

To: Honorable Mayor Jim Strickland

From: Tim Boyles, Purchasing Agent *TJB*

Date: September 1, 2020



Subject: Contract # 37430 - APPLING FARMS DISTRIplex, LLC

Please find attached the above referenced contract for the Mayor's signature. This document does not require City Council approval.

Purpose: FY21 Lease Agreement for Covid -19 Testing Site@ 2355 Appling Cove, Memphis TN 38133. Term: 9/1/20 To 12-31-20 Four (4) months with option to extend month to month. Rent Amount: \$15,000.00 payable in four (4) equal monthly payments.

Type: New

Type Amount: \$

Financial Commitment: The total cost for this agreement is \$50,000.00.

M/WBE Participation Goal: 0.00%

M/WBE Participation Commitment: 0.00%

SBE-Only Bid: No

Contracting Authority: By Home Rule Amendment 1852, Section 14, BE IT FURTHER ORDAINED, That the power to contract (other than by franchise agreements) shall remain with the Mayor.

After approval, please return all documents to the Purchasing Department for further processing.

Should you have any questions, please advise.

Attachment

10



PURCHASING
CONTRACT CHECK-OFF SHEET
 (To be attached to each file)

FY 20

Division GS
 Requisition No. _____
 Request for Quote No. _____
 Purchase Order No. 37430
 Initials/Date LS 8/28/20

NEGOTIATED CONTRACT

For Lease Agreement
with Appling Farms.

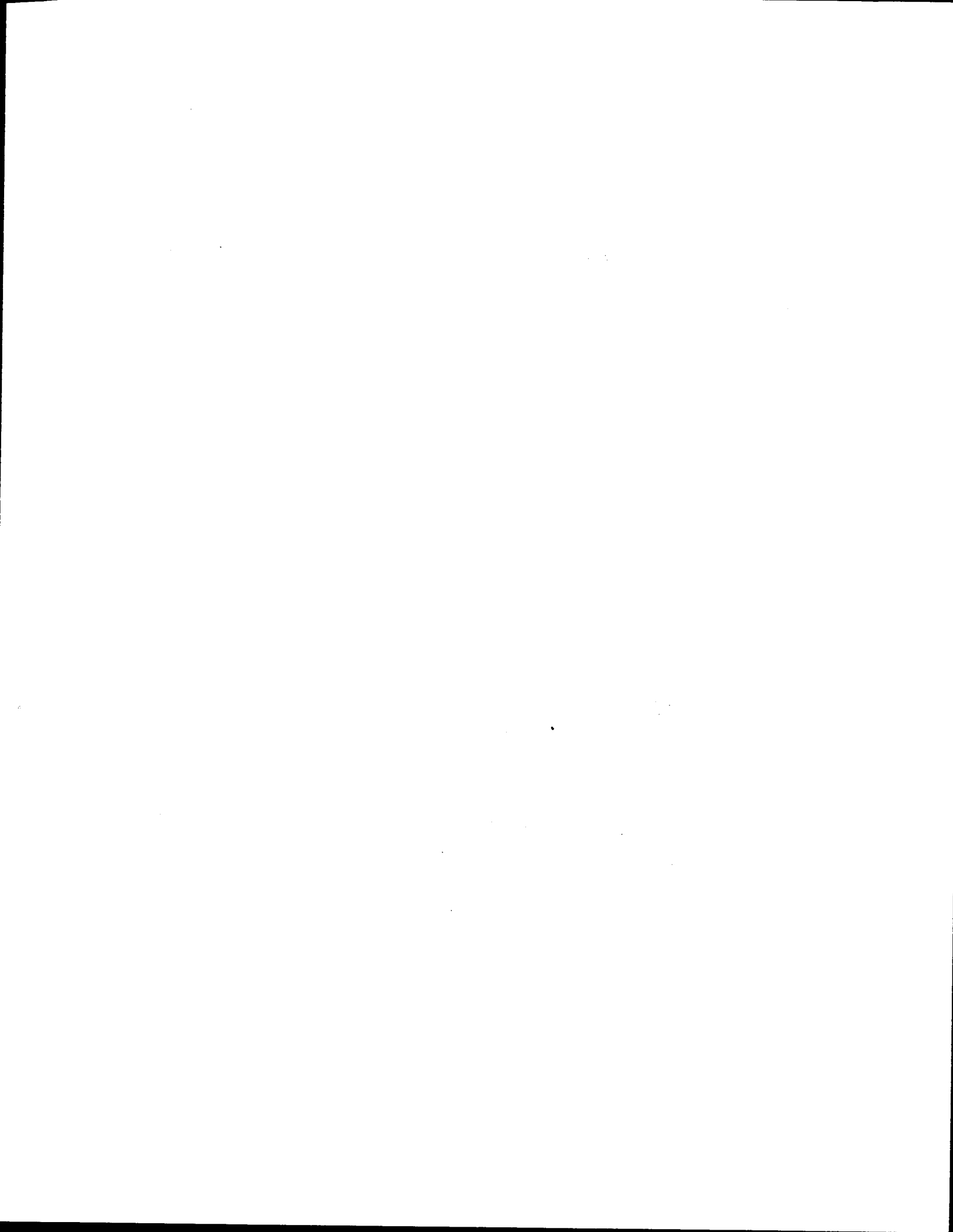
Appling Farms Distriplex, LLC

NEGOTIATED CONTRACTS	YES	NO	N/A
RFP Required			✓
Scoring criteria attached			✓
Does Purchasing have original proposals			✓
Check award recommendation information			✓
Check scope of services	✓		
Check term of contract/extension clauses	✓		
Check and enter Not To Exceed Amount	✓		
Check contract amount	✓		
Check source of funds/POETA	✓		
Check insurance requirements	✓		
Have you received tax exempt ruling letter from IRS or Memphis Shelby County Business Tax Receipt/License			
Copy of License & Establish Date - Shelby County 222-3059			
Check signatures	✓		
Copy of insurance/endorsement to clerk			N/A

Term: Sept 1, 20 To Dec 31, 2020
(4) months with option to extend month to month.

