

The Washington City Council met in a regular session on Monday, November 18, 2013 at 5:30 pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Bobby Roberson, Councilman; Doug Mercer, Councilman; William Pitt, Councilman; Richard Brooks, Councilman; Brian M. Alligood, City Manager; Cynthia S. Bennett, City Clerk and Franz Holscher, City Attorney. Councilman Moultrie was absent from the meeting.

Also present were: Stacy Drakeford, Interim Fire & Police Services Director; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Keith Hardt, Utilities Director; John Rodman, Community/Cultural Resources Director; Kristi Roberson, Parks and Recreation Manager; Susan Hodges, Human Resource Director; Gloria Moore, Library Director; Lynn Lewis, Tourism Director; and David Carraway, IT Department and Mike Voss, Washington Daily News.

Mayor Jennings called the meeting to order and Councilman Pitt delivered the invocation.

#### **APPROVAL OF MINUTES:**

Councilman Mercer requested the following changes on the minutes of October 7 and October 18, 2013:

1. Page 6 of the October 7 minutes where Mr. Langley discussed water under his house should read sills and not seals
2. Page 12 paragraph 2 the motion of the October 18 should read: vote 3-1 and not 3-2.

By motion of Mayor Pro tem Roberson, seconded by Councilman Mercer, Council approved the minutes of October 7, and October 18, 2013 as amended.

#### **APPROVAL/AMENDMENTS TO AGENDA:**

Mayor Jennings reviewed the requested changes to the agenda:

- Remove: Public Hearing Other: Item A: – Close out of FY 09 CDBG Housing Development Program – Washington Housing, Inc. (\*City Manager, Brian Alligood explained he had received a call from Richard Self, DCA and he indicated the City had received approval on the extension of grant FY 09 CDBG Housing Development Program until October 14, 2014 and we do not need to close the grant until that time.)
- Remove: New Business: Item C: - Authorize – City Manager to execute an agreement with EMS Management & Consultants
- Move Consent Item G: Adopt – Ordinance Waterfront Advisory Committee to Old Business Item E

By motion of Councilman Mercer, seconded by Councilman Brooks, Council approved the agenda as amended.

#### **CONSENT AGENDA:**

By motion of Councilman Mercer, seconded by Councilman Brooks, Council approved the consent agenda as amended.

- A. Authorize/Adopt – Repurchase of Cemetery Lot R-83, Plot 2 in Oakdale Cemetery for \$600 **and** Adopt Budget Ordinance Amendment

#### **AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, N.C. FOR THE FISCAL YEAR 2013-2014**

**BE IT ORDAINED** by the City Council of the City of Washington, North Carolina:

Section 1. That following account numbers in the Cemetery Fund appropriations budget be increased for decreased in the amounts shown to provide funds for the repurchase of cemetery lot R-83, plot 2.

39-90-9990-9900	Contingency	\$(600)
39-90-4740-4901	Repurchase of Lots	600

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 18<sup>th</sup> day of November, 2013.

**ATTEST:**

s/Cynthia S. Bennett, CMC  
City Clerk

s/N. Archie Jennings, III  
Mayor

B. Declare Surplus/Authorize – Declare surplus and Authorize the sale of vehicles through electronic auction using GovDeals

<u>Vehicle Number</u> <u>Number</u>	<u>Make /Model</u> <u>Description</u>	<u>Serial</u> <u>Number</u>	<u>Odometer</u> <u>Reading</u>
#134	2005 Ford Crown Vic	1FAHP71W75X136814	126,905
#150	2007 Ford Crown Vic	2FAFP71W17X130663	125,690
#158	2005 Ford Crown Vic	2FAHP71W25X100996	110,067
#159	2005 Ford Crown Vic	2FAHP71W15X128532	106,080

C. Accept/Adopt – Grant from Mid-East Commission Area Agency on Aging and Adopt Budget Ordinance to adjust the FY 13-14 budget appropriations and estimated revenue to match the grant award (\$32,680)

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE  
OF THE CITY OF WASHINGTON, N.C.  
FOR THE FISCAL YEAR 2013-2014**

**BE IT ORDAINED by the City Council of the City of Washington, North Carolina:**

Section 1. That the Estimated Revenues in the General Fund be decreased in the amount of \$571 in the account Mid-East Grant, account number 10-40-3621-3300.

Section 2. That the following account numbers in the Senior Programs portion of the General Fund appropriations budget be increased or decreased in the amounts shown to reflect the actual grant award.

10-40-6123-0200	Salaries	\$3,329
10-40-6123-0301	Part-Time Salaries – Mid-East	2,000
10-40-6123-4501	Mid-East Grant –General HP	( 498)
10-40-6123-4504	Mid-East Grant-Center Operations	( 5,402)
	Total	(\$ 571)

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18<sup>th</sup> day of November, 2013.

**ATTEST:**

s/Cynthia S. Bennett, CMC  
City Clerk

s/N. Archie Jennings, III  
Mayor

- D. Approve/Support – NC State Trails Program – 2014-2015 RTP Grant application
- E. Adopt – Resolution directing the City Clerk to investigate a petition for a non-contiguous annexation of Washington Montessori School

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE  
A PETITION RECEIVED UNDER G.S. 160A-31**

**WHEREAS**, a petition requesting annexation of an area described in said petition was received on November 18, 2013 by the Washington City Council; and

**WHEREAS**, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

**WHEREAS**, the City Council for the City of Washington deems it advisable to proceed in response to this request for annexation;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Washington that:

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council the result of her investigation.

Adopted this the 18<sup>th</sup> day of November, 2013.

**ATTEST:**

s/Cynthia S. Bennett, CMC  
City Clerk

s/N. Archie Jennings, III  
Mayor

Annexation # 13-A-02  
Washington Montessori School

- F. Adopt – Resolution directing the City Clerk to investigate a petition for a non-contiguous annexation of West Park Motors

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE  
A PETITION RECEIVED UNDER G.S. 160A-31**

**WHEREAS**, a petition requesting annexation of an area described in said petition was received on November 18, 2013 by the Washington City Council; and

**WHEREAS**, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

**WHEREAS**, the City Council for the City of Washington deems it advisable to proceed in response to this request for annexation;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Washington that:

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council the result of her investigation.

Adopted this the 18<sup>th</sup> day of November, 2013.

**ATTEST:**

s/Cynthia S. Bennett, CMC  
City Clerk

s/N. Archie Jennings, III  
Mayor

Annexation # 13-A-03  
West Park Motors

G. **Moved to New Business Item: E – Adopt – Ordinance – Waterfront Advisory Committee**

**COMMENTS FROM THE PUBLIC:**

There were no comments from the public

**PUBLIC HEARING ON ZONING: NONE**

**PUBLIC HEARING OTHER: CLOSE OUT OF FY09 CDBG HOUSING DEVELOPMENT PROGRAM – WASHINGTON HOUSING INC. (item removed)**

**SCHEDULED PUBLIC APPEARANCES:**

**Randall & Shelia Morgan** who lives on River Road requested to be released from Washington Utilities in order to be transferred to Tideland Electric.

Mr. and Mrs. Morgan commented that Tideland has a line that runs behind and in front of their property.

Mayor Jennings inquired what else would be involved in releasing the Morgan's from Washington Utilities? Mr. Allgood stated he understands this is not something we have done before and North Carolina laws states that once you serve a customer you retain that customer until you remove the customer. The first step would involve Council agreeing to the transfer and then it would have to be sent to the North Carolina Power Agency for their approval.

Mayor Jennings voiced Council will take this request under advisement and directed Mr. Allgood to follow up on the procedure and bring this item back to Council for final approval.

**Mr. Joey Toler** – explained that the Beaufort County Arts Council had recently become aware of a grant opportunity from the National Endowment for the Arts and wishes to pursue the grant. It is a planning grant which will involve calling in consultants to work with them as they move forward with their efforts involving the Turnage Theater. To ensure success as much as possible, this will include various partners in our community. The grant that NEA is offering is a grant called OUR TOWN Grant Program.

The grant requires two primary partners: a non-profit cultural arts organization and a local government entity. BCAC would serve as the 501(c)(3) arts organization and would like to request the local government entity be the City of Washington.

BCAC would fulfill all administrative roles regarding the grant (i.e. application, disbursement of funds, reporting, etc.) The grant does not require any financial obligation on the City's part.

City of Washington would only need to submit a formal endorsement letter designating the project as the only one being submitted for the local government. In other words, that City of Washington is not applying for any other NEA grants.

The deadline to apply for the grant is January 13, 2014. Grant awards range from \$25,000 to \$200,000. BCAC will be applying for \$25,000-\$30,000 to bring in consultants. Mr. Toler provided the basic outline regarding the grant.

Mayor Pro tem Roberson inquired which one of the projects BCAC is specifically interested in for the funding capabilities? Mr. Toler stated they are looking at "Cultural Planning" for the Creative asset mapping, Support for creative entrepreneurship and Creative industry cluster/hub development. Councilman Mercer asked if Mr. Toler felt they would be able to apply in all five areas. Mr. Toler stated they will be applying for a grant where all of this can work together and Councilman Mercer suggested they would be more likely to receive a grant if you concentrate your efforts in one or two those areas that was mentioned. Councilman Pitt inquired if this was a competitive ~ Mr. Toler responded 'yes' very competitive – approximately 350 applications and they grant approximately 80.

Mayor Jennings voiced the key part of the process was exactly what Mr. Toler had done – he love that he came in early. Also with there being no administrative expectation of the City (with the Manger agreeing we do not have any other competing interest for NEA grants) he doesn't see why the City would not supportive.

**Mr. Marc Recko** – addressed Council regarding the KaBoom grant. Mr. Recko introduced Ms. Lorraine Garner from Oakcrest Community Housing Development and noted they are the happy recipient of receiving a grant to build a playground. On December 14, 2013, they will be building the playground at Oakcrest Housing Development. On the morning of December 14, there will be no playground there but by the end of the day, there will be a new playground for 200+ children that reside at Oakcrest. The grant is through an organization called KaBoom, the grant is for \$15,000. They are in the process of raising another \$80,000.

Mr. Recko voiced they are here to invite City Council to participate with this project. Councilman Pitt attended the design day where the children came together and designed the playground. Mr. Recko requested the City supply trash receptacles, recycle containers, dumpsters, and possibly EMS support during the day.

Ms. Garner stated the Oakcrest Community needs this playground for our children because the children have nowhere to play except for in the streets.

Mayor Jennings thanked Mr. Recko and Ms. Garner for their involvement and stated they look forward to seeing the playground.

**CORRESPONDENCE AND SPECIAL REPORTS:**

**MEMO – STATUS REPORT – SBEA GRANT PROGRAM & CDBG 09-C-2050  
WASHINGTON HOUSING INC.**

The Division of Community Investment and Assistance approved the 2011 Community Development Block Grant (CDBG) for Small Business and Entrepreneurial Assistance (SBEA) funds in the amount of \$200,000. The primary purpose of the SBEA program is to provide funding to local governments to help jumpstart the growth of existing small businesses by expanding their businesses and creating new jobs. Five (5) local businesses are participating in the program and will provide the local match. The local businesses that are participating are: Park Boat Company, Hospital Pharmacy, East Carolina Imports, FRE Plumbing, and Pamlico Fencing.

The grant project is authorized to provide CDBG funds to these local businesses for construction/rehab, machinery and equipment, and working capital. By providing capital resources to the existing business the City of Washington will help increase employment opportunities by creating 8 new jobs. Funding eligibility is contingent upon the creation and retention of permanent fulltime jobs. Each new job created or retained is eligible to receive up to \$25,000 in grant funds. The City of Washington was therefore awarded \$200,000 in Small Business and Entrepreneurial Assistance funds. Before these funds can be released the conditions must be met. Monthly status reports and a letter indicating completed activities is provided.

**CDBG 09-C-2050 Washington Housing Inc.**

The Division of Community Investment and Assistance approved the 2009 Community Development Block Grant for Housing Development in the amount of \$227,700. The primary purpose of the program is to provide funding to local governments to provide residential construction for low to moderate income individuals. The City of Washington is working in partnership with the Washington Housing Authority and Washington Housing Inc. The performance requirement was originally 13 houses built and occupied by 10/31/14. That requirement has been reduced to 10 houses. Attached are monthly grant updates and project schedule. (Memo accepted as presented)

Re: Jumpstart Washington CDBG Report  
Washington CDBG #11-C-2340

Small Business and Entrepreneurial Assistance Grant (SBEA)

Dear Mr. Rodman:

During the months of August, September and October, 2013, The Wooten Company completed the following CDBG activities:

- One new employee was hired by one of the five project companies that qualifies as low – moderate income, which brings our current total of new hires to six towards a goal of eight.
- Grant funded purchases were advertised for three pieces of equipment for project company’s needs.
- Staff met with four of five project companies to execute the revised Legally Binding Commitments and Promissory Notes.
- Staff met with project companies to finalize specifications for grant funded equipment needs.
- On-going administration and financial management.

s/Billie Hansen, Project Manager

**Monthly Performance Status Report**

(Due on 15<sup>th</sup> of each month)

Grantee Name: City of Washington Grant Number: 11-C-2340 Month: October Year: 2013

<u>Activity</u>	<u>Performance Schedule (On/Off)</u>	<u>Current Performance Status (If Off Schedule)</u>	<u>Remedy to get back on Schedule (If Off Schedule)</u>
Rehabilitation (Commercial)	On		
Working Capital	On		
Machinery & Equipment	On		
Planning	On		
Administration	On		

Prepared By: Billie Hansen Title: Project Coordinator  
 Endorsed By: Brian Alligood Title: City Manager (City/County Manager or Clerk)  
 Board or Council Update: John Rodman, Dir. of Planning Date: November 11, 2013

**Performance Schedule**  
(Based on Performance Based Contract)  
On/Off Schedule

- ❖ • *Off Performance Schedule: Provide current performance status and remedy to get back on schedule and submit report*
- ❖ • *On Performance Schedule: Stop and submit report, no current performance status or remedy to get back on schedule is required*

Status Report  
City of Washington  
Washington FY 11 SBEA Jumpstart Washington  
11-C-2340

Date: October 15, 2013  
Through CDBG Req #: 2

Activity	Total Project Funds			CDBG Funds		Other Funds	
	CDBG Grant**	Other*	Total Budget	Requisitioned To Date**	Unencumbered Balance To Date	Expended To Date**	Unencumbered Balance To Date
C-1							
Working Capital	\$43,750.00	\$97,125.00	\$140,875.00	\$43,750.00	\$0.00	\$0.00	\$97,125.00
Machinery and Equipment	\$131,250.00	\$53,375.00	\$184,625.00	\$54,531.22	\$76,718.78	\$0.00	\$53,375.00
Planning	\$5,000.00	\$0.00	\$5,000.00	\$0.00	\$5,000.00	\$0.00	\$0.00
Administration	\$20,000.00	\$0.00	\$20,000.00	\$16,644.43	\$3,355.57	\$0.00	\$0.00
C-1 Total	\$200,000.00	\$150,500.00	\$350,500.00	\$114,925.65	\$85,074.35	\$0.00	\$150,500.00
PROJECT TOTAL	\$200,000.00	\$150,500.00	\$350,500.00	\$114,925.65	\$85,074.35	\$0.00	\$150,500.00

**City of Washington  
Grant Update**

Agenda Date: November 18, 2013

<b>Grant Name:</b> CDBG Housing Development Program
<b>Grant Number:</b> CDBG 09-C-2050 (HD)
<b>Grant Agency:</b> Department of Commerce
<b>Contract Grant Administrator:</b> Holland Consulting, Reed Whitesell
<b>City Grant Administrator:</b> John Rodman

Award Date: 4/9/10      Grant Expiration Date:      Projected Completion Date: 10/31/14

**Financial Status:**

	Total Budgeted <u>Revenues</u>	Actual Revenues <u>Project to Date</u>	Total Budgeted <u>Expenditures</u>	Actual Expenditures <u>Project to Date</u>
Grant Funds	\$227,700	\$185,718.62	\$227,700	
City Match	0		0	
Other Match				
<b>Total</b>	<b>\$227,700</b>	<b>\$185,718.62</b>	<b>\$227,700</b>	<b>\$185,718.62</b>

\*Detailed Revenue and Expenditure Statement is attached.

Reimbursement to Date:	\$185,718.62
Outstanding Reimbursement requests:	<u>0</u>
Total Reimbursement:	\$185,718.62

**Grant Status**

**Prior Activity:**

The performance requirement has been reduced from 13 to 10 houses built and occupied by 10/31/14. Three houses are currently occupied at this time. One of these houses was constructed on one of the 8 lots purchased with grant funds. As per the LBC, \$6000 was placed in the trust account of the city attorney.

**Activity during Month:**

The fourth house is under construction at this time. The closing has already taken place and WHI put \$6000 in the city attorney's trust account as stated in the LBC. The buyer should be living in home within 2 months.

**City of Washington  
Grant Update**

**Projected Activity for next Month:**

The fifth house is under contract and should close within the next month. Construction will begin at that time. In addition, 3 more applicants are in the pre-approval process at this time.

**MEMO – FUEL REBATE POLICY**

In order to assist with attracting more aircraft traffic to Warren Field Airport, staff has proposed the attached fuel rebate program to be implemented. This proposal was submitted to the Airport Advisory Board and received their overwhelming approval. This policy is just being presented for your information and no action is required. (Memo accepted as presented)

**FUEL REBATE POLICY**

Purchase 250 or more gallons per quarter receive \$0.10/gallon rebate.

Purchase 500 or more gallons per quarter receive \$0.20/gallon rebate.

Purchase 1,000 or more gallons per quarter receive \$0.30/gallon rebate.

Purchase 2,000 or more gallons per quarter receive \$0.40/gallon rebate.

Purchase 4,000 or more gallons per quarter receive \$0.50/gallon rebate.

Conditions: Must sign up to receive rebates and make at least four (4) purchases per quarter. Rebates will be made within thirty (30) days of end of quarter. Quarters end in March, June, September and December.

**REPORT – LOAD MANAGEMENT DEVICE INSTALLATION (OCTOBER)**

Load Management Device Installation Report

Project Start Date : October 2010

	October 2013	Project to Date	Projected Annual Savings
Total Load Management Device Installations	52	2,318	
Total Accounts Added with Load Management	64	1,717	
<b>Appliance Control Installations</b>			
Air Conditioner / Heat Pump	70	1,747	\$85,575
Auxiliary Heat Strip	53	878	\$90,978
Electric Furnace	3	260	\$35,922
Water Heater	61	1,385	\$118,290
			<u>\$330,765</u>
<b>Total Encumbrances to Date</b>			
Load Management Devices		\$65,600	
Contractor Installations		\$250,000	
Total Project Encumbrances		\$315,600	
<b>Total Expenses to Date</b>			
Load Management Device Purchases		\$65,600	
Contractor Installation Expenses	\$9,805	\$232,995	
Total Project Expenses		\$298,595	
Average Cost per Load Management Device Installed		\$129	
Average Installed Cost per Controlled Appliance		\$70	
Load Management Devices Remaining in Stock	182		

**REPORTS FROM BOARDS, COMMISSIONS AND COMMITTEES:**  
**HUMAN RELATIONS COUNCIL**

(Report approved as submitted)

**SCHEDULED PUBLIC APPEARANCES:**

Criminal Justice Program Coordinator, Kimberly Grimes addressed the Board regarding the event “Take-A-Stand & Give-A-Helping Hand” to be held on Saturday, October 19, 2013 at the Smoke on the Water Festival. Ms. Grimes explained that the event would allow an individual to put their hand on a Police or Fire vehicle and all contributions would be donated to the Marion L. Shepard Cancer Center.

