

MARKET BUILDING FOUNDATION, INC.
REQUEST FOR PROPOSAL
FOR
COMMERCIAL REAL ESTATE SERVICES and FACILITIES MANAGEMENT SERVICES
FOR THE
HISTORIC CITY MARKET BUILDING
32 MARKET SQUARE, ROANOKE, VA 24011

July 30, 2021

INTRODUCTION

The Market Building Foundation, Inc. (“MBFI”) is seeking competitive proposals from qualified firms to provide Commercial Real Estate and Facilities Management Services for the Historic City Market Building in accordance with all terms, conditions and specifications as set out in this Request for Proposal. The Request for Proposal and specifications may be downloaded from the MBFI website: Citymarketbuilding.com.

There is a mandatory pre-proposal conference scheduled for August 9, 2021 at 9:00 a.m., at 32 Market Square SE, Roanoke, VA, 24011 inside Charter Hall, third floor. Prospective offerors attending the pre-proposal conference will be required to provide contact information, including the e-mail address of a designated contact person.

Proposals, to be considered and evaluated, must be received before 12:00 noon on August 20, 2021, at the office of Elliot Broyles, Executive Director, Market Building Foundation, Inc., 32 Market Square, S.E., Roanoke, Virginia 24011. Proposals appropriately received will, at that time, be opened. Proposals received after the above scheduled opening time and date will not be considered. Fax or e-mailed proposals are not acceptable.

Your proposal, one (1) original and two (2) copies, appropriately signed by an authorized representative of your firm, must be submitted in a sealed envelope or package. The notation “COMMERCIAL REAL ESTATE SERVICES AND FACILITIES MANAGEMENT SERVICES FOR THE HISTORIC CITY MARKET BUILDING” and the above specified opening time and date must be clearly marked on the front of that sealed envelope or package.

MBFI, its directors, and agents will not assume or accept any responsibility for the opening of a proposal envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.

Project evaluation and award will be accomplished in accordance with this Request for Proposal. It is anticipated that the Board of Directors of MBFI will evaluate proposals at its meeting August 25, 2021, and negotiations will proceed after that date. No proposal may be withdrawn for a period of sixty (60) days after the opening of the proposal.

Inquiries regarding this RFP should be directed to Elliot Broyles, at the Roanoke City Market Building; email: info@citymarketbuilding.com; cell phone: 540-293-4653.

This Request for Proposal consists of this Introduction document and the documents and attachments hereto.

Respectfully,

Elliot Broyles, Executive Director

Market Building Foundation, Inc.

July 30, 2021

Market Building Foundation, Inc.
Request For Proposal
Commercial Real Estate Services and Facilities Management Services for the Historic City
Market Building
32 Market Square, Roanoke, Virginia 24011

SECTION 1. PURPOSE

The purpose of this Request for Proposal (RFP) is the procurement of Commercial Real Estate Services and Facilities Management Services for the Historic City Market Building located at 32 Market Square, Roanoke, VA. 24011.

The Market Building is a 28,000 (approximately) gross square foot multi-tenant facility owned by the City of Roanoke and leased to the Market Building Foundation, Inc. (“MBFI”). The Market Building has undergone a comprehensive renovation of the interior, including the replacement and expansion of substantially all of the utility infrastructure and improved streetscape surrounding the building. The renovated Market Building reopened in 2011. At this date it is fully leased with retail and restaurant spaces, as well as Charter Hall, a multi-purpose event space on the second floor. Attachment 1 provides a rendering of the floor plan of the building.

MBFI is seeking competitive proposals from qualified firms to provide Commercial Real Estate Services, and to manage the physical plant of the Market Building.

SECTION 2. INSTRUCTIONS TO OFFERORS

Proposals must be submitted in accordance with the instructions and requirements given in this RFP, including the Introduction. All information requested must be submitted. Failure to do so may result in the proposal being considered non-responsive and it may be rejected.

Prospective Offerors are to address the criteria below at a minimum as part of their submitted proposal. Each proposal should include a transmittal letter and management overview of the proposal. Proposals are to include and may be evaluated on the following factors. Other factors which will protect and preserve the interests of the MBFI may also be considered.

SECTION 3. ORGANIZATIONAL STRUCTURE AND QUALIFICATIONS OF OFFEROR OF COMMERCIAL REAL ESTATE SERVICES and MANAGEMENT SERVICES;

A. Organizational structure of firm and qualifications of leasing personnel

Prospective Offerors should submit at a minimum the length of time in the business, corporate experience, strengths in the industry, business philosophy, and a description of the organizational structure of the firm; a description of the organizational structure for the leasing, including an organizational chart denoting all positions and the number of personnel in each position.

B. Facility Management

Experience in property management, specifically experience managing facilities which include retail sales, restaurant, and food court vendors, or other similar services/operations as requested by this RFP. Offerors should submit, at a minimum, a synopsis regarding their experience in managing and operating similar types of facilities, including the names of the facilities; the length of time they have managed and operated such facilities; the size of the facility and tenant mix; and a reference (including name, address and phone number) for each facility listed. Also, include any relevant experience working in commercial districts of a downtown or urban city center, demonstrating the Offeror's understanding of the dynamics of the restaurant and retail markets in these areas.

C. Financial Condition

Financial condition of the firm and ability to perform all obligations of the leasing agreement, management contract or other contract. Each Offeror shall provide a current annual financial report, the previous year's report, and a statement regarding any recent or foreseeable mergers or acquisitions. Also, include a history of the Offeror's firm including a description of any significant changes in ownership or structure of business focus in the past seven years. A complete listing of any contract terminations that have occurred over the past five years involving "for cause termination" or "default" should be provided.

D. Commercial Real Estate Experience

Experience in the procurement of tenants and negotiating commercial leases for an historic public market, or similar commercial facility, which will include locally and regionally-owned retail sales, restaurant, and food court vendors. Offerors should submit, at a minimum, a synopsis regarding their experience in the procurement of tenants and negotiating commercial leases for similar types of facilities, including the names of the facilities; the length of time they have leased such facilities; the size of the facility and tenant mix; and a reference (including name, address and phone number) for each facility listed. Also, include any relevant experience working in commercial districts of a downtown or urban city center, demonstrating the Offeror's understanding of the dynamics of the restaurant and retail markets in these areas.

If the Executive Director of the City Market Building is a licensed real estate salesperson, offeror shall indicate if it is willing to enter into a separate agreement with the Executive Director to provide leasing services as a salesperson for the Offeror's firm.

E. Customer Service

What is the philosophy of Offeror regarding customer service? Explain in detail the method of working with tenants and tenants' customers. Given this is a public building with shared dining areas and common spaces, explain how the needs of customers and tenants will be met in such an environment.

SECTION 5. OTHER SUBMISSIONS

A. References

Please list at least (3) operational references. Include name, address, title, firm, phone number, fax number and email address.

B. Supplemental Information

In a separate binder marked “supplemental information,” Offeror may include additional information such as promotional brochures, letters of recommendation, newspaper articles, etc. to support the submission requirements of the RFP.

C. Proposal Evaluation

Proposals may be evaluated upon the requirements set forth in this Request for Proposal and other criteria to determine acceptability such as inspection, testing, quality, customer service delivery, and suitability for particular purpose. The MBFI, in its sole discretion, may elect to waive any informality in a proposal, and/or reject any and all proposals.

D. Prescribed Format of Responses

Responses to this Request for Proposal must be in the prescribed format.

E. Request for Additional Information and Clarification

MBFI may request additional information, clarification or presentations from any of the Offerors after review of the proposals received.

F. Insurance

Offeror should demonstrate ability to provide necessary insurance, including Workers' Compensation, Commercial General Liability, Automobile Liability, and an Umbrella Policy, all in compliance with the insurance provisions of the Commercial Real Estate Services and Facilities Management Agreement.

