

# City of Palm Coast, Florida

## Agenda Item

Agenda Date: 10/12/2021

<b>Department</b>	PLANNING	<b>Amount</b>
<b>Item Key</b>	12184	<b>Account</b>
		<b>#</b>
<b>Subject</b>	RESOLUTION 2021-XX APPROVING A RECAPTURE ENHANCED VALUE GRANT AGREEMENT WITH GROUND UP, INC.	
<b>Presenter:</b>	Jason DeLorenzo	
<b>Background:</b>	<p>Council Priority: B4 - Economic Development: Create a business recruitment program and <b>develop incentives through in-house resources.</b></p> <p>Founded in 1990, Ground Up, Inc. SS396.com has grown from a small operation selling tough to find parts at swap meets to the largest restoration supply house in the Northeast! The first Ground Up, Inc. warehouse, at just 500 sq. ft. was located in Long Island, NY. After expanding several times in New York, Ground Up, Inc. made the move to Connecticut in 2004 to improve our product line and available services. Ground Up, Inc. quickly outgrew that warehouse and just a few years later, the operation moved to a 40,000 sq. ft. distribution center and showroom in Naugatuck, CT in 2010.</p> <p>Ground Up, is now relocating their entire operation to Palm Coast to allow the company to expand into over 70,000 sq. ft. and requested an economic development incentive.</p> <p>A Recapture Enhanced Value Grant is a modern, performance based, incentive agreement utilized by the cities of Jacksonville and Lakeland where a portion of ad-valorem property taxes paid by the company are granted back for certain allowable expenses.</p> <p>The proposed Recapture Enhanced Value Grant Agreement with Ground Up, Inc. includes the following commitments by Ground Up, Inc. and the City and a list of allowable uses of grant funds:</p> <p><b><u>SECTION 3. COMMITMENT BY GROUND UP, INC.</u></b></p> <ul style="list-style-type: none"> <li>(a) Ground Up, Inc. agrees that during the term of this Agreement, the City of Palm Coast, Florida shall serve as the primary location of Ground Up, Inc.</li> <li>(b) Ground Up, Inc. agrees to maintain a minimum of twenty-five (25) jobs at the City of Palm Coast location.</li> <li>(c) Before March 31<sup>st</sup> of each year of this Agreement, Ground Up, Inc. agrees to provide the City with an annual report of grant related activities including but not limited to the following: <ul style="list-style-type: none"> <li>a. Current employee count</li> </ul> </li> </ul>	

- b. Anticipated change in employment for current year
  - c. Grant related activities and expenses completed in the past year
  - d. Grant related activities planned for the current year
- (d) Ground Up, Inc. agrees to expend all grant funds provided annually per Section 5 of this agreement.

**SECTION 4. COMMITMENTS BY CITY.**

- (a) Annually after a satisfactory grant compliance review by the City Manager or designee, and for a period not to exceed five (5) consecutive years, the City shall provide a grant equal to 75% of the City portion of ad-valorem property taxes paid by Ground Up, Inc. the previous year.

**SECTION 5. ALLOWABLE USES OF GRANT FUNDS.**

- (a) To ensure recapture of grant funds the following expenses are allowed:
- a. Facility reinvestment which increases the taxable value
  - b. Host at least one regionally advertised car show
  - c. Support Flagler County Schools
    - i. Sponsor STEM programs
    - ii. Invest in Career & Technical Education (CTE) programs
  - d. Support and promote traffic safety programs
  - e. Sponsor or participate in a City event

**Recommended Action:**

ADOPT RESOLUTION 2021-XX APPROVING A RECAPTURE ENHANCED VALUE GRANT AGREEMENT WITH GROUND UP, INC.

# Recapture Enhanced Value Grant

Ground Up, Inc Relocation

---

*Community Development Department*





# Council Priority Business Friendly # 4 (B4)

B4: Economic Development - Create a business recruitment program and develop incentives through in-house resources.