Event organizer, Barbara Gaskins addressed the Board regarding the Trunk & Treat event planned for Thursday, October 31, 2013 at Beebe Park. Ms. Gaskins requested the boards’ participation by volunteering and donating candy.

**Update – Fire Chief Rose** – Provided an update on the project and the placement of the Ed Peed marker at Beebe Park. Chief Rose presented the marker for the Board to review and noted it was made with non-glare acrylic. This is an informational pedestal and the community will be provided with the history of Edward Peed when walking in the Park for generations to come.

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Chief Rose advised the next step in this on-going project would be to request NDCOT to place a historical marker sign out at 15<sup>th</sup> Street directing people to the site.

**Discussion – Post Master Myra Lynn – unveiling of cancellation stamp for Ed Peed** – The Human Relations Council was informed of Ms. Lynn’s request to unveil a cancellation stamp at the Ed Peed Commemoration service to be held on Saturday, February 15, 2014. By unanimous vote, the Board approved this request.

**Amendment – Amended By-laws** – A hard copy of the current operating by-laws was provided to the Human Relations Council Board members for filing purposes.

**OPEN DISCUSSION:**

Memorial discussion for former Board Chair Evelyne Roberson was held. The Board approved purchasing flowers (\$72.59) from the Human Relations Council budget and to receive private donations from Board members. The private donations would be presented to the Marion L. Shepard Cancer Center to memorialize Mrs. Roberson. Also, the Human Relations Council presented a resolution to Mrs. Roberson’s family.

**CANCELLED MEETING:**

Chairman Hughes and the Human Relations Board determined that there were no regular items that would require a meeting for the month of November. The next meeting was scheduled for December 10, 2013 with time and venue to be announced.

**FINANCIAL REPORTS (EMAILED AS AVAILABLE)**

There were no comments regarding Financial Reports.

**APPOINTMENTS – VARIOUS BOARDS, COMMISSIONS, AND COMMITTEES:**  
**Waterfront Advisory Committee –**

Councilman Mercer explained he requested moving this item because all previous discussions regarding this board have involved maintenance, or management of the Waterfront Docks. When the ordinance and resolution was written it basically states a Waterfront Advisory Committee. Councilman Mercer suggested everywhere we have the words ‘Waterfront Advisory Committee’ we put in the word ‘Docks’ between the word ‘Waterfront’ and ‘Advisory’. Councilman Mercer stated this would then become the Waterfront Docks Advisory Committee to clarify that the panel’s focus would be on the City docks and not the entire waterfront. Also, he recommended changing the language under Sec. 2 – 594 Duties:

**Paragraph:**

The Waterfront Advisory Committee shall act as an advisory board to the City Council, City Manager and Director of Community and Cultural Services and provide recommendations regarding the management of the waterfront docks according to the Washington Waterfront Docks Business Plan and to advance the goals and objectives of said Plan.

**To read:**

The Waterfront Advisory Committee shall act as an advisory board to the City Council, City Manager and Director of Community and Cultural Services provide recommendations regarding the management of the waterfront docks.

Mayor Jennings voiced that there was no residency requirement in the composition of the committee. It has been determined that out of all the people who have applied that there are no city residents in the group. In all the other advisory boards the City has, there is a residency requirement at least for a portion of the board. Councilman Brooks felt we should have some City residents on this board. Mayor Pro tem Roberson suggested it should be 3-2 (3 inside the city and two outside). Councilman Pitt concurred with City residency and voiced it should at least at be a minimum two. Councilman Mercer said he had no problem with two or three – speaking from experience with the Airport Board it’s hard to get three but at least a minimum of two. Mayor Pro tem Roberson reiterated the City should always control the majority of the votes if it belongs to the City of Washington.

Mayor Jennings referred to Franz Holscher, City Attorney as to what he had heard regarding the modification put forward and if he could reduce this to writing tonight. Mr. Holscher stated with staff's help it could be done but he would prefer to do a re-write and propose the draft at a later date.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council tabled this appointment until December 9, 2013 to allow revisions. Majority vote was three (3) inside and two (2) outside. This will be addressed under Old Business at the December 9, 2013 meeting.

Mr. Fred Watkins stated that December 9, 2013 was doable but felt we need more members to allow qualified applicants to serve on the board. Mr. Watkins suggested increasing the Board appointment to five or seven to have good qualified people.

Mayor Jennings suggested Council was looking for the Maritime Committee to put forward some formal recommendations but what we received was a lot of people on the committee applied for the position. Council would appreciate the guidance of the Maritime Committee to choose two members to serve on this board.

**Recreation Advisory Committee –**

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson, Council appointed Carl W. Moore Jr. to the Recreation Advisory Committee to fill the unexpired term of Ann Ange (**outside**), term to expire June 30, 2014.

**Planning Board –**

Mayor Jennings suggested having a new liaison in place before making the appointment on the Planning Board and Council agreed.

**Board of Library Trustees –**

Appointments continued

**OLD BUSINESS:**

**AUTHORIZE – CITY MANAGER TO NEGOTIATE AND EXECUTE ENGINEERING CONTRACT FOR VARIOUS WATER AND PROJECTS AS A RESULT OF THE RECENTLY AWARDED EDA GRANT:**

City Manager, Brian Alligood explained this request allows the City to negotiate and execute an engineering contract with Rivers and Associates, Inc. North Carolina Law known as the Minnie Brooks Act requires when acquiring engineering services that it not be based on price and it be done on the basis of qualifications. Request for qualifications were sent out and from that we made a qualification base selection. The firm that is the most qualified and experienced with the projects we have. After this phase you negotiate the final price. RFQ was distributed after we were awarded the EDA grant eight (8) companies submitted proposals. Staff recommended that Rivers and Associates, Inc. be selected the engineering firm. It will be much easier for staff to deal with one engineering firm and have one engineering firm overseeing all projects in reference for submittals, pay request and reimbursement requests.

Mr. Alligood stated the amount of the contract will be negotiated in accordance with the law; however, it will not exceed \$290,506. This is the amount of monies allocated under the grant for engineering services.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council authorized the Manager to negotiate and execute an engineering contract with Rivers and Associates, Inc. for various water and sewer projects as a result of the recently awarded EDA grant.

**AWARD/APPROVE – CONTRACT FOR AIRPORT TERMINAL SITE SURCHARGE WORK AND APPROVE PURCHASE ORDER FOR SAME TO B.E. SINGLETON & SONS, INC. (\$37,016)**

City Manager, Brian Allgood explained this a contract and corresponding purchase order for B.E. Singleton to perform earth moving work at the future site of the proposed airport terminal building. When the site was evaluated by the Geo-Technical Engineer, there were some concerns with soil shrinkage and settling with the new building. This work will primarily consist of the excavation of approximately 30” of existing material, backfilling with structural fill and surcharging the site with an additional 8’ of material. This method was determined to be the most economical of those considered in order to reduce the possibility of settlement in the future. Informal bids were requested of three contractors and we received two bids. B.E. Singleton had the lowest bid of \$37,016.

Mr. Allgood stated part of the project will consist of a surveyor being on site to do measurement.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council awarded a contract for the airport terminal building surcharge work to B.E. Singleton & Sons, Inc., in the amount of \$37,016 and approved a purchase order for this amount.

Warren Field  
Terminal Building Surcharge and Site Preparation  
TBI No. 4207-1302  
Bid Date: Friday, October 25, 2013 @ 1:00 pm

This Tabulation was prepared by Talbert & Bright, Inc. and is correct to the best of our knowledge, information, and belief.

By:  Date: 10/25/13

Base Bid				B.E. Singleton & Sons, Inc. 920 W. 3rd Street Washington, NC 27889 NC General License No: 8226		St. Clair Trucking, Inc. PO Box 372 Washington, NC 27889 NC General License No: 30071		
Item	Spec.	Description	Unit	Quantity	Unit Price	Ext. Total	Unit Price	Ext. Total
1	P-150	Mobilization	LS	1	\$ 4,355.00	\$ 4,355.00	\$ 12,180.00	\$ 12,180.00
2	95	Temporary Chain Link Construction Fence	LF	430	\$ 7.06	\$ 3,035.00	\$ 16.05	\$ 6,901.50
3	95	Temporary Silt Fence	LF	300	\$ 3.00	\$ 900.00	\$ 3.35	\$ 1,005.00
4	95	Temporary Seeding and Mulching	LS	1	\$ 1,500.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00
5	95	Erosion Control Matting	SY	75	\$ 4.00	\$ 300.00	\$ 5.60	\$ 420.00
6	REP	Pavement Removal	SY	360	\$ 13.25	\$ 4,770.00	\$ 5.14	\$ 1,850.40
7	REP	Sidewalk Removal	SY	26	\$ 10.00	\$ 260.00	\$ 5.77	\$ 150.02
8	95	Remove Chain Link Fence	LF	275	\$ 3.20	\$ 880.00	\$ 1.64	\$ 451.00
9	P-152	Unclassified Excavation	CY	2,100	\$ 6.00	\$ 12,600.00	\$ 5.00	\$ 10,500.00
10	P-152	Borrow Embankment - Structural Fill	CY	700	\$ 9.00	\$ 6,300.00	\$ 17.54	\$ 12,278.00
11	95	Settlement Monitoring Devices	EA	2	\$ 300.00	\$ 600.00	\$ 600.00	\$ 1,200.00
12	95	Drainage Pipe Replacement	LF	40	\$ 37.90	\$ 1,516.00	\$ 20.00	\$ 800.00
<b>Total - Base Bid:</b>						<b>\$ 37,016.00</b>		<b>\$ 48,735.92</b>

**ADOPT – WATERFRONT RESTROOMS GRANT PROJECT ORDINANCE AMENDMENT AND BUDGET ORDINANCE AMENDMENT (\$44,397) STORAGE EQUIPMENT SHELTER**

City Manager, Brian Allgood called Council’s attention to a previous meeting when there were discussion regarding additional funds that would be needed in order to fund the low bid on the construction of this project.

Councilman Mercer inquired about the installment purchases item in the amount of (\$17,680). Mr. Allgood stated it was the under-run on the Peterson’s building roof.

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson Councilman Brooks, Council adopted a grant project ordinance amendment and a budget ordinance amendment to provide additional funds for the Waterfront Restroom project.

**AN ORDINANCE TO AMEND THE GRANT PROJECT ORDINANCE FOR THE WATERFRONT RESTROOM GRANT AWARD CITY OF WASHINGTON, N.C FOR THE FISCAL YEAR 2013-2014**

**BE IT ORDAINED** by the City Council of the City of Washington, North Carolina:

Section 1. That the following appropriation accounts in the Waterfront Restroom grant be increased or decreased by the following amounts:

78-40-6124-0401

Planning and Design

\$(26,825)

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78-40-6124-4500	Construction	86,222
78-40-6124-9990	Contingency	<u>(15,000)</u>
	Total	\$ 44,397

Section 2. That the following revenue accounts in the Waterfront Restroom grant be increased by the following amount:

78-40-3352-0000 City Contribution- Trans. Gen. Fund \$44,397

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18<sup>th</sup> day of November, 2013.

**ATTEST:**

s/Cynthia S. Bennett, CMC  
City Clerk

s/N. Archie Jennings, III  
Mayor

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE  
OF THE CITY OF WASHINGTON  
FOR THE FISCAL YEAR 2013-2014**

**BE IT ORDAINED** by the City Council of the City of Washington, North Carolina:

Section 1. That the following appropriation accounts in the General Fund be decreased by the following amounts:

10-00-9990-9900	Contingency	\$(26,717)
10-40-6120-7401	Installment Purchases	<u>(17,680)</u>
	Total	\$(44,397)

Section 2. That account number 10-00-4400-6200, Transfer to Capital Projects, Miscellaneous portion of the General Fund appropriations budget be increased in the amount of \$44,397 to provide funds for the waterfront restroom grant project.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 18<sup>th</sup> day of November, 2013.

**ATTEST:**

s/Cynthia S. Bennett, CMC  
City Clerk

s/N. Archie Jennings, III  
Mayor

**AUTHORIZE – CITY MANAGER TO SIGN THE GROUND LEASE AND EASEMENT  
AGREEMENT WITH WASHINGTON AIRPORT SOLAR, LLC.**

City Manager, Brian Alligood noted this is the agreement that has been thoroughly reviewed by the FAA and they have no objections to it as presented. This agreement allows them to place the Solar Farm at the airport and includes all of the legal documents.

Council commended the efforts of Mr. Alligood for getting this project moving along. Councilman Mercer voiced Mr. Alligood had gone above and beyond what is considered to be his normal responsibilities. Mayor Jennings echoed the comments and stated he did an awesome job in preserving the process. Mr. Alligood echoed the same comments to Public Works Director, Allen Lewis and his staff along with the City Attorney.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council approved and authorized the Manager to sign the attached Ground Lease and Easement Agreement and related legal documents, including but not limited to, Easement Agreement, Solar Skyway Easement, Memorandum of Lease and Owner Affidavit and Indemnity Agreement on behalf of the City with Washington Airport Solar, LLC.

**GROUND LEASE AND EASEMENT AGREEMENT**

This GROUND LEASE AND EASEMENT AGREEMENT (this "Ground Lease"), is dated as of November 20, 2013 ("Effective Date") between CITY OF WASHINGTON, a body politic and corporate organized and existing under the laws of the State of North Carolina ("Owner") and WASHINGTON AIRPORT SOLAR, LLC, a Delaware limited liability company ("Tenant").

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, hereby agree as follows.

1. **Definitions.** For all purposes of this Ground Lease the following terms shall have the meanings assigned to them in this Article, and include the plural as well as the singular.

1.1 "Affiliate" means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of the foregoing, "control", "controlled by" and "under common control with" with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

1.2 "Business Day" means any day other than Saturday or Sunday or a legal holiday observed by the State of North Carolina.

1.3 "Casualty" means any loss or destruction of or damages to the Facility or the Site resulting from any act of God, fire, explosion, earthquake, accident or the elements, whether or not covered by insurance and whether or not caused by the fault or negligence of either Party, or such Party's employees, agents, contractors, or visitors.

1.4 "Closing" has the meaning set forth in Section 23.2.

1.5 "Commercial Operation Date" means the date upon which Tenant notifies Owner that the Facility is commercially operational.

1.6 "Environmental Laws" means any federal, state or local law, code, statute, ordinance, rule, regulation, rule of common law, guideline or informal policy position, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture of any Hazardous Materials regulated thereunder, now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal or release of any Hazardous Materials to be provided to any party), including, but not limited to, the following: the Comprehensive Environmental Response, Compensation and Liability Act, as now or hereafter amended (42 U.S.C. Section 9601, et seq.); the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Section 1801, et seq.); the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Section 6901, et seq.); and any so-called "Superfund" or "Superlien" law, or 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 or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 et seq.); and any "toxic pollutant" under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 et seq.); and any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. Section 7901 et seq.).

1.7 "Environmental Liability" means any action, lawsuit, claim or proceeding (including claims or proceedings at common law or under the Occupational Safety and Health Act or similar laws relating to safety of employees) arising under or related in any way to the Environmental Laws or which seeks to impose liability for (a) noise; (b) pollution or contamination of the air, surface water, ground water or land or the clean-up of such pollution or contamination; (c) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (d) exposure to or contamination by Hazardous Materials; (e) the safety or health of employees or (f) the manufacture, processing, distribution in commerce or use of Hazardous Materials. An "Environmental Liability" includes a common law action, whether direct or indirect, as well as a proceeding to issue, modify or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that such a proceeding attempts to redress violations of an applicable permit, license, or regulation as alleged by any governmental authority.

1.8 "Environmental Permit" means any permit, license, approval or other authorization under any applicable Environmental Laws.

1.9 "Facility" means a solar photovoltaic electric generating facility or facilities and related Utilities, improvements, equipment, facilities, appurtenances and other improvements existing on the Effective Date and/or to be developed, constructed, owned, operated and maintained on the Site and the Easement Areas, including but not limited to all structures, machinery, equipment, meters, fixtures, interconnections, ancillary equipment and materials, and all additions, expansions and modifications thereto as may be located on the Site and the Easement Areas.

1.10 "Force Majeure" means all events beyond the control of the Party affected, including without limitation flood, earthquake, storm, lightning, fire, explosion, war, riot, civil disturbances, strikes, and sabotage.

1.11 "Hazardous Materials" means any flammable, reactive, explosive, corrosive or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials, wastes or substances, exposure to which is prohibited, limited or regulated by a federal, state, county, regional or local authority, or any Environmental Laws including, but not limited to, asbestos, PCBs, petroleum products and by-products, hazardous air pollutants, or any substance identified, defined or listed as a "toxic pollutant," "hazardous wastes," "hazardous materials," "hazardous substances," "toxic substances," "pollutant or contaminant," "hazardous chemical," or any hazardous air pollutant, or similarly identified in, pursuant to, or for purposes of, any Environmental Laws.

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1.12 "Lease Year" means each consecutive 12 month period during the Term commencing with the first day of the first full calendar month following the Rent Commencement Date (or if the Rent Commencement Date shall occur on the first day of a calendar month, commencing on the Rent Commencement Date) and ending on the last day of the calendar month completing such 12 month period.

1.13 "Official Records" means the Official Records of Beaufort County, North Carolina.

1.14 "Owner's Parties" means Owner, its elected as well as appointed officials, officers, directors, partners, members, affiliates, lenders, employees, shareholders, attorneys, lessees (other than Tenant), sublessees, licensees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

1.15 "Party" or "Parties" means Owner and/or Tenant, as applicable.

1.16 "Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization or other business entity, or any governmental authority.

1.17 "Public airport" means an airport used or intended to be used for public purposes - (a) that is under the control of a public agency; and (b) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is public owned.

1.18 "Release" means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Material whether on, under or migrating to or from the property of any Party.

1.19 "Rent Commencement Date" means the Effective Date.

1.20 "Rent Payment Term" means the period of time commencing with the Rent Commencement Date and expiring at the end of the Term.

1.21 "Site" means the property described on Exhibit A attached hereto, together with all improvements located thereon as of the Effective Date.

1.22 "Tenant's Contemplated Use" means the construction, operation, use, maintenance, repair and replacement of the Facility on the Site and within the Easement Areas, as generally illustrated on Exhibit "F" attached hereto and substantially in accordance with plans therefor as disclosed to Owner prior to the execution of this Ground Lease.

1.23 "Tenant's Parties" means Tenant, its officers, directors, partners, members, affiliates, lenders, employees, shareholders, attorneys, lessees, sublessees, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

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1.24 "Transfer" means a transfer or conveyance of Owner's interest in (i) the Site, (ii) the Easements and/or (iii) this Ground Lease.

