LEASE

BETWEEN

THE CITY OF NORTH MIAMI, as Landlord

AND

OLETA PARTNERS LLC, as Tenant

FOR PREMISES LOCATED

in the City of North Miami, in Miami-Dade County, Florida,

known as "Biscayne Landing"

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LIST OF EXHIBITS AND SCHEDULES

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Exhibit C	-	Landlord Estoppel Certificate
Exhibit D	-	Description of Initial Development
Exhibit D-1	-	Schedule of Values and Projected Timeline for Initial Development
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Schedule 25	-	Initial Notice Addresses
Schedule 33.1	-	Biscayne Landing Master Plan
Schedule 33.6	-	Title Affidavit (in connection with exercise of the Option)

LEASE

This **LEASE** (the "Lease") is made and entered into as of _____, 2012 (the "Effective Date"), between the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation ("Landlord"), and OLETA PARTNERS LLC, a Delaware limited liability company ("Tenant").

W I T N E S S E T H :

WHEREAS, at the Effective Date, Landlord owns the following real property (collectively, the "Premises"): (a) the land described in **Exhibit A**, consisting of approximately 183.8 acres of land (the "Land"); (b) all buildings, structures, and other improvements and appurtenances located on the Land; (c) all right, title, and interest of Landlord, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line of such street or highway; (d) the appurtenances and all the estate and rights of Landlord in and to the Land; (e) any strips or gores adjoining the Land; and (f) all Building Equipment and FF&E, if any, attached or appurtenant to any of the foregoing;

WHEREAS, Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord;

WHEREAS, Landlord desires that the Premises be fully developed as a productive enterprise as provided in this Lease, thereby contributing to the well being and economic development of the City of North Miami and the State of Florida;

WHEREAS, the parties desire to enter into this Lease to set forth their rights and obligations to each other relating to the Premises; and

WHEREAS, on _____, 2012, the City Council of the City of North Miami, passed and adopted Resolution No. _____, approving the terms of this Lease and authorizing the City Manager or Mayor to execute this Lease;

NOW, THEREFORE, for good and valuable consideration, Landlord leases and demises the Premises to Tenant, and Tenant takes and hires the Premises from Landlord, "AS IS" and "WHERE IS" without any representation or warranty whatsoever, including regarding environmental condition of the Premises, by Landlord except as expressly set forth in this Lease for the Term, upon the terms and conditions of this Lease.

1. DEFINITIONS

The following definitions apply in this Lease.

"Additional Rent" means all sums that this Lease requires Tenant to pay Landlord or a third party, whether or not expressly called Additional Rent, except Fixed Rent.

"Affiliate" of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person. "Affiliated" shall have the correlative meaning.

"Application" means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any Construction this Lease allows, including any application for any building permit, site plan approval, certificate of occupancy, utility service or hookup, easement or relocation of same, covenant, condition, restriction, subdivision plat, or such other instrument as Tenant may from time to time reasonably request for such Construction; (b) to allow Tenant to obtain any abatement, deferral, or other benefit otherwise available for Real Estate Taxes; (c) to allow Tenant to change the use or zoning of the Premises; (d) to enable Tenant from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease; or (e) otherwise reasonably necessary and appropriate to permit Tenant to realize the benefits of the Premises under this Lease. Application shall include any declaration of restrictions and reciprocal easement agreement between Phases of the Premises, or between all or portions of the Premises and adjacent property from time to time owned or controlled by Tenant or Subtenant, or their respective Affiliates. Any Application that will be recorded against or run with the Fee Estate will be subject to the prior approval of Landlord, which will not be unreasonably withheld.

"Approvals" means any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals (including, without limitation, conditional use, planned development, site plan and other zoning approvals or amendments to land development regulations), consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, or for the zoning, rezoning, use, occupancy, maintenance, or operation of the Premises.

"Bankruptcy Action" means with respect to any Person (i) such Person filing a voluntary petition under Bankruptcy Law; (ii) the filing of an involuntary petition against such Person under Bankruptcy Law in which such Person colludes with, or otherwise assists such Person, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (iii) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Law; (iv) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (v) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any action, suit or proceeding, its insolvency or inability to pay its debts as they become due; (vi) such Person generally does not pay their debts as and when they become due and owing or is unable to pay its debts as and when they become due and owing or admits an inability to pay its debts as and when they become due and owing; (vii) if a meeting of such Person is convened for the purpose of considering any resolution for, or to petition for, winding-up or administration or if any resolution relating with respect thereto or with respect to any present, contemplated or future Bankruptcy Action, or if an order for winding-up or administration, custodianship, liquidation, winding-up, dissolution, or any other insolvency proceedings or Bankruptcy Action of such Person; or (viii) the taking of any action in furtherance of the foregoing.

"Bankruptcy Law" means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

"Bankruptcy Proceeding" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

"Bankruptcy Sale" means a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy, insolvency, or similar proceeding affecting the owner of such property.

"Bankruptcy Termination Option" means Tenant's or any Subtenants' right to treat this Lease or any Subtenant's Sublease, as applicable, as terminated under 11 U.S.C. §365(h)(1)(A)(i) or any comparable provision of law.

"BID" means any business improvement district, community development district or similar district or program, proposed or actual, that includes, may include, or affects any Premises.

"Building" means all Improvements located or to be located on the Premises from time to time.

"Building Equipment" means all fixtures incorporated in the Premises and used, useful, or necessary to operate the Building as such (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; and pipes) as opposed to operating any business in the Building.

"Business Day" means any weekday on which State-chartered banks are open to conduct regular banking business with bank personnel. All references in this Lease to time periods shall mean calendar days unless Business Days are specifically referenced. Whenever a date specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to the next Business Day.

"Casualty" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Buildings, whether or not insured or insurable.

"CDD" means a Community Development District under and pursuant to the provisions of Chapter 190, Florida Statutes (as from time to time amended or renumbered).

"City Affiliate" shall have the meaning set forth in Section 15.4 of this Lease.

"City PE" shall mean a Florida licensed professional engineer designated by Landlord to observe, inspect, and assist in coordinating all work done pursuant to the CLCP, including that done under the ERA.

"CLCP" means the Comprehensive Landfill Closure Plan Formalization Report produced by Brown & Caldwell, the original DSWM Bond Engineer, dated March 2005, as amended by the ____ Amendment 1, June 2010 Amendment 2, the January 2011 Amendment 3, the March 10, 2011, Amendment 4, and the April 26, 2012 Amendment 5 for the closing of the landfill

located on the Premises in accordance with the Landfill Closure Permit, and as same may be amended from time to time, the terms of which are incorporated herein by reference.

"Commencement Date" shall have the meaning set forth in Section 3.1.

"Concept Plan" means the concept plan for the Development attached hereto as **Exhibit B**.

"Condemnation" means: (a) any temporary or permanent taking of (or of the right to use or occupy) any portion of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any portion of the Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

"Condemnation Award" means any award(s) paid or payable (whether or not in a separate award) to either party or its Mortgagee after the Commencement Date because of or as compensation for any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation, including for any prepayment premium under any Mortgage.

"Condemnation Effective Date" means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any Premises subject to the Condemnation.

"Construction" means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Building, including new construction.

"Construction Documents" means the following documents for Major Construction, as Tenant shall modify them from time to time:

(a) Architectural Contract. A contract between Tenant and Tenant's architect, relating to Tenant's architect's preparation of the Plans and Specifications for a Major Construction undertaking;

(b) Construction Contract. Contract(s) between Tenant's builder and Tenant related to a Major Construction undertaking, providing for Tenant's builder's performance of such Major Construction; and

(c) Other Contracts and Permits. All other agreements and Approvals in place for a Major Construction undertaking as of the commencement of such Major Construction to which Tenant is a party.

"Construction Loan" means Land improvement or construction loan(s) from Leasehold Mortgagee(s), the proceeds of which are to be used to finance the initial Major Construction.

"Contest" shall have the meaning set forth in Section 11.1 of this Lease.

"Contest Conditions" shall have the meaning set forth in Section 11.1 of this Lease.

"Control" (including as used in the terms "Controlling," "Controlled by," or "under common Control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

"Corner Parcel" means that certain portion of the Premises labeled as the "Corner Parcel" on **Exhibit J** attached hereto.

"Corner Parcel Net Revenue" means all revenue actually received by Tenant from the sale of a sublease or the sublease of the Corner Parcel, less (i) sales taxes, (ii) "pass-through reimbursements" paid to Tenant with respect to operating expenses, taxes, improvements allowances, and other similar items, (iii) leasing commissions payable to Persons who are not Affiliates of Tenant, and (iv) an amount equal to the portion of Fixed Rent under the Lease that is allocated to the Corner Parcel (based on the ratio of the acreage of the Corner Parcel to 150 acres).

"County" means the county where the Premises are located.

"CPI Level" means, for any given year, the annual average Consumer Price Index for All Urban Consumers, Miami-Fort Lauderdale, FL for All Items as published during the 70th Lease Year by the United States Department of Labor Bureau of Labor Statistics, or any successor statistic published by a comparable government authority. In any event, both CPI Levels employed in the calculation shall be based on the same base year.

"Default" means any Monetary Default or Nonmonetary Default.

"Default Interest" means interest at an annual rate equal to the lesser of: (a) thirteen percent (13%); or (b) the Usury Limit.

"Delay Fee" shall mean the fees described as follows. If Tenant breaches an obligation under this Lease for which a Delay Fee is expressly made a remedy, Landlord may give a Notice of Default to Tenant, which Notice of Default shall specify the Minor Default in reasonable detail, and shall provide that failure to remedy the specified default within ten (10) Business Days of such Notice of Default shall result in a Delay Fee. If Tenant fails to remedy the specified default within ten (10) Business Days of such notice, a Delay Fee in the amount of $250 (except in the case of utilities under Section 4.6 of this Lease, for which it shall accrue at $500 per day), not to exceed $25,000.00 in the aggregate for any one specified default, shall be paid by Tenant for each day the specified default remains uncured beginning on the date of the Notice of Default. The amount of the Delay Fee and the aggregate cap shall each increase by 20% on the tenth (10th) anniversary of the Commencement Date and on each tenth (10th) anniversary thereafter. Demand for a Delay Fee by Landlord, and payment thereof by Tenant, shall not preclude or delay the Landlord from bringing an action for specific performance for the same Minor Default.

"Delayed Park Property" means the real property denoted as the Delayed Park Property on **Exhibit B**, which will be used initially for a staging area and will be landscaped and irrigated on the earlier of (a) the date the surrounding Improvements (as indicated on **Exhibit B**) are built and completed, or (b) the tenth (10th) anniversary of the Commencement Date.

"Depository" means an Institutional Lender designated by a Leasehold Mortgagee (or, if no Leasehold Mortgage exists, then by Tenant). A Leasehold Mortgagee that is an Institutional Lender may designate itself as Depository.

"Development" means the construction of improvements on the Premises, excluding any tenant improvements, tenant interior work or tenant build-out.

"Development Rights" means right(s), acquired or to be acquired from any other real property owner, to construct zoning floor area on the Land beyond the maximum permissible using the floor area ratio of the Land alone.

"Development Rights Transfer" means any so-called "zoning lot merger" or any other agreement or instrument that combines the Land with any other real property for purposes of any Law on bulk, development rights, use, zoning, or any similar matter, or by which any development rights (or so-called "floor area ratio," "FAR," or rights to construct "zoning floor area") under any such Law are transferred to or from any other real property.

"Dispute Resolution Procedures" shall have the meaning set forth in Section 7.12 of this Lease.

"DPERA" means the Miami-Dade County Department of Permitting, Environment and Regulatory Affairs (formerly referred to as the Department of Environmental Resources Management or "DERM").

"Effective Date" means the date on which the last of Landlord and Tenant has executed this Lease, after approval by the City Council of the City of North Miami.

"Environmental Law" means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

"Equipment Lien" means any security interest, financing lease, personal property lien, conditional sales agreement, chattel mortgage, security agreement, title retention arrangement or any similar arrangement (including any related financing statement) for acquisition or leasing of any Financed FF&E used in the Premises that is leased, purchased under conditional sale or installment sale arrangements, encumbered by a security interest, or used under a license, provided that each Equipment Lien encumbers or otherwise relates only to the Financed FF&E for which such secured party provides bona fide financing or a bona fide equipment lease, after the Commencement Date. A Leasehold Mortgage is not an Equipment Lien.

"Equity Interest" means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, stock right, warrant, profits' interest, partnership interest, beneficial

interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in a Person.

"ERA" means that certain maximum guaranteed price agreement for design and construction of the groundwater remediation system required under the CLCP, having an effective date of September 10, 2010, between Charles W. DeSanti, Receiver for the Biscayne Landing Project, and CH2M Hill Engineers, Inc. ("CH2M Hill"), which agreement was assumed by Landlord pursuant to the Letter of Intent dated September 10, 2010, as such agreement may be modified by change order or amendment from time to time, subject to written approval by the Landlord, which approval shall not be unreasonably withheld or delayed.

"ERA Work" means the work to be performed by CH2M Hill pursuant to the ERA.

"Estoppel Certificate" means a statement, addressed to Tenant, Leasehold Mortgagee and/or Subleasehold Mortgagee and/or as such party directs, in substantially the form of **Exhibit C**, and containing other assurances as such party reasonably requests. It also means a statement, addressed to Landlord or as Landlord directs, containing such assurances as Landlord reasonably requests.

"Event of Default" shall have the meaning set forth in Section 23 of this Lease.

"Eviction Action" shall have the meaning set forth in Section 23.8 of this Lease.

"Expiration Date" means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies for an Event of Default, or otherwise.

"FDEP" means the Florida Department of Environmental Protection.

"Fee Debt Service" means all payments required from time to time under any Fee Mortgage, including principal, interest, late charges, costs of collection, reimbursement of protective advances, and any other sums any Fee Mortgage secures.

"Fee Estate" means Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

"Fee Mortgage" means any mortgage, deed of trust, collateral assignment, or other lien (as modified from time to time) encumbering the Fee Estate. A Fee Mortgage shall not attach to the Leasehold Estate.

"Fee Mortgagee" means the holder from time to time of a Fee Mortgage and its successors and assigns, provided Tenant has received notice or its name and address and a copy of its Fee Mortgage.

"FF&E" means all movable furniture, furnishings, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) that may be removed without material damage to the Premises and without adversely affecting: (a) the

structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any electrical, plumbing, mechanical or other system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as factory equipment, furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

"Financed FF&E" means any FF&E subject to an Equipment Lien in favor of a lessor or lender that actually provides bona fide financing or a bona fide equipment lease after the Commencement Date for such FF&E.

"First Offer Right" shall have the meaning set forth in Section 15.4 of this Lease.

"Foreclosure Event" means any: (a) foreclosure sale (or trustee's sale, assignment in lieu of foreclosure, Bankruptcy Sale, or similar transfer) affecting the Leasehold Estate; or (b) Leasehold Mortgagee's exercise of any other right or remedy under the Leasehold Mortgage or its other loan documents (or applicable law) that divests Tenant of its Leasehold Estate or effects a Transfer of Equity Interests in Tenant, in each case, including, without limitation, pursuant to an assignment in lieu of foreclosure or similar transfer; or (c) foreclosure sale (or trustee's sale, assignment in lieu of foreclosure, Bankruptcy Sale, or similar transfer) affecting a Subleasehold Estate; or (d) a Subleasehold Mortgagee's exercise of any other right or remedy under a Subleasehold Mortgage or its other loan documents (or applicable law) that divests a Subtenant of its Subleasehold Estate or effects a Transfer of Equity Interests in a Subtenant, including, without limitation, pursuant to an assignment in lieu of foreclosure or similar transfer; or (e) a Mezzanine Lender's exercise of any right or remedy under its loan documents effecting a Transfer of Equity Interests, including, without limitation, pursuant to an assignment in lieu of foreclosure or similar transfer.

"Good Moral Character" means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealings, and respect for the rights of others and for the laws of this State and nation.

"Government" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof. "Government" shall also include any planning commission, board of standards and appeals, department of building and zoning, city council, board of adjustment, zoning board of appeals, or similar body having or claiming jurisdiction over the Premises or any activities on or at the Premises.

"Grant" shall have the meaning set forth in Section 9.3 of this Lease.

"Grant Agreement" shall have the meaning set forth in Section 9.3 of this Lease, and is hereby incorporated by reference.

"Hazardous Substance" includes any substance or related material that is defined as "hazardous" or "toxic" or a term of similar import or is regulated as such under any

Environmental Law, including any material, substance or waste that is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. §1317), as amended; (ii) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq., as amended; (iii) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. or any so-called "superfund" or "superlien" law; (iv) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. §9601(33); (v) defined as "hazardous waste" under 40 C.F.R. Part 260; or (vi) defined as a "hazardous chemical" under 29 C.F.R. Part 1910.

"Hazardous Substances Discharge" means any deposit, discharge, generation, release, or spill of Hazardous Substances in violation of Environmental Laws that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Lease. Notwithstanding the foregoing, the term Hazardous Substances Discharge shall not include any permitted releases or any deposit, discharge, generation, release or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or any seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land to the extent caused by Landlord or Landlord's agent. A "permitted release" is a release, the nature and manner of which is authorized in a permit issued to Tenant, or its successors or assigns, by a governmental agency with jurisdiction over the Premises or which generally is authorized pursuant to Environmental Law.

"Immaterial Loss" means a Condemnation that does not significantly adversely affect the use of the Premises as a whole.

"Improvements" means all Buildings, structures, and other improvements and appurtenances located on Premises, including the billboard described in Section 31.4 of this Lease.

"Indemnify" means, where this Lease states that any Indemnitor shall "Indemnify" any Indemnitee from, against, or for a particular matter (the "Indemnified Risk"), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor's indemnity. Indemnitor's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to Indemnitor's insurance carrier shall be automatically deemed satisfactory. Whenever the term Indemnify is used in this Lease, the obligation to Indemnify shall be to the maximum extent permitted by Law.

"Indemnitee" means any party entitled to be Indemnified under this Lease and its agents, directors, employees, Equity Interest holders, mortgagees, and officers.

"Indemnitor" means a party that agrees to Indemnify any other Person.

"Initial Development" means the (a) Substantial Completion of the infrastructure and Improvements described on **Exhibit D** attached hereto, and (b) pulling of the building permits for the Required Improvements and completion of the other project-related requirements described on **Exhibit D** attached hereto, all by the fifth (5th) anniversary of the Commencement Date, and all subject to Unavoidable Delay.

"Initial Leasehold Mortgage" means the first Leasehold Mortgage to be recorded against the Premises, as the same may be amended, restated, modified or assigned from time to time.

"Initial Leasehold Mortgagee" means the holder of the Initial Leasehold Mortgage in such capacity.

"Institutional Lender" means (1) a bank (state, federal or foreign), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (state or federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), federal or state agency regularly making or guaranteeing mortgage loans, investment bank, subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation), real estate mortgage investment conduit, or securitization trust; (2) any issuer of collateralized mortgage obligations or any similar investment entity (provided that either (a) at least certain interests in such issuer or other entity are publicly traded or (b) such entity was or is sponsored by an entity that otherwise constitutes an Institutional Lender or has a trustee that is, or is an Affiliate of, any entity that otherwise constitutes an Institutional Lender), or any Person acting for the benefit of or on behalf of such an issuer; (3) any Person actively engaged in commercial real estate financing or who, in the ordinary course of its business, makes commercial real estate loans and, in either case, has total assets at the time the deposit of funds to the Depository is to be made of $300,000,000 or more; (4) any Person approved by Landlord in writing, in its sole, but reasonable discretion; (5) any Person that is a wholly owned subsidiary or Affiliate of or is a combination of any one or more of the foregoing Persons; (6) the Initial Leasehold Mortgagee; or (7) any of the foregoing when acting as trustee, agent, or administrative agent for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders. The fact that a particular Person (or any Affiliate of such Person) is a partner, member, or other investor of the then Tenant shall not preclude such Person from being an Institutional Lender and a Leasehold Mortgagee provided that such entity otherwise qualifies as an Institutional Lender and a Leasehold Mortgagee (as applicable).

"Insubstantial Condemnation" means any Condemnation except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

"Land" shall have the meaning set forth in the first "Whereas" clause of this Lease.

"Landfill Closure" means final certification by the applicable governmental authorities of completion of the landfill remediation and closure as provided in the CLCP and Landfill Closure Permit and any other applicable environmental permits and approvals.

"Landfill Closure Permit" means Landfill Closure Permit # SF-13-002191514-009 issued by FDEP, as same may be modified from time to time.

"Landlord" initially means the Landlord named in the opening paragraph of this Lease. After every transfer of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a Transfer of the Fee Estate occurs (in all cases in compliance with this Lease, including requirements regarding any Trust Funds), except as expressly provided in this Lease to the contrary, the transferor (including a Fee Mortgagee, or anyone acting for a Fee Mortgagee, that has acquired and then disposed of the Fee Estate) shall be and hereby is entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such Transfer. It shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Premises, including the transferee (including a Fee Mortgagee taking title to the Fee Estate or a Person taking title to the Fee Estate from a Fee Mortgagee) on any such Transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants, and obligations of Landlord under this Lease accruing from and after the date of such Transfer.

"Last Chance Notice" shall have the meaning ascribed to such term in Section 19.5 hereof.

"Laws" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any Real Estate Taxes, or otherwise relating to this Lease or any party's rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

"Lease Impairment" means Tenant's: (a) canceling, modifying, restating, surrendering, or terminating this Lease, including upon Loss; (b) consenting, or failing to object, to a Bankruptcy Sale of any portion of the Premises; (c) determining that a Substantial Condemnation has occurred; (d) exercising any Bankruptcy Termination Option; (e) subordinating this Lease or the Leasehold Estate to any other estate or interest in the Premises; or (f) waiving any term(s) of this Lease or granting or withholding any consent or approval hereunder (including, without limitation, any deemed approval) where such consent or approval is required hereunder.

"Lease Termination Notice" means a notice stating this Lease has terminated, and describing in reasonable detail any uncured Events of Default.

"Lease Year" means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date (or starting on the Commencement Date, if the Commencement Date is the first day of a month); and (b) every subsequent period of twelve calendar months during the Term.

"Leasehold Estate" means Tenant's leasehold estate, and all of Tenant's rights, privileges, and Preemptive Rights, under this Lease, upon and subject to all the terms and conditions of this Lease.

"Leasehold Mortgage" means any mortgage, deed of trust, collateral assignment, or other lien (as modified from time to time) encumbering this Lease, the Leasehold Estate, and Tenant's Preemptive Rights. A Leasehold Mortgage shall not attach to the Fee Estate.

"Leasehold Mortgagee" means a holder of a Leasehold Mortgage (and its successors and assigns), provided (a) it is not an Affiliate of Tenant, unless (x) Landlord has given its prior written consent or (y) the Leasehold Mortgagee is an Affiliate of Tenant solely by virtue of having acquired (or having the right to acquire) an Equity Interest in Tenant pursuant to the foreclosure of a pledge of Equity Interests or by assignment in lieu of a foreclosure of such Equity Interests or similar transfer; and (b) Landlord has received Notice of its name and address (and that of any successors and assigns) and a copy of its Leasehold Mortgage.

"Leasehold Mortgagee Cure Period" shall have the meaning set forth in Section 19.4 of this Lease.

"LeFrak Organization" means LeFrak Organization, Inc., a New York corporation.

"Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, at trial, at all appeal levels, at all administrative proceedings or hearings, and in or as a result of any Bankruptcy Proceeding.

"Liability Insurance" means commercial general liability insurance against claims for personal injury, death, or property damage occurring upon, in, or about the Premises, excluding publicly dedicated adjoining streets and passageways, providing coverage for a combined single limit of not less than Ten Million Dollars ($10,000,000.00) for any one occurrence and in the aggregate initially, which shall and generally conform to the limits customarily required by prudent landlords or institutional lenders for similar properties in the County.

"Loss" means a Casualty or Condemnation affecting the Premises.

"Loss Proceeds" means any insurance proceeds or Condemnation Award paid or payable for a Loss.

"Major Construction" means the Initial Development and any other Construction consisting of a whole Building to be built by Tenant (but not by a Subtenant or other Person).

"Memorandum of Lease" means a memorandum of this Lease, in substantially the form of as **Exhibit E** attached hereto**,** setting forth the following provisions of this Lease: (a) all information any Law requires; (b) restrictions on Transfers and Fee Mortgages; (c) provisions required to be (or deemed) contained in Subleases, Subleasehold Mortgages, Fee Mortgages, and Leasehold Mortgages; (d) Landlord's non-responsibility for costs of improvements and a notice of prohibition of liens under Florida Statutes Chapter 713 on Landlord's Fee Estate (provided, however, that at Landlord's option such notice of prohibition of liens may be recorded separately); and (e) such other provisions, except the amount or means of determining Rent, as either party reasonably desires.

"Mezzanine Loan" means a loan made by a Mezzanine Lender to a direct or indirect owner of Tenant and secured by a pledge of direct or indirect ownership interests in Tenant.

"Mezzanine Lender" means a lender or preferred equity investor that provides bona fide financing or a bona fide preferred equity investment to Tenant or the direct or indirect owners of Tenant, and receives: (a) a pledge of direct or indirect equity or other direct or indirect ownership interests of Tenant; or (b) a direct or indirect preferred equity or other direct or indirect ownership interest in Tenant. The successors and assigns of any such Person shall also be a "Mezzanine Lender."

"Minor Default" shall mean any breach of an obligation under this Lease for which the remedies of breach are, subject to the provisions of Section 23.1.8, expressly limited to either a Delay Fee or specific performance or both.

"Modification" means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

"Modify" means agree to, cause, make, or permit any Modification.

"Monetary Default" means Tenant's failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.

"Mortgage" means any mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) creating a mortgage lien on the Leasehold Estate or the Fee Estate or a Subleasehold Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such mortgages are consolidated or restated as a single lien or held by the same Leasehold Mortgagee or Fee Mortgagee or Subleasehold Mortgagee (as applicable), then all such mortgages so consolidated or restated shall constitute a single Mortgage. A participation interest in a Mortgage (or partial assignment of the secured loan) does not itself constitute a Mortgage.

"Mortgagee" means a holder of any Mortgage and its successors and assigns.

"New Lease" means a new lease of the Premises and related customary documents such as a memorandum of lease and a deed of Buildings. Any New Lease shall: (a) commence immediately after this Lease is terminated; (b) continue for the entire remaining term of this Lease, as if no termination had occurred, subject to any Preemptive Rights; (c) give New Tenant the same rights to Buildings that this Lease gave Tenant; and (d) have the same terms, including Preemptive Rights, and the same priority, as this Lease, subject to any subsequent written amendments made with Leasehold Mortgagee's consent.

"New Lease Option Period" shall have the meaning ascribed to such term in Section 19.6 hereof.

"New Sublease" means, with respect to any Sublease, a new direct lease of the applicable Subleased Premises with Landlord or Successor Tenant, as applicable. Any New Sublease shall: (a) commence immediately after the applicable Sublease is terminated; (b) continue for the entire remaining term of the applicable Sublease, as if no termination had occurred; (c) give New Subtenant the same rights to the applicable Subleasehold Estate that the applicable Sublease gave the applicable Subtenant; and (d) have the same terms and the same priority, as the applicable Sublease, subject to any subsequent written amendments made with Leasehold Mortgagee's and Subleasehold Mortgagee's consent.

"New Sublease Option Period" shall have the meaning ascribed to such term in Section 20.2 of this Lease.

"New Subtenant" means Subleasehold Mortgagee or its designee or nominee, and any of their successors and assigns, in their capacity as lessee under any New Sublease.

"New Tenant" means Leasehold Mortgagee or its designee or nominee, and any of their successors and assigns.

"Nondisturbance Agreement" means a nondisturbance, and attornment agreement, in recordable form, in substantially the form of **Exhibit F**, modified as commercially necessary to reflect the parties and the nature and circumstances of the estates that such Nondisturbance Agreement affects, provided that no such modification increases the obligations or liabilities of Landlord other than ministerial obligations.

"Nonmonetary Default" means Tenant's material: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

"Notice" means any consent, demand, designation, election, notice, or request relating to this Lease, including, without limitation, any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the "Notices" Section of this Lease.

"Notify" means give a Notice.

"Notice of Default" means any Notice claiming or giving Notice of a Default a Minor Default or alleged Default or Minor Default.

"Offer" shall have the meaning set forth in Section 15.4 of this Lease.

"Offer Notice" shall have the meaning set forth in Section 15.4 of this Lease.

"Option" means the option to purchase to be granted by Landlord to Tenant pursuant to the terms of this Lease.

"Option Parcel" shall have the meaning set forth in Section 33 of this Lease.

"Option Period" shall have the meaning given to such term in Section 33.2 of this Lease.

"Option Rights Property" shall have the meaning given to such term in Section 33 of this Lease.

"Park Property" shall have the meaning given to such term in Section 34 of this Lease.

"Participation Rent" shall have the meaning given to such term in Section 3.3 of this Lease.

"Permitted Exceptions" means only: (1) subject to the provisions of Section 29.9 of this Lease, the recorded title exceptions affecting the Fee Estate and prior to this Lease as of the Commencement Date that are listed as exceptions in Tenant's leasehold policy of title insurance for this Lease; (2) any title exceptions (including Subleases) caused by Tenant's acts or omissions, consented to or requested by Tenant, or resulting from Tenant Default; (3) any Application made at Tenant's request; (4) this Lease and its terms and provisions; (5) any state of facts an accurate survey or physical inspection would show, including any encroachments thereon or over any street or adjoining property; (6) the lien for all taxes, charges, rents, assessments, and any other governmental charges which are not yet due and payable; and (7) all Laws, zoning regulations, restrictions, rules and ordinances, and all building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having or acquiring jurisdiction; and, with respect to the Improvements, in their present state and condition and without representation or warranty of any kind by Landlord except as expressly provided in this Lease. Permitted Exceptions also include all rights, if any, for electricity, gas, telephone, water, cable television, and any other utilities to maintain and operate lines, cables, poles, and distribution boxes in, over, and upon the Premises, that are not within recorded easements or shown on the survey obtained by Tenant just prior to the Effective Date.

"Permitted Equity Owner" means:

Until Completion. Until the completion of Tenant's Construction Obligations, only: (a) any Principal, any Person a Principal Controls, any immediate family member (including a domestic partner) of any Principal, a trust for the benefit of any of the foregoing, or any transferee upon the death of any of the foregoing; (b) any Institutional Lender (or its designee or nominee) that makes a direct or indirect equity investment in Tenant or provides equity financing to any of the Persons described in (a) or the direct or indirect owners of Tenant; (c) a Mezzanine Lender (or its designee or nominee) that takes title to direct or indirect ownership interests in Tenant or any of the Persons described in (a) or the direct or indirect owners of Tenant as a result of the foreclosure of a pledge of such ownership interests (or by assignment in lieu of such a foreclosure or similar transfer); (d) any other holder of an Equity Interest in Tenant, which other holder Landlord has approved in writing, such approval not to be unreasonably withheld; (e) any holder of an Equity Interest in Tenant that is of a purely passive and nonvoting nature and (f) any Leasehold Mortgagee or its designee or nominee; and

After Completion. Thereafter, any Person that, directly or indirectly, holds or acquires an Equity Interest in Tenant.

"Person" means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

"Phase" means any portion of the Premises that is the subject matter of a Sublease and in respect of which Tenant both designates the premises demised in such Sublease to be a Phase and provides Notice to Landlord of same; provided that there shall be appurtenant to any Phase such cross easements (for access, utilities, drainage and other infrastructure) as are commercially reasonable to allow for the development of such Phase as a separate and free standing building site.

"Plans and Specifications" means plans and specifications for Major Construction, prepared by a licensed architect, submitted in such machine-readable format as is then customary in the architectural profession, consisting of architectural plans; elevations and sections indicating principal areas, core design and location; location, number, and capacity of elevators; basic structural system; minimum estimated electrical capacity and distribution system; general type of plumbing system; façade, placement, and orientation; gross and rentable square foot analysis; and principal types of HVAC systems. Tenant may modify the Plans and Specifications at any time or from time to time. The "Plans and Specifications" shall mean the original Plans and Specifications as so modified.

"Preemptive Right" means any expansion, extension, purchase, or renewal option or other preemptive right this Lease gives Tenant, if any.

"Premises" shall have the meaning set forth in the first "Whereas" clause of this Lease.

"Prime Rate" means the prime rate or equivalent "base" or "reference" rate for corporate loans that, at Tenant's election, by Notice to Landlord, is from time to time: (a) published in the Wall Street Journal; (b) announced by any large United States "money center" commercial bank Tenant designates; or (c) if such rate is no longer so published or announced, then a reasonably equivalent rate published by an authoritative third party that Tenant reasonably designates. Notwithstanding anything to the contrary in this paragraph, the Prime Rate shall never exceed the Usury Limit.

"Principals" of Tenant means, until the completion of Tenant's Construction Obligations, but subject to the provisions of Section 17: Richard S. LeFrak, Harrison LeFrak, and Jamie LeFrak of Biscayne Investor LLC, an Affiliate of LeFrak Organization; Michael Swerdlow and Brett Dill of Oleta BL Holdings, LLC, an Affiliate of Swerdlow Development Company; and Jean Cherubin and Emmanuel Cherubin of Millenium Investments Group of North Miami LLC. Thereafter, such term means instead such owners of Equity Interests in Tenant (if any) as Tenant shall have designated by Notice or certified to Landlord from time to time in writing.

"Progress Report" shall have the meaning given to such term in Section 7.8 of this Lease.

"Prohibited Lien" means any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant (or anyone claiming through Tenant) or any other lien based on a claim against Tenant (or anyone claiming through Tenant) except for

ad valorem real estate taxes which are automatically a lien as of January 1 of any calendar year, but only if such lien attaches (or may attach upon termination of this Lease) to the Fee Estate. Neither an Equipment Lien, a Leasehold Mortgage, nor a Subleasehold Mortgage shall attach to the Fee Estate, and none will constitute a Prohibited Lien.

"Project Coordination Team" shall have the meaning given to such term in Section 9.3.1 of this Lease.

"Property Insurance" means insurance providing coverage for the Premises, the Building, and Building Equipment, against loss, damage, or destruction by fire and other hazards encompassed under the "all risk or special" form of property insurance coverage then customarily used for like properties in the County (except earthquake, flood, nuclear or war risk) from time to time during the Term, in an amount equal to no less than 80% of the replacement value (without deduction for depreciation) of the Building and Building Equipment (excluding excavations, footings and foundations) and in any event sufficient to avoid co-insurance, with "ordinance or law" coverage if commercially reasonable. Such insurance may contain a commercially reasonable deductible clause. To the extent any portion of the premises is located in a designated flood zone such insurance shall include flood insurance for the lesser of 100% of the replacement cost or the maximum amount available under the National Flood Insurance Program. In regards to wind and hail coverage, Tenant may purchase same for less than 100% of value with written approval from Landlord. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Premises; coverage for terrorism (but only if required by a Leasehold Mortgagee or Subleasehold Mortgagee (and in that event only to the extent so required and as to the property covered by their financing) or then customary to do so); an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal in amounts reasonably acceptable to Landlord, but in no event more than 10% of the replacement cost of the building(s). Property Insurance shall also include rental or business interruption insurance in an amount at least equal to one times annual Fixed Rent and Real Estate Taxes (to the extent not covered by Sublease payments that will not abate upon Casualty) and providing for a 12-month extended period of indemnity.

"Property Insurance Proceeds" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord, Tenant, Depository, or any Mortgagee, excluding proceeds of Tenant's business interruption insurance in excess of Rent.

"Qualified Developer" shall have the meaning given to such term in Section 17.1 of this Lease.

"Real Estate Taxes" means all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), BID payments, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or

become a lien on, the Premises, or the sidewalks or streets in front of or adjoining the Premises, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Premises, or any FF&E, Building Equipment or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupancy thereof. "Real Estate Taxes" shall not, however, include any of the following, all of which Landlord shall pay before delinquent: (a) any franchise, income, excess profits, estate, inheritance, succession, transfer, gift, corporation, business, capital levy, or profits tax, or license fee, of Landlord; (b) any item listed in this paragraph that is levied, assessed, or imposed against the Premises during the Term based on the recapture or reversal of any previous tax abatement or tax subsidy, or compensating for any previous tax deferral or reduced assessment or valuation, or correcting a miscalculation or misdetermination, relating to any period(s) before the Commencement Date; and (c) interest, penalties, and other charges for items "a" and "b." If at any time during the Term the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises, then all such new taxes, assessments, levies, Real Estate Taxes, or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term "Real Estate Taxes."

"Records" shall have the meaning set forth in Section 3.3 of this Lease.

"Remedial Action" means all remedial action for Landfill Closure including capping, stormwater management system, groundwater monitoring, methane gas control plan, and other requirements set forth in the CLCP, Landfill Closure Permit, any approved remedial action plan, and related documents, but excluding the ERA Work, and including any investigation, containment, removal, remedy, clean-up, capping, response, abatement, landfill closure, or any other response action (including on-going monitoring obligations and providing financial assurances).