G. Price

Offeror must submit the cost of providing the required services, including leasing commission (including co-broker commission splits) and management fee and how they are calculated. Offeror is requested to provide the services outlined herein under a single unified contract by which the selected operator will lease, operate and manage the facility, pay all related operating expenses as defined by the contract, collect and deposit revenues as defined by the contract and receive a management fee and appropriate commissions for its efforts.

MBFI encourages a proposal that compensates the successful Offeror with a base management fee, plus incentives for meeting established targets associated with leasing and operating the facility.

H. Revenue Control

Prospective Offeror will explain the method of controlling, securing and maximizing revenues. Offeror is required to propose revenue control procedures that will guarantee collection and proper accounting of all revenues collected. Each type of transaction should be accounted for separately.

I. General Ability, Capacity, and Skill of Offeror

The ability, capacity and skill of the Offeror to perform the duties and responsibilities described in this RFP. Please include a narrative of quality assurance mechanisms and how the Offeror intends to guarantee contract compliance and total satisfaction on the part of MBFI. Include both quantitative and qualitative measures and a description of what will be tracked. Please give special attention to the necessity of communicating with the MBFI at regular intervals throughout the agreement to ensure MBFI's satisfaction with the services provided. Demonstrate the ability, capacity and skill of the Offeror to perform the duties and responsibilities described in this Request for Proposal in a prompt and timely manner without delay or interference.

SECTION 6. MISCELLANEOUS

- A. Ownership of Material - Ownership of all data, materials, and documentation originated and prepared for the MBFI pursuant to the RFP shall belong exclusively to the MBFI.
- B. MBFI has the right to use any or all ideas presented in reply to this RFP, subject only to limitations regarding proprietary/confidential data of offeror. Offeror must identify each specific element of its proposal which it believes to be proprietary and confidential in nature.
- C. MBFI is not liable for any cost(s) incurred by any Offeror in connection with this Request for Proposal or any response by any Offeror to this Request for Proposal. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal, are the sole responsibility of the Offeror and may not be charged to MBFI.
- D. Only MBFI will make news releases pertaining to this request for proposal or the proposed award of the Contract.
- E. An Offeror must promptly notify the MBFI of any ambiguity, inconsistency, or error which may be discovered upon examination of the RFP. An Offeror requiring clarification or interpretation of this RFP should contact Elliot Broyles., at (540)293-4653.
- F. Any interpretation, correction, or change of the RFP will be made by a documented addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and Offerors must not rely upon such interpretations, corrections, or changes. The MBFI will issue Addenda on-line and to those who attended the pre-proposal conference.

- G. No Offeror, as it pertains to this RFP, shall confer on any MBFI Officer or Director having official responsibility for a purchasing transaction any payment, loan, subscription, advance, deposit or money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal value is exchanged.
- H. The MBFI may make investigations to determine the ability of the Offeror to perform or supply the services or items as described in this RFP. The MBFI reserves the right to reject any proposal if the Offeror fails to satisfy the MBFI that it is qualified to carry out the obligations of the contract.
- I. The Offeror will agree to these provisions in its contract:
1. The Offeror will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age disability, or any other basis prohibited by state law relating to discrimination in employment except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contract. The Offeror agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 2. The Offeror, in solicitations or advertisements for employees placed by or on behalf of the Offeror, will state that such Offeror is an equal opportunity employer.
 3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 4. The Offeror will include the provisions of the foregoing subparagraphs (I) 1, 2 and 3 in every subcontract or purchase order of over \$10,000 so that provisions will be binding upon each subcontractor or vendor.

During the performance of this contract, the Offeror agrees to (i) provide a drug-free workplace for the Offeror's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Offeror's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Offeror that the Offeror maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with specific contract awarded to a Offeror, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- J. The successful firm shall comply with all applicable City, State, and Federal laws, codes and provisions.
- K. Providers of any outside services shall be subject to the same conditions and requirements as the successful Offeror in regards to code or regulation compliance. The MBFI reserves the right of approval for any subcontract work, including costs thereof.
- L. Offeror shall provide a list of any existing contracts for leasing and managing retail, event, or similar commercial facilities in the Roanoke Valley, as well as contracts with MBFI Board Members.

SECTION 7. EVALUATION CRITERIA.

Offerors will be evaluated for selection on the basis of those most qualified to meet the requirements of this RFP. Major criteria to be considered in evaluation may include, but shall not necessarily be limited to:

- A. The background, knowledge, and experience of the Offeror in providing commercial real estate leasing and management services or items elsewhere, including the level of experience and the quality of services performed.
- B. Reasonableness/competitiveness of proposed fee and/or benefits to the MBFI, although the MBFI is not bound to select the Offeror who proposes the lowest fee or most benefits for services. The MBFI reserves the right to negotiate fees and/or benefits to MBFI with the selected Offeror(s).
- C. The Offeror's responsiveness and compliance with the RFP requirements and conditions.
- D. The Offeror's demonstrated ability to, provide the services requested by MBFI through this RFP.
- E. Determination that the selected Offeror has no contractual relationships which would result in a conflict of interest to MBFI which may be detrimental to MBFI goals.
- F. The ability, capacity and skill to fully and satisfactorily provide the services or items required in this RFP.
- G. The quality of Offeror's performance in leasing and managing historic public market or similar commercial facilities and references from similar projects.
- H. Whether the Offeror can provide the service and deliver the services or items in a prompt and timely fashion.
- I. Stability and continuity of the Offeror's personnel and management structure.
- J. Flexibility, accessibility, and availability of the Offeror's staff.

- K. Demonstrated ability to keep excellent financial records using generally accepted accounting principles; providing separate accounts for necessary revenues and providing necessary bonding and insurance for handling owner's cash and financial records.
- L. Demonstrated ability to work well with various civic groups and/or businesses within a historic district.

SECTION 8. SELECTION PROCESS

- A. Selection may be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation of factors included in the RFP, including price. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but not need be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the MBFI shall select the Offeror which, in its opinion, has made the best proposal, and may award the contract to that Offeror. The MBFI may cancel this RFP or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. Should the MBFI determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award, if one is made, will be a contract incorporating the terms and conditions contained in Attachment 2 as mentioned in Section 10 of this RFP.
- B. Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the selection committee. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. Oral Presentations are strictly at the option the MBFI and may or may not be conducted.

SECTION 9. SERVICES AND ITEMS REQUIRED FROM SUCCESSFUL OFFEROR

- A. The successful Offeror will be required to enter into a Contract with the MBFI, for commercial real estate services and management services of the Historic City Market Building. The initial term of the agreement will be three (3) years with the option to renew for two successive one (1) year terms. The MBFI may terminate the agreement on the part of MBFI without cause by giving 180 days' notice to the Offeror. The contract will be evaluated annually, at which time the contract may be altered based on the current needs of the facility.
- B. Operation and Management services and goods to be provided by the successful Offeror, and for which the successful Offeror will be paid a management fee, include the following:
 - 1. General liability insurance which is acceptable to MBFI.

2. Recommendations on structure of lease rate, common area maintenance fee and other tenant charges.
3. Monthly revenues deposited to accounts using documentation and procedures that are acceptable to MBFI. Maintenance of accurate and complete accounting records which will be subject to review, copying and audit by the MBFI or its representatives and will be retained by the Offeror for a period of (5) years after the contract ends.
4. Monthly financial and operations reports.
5. Provision of training for employees of the Offeror in order to ensure a high level of professional operation and management services.
6. All necessary licenses and permits.

