

Prepared by:
Town of Davie
6591 Orange Drive
Davie, FL 33314

**AGREEMENT BETWEEN THE TOWN OF DAVIE AND
CG DAVIE NORTH, LLC**

This Agreement is hereby entered into as of March 18, 2020 (the “Effective Date”) by and between the **TOWN OF DAVIE**, a municipal corporation and political subdivision of the State of Florida, whose address is 6591 Orange Drive, Davie, FL 33314 (“TOWN”), and **CG DAVIE NORTH, LLC**, a Florida limited liability company duly authorized to conduct business in the State of Florida, whose address is 621 South Federal Highway, Suite #5, Ft. Lauderdale, FL 33301 (“Ceiba”) (“Agreement”).

W I T N E S S E T H:

WHEREAS, TOWN is the owner of the Property depicted in Exhibit A, attached hereto and made a part hereof (the “Property”);

WHEREAS, Ceiba has requested, during the term of this Agreement, the exclusive right to have its employees, contractors, subcontractors and other persons and entities involved in the construction and development by Ceiba of a development (the “Development”) in the Town of Davie commonly known as ZONA II (which name is subject to change in the sole discretion of Ceiba) and/or its respective employees and agents: (i) park their personal vehicles and construction equipment utilized in relation to development on the Property; and (ii) store construction equipment, materials, trailers and other items utilized in relation to the Development on the Property (collectively the “Ceiba Use”);

WHEREAS, Ceiba desires to pay a fee to TOWN in exchange for exclusive use of the Property for the Ceiba use;

WHEREAS, Ceiba agrees to indemnify, defend and hold TOWN harmless from damages and expenses which may be incurred as a direct or indirect result of such use and certain other conditions; and

WHEREAS, TOWN desires to enter into this Agreement to earn income on the use of the Property during the term hereof.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein, and other good and valuable considerations, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference and made a part of this Agreement as if set forth herein verbatim.
2. Use. TOWN acknowledges and agrees that Ceiba shall have the exclusive use of the Property for the Ceiba Use during the term. The Property may be utilized for the Ceiba Use on such dates and at such times during the term as shall be solely determined by Ceiba. Ceiba shall be responsible for securing the Property and locking such gates as may be within the Property at its discretion during its hours of use. Town will be provided a key to such gates as may be on

the Property for emergency entry, if applicable, and an emergency contact number for a Ceiba representative. Ceiba agrees that there shall be no display or use of firearms and alcohol upon the Property.

3. Fees. Ceiba agrees to pay to TOWN a monthly fee in exchange for the exclusive use of the Property in the gross amount of \$2,500.00, beginning on the first day of the Term of this Agreement (hereinafter defined), and continuing on the first day of each month thereafter. Such gross rent payment shall be paid in lawful money of the United States monthly, without notice, set off, deduction or demand, to TOWN at 6591 Orange Drive, Davie, FL 33314, attn: Town Administrator.
4. Term. The Commencement Date (hereinafter defined) of this Agreement shall be dependent upon the construction schedule for the Development, but the Commencement Date (hereinafter defined) is expected to be immediately prior to the commencement of the installation of the infrastructure for the Development. The term of this Agreement shall commence (the "Commencement Date") on the date specified in a written notice (the "Commencement Date Notice"), which Commencement Date Notice shall be delivered by Ceiba to TOWN not less than sixty (60) days prior to the Commencement Date specified by Ceiba in the Commencement Date Notice. The Term of this Agreement shall terminate on the date (the "Termination Date") specified in a written notice (the "Termination Notice") to be delivered by Ceiba to TOWN not less than ninety (90) days prior to the Termination Date specified by Ceiba in the Termination Notice; provided, however, the Term of this Agreement shall not extend past December 31, 2028. Prior to the Termination Date, Ceiba, at its sole cost and expense, shall remove from the Property all equipment and other materials placed on the Property by Ceiba during the term of this Agreement.
5. Regulations. Ceiba shall, at its sole cost and expense, obtain all permits, licenses, and approvals required by any federal, municipal, state or other governmental authority for its use of the Property and shall at all times comply with all laws, ordinances, rules and regulations of any federal, municipal, state, or other governmental authority with respect to its use of the Property.
6. Utilities. No utilities will be used by Ceiba in connection with the Property.
7. Condition of Property. The parties acknowledge that there is currently trash, debris and other materials (collectively the "Existing Materials") upon the Property. Ceiba, without any obligation to do so and at the sole cost and expense of Ceiba, may elect to remove the Existing Materials from the Property. Upon the expiration of this Agreement, Ceiba shall deliver the Property to the TOWN in a condition which is not worse than the condition of the Property as of the date of the complete execution of this Agreement.