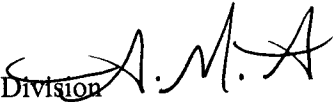
Compensation: \$ Rental Amount \$15,000.00 payable in (4) equal
monthly payments.

Encumbrance \$ 50,000.00



Memo

TO: Jim Strickland, Mayor

FROM: Antonio M. Adams, Sr. Esq
Director – General Services Division 

VIA: Doug McGowen, Chief Operations Officer

DATE: August 21, 2020, 2020

SUBJECT: Lease Agreement for Covid-19 Testing Site

Reviewed by OBDC

Approved by OBDC

Jim
8/26/2020

Date

Brief / Memo

1. Statement of Opportunity

Lease Agreement with Appling Farms Distriplex, LLC (AFD)

2. Prior General Services Action

The City of Memphis desires to enter into a rental agreement with Appling Farms Distriplex, LLC (AFD) for use of premises at 2355 Appling City Cove, Memphis, TN 38133, to be used as a drive thru Covid-19 testing site. The agreement is for four (4) months, with the option to extend month to month. The rental amount is fixed at \$15,000.00, payable in four (4) equal monthly payments.

3. EBO Participation / Bid History

This project did not go before the Goal Setting Committee.

4. COO Action

The COO is requested to advise the Mayor to approve the Agreement.





Suppliers

- Quick Update
- Company Profile
 - Organization
 - Tax Details
 - Address Book
 - Contact Directory
 - **Business Classification**
 - Products & Services
 - Banking Details
 - Surveys
- Approval History
- Terms and Control
 - Accounting
 - Tax and Reporting
 - Purchasing
 - Receiving
 - Payment Details
 - Relationship
 - Invoice Management

Suppliers >

Update **APPLING FARMS DISTRIplex, LLC - 182359: Business Classification**

Cancel **Save**

Certification

Last Certified By

✓TIP Date format example: 28-Aug-2020

Classification	Minority Applicable Type	Certificate Number	Certifying Agency	Expiration Date	Status
MIPR Assisting Agency	<input type="checkbox"/>	i			
Minority Owned	<input type="checkbox"/>	i			
Service-disabled Veteran Owned	<input type="checkbox"/>	i			
Small Business	<input type="checkbox"/>	i			
Veteran Owned	<input type="checkbox"/>	i			
Women Owned	<input type="checkbox"/>	i			

Cancel **Save**





A NEW WAY TO SIGN IN - If you already have a SAM account, use your **SAM email** for login.gov.

[Log In](#)

[Login.gov FAQs](#)

- ⚠ ALERT: SBA connectivity is experiencing an outage. For questions about small business size status, users should return later or contact SBA directly (www.sba.gov).
- ⚠ ALERT: SAM.gov will be down for scheduled maintenance Saturday, 09/12/2020 from 8:00 AM to 1:00 PM.

Search Results

Current Search Terms: **APPLING FARMS DISTRIPLEX, LLC***

Total records:0

[Save PDF](#) [Export Results](#)

Result Page:

Sort by Order by

Your search for APPLING FARMS DISTRIPLEX, LLC* returned the following results...

No records found.

Result Page:

[Save PDF](#) [Export Results](#)



IBM-P-20200814-1154
WWW8

[Search Records](#) [Disclaimers](#) [FAPIS.gov](#)
[Data Access](#) [Accessibility](#) [GSA.gov/IAE](#)
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Search Parameters

Edit Parameters

Clear Parameters

CERTIFICATIONS

Minority Business Enterprise (MBE)
Small Business Enterprise (SBE)
Women Business Enterprise (WBE)

BUSINESS NAME/DBA

APPLING FARMS DISTRIplex, LLC

Search Results

0 firms with 0 certifications found

Your search parameters did not return any matches. Click **Edit Parameters**, modify the information in the fields above and click **Search Again**.



City of Memphis  **BID AND CONTRACT AGENDA SHEET**

FY 21

Original
staples to

1. Division: General Services Date 8/20/2020
 Division Contact Person Carlton Osborne Phone # _____
 Print Name _____
 2. Contractor : Appling Farms Distriplex, LLC Address: 4728 Spottswood Avenue, Suite 207
 City/State/ Zip Code Memphis, TN 38117
 Contractor's Contact Name _____ Contractor's Email Address _____

3. BID REJECTION:
 For purchase/construction of 4 months rent for COVID-19 testing
 Explanation of rejection _____
 Request to Re-advertise _____

4. CONTRACT AWARD RECOMMENDATION: RFQ/RFP # _____ Vendor # _____
 Check Box: Low Best* Only Negotiated
 Contract Amount: \$ _____
 Purpose : _____
 Special Instructions: _____

*Justification for rejection of low bids attached. (Attach a copy of bid tabulation)
 5. CHANGE ORDER/AMENDMENT/ENCUMBRANCE/FINAL PAYMENT: Contract# 37430
 For: _____

Special Instructions: _____

6. Submit Invoices to:
 Dept. Contact Person _____ Address _____
 City/State/Zip Code _____

<input type="checkbox"/>	Extension	Original Contract Amount	_____	Final Payment Due:	\$ _____
<input type="checkbox"/>	Change Order	Previous C. O. Total	_____		
<input type="checkbox"/>	Cancel Contract	Prev. Amend./Encum. Toll.	_____	Retainage:	\$ _____
<input type="checkbox"/>	Transfer to PO	C. O. # _____	Attached _____		
<input type="checkbox"/>	Amendment	Encumbrance Amount	_____		
<input type="checkbox"/>	50,000.00 Encumber				
<input type="checkbox"/>	Unencumber	Adjusted Contract Amount	_____	\$0.00	