SECTION 10. INFORMATION ON CONTRACT TO BE AWARDED

The terms and conditions contained in Attachment 2 will be included in any operations and management contract awarded. Submission of a proposal by an Offeror will obligate the successful Offeror to enter into a contract containing the same or substantially similar terms and conditions as contained in Attachment 2. Other terms and conditions, including the final scope of services, will be negotiated with the successful Offeror.

Attachment 1

Copy of Building Floor Plan (linked separately)

Attachment 2

SAMPLE COMMERCIAL REAL ESTATE SERVICES AND MANAGEMENT AGREEMENT

THIS COMMERCIAL REAL ESTATE SERVICES AND FACILITIES MANAGEMENT AGREEMENT (the “Agreement”) is made and entered into this ___ day of _____, 20___ by and between the Market Building Foundation, Inc., a non-stock, non-profit corporation organized under the laws of the Commonwealth of Virginia (“MBFI”), and _____, a _____ (“Commercial Real Estate Services and Management Firm”).

WITNESSETH:

WHEREAS, MBFI is the Sub-Sublessee of that certain parcel of land and the improvements located thereon at 32 Market Square, Roanoke, Virginia, 24011 known as the “Roanoke City Market Building,” and bearing Official Tax No. 4010401 (hereinafter the “Roanoke City Market Building”); and

WHEREAS, Commercial Real Estate Services and Facilitates Management Firm has had experience in the operation and management of retail centers comparable to the Roanoke City Market Building; and

WHEREAS, MBFI desires to retain Commercial Real Estate Services and Facilities Management Firm to perform property management services with respect to the operation and management of the Roanoke City Market Building and other similar services proposed by MBFI

as more particularly set forth herein, and Commercial Real Estate Services and Management Firm is desirous of providing such services to MBFI.

NOW, THEREFORE, MBFI and Commercial Real Estate Services and Management Firm, intending to be legally bound hereby, do agree that MBFI does hereby retain Commercial Real Estate Services and Facilities Management Firm for such purposes as more specifically provided herein, for a term of three (3) years, with the option on the part of MBFI to extend the term for two (2) additional one (1) year terms, in consideration of the following covenants, agreements, terms, provisions, conditions and limitations, and for other good and valuable consideration.

ARTICLE ONE

RETENTION OF COMMERCIAL REAL ESTATE SERVICES AND MANAGEMENT FIRM

Section 1.1 MBFI's Warranties. MBFI represents and warrants that:

A. MBFI is the sublessee of the Roanoke City Market Building and has full right and power to enter into this Agreement and to hire Commercial Real Estate Services and Facilities Management Firm pursuant to the terms hereof.

B. The Roanoke City Market Building is now and will remain free and clear of all encumbrances created by MBFI which could adversely affect Commercial Real Estate Services and Facilities Management Firm's ability to manage and operate the same.

C. As of date of execution of this Agreement, the intended use of the Roanoke City Market Building for purposes stated herein is permitted by all applicable zoning laws and regulations; and

D. As of the date of execution of this Agreement, to the best of MBFI's knowledge, the Roanoke City Market Building complies in all material respects with all applicable ordinances

regulations and zoning and other laws, for the use of the Roanoke City Market Building for the purposes stated herein.

Section 1.2 Retention of Commercial Real Estate Services and Management Firm.

Commercial Real Estate Services and Facilities Management Firm hereby agrees to perform property management services with respect to the day-to-day operation and management of the Roanoke City Market Building as described in Section 2.1 below.

Section 1.3 Diligence of Commercial Real Estate Services and Management Firm.

Commercial Real Estate Services and Facilities Management Firm hereby agrees to perform the services required to be performed of it hereunder with reasonable care and reasonable diligence, in a manner equivalent to other first-class professional property managers performing similar services for projects of a like kind and size as the Roanoke City Market Building.

Section 1.4 Authority of Commercial Real Estate Services and Management Firm.

Subject to the limitations herein set forth, Manager shall have the power and authority to implement the day-to-day managerial decisions that are necessary in the performance of its obligations hereunder.

Section 1.5 Decisions and Representation. Commercial Real Estate Services and Facilities Management Firm shall designate a Representative (the “Representative”) to coordinate required duties with Market Building Executive Director (ED). Representative shall use reasonable efforts to respond to any decision or approval requested by ED in accordance with this Agreement or if no time period is specified, within three (3) business days of the request.

Section 1.6 Major Decisions. Major decisions such as capital expenditures or major maintenance (which for purposes of this Agreement will be \$2,000 per expenditure, or cumulatively equal or greater than 20% of the Approved Budget on a per major or category line item basis are reserved to MBFI except to the extent that such are permitted by the Approved Budget.

ARTICLE TWO

**SCOPE OF COMMERCIAL REAL ESTATE SERVICES AND MANAGEMENT
FIRM'S SERVICES/CERTAIN LIMITATIONS**

Section 2.1 Scope of Commercial Real Estate Services and Management Firm's Services. Commercial Real Estate Services and Facilities Management Firm shall be responsible for soliciting, administering and managing all services necessary to operate and maintain the Roanoke City Market Building in a first-class manner in accordance with the Approved Budget (as defined in Section 2.2), which services shall include but shall not be limited to:

(a) **Commercial Real Estate Services and Maintenance.**

(b) **Maintenance.** In accordance with the Approved Budget, Commercial Real Estate Services and Facilities Management Firm will service and maintain the Roanoke City Market Building in good repair, condition and appearance during the term of this Agreement. Final list and details regarding the items below will be negotiated once the Commercial Real Estate Services and Facilities Management Firm is selected.

- Keeping electric wiring, toilets, water pipes, gas, water and electric fixtures in good working order
- Replace all locks, trimmings, glass and plate glass broken during tenancy
- Elevators, escalators, lifts, machinery or appliances
- Regular servicing and maintenance of mechanical and electrical equipment including changing filters and proper maintenance of HVAC equipment as needed.

Representative shall communicate with ED monthly regarding the maintenance of the Roanoke City Market Building and the condition of such equipment contained therein. Representative shall keep ED informed when repairs or replacements are required to roofing system, structural foundation, walls, exterior canopies, utility service lines, electrical, plumbing, mechanical systems or other equipment within the facility. Such repairs or replacements as mentioned above may be arranged by Representative, upon ED's approval and paid at MBFI's cost.

Representative acknowledges and agrees that ED shall be responsible for the facilitation and management of all structural repairs and replacements. Structural repairs and replacements are defined as repairs or replacements which include, but are not limited to, repairs or replacements to electrical wiring, heating, air conditioning systems, toilets, water, water pipes, gas, plumbing, and other electrical fixtures, and the exterior walls.

(d) **Personnel.** Representative shall, at all times, employ, at Commercial Real Estate Services and Facilities Management Firm's expense, qualified personnel who shall be employees or independent contractors of Commercial Real Estate Services and Facilities Management Firm for the performance of duties hereunder. All persons so engaged shall be the employees or independent contractors of Commercial Real Estate Services and Management Firm. Commercial Real Estate Services and Facilities Management Firm shall employ, the personnel required to carry out duties under this Section 2.1. Commercial Real Estate Services and Facilities Management Firm shall use due care in the selection and supervision of such employees or independent contractors. Commercial Real Estate Services and Management Firm shall comply with all applicable employment laws. Commercial Real Estate Services and Management Firm shall be responsible for the preparation of and shall timely file all payroll tax reports and timely pay all withholding and other payroll taxes with respect to each employee. It is expressly understood and agreed by the parties that subject to the provisions of Section 2.1 (m) below but otherwise notwithstanding anything contained herein the contrary, Commercial Real Estate Services and Management Firm is solely responsible for all labor relation functions with respect to its personnel (including its independent contractors) performing services for the Roanoke City Market Building including, without limitation, hiring, discipline, training, wages, taxes, benefits and the like.