1.25 "Utilities" means the services and related improvements, equipment and facilities necessary for the operation of the Facility, including, but not limited to, natural gas, electrical power, water, storm water, sanitary sewer, roads, telephone and telecommunication services, improvements, equipment and facilities.

2. Lease; Term.

2.1 Lease of Site; Term. Owner hereby leases the Site to Tenant, and Tenant hereby leases the Site from Owner, upon the terms and conditions hereof, for a term which shall commence on the Effective Date, and expire on the date that is fifteen (15) years after the Commercial Operation Date (the "Initial Term"); provided, that upon not less than 180 days' written notice (a "Renewal Notice") to Owner prior to the expiration of the then expiring term, Tenant may elect to extend the term of this Ground Lease for a period of five (5) years (the "First Renewal Term"), followed by up to two additional period(s) of five (5) years each (the "Second Renewal Term" and "Third Renewal Term", respectively, and, together with the First Renewal Term and the Initial Term, collectively, the "Term"), with each such renewal term commencing on the expiration of the then expiring term and continuing for the period specified in such Renewal Notice delivered by Tenant.

(a) Tenant shall notify Owner that the Facility is commercially operational by December 31, 2014.

2.2 Termination Right. In the event of a condition outside of Tenant's reasonable control that prevents or materially and adversely affects Tenant's ability to use or operate any Facility located on the Site for the purposes of generating or selling electricity, Tenant shall notify Owner ("Tenant's Notice") of the same and the Parties shall meet and discuss whether there is any commercially feasible alternative for Tenant to maintain its operations on the Property. If the Parties, each negotiating in good faith and with due diligence, cannot come to a mutually satisfactory agreement within sixty (60) days following the date of Tenant's Notice, then Tenant may, at any time following such date, elect to terminate this Ground Lease with respect to all or a portion of the Site by giving Owner not less than one hundred twenty (120) days notice of such termination ("Tenant's Election"). In the event Tenant elects to terminate this Ground Lease with respect to a portion of the Site, Tenant's Election shall contain a description of the portion of the Site for which Tenant intends to continue this Ground Lease and the Parties shall enter and execute with due diligence an Amendment to this Ground Lease in order to effectuate any revision to this Ground Lease that is required as a result of Tenant's Election. Upon the effective date of any such termination with respect to all of the Site, this Ground Lease shall terminate and neither Party shall have any further obligations under this Ground Lease, except as specifically set forth herein. In the event Tenant elects to terminate all or a portion of this Ground Lease pursuant to the provisions of this Section 2.2, Owner shall retain all of the Rent which has been paid to Owner for the year in which the effective date of any such termination occurs as a Termination Fee.

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2.3 Elective Termination. If for any reason other than as set forth in Section 2.2, above Tenant elects to terminate this Ground Lease within the first year of the Term (other than any termination based on Landlord's default, if applicable), Tenant shall notify Owner of same ("Tenant's Elective Termination Notice") and this Ground Lease shall terminate effective as of the date which is the later of (i) the date Landlord receives Tenant's Elective Termination Notice, or (ii) the date set forth in said Tenant's Elective Termination Notice. In the event Tenant elects to terminate this Ground Lease pursuant to the provisions of this Section 2.3, Owner shall retain the Rent for the first year which has been paid to Owner upon the execution of this Ground Lease as a termination fee (the "Termination Fee"). Upon the effective date of any such termination, this Ground Lease shall terminate and neither party shall have any further obligations under this Ground Lease, except as specifically set forth herein, and Tenant shall surrender the Site and Easement Areas to Owner; however, Tenant shall remove and retain ownership of any and all materials, equipment and fixtures then located on the Site or any Easement Area.

2.4 Holdover. If Tenant shall remain in possession of the Site after the expiration or termination of the Term (other than in connection with performing any applicable removal activities as contemplated in Article 6 below), such possession shall be on a month-to-month tenancy, and the provisions of the Ground Lease shall remain applicable, except that the Rent shall be increased by 25%, and shall be prorated and paid in monthly installments.

3. Severance. The Parties agree that all improvements at any time constructed by or for Tenant on the Site or within any Easement Area, whether prior to the Effective Date or after the same, and all equipment at any time acquired by or for Tenant and located on the Site or within any Easement Area, including (without limitation) all improvements and equipment comprising the Facility, are hereby severed by agreement and intention of the Parties and shall remain severed from the Site and any Easement Area, shall be considered with respect to the interests of the Parties hereto as the sole and exclusive property of Tenant or a Financing Party designated by Tenant, and, even though attached to or affixed to or installed upon the Site or within an Easement Area, shall not be considered to be fixtures or a part of the Site or such Easement Area and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Site or any Easement Area by Owner. Except as specifically provided for herein, Owner waives any rights it may have under the laws of the State of North Carolina arising under this Ground Lease or otherwise to any lien upon, or any right to distress or attachment upon, or any other interest in, any item constituting part of the Facility or any other equipment or improvements constructed or acquired by or for Tenant and located on the Site or within any Easement Area. Nothing contained in this Article 3 shall be interpreted or construed to limit or restrict in any way any right or interest any taxing authority may have to levy and collect any tax.

4. Rent. In consideration of the agreements herein contained, a lease rate of \$1,200.00 per acre per year, which amount shall be received or satisfied in accordance with the terms and conditions contained in Section 4.1 below and Exhibit "G" attached hereto and incorporated herein by reference as if fully set forth.

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4.1 Rent Calculations. For purposes of the Rent calculations, the acreage of the Site shall be as determined by Tenant's survey (the "Survey") of the Site, as the same may be amended.

4.2 Interest. Any monetary payment due Owner hereunder not received on or before such payment is due, other than late charges, not received by Owner within 10 Business Days after Tenant receives notice from Owner that such payment is past due shall bear interest from the due date until the date paid. The interest charged shall be equal to the lesser of 10% per annum or the maximum rate allowed by law.

4.3 Late Charge. Tenant agrees to pay, upon demand by Owner, for each payment past due for ten (10) or more Business Days after receipt of written notice of non-payment, a late charge in an amount equal to five percent of the amount past due.

5. Further Assurances. Owner and Tenant shall conduct good faith negotiations with due diligence and upon reasonable terms concerning any further instruments and documents, including, without limitation, a shared facilities agreement, if reasonably necessary, and take any further action that may be reasonably necessary to effectuate the purposes and intent of this Ground Lease. To such end, Owner and Tenant shall conduct good faith negotiations with due diligence and upon reasonable terms, including but not limited to any applicable consideration that may be required therefor, concerning any nonexclusive easements and rights-of-way in, to, over, under and across the Site and/or adjacent lands owned or controlled by Owner, and any improvements thereon, as the Parties mutually determine may be necessary or desirable in connection with the development, construction, ownership, operation, maintenance and expansion of the Facility (the "Operational Easements") as well as a solar skyway easement (the "Solar Skyway Easement" (the Operational Easements and the Solar Skyway Easement herein collectively referred to as the "Easements", each also herein sometimes referred to as an "Easement"), which Easements shall burden real property owned or controlled by the Owner (the "Easement Areas"). Notwithstanding anything herein to the contrary, said Easements and Tenant's use thereof shall not prevent or impair in any way Owner or any third party from operating or using Warren Field Airport ("Airport") as a public airport consistent with Owner's grant and other applicable assurances as well as federal obligations and the current Airport Layout Drawing ("ALD") (a copy of which is attached hereto as Exhibit E) on property owned or controlled by Owner. All Easements shall (a) be non-exclusive, (b) be co-terminous with the Term hereof (as the same may be extended), (c) be appurtenant to the Site, benefit and run with the Site and burden and run with the Easement Areas, (d) require Tenant to bear the cost of restoring the condition of the Easement Area after the exercise of any rights of access under such Easement, and (e) be consistent with Owner's grant and other applicable assurances as well as federal obligations. Without limiting the generality of the foregoing, Owner acknowledges and agrees that Tenant may request Easements for solar skyway protection, construction laydown areas, pedestrian and vehicular ingress, egress and access, parking and circulation, electrical transmission lines, water lines, fire lines, gas lines, storm drainage, sewer lines, telephone lines, fiber optic lines, and other or associated Utilities, facilities and/or equipment serving the Facility and/or the Site. Upon reaching mutual agreement concerning any such request, the Parties shall execute one or more easement agreements reflecting certain of the Operational Easements in substantially the form of attached Exhibit B, and a Solar Skyway Easement in substantially the form of Exhibit C, which easement agreements shall be recorded in the Official Records at

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Tenant's expense. The Parties expressly agree that said forms may be revised to incorporate any provision required to capture the Parties' mutual agreement, including but not limited to a provision concerning any applicable consideration that may be required. Owner shall not grant or convey any easement or other interest that, if enjoyed in accordance with its terms, would interfere with Tenant's Contemplated Use on the Site. If there are any mortgages, deeds of trust or other security interests with respect to the Site or any Easement Area(s), then, subject to any applicable federal agency pre-emptive rights, within 30 days after Tenant's written request, Owner shall obtain a commercially reasonable subordination, non-disturbance and attornment agreement, in a form provided by Tenant and satisfactory to Tenant as well as Owner from any lender or beneficiary which provides, among other things, that Tenant's occupancy or use of the Easements in accordance with the terms of the applicable easement agreement will not be disturbed.

6. Surrender of Site. Upon expiration of the Term, any termination of this Ground Lease, and any termination of this Ground Lease with respect to any portion of the Site and/or Easement Areas (collectively referred to in this Article 6 as "Termination"), and except as set forth below, Owner shall have the right to elect to take title to so much of the Facility, fixtures, and any other improvements located upon the Site or Easement Areas that are subject to such Termination as Owner may elect and/or to require Tenant to remove so much of said Facility, fixtures, and any other improvements located upon the Site or Easement Areas that are subject to such Termination as Owner may elect. Owner shall provide Tenant written notice of said election ("Owner's Election") within sixty (60) days of such Termination. Owner's Election shall describe so much of the Facility, fixtures, and any other improvements located upon the Site or Easement Areas that are subject to such Termination as Owner elects to take title to. Notwithstanding anything herein to the contrary, however, in the event Tenant elects to terminate all or any portion(s) of the Site or the Easement Areas under the terms of Section 2.2 or Section 2.3, or if Tenant has terminated the Ground Lease based on a default by Owner, Tenant shall retain title to and remove all of its Facility, fixtures and other improvements and personal property located within such areas as to which the Ground Lease and/or any Easement is terminated, and Owner shall not be entitled to elect to take title to the same. Within one hundred eighty (180) days of Owner's Election or the effective date of any termination described in the preceding sentence, Tenant shall commence to decommission, dismantle, and remove the Facility, fixtures, and any other improvements and all other property of Tenant located upon the Site or Easement Areas ("Tenant Removal Obligations") that Owner does not elect (or is not entitled) to take title to and return such applicable portions of the Site and Easement Areas to their condition as of the Effective Date to the extent reasonably practical, absent the planting or harvesting of any presently existing crops. In this regard, Tenant shall repair any damage to, and remove any debris placed upon, Owner's property arising out of or related to such removal or Tenant's use of the Site and Easement Areas and shall complete such Tenant Removal Obligations within ninety (90) days of commencement of the work, or such other period of time as may be agreed to by Owner. Owner hereby grants to Tenant and Tenant's Parties a license to enter upon the Site and the Easement Areas to perform the activities required to be performed by Tenant pursuant to this Article 6, which license shall be effective commencing upon the date of Owner's Election or the effective date of any other termination specifically provided for hereinabove, as the case may be, and shall terminate upon the date on which such Tenant Removal Obligations are complete. Tenant's occupancy of the Site and Easement Areas during such period for the purpose of accomplishing such Tenant Removal Obligations shall not be

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deemed a holdover hereunder. Failure by Tenant to perform the above Tenant Removal Obligations within said period shall entitle Owner to perform said Tenant Removal Obligations and recover all of its costs and expenses in doing so from Tenant. In the event Owner is entitled to do so and provides Tenant with Owner's Election, Tenant shall have no further right or interest in the Facility, fixtures, or any other improvements Owner elects to take title to as described in Owner's Election. It is mutually agreed that title to any and all of the Facility, fixtures, and any other improvements Owner validly elects to take title to as described in Owner's Election shall revert to and become owned and possessed by Owner without any additional payment or consideration to Tenant therefor, free and clear of all claims on the part of Tenant or any liens. The vesting of title in Owner in this instance at the time specified is a part of the consideration of this Ground Lease. Owner shall not be liable to Tenant or Tenant's lenders, contractors or subcontractors for the value of such part of the Facility, fixtures, or any other improvements Owner elects to take title to as described in Owner's Election.

7. Nontermination. Except as specifically provided for in this Ground Lease, this Ground Lease shall not terminate, nor shall Tenant's interest in the Site, the Easements, or the Facility be extinguished, lost, conveyed or otherwise impaired, or be merged into or with any other interest or estate in the Site, the Easement Areas or any other property interest, in whole or in part, by any cause or for any reason whatsoever, including, without limitation, the following: (a) destruction of all or any part of the Facility, the Site or the taking of the Facility, or the Site or any portion thereof by condemnation, requisition, eminent domain or otherwise, (b) any prohibition, limitation or restriction of Tenant's Parties' or any Financing Party's use of all or any part of the Site or the Easements or of Tenant's Parties' or any Financing Party's use of the Facility, or the interference of such use by any Person, or any eviction by paramount title or otherwise, (c) any inadequacy, incorrectness or failure of the description of the Site, the Easements or any other property or rights intended to be granted or conveyed by this Ground Lease, or (d) insolvency, bankruptcy, reorganization or similar proceedings by or against either Party.

8. Possession and Quiet Enjoyment. As long as Tenant's activities on the Site and the Easement Areas are consistent with the scope of Tenant's Contemplated Use and no Tenant Event of Default under this Ground Lease has occurred and is continuing beyond any applicable cure period, Owner covenants and agrees that Tenant shall enjoy quiet possession of the Site and the Easements without any disturbance from Owner or any person claiming by or through Owner. Notwithstanding the foregoing, Tenant shall not engage in any activity(ies) outside of the scope of Tenant's Contemplated Use as permitted herein which shall prevent or impair in any way Owner or any third party from operating or using the Airport as a public airport consistent with Owner's grant and other applicable assurances as well as federal obligations and the ALD on property adjacent to the Site owned or controlled by Owner. Such public airport operations shall not constitute or be construed to constitute a breach of this covenant for possession and quiet enjoyment. With the exception of any encumbrance that may be required by the Division of Aviation ("DOA") or the Federal Aviation Administration ("FAA"), in no event shall Owner permit or suffer to exist any mortgage, deed of trust, tax lien or other encumbrance on or against the Facility, the Site or the Easement Areas without Tenant's prior written consent, which may be withheld in Tenant's sole and absolute discretion. Upon either Party's discovery of any such lien, such Party shall (a) promptly give written notice thereof to the other Party, and (b) Owner shall cause the same to be discharged of record or deliver to Tenant, within 30 days after the date

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Owner receives notice of filing of the same, appropriate security for payment, either by payment, deposit or bond. If Owner shall fail to discharge any such lien(s) within such period, in addition to any other rights or remedy hereunder, Tenant may, but shall not be obligated to, procure the discharge of the same either by paying the amount claimed to be due by deposit in court or bonding. Any amount so paid or deposited by Tenant, and all costs and other expenses related thereto, including reasonable attorneys' fees, in defending any action or in procuring the discharge of such lien, with all necessary disbursements in connection therewith, together with interest thereon at the prime interest rate of Bank of America, N.A., or its successor, plus 4% per annum (subject to and limited by applicable usury laws) from the date of payment or deposit, until repaid to Tenant, shall be payable by Owner to Tenant upon demand.

9. Use of Site: Development of Facility.

9.1 Use. During the Term, Tenant shall have exclusive use of the Site. Any use of the Site or any of the Easement Areas for other than Tenant's Contemplated Use will be subject to any conditions or requirements of the DOA or the FAA, including but not limited to any glare or other applicable study. Without limiting the generality of the foregoing, Tenant may use the Site and the Easement Areas for purposes related to due diligence investigations and studies, and the construction, use, operation, repair, ownership, replacement, expansion, modification, upgrade or maintenance of the Facility. Notwithstanding the foregoing, Owner shall have access to the Site as well as Easement Areas as may be necessary, in Owner's reasonable discretion, to operate, develop, and maintain the Airport, including but not limited to the runways. Owner acknowledges and agrees, however, that Tenant's Contemplated Use is not, and shall not be deemed to be, a use which prevents or impairs Owner or any third party from operating or using the Airport as a public airport consistent with Owner's grant and other applicable assurances, as well as federal obligations and the ALD on property adjacent to the Site owned or controlled by Owner.

9.2 Construction of the Facility. Tenant shall determine whether and when to construct (or cause the construction of) the Facility on the Site and within the Easement Areas in its sole discretion and nothing herein shall obligate Tenant to construct the Facility on the Site or within the Easement Areas. Construction shall be performed in a good and workmanlike manner using new (or like-new), quality materials, products and equipment; and the Facility, after completion, shall conform and otherwise comply in all material respects with all applicable laws. Owner acknowledges and agrees that Tenant's Contemplated Use of the Site and the Easement Areas does not constitute, and shall not be deemed to constitute, any activity that would constitute an obstruction to air navigation, interfere with, or be a hazard to, the flight of aircraft over the Airport or to and from the Airport, or interfere with air navigation or communication facilities serving the Airport. Tenant shall not erect structures or allow growth of natural objects that would constitute an obstruction to air navigation. Tenant shall not engage in any activity outside the scope of Tenant's Contemplated Use that would interfere with, or be a hazard to, the flight of aircraft over the Airport or to and from the Airport. Tenant shall not engage in any activity outside the scope of Tenant's Contemplated Use that interferes with air navigation or communication facilities serving the Airport. Should Tenant seek to obtain any permits, licenses, exemptions or certifications in connection with the Facility, Owner agrees to cooperate fully and promptly with Tenant in such efforts. To the extent permitted by law, all permits, licenses, exemptions and certifications for the construction of the Facility shall be in the name of

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and for the benefit of Tenant or a party designated by Tenant. Owner has no obligation to upgrade, update, expand, replace, make additions to, or otherwise modify the Facility.

(a) Tenant shall provide Owner with contact information, including name(s), title(s), phone number(s) and mailing address(es), for Tenant's Parties that will be performing the construction and maintenance contemplated by this Section 9.

9.3 Maintenance. During the Term, Tenant shall be responsible for the general maintenance of the Site, and so much of the Easement Areas as may be agreed upon, in a good as well as aesthetically pleasing condition and in accordance with prudent industry standards given the permitted use hereunder, which maintenance shall include the planting as well as maintenance of a low growth ground cover on the Site and mowing as may be reasonably required.

9.4 Access. All permanent means of ingress and egress to and from the Facility operated and maintained by Tenant shall be cleared, graded, improved and maintained with a gravel surface passable at all times by a two-wheel drive vehicle.

