

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is made as of the ____ day of _____ 2013, by and between _____, a (state of formation) company (“CONSULTANT”), whose address is (Street, City, State and Zip code), and _____, a (state of formation) company (“CLIENT”), whose address is (Street, City, State and Zip code).

Recitals

A. CONSULTANT is in the business of providing commercial real estate due diligence services.

B. The CLIENT desires to engage CONSULTANT, on a project-by-project basis, to perform certain real estate due diligence services, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Definitions. As used herein, the term “Agreement” means this Master Services Agreement and all exhibits and attachments hereto, as amended from time to time; the term “Services” means those professional services to be performed by CONSULTANT pursuant to this Agreement; the term “Work Order” means the form attached hereto as Exhibit “A” to be completed and executed by CLIENT and CONSULTANT authorizing CONSULTANT to perform certain Services for a particular Project; the term “Project” means the Services to be performed with regard to a particular CLIENT transaction pursuant to a particular Work Order; and the term “Site” means any property or properties to be identified in a Work Order with respect to the Services to be performed.

2. Services to be provided by CONSULTANT. The scope of the primary Services covered by this Agreement is described on Exhibit “B” attached hereto and made a part of this Agreement.

3. Initiation of Services. The CLIENT may from time to time retain CONSULTANT to perform Services in accordance with this Agreement. CONSULTANT agrees to provide the CLIENT with the Services described in this Agreement with respect to each Project identified in a signed Work Order submitted to CONSULTANT by the CLIENT. The Services shall be initiated as follows:

- The CLIENT shall initiate each Project by sending to CONSULTANT a Request for Proposal (RFP) using the Work Order form with the “RFP” box checked, which will set forth (a) a description of the scope of Services to be performed, (b) the address and description of the Site, (c) specific time requirements for the Project, (d) a viable Point of Contact for scheduling, and (e) such other matters as may be agreed by the CLIENT and CONSULTANT.
- CONSULTANT will return the Work Order form to CLIENT as a “Proposal”, which will include the fee(s) to be charged for the Project, as well as confirmation of the scope, delivery timing and other matters. If the fee and timing are acceptable, then CLIENT will accept the Bid by checking the “Work Order” box on the form and by signing and returning it to CONSULTANT.

- Upon its receipt of the signed Work Order and determination that it is satisfactorily completed, CONSULTANT will indicate its acceptance of the Work Order by executing the original and returning it to the CLIENT, retaining a copy for its files. Notwithstanding anything to the contrary herein, CONSULTANT may reject a Work Order in its sole and absolute discretion. **CLIENT shall not assume a Project has been accepted by CONSULTANT until the fully executed Work Order has been returned to CLIENT.**
- For purposes of this Agreement, the date on which CONSULTANT shall be deemed to have commenced performance of its Services on a Project (the “Commencement Date”) shall be the first business day after the date on which CONSULTANT returns the signed Work Order to CLIENT.

4. Documents Related to the Site. In order to facilitate a review of pre-existing documents for each Project, CONSULTANT asks to be furnished with electronic or printed copies of available site information prior to the site visit. Such documents may include, but are not limited to:

- Site Plan/Subdivision Plan
- Location/Boundary/ALTA Surveys
- Geotechnical Studies
- Fire Protection/Life Safety Plans
- Prior Seismic Studies
- Diminution of Value
- Capital Expenditure Schedules (prior or planned)
- Architectural, Civil, Structural or Landscape Plans
- Mechanical/Electrical/Plumbing Plans
- Prior Property Condition Assessments
- Prior Environmental Studies

Documents to be reviewed shall be provided to CONSULTANT within five (5) business days of the Commencement Date, but not less than two (2) business days prior to the onsite. In the event that documents can only be made available at the Site, CONSULTANT will perform a document review during the site visit, as time permits.

If documents are received after the deadline, or if the volume of documentation is determined by CONSULTANT to be excessive, the Project may be subject to additional review fees at the rate of \$____/hour. Any additional review fees will be mutually agreed upon by CONSULTANT and the CLIENT prior to review, and will be authorized using a Work Order or Change Order.