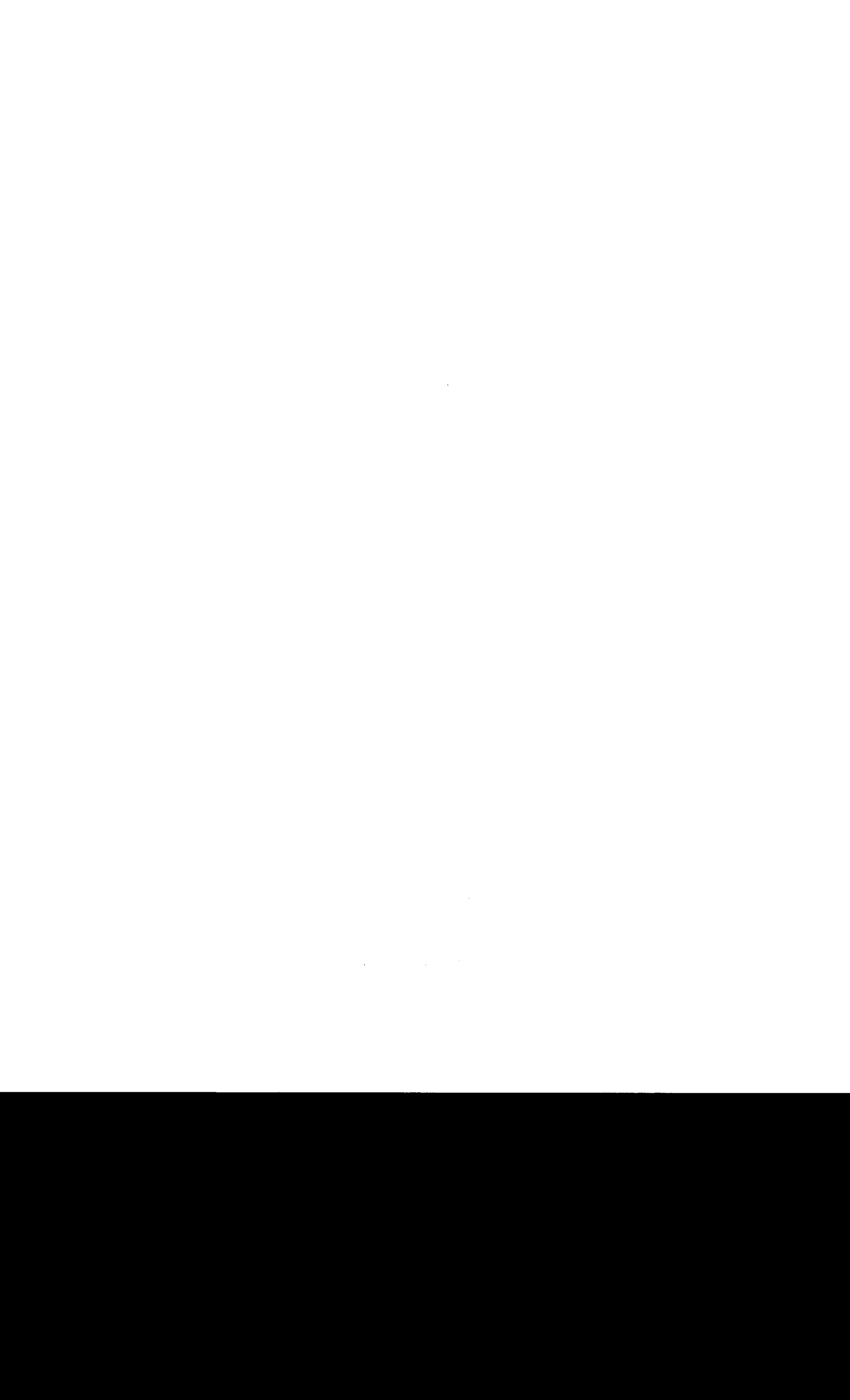
COST & SOURCE OF FUNDS

Type	Line #	Fund	Serv. Ctr	Account #	Project #	Task #	Award #	Amount
(1)	Rent	0400	109901		GR90085		13113	50,000.00
(2)								
(3)								
(4)								
(5)								
(6)								

Appropriating Resolution Attached. Other Attachments

CHECKED & APPROVED BY :
DKMajm 8/21/2020 Service Center Approval Date
[Signature] 8/26/2020 Director, CBDC Approval Date
[Signature] 8/20/2020 Division Director Date
[Signature] 8/17/2020 Chief Administrative Officer Date
L. Sherrod Contract Analyst-Print
Tom Boyles 9/1/2020 Purchasing Agent or CPO Date

FUNDING/PURCHASING APPROVAL:
 Funds are available.
 Funds to be appropriated/transferred.





City of Memphis Lease Agreement

2355 Appling Center Cove

(formerly Appling Inspection Station)

This Lease Agreement ("Lease") is made and entered into this 20 day of August 2020, by and between the City of Memphis, a Tennessee Municipality, (hereafter "City") and Appling Farm Distriplex, LLC, a Delaware limited liability company (hereinafter "AFD").

RECITALS

WHEREAS the City of Memphis desires to enter into a lease agreement with AFD for the use of the Premises to be used as a drive thru COVID-19 testing site; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereby agree as follows:

Section 1. Premises.

That certain real estate, together with improvements thereon, situated and being in the City of Memphis, Shelby County, Tennessee, which real estate is more particularly described on Exhibit A attached hereto. The municipal street address of the Premises is 2355 Appling City Cove, Memphis, TN 38133.

The City accepts the Premises, in its "As Is" condition. The City further agrees to surrender the Premises to AFD in the condition in which it was delivered, reasonable wear and tear excepted.

Section 2. Fixed Minimum Rent.

Subject to the terms and provisions of this Lease, during the Lease Term, the City shall pay to AFD Fixed Rent payable in equal monthly amounts of \$15,000.00.

Section 3. Permitted Use.

Any lawful uses, all of which are related to, in connection with, or in support of the City's business of drive thru COVID 19 testing for the citizens of the city of Memphis. The City will not use or occupy, or permit any portion of the Premises to be used or occupied violation of any law, ordinance, order, rule, regulation, certificate of occupancy, or other governmental requirement, now or after the date of this Lease affecting the Premises.



Section 4. Term and Termination.