"Rent" means Fixed Rent and Additional Rent.

"Required Improvements" means a building or buildings comprised of the vertical construction, rising from the footprint of such building, and not including parking, landscaping, or other such amenities.

"Restoration" means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before the Loss, subject to such Construction as Tenant shall perform in conformity with this Lease and subject to any changes in Law that would limit the foregoing.

"Restoration Funds" means any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

"Restore" means accomplish a Restoration.

"Scheduled Expiration Date" means 11:59 p.m. on the last day of the month, 99 years after the Commencement Date (unless extended or sooner terminated as herein provided).

"Second Stage Development" means the (a) Substantial Completion of at least 500,000 leasable square feet of Required Improvements, and (b) the pulling of building permits for at least an additional 200,000 leasable square feet of Required Improvements above and beyond the initial 500,000 leasable square feet of Required Improvements, all by the seventh anniversary of the Commencement Date, subject to Unavoidable Delay.

"Senior" when referring to multiple Mortgage(s), means the Mortgage that is most senior in lien of the same type (Fee or Leasehold or Subleasehold, and in the case of Subleasehold, encumbering the same Sublease). Where "Senior" is used as a comparative term as against any specified Mortgage, such term refers to any Mortgage of the same type (Fee or Leasehold or Subleasehold) that is senior in lien to such specified Mortgage. Priority of liens shall be determined under the Section of this Lease entitled "Protections; Priorities of Multiple Mortgagees." If only one Mortgage of a particular type exists, then it shall be deemed the "Senior" Mortgage of such type.

"SOV" means the schedule of values approved pursuant to the Grant Agreement, as same may be amended from time to time, and as same is updated from time to time to reflect the disbursement of funds. The current approved schedule of values to the Grant Agreement is attached hereto as **Exhibit G**.

"State" means the state or commonwealth where the Premises are located.

"Structure" of the Premises means only the concrete floors, footings, foundation, load-bearing walls, roof, roof support system, and structural steel or other structural support system of the Premises.

"Sublease" means, for the Premises, (a) sublease; (b) agreement or arrangement (including a concession, license, or occupancy agreement) allowing any Person to occupy, use or possess; (c) subsublease or any further level of subletting; or (d) Modification or assignment of "a" through "c."

"Subleased Premises" means any portion of the Premises subleased under a Sublease.

"Subleasehold Estate" means a Subtenant's subleasehold estate, and all of the Subtenant's rights and privileges under the Sublease, upon and subject to all the terms and conditions of the Sublease.

"Subleasehold Mortgage" means any mortgage, deed of trust, collateral assignment, or other lien (as modified from time to time) encumbering any Sublease and any Subleasehold Estate. A Subleasehold Mortgage shall not attach to the Fee Estate or the Leasehold Estate.

"Subleasehold Mortgagee" means a holder of a Subleasehold Mortgage (and its successors and assigns), provided (a) it is not an Affiliate of Tenant, unless Landlord has given its prior written consent; and (b) Landlord has received Notice of its name and address (and that of any successors and assigns) and a copy of its Subleasehold Mortgage.

"Subrent" means all money due and payable by Subtenants under Subleases.

"Substantial Completion" means (a) substantially completed, as reasonably determined by the Tenant's licensed professional, i.e. architect or professional engineer, in accordance with the Plans and Specifications, if applicable, or in accordance with the plans and specifications provided to the City of North Miami in its governmental capacity and on which any building permit or approval was granted; provided, however, that in the event that Landlord, in good faith, disagrees with Tenant's licensed professional as to whether substantial completion has in fact occurred, the Landlord shall have the right to hire its own licensed professional, at Tenant's cost, to certify as to whether or not substantial completion has in fact occurred, and in such event, the certification of Landlord's licensed professional shall control; and (b) the Improvement can be used as intended (for clarification, such intended use may be a shell to be provided to a Subtenant that will complete its own build-out, or a shell to be built out once a Subtenant for that space is located) with only minor, punch list type work remaining, all as certified to by Tenant's licensed professional, i.e. architect or professional engineer; provided, however, that in the event that Landlord, in good faith, disagrees with Tenant's licensed professional as to whether substantial completion has in fact occurred, the Landlord shall have the right to hire its own licensed professional, at Tenant's cost, to certify as to whether or not substantial completion has in fact occurred, and in such event, the certification of Landlord's licensed professional shall control.

"Substantial Condemnation" means any Condemnation that takes the entire Premises or at Tenant's sole option any Condemnation that (a) in Tenant's reasonable determination renders the remaining Premises as a whole in such a condition that it cannot be developed or operated in a commercially reasonable manner; or (b) significantly adversely affects the use of the Premises as a whole and occurs less than sixty months before the end of the Term.

"Subtenant" means any Person entitled to occupy, use, or possess any of the Premises under a Sublease.

"Subtenant-Specific Default" means any event of default under a Sublease that: (a) arises from any lien or encumbrance attaching solely to the Subleasehold Estate (not the Leasehold Estate or Fee Estate) but junior to the Subleasehold Mortgage; (b) is a nonmonetary default that Subleasehold Mortgagee or New Subtenant cannot with diligence and commercially reasonable efforts cure or (c) arises from a Bankruptcy Action or any related action, omission, event, circumstance, matter or related event of the default under the Sublease.

"Successor Tenant" has the meaning ascribed to such term in Section 20.4(b) hereof.

"Surety Bond" means a surety company payment and performance bond, in form and substance and issued by a surety company licensed in the State guaranteeing to Landlord (and to such other Persons as Tenant shall determine appropriate) Builder's completion of such Construction, in accordance with the contract with Builder, fully paid and free and clear of all liens, encumbrances, security interests, and other charges, except as this Lease permits. Such Surety Bond shall be in an amount equal to at least 110% of the cost (as estimated by Tenant's State licensed architect) of all materials and labor for any Construction for (a) any and all Improvements which may be required within dedicated rights of way and/or public facility easements, and (b) public works as described in section 255.05, Fla. Stat. (2012), as same may be amended from time to time for all public works.

"Swerdlow Development Company" means Swerdlow Development Company, LLC, a Delaware limited liability company.

"Temporary Condemnation" means a Condemnation of the temporary right to use or occupy all or part of the Premises.

"Tenant's Construction Obligations" means the construction obligations of Tenant with regard to the Initial Development, the Second Stage Development, and the Third Stage Development.

"Tenant-Specific Default" means any Event of Default that: (a) arises from any lien or encumbrance attaching solely to the Leasehold Estate (not the Fee Estate) but junior to the Leasehold Mortgage; (b) is a Nonmonetary Default that Leasehold Mortgagee or New Tenant cannot with diligence and commercially reasonable efforts cure, but specifically excluding any default in connection with Tenant's Construction Obligations, which shall not be deemed to be a Tenant-Specific Default, or (c) arises from a Bankruptcy Action or any related action, omission, event, circumstance, matter or related Event of Default.

"Term" means the term of this Lease, commencing on the Commencement Date and ending on the Scheduled Expiration Date.

"Third Stage Development" shall mean (a) Substantial Completion of at least 700,000 leasable square feet of Required Improvements in the aggregate, and (b) completion of the Remedial Action, all by the tenth anniversary of the Commencement Date, subject to Unavoidable Delay; provided however that if after the seventh anniversary of the Commencement Date, there is any twelve (12) consecutive month period in which there are no active building permits for any Required Improvements, Tenant shall complete the Remedial Action (except for post-closure monitoring and reporting) within six (6) months after the end of such twelve (12) consecutive month period instead of by the tenth anniversary of the Commencement Date. For these purposes, a permit shall be considered to be active when the permit has received an approved inspection within 180 days.

"Transfer" of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property by the holders of such Equity Interest(s); (c) any transaction described in "b" affecting any Equity Interest(s) or any other interest in such property or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "b" through "d," shall be deemed a Transfer by Landlord or Tenant even though Landlord or Tenant is not technically the transferor. Entry into a Sublease does not constitute a Transfer.

"Trust Funds" means any funds that this Lease requires or allows Landlord (or anyone acting for Landlord) to hold, and in which Tenant has an interest.

"Unavoidable Delay" means delay in performing any obligation under this Lease (except payment of money) arising from or on account of any cause beyond the obligor's (i.e. the party claiming Unavoidable Delay) reasonable control, despite such obligor's reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions do not result from an act or omission of the obligor), the obligor's inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, Laws, governmental preemption or governmental approval, regulatory, permitting, inspection or other delays (unless caused by the obligor) including, without limitation, with respect to any Application, Approval or Modifications thereto and those arising from actions or omissions of DPERA or FDEP (unless caused by the obligor), war, terrorism, or riots. Unavoidable Delay claimed by Tenant as to Tenant's Construction Obligations may include, without limitation, delays incurred by Tenant as a result but only to the extent of (a) Landlord's failure to timely complete the ERA Work, (b) Landlord's improper or defective performance of the ERA Work, or (c) the ERA Work causing unreasonable interference with Tenant's Construction Obligations. Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency, or failure to obtain funding. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within 15 days after such obligor knows of any such Unavoidable Delay; and (b) within 10 days after such Unavoidable Delay ceases to exist, but failure to do so shall not affect the entitlement of the party claiming Unavoidable Delay to claim same. However, the obligee may by Notice to the obligor from time to time request that the obligor confirm in writing whether or not any Unavoidable Delay has theretofore occurred in respect of any particular obligation, and obligor shall respond to such notice within 30 days either that there are none or specifying the number of days claimed and the basis therefor (and failure to respond within said 30 day period shall be deemed to be an acknowledgment that there are none), and Landlord shall be entitled to rely on such response, which shall be deemed conclusive. Landlord shall also be entitled to rely on any information regarding Unavoidable Delays provided in a Progress Report, and such information shall be deemed conclusive. Any such Notices and Progress Report responses shall describe the Unavoidable Delay in reasonable detail. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance. Any disputes regarding Unavoidable Delays may be resolved by the Dispute Resolution Procedures. No Unavoidable Delay shall serve to extend the time for performance of the covenants or provisions of this Lease by more than one (1) year (unless extended by the Parties in writing or if such Unavoidable Delay arises from any governmental preemption or governmental approval, regulatory, permitting, inspection or other delays (unless caused by the obligor) with respect to any Application, Approval or Modifications thereto).

"Usury Limit" means the highest rate of interest, if any, that Law allows under the circumstances.

"Waiver of Subrogation" means a provision in, or endorsement to, any property insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either party to this Lease for any loss such policy covers.

2. TERM; RENEWAL

2.1. *Term.* The Term of this Lease (the "Term") shall: (a) commence on the Commencement Date; and (b) continue until the Scheduled Expiration Date, unless terminated sooner or extended as provided below in Section 2.2. If the Commencement Date is not the first day of a Lease Year, then from the Commencement Date through the day before the first Lease Year, the parties shall have all the same rights and obligations under this Lease (including regarding Rent) that they do during the first full Lease Year, all prorated daily.

2.2. *Renewal*. Provided that there is no Event of Default then in effect at the expiration of the Term, the Term shall automatically extend for one (1) additional period of ninety-nine years upon the same terms and conditions as provided in the original term of this Lease, except as this Lease otherwise expressly states, and except that Fixed Rent shall be as set forth in Section 3.5 below.

3. INITIAL PAYMENT; RENT; INITIAL REIMBURSEMENT

3.1. *Initial Payment*. Upon the later to occur of (x) thirty (30) days following the Effective Date, and (y) ten (10) Business Days following Tenant's receipt of each of the fully executed documents set forth on **Schedule 3.1** attached hereto (the "Required Documents") (such later date, hereinafter, the "Commencement Date"), Tenant shall pay advanced rent by bank wire transfer in immediately available federal funds, in the sum of (a) Seventeen Million Five Hundred Thousand and No/100 Dollars ($17,500,000.00), plus (b) the amount required to pay in full all outstanding Real Estate Taxes including interest and penalties on the Premises (provided however that if Tenant wishes to and is permitted by Laws to appeal the amounts of such outstanding Real Estate Taxes, Tenant may pay only the amounts required by the Miami-Dade County Value Adjustment Board as required for such an appeal, provided that Tenant complies with the provisions of this Lease regarding Contests), plus (c) the amount specified in Section 3.11 below. The payments required by (a) and (c) shall be made to the specified accounts of Landlord and the payment required by (b) shall be made directly to the Miami-Dade Tax Collector. Such sum shall be deemed fully earned as of the Commencement Date and shall not be refundable. If after payment of the amount required to be paid by this Section 3.1 with respect to all such outstanding Real Estate Taxes (including interest and penalties) on the Premises, Tenant appeals the amounts of such Real Estate Taxes and is able to obtain a reduction, Tenant shall be entitled to the refund. Notwithstanding anything to the contrary contained herein, the failure of Tenant to timely pay the amounts required by (a), (b) and (c) of this Section 3.1 on the Commencement Date shall render this Lease (at Landlord's option) null, void, and of no further force or effect. Commencing on the Effective Date, Landlord shall work in good faith to timely deliver the Required Documents to the Tenant. Notwithstanding anything to the contrary contained in this Section 3.1, in the event the Landlord has not delivered the Required Documents to Tenant within one hundred twenty (120) days following the Effective Date, then, Tenant, at its sole option, shall have the right to either (i) waive the delivery of any of the Required Documents that have not yet been delivered, (ii) extend the period of time for

which the Landlord shall be able to deliver the Required Documents (and for which the Commencement Date shall occur), or (iii) terminate this Lease by written notice to the Landlord, in which event (x) this Lease shall be null, void and of no further force or effect, and (y) Landlord shall promptly return to Tenant the Fixed Rent for the first Lease Year of the Term (it being the understanding of the Landlord and Tenant that the failure of the Tenant to notify the Landlord of its option in writing shall be deemed to be an election to extend the period of time for which the Landlord shall be able to deliver the Required Documents (and for which the Commencement Date shall occur) for a period of thirty (30) days).

3.2. *Fixed Rent*. Tenant shall pay Landlord, without notice or demand, in lawful money of the United States of America, a net annual rental (the "Fixed Rent") as follows:

Term	**Fixed Rent**	
	Annual	**Quarterly**
Initial	$1,500,000.00	$375,000.00

Fixed Rent for the first Lease Year of the Term shall be due within two (2) Business Days following the Effective Date. No Fixed Rent shall be due or payable for the second, third, fourth or fifth Lease Years of the Term unless and until final certificates of occupancy or their equivalent have been issued for 500,000 gross square feet or more of Improvements, at which time a reduced Fixed Rent of $200,000.00 per Lease Year (prorated), payable quarterly in advance, shall commence and be payable through the end of the fifth Lease Year. Thereafter during the Term, full Fixed Rent shall be due and payable in quarterly installments on the first day of each three month quarter. If the Commencement Date is a date other than the first day of the month, Tenant shall pay to Landlord on the Commencement Date (in addition to the Fixed Rent for the first Lease Year) the quarterly Fixed Rent prorated by multiplying the quarterly Fixed Rent by a fraction, the numerator of which is the number of days remaining in the month (including the Commencement Date) for which Rent is being paid, and the denominator of which is the total number of days in such quarter.

3.3. *Participation Rent*. In order to allow Tenant and its Subtenants to predict with precision their costs over the Term, Landlord has agreed to receive as Additional Rent the amounts described in this Section ("Participation Rent") instead of requiring a periodic increase in Fixed Rent that is tied to a consumer price index or other index for inflation. Accordingly, Tenant shall pay the following amounts as Participation Rent:

3.3.1 *Retail, Office, Recreation/Entertainment Indoor, Recording and TV/Radio*. Tenant shall pay 1.75% of the gross revenue (less any release price payable in connection with the release of the lien of a Leasehold Mortgage from the applicable space and/or related lien of a Mezzanine Loan) actually received and whenever received by Tenant (or the fair value equivalent thereof, for space other than sales, leasing and/or construction centers occupied by Tenant), excluding all pass-through reimbursements, from the portions of the Premises having a primary use of retail, office, Recreation/Entertainment Indoor, or Recording and TV/Radio uses (but excluding such amounts derived from retail, office, Recreation/Entertainment Indoor, or Recording and TV/Radio uses that are located in any hotel, senior housing or residential facility, if any, which shall be deemed revenue of such hotel, senior

housing or residential facility) during the prior calendar year. If, as, and when Light Industrial uses are approved for the Premises, Tenant shall pay Participation Rent of 1.75% of the gross revenue actually received and whenever received by Tenant for portions of the Premises having a primary use of Light Industrial.

3.3.2 *Residential Rentals*. Tenant shall pay 1.75% of the gross revenue (less any release price payable in connection with the release of the lien of a Leasehold Mortgage from the applicable space and/or related lien of a Mezzanine Loan) actually received and whenever received by Tenant (excluding all pass-through reimbursements) from the portions of the Premises having a primary use as rentals of space in any senior housing or other residential use facility on the Premises during the prior calendar year.

3.3.3 *Hotel*. Tenant shall pay 2.25% of the gross revenue (less any release price payable in connection with the release of the lien of a Leasehold Mortgage from the applicable space and/or related lien of a Mezzanine Loan) actually received and whenever received by Tenant (excluding all pass-through reimbursements) for portions of the Premises having a primary use as hotel or transient housing purposes.

3.3.4 *Sales*. Tenant shall pay 3.25% of the gross revenue (less any release price payable in connection with the release of the lien of a Leasehold Mortgage from the applicable space and/or related lien of a Mezzanine Loan) actually received and whenever received by Tenant from sales of condominium units and senior housing units on the Premises (including a long term "buy-in" option for a continuing care retirement community) during the prior calendar year, less (i) all closing costs but capped at 8% in the aggregate (including brokerage commissions, transfer costs and recording fees, seller concessions and prorations), and (ii) the release price paid to release any Leasehold Mortgage and/or any Mezzanine Lender on the units or facility sold, but only up to an aggregate amount for all such releases equal to the maximum amount of the initial construction loan(s) disbursed for such units or facility (the "Unit Release Cap"). Notwithstanding anything to the contrary contained in this Section 3.3.4, the Unit Release Cap is not applicable to the Initial Leasehold Mortgage.

3.3.5 *Condominiums*. Tenant agrees that all first-time sales of any condominium units on the Premises shall be good faith, third party, commercially reasonable transactions.

3.3.6 *Other Commercial Uses; Future Uses and Revenue*. If in the future a use or manner of revenue production that is not presently expressly subject to Participation Rents under this Lease (by way of example only and not limitation, industrial use, sale of shares in a cooperative, any concession, license, management, or occupancy agreement allowing any Person to occupy, use or possess a portion of the Premises, including without limitation any cell tower lease, air rights lease, or billboard or other signage license), then Landlord and Tenant agree to diligently and in good faith amend the Participation Rent provision of this Lease to provide reasonable additional Participation Rent to Landlord related to such use or method of revenue production.

3.3.7 *No Duplication*. There shall be no duplication of payments under any of the foregoing categories.

3.3.8 *Payment.* Within one hundred twenty (120) days after the end of each calendar year, any portion of which occurs within the Term, Tenant shall calculate, provide detailed substantiation for, and pay to Landlord the Participation Rent attributable to such calendar year (or portion thereof), and an authorized representative of Tenant shall certify to Landlord in writing that such report is true, correct and complete in all material respects. Landlord's processing of any payment shall not be deemed acceptance of Tenant's calculations of Participation Rent.

3.3.9 *Books, Records, Documents; Inspection*. All books, records, agreements and other documents used by Tenant to calculate or substantiate the Participation Rent (the "Records") will be maintained at the Premises in a fireproof safe, in a location provided by Tenant to Landlord by Notice from time to time, and in the manner recited in this Subsection. Tenant shall maintain all Records for the immediately preceding seven (7) calendar years or parts thereof during which any part of the Term falls at such location. The Records shall be open to inspection, examination, copying, and audit by Landlord or Landlord's designated representative, in comfortable office surroundings, upon giving Tenant five (5) days' prior notice of Landlord's intention to exercise its rights under this Section. If upon inspection or examination of the Records, Landlord determines that (a) Tenant has failed to maintain, preserve, or retain the Records in the manner set forth in this Section, or (b) the Records are insufficient to enable Landlord to verify the accuracy of the Participation Rent paid by Tenant for any calendar year being audited, Landlord shall give Tenant sixty (60) days to cure the deficiencies. Tenant shall reimburse Landlord as Additional Rent for all reasonable expenses incurred by Landlord in determining the deficiencies, including any audit or examination fees incurred by Landlord. If Landlord does not give Tenant notice of its intention to exercise its rights under this Section within one (1) year after the end of a calendar year with respect to which any Participation Rent is payable, it shall have no right to do so unless a subsequent examination of a later calendar year reveals an underpayment of Participation Rent in that calendar year. All direct Subleases with Tenant shall provide that Landlord shall have the right to request and such Subtenant shall provide certified estoppel information in connection with any audit, and the failure to do so shall constitute a default under the applicable Sublease.

3.3.10 *Failure to Cure Deficiencies*. If Tenant fails to cure the deficiencies described in Section 3.3.9 within sixty (60) days after notice, Landlord may, at its option, either hold Tenant in default of the Lease, or, at Tenant's expense and for Tenant's benefit, retain an independent accounting or bookkeeping firm to prepare and maintain the Records. If Landlord elects the latter option, the representatives of the accounting or bookkeeping firm shall have full right of entry and access to the Premises and existing financial records, and full cooperation by Tenant, for the purpose of establishing and maintaining the Records. Any expenses incurred by Landlord in furtherance of its rights under this Section shall be Additional Rent payable by Tenant upon receipt of an invoice. If an audit or examination by Landlord, or its representative, discloses that Tenant has failed to report all revenue subject to Participation Rent accurately, and that the total amount of the underreported revenue exceeds 2% of the revenue previously reported by Tenant for any period examined, or the total amount of the underreported revenue subject to Participation Rent results in Tenant owing additional Participation Rent in excess of $5,000.00, Tenant shall reimburse Landlord for all reasonable expenses incurred by Landlord in performing the examination, in addition to all additional Participation Rent found to be owed by Tenant pursuant to this Section. Additional Participation Rent shall bear interest at the lesser of

fifteen percent (15%) per annum or the highest rate allowed by law from the date on which the additional Participation Rent was due until it is paid in full with interest. If an examination by Landlord or its representative discloses that Tenant has overreported revenue subject to Participation Rent and that as a result of the overreporting Tenant has overpaid Participation Rent, Tenant shall receive a credit against the next payment due to Landlord hereunder.

3.3.11 *Taxes*. The revenue specified above to which the percentages are applied shall not include any sums collected or paid out for any sales or retail excise tax imposed by any duly constituted governmental authority. Tenant shall pay all sales, use, or similar taxes payable with respect to the Participation Rent.

3.4. *Periodic Fixed Rent Increases*. Fixed Rent shall increase by an amount equal to One Hundred Fifty Thousand Dollars ($150,000.00) on the first day of each of the eleventh, twenty-first, thirty-first, forty-first, fifty-first, sixty-first, seventy-first, eighty-first and ninety-first Lease Years.

3.5. *Renewal Rent*. The initial Fixed Rent for the renewal term ("Initial Renewal Rent") shall be determined in the 70th Lease Year. Tenant shall calculate Initial Renewal Rent as follows, and shall provide Notice of same to Landlord including reasonably detailed backup for all calculations. In the event Landlord in good faith believes that Tenant's Initial Renewal Rent calculation is not correct, then, Landlord shall provide Tenant with its calculation within sixty (60) days following Landlord's receipt of Tenant's calculation and Landlord's determination of Initial Renewal Rent, if it differs from Tenant's calculations, shall be binding absent manifest error.

(1) A compound annual growth rate ("CAGR") shall be determined by (i) dividing the CPI Level for the 69th Lease Year by the CPI Level for the 49th Lease Year and (ii) raising the resulting quotient to the power of one twentieth (1/20).

(2) Initial Renewal Rent shall equal the product of (i) CAGR raised to the power of ninety-nine (99) and (ii) $1,500,000.

The Fixed Rent shall equal the Initial Renewal Rent during the 100th Lease Year, and shall increase by fifteen percent (15%) of the then current Fixed Rent for any renewal term on each tenth (10th) anniversary of the commencement date of such renewal term.

3.6. *Payment; Proration; Etc.* Tenant shall pay Fixed Rent in equal quarterly installments in advance on the first day of each quarter of each Lease Year. Tenant shall pay all Rent payable to Landlord by good and sufficient check payable to Landlord or by wire transfer, at such address as Landlord shall designate from time to time.

3.7. *Additional Rent*. In addition to Fixed Rent, Tenant shall promptly pay the appropriate third party, or to Landlord as applicable, as additional rent under this Lease, all Additional Rent. Except where this Lease provides otherwise, Tenant shall pay all Additional Rent within thirty days after receipt of an invoice and reasonable backup documentation, if appropriate.

3.8. *No Allocation to FF&E*. No Rent is allocable to any FF&E.

3.9. *No Offsets*. Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever except as provided in Section 9.3.1.

3.10. *Government Restriction on Rent*. During any period when any Rent shall be or become uncollectible, reduced, or required to be refunded because of any rent control Law or other Law (a "Rent Regulation Period"), Tenant shall enter into such agreement(s) and take such other steps as Landlord may reasonably request and as may be legally permissible to permit Landlord to collect the maximum Rent that, from time to time during such Rent Regulation Period, may be legally permissible (and not in excess of the amounts then reserved therefor under this Lease to the extent then due and payable under this Lease). After any Rent Regulation Period: (a) Rent shall become and thereafter be payable in accordance with this Lease; and (b) Tenant shall promptly pay in full to Landlord, unless prohibited by Law, an amount equal to the excess, if any, of the following during the Rent Regulation Period: (1) the Rent that this Lease required Tenant to pay; less (2) the Rent Tenant actually paid.

3.11. *Third Party Professional Fee and Property Maintenance Reimbursement*. On the Commencement Date, Tenant shall reimburse Landlord for up to One Million and No/100 Dollars ($1,000,000.00) for documented and reasonable third party professional fees related to this Lease transaction and for the costs of maintenance of the Premises by Landlord from August 31, 2009 until the Commencement Date.

3.12. *Casino Gambling or Gaming.* If casino gambling or gaming becomes a use that is permitted by Law on the Premises, no portion of the Premises shall be used for the purpose of casino gambling or gaming unless and until Landlord and Tenant have renegotiated the Participation Rent provision of this Lease to provide reasonable additional Participation Rent to Landlord related to such use, which Landlord and Tenant agree to do diligently and in good faith. The sale of lottery tickets or slot machines (if permitted by Law) as part of another primary use shall not be restricted by this Section 3.12 or require renegotiation of the Lease as contemplated by this Section 3.12.

3.13. *Replacement of Participation Rent*. Landlord and Tenant agree that if the Participation Rent provisions of this Lease create a federal or other tax liability for Landlord, including unrelated business income, then the parties will work in good faith to restructure the Participation Rent component of the Rent payments (retroactively to the extent necessary to remove the tax liability) to afford Landlord substantially the same economic benefit and Tenant substantially the same economic obligation but in a manner that does not create a federal or other tax liability for Landlord.

3.14. *Rent for Park Property*. Notwithstanding anything to the contrary contained in this Lease, the sole rental for the Park Property is $1.00 per year (the receipt of which is hereby acknowledged), it being the intention of the Parties that none of the rent or other payments made pursuant to this Lease (including, without limitation, the payments made pursuant to Section 3) shall be allocated to the Park Property.

3.15. *Corner Parcel*. During the Term, Tenant shall pay to Landlord, as rent, within forty-five (45) days following the date such amounts are actually received by Tenant: (a) 100% of the next $1,500,000, if any, of the Corner Parcel Net Revenue over and above the initial $13,500,000 of Corner Parcel Net Revenue, and then (b) 50% of any additional Corner Parcel Net Revenue over and above the aforementioned $15,000,000 of Corner Parcel Net Revenue.

4. ADDITIONAL PAYMENTS BY TENANT; REAL ESTATE TAXES

4.1. *Landlord's Net Return*. This Lease shall constitute an absolutely "net" lease. The Fixed Rent shall give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises, except as this Lease expressly provides otherwise. Tenant shall pay directly to the payee as Additional Rent and discharge (subject to Tenant's right of Contest as this Lease expressly provides), before failure to pay creates a material risk of lien on the Fee Estate, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Construction affecting, the Premises, including all costs and expenses relating to the Premises and the business carried on therein during the Term of this Lease, all taxes and charges of every kind and nature (including Real Estate Taxes, *ad valorem*, single business, sales taxes on Rent, business receipts taxes, certificates of use, sales, use or similar taxes, and personal property taxes) on or with respect to the Premises, or the use, lease, ownership or operation thereof; all general and special assessments, levies, permits, inspection and license fees (including without limitation any inspections required by municipal or county codes such as building recertification) on or with respect to the Premises; all water and sewer rents and other utility charges on or with respect to the Premises; all code violation fees and fire alarm fees; and all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed or assessed upon or with respect to the Premises, during the Term, against Landlord, Tenant or any of the Premises as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair or possession thereof, or any activity conducted on the Premises, or the Rent, including without limitation, any rent tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Rent, including pursuant to Fla. Stat. 212.031 (2007) as same may be amended from time to time; all payments required to be made to a Government (or private entity in lieu thereof) that are in lieu of any of the foregoing. Except for (i) the reimbursement for administrative cost provided for in Section 4.7 of this Lease, (ii) the reimbursement for third party professional fees and property maintenance expenses payable pursuant to Section 3.11, (iii) the reimbursement of expenses incurred by Landlord under circumstances contained in this Lease that expressly permit such reimbursement (by way of example only, expenses incurred by Landlord under Subsection 3.3 because of a failure by Tenant to cure deficiencies in the maintenance of Records and under Section 9.3.2 for third-party costs and expenses of Landlord's cooperation), Tenant need not pay (as Landlord shall be responsible for timely paying without contribution by Tenant) the following items payable, accrued, or incurred by Landlord: (a) Fee Debt Service; (b) depreciation, amortization, brokerage commissions, financing or refinancing costs, management fees, or leasing expenses for the Fee Estate; (c) after the Commencement Date, any consulting, overhead, accounting, tax preparation, other professional fees, travel, legal and staff costs, bank service charges, and other costs incidental to Landlord's ownership of the Premises and administration and monitoring of this Lease, including such costs Landlord incurs in reviewing anything Tenant delivers under this

Lease or determining whether Tenant is in compliance with this Lease, except to the extent that this Lease requires Tenant to pay such costs or expenses; (d) any costs or expenses that Landlord incurs in or for any litigation, except to the extent that this Lease requires Tenant to pay such costs or expenses; (e) any costs arising from or under any instrument or agreement affecting the Premises that is not a Permitted Exception and was not requested or created by or with the consent of Tenant or anyone claiming through Tenant, and to which Landlord is a party and Tenant is not a party, except to the extent that this Lease requires Tenant to pay such costs or expenses; (f) any insurance premiums, utilities, operating expenses, or other costs related to the Premises that accrued before the Commencement Date, except to the extent that this Lease requires Tenant to pay such costs or expenses; (g) any sums expressly payable by Landlord under this Lease or expressly excluded from the definition of Real Estate Taxes; and (h) all other costs or expenses that, by their nature, are personal to Landlord or Landlord's ownership of the Fee Estate. The intent of the foregoing sentence is not to abrogate the triple net nature of this Lease, but is instead to make it clear that costs normally for the account of the landlord in a triple net ground lease remain for the account of the Landlord in this Lease, except to the extent that this Lease requires Tenant to pay such costs or expenses.

4.2. *Real Estate Taxes*. Tenant shall pay and discharge all Real Estate Taxes payable or accruing for 2012 and all period(s) within the Term (including any determined to be due and owing after a Contest of Real Estate Taxes), by November 1 of the calendar year during which the Real Estate Taxes are last payable without delinquency (by way of example, 2012 Real Estate Taxes are payable without delinquency until March 31, 2013, so Tenant would have until November 1, 2013 to pay same) but in any event prior to the Expiration Date. Tenant shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes. Notwithstanding the foregoing, Tenant shall not be in default for failure to pay Real Estate Taxes (including any determined to be due and owing after a Contest of Real Estate Taxes) until Tenant has received Notice and the opportunity to cure that is afforded Tenant for Monetary Defaults under this Lease. Tenant shall within a reasonable time after payment give Landlord reasonable proof that Tenant has paid any Real Estate Taxes that this Lease requires Tenant to pay. Tenant shall have the sole right and authority to contest Real Estate Taxes, in compliance with the Contest Conditions. Real Estate Taxes for the year in which the Expiration Date occurs shall be prorated as of midnight of the day preceding the Expiration Date, and such amount shall be paid within 10 Business Days after the Expiration Date by Tenant to Landlord. If the amount of taxes for such year cannot be ascertained, rates for the previous year will be used with due allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at the request of either party, be readjusted upon receipt of the tax bill for the Premises for the year of the Expiration Date; this provision will survive the termination of the Lease.

4.3. *Assessments in Installments*. To the extent Law allows, Tenant may apply to have any assessment by a Government payable in installments. Upon approval of such application, Tenant shall pay and discharge only such installments as become due and payable during the Term.

4.4. *BID Decisions*. If any proposal is made to include the Premises in any BID (or to Modify the terms of any BID, including the amount or calculation of any required payments or assessments) and the owner of the Fee Estate is entitled to vote in favor of or against such

proposal, then Tenant shall solely decide how to vote on behalf of such owner, the parties shall reasonably cooperate to effectuate such decision, and Tenant shall have full and sole power to represent the Premises as owner in all matters regarding the BID, provided that at the time of determination the unexpired Term (including any extension option, whether or not exercised) is ten (10) years or more and no Event of Default exists. Tenant shall keep Landlord reasonably informed of current action of the BID. A BID shall include the creation of a CDD in order to obtain lower interest rates for the funding of CDD costs, as defined in Section 190.003(7), Florida Statutes, as it may be amended or renumbered from time to time. Landlord agrees to consider, which consideration shall not be unreasonably withheld, conditioned or delayed, any such application for a CDD in its capacity as owner of the Premises, as long as the unexpired Term condition set forth above is satisfied and no Event of Default exists.

4.5. *Direct Payment by Landlord*. Additional Rent shall include obligations of Tenant owed to third parties by virtue of other provisions of this Lease. If any such Additional Rent is required by such third parties to be paid directly by Landlord, then Tenant shall Notify Landlord and shall pay such amount to Landlord in a timely manner with reasonable instructions on remittance of such payment by Landlord to the payee. Landlord shall with reasonable promptness comply with Tenant's reasonable instructions, and Landlord shall pay (either to the third party directly or to Tenant within 30 days after Notice) any penalties, late fees, finance charges, lost discounts or other amounts payable to the obligee as a direct result of Landlord's failure to do so.

4.6. *Utilities*. Tenant shall arrange and pay the costs for all those utilities servicing the Premises for which a lien could be placed on the Premises as a result of non-payment during the Term before delinquency (or before they can become a lien on the Premises on account of non-payment thereof, if later) but in any event prior to the Expiration Date. Notwithstanding the foregoing, Tenant shall not be in default for failure to pay such utility costs until Tenant has received a Notice of Default and has been given the opportunity to cure that is afforded Tenant in the definition of Delay Fee under this Lease. Landlord's sole remedies shall be at Landlord's option to impose a Delay Fee, and/or to pay the delinquent utility costs (including any interest and penalties), and/or specific performance, and Tenant waives all defenses, except defense of performance, in any action brought by Landlord to enforce its rights under this Section. Tenant shall promptly reimburse Landlord for any payments made and costs incurred under this Section, plus a $500 (increasing 10% at the beginning of the 11th full Lease Year and at the beginning of each 10th full Lease Year thereafter) administrative fee, interest at the Default Interest Rate and Legal Costs. Notwithstanding anything to the contrary, should any non-payment under this Section result in a lien on the Fee Estate, then Landlord shall have the remedies provided for Prohibited Liens.

4.7. *Administrative Cost Reimbursement*. During the first five (5) Lease Years only, Tenant shall pay to Landlord $50,000.00 semi-annually ($100,000.00 annually, $500,000.00 in the aggregate for all 5 years) at the end of the 6th month of the Lease Year and at the end of the Lease Year, within 30 days of Notice from Landlord, which Notice shall include a certificate from the City Manager or other authorized representative of Landlord to the effect that at least $50,000 of third party and in house costs have reasonably been incurred by Landlord for the 6 month period for which payment is being requested for administering and monitoring compliance of Tenant's performance under this Lease.

4.8. *Payments to be Made by Landlord and Consequences for Failure To Do So.* If any payment required to be made by Landlord under this Lease (whether to Tenant or a third party) is not timely paid, Landlord shall not be in default for failure to pay same, and Tenant shall not take action on same, until Landlord has received Notice and 30 days opportunity to cure has elapsed, and thereafter Tenant gives Notice with time to cure as provided in Section 23.11 of this Lease, but thereafter Tenant may pay same (in the case of payments to third parties) and Landlord shall reimburse Tenant (in the case of third party payments) or pay Tenant for the amount thereof.