(e) **Compliance with Laws and Agreements.** Commercial Real Estate Services and Facilities Management Firm shall use its best efforts to manage the Roanoke City Market Building so that it will comply with (i) all federal, state and municipal laws, ordinances, regulations and order relating to the use, operation, repair and maintenance of the Roanoke City Market Building, (ii) the terms of all agreements and documents relating thereto of which Commercial Real Estate Services and Facilities Management Firm has been given copies including, but not limited to, MBFI's insurance policies covering the Roanoke City Market Building, (iii) the rules, regulations or orders of the local Board of Fire Underwriters or similar body, and (iv) laws and regulations of

the Health Department. Commercial Real Estate Services and Management Firm shall promptly notify ED and use its best efforts to remedy (with MBFI's approval and for MBFI's account) a violation of any law, ordinance, rule, regulation or order which comes to its attention. Any such violations caused by Commercial Real Estate Services and Management Firm, its employees, and agents shall be for Commercial Real Estate Services and Management Firm's account.

(f) **Utilities.** MBFI shall assume primary responsibility for establishing contracts and being ultimately responsible for the payment of all necessary bills for electric and gas utilities, all of which are to be sub-metered and charged to individual tenants. Commercial Real Estate Services and Management Firm is to make such payments in accordance with the Approved Budget. Subject to the limitations set forth herein, Commercial Real Estate Services and Management Firm shall arrange contracts for snow removal, landscaping, telephone, maintenance, vermin extermination and other services as are customarily furnished or rendered in connection with the operation of similar first-class facilities, or as Commercial Real Estate Services and Facilities Management Firm in its reasonable judgment, shall deem prudent, in accordance with the Approved Budget (as hereinafter defined).

(g) **Expenses.** Commercial Real Estate Services and Facilities Management Firm shall analyze all bills received for services, work and supplies in connection with maintaining, promoting, leasing and operating of the Roanoke City Market Building and pay all items described herein in accordance with the Approved Budget ("Reimbursable Expenses"). Expenses properly chargeable to Tenants shall be charged to and paid by Tenants, including sub-metering of utilities where applicable.

(h) **Collection of Rents and Other Income.** Commercial Real Estate Services and Facilities Management Firm shall use diligent efforts to collect all rents (including fixed rents, percentage rents and other sums, whether payable as additional rent or otherwise, together with escalation billing resulting from a sub-tenant's participation in increases in expenses, taxes and common area maintenance charges) and all other charges of whatever kind or nature which become due at any time from any sub-tenant or other users of the Roanoke City Market Building. Commercial Real Estate Services and Facilities Management Firm shall collect and identify any income due MBFI from miscellaneous services provided to sub-tenants or the public including, but not limited to, sub-tenant storage, building services or coin operated machines of all types as

well as amounts due from any other parties under license, service and other agreements. All money so collected shall be deposited in an account to be established by Commercial Real Estate Services and Facilities Management Firm in the name of the MBFI. Commercial Real Estate Services and Facilities Management Firm shall obtain and review statements of sales furnished by sub-tenants to support their payment of percentage rentals or other sums or deductions and, if so directed by MBFI, audit or cause to be audited, at the expense of MBFI, the books of account of all or a portion of such tenants. Commercial Real Estate Services and Facilities Management Firm shall request, demand, collect, and where appropriate, institute legal proceedings to enforce MBFI's rights at law and in equity under all sub-leases of the Roanoke City Market Building, provided that Commercial Real Estate Services and Management Firm may not, without the prior writer approval of MBFI, terminate any sub-lease, institute suit nor create any obligation for payment of legal fees.

(i) **Banking Accommodations.** Commercial Real Estate Services and Facilities Management Firm shall establish and maintain a separate checking account to pay all reimbursable expenses on behalf of MBFI. All monies collected by Commercial Real Estate Services and Management Firm on MBFI's behalf are to be deposited in the predetermined MBFI account and used to pay all Reimbursable Expenses. Detailed records of amounts deposited by Commercial Real Estate Services and Facilities Management Firm into this account are to be maintained by Commercial Real Estate Services and Facilities Management Firm. No monies collected by Commercial Real Estate Services and Facilities Management Firm on MBFI's behalf shall be commingled with funds of Commercial Real Estate Services and Facilities Management Firm. Such accounts shall be maintained, and monies shall be deposited therein and withdrawn therefrom, in accordance with the following:

- (i) Collections of rent and any other income and security deposits due in respect of the Roanoke City Market Building shall be deposited by Commercial Real Estate Services and Management Firm in the appropriate account no later than the business day following receipt by Commercial Real Estate Services and Management Firm in its offices.
- (ii) Commercial Real Estate Services and Facilities Management Firm's separate checking account is to be used for the payment of all costs and expenses for which

MBFI is responsible under this Agreement, in accordance with and subject to the terms of this Agreement.

- (iii) All security deposits thereafter received by Commercial Real Estate Services and Facilities Management Firm from sub-tenants shall be deposited into MBFI's account. Commercial Real Estate Services and Management Firm shall maintain, in reasonable detail, records with respect to such deposits. At such times as a tenant is entitled to a return thereof, Commercial Real Estate Services and Facilities Management Firm shall notify MBFI of the need to return such deposits by a disbursement from MBFI.
- (iv) MBFI will be responsible for funding Reimbursable Expenses in the event rent and other income are not sufficient to cover such expenditures.
- (j) **Sub-Tenant Relations.** Commercial Real Estate Services and Facilities Management Firm shall maintain businesslike relations with the sub-tenants of the Roanoke City Market Building. Commercial Real Estate Services and Management Firm shall maintain files on sub-tenant service requests and complaints, which files shall be open the inspection by MBFI at all times.
- (k) **Correspondence.** Commercial Real Estate Services and Facilities Management Firm shall maintain a correspondence file containing copies of all written communications with all sub-tenants, contractors and third parties relating to the Roanoke City Market Building. Copies of such correspondence file shall be made available to MBFI, at MBFI's expense, upon request and upon reasonable notice (24 hours prior verbal notice is acceptable).
- (l) **Labor Disputes.** Commercial Real Estate Services and Facilities Management Firm shall use commercially reasonable efforts to avoid any labor disputes with its personnel (including its independent contractors) and, with MBFI's consent, shall settle, any such labor disputes in such a manner and at such cost as shall be approved by MBFI in its sole discretion.
- (m) **Other Services.** As part of Commercial Real Estate Services and Facilities Management Firm's general duties, Commercial Real Estate Services and Management Firm shall recommend from time to time to MBFI such procedures with respect to the Roanoke City Market Building as Commercial Real Estate Services and Facilities Management Firm may deem advisable for the most efficient and economic management and operation thereof and shall perform

other reasonable management services which normally are performed in connection with the operation of a first-class property and perform all activities normally provided to similar premises. Commercial Real Estate Services and Facilities Management Firm shall render advice and assistance to MBFI (in conjunction with other appropriate third-party consultants) in the negotiation and prosecution of all claims for the abatement of property and other taxes affecting the Roanoke City Market Building and for awards for taking by eminent domain affecting the Roanoke City Market Building or any portion thereof:

(n) **Disclosure of Affiliations.** Commercial Real Estate Services and Facilities Management Firm shall promptly disclose to MBFI any financial interest other than the holding of stock in a public company between Commercial Real Estate Services and Facilities Management Firm and any persons or entity with which Commercial Real Estate Services and Management Firm may propose to deal in any manner in connection with the discharge of its functions under this Agreement and obtain MBFI's written consent to any dealings between Commercial Real Estate Services and Facilities Management Firm and any of its affiliates, which consent will not be unreasonably withheld or delayed.

(o) **Inspection.** Commercial Real Estate Services and Facilities Management Firm shall permit MBFI or its authorized agents to enter the Roanoke City Market Building for the purpose of inspection at any time or times during the term of this Agreement, provided, however, that such inspections shall not unreasonably interfere with Tenants' use and occupancy of the Roanoke City Market Building.