4.01. The period of this Agreement shall be for a term of four (4) months from September 1, 2020 and shall end on December 31, 2020. AFD has extended the option to occupy the premises upon execution and prior to the commencement of the Lease at no extra charge. This Agreement may be extended on a month-to-month basis with 30-day notice and AFD's written approval for the same rent amount as stated above.

4.02. This Agreement shall be terminated upon the expiration of such Term.

Section 5. Operational Expenses & Repairs and Maintenance

5.01. Appling Farms Distriplex Responsibilities.

AFD covenants that it will, deliver the Premises with all systems and equipment in good working order and with reasonable dispatch after being notified by the City of the need therefor, make such repairs and replacements to the exterior and structural portions of the Premises (including, without limitation: the roof and all components thereof including roof decking, covering, and flashing (but excluding interior ceilings); foundations; interior load bearing walls and supporting columns, if any; structural portions of floors and floor slabs (excluding interior floor decking or covering); and outside walls (but excluding all glass, windows and doors) as may be necessary to keep the same in a good condition of repair, provided, however, that if such maintenance or repair is occasioned by the negligence or willful act of the City, or any of its agents, employees, invitees, or contractors, such repairs shall be made by AFD, but the cost of such repairs shall be charged to and promptly paid by the City, upon demand. Anything in the foregoing to the contrary notwithstanding, AFD shall have no liability whatsoever for damage or injury to persons or property occasioned by its failure to make any repair which AFD is obligated to make unless, within a reasonable time after being notified by the City of the need therefor, AFD shall have failed to make such repair and such failure shall not have been due to any cause beyond AFD's control, including without limitation strikes, riot, civil insurrection, war, epidemics, act of God or other casualty, and/or inability to obtain materials, equipment, or labor at commercially reasonable prices. In no event shall AFD be bound to make any repairs whatever, or be held liable for any damage to the City, resulting from or in consequence of stoppage or backup of water, sewer, gas, or drain pipes, either within or without the Premises, whether the same is occasioned by reason of freezing, flooding, obstruction, or any other cause whatsoever. AFD, its agents, employees, and contractors, shall have the right, from time to time, to enter and use (insofar as may be necessary) the Premises for the purposes of making any repairs which AFD is obligated to make, and the City shall not be entitled to any abatement or reduction in rent or to any claim for constructive eviction, breach of AFD's covenant of quiet enjoyment, or for any damages by reason of inconvenience, annoyance, and/or injury to business arising out of any such entry or the making of any such repairs by AFD; provided AFD agrees to use reasonable efforts to perform the foregoing in a manner to attempt to minimize unreasonable and material



interference with the City's use and occupancy of the Premises. To the extent necessary and practical to enable AFD to make any such repairs, the City shall, promptly, and at the City's expense, move the City's merchandise, fixtures, and equipment.

5.02. City Responsibilities. The City hereby agrees that it will have sole responsibility for all Premises programming and operating costs for the location herein, to include personnel costs, lawn maintenance, and general materials and supplies. The City will provide its own janitorial services..

AFD shall not be obligated to maintain, or to make repairs or improvements of any kind upon, said Premises, or any equipment, facilities or fixtures therein contained, which shall at all times be kept in good order, condition, maintenance and repair by the City, and in a clean, sanitary and safe condition and in accordance with all applicable laws, ordinances and regulations of any governmental authority having jurisdiction, reasonable wear and tear. The City shall not suffer nor permit any waste, damage or injury to the Premises or the building in which same is located. If the City refuses or neglects to commence maintenance or repairs within ten (10) days after written demand, or adequately to complete such maintenance or repairs within a reasonable time thereafter (such time in no event to exceed 30 days), AFD may perform the maintenance or repairs without liability to the City for any loss or damage that may occur to the City's stock or business by reason thereof, and if AFD performs such maintenance or repairs the City shall pay to AFD on demand as additional rent the cost thereof with Interest from the date of payment by AFD until paid by The City. Notwithstanding anything contained in this Paragraph, there shall be no obligation on the part of the City to comply with any of the directions, rules, regulations and laws which may require structural alterations, structural changes, structural repairs or structural additions to the building in which the Premises are located, unless made necessary by act, work or omission by the City, in which event the City shall comply at its sole expense.

5.03 Utilities. The City shall be directly responsible for paying 100% of the monthly utilized gas and electrical charges from Memphis, Light, Gas & Water for the Premises, including any demand charges incurred or transferring fees associated with the transfer of service from AFD to the City.

Section 6. Indemnity and Insurance.

6.01. Indemnification. City agrees to hold the AFD harmless, to the extent allowed by law, from liability for injury to person, including City's employees, or damage to the Premises arising out of or in connection with City's use of the Premises, including all costs, and expenses, but not including attorneys' fees incurred by AFD in defense of any such claims, provided that such liability is not due to the fault, negligence, or strict liability of AFD. The City is self-insured for third party liability, including general liability up to the limits of T.C.A. 29-20-101, et. seq., Tennessee Governmental Tort Liability Act.



City acknowledges that AFD does not insure City's personal property, fixtures, improvements or equipment. Accordingly, in order to contractually allocate risk of loss relative to all of such property City agrees that it shall store its property in and shall occupy the Premises and use all other portions of the property of which the Premises are a part, at its own risk. The provisions of this section shall also apply to the period prior to the commencement of the Lease term where any permission is given by AFD to City for City to perform any of its work and install any of its fixtures or otherwise prior to commencement of the Lease term.

Anything in this Lease to the contrary notwithstanding, AFD and City each hereby waives any and all rights of recovery, claim, action or cause of action, against the other, its agents, officers or employees, for any loss or damage that may occur to the Premises, or any improvements thereto, or the Building, or any personal property of such party therein, by reason of fire, the elements, or any other cause which is insured against regardless of cause or origin, including negligence of the other party hereto, its agents, officers or employees. AFD's and City's insurance policies shall each contain a waiver of subrogation.

City shall not knowingly do anything to cause the cancellation of, or permit any condition to exist on or about the Premises which will invalidate any insurance which AFD may now or hereafter have on the Building or the Premises. Further, City shall not permit any condition or activity which may result in increased premiums payable by AFD, nor shall City engage in any activity which may adversely affect or result in the cancellation of any policies of insurance carried by AFD.