9.5 Liens. Tenant shall keep the Site and Easement Areas free and clear of any lien or encumbrance arising out of work performed, materials furnished or obligations incurred in connection with Tenant's obligations for construction, utilities and services, repairs or alterations under this Ground Lease. In the event any lien is placed upon the Site or Easement Areas as a result of any act or omission of Tenant, Tenant shall pay such lien or may provide a bond or otherwise insure Owner against such lien within 60 calendar days after notice to Tenant of such lien being perfected, and may thereafter contest such lien or payment at Tenant's sole cost and expense. Tenant shall indemnify Owner against any loss, damage, cost or expenses in connection with any such lien or encumbrance that may be claimed or asserted against the Site or Easement Areas.

10. Insurance.

10.1 Coverage. As to all activities hereunder, the following insurance shall be obtained and maintained in force during the Term by Tenant so long as such insurance is available at commercially reasonable rates.

(a) Commercial General Liability. Commercial General Liability insurance including, but not limited to, coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, property damage and bodily injury providing for minimum limits of \$1,000,000.00 for bodily injury, including death, and property damage, arising from any one occurrence, and a \$2,000,000.00 aggregate limit.

(b) Property Insurance. From the beginning of construction of the Facility to its completion, Tenant, at Tenant's cost and expense, shall carry (or shall cause its contractor to carry) and maintain in full force with respect to the Facility all risk insurance in such amount as Tenant may designate, written in builder's risk form; and from the date of completion of the Facility through the end of the Term, Tenant, at Tenant's cost and expense, shall carry and maintain in full force all risk fire and extended coverage insurance on the Facility in such amount as Tenant may deem prudent. The property insurance shall be carried with a

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reputable insurance company authorized or qualified to do business in the State of North Carolina.

(c) Workers' Compensation Insurance. Workers' Compensation insurance or qualified self-insurance in accordance with State and Federal laws including statutory North Carolina benefits and other states' endorsement covering loss resulting from injury, sickness, disability or death; and Employer's Liability insurance or self-insurance with limits of not less than \$100,000.00 each accident or disease or the minimum limit necessary to meet the underlying requirements of the excess liability carrier, but in no event less than \$500,000.00 bodily injury by disease policy limit.

(d) Policy Terms. The liability policy described above (a) shall be primary, without right of contribution from any other insurance which may be carried by Owner, and (b) shall include Owner, as an additional insured.

10.2 Certificates. Prior to commencement of construction of the Facility and upon any policy renewal or replacement, Tenant shall provide Owner hereto with written evidence of the insurance required in Section 10.1(a) - (c) above in the form of appropriate insurance certificates specifying amounts of coverage and expiration dates of all policies in effect. Each policy shall provide that it is not subject to cancellation except after thirty (30) days following notice to Tenant. Tenant shall provide twenty-five (25) business days notice to Owner prior to the expiration of any such policy.

10.3 Waiver of Subrogation. All policies obtained hereunder shall have a provision waiving rights of subrogation by the insurer against the Owner.

10.4 Waiver of Insurance; Right to Self-Insure. In the event any insurance (including the limits of deductibles thereof) hereby required to be maintained, other than insurance required by law to be maintained, shall not be available at commercially reasonable rates, Owner shall not unreasonably withhold its consent to waive such requirement to the extent the maintenance thereof is not so available; provided, however, that Tenant shall first request any such waiver in writing delivered to Owner explaining in detail the basis for such conclusions and Tenant taking whatever action may be necessary to establish self-insurance for the respective coverages and amounts required herein. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates. Notwithstanding anything herein to the contrary, Tenant shall have the right to self-insure.

11. Damage or Destruction of Facility. Except in the case of Casualty which occurs in the last five years of the Initial Term or any exercised renewal term(s), if the Facility or any part thereof is damaged or destroyed by any Casualty such that the damage can be repaired within six (6) months, Tenant shall either (i) repair the damage in accordance with this Article 11 or (ii) continue the Lease and make applicable Rent and other payments due under the Lease, but Tenant may elect not to rebuild or continue its operations hereunder. In the event Tenant elects not to rebuild or continue its operations hereunder, Tenant shall remove so much of the Facility, fixtures, and other improvements located upon the Site and the Easement Areas as were affected by said Casualty and not rebuilt as provided in Article 6 above. Any repairs shall restore the Facility to a condition which is not less than the condition it was in immediately prior to the

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Casualty. The repairs shall be made in a good and workmanlike manner using new (or like-new), quality materials, products and equipment; and the Facility, after completion of the repairs, shall conform and otherwise comply in all material respects with all applicable laws. All insurance proceeds paid on account of the Casualty shall be paid to Tenant as its sole property, to be used by Tenant in connection with repairing the Facility, if applicable. If the Casualty occurs during the last five years of the Initial Term or any exercised renewal term(s), or if the repairs cannot reasonably be concluded within six (6) months of the Casualty, Tenant may elect not to restore the Facility, in which event Tenant shall provide written notice to Owner of its election not to repair the Facility within 90 days following the date of the Casualty, and upon the date of such notice, this Ground Lease shall be terminated and Tenant shall surrender the Site and the Easement Areas as provided in Article 6 above. In the event Tenant elects not to restore the Facility as provided for in the preceding sentence, Owner shall retain the Rent for the year in which the Casualty occurs.

12. Liabilities.

12.1 General.

(a) Tenant. Tenant shall indemnify, defend and hold Owner and Owner's Parties harmless from any and all claims, losses, expenses, liabilities, actions, suits, or judgments for personal injury or property damage, including all of the above of third parties (collectively, "Losses") by reason of, resulting from, whether directly or indirectly, or arising out of or related to (i) Tenant's or Tenant's Parties' ownership, operation, use or maintenance of the Facility, the Easement Areas or the Site; (ii) the negligence or willful misconduct of Tenant or any Tenant Party in connection with the transactions contemplated by this Ground Lease; (iii) any release of Hazardous Materials on the Site or any of the Easement Areas caused or permitted by Tenant or any Tenant Party; or (iv) any environmental claim from a third party with regard to a violation or alleged violation of any Environmental Laws by Tenant or any Tenant Party.

(b) Owner. Owner shall indemnify, defend and hold Tenant and Tenant's Parties harmless from any and all Losses to the extent arising prior to or after the Effective Date by reason of, resulting from, whether directly or indirectly, or arising out of or related to (i) Owner's or Owner's Parties' ownership, operation, use or maintenance of Owner's property underlying the Site or any of the Easement Areas; (ii) the negligence or willful misconduct of Owner or any Owner Party in connection with the transactions contemplated by this Ground Lease; (iii) the inaccuracy of any representation or warranty of Owner contained in this Ground Lease; (iv) any release of Hazardous Materials on the Site or any of the Easement Areas caused or permitted by Owner or any Owner Party; or (v) any environmental claim from a third party with regard to a violation or alleged violation of any Environmental Laws by Owner or Owner's Parties. The foregoing liability obligation of Owner shall not include Losses that are in any way related to the use of the Airport, or activities thereon, by unrelated third parties, specifically including but not limited to lessees, sublessees, or licensees of Owner or any person performing a fixed based operation at the Airport.

(c) Survival. The provisions of this Section 12.1 shall survive the expiration or termination of the Term, and, as to Owner's obligation to indemnify, defend, and

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hold Tenant and Tenant's Parties harmless, shall survive Owner's Transfer with respect to any occurrence prior to such Transfer.

12.2 Consequential Damages. Notwithstanding anything to the contrary in this Ground Lease, neither Party hereto shall be liable to the other for consequential or punitive damages, including but not limited to loss of use or loss of profit or revenue.

13. Default.

13.1 Events of Default. The following events shall be deemed to be events of default by Tenant ("Tenant Events of Default") under this Ground Lease:

(a) Failure to pay any payment required to be made hereunder, including taxes or any other sum to be paid hereunder within 10 Business Days after the date the same is due which shall have remained unpaid for 20 Business Days after written notice of such failure has been given to Tenant by Owner.

(b) Failure to comply in any material respect with any material term, provision or covenant of this Ground Lease, other than the payment of sums to be paid hereunder, without curing such failure within 60 days after due written notice thereof from Owner; or if such failure cannot reasonably be cured within the said 60 days and Tenant shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure.

(c) Tenant shall file in any court pursuant to any statute, either of the United States or any state, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or any portion of Tenant's property, or makes an assignment for benefit of creditors; or there is filed against Tenant in any court pursuant to any statute either of the United States or any state, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or any portion of Tenant's property, and within 90 days after the commencement of any such proceeding against Tenant, such petition shall not have been dismissed.

13.2 Owner's Remedies. Upon the occurrence of any Tenant Event of Default, Owner may, at its option, and in addition to and cumulatively of any other rights Owner may have at law or in equity or under this Ground Lease, (a) cure the Tenant Event of Default on Tenant's behalf, in which event Tenant shall reimburse Owner on demand for all sums so expended by Owner, (b) terminate this Ground Lease by notice to Tenant and in conformity with procedures required hereby and by applicable law, or in lieu of termination, Owner may re-enter, retake and relet the Site, or any part thereof, as agent of Tenant or otherwise, and Tenant shall be responsible to Owner for the difference between the rent hereby reserved and agreed to be paid by Tenant for the portion of the term remaining at the time of re-entry or repossession in the amount, if any, received or to be received under such re-letting for such portion of time, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Owner shall have all remedies available at law or in equity, and should it be necessary for Owner to take any legal action in connection with such enforcement, Tenant shall pay Owner all reasonable attorneys' fees and expenses so

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incurred, all without prejudice to any remedies that might otherwise be used by Owner for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant.

13.3 Owner Events of Default. The following events shall be deemed to be events of default by Owner ("Owner Events of Default") under this Ground Lease regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding which have or might have the effect of preventing Owner from complying with the terms of this Ground Lease.

(a) Failure to pay any payment required to be made hereunder within 10 Business Days after the date the same is due which shall have remained unpaid for 20 Business Days after written notice of such failure has been given to Owner by Tenant.

(b) Failure to comply in any material respect with any material term, provision or covenant of this Ground Lease, other than the payment of sums to be paid hereunder, without curing such failure within 60 days after due written notice thereof from Tenant; or if such failure cannot reasonably be cured within the said 60 days and Owner shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure.

(c) Any act or omission of Owner that in any way, directly or indirectly, adversely, materially, and substantially impacts, affects or impairs Tenant's ability to operate and/or the operation of the Facility for Tenant's Contemplated Use. The foregoing event of default shall not include any impact, effect, or impairment that results from any act or omission of Owner that is related to Owner's operation or use of the Airport as a public airport and is required by Owner's grant and other applicable assurances as well as federal obligations and consistent with the ALD.

13.4 Tenant's Remedies. Upon the occurrence of any Owner Event of Default, Tenant may, at its option, and in addition to and cumulatively of any other rights Tenant may have at law or in equity or under this Ground Lease, (a) cure the Owner Event of Default on Owner's behalf, in which event Owner shall reimburse Tenant on demand for all sums so expended by Tenant or Tenant may elect to offset any such amounts against subsequent installments of Rent or any other sums due from Tenant to Owner hereunder, (b) terminate this Ground Lease by notice to Owner and in conformity with procedures required hereby and by applicable law, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Tenant shall have all remedies available at law or in equity, and should it be necessary for Tenant to take any legal action in connection with such enforcement, the Owner shall pay Tenant all reasonable attorneys' fees and expenses so incurred, all without prejudice to any remedies that might otherwise be used by Tenant for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant.

13.5 Limitation of Right of Recovery against Owner. Tenant acknowledges and agrees that the liability of Owner under this Ground Lease shall be limited to its interest in the Site and any judgments rendered against Owner shall be satisfied solely out of the proceeds

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of the sale of its interest in the Site. No personal judgment shall lie against Owner (or the agents or employees of either). Upon extinguishment of their rights in the Site, any judgment so rendered shall not give rise to any right of execution or levy against Owner or its assets. The foregoing provisions are not intended to relieve Owner from the performance of any of Owner's obligations under this Ground Lease, but only to limit the liability of Owner in case of recovery of a judgment against Owner; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law or under this Ground Lease. Nothing herein shall be deemed to waive Owner's sovereign immunity, if applicable. Notwithstanding anything herein to the contrary, the Parties hereto expressly acknowledge that any sale of Airport property is subject to FAA approval.

14. Governing Law. This Ground Lease and all provisions hereof, shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

15. Force Majeure.

15.1 Force Majeure. The performance of each Party's respective obligations under this Ground Lease, other than failure or delay in payment of obligations, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

15.2 Resumption of Performance. The Party whose performance is suspended, prevented or delayed by Force Majeure shall promptly notify the other Party of such occurrence and its estimated duration. Subject to any rights of termination under this Ground Lease, such Force Majeure shall be promptly remedied, if and to the extent reasonably possible.

16. Condemnation. If at any time the Site, the Easements, or any portion thereof is condemned or transferred in lieu of condemnation, the net proceeds of such condemnation or transfer shall be divided between Owner and Tenant (or Tenant's designee) in the proportions specified in the condemnation award or agreement of transfer or, if not so specified, in proportion to the fair value of Owner's and Tenant's respective interests in the Site and the Easements, provided that to the extent that the net proceeds of any condemnation or transfer in lieu of condemnation are attributable to the Facility or improvements constructed by or on behalf of Tenant on the Site and/or the Easements, such proceeds shall be paid solely to Tenant or Tenant's designee, with Owner receiving any proceeds attributable solely to the residual value of the fee estate of the Site. For the purpose of this Article 16, the net proceeds of a condemnation or transfer in lieu of condemnation shall mean the total proceeds of such condemnation or transfer less the costs and expenses incurred in connection therewith (including legal fees).

16.1 Termination. If the entire Site is condemned or transferred in lieu of condemnation, the Term shall terminate at the time title vests in the condemning authority. If a portion of the Site is condemned or transferred in lieu of condemnation, the Ground Lease shall continue in full force and effect with respect to that portion of the Site which has not been so condemned or transferred, and Rent shall abate with respect to that portion of the Site which has been so condemned or transferred. Notwithstanding the foregoing, Tenant may terminate this Ground Lease without penalty by giving written notice of termination to Owner if, in Tenant's

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discretion, the Site or the Easements are not suitable for Tenant's intended use following such condemnation or transfer in lieu thereof.

17. Maintenance Responsibilities of Parties. No Party shall have any duty or responsibility to the other Party in respect of the Site or the Easement Areas or the use, maintenance or condition thereof except such obligations of such Party as are specifically set forth in this Ground Lease.

18. Mortgage of Tenant's Interest.

18.1 Tenant Financing. Tenant may at any time elect to finance a portion of the cost of the Facility, possibly in a sale-leaseback financing structure, with one or more financial institutions, leasing companies, institutions or affiliates or subsidiaries thereof (each a "Financing Party," collectively, the "Financing Parties") and in connection therewith Tenant would enter into various agreements and execute various documents relating to such financing, which documents may, among other things, assign this Ground Lease and the Easements to a Financing Party, grant a sublease in the Site and a lease of the Facility from such Financing Party to Tenant, grant the Financing Parties a sublease or other real property interest in Tenant's interests in and to the Site, grant a first priority security interest in Tenant's interest in the Facility and/or this Ground Lease and Tenant's other interests in and to the Site, including, but not limited to, any easements, rights of way or similar interests (such documents, "Financing Documents"). Owner acknowledges notice of the foregoing and consents to the foregoing actions and Financing Documents described above, provided that in no event shall Tenant be released from liability under this Ground Lease, and Owner agrees to execute, and agrees to cause any and all of Owner's lenders to execute, such subordination agreements, consents, estoppels and other acknowledgements of the foregoing as Tenant or the Financing Parties may reasonably request. Owner agrees that if requested by Tenant, Owner will furnish the Financing Parties with a counterpart of each notice or other document delivered by Owner to Tenant in connection with this Ground Lease.

(a) Tenant shall provide Owner with contact information, including name(s), title(s), phone number(s) and mailing address(es), for Financing Parties who hold, own, or may be entitled to an interest, including security interest, in the Site.

18.2 Notice to Financing Party. Owner agrees that it shall not terminate this Ground Lease unless it has given each Financing Party at least 90 days' (30 days' in the case of a default in payment by Tenant) prior written notice of its intent to terminate this Ground Lease and the Financing Parties fail to cure the condition giving rise to such right of termination within such time period.

18.3 Cured by Financing Party. If the default under this Ground Lease is of such a nature that it cannot be practicably cured without first taking possession of the Facility and the Site or if such default is of a nature that is not susceptible of being cured by the Financing Parties, then Owner shall not be entitled to terminate this Ground Lease by reason of such default if and so long as the Financing Parties proceed diligently to attempt to obtain possession of the Facility and the Site pursuant to the rights of the Financing Parties under the Financing Documents and upon obtaining such possession, the Financing Parties shall proceed

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diligently to cure such default if such default is susceptible of being cured by the Financing Parties.

18.4 Acquisition by Financing Party. The Financing Parties shall not be required to continue to proceed to obtain possession, or to continue in possession of the Site, pursuant to Section 18.3 if and when such default is cured. If the Financing Parties, or a purchaser through foreclosure under the Financing Documents or otherwise, shall (a) acquire title to the Facility and the leasehold estate created by this Ground Lease, (b) cure all defaults which are susceptible of being cured by the Financing Parties or such purchaser, as the case may be, and (c) assume all the obligations of Tenant hereunder, then (i) any default of Tenant which is not susceptible of being cured by the Financing Parties or such purchaser, as the case may be, shall no longer be deemed to be a default under this Ground Lease, and (ii) Owner shall recognize the Financing Parties or such purchaser, as the case may be, as if such party had been the Tenant under this Ground Lease; provided, however, that any waiver of default by Owner in connection with the Financing Parties or purchaser pursuant to this Section 18.4 shall not constitute a waiver of such default and Owner's rights as a result thereof as against Tenant.

19. Owner's Representations and Covenants.

19.1 Condition of Title; Warranty of Authority; Enforceability. Owner represents and warrants as of the Effective Date that Owner owns fee title to the Site and the Easement Areas free and clear of any lien, interest or encumbrance, subject only to the matters and exceptions approved in writing by Tenant on or before the Effective Date and shown in that certain Title Insurance Commitment prepared by First American Title Insurance Company, Commitment No. 638190 having an effective date of October 25, 2013. At any time on or after the Effective Date, Tenant may obtain for itself and/or any Financing Party, at Tenant's expense, an ALTA Extended Coverage policy of title insurance in a form and with exceptions acceptable to Tenant and/or such Financing Party in its sole discretion (the "Title Policies"). Owner agrees to cooperate fully and promptly with Tenant in its efforts to obtain the Title Policies, and Owner shall take such actions as Tenant or any Financing Party may reasonably request in connection therewith. Except as specifically provided for hereinbelow, Owner represents and warrants that, to Owner's knowledge, (a) there are no pending or threatened claims, actions or suits affecting the Site or the Easement Areas or Owner's interest in the Site or the Easement Areas; (b) the execution and performance of this Ground Lease by Owner does not violate any contract, agreement or instrument to which Owner is a party and Owner has not entered into any contract, agreement or instrument with respect to the Site or the Easement Areas with any third party other than Tenant; (c) the execution, delivery and performance by it under this Ground Lease have been duly authorized by all necessary action by Owner and, to Owner's knowledge, do not violate any provision of any current law applicable to Owner, the Site or the Easement Areas or any order, judgment or decree of any court or other agency presently binding on Owner or conflict with or result in a breach of or constitute a default under any contractual obligation of Owner; and (d) this Ground Lease is the legally valid and binding obligation of Owner enforceable against it in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency, or reorganization, moratorium or similar laws or equitable principles relating or limiting creditors rights generally.