5. USE

5.1. *Permitted Use.* Tenant may use the Premises for any lawful purpose. Tenant at its sole option, may seek to rezone the Premises or any portion thereof.

5.2. *Exclusive Control*. Tenant shall have exclusive control, possession, occupancy, use, and management of the Premises, subject only to Permitted Exceptions and the provisions of this Lease, including, but not limited to, Section 35.3. Except for the ERA, Landlord, at its sole cost and expense, shall terminate any and all existing service and management contracts that exist prior to the Commencement Date, effective on the Commencement Date. Subject to the terms of Section 31.4 of this Lease, Tenant shall have the exclusive right to install signage on or at the Premises, or to Transfer the right to install such signage during the Term. During the Term and subject to the terms and provisions of the Lease, Tenant may enter into and thereafter terminate, or Modify any contract for management or operation of the Premises entered into by Tenant or Modify any provision of services to the Premises procured by Tenant, without Landlord's input, consent or approval. Any such contracts shall automatically expire on the Expiration Date.

6. COMPLIANCE

6.1. *Generally*. Tenant shall during the Term, at Tenant's expense, in all material respects, subject to Tenant's right of Contest: (a) comply with all Laws and Permitted Exceptions; and (b) procure and comply with all Approvals required by Law. In amplification of the foregoing, all Construction shall be performed in compliance with applicable Laws and Approvals and any applicable provisions of this Lease.

6.2. *Copies of Notices*. Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises or any Real Estate Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that Landlord receives from any Government, utility company, insurance carrier, or insurance rating bureau.

7. DEVELOPMENT; MAINTENANCE AND ALTERATIONS; DISPUTE RESOLUTION

7.1. *Development*. Subject to compliance with any applicable provisions of this Lease, Tenant and those claiming under it may perform any lawful Construction on the Premises without the consent of Landlord. Without limiting the foregoing, the Concept Plan is a conceptual plan for the Premises and includes presently proposed phases, presently anticipated time frames for development, and the presently proposed uses of the Project. Tenant and

Landlord recognize and agree that except for the Park Property, the location and boundaries of which shall not be changed without the prior written consent of Landlord, the Development plan for the Premises will change over time based on market conditions and needs, and that Tenant requires the flexibility to react to those changing conditions in a prompt and timely fashion. Thus, this Concept Plan should be considered a general guideline for the Development of the Premises, which Tenant may modify from time to time in its sole discretion, except as provided above as to the Park Property. Likewise, the projected time frames and sequence of Development is totally market driven and, therefore, such time frames and sequencing are merely aspirational goals and may be changed from time to time by Tenant in its sole discretion. However, notwithstanding anything to the contrary in this Lease, Tenant shall cause the timely completion of (a) the Initial Development, (b) the Second Stage Development, and (c) the Third Stage Development, in each case subject to extension by reason of Unavoidable Delay (collectively, "Tenant's Construction Obligations"), and no change in the Concept Plan shall be deemed to change the requirements included in Tenant's Construction Obligations. In the event there is no construction on an undeveloped portion of the Premises for a period of five (5) consecutive Lease Years, the Tenant agrees to close and secure that portion of the Premises on which no construction activity is taking place until such time as construction commences thereon. Notwithstanding anything to the contrary in this Lease, any breach of Tenant's Construction Obligations as set forth in the immediately preceding subsections (a) and (b) shall become an Event of Default if not cured within ninety (90) days of Notice from Landlord of same, subject to Unavoidable Delay. A projected schedule of values and projected timeline for the Initial Development is set forth on **Exhibit D-1** and is more specifically described on **Exhibit D-2** attached hereto. All Construction at the Premises shall be performed in a good and workmanlike manner. Tenant shall Notify Landlord of all material changes to the Concept Plan. Tenant shall not be in default of the requirements regarding good and workmanlike construction, required notification of changes in the Concept Plan or compliance with values and timelines set forth in **Exhibits D-1** and **D-2** until it has received a Notice of Default and the opportunity to cure that is afforded Tenant in the definition of Delay Fee under this Lease, and thereafter Landlord's sole remedies for breach of this obligation shall, subject to Section 23.1.8, be limited to specific performance and/or payment of the Delay Fee, and Tenant waives all defenses, except the defenses of performance and Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section. The foregoing shall not be deemed to limit in any way the regulatory requirements, Approvals or processes required by Law for Construction. Tenant agrees to seek any necessary Approvals from Landlord, acting in its governmental capacity, and agrees that such Applications shall be consistent with the Concept Plan, as amended.

7.2. *Plans and Specifications*. Tenant shall submit to Landlord a courtesy copy of any Plans and Specifications (as Modified) for Major Construction at the same time that same are submitted for Government Approvals. If such Plans and Specifications are changed, then Tenant shall promptly deliver copies of such changes to Landlord for its information. Tenant shall not be in default of these obligations until it has received a Notice of Default and the opportunity to cure that is afforded Tenant in the definition of Delay Fee under this Lease. Subject to Section 23.1.8, Landlord's sole remedies for breach of these obligations shall be limited to specific performance and/or payment of the Delay Fee, and Tenant waives all defenses, except the defenses of performance and Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section. Neither the retention of the Plans and

Specifications nor any other action Landlord takes regarding the Plans and Specifications shall constitute an opinion or representation on their sufficiency.

7.3. *Approvals; Applications; Cooperation*. Tenant shall cause all applicable Applications to be submitted and all applicable Approvals to be obtained for any Construction. No demolition or Construction will commence without possession of all appropriate approvals and permits from all governing jurisdictions. Tenant shall not be in default of its obligation regarding submitting such Applications and obtaining such Approvals (but excluding its obligation to not start demolition or Construction until they are received) until it has received a Notice of Default and the opportunity to cure that is afforded Tenant in the definition of Delay Fee under this Lease. Subject to Section 23.1.8, Landlord's sole remedies for breach of this obligation shall be limited to specific performance and/or payment of the Delay Fee, and Tenant waives all defenses, except the defenses of performance and Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section. Tenant shall not submit Applications or apply for Approvals or Modifications of either in Landlord's name without the prior written consent of Landlord. Subject to the provisions of Section 32 entitled "Sovereign Rights", Landlord in Landlord's capacity as owner of the Fee Estate and not as a municipality shall reasonably cooperate, provided there is no cost or increased obligation or liability to Landlord, as fee owner (a) with Tenant in obtaining applicable Approvals, including where reasonably necessary joining in any documents for which the owner of the Fee Estate must join to bind the Premises, and (b) in submitting Applications, including for any pass-through grants other than the Grant or other payments or entitlements that may be available to Landlord and that can be passed through to Tenant to offset costs of Development of the Premises, pursuant to Tenant's reasonable request, and Tenant shall reimburse Landlord's actual and reasonable third-party costs and expenses of such cooperation. Landlord assumes no liability by cooperating with any Construction. Tenant shall Indemnify Landlord regarding such cooperation. Notwithstanding the foregoing, if requested by Tenant, Landlord (as fee owner) shall, within ten (10) days after such request, execute, acknowledge and deliver any such documents or submit such Applications or such other documents as may reasonably be required by Tenant for such purposes, or cause the execution, acknowledgement, delivery or submission of same. In the event that Landlord (as fee owner) fails to comply with such request after such (10) day request, then Tenant shall notify the City Manager and City Attorney of the City of North Miami in writing of the need for such documents or Application within ten (10) days from the date of the Notice. In the event that Landlord (as fee owner) fails to comply with such request after such second (10) day request, then Tenant shall have the right to execute, acknowledge, deliver and submit any such consents, documents or Applications for, on behalf of, and as attorney-in-fact for Landlord (as fee owner).

7.4. *Bonds*. Tenant shall use commercially reasonable efforts, including providing (or causing to be provided) for same in the applicable Sublease, to cause Landlord to be named as an additional obligee (subordinate to any construction lender) on any payment or performance bond issued with respect to the Construction of Improvements. Prior to the issuance of a building permit, Tenant will obtain a Surety Bond (a) for any and all Improvements which may be required within dedicated rights of way and/or public facility easements, and (b) for all public works pursuant to section 255.05, Fla. Stat. (2012), as same may be amended from time to time, including the Remedial Action.

7.5. *Certain Deliveries*. When Tenant has obtained a certificate of occupancy for any Major Construction, Tenant shall provide Landlord with a courtesy copy thereof and, when available, a courtesy copy of "as-built" plans and specifications for such Major Construction and a courtesy copy of an "as-built" survey, either of which may be in electronic format, but Tenant shall not be in default of these obligation until it has received a Notice of Default and the opportunity to cure as is afforded Tenant in the definition of Delay Fee in this Lease. Subject to Section 23.1.8, Landlord's sole remedies for breach of these obligations shall be limited to specific performance and/or payment of the Delay Fee, and Tenant waives all defenses, except the defenses of performance and Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section.

7.6. *Obligation to Maintain*. Except to the extent that (a) this Lease otherwise expressly provides or allows or (b) with respect only as to those portions of the Premises upon which Construction is being performed, Tenant shall during the Term cause (which may be by enforcement of provisions in Subleases as to Subleased Premises) the Premises to be kept and maintained in good order, condition, and repair (which for these purposes shall mean in accordance with the standards for maintenance and building set forth in the City of North Miami Code of Ordinances as same may be amended or replaced from time to time, and other Laws), subject to Loss (governed by other provisions of this Lease), and reasonable wear and tear. Tenant’s obligation to cause the Premises to be maintained includes an obligation to cause to be made (which may be by enforcement of provisions in Subleases as to Subleased Premises) all repairs on or to the Premises (including plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, Structure, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises, together with (to the extent not publicly dedicated) any sidewalks and streets adjacent to the Premises) as may be required by Law from time to time during the Term, whether structural or nonstructural, foreseen or unforeseen, capital or operating. Tenant shall cause trash and debris to be removed from the Premises and the adjoining sidewalks, and cause them to be maintained in a reasonably clean condition. Tenant shall not be in default of the foregoing obligations until it has received a Notice of Default which includes and the opportunity to cure afforded Tenant in the definition of Delay Fee in this Lease, provided however that if the specified default is due to the conduct of a Subtenant and is not within Tenant’s direct control and therefore cannot with due diligence be cured within ten (10) Business Days from such Notice of Default, Tenant shall have additional time prior to the imposition of the Delay Fee to cure such specified default if it duly commences such cure (which may be by enforcement of provisions in Subleases as to Subleased Premises) within such period and then diligently prosecutes such cure to completion. Subject to Section 23.1.8, Landlord's sole remedies for breach of these obligations shall be limited to specific performance and/or payment of the Delay Fee, and Tenant waives all defenses, except the defenses of performance and Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section.

7.7. *Green Practice Standard*. To the extent required by Laws, all Buildings shall achieve LEED Certification or greater or the equivalent under a similar nationally recognized green practice standard.

7.8. *Reports*. Tenant agrees to provide Landlord with accurate and reasonably complete quarterly (during both design and construction) written updates ("Progress Reports") regarding its progress and construction activities in substantially the form attached hereto as **Schedule 7.8**, including estimated timetables (with periodic updates), status of milestones for Major Construction, subleasing, list and status of existing permits, list and status of permits applied for, schedule update of all environmental projects, schedule update of all Construction projects, update of local vendor and labor participation program, disclosure of Unavoidable Delays, disclosure of changes in the Concept Plan and such other information as Landlord may reasonably request and is not confidential. These reports shall be delivered to the City Manager of Landlord or his designee. The provision of information and materials under this Section is intended solely for informational purposes to allow Landlord to monitor the progress of Development and compliance with this Lease in an efficient fashion and not for purposes of consent or approval, except that Landlord shall be entitled to rely on the information provided by Tenant regarding Unavoidable Delays and changes in the Concept Plan. Tenant shall not be in default of its obligation to provide a Progress Report until it has received a Notice of Default and the opportunity that is afforded to Tenant in the definition of Delay Fee in this Lease to cure. Subject to Section 23.1.8, Landlord's sole remedies for failure to provide a Progress Report shall be limited to specific performance and/or payment of the Delay Fee and Tenant waives all defenses, except the defenses of performance and Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section. Notwithstanding anything herein to the contrary, the failure to deliver two consecutive (2) Progress Reports at any time shall be deemed to be a Monetary Default (without the requirement of any additional Notice).

7.9. *Materials on Premises*. The parties acknowledge that the materials, equipment and other personal property described on attached **Schedule 7.9** were stored on the Premises as of February __, 2012. Effective on the Commencement Date, Landlord conveys to Tenant all of Landlords' right, title, and interest, if any, in any such construction material, equipment and other personal property (in "as-is" "where-is" condition with no representations or warranties whatsoever) located on the Premises on the Commencement Date and Tenant shall have the right to retain and use, or remove, sell or discard, all such construction materials, equipment and other personal property. Specifically excluded from the foregoing conveyance, whether or not listed on **Schedule 7.9**, are the crane and generator, as well as any equipment owned by the contractor or any subcontractors under the ERA. Tenant shall provide Landlord with the use of the fusing machine and a trained operator at Tenant's cost from time to time at Landlord's request for use on the Premises.

7.10. *License of Construction Documents*. Tenant hereby grants Landlord a license to use all Construction Documents and all Plans and Specifications for completion, maintenance, repairs and replacements of then existing Improvements after the Expiration Date for purposes of any Law related to intellectual property, but such assignment shall be effective only to the extent Tenant is permitted to do so under the applicable contract with the applicable vendor or preparer of same (and such preparer or vendor may refuse to allow the assignment in its sole discretion). Such license includes the right to modify or amend the Plans and Specifications and the right to grant sublicenses. Landlord shall not exercise its rights under any license of Construction Documents or Plans and Specifications granted to Landlord under this Lease unless this Lease has terminated and no Leasehold Mortgagee has requested a New Lease.

7.11. *Conditional Assignment of Financing Commitment*. Provided that such assignment is expressly permitted by the Construction Loan, Tenant hereby assigns to Landlord Tenant's rights under each Construction Loan. Although such assignment is presently effective, Landlord shall not exercise or seek to exercise any rights as assignee unless and until the Lease has been terminated, the New Lease Option Period has expired without a request for a New Lease, and Tenant's lender has consented in writing to such assignment in its sole discretion. No fact or circumstance, except such lender's actual written consent, shall be deemed to constitute such lender's consent to such assignment. Tenant's lender's acceptance of a Leasehold Mortgage shall not be deemed consent to the foregoing assignment and shall not constitute such lender's acknowledgment that such assignment is permitted by the Construction Loan. If such lender does not consent to such assignment, then such failure shall not constitute a Tenant Default. Such lender is under no obligation to consent to such assignment and may refuse such consent in its sole and absolute discretion. Unless and until Tenant's lender has actually consented to such assignment in writing and this Lease has terminated, Landlord shall not be entitled to exercise against such Construction Loan lender any rights of Tenant and may not assert any other claims against Tenant's lender with respect to the Construction Loan. The purpose of this assignment is solely to allow Landlord to obtain the benefit of the Construction Loan, free of any claims by Tenant if, as and when both: (a) this Lease has terminated; and (b) Tenant's lender in its sole and absolute discretion has in writing consented to this assignment and agreed to recognize Landlord as successor borrower under the Construction Loan. Landlord shall not be deemed to have assumed the Construction Loan or any other obligation except under an express written assumption.

7.12. *Dispute Resolution*. The Parties acknowledge that litigation is expensive and time consuming, and that the parties to a dispute are frequently in a much better position to reach a satisfactory resolution when working in a good faith, commercially reasonable, collaborative manner. Accordingly, the Parties agree that they will each work to resolve any disputes arising under this Section 7 in a good faith, commercially reasonable, collaborative manner as follows ("the Dispute Resolution Procedures"):

7.12.1 *Project Coordination Team*. The Parties shall first work to resolve any problems at the Project Coordination Team meetings. Landlord and Tenant agree to notify the members of the Project Coordination Team promptly in writing in the event that either becomes aware of any unreasonable interference with the complaining party's work or operations where the offending party has been informed of the problem but has not sufficiently addressed it. Such written notification shall recite the foregoing facts with specificity and shall be a condition precedent to the making of any claim for damages in any Arbitration or litigation proceeding hereunder.

7.12.2 *Arbitration; Arbitrator(s).* If the problem is not resolved at the Project Coordination Team meetings, the issue may be submitted for Arbitration at the request of any party as provided in this Lease. Any dispute which is to be resolved by arbitration under this Section 7 may be referred for non-binding arbitration, conducted in accordance with the Construction Arbitration Rules (or similar successor rules thereto) and this Section 7. The place of arbitration shall be North Miami, Florida. In the event that any party calls for a determination in arbitration pursuant to the terms of this Lease, the Parties shall have a period of ten (10) days from the date of such request to mutually agree on one arbitrator who, at a minimum, must be an

attorney with at least fifteen (15) years experience practicing real estate construction law (with significant experience in construction contracts and development projects and related litigation) in Miami-Dade County, Florida. If the parties fail to agree, each party shall have an additional ten (10) days to each select an individual meeting the same minimum qualifications set forth above, and the two (2) arbitrators selected shall select an arbitrator to be the arbitrator for the dispute in question. If any party fails to make its respective selection of an arbitrator within the additional 10-day period provided for above, then the remaining party's selection shall select the arbitrator.

7.12.3 *Arbitration Process*. The arbitrator shall decide the issues submitted to him/her in accordance with (a) the language, commercial purpose and restrictions contained in this Lease (including exhibits hereto, if any) and (b) what is just and equitable under the circumstances, provided that all substantive issues shall be determined under the laws of the State of Florida and all matters involving the discretion of the North Miami City Council shall not be subject to arbitration, but instead shall be subject where appropriate to judicial review. With respect to any arbitration proceeding hereunder, the following provisions shall apply: (i) the parties shall cooperate with one another in the production and discovery of requested documents, and in the submission and presentation of arguments to the arbitrator at the earliest practicable date; (ii) the arbitrator conducting any arbitration shall be bound by the provisions of this Lease and shall not have the power to add to, subtract from or otherwise modify such provisions; and (iii) each party shall be responsible for its own costs and expenses incurred in the arbitration, including attorneys' fees, but the costs of the presiding arbitrator and the arbitration itself shall be shared equally by the Parties. Any ruling under this arbitration proceeding shall be subject to judicial review in the courts of Miami-Dade County, Florida.

7.13. *Park Property Construction Material Tax Exemptions*. With respect to any sales, use or similar taxes otherwise payable on any materials, goods, supplies or equipment purchased or obtained for, or incorporated into, the Park Property, Landlord shall at no cost to Landlord reasonably cooperate with Tenant to order and pay for same or otherwise work with Tenant to realize any available exemption from sales, use or similar taxes thereon, if any. Even though Landlord may purchase same, same shall be stored on the Premises as if purchased by Tenant, and Tenant shall assume the risk of Loss respecting same.

7.14. *Infrastructure*. Tenant shall dedicate and Landlord, in its governmental capacity, shall accept the dedication of the Spine Road (as defined in **Exhibit D**) to the perpetual use of the public following its construction, and upon such dedication Tenant shall be released from any and all maintenance, repair, and replacement obligations with respect to the Spine Road and the same shall be assumed by Landlord. Landlord, in its governmental capacity or otherwise, shall thereafter maintain, repair and replace the same, as the necessity thereof shall be admitted by the circumstances, from time to time, in accordance with the then prevailing legal standards according to the statutory classification of such right-of-way. Tenant shall convey utilities facilities to the applicable utilities provider, if so required by the applicable provider; provided, however, in connection with the dedication contemplated herein, Tenant shall reserve for and convey such easements or other rights with respect to all utility facilities and lines as shall be customary with respect thereto.

8. PROHIBITED LIENS

8.1. *Tenant's Covenant*. If a Prohibited Lien is filed then Tenant shall, within 30 days after the later to occur of (i) the filing of such lien, or (ii) Tenant's actual knowledge of the existence of such lien, cause such Prohibited Lien to be paid, discharged, bonded, transferred to security or cleared from title. If Tenant fails to do so, Landlord may do so and Tenant shall reimburse Landlord for the reasonable costs of doing so, including Legal Costs incurred by Landlord and an administrative charge of fifteen percent (15%) of the amount of the Prohibited Lien, and/or Landlord may give Notice of Default and pursue its remedies pursuant to the terms of this Lease. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Nothing in this Section shall be construed to: (a) limit Tenant's right of Contest so long as no Prohibited Lien is filed; or (b) obligate Tenant regarding any lien that results from any act or omission by Landlord (for which Landlord shall be provided Notice by Tenant) and, if Landlord does not within 30 days thereafter cause such lien to be paid, discharged, bonded, transferred to security or cleared from title, Tenant may do so and Landlord shall reimburse Tenant for the reasonable costs of doing so. If any Subtenant or other party claiming under Tenant causes a Prohibited Lien, then Tenant's obligations under this Subsection shall be suspended for a period not to exceed thirty (30) days so long as both: (a) Tenant is with reasonable diligence endeavoring to cause the Subtenant or other party to remove the Prohibited Lien, and is keeping Landlord informed in writing as to its efforts; and (b) the holder of the Prohibited Lien has not commenced foreclosure proceedings. If either of the foregoing conditions is not met, or if the thirty (30) day period expires, Tenant shall within ten (10) days of the failure of such condition cause such Prohibited Lien to be paid, discharged, bonded, transferred to security or cleared from title.

8.2. *Protection of Landlord*. NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR ANY SUBTENANT OR OTHER PARTY CLAIMING UNDER TENANT UPON CREDIT, AND THAT NO CONSTRUCTION OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE, INCLUDING WITHOUT LIMITATION JOINDER BY LANDLORD IN ANY APPLICATION OR APPROVAL, SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT OR ANY SUBTENANT OR ANY OTHER PARTY CLAIMING UNDER TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE. TENANT SHALL INDEMNIFY LANDLORD AGAINST ANY CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT OR ANY SUBTENANT, AND AGAINST ALL PROHIBITED LIENS.

9. HAZARDOUS SUBSTANCES; ENVIRONMENTAL COMPLIANCE AND REMEDIATION

9.1. *Restrictions*. Tenant shall not cause or permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance in violation of Environmental Laws, or the transportation to or from the Premises of any Hazardous Substance in violation of Environmental Laws.

9.2. *Condition of Premises; Compliance; Clean-Up*. Tenant acknowledges that it is fully familiar with the physical and environmental condition of the Property and shall take the Premises in "AS IS" and "WHERE IS" condition without any representation or warranty whatsoever except as expressly set forth in this Lease. Except to the extent of the ERA Work rendered by CH2M Hill for the groundwater remediation system on the Premises, Tenant shall, at Tenant's sole expense: (a) comply with Environmental Law and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and any required financial assurances for such Hazardous Substances Discharge; (d) promptly and diligently carry out all such clean-up plans; (e) conduct and complete the Remedial Action as part of and in accordance with the timeline for Tenant's Construction Obligations, and Indemnify Landlord for any non-performance of or delay in completion of the Remedial Action except to the extent such non-performance of or delay in completion of the Remedial Action is caused by the acts or omissions of Landlord or Landlord's agent; and (f) as to events, occurrences, or matters first arising during the period beginning on the Commencement Date and ending on the Expiration Date, Indemnify Landlord against any Hazardous Substances Discharge or violation of Environmental Law provided, however, in no event shall Tenant Indemnify Landlord for events, occurrences or matters (i) to the extent caused by the acts or omissions of Landlord or Landlord's agent, or (ii) which are in existence prior to the Commencement Date, except to the extent such events, occurrences or matters are exacerbated by Tenant (in which event Tenant shall only Indemnify Landlord with regards to such exacerbation). Without limiting the generality of the foregoing, Tenant shall comply with any conditions of any no further action determination as provided for and in conformance with Rule 62-780.680, Fla. Admin. Code. Neither Landlord nor Tenant shall modify the terms of any such no further action determination without the written consent of the other party. Any party's obligations under this Section 9 shall not limit such party's rights against third parties. Notwithstanding anything to the contrary in this Lease, as to events, occurrences, or matters first arising during the period beginning on the Commencement Date and ending on the Expiration Date, as between Landlord and Tenant (and those claiming through Tenant, including Subtenants), Landlord shall have no responsibility whatsoever regarding environmental matters and conditions on the Premises, except for matters arising or exacerbated (but only to the extent of such causation or exacerbation) as a result of the acts or omissions of Landlord or Landlord's agent. Tenant shall obtain and maintain until Landfill Closure a pollution liability policy in the amount of $25,000,000.00 (2012 dollars) with a deductible not to exceed $100,000.00 (2012 dollars) if available to insure against risks including (if available) an unknown pollution condition, third-party claims alleging that pollution has migrated from the Premises and has caused bodily injury or damaged property off-Premises, allegations of bodily injury or property damage as a result of exposure to toxic substances on the Premises, and claims by Governments for natural resource damages, and Tenant shall continue to maintain the same throughout the

Term solely to the extent similar coverage (in Tenant's reasonable discretion) is available with at least the same coverage at the same or less premium than for the initial policy. Both Landlord and Tenant shall be named insureds, though the policy will provide that only Tenant is responsible for premium payment.

9.3. *Grant from County; Environmental Obligations*. Landlord and County are parties to that certain Second Amended Grant Agreement dated March 26, 2004 (as same may be amended from time to time, the "Grant Agreement"), in which County has agreed to provide Landlord a grant (the "Grant") in the amount of Thirty One Million Twenty Seven Thousand and No/100 Dollars ($31,027,000.00) to be funded by County for (a) groundwater remediation and (b) landfill closure pursuant the Grant Agreement. The Grant Agreement expires on the later of (x) receipt of a final certificate of completion of groundwater remediation and landfill closure, or (y) depletion of the escrow accounts so that no further funds are available for disbursements therein.

9.3.1 *Groundwater Remediation*. Landlord entered into the ERA for the design and construction of the groundwater remediation system required under the CLCP. Landlord shall diligently pursue completion of the groundwater remediation system as provided in the ERA and pursuant to the terms of the Grant Agreement, Landfill Closure Permit, and CLCP ("Landlord's Remediation Work"). The Parties shall reasonably cooperate and work in good faith with each other in coordinating development of each of their components of the project in order not to unreasonably interfere with each others' construction plans, activities and schedules. Landlord and Tenant shall each designate coordination representatives (collectively, the "Project Coordination Team") and establish a regular meeting schedule beginning within seven (7) days after the Commencement Date, and shall meet no less frequently than monthly until the Substantial Completion of the Initial Development, and thereafter as decided by the Project Coordination Team, to allow representatives to provide applicable reports, plans, and other information, and discuss the progress and coordination of the groundwater remediation system (including horizontal piping and placement of extraction wells) and the Initial Development so as not to unreasonably interfere with each other's work, and address issues and problems that arise in a good faith, collaborative manner. Tenant shall have the right to observe but not interfere with the work done pursuant to the ERA, including, but not limited to, Tenant seeking amendment and/or modification of the ERA to include storm water discharge from the Development. If Tenant has concerns regarding the quality, appropriateness, or compliance with Laws, applicable Approvals or the Grant of such work, Tenant shall provide a reasonably detailed written description of such concerns to the City PE (or other Landlord designated member of the Project Coordination Team), who will evaluate and if necessary after appropriate consultation and investigation, address the concerns in an appropriate manner. If Landlord receives a written notice of default under the Grant Agreement, Landlord shall, within ten (10) Business Days, provide notice of said default to Tenant and any Leasehold Mortgagee. In the event Landlord fails (a) to cure an event of default under the Grant Agreement for a period of twenty-five (25) days after receipt of written notice from the County of said default or, if the nature of said default is such that it cannot be cured within a period of twenty five (25) days from the date of such notice, Landlord fails to commence reasonable efforts to cure such default no later than twenty-five (25) days after such notice or (b) to timely or properly perform Landlord's Remediation Work following not less than ninety (90) days prior written notice from Tenant (or any Leasehold Mortgagee), Tenant (and any Leasehold Mortgagee) shall have the right (but not

the obligation) to undertake Landlord's obligations under the Grant Agreement or Landlord's Remediation Work and in such event (i) Landlord shall cooperate with Tenant (and any Leasehold Mortgagee) in the performance of such work and the transfer of all necessary permits and Approvals, (ii) Tenant (and any Leasehold Mortgagee) shall be entitled to access the Grant to the extent permitted by the County, and (iii) Tenant shall be entitled to an offset against any subsequently accruing payment to Landlord for the cost of such undertaking to the extent Tenant was not at fault.

9.3.2 *Landfill Closure*. The SOV allocates certain funds to be used for landfill closure, including the capping of the Premises, stormwater management system, and gas methane control, and pre- Landfill Closure monitoring as required under the CLCP. On the Commencement Date, Tenant shall assume all of the obligations of Landlord for the Remedial Action. Landlord agrees to use the available unused proceeds of the Grant Agreement allocated under the SOV for the Remedial Action and to reimburse Tenant for its work to complete the Remedial Action, provided however that Tenant complies in all respects with requirements for such funding under the Grant Agreement, including provision of required documentation and releases and access to the Premises to County and City of North Miami officials. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, TENANT SHALL BE SOLELY RESPONSIBLE FOR ALL COSTS TO COMPLETE THE REMEDIAL ACTION WHICH EXCEED THOSE AVAILABLE AND ACTUALLY DISBURSED FOR THE REMEDIAL ACTION UNDER THE GRANT AGREEMENT AND SOV. Provided no Event of Default exists at the time any of the below events would otherwise be consummated, Landlord agrees that without obtaining Tenant's prior written consent, which consent may be withheld in Tenant's good faith sole discretion, Landlord shall not approve, permit or agree to any supplement, modification, amendment or termination of, or consent to or agree to any waiver of any of the terms of, the Grant Agreement, or any other material document or agreement relating thereto which would diminish the amount of the funds allocated for the Remedial Action under the Grant Agreement or the SOV or adversely affect the timing of the funding of the Grant. Landlord in Landlord's capacity as owner of the Fee Estate and as a municipality shall reasonably cooperate with Tenant in requesting additional funds from the County under the Grant, provided that no such request shall cause delay or other change under the existing Landfill Closure Permit and related permits or any delay in completion of the groundwater remediation system or the funding for same. Tenant shall reimburse Landlord's actual third-party costs and expenses of such cooperation. Landlord assumes no liability whatsoever by such cooperation, and Tenant shall Indemnify Landlord for any loss resulting such cooperation but Tenant shall obtain such additional funds elsewhere to comply with the obligations under the Grant Agreement in the event the Grant funds cannot be increased. Landlord shall not be required to provide any consideration to any party for any such increase in the Grant. Landlord and Tenant shall each be responsible for complying with the terms and provisions of the Grant Agreement that apply to their obligations under this Section. Landlord agrees to promptly request funds from County as requested by Tenant and to pay those funds to Tenant or other appropriate payee promptly upon receipt thereof, all pursuant to the Grant, and to take all other actions reasonably necessary for Landlord to obtain all Grant funds to which Landlord is entitled under the Grant Agreement in a timely manner. Tenant agrees to submit promptly such documentation, proof of compliance with Laws and applicable environmental permits and approvals, inspection reports, lien releases and other back-up as may be requested by Landlord's Public Works Department or by the County in connection with the work for which Landlord requests funding under the Grant

(but failure to do so shall not constitute a Default or Event of Default under this Lease; rather it shall merely defer Landlord's obligation to pursue funding under the Grant while delivery of such materials is pending, provided however that any delay or insufficiency that results in a reduction in or lack of payment of funding under the Grant Agreement shall reduce Tenant's right to receive payment to the same extent). Tenant hereby agrees to complete the Remedial Action in compliance with the CLCP, Landfill Closure Permit, and any other applicable environmental permits and approvals, as part of and in accordance with the timeline for the Tenant's Construction Obligations. Tenant shall Indemnify Landlord regarding such completion and compliance except to the extent any non-completion or non-compliance is caused by the acts or omissions of Landlord or Landlord's agent.

9.3.3 *Landfill Closure Monitoring and Compliance*. Except for the ERA Work for which Landlord is responsible, Tenant shall assume all of the obligations of Landlord for the monitoring and compliance requirements under the CLCP, Landfill Closure Permit, and any other applicable environmental permits and approvals related to the Premises from and after the Landfill Closure pursuant to such documents. Tenant acknowledges that there are no funds available under the Grant Agreement for such obligations, and that Tenant will be responsible for all costs of same. Tenant shall, as part of the Initial Development, on or before the fifth (5th) anniversary of the Commencement Date, create a homeowner's association or CDD or declaration of covenants and restrictions or similar funding source running with the land included in the Premises for all environmental monitoring and compliance costs under the CLCP, which shall be in form and substance reasonably acceptable to Landlord, and for which funding requirements Tenant shall assume all financial responsibility as Additional Rent under this Lease, and Tenant shall include such obligation in direct Subleases (i.e., first tier) to be paid by such Subtenants so that if this Lease is terminated, the full obligation will continue to be paid by such Subtenants.

9.3.4 *Environmental Meetings; Inspection*. Each of Landlord and Tenant shall provide reasonable advance notice of any proposed meeting or telephone conference with governmental authorities concerning the Remedial Action or the ERA Work so Landlord's representatives have the opportunity to attend and participate in such meeting or telephone conference. Each of Landlord and Tenant may designate representatives to attend all proceedings, telephone conferences, and meetings with any governmental authority regarding environmental issues related to the Premises, and upon Landlord's request or Tenant's request, Tenant and Landlord's Public Works Department and PE shall actively consult regarding such issues.

9.3.5 *Records*. Tenant shall provide access to Tenant's books and records and to the Premises to representatives of the County and Landlord in its municipal capacity as required in the Grant Agreement, shall maintain all records and documents, and shall otherwise comply with all requirements of the Grant Agreement, the CLCP, and all other applicable permits, Approvals and Laws. Tenant shall Indemnify Landlord regarding such access and compliance.

10. INDEMNIFICATION; LIABILITY OF LANDLORD

10.1. *Obligations*. Tenant shall Indemnify Landlord against any: (a) wrongful act, wrongful omission, or negligence of the Indemnitor (and anyone claiming by or through the Indemnitor) or its or their partners, members, directors, officers, or employees; (b) breach or default by the Indemnitor under this Lease; or (c) breach of any representation or warranty Indemnitor makes in this Lease. Tenant shall Indemnify Landlord against the following during the Term and so long as Tenant remains in possession after the Expiration Date: (u) any Contest Tenant initiates; (v) any Application made at Tenant's request; (w) use, occupancy, control, management, operation, and possession of the Premises, excluding any publicly dedicated street, curb or sidewalk adjoining the Premises; (x) any Construction and any agreements that Tenant (or anyone claiming through Tenant) makes for any Construction; (y) the condition of the Premises, excluding any publicly dedicated street, curb or sidewalk adjoining the Premises; and (z) any accident, injury or damage whatsoever caused to any person in or on the Premises, excluding upon or under any publicly dedicated street, curb or sidewalks adjoining the Premises. Notwithstanding anything to the contrary in this Lease, no Indemnitor shall be required to Indemnify any Indemnitee regarding the Indemnitee's intentional acts or omissions or gross negligence. Nothing in this Section 10.1 shall apply to obligations concerning Environmental Law and Hazardous Substances Discharges, which are covered in Section 9.

10.2. *Liability of Landlord*. During the Term: (a) Tenant is and shall be in exclusive control and possession of the Premises; and (b) Landlord shall not be liable for any injury or damage to any property (of Tenant or any other Person) or to any person occurring on or about the Premises, except to the extent caused by Landlord's willful misconduct or gross negligence. Landlord's right to enter and inspect the Premises is intended solely to allow Landlord to ascertain whether Tenant is complying with this Lease and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Landlord any liability to third parties. Nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Landlord from or against any liability of Landlord: (y) to third parties existing at or before the Commencement Date; or (z) arising from Landlord's willful misconduct or gross negligence. In furtherance of the foregoing and not by way of limitation, Landlord shall Indemnify Tenant and any title insurance company insuring the interest of Tenant in the Premises and/or the interest of any Leasehold Mortgagee or Subleasehold Mortgagee against any and all loss, claim, or damage (including, without limitation, Legal Costs) arising out of the Wells Fargo Claims or the matters that are the subject of the Wells Fargo Claims, including, without limitation, the Leasehold Mortgage by and between Biscayne Landing, LLC and Wells Fargo Bank, N.A., and Foreclosure Action Case No. 2009-34005-CA-10, Wells Fargo Bank, N.A. vs. Biscayne Landing, LLC. Landlord shall provide any title company with such indemnification agreement(s) as the title company shall reasonably require to evidence the Indemnifications set forth in the preceding sentence.