(p) **Commercial Real Estate Services and Facilities Management Firm's Obligation to Quit Premises.** Commercial Real Estate Services and Management Firm shall, upon the expiration or termination of this Agreement, peaceably quit and deliver to MBFI possession of the Roanoke City Market Building in the same, or better condition as of the date of commencement, normal wear and tear and damage caused by fire or natural disaster excepted, and shall promptly clean up and remove all personal property and non-fixtured items in the Roanoke City Market Building.

Section 2.2 Approved Budgets.

(a) On or before the first day of each fiscal year, Commercial Real Estate Services and Management Firm shall prepare and deliver to MBFI for its approval a detailed budget for the next fiscal year beginning July 1 of (i) the projected revenues for the next succeeding fiscal year (including, without limitation, all revenues to be derived from all leases and all sums received in lieu thereof) and (ii) all ordinary and extraordinary costs and expenses to be incurred by or on behalf of MBFI during the next succeeding fiscal year in connection with the management, operation, leasing, maintenance or repair of the Roanoke City Market Building including, but not limited to, all sums payable under service contracts, insurance premiums, established costs and expenses of capital repairs and improvements, and estimated sums payable to outside brokers) necessary to operate the Roanoke City Market Building in a first class manner, all in reasonable detail with each category of revenue and expense listed on a separate line. If MBFI disapproves of any such proposed budget, Commercial Real Estate Services and Facilities Management Firm and ED shall work together in a diligent manner until an Approved Budget has been achieved. Each budget which has been approved by MBFI pursuant to the provisions of this Section 2.2 is herein called an “Approved Budget”.

(b) Commercial Real Estate Services and Facilities Management Firm agrees to use its best efforts to ensure that the actual costs of managing, maintaining and operating the Roanoke City Market Building shall not exceed the Approved Budget in total. All expenses shall be charged to the proper account in accordance with the budget and no expenses may be classified or re-classified for the purpose of avoiding expenditures in excess of the annual budgeted amount to an accounting category. Commercial Real Estate Services and Facilities Management Firm shall have the right to suggest revisions to the Approved Budget from time to time and MBFI agrees to consider such suggestions and revisions and work together with Commercial Real Estate Services and Facilities Management Firm to achieve a revised Approved Budget. During each fiscal year, Commercial Real Estate Services and Facilities Management Firm agrees to inform MBFI of any increase in costs and expenses, which were not foreseen during the budget preparation process and thus, were not reflected in any Approved Budget or which would cause total expenditures under an Approved Budget to exceed the total budgeted amount.

Section 2.3 Accounting Records and Reports

(a) **Books and Records.** At all times during the term of this Agreement, Commercial Real Estate Services and Facilities Management Firm shall maintain in accordance with sound and customary business practices or as otherwise requested by MBFI, complete books, records and accounts in accordance with general accepted accounting principles. Said books, records and accounts shall be the property of MBFI, provided that internal records of Commercial Real Estate Services and Facilities Management Firm or any affiliate shall not be the property of MBFI, and shall be available to MBFI for examination in accordance with the provisions of Section 2.3(d) below. All such books, records, accounts, supporting documentation relating thereto shall be maintained either at Commercial Real Estate Services and Facilities Management Firm's office or at the Roanoke City Market Building and shall include and not be limited to all bank statements, canceled checks, bank deposit slips and bank re-conciliations; all invoices and other documentation supporting cash expenditures; supporting documentation for payroll, payroll taxes, employee benefits; check registers, billing journals, accounts receivable reports, accounts payable reports, cash receipts journals and distribution registers.

(b) **Monthly Statement.** On or before the twentieth (20) day of each month, Commercial Real Estate Services and Management Firm shall deliver to ED a detailed, unaudited cash basis statement signed by Representative and showing for the fiscal year period all revenues, receipts, expenditures and disbursements for the preceding month (the "Monthly Statement") which Monthly Statement shall, among other things (i) accurately reflect all revenues and expenses, each by relevant category of the Approved Budget or in the case of unbudgeted revenues, receipts, expenses and disbursements on an itemized basis; (ii) compare on a monthly and year-to-date basis actual income and expenses with the estimated revenues and expenses set forth in the Approved Budget; and (iii) show all collections, delinquencies, uncollectible items, vacancies and other matters pertaining to the management and operation of the Roanoke City Market Building during the preceding month.

(c) **Insurance Required by Law.** Commercial Real Estate Services and Facilities Management Firm shall execute and file when due all forms, reports and returns required by law pertaining to the employment of MBFI's personnel.

(d) **MBFI's Right to Audit.** After notice to Commercial Real Estate Services and Facilities Management Firm and during normal business hours, MBFI and any person chosen by

MBFI shall be entitled to audit all records and data possessed by Commercial Real Estate Services and Facilities Management Firm or under control of Commercial Real Estate Services and Facilities Management Firm or any Affiliate (as hereinafter described) of Commercial Real Estate Services and Facilities Management Firm relating to the Roanoke City Market Building wherever located. Commercial Real Estate Services and Facilities Management Firm shall pay the cost of such audit in the event the audit reveals a discrepancy of three percent (3%) or greater.

(e) **Fidelity Bonds.** Commercial Real Estate Services and Facilities Management Firm shall carry Employee Dishonesty Insurance on all employees of Commercial Real Estate Services and Facilities Management Firm or its Affiliates in an amount not less than \$750,000.

Section 2.4 Services Not Included. Except as may be specifically set forth to the contrary herein and except as otherwise authorized by MBFI and agreed to by Commercial Real Estate Services and Facilities Management Firm the following services are not included within the scope of the duties to be performed by Commercial Real Estate Services and Management Firm hereunder:

(a) Arranging for or obtaining any financing for the Roanoke City Market Building or any part thereof;

(b) Making examination or audits of books of the Roanoke City Market Building or sub-tenants;

Section 2.5 Certain Limitations. Without limitation of any other provision hereof, it is expressly understood and agreed that the following limitations and restrictions apply with respect to the performance by Commercial Real Estate Services and Facilities Management Firm of its duties hereunder:

(a) Commercial Real Estate Services and Facilities Management Firm shall not and shall have no authority to implement any item or incur any other liability or expense whatsoever which is not expressly provided for in the then-current Approved Budget without obtaining the prior written approval of MBFI, which approval shall be granted or withheld by MBFI in its sole discretion. Notwithstanding the foregoing, in case of a bona-fide emergency involving a risk to health or safety of persons or material damage or injury to property, Commercial Real Estate Services and Facilities Management Firm may, on behalf of MBFI, incur such liability or expenses

as reasonably required to meet the emergency and Commercial Real Estate Services and Facilities Management Firm shall notify ED of said emergency as soon as is reasonably practicable following the occurrence thereof.

ARTICLE THREE

PAYMENT OF EXPENSES

Section 3.1 Commercial Real Estate Services and Facilities Management Firm's Expenses. Except as otherwise specifically provided herein, Commercial Real Estate Services and Facilities Management Firm shall not be responsible for the payment out of its own funds of any of the following items, and will be reimbursed by MBFI for any such expenses as applicable.

- (a) Management Fee and Reimbursable Expenses of Commercial Real Estate Services and Facilities Management Firm
- (b) Utility Charges; and
- (c) Leasing Commissions.