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(a) The foregoing representations and warranties are subject to the following: (i) the recapture clause and other conditions of any grant or agreement with the Navy Department, Civil Aeronautics Administration or respective successor agency, as well as any other rights or authority whatsoever held by, or obligations the Owner may have to, the North Carolina or federal governments and which have been disclosed to Tenant in writing, including but not limited to grant and other applicable assurances, as well as federal obligations (ii) any applicable requirements or directives of the DOA and the FAA regarding this Ground Lease, the Site, the Facility, the Easement Areas, or Tenant's use of the Site, the Facility, the Easement Areas, or any of Owner's property, (iii) the Agreement to Reduce Deer Population of Warren Field Airport with Willie Allen d/b/a Outback Outfitters and Guide Service dated December 15, 2009, and (iv) the Acquisition Agreement with County of Beaufort, North Carolina dated February 5, 2005.

(b) Notwithstanding anything herein to the contrary, Tenant expressly acknowledges that the Owner's property that is subject to this Ground Lease and leased hereby is located on and is a part of the Airport, a public airport owned and operated by Owner, and, as such, is subject to any and all applicable regulatory agency, state and federal rules, regulations, laws, and other authority, including grant and other applicable assurances. Tenant shall not engage in any activity(ies) outside of the scope of Tenant's Contemplated Use but otherwise permitted herein which shall prevent or impair in any way Owner or any third party from operating or using the Airport as a public airport consistent with Owner's grant and other applicable assurances as well as federal obligations and the ALD. Tenant and Tenant's Parties hereby unconditionally release, hold harmless, acquit and forever discharge the Owner and Owner's Parties of and from all and any manner of action or actions, cause and causes of actions, claims, demands, costs, expenses, losses, penalties, attorney's or other professional fees, and consequential, general, special, and punitive damages or liabilities, of every kind, known or unknown, on account of, arising from, or in any way in violation of, related to or produced by any applicable regulatory agency, state or federal rule, regulation, law, and other authority, including grant and other applicable assurances, or any action, directive, or consequence arising from any such applicable regulatory agency, state or federal rule, regulation, law, and other authority, including grant and other applicable assurances, that in any way affects or is related to the Owner's operation of the Airport or that in any way affects Tenant's rights arising from or relating to this Ground Lease outside of the scope of Tenant's Contemplated Use. Furthermore, Tenant will cooperate with and will abide by any such regulatory agency, state or federal rule, regulation, law, and other authority, as well as any action, directive, or consequence therefrom, taken thereunder, or promulgated pursuant thereto. Notwithstanding the foregoing, however, any matter(s) arising out of any of such regulation, rule or law which prevents or materially and adversely affects Tenant's ability to use or operate any Facility located on the Site may trigger Tenant's rights under Section 2.2 above.

19.2 Environmental. Owner represents and warrants that, with the exception of those matters disclosed in the Phase I Environmental Site Assessment Questionnaire dated July 31, 2013 and any and all Hazardous Materials as well as similar substances, including but not limited to aircraft fuel and similar substances, that have been and are stored and used in conjunction with the operation of the Airport, to the best of Owner's knowledge, as of the Effective Date (a) the Site and Easement Areas are free of known or identified Hazardous Materials, no Hazardous Materials have ever been produced or disposed upon the Site or the

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Easement Areas, no Release has occurred on the Site or the Easement Areas and Hazardous Materials have not migrated to the Site or the Easement Areas, (b) the Site and the Easement Areas and are in compliance with all Environmental Laws, (c) neither the Site nor the Easement Areas are subject to any Environmental Liability, threatened Environmental Liability or alleged Environmental Liability, and (d) Owner has not received notice of any violation of Environmental Laws affecting the Site or the Easement Areas.

19.3 Subordination Agreements. Owner shall, at its expense, on or before the initial Rent Payment Date and as a condition to Tenant's obligation to make any payment of Rent, remove, or cause to be subordinated to the Ground Lease all monetary obligations that are described as exceptions to the Title Policies. Any such subordination agreement shall be in a form as may be reasonably acceptable to Tenant, which provides, among other things, that Tenant's occupancy or use of the Site in accordance with the terms of this Ground Lease will not be disturbed by anything related to said exceptions to the Title Policies.

20. Utilities. The provision of Utilities shall be covered under a separate agreement; however, Tenant shall be responsible for all applicable charges, including but not limited to "hook-up" and customary monthly charges for all Utilities consumed by Tenant at the Site or Easement Areas during the Term. Notwithstanding the foregoing, it is expressly understood by the Parties that Tenant shall be responsible for the installation of, in the manner required by Owner, and the paying for any Utilities that may be required.

21. Taxes.

21.1 Covenant to Pay Taxes and Assessments. Tenant shall be responsible for and promptly pay before default any and all real and personal property taxes or assessments ("Taxes and Assessments"), if any, that may be levied or assessed against the Site and Easement Areas (other than any Easement Area(s) affected by any Solar Skyway Easement) or any improvements or other property owned by Tenant situated thereon, it being the mutual intention of the Parties that Owner shall not be required to pay any taxes on either real or personal property by reason of permitting Tenant to enter this Ground Lease. Tenant also agrees to indemnify Owner against any loss or liability resulting from any and all claims or liens in connection with any applicable Taxes and Assessments.

21.2 Separate Tax Parcel(s); No Proration at Commencement and Expiration of Term.

(a) The Parties shall use good faith and duly diligent efforts to cause the Site to be designated as a separate tax parcel, independent from the balance of Owner's surrounding property, if any. At all times during the term hereof when the tax bills for the Site and any applicable Easement Areas are being sent to Owner, Owner shall deliver copies of same to Tenant within twenty (20) days following Owner's receipt of same. In the event the Site is so designated as a separate tax parcel, Tenant shall be responsible for paying, and shall timely pay, all Taxes and Assessments (or similar) applicable to the separate tax parcel. In the event the Site or any applicable Easement Area for which Tenant is responsible for paying real and/or personal property taxes hereunder is not a separate tax parcel, Tenant shall be responsible for only paying its proportionate share thereof, based on a per acre allocation of the acreage within the Site and

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such Easement Area and the total acreage of the larger parcel of which the Site and such Easement Area is a portion. Until such time, if ever, that the Site and/or applicable Easement Area(s) is(are) designated as one or more separate tax parcel(s), Owner shall be responsible for paying all Taxes and Assessments for all of the larger parcel(s) within which the Site and the Easement Areas are located, and following Owner's payment of same, Owner shall provide Tenant with a paid receipt for such Taxes and Assessments and Tenant shall reimburse Owner for its prorata share of such Taxes and Assessments.

(b) Tenant covenants and agrees to pay any personal property taxes or special assessments, if any, that may be levied or assessed against any improvements, or other personal property, situated on the Site or the Easement Areas which the Owner would not incur but for this Ground Lease that are due and payable during the Term hereof and are at any time imposed or levied against the Facility, the Easement Area or the Site, directly to the agency, entity, municipality or other party charged with collection of same. In the event Tenant fails to make any such payment when due, Owner may in its sole discretion pay the same on behalf of Tenant, and the same shall be due to Owner as repayment in which event Owner shall have the right, after ten (10) days prior written notice to Tenant, to charge Tenant interest thereon beginning ten (10) days from the date such notice is received by Tenant.

(c) Tenant shall be responsible for and promptly pay before default any and all Taxes and Assessments for the full year in which the Effective Date occurs and for the full year in which the Term expires. Tenant expressly acknowledges that there will be no pro-ration of the same.

21.3 Tenant's Right to Contest Taxes. Without limiting the right of Owner to contest any Taxes and Assessments levied against the Site, Tenant shall have the right to contest any Taxes or Assessments payable by Tenant, provided, Tenant shall, in good faith and with due diligence, contest the same or the validity thereof by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment. Tenant shall have the right, at its sole expense, to institute and prosecute, in Owner's name, any suit or action to contest any tax or assessment payable by Tenant or to recover the amount of any such tax or assessment but, in such event, Tenant hereby covenants and agrees to indemnify and save Owner harmless from any and all reasonable and documented costs and expenses, including attorneys' fees, in connection with any such suit or action. Any funds recovered by Tenant as a result of any such suit or action shall belong to Tenant.

## 22. Assignment.

22.1 Assignment by Owner. Owner may not sell, assign, sublease, mortgage, pledge, or otherwise transfer its interest in the Site or this Ground Lease without the prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary in the preceding sentence, no assignment of Owner's interest in the Site or the Ground Lease shall relieve Owner of any of its obligations under this Ground Lease, nor may any such assignment be made unless fee title to the Site is simultaneously transferred to the permitted assignee hereunder and unless such permitted assignee has first assumed all of Owner's obligations under this Ground Lease in writing.

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22.2 Assignment by Tenant. Tenant may not sell, assign, sublease, mortgage, pledge, or otherwise transfer its interest in the Site or this Ground Lease without the prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary in the preceding sentence, Tenant may, without the consent of Owner, assign or sublease this Ground Lease to (a) any entity which controls, is controlled by or under common control with Tenant; (b) any entity resulting from the merger or consolidation of Tenant; (c) any person or entity which acquires all of the assets of Tenant as a going concern of the business that is being conducted on the Site, provided that said transferee assumes all of the obligations of Tenant under the Ground Lease; or (d) any financing parties in connection with the financing and/or construction of the Facility on the Site. Notwithstanding anything to the contrary in the preceding sentences, no assignment of Tenant's interest in the Site or the Ground Lease (other than an assignment made pursuant to clause (a) above) shall relieve Tenant of any of its obligations under this Ground Lease, nor may any such assignment (other than an assignment made to any financing party(ies) of Tenant or any affiliate of Tenant) be made unless the permitted assignee hereunder has first assumed all of Tenant's obligations under this Ground Lease in writing. Pursuant to the provision of said clause (a) above, Tenant may assign or otherwise transfer its interest in this Ground Lease to an affiliate of Tenant without the prior written consent of Owner, and provided that said transferee assumes all of the obligations of Tenant under this Ground Lease, thereafter Tenant shall be fully released of all further obligations under this Ground Lease. Tenant will notify Owner of any such assignment to an affiliate, and upon the request of Tenant or of such affiliate, Owner will acknowledge such assignment and release of Tenant.

(a) Tenant shall provide contact information, including name(s), title(s), phone number(s) and mailing address(es) for any Person or entity to whom Tenant sales, assigns, subleases, mortgages, pledges, or otherwise transfers its interest in the Site or Ground Lease.

23. Sale of Site (Underlying Property). Owner is unaware of any statutory authority under which Owner could sell the property underlying the Site by private negotiation. Any potential sale of the property underlying the Site or a portion thereof during the Term hereof shall be accomplished only through the negotiated offer, advertisement, and upset bid process authorized by North Carolina General Statute § 160A-269, as the same may be amended, or a functionally equivalent statutorily authorized process that will ensure Tenant has the opportunity to receive notice of, and to upset, any bid or offer to purchase from any third party. Furthermore, Tenant expressly acknowledges that any sale of the property underlying the Site or a portion thereof would require formal approval from the DOA and/or the FAA as well as satisfaction of any conditions that the DOA and/or the FAA might place upon said approval and sale. The following Section 23.1 shall be inapplicable and void unless Owner's attorney renders a legal opinion satisfactory to Owner that the sale of the property underlying the Site by private negotiation is authorized by currently existing or subsequently enacted North Carolina law and has been approved by DOA and/or the FAA, as may be applicable.

23.1 Right of First Offer. Throughout the Term of this Ground Lease, Tenant shall have a continuing right to purchase the Site as it becomes available (the "Right of First Offer"). Should Owner (a) receive an offer to purchase the Site or any portion thereof from any third party during the Term, which offer the Owner contemplates accepting (a "Bona Fide

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Offer”) or (b) intend to offer all or any portion of the Site for sale (an “Owner Offer” and, together with a Bona Fide Offer, collectively, an “Offer”), Owner shall promptly give written notice and a copy of such Bona Fide Offer to Tenant, or the material terms of an Owner Offer (including, without limitation, purchase price, location and size of offered space, due diligence contingencies and closing date), as applicable. Tenant shall have the right to purchase the Site or portions thereof as set forth in the relevant Offer by giving written notice to Owner that Tenant is exercising its Right of First Offer upon the terms set forth in the relevant Offer, no later than 20 Business Days after Tenant’s receipt of the relevant Offer from Owner. If Tenant does not exercise its Right of First Offer within such 20-Business Day period, then Owner may sell the Site to the third party who made the Bona Fide Offer or any other third party with respect to an Owner Offer on the same terms, covenants and conditions as presented to Tenant in the relevant Offer, subject to Article 22 above and the terms and conditions of this Ground Lease; provided, that if there is any change to the terms of the Offer, Owner shall promptly send Tenant a copy of the revised Offer and Tenant shall have a Right of First Offer to purchase the Site according to the terms of the revised Offer under the procedure set forth in this Section 23.1. Any such sale shall be made, if at all, within six (6) months of the end of the 20-Business Day period, and if the sale is not completed within such time period, Tenant’s Right of First Offer shall revive and the provisions of this Section 23.1 shall again be operative.

23.2 Closing. If Tenant exercises its Right of First Offer or otherwise purchases the Site, the closing of the sale (the “Closing”) shall be conducted as follows.

(a) Closing shall take place at a time and in a location mutually acceptable to the Parties hereto; provided, that Closing shall take place no later than the expiration of the then current Term hereof unless extended in writing by the Parties.

(b) Subject to the applicability of the provisions contained in Article 23 hereof, Owner shall deliver marketable title to the Site or the applicable portion thereof to Tenant by special warranty deed, free and clear of all liens and other encumbrances, other than those created, approved, or agreed to by Tenant, as evidenced by an ALTA Extended Coverage Owner’s policy of title insurance in the full amount of the purchase price issued by the title company approved by Tenant and in a form approved by Tenant in its sole discretion. Further, Owner shall grant to Tenant the Easements then in effect as permanent indefeasible easements appurtenant to the Site.

(c) Except as otherwise provided by this Ground Lease or otherwise agreed to by the Parties, Owner and Tenant shall share all closing costs in accordance with the custom and practice in Beaufort County, North Carolina. Notwithstanding the foregoing, Tenant expressly acknowledges that Tenant shall be responsible for and shall pay any and all taxes that may be imposed and there shall be no proration of the same.

(d) The sale of the Site or the applicable portion thereof to Tenant shall be made subject to the following representations and covenants by Owner as “seller” effective as of the date of Closing.

(i) Owner has done nothing to impair such title to the Site or the applicable portion thereof as Owner received. The documents delivered by Owner at

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closing will be duly authorized, executed and delivered by Owner, and will be the legal, valid and binding obligations of Owner.

(ii) This subsection intentionally left blank.

(iii) Each of the representations and covenants made by Owner shall be true and correct in all respects on the date of Closing and shall survive the Closing. Owner shall indemnify Tenant and Tenant’s Parties for, and hold it harmless from, any claims, damages, liabilities, costs and expenses (including reasonable attorney’s fees), arising from or under, or by reason of any breach of, Owner’s representations or covenants.

24. Miscellaneous.

24.1 Notices. Any notice, consent or other formal communication required or permitted to be given by a Party pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (a) when delivered personally or by email, unless such delivery is made (i) on a day that is not a business day in the place of receipt or (ii) after 5:00 p.m. local time on a business day in the place of receipt, in either of which cases such delivery will be deemed to be made on the next succeeding business day, (b) on the next business day after timely delivery to a reputable overnight courier and (c) on the business day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), addressed as follows (or to such other address or having such other contact information as either Party may hereafter specify for such purpose by like notice to the other Party from time to time):

(a) if to Tenant, addressed to:

WASHINGTON AIRPORT SOLAR, LLC  
c/o DEGS NC Solar, LLC  
550 South Tryon Street – DEC 18A  
Charlotte, North Carolina 28202  
Attention: Robert Stewart II  
Phone: (704) 382-9226  
Email: rob.stewart@duke-energy.com

With a copy to:

Duke Energy Corporation  
139 East Fourth Street  
Room 1212-Main  
Cincinnati, Ohio 45202  
Attention: George Dwight II, Deputy General Counsel  
Phone: (513) 287-4327  
Email: George.dwight@duke-energy.com

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(b) if to Owner, addressed to:

City of Washington  
Attn: Brian M. Alligood, City Manager  
102 E. Second St.  
Washington, North Carolina 27889  
Phone: (252) 975-9319  
Email: balligood@washingtonnc.gov

With a copy to:

City Attorney  
Attn: Franz F. Holscher  
Rodman, Holscher, Peck & Edwards, PA  
320 N. Market Street  
Washington, North Carolina 27889  
Phone: (252) 946-3122  
Email: ffh@rhpe.net

or to such other address as either Party shall from time to time designate in writing to the other Party.

24.2 Counterparts; Signatures. This Ground Lease may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The Parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Ground Lease had been delivered. Owner and Tenant (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other Party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Ground Lease based on the foregoing forms of signature.

24.3 Amendments. Neither this Ground Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

24.4 Headings, etc. The headings of the various Articles and Sections of this Ground Lease are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

24.5 Successors and Assigns. The terms of this Ground Lease shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

24.6 Confidentiality. Owner and Tenant each agree to use commercially reasonable efforts to keep confidential, and not publicly disclose, the terms of this Ground Lease and any information provided by Owner to Tenant or by Tenant to Owner in relation to the

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transaction contemplated hereby; provided, however, that either Party may disclose the existence and terms of this Ground Lease to: (a) its consultants, agents, architects, independent contractors, or attorneys in connection with the execution of this Ground Lease, (b) any bona fide potential purchaser or lender of the Facility who agrees to keep such information confidential, (c) any third party to whom both Parties hereto have given their prior written consent for such a disclosure, or (d) governmental, administrative, regulatory or judicial authorities in the investigation of the compliance of the Site, the Facility and/or the Easement Areas with applicable legal requirements; and provided, further, that the non-disclosure obligations contained in this Section shall not apply to any such information that (i) is or becomes generally available to the public other than as a result of a disclosure by Tenant or Owner, or their employees, agents or representatives, or (ii) Owner or Tenant is compelled to disclose pursuant to any judicial, statutory or regulatory authority. Notwithstanding anything contained herein to the contrary, Tenant expressly authorizes Owner to disclose the existence and terms of this Ground Lease, as may be necessary in Owner's discretion, (a) to DOA and/or the FAA (upon which disclosure the same shall be considered a public record) or (b) to fulfill the statutory authority that authorizes Owner, a municipality, to lease property it owns, including but not limited to the statutory requirements for leases by municipalities of more than ten (10) years and (c) to the extent that public records law requires disclosure of the same. The provisions of this Section shall survive the termination of this Lease.