- Initial research included discussion with The Southern Group, our lobbying firm, on what strategies other communities are using
- The Recapture Enhanced Value Grant (REV Grant) was identified as being successfully utilized by the Cities of Jacksonville and Lakeland
- Currently approved REV Grants in Jacksonville are expected to produce 535 jobs at a cost of \$7.5M



# REV Grant Structure

- Provides a minimum job floor for eligibility
- Monitored annually for compliance before being paid
- A grant made back to the company from property taxes they have already paid
- May only be used for eligible expenses designed to be recaptured by the community
- Negotiated case by case based on anticipated economic impact and tailored to the recipient



# An American Success Story



- E-Commerce distribution of GM Muscle Car Parts
- Founded in 1990 in Long Island, NY
- Started in 500 sq. ft. facility expanding several times into larger locations
- In 2004 moved to large facility in Connecticut
- In 2010 expanded operations to 40,000 sq. ft.
- In 2021 relocating headquarters to 70,000 sq. ft. in Palm Coast



# Ground Up, Inc.

- Experienced more than 10% growth for last two years
- Invested over \$4,000,000 in the purchase and renovation of 2 Commerce Blvd.
- Plan to be operational in November - December
- Currently hiring
- Anticipate starting with approximately 30 employees
- Have plans for future expansion of the facility



## Ground Up, Inc. Southeast

2 Commerce Blvd  
Palm Coast, FL 32164

[See Open Positions](#)



# REV Grant Agreement Commitments

Ground Up, Inc.	City of Palm Coast
Shall maintain its primary location within the City of Palm Coast	The City will provide a grant equal to 75% of the amount of the City portion of ad-valorem property taxes paid by the company
Shall maintain a minimum of twenty-five (25) jobs at the City of Palm Coast location.	For a 5 years starting in March 2022, distributed annually following a grant compliance review
Shall provide the City with an annual report of grant related activities including but not limited to the following: Current employee count, anticipated change in employment for current year, grant related activities and expenses completed in the past year, and grant related activities planned for the current year	
May only expend grant funds on expenses allowed in this agreement	





# REV Grant Agreement Commitments

Allowable expenses of grant funds:

- Facility reinvestment which increases the taxable value
- Host at least one regionally advertised car show
- Support Flagler County Schools
  - Sponsor STEM programs
  - Invest in Career & Technical Education (CTE) programs
- Support and promote traffic safety programs
- Sponsor or participate in a City event



# REV Grant Agreement

Anticipated cost of the grant:

- The City portion of 2021 ad-valorem property taxes = \$12,912
- $\$12,912 \times .75 = \$9,684$  (amount of 2022 grant)
- 5 year estimated at \$50,000 – \$60,000

# Council Action Requested

- Approve the Recapture Enhanced Value Grant Agreement with Ground Up, Inc.



# THANK YOU

Questions?



**RESOLUTION 2021-\_\_\_\_**  
**RECAPTURE ENHANCED VALUE GRANT**  
**GROUND UP, INC.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE RECAPTURE ENHANCED VALUE GRANT AGREEMENT WITH GROUND UP, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Ground Up, Inc., a Connecticut based company founded in 1990, desires to move its entire operation to Palm Coast; and

**WHEREAS**, Ground Up, Inc. currently employs thirty-five (35) full time employees and is experiencing significant growth; and

**WHEREAS**, Ground Up, Inc.'s move to Palm Coast includes a \$4,000,000 investment to expand into a larger facility and will allow them to continue growing; and

**WHEREAS**, the City desires to provide Ground Up, Inc., a Recapture Enhanced Value Grant (REV Grant) in furtherance of the municipal purpose of attracting a major employer within the City and expanding economic activity within its jurisdictional boundaries under section 166.021, Florida Statutes; and

**WHEREAS**, the City finds REV Grants as a way to incentivize economic development while recapturing the dollars as they are intended to promote investment in the community; and

**WHEREAS**, the parties recognize this Agreement is necessary to ensure that the REV Grant provided by the City to Ground Up, Inc. ultimately serve their intended municipal purpose; and

**WHEREAS**, the City has established terms and conditions herein whereby Ground Up, Inc. by complying with these terms and conditions, can receive the benefit outlined in this Agreement, while the City can fulfill the City's desire to support employers which will create jobs and significantly enhance the prospects of local economic development; and

**WHEREAS**, the parties agree that the grant provided by the City hereunder are for the benefit of the public health, safety, welfare and convenience of the citizens of the City of Palm Coast, Florida and the County; and

**WHEREAS**, the City Council finds and declares that this Agreement serves a public purpose, which includes promotion of economic development, job growth, and the future expansion of the City's tax base.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:**

**SECTION 1. RECITALS.** The foregoing recitals are deemed to be true and accurate and are fully incorporated herein by reference

**SECTION 2. APPROVAL OF REV GRANT** The City of Palm Coast City Council hereby approves the terms and conditions of a Recapture Enhanced Value Grant (REV Grant) with Ground Up, Inc., as attached hereto and incorporated herein by reference as Exhibit "A."