5. Matters Known to CLIENT. The CLIENT, itself or through the Site owner, shall provide CONSULTANT with any and all information known to the CLIENT, or suspected by the CLIENT, which pertains to: (a) the existence or possible existence at, on, under or in the vicinity of the Site, of any hazardous materials, pollutants, lead-based paint, radon or asbestos; (b) any conditions at, on, under or in the vicinity of the Site, which might represent a potential safety hazard or danger to human health or the environment; (c) any permit, manifest, title record, or other record of compliance or non-compliance with any federal, state or local laws, or court or administrative order or decrees; (d) any known or suspected deficiencies or adverse conditions associated with structures or other physical improvements on the Site; or (e) any modifications or changes from the original plans and specifications of Site improvements which could affect the recommendations or conclusions reached by CONSULTANT in the performance of its Services.

6. Right of Entry. The CLIENT shall arrange for the right of entry to the Site by CONSULTANT, its agents, employees, consultants, and subcontractors, for the purpose of performing all acts as may be reasonably necessary to complete the Services within the agreed scope of work. In certain

instances, CONSULTANT may require that site personnel operate major building systems and equipment at the time the Services are performed. CONSULTANT may require that an authorized knowledgeable representative of the owner be present at the Site as a condition to the performance of the Services. CONSULTANT's ability to comply with the schedule for performance described in this Agreement is contingent upon timely and complete Site access.

7. Due Dates for Delivery of Reports; Force Majeure. Unless otherwise stipulated in the accepted Work Order, CONSULTANT shall perform all required Services for each Project within fifteen (15) business days or less after the Commencement Date of the Project, *provided* that CONSULTANT is in possession of, or has the benefit of,

- A completed Work Order with full and accurate site address information;
- Contact information for a valid and cooperative Point of Contact ("POC"); and
- Full availability of and access to the Site.

Any delay in the receipt of any of the items described in this Section with respect to any Project shall result in a corresponding extension of the due date for completion of the work by CONSULTANT for that Project. Force majeure, acts of God, events beyond the control of CONSULTANT, or events that could not have been reasonably foreseen and prevented by CONSULTANT, may also result in a necessary extension of the report delivery date. CONSULTANT shall notify the CLIENT of any changes in the expected report delivery date as a result of any of the aforementioned circumstances. Report due dates for portfolio transactions will be determined on a case by case basis.

During the course of the assignment, CONSULTANT shall contact the designated onsite Point of Contact provided by the CLIENT in order to schedule the site visit(s). The CLIENT acknowledges the Point of Contact provided shall be deemed a representative of the CLIENT for the purposes of providing access and conveying information pertaining to the Site.

8. Report Delivery. On or prior to the due date for each Project, CONSULTANT shall furnish the CLIENT with [deliverables required] to the attention of the CLIENT contact identified in the Work Order. Subsequent to the completion of CONSULTANT's Services on a Project, additional reports shall be available at a cost of \$_____ per each original, \$_____ per each black and white copy, and \$_____ per electronic delivery or CD.

If draft reports are being issued for review, CLIENT's comments and changes to any draft report shall be delivered to CONSULTANT within thirty (30) days of CLIENT's receipt of such draft report. CONSULTANT reserves the right to charge CLIENT \$____ per hour for processing any comments or changes received after such 30-day period.

Once all draft comments and changes have been provided to CONSULTANT, CLIENT shall notify CONSULTANT to issue final reports. CONSULTANT will not process and ship final reports until requested to do so by CLIENT. The timing for completion of final reports will be determined at the time of the request. Factors affecting this timing include (but are not limited to): (a) Complexity of the requested comment(s)/change(s); (b) Number of project reports affected by request, and (c) CONSULTANT's capacity at the time of request. Typical timing for delivery of finals will be three (3) business days.

9. Documents. All field notes, laboratory test data, calculations, estimates and other documents, data or information prepared by or on behalf of CONSULTANT in connection with the performance of its Service (collectively, "Documents"), shall remain the sole property of CONSULTANT.

All Documents prepared by CONSULTANT for the CLIENT with respect to any Site shall be used solely for the intended purposes described in this Agreement, and solely with respect to the subject Site. Unless otherwise agreed, CONSULTANT shall retain all Documents for three (3) years following submission of CONSULTANT's report to the CLIENT. Documents shall be made available to the CLIENT upon written request and reasonable notice for a period of three (3) years, and CONSULTANT shall furnish copies to the CLIENT upon payment to CONSULTANT by the CLIENT of the cost of reproduction and related expenses. In its sole discretion and without prior notice to the CLIENT, CONSULTANT may dispose of all field samples within thirty (30) calendar days after submission of CONSULTANT's report to the CLIENT.