24.7 Attorneys' Fees. If either Party commences an action or proceeding against the other Party arising out of or in connection with this Ground Lease, or institutes any proceeding in a bankruptcy or similar court which has jurisdiction over the other Party or any or all of its property or assets, the prevailing Party in such action or proceeding and in any appeal in connection therewith shall be entitled to have and recover from the unsuccessful Party reasonable attorneys' fees, court costs, expenses and other costs of investigation and preparation. If such prevailing Party recovers a judgment in any such action, proceeding, or appeal, such attorneys' fees, court costs and expenses shall be included in and as a part of such judgment.

24.8 Interpretation. The Parties acknowledge that this Ground Lease, as executed, is the product of negotiations between Owner and Tenant and that it shall be construed fairly, in accordance with its terms, and shall not be construed for or against either Party. No inferences as to the intention of the Parties shall arise from the deletion of any language or provisions of this Ground Lease.

24.9 Memorandum of Lease. Concurrently with the execution of this Ground Lease, Owner and Tenant shall execute, acknowledge before a notary public, in recordable form, and deliver a short form memorandum of lease in the form of Exhibit D, attached hereto and incorporated herein, which shall be recorded by Tenant in the Official Records.

24.10 Severability. If any term or provision of this Ground Lease is, to any extent, determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ground Lease shall not be affected thereby, and each remaining term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

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24.11 Time is of the Essence. Time is of the essence of this Ground Lease and each and every provision of this Ground Lease.

24.12 Consent and Approvals. Any consent or approval that a Party is obligated to give to the other Party shall not be unreasonably withheld or delayed, subject to any specific provision to the contrary contained in this Ground Lease.

24.13 Entire Agreement. This Ground Lease, including any exhibits and attachments hereto, constitutes the entire agreement between Owner and Tenant relative to the matters and transactions contemplated herein. Owner and Tenant agree hereby that all prior or contemporaneous oral or written agreements, or letters of intent, between and among themselves or their agents including any leasing agents and representative, relative to such matters and transactions are merged in or revoked by this Ground Lease.

24.14 Broker's Commission. Tenant represents and warrants that it has not dealt with any broker or agent in connection with this Ground Lease and Tenant agrees to indemnify and save Owner harmless from any claims made by any brokers or agents claiming to have dealt with Tenant. Owner represents and warrants that it has not dealt with any brokers or agents in connection with this Ground Lease, and Owner agrees to indemnify and save Tenant harmless from any claims made by any brokers or agents claiming to have dealt with Owner. The terms and provisions of this Section 24.14 shall survive the termination or earlier expiration of this Ground Lease.

24.15 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE ANY AND ALL RIGHTS THAT THEY MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING RELATING TO THIS GROUND LEASE OR ANY TRANSACTIONS CONTEMPLATED HEREBY OR RELATED HERETO. IT IS INTENDED THAT THIS WAIVER SHALL APPLY TO ANY AND ALL CAUSES OF ACTION, DEFENSES, RIGHTS, CLAIMS AND/OR COUNTERCLAIMS, WHETHER IN CONTRACT, TORT OR OTHERWISE, IN ANY SUCH ACTION OR PROCEEDING. THE PARTIES UNDERSTAND THAT THIS WAIVER IS A WAIVER OF A CONSTITUTIONAL SAFEGUARD, AND THE PARTIES BELIEVE THAT THERE ARE SUFFICIENT ALTERNATE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS, INCLUDING A TRIAL BY AN IMPARTIAL JUDGE, THAT ADEQUATELY OFFSET THE WAIVER CONTAINED HEREIN.

24.16 No Joint Venture. Neither this Ground Lease nor anything contained herein shall be deemed to make Owner in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Owner, as Owner of the property subject to this Ground Lease, and Tenant, as Tenant of this Ground Lease, nor shall this Ground Lease or any provision thereof be construed to authorize either to act as an agent for the other except as expressly provided in this Ground Lease.

24.17 Condition of Site and Easement Areas. Tenant's taking possession of the Site and Easement Areas shall be conclusive evidence as against Tenant that Tenant has accepted

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said Site and Easement Areas "AS IS" and that, except with regard to any obligation that Owner may have with respect to any environmental issue(s) on or affecting the Site or any Easement Area(s) not caused by Tenant or anyone claiming by or through Tenant, Owner is under no duty to repair anything, furnish any services for, or otherwise improve in any way the same.

24.18 Adherence to Regulations. Tenant shall comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, Courts, authorities, agents, officials, officers and other parties, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to Tenant; Tenant's construction, operation, and maintenance of the Facility; and Tenant's use of the property that is subject to this Ground Lease. Tenant shall not intentionally or knowingly use the property that is the subject of this Ground Lease for any purpose or in any manner in violation of any law, ordinance, rule, or regulation adopted or imposed by any federal, state, county, municipal body, or other governmental agency. Tenant further agrees to indemnify and hold Owner harmless for any and all damage of any kind arising from Tenant's failure to comply with the aforementioned rules and regulations.

IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be duly executed by their respective officers thereto duly authorized as of the day and year first above written.

**PRE-AUDIT CERTIFICATE**

This Ground Lease has been pre-audited pursuant to North Carolina General Statute §159-28 in the manner required by the Local Government Budget and Fiscal Control Act.

**CITY OF WASHINGTON**

 (SEAL)  
Matt Rauschenbach, Chief Financial Officer

**OWNER:**

CITY OF WASHINGTON

By:   
Name: BRIAN M. ALLIGOOD  
Title: CITY MANAGER

**TENANT:**

WASHINGTON AIRPORT SOLAR, LLC, a Delaware limited liability company

By:   
Name: Brian K Stallman  
Title: Vice President

**EXHIBIT A**

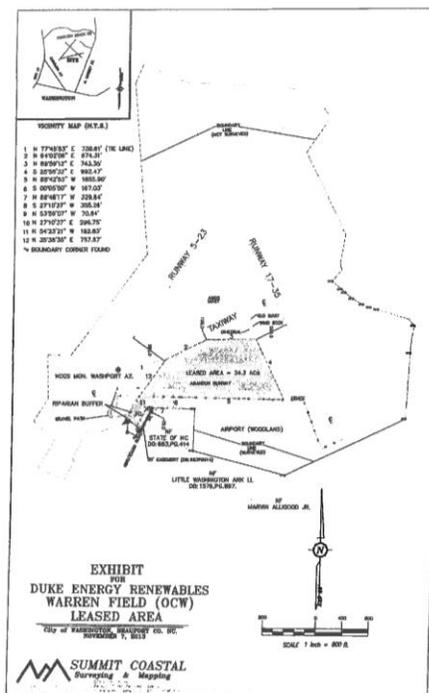
To Ground Lease

Legal Description of Site

ALL THAT CERTAIN TRACT OR PARCEL OF LAND lying and being in the City of Washington, Beaufort County and consisting of approximately 34.3 acres of land, and as more particularly shown as crosshatched and described on the survey of Summit Coastal Surveying and Mapping dated November 7, 2013, a copy of which is attached hereto as Exhibit A-1.

TOGETHER WITH the right to use that certain thirty (30) foot wide right of way easement for all purposes reserved in that certain Deed of Correction from the County of Beaufort and the City of Washington to the State of North Carolina dated March 15, 1972 and recorded in Book 683 at Page 414 in the Office of the Register of Deeds for Beaufort County, North Carolina.

EXHIBIT A-1



**NEW BUSINESS:**

**AUTHORIZE – MANAGER TO AWARD CONTRACT FOR POWER LINE CONSTRUCTION NOT TO EXCEED (\$200,000)**

City Manager, Brian Alligood stated this is the authorization that will allow us to enter into an agreement with an outside contractor to provide the interconnect work – powerline work and anything that needs to be done for the Solar Farm tie in into our system. Being pressed for time, we do not have the time or the resources in house to do that work

All expenditures made by the City in conjunction with these improvements will be reimbursed by the developer.

Councilman Mercer suggested extending the requested amount to \$225,000.

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson, Council authorized the City Manager to award a contract for powerline construction in an amount not to exceed \$225,000.

**ADOPT – MOTION FIXING THE DATE FOR PUBLIC HEARING (12-9-2013) ON THE BEAUFORT COUNTY COMPREHENSIVE TRANSPORTATION PLAN**

City Manger, Brian Alligood advised that this is a request to adopt a motion fixing the date to have a public hearing and to receive comments on The Beaufort County Comprehensive Transportation Plan. The Mid-East Rural Planning Organization (MERPO) did the plan and we have some of the recommendation provided in the agenda. Mr. Alligood stated they are seeking Council endorsement.

Councilman Mercer inquired if we have representatives on the RPO? Mr. Rodman stated Glen Moore is the staff representative on the RPO.

Mayor Pro tem Roberson expressed a couple of concerns:

- Would like a copy of the plan ~Mr. Rodman explained that Council has what he has ~ Mayor Jennings inquired if we should have a copy before the public hearing, Mr. Rodman advised he would hope to have copies.
- Priorities – namely: Highland Drive (dangerous situation and should be upgraded) and we should have a east/west connector off of 264 to the Old Bath highway

Mayor Pro tem Roberson said he would get any additional concerns to the Manager. Discussions of other concerns followed.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council adopted a motion fixing the date for a public hearing on The Beaufort County Comprehensive Transportation Plan for December 9, 2013.

**AUTHORIZE – CITY MANAGER TO EXECUTE AN AGREEMENT WITH EMS MANAGEMENT & CONSULTANTS (item removed)**

**AUTHORIZE – RELEASE OF LOT 105 FROM CITY'S DEED OF TRUST**

City Manager, Brian Alligood said this is an authorization for the Mayor and City Attorney to execute the release of 105 in the Northgate Subdivision. This is under the CDBG project 09 with Washington Housing Nonprofit, Inc. The lot is scheduled to close on December 11, 2013 as part of the CDBG Affordable Housing Grant.

Washington Housing Nonprofit, Inc. will deposit \$6,000 into the City Attorney's trust account pursuant to and consistent with the Legally Binding Commitment by and between the City of Washington and Washington Housing Nonprofit, Inc.

Mayor Pro tem Roberson addressed a concern regarding sidewalks and Mr. Alligood noted this would be explained with the next agenda item.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council authorized the Mayor and the City Attorney to execute the release of lot 105 in the Northgate Subdivision.

**AUTHORIZE – RELEASE OF LOTS 52 & 53 IN NORTHGATE SUBDIVISION**

Mayor Jennings asked Mr. Alligood to explain why the City does not need a release of lots 52 and 53 from City's Deed of Trust. Mr. Alligood voiced lot 52 and 53 have already been conveyed to a builder by Northgate Development, LLC and they are requesting a partial release from the Deed of Trust for which the City is a beneficiary. If Council will recall, there is a Deed

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of Trust in the amount of \$1,620,000 that the City holds and is related to the Crisis Housing Infrastructure Funds Grant program which the City received to assist Northgate in constructing infrastructure for the subdivision. The City received confirmation from the State that Northgate Development, LLC. has satisfied the grant requirement of conveying 32 homes to low to moderate income households. To address Mayor Pro tem Roberson's concern from the previous agenda item – Mr. Alligood voiced there is an outstanding issue between the City and Northgate regarding sidewalks in the subdivision that were not constructed. Staff has been in conversation with Mr. Briley and his attorney regarding this matter and anticipates bringing a proposal to Council at the December 9, 2013 meeting for its resolution.

Councilman Mercer inquired of the City Attorney, if we release all the lots, what is the leverage on the Deed of Trust. Mr. Holscher stated it is his understanding these are not the last two lots of Northgate Subdivision that are secured. There are additional lots secured by this Deed of Trust; in the event we are not able to work out a solution for the sidewalk issue, we will come before Council at that time noting we will not be accommodating with any future releases.

By motion of Mayor Pro tem Roberson, seconded by Council Brooks, Council authorized the Mayor and the City Attorney to execute the release of lots 52 and 53 in the Northgate Subdivision.

**ADOPT – ORDINANCE - WATERFRONT ADVISORY COMMITTEE** (item removed)  
**\*Item discussed under appointments to various boards, commissions, and committees.**

**ANY OTHER BUSINESS FROM THE MAYOR OR MEMBERS OF COUNCIL**  
**DISCUSSION – CITY COUNCIL PROFESSIONAL DEVELOPMENT**

Mayor Jennings items of interest as he is transitioning from his duties as Mayor:

1. City Council Professional Development – Mayor Jennings submitted we have certain group function around professional development where all are invited to attend. Council members have various interest of their own that could be beneficial to the City or to that Council member. Mayor Jennings noted the cost of this should be monitored and that we should limit the additional professional development expenses to \$500 per year ~ anything above the \$500 would be at the individual Council member's expense. This relates to \$500 in addition to the other opportunities that all members are invited to and provided for by the City. This \$500 would be part of the budget process and noted this is an opportunity for some guidance ~ standardizing of what's expected. Mayor Pro tem Roberson agreed and went a step further, noting that if a Councilmember runs for an office for the League, suggested they have concurrence from the sitting Council. Members of Council supported the idea and Councilman Brooks suggested staff provide a memo that lists the annual opportunities that is already provided for clarity. Councilman Mercer suggested including in the code of conduct that if a member misses a meeting and is unexcused that they will lose one third of their monthly salary if he/she misses two meetings during the month they would lose two thirds of their monthly salary. Mayor Jennings stated that in this "Code of Best Practices" we will be addressing professional development expenses and non-excused absences with a reduction in salary. Mr. Alligood requested time to research the last suggestion from Councilman Mercer.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council instructed the staff to investigate the preparation of a code of conduct for Council members which will include among other things the use of City funds for professional development to be limited to a total of \$500 per year and to investigate the opportunity for reduction or a penalty related to unexcused absences from board meeting.

**ACKNOWLEDGEMENT**

Mayor Jennings congratulated Councilman elect Larry Beeman and Mayor elect Mac Hodges and voiced he is looking forward to their service.

**CLOSED SESSION – UNDER NCGS § 143-318.11(a)(3) ATTORNEY CLIENT PRIVILEGE – INCLUDING JAMES L. DAVIS VS. CITY OF WASHINGTON (09-OSP-**

**06499), NCGS § 143-318.11(a)(4) ECONOMIC DEVELOPMENT, AND NCGS § 143-318.11(a)(1) DISCLOSURE OF CONFIDENTIAL INFORMATION AND NCGS § 143-318.10(e) THE PUBLIC RECORDS ACT**

By motion of Councilman Pitt, seconded by Mayor Pro tem Roberson, Council agreed to enter closed session under § NCGS 143-318.11(a)(3) Attorney Client Privilege – Including James L. Davis vs. City of Washington (09-OSP-06499), NCGS § 143-318.11(a)(4) Economic Development, and NCGS § 143-318.11(a)(1) Disclosure of Confidential Information, and NCGS § 143-318.10(e) The Public Records Act at 6:45 PM.

By motion of Councilman Mercer, seconded by Councilman Brooks, Council agreed to come out of Closed Session at 8:20 pm.

**IDX IMPRESSIONS, LLC AGREEMENT**

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council approved and authorized the execution of a Real Estate Purchase Agreement by and between idX Impressions, LLC. and the City of Washington.

**REAL ESTATE PURCHASE AGREEMENT**

THIS REAL ESTATE PURCHASE AGREEMENT (this “Agreement”) is made as of the 15<sup>th</sup> day of November, 2013 (the “Effective Date”) by and between idX Impressions, LLC, a Delaware limited liability company (“Purchaser”) and the City of Washington, a body politic and corporate under Chapter 160A of the North Carolina General Statutes (“Seller”).

WHEREAS, Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller, upon the terms and conditions contained in this Agreement, certain real property commonly known as 234 Springs Road, Washington, North Carolina 27889 and more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and the buildings, improvements and structures thereon, the easements, access rights and appurtenances and hereditaments thereto;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, and subject to the terms and conditions hereof, Seller and Purchaser hereby covenant and agree as follows:

ARTICLE I  
THE PROPERTY

1.1. There shall be included in this sale all of the following (collectively, the “Property”):

1.1.1. The real property (the “Land”) described on Exhibit A attached hereto and made a part hereof, together with all rights and appurtenances pertaining thereto, including, without limitation, any and all rights of Seller in and to all oil, gas and other minerals, air and development rights, roads, alleys, easements, streets and ways adjacent to the Land, rights of ingress and egress thereto, any strips and gores within or bounding the Land and in profits or rights or appurtenances pertaining to the Land.

1.1.2. The buildings and all other improvements, structures and fixtures placed, constructed or installed on the Land (collectively, the “Improvements”).

1.1.3. All of Seller’s rights in and to any Assumed Contracts (as that term is defined in Section 3.1 hereof) and all warranties of any contractor, manufacturer or materialman.

1.1.4. All of Seller’s equipment, furnishings and other tangible personal property (collectively, the “Personal Property”) placed or installed on or about the Land or Improvements now or prior to Closing (as defined in Section 8.1 below) and used as part of or in connection with the Land and Improvements, including, without limitation, all Personal Property specified on Exhibit B to this Agreement.

1.1.5. All rights to any award made or to be made or settlement in lieu thereof for damage to the Land or Improvements by reason of condemnation, eminent domain, exercise of police power or change of grade of any street.

1.2. Seller shall convey the Property to Purchaser at Closing by executing and delivering a Special Warranty Deed (the "Deed") in substantially the form of Exhibit C attached hereto and made a part hereof, free and clear of all liens and encumbrances, other than: (i) certain utility easements reserved by Seller in a form agreed upon by Purchaser and Seller prior to the Inspection Period Expiration Date (as defined in Section 3.1 below), (ii) the lien of general real estate taxes not yet due and payable; (iii) the Grant of Easement and Indemnity Agreement by and between Hamilton Beach Brands, Inc. f/k/a Hamilton Beach/Proctor Silex, Inc. recorded in Deed Book 1661, Page 952 of the Beaufort County Registry; and (iv) any Permitted Exceptions (as defined in Section 3.2 below).

ARTICLE II  
PURCHASE PRICE

2.1. The purchase price for the Property (the "Purchase Price") shall be Seven Hundred Fifty Thousand Dollars (\$750,000) and shall be payable by Purchaser as set forth in the balance of this Section 2.1.

2.1.1. The good faith deposit in the amount of Forty Thousand Dollars (\$40,000) made by Purchaser simultaneously with Purchaser's submission of its bid to purchase the Property dated July 29, 2013, and any interest earned thereon (collectively, the "Deposit") shall be credited against the Purchase Price at Closing.

2.1.2. The remainder of the Purchase Price, increased or decreased by the adjustments provided for in this Agreement, shall be paid by wire transfer of immediately available funds on the Closing Date to Purchaser's Attorney for disbursement at Closing.

2.2. In addition to the Purchase Price, as consideration for the purchase of the Property, Purchaser shall cause to be paid to PNC Bank ("Bank") on behalf of Seller at Closing the amount required to pay in full on the Closing Date the entire principal, interest, prepayment penalties and all other amounts owed by Seller to Bank which are secured by that certain deed of trust recorded in Deed Book 1757, Page 18 of the Beaufort County Registry (the "Secured Debt"). No later than two (2) business days prior to Closing, Seller shall obtain from Bank and deliver to Purchaser a letter indicating the amount required to pay the Secured Debt in full as of the Closing Date.