ARTICLE FOUR

MANAGEMENT COMPENSATION

Section 4.1 Management Fee. MBFI shall pay Commercial Real Estate Services and Management Firm a monthly management fee (the "Management Fee") of \$[insert management fee arrangement] As used herein, the term "Gross Revenues" shall mean the following amounts actually received by MBFI: fixed and percentage rent billed to by sub-tenants of the Roanoke City Market Building, all billing to sub-tenants which are attributed to maintenance of the common areas, insurance premiums and, except as set forth below, all other miscellaneous revenues related to and derived from the Roanoke City Market Building. In computing the Management Fee due pursuant to this Agreement, the term "Gross Revenues" shall not be deemed to include any of the following: (i) proceeds of and Disposition (as hereinafter defined), insurance proceeds (other than proceeds of rental or business interruption insurance), condemnation proceeds, the proceeds of any loan or capital contribution made to MBFI, (ii) rent paid by sub-tenants in excess of pre-holdover

rent payable under the applicable leases upon a holding over under their lease in excess to pre-holdover rent payable under the applicable leases, (iii) security deposits and any income earned thereon, (iv) interest earned on funds which are deposited in the appropriate account. Gross revenues do not include reimbursable utilities.

Section 4.2 Leasing Commissions.

[To be negotiated]

ARTICLE FIVE

TERM AND TERMINATION

Section 5.1 Term. Unless earlier terminated in accordance with this Article 6, the term of this Agreement (the “Term”) shall commence on _____, 20__, and shall terminate on _____, 20__. MBFI may, on written notice delivered Commercial Real Estate Services and Management Firm 60 days prior to the end of _____, extend this Agreement for two (2) additional one (1) terms year or a total of two (2) one (1) year extensions, subject to the parties’ rights to terminate this Agreement as set out in Sections 5.2-5.4 below

Section 5.2 Termination for Default. If at any time during the Term of the Agreement either MBFI or Commercial Real Estate Services and Facilities Management Firm shall be in Default (as defined in Section 6.1 below) under this Agreement, then the non-defaulting party may, at its option, and in addition to any other remedies provided under Virginia law or equity or available to such non-defaulting party at law or equity, terminate this Agreement by giving notice to the defaulting party which specifies a date, not earlier than five (5) business days after the giving of such notice, when such termination shall be effective.

Section 5.3 Termination Without Cause. Either MBFI or Commercial Real Estate Services and Facilities Management Firm may terminate this Agreement without cause upon one hundred eighty (180) days prior written notice to the other party.

Section 5.4 Termination Upon Casualty or Condemnation. If all or substantially all of the Roanoke City Market Building shall be (i) damaged or destroyed by fire or other casualty or (ii) taken by lawful condemnation proceedings by any governmental authority having jurisdiction thereof, this Agreement shall automatically terminate thirty (30) days following the occurrence of either such even.

Section 5.5 Obligations Upon Termination/Final Accounting. At the Termination Date or upon the earlier termination hereof in accordance with the provisions of this Article 5:

(a) Except as otherwise provided in this Section 5.5, neither party hereto shall have any further liability to the other.

(b) Within Thirty (30) days following the Termination Date of effective date of such earlier termination Commercial Real Estate Services and Facilities Management Firm shall deliver to MBFI the following:

(i) A final accounting (the "Final Accounting") reflecting the earned but unpaid portion of the Management Fee allocable to the period prior to the date of termination and all unreimbursed Reimbursable Expenses due Commercial Real Estate Services and Facilities Management Firm;

(ii) Any monies of MBFI or sub-tenant security deposits, or both, held by Commercial Real Estate Services and Facilities Management Firm;

(iii) All records, contracts, leases, receipts for deposits, unpaid bills and other information or documents which pertain to the Roanoke City Market Building; and

(d) MBFI hereby agrees to pay within ten (10) days of the receipt of the Final Accounting, the full amount set forth in such Final Accounting or, if any portion is in dispute, pay the portion not in dispute and furnish Commercial Real Estate Services and Facilities Management Firm with a detailed statement of the amounts in dispute and the basis for such dispute. Any such disputed amount shall be paid within thirty (30) days after resolution of such dispute.

ARTICLE SIX

DEFAULTS AND REMEDIES

Section 6.1 Default. Each of the following events shall constitute a “Default” under this Agreement:

(a) If either party shall default in the payment of any amount due hereunder and the same is not cured within ten (10) days following written notice thereof from the non-defaulting party;

(b) Should any party fail in any respect to perform or observe any material term, covenant or agreement contained herein on its part to be performed or observed of a non-monetary nature and any such failure shall continue for thirty (30) days after written notice thereof as given by the non-defaulting party; provided, however, if said default is susceptible to cure but cannot, by the use of reasonable efforts be cured within thirty (30) days, such default shall not constitute a Default under this Subparagraph 6.1(b) as long as the defaulting party shall commence to cure such default within said thirty (30) days period and thereafter it proceeds to cure such default continuously and diligently in a manner reasonable satisfactory to the non-defaulting party; or

(c) If either party shall generally not pay its debts as such debts become due or shall admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors or any proceeding shall be instituted by or against any party hereto seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of receiver, or trustee or similar official for it or any substantial part of its property which, if commenced is not dismissed within sixty (60) days from the date of such commencement thereof.

Section 6.2 Remedies. In the event of the occurrence of a Default hereunder, in addition to the right to termination set forth in Article Five above and any other remedies specified elsewhere herein, the non-defaulting party shall retain all rights and remedies available to it at law or equity.

Section 6.3 Attorney's Fees. In the event of the occurrence of a Default hereunder, the prevailing party, in addition to its other rights and remedies hereunder, shall have the right to recover from the party in Default all reasonable costs and expenses incurred by the prevailing party enforcing its rights and remedies hereunder including reasonable attorneys' fees.

ARTICLE SEVEN

INDEMNIFICATION, LIABILITY AND INSURANCE

Section 7.1 Liability for Theft and Fraudulent Activity. Notwithstanding anything contained herein to the contrary, Commercial Real Estate Services and Management Firm shall be held strictly accountable for all receipts and disbursements with respect to the operation of the Roanoke City Market Building and shall ensure such control over accounting and financial transactions as is required to protect MBFI's assets under the control of Commercial Real Estate Services and Facilities Management Firm from theft, error or fraudulent activity on the part of Commercial Real Estate Services and Facilities Management Firm's employees or other agents including, without limitation, overpayment or duplicate payment of invoices or the receipt by Commercial Real Estate Services and Management Firm's employees or agents of any form of payment from purveyors arising from the purchase of goods or services for the Roanoke City Market Building.

Section 7.2 No Guarantee by Commercial Real Estate Services and Management Firm. In no event shall any provision of this Agreement be construed as a guaranty by Commercial Real Estate Services and Management Firm of (a) the actual operating costs and expenses to be incurred by MBFI in connection with the operations, sub-leasing, marketing and maintenance of the Roanoke City Market Building (b) the accuracy of the plans and specifications prepared by architects or engineers, (c) the quality of work performed by construction contractors and any other engineers, contractors, subcontractors or other Consultants, engaged in the operations, management, leasing, marketing or maintenance of the Roanoke City Market Building. The foregoing, however, shall not relieve Commercial Real Estate Services and Facilities Management Firm of its obligations to use its commercially reasonable skill, judgment and resources available

to it in connection with the services to be performed by Commercial Real Estate Services and Facilities Management Firm under this Agreement.

Section 7.3 Indemnity of MBFI. Without limitation of Section 7.1 above, Commercial Real Estate Services and Facilities Management Firm agrees to indemnify, protect and save MBFI harmless from and against and to reimburse MBFI with respect to all loss, cost, liability and expense (including, but not limited to, reasonable attorney’s fees) which may be occasioned by the Default by Commercial Real Estate Services and Facilities Management Firm, its employees, servants, contractors, or agents under any of the provisions of this Agreement or by the gross negligence or willful misconduct of Commercial Real Estate Services and Management Firm or its employees, servants, contractors, or agents. Without limiting the definition of gross negligence, repeated issues or failures to perform shall be deemed gross negligence.