10.3. *Indemnification Procedures*. Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee:

10.3.1 *Prompt Notice*. Indemnitee shall promptly Notify Indemnitor of any claim. To the extent, and only to the extent, that Indemnitee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

10.3.2 *Selection of Counsel*. Indemnitor shall select counsel reasonably acceptable to Indemnitee. Counsel to Indemnitor's insurance carrier shall be deemed satisfactory. Even though Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall reasonably consult with Indemnitee's counsel. Indemnitor and its counsel shall, however, fully control the defense; provided, however, that settlement of the matter shall require the written consent of the Indemnitee, which consents shall not be unreasonably withheld, conditioned or delayed.

10.3.3 *Cooperation.* Indemnitee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnitee's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

10.3.4 *Settlement*. Indemnitor may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall not be required for any settlement by which: (w) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (x) neither Indemnitee nor Indemnitor on behalf of Indemnitee admits liability; (y) the continued effectiveness of this Lease is not jeopardized in any way; and (z) Indemnitee's interest in the Premises is not jeopardized in any way.

10.3.5 *Insurance Proceeds*. Indemnitor's obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

11. RIGHT OF CONTEST

11.1. *Tenant's Right; Contest Conditions*. Notwithstanding anything to the contrary in this Lease, Tenant shall have the exclusive right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Real Estate Taxes or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Premises for Real Estate Taxes; the amount of any Real Estate Tax; the validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any Approval; the validity or merit of any claim against which this Lease requires Tenant to Indemnify Landlord; or any other matter involving a Person other than Landlord that Tenant has agreed to comply with or be bound by under this Lease that is susceptible to Contest (any of the foregoing, a "Contest"). Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions (collectively, the "Contest Conditions") to remain satisfied:

11.1.1 *No Criminal Act*. Such deferral or noncompliance shall not constitute a criminal act by Landlord and shall not subject Landlord to a material risk of any fine or penalty, except fines or penalties for which Tenant agrees to be liable.

11.1.2 *No Liability*. Excluding deferrals or noncompliance resulting from the Contest of Real Estate Taxes, such deferral or noncompliance creates no material (as reasonably determined by Landlord) risk of a lien, charge, or other liability of any kind against the Fee

Estate, unless Tenant has given Landlord reasonable security in an amount reasonably estimated to equal the amount of such lien, charge or other liability.

11.1.3 *No Forfeiture.* Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited or lost, and no Prohibited Lien will be created by such Contest.

11.1.4 *No Cost to Landlord.* Such Contest shall be without cost, liability, or expense to Landlord.

11.1.5 *Diligence*. Tenant shall prosecute such Contest with reasonable diligence and in good faith.

11.1.6 *Payment*. If required for such Contest, Tenant shall have paid the Contested Real Estate Taxes or other matter.

11.1.7 *Collection of Real Estate Taxes*. If such Contest relates to any Real Estate Tax, Tenant shall Indemnify Landlord in respect of collection from Landlord and the Fee Estate of same.

11.1.8 *No Tax Deed*. If, at any time, payment of any Real Estate Taxes is necessary to prevent the imminent (i.e., within 30 days) delivery of a tax deed of the Fee Estate for nonpayment, then Tenant shall pay or cause to be paid the sums in sufficient time to prevent delivery of such deed.

11.1.9 *Named Parties.* If Landlord has been named as a party in any action and desires to be removed, then, upon Landlord's written request, Tenant shall cause Landlord to be removed as such party and Tenant substituted in Landlord's place, if permissible under the circumstances.

11.1.10 *No Event of Default*. No Event of Default shall exist at the time of commencement of the Contest.

11.2. *Landlord Obligations and Protections.* Landlord need not join in any Contest unless (a) Tenant has complied with the Contest Conditions; (b) such Contest must be initiated or prosecuted in Landlord's name; and (c) such joinder is at no out-of-pocket cost to Landlord. In such case, Landlord shall reasonably cooperate, as Tenant reasonably requests, to permit the Contest to be prosecuted in Landlord's name. Landlord shall give Tenant any documents, deliveries, and information in Landlord's control as owner of the Fee Estate and reasonably necessary for Tenant to prosecute its Contest. Landlord shall otherwise assist Tenant in such Contest as Tenant reasonably requires. Tenant shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Tenant shall, at Landlord's request, advance (when Landlord incurs them) such reasonable costs and expenses as Landlord incurs, for Tenant's Contest and Landlord's assistance with such Contest.

11.3. *Miscellaneous.* Tenant shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Tenant), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Tenant concludes Tenant's Contest

of any Real Estate Taxes, Tenant shall pay (within the time frame permitted for payment of same as set forth in Section 4.2) the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Tenant's Contest of a Law, Tenant shall comply with such final determination. So long as the Contest Conditions remain satisfied, Landlord shall enter no objection to any Contest. Landlord may not contest any matter for which Tenant is entitled to prosecute a Contest.

11.4. *Landlord in its Municipal Capacity*. Notwithstanding anything to the contrary in this Section 11, Landlord shall not be required to assist or side with Tenant in any Contest against the City of North Miami in its municipal capacity.

12. INSURANCE

12.1. *Tenant to Insure*. Tenant shall, at its sole expense, during the Term, cause to be maintained the insurance (or its then reasonably available equivalent) described in this Section. Landlord acknowledges being advised that the insurance required by this Lease may be provided by different parties and different insurers as to different portions of the Premises, and Landlord will accept such insurance as satisfying the insurance provisions of this Lease.

12.1.1 *Property Insurance*. Tenant shall provide commercial Property Insurance on an "all risk" or "special" coverage form. The Tenant-provided property insurance shall include coverage for damage caused by windstorm or hail. Such Property Insurance shall not be subject to any coinsurance provision. Landlord (and, if requested by a Leasehold Mortgagee, the requesting Leasehold Mortgagee) shall be named as an insured, as their interests may appear, on the Property Insurance. The amount of property coverage shall be no less than the estimated replacement value of all of Improvements and fixtures on the Premises. In regards to wind and hail coverage, Tenant may purchase same for less than 100% of value with the approval of Landlord. The maximum deductible for other than windstorm or hail shall be $100,000 per occurrence. The maximum deductible per occurrence for windstorm and hail shall be the greater of $100,000 or 5% of the estimated replacement value of all of the Improvements and fixtures on the Premises. Tenant shall be responsible to pay on behalf of Landlord any such deductible.

12.1.2 *Liability Insurance*. Tenant shall maintain Liability Insurance which shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01). The coverage may include restrictive endorsements which exclude coverage for liability arising out of: Mold, fungus, or bacteria; terrorism; silica, asbestos or lead; and sexual molestation. Unless the work under this Agreement includes activities which would be the subject of such exclusions, the coverage may also exclude coverage for liability arising out of: Architects and Engineers professional liability; Exterior Insulation and Finish Systems. Any other exclusions are subject to the prior written approval of Landlord. The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be: $10,000,000 General Aggregate; $10,000,000 Products/Completed Operations Aggregate; $10,000,000 Personal and Advertising Injury; and $10,000,000 Each Occurrence.

Any deductible shall not exceed $50,000.00, or such larger deductible as the City of North Miami shall permit in writing.

12.1.3 *Construction Related Insurance*. Before commencement of (and at all times during) any Major Construction or any related excavation or demolition, terminating on the Substantial Completion for such Major Construction, in addition to the other insurance this Lease requires, Tenant shall at no cost to Landlord procure and maintain, or cause to be procured and maintained (by the contractor or construction manager otherwise), the following insurance coverage:

(a) "All risk" builder's risk insurance (if not already covered by required property insurance) on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than 100% of completed replacement value including cost of debris removal but excluding foundation, footers and excavations, naming Landlord and Tenant, as their interests may appear. The builder's risk insurance shall include coverage for damage caused by windstorm or hail. Tenant may purchase same for less than 100% of value with approval of Landlord. Such builder's risk insurance shall not be subject to any coinsurance provision. The maximum deductible for other than windstorm or hail shall be $100,000 per occurrence. The maximum deductible per occurrence for windstorm and hail shall be the greater of $100,000 or 5% of the estimated completed replacement value of all of the Improvements and fixtures on the Premises. Tenant shall be responsible to pay on behalf of Landlord any such deductible.

(b) Commercial general and automobile liability insurance Liability Insurance for not less than $10,000,000.00 for personal injury and $1,000,000.00 for broad form property damage, including premises-operations liability, independent contractors coverage for all subcontractors' operations, completed operations to be maintained for a minimum of three (3) years following the completion of the Major Construction (Landlord and Tenant shall be included as an additional insured in a manner no more restrictive than that which would be afforded by the latest edition of ISO Form CG 20 10 and ISO form CG 2037), contractual liability, and automobile liability (owned and non-owned), and for any foundation, excavation, or demolition work, an endorsement that such operations are covered and that the "XCU Exclusions" have been deleted, which insurance may be in the form of a single limit policy or policies;

(c) Workers' compensation, and employer's liability insurance covering all Persons employed by or claiming through Tenant and its or their contractors, as applicable as described below.

(d) During any demolition or excavation, such additional Liability Insurance as shall be reasonably customary to cover the added risks of such demolition or excavation.

All Liability Insurance under this Subsection 12 shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) without any restrictive endorsements, including coverage for liability contractually assumed,

and shall cover all owned, non-owned, and hired autos used in connection with the performance of the Major Construction. Such auto insurance shall not be subject to any aggregate limit. The maximum deductible for other than windstorm or hail shall be $100,000 per occurrence. The maximum deductible per occurrence for windstorm and hail shall be 5% of the estimated completed value at the time of loss. Tenant shall be responsible to pay on behalf of Landlord any such deductible. With regards to any Construction other than Major Construction an appropriate amount of insurance will be required, which will be reported to the City of North Miami's risk manager for approval, such approval not to be unreasonably withheld.

12.1.4 *Workers' compensation*. Workers' compensation employer's liability and insurance covering all Persons employed by Tenant or those claiming through Tenant (and its or their contractors), as applicable as described below. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than any endorsements required by NCCI or the State of Florida. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The policy must be endorsed to waive the insurer's right to subrogate against Landlord, and its members, officials, officers and employees in the manner which would result from the attachment of the NCCI Waiver Of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13) with Landlord, and its officials, officers and employees scheduled thereon. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be: Part One: "Statutory"; Part Two: $5,000,000 Each Accident; $5,000,000 Disease - Policy Limit; $5,000,000 Disease - Each Employee.

12.2. *Self Insurance*. Any Person with a net worth in excess of $100,000,000.00 may self insure the risks required to be insured under this Lease, as to the portion of the Premises in which such Person holds an interest, so long as such Person maintains such net worth and reasonably substantiates same on request. Any self insured exposure shall be deemed to be an insured risk to the extent of the insurance required to be maintained under this Lease, and Landlord and any Fee Mortgagee shall be afforded the benefits of self insurance to the same extent that they would be afforded the benefits of insurance, including costs of defense. Any self insured Person shall be deemed to waive and hereby waives all rights to recover against Landlord or any Fee Mortgagee or any of their officers, employees, agents and representatives, for any damage arising from any cause covered by any insurance required to be carried by Tenant or any Subtenant, or self insured by Tenant or any Subtenant as permitted in this Lease, or any insurance actually carried by Tenant or any Subtenant. Tenant may not self-insure while an Event of Default exists (but this prohibition shall not be applicable to Subtenants).

12.3. *Nature of Insurance Program*. All insurance policies this Lease requires shall be maintained in full force and effect under the terms of this Lease issued by carriers that: (a) have a minimum of A- rating for management and VI or better for financial strength or better based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent); and (b) are lawfully doing business in the State. Any insurance required by this Lease may be carried under a "blanket" or "umbrella" insurance policy provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated

to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease.

12.4. *Policy Requirements and Endorsements*. All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

12.4.1 *Insureds.* Liability Insurance policies shall name Landlord its officials, officers and employees, any Fee Mortgagee, and any Leasehold Mortgagee (if so required by the Leasehold Mortgagee) as an "Additional Insured" on a form no more restrictive than ISO form CG 20 11 (Additional Insured – Managers or Lessors of Premises). Property Insurance policies shall name Landlord and any Fee Mortgagee as loss payee as its interest may appear. Notwithstanding anything to the contrary in this Subsection, all Property Insurance Proceeds shall be paid and applied as this Lease provides.

12.4.2 *Primary Coverage*. All policies shall be written as primary policies not contributing to or in excess of any coverage that Landlord may carry.

12.4.3 *Contractual Liability*. Liability Insurance policies shall contain contractual liability coverage for Tenant's indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Tenant's failure to obtain such contractual liability coverage shall not relieve Tenant from any indemnity obligation under this Lease.

12.4.4 *Notice to Landlord*. Policies shall be endorsed to require notification of Landlord and any Fee Mortgagee of any cancellations or non-renewal at least thirty (30) days prior to effectuating same, provided that such notice requirement does not contravene insurer's policies; otherwise the 30 day time frame may be reduced to what the insurer can offer (but not less than ten (10) days). Landlord and any Fee Mortgagee shall be provided with a copy of the foregoing endorsement, and at all times be provided with certificates of insurance evidencing all coverage required herein upon written request.

12.5. *Deliveries to Landlord*. On the Commencement Date, and no later than the day any Liability Insurance or Property Insurance expires or is cancelled, Tenant shall deliver to Landlord copies of insurance policies with applicable endorsements evidencing Tenant's maintenance of all insurance this Lease requires. Notwithstanding the prior submission of a certificate of insurance, copies of endorsements, or other evidence initially acceptable to Landlord, if requested in writing by Landlord, Tenant shall, within thirty (30) days after receipt of a written request, provide Landlord with a certified copy or certified copies of the policy or policies providing the coverage required herein. Tenant may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required herein.

12.6. *Tenant's Inability to Obtain Insurance*. So long as (a) any insurance this Lease requires is, after diligent effort by Tenant, unobtainable at commercially reasonable rates through no act or omission by Tenant; and (b) Tenant obtains the maximum insurance coverage reasonably obtainable and Notifies Landlord of the extent of Tenant's inability to obtain the full

insurance this Lease requires, Tenant's obligation to procure and maintain such insurance as is unobtainable shall be excused, but only so long as conditions "a" through "b" are satisfied. Notwithstanding the foregoing, if Landlord at any time can procure for Tenant such insurance at commercially reasonable rates at any time after Tenant's Notice of inability to do so (and before Tenant has withdrawn such Notice), then Tenant shall obtain and maintain such insurance at Tenant's expense.

12.7. *Waiver of Subrogation*. Tenant waives all rights to recover against Landlord or its officers, employees, agents and representatives, for any damage arising from any cause covered by any insurance required to be carried by Tenant or self insured by Tenant as permitted in this Lease, or any insurance actually carried by Tenant. Tenant shall cause its insurer(s) to issue appropriate Waiver of Subrogation rights endorsements to all policies of insurance carried in connection with the Premises. Landlord waives all rights to recover against Tenant its Subtenants, and their respective officers, directors, trustees, employees, agents and representatives, for any damage arising from any cause covered by insurance (irrespective of whether the insurance is carried by Tenant (or those claiming under them) or Landlord). Any self-insurance program of Landlord shall be deemed to include a full Waiver of Subrogation consistent with this Section.

12.8. *No Liability of Landlord*. Except to the extent caused by the gross negligence or willful misconduct of Landlord or anyone acting by, through or under Landlord (for which Landlord may in an action be liable to Tenant but subject to the limitations set forth in Section 768.28 of the Florida Statutes), Landlord shall not be liable for injury or damage which may be sustained by a person, goods, wares, merchandise or other property of Tenant, or Tenant's employees, invitees, officers, agents and customers, or by any other person in or about the Premises caused by or resulting from any peril which may affect the Premises, including, without limitation, fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires or plumbing to the Premises, whether such damage or injury results from conditions arising upon the Premises or from other sources.

12.9. *No Representation*. Neither party makes any representation that the limits, scope, or forms of insurance coverage this Lease requires are adequate or sufficient.

12.10. *Amendment of Insurance Requirements; Changes in Insurance Industry*. Landlord reserves the right to amend the insurance requirements by the issuance of a notice in writing to Tenant, provided that any new or amended insurance requirements must be reasonable and consistent with industry standards for similar uses and facilities. Revised insurance requirements which meet the foregoing conditions shall become part of the insurance requirements under this Lease. Upon the written request of either party, their representatives shall meet to discuss possible modifications to any of the foregoing insurance requirements if material changes in the availability and cost of the required coverage warrant such action. Not more than once every three (3) Lease Years, Landlord may require an increase in the amount of the required coverage maintained by Tenant. Upon the written request of either party, their representatives shall meet to discuss possible modifications to any of the forgoing insurance requirements if material changes in the availability, cost and terms of the required coverage warrant such action. Any changes made to the insurance required by this Agreement will be

made only with the written approval of Landlord and Tenant, which approval shall not be unreasonably withheld, conditioned or delayed.

12.11. *Leasehold Mortgage Requirements*. In the event the terms of a Leasehold Mortgage or a Mezzanine Loan impose more stringent requirements with respect to Tenant's insurance coverage than are imposed by the Lease, the requirements set forth in such Leasehold Mortgage or a Mezzanine Loan shall be deemed acceptable and Tenant shall be entitled to obtain such coverages (if and to the extent required by the Leasehold Mortgage or a Mezzanine Loan).

13. LOSSES AND LOSS PROCEEDS

13.1. *Notice*. If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other in writing.

13.2. *Effect of Casualty*. If any Casualty occurs, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; (c) Tenant or those claiming under Tenant shall Restore with reasonable promptness regardless of cost; and (d) all Property Insurance Proceeds shall be applied to Restore, with any Property Insurance Proceeds (and the rights thereto) arising from the Casualty remaining after Restoration being paid to the applicable Leasehold Mortgagee and any remaining sums after payment to the Leasehold Mortgagee in accordance with its loan documents being paid to and belonging to Tenant or, at Tenant's direction, those claiming under Tenant. Provided Tenant or those claiming under Tenant otherwise complies with the terms of this Lease, it may construct Buildings which are larger, smaller or different in use and represent the highest and best use of the Premises. Tenant or those claiming under Tenant may also elect to demolish without reconstruction, in which case all debris shall be promptly removed and the site shall be filled and placed in a level and safe condition and the remaining Property Insurance Proceeds (and the rights thereto) arising from the such Casualty shall be paid to the applicable Leasehold Mortgagee and any remaining sums after payment to the Leasehold Mortgagee in accordance with its loan documents shall be paid to and belong to Landlord. Notwithstanding anything to the contrary contained herein, in the event that the Premises or any Phase thereof shall be affected by Casualty during the last five (5) years of the term of this Lease and the estimated cost for repair and restoration exceeds an amount equal to One Million Dollars ($1,000,000) in 2012 (increasing 3.5% on January 1 of each calendar year thereafter), then Tenant shall have the right to terminate this Lease and its obligations hereunder (either entirely or as to the applicable Phase or Phases) by giving Notice to Landlord within ninety (90) days after such Casualty. In such event, this Lease shall terminate (either entirely or as to the applicable Phase or Phases) thirty (30) days following such Notice, effective as of the date of such Casualty. The obligations of Tenant to pay rent under this Lease shall be prorated to the date of termination. If termination is as to one or more Phases only, Fixed Rent shall be subject to a just and proportional adjustment after the partial termination, and Additional Rent shall be paid only on the portion of the Premises that remains leased after the partial termination. If this Lease is terminated (either entirely or as to one or more Phase) as a result of a Casualty, Tenant or those claiming under Tenant shall use Property Insurance Proceeds to remove all debris from, fill any substantial excavations in and return the Premises, or the applicable Phase or Phases, to a level, safe and vacant condition, and the remaining Property Insurance Proceeds shall be paid to and belong to Landlord).

13.3. *Adjustment of Claims; Use of Property Insurance Proceeds*. Except in the event that Tenant terminates the Lease in the last 5 years of the Term due to Casualty as provided in Section 13.2 above, Tenant or those claiming under Tenant shall have the sole right and authority to adjust and/or settle any insurance claim, subject to rights of Leasehold Mortgagee(s) or Subleasehold Mortgagee(s). Subject to any Leasehold Mortgagee's or Subleasehold Mortgagee's loan documents, Property Insurance Proceeds shall be disbursed: (a) in the case of a Loss of Two Million Five Hundred Thousand Dollars ($2,500,000.00) or less in 2012 (increasing 3.5% on January 1 of each calendar year thereafter), to Tenant or those claiming under Tenant, to be held in trust to be applied first for Restoration; and (b) in the case of any other Casualty, to Depository, to be released in installments for Restoration provided that Restoration Funds are sufficient to Restore, with any balance remaining after Restoration is completed being disbursed to Tenant or, at Tenant's direction, to those claiming under Tenant. If Restoration Funds are insufficient to Restore, then Tenant shall nevertheless begin to Restore at its expense until such time as the Restoration Funds are sufficient to complete Restoration or shall deposit the difference with the Depository. To obtain each such disbursement, there shall be delivered to Depository the below, or substantially similar documentation as may be required by such Depository:

13.3.1 *Architect's Certificate.* A certificate of a licensed architect, confirming that in such architect's professional judgment: (a) the sum then being requested is then properly due and payable to contractors, subcontractors, or other Persons for Restoration; (b) Restoration is proceeding in substantial compliance with the applicable plans and specifications and otherwise satisfactorily; (c) the sum being requested does not exceed the amount then due and payable; (d) except in the case of the final disbursement of Restoration Funds, the remaining Restoration Funds after disbursement are reasonably anticipated to suffice to pay for the remaining Restoration yet to be performed; and (e) in the case of the final disbursement of Restoration Funds, Tenant has Substantially Completed Restoration and obtained a temporary certificate of occupancy for the Restoration to the extent Law requires;

13.3.2 *Status of Title.* Evidence reasonably satisfactory to Depository that no Prohibited Lien exists, except any to be fully paid from the current disbursement;

13.3.3 *Lien Waivers*. If required by the Depository, progress lien waivers for Restoration completed and paid for through the date of the preceding disbursement and, in the case of the final draw, delivered (or simultaneously delivers in exchange for payment) final lien waivers from all Persons otherwise entitled to claim a Prohibited Lien because of the Restoration; and

13.3.4 *Other*. Such other documents, deliveries, certificates, and information as Depository reasonably requires.

13.4. *Substantial Condemnation*. If a Substantial Condemnation occurs, then this Lease (except as it relates to allocation of the Condemnation Award) shall terminate on the Condemnation Effective Date. Rent shall be apportioned accordingly. The Condemnation Award shall be allocated in accordance with Florida law, subject to the rights of Leasehold Mortgagee(s) under its loan documents. If the values of the respective interests of Landlord and Tenant (and those claiming under Tenant) shall be determined according to the foregoing

provisions of this Section 13.4 in the proceeding pursuant to which the Premises shall have been taken, the values so determined shall be conclusive upon Landlord and Tenant and those claiming under Tenant. If such values shall not have been separately determined in such proceeding, such values shall be fixed by agreement between Landlord and Tenant (and those claiming under Tenant who have an interest) or, if they are unable to agree, by an apportionment hearing within the condemnation proceeding so that the allocation between the parties is fair and equitable. The party whose award compensates it for removing all debris from, filling any substantial excavations in and returning the Premises to a level, safe and vacant condition shall be obligated to perform such work at its cost. All Rents and other payments required to be paid by Tenant under this Lease shall be paid up to the Condemnation Effective Date. Tenant shall, in all other respects, keep, observe and perform all the terms of this Lease up to the Condemnation Effective Date.

13.5. *Insubstantial Condemnation*. If an Insubstantial Condemnation occurs, then (subject to the rights of Leasehold Mortgagees and Subleasehold Mortgagees) any Condemnation Award shall be paid to Depository to be applied first for Restoration in the same manner as Property Insurance Proceeds. Tenant or those claiming under Tenant shall Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be allocated among Landlord, Tenant, and those claiming through Tenant in accordance with applicable Florida law.

13.6. *Temporary Condemnation*. In the event of a Temporary Condemnation, then Tenant or those claiming under Tenant shall receive any Condemnation Award (to the extent for periods within the Term), without affecting Tenant's obligations in any way.

13.7. *Immaterial Loss.* If an Immaterial Loss occurs, then Tenant or those claiming under Tenant shall receive any Condemnation Award in trust to be applied first to Restoration without affecting the obligations of Tenant or those claiming under Tenant in any way. Tenant or those claiming under Tenant shall Restore in accordance with this Lease. After Restoration, Tenant or those claiming under Tenant shall receive any remaining Condemnation Award.

14. REPRESENTATIONS AND WARRANTIES OF LANDLORD AND TENANT

14.1. Landlord represents and warrants to Tenant that the following facts and conditions exist and are true as of the Effective Date. Landlord's representations and warranties in this Subsection shall continue to apply in full force and effect throughout the Term as if made continuously during the Term. Landlord shall execute, contemporaneously with the Commencement Date, a Title Affidavit in the form of **Schedule 14** attached hereto.

14.1.1 *Due Authorization and Execution*. Landlord has full right, title, authority, and capacity to execute and perform this Lease, the Memorandum of Lease, and any other agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the "Lease-Related Documents"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Landlord; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Landlord's organizational documents),

contract, or other restriction to which Landlord is a party or is bound. Tenant makes to Landlord representations and warranties reciprocal to those in the preceding sentence. During the Term, any document requiring execution by Landlord may be executed by the City Manager or his designee and, if so executed, it shall be deemed to have been properly authorized and binding on Landlord without the need for any further verification of authority or execution by anyone else (the foregoing shall not be construed as a waiver of approval or authorization of the City Council of the City of North Miami, but rather, shall mean that any such approval or authorization of such City Council, if any is required, has been obtained prior to the execution by the City Manager or his designee and is evidenced by such execution, and no Person shall be required to look behind such execution as to approval or authority to execute and bind).

14.1.2 *No Litigation*. As of the Effective Date and as of the Commencement Date, there is no existing or, to Landlord's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Landlord, any constituent entity or individual of Landlord, or the Premises that would, if adversely determined, materially adversely affect Landlord, the Premises, this Lease, the Leasehold Estate, or Tenant's ability to develop and operate the Premises for a mixed use development, except and to the extent threatened by Wells Fargo Bank. N.A. as Trustee for the Credit Suisse First Boston, Securities Corp., Commercial Pass-Through Certificates, Series 2001-TFL2 in connection with that certain Amended and Restated Ground Lease dated June 27, 2008 by and between Landlord and Biscayne Landing, LLC (the "Wells Fargo Claims").

14.1.3 *No Pending Condemnation*. As of the Effective Date and as of the Commencement Date, there is no existing or, to Landlord's knowledge, pending or threatened Condemnation affecting any portion of the Premises or any pending public improvements in, about, outside, or appurtenant to the Premises that will materially adversely affect the use and operation of the Premises as a whole, the value of the Premises as a whole, or access to the Premises.

14.1.4 *Liens*. As of the Effective Date, the Premises are free and clear of any liens or encumbrances except for the Permitted Exceptions and those certain Notices of Commencement that will be terminated pursuant to item 3 of Schedule 3.1. As of the Commencement Date, the Premises will be free and clear of any liens or encumbrances except for the Permitted Exceptions.

14.1.5 *FIRPTA*. Landlord is not a "foreign person" within the meaning of United States Internal Revenue Code §1445(f)(3).

14.1.6 *No Pending Construction or Liens*. Except for the ERA, Landlord is not a party to any contract for any Construction and there has been no Construction on the Premises prior to the Effective Date for which the full costs thereof have not been paid (or will be paid by landlord prior to delinquency). Except in connection with the ERA, no Person has the right to claim any construction lien arising from any labor or materials furnished to the Premises before the Effective Date.

14.1.7 *Parties Entitled to Possession*. As of the Effective Date, Tenant is the only party entitled to possession of the Premises and no other Person has any right to lease, use, have possession of or occupy the Premises, including Landlord.

14.2. Tenant represents and warrants to Landlord that the following facts and conditions exist and are true as of the Effective Date. Tenant's representations and warranties in this Subsection shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

14.2.1 *Due Authorization and Execution*. Tenant has full right, title, authority, and capacity to execute and perform its obligations under the Lease-Related Documents to which Tenant is a party and referred to or required by this Lease; the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Tenant; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Tenant; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Tenant's organizational documents), contract, or other restriction to which Tenant is a party or is bound.

14.2.2 *No Litigation*. As of the Effective Date, there is no existing or, to Tenant's knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting Tenant that would, if adversely determined, materially adversely affect the ability of Tenant to perform its obligations under the Lease.

14.2.3 *Initial Equity Interest in Tenant*. Tenant represents and warrants to Landlord that, as of the Effective Date, the sole member of Tenant is Oleta Partners Tenant Owner, LLC, a Delaware limited liability company ("Sole Member"). Tenant further represents and warrants to Landlord that as of the Effective Date after the payment of all expenses, the repayment of member loans (and interest thereon), the return of capital contributions to the members and payment of a preferred return on such capital contributions, the indirect Equity Interest composition of Sole Member is as follows: fifty-two and one-half percent (52.5%) by Biscayne Investor LLC, a Delaware limited liability company, an Affiliate of LeFrak Organization, seventeen and one-half percent (17.5%) by Oleta BL Holdings, LLC, a Florida limited liability company, an Affiliate of Swerdlow Development Company, and thirty percent (30%) by TM Oleta Holdings, LLC, a Florida limited liability company, an entity affiliated with Michael Swerdlow and Millenium Investments Group of North Miami LLC, a Florida limited liability company. Nothing contained in this Subsection 14.2.3 shall limit the Transfer of Equity Interests, which is governed solely by Section 17. Simultaneously with the execution of this Lease, Tenant shall provide to Landlord an “Ownership Certificate”, in the form attached hereto as **Exhibit K.** Within thirty (30) days of written request of the Landlord, which request shall not be made more than twice per Lease Year except in the event that Landlord on a good faith basis believes that a Transfer of an Equity Interest by Tenant has occurred, the Tenant shall provide an updated Ownership Certificate, specifying and certifying in reasonable detail, to the best of Tenant’s knowledge, after diligent, reasonable inquiry, the ultimate individual legal and beneficial owners of all of the Equity Interests of the Tenant.

15. LANDLORD'S TRANSFERS

15.1. *Landlord's Right to Convey*. Landlord may Transfer the Fee Estate in whole but not in part from time to time, but only to a person that is not and cannot elect to be immune from civil process and then only if such Transfer does not otherwise violate this Lease. No such Transfer shall be made by Landlord unless Landlord has first offered to Transfer the Fee Estate to Tenant in accordance with the provisions of Section 15.4. Further, notwithstanding anything in this Lease to the contrary, and subject to compliance with the preceding sentence, no such Transfer shall be effected until the earliest to occur of (a) the expiration of the 10th Lease Year, (b) the receipt of reasonable assurances acceptable to Tenant that any Grant money available to Landlord in connection with the Remedial Action will continue to be received by Landlord and paid to Tenant or other acceptable payee pursuant to the terms of the Grant Agreement after the Transfer substantially and in all material respects as if the Transfer had not occurred, or (c) the issuance of a no further action letter (with only those conditions contained therein that are customary and standard for the zoning and intended use of the Premises and are otherwise reasonably acceptable to Tenant) with respect to the Remedial Action. If any transaction violates this Section 15.1, then: (a) it shall be null, void, and of no force or effect; and (b) notwithstanding the foregoing, Tenant shall be entitled to equitable relief to cancel and rescind it (without waiving any other rights or remedies, including an award of actual provable direct damages, capped at the amount received by the transferor for the Transfer). Landlord shall promptly Notify Tenant of such Transfer. Unless otherwise agreed by Tenant in its sole discretion Tenant shall have no liability for any transfer and other taxes payable on account of any Transfer by Landlord.

15.2. *Release of Landlord.* Upon any Transfer of the entire Fee Estate in compliance with this Lease, the grantor shall be automatically freed and relieved from all liability for performance of any covenants or obligations to be performed by Landlord after the Transfer other than liability previously accrued provided that: (i) Landlord delivers and turns over to the grantee all Trust Funds; and (ii) such successor Landlord acknowledges to Tenant receipt of such Trust Funds and assumes Landlord's future obligations under this Lease, all subject to the Nonrecourse Clause. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate or arising from failure to turn over Trust Funds or violation of this Section 15, all subject to the Nonrecourse Clause.

15.3. *Development Rights.* Landlord shall not enter into any Development Rights Transfer without Tenant's prior written consent, which Tenant may withhold for any reason or no reason.

15.4. *Right of First Offer*. Landlord grants to Tenant the right of first offer (the "First Offer Right") to purchase Landlord's interest in the Premises, subject to the terms and conditions hereinafter set forth. There shall be no Transfer of the Fee Estate unless and until Landlord shall have first offered to Transfer the Fee Estate to Tenant and Tenant has waived its First Offer Right to purchase the Fee Estate, provided, however, that the First Offer Right shall not be exercisable if, at the time the Offer Notice is to be given, an Event of Default exists. In the event that Landlord desires to sell Landlord's interest in the Premises, Landlord shall, prior to offering the same to any third party, give Tenant written notice (the "Offer Notice") of the price at which

it is willing to sell same and any other material terms and conditions of such proposed sale (collectively, the "Offer"). The Offer shall include, at a minimum, the following terms: (i) a purchase price and deposit amount, (ii) that closing shall be conditioned on the payment in full and satisfaction of any Fee Mortgage out of the purchase price, with any excess being paid by Landlord at closing, (iii) that the buyer accept the Premises "AS IS", "WHERE IS" and "WITH ALL FAULTS" and with no due diligence period in the case of Tenant—a third party can have a due diligence period but must take "as is", "where is" and "with all faults" after expiration of that due diligence period, (iv) that closing shall occur no later than one-hundred eighty (180) days following exercise of the First Offer Right, and (v) method of allocation of prorations and closing costs between the buyer and seller. The Offer Notice shall not provide for a property exchange. If Tenant desires to exercise its First Offer Right, Tenant shall deliver written notice (the "Acceptance Notice"), accompanied by the deposit, to Landlord within thirty (30) days following Tenant's receipt of the Offer Notice, and the closing shall be on the terms and conditions specified in the Offer, with Landlord conveying by Special Warranty Deed, subject only to the Permitted Exceptions and any exceptions created by or with the consent of Tenant and those claiming through Tenant, and providing reasonable evidence of authority to convey as required by the title insurance underwriter insuring the purchaser, a customary title affidavit regarding parties in possession, construction liens, FIRPTA and insuring the "gap". The parties shall reasonably cooperate with such other and follow customary practices and provide such other customary deliveries as either may reasonably request if not in conflict with the provisions of this Lease. In the event that Tenant has not delivered an Acceptance Notice accompanied by the deposit (which shall be applied to the purchase price at closing) prior to the expiration of such 30 day period, or Tenant is unable to close in accordance with the terms and conditions of the Offer, then Landlord shall thereafter have the right to sell Landlord's interest in the Premises on terms and conditions which do not materially deviate from the Offer (any reduction in the deposit by more than 5% shall be deemed material); provided, however, that any change in terms or concession on costs, timing or expenses that do not reduce the overall economic consideration of the transaction (i.e. reduce the cost to Tenant) by more than 5% shall not be considered a material deviation and shall not require a re-offer to Tenant. In the event of a material deviation from the Offer, Landlord shall not be permitted to sell Landlord's interest in the Premises without first re-offering same to Tenant in accordance with the provisions of this Section. The First Offer Right shall survive any transfer(s) of Landlord's interest in the Premises. However, the First Offer Right shall be deemed waived, terminate and be of no further force or effect if, having furnished an Acceptance Notice, Tenant thereafter defaults in its obligation to close the transaction . The termination of the First Offer Right and retention of the deposit as liquidated damages shall be Landlord's sole remedies for such default, and a default by Tenant in its obligation to close the transaction shall not be deemed a Default or Event of Default under this Lease. The parties acknowledge that in the event of Tenant's default in its obligation to close the First Offer Right transaction, Landlord's damages are incapable of exact ascertainment and that Landlord's retention of the deposit as liquidated damages is fair and reasonable and is not a penalty. If Landlord fails to close the sale in accordance with the provisions of this Lease for any reason other than failure to make the title marketable after diligent effort, then Tenant may either receive the return of its deposit or seek specific performance as its sole remedies. The First Offer Right shall apply to a sale of Landlord's interest in the Premises, but shall not apply to any mortgage, pledge or hypothecation thereof, or any grant of a security interest therein, or any similar transaction, or any transfer of Landlord's interest in the Premises (or any portion

thereof) or majority ownership interest in connection with the foreclosure, deed in lieu of foreclosure or enforcement of any other rights or remedies under any such mortgage, pledge, hypothecation, security interest or similar instrument (but the First Offer Right shall apply to any subsequent Transfer). The First Offer Right shall not apply to any transfers of interests in any publicly held companies or to any transfer of interests to any party (herein referred to as a "City Affiliate") which directly or indirectly: (i) wholly owns or controls Landlord, (ii) is wholly owned or controlled by Landlord, (iii) is under common ownership or control with Landlord, (iv) into which any of the foregoing parties is merged, consolidated or reorganized, or to which all or substantially all of the assets or such other party are sold, or (v) is an agency of Landlord.