**SECTION 2. AUTHORIZATION TO EXECUTE.** The City Council of the City of Palm Coast hereby authorizes the City Manager to execute the necessary documents relating to the REV Grant with Ground Up, Inc., as attached hereto as Exhibit "A."

**SECTION 3. SEVERABILITY.** If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

**SECTION 4. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 5. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the actions taken in this Resolution.

**SECTION 6. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption by the City Council.

**DULY PASSED AND ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 19th day of October 2021.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
DAVID ALFIN, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
WILLIAM E. REISCHMANN, JR., ESQ.  
CITY ATTORNEY

Attachment: Exhibit A-REV Grant with Ground Up, Inc.

**RECAPTURE ENHANCED VALUE GRANT  
GROUND UP, INC.**

**THIS RECAPTURE ENHANCED VALUE GRANT AGREEMENT (“Agreement”)** is made and entered into this \_\_\_\_ day of \_\_\_\_, 2021, by and between the **CITY OF PALM COAST, FLORIDA**, a municipal corporation (“CITY”), whose address is 160 Lake Ave, Palm Coast, FL 32164 and **GROUND UP, INC.**, a corporation, (GROUND UP) whose address is 2 Commerce Drive, Palm Coast, FL 32164.

**WHEREAS**, Ground Up, Inc., a Connecticut based company founded in 1990, desires to move its entire operation to Palm Coast; and

**WHEREAS**, Ground Up, Inc. currently employs thirty-five (35) full time employees and is experiencing significant growth; and

**WHEREAS**, Ground Up, Inc.’s move to Palm Coast includes a \$4,000,000 investment to expand into a larger facility and will allow them to continue growing; and

**WHEREAS**, the City desires to provide Ground Up, Inc., a Recapture Enhanced Value Grant (REV Grant) in furtherance of the municipal purpose of attracting a major employer within the City and expanding economic activity within its jurisdictional boundaries under section 166.021, Florida Statutes; and

**WHEREAS**, the City finds REV Grants as a way to incentivize economic development while recapturing the dollars as they are intended to promote investment in the community; and

**WHEREAS**, the parties recognize this Agreement is necessary to ensure that the REV Grant provided by the City to Ground Up, Inc. ultimately serve their intended municipal purpose; and

**WHEREAS**, the City has established terms and conditions herein whereby Ground Up, Inc., by complying with these terms and conditions, can receive the benefit outlined in this Agreement, while the City can fulfill the City’s desire to support employers which will create jobs and significantly enhance the prospects of local economic development; and



**WHEREAS**, the parties agree that the grant provided by the City hereunder is for the benefit of the public health, safety, welfare and convenience of the citizens of the City of Palm Coast, Florida and Flagler County; and

**WHEREAS**, the City Council finds and declares that this Agreement serves a public purpose, which includes promotion of economic development, job growth, and the future expansion of the City's tax base.

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein, and other good and valuable consideration which the parties agree has been exchanged and received the parties agree as follows:

**SECTION 1. RECITALS.**

The foregoing recitals are deemed to be true and accurate and are fully incorporated herein by reference.

**SECTION 2. DEFINITIONS.**

For the purpose of this agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

- (a) "County" shall mean Flagler County, Florida
- (b) "Effective Date" shall be the date on which the last signatory hereto shall execute the Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not be effective until said date.
- (c) "Jobs" shall have the meaning given to such terms in Section 288.106(2)(i), Florida Statutes.

**SECTION 3. COMMITMENT BY GROUND UP, INC.**

- (a) Ground Up, Inc. agrees that during the term of this Agreement, the City of Palm Coast, Florida shall serve as the primary location of Ground Up, Inc.

- (b) Ground Up, Inc. agrees to maintain a minimum of twenty-five (25) jobs at the City of Palm Coast location.
- (c) Before March 31<sup>st</sup> of each year of this Agreement, Ground Up, Inc. agrees to provide the City with an annual report of grant related activities including but not limited to the following:
  - a. Current employee count
  - b. Anticipated change in employment for current year
  - c. Grant related activities and expenses completed in the past year
  - d. Grant related activities planned for the current year
- (d) Ground Up, Inc. agrees to expend all grant funds provided annually per Section 5 of this agreement.