Section 7.4 Insurance. Commercial Real Estate Services and Facilities Management Firm shall, at its sole expense, obtain and maintain during the life of this Agreement, the insurance policies required by this Section. Any required insurance policies shall be effective prior to the beginning of any work or other performance by Commercial Real Estate Services and Facilities Management Firm under this Agreement. The following policies and coverage required:

1. The following minimum insurance requirements apply:

a. Workers’ Compensation and Employers’ Liability:

Commercial Real Estate Services and Management Firm shall obtain and maintain the following limits:

Workers’ Compensation: Statutory

Employers’ Liability: \$100,000 bodily injury by accident each occurrence

\$500,000 bodily injury by disease (policy limit)

\$100,000 bodily injury by disease – each employee

Commercial General Liability: Commercial Real Estate Services and Management Firm will maintain Comprehensive “Commercial General Liability” insurance against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Roanoke City Market Building, including, without limitation, coverage

against so called occurrences in amounts not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate coverage (umbrella coverage shall not be less than an additional \$3,000,000) for bodily injury, personal injury or death and \$1,000,000 for property damage and \$5,000 for medical payments. This policy must contain, but not be limited to coverage for premises and operations liability, products and completed operations liability, contractual liability, hired and non-owned automobile liability, personal injury liability and property damage liability. During any construction on the Premises, Commercial Real Estate Services and Management Firm's general contractor for such construction shall also provide the insurance required in this subsection (a). The MBFI hereby retains the right to periodically review the amount of said liability insurance being maintained by Commercial Real Estate Services and Management Firm and to require an increase in the amount of said liability insurance should the MBFI deem an increase to be reasonably prudent under then existing circumstances. The MBFI and the City of Roanoke shall be named as additional insured with respect to all liability insurance. In all situations, the coverage of the Lessee or its contractors shall be primary and non-contributory with any insurance or self-insurance carried by the MBFI, its agents, employees or assigns.

Coverage is to be written on an "occurrence" basis, providing primary coverage to the entire Roanoke City Market Building as described in this Agreement, and such coverage shall include:

Products/Completed Operations

Personal Injury and Advertising Injury

Bodily Injury/Property Damage

Contractual Liability

b. Automobile Liability:

Limits for vehicles owned, non-owned or hired/borrowed shall not be less than:

\$1,000,000 Bodily Injury and Property Damage combined single limit

c. Umbrella

\$2,000,000 excess over the commercial general and automobile liability. Commercial Real Estate Services and Facilities Management Firm company only.

All such insurance required by Section 7.4 shall (i) be with insurers authorized to do business in the Commonwealth of Virginia and who have and maintain a rating of “A-VIII” from A.M. Best, (ii) contain the complete address of the Roanoke City Market Building (or a complete legal description), (iii) be for terms of at least one year, with premium prepaid, (iv) contain deductibles which do not exceed \$10,000, (v) be subject to the approval of the MBFI as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates and (vi) contain a standard noncontributory clause, mortgagee clause, or endorsement listing the MBFI as well as Market Building GP, LLC, Market Tenant GP, LLC, Market Building Development, LLC, Market Building Partners, LP and Market Tenant, LP and the City of Roanoke as follows:

City of Roanoke, Virginia
Attn: City Manager
Noel C. Taylor Municipal Building, Rm. 364
215 Church Avenue, S.W.
Roanoke, Virginia 24011

Commercial Real Estate Services and Facilities Management Firm shall as of the date hereof deliver to the MBFI evidence satisfactory to the MBFI that, as of the date hereof, said insurance policies have been prepaid as required above and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent evidencing such insurance satisfactory to the MBFI. Commercial Real Estate Services and Facilities Management Firm shall renew all such insurance and deliver to the MBFI policies evidencing such renewals at least fifteen (15) days before any such insurance shall expire. Without limiting the required endorsements to insurance policies, Commercial Real Estate Services and Facilities Management Firm further

agrees that (A) the MBFI and the City of Roanoke their successors and assigns, shall be named as an additional insured under all liability insurance policies. Commercial Real Estate Services and Facilities Management Firm further agrees that all such insurance policies: (A) shall provide for at least thirty (30) days' prior written notice to the MBFI prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of the MBFI; (B) shall contain an endorsement or agreement by the insurer that any loss shall be payable to the MBFI in accordance with the terms of such policy notwithstanding any act or negligence of Commercial Real Estate Services and Facilities Management Firm which might otherwise result in forfeiture of such insurance; and (C) shall either name the MBFI as an additional insured or waive all rights of subrogation against MBFI. The delivery to the MBFI of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies by Commercial Real Estate Services and Management Firm to the MBFI. Approval of any insurance by the MBFI shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Commercial Real Estate Services and Facilities Management Firm fails to provide, maintain, keep in force or deliver and furnish to the MBFI the policies of insurance required by this Agreement or evidence of their renewal as required herein, the MBFI may, but shall not be obligated to, procure such insurance and Commercial Real Estate Services and Facilities Management Firm shall pay all amounts advanced by the MBFI, together with interest thereon at the Legal Rate from and after the date advanced by the MBFI until actually repaid by Commercial Real Estate Services and Facilities Management Firm promptly upon demand by the MBFI. The MBFI shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though the MBFI has caused the insurance to be placed with the insurer after failure of Commercial Real Estate Services and Facilities Management Firm to furnish such insurance.

2. **Proof of Insurance Coverage:** The policies of insurance shall be purchased from a reputable insurer licensed to do business in Virginia and maintained for the life of the Agreement by Commercial Real Estate Services and Facilities Management Firm. Other insurance requirements include the following:

- a. Commercial Real Estate Services and Facilities Management Firm shall furnish MBFI with the required certificates of insurance showing the insurer, type of insurance, policy number, policy term and limits.
- b. The required certificates of insurance shall contain substantially the following statement: “The insurance covered by this certificate shall not be canceled or materially altered except after a thirty (30) day written notice has been received by MBFI’s Risk Management Officer.”
- c. The required certificates of insurance shall name MBFI, its officers, agents, volunteers, and employees as additional insureds except with regard to – workers’ compensation and employers’ liability coverages. Workers’ Compensation and Employer’s Liability coverages shall contain a waiver of subrogation in favor of MBFI. Additional insured and waiver endorsements shall be received by MBFI Risk Management Office from the insurer within thirty (30) days of beginning of this contract. Endorsement stating that the umbrella coverage follows from the primary is required.
- d. Insurance required under this Section is primary and non-contributory. In all situations, the Commercial Real Estate Services and Management Firm’s coverage is primary and non-contributory with any insurance or self-insurance carried or maintained by the MBFI, its agents, affiliates, employees or assigns. Commercial Real Estate Services and Management Firm agrees to require its insurance carriers to add additional insured status to any entity or person where a financial interest exists. Coverage will apply as primary and non-contributory as outlined in Section 7.4.2.d.

Section 7.5 Waiver of Subrogation. MBFI and Commercial Real Estate Services and Management Firm waive all rights against each other for any liability, loss cost or expense to the extent that the same is covered by insurance required under this Article Seven.

ARTICLE EIGHT

MISCELLANEOUS

Section 8.1 Governing Law. Commercial Real Estate Services and Management Firm and MBFI agree that this Agreement shall be constructed and interpreted in accordance with the laws of the State of Virginia.