16. FEE MORTGAGES

This Lease, including all amendments, renewals and extensions thereto or thereof, and the Leasehold Estate and all Leasehold Mortgages, including all amendments, renewals, and extensions thereto or thereof, shall be prior and superior to all Fee Mortgages (including all extensions, renewals, replacements, modifications and consolidations thereof, and to all advances thereunder) and the rights of all Fee Mortgagees. Tenant shall not be obligated to provide any documentation to a Fee Mortgagee which in any way prejudices Tenant's rights under this Lease in Tenant's sole but commercially reasonably exercised discretion. Any inconsistency between any Fee Mortgage and this Lease shall be resolved in favor of this Lease. Leasehold Mortgagee shall be deemed a third party beneficiary of this Section 16.

17. TENANT'S TRANSFERS

17.1. *Transfer of Leasehold Estate by Tenant*. Provided that no Event of Default exists at the time of the Transfer and Tenant's Construction Obligations have been completed, Tenant may Transfer this Lease or the Leasehold Estate without Landlord's consent (except to any Person that is or can elect to be immune from civil process), provided, however, that (a) any assignee of Tenant shall be a Qualified Developer and shall assume (and shall be deemed to assume, whether or not so stated in the assignment and assumption document) all obligations and liabilities of Tenant under this Lease related to the time period from and after the effective date of the assignment, (b) Tenant shall not be released from any of its obligations and liabilities under this Lease related to the time period prior to the effective date of the assignment, and (c) Tenant shall pay any Transfer fee due pursuant to Subsection 17.3. Tenant shall, without further action by Landlord, be released of all liability under this Lease related to the time period from and after the effective date of the assignment upon consummation of the assignment transaction. Landlord shall have no liability for any transfer and other taxes payable on account of any Transfer by Tenant. Notwithstanding anything to the contrary in this Lease, prior to completion of Tenant's Construction Obligations, neither Transfer of this Lease or the Leasehold Estate, nor any Transfers of Equity Interests in excess of twenty percent (20%) in the aggregate (to anyone other than Permitted Equity Owners) shall be effected without the prior written consent of Landlord. "Qualified Developer" shall mean a Person of Good Moral Character (or a wholly owned subsidiary of such Person or an entity that is controlled by such Person, so long as such subsidiary is reasonably capitalized, including any financing) who has the business judgment, experience, personal and financial ability and wherewithal (with a minimum net worth of $50,000,000.00) to proceed to perform under the Lease, as certified in writing to Landlord by such Qualified Developer. If any transaction violates this Section 17.1, then: (i) it shall be an

Event of Default, (ii) it shall be null, void, and of no force or effect; and (iii) notwithstanding the foregoing, Landlord shall be entitled to equitable relief to cancel and rescind it (without waiving any other rights or remedies, including an award of actual provable direct damages, capped at the amount received by the transferor for the Transfer). Tenant shall promptly Notify Landlord in writing of any Transfer of which it is aware.

17.2. *Transfer of Equity Interests*.

17.2.1 *Before Completion of Tenant's Construction Obligations*. Prior to completion of Tenant's Construction Obligations and provided that no Event of Default exists at the time of the Transfer, Tenant may without the prior written consent of Landlord (a) Transfer not more than twenty percent (20%) in the aggregate of the Equity Interests in Tenant to Persons of Good Moral Character, provided that such Transfer shall not result in Control being vested in Persons not affiliated with the LeFrak Organization and/or the Swerdlow Development Company, and (b) Transfer Equity Interests in Tenant to Permitted Equity Owners. Tenant shall pay any Transfer fee due pursuant to Subsection 17.3. Other than as set forth in this Subsection 17.2.1, Tenant shall not Transfer an Equity Interest in Tenant prior to completion of Tenant's Construction Obligations without the prior written consent of Landlord. Tenant shall promptly Notify Landlord of any Transfer of which it is aware.

17.2.2 *After Completion of Tenant's Construction Obligations*. After completion of Tenant's Construction Obligations, Tenant may Transfer an Equity Interest in Tenant without the prior written consent of Landlord provided that no Event of Default exists at the time of the Transfer. Tenant shall pay any Transfer fee due pursuant to Subsection 17.3. Tenant shall promptly Notify Landlord of any Transfer.

17.3. *Transfer Fee*. Tenant shall pay to Landlord a transfer fee in the amount of five percent (5%) of the gross revenue received by it or the owner of the Equity Interest being transferred, as applicable, in consideration of a Transfer of this Lease or the Leasehold Estate or any part thereof, including a Transfer of an Equity Interest in Tenant. Such transfer fee shall be paid by wire to Landlord on the date of such Transfer. The transfer fee shall apply only as to the initial Transfer of the property interest transferred for good faith arms-length consideration, e.g. if Oleta BL Holdings, LLC sells a one-third interest to Biscayne Investor LLC, after the transfer fee is paid on that one-third interest no further transfer fee will be due on further transfers of that one-third interest, but a transfer fee would be due on the Transfer of the remaining two-thirds on which a transfer fee has not yet been paid. Notwithstanding anything to the contrary contained in this Section 17.3 or otherwise in this Lease, in the event of a Transfer of Oleta BL Holdings, LLC's Equity Interest or of TM Oleta Holdings, LLC's Equity Interest or of any other Person which may then hold an Equity Interest, directly or indirectly, on behalf of or for the benefit of Michael Swerdlow in Tenant to Biscayne Investor LLC or an Affiliate thereof pursuant to a "buy-sell" prior to the completion of Tenant's Construction Obligations, then, in lieu of a transfer fee of five percent (5%) of the gross revenue, Tenant shall pay to Landlord a transfer fee in the amount of twenty-five percent (25%) of the gross revenue paid to Oleta BL Holdings, LLC and/or TM Oleta Holdings, LLC or to such other Person which may then hold an Equity Interest in Tenant on behalf of or for the benefit of Michael Swerdlow, and known by Tenant after reasonable investigation to be attributable to Michael Swerdlow's direct or indirect Equity Interests in Tenant or in such Persons (as opposed to other direct or indirect owners of Oleta BL

Holdings, LLC or TM Oleta Holdings, LLC or such other Person who are not member(s) of Michael Swerdlow's immediate family or trusts for their benefit). No transfer fee shall be due relating to any Transfer of the Lease or of an Equity Interest in Tenant: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax law; (b) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (c) to any Person as a result of a Foreclosure Event, or (d) held by Biscayne Investor LLC and sold to Oleta BL Holdings, LLC and/or TM Oleta Holdings, LLC provided however that any subsequent sale of such Equity Interest shall be subject to the transfer fee. Notwithstanding anything to the contrary contained in this Section 17, no transfer fee shall be due relating to any Transfer of the Lease or of an Equity Interest following acquisition of the Tenant's interest in the Lease or an Equity Interest by any Leasehold Mortgagee (or its designee or nominee) or any Mezzanine Lender (or its designee or nominee) or otherwise pursuant to a Foreclosure Event. Tenant shall provide Landlord all such documentation as may be required to calculate the transfer fee.

17.4. *Transfer Breach*. If any transaction violates the restrictions on transfer of this Section 17, then: (a) it shall be an Event of Default; (b) it shall be null, void, and of no force or effect; and (c) notwithstanding the foregoing, Landlord shall be entitled to equitable relief to cancel and rescind it (without waiving any other rights or remedies, including an award of actual provable direct damages, capped at the amount received by the transferor for the Transfer). All transferees of Equity Interests other than Permitted Equity Owners shall be Persons of Good Moral Character.

17.5. *Mr. Swerdlow*. Michael Swerdlow, by signing below, agrees that until Tenant's Construction Obligations have been completed, he will not Transfer his Equity Interest in Tenant, except as permitted by Section 17.3, to any immediate family member, a trust for the benefit of such family member, or any transferee upon the death of such Person, and will remain actively and substantially involved with the Premises and its Development (which involvement may be as an owner, consultant or otherwise), subject to death, incapacity, removal from involvement with the Premises and Development by a Person who is entitled to do so pursuant to a written agreement between Michael Swerdlow and such Person, and removal by a Leasehold Mortgagee or Mezzanine Lender pursuant to an exercise of remedies under its loan documents, including, without limitation, by appointment of a receiver for the Premises. A breach of this Section 17.5 shall constitute a Default or Event of Default under this Lease.

18. SUBLEASES; NONDISTURBANCE OF SUBTENANTS

18.1. *Tenant's Right*. Tenant may enter into or Modify any Sublease, terminate any Sublease or evict any Subtenant, and grant any consent under any Sublease, all without Landlord's consent. No Sublease shall affect any obligations of Tenant or rights of Landlord under this Lease, all of which shall continue in full force and effect notwithstanding any Sublease. Any Sublease shall expire no later than the Expiration Date. The fact that any Subtenant causes any Default shall not relieve Tenant of Tenant's obligation to cure it. Subject to the foregoing continuing responsibility of Tenant, Tenant may delegate any obligations under this Lease to any Subtenant (as to the Phase demised to such Subtenant), and Landlord shall accept performance by any such Subtenant as performance by Tenant.

18.2. *Required Provisions.* Each first tier (direct) Sublease from Tenant shall contain provisions in form and substance substantially as set forth below in this Section, and by executing its Sublease, each such first tier Subtenant shall be deemed to have agreed to these provisions, which reflect the definitions in this Lease. Tenant shall use commercially reasonable efforts to cause sub-Subtenants and further tiers of subleasing to contain provisions in form and substance substantially as set forth below in this Section, and inclusion of such by provisions shall be a condition precedent to the nondisturbance granted by Landlord in this Section 18. By executing its Sublease containing such provisions, each such Subtenant shall be deemed to have agreed to these provisions; All such defined terms shall be modified in the Sublease as appropriate to reflect the definitions in the Sublease.

> All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease and the Leasehold Estate terminate, then this Sublease shall remain in effect as a direct lease between Landlord and Subtenant; provided, however, that Landlord shall not be: (i) liable for any act or omission of a prior landlord (including Tenant); or (ii) subject to any offsets, defenses or deficiencies that Subtenant might have against any prior landlord (including Tenant); or (iii) liable to Tenant for any deposit, rental security or any other sums deposited with the original or any prior landlord under the Lease and not delivered to Landlord; or (iv) bound by any rent or additional rent which Subtenant might have paid in advance to any prior landlord (including Tenant) for a period in excess of one month; or (v) bound by any amendment, modification, assignment or termination of a direct Sublease from Tenant made without the written consent of Landlord if at the time of the execution thereof a Event of Default, as defined in the Lease (and the recorded Memorandum thereof), existed; or (vi) obligated or liable with respect to any representations, warranties or indemnities contained in the Sublease, including without limitation relating to work performed by any prior landlord under the Sublease; or (vii) liable to Subtenant or any other party for any conflict between the provisions of the Sublease and the provisions of any other lease affecting the Premises which is not entered into by Landlord; or (viii) obligated to construct any improvements to be constructed by Tenant under the Sublease including without limitation tenant improvements; or (ix) be obligated for the restoration of the Premises, Subleased Premises, or any other improvements on or benefiting the Subleased Premises in the event of any casualty or taking of any part of the Subleased Premises under power of eminent domain beyond any insurance or condemnation proceeds received in connection with such casualty or taking, provided however that Subtenant may offset from base rent payments currently due under the Sublease up to, but not in excess of, fifty percent (50%) of the excess of such Sublease base rents over the rents payable under this Lease that are allocable to the Sublease (as determined by a just and proportional allocation) against the costs and expenses incurred by Subtenant which Subtenant would have been able to recover from Tenant under the Sublease for Tenant construction obligations necessary for Subtenant to open for business and operate in the Subleased Premises. Any such offset will be applied proportionately in rental payments due under the Sublease until such offset amount is recovered by Subtenant in full. In that event, Subtenant shall attorn to Landlord and recognize Landlord as Subtenant's direct landlord under this Sublease. Subtenant shall execute and deliver, at any time and from time to time, upon the request of Landlord, any

instrument necessary or appropriate to evidence such attornment. The Lease provides Landlord with certain audit rights. Landlord shall have the right to request and each Subtenant under a direct Sublease with Tenant shall provide certified estoppel information in connection with any audit. All Subleases are subject to audit on reasonable notice by Landlord's outside legal counsel and real estate consultant to verify terms, but the audit shall be performed in a way that protects the terms of the Subleases from public disclosure, as the terms of the Subleases are confidential and sensitive and public disclosure is not desirable and would be prejudicial to the parties to the Subleases.

18.3. *Conditions to Effectiveness of Certain Transactions*. No assignment of this Lease or any Sublease of substantially the entire Premises shall be effective or have any validity unless and until such assignment or Sublease otherwise complies with this Lease and Landlord has received: (a) in the case of an assignment, an executed counterpart of the assignment and an assumption of this Lease by the assignee in respect of those matters that first arise from and after the effective date of the assignment, in recordable form and in form and content reasonably satisfactory to Landlord (the assignee shall be deemed to have assumed all of the obligations of the assignor in respect of those matters that first arise from and after the effective date of the assignment, whether or not the assignment and assumption document so states), (b) in the case of a Sublease of all or substantially all the Premises, a copy of the executed Sublease complying with this Lease; and (c) Notice of the assignee or Subtenant.

18.4. *Nondisturbance of Subtenants*. If this Lease terminates, Landlord shall not disturb the possession, interest, or quiet enjoyment of any Subtenant whose Sublease (a) was entered into at a time when no Event of Default existed, which condition shall apply only to direct Subleases from Tenant (b) has a term that with any renewals does not extend beyond the Scheduled Expiration Date, (c) is then in effect, (d) contains the required provisions set forth in Subsection 18.2 above, and (e) otherwise complies with the provisions of this Section 18, provided that such Subtenant agrees to attorn to Landlord and the Sublease either: (x) does not demise all or substantially all the Premises and was on commercially reasonable and fair market terms (including fixed subrent that cannot decline except upon Loss) when the Subtenant became legally bound; or (y) demises the entire Premises and is in all material respects at all times no less favorable to Landlord than this Lease, all as certified to Landlord by Tenant in writing. Tenant shall use commercially reasonable efforts, including placing the requirement in Subleases, to ensure that the Subleases are subject to audit on reasonable notice by Landlord's outside legal counsel and real estate consultant to verify, but the audit shall be performed in a way that protects the terms of the Subleases from public disclosure, as the terms of the Subleases are confidential and sensitive and public disclosure is not desirable and would be prejudicial to the parties to the Subleases. Such nondisturbance is automatically granted by Landlord and occurs without the need for a separate nondisturbance agreement provided, however, that Landlord shall not be: (i) liable for any act or omission of a prior landlord (including Tenant); or (ii) subject to any offsets, defenses or deficiencies that Subtenant might have against any prior landlord (including Tenant); or (iii) liable to Tenant for any deposit, rental security or any other sums deposited with the original or any prior landlord under the Lease and not delivered to Landlord; or (iv) bound by any rent or additional rent which Subtenant might have paid in advance to any prior landlord (including Tenant) for a period in excess of one month; or (v) bound by any amendment, modification, assignment or termination of a direct Sublease from Tenant made without the written consent of Landlord if at the time of the execution thereof a

Event of Default, as defined in this Lease existed; or (vi) obligated or liable with respect to any representations, warranties or indemnities contained in the Sublease, including without limitation relating to work performed by such landlord under the Sublease; or (vii) liable to Subtenant or any other party for any conflict between the provisions of the Sublease and the provisions of any other lease affecting the Premises which is not entered into by Landlord; or (viii) obligated to construct any improvements to be constructed by Tenant under the Sublease including without limitation tenant improvements; or (ix) be obligated for the restoration of the Premises, Subleased Premises, or any other improvements on or benefiting the Subleased Premises in the event of any casualty or taking of any part of the Premises under power of eminent domain beyond any insurance or condemnation proceeds received in connection with such casualty or taking. Although nondisturbance for Subleases meeting the aforestated conditions and terms is automatic and occurs without the need for a separate nondisturbance agreement at the time the Sublease was entered into, Landlord and the Subtenant shall from time to time within 30 days of request by Tenant (accompanied by the certification by Tenant to Landlord regarding the terms of the Sublease as described above in this Subsection and including a description of the Sublease term and Subleased Premises) issue a Nondisturbance Agreement confirming same in substantially the form attached hereto as **Exhibit F**, with such changes as the Subtenant may reasonably request, provided same does not increase the obligations or liabilities or decrease the rights of Landlord except for ministerial obligations, but failure to do so or the rejection of same in Bankruptcy or invalidity of same shall not affect the automatic nondisturbance obligation set forth in this Section 18.4. If this Lease terminates, Landlord shall recognize the rights and protections of Subleasehold Mortgagees as provided in Section 20 below to the extent they are timely asserted by such Subleasehold Mortgagees. Landlord acknowledges being advised that Landlord's failure to timely provide a confirmatory Nondisturbance Agreement as provided for in this Section (or an estoppel certificate as provided for in Sections 19.11 or 28.1) could have adverse consequences for Tenant, including potential delay or loss of a Sublease transaction with a Subtenant and the consequent economic loss. If requested by Tenant, any Subtenant, any Leasehold Mortgagee or any Subleasehold Mortgagee, Landlord will advise Tenant (and such other parties) in writing within ten (10) days following receipt of the request from such party (x) as to whether Landlord deems a Sublease to be commercially reasonable and on fair market terms and/or (y) that no Event of Default then exists nor existed at the time the Sublease was executed. If Landlord so advises Tenant or such other party, the Sublease will be deemed to be commercially reasonable and on fair market terms unless Landlord shall advise Tenant (and such other parties) in writing that such is not the case (stating the reason why) within the ten (10) day period. Accordingly, Tenant shall be entitled to specific performance of Landlord's obligation to provide a Nondisturbance Agreement as provided for in this Section as its sole remedy.

18.5. *Effect of Recapture by Landlord of Portions of the Premises.* In the event Landlord reacquires any portion (but not all) of the Premises by reason of termination of this Lease as to a Phase or otherwise, the portion so acquired by Landlord shall in no event be used for any of the following purposes while this Lease or any Sublease remains in effect with respect to any other portion of the Premises: trash transfer station, vehicle storage or repair yard, warehouse, jail, or other uses with a clear likelihood of diminishing the use and enjoyment of such portions of the Premises that Landlord has not reacquired.

18.6. *Third Party Beneficiaries.* Any Leasehold Mortgagee, Subtenant and any Subleasehold Mortgagee shall be deemed to be third party beneficiaries of this Section 18.

19. LEASEHOLD MORTGAGES AND PROTECTIONS

19.1. *Leasehold Mortgages*. Without Landlord's consent, at any time and from time to time, (a) Tenant may grant Leasehold Mortgage(s), and any modifications, extensions, consolidations or replacements thereto or thereof, and any future advances thereunder; (b) any Leasehold Mortgagee may initiate and complete any Foreclosure Event and exercise any other rights and remedies against Tenant and the Leasehold Estate (but not the Fee Estate), under its Leasehold Mortgage; and (c) any transferee through a Foreclosure Event, and its successors and assigns, may assign this Lease or Transfer Equity Interests in Tenant without Landlord's consent. A Foreclosure Event shall impair no estate or right under any Fee Mortgage and shall transfer only the Leasehold Estate or Equity Interests in Tenant. Notwithstanding anything to the contrary contained in this Lease, a Foreclosure Event shall not preclude Landlord from exercising its right to terminate this Lease in the event that Leasehold Mortgagee fails to timely exercise its right to cure any Monetary Default or Nonmonetary Default pursuant to the terms of this Lease.

19.2. *Lease Impairments; Landlord Modifications; Leasehold Mortgagee Approvals*.

19.2.1 Any Lease Impairment made without Leasehold Mortgagee's consent shall (at Leasehold Mortgagee's option) be null, void, and of no force or effect, and not bind any party to the Lease, Leasehold Mortgagee or New Tenant.

19.2.2 The canceling, modifying, restating or terminating of this Lease by Landlord without Leasehold Mortgagee's consent (other than a termination of the Lease following an Event of Default that remains uncured or waived following Landlord's compliance with the terms and conditions set forth in this Section 19, including, without limitation, Sections 19.4 and 19.5 with respect to Leasehold Mortgagee's cure rights, and subject to Leasehold Mortgagee's rights under Sections 19.6 and 19.7 to obtain a New Lease) shall (at Leasehold Mortgagee's option) be null, void, and of no force or effect, and not bind any party to the Lease, Leasehold Mortgagee or New Tenant.

19.2.3 No consent, approval or submittal by Tenant and no agreement relating to any of Tenant's rights, powers, privileges and obligations under this Lease (including, without limitation, the obligations of Tenant under Section 35.2.3) shall be deemed final, valid, binding or of any force or effect, unless Leasehold Mortgagee has approved each such consent, approval submittal and agreement in writing and in advance or waived its right to approve the same in writing and in advance (which waiver shall relate solely to the specific consent, approval, submittal or agreement provided to Leasehold Mortgagee for its approval and shall not constitute a waiver of Leasehold Mortgagee's right to consent with respect to any other consent, approval, submittal or agreement); provided, however, that in issuing or waiving such consents, approvals, submittals and agreements, Leasehold Mortgagee shall not incur any liability or assume any obligations with respect thereto.

19.3. *Notices*. Any Notice (including, without limitation, any Default Notice) from Landlord to Tenant shall have no effect unless Landlord gives a copy to Leasehold Mortgagee. If any Default occurs for which Landlord intends to exercise any remedy, Landlord shall promptly give Leasehold Mortgagee, Subleasehold Mortgagee and any Subtenants a Notice of Default,

provided, however, that Tenant or the applicable party has Notified Landlord in writing of the address and contact information.

19.4. *Opportunity to Cure; Leasehold Mortgagee's Right to Perform*.

19.4.1 *Opportunity to Cure.* Subject to the remaining provisions of this Section 19.4.1, Landlord shall accept Leasehold Mortgagee's cure of any Default at any time until thirty (30) days after both: (a) Tenant and Leasehold Mortgagee have received the Notice of Default for that Default; and (b) Landlord has notified Leasehold Mortgagee that Tenant's cure period for that Default has expired without cure having been effected (the "Leasehold Mortgagee Cure Period"). Provided that (i) within the Leasehold Mortgagee Cure Period, Leasehold Mortgagee commits in writing to Landlord to diligently pursue such cure to completion, and (ii) Leasehold Mortgagee timely exercises its cure rights for and cures all other Defaults except for Tenant-Specific Defaults, then for any Default, if Leasehold Mortgagee cannot reasonably cure a Nonmonetary Default within the Leasehold Mortgagee Cure Period, it shall have such further time as it reasonably needs so long as it proceeds with reasonable diligence. If Leasehold Mortgagee consummates a Foreclosure Event, all Tenant-Specific Defaults shall be deemed automatically waived. Notwithstanding anything to the contrary contained herein, the Leasehold Mortgagee Cure Period shall be extended by any period of time during which Leasehold Mortgagee is legally prevented or restricted from exercising its rights and remedies under the Leasehold Mortgage or its other loan documents by reason of a Bankruptcy Action, including, without limitation, if an Event of Default occurs under Section 23.1.3, an injunction, a court order, or other similar prohibition or other cause beyond the reasonable control of Leasehold Mortgagee.

19.4.2 *Leasehold Mortgagee's Right to Perform*. Landlord hereby acknowledges and agrees that Leasehold Mortgagee may, in its sole and absolute discretion, observe or perform, or cause to be observed or performed, any of the obligations of Tenant under this Lease and any or all of the rights, powers and privileges of Tenant under the Lease and upon such exercise Landlord will observe or perform, or cause to be performed, such obligations of such Persons for the benefit of Leasehold Mortgagee. This Section 19.4.2 shall not, however, be deemed to limit the obligations of Tenant under this Lease (or to impose such obligations upon Leasehold Mortgagee) or the Leasehold Mortgage or related loan documents.

19.5. *CURE RIGHTS/PERFORMANCE IMPLEMENTATION; LAST CHANCE NOTICE*. WHENEVER LEASEHOLD MORTGAGEE'S TIME TO CURE A DEFAULT HAS NOT EXPIRED, LANDLORD SHALL NOT TERMINATE THIS LEASE, ACCELERATE ANY RENT, OR OTHERWISE INTERFERE WITH TENANT'S OR LEASEHOLD MORTGAGEE'S POSSESSION AND QUIET ENJOYMENT OF THE LEASEHOLD ESTATE. LEASEHOLD MORTGAGEE MAY ENTER THE PREMISES TO SEEK TO CURE A DEFAULT OR PERFORM THE OBLIGATIONS OF TENANT. THIS RIGHT OR ITS EXERCISE SHALL NOT BE DEEMED TO GIVE LEASEHOLD MORTGAGEE POSSESSION.

NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, LANDLORD AGREES THAT IN ADDITION TO ALL OTHER APPLICABLE NOTICE AND CURE PERIODS AFFORDED UNDER THIS LEASE, AFTER THE GIVING OF

ALL SUCH APPLICABLE NOTICES AND THE EXPIRATION OF ALL SUCH APPLICABLE CURE PERIODS, PRIOR TO ANY TERMINATION OR CANCELLATION OF THIS LEASE, OR THE INTERESTS OF ANY PERSON HEREIN, BECOMING EFFECTIVE AND ENFORCEABLE, LANDLORD SHALL GIVE LEASEHOLD MORTGAGEE A NOTICE MARKED AND TYPED IN BOLDFACE AND NOT LESS THAN 12 POINT TYPEFACE "LAST CHANCE NOTICE" (THE "LAST CHANCE NOTICE"), WHICH LAST CHANCE NOTICE SHALL AFFORD LEASEHOLD MORTGAGEE AN ADDITIONAL FIFTEEN (15) BUSINESS DAYS TO TAKE SUCH ACTIONS AS MAY NECESSARY TO AVOID SUCH TERMINATION OR CANCELLATION OR ANY INTEREST THEREIN. THE FOREGOING IS INTENDED TO AFFORD LEASEHOLD MORTGAGEE A NOTICE AND CURE PERIOD (IN ADDITION TO ALL OTHERS SET FORTH IN LEASE), AND ANY PURPORTED TERMINATION OR CANCELLATION OF THE LEASE OR ANY INTEREST THEREIN, WITHOUT COMPLIANCE WITH THE TERMS OF THIS PARAGRAPH SHALL BE VOID AND OF NO FORCE AND EFFECT.

19.6. *New Lease*. If this Lease terminates for any reason (except with Leasehold Mortgagee's consent or because of a Substantial Condemnation), even if Leasehold Mortgagee failed to timely exercise its cure rights for a Default, Landlord shall promptly give Leasehold Mortgagee a Lease Termination Notice. By giving notice to Landlord on or before the day that is thirty (30) days after Leasehold Mortgagee receives Landlord's Lease Termination Notice (such thirty (30) day period, the "New Lease Option Period"), Leasehold Mortgagee may require Landlord to enter into a New Lease with New Tenant. Landlord need not do so, however, unless New Tenant has, subject to Unavoidable Delays, (a) in the New Lease committed to cure all Monetary Defaults within thirty (30) days of commencement of the New Lease, and to cure all Nonmonetary Defaults (except Tenant-Specific Defaults) within forty-five (45) days of commencement of the New Lease, except, in the case of any such Nonmonetary Default that cannot with due diligence be cured within forty-five (45) days, New Tenant shall have commenced such cure and committed in the New Lease to diligently prosecute such cure to completion within a reasonable time under the circumstances; and (b) reimbursed Landlord's reasonable costs and expenses (including reasonable attorneys' fees and expenses) to terminate this Lease, recover the Premises, and enter into the New Lease. If Leasehold Mortgagee exercises its option to require Landlord to enter into a New Lease with New Tenant, New Tenant shall execute the New Lease within thirty (30) days after expiration of the New Lease Option Period or the option shall be deemed to be waived and of no further effect.

19.7. *New Lease Implementation*. If Leasehold Mortgagee timely requests a New Lease in conformity with this Lease, then from the date this Lease terminates until the parties execute and deliver a New Lease, Landlord shall not: (a) operate the Premises in an unreasonable manner; (b) terminate any Sublease(s) except for a default thereunder beyond all applicable notice and cure periods; or (c) lease any Premises except to New Tenant. When the parties thereto sign a New Lease, Landlord shall transfer to New Tenant, all Subleases, New Subleases (including any security deposits held by Landlord, if any), service contracts, premises operations, and net income Landlord collected from the Premises during the period described in the previous sentence and any offset rights which Tenant was entitled to under the Lease prior to the termination thereof shall automatically be transferred to New Tenant and Landlord shall cause every Fee Mortgagee to subordinate unconditionally to the New Lease.

19.8. *No Merger*. If the Leasehold Estate and the Fee Estate are ever commonly held, they shall remain separate and distinct estates (and not merge) without Leasehold Mortgagee's and Fee Mortgagee's consent.

19.9. *No Personal Liability.* Notwithstanding anything to the contrary in this Lease, no Leasehold Mortgagee, Subleasehold Mortgagee, New Tenant, or any Person acting for any of them shall have any personal liability under this Lease (or a New Lease), even if such Person exercises any Leasehold Mortgagee's cure rights, except to the extent that such Person assumes in writing any of Tenant's obligations under this Lease or a New Lease. Any such liability shall: (a) not extend to any Default that occurred before such Tenant or New Tenant took title to this Lease, (or a New Lease, as applicable), except as agreed in the New Lease; and (b) terminate if and when any such Tenant assigns this Lease (provided the assignee assumes all of the assignor's obligations under this Lease) or New Tenant enters into a New Lease or Tenant abandons this Lease (except as agreed to in the New Lease).

19.10. *Multiple Leasehold Mortgagees***.** If at any time multiple Leasehold Mortgagees exist: (a) any consent by or notice to Leasehold Mortgagee refers to all Leasehold Mortgagees; (b) except under clause "a," only the most Senior Leasehold Mortgagee may exercise all rights of Leasehold Mortgagee(s), to the exclusion of junior Leasehold Mortgagee(s); (c) to the extent that the most Senior Leasehold Mortgagee declines to do so, any other Leasehold Mortgagee may exercise those rights, in order of priority; and (d) if Leasehold Mortgagees do not agree on priorities, a written determination of priority issued by a title insurance underwriter licensed in the State shall govern.

19.11. *Further Assurances.* Upon written request from Tenant or any Leasehold Mortgagee (prospective or current), Landlord shall promptly, under documentation reasonably satisfactory to the requesting party: (a) acknowledge any Subtenant's nondisturbance and recognition rights (provided such Subtenant joins in a Nondisturbance Agreement); (b) agree directly with Leasehold Mortgagee that it may exercise against Landlord all Leasehold Mortgagee's rights in this Lease; (c) certify (subject to any then exception reasonably specified) whether this Lease is in full force and effect, whether any Lease Impairment has occurred, whether to Landlord's knowledge any Default exists, the date through which Rent has been paid, and other factual matters as reasonably requested; and (d) provided Tenant reimburses Landlord's reasonable attorneys' fees and expenses, amend this Lease and/or provide other assurances as any current or prospective Leasehold Mortgagee reasonably requests, provided such amendment does not adversely affect Landlord, including reduction of any payment due Landlord, increase of any liability or obligation of Landlord, or change in any Default or cure or Notice period.

19.12. *Miscellaneous*. Notwithstanding anything to the contrary in this Lease, Leasehold Mortgagee may: (a) exercise its rights through an affiliate, assignee, designee, including a Mezzanine Lender, nominee, subsidiary, or other Person, acting in its own name or in Leasehold Mortgagee's name (and anyone acting under this clause "a" shall automatically have the same protections, rights, and limitations of liability as Leasehold Mortgagee); (b) refrain from curing any Default; (c) abandon such cure at any time; or (d) withhold consent or approval for any reason or no reason, except where this Lease states otherwise. Any such consent or approval

must be written. To the extent any Leasehold Mortgagee's rights under this Lease apply after this Lease terminates, they shall survive such termination.

19.13. *Priorities of Multiple Mortgagees*. If more than one Mortgagee of a particular type (Fee or Leasehold or Subleasehold, and as to Subleasehold Mortgagees, as to a particular encumbered Sublease) desires to exercise any mortgagee protection, then the party against whom such mortgagee protection is to be exercised shall be required to recognize either: (1) only the Mortgagee that desires to exercise such mortgagee protection and whose Mortgage is most Senior (as against other Mortgages of like type); or (2) such other Mortgagee of a particular type (all Fee Mortgagees or all Leasehold Mortgagees or all Subleasehold Mortgagees as applicable), have designated in writing to exercise such mortgagee protection. Priority of Mortgages shall be conclusively evidenced by (in order of precedence of application): (x) written agreement (or joint written instructions) by all Mortgagees of a particular type (Fee or Leasehold or Subleasehold, as applicable); or (y) a report or certificate of a title insurance company licensed to do business in the State. Neither Tenant nor Landlord shall be obligated to determine the relative priorities of any Mortgages. For any mortgagee protection that by its nature or under this Lease only one Leasehold Mortgagee can exercise (such as the right to a New Lease), pending the determination of priority, any time period that applies to Leasehold Mortgagees' exercise of such mortgagee protection shall be tolled. Notwithstanding the foregoing, unless expressly acknowledged and agreed by Leasehold Mortgagee in a written agreement (or written instructions), all Leasehold Mortgages (including all extensions, renewals, replacements, modifications and consolidations thereof, and to all advances thereunder) shall be prior and superior to all Fee Mortgages and Subleasehold Mortgages (in each case, including all extensions, renewals, replacements, modifications and consolidations thereof, and to all advances thereunder) and Leasehold Mortgagee's rights to exercise any mortgagee protection under this Lease (including, without limitation, the rights under this Section 19) shall be prior and superior to the rights of any Subtenants (including, without limitation, the rights under Section 18 hereof), any Fee Mortgagee or any Subleasehold Mortgagee (including, without limitation, the rights under Section 20 hereof) to exercise same.

19.14. *Tenant Bankruptcy*. In the event of a Bankruptcy Action in which Tenant or any Affiliate thereof is a debtor:

(a) If this Lease is rejected in connection with such Bankruptcy Action by the Tenant or any Affiliate thereof or a trustee in bankruptcy for such Person (or other Person to such proceeding), such rejection shall be deemed an assignment by such Persons to Leasehold Mortgagee of the Leasehold Estate and all of Tenants interests in this Lease and neither the Leasehold Estate nor its Lease shall terminate or be cancelled and Leasehold Mortgagee shall have all rights and obligations of such Person as if such Bankruptcy Action had not occurred, unless Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within thirty (30) business days following such rejection.

(b) If any court of competent jurisdiction or other tribunal shall determine that the Lease shall have been terminated or cancelled notwithstanding the provisions of clause (a) above as a result of such rejection, the rights of New Tenant to a New Lease under Section 19.6 shall not be affected thereby, and Leasehold Mortgage and

Landlord agree that New Tenant shall enter into such New Lease pursuant to the terms and conditions of Section 19.6 notwithstanding the foregoing.

19.15. *Third Party Beneficiary.* Any Leasehold Mortgagee shall be deemed to be a third party beneficiary of this Section 19.

20. SUBLEASEHOLD MORTGAGES AND PROTECTIONS.

20.1. *Generally.* Notwithstanding anything in this Lease to the contrary, Tenant or those claiming under it shall have the absolute and unconditional right, without Landlord's consent, to execute and deliver Subleasehold Mortgage(s) at any time and from time to time during the Term. Landlord need not join in, or "subordinate the Fee Estate to," any Subleasehold Mortgage, and Tenant need not join in, or "subordinate the Leasehold Estate to," any Subleasehold Mortgage. No Subleasehold Mortgage shall reduce any party's rights or obligations under this Lease. Without Landlord's consent, at any time and from time to time: (a) any Subleasehold Mortgagee may initiate and complete any Foreclosure Event and exercise any other rights and remedies against the Subtenant and the Subleasehold Estate (but not the Fee Estate or the Leasehold Estate) under its Subleasehold Mortgage; and (c) any transferee through a Foreclosure Event, and its successors and assigns, may assign the subject Sublease. A Foreclosure Event shall impair no estate or right under the Fee Estate or the Leasehold Estate, and shall transfer only the Subleasehold Estate.

20.2. *New Sublease.* In the event that the Subleasehold Estate has terminated and the Leasehold Estate has also terminated (except with the consent of a Subleasehold Mortgagee or because of a Substantial Condemnation relating to the Subleasehold Estate), even if Subleasehold Mortgage failed to timely exercise its cure rights for a default under its Sublease, Landlord shall promptly give Subleasehold Mortgagee a Lease Termination Notice. By giving notice to Landlord on or before the day that is thirty (30) days after Subleasehold Mortgagee receives Landlord's Lease Termination Notice (such thirty (30) day period, the "New Sublease Option Period"), subject to the remaining provisions of this Section 20.2, Subleasehold Mortgagee may require Landlord to enter into a New Sublease with New Subtenant. Landlord need not do so, however, unless New Subtenant has, subject to Unavoidable Delays, (a) in the New Sublease committed to cure all monetary defaults under the Sublease within thirty (30) days of commencement of the New Sublease, and to cure all non-monetary defaults under the Sublease (except Subtenant Specific Defaults) within forty five (45) days of commencement of the New Sublease, except, in the case of any such non-monetary defaults under the Sublease that cannot with due diligence be cured within forty five (45) days, New Subtenant shall have commenced such cure and committed in the New Sublease within a reasonable time under the circumstances and (b) reimbursed Landlord's reasonable costs and expenses (including reasonable attorneys' fees and expenses) to recover the Subleased Premises, and enter into the New Sublease.