Ceiba shall, together with delivery to TOWN of the Commencement Date Notice, place a security deposit (the "Security Deposit") in the amount of \$5,000.00 with TOWN to assure Ceiba's compliance with the requirements of this Section 10.

Ceiba agrees that TOWN may draw against the Security Deposit to repair damage to the Property caused as a result of Ceiba usage of the Property, after 10 days' written notice to Ceiba and Ceiba's failure to repair the damage specified in the notice. In such event Ceiba shall be obligated to restore the Security Deposit back to the amount of \$5,000.00 or pay TOWN the cost of repair of the damage, whichever is greater. TOWN shall return the security deposit to Ceiba (or any remaining portion thereof) at the end of the term of this Agreement.

8. Improvements. Ceiba shall make all site improvements deemed necessary by Ceiba for the Development, including fencing and gates as deemed necessary by Ceiba. All site improvements shall be completed by Ceiba prior to the utilization of the Property by Ceiba for the Ceiba Use. Ceiba shall not construct or install any improvements on the Property without the prior written consent of TOWN, which prior written consent shall not be unreasonably withheld, conditioned or delayed. If consent is given by TOWN, Ceiba must obtain all necessary construction permits for any improvements on the Property. No construction on the Property at the direction of Ceiba shall create any lien upon the Property or shall necessitate the posting of a bond pursuant to Florida Statute 255.05. Any improvement constructed by Ceiba upon the Property will become the property of the Town upon termination of this Agreement. Any existing improvement on the Property may be removed or modified by TOWN prior to the Commencement Date, at the discretion of TOWN.

9. Maintenance. Ceiba shall, at its sole cost and expense, maintain the Property during the term of this Agreement in a clean, orderly and sanitary condition including but not limited to daily trash pickup and weekly lawn maintenance, i.e. bush-hogging.

10. Mechanics' Liens. Ceiba shall have no power to do any act or make any contract which may create or be the foundation for any mechanics', materialmen's or other lien or encumbrance upon the Property.

11. Fences. Ceiba shall, at its sole cost and expense, maintain all perimeter fences and gates at the Property in good repair. Ceiba shall provide keys to TOWN to all gate locks installed by Ceiba at the Property.

12. Security. Ceiba shall secure the Property as necessary during the term of this Agreement, during operating hours.

13. Fire or Casualty. TOWN shall have no obligation to repair, restore or replace any Property damaged by fire or other casualty.

14. Indemnity and Sovereign Immunity. Ceiba covenants with TOWN that TOWN, its officers, agents, employees, servants, licensees, invitees, contractors, volunteers, elected and appointed officials, permitted users, successors and assigns shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Ceiba, TOWN or any other person during the term of this Agreement resulting from the use, and enjoyment of the Property by Ceiba (including, but not limited to, Ceiba's business invitees, agents, employees, servants, contractors, invitees and guests), and that Ceiba shall indemnify, defend, and save harmless TOWN, its officers, agents, employees, servants, invitees, contractors, licensees, permitted users, successors and assigns against and from all costs, expenses, liabilities, losses, damages, suits, actions, fines, penalties, claims and demands of every kind or nature arising out of (a) the use, occupancy and enjoyment of the Property by Ceiba (including, but not limited to, Ceiba's business invitees, agents, employees, servants, contractors, invitees and guests); (b) any failure by Ceiba to perform any of the agreements, terms, covenants, or conditions of this Agreement on Ceiba's part to be performed; (c) Ceiba's failure to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any federal, state, county or TOWN governmental authority; (d) any mechanic's lien, conditional bill of sale or chattel mortgage filed against the Property or any improvements or equipment therein or any materials used in the construction or alteration of any improvements thereon by Ceiba; (e) any act, omission or negligence of Ceiba or any person claiming under Ceiba (including, but not limited to, Ceiba's agents, employees, servants, business invitees, contractors, invitees and guests); or (f) any injury, loss or damage to Ceiba or anyone claiming under Ceiba (including, but without limitation, Ceiba's guests, invitees, agents, employees, servants, business invitees and subcontractors) or to any property of Ceiba or