6.02 Insurance. The City of Memphis is self-insured for third party liability including General Liability up to the limits of the Tennessee Code Annotated 29-20-101, et. seq., as stated in the Tennessee Governmental Tort Liability Act.

Section 7. Notices

To AFD:

Appling Farms Distriplex, LLC
4728 Spottswood Ave, 207
Memphis, TN 38117

To City:

City of Memphis Real Estate Manager
City Hall, 125 North Main, Room 568
Memphis, Tennessee 38103

With copy to:



Chief Legal Officer/City Attorney
City Hall, 125 North Main, Room 336
Memphis, Tennessee 38103

Section 8. Miscellaneous Provisions

8.01 Entire Agreement. This Agreement contains the entire agreement of the Parties hereto and there are no other promises or conditions in any other agreements whether oral or written. This Agreement supersedes any prior written or oral agreements between the Parties pertaining to the subject matter hereof.

8.02 Relationship of Parties. This Agreement does not and shall not be construed to create a partnership or joint venture between the Parties hereto.

8.03 Third Party Beneficiaries. This Agreement does not create any relationship with, or any rights in favor of, any third party.

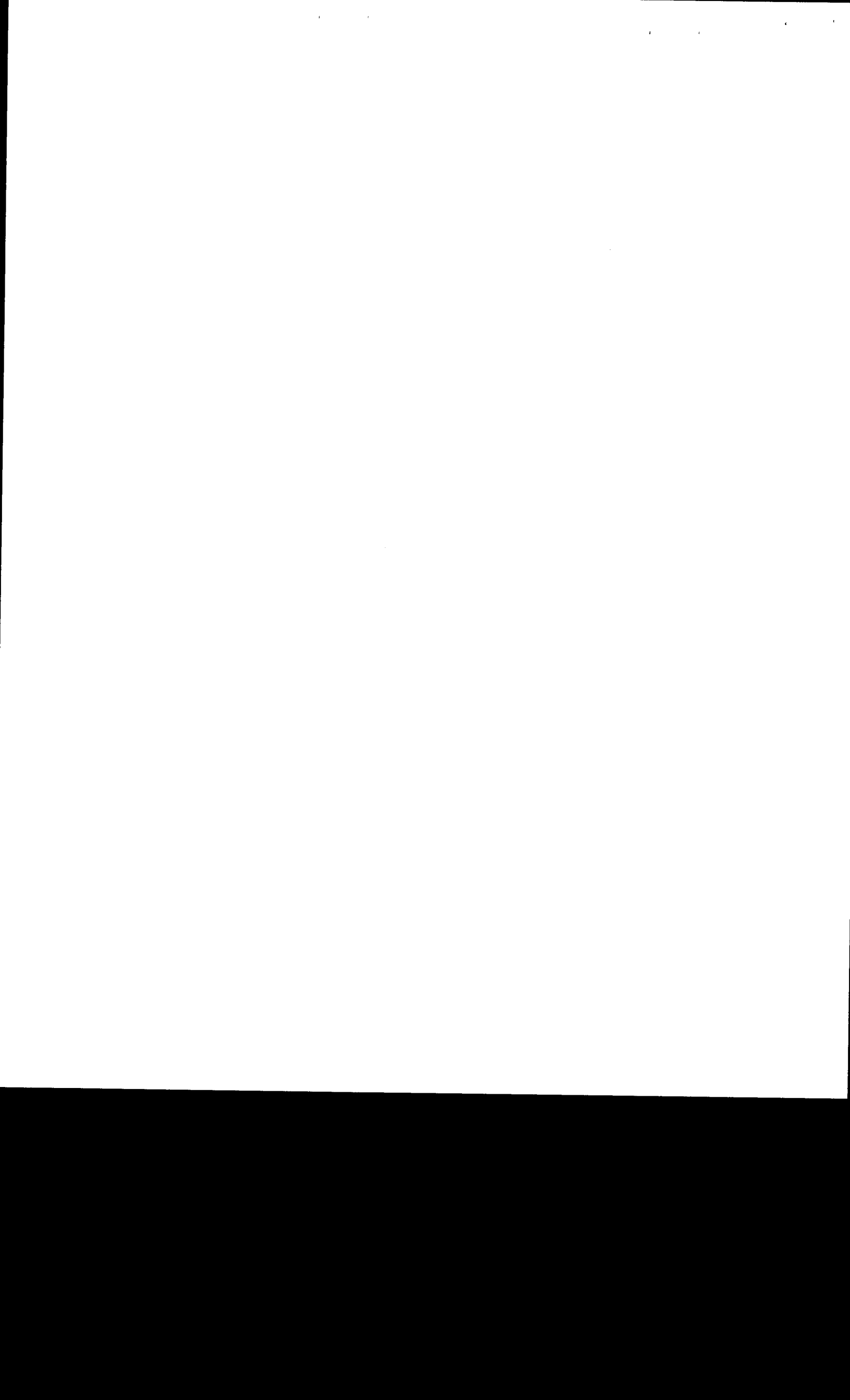
8.04 Assignment. The City shall not assign or transfer its interest in this Agreement without the prior written consent of AFD.

8.05 Amendment. This Agreement may be modified or amended only by a document in writing executed by an authorized representative of the Parties hereto.

8.06 Intentionally omitted.

8.07. Nondiscrimination. AFD agrees and warrants that no person shall be excluded from participation in or be otherwise subjected to discrimination in the City's use of the Premises or performance of this Agreement on the grounds of disability, race, gender, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional or statutory law, or local ordinances and policies of the City of Memphis. Upon a finding of such discrimination, this Agreement shall be immediately terminated.

8.08 Governing Law. The City is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state and local laws, ordinances, and regulations applicable to its performance of this Agreement. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement, AFD agrees that all actions it might institute against the City, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the Courts of Shelby County, Tennessee, and in no other.