#### **SECTION 4. COMMITMENTS BY CITY.**

Annually after a satisfactory grant compliance review by the City Manager or designee, and for a period not to exceed five (5) consecutive years, the City shall provide a grant equal to 75% of the City portion of ad-valorem property taxes paid by Ground Up, Inc. the previous year.

#### **SECTION 5. ALLOWABLE USES OF GRANT FUNDS.**

To ensure recapture of grant funds, the following expenses are allowed:

- a. Facility reinvestment which increases the taxable value
- b. Host at least one regionally advertised car show
- c. Support Flagler County Schools
  - i. Sponsor STEM programs
  - ii. Invest in Career & Technical Education (CTE) programs
- d. Support and promote traffic safety programs
- e. Sponsor or participate in a City event

**SECTION 6. COMPLIANCE WITH LAWS.** Ground Up, Inc. shall be responsible for complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority regarding the location and continued operation of its business within the City of Palm Coast.

## **SECTION 7. WORK IS A PRIVATE UNDERTAKING.**

Regarding Ground Up, Inc.'s business operations and compliance with applicable laws, ordinances, rules, and regulations, it is specifically understood and agreed upon by and between the parties hereto, that the contractual relationship between the City and Ground Up, Inc. is such that Ground Up, Inc. is an independent contractor and not an agent of the City. Ground Up, Inc. and its contractors, partners, agents, and employees are independent contractors and not employees of the City. Nothing in this Agreement shall be interpreted to establish any relationship, other than that of independent contractor, between the City, and Ground Up, Inc., and its contractors, partners, employees, or agents, under this Agreement.

## **SECTION 8. COMPLIANCE MONITORING.**

Ground Up, Inc. shall be responsible for complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority regarding location and continued operation of its business within the City of Palm Coast.

## **SECTION 9. AUDIT AND INSPECTION; JOB COMPLIANCE CHECK.**

Ground Up, Inc. agrees that any records with respect to Ground Up, Inc.'s obligations to the City under this Agreement shall be made available to the City, at any time during normal business hours upon seventy-two (72) hours written notice to Ground Up, Inc., no more than once every calendar year, to audit, examine, and make excerpt or transcripts of all data relevant to confirming Ground Up, Inc.'s compliance with the Agreement. Any audit shall be conducted to Government Auditing Standards, or Generally Acceptable Auditing Standards, as applicable at the time of the audit. Notwithstanding the foregoing, (1) Ground Up, Inc. shall not be required to make available any documents or information that (i) are attorney/client privileged, (ii) constitute a trade secret under the Uniform Trade Secret Act or Florida's Public Records Laws, and (iii) which are determined exempt from disclosure under Florida's Public Records Laws; and (2) with respect to any information regarding the amount of employee wages for specific jobs, the City shall (a) treat such information as confidential if exempt under Florida's Public Records Laws, (b) not release such information to a third party if exempt under Florida's Public Records Laws, (c) not take any notes with respect to the information reviewed, and (d) not make any copies of any of the information reviewed. Any deficiencies noted in audit reports prepared by the City must be fully cleared by Ground Up, Inc. within thirty (30) days after notice of said deficiencies is received by

Ground Up, Inc. The City shall also conduct a written annual compliance check of the number of employees employed by Ground Up, Inc. on each March of this Agreement. Subject to restrictions set forth in this Paragraph, Ground Up, Inc. shall fully cooperate with the City by providing access to appropriate payroll documentation to verify the total number of employees and whether such employees are part-time or full-time. Failure of Ground Up, Inc. to reasonably comply with the above audit requirements will constitute a material breach of this Agreement, and may result, at the sole discretion of the City, in the withholding of future grant disbursements and termination of this Agreement. Notwithstanding the foregoing, the Parties agree to submit any dispute under this Paragraph to nonbinding mediation before the City's exercise of its rights hereunder for alleged violation by Ground Up, Inc.

#### **SECTION 10. PROMOTION OF ECONOMIC INCENTIVES.**

Either party may issue press releases, public announcements, advertisements, or other form of publicity concerning its efforts in connection with this Agreement. However, unless otherwise agreed, the party publicizing its efforts shall provide a courtesy copy of any written material to the other party for review and comments prior to publication.

#### **SECTION 11. SEVRABILITY.**

Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid, or enforceable by any paragraph of this agreement to render, void, invalid, or enforceable any other paragraph or any part of any paragraph in this Agreement.