10. Confidentiality. CONSULTANT shall not disclose information regarding this Agreement, the Services or any Documents, except to the CLIENT, employees, consultants, subcontractors or other persons engaged by CONSULTANT to perform the Services, third parties designated by the CLIENT (subject to the reliance limitations described herein), or as required by law or court order. Notwithstanding the terms of this Section, CONSULTANT shall be permitted to make such disclosures as necessary to comply with all judicial orders, government directives, and laws, regulations and ordinances, regarding the reporting to appropriate public agencies of potential dangers to public health, safety or the environment.

11. Pricing. The pricing for each of CONSULTANT's Services shall be at a rate determined mutually by CONSULTANT and the CLIENT at the time of Project Commencement, as indicated on the executed Work Order. Additional Services that are not outlined on the Work Order may be provided at a rate mutually agreed upon by CONSULTANT and the CLIENT.

12. Billings, Payment and Credit. The CLIENT shall pay CONSULTANT for the Services performed in accordance with the prices mutually agreed upon in each executed Work Order. Invoices shall be submitted in accordance with this Agreement upon issuance of the draft reports. CONSULTANT reserves the right to cancel or modify payment terms of this Agreement if the CLIENT does not meet the credit requirements of CONSULTANT. In addition, if the potential financial condition of the CLIENT were to change due to lawsuit, bankruptcy, or other significant incidents, or if CONSULTANT were to become aware of such change during the time frame of performing the Services, CONSULTANT reserves the right to cancel or modify the payment terms of this Agreement. Payment of the CONSULTANT invoices shall be the primary, absolute and non-contingent obligation of the CLIENT, and shall not be conditioned upon the closing of a loan transaction or any other event. PAYMENT OF CONSULTANT'S INVOICE IS DUE UPON RECEIPT. If CONSULTANT does not receive payment in full within thirty (30) calendar days of the date of the invoice, the account shall be deemed delinquent. Unpaid delinquent balances shall bear interest from the invoice date at one and one-half percent (1.5%) per month, or at the maximum lawful interest rate (whichever rate is less).

The CLIENT shall be liable to CONSULTANT for all costs and expenses of collection, including reasonable attorney and paralegal fees, and court costs. Time is of the essence with respect to this provision. CONSULTANT's non-exercise of any rights or remedies, whether specified herein or as otherwise provided by law, shall not be deemed a waiver of any other rights or remedies, nor preclude CONSULTANT from the future exercise of such rights or remedies. If a third party is accepting a Work Order as agent for the CLIENT, such third party represents and warrants to CONSULTANT that it is duly authorized to bind the CLIENT to the terms of the Work Order and guarantees payment for services.

13. Cancellation: Should the CLIENT cancel the engagement, the CLIENT will be charged project-specific costs incurred, such as regulatory database and non-recoverable travel fees, based on the percentage of the project completion at the time of cancellation.

Project Cancellation Stage	Billing Stage
Project canceled at least 24 hours (1 business day) prior to onsite visit:	Expenses incurred to date
Project canceled < 24 hours prior to onsite visit, during, or following completion of the onsite visit, but prior to report writing:	50% of project fee
Project canceled after or during report writing, but prior to review/production:	80% of project fee
Project canceled after or during report production	100% of project fee

14. Insurance. At its sole cost and expense, CONSULTANT shall obtain and maintain insurance (including worker’s compensation and employer’s liability insurance, general liability insurance, auto insurance and professional liability insurance), at all times during the term of this Agreement, in such amounts, covering such risks and liabilities, as are in accordance with normal industry practice, provided, however, that the minimum limits shall be at least one million dollars (\$1,000,000.00) for each insurance policy. Upon written request of the CLIENT, CONSULTANT shall provide to the CLIENT certificates of insurance or other proof evidencing its insurance coverage as required above.