Notwithstanding the foregoing, it is expressly acknowledged and agreed that the rights of Subleasehold Mortgagee and New Subtenant under this Section 20.2 are subject and subordinate in all respects and for all purposes to the rights of Leasehold Mortgagee and New Tenant under Section 19.6 of this Lease. If Subleasehold Mortgagee exercises its option to require Landlord to enter into a New Sublease with New Subtenant, New Subtenant shall execute the New Sublease

within thirty (30) days after expiration of the New Sublease Option Period or the option shall be deemed waived and of no further force and effect. In the event that a Successor Tenant acquires the Leasehold Estate through a Foreclosure Event or otherwise or New Tenant enters into a New Lease pursuant to Section 19.6 , then (x) if Subleasehold Mortgagee purports to exercise its remedies under this Section 20.2 or New Subtenant enters into a New Sublease, such New Sublease shall be deemed to be a direct lease between New Subtenant and Successor Tenant and (y) all Subleases shall be deemed to be direct leases between Subtenant and Successor Tenant. The parties to any such Subleases shall execute, acknowledge and deliver any instrument reasonably requested by Landlord or Leasehold Mortgage to evidence the foregoing, but no such instrument shall be necessary to make the foregoing effective.

20.3. *New Sublease Implementation*. If Subleasehold Mortgagee timely requests a New Sublease for the Subleased Premises in conformity with this Lease, then from the date the applicable Sublease terminates until the parties thereto execute and deliver a New Sublease, Landlord shall not: (a) operate the Sublease Premises in an unreasonable manner; (b) terminate any sub-sublease(s) except for a default thereunder beyond all applicable notice and cure periods; or (c) lease any Sublease Premises except to New Subtenant. When the parties thereto sign a New Sublease, Landlord (or Successor Tenant, as applicable) shall transfer to New Subtenant all sub-subleases (including any security deposits held thereby, if any), service contracts, premises operations, and net income Landlord (or Successor Tenant, as applicable) collected from the Subleased Premises during the period described in the previous sentence and any offset rights which Subtenant was entitled to under the Sublease prior to the termination thereof shall automatically be transferred to New Subtenant under the New Sublease.

20.4. *Nondisturbance of New Subtenants*.

(a) Landlord shall not disturb the possession, interest or quiet enjoyment of any New Subtenant whose New Sublease (a) has a term that with any renewals does not extend beyond the Scheduled Expiration Date and (b) otherwise complies with the provisions of Section 18 of this Lease, as they apply to Subleases, provided that such New Subtenant agrees to attorn to Landlord and the New Sublease either: (x) does not demise all or substantially all of the Premises and was on commercially reasonable and fair market terms (including fixed subrent that cannot decline except upon Loss) when the applicable Subtenant became legally bound under the applicable Sublease; or (y) demises the entire Premises and is in all material respects at all times no less favorable to Landlord than this Lease, all as certified to Landlord by Tenant when the applicable Sublease was entered into pursuant to Section 18.4 of this Lease. Such nondisturbance is automatically granted by Landlord and occurs without the need for a separate nondisturbance agreement provided, however, that Landlord shall not be: (i) liable for any act or omission of a prior landlord under the applicable Sublease (including Tenant); or (ii) subject to any offsets, defenses or deficiencies that Subtenant might have against any prior landlord under the applicable Sublease (including Tenant); or (iii) liable to Tenant for any deposit, rental security or any other sums deposited with the original or any prior landlord under the Lease and not delivered to Landlord; or (iv) bound by any rent or additional rent which Subtenant might have paid in advance to any prior landlord under the applicable Sublease (including Tenant) for a period in excess of one month; or (v) bound by any amendment, modification, assignment or termination of a

Sublease from Tenant made without the written consent of Subleasehold Mortgagee; or (vi) obligated or liable with respect to any representations, warranties or indemnities contained in the Sublease, including without limitation relating to work performed by such landlord under the Sublease; or (vii) liable to Subtenant or any other party for any conflict between the provisions of the Sublease and the provisions of any other lease affecting the Premises which is not entered into by Landlord; or (viii) obligated to construct any improvements to be constructed by Tenant under the Sublease including without limitation tenant improvements; or (ix) be obligated for the restoration of the Premises, Subleased Premises, or any other improvements on or benefiting the Subleased Premises in the event of any casualty or taking of any part of the Premises under power of eminent domain beyond any insurance or condemnation proceeds received in connection with such casualty or taking.

(b) If a Foreclosure Event occurs and Leasehold Mortgagee (or its designee or nominee) shall succeed to the interests of Tenant under this Lease, or if a New Tenant enters into a New Lease pursuant to Section 19.6 of this Lease, then neither the applicable Leasehold Mortgagee nor its designee or nominee or a New Tenant, as applicable (together with their respective successors and assigns, collectively, "Successor Tenant"), shall disturb the possession, interest, or quiet enjoyment of any Subtenant (including any Subleasehold Mortgagee or its designee or nominee which has acquired the Subleasehold Estate or their respective successors and assigns) or a New Subtenant whose Sublease or New Sublease, as applicable, (a) was entered into at a time when no Event of Default existed, which condition shall apply only to Subleases and not New Subleases, (b) has a term that with any renewals does not extend beyond the Scheduled Expiration Date, (c) is then in effect and (d) otherwise complies with the provisions of Section 18 of the Lease, as they apply to Subleases, provided that such Subtenant or New Subtenant, as applicable, agrees to attorn to Successor Tenant and the Sublease or New Sublease, as applicable, either: (x) does not demise all or substantially all of the Premises and was on commercially reasonable and fair market terms (including fixed subrent that cannot decline except upon Loss) when the applicable Subtenant became legally bound under the applicable Sublease; or (y) demises the entire Premises and is in all material respects at all times no less favorable to Successor Tenant than this Lease, all as certified to Landlord or Leasehold Mortgagee by Tenant when the applicable Sublease was entered into pursuant to Section 18.4 of this Lease. Such nondisturbance is automatically granted by Successor Tenant and occurs without the need for a separate nondisturbance agreement provided, however, that Successor Tenant shall not be: (i) liable for any act or omission of a prior landlord (including Tenant); or (ii) subject to any offsets, defenses or deficiencies that Subtenant or New Subtenant, as applicable, might have against any prior landlord (including Tenant); or (iii) liable to Subtenant or New Subtenant, as applicable, for any deposit, rental security or any other sums deposited with the original or any prior landlord and not delivered to Successor Tenant; or (iv) bound by any rent or additional rent which Subtenant might have paid in advance to any prior landlord (including Tenant) for a period in excess of one month; or (v) bound by any amendment, modification, assignment or termination of a Sublease from Tenant made without the written consent of Leasehold Mortgagee; or (vi) obligated or liable with respect to any representations, warranties or indemnities contained in the Sublease or New Sublease, as applicable, including without limitation relating to work performed by such prior landlord, as

applicable; or (vii) liable to Subtenant or New Subtenant or any other party for any conflict between the provisions of the Sublease or the New Sublease, as applicable, and the provisions of any other lease affecting the Premises which is not entered into by Successor Tenant; or (viii) obligated to construct any improvements to be constructed by Tenant or any prior landlord, including without limitation tenant improvements; or (ix) be obligated for the restoration of the Premises, Subleased Premises, or any other improvements on or benefiting the Subleased Premises in the event of any casualty or taking of any part of the Premises under power of eminent domain beyond any insurance or condemnation proceeds received in connection with such casualty or taking.

20.5. *Third Party Beneficiaries*. Any Leasehold Mortgagee and Subleasehold Mortgagee shall be deemed to be a third party beneficiaries of this Section 20.

21. EQUIPMENT LIENS

Landlord shall have no rights in respect of any FF&E, and Landlord hereby waives any statutory, landlord's or other liens on FF&E. From time to time promptly upon written request, Landlord shall confirm to Tenant or any Subtenant the waiver contained in this Section as to particular FF&E. If at any time or from time to time Tenant or any Subtenant desires to enter into or grant any Equipment Lien, then upon Tenant's written request Landlord shall enter into (and shall cause every Fee Mortgagee to enter into) such customary documentation regarding the Financed FF&E as Tenant or any Subtenant reasonably requests, providing for matters such as: (a) waiver of any right to take possession of such Financed FF&E upon an Event of Default; (b) waiver of any other right, title, or interest in the Financed FF&E; and (c) agreements to enable the holder of such Equipment Lien to repossess such Financed FF&E if such holder exercises remedies under its Equipment Lien. If Tenant enters into any Equipment Lien, such Equipment Lien shall not create a lien against the Fee Estate.

22. QUIET ENJOYMENT; TITLE TO CERTAIN PREMISES; CERTAIN AGREEMENTS

22.1. *Quiet Enjoyment.* So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms of this Lease, without molestation, hindrance, or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord, except Permitted Exceptions.

22.2. *Access and Inspection.* Landlord in its capacity as the owner of the Fee Estate and its agents, representatives, and designees may enter the Premises upon reasonable notice, which the parties agree can be one Business Day's notice by email or phone, and accompanied by a representative of Tenant (which Tenant agrees to make available after reasonable notice), during regular business hours, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults (to the extent permitted by this Lease); (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Landlord determines may be reasonably necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) show the Premises to a prospective transferee

or Fee Mortgagee. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises, shall not be entitled to enter secured areas without permission from and accompaniment by the occupant, and shall comply with Tenant's reasonable instructions. Tenant shall not be in default of the obligations contained in this Section 22.2 until it has received Notice of Default and the opportunity to cure that is afforded Tenant for Nonmonetary Defaults under this Lease and thereafter, subject to Section 23.1.8, Landlord's sole remedies for breach of this obligation shall be limited to specific performance and/or payment of the Delay Fee, and Tenant waives all defenses, except defense of performance, in any action for specific performance brought by Landlord to enforce its rights under this Section. Notwithstanding the foregoing, if Tenant breaches this obligation more than 2 times in any Lease Year, such additional breach shall be a Nonmonetary Default with unrestricted remedies. Nothing in this Section shall be construed to limit any access or require notice by representatives, agents, and designees of the County or Landlord in its municipal capacity for inspection of the work that is subject to the Grant Agreement, CLCP or otherwise. Tenant shall Indemnify Landlord for any lack of access granted to such representatives, agents, and designees for any resulting impairment or infraction under the Grant Agreement or CLCP or any other Approval.

22.3. *Title*. Notwithstanding anything to the contrary in this Lease, all Buildings, Building Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises shall during the Term be owned by, and belong to, Tenant or those claiming under it. All benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits, and all other tax items, shall be and remain in Tenant or those claiming under it during the Term.

23. EVENTS OF DEFAULT; REMEDIES

23.1. *Definition of "Event of Default."* An "Event of Default" means the occurrence of any one or more of the following:

23.1.1 *Monetary Default*. If a Monetary Default occurs and continues for 30 days after Notice from Landlord, specifying which category of payments that have not been paid in full.

23.1.2 *Prohibited Liens*. If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within 30 days after Notice from Landlord.

23.1.3 *Bankruptcy or Insolvency*. If Tenant ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within 365 days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within 365 days).

23.1.4 *Appointment of Receiver*. If a receiver for Tenant and/or the Premises is appointed whether voluntarily or involuntarily without the prior written consent of Landlord, except for appointment of a receiver at the request of a Leasehold Mortgagee or Subleasehold Mortgagee. The appointment of a receiver by any Leasehold Mortgagee or Subleasehold Mortgagee is not an Event of Default, but shall not extend any cure periods set forth in this Lease and shall not preclude or limit Landlord's right to exercise any remedies available under this Lease or applicable law, including termination of this Lease.

23.1.5 *Failure to Complete Tenant's Construction Obligations*. If Tenant fails to comply with Tenant's Construction Obligations and does not remedy such failure within ninety (90) days after Notice from Landlord.

23.1.6 *Breach of Transfer Provisions*. If any Transfer is made by Tenant that violates the requirements of Section 17 of this Lease.

23.1.7 *Nonmonetary Default*. If any other Nonmonetary Default occurs and Tenant does not cure it within 60 days after Notice from Landlord describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within 60 days from such Notice, if Tenant shall not (y) duly commence such cure within such period and then diligently prosecute such cure to completion; and (z) complete such cure within a reasonable time under the circumstances (not necessarily limited to 60 days).

23.1.8 *Uncured Minor Defaults*. Notwithstanding anything to the contrary contained in this Lease, if any Minor Default is not cured at or prior to the cap on Delay Fees being met as to such Minor Default and specific performance is not reasonably available.

23.2. *Remedies*. If an Event of Default occurs, then, subject to the rights of a Leasehold Mortgagee hereunder, Landlord shall, at Landlord's option, but subject to any limitations as to Minor Defaults expressly provided elsewhere in this Lease, have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Landlord's remedies include:

23.2.1 *Termination of Tenant's Rights*. Landlord may terminate Tenant's right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of termination shall be the Expiration Date, and Tenant shall immediately surrender possession to Landlord.

23.2.2 *Taking Possession.* Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Landlord. Except as expressly provided in this Lease or prohibited by Law, Tenant, for and on behalf of itself and all persons claiming by, through or under Tenant, expressly waives any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Tenant is dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or any expiration or termination of this

Lease. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

23.2.3 *Suits Before Expiration Date*. Landlord may sue for damages or to recover Rent from time to time at Landlord's election.

23.2.4 *Receipt of Moneys*. No receipt of money by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later falling due, or Landlord's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation or, at Landlord's election, on account of Tenant's liability.

23.2.5 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default, shall be Modified except by a written instrument executed by Landlord. No waiver of any Default shall Modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

23.2.6 *Security Devices.* Landlord may change the locks and other security devices providing admittance to the Premises as permitted by law.

23.2.7 *Damages.* Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Such damages shall include, at Landlord's election, either (a) the present value, calculated at a discount rate equal to the then-current Prime Rate plus five percent (5%) per annum, of the excess of the total Fixed Rent under this Lease over the fair market rental value of the Premises for the balance of the Term; or (b) the Rent payable to Landlord provided for in this Lease, when and as due and payable under this Lease, less (in the case of this clause "b" only) Landlord's actual proceeds of reletting less Landlord's actual reasonable costs of reletting. Landlord may recover such damages at any time after Tenant's Default, including after expiration of the Term. Notwithstanding any Law to the contrary, (x) Landlord need not commence separate actions to enforce Tenant's obligations for each quarter's Rent not paid, or each quarter's accrual of damages for Tenant's Default, but may accelerate all amounts due

under the Lease and may bring and prosecute a single combined action for all such Rent and damages; and (y) Landlord may not recover any consequential damages for Tenant's Default.

23.2.8 *Injunction of Breaches*. Landlord may obtain a court order enjoining Tenant from continuing any Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default or Minor Default.

23.2.9 Intentionally deleted.

23.2.10 *Restoration Funds.* Upon any termination of this Lease, to the extent that Landlord or Depository then holds any Restoration Funds, they shall be applied solely as Landlord directs, including as a payment toward any sums then payable to Landlord.

23.2.11 *List of Sections containing Minor Defaults.* The following Sections contain Minor Defaults:

Section 4.2—Tenant's failure to timely pay Real Estate Taxes

Section 4.6—Tenant's failure to timely pay utility charges

Section 7.1—Tenant's failure to timely provide Notices of changes to the Concept Plans

Section 7.2—Tenant's failure to timely provide copies of plans and specifications

Section 7.3—Tenant's failure to timely pursue Approvals

Section 7.5—Tenant's failure to timely provide as-built drawings or survey

Section 7.6—Tenant's failure to maintain

Section 7.8 -- Tenant's failure to timely provide required reports

Section 8.1—Landlord Notice to Tenant regarding Prohibited Liens

Section 22.2 --Tenant's failure to provide Landlord access to inspect

Portions of Section 35.2 -- Tenant's failure to comply with certain local preference requirements

23.3. *Proceeds of Reletting*. Landlord shall apply any proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

23.3.1 *Landlord's Costs*. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any

Construction, and the cost and expense of removing all persons and property therefrom, including in such costs reasonable and customary brokerage commissions and Legal Costs;

23.3.2 *Preparation for Reletting*. Second, to pay to itself the cost and expense reasonably sustained in securing any new tenants and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for reletting;

23.3.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

23.3.4 *Residue*. Fourth, to pay to itself any balance remaining on account of Tenant's liability to Landlord.

23.4. *Exculpation; Landlord's Sole and Exclusive Remedy.* Notwithstanding anything to the contrary in this Lease, Landlord's right to terminate this Lease and re-enter the Premises and take possession of the Premises (and collect damages from Tenant, but only to the extent of Tenant's interest in the Premises or the proceeds from same) as provided in this Lease shall constitute Landlord's sole and exclusive remedy for any Default or Event of Default.

23.5. *Tenant's Late Payments; Late Charges.* If Tenant fails to make any payment to Landlord required under this Lease within 10 days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord within 30 days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant actually makes such payment. In addition, and without limiting any other rights or remedies of Landlord, Tenant shall pay Landlord, as Additional Rent, an administrative charge equal to $500 (which amount shall increase by 10% on the tenth anniversary of the Commencement Date and on every tenth anniversary of the Commencement Date thereafter) for any payment that Tenant fails to pay within 10 days after Notice that such payment is delinquent. Such administrative charge is intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Tenant under this Lease.

23.6. *Landlord's Right to Cure*. If Tenant at any time fails to (a) make any payment that could create a material risk of forfeiture of the Fee Estate or (b) take any action this Lease requires when there is already an Event of Default, then Landlord, if such breach is not cured after fourteen (14) days Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to (i) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Landlord in exercising its cure rights under this Subsection; and (ii) Default Interest on "i."

23.7. *Holding Over*. If for any reason or no reason Tenant remains in the Premises after the Expiration Date, then Landlord will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Tenant remains in the Premises after the Expiration Date, for any reason or no reason, then in addition to any other rights or remedies of Landlord, Tenant shall pay to Landlord, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Tenant holds over after the Expiration Date, a sum equal to 200% times the quarterly Fixed Rent payable under this Lease during the year preceding the Expiration Date, plus 100% of the Additional Rent.

23.8. *Waivers; Venue*. TO THE EXTENT PERMITTED BY LEGAL REQUIREMENTS, LANDLORD AND TENANT IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT REGARDING THE PREMISES, ENFORCEMENT OF THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN LANDLORD AND TENANT, OR ANY ACTIONS OF LANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS LEASE. LANDLORD AND TENANT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS IN MIAMI-DADE COUNTY, FLORIDA, FOR ANY AND ALL CLAIMS OR DISPUTES ARISING OUT OF, TO ENFORCE, CONSTRUE, OR OTHERWISE RELATING TO THIS LEASE, AND ANY APPELLATE COURT FROM ANY SUCH COURTS, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT THEREON, AND EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH COURTS. LANDLORD AND TENANT EACH AGREES THAT A FINAL JUDGMENT (AFTER EXHAUSTION OF APPEALS OR EXPIRATION OF THE TIME TO APPEAL) IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. LANDLORD AND TENANT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE IN ANY SUCH COURT. TENANT AGREES NOT TO INTERPOSE ANY COUNTERCLAIM IN ANY ACTION BY LANDLORD FOR POSSESSION AND/OR TERMINATION, OR IN RESPONSE TO ANY CAUSE OF ACTION UNDER THE SUMMARY PROCEEDINGS RULES, I.E., IN ANY ACTION AIMED SOLELY AT SECURING OR GAINING POSSESSION OF, OR TERMINATION OF THE LEASEHOLD INTEREST ON, THE PREMISES ("EVICTION ACTION"). LANDLORD AND TENANT AGREE THAT ANY COUNTERCLAIM THAT TENANT MAY HAVE TO THE EVICTION ACTION SHALL BE FILED AS A SEPARATE ACTION AND SHALL NOT BE FILED IN THE EVICTION ACTION. LANDLORD SHALL NOT RAISE AS A DEFENSE IN TENANT'S SEPARATE ACTION THAT SUCH ACTION IS WAIVED AND/OR SHOULD HAVE BEEN BROUGHT AS A COUNTERCLAIM IN THE EVICTION ACTION, OR RAISE ANY DEFENSE OF COLLATERAL ESTOPPEL, RES JUDICATA,

CLAIMS SPLITTING, OR OTHER SIMILAR DEFENSE. IN THE EVENT THAT THE STIPULATIONS CONTAINED IN THIS SECTION ARE NOT ENFORCEABLE AS A MATTER OF LAW, THEN TENANT SHALL HAVE NO RESTRICTIONS IN BRINGING ANY COUNTERCLAIMS IN ANY EVICTION ACTION.

23.9. *Accord and Satisfaction; Partial Payments*. No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy.

23.10. *Miscellaneous*. Landlord and Tenant further agree as follows with respect to any Defaults and Landlord's rights and remedies.

23.10.1 *Survival*. No termination of this Lease and no taking possession of or reletting the Premises shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse in this Lease.

23.10.2 *Multiple Suits*. Landlord may sue to recover damages, or sum(s) equal to any installment(s) of Rent payable by Tenant, from time to time at Landlord's election. Nothing in this Lease requires Landlord to await the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

23.10.3 *Receipt of Monies*. No receipt of moneys by Landlord from Tenant after the giving a termination notice or a notice to obtain possession, after expiration of the applicable cure period or after the retaking of possession by Landlord as aforesaid, shall reinstate, continue, or extend the Term or affect any notice previously given to Tenant, waive Landlord's right to enforcement of Rent payable by Tenant or thereafter falling due, or waive Landlord's right to recover possession of the Premises. After the service of any such notice, or commencement of any suit or summary proceedings, or after a final and unappealable order or judgment for possession of the Premises, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment. Any sums so collected shall instead be deemed payments on account of use and occupation of the Premises or, at Landlord's election, to have been made on account of Tenant's liability under this Lease.

23.10.4 *No Double Recovery*. In no event shall Landlord be entitled, directly or indirectly, to recover twice for the same element of Landlord's damages.

23.11. *Landlord Default and Tenant Remedies.* Landlord shall not be in default under this Lease unless Landlord does not cure the default within 60 days after Notice from Tenant describing it in reasonable detail, or, in the case of a nonmonetary default that cannot with due diligence be cured within 60 days from such Notice, if Landlord shall not (y) duly commence such cure within such period and then diligently prosecute such cure to completion; and (z) complete such cure within a reasonable time under the circumstances (not necessarily limited to

60 days). If Landlord fails to timely cure, Tenant may exercise any and all rights and remedies available to it at law, in equity or under this Lease.

24. END OF TERM

Upon any Expiration Date: (a) all Buildings, FF&E not removed from the Premises, and Building Equipment shall become Landlord's property; (b) Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires, reasonable wear and tear excepted and subject to any Loss that this Lease does not require Tenant to Restore; (c) Tenant shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord reasonably requires; (d) Tenant shall deliver the Premises free and clear of all: (i) Subleases, and (ii) liens except (1) Permitted Exceptions and (2) liens that Landlord or any of its agents consented to in writing, caused or joined in; (e) Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises; (f) the parties shall reasonably cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires; (g) the parties shall adjust for Real Estate Taxes and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Tenant shall first be applied to cure any Default); (h) the parties shall terminate the Memorandum of Lease; and (i) Tenant shall assign to Landlord, and Landlord shall reimburse Tenant for, all utility and other service provider deposits for the Premises. Notwithstanding anything to the contrary in this Subsection, Tenant may remove from the Premises any FF&E, but Tenant must do so, if at all, before or within 30 days after the Expiration Date. Tenant shall not, however, remove any Buildings or Building Equipment. Tenant shall repair any material damage from any such removal. During such 30-day period: (x) Tenant may enter the Premises for such purposes, without being deemed a holdover; (y) Landlord shall have no obligation to preserve or protect such FF&E; and (z) in entering the Premises, Tenant shall comply with Landlord's reasonable instructions. Tenant's FF&E not removed within 30 days after the Expiration Date shall be deemed abandoned.

25. NOTICES

All Notices shall be in writing and addressed to Landlord and Tenant (and their designated copy recipients) as set forth in **Schedule 25**. Notices (including any required copies as set forth in **Schedule 25**) shall be delivered by certified mail, return receipt requested, or Federal Express or other overnight (one-night) courier service to the addresses set forth in **Schedule 25**, in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the post office or courier service) to such address(es). Either party may change its address or add/delete parties to receive Notice by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client. Any notice from Landlord to Tenant shall have no effect unless Landlord gives a copy to Leasehold Mortgagee. If any Default occurs for which Landlord intends to exercise any remedy, Landlord shall promptly give Leasehold Mortgagee a Default Notice.

26. NO BROKER

Each party: (a) represents and warrants that it did not engage or deal with any broker or finder, in connection with this Lease and no person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such party; and (b) shall be liable for the consequences of any breach of the foregoing, and shall pay to the other within thirty (30) days of demand therefor, any costs, expenses, damages or liability therefor including Legal Costs.

27. NONRECOURSE

Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord and Tenant (including any New Tenant or post-foreclosure Tenant) and each of their parent(s), subsidiary(ies), or affiliated corporations or other entities, and any of their constituent partners, joint venturers, or tenants-in-common, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Premises (including the proceeds thereof, or if such actual proceeds are unavailable, an amount equal to such proceeds, and the benefits of any dual obligee rider to a payment and performance bond). No property or assets whatsoever, except Landlord's or Tenant's (as applicable) interest in the Premises (including the proceeds thereof or if such actual proceeds are unavailable, an amount equal to such proceeds), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of the other party arising under or in connection with this Lease. No shareholder, officer, member, manager, director, agent, or employee of Tenant or Landlord shall have any liability under this Lease. This Lease sometimes refers to this Subsection as the "Nonrecourse Clause."

28. ADDITIONAL DELIVERIES; THIRD PARTIES

28.1. *Estoppel Certificates.* Each party to this Lease and any Leasehold Mortgagee or Subleasehold Mortgagee (a "Requesting Party") may require Landlord or Tenant (a "Certifying Party") to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four original counterparts of an Estoppel Certificate. The Certifying Party shall sign, acknowledge, and return such Estoppel Certificate within 15 days after request, even if the Requesting Party is in Default. Any Estoppel Certificate shall bind the Certifying Party. Landlord will provide Estoppel Certificates to Tenant and Initial Leasehold Mortgagee contemporaneously with the execution and delivery of this Lease and then upon the Commencement Date.

28.2. *Further Assurances*. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

28.3. *Memorandum of Lease*. Simultaneously upon the execution of this Lease, the parties shall promptly execute, acknowledge, and deliver duplicate originals of a Memorandum of Lease and thereafter submit same for recording promptly on the Commencement Date. If the parties amend this Lease, then the parties shall simultaneously execute, acknowledge, deliver duplicate originals of an amendment to such Memorandum of Lease as appropriate and submit same for recording. Neither Landlord nor Tenant shall modify or terminate the Memorandum of Lease without the consent of the Leasehold Mortgagee; provided, however, that Landlord shall be permitted to terminate the Memorandum of Lease so long as Landlord has terminated this Lease in accordance with the terms and provisions of this Lease, including Landlord's compliance with the terms and conditions set forth in Section 19, including, without limitation, Sections 19.4 and 19.5 with respect to Leasehold Mortgagee's cure rights, and subject to Leasehold Mortgagee's rights under Sections 19.6 and 19.7 to obtain a New Lease.

28.4. *Modification*. Any Modification of this Lease must be in writing signed by all of the parties to be bound thereby.

28.5. *Successors and Assigns*. This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Lease confers on any Person (except Landlord, Tenant, Leasehold Mortgagees, Fee Mortgagees and Subleasehold Mortgagees) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.

29. MISCELLANEOUS

29.1. *Costs and Expenses; Legal Costs*. In the event of any litigation or dispute between the parties, or claim made by either party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy

Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default. In connection with any amendments to this Lease, Legal Costs shall be allocated as provided for in such Lease amendment.

29.2. *No Consequential Damages*. Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other. The limitation of liability herein shall not apply to any indemnification for third party claims available at law or pursuant to, but subject to the limitations in, Section 10. This provision shall survive the Expiration Date or earlier termination of this Lease.

29.3. *No Waiver by Silence*. Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

29.4. *Performance Under Protest*. If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Default Rate.

29.5. *Survival*. All rights, obligations and provisions that by their nature are to be performed after any termination of this Lease, including all provisions of Sections 29.1-29.3, inclusive, and Section 30, shall survive any such termination.

29.6. *Unavoidable Delay*. Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

29.7. *Vault Space*. Any vaults and other areas now existing or later built extending beyond the building line of the Premises are not part of the Premises, but Tenant may occupy and use them during the Term, subject to applicable Law and payment of applicable Real Estate Taxes.

29.8. *Time of the Essence*. Subject to any extensions expressly provided in this Lease and Unavoidable Delay, time is of the essence as to the performance of the provisions of this Lease by Landlord and Tenant.

29.9. *Status of Title*. Landlord must deliver fully insurable title to the Premises, subject only to exceptions acceptable to Tenant and Initial Leasehold Mortgagee.

30. INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE

30.1. *Captions*. The captions of this Lease are for convenience and reference only. They in no way affect this Lease.

30.2. *Counterparts*. This Lease may be executed in counterparts.

30.3. *Delivery of Drafts*. Neither party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts, including any recordings of negotiations of this Lease, shall bind neither party in any way. Such draft(s) and comment(s) and recording(s) shall not be considered in interpreting this Lease.

30.4. *Entire Agreement*. This Lease contains all terms, covenants, and conditions between Landlord and Tenant about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

30.5. *Governing Law*. This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws.

30.6. *Partial Invalidity*. If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

30.7. *Principles of Interpretation*. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "<u>include</u>" and "<u>including</u>" shall be construed to be followed by the words: "without limitation." Each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: Building Equipment; FF&E; Fee Estate; Buildings; Land; Leasehold Estate; Premises; Structure; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any Modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and."

30.8. *Reasonableness*. Wherever this Lease requires the consent or approval of a party, except as and to the extent expressly set forth to the contrary in this Lease, such party shall not

unreasonably withhold approval and this means: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a party grants its consent (or fails to object) to any matter, this shall not waive its rights to require such consent for any further or similar matter. The parties agree to deal with each other fairly and in good faith.

31. ADDITIONAL PROVISIONS.

31.1. *Radon*. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from the county health department.

31.2. *Nondiscrimination*. Tenant represents and warrants to Landlord that Tenant does not and will not engage in unlawful discriminatory practices and that there shall be no unlawful discrimination in connection with Tenant's performance under this Lease or in the use of the Premises, on account of race, color, sex, religion, age, handicap, disability, marital status, national origin, ancestry, familial status, or sexual orientation. Tenant further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status, national origin, ancestry, familial status, or sexual orientation unlawfully be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Lease in the use of the Premises. Landlord's sole remedy for breach of the provisions of this Section shall be specific performance.

31.3. *Conflict of Interest*. Tenant represents and warrants to Landlord that it has not employed or retained any person or company currently employed by Landlord to solicit or secure this Lease and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Lease. Tenant covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of Landlord in connection with this Lease has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on projects assigned by Tenant, except as fully disclosed and approved by Landlord.

31.4. *Billboard*. Landlord represents that it has the right to grant to Tenant the right to use the billboard that is located on Biscayne Boulevard on the Premises for the Term. Tenant shall comply with and takes subject to any City of North Miami, State, and other regulatory procedures or requirements for use of the billboard. Tenant shall insure, repair (including replace, when and if necessary), maintain and pay Real Estate Taxes (including any personal property taxes thereon) on said billboard in accordance with the maintenance and insurance standards set forth in this Lease and any other applicable Approvals and Laws. Tenant may after Notice to Landlord abandon the right to use such billboard, in which case the rights provided to and obligations imposed on Tenant by the provisions of this Section shall be rendered null and void. Tenant may assign the right to use said billboard to its designee, which assignment may be

for consideration (which shall belong to and be retained by Tenant, but shall be subject to Participation Rent). If Tenant elects to replace the existing billboard with an electronic message board, which it may do subject to compliance with applicable Laws, Tenant agrees that no fewer than 10 minutes per hour of the usage of such electronic message board will be available to Landlord at no charge for City of North Miami public messages and to assist in traffic control. Landlord's sole remedy for a breach of this Section shall be limited to Delay Fees and/or specific performance, and Tenant waives all defenses, except defense of performance, in any action brought by Landlord to enforce its rights under this Section.

32. SOVEREIGN RIGHTS

32.1. *Sovereign Rights as Municipality*. Notwithstanding anything to the contrary in this Lease, Landlord shall retain all of its sovereign prerogatives and rights as a municipality under State law with respect to the Premises. It is expressly understood that:

(a) Landlord retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a municipal corporation under State law and shall in no way be estopped by virtue of its execution of this Lease from withholding or refusing to issue any approvals in its municipal regulatory capacity of applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of the Improvements, or the operation thereof, or be liable for the same; and

(b) Landlord shall not by virtue of this Lease or any other agreement entered into by Landlord relating to the Premises, be obligated in its municipal regulatory capacity to grant Tenant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Buildings.

(c) Notwithstanding and prevailing over any contrary provision in this Lease, any covenant or obligation of Landlord in its municipal regulatory capacity that may be contained in this Lease shall not bind the City Council or any City of North Miami department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, or any other approvals that may be granted, withheld or revoked in the discretion of Landlord in its municipal regulatory capacity or other applicable governmental agencies in the exercise of its police power.

32.2. *No Partnership or Joint Venture*. Nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing a partnership or a joint venture between or among any of the parties or as constituting any party as the agent or representative of any other party.

32.3. *No Permit*. This Lease is not and shall not be construed as a development agreement under Chapter 163, Florida Statutes, nor a development permit, development approval or authorization to commence development, nor shall it relieve Tenant of the obligations to obtain necessary Comprehensive Plan amendments and development approvals that are required under applicable law and under and pursuant to the terms of this Lease, if any.

32.4. *No subordination*. In no event shall Landlord be obligated to subordinate, hypothecate or otherwise encumber its fee simple ownership interest in the Premises. The foregoing is not intended to preclude Landlord's obligation to join in and execute Applications reasonably required to be executed by Landlord as a land owner.

32.5. *Public Disclosure Requirements*. Throughout the term of this Lease, all documents, records and materials of any nature that are submitted to Landlord relating to construction, sale, lease, operation or any other activity occurring on the Premises shall be public records and shall be provided as required by Chapter 119, Florida Statutes, and pursuant to the City's Citizens' Bill of Rights. Tenant shall be entitled to assert any lawful exemption or defense to disclosure.

32.6. *Non-Delegable Obligations*. The parties acknowledge and agree that, in entering into this Lease, Landlord has relied on the particular and specialized experience, knowledge and expertise of Tenant in developing complex multi-use projects of the type contemplated herein, including the relationships that Tenant has with others who have particular and specialized experience, knowledge and expertise of Tenant in developing complex multi-use projects of the type contemplated herein. Tenant intends to utilize this particular and specialized experience, knowledge and expertise of itself and those with whom it has relationships in connection with the Development of the Premises.

33. OPTION TO PURCHASE

33.1. *Grant of Option*. Landlord hereby grants Tenant the exclusive option (the "Option") to purchase from time to time within the Option Period certain portions (each, an "Option Parcel") of the Fee Estate located within the 50.6 acres comprising Phase III and that portion of Phase IV that is adjacent to Phase III on the eastern boundary of the Premises (but not that portion of Phase IV abutting Biscayne Boulevard) as shown on the Biscayne Landing Master Plan prepared by Arquitectonica attached hereto as **Schedule 33.1** (the "Option Rights Property", subject to the conditions described in this Section. Tenant shall be entitled to exercise the Option only with respect to those portions of the Option Rights Property on which condominium units and amenities serving the condominium are to be developed (or a multifamily Building for which a condominium conversion is to occur). Each Option Parcel shall (a) be comprised of five (5) *acres or more, and (b) be subject to Landlord's commercially reasonable prior written approval to ensure that no portion of the remaining Premises is rendered unbuildable* due to size, configuration, location, lack of access, or to county, building code, or other Government requirements or other practical consideration.

33.2. *Option Period*. Provided no Event of Default exists at the time of the Option is exercised, the Option is exercisable from and after the date of certification of Substantial Completion of the Initial Development until the earlier of (a) the 20th anniversary of the Commencement Date and (b) the termination of this Lease (the "Option Period"). If properly exercised within the Option Period, the exercise shall be effective even if closing would occur after expiration of such 20 year period but not if it would occur after termination of this Lease.