ARTICLE III  
INSPECTION PERIOD

3.1. For the period (the "Inspection Period") commencing on the Effective Date and ending ninety (90) days after the Effective Date (the "Inspection Period Expiration Date"), Purchaser shall have the right to have performed (i) such physical, mechanical and environmental inspections of the Property as Purchaser deems necessary to determine the physical condition of the Property, and (ii) such inspections of all books and records and financial information pertaining to the Property as Purchaser deems necessary. During the Inspection Period, Seller shall cooperate with Purchaser in its inspection of the Property, including but not limited to, furnishing to Purchaser such information, materials and documents as Purchaser may reasonably request, to the extent such information is in

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Seller's possession or control. If Purchaser, in Purchaser's sole judgment, shall find such inspection to be unsatisfactory for any reason whatsoever or for no reason, Purchaser shall have the right, at its option, to be exercised not later than the Inspection Period Expiration Date, to elect to terminate this Agreement by written notice to Seller. Immediately upon receipt of such notice, Seller shall return the Deposit to Purchaser and the parties hereto shall have no further liabilities one to the other (other than those that are expressly stated to survive the termination of this Agreement). If Purchaser fails to terminate this Agreement on or before the Inspection Period Expiration Date, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.1.

Within ten (10) days after the Effective Date, Seller, to the extent in Seller's possession or control, shall deliver to Purchaser a copy of Seller's existing title policy and/or title commitment, survey, environmental and other engineering reports, tax bills for the Property and copies of any contracts, agreements, and written descriptions of all other contractual rights and intangibles of Seller with respect to the operation, maintenance, repair and improvement of the Property, including service and maintenance agreements, construction, material and labor contracts, utility agreements and other contractual arrangements (collectively, the "Contracts").

Purchaser shall, on or before the Inspection Period Expiration Date, notify Seller which Contracts, if any, Purchaser will assume (the "Assigned Contracts") and which Contracts Purchaser will not assume (the "Rejected Contracts"). Seller shall deliver a notice to terminate the Rejected Contracts at the Closing; provided, however, if any of the Rejected Contracts cannot be terminated without payment of a penalty, Purchaser shall have the right to (i) assume that Contract, (ii) pay any fees in connection with the termination of the Contract, or (iii) terminate this Agreement, and, thereupon, Seller shall immediately return the Deposit to Purchaser and the parties hereto shall have no further liabilities one to the other (other than those that are expressly stated to survive the termination of this Agreement).

Purchaser shall indemnify and hold Seller harmless for any and all damage, cost and expense arising out of Purchaser's, or its employees', agents' or contractors', activities on the Property pursuant to the inspection rights granted herein.

3.2. Purchaser may, at Purchaser's cost, obtain a title commitment (the "Title Commitment") from a title insurance company selected by Purchaser (the "Title Company") and Purchaser shall have the right, at Purchaser's cost, to obtain a survey of the Property (the "Survey"). Purchaser shall have until the Inspection Period Expiration Date to examine the condition of title and the Survey and to approve or disapprove the same. If Purchaser shall disapprove the condition of title or Survey, such disapproval shall be set forth in one or more notices (each, a "Title Disapproval Notice") given to Seller not later than the Inspection Period Expiration Date, stating that the condition of title to the Property, any of the terms, provisions or contents of said items and documents or contents of the Survey are disapproved by Purchaser. Notwithstanding the foregoing, Purchaser may deliver one or more additional Title Disapproval Notices after the Inspection Period Expiration Date if, at any time after the Inspection Period Expiration Date, Purchaser receives (i) an amendment to the Title Commitment previously delivered to it by the Title Company containing any exception not set forth in a Title Commitment previously delivered to it or (ii) a revision of the Survey containing any encumbrances or other defects not included on the previous Survey, provided

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that any such additional Title Disapproval Notice shall be given, if at all, within ten (10) days after Purchaser receives such amendment or revised survey. Seller shall have until the date which is ten (10) days after the date of the applicable Title Disapproval Notice (the "Title Cure Expiration Date") in which to cure or eliminate or agree to cure or eliminate all items which Purchaser disapproves in the applicable Title Disapproval Notice, and to furnish evidence satisfactory to Purchaser and the Title Company that all such items have been cured or eliminated or that arrangements have been made with the Title Company and any parties in interest to cure or eliminate the same at or prior to the Closing. If such evidence is not received by Purchaser and the Title Company on or before the earlier of the Closing Date or the Title Cure Expiration Date or if at Closing there are any additional exceptions to title of which the Title Company has not theretofore provided to Purchaser and Seller is unable or unwilling to cure or eliminate such items, then Purchaser shall have the right, in Purchaser's sole discretion, to (i) approve such items or exceptions as permitted exceptions to title ("Permitted Exceptions") and proceed with the Closing subject to such Permitted Exceptions; or (ii) elect to terminate this Agreement and upon such election, Seller shall immediately return the Deposit to Purchaser and the parties hereto shall have no further obligations one to the other under this Agreement (other than those that are expressly stated to survive the termination of this Agreement). Notwithstanding anything herein to the contrary, in no event shall monetary liens, mortgages or encumbrances that are identified in the Title Commitment or that are placed on the Property after the date of the Title Commitment but before the Closing Date be permitted exceptions to title. Seller agrees that if the legal description on the Survey contains discrepancies from the legal description in Seller's title deed, Seller will execute and deliver to Purchaser at the Closing a quit claim deed using the legal description from the Survey.

3.3. During the Inspection Period, Purchaser shall have arranged for financing for the acquisition of the Property and economic development incentives relating to Purchaser's planned improvements to and activities at the Property which are satisfactory to Purchaser in Purchaser's sole discretion. If Purchaser does not arrange such financing or economic development incentives prior to the Inspection Period Expiration Date, Purchaser shall have the right to elect to terminate this Agreement by providing written notice to Seller, and upon receiving such notice, Seller shall immediately return the Deposit and the parties hereto shall have no further obligations one to the other under this Agreement (other than those that are expressly stated to survive the termination of this Agreement).

3.4. During the Inspection Period, Purchaser shall have obtained a pollution insurance policy or a commitment for a pollution insurance policy issued by an insurance company satisfactory to Purchaser in Purchaser's sole discretion which will cover the Current Environmental Condition (as defined in Article V below) with such policy limits and premiums as may be satisfactory to Purchaser in Purchaser's sole discretion. If Purchaser does not obtain such policy or commitment prior to the Inspection Period Expiration Date, Purchaser shall have the right to elect to terminate this Agreement by providing written notice to Seller, and upon receiving such notice, Seller shall immediately return the Deposit and the parties hereto shall have no further obligations one to the other under this Agreement (other than those that are expressly stated to survive the termination of this Agreement).

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ARTICLE IV  
REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Seller hereby makes the following representations, warranties and covenants which shall be true and correct as of the Effective Date and as of the Closing Date, and shall survive the Closing for one year:

4.1.1. Seller has done nothing to impair such title to the Property as Seller received, except for that deed of trust recorded in Deed Book 1757, Page 18 of the Beaufort County Registry, the Grant of Easement and Indemnity Agreement by and between the Seller and Hamilton Beach Brands, Inc. f/k/a Hamilton Beach/Proctor Silix, Inc. recorded in Deed Book 1661, Page 952 of the Beaufort County Registry, the lien of general real estate taxes not yet due and payable, and such other matters as may be reflected as exceptions to title in the Title Commitment and approved by Purchaser as Permitted Exceptions.

4.1.2. Seller has the authority to enter into this Agreement, to sell and convey the Property to Purchaser as provided herein and to perform its obligations hereunder. Seller has taken all action necessary to authorize the execution and delivery of this Agreement and the performance by Seller of its obligations under this Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a valid, binding and enforceable obligation of Seller, subject to bankruptcy and other debtor relief laws and principles of equity. The representations, warranties, covenants and indemnifications provided by Seller under this Agreement and the consummation by Seller of the transaction which is the subject of this Agreement will not conflict with or result in a breach of any of the terms of any agreement or instrument to which Seller is a party or any federal, state or local law. No party other than Purchaser has any right to purchase the Property or any part thereof.

4.1.3. Except as may be provided for herein, to the best of Seller's knowledge there are no violations or alleged violations of any federal, state or local law relating to the Property. There is no litigation or proceeding pending or, to the best of Seller's knowledge, threatened against Seller or the Property which could affect Purchaser or the Property upon or subsequent to the Closing. Seller has not received any notice of any pending, and Seller has no knowledge of any threatened, condemnation or similar proceeding or pending public improvements in or adjoining the Property which will in any manner affect the Property.

4.1.4. All of the Contracts are set forth on Exhibit D attached hereto and made a part hereof. There are no Contracts which will bind the Property or the Purchaser on or after the Closing, except for any Assumed Contracts. Each of the Assumed Contracts are valid and in full force and effect, and to the best of Seller's knowledge no party thereto is in default thereunder nor has any event occurred which, after any required notice and cure periods, would constitute a default. All work performed at Seller's request or materials furnished at Seller's request up to Closing which are or might become a lien against the Property shall be paid for in full at or prior to the Closing.

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4.1.5. To Seller's knowledge, except with respect to the Current Environmental Condition (as defined in Article V below) and except with respect to Hazardous Materials that may be stored and used in conjunction with idX Corporation's current operations on the Property, (i) no Hazardous Materials (as defined in Article V below) have been located on the Property, except in compliance with applicable laws and regulations, or have been released into the environment, or discharged, placed or disposed of at, on or under the Property; (ii) no underground storage tanks have been located on the Property; (iii) the Property has not been used as a dump for waste material; (iv) the Property complies with all Environmental Laws (as defined in Article V below), (v) the Property is not subject to any consent decree, compliance order, administrative order or judgment pursuant to any Environmental Law; and (vi) Seller has not received notice from any person or entity regarding the existence of Hazardous Materials on the Property in violation of any Environmental Law.

4.1.6. Seller has not received any notice of any violation of any building, fire or health code or any other law, ordinance, code or regulation, covenant, condition, restriction or easement applicable to the Property which shall not be cured prior to Closing. To Seller's knowledge, except for the Current Environmental Condition, there are no material defects in the Property. No written notice has been received by Seller from any holder of any mortgage or deed of trust on the Property, any insurance company which has issued a policy with respect to any of the Property, any board of fire underwriters (or other body exercising similar functions), or any third party, any of which notices claim any defect or deficiency or request the performance of any repairs, alterations or other work to the Property.

4.1.7. There is no petition in bankruptcy, attachment, execution, or any petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, liquidation or dissolution or similar relief under the U.S. Bankruptcy Code or any state law that has been filed or, to the best of Seller's knowledge, threatened to be filed against Seller. Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

Except for the express representations and warranties set forth in Section 4.1 or in the documents delivered at Closing, the Property is being sold in an "AS IS" condition and "WITH ALL FAULTS" as of the Effective Date and as of Closing. Except as expressly set forth in this Agreement, no representations or warranties have been made or are made and no responsibility has been or is assumed by Seller or by any partner, officer, person, firm, agent or representative acting or purporting to act on behalf of Seller as to the condition or repair of the Property, the Property's compliance with applicable law, the Property's value, or any other fact or condition which has or might affect the Property or the condition, repair, compliance or value of the Property or any portion thereof. The parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement and the Exhibits hereto, which alone fully and completely express their agreement, and that this Agreement has been entered into after full investigation, or with the parties satisfied with the opportunity afforded for investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in this Agreement or the Exhibits hereto.

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4.2. As a condition precedent to Purchaser's obligations at Closing, all of Seller's representations and warranties provided in this Agreement shall be true as of the Closing. Seller shall immediately advise Purchaser of any fact causing any representation or warranty set forth in this Agreement not to be true.

4.3. In order to induce Seller to enter into this Agreement, Purchaser represents and warrants to Seller that, as of the Effective Date and the Closing Date:

4.3.1 Purchaser is a limited liability company duly organized and validly existing under the laws of the State of Delaware.

4.3.2 Purchaser has the authority to enter into this Agreement, to perform its obligations under this Agreement and to complete the purchase of the Property as contemplated by this Agreement. Purchaser has taken all limited liability company action necessary to authorize the execution and delivery of this Agreement and the performance by Purchaser of its obligations under this Agreement. This Agreement has been duly executed and delivered by Purchaser and constitutes a valid, binding and enforceable obligation of Purchaser, subject to bankruptcy and other debtor relief laws and principles of equity. The entry into this Agreement by Purchaser, and the performance of Purchaser's obligations hereunder does not violate the organizational documents of Purchaser or any agreement to which it is a party or any governmental or court order or ruling applicable to Purchaser.

#### ARTICLE V ENVIRONMENTAL MATTERS

5.1. For the purposes of this Agreement, the term "Hazardous Substance" and/or "Hazardous Materials" shall mean, without limitation, any flammable explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulations, polychlorinated bphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, including, without limitation, those defined as such in (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. sections 9601 *et. seq.*); (ii) the Hazardous Materials Transportation Act, as amended (49 U.S.C. sections 1801 *et. seq.*); or (iv) any other applicable Environmental Law and in regulations adopted pursuant thereto.

5.2. For the purposes of this Agreement, the term "Environmental Laws" shall mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production, release or disposal of Hazardous Substances, and the rules, regulations, policies, guidelines, interpretations, permits, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

5.3. Purchaser and Seller acknowledge that each of them is aware of the presence of certain Hazardous Substances existing as of the Effective Date, in the soil and ground water on,

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under, around or within the Property as the same is defined, described and established by the administrative record, reports and other documentation currently on file with the North Carolina Department of Environment and Natural Resources (the "NCDENR"), which shall expressly exclude for the purposes of this Agreement, however, the presence of any Hazardous Substances that are not included in said record (the "Current Environmental Condition").

5.4. Seller hereby agrees to take all such actions and execute and deliver all such certificates, agreements, instruments and other documents as may be reasonably necessary or appropriate to assist Purchaser's efforts to apply for and obtain entry into, and Purchaser shall exercise due diligence and its best efforts to apply for and obtain entry into, the North Carolina Brownfields Program (the "Brownfields Program") pursuant to the Brownfields Property Reuse Act of 1997 (N.C.G.S. sections 130A310.30 et. seq.).

5.5. As additional consideration for the Purchase Price, Seller shall defend, indemnify and hold Purchaser harmless from and against any and all claims, response or remediation costs, losses, damages, penalties, actions, judgments, expenses and liabilities of every kind and nature whatsoever (including without limitation reasonable attorneys' and consultants' fees and costs of investigation, remediation and defense), to the extent they arise out of, result from or are connected to: (i) the willful, wanton and/or negligent exacerbation of the Current Environmental Condition of the Property attributable to the acts or omissions of Seller, its employees, agents, representatives and contractors; (ii) a violation of any Environmental Laws at the Property by Seller, its employees, agents, representatives and contractors; or (iii) the production, treatment, processing, handling, storage, disposal, spillage or release of Hazardous Substances on or about the Property by Seller, its employees, agents, representatives and contractors.

5.6. As additional consideration for the conveyance of the Property to Purchaser, Purchaser shall defend, indemnify and hold Seller harmless from and against any and all claims, response or remediation costs, losses, damages, penalties, actions, judgments, expenses and liabilities of every kind and nature whatsoever (including without limitation reasonable attorneys' and consultants' fees and costs of investigation, remediation and defense), to the extent they arise out of, result from or are connected to: (i) the willful, wanton and/or negligent exacerbation of the Current Environmental Condition of the Property attributable to the acts or omissions of Purchaser, its employees, agents, representatives and contractors; (ii) a violation of any Environmental Laws at the Property by Purchaser, its employees, agents, representatives and contractors; or (iii) the production, treatment, processing, handling, storage, disposal, spillage or release of Hazardous Substances on or about the Property by Purchaser, its employees, agents, representatives and contractors.

5.7. The indemnification obligations set forth in this Article V shall survive the Closing.

#### ARTICLE VI OPERATIONS PRIOR TO CLOSING

6.1. Seller agrees that between the Effective Date and the Closing Date, Seller shall:

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6.1.1. Continue to operate the Property as heretofore operated and in accordance with Seller's customary practices.

6.1.2. Perform all of Seller's obligations under that certain Lease by and between Seller and Impressions Marketing Group, Inc. dated April 1, 2011 (the "idX Lease"), which has been assigned to idX Corporation pursuant to that certain Assignment and Assumption of Lease Agreement by and between Impressions Marketing Group, Inc., idX Corporation, and Seller dated April 30, 2013.

6.1.3. Perform all of Seller's obligations under the Contracts and not modify the Contracts or enter into any contracts or other binding commitments to lease the Property or any interest therein or which would affect the Property after Closing.

6.1.4. Not create on the Property any easements, liens, mortgages, encumbrances or other interests that would not be satisfied or terminated on or before the Closing;

6.1.5. Not permit any alteration, structural modification or additions to the Property, except in the nature of ordinary maintenance and repair.

6.1.7. Pay, in the normal course of business, and, in any event, prior to Closing, all sums due for work, materials or services furnished or otherwise incurred by Seller in connection with the Property up to the Closing.

6.1.8. Not to solicit, initiate or negotiate a sale of the Property, approve or enter into any bidding process for the sale of the Property or otherwise market the Property for sale.

6.2. As a condition precedent to Purchaser's obligations at Closing, Seller shall have duly performed all covenants and other obligations to be performed by it under this Agreement.

#### ARTICLE VII CLOSING ADJUSTMENTS

7.1. Purchaser and Seller acknowledge and agree that under the idX Lease, idX Corporation is responsible for electric, gas, water, sewer and other utility charges, and real as well as personal property taxes and assessments levied, imposed or assessed on the Property prior to the Closing, and that Purchaser will be responsible for electric, gas, water, sewer and other utility charges, and real as well as personal property taxes and assessments levied, imposed or assessed on the Property on and after the Closing Date, as the owner of the Property.

7.2. Amounts paid or payable in respect of the Assigned Contracts, if any, shall be prorated between Seller and Purchaser as of the Closing Date. The customs of the county in which the Property is located shall govern all other prorations. The provisions of this Section 7.2 shall survive the Closing.

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7.3. If such prorations result in a payment due Purchaser, then the cash portion of the Purchase Price payable at Closing shall be reduced by such sum. If such prorations result in a payment due Seller, then the same shall be paid to Seller in addition to the cash portion of the Purchase Price payable at Closing. If any items require proration under this Agreement, the parties hereto shall endeavor to prepare a schedule of prorations no less than two (2) days prior to Closing. The parties hereto shall correct any errors in prorations as soon after the Closing as amounts are finally determined.

ARTICLE VIII  
CLOSING

8.1. The closing of the transaction which is the subject of this Agreement (the "Closing") shall occur at the offices of Purchaser's North Carolina real estate attorney (Purchaser's "Attorney") (the parties need not be physically present at the offices of Purchaser's Attorney to conduct the Closing) on a date (the "Closing Date") that shall be designated by Purchaser with at least five (5) days' advance written notice to Seller, provided, however, the Closing Date shall be no later than fifteen (15) days after the Inspection Period Expiration Date.