any one claiming under Ceiba (including, not without limitation, Ceiba's guests, invitees, agents, employees, servants, business invitees and contractors) from any cause whatsoever. Notwithstanding the foregoing, Ceiba shall not be liable for damage or injury occasioned by the gross negligence or willful misconduct of TOWN and/or its agents, servants or employees. This obligation to indemnify shall include reasonable attorney's fees and all other reasonable costs, expenses and liabilities actually incurred TOWN from the first notice that any claim or demand is to be made or may be made. The provisions of this Section 14 shall survive the term of this Agreement. TOWN expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Fla. Stat. Notwithstanding anything set forth herein to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity of limits of liability of TOWN beyond any statutory limited waiver of immunity or limits of liability that may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of TOWN for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this section shall inure to the benefit of any third party for the purpose of allowing any claim against TOWN that would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

15. Insurance. Ceiba shall keep in full force and effect liability insurance naming the Town of Davie as additional insured in an amount not less than one million dollars (\$1,000,000) for each occurrence. Ceiba shall obtain and maintain the following insurance coverages with the listed coverage limits throughout the extended life of this agreement:

- a. Commercial General Liability - \$ 1,000,000 per occurrence
Premises/Operations
Products/Completed operations
Contractual Liability
Sub-Contractors Coverage
- b. Business Automobile Liability - \$ 1,000,000 per occurrence
- c. Workers' Compensation - Florida Statutory (Minimum)
- d. Employers Liability - \$ 500,000 (Minimum)

Said insurance shall be written by an insurer holding a current certificate of authority issued by the Department of Insurance of the State of Florida pursuant to Chapter 624, Florida Statutes. Prior to entering the Property, Certificates of Insurance approved by Town's Risk Management Division evidencing the maintenance of said insurance shall be furnished to TOWN. The Certificates and/or insurance policy rider shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until thirty (30) days after receipt of written notice by TOWN. Any indemnification provisions in this Agreement are separate and apart and in no way limited by the insurance amounts stated above.

Anything to the contrary notwithstanding, the liabilities of Ceiba under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by Ceiba shall relieve Ceiba from responsibility to provide insurance as required by the contract.

Each such Certificate and/or insurance policy rider shall include the following wording: "the Town of Davie, its officers, and employees are named as additional insured's with respect to the General and Automobile liability of Corporation related to any work performed under this agreement"

and shall provide for 30 days prior written notice to the Certificate Holder of any cancellation prior to the expiration date of the coverage's listed on the certificate and of any other material changes. Ceiba shall provide a copy of the actual endorsement from its insurance carrier adding the Town as an additional insured. The commercial general liability insurance shall be primary and non-contributory. The auto liability insurance shall provide coverage for any owned and non-owned vehicles used on the Property, including loading and unloading hazards and shall include a waiver of subrogation in favor of the TOWN.

The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida and having an AMBest insurance rating of not less than B+.

Ceiba shall require any sub-contractors to comply with these requirements in the same manner that Ceiba is required to comply or Ceiba shall provide for "General Contractors Insurance" coverage that provides the above coverages for itself as well as any subcontractor working under it.

16. Hazardous Substances.

(a) Ceiba covenants and agrees that it will not cause or permit any Hazardous Substances (the "Hazardous Substances" as hereinafter defined) to be installed, placed, stored, held, located, released or disposed of in, on, at, or under the Property. Ceiba further covenants and agrees to indemnify TOWN for any loss, cost, damage, liability or expense (including without limitation, attorneys' fees and other costs of legal representation) that TOWN might ever incur because of Ceiba's failure to comply with the provisions of the immediately preceding sentence. For purposes of this indemnification, the term "TOWN" shall mean TOWN, as a body corporate and shall include its governing board, officers, employees, agents, successors and assigns. This indemnification survives the term of this Agreement.