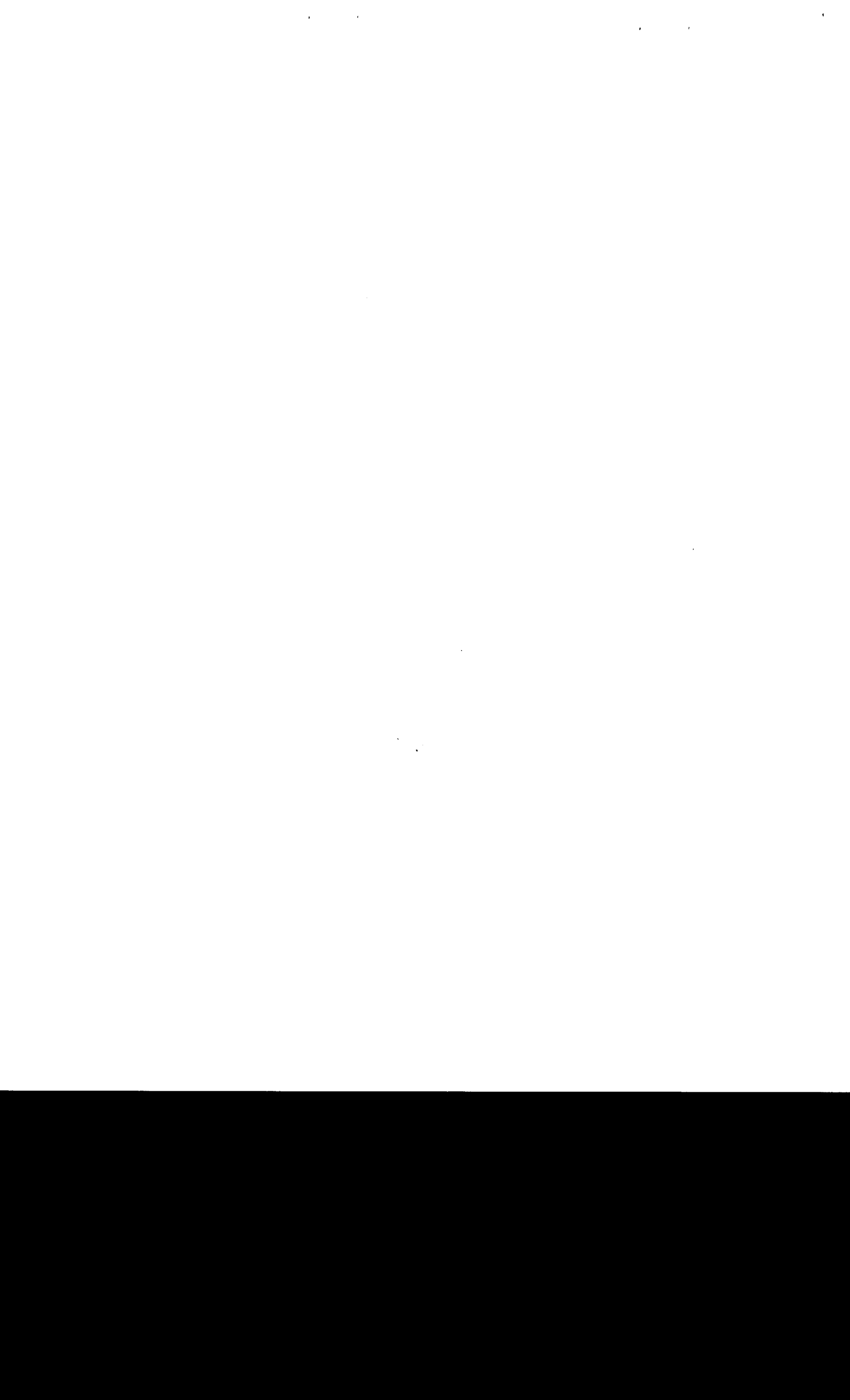
8.09 Force Majeure. The obligations of the parties hereunder are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics, or any other similar cause.

8.10 Unenforceability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to have been written, construed and enforced as so limited.

8.11. No Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

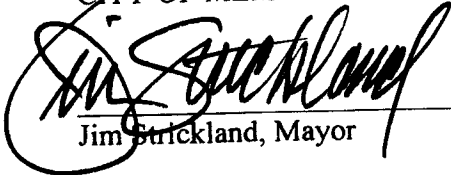
8.12 Captions. The headings and captions contained in this Agreement are for reference purposes only and shall not limit or extend the meaning or terms of any paragraph or section herein contained.

THIS SPACE INTENTIONALLY LEFT BLANK

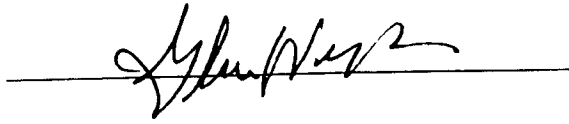


IN WITNESS THEREOF, Appling Farms Distriplex, LLC and the City of Memphis have caused this Agreement to be executed in their respective names by their duly authorized officers as recorded below.


CITY OF MEMPHIS


Jim Strickland, Mayor

APPLING FARMS DISTRIplex, LLC



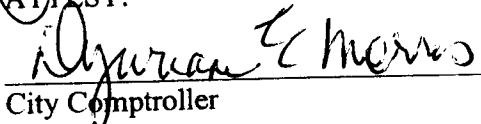
APPROVED:

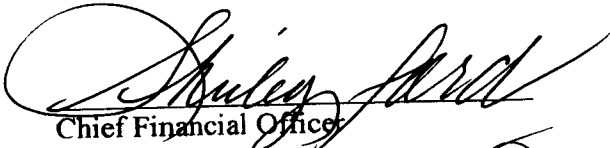

Chief Legal Officer/City Attorney

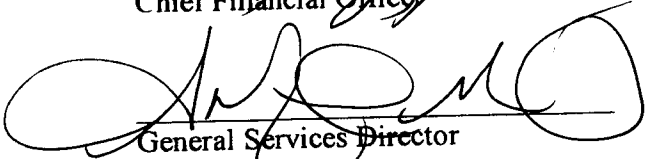
By: Glenn Wegener

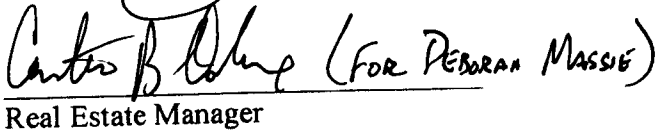
Its: Manager

ATTEST:


City Comptroller


Chief Financial Officer


General Services Director


Carter B. O'Neal (FOR DEBORAH MASSIE)
Real Estate Manager

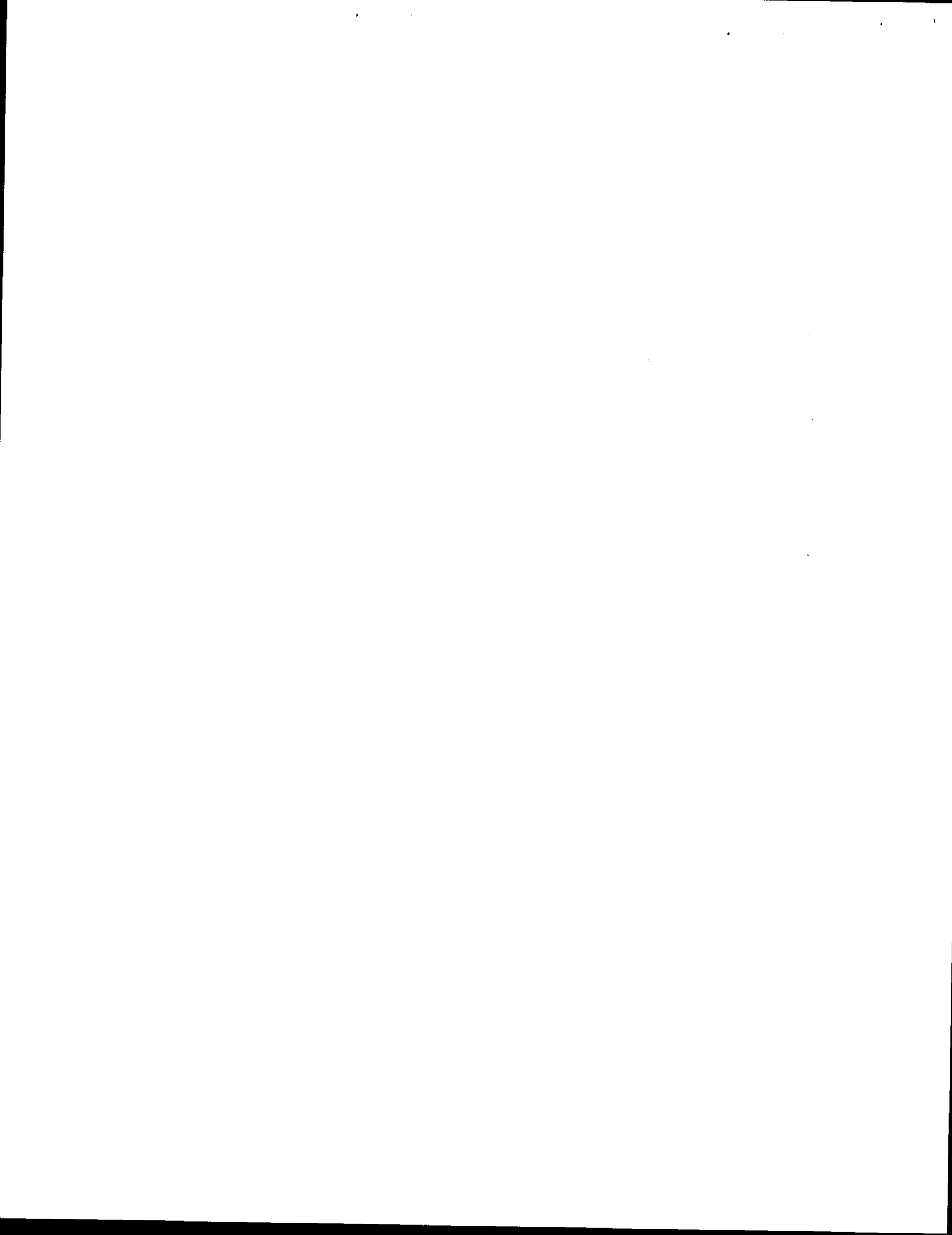
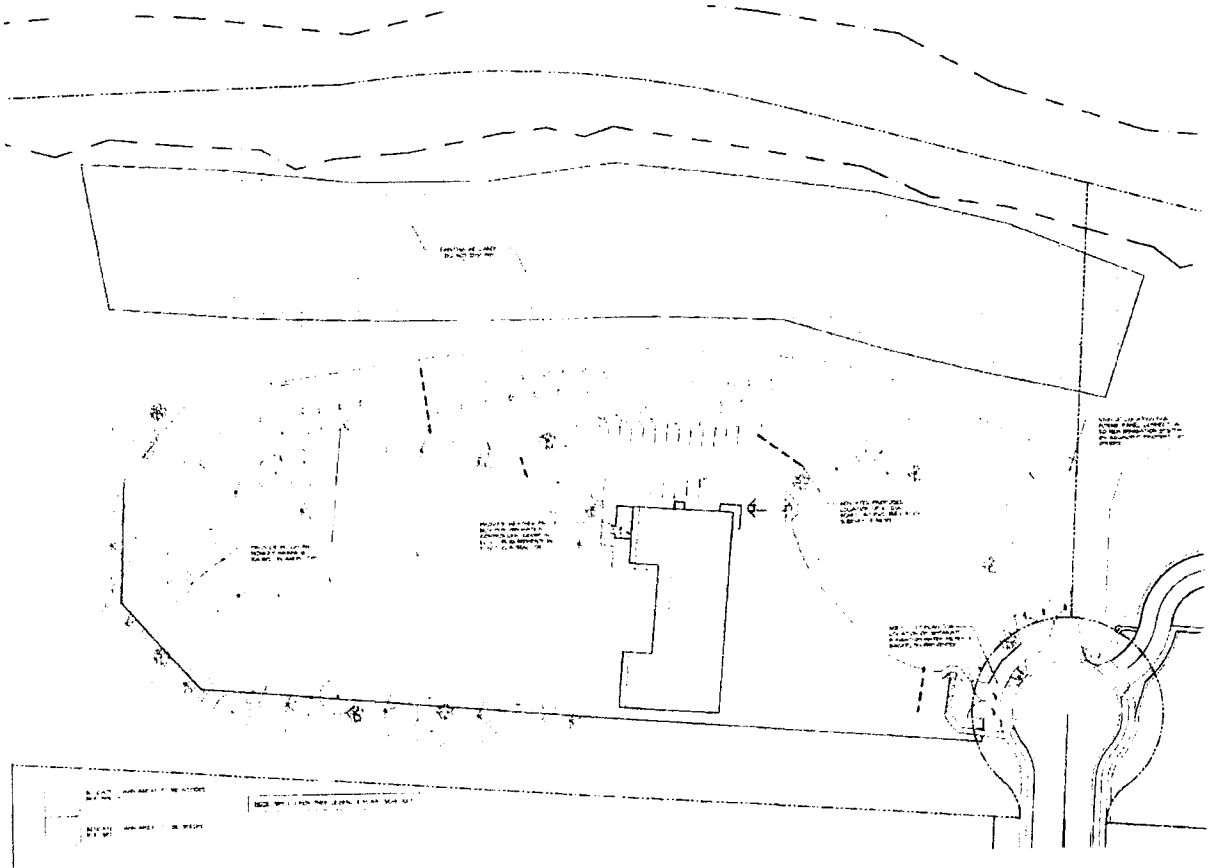
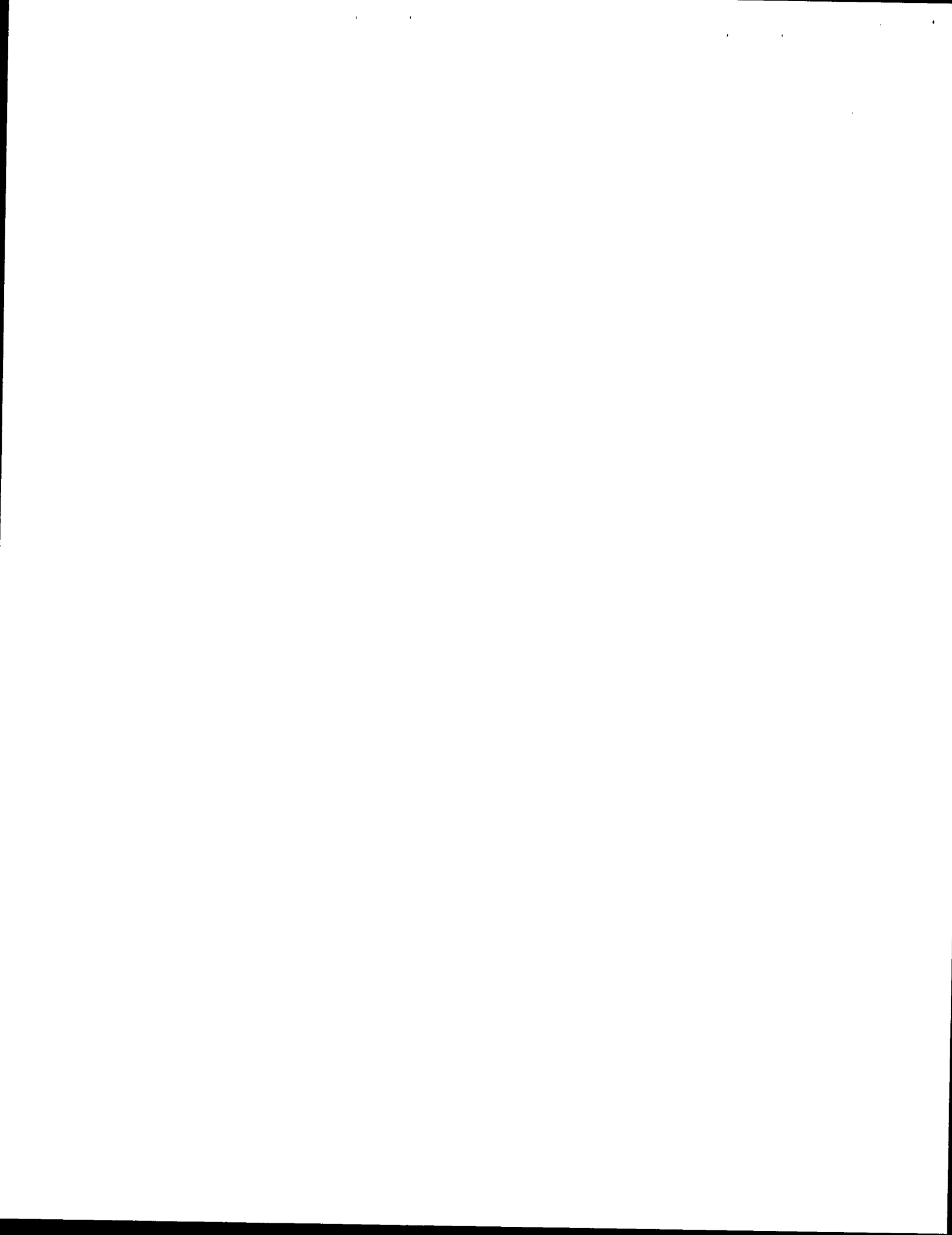


Exhibit A

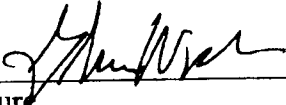
Lot 2, as shown on Final Plat of record in Plat Book 222, Page 12 in the Register's Office for Shelby County, Tennessee, to which plat reference is hereby made for a more particular description of said property.





Certification of Signature

"I, Glenn Wegener, hereby certify that the faxed/electronic/copied signature below is my legally enforceable signature."


Signature

Manager
Title

Applying Furnms Distriplex, LLC
Company

8-25-2020
Date