ARTICLE IX  
CLOSING DOCUMENTS

9.1. At the Closing, Seller shall cause to be delivered to Purchaser the following documents and instruments, and any other items specified in this Agreement, duly executed and acknowledged, in recordable form where applicable, and dated as of the Closing Date:

9.1.1. The Deed.

9.1.2. A bill of sale and assignment of the Assigned Contracts, if any, (the "Bill of Sale") in a form mutually agreed upon by Seller and Purchaser on or before the Inspection Period Expiration Date, together with originals of the Assigned Contracts, if any.

9.1.3. To the extent in Seller's possession or control, all plans, specifications, repair and maintenance records, mechanical, electrical and plumbing layouts, operating manuals, purchase orders, brochures, marketing materials, advertisements and other files and records in the possession or control of Seller and its managing agent and utilized in connection with the operation and maintenance of the Land and Improvements.

9.1.4. Such affidavits, certificates and other documents as may be required by the Title Company with respect to the title insurance policy to be issued by the Title Company (the "Title Policy") and with respect to any endorsements, indemnities and letters reasonably required by Purchaser or Purchaser's lender in connection with the Title Policy.

9.1.5. A Closing Statement to be prepared by Purchaser's Attorney and agreed upon by Seller and Purchaser (the "Closing Statement").

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9.1.6. An affidavit of Seller in form and substance satisfactory to Purchaser certifying that Seller is not a foreign person as that term is used and defined in Section 1445 of the United States Internal Revenue Code.

9.1.7. Any other instruments specifically referred to in this Agreement.

9.2. At the Closing, Purchaser or its assignee shall cause to be delivered to Seller the following documents and instruments:

9.2.1. Funds representing the cash payment due in accordance with Section 2.1.2 hereof.

9.2.2. Purchaser's counterpart to the Bill of Sale, duly executed by Purchaser.

9.2.3. Purchaser's counterpart to the Closing Statement, duly executed by Purchaser.

9.2.4. Any other instruments specifically referred to in this Agreement.

9.3. At the Closing, Seller and Purchaser shall cause to be delivered such other instruments and documents as may be required by law in order to complete the Closing of the transaction which is the subject of this Agreement.

ARTICLE X  
COSTS

Seller shall pay (i) the cost of all transfer taxes, stamp taxes, deed taxes or similar impositions payable in connection with the transaction which is the subject of this Agreement and (ii) Seller's attorney's fees. Purchaser shall pay (i) the cost of the Title Commitment, (ii) the base title premium for the Title Policy, (iii) the costs for any endorsements to the Title Policy and any costs associated with issuing a policy for Purchaser's lender, (iv) the cost for the Survey, (v) all expenses related to Purchaser's inspection of the Property, and (vi) Purchaser's attorney's fees. All other closing costs shall be allocated to and paid by Seller and Purchaser in accordance with the manner in which such costs are customarily borne by such parties in sales of similar property in Beaufort County, North Carolina.

ARTICLE XI  
COMMISSIONS

Seller and Purchaser represent and warrant that neither has engaged a broker that is entitled to a brokerage commission as a result of the sale of the Property to Purchaser. Seller shall indemnify and hold Purchaser harmless from any and all real estate commissions, claims for such commissions or similar fees, including attorneys' fees incurred in any lawsuit regarding such commissions or fees (collectively, "Claims") arising out of contracts executed by or activities engaged in by Seller. Purchaser shall indemnify and hold Seller harmless from any and all Claims arising out of contracts

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executed by or activities engaged in by Purchaser. The provisions of this paragraph shall survive the Closing or the earlier termination of this Agreement.

ARTICLE XII  
RISK OF LOSS

12.1. The risk of loss or damage to the Property by fire, earthquake, or other casualty shall be borne by Seller. If damage, loss or destruction of the Property or any part thereof, by fire, earthquake, or other casualty, occurs prior to the Closing, Seller shall immediately notify Purchaser of such damage, loss or destruction.

12.2. If any of the Improvements located on the Property is damaged by fire, earthquake, or other casualty, and the damage, loss or destruction shall cost less than Forty Thousand Dollars (\$40,000) to repair, based upon the determination of a contractor mutually acceptable to Seller and Purchaser in their reasonable discretion, then Purchaser shall close the transaction which is the subject of this Agreement with an assignment of Seller's rights to payments which may be payable under any applicable hazard or other insurance policy or policies in effect with respect to the Property; provided, however, Purchaser shall have the right to elect to terminate this Agreement if, as a result of such damage by fire, earthquake, or other casualty, (i) the Property may not, as a matter of applicable law, be rebuilt as it currently exists, or (ii) access to the Property from a publicly dedicated street is prevented, and if Purchaser so elects, this Agreement shall be terminated, Seller shall immediately return the Deposit to Purchaser, and the parties hereto shall be relieved of all further obligations and liability under this Agreement, other than those that are expressly stated to survive the termination of this Agreement.

12.3. If any of the Improvements located on the Property is damaged by fire, earthquake, or other casualty and the damage, loss or destruction shall cost Forty Thousand Dollars (\$40,000) or more to repair, based upon the determination of a contractor mutually acceptable to Seller and Purchaser in their reasonable discretion, then Purchaser shall, at its option, elect one of the following:

12.3.1. To terminate this Agreement, in which event, Seller shall immediately return the Deposit to Purchaser and the parties hereto shall be relieved of all further obligations and liability under this Agreement (other than those that are expressly stated to survive the termination of this Agreement); or

12.3.2. To proceed with the Closing and receive (i) a credit against the cash balance of the Purchase Price payable at Closing to the extent of payments received by Seller prior to the Closing Date under any applicable hazard or other insurance policy or policies in effect with respect to the Property, (ii) an assignment of Seller's rights to any payments which may be payable subsequent to the Closing Date under any applicable hazard or other insurance policy or policies in effect with respect to the Property, and (iii) a credit against the cash balance of the Purchase Price payable at the Closing in an amount equal to the aggregate amount of the deductibles with respect to all such hazard insurance policies.

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If Purchaser elects to exercise the option set forth in Section 12.3.2 hereof, then pending the Closing, Purchaser and Seller shall cooperate to adjust, compromise and settle with the insurance company(s) with respect to the insurance policies.

12.4. If, prior to Closing, any governmental authority or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to a material portion of the Land or Improvements, and the same is not dismissed in a final determination for which all appeal periods have passed on or before ten (10) days prior to the Closing Date set forth in this Agreement, then Seller shall immediately notify Purchaser thereof and Purchaser shall be entitled to terminate this Agreement in which event, the provisions of Section 12.3.1 hereof shall be applicable.

ARTICLE XIII  
TERMINATION AND REMEDIES

13.1. If any of the conditions precedent to Purchaser's obligations to consummate the transaction which is the subject of this Agreement shall have failed to occur, or in the event of Seller's failure to perform any of its obligations hereunder prior to or at the Closing, or if any of the representations and warranties made herein by Seller are untrue prior to or at the Closing (each event referred to in the foregoing provisions of this sentence is herein sometimes called a "Seller Default"), Purchaser shall have the right (i) to terminate this Agreement by giving written notice thereof to Seller and seek damages from Seller, in which event Seller shall immediately return the Deposit to Purchaser and thereafter this Agreement shall terminate and be null and void of no further force or effect, and neither Seller nor Purchaser shall have any further rights, duties, liabilities or obligations one to the other hereunder (other than those that are expressly stated to survive the termination of this Agreement), or (ii) to sue Seller for specific performance of its obligations under this Agreement. The provisions of this Section shall survive the Closing.

13.2. If the purchase and sale which is the subject of this Agreement is not consummated solely as a result of a default by Purchaser with respect to any of Purchaser's obligations under this Agreement, Seller shall retain the Deposit as Seller's sole remedy (whether at law or in equity), Purchaser and Seller having agreed that it would be impractical and extremely difficult to estimate the damages which Seller may suffer in such event.

ARTICLE XIV  
NOTICES

14.1. Any and all notices or other communications or deliveries required or permitted to be given or made pursuant to any of the provisions of this Agreement shall be deemed to have been duly given or made for all purposes: (i) if hand delivered, on the day delivered; (ii) if sent by email or telephone facsimile transmission during normal business hours on a Business Day (with confirmation by the transmitting equipment and without receipt of an automatic reply message stating that the recipient was not readily available to read the notice), on the day sent; (iii) if sent by a nationally recognized overnight courier, costs prepaid, on the next Business Day after being

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deposited with such courier; or (iv) if mailed by first-class mail, postage prepaid and return receipt requested, on the third (3<sup>rd</sup>) day after being deposited in the mail, in each case to the applicable address set forth below or to such other address as such party has designated by notice so given to the other party:

IF TO PURCHASER: idX Impressions, LLC  
3451 Rider Trail South  
Earth City, MO 63045  
Attn: Matthew Posey  
Email: matt.posey@idxcorporation.com  
Phone: 314-801-6330  
Facsimile: 314-739-4129

IF TO SELLER: The City of Washington  
102 East Second Street  
Washington, NC 27889  
Attn: Brian Alligood  
Email:balligood@washingtonnc.gov  
Phone:(252) 975-9333  
Facsimile:(252) 974-6461

ARTICLE XV  
MISCELLANEOUS

15.1. This Agreement and the Exhibits attached hereto contain the entire agreement between the parties with respect to the subject matter hereof, and no promise, representation, warranty or covenant not included in this Agreement or such Exhibits has been or is relied upon by either party. This Agreement is intended by the parties hereto to be the final expression of their agreement with respect to the matters herein contained and is the complete and exclusive statement of the terms thereof, notwithstanding any representation or statement to the contrary heretofore made.

15.2. This Agreement cannot be changed, modified, discharged or terminated by any oral agreement or any other agreement and there cannot be any waiver of the warranties, representations and covenants expressly contained in this Agreement unless the same is in writing and signed by the party against whom enforcement of the change, modification, discharge, termination or waiver is sought.

15.3. The Article and Exhibit headings herein are for convenience only, and are not to be used in determining the meaning of this Agreement or any part hereof.

15.4. This Agreement shall be binding on, and the benefits hereof shall inure to, the successors and assigns of the parties hereto. Purchaser shall not assign this Agreement or any of Purchaser's rights under this Agreement prior to Closing without Seller's written consent unless said assignment is in accordance with Section 15.11.

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15.5. If any term or provision of this Agreement, or any part of such term or provision, or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision or remainder thereof to persons or circumstances other than those as to which it is held invalid and unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15.6. All Exhibits which are attached to this Agreement are part of this Agreement and are incorporated herein by reference.

15.7. The provisions of this Agreement are for the sole benefit of the parties to this Agreement and their successors and assigns, as limited by Section 15.4, and shall not give rise to any rights by or on behalf of anyone other than such parties.

15.8. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

15.9. This Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

15.10. If any litigation arises under this Agreement, the prevailing party (which term shall mean the party which obtains substantially all of the relief sought by such party) shall be entitled to recover, as a part of its judgment, reasonable attorneys' and paralegals' fees, court costs and expert witness fees. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

15.11. Purchaser shall have the right to assign this Agreement to an entity controlling, controlled by or under common control with Purchaser by providing written notice thereof to Seller. In the event of any such assignment, Seller agrees to execute any documents specified by Purchaser to or in the name of Purchaser's assignee that are necessary to effectuate said assignment and agrees that all surviving representations and warranties of Seller hereunder shall be deemed to run in favor of, and be enforceable by, said assignee as if it were the Purchaser hereunder. The provisions of this Section shall survive the Closing.

15.12. The submission of a draft, or a marked up draft, of this Agreement by one party to another is not intended by either Seller or Purchaser to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. Seller and Purchaser shall be legally bound with respect to the purchase and sale of the Property pursuant to the provisions of this Agreement or otherwise only if and when Seller and Purchaser have negotiated all of the provisions of this Agreement in a manner acceptable to Seller and Purchaser in their respective sole discretion, and each of Seller and Purchaser have fully executed and delivered to each other a counterpart of this Agreement signed by it.

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15.13. Seller will, whenever and as often as it shall be reasonably requested so to do by Purchaser, and Purchaser will, whenever and as often as it shall be reasonably requested so to do by Seller, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments, correction instruments and all other instruments and documents as may be reasonably necessary in order to complete the transaction which is the subject of this Agreement and to carry out the intent and purposes of this Agreement. All such instruments and documents shall be satisfactory to the respective attorneys for Purchaser and Seller. The provisions of this Section shall survive the Closing.

15.14. If the date for performance of any act pursuant to this Agreement, including without limitation the giving of any notice, is not a Business Day, then such act shall be performed on the next succeeding Business Day. The term "Business Days" shall mean all days, except Saturdays, Sundays and all days observed by the Federal Government as legal holidays.

ARTICLE XVI  
CONFIDENTIALITY

All information, other than matters of public record or matters generally known to the public, furnished to, or obtained through inspection of the Property by, Purchaser, its affiliates, lenders, employees, attorneys, accountants and other professionals or agents relating to the Property, will be treated by Purchaser, its affiliates, lenders, employees and agents as confidential, and will not be disclosed to anyone other than on a need-to-know basis and to Purchaser's consultants who agree to maintain the confidentiality of such information, and will be returned to Seller by Purchaser if the Closing does not occur; provided that Purchaser shall not be bound by such confidentiality obligations after the Closing if the Closing does occur. The confidentiality provisions of this Article shall not apply to any disclosures made by Purchaser as required by law, by court order, or in connection with any subpoena served upon Purchaser; provided that Purchaser shall provide Seller with written notice before making any such disclosure.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the Effective Date.

PRE-AUDIT CERTIFICATE

This Agreement has been pre-audited pursuant to North Carolina General Statute § 159-28 in the manner required by the Local Governmental Budget and Fiscal Control Act.

THE CITY OF WASHINGTON



Name: Matt Rauschenbach  
Title: Chief Financial Officer

**PURCHASER:**

IDX IMPRESSIONS, LLC  
a Delaware limited liability company

By: 

Name: Fritz Baumgartner  
Title: Chief Financial Officer

**SELLER:**

THE CITY OF WASHINGTON  
a North Carolina municipal Corporation

By: 

Name: N. Archie Jennings, III  
Title: Mayor



Name: Cynthia Bennett  
Title: City Clerk

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EXHIBIT A

LEGAL DESCRIPTION

LYING AND BEING IN THE CITY OF WASHINGTON, BEAUFORT COUNTY, NORTH CAROLINA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Being all of Tract 3, containing 28.557 acres according to that certain survey of Mayo and Associates, P.A. dated April 29, 2008, and last revised on July 23, 2013, a copy of which survey is recorded in the Beaufort County Registry in Plat Cabinet \_\_\_\_, Slide \_\_\_\_. Reference is herein made to said survey and the same is incorporated herein for a more complete and adequate description.

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EXHIBIT B

PERSONAL PROPERTY

None

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EXHIBIT C

SPECIAL WARRANTY DEED

PREPARED BY AND RETURN TO:  
RODMAN, HOLSCHER, PECK & EDWARDS, P. A.  
Attorneys at Law  
320 N. Market Street  
Post Office 1747  
Washington NC 27889  
Telephone: (252) 946-3122

STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT

SPECIAL WARRANTY DEED

THIS DEED, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by the **CITY OF WASHINGTON, a municipal corporation of the State of North Carolina**, 102 East 2<sup>nd</sup> St. Washington, NC 27889; Grantor, to **idx IMPRESSIONS, LLC, a Delaware Limited Liability Company**, Grantee, whose address is: 3451 Rider Trail South, Earth City, MO 63045;

W I T N E S S E T H:

That the Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations to it paid by the Grantee, the receipt whereof is acknowledged, has given, granted, bargained, sold and does hereby convey unto the Grantee, **idx IMPRESSIONS, LLC, a Delaware Limited Liability Company**, its successors and assigns subject to the easements reserved herein;

**THE GRANTOR HEREIN STATES THAT THE PROPERTY DESCRIBED IN THIS DEED IS NOT A PRINCIPAL RESIDENCE.**

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that certain tract or parcel of land lying and being in the City of Washington, Beaufort County, North Carolina, more particularly described as follows:

Being all of Tract 3, containing 28.557 acres according to that certain survey of Mayo and Associates, P.A. dated April 29, 2008, and last revised on July 23, 2013, a copy of which survey is recorded in the Beaufort County Registry in Plat Cabinet \_\_\_\_, Slide \_\_\_\_. Reference is herein made to said survey and the same is incorporated herein for a more complete and adequate description.

TO HAVE AND TO HOLD the same, together with all and singular, the rights, ways, privileges and appurtenances thereunto belonging or in anywise appertaining unto the said Grantee, its successors and assigns, subject, however, to the following:

1. Future Beaufort County Ad Valorem taxes.
2. Such easements, rights-of-way and restrictions of record in the Beaufort County Registry.
3. Grantor herein specifically reserves unto itself, its successors and assigns, those certain easements as shown on the above described survey and listed as "Utility Easements 1, 2, and 3". Reference is made to said survey for a metes and bounds description of said easements and said easements are to construct, maintain and operate electric and/or communication facilities thereon consisting of poles, cables, wires, guides, anchors, underground conduits, enclosures, and other pertinent facilities within said easement areas. Said easements include the right, but is not limited to the right, to enter said easement areas at all times over the adjacent land to inspect, repair, maintain and alter said

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facilities and keep said easements clear of trees, shrubs, undergrowth, structures and obstructions, to trim or cut any tree adjacent to said easements that may, in the opinion of the Grantor herein, endanger the overhead facilities or hinder maintenance, operation or use of the same and to install, at any angle points of the overhead facilities, reasonably necessary guide wires and anchors outside the easement areas.

4. Easement for ingress, egress and utilities over and across that portion of the above described property depicted as "Easement Retained by City of Washington, 0.992 acres" and shown on the above referred to survey.

The Grantor covenants with the Grantee that it has done nothing to impair such title as said Grantor received, and it will warrant and defend the title against the lawful claims of all persons claiming by, under or through said Grantor.

IN WITNESS WHEREOF, the CITY OF WASHINGTON, a municipal corporation, Grantor, has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk, and its corporate seal to be hereunto affixed, all by proper corporate authority duly given, this the day and year first above written.

CITY OF WASHINGTON

(corporate seal)

BY: \_\_\_\_\_ (Seal)  
N. ARCHIE JENNINGS, III, Mayor

ATTEST:

\_\_\_\_\_  
CYNTHIA BENNETT, City Clerk

STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that CYNTHIA BENNETT personally appeared before me this day and acknowledged that she is City Clerk of the CITY OF WASHINGTON, a North Carolina municipal corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by N. ARCHIE JENNINGS, III, its Mayor, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_.

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EXHIBIT D

CONTRACTS

None

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**ADJOURN – UNTIL THURSDAY, NOVEMBER 21, 2013**

By motion of Councilman Mercer, seconded by Councilman Brooks, Council adjourned the meeting at 8:20pm until Thursday, November 21, 2013 at 8:00am in the Council Chambers at the Municipal Building.

\_\_\_\_\_  
**Cynthia S. Bennett, CMC**  
City Clerk