33.3. *Consideration Payment*. On the Commencement Date, Tenant is paying as provided for in Section 3.1 a payment which (i) is consideration for the execution and delivery of

the Option by Landlord, (ii) is non-refundable and (iii) will be retained by Landlord notwithstanding any other provision of this Lease.

33.4. *Manner of Exercise of Option*. The Option shall be exercised, if at all, by Tenant delivering from time to time to Landlord within the Option Period Notice of its exercise of the Option and (a) the legal description for the Option Parcel for which the Option is being exercised, (b) a certification that the Option Parcel will be used for condominium units or residential units for which a condominium conversion is to occur, and (c) a survey of the Option Parcel showing its location within the Phase III or IV and other reasonably detailed information regarding access, availability of utilities, and other matters to allow Landlord to evaluate the proposed Option Parcel. Landlord shall have forty-five (45) days after receipt of such Notice to provide Notice to Tenant of its approval or disapproval of the exercise of the Option with respect to the proposed Option Parcel, with Landlord's approval rights being limited to Subsection 33.1(b). Any Notice of disapproval will specify the basis for the disapproval, and failure to give such Notice will be deemed to be disapproval. If the exercise of the Option with respect to the proposed Option Parcel is approved by Landlord, the parties will proceed as provided below in this Section 33.

33.5. *Purchase Price*. The purchase price for the Option Parcel will be paid by bank wire transfer in immediately available federal funds at Closing, and will be determined as through good faith negotiation by the parties. If the parties cannot agree on the purchase price within one hundred eighty (180) days after the date of Tenant's exercise of the Option, the Option to purchase such Option Parcel shall be deemed to be revoked. The Parties agree to comply with the City of North Miami Charter and all laws in determining such purchase price, such procedure or conditions in any Option sale. Tenant shall pay a deposit in the amount of 5% of the purchase price to Landlord within five (5) Business Days of the determination of the purchase price for the Option Parcel, which shall be applied to the purchase price at closing.

33.6. Closing Process. Once the purchase price is set, the Closing shall occur within 30 days (or such additional time as Landlord may reasonably require to complete its internal administrative processes, not to exceed sixty (60) days) after date of receipt of the deposit, at which time Landlord shall deliver a special warranty deed, subject only to the Permitted Exceptions and any exceptions created by or with the consent of Tenant and those claiming through Tenant, reasonable evidence of authority to convey as required by the title insurance underwriter insuring the purchaser's interest, a customary title affidavit substantially in the form of **Schedule 33.6** attached hereto regarding (a) no construction liens available as a result of the acts or omissions of Landlord, (b) no parties entitled to possession other than Tenant and those claiming under Tenant, (c) representations sufficient to allow insuring of the "gap" and (d) representations sufficient to allow for no withholding under FIRPTA. As a condition to closing, no Event of Default shall exist at the time of closing. Tenant may designate one or more third parties of its choice (whether or not same is/are Affiliates of Tenant) to accept title. Tenant shall pay for documentary stamps and surtax on the deed and to record the deed. The Lease shall be released as to the Option Parcel being purchased. Fixed Rent under the Lease shall be reduced by a just and proportional adjustment and Rent under the lease(s) for the Option Parcel shall be prorated as of the Closing date. Reasonably appropriate cross easements (if not already existing) shall be entered into so that the Option Parcel and the remainder of the Premises each comprise separate Phases, provided however that if the primary beneficiary of such cross easements is the

Option Parcel, the property subject to the cross easements shall be included within the acreage of the Option Parcel. The parties shall reasonably cooperate with such other customary practices and provide such other customary deliveries as either may request provided the same are not in conflict with the provisions of this Lease.

33.7. *Environmental Requirements*. As a condition to closing on any Option Parcel, all of Tenant's environmental obligations and compliance costs under Section 9 of this Lease, including for Landfill Closure under the CLCP, Landfill Closure Permit, and other applicable documents and Approvals, and for post-closure monitoring, compliance with environmental Laws, and responsibility for environmental conditions, shall be assumed as to the Option Parcel under a homeowner's association or community development district or declaration of covenants and restrictions or similar binding mechanism, which shall be in form and substance satisfactory to Landlord in its sole discretion and run with the land, and be recorded prior to the Special Warranty Deed conveying the Option Parcel. No sale of an Option Parcel shall in any way change Tenant's Construction Obligations under this Lease, including full Landfill Closure by the specified deadline.

33.8. *Termination of Option*. The Option shall survive any transfer(s) of Landlord's interest in the Premises, and shall not be assigned apart from this Lease. However, the Option shall be deemed waived, terminate and be of no further force or effect if, having furnished a Notice confirming the exercise of the Option, Tenant thereafter defaults in its obligation to close the transaction. The termination of the Option and retention of the deposit as liquidated damages shall be Landlord's sole remedies for such default. The parties acknowledge that in the event of Tenant's default in its obligation to close the Option transaction, Landlord's damages are incapable of exact ascertainment and that Landlord's retention of the deposit as liquidated damages is fair and reasonable and is not a penalty. In such case Tenant shall, at the request of Landlord, execute and deliver to Landlord an instrument in recordable form, evidencing such waiver and acknowledging the termination of the Option as to the entire Option Rights Property; if Tenant fails to deliver such recordable instrument within seven (7) Business Days after request, Landlord is hereby authorized to record an affidavit regarding the waiver and acknowledging the termination of the Option as to such property and all persons shall be entitled to rely on such affidavit as to the termination of the Option. This section shall be included in any recorded memorandum of this Lease. Under no circumstances shall either Tenant's or Landlord's default in its obligation to close any Option transaction constitute a Default or Event of Default under this Lease. If Landlord fails to a sale pursuant to the exercise of the Option and in accordance with the provisions of this Lease for any reason other than (i) failure to make the title marketable after diligent effort or (ii) disapproval of the Option Parcel, then Tenant may either receive the return of its deposit or seek specific performance as its sole remedies.

34. PARK

34.1. *Conveyance to Landlord and Release from this Lease after Completion*. Tenant shall construct or otherwise provide for parks on two parcels of real property (together, the "Park Property") consisting of an approximately 7.2 acre site (including an approximately 1.0 acre water booster station site) and an approximately 13.7 acre site, respectively, the general location of which is shown on **Exhibit B** and which are labeled the Active Park and 13.7 acre park, which locations shall not be changed in any material respect without the prior written consent of Landlord and any Leasehold Mortgagee. In total, there will be approximately 37 acres devoted to recreational, community, open space, park, access or similar use within the Premises.

Tenant shall cause Construction of the 13.7 acre portion of the Park Property to be commenced on the earlier of the issuance of the building permit for the first unit of residential development on the Property or, no later than 7 years from the Commencement Date, with Substantial Completion thereof to occur no later than one (1) year from the date of commencement of construction of said portion of the Park Property.

Tenant shall also construct a community center structure (the "Community Center") of approximately 10,000 square feet or approximately the size of the existing Gwen Margolis Community Center (under air), whichever is the greater. This Community Center shall be comprised of a modern meeting and social center with kitchen, restrooms, meeting and social space, with amenities that are consistent with a modern meeting and social center, to be owned and maintained by Tenant. Landlord will have free use of the facility at least three (3) times a month. Construction of said Community Center shall commence at the time that a building permit is issued for the 500th residential unit and be completed within one (1) year of commencement. In addition, within sixty (60) days of the date of the Commencement Dade, Tenant shall pay to Landlord the sum of fifty thousand ($50,000.00) to be used solely for improvements to the Gwen Margolis Community Center.

As part of the Initial Development, Tenant will cause the 13.7 acre portion of the Park Property to be graded, leveled, sodded and maintained as green space. Tenant or Tenant's successors and assigns shall own this portion of the Park Property and shall be responsible for the maintenance and repair of all portions of this portion of the Park Property, including the above-noted community center.

The 7.2 acre Active Park shall be graded and leveled as part of the Initial Development. Promptly after Substantial Completion of the improvements just east of the Active Park, Landlord and Tenant shall execute a release of the Active Park from this Lease and Tenant shall execute a quitclaim deed or other document reasonably requested by Landlord to confirm Landlord's sole ownership of and fee simple title to the Active Park along with a check or other form of payment acceptable to Landlord in the amount of Two Million ($2,000,000) Dollars, to be used solely by Landlord for park improvements on the Active Park, in Landlord's sole discretion, and for no other purpose, whatsoever. In the event, however, that said construction east of the Active Park is not substantially completed by the 5th year after the Commencement Date, Tenant shall pay said amount to the Landlord for the purposes noted above. Landlord shall be responsible for the maintenance and repair of all portions of the Active Park. Lake Ibis and the 13.7 acre portion of the Park Property will both be maintained by in good clean condition by Tenant.

34.2. *Excluded Park Property*. The Park Property shall not include the walking and biking trails along the open space on the perimeter of the Premises, which shall be constructed, retained and maintained by Tenant or those claiming under it, and the trails shall be open to the public.

35. COMMUNITY BENEFITS

35.1. *Community Center*. Tenant shall cause the Community Center to be constructed on the Premises (as noted on the Concept Plan, but subject to change as elsewhere provided for in this Lease) for use of the properties to be constructed on the Premises. After completion, Tenant shall cause such Community Center to be made available to Landlord, subject to prior reservation, for at least three (3) events or meetings per calendar month at no charge to Landlord except for standard setup, breakdown and cleanup charges, if said work is not performed by Landlord. The space devoted to such community center and its recreational facilities shall be included in the calculation of the thirty-seven (37) acres of park area under Section 34.

35.2. *Local Preference*. Subject to applicable Laws, Tenant shall comply with City of North Miami ordinances including Procurement Code Ordinance Nos. 1289 and 1308 and Section 7-151, as same may be amended, supplemented, or replaced from time to time. Tenant shall employ or contract with residents of the City of North Miami and local businesses (as "local business" is defined in City of North Miami Procurement Code Sec. 7-151) (such residents and local businesses are collectively, the "Local Preference Group") for at least ten percent (10%) of residents of the City of North Miami and ten percent (10%) of the local businesses, with an aspirational goal of twenty-five percent (25%), of the labor, goods and services to be provided on an annual basis in connection with the Development, and if Tenant or its Affiliate operates any portion of the Premises itself, in long-term employment. It is agreed by the Parties that the definitions provided in the City of North Miami Procurement Code Sec. 7-151 entitled "Procedure to Provide Preference to Local Businesses in City Contacts" subsection (a) for Business location and for Local business shall apply, and that regarding Sec. 7-151 (b) "Preference to local business" and (c) "Comparison of qualifications," the Tenant and Subtenants shall have the same rights and responsibilities as the City of North Miami under the Procurement Code. For the purposes of this Section 35, the percentages shall be (i) the number of qualified individual residents as a percent of the total number of laborers employed, and (ii) the dollar amount expended for goods and services acquired from qualified local businesses as a percent of the total dollar amount expended for goods and services on an annual basis.

35.2.1 *Plan and Reporting*. Within sixty (60) days of the Commencement Date, Tenant shall provide a Local Preference Plan describing in reasonable detail a program to implement the commitments made by Tenant regarding the Local Preference Group. Tenant shall solicit input from the City of North Miami Community Redevelopment Agency (the "CRA") with regards to creation of the Local Preference Plan. During the term of Construction, Tenant shall provide Landlord with quarterly reporting of the achievement of the annual goal regarding the programs planned and in place and the progress made to achieve the goals described in Section 35.2 above. Tenant, however, shall not be in default of this reporting obligation until it has received Notice of Default and opportunity to cure and thereafter, subject to Section 23.1.8, Landlord's sole remedies for breach of this obligation shall be limited to specific performance and/or payment of the Delay Fee, and Tenant waives all defenses, except defense of performance

or of Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section.

35.2.2 *Outreach and Training*. Tenant anticipates that over 1,000 jobs can be made available to City of North Miami residents as part of its development, construction and operational program, as more particularly set forth on **Exhibit H** attached hereto. As part of the Local Preference Plan required in Section 35.2.1, above, Tenant shall prepare a program of outreach and training of members of the Local Preference Group designed to create a qualified workforce and qualified firms or entities. Tenant shall inventory and identify (a) existing education and training resources available from established public and private educational institutions, and (b) unmet needs that those institutions can potentially meet to educate and train North Miami residents for specific positions available because of the activities of Tenant. Tenant shall also identify education and training programs available to assist private businesses in North Miami take advantage of the market demand for goods and services required by Tenant in the development of the project. Tenant shall provide notice to its Subtenants of the applicable ordinances and require compliance by Subtenants with the local preference goals for the hiring of North Miami residents described in this Section in their Subleases, for both the construction period and long-term employment.

35.2.3 *Financial and Business Support*. Tenant shall as part of its Plan provide financial and business mechanisms to increase access to available work for the Local Preference Group such as (a) providing a structured revolving line of credit of up to Five Million Dollars ($5,000,000.00) until the completion of the Initial Development to fund secured advance payments at a rate equal to no more than the then Prime Rate for approved contractual costs to qualified Local Preference Group businesses that may not be able to obtain traditional financing to initiate work on a contract related to Initial Development work without initial assistance, (b) assistance with bonding requirements, (c) assisting members of the Local Preference Group to make connections with general contractors who are seeking bids, (d) facilitating the creation of mentoring programs for large, established businesses to mentor Local Preference Group firms, (e) facilitating the creation of "incubator-style" programs that offer a supportive environment and lower overhead through shared space and other capital costs, (f) assistance with information and applications for small business loans and other small business programs, and (g) providing information to the City of North Miami CRA Coordinator regarding available space for small business operators. In addition, beginning within ninety (90) days of the Commencement Date and continuing without interruption over the initial seven (7) years following the Commencement Date, Tenant shall provide a total of Two Million Five Hundred Thousand Dollars ($2,500,000.00) in the aggregate (the "Training Program Funds") towards an Occupational Training and Trade Related Educational Program in the nature of that described in **Exhibit I** attached hereto. No later than sixty (60) days following each anniversary of the Commencement Date during such seven (7) year period, Tenant shall report to Landlord on expenditures made or credits given, if applicable, for said program. In the event, at the end of the seventh year of the program, there are any amounts remaining of said Training Program Funds, the balance of such Training Program Funds (the "Training Program Funds Balance") shall be paid to the Landlord within sixty (60) days following the end of such seventh year to be used for job creation programs for City of North Miami residents in accordance with the spirit and intention of this Section 35.2.3.

35.2.4 *Local Preference Program Liaisons*. Within ninety (90) days of the Commencement Date, each of Tenant and Landlord shall designate one or more individuals as local preference liaison officers. The designated officers shall work together with an employee or firm acceptable to Landlord and hired by Tenant to (a) gather and report statistical data and other information as required to analyze the Plan's progress, and prepare quarterly reports on the achievement of annual goals, (b) work with the City of North Miami CRA to assist Local Preference Group members to secure needed permits and certifications, (c) promote awareness of local businesses of procurement opportunities, (d) advise the City Manager and Tenant on matters impacting the local preference program, (e) provide the Local Preference Group with information and assistance on preparing bids, obtaining bonding and insurance, (f) assist the Local Preference Group to obtain training, (g) provide outreach to the Local Preference Group through business and community organizations to advise them of contracting opportunities, and (h) facilitate access for the Local Preference Group to current information on relevant regulations and laws. The participation of Landlord's liaison officer shall not in any way reduce or shift Tenant's responsibility for meeting its commitments in this Section 35.

35.2.5 *Costs of Local Preference Plan*. Tenant shall be responsible to pay the reasonable costs of implementation of the programs and obligations under the Local Preference Plan as described in Subsection 35.2, and agrees to invest a minimum of Three Hundred Thousand Dollars ($300,000.00) annually for five (5) years from the Commencement Date for same. Tenant shall include a statement of funds spent in each quarterly report, and shall provide substantiating backup documentation in connection therewith.

35.3. *Office Space for Landlord's Employees or Designees*. (a) Commencing thirty days following the Commencement Date and continuing until Landfill Closure, Tenant shall cause at least four hundred (400) square feet of air conditioned office and document storage space with appropriate parking to be provided to the City PE or designee (with the same qualifications) to be used solely for the administration and compliance monitoring of Tenant's environmental and related obligations under this Lease, including the Remedial Action, which office space may be in the construction trailer complex on site or such other office space as may be mutually agreeable to Landlord and Tenant, at no charge to Landlord. Such employee shall not unreasonably interfere with the operations of Tenant, subtenant or either of their agents or employees on the Premises.

(b) In addition, commencing thirty days following the Commencement Date and continuing until Landfill Closure, Tenant shall cause at least four hundred (400) square feet of air conditioned office space with appropriate parking to be provided for the use of Landlord's employees or designee to be used primarily for compliance monitoring of Tenant's environmental and related obligations under this Lease, including the Remedial Action, which office space shall be in an air conditioned trailer located near the site of the ERA Work. Further, Tenant shall contribute one half of the salary of such employee, until Landfill Closure, provided that except solely in the first Lease Year as a result of the operation of (x) and (y) of this Section 35.3(b), Tenant's contribution to such salary shall not exceed One Hundred Twenty-Five Thousand Dollars ($125,000.00) per Lease Year, pursuant to the following schedule: (x) within thirty (30) days following the Commencement Date Tenant shall pay the proportionate amount of its contribution for the period of the Commencement date thru September 31, 2012, and (y) on October 1, 2012 and on each October 1st thru and until Landfill Closure, Tenant shall pay the

amount required for the period of time between October 1st of such year and September 31st of the following year (with a proportionate payment being made for the payment made during the year in which Landfill Closure occurs). Notwithstanding that Tenant pays a portion of such employee's salary, such employee shall be solely an employee of Landlord and not subject to direction or control by Tenant. Further, such employee shall not unreasonably interfere with the operations of Tenant, subtenant or either of their agents or employees on the Premises.

35.4. *Community Redevelopment*. Tenant agrees to consult with Landlord, at no cost to Landlord and at Landlord's reasonable request, from time to time with respect to the identification, planning, implementation and management of off-site areas within the boundaries of the Community Redevelopment Area to be redeveloped with proceeds of the North Miami Community Redevelopment Agency tax increment trust fund in accordance with the goal to alleviate blight and slums within the Community Redevelopment Area. Landlord's sole remedy if it believes Tenant is in breach of this Section shall be to seek specific performance.

35.5. *Tutoring/Scholarship Program*. North Miami Educational Foundation, Inc. ("NMEF") is a not-for-profit Florida corporation that has applied for federal Internal Revenue Code 501(c)(3) designation (the "Designation"). It is dedicated to assisting North Miami residents in the pursuit of post-secondary educational goals, including providing tutoring and Florida Prepaid College Foundation scholarships to City of North Miami students who meet the selection criteria set forth in the corporation's governance documents. Tenant agrees to contribute Two Hundred Fifty Thousand Dollars ($250,000.00) upon the later to occur of (x) August 31, 2012, or (y) within ten days following receipt of evidence that NMEF has obtained the Designation, and thereafter One Hundred Thousand Dollars ($100,000.00) each August for five (5) consecutive years so that a total of Seven Hundred Fifty Thousand Dollars ($750,000.00) shall have been contributed to NMEF. Notwithstanding the foregoing, as a condition of Tenant's obligation under this Section 35.5, (i) Tenant shall be entitled to designate an individual for one seat on the board of directors of NMEF for such six (6) year period, and (ii) NMEF must have received (and shall have not lost) the Designation prior to Tenant having any obligation to make any contribution (initial or subsequent).

35.6. *Future Road*. If all applicable permits and Approvals are obtained by Landlord or any third party for the building of a road from 143rd Street to the Florida International University Biscayne Bay campus but no State, County, federal, or Florida International University funds are allotted to pay for the construction of such road, Tenant, at its sole option (which shall be determined by Tenant within one hundred eighty (180) days following the date upon which Tenant is advised that funds have not been allotted and the applicable permits and Approvals have been obtained), shall either construct such road or pay to the party constructing the road the equivalent cost of constructing such road, but excluding the cost of obtaining permits and Approvals; it being the understanding of the Landlord and Tenant that if Tenant elects to make the payment in lieu of constructing the road, such payments shall be made pursuant to a schedule as agreed to, in good faith, by the Tenant and the party(ies) to whom the payments will be made. Such road shall be a two-lane road, at grade.

35.7. *Waiver of Amendment*. Tenant, on behalf of itself, and its successors and assigns, hereby agrees not to request Landlord for any amendment to this Section 35 that would reduce Tenant's obligations under Section 35.

35.8. *Enforcement*. If, for any reason, Tenant experiences persistent and significant difficulty beyond the reasonable control of Tenant in fulfilling the goals described in Section 35, Landlord and Tenant shall meet to address the problems and use good faith diligent efforts to resolve any issues and make appropriate adjustments. Subject to Section 23.1.8, Landlord's sole remedy if it believes Tenant is in breach of this Section 35 [with the exception of (a) the failure of Tenant to pay when due the Training Program Funds Balance, (b) the failure of Tenant to pay when due the salary in subclause (b) of Section 35.3, and (c) the failure of Tenant to pay when due the funds set forth in Section 35.5., as and to the extent the same are due, each of which defaults shall be considered Monetary Defaults and not Minor Defaults] shall be a Delay Fee and/or to seek specific performance, and Tenant waives all defenses, except defense of performance and Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section 35.

[Signatures on Next Page.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date.

WITNESSES (as to City Manager and City Clerk):

_____
Print Name:_____
Title:_____

_____
Print Name:_____
Title:_____

THE CITY OF NORTH MIAMI, a municipal corporation of the State of Florida

By:_____
City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By:_____
City Attorney

APPROVED AS TO INSURANCE REQUIREMENTS:

By:_____
Risk Management Administrator

[Signatures continue on next page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date.

OLETA PARTNERS LLC

_____
Print Name:

By:_____
Print Name: Michael J. Swerdlow
Title: _____

_____
Print Name:

MICHAEL J. SWERDLOW, TENANT PRINCIPAL
(SOLELY FOR THE PURPOSE OF
SECTION 17.5)

_____
Print Name: Michael J. Swerdlow

EXHIBIT A

LEGAL DESCRIPTION

Tract "A" of BISCAYNE LANDING, according to the plat thereof, as recorded in Plat Book 161, at Page 72, of the Public Records of Miami - Dade County, Florida, LESS AND EXCEPT the following described property:

Beginning at the most Northeasterly corner of said Tract "A" of BISCAYNE LANDING, said point being further described as being the Northeast corner of the West 1/2 the Northeast 1/4 of said Section 21, Township 52 South, Range 42 East; thence South 02°55'05" East, along the East line of said Tract "A", a distance of 677.06 feet; thence North 83°13'18" West, a distance of 177.81 feet; thence North 27°35'03" West, a distance of 138.47 feet; thence South 86°42'35" West, a distance of 159.56 feet; thence North 03°17'25" West, a distance of 522.10 feet to a point on the North line of said tract "A"; thence North 87°02'55" East, along said North line, a distance of 369.01 feet to the Point of Beginning.

EXHIBIT B

CONCEPT PLAN

(denoting, among other things, the community center, approximately 7.2 and 13.7 acre parcels of Park Property, Lake Ibis and the Delayed Park Property, retail center, residential areas)

EXHIBIT C

ESTOPPEL CERTIFICATE

LANDLORD ESTOPPEL CERTIFICATE

TO: _____

Address:_____

_____

With a Copy To: _____

Address:_____

_____

RE: Ground Lease ("Lease") dated _____, 2012 for the Biscayne Landing project (the "Property"), located in the City of North Miami, Miami-Dade County, Florida between City of North Miami ("Landlord"), as Landlord, and Oleta Partners, LLC ("Tenant"), as Tenant

Landlord hereby certifies as follows:

1. It is the current landlord under the Lease, and it has not assigned, pledged or hypothecated any of its interests in the Lease to anyone else.

2. The term of the Lease commenced on _____, 2012, and will terminate on _____, 2111, which will automatically extend for 99 years.

3. Rent under the Lease has been paid through _____.

4. The Lease, as described above, is in good standing and in full force and effect and is true, correct and complete and has not been modified or amended except as follows: _____

5. As of the date hereof, Landlord has no knowledge of any defaults on the part of either Landlord or Tenant under the terms of the Lease, or of the occurrence of any event which with notice or the passage of time or both would constitute a default by either Landlord or Tenant thereunder.

6. As of the date hereof, Landlord has no knowledge of any claim against Tenant under the Lease or otherwise under any of the terms, conditions, or covenants contained therein.

7. Landlord has received no notice from any insurance company of any defects or

inadequacies in the Property or in any part thereof which would adversely affect the insurability of the Property.

8. There are no pending bankruptcies against Landlord or any affiliate of Landlord and there are no pending suits, proceedings, judgments, liens or executions against Landlord that would impair Landlord's ability to meet its obligations under the Lease.

9. Landlord has no knowledge of any assignment by Tenant of its interest in the Lease other than to a Leasehold Mortgagee (as defined in the Lease) and the recorded Memorandum thereof, if any.

10. The certifications contained herein are made with the knowledge that the addressee hereof and/or its affiliates will place substantial reliance thereon.

11. No Event of Default, as defined in the Lease, currently exists.

When used in this Affidavit, the word "knowledge" means the actual knowledge without inquiry of the City Manager, who is currently _____. To the extent not delivered to same, any Leasehold Mortgagee (as defined in the Lease) , any Subleasehold Mortgagee (as defined in the Lease) and any servicer of a Leasehold Mortgage (as defined in the Lease) or a Subleasehold Mortgage (as defined in the Lease) and each of their respective successors and assigns is entitled to rely upon this certificate.

IN WITNESS WHEREOF, the undersigned has executed this Estoppel Certificate as of the day of _____, 2___.

WITNESSES:	City of North Miami
_____	By: _____
_____	Title: City Manager

EXHIBIT D

DESCRIPTION OF INITIAL DEVELOPMENT

All in compliance with Law and applicable permits and Approvals:

1. The Storm Water Master Plan for the entire site pursuant to applicable permits including FDEP, DPERA, and SFWMD.

2. The Lake Fill Project (permit and fill all lakes except Ibis, denoted as such on Exhibit B).

3. Mass Grading and Balancing of Premises (but not individual pad sites), including trash/debris removal and/or compaction to levels approved for development for the full site. All excess material not redistributed or relocated as described, including but not limited to excess material from the landfill, shall be completely disposed of offsite.

4. The Spine Road (Biscayne Landings Boulevard) extension from the intersection of NE 151 Street (to the North) traversing the site and connecting at the intersection of 143rd Street.

5. All Utility Infrastructure along the Spine Road, including Domestic Water and Fire Flow Supply, Sanitary Sewer, Storm Water Collection and Disposal, Power Supply Corridor, Communications and CATV Raceways, Gas Supply Main and Reuse Irrigation Main (if allowed by Miami-Dade County Regulatory Authority).

6. All daily Landfill Closure Permit and CLCP (except the ERA Work) required activities, and including without limitation groundwater monitoring

7. The grading, leveling and sodding of the Park Property, as set forth in Section 34 of the Lease. This work shall not include the walking and biking trails along the open space on the perimeter of the Premises, which shall be constructed with each phase of the development and, thereafter, retained and maintained by Tenant or those claiming under it, and the trails shall be open to the public.

8. Building permits pulled for at least 500,000 leasable square feet of Required Improvements.

9. Creation of a homeowner's association or community development district or declaration of covenants and restrictions or similar funding source running with the land included in the Premises for all environmental monitoring and compliance costs under the CLCP as provided in section 9.3.3 of this Lease.

10. Musco lighting will be provided for all dedicated rights of way.

EXHIBIT D-1

SCHEDULE OF VALUES AND PROJECTED TIMELINE FOR INITIAL DEVELOPMENT

EXHIBIT D-2

- Approximately $2.2 Million per year will be spent on maintenance of the site, site monitoring and reporting for the regulatory authorities, utilities, overhead and upkeep for the development offices. Jobs to be filled will be equipment operators for landscape maintenance equipment, maintenance personnel, cleaning services personnel, security personnel, monthly and quarterly methane gas and site wide water sampling personnel, courier services, intermittent unskilled labor services and various other services personnel as may be needed to support onsite office management staff.

- In the first 90 days (1st quarter) approximately $550,000 will be spent on Design and Permitting of Lake Fill, Mass Grading, Spine Road and 143rd Street Intersection projects. Jobs available will be in engineering, architecture, surveying, unskilled labor services, permit expediting, courier services and some heavy equipment operating to begin the mass grading effort. At least one water truck driver will be needed as well for dust control.

- In the next 90 days (2nd quarter) approximately $620,000 will be spent on Design, Permitting and start-up of Construction activities of the Lake Fill and Mass Grading projects. In addition to the jobs stated above other jobs available will be added heavy equipment operators (Cranes, Bull Dozers, Loaders and Off Road Trucks)and Over the Road Trucks.

- In the next 90 days (3rd quarter) approximately $820,000 will be spent on the Design and Permitting previously started. A new activity will begin in this quarter requiring two additional crane operators and at least two geotechnical engineers to monitor the Deep Dynamic Compaction activities along the area of the Spine Road construction.

- In the next 90 days (4th quarter) another $820,000 will be spent completing the Design and Permitting of the Spine Road and 143rd street Intersection. Deep Dynamic Compaction is ½ completed, Mass Grading and Lake Fill production is increasing the site areas for the Spine Road and Intersection improvements are being prepared for the contractors to mobilize. Added job availability is in Heavy Equipment Operation, Unskilled Labor Services, Electrical, Plumbing and Masonry (Concrete) work is beginning at site of contractor field office set-up. Possibly on additional water or fuel truck driver may be available.

- In the next 90 days (1st quarter, 2nd year) approximately $4.2 Million will be spent. The Spine Road and 143rd Street Intersection projects are in full construction phase, Lake Fill, Mass Grading and DDC are still in progress and the Retail and Active Park Designs are beginning. Additional Design services will be needed (architects and engineers), and two contractors will be adding staff (project managers, superintendents, assistant supervisors,

plumbers, electricians, equipment operators, carpenters, laborers) for their paving, grading, drainage and underground utility work.

- In the next 90 days (2nd quarter, 2nd year) an additional $2.8 Million will be spent. The Mass Grading, Lake Fill, Spine Road and Intersection projects are at peak production, the DDC Work is finishing up and the Park and Retail Designers are ½ finished. Few new site related jobs will be added, but support services from City of North Miami vendors should be at their peak. Depending on the vendors used, this will mean delivery truck drivers, printing and copying service personnel, inventory and clerking personnel, secretarial and custodial personnel, lunch truck drivers, fuel delivery drivers, unskilled labor services, etc. will be necessary.

- In the next 90 days (3rd quarter, 2nd year) another $2.0 Million will be spent. Mass Grading and Lake Fill projects are continuing, the Spine Road is nearing completion, the Intersection Improvement is completed and the Designers of the Retail projects are engaged in Permitting. Similar to the previous quarter, no new jobs are expected at the site but the City of North Miami support service Vendors and Suppliers should still be very busy.

- In the next 90 days (4th quarter, 2nd year) another $2.1 Million will be spent. The Spine Road project should be completed and the Retail Permits should be issued in this quarter. Site preparation for both projects will begin and should add jobs in areas similar to those added in the 1st quarter of year #2, e.g. Heavy Equipment Operation, Unskilled Labor Services, Electrical, Plumbing and Masonry (Concrete) work is beginning at site of contractor field office set-up.

- In the next 90 days (1st quarter, 3rd year) approximately $14.5 Million will be spent as the Retail Center Construction projects begin. Two contractors will be adding staff (project managers, superintendents, assistant supervisors, plumbers, electricians, equipment operators, carpenters, and laborers) to conduct work activities in these areas of the site along with office personnel and support service personnel. There will also be an increase in the need for City located vendors for similar support services as identified above.

- In the next 90 days (2nd quarter, 3rd year) approximately $14.6 Million will be spent. The Retail Center is in full production, the Mass Grading is continuing and the Lake Fill project is winding down. City of North Miami Vendors services are at an optimum level and it is expected that at least 120 workers are on site at any given time.

- In the next 90 days (3rd quarter, 3rd year) approximately $17.6 Million will be spent. The Retail Center is in full production, the Lake Fill project is finishing, the Mass Grading is continuing and an expected 300 plus full time workers are on site performing all aspects of trade labor. An additional 75 to 100 contractor support personnel are on site as well. In addition, it is expected that 800 plus intermittent work personnel have some contribution to this site through local support services vendors.

- In the next 90 days (4th quarter, 3rd year) approximately $5.1 Million will be spent. The Retail Center Site Work is finished and the building construction is in full production. As

MEP trades come in an expected 500 plus construction workers are on site. The support service personnel utilized by City Vendors are expected to exceed 1000 on an intermittent basis.

- In the next 90 days (1st quarter, 4th year) another $6.1 Million will be spent. The Retail Center is nearing the halfway point. Similar labor and staff counts are expected as listed above.

- In the next 90 days (2nd quarter, 4th year) approximately $5.1 Million is spent. The Mass Grading project will be completed this quarter and the Retail Center production is stabilized. Roofers, Window and Door trades, HVAC, Electrical, Plumbing and Masonry contractors are hiring and the shell contractor is finishing up. Labor counts are expected to rise slightly (possibly 15%) during this phase.

- In the next 90 days (3rd quarter, 4th year) approximately $6 Million will be spent. The Retail Center is entering the Finishes Phase. Flooring Installations, Painting, MEP finishes are being applied and subtenants' contractors are beginning work. Labor counts are expected to drop slightly. IT IS IMPORTANT TO NOTE THAT THE RESIDENTIAL COMPONENT SHOULD BE ENTERING THE DESIGN PHASE DURING THIS QUARTER. THE EFFECT FELT WOULD BE ADDED DESIGN PERSONNEL THAT WOULD START A NEW PHASE OF DEVELOPMENT DRIVING UP THE CONTRIBUTED MONETARY VALUES AT A RATE SIMILAR TO WHEN THE RETAIL DEVELOPMENT STARTED.

- In the next 90 days (4th quarter, 4th year) another $5 Million will be spent. Subtenant contractors are in full production with finishes and applications described above.

- During the Fifth Year another $8 Million will be spent completing the Retail Center project and any remaining site work. Tenant fully expects to be actively engaged in developing other portions of the site by this year which should increase local participation in all phases, from skilled and unskilled labor, through management, operations of the existing retail subtenants, design consultants and finished product maintenance services.

EXHIBIT E

MEMORANDUM OF LEASE

This instrument prepared by and after
recording return to:
Arnold A Brown, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, Suite 2300
Miami, Florida 33131

Tax Folio No.:
06-2221-034-0010

MEMORANDUM OF GROUND LEASE

Oleta Partners, LLC, a Delaware limited liability company, whose address is _____, Coconut Grove, Florida 33133 ("Tenant") and **City of North Miami**, a Florida municipal corporation, whose address is _____, North Miami, Florida 331__ ("Landlord") have entered into a Ground Lease dated _____, 2012 (the "Lease") with respect to the vacant and unimproved real property legally described on **Exhibit A** annexed hereto (the "Leased Premises"), which is part of Biscayne Landing. The term of the Lease commences on the date hereof and ends on _____, 2111. The Lease shall automatically renew for 99 years. Rent and other charges payable during the Lease term are as set forth in the Lease.

All persons to whom these presents come or who should be on notice hereof are put on notice of the existence of the Lease and of all its terms and provisions. This Memorandum of Ground Lease is summary in nature and to the extent of any conflict or inconsistency between the provisions hereof and those contained in the Lease, the provisions of the Lease shall prevail.

The Lease contains, among other provisions, provisions relating to the following:

1. Tenant and those claiming under tenant are entitled to obtain leasehold and subleasehold financing, as therein provided, and the holder of such financing is entitled to the benefits afforded by the Lease.

2. Neither Tenant nor anyone claiming by, through or under Tenant including, without limitation, contractors, subcontractors, materialmen, mechanics and laborers, shall have any right to file or place any construction, materialmens' or other liens of any kind whatsoever upon Landlord’s interest in the Leased Premises or any portion thereof; on the contrary, any such liens are specifically prohibited and shall be null and void and of no force or effect. Notice is hereby given that neither Tenant nor anyone claiming by, through or under Tenant has any power to subject Landlord's interest in the Leased Premises or any portion thereof to any claim or lien of any kind or character and any persons dealing with Tenant, or those claiming by, through or under Tenant must look solely to the credit of party with whom they are dealing for payment.

3. Landlord is not liable for any injury or damage to any property or any person happening on or about the Leased Premises, nor for any injury or damage to any property of Tenant or any other person contained therein or thereon. Tenant shall maintain, at its sole cost and expense, insurance in such amounts and with such companies as is provided for in the Lease insuring against all claims, demands, actions or damages for personal injury, death and damage to property.

4. There shall be no merger of the leasehold estate created by the Lease with the fee estate owned by Landlord unless all persons having an interest in the leasehold and fee estates (including, without limitation, any mortgagees) shall join in a written instrument for the specific purpose of effecting such merger and such instrument shall be placed of record in the county in which the Leased Premises are located.