#### **SECTION 12. INTEGRATION; MODIFICATION; EXHIBITS.**

The drafting, execution, and delivery of this Agreement by parties has not been induced by any representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the parties, and there are to be no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof unless expressly referred to herein. Modifications of this Agreement shall only be made in writing signed by both parties. Any exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except if there is conflict between an exhibit

and provisions of this Agreement, the provisions of this Agreement shall prevail over the exhibit.

**SECTION 13. ATTORNEY'S FEES.**

Unless otherwise provided herein, each party agrees to bear their own attorney's fees and cost in furtherance of this Agreement.

**SECTION 14. HEADINGS.**

All headings in this Agreement are for convenience only and shall not be used to interoperate or construe its provisions.

**SECTION 15. WAIVER.**

No failure to insist on the prompt performance by Ground Up, Inc. of its Obligations under this Agreement shall be construed as a waiver of the City of its rights to demand performance. Further, any waiver by the City of any breach or violation of Ground Up, Inc.'s Obligations under this Agreement shall not be construed as continuing waiver or consent to any subsequent breach or violation or impede the City's ability to enforce the terms of this Agreement.

**SECTION 16. NOTICES.**

All notices required or permitted under this Agreement and any written consents or approvals required hereunder shall be in writing. (including electronic communication) and shall be (as elected by the person giving such notice) hand-delivered by messenger or overnight courier service, electronic communication, or mailed by registered or certified mail (postage pre-paid), returned receipt requested, and addresses to each party at their respective addresses as set forth below or to such other addresses any party may designate by notice complying with the terms of this Paragraph.

Attn: City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast FL 32164

With copy to:  
Anthony A. Garganese, Esquire  
Garganese, Weiss & D'Agresta, PA  
PO Box 2873  
Orlando, FL 32802-2873

With copy to:  
Kenneth Santoro  
Ground Up, Inc.  
2 Commerce Drive  
Palm Coast, FL 32164

Such notice, request, or other communication shall be considered given and deemed delivered: (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by electronic communication if transmitted prior to 5:00 pm on a business day, and on the next business day if transmitted after 5:00 pm or on a non-business day, provided that a copy of the notice is provided within two (2) business days thereafter by one of the other methods permitted in this Paragraph: or (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

**SECTION 17. TERM; TERMINATION; TERMINATION OF PARTIES.**

(a) Unless sooner terminated by the City or Ground Up, Inc. under this Agreement or terminated by mutual consent, the Agreement shall terminate on March 31, 2026. The City may terminate the Agreement, without penalty and further obligation to perform under this Agreement, in the event of a material breach of any provision of this Agreement by Ground Up, Inc., which shall include, but not be limited to, failing to fulfill any of its obligations under Section 3. The City may also terminate this Agreement if: (i) Ground Up, Inc. is declared bankrupt or insolvent; (ii) Ground Up, Inc. adopts a plan or resolution of liquidation of Ground Up, Inc. or substantially sells all assets; (iii) Ground Up, Inc. engages in fraud or misleading compliance reporting against the City; or (iv) a receiver or trustee is appointed on behalf of Ground Up, Inc. for purposes of taking control of substantially all of Ground Up, Inc.'s assets within the City of Palm Coast, Florida or the said assets are judicially seized for any reasons, and possession of said assets are not released to Ground Up, Inc. within ninety (90) days. Upon termination by the City, the City shall be entitled to recover a refund of any grant monies paid by the City pursuant to Section 4, including the recovery of reasonable attorney's fees and costs incurred in collecting said monies through

all appellate proceedings. Ground Up, Inc may terminate the Agreement in the event of a material breach of any provision of this Agreement by the City which shall include, but not be limited to, failing to fulfill any of its legal obligations under Section 4. Prior to exercising its right terminate this Agreement, the terminating party shall provide the other party with written notice of termination setting forth the reason for termination (“Default”) and at least a thirty (30) day opportunity to cure the Default. In the event of terminations under this Paragraph by Ground Up, Inc., Ground Up Inc. shall have all remedies available at law, including, without limitation, the right to sue for damages. However, any damages claimed or awarded to Ground Up, Inc. under this Agreement shall not exceed the total monetary value of the grant required to be paid by the City pursuant to Section 4 of this agreement.