Section 8.2 No Waiver. No failure by Commercial Real Estate Services and Management Firm or MBFI to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

Section 8.3 Enforceability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be valid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, as the case may be, shall not be affected thereby, and each term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 8.4 Notice. Any notice required or permitted under this Agreement shall be in writing and deemed given when actually delivered or three (3) days following deposit in the United States Mail, postage prepaid, as certified or registered mail, return receipt requested, addressed to the party to which directed at its address as set forth below, or to such other address as may be specified from time to time by either party in writing:

If to MBFI:

Elliot Broyles, Executive Director
Market Building Foundation, Inc.
32 Market Square, S.E.
Roanoke, Virginia 24011

With a copy to:

Harwell M. Darby, Jr.
Glenn, Feldmann, Darby & Goodlatte
37 Campbell Ave., S.W.
Roanoke, Virginia 24011

If to Commercial Real Estate Services and Facilities Management Firm:

Attention: -----, -----

Section 8.5 Assignability: Successors and Assigns. This Agreement shall be binding upon MBFI and Commercial Real Estate Services and Facilities Management Firm and their respective partners, successors, permitted assigns and legal representatives. Notwithstanding the foregoing, because of the personal nature of the services to be rendered by Commercial Real Estate Services and Facilities Management Firm hereunder, Commercial Real Estate Services and Facilities Management Firm may not assign or otherwise transfer any part of Commercial Real Estate Services and Facilities Management Firm's rights or obligation under this Agreement without the prior written consent of MBFI, which consent maybe not be withheld arbitrarily. Commercial Real Estate Services and Facilities Management Firm acknowledges and agrees that MBFI may assign its interest in this Agreement.

Section 8.6 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

Section 8.7 Amendments in Writing. Neither this Agreement nor any term or provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties hereto.

Section 8.8 Captions. The captions of the Articles and Section of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement of any part hereof, not in any way affect this Agreement or any part hereof.

Section 8.9 Independent Contractor. Commercial Real Estate Services and Management Firm shall be an independent contractor with respect to all services to be performed hereunder. It is understood and agreed that nothing contained in this Agreement or the performance hereof shall be construed as creating any employment relationship whatsoever between MBFI and Commercial Real Estate Services and Management Firm of its agents and employees Commercial Real Estate Services and Management Firm agrees to handle the payroll for its employees, withhold from the wages and salaries and make all tax filings and payments with respect to such employees as is required by law.

Section 8.10 Construction. As used herein, all reference made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made respectively in the plural or singular number as well; (c) to any Articles, Sections, Subsections, Paragraph or Subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Article, Section, Subsection, Paragraph or Subparagraph of this Agreement.

Section 8.11 Force Majeure. The obligations of the parties hereunder shall be subject to force majeure (which shall include lawful strikes, riots, floods, accidents, Acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse) for nonperformance of such obligations.

Section 8.12 Taxes and Assessments. Commercial Real Estate Services and Management Firm agrees that it will be responsible as a Reimbursable Expense for the payment of any leasehold taxes or other legal taxes, charges or assessments imposed by virtue of the MBFI's occupancy of the Roanoke City Market Building.

Section 8.13 Compliance with Laws. Commercial Real Estate Services and Management Firm agrees to conform to and not to violate laws, ordinance, rules, regulations and requirements of federal, state, county, municipal, or other governmental authorities and the various

departments thereof now existing or hereinafter created affecting Commercial Real Estate Services and Management Firm's use and occupancy of the Roanoke City Market Building.

Section 8.14 Fixtures. All fixtures, equipment, improvements, and appurtenances permanently located or built into the Roanoke City Market Building, whether or not by or at the expense of Commercial Real Estate Services and Management Firm, and any personal property of MBFI or installed by MBFI in the Roanoke City Market Building shall be and remain a part of the Roanoke City Market Building and shall be deemed property of MBFI and shall not be removed by Commercial Real Estate Services and Management Firm.

All moveable partitions, other business and trade fixtures, furnishings, furniture, machinery and equipment, communications equipment, and other personal property located in the Roanoke City Market Building and acquired by or for the account of Commercial Real Estate Services and Management Firm without expense to MBFI may be removed by Commercial Real Estate Services and Management Firm at any time during the term hereof, provided that Commercial Real Estate Services and Management Firm shall repair any damages to the Roanoke City Market Building resulting from such removal to the reasonable satisfaction of MBFI.

Section 8.15 Non-discrimination. During the performance of this contract, Commercial Real Estate Services and Management Firm agrees as follows:

Commercial Real Estate Services and Management Firm will not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. Commercial Real Estate Services and Management Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Commercial Real Estate Services and Management Firm, in all solicitations or advertisements for employees placed by or on behalf of Commercial Real Estate Services and Management Firm, will state such Commercial Real Estate Services and Management Firm is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

Commercial Real Estate Services and Management Firm will include the provisions of this Section 8.16, in every subcontract or sublease or purchase order for construction at the Roanoke City Market Building of over ten thousand dollars (\$10,000), so that the provisions will be binding upon each subcontractor, sublessee or vendor. Any inadvertent failure by Commercial Real Estate Services and Management Firm to comply with the terms of this Paragraph shall not be grounds for terminating this Agreement.

Section 8.16 Drug-Free Workplace To Be Maintained By Commercial Real Estate Services and Management Firm.

Commercial Real Estate Services and Facilities Management Firm shall: (i) provide a drug-free workplace for Commercial Real Estate Services and Management Firm's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Commercial Real Estate Services and Facilities Management Firm's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Commercial Real Estate Services and Facilities Management Firm that Commercial Real Estate Services and Facilities Management Firm maintains a drug-free workplace; and (iv) include the provision of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purpose of this subsection, "drug-free workplace" means a site for the performance of work done in connection with this contract.

For the purpose of this section "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Section 8.17 Covenants and Conditions. Each provision of this Agreement shall be deemed to be both a covenant and a condition running with the land unless otherwise provided.

Section 8.18 Conveyances. If MBFI sells, conveys or passes title to the Roanoke City Market Building, Commercial Real Estate Services and Facilities Management Firm shall be bound by the terms and conditions herein to the new MBFI of the Roanoke City Market Building and the new MBFI shall take title subject to this Agreement.

Section 8.19 Severability. If any clause or provision of this Agreement is or becomes illegal or unenforceable because of present or future laws or rules or regulations of any governmental body or entity, effective during the term of this Agreement, the intention of the parties hereto is that the remaining part of this Agreement shall not be effected thereby unless such clause or provision is, in the reasonable determination of both Commercial Real Estate Services and Facilities Management Firm and MBFI, essential and material to their respective rights, in which event either party shall have the right to terminate this Agreement upon thirty (30) days' written notice to the other party.

Section 8.20 Waiver of Subrogation. Each of the parties to this Agreement hereby waives all causes of action and rights of recovery against the other party, and their respective heirs, administrators, successors, officers, employees, agents and assigns for any loss or damage occurring to the Roanoke City Market Building, or the improvements, fixtures, merchandise and personal property of every kind located in and about the Roanoke City Market Building resulting from any perils covered by insurance regardless of cause or origin, including the negligence of either party, their respective heirs, administrators, successors, officers, employees, agents and assigns to the extent of any recover under a policy or policies of insurance. To the extent necessary to effect the foregoing waiver of subrogation, each of the parties agrees to obtain from their respective insurance carriers endorsements to such policies of insurance waiving the right of subrogation of the insurance carrier.

Section 8.21 Entire Agreement. This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior negotiations, statements, instructions, correspondence, communications, representations, warranties or agreements either written or oral.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

ATTEST:

MARKET BUILDING FOUNDATION,
INC.

By: _____

ATTEST:

By: _____

COMMONWEALTH OF VIRGINIA

CITY OF ROANOKE

The foregoing instrument was acknowledged before me this ___ day of _____, 20 __,
by _____, _____, on
behalf of _____.

My Commission Expires:

Notary Public

COMMONWEALTH OF VIRGINIA

CITY OF ROANOKE

The foregoing instrument was acknowledged before me this ___ day of _____, 20 __,
by _____, _____, on
behalf of _____.

My Commission Expires:

Notary Public