5. The Lease contains both an option to purchase a portion of the Lease Premises and a right of first offer to purchase the Leased Premises, on the terms and conditions contained in the Lease. The Lease provides that the option to purchase "shall be deemed waived, terminate and be of no further force or effect if, having furnished a Notice confirming the exercise of the Option, Tenant thereafter defaults in its obligation to close the transaction. The termination of the Option and retention of the deposit as liquidated damages shall be Landlord's sole remedies for such default. The parties acknowledge that in the event of Tenant's default in its obligation to close the Option transaction, Landlord's damages are incapable of exact ascertainment and that Landlord's retention of the deposit as liquidated damages is fair and reasonable and is not a penalty. In such case Tenant shall, at the request of Landlord, execute and deliver to Landlord an instrument in recordable form, evidencing such waiver and acknowledging the termination of the Option; if Tenant fails to deliver such recordable instrument within seven (7) Business Days after request, Landlord is hereby authorized to record an affidavit regarding the waiver and acknowledging the termination of the Option as to such property and all persons shall be entitled to rely on such affidavit as to the termination of the Option."

6. The Lease permits self insurance under certain circumstances. With respect to self insurance, it provides that "Any self insured exposure shall be deemed to be an insured risk to the extent of the insurance required to be maintained under this Lease, and Landlord and any Fee Mortgagee shall be afforded the benefits of self insurance to the same extent that they would be afforded the benefits of insurance, including costs of defense. Any self insured Person shall be deemed to waive and hereby waives all rights to recover against Landlord or any Fee Mortgagee or any of their officers, employees, agents and representatives, for any damage arising from any cause covered by any insurance required to be carried by Tenant or any Subtenant, or self insured by Tenant or any Subtenant as permitted in this Lease, or any insurance actually carried by Tenant or any Subtenant." Anyone claiming under Tenant who is qualified under the Lease to and elects to self insure any risk shall comply with and be deemed to have agreed to the foregoing.

7. The Lease provides that "any document requiring execution by Landlord may be executed by the City Manager or his designee and, if so executed, it shall be deemed to have been properly authorized and binding on Landlord without the need for any further verification of authority or execution by anyone else (the foregoing shall not be construed as a waiver of

approval or authorization of the City Council of the City of North Miami, but rather, shall mean that any such approval or authorization of such City Council, if any is required, has been obtained prior to the execution by the City Manager or his designee and is evidenced by such execution, and no Person shall be required to look behind such execution as to approval or authority to execute and bind)".

8. The Lease provides that "except to the extent caused by the gross negligence or willful misconduct of Landlord or anyone acting by, through or under Landlord (for which Landlord will be liable to Tenant), Landlord shall not be liable for injury or damage which may be sustained by a person, goods, wares, merchandise or other property of Tenant, or Tenant's employees, invitees, officers, agents and customers, or by any other person in or about the Premises caused by or resulting from any peril which may affect the Premises, including, without limitation, fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires or plumbing to the Premises, whether such damage or injury results from conditions arising upon the Premises or from other sources". This provision shall be binding on all Persons claiming by, through and under Tenant.

9. The Lease provides that "Each Sublease shall contain provisions in form and substance substantially as set forth below in this Section. By executing its Sublease, each Subtenant shall be deemed to have agreed to these provisions, which reflect the definitions in this Lease. All such defined terms shall be modified in the Sublease as appropriate to reflect the definitions in the Sublease.

> All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease and the Leasehold Estate terminate, then this Sublease shall remain in effect as a direct lease between Landlord and Subtenant; provided, however, that Landlord shall not be: (i) liable for any act or omission of a prior landlord (including Tenant); or (ii) subject to any offsets, defenses or deficiencies that Subtenant might have against any prior landlord (including Tenant); or (iii) liable to Tenant for any deposit, rental security or any other sums deposited with the original or any prior landlord under the Lease and not delivered to Landlord; or (iv) bound by any rent or additional rent which Subtenant might have paid in advance to any prior landlord (including Tenant) for a period in excess of one month; or (v) bound by any amendment, modification, assignment or termination of a direct Sublease from Tenant made without the written consent of Landlord if at the time of the execution thereof a Event of Default, as defined in the Ground Lease (and the recorded Memorandum thereof), existed; or (vi) obligated or liable with respect to any representations, warranties or indemnities contained in the Sublease, including without limitation relating to work performed by any prior landlord under the Sublease; or (vii) liable to Subtenant or any other party for any conflict between the provisions of the Sublease and the provisions of any other lease affecting the Premises which is not entered into by Landlord; or (viii) obligated to construct any improvements to be constructed by Tenant under the Sublease including without limitation tenant improvements; or (ix) be obligated for the restoration of the Premises, Subleased Premises, or any other

improvements on or benefiting the Subleased Premises in the event of any casualty or taking of any part of the Subleased Premises under power of eminent domain beyond any insurance or condemnation proceeds received in connection with such casualty or taking, provided however that Subtenant may offset from base rent payments currently due under the Sublease up to, but not in excess of, fifty percent (50%) of the excess of such Sublease base rents over the rents payable under this Lease that are allocable to the Sublease (as determined by a just and proportional allocation), the costs and expenses incurred by Subtenant which Subtenant would have been able to recover from Tenant under the Sublease for Tenant construction obligations necessary for Subtenant to open for business and operate in the Subleased Premises. Any such offset will be applied proportionately in rental payments due under the Sublease until such offset amount is recovered by Subtenant in full. In that event, Subtenant shall attorn to Landlord and recognize Landlord as Subtenant's direct landlord under this Sublease. Subtenant shall execute and deliver, at any time and from time to time, upon the request of Landlord, any instrument necessary or appropriate to evidence such attornment. The Lease provides Landlord with certain audit rights. Landlord shall have the right to request and each Subtenant under a direct Sublease with Tenant shall provide certified estoppel information in connection with any audit. All Subleases are subject to audit on reasonable notice by Landlord's outside legal counsel and real estate consultant to verify terms, but the audit shall be performed in a way that protects the terms of the Subleases from public disclosure, as the terms of the Subleases are confidential and sensitive and public disclosure is not desirable and would be prejudicial to the parties to the Subleases."

10. The Lease provides that "All books, records, and other documents used by Tenant to calculate or substantiate the Participation Rent (the "Records") will be maintained at the Premises in a fireproof safe, in a location provided by Tenant to Landlord by Notice from time to time, and in the manner recited in this Subsection. Tenant shall maintain all Records for the immediately preceding seven (7) calendar years or parts thereof during which any part of the Term falls at such location. The Records shall be open to inspection, examination, copying, and audit by Landlord or Landlord's designated representative, in comfortable office surroundings, upon giving Tenant five (5) days' prior notice of Landlord's intention to exercise its rights under this Section. If upon inspection or examination of the Records, Landlord determines that (a) Tenant has failed to maintain, preserve, or retain the Records in the manner set forth in this Section, or (b) the Records are insufficient to enable Landlord to verify the accuracy of the Participation Rent paid by Tenant for any calendar year being audited, Landlord shall give Tenant sixty (60) days to cure the deficiencies. Tenant shall reimburse Landlord as Additional Rent for all reasonable expenses incurred by Landlord in determining the deficiencies, including any audit or examination fees incurred by Landlord. If Landlord does not give Tenant notice of its intention to exercise its rights under this Section within one (1) year after the end of a calendar year with respect to which any Participation Rent is payable, it shall have no right to do so unless a subsequent examination of a later calendar year reveals an underpayment of Participation Rent in that calendar year. All direct Subleases with Tenant shall provide that Landlord shall have the right to request and such Subtenant shall provide certified estoppel information in connection with any audit."

11. Unless expressly acknowledged and agreed by Leasehold Mortgagee in a written agreement (or written instructions), all Leasehold Mortgages (including all extensions, renewals, replacements, modifications and consolidations thereof, and to all advances thereunder) shall be prior and superior to all Fee Mortgages and Subleasehold Mortgages (in each case, including all extensions, renewals, replacements, modifications and consolidations thereof, and to all advances thereunder) and Leasehold Mortgagee's rights to exercise any mortgagee protection under the Lease shall be prior and superior to the rights of any Subtenants, any Fee Mortgagee or any Subleasehold Mortgagee to exercise same.

12. Capitalized terms used herein and not defined herein shall have the meaning provided for in the Lease. The following terms used in the Lease have the following meanings:

"Leasehold Mortgage" means any mortgage, deed of trust, collateral assignment, or other lien (as modified from time to time) encumbering this Lease, the Leasehold Estate, and Tenant's Preemptive Rights. A Leasehold Mortgage shall not attach to the Fee Estate.

"Leasehold Mortgagee" means a holder of a Leasehold Mortgage (and its successors and assigns), provided (a) it is not an Affiliate of Tenant, unless (x) Landlord has given its prior written consent or (y) the Leasehold Mortgagee is an Affiliate of Tenant solely by virtue of having acquired (or having the right to acquire) an Equity Interest in Tenant pursuant to the foreclosure of a pledge of Equity Interests or by assignment in lieu of a foreclosure of such Equity Interests or similar transfer; and (b) Landlord has received Notice of its name and address (and that of any successors and assigns) and a copy of its Leasehold Mortgage.

"Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, at trial, at all appeal levels, at all administrative proceedings or hearings, and in or as a result of any Bankruptcy Proceeding.

"Event of Default" shall have the meaning set forth in Section 23 of the Lease.

"Person" means any association, corporation, government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other legal entity of any kind.

"Subtenant" means any Person entitled to occupy, use, or possess any of the Premises under a Sublease.

"Sublease" means, for the Premises, (a) sublease; (b) agreement or arrangement (including a concession, license, or occupancy agreement) allowing any Person to occupy, use or possess; (c) subsublease or any further level of subletting; or (d) Modification or assignment of "a" through "c."

"Participation Rent" shall have the meaning set forth in Section 3 of the Lease.

"Subleasehold Mortgage" means any mortgage, deed of trust, collateral assignment, or other lien (as modified from time to time) encumbering any Sublease and any Subleasehold Estate. A Subleasehold Mortgage shall not attach to the Fee Estate or the Leasehold Estate.

"Subleasehold Mortgagee" means a holder of a Subleasehold Mortgage (and its successors and assigns), provided (a) it is not an Affiliate of Tenant, unless Landlord has given its prior written consent; and (b) Landlord has received Notice of its name and address (and that of any successors and assigns) and a copy of its Subleasehold Mortgage.

IN WITNESS WHEREOF, Landlord has caused this Ground Lease to be executed under seal the date first above written.

WITNESSES (as to City Manager and City Clerk):

_____
Print Name:
Title:

_____
Print Name:
Title:

THE CITY OF NORTH MIAMI, a municipal corporation of the State of Florida

By: _____
City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By:_____
City Attorney

[SEAL]

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____, the City Manager, and _____, the City Clerk, of the City of North Miami, a Florida municipal corporation, in the capacity aforestated; each such person is personally known to me.

Sign Name:_____
Print Name:_____
Notary Public

My Commission Expires
[NOTARIAL SEAL]

Serial No. (none if blank):_____

IN WITNESS WHEREOF, Tenant has caused this Ground Lease to be executed under seal the date first above written.

WITNESSES (as to both) :

OLETA PARTNERS, LLC, a Delaware limited liability company

_____
Print Name:
Title:

By: _____
Print Name: Michael J. Swerdlow
Title: _____

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by Michael J. Swerdlow as _____ of Oleta Partners, LLC, in the capacity aforestated; such person is personally known to me.

Sign Name:_____
Print Name:_____
Notary Public

My Commission Expires
[NOTARIAL SEAL]

Serial No. (none if blank):_____

EXHIBIT F

GROUND LEASE NON-DISTURBANCE AGREEMENT

THIS AGREEMENT, made as of the _____ day of _____, 20__, by and between the CITY OF NORTH MIAMI, FLORIDA, a municipal corporation of the State of Florida, whose address is _____ ("Landlord") and _____, having its principal office at _____ ("Subtenant").

A. Landlord is lessor under that certain lease (the "Ground Lease") with OLETA PARTNERS LLC, a Delaware limited liability company ("Tenant"), as lessee, dated _____, 201_, which demises certain real property (the "Premises") located in North Miami, Florida. A Memorandum of Ground Lease regarding the Ground Lease was recorded in Book _____ at Page ____ of the Public Records of Miami-Dade County, Florida.

B. Tenant subleased a part of its lessee's interest under the Ground Lease to _____ ("Subtenant") pursuant to that certain Sublease (the "Sublease") dated _____, 20__, which portion (the "Subleased Premises") is more particularly described on **Exhibit A** attached hereto and made a part hereof for an initial term of _____ years (commencing as provided in the Sublease), with _____ options to renew thereafter for _____ years each.

NOW, THEREFORE, it is agreed as follows:

1. For so long as Subtenant is not in default of any of its obligations under the Sublease beyond any applicable notice and cure periods as would permit Tenant to re-enter the Subleased Premises and/or terminate the Sublease, Landlord shall not disturb or deprive Subtenant in or of its possession or its rights to possession of the Subleased Premises or of any right or privilege granted to or inuring to the benefit of Subtenant under the Sublease, subject to the provisions of this Agreement, nor will Landlord bring any action against Subtenant to accomplish same.

2. If the Ground Lease terminates for any reason other than on its natural expiration date on _____ (or _____, once the automatic renewal takes place), and provided Subtenant attorns to Landlord, the Sublease shall continue in full force and effect, notwithstanding such termination of the Ground Lease, as a direct space lease between Landlord and Subtenant for the remainder of the term of the Sublease, without the necessity of executing a new space lease, and on the same terms and conditions as are in effect under the Sublease immediately preceding the termination of the Ground Lease; provided, however, that the Sublease contains substantially the following provision, and by executing its Sublease, each Subtenant shall be deemed to have agreed to these provisions, which reflect the definitions in this Lease:

All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease and the Leasehold Estate terminate, then this Sublease shall remain in effect as a direct lease between Landlord and Subtenant; provided, however, that Landlord shall not be: (i) liable for any act or omission of a prior landlord (including Tenant); or (ii) subject to any offsets, defenses or deficiencies that Subtenant might have against any prior landlord (including Tenant); or (iii) liable to Tenant for any deposit, rental security or any other sums deposited with the original or any prior landlord under the Lease and not delivered to Landlord; or (iv) bound by any rent or additional rent which Subtenant might have paid in advance to any prior landlord (including Tenant) for a period in excess of one month; or (v) bound by any amendment, modification, assignment or termination of a direct Sublease from Tenant made without the written consent of Landlord if at the time of the execution thereof a Event of Default, as defined in the [Ground] Lease (and the recorded Memorandum thereof), existed; or (vi) obligated or liable with respect to any representations, warranties or indemnities contained in the Sublease, including without limitation relating to work performed by any prior landlord under the Sublease; or (vii) liable to Subtenant or any other party for any conflict between the provisions of the Sublease and the provisions of any other lease affecting the Premises which is not entered into by Landlord; or (viii) obligated to construct any improvements to be constructed by Tenant under the Sublease including without limitation tenant improvements; or (ix) be obligated for the restoration of the Premises, Subleased Premises, or any other improvements on or benefiting the Subleased Premises in the event of any casualty or taking of any part of the Subleased Premises under power of eminent domain beyond any insurance or condemnation proceeds received in connection with such casualty or taking, provided however that Subtenant may offset from base rent payments currently due under the Sublease up to, but not in excess of, fifty percent (50%) of the excess of such Sublease base rents over the rents payable under this Lease that are allocable to the Sublease (as determined by a just and proportional allocation) against the costs and expenses incurred by Subtenant which Subtenant would have been able to recover from Tenant under the Sublease for Tenant construction obligations necessary for Subtenant to open for business and operate in the Subleased Premises. Any such offset will be applied proportionately in rental payments due under the Sublease until such offset amount is recovered by Subtenant in full. In that event, Subtenant shall attorn to Landlord and recognize Landlord as Subtenant's direct landlord under this Sublease. Subtenant shall execute and deliver, at any time and from time to time, upon the request of Landlord, any instrument necessary or appropriate to evidence such attornment. The Lease provides Landlord with certain audit rights. Landlord shall have the right to request and each Subtenant under a direct Sublease with Tenant shall provide certified estoppel information in connection with any audit. All Subleases are subject to audit on reasonable notice by Landlord's outside legal counsel and real estate consultant to verify terms, but the audit shall be performed in a way that protects the terms of the Subleases from public disclosure, as the

terms of the Subleases are confidential and sensitive and public disclosure is not desirable and would be prejudicial to the parties to the Subleases"

3. If Subtenant meets the requirements to self-insure under the Ground Lease, Subtenant may do so only in accordance with those requirements. Any self insured exposure shall be deemed to be an insured risk to the extent of the insurance required to be maintained under the Sublease, and Landlord and any Fee Mortgagee shall be afforded the benefits of self insurance to the same extent that they would be afforded the benefits of insurance, including costs of defense. Any self insured Person shall be deemed to waive and hereby waives all rights to recover against Landlord or any Fee Mortgagee or any of their officers, employees, agents and representatives, for any damage arising from any cause covered by any insurance required to be carried by Subtenant, or self insured by Subtenant as permitted in the Ground Lease, or any insurance actually carried by Subtenant.

4. Any notices, consents, approvals, submissions, demands or other communications (hereinafter collectively referred to as "Notice") given under this Agreement shall be in writing. Unless otherwise required by law or governmental regulation, Notices shall be deemed given if sent by registered or certified mail, return receipt requested, postage prepaid (a) to Landlord, at the address of Landlord as hereinabove set forth or such other address as Landlord may designate by Notice to the other parties hereto, (b) to Subtenant, then in duplicate under separate cover, one copy to _____ and one copy to _____ or such other addresses or persons as Subtenant may designate by Notice to the other parties hereto. Delivery by nationally recognized overnight courier service or by hand delivery, with all charges prepaid, may be substituted for registered or certified mail. All Notices shall be deemed served or given on the date received (as evidenced by the return receipt or courier's receipt for delivery) or the date delivery was refused or unavailable due to an unnoticed change of address.

5. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns and subleases.

6. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Agreement. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation."

7. This Agreement shall be governed by the internal law (and not the law of conflicts) of the State of Florida. The parties hereto agree that any suit brought to enforce this Agreement shall be brought in Miami-Dade County, Florida, in the courts of the State of Florida or in the United States District Court for the Southern District of Florida, and, by execution and delivery of this Agreement, each of the parties to this Agreement hereby irrevocably accepts and waives all objection to, the exclusive jurisdiction of the aforesaid courts in connection with any suit brought to enforce this Agreement.

Balance of page is intentionally blank

IN WITNESS WHEREOF, Landlord has caused this Ground Lease Non-Disturbance Agreement between Landlord and _____ to be executed under seal the date first above written.

WITNESSES (as to City Manager and City Clerk):

_____
Print Name:
Title:

_____
Print Name:
Title:

THE CITY OF NORTH MIAMI, a municipal corporation of the State of Florida

By:_____
City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By:_____
City Attorney

[SEAL]

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____, the City Manager, and _____, the City Clerk, of the City of North Miami, a Florida municipal corporation, in the capacity aforestated; each such person is personally known to me.

Sign Name:_____
Print Name:_____
Notary Public

My Commission Expires
[NOTARIAL SEAL]

Serial No. (none if blank):_____

IN WITNESS WHEREOF, Subtenant has caused this Ground Lease Non-Disturbance Agreement between to be executed under seal the date first above written.

WITNESSES : **_____,** a _____

_____ By:_____
Print Name: Print Name:_____
Title: Title: _____

_____ [SEAL]
Print Name:
Title:

STATE OF _____)
) SS.:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____ as _____ of _____, in the capacity aforestated; such person is personally known to me.

Sign Name:_____
Print Name:_____
Notary Public
My Commission Expires: Serial No. (none if blank):_____

[NOTARIAL SEAL]

EXHIBIT G

SCHEDULE OF VALUES UNDER GRANT AGREEMENT

EXHIBIT H

The following chart reflects personnel requirements that the development group, its contractors and tenants, will make available to citizens of North Miami. While all jobs at Biscayne Landing can potentially be filled by citizens of the City, to the extent we are able to identify candidates, or train them through programs funded by Oleta Partners, the positions described below will be filled exclusively by documented residents of the City of North Miami and far exceed the set standards of the lease documents:

Year 1 –

Earthmoving:	Heavy Equipment Trainee	1
	Truck Driver	1
Surveying:	Crew member	1
Developer (Oleta Partners):	Receptionist (full-time)	1
	Field Manager Assistant (full time)	1
Landscaping:	Laborers (minimum number)	5
Security:	On site security guards	5
Fill:	Truck drivers	3
Engineering & Architecture:	Architects, draftsmen, etc.	3
Road Work:	Skilled labor	2
	Laborers	3
	TOTAL YEAR 1	26

Year 2 - anticipates commencement of construction of 500,000sf of retail space and 1,000 parking spaces, which adds additional employees as described:

Construction Related Positions:	40
Training for Permanent Positions:	20
TOTAL YEAR 2	60

Year 3 – anticipates personnel needs for construction of parks and shopping center space:

Parks:	Landscape and Construction Laborers	10
Shopping Center:	Architectural & Engineering	2
	Labor	20
	Various Trades	20
	TOTAL YEAR 3	52

Year 4 – commencement of construction on the Hotel and completion of the community center are planned. Anticipated personnel requirements for both are as follows:

Community Center Construction:		
	Permanent Staffing (Full Time)	2
	Miscellaneous	4
	Clerical/Maintenance/Etc.	
Hotel:	Construction	40
	Permanent	
	Management	2
	Front Desk	3
	Restaurant	3
	Maintenance/Housekeeping	6
Permanent Shopping Center:		
	Theater Management	10
	Restaurants	
	Management	6
	Chefs	6
	Wait Staff	20
	Bartenders	5
	Retailers	
	Management	10
	Sales	50
	Staff	50
	TOTAL YEAR 4	217

Year 5 - anticipates additional personnel requirements based on construction of one additional Hotel and one Residential Building:

Hotel II:	Construction	40
	Permanent	
	Management	2
	Front Desk	3
	Restaurant	3
	Maintenance/Housekeeping	6
		54
Residential Building:	Construction	20
	Permanent	
	Management	1
	Staff	2
	Maintenance/Housekeeping	4
	Sub-total Residential	27
	TOTAL YEAR 5	81

During the first five years under the current development plan the project is expected to create 436 jobs for City of North Miami residents.

Years 6–16 - anticipates additional personnel requirements based on planned construction of one additional residential building each year for a total of 11 buildings:

Residential (per bldg):	Construction	20	220
	Permanent		
	Management	1	11
	Staff	2	22
	Maintenance/Housekeeping	4	44
	TOTAL YEARS 6 – 16		297

An additional 600,000 square feet of future development of product currently not defined will be built during the life of the project resulting in approximately 300 additional City of North Miami residents being needed to fill various positions.

In summary, under the current development plan, the Tenant estimates the personnel requirement to be over 1000 City of North Miami residents over the life of the project. Most of these positions will be permanent on-site jobs while others will have training that is useable at any location in the State.

EXHIBIT I

OCCUPATIONAL TRAINING AND TRADE RELATED EDUCATIONAL PROGRAM

Over the first seven years after the Commencement Date, Tenant will contribute not less than $2.5 Million, in the aggregate, towards Occupational Training and Trade Related Educational Programs. These programs will provide qualified City of North Miami residents interested in participating in the development of the project with the opportunity to acquire technical skill sets that will allow them to compete in their respective fields or trades in this project as well as in other locales and at higher economic values (wages).

This Job Training effort will be provided to acclimate City of North Miami residents in all aspects of land development and building construction in trades such as Mechanical and HVAC Installation, Electrical Work, Masonry, Carpentry, Roofing, Waterproofing, Window and Door Installations, Heavy Equipment Operating, Paving, Grading, Drainage, Landscaping and Irrigation. The Tenant will also provide Training programs through its subtenants that will develop skill sets in all types of retail operations and management such as store management, inventory control, merchandising, advertising, accounting and customer service related skills. The program may include, but not be limited to on-site training by Tenant or Sub-Tenants; paid apprenticeship programs during construction and after completion; rental discount programs for equipment training, among other items.

Tenant will not seek reimbursement for any of these training program costs from the City of North Miami residents that are provided with these training and educational opportunities. Whenever training for a specific site related skill is not provided on site, Tenant will make available non-refundable grants or scholarships for qualified City of North Miami residents to attend other existing off-site training programs that are provided by vendors recognized within the particular field of interest as provider of programs that qualify as practical training worthy of certification in that field.

EXHIBIT J

DEPICTION OF CORNER PARCEL

EXHIBIT K

OWNERSHIP CERTIFICATE

In accordance with Section 14.2.3 of the Lease dated _____, 2012, between the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation ("Landlord"), and OLETA PARTNERS LLC, a Delaware limited liability company ("Tenant"), the undersigned, does hereby certify on behalf of the Tenant that, as of this date, to the best of Tenant's knowledge, and after diligent, reasonable inquiry:

1. The Tenant is wholly owned by the Sole Member which is in turn wholly owned by Oleta Partners Holdings, LLC, a Florida limited liability company ("Oleta Holdings").

2. Attached hereto is an Ownership Chart showing all the direct and indirect legal and beneficial owners of Equity Interests in Tenant as of the date hereof.

3. The Equity Interests of Oleta Holdings are owned by the following direct legal and beneficial owners in accordance with the following Equity Interest composition:

[LIST COMPLETE LEGAL NAME AND ADDRESS INFORMATION OF EACH LEGAL AND BENEFICIAL OWNER OF A DIRECT EQUITY INTEREST IN OLETA HOLDINGS, TOGETHER WITH THE CURRENT PERCENTAGE EQUITY INTEREST HELD BY SUCH HOLDER]

4. The ultimate legal and beneficial owners of an Equity Interest in Tenant are as follows:

[LIST COMPLETE LEGAL NAME AND ADDRESS INFORMATION OF EACH ULTIMATE LEGAL AND BENEFICIAL OWNER OF AN INDIRECT EQUITY INTEREST IN TENANT, TOGETHER WITH THE CURRENT PERCENTAGE INTEREST HELD BY SUCH HOLDER]

5. The Tenant is Controlled by Persons affiliated with the LeFrak Organization and the Swerdlow Development Company. [NOTE: THIS WILL BE REVISED AS APPROPRIATE]

6. Capitalized terms used herein shall have the meanings ascribed to them in the Lease.

IN WITNESS WHEREOF, the undersigned has signed this Ownership Certificate on behalf of Tenant as of the _____ day of _____, 20__.

OLETA PARTNERS, LLC, a Delaware limited liability company

By: _____
Print Name:
Title: _____

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by _____ as _____ of Oleta Partners, LLC, in the capacity aforestated; such person is personally known to me.

Sign Name:_____
Print Name:_____
Notary Public

My Commission Expires
[NOTARIAL SEAL]

Serial No. (none if blank):_____

SCHEDULE 3.1

CONDITIONS TO COMMENCEMENT DATE

1. Clean Estoppel Certificates in favor of Tenant and Initial Leasehold Mortgagee. (Section 28.1)

2. Indemnification Agreement(s) in favor of Tenant and Initial Leasehold Mortgagee's title insurance companies. (Section 10.2)

3. Terminations of all Notices of Commencement recorded against the Premises (including, without limitation, those recorded at ORB 27971, pages 521,537,588,589, and 590) together with such other items as may reasonably be required by Tenant's and Initial Leasehold Mortgagee's title insurance companies to issue title insurance policies without exception for lien claims filed under notices of commencement, including, without limitation, contractor's affidavits, owner's affidavit, final lien waivers and releases, and indemnifications, with no new Notices of Commencement being recorded against the Premises until after the recording of the Memorandum of Lease.

4. Evidence as may be reasonably requested by Tenant's and Initial Leasehold Mortgagee's title insurance companies that the Lease as been duly and properly authorized, executed, and delivered by the Landlord in accordance with applicable Laws.

5. The Title Affidavit, modified as may be reasonably required by the Tenant's and Initial Leasehold Mortgagee's title insurance companies to provide insurance coverage without exception for any lien claims arising from recorded notices of commencement or the ERA. (Section 14.1)

SCHEDULE 7.8

BISCAYNE LANDING DEVELOPMENT QUARTERLY PROGRESS REPORT

(Date or __ Yr. __ Qtr.)

Construction Projects (each listed separately)

- Permits Status (listed under the Project)
- Schedule Updates (listed under the Project)

Environmental Projects(each listed separately)

- Permits Status (listed under the Project)
- Schedule Updates (listed under the Project)

Participation Rent

- Product Type (each listed separately) – Total Rents Received – Less Costs (if applicable) = Net Rent
- Rent Roll Support Documents (listing specific units per product and rent received per unit)

Sales

- Product Type (each listed separately)
- Unit Sold (listed separately under each product) with sales price, date of conveyance and closing costs

Local Business & Labor Participation (most likely an attachment)

- Total Costs Paid to Local Businesses/Total Construction Costs Spent to Date = Percentage of Local Business Participation
- (Similar formula for Local Labor/Total Labor on a Contractor by Contractor Basis)
- Past Community Outreach Events and Total Attendees
- Upcoming Community Outreach Events with Dates and Locations

Unavoidable Delays Since Last Report
"**FAILURE TO TIMELY PROVIDE THE INFORMATION REQUESTED HEREIN MAY RESULT IN YOUR WAIVER OF THE RIGHT TO CLAIM FORCE MAJEURE DELAY**")

Concept Plan Modifications Since Last Report

SCHEDULE 7.9

ON SITE AND OFF SITE CONSTRUCTION MATERIALS
AND EQUIPMENT TO BECOME TENANT'S PROPERTY

This schedule is too large to conveniently attach. It consists of the attachments to e-mail dated January 25, 2012 from Arnold A. Brown to Peyton Lumpkin, which consists of excel spread sheets entitled (a) Inventory List BL, (b) 7.12.04 Stored Materials log vs physical count 11 2 09, and (c) Inventory List Sales Center, with multiple tabs each, and one pdf file entitled Onsite Inventory 11 09. Specifically excluded, whether or not listed on such attachments, are the crane and generator, as well as any equipment owned by the contractor or any subcontractors under the ERA.

SCHEDULE 14

TITLE AFFIDAVIT

State of Florida
County of Miami-Dade

Before me, the undersigned authority, personally appeared _____ as City Manager and _____ as City Clerk of the City of North Miami ("Landlord"), who being first duly sworn deposed and said.

1. This Affidavit is made in connection with the Biscayne Landing Ground Lease (the "Lease") between Landlord and Oleta Partners, LLC ("Tenant") that is being executed and delivered contemporaneously herewith.

2. *Due Authorization and Execution*. Landlord has full right, title, authority, and capacity to execute and perform the Lease and the related Memorandum of Lease (collectively, the "Lease Documents"); the execution and delivery of the Lease Documents have been duly authorized by all requisite actions of Landlord; the Lease Documents constitute valid, binding, and enforceable obligations of Landlord.

3. *Liens*. The Premises are free and clear of any liens or encumbrances except for the Permitted Exceptions, as defined in the Lease.

4. *No Pending Construction or Liens*. Except in connection with the ERA, as defined in the Lease, Landlord is not a party to any contract for any construction respecting the Premises and there has been no construction on or respecting the Premises prior to the date hereof for which the full costs thereof have not been paid (or will be paid by Landlord prior to delinquency). Except in connection with the ERA, no party has the right to claim any mechanic's or supplier's lien arising from any labor or materials furnished to the Premises before the date hereof. **[THIS PARAGRAPH TO BE REVISED TO REFLECT TERMINATION OF THE NOTICES OF COMMENCEMENT]**

5. *Parties Entitled to Possession*. As of the date hereof, Tenant is the only party entitled to possession of the Premises and no other party has any right to lease, use, have possession of or occupy the Premises, including Landlord, except pursuant to the terms of the Lease.

6. *Gap*. There are no matters pending against Landlord that could give rise to a lien that would attach to the Premises between (a) the effective date of the commitment(s) to insure title issued by **[INSERT NAME(S) OF TENANT'S TITLE INSURANCE COMPANY/COMPANIES]** committing to insure the leasehold estate in the Premises to Tenant, and (b) the recording of the aforestated Memorandum of this Lease; and Landlord has not and will not execute any instrument during such period that would adversely affect the title or interest to be acquired by Tenant and insured by **[INSERT NAME(S) OF TENANT'S TITLE INSURANCE COMPANY/COMPANIES]**.

7. **[INSERT NAME(S) OF TENANT'S TITLE INSURANCE COMPANY/COMPANIES]**, Tenant's title insurer, may rely on the statements set forth above, and such statements are made under penalties of perjury.

Further Affiant Sayeth Not.

THE CITY OF NORTH MIAMI, a municipal corporation of the State of Florida

By:_____
City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

[SEAL]

By:_____
City Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was sworn to and subscribed before me this ___ day of _____, 20__, by _____, the City Manager, and _____, the City Clerk, of the City of North Miami, a Florida municipal corporation, in the capacity aforestated; each such person is personally known to me.

Sign Name:_____
Print Name:_____
Notary Public

My Commission Expires
[NOTARIAL SEAL]

Serial No. (none if blank):_____

SCHEDULE 25

INITIAL NOTICE ADDRESSEES
(INCLUDING INITIAL REQUIRED COPY RECIPIENTS)

If to Landlord:

City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161
Attention: City Manager

With a copy to:

City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161
Attention: City Attorney

With a copy to:

SMGQ Law
201 Alhambra Circle, Suite 1205
Coral Gables, Florida 33134
Attention: Roland Sanchez-Medina, Jr., Esq.

If to Tenant:

Oleta Partners, LLC
c/o Swerdlow Group
3390 Mary Street, Suite 200
Coconut Grove, Florida 33133
Attention: Michael Swerdlow

With a copy to:

LeFrak Organization, Inc.
40 West 57th Street
New York, New York 10019
Attention: Arnold Lehman

And:

Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, Suite 2300
Miami, FL 33131-3456
Attention: James W. Shindell, Esq,

And:

Greenberg Traurig
333 Avenue of the Americas, 44th Floor
Miami, FL 33131
Attention: Kimberly Segall LeCompte, Esq.

SCHEDULE 33.1

BISCAYNE LANDING MASTER PLAN BY ARQUITECTONICA DATED 10/24/11
SHOWING PHASE III AND PHASE IV

SCHEDULE 33.6

TITLE AFFIDAVIT

State of Florida
County of Miami-Dade

Before me, the undersigned authority, personally appeared _____ as City Manager and _____ as City Clerk of the City of North Miami ("Landlord"), who being first duly sworn deposed and said.

1. This Affidavit is made in connection with the purchase from Landlord by Oleta Partners, LLC ("Tenant") of certain real property (the "Property") as more particularly described on Exhibit A attached hereto, which purchase is made pursuant to an option to purchase contained in that certain Biscayne Landing Ground Lease (the "Lease") between Landlord and Tenant dated _____, 2012.

2. *Due Authorization and Execution*. Landlord has full right, title, authority, and capacity to execute deed for the Property and the other required closing documents the (collectively, the "Closing Documents"); the execution and delivery of the Closing Documents have been duly authorized by all requisite actions of Landlord; the Closing Documents constitute valid, binding, and enforceable obligations of Landlord.

3. *Liens*. The Property is free and clear of any liens or encumbrances from any parties claiming through Landlord but not Tenant, except for the Permitted Exceptions, as defined in the Lease.

4. *No Pending Construction or Liens*. Landlord is not a party to any contract for any construction respecting the Property and there has been no construction on or respecting the Property prior to the date hereof for which the full costs thereof have not been paid (or will be paid by Landlord prior to delinquency).No party claiming through Landlord has the right to claim any mechanic's or supplier's lien arising from any labor or materials furnished to the Property before the date hereof.

5. *Parties Entitled to Possession*. As of the date hereof, Tenant is the only party entitled to possession of the Property and no other party has any right to lease, use, have possession of or occupy the Property, including Landlord, except pursuant to the terms of the Lease and except for parties claiming through Tenant.

6. *Gap*. There are no matters pending against Landlord that could give rise to a lien that would attach to the Property between (a) the effective date of the commitment to insure title issued by **[title company]** committing to insure the fee estate in the Property to Tenant, and (b) the recording of the deed to the Property; and Landlord has not and will not execute any instrument during such period that would adversely affect the title or interest to be acquired by Tenant and insured by **[title company]**.

7. **[title company]**, Tenant's title insurer, may rely on the statements set forth above, and such statements are made under penalties of perjury.

Further Affiant Sayeth Not.

THE CITY OF NORTH MIAMI, a municipal corporation of the State of Florida

By:_____
City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

[SEAL]

By:_____
City Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was sworn to and subscribed before me this ___ day of _____, 20__, by _____, the City Manager, and _____, the City Clerk, of the City of North Miami, a Florida municipal corporation, in the capacity aforestated; each such person is personally known to me.

Sign Name:_____
Print Name:_____
Notary Public

My Commission Expires
[NOTARIAL SEAL]

Serial No. (none if blank):_____

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