**SECTION 18. INDEMNIFICATION AND HOLD HARMLESS.**

- (a) Ground Up, Inc. assumes any and all risk of personal injury and property damage to the extent attributable to the intentional and negligent acts or omissions of Ground Up, Inc. and its officers, employees, servant, and agent thereof while acting within the scope of their employment with Ground Up, Inc. and performing Ground Up, Inc.’s requirements and obligations under the terms and conditions set forth in this Agreement. The City assumes any and all risks of personal injury of property damage to the extent attributable to the intentional and negligent acts or omissions of the City. and it’s officers and employees thereof while acting within the scope of their employment with the City. and performing the City’s requirements and obligations under the terms and conditions set forth in this Agreement. Subject to the terms and conditions of this Agreement, Ground Up, Inc. and the City further agree that nothing contained herein shall be construed or interpreted as (1) denying either party any remedy or defense available to such party under the laws of the State of Florida; or (2) a waiver of sovereign immunity of the City beyond the waiver provided in Section 768.28, Florida Statutes. The limits of liability on the City set forth in Section 768.28, Florida Statutes are hereby fully incorporated herein by this reference. This paragraph shall survive termination of this Agreement.

- (b) The obligations arising under this Section 18.0 shall survive the expiration or termination of this Agreement, as to claims or causes of actions, liabilities, expenses, losses, costs, reasonable attorney's fees, damages, fines and penalties for every kind and character or incurred or suffered by the City as a result thereof, based upon an event arising prior to the date of termination of this Agreement.

#### **SECTION 19. ASSIGNMENT**

This Agreement and the Grant provided hereunder shall not be assigned by Ground Up, Inc. without prior written consent of the City.

#### **SECTION 20. NO CITY OBLIGATION FOR FUTURE FUNDS.**

No provisions in this Agreement shall be constructed as requiring the City to provide additional grants of any kind, other than specifically provided herein.

#### **SECTION 21. CONFLICT OF INTEREST.**

Ground Up, Inc. represents and warrants, and this Agreement is being made by the City in reliance thereon, that Ground Up, Inc. and its officers, employees, and agents are neither officers nor employees of the City. Further, Ground Up Inc. represents and warrants that no consideration of any kind is being paid, transferred, or conveyed directly to any City officer or employee, or indirectly to any City officer or employee through some other third party included a relative or legal entity, for the City's commitment to enter into this Agreement.

#### **SECTION 22. REPRESENTATIONS OF GROUND UP, INC.**

Ground Up, Inc. represents to the City that (i) Ground Up, Inc. is an entity organized in the State of Connecticut and duly authorized to conduct business in Florida; (ii) Ground Up, Inc. has the authority to enter into the Agreement and perform the requirements of this Agreement; (iii) to Ground Up, Inc.'s best knowledge, Ground Up, Inc.'s performance under this Agreement shall not violate any applicable judgement, order, law or regulations; (iv) to Ground Up, Inc.'s best knowledge, Ground Up, Inc.'s performance under this Agreement shall not result in the creation of any claims against the City for money or performance, or any lien, charge, encumbrance or security interest upon any asset of the City; (v) Ground Up, Inc. shall have sufficient capital to perform its obligations under this Agreement; and



(vi) Ground Up, Inc. does not require any third party consent to execute, deliver and perform its obligations under this Agreement unless otherwise stated in this Agreement.

**SECTION 23. GROUND UP, INC.'S CONTINUING DISCLOSURE REQUIREMENT.**

Ground Up, Inc. must promptly notify the City of any developments that materially and adversely impacts this Agreement and Ground Up, Inc.'s obligations stated herein including but not limited to, compliance with all applicable laws, rules, and regulations pertaining to clean air permits, initiation of any law suits or bankruptcy proceedings, sale or conveyance of real property, labor, disputes, and changes in business operations.

**SECTION 24. NO DELEGATION OF POLICE POWER.**

Ground Up, Inc. shall not pledge the credit of the City nor make the City a guarantor of payment of surety for any contract, debt, or obligation, judgment, lien or any indebtedness. The Parties agree this Agreement does not nor shall it be construed as delegation of any of the City's authority or police powers to Ground Up, Inc.

**IN WITNESS THEREOF**, this Agreement is entered into as of the day and year the last party signs this Agreement as stated below.

*ATTEST:*

***CITY OF PALM COAST,***

\_\_\_\_\_  
Virginia A. Smith, City Clerk

\_\_\_\_\_  
BY: David Alfin, Mayor

*APPROVED AS TO FORM AND LEGALITY:*

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.

*WITNESSES:*

***GROUND UP, INC.***

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
*BY:*

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
*DATE:*