16. **INDEMNIFICATION AND LIMITATION OF LIABILITY**: CONSULTANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS (BUT NOT DEFEND) CLIENT, ITS DIRECTORS, OFFICERS AND EMPLOYEES AGAINST ANY LOSSES, LIABILITY, DAMAGES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES AND DEFENSE COSTS ARISING FROM CLAIMS BY THIRD PARTIES, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF CONSULTANT, ITS EMPLOYEES, SUBCONTRACTORS OR ANYONE FOR WHOM CONSULTANT IS LEGALLY LIABLE, IN THE PERFORMANCE OF SERVICES HEREUNDER. IN NO EVENT SHALL CONSULTANT BE LIABLE FOR LATENT OR HIDDEN CONDITIONS, CONDITIONS NOT ACTUALLY OBSERVED BY CONSULTANT WITHIN THE LIMITED SCOPE OF WORK, THE POTENTIAL CONSEQUENCES OF OBSERVABLE CONDITIONS, CONDITIONS OF WHICH CLIENT HAD KNOWLEDGE AT THE TIME OF THE ASSESSMENT, OR ANY UNAUTHORIZED ASSIGNMENT OF OR RELIANCE UPON THE REPORTS. THE LIABILITY OF CONSULTANT, AND THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONTRACTORS, TO CLIENT OR ANY PARTY CLAIMING BY OR THROUGH THE CLIENT, INCLUDING ANY COMPANY AFFILIATED WITH CLIENT, OR ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, SUBCONTRACTOR, SUCCESSOR, OR ASSIGN OF SUCH PARTIES, FOR ANY LOSSES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), RELATED TO THE SERVICES, THIS AGREEMENT OR OTHERWISE, SHALL NOT EXCEED THE PROCEEDS FROM CONSULTANT’S INSURANCE UP TO AN AGGREGATE OF TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS PER PROJECT (EXCEPT IN CASES WHERE CLIENT ELECTS TO PAY A RISK PREMIUM (AS INDICATED ON THE WORK ORDER FORM) TO INCREASE THE LIMIT OF LIABILITY TO THE INSURANCE PROCEEDS RECOVERED UP TO AN AGGREGATE OF ONE MILLION (\$1,000,000) DOLLARS PER PROJECT). IN NO EVENT SHALL CONSULTANT BE LIABLE TO CLIENT FOR ANY EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL (INCLUDING LOST PROFITS) DAMAGES ARISING FROM OR IN ANY WAY CONNECTED WITH ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF THE AFFECTED PARTY HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES.

17. **PERFORMANCE STANDARDS**. IN PERFORMING THE SERVICES, CONSULTANT SHALL EXERCISE THE DEGREE OF SKILL AND CARE ORDINARILY EXERCISED BY CONSULTANTS IN THE SAME COMMUNITY PROVIDING THE SAME OR SIMILAR SERVICES FOR PROJECTS OF COMPARABLE SIZE, COMPLEXITY, BUDGET, SCHEDULE AND OTHER CHARACTERISTICS OF THE PROJECT (THE “STANDARD OF CARE”). EXCEPT AS SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, CONSULTANT MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR ANY OF ITS ORAL OR WRITTEN REPORTS. CLIENT ACKNOWLEDGES AND AGREES THAT (I) THE SERVICES MAY REQUIRE JUDGMENTS TO BE MADE BY CONSULTANT THAT ARE BASED UPON LIMITED DATA RATHER THAN UPON SCIENTIFIC

CERTAINTIES; (II) CONSULTANT'S APPROACH, RECOMMENDATIONS, AND ASSOCIATED COST ESTIMATES, IF ANY, ARE BASED ON INDUSTRY PRACTICES AND AVERAGES; (III) PROFESSIONAL OPINIONS ARE RENDERED WITH RESPECT TO OBSERVATIONS MADE AND DATA OBTAINED AT THE TIME OF ASSESSMENT; AND (IV) ULTIMATE OUTCOMES COULD BE INCONSISTENT WITH THE CONCLUSIONS, RESULTS AND PROJECTIONS OF CONSULTANT. ALL INFORMATION REGARDING OPERATIONS, PLANS, SPECIFICATIONS, CONDITIONS OR OTHER DATA WHICH IS PROVIDED TO CONSULTANT BY CLIENT, OWNERS OR THIRD PARTIES (INCLUDING WITHOUT LIMITATION, ANY POINT OF CONTACT AT THE SITE), IS ASSUMED BY CONSULTANT TO BE CORRECT AND COMPLETE WITHOUT INDEPENDENT VERIFICATION BY CONSULTANT. CONSULTANT ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION AND SHALL NOT BE LIABLE IF RELIANCE ON SUCH INFORMATION RESULTS IN INACCURATE CONCLUSIONS OR RESULTS.