(b) For the purposes of this Section 19, Hazardous Substances shall mean and include all those substances, elements, materials or compounds that are included in any list of hazardous or restricted substances adopted by the United States Environmental Protection Agency (the "EPA") or any other substance, element, material or compound defined or restricted as a hazardous, toxic, radioactive or dangerous substance, material or waste by the EPA or by any other ordinance, statute, law, code, or regulation of any federal, state or local governmental entity or any agency, department or other subdivision thereof, whether now or later enacted, issued or promulgated.

17. Waiver. Any waiver at any time by TOWN of its rights with respect to Ceiba or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any other prior or subsequent default or matter.

18. Assignment. Neither this Agreement nor any interest herein shall be transferred, assigned, or subleased by Ceiba, nor shall any other party succeed to the interests of Ceiba in this Agreement; provided, however, that Ceiba, without the necessity of obtaining consent from TOWN, shall have the right to assign its interest in this Agreement to a wholly owned subsidiary of Ceiba.

19. Notices.

Notices required by this Agreement shall be deemed delivered upon mailing by certified mail, return receipt requested, or by overnight courier service with written receipt of delivery to the following persons and addresses:

AS TO TOWN: Town Administrator
6591 Orange Drive
Davie, Florida 33314

Copy: Town Attorney
6591 Orange Drive
Davie, Florida 33314

AS TO CEIBA: CG DAVIE NORTH, LLC
621 South Federal Highway, #5
Ft. Lauderdale, Florida 33301

20. Emergency Contact. Ceiba shall keep the Town advised as to the phone number and an alternate number where Ceiba may be reached twenty-four (24) hours per day for emergency contact.

21. Relationship of the Parties. Nothing herein contained shall be deemed or construed as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto.

22. Construction of Language. Words of any gender used in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural when the sense requires. The paragraph headings and titles are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

23. Recording. This Agreement may be recorded in the public records of Broward County, Florida, by TOWN.

24. Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida with venue for any litigation thereon to be found in the Seventeenth Judicial Circuit in and for Broward County, Florida. This Agreement and documents relating thereto are public records subject to Chapter 119, Fla. States.

25. Severability. If any part of this Agreement is held to be in conflict with applicable laws by a court of competent jurisdiction, such part shall be null and void insofar as it is found in conflict with the laws of the State of Florida, but the remainder of the Agreement shall be and remain in full force and effect.

26. Force Majeure. If TOWN or Ceiba shall be delayed in, hindered in or prevented from the performance of any act required hereunder (other than performance requiring the payment of a sum of money) by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations or actions, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond such party's reasonable control (excluding the unavailability of funds or financing), then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act as required herein shall be extended for a period equivalent to the period of such delay, provided that the party seeking the extension gives written notice to the other party within five (5) business days of the event causing delay.

27. Purchasing from Town Employees. Pursuant to Town of Davie Ordinance 92-008 Section 2-327 (Purchasing From Town Employees), the TOWN shall not purchase any goods or services from any person who is actively employed by the Town of Davie or from any business or

entity of which the employee or the employee's spouse or child is an agent, officer, partner, director or proprietor or in which he or she has a material interest. Any such individual or business shall be disqualified from participating in any bidding activity for purchases by the Town unless specifically authorized by action of the Town Council.

28. Time of the Essence. Time shall be of the essence with respect to the provisions of this Agreement.

29. Entire Agreement. This Agreement represents the full, complete and entire agreement between TOWN and Ceiba with respect to the subject matter hereof. No modification, alteration or amendment to this Agreement shall be binding unless in writing and executed by the parties hereto.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth above.

ATTEST:

Evelyn Roig, Town Clerk

WITNESSES:

Print Name:_____

Print Name:_____

TOWN OF DAVIE

By:_____
Judy Paul, Mayor

CG DAVIE NORTH, LLC, a Florida limited liability company

By: _____
Print Name: JEREMY BEDZOW
Title: Manager

EXHIBIT A