18. **RELIANCE AND ASSIGNMENT.** CONSULTANT'S WRITTEN REPORT SHALL CONTAIN THE STANDARD RELIANCE LANGUAGE (IF ANY) THAT HAS BEEN PRE-APPROVED BY THE CLIENT AND CONSULTANT. IF NO PRE-APPROVED LANGUAGE EXISTS, THE SERVICES, THE REPORTS AND OTHER RELATED WORK PRODUCTS PROVIDED BY CONSULTANT MAY BE RELIED UPON BY THE CLIENT, ITS SUCCESSORS AND ASSIGNS WITH RESPECT TO A LOAN SECURED BY THE SUBJECT PROPERTY, AND ANY RATING AGENCY RATING, OR ANY ISSUER OR PURCHASER OF ANY SECURITY COLLATERALIZED OR OTHERWISE BACKED BY SUCH LOAN. NO OTHER PERSON OR ENTITY MAY RELY ON THE REPORT WITHOUT THE PRIOR WRITTEN CONSENT OF CONSULTANT, AND NO OTHER THIRD PARTY BENEFICIARIES ARE INTENDED. EXCEPT AS DESCRIBED ABOVE, THE CLIENT SHALL NOT ASSIGN THIS AGREEMENT, ANY REPORT OR ANY RELATED WORK PRODUCT, WITHOUT THE PRIOR WRITTEN CONSENT OF CONSULTANT. ANY UNAUTHORIZED REUSE OR REDISTRIBUTION OF CONSULTANT'S WORK PRODUCTS OR REPORTS SHALL BE AT THE CLIENT'S AND RECIPIENT'S SOLE RISK, WITHOUT LIABILITY TO CONSULTANT. CLIENT WILL HOLD CONSULTANT HARMLESS FROM ANY AND ALL LIABILITY, OBLIGATION, COST AND EXPENSE ARISING FROM OR RELATED TO ANY UNAUTHORIZED DISTRIBUTION OR USE BY CLIENT OF CONSULTANT'S WORK PRODUCT OR REPORTS. CONSULTANT SHALL NOT ASSIGN ITS OBLIGATIONS UNDER THIS AGREEMENT; HOWEVER, CONSULTANT MAY EMPLOY, BY SUBCONTRACT, SUITABLY TRAINED PERSONS OR ENTITIES ACCEPTABLE TO CONSULTANT TO PERFORM THE SERVICES.

19. **Termination of Agreement.** Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days advance written notice to the other party. CLIENT shall pay CONSULTANT for any Services in progress at the time this Agreement is terminated, in accordance with the terms of this Agreement. The provisions of this Agreement that, by their nature, survive final completion and acceptance of Services by the CLIENT shall remain in full force and effect, notwithstanding any termination of this Agreement.

20. **Dispute Resolution.** Any claim, dispute or controversy arising out of or related to this Agreement which cannot be resolved amicably between senior officials of the parties, shall be resolved through the following method of binding dispute resolution:
(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction in accordance with this Agreement.)

(Check one.)

- [« »] Arbitration in accordance with the Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration.
- [« »] Litigation in a court of competent jurisdiction determined in accordance with this Agreement.

IN ANY LITIGATION ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.

21. Miscellaneous. CONSULTANT is an independent contractor of CLIENT, and not CLIENT's agent, employee or partner. The Agreement shall be governed by the laws of the State of _____. CLIENT irrevocably consents to the jurisdiction of the courts of the State of _____ and of the United States District Court for the District of _____, if a basis for federal jurisdiction exists, in any suit to enforce any provision of this Agreement. In the event a dispute relating to a CONSULTANT report results in litigation, and the CLIENT does not prevail at trial, then the CLIENT shall pay all costs incurred by CONSULTANT in the defense of the claim, including reasonable attorney's fees. Each provision of this Agreement shall be considered separable, and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the Services to be provided pursuant to this Agreement. The provisions of this Agreement may only be modified by a written instrument signed by an authorized representative of each party.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed this Agreement to be effective as of the date stated on the first page of this Agreement.

CONSULTANT:

By: _____

Printed Name:

Title:

Date: _____

CLIENT:

By: _____

Printed Name: _____

Title: _____

Date: _____

LIST OF EXHIBITS:

- Exhibit A** Work Order Form
- Exhibit B** Description of Services

Exhibit "A" – Work Order Form

Exhibit “B” – SCOPE OF SERVICES

Attached Documents: