

## LEASE

Pursuant to a resolution of the Mayor and City Council of the City of North Miami passed on November 18, 2021, this Lease is made and entered into as of the Date of this Lease, by and between Landlord and Tenant. "Date of this Lease" shall mean the date on which the last one of the Landlord and Tenant has signed this Lease.

### WITNESSETH:

Subject to and on the terms and conditions of this Lease, Landlord leases to Tenant and Tenant hires from Landlord the Premises.

1. **BASIC LEASE INFORMATION AND DEFINED TERMS.** The key business terms of this Lease and the defined terms used in this Lease are as follows:

1.1 **Landlord:** TR WILDCAT INVESTMENT, LLC, a Florida limited liability company.

1.2 **Tenant:** CITY OF NORTH MIAMI, a Florida municipal corporation.

1.3 **Building:** The building currently known as the "Wildcat Center" located at 1600 NE 126<sup>th</sup> Street, North Miami, Florida 33181. The Building is located within the Property.

1.4 **Property:** The Building and the parcel of land on which it is located as legally described in EXHIBIT "A" and all of the other improvements located on such land.

1.5 **Premises:** The Property.

1.6 **Rentable Area of the Premises:** N/A.

1.7 **Commencement Date:** The earlier to occur of (a) the date when Landlord delivers possession of the Premises to Tenant; or (b) 45 days after the Date of this Lease, but in no event later than the date on which Landlord acquires title to the Premises, and subject to the Contingency (as defined below)

1.8 **Lease Term.** A term commencing on the Commencement Date and continuing for one hundred eighty (180) full calendar months (plus any partial calendar month in which the Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Commencement Date falls on a day other than the first day of a month, the first month of the Lease Term shall be the month immediately following the Commencement Date and Tenant shall pay prorated Rent for the partial month.

1.9 **Renewal Options:** N/A

1.10 **Base Rent:** Monthly Base Rent for the first Lease Year in the amount of \$87,500.00, for an annual Base Rent of \$1,050,000.00 for the first Lease Year, plus sales, use, and other similar taxes, if any. Base Rent will increase each subsequent Lease Year during the Lease Term at the rate of three percent (3%) per year, effective on the first (1st) day of each subsequent Lease Year.

1.11 **Security Deposit:** \$87,500.00, plus applicable taxes, to be delivered by Tenant to Escrow Agent on its execution of this Lease and disbursed to Landlord pursuant to Section 24.2 of this Lease.

1.12 **First Month's Rent:** \$87,500.00, plus applicable taxes, to be delivered by Tenant to Escrow Agent on its execution of this Lease and disbursed to Landlord pursuant to Section 24.2 of this Lease.

1.13 **Tenant's Notice Address:** 776 NE 125 Street, North Miami FL 33185. Attn: City Manager, City Attorney and Mayor

1.14 **Landlord's Notice Address:** TR Wildcat Investment, LLC c/o Tate Capital, LLC, 1175 NE 125th Street, Suite 102, North Miami, Florida 33161, Attn: James D. Tate.

1.15 **Guarantor:** N/A.

1.16 **Purchase Option:** See Section 23

1.17 **Escrow Agent:** Shutts & Bowen LLP, 200 South Biscayne Boulevard, Suite 4100, Miami, Florida 33131  
Attn: Robert Cheng, Esq.

**2. TERM; RENEWAL OPTIONS.** Tenant shall have and hold the Premises for the Lease Term. The Lease Term shall commence on the Commencement Date. Landlord shall determine the Commencement Date as provided in Basic Lease Information and Defined Terms article of this Lease and shall notify Tenant of the date so determined. Tenant shall, if Landlord so requests, thereafter promptly execute and deliver to Landlord a letter confirming the Commencement Date and the expiration date of this Lease.

**2.1 Delay in Delivery.** If the Commencement Date is delayed because Landlord cannot deliver possession of the Premises to Tenant or for any reason not attributable to fault on the part of Tenant, or if Landlord is unable to deliver possession of the Premises on the Commencement Date by reason of the holding over of any prior tenant, Tenant shall not be required to commence payment of rent until the Commencement Date has occurred and Landlord has delivered possession of the Premises to Tenant. However, nothing set forth in this section will operate to extend the Lease Term and rent abatement will be the full extent of Landlord's liability to Tenant on account of the delay.

**2.2 Renewal Options.** Intentionally Deleted.

**3. USE.** Tenant may use and occupy the Premises for any legally permissible use.

**4. RENT.** Tenant shall pay to Landlord in lawful United States currency the Base Rent. On the execution of this Lease by Tenant, Tenant shall pay to Landlord the installment of Base Rent for the first month of the Lease Term for which rent is due and not abated. All Base Rent shall be payable in equal monthly installments, in advance, beginning on the Commencement Date, and continuing on the first day of each and every calendar month thereafter during the Lease Term. Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Base Rent, shall be denominated as additional rent. Except as otherwise provided, all additional rent payments are due ten days after delivery of an invoice. Tenant shall pay monthly to Landlord any sales, use, or other tax (excluding state and federal income tax) now or hereafter imposed on the rent due under this Lease. The term "rent" when used in this Lease shall include Base Rent and all forms of additional rent. Tenant hereby acknowledges and agrees that "additional rent" shall expressly include any and all costs and expenses incurred by Landlord in connection with its right to perform pursuant to Section 8.3 of this Lease. All rent shall be paid to Landlord without demand, setoff, or deduction whatsoever, except as specifically provided in this Lease, at Landlord's Notice Address, or at such other place as Landlord shall designate in writing to Tenant. Tenant's obligations to pay rent are covenants independent of the Landlord's obligations under this Lease. Tenant hereby represents and warrants to Landlord that it has obtained all requisite approvals from the City and its applicable bodies in connection with this Lease, including, but not limited to, Tenant's obligation to make all payments due under this Lease, such that this Lease and Tenant's obligations therein are not contingent upon or subject to the City's budget processes and/or appropriations. Tenant acknowledges and agrees that Landlord is expressly relying on the preceding representation and warranty of Tenant as a condition to enter into this Lease. It is the purpose and intent of Landlord and Tenant that the rent shall be absolutely net to Landlord, so that this Lease shall yield net to Landlord the rent specified in this Lease hereof, and that the costs, fees, interest, charges, reimbursements, and obligations of every kind relating to the Premises (excepting only inheritance, estate, succession, transfer, gift, franchise or capital stock tax, any income taxes arising out of or related to ownership operation of income producing real estate, and any payments for principal, premium and amortization of indebtedness of any mortgage which Landlord may place upon the fee of the Premises) shall be paid or discharged by Tenant as additional rent hereunder. Tenant has advised Landlord that Tenant is exempt from paying any sales, use, and other similar taxes that may be due hereunder. If at any time it is determined that any sales, use, or other similar taxes are due hereunder, Tenant shall promptly make such payments directly to the appropriate taxing authority.

**5. OPERATING COSTS/REAL ESTATE TAXES.**

**5.1 Operating Costs.** During the Lease Term, Tenant will pay or cause to be paid all costs and expenses attributable to or incurred in connection with the use, leasing, occupancy, operation, maintenance, repair and rebuilding of the Premises including without limitation (i) all mechanical, electrical, plumbing, HVAC, telecommunications and security systems within the



Premises, and all structural and non-structural components of the Building, both interior and exterior; (ii) all driveway, utilities, drainage facilities, exterior lighting, irrigation systems, signage, landscaping, maintenance, repair and striping of all parking areas of the Premises; (iii) all insurance premiums relating to the Premises; and (iv) the costs and expenses of all capital improvements or repairs (whether structural or non-structural) required to maintain the Premises in good order and repair or required by any governmental (or quasi-governmental) authority having jurisdiction over the Premises (collectively, "Operating Costs").

**5.2 Real Estate Taxes.** The term "Real Estate Taxes" shall mean the total of all taxes, assessments, and other charges by any governmental or quasi-governmental authority, including real and personal property taxes, transit and other special district taxes, franchise taxes, and solid waste assessments that are assessed, levied, or in any manner imposed on the Property. If a tax shall be levied against Landlord in substitution in whole or in part for the Real Estate Taxes or otherwise as a result of the ownership of the Property, then the other tax shall be deemed to be included within the definition of "Real Estate Taxes". "Real Estate Taxes" shall also include all costs incurred by Landlord in contesting the amount of the assessment of the Property made for Real Estate Tax purposes, including attorneys', consultants', and appraisers' fees.

**5.3 Payment of Real Estate Taxes.** Tenant shall pay the entirety of the Real Estate Taxes due for any calendar year during the Lease Term in one lump sum payment without abatement, deduction or offset, on or before the day that is 15 days before the date such Real Estate Taxes must be paid to obtain the maximum discount allowed by law for early payment (such amounts shall be prorated for any partial year of the Lease Term). In the event the Real Estate Taxes for any one year of the Lease Term are appealed by Landlord, upon resolution of the tax appeal, if the tax determined to be due on the year appealed are less than the tax bill initially issued by the Property Appraiser, Tenant shall receive a reimbursement of the reduction of the annual taxes for the appealed year (less, however, any and all expenses and costs incurred by Landlord in connection with such appeal (the "Appeal Expenses")), even if the results of the tax appeal occur subsequent to the termination of the Lease. The reimbursement (less the Appeal Expenses) shall be given to Tenant as part of the next reconciliation. Tenant agrees to cooperate with Landlord in connection with any such appeal of the Real Estate Taxes.

**6. ASSIGNMENT OR SUBLetting.** Tenant may not transfer any of its rights under this Lease, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without Landlord's consent, which may be withheld in Landlord's sole and absolute discretion. Without limiting the generality of the foregoing, Tenant may not assign, mortgage, encumber, permit the transfer of ownership or control of Tenant, or permit the entirety or substantially all of the Premises to be occupied by third parties, without Landlord's consent, which may be withheld or conditioned in Landlord's sole and absolute discretion; provided, however, Tenant may sublease or otherwise license for use portions, but not all or substantially all of the Premises in the ordinary course of operating a municipal facility of this kind without the necessity of obtaining Landlord's consent, unless any such sublease or license has a term of one year or more, in which event the prior reasonable written consent of Landlord shall be required. Consent by Landlord to a transfer shall not relieve Tenant from the obligation to obtain Landlord's consent to any further transfer. Tenant shall remain fully liable for all obligations under this Lease following any such transfer. The joint and several liability of Tenant and any successor in interest of Tenant (by assignment or otherwise) under this Lease shall not in any way be affected by any agreement that modifies any of the rights or obligations of the parties under this Lease or any waiver of, or failure to enforce, any obligation under this Lease. If Landlord assigns this Lease to a successor who expressly assumes the obligations of Landlord, Landlord shall be released from its obligations. Tenant shall pay to Landlord, on demand, an administrative fee of \$5,000, plus all reasonable attorneys' fees and actual costs associated with Landlord's consideration of Tenant's transfer request and the review and preparation of all documents associated with it. Any transfer by Tenant in violation of this article shall, at Landlord's option, be void.

## 7. INSURANCE.

**7.1 Tenant's Insurance.** Tenant shall, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, obtain and keep in full force and effect at all times thereafter the following insurance coverage relating to the Premises:

**7.1.1 Liability Insurance.** Comprehensive, general liability insurance for claims for bodily or personal injury, death or property damage, occurring in, on or about the Premises, and contractual liability with limits of not less than \$5,000,000.00 combined single limit, which may be a combination of primary and umbrella liability coverage. Tenant will have Landlord and any mortgagee of Landlord's interest in the Premises ("Mortgagee") named as additional insureds thereunder;

**7.1.2 Property Insurance.** All risk, fire and extended coverage insurance (including windstorm) on a 100% replacement cost basis with respect to the Building and other improvements including all Alterations and additions and all personal property of Tenant used or located at the Premises. If any portion of the Building is located in a federally designated flood plain, an acceptable flood insurance policy shall also be delivered by Tenant to Landlord, providing coverage in the maximum amount reasonably



necessary to insure against the risk of loss from damage to the Building caused by a flood. With respect to all policies of property insurance required to be maintained by Tenant in accordance with this Lease, (a) Landlord shall be named as a loss payee as its interest may appear (and if a Mortgagee then exists, the Mortgagee shall also be named as the loss payee), and (b) the loss thereunder shall be payable to Tenant, Landlord and any Mortgagee under a standard mortgage endorsement. Neither Landlord nor any Mortgagee shall unreasonably withhold its consent to a release of the proceeds of any fire or other casualty insurance for any loss which shall occur during the Lease Term for repair or rebuilding (when the Building is required to be repaired or rebuilt as provided herein); and

7.1.3 **Worker's Compensation.** Such worker's compensation or employer's liability insurance as may be required by law.

Tenant's insurance shall provide primary coverage to Landlord when any policy issued to Landlord provides duplicate or similar coverage, and in such circumstance, Landlord's policy will be excess over Tenant's policy. None of Tenant's policies may have any deductibles or self-insured retentions.

7.2 **Insurance Requirements.** All insurance policies shall be written with insurance companies and shall have coverage limits acceptable to Landlord and having a policyholder rating of at least "A-" and a financial size category of at least "Class XII" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies. All policies shall provide that they may not be terminated or modified in any way that would materially decrease the protection afforded Landlord under this Lease without 30 days' advance notice to Landlord. Tenant shall furnish evidence of all required insurance (on ACORD 27 or other form acceptable to Landlord) prior to the Commencement Date.

7.3 **Waiver of Subrogation.** Landlord and Tenant each expressly, knowingly, and voluntarily waive and release any claims that they may have against the other or the other's employees, agents, or contractors for loss or damage to its property and loss of business (specifically including loss of Rent by Landlord and business interruption by Tenant) as a result of the acts or omissions of the other party or the other party's employees, agents, or contractors (specifically including the negligence of either party or its employees, agents, or contractors and the intentional misconduct of the employees, agents, or contractors of either party), to the extent any such claims are covered by the property insurance described in this Lease (whether or not actually carried by either party), or other property insurance that either party may carry at the time of an occurrence. Landlord and Tenant shall each, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurer concerning the property insurance maintained by it for the Premises and the property located in the Premises. The waiver of subrogation and release shall not apply to the deductible amount of any loss under any property insurance carried by Landlord. This section shall control over any other provisions of this Lease in conflict with it and shall survive the expiration or sooner termination of this Lease.

## 8. DEFAULT.

8.1 **Events of Default** Each of the following shall be an event of default under this Lease: (a) Tenant fails to make any payment of Rent within 5 days when due; (b) Tenant becomes bankrupt or insolvent or makes an assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings are taken by or against Tenant; (c) Tenant abandons the Premises for more than ninety (90) consecutive days; (d) Tenant transfers this Lease in violation of the Assignment or Subletting article; or (e) Tenant fails to maintain required insurance coverages within the time periods required by this Lease; or (f) Tenant fails to perform any other obligation under this Lease within ten days of receipt of written notice from Landlord, including the execution and/or delivery of an estoppel certificate or a subordination agreement as provided in this Lease.

## 8.2 Remedies.

8.2.1 In addition to all remedies provided by law, if Tenant defaults, Landlord may terminate this Lease or Tenant's right of possession of the Premises (without terminating this Lease) by notice to Tenant and Landlord shall have the right, but not the obligation, to relet the Premises or any part thereof for such rent and upon such terms as Landlord, in its sole discretion, shall determine. In addition, Landlord may declare the entire balance of all forms of rent due under this Lease for the remainder of the Lease Term to be forthwith due and payable and may collect the then present value of the rents (calculated using a discount rate equal to the discount rate of the branch of the Federal Reserve Bank closest to the Premises in effect as of the date of the default). Landlord shall account to Tenant, at the expiration date of the Lease, for the net amounts (taking into consideration marketing/advertising costs, legal



expenses, brokerage commissions, "free rent", moving costs, or other incentives granted, and the cost of improvements to the Premises required by replacement tenants) actually collected by Landlord as a result of a reletting.

**8.2.2** If Landlord defaults and such default continues beyond the applicable notice and cure period, Tenant's exclusive remedies shall be an action for: (i) specific performance, or (ii) actual damages. Notwithstanding any other provision of this Lease, the liability of Landlord to Tenant for any breach or default by Landlord under the terms of this Lease, or for any other matter related to this Lease or to the Premises, shall be limited to Tenant's actual direct, but not consequential, damages. Tenant hereby waives any claim for damages for any disturbance, loss of business, nuisance, injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss arising with respect to any act, omission or breach of Landlord. Without limiting the preceding sentence, in no event shall Landlord be liable to Tenant for any punitive, exemplary, or consequential damages.

**8.3 Landlord's Right to Perform.** If Tenant defaults, Landlord may, but shall have no obligation to, perform the obligations of Tenant, including, but not limited to, Tenant's obligation to maintain the Premises and obtain the necessary insurance coverage set forth in Insurance article of this Lease, and if Landlord, in doing so, makes any expenditures or incurs any obligation for the payment of money, including reasonable attorneys' fees, the sums so paid or obligations incurred shall be paid by Tenant to Landlord within five days of rendition of a bill or statement to Tenant therefor. All such costs incurred by Landlord shall bear interest at the lesser of (a) 12% per annum, or (b) the highest rate of interest permitted to be charged by applicable law (the ("Default Rate").

**8.4 Late Charges.** If any payment due Landlord shall not be paid within five days of the date when due, Tenant shall pay, in addition to the payment then due, an administrative charge equal to 5% of the past due payment. All payments due Landlord shall bear interest at the Default Rate, accruing from the date the obligation arose through the date payment is actually received by Landlord. If any payment given to Landlord for any payment is dishonored for any reason whatsoever not attributable to Landlord, in addition to all other remedies available to Landlord, upon demand, Tenant will reimburse Landlord for all insufficient funds, bank, or returned check fees, plus an administrative fee not to exceed the maximum amount prescribed by Section 68.065, Florida Statutes. In addition, Landlord may require all future payments from Tenant to be made by cashier's check from a local bank or by Federal Reserve wire transfer to Landlord's account.

**8.5 Limitations.** None of Landlord's officers, employees, agents, directors, shareholders, partners, members, managers, or affiliates shall ever have any personal liability to Tenant. No person holding Landlord's interest shall have any liability after such person ceases to hold such interest, except for any liability accruing while such person held such interest. **TENANT SHALL LOOK SOLELY TO LANDLORD'S ESTATE AND INTEREST IN THE BUILDING FOR THE SATISFACTION OF ANY RIGHT OR REMEDY OF TENANT UNDER THIS LEASE, AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION, OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT'S RIGHTS OR REMEDIES, OR ANY OTHER LIABILITY OF LANDLORD TO TENANT OF WHATEVER KIND OR NATURE.** No act or omission of Landlord or its agents shall constitute an actual or constructive eviction of Tenant or a default by Landlord as to any of its obligations under this Lease unless Landlord shall have first received written notice from Tenant of the claimed default and shall have failed to cure it after having been afforded reasonable time in which to do so, which in no event shall be less than 60 days. Further, Tenant waives any claims against Landlord that Tenant does not make in writing within 30 days of the onset of the cause of such claim. Landlord and Tenant each waive all rights (other than rights under the Estoppel Certificate and End of Term articles) to consequential damages, lost profits, punitive damages, or special damages of any kind.

**8.6 Intentionally Deleted.**

**9. ALTERATIONS.** "Alterations" shall mean any alteration, addition, or improvement in or on or to the Premises of any kind or nature, including any improvements made prior to Tenant's occupancy of the Premises, which for purposes of this Lease shall include Casualty Restoration (as defined in Section 14.2) following casualty. Tenant shall make no Alterations without the prior written consent of Landlord, which consent shall not be unreasonably conditioned, delayed or withheld; provided, however, any Alterations that affect the structural components of the Building, the roof of the Building or any Building systems, including, without limitation, mechanical, electrical, plumbing or HVAC, such consent may be granted or withheld in Landlord's sole and absolute discretion. Landlord will not unreasonably withhold or delay consent to non-structural interior Alterations, provided that they do not involve demolition of improvements, affect utility services or Building systems, are not visible from outside the Premises, and do not require building permits. Except as expressly set forth in this Lease, (i) Landlord has made no representation or promise as to the condition of the Premises; (ii) Landlord shall not perform any alterations, additions, or improvements in order to make the Premises suitable and ready for occupancy and use by Tenant, and (iii) as set further set forth in and subject to the Due Diligence; As-Is article of this Lease, Tenant shall accept possession of the Premises in its then "as-is", "where-is" condition, without



**representation or warranty of any kind by Landlord.** Before any Alterations are undertaken by or on behalf of Tenant, Tenant shall require any contractor performing work on the Premises to be licensed and to obtain and maintain, at no expense to Landlord, workers' compensation insurance as required by law, builder's risk insurance in the amount of the replacement cost of the applicable Alterations (or such other amount reasonably required by Landlord), and commercial general liability insurance written on an occurrence basis with minimum limits of \$2 million per occurrence limit, \$2 million general aggregate limit, \$2 million personal and advertising limit, and \$2 million products/completed operations limit; which coverage limits may be effected with umbrella coverage (including contractual liability, broad form property damage and contractor's protective liability coverage).

## 10. DUE DILIGENCE; AS-IS.

10.1 From and after the Date of this Lease until 12:00 p.m. Eastern Time on November 24, 2021 (the "Due Diligence Period"), Tenant shall have the right, at Tenant's sole cost and expense, to examine and inspect the Premises. At all times during the Due Diligence Period, Tenant may examine and inspect the Premises, and in connection therewith, Tenant and Tenant's contractors, consultants, employees, and agents shall be entitled to enter upon the Premises, and any portions thereof, and to conduct such tests, studies and analyses (collectively, the "Due Diligence Reports"), and to take any and all other steps or actions determined by Tenant to be necessary, proper, or appropriate to determine the feasibility (economic or otherwise) of this Lease. To the maximum extent permitted by law, Tenant agrees to keep the Due Diligence Reports and the contents thereof in strict confidence to be used solely in evaluating the lease of the Premises by Tenant pursuant to this Lease and shall not be disclosed to any third parties without the consent of Landlord and Seller (as defined below). Tenant shall and does hereby indemnify and hold Landlord and Seller and each of their respective affiliates, parents, subsidiaries, successors, assigns, partners, managers, members, shareholders, trustees, beneficiaries, officers, directors, employees, representatives and agents, harmless from and against any and all liability, loss, cost, expense and damage caused to or incurred by Landlord or the Premises by any acts or omissions of Tenant (or its agents or representatives) in connection with such inspection, and this indemnification shall survive the termination of this Lease. Prior to the expiration of the Due Diligence Period, Tenant may terminate this Lease for any reason by providing written notice of termination to Landlord, whereupon the Escrow Agent shall be authorized to refund the First Month's Rent and the Security Deposit back to Tenant and neither party shall have further rights or obligations pursuant to this Lease except for those expressly intended to survive termination of this Lease. If Tenant does not terminate this Lease pursuant to the preceding sentence, Tenant hereby acknowledges and agrees that upon the expiration of the Due Diligence Period: (i) Tenant shall be unconditionally obligated to proceed with this Lease, subject to the Contingency; (ii) Tenant shall not have the right to terminate this Lease under any circumstance and its only remedies under this Lease shall be those set forth in Section 8.2.2 of this Lease; and (iii) this Lease and Tenant's obligations herein shall be neither contingent on nor conditioned on the approval of an annual budget and/or budget appropriation by the City. Prior to entering the Premises to conduct its examination and inspection pursuant to this Section 10.1, Tenant shall: (i) obtain and keep in full force and effect during the Due Diligence Period, comprehensive, general liability insurance with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate; and (ii) provide Landlord with a certificate of insurance evidencing such coverage, naming Landlord and Seller as additional insureds.

10.2 SUBJECT TO SECTION 10.1, TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DUE DILIGENCE PERIOD REPRESENTED AN ADEQUATE OPPORTUNITY TO CONDUCT A COMPLETE AND THOROUGH INSPECTION, ANALYSIS AND EVALUATION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL TESTING AND COMPLIANCE, OR LACK THEREOF, WITH RESPECT TO ANY LEGAL REQUIREMENTS INCLUDING, WITHOUT LIMITATION, ZONING REQUIREMENTS. TENANT HEREBY RELEASES LANDLORD AND ITS AFFILIATES, PARENTS, SUBSIDIARIES, SUCCESSORS, ASSIGNS, PARTNERS, MANAGERS, MEMBERS, SHAREHOLDERS, TRUSTEES, BENEFICIARIES, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AGENTS FROM ANY AND ALL LIABILITY, RESPONSIBILITY, CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RELATED TO THE CONDITION OF THE PREMISES OR ITS SUITABILITY FOR ANY PURPOSE (INCLUDING WITHOUT LIMITATION, LIABILITIES UNDER, OR RIGHT TO COST RECOVERY UNDER, SECTION 107(A) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 (42 .S.C. SECTIONS 9601 ET SEQ.), AS AMENDED). TENANT ACKNOWLEDGES THAT IT IS RELYING SOLELY ON TENANT'S OWN DUE DILIGENCE INVESTIGATION IN DETERMINING WHETHER TO LEASE THE PREMISES AND THAT IT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER BY LANDLORD REGARDING THE PREMISES (INCLUDING, WITHOUT LIMITATION, (I) ITS PHYSICAL CONDITION; (II) ITS SUITABILITY FOR ANY PARTICULAR PURPOSE; OR (III) ITS COMPLIANCE WITH LEGAL REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, WHETHER OR NOT THE PREMISES CURRENTLY COMPLIES WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED), AND LANDLORD EXPRESSLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, EXCEPT FOR ANY WARRANTIES EXPRESSLY SET FORTH IN THIS LEASE. TENANT SHALL ACCEPT THE PREMISES IN ITS "AS IS", "WHERE IS", "WITH ALL FAULTS" CONDITION, AND LANDLORD HEREBY



DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXPRESS OR IMPLIED.

11. **PARKING.** Tenant acknowledges that the Premises may be non-conforming with respect to the minimum number of off-street parking spaces (the "Parking Nonconformance") required under the Land Development Regulations for the City (the "Regulations"), and it is Tenant's obligation to ensure that its use of the Premises complies with all applicable Regulations, including parking, and the resolution of the Parking Nonconformance shall not be a condition to the effectiveness of this Lease or Tenant's obligations hereunder. Tenant shall secure all required governmental approvals necessary to operate the Premises for its proposed use as a recreation center and for general office purposes, including but not limited to, obtaining a variance from the required parking provisions in Section 5-1402 of the City's Land Development Regulations. Tenant shall ensure that the variance runs with the land inures to the benefit of Landlord and its successors and assigns and shall continue in full force and effect notwithstanding a default by Tenant under this Lease which may lead to a termination of this Lease or Tenant's right to occupy the Premises, such that Landlord may continue to operate the Premises as a recreation center and for general office purposes notwithstanding the parking deficiency.

12. **LIENS.** The interest of Landlord in the Premises shall not be subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. This exculpation is made with express reference to Section 713.10, Florida Statutes. Tenant represents to Landlord that any improvements that might be made by Tenant to the Premises are not required to be made under the terms of this Lease and that any improvements which may be made by Tenant do not constitute the "pith of the lease" under applicable Florida case law. If any lien is filed against the Premises for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond under Section 713.24, Florida Statutes, within 15 days of recording. Further, Tenant shall indemnify, defend, and save Landlord harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in the Premises by or on behalf of Tenant. Tenant shall notify every contractor making improvements to the Premises that the interest of the Landlord in the Premises shall not be subject to liens.

13. **ACCESS TO PREMISES.** Landlord and persons authorized by Landlord shall have the right, at all reasonable times during normal business hours, to enter and inspect the Premises and to make repairs and alterations Landlord deems necessary, with reasonable prior notice, except in cases of emergency, in which event, no notice shall be required and any limitations regarding the hours during which Landlord may access the Premises shall not apply.

#### 14. **CASUALTY DAMAGE.**

14.1 If the Building or Property is damaged by fire or any other casualty and: (a) Tenant is not permitted to rebuild the Building or the Property in substantially the same form as they existed before the damage; or (b) any Mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt; then Landlord may, within 90 days after the casualty, give notice to Tenant of Landlord's election to terminate this Lease, and the balance of the Lease Term shall automatically expire on the fifth day after the notice is delivered.

14.2 If the Premises shall be damaged by fire or any other casualty and Landlord does not elect to terminate this Lease as pursuant to Section 14.1 hereof, Tenant shall repair and restore the same substantially in accordance with the plans and specifications that shall be approved in writing by Landlord (the "Casualty Restoration"). All Casualty Restoration shall be completed by Tenant with reasonable diligence and promptness. The Casualty Restoration shall be treated as an Alteration under the terms of this Lease. Landlord shall not be liable to Tenant for any delay in restoring the Premises or any inconvenience or annoyance to Tenant or injury to Tenant's operations at the Premises resulting in any way from the damage or the repairs, nor shall rent abate.

14.3 Notwithstanding the generality of the foregoing, Landlord and Tenant hereby agree that if any material destruction or damage to the Premises, as determined by Landlord in its reasonable business judgment, occurs:

14.3.1 Prior to the last five years of the Lease Term, then:

(i) Tenant shall perform the Casualty Restoration regardless of whether the insurance proceeds awarded or paid by reason of such material destruction or damage to the Premises (the "Proceeds") is sufficient to complete such Casualty Restoration, and if applicable, Landlord agrees to hold and disburse such Proceeds in accordance with the provisions of this Section 14.3.1. If the Proceeds exceed \$500,000.00, the Proceeds shall be paid to and disbursed by Landlord to, or as directed by, Tenant from time to time during the course of the Casualty Restoration, upon receipt of evidence reasonably satisfactory to Landlord that (A) all



materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Casualty Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, construction, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Premises arising out of the Casualty Restoration which have not either been fully bonded to the reasonable satisfaction of Landlord or discharged of record. All plans and specifications required in connection with the Casualty Restoration shall be subject to prior review and acceptance in all respects by Landlord. Landlord shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Casualty Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Casualty Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and reasonable approval by Landlord. In no event shall Landlord be obligated to make disbursements of the Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Casualty Restoration, minus retainage in an amount equal to 10% of the costs actually incurred for work in place as part of the Casualty Restoration until the Casualty Restoration has been completed. The retainage shall not be released until all approvals necessary for the re-occupancy and use of the Premises have been obtained from all appropriate governmental and quasi-governmental authorities, and Landlord receives evidence satisfactory to Landlord that the costs of the Casualty Restoration have been paid in full or will be paid in full out of the retainage. Landlord shall not be obligated to make disbursements of the Proceeds more frequently than once every calendar month. If at any time the Proceeds held by Landlord or the undisbursed balance thereof shall not, in the reasonable opinion of Landlord, be sufficient to pay in full the balance of the costs which are estimated by Landlord to be incurred in connection with the completion of the Casualty Restoration, Tenant shall, before any further disbursement of the Proceeds is made, deposit the deficiency (the "Casualty Restoration Proceeds Deficiency") with Landlord. The Casualty Restoration Proceeds Deficiency deposited with Landlord, shall be held by Landlord and shall be disbursed, or drawn upon, as applicable, for costs actually incurred in connection with the Casualty Restoration on the same conditions applicable to the disbursement of the Proceeds, and until so disbursed, or drawn upon, as applicable, pursuant to this Section 14.3.1;

(ii) During the last five years of the Lease Term, then Tenant may not restore the Premises without the prior written consent of Landlord, which consent shall not be unreasonably delayed, withheld or conditioned if the cost to restore the Premises as estimated by a licensed general contractor reasonably acceptable to Landlord and Tenant (the "Restoration Estimate") is less than \$1,000,000.00; provided, however, if the Restoration Estimate is \$1,000,000.00 or more, then such consent may be granted or withheld in Landlord's sole and absolute discretion; and

(iii) Upon Tenant's full completion of the Casualty Restoration, as determined by Landlord in its sole discretion, any Proceeds from a policy obtained and paid for by Tenant in excess of the costs to complete the Casualty Restoration shall belong to Tenant alone provided that: (x) Tenant is not in default of this Lease beyond any applicable grace or notice periods, and (y) no condition exists which with the giving of notice or passage of time, or both, could result in a default by Tenant under this Lease.

**15. CONDEMNATION.** If the whole or any substantial part of the Premises shall be condemned by eminent domain or acquired by private purchase in lieu of condemnation, this Lease shall terminate on the date on which possession of the Premises is delivered to the condemning authority and rent shall be apportioned and paid to that date. If no portion of the Building is taken but a substantial portion of the Property is taken, at Landlord's option, this Lease shall terminate on the date on which possession of such portion of the Property is delivered to the condemning authority and rent shall be apportioned and paid to that date. Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term, nor shall Tenant be entitled to any part of the condemnation award or private purchase price. If this Lease is not terminated as provided above, rent shall abate in proportion to the portion of the Premises condemned.

## **16. REPAIR AND MAINTENANCE.**

**16.1** Landlord shall have no maintenance obligation concerning the Premises whatsoever and no obligation to make any repairs or replacements of any kind, in, on, or to the Premises. Tenant waives the provisions of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord's expense or to withhold rent or terminate this Lease based on any alleged failure of Landlord to make repairs.

**16.2** Tenant assumes the full and sole responsibility for the condition, operation, repair, replacement, and maintenance of the Premises, including all improvements, throughout the Lease Term. Tenant will keep the Premises, including, without limitation, the interior and exterior of the Building, in good, clean and sanitary condition, and shall make all repairs, ordinary as well as extraordinary, structural or otherwise, necessary to keep same in good condition, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted (but subject to the provisions of Section 14 regarding the obligation to repair, replace or reconstruct the improvements), and at the termination of this Lease, by expiration of time or otherwise, will deliver the Premises and the



improvements thereon to Landlord in good condition, reasonable wear and tear and damage by fire or other unavoidable casualties excepted (but subject to the provisions of Section 14 regarding the obligation to repair, replace or reconstruct the improvements). In the event the Building or other improvements are damaged or destroyed the same shall be replaced or rebuilt from the proceeds of the insurance as provided in Section 14 hereof. If Lessee fails to maintain the Building and/or other improvements as required hereunder, then 30 days after written notice from Landlord, Landlord shall have the right to enter the Premises and to make such repairs at Tenant's expense, and upon completion thereof, Tenant shall pay as additional rent, Landlord's reasonable costs for making such repairs at the Default Rate; provided, however, no notice shall be required in the event of an emergency. All such payments shall be due within 10 days after Tenant's receipt of an invoice therefor. Tenant shall not commit or allow to be committed any waste on any portion of the Premises. All replacements shall be of equal quality and class to the original items replaced.

**17. ESTOPPEL CERTIFICATES.** From time to time, but no more than 2 times in any consecutive twelve (12) month period unless requested in connection with a prospective sale or financing to be secured by the Property or any interest therein, Tenant, on not less than five days' prior notice, shall execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and certified to all or any of Landlord, any Mortgagee or prospective mortgagee, or prospective purchaser of the Building.

**18. SUBORDINATION.** This Lease is and shall be subject and subordinate to all mortgages that may now or hereafter affect the Building, and to all renewals, modifications, consolidations, replacements, and extensions of the mortgages. Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any deed of trust, mortgage or mortgages now or hereafter placed upon Landlord's interest in the Premises; provided, however, that any such subordination shall be contingent upon Tenant receiving a commercially reasonable non-disturbance agreement. This article shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, Tenant shall execute promptly any certificate that Landlord may request. If the interest of Landlord under this Lease is transferred by reason of or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if this Lease is terminated by foreclosure of any mortgage to which this Lease is subordinate, then Tenant will, at the option to be exercised in writing by the purchaser or assignee, (a) attorn to it and will perform for its benefit all the terms of this Lease on Tenant's part to be performed with the same force and effect as if the purchaser or assignee were the Landlord originally named in this Lease, or (b) enter into a new lease with the purchaser or assignee for the remainder of the Lease Term and otherwise on the same terms as provided in this Lease.

**19. INDEMNIFICATION.** To the fullest extent permitted by law, Tenant shall indemnify, defend, and save harmless Landlord and Landlord's members, officers, employees, agents, and contractors ("Landlord Parties") from and against any and all liability (including reasonable attorneys' fees) resulting from claims by third parties in connection with the Premises, regardless of whether or not the claim is caused by the negligence or willful acts of Landlord Parties, except to the extent resulting from the gross negligence or willful misconduct of Landlord Parties. To the fullest extent permitted by law, Landlord shall indemnify, defend, and save harmless Tenant and Tenant's employees, agents, and contractors from and against any and all liability (including reasonable attorneys' fees) resulting from claims by third parties arising from the gross negligence or willful misconduct of Landlord Parties in connection with the Premises. This Indemnification article shall not be construed to restrict, limit, or modify either party's insurance obligations under this Lease. Either party's compliance with the insurance requirements under this Lease shall not restrict, limit, or modify that party's obligations under this Indemnification article. These indemnification provisions shall survive the expiration or sooner termination of this Lease.

**20. NO WAIVER.** The failure of a party to insist on the strict performance of any provision of this Lease or to exercise any remedy for any default shall not be construed as a waiver. The waiver of any noncompliance with this Lease shall not prevent subsequent similar noncompliance from being a default. No waiver shall be effective unless expressed in writing and signed by the waiving party. No notice to or demand on a party shall of itself entitle the party to any other or further notice or demand in similar or other circumstances. The receipt by Landlord of any rent after default on the part of Tenant (whether the rent is due before or after the default) shall not excuse any delays as to future rent payments and shall not be deemed to operate as a waiver of any then existing default by Tenant or of the right of Landlord to enforce the payment of any other rent reserved in this Lease or to pursue eviction or any other remedies available to Landlord. No payment by Tenant, or receipt by Landlord, of a lesser amount than the rent actually owed under the terms of this Lease shall be deemed to be anything other than a payment on account of the earliest stipulated rent. No endorsement or statement on any check or any letter accompanying any check or payment of rent will be deemed an accord and satisfaction. Landlord may accept the check or payment without prejudice to Landlord's right to recover the balance of the rent or to pursue any other remedy. It is the intention of the parties that this article modify the common law rules of waiver and estoppel and the provisions of any statute which might dictate a contrary result.



21. **SERVICES AND UTILITIES.** Landlord shall have no obligation to provide any utilities or services to the Premises, including, but not limited to, electrical services, water, sewer, telecommunications, cable television, or any other utilities, janitorial and general cleaning services, security services, trash removal, or pest control. Tenant shall be solely responsible for contracting for and shall promptly pay all charges for water, electricity, or any other utility used or consumed in the Premises. In addition to Tenant's maintenance obligations set forth elsewhere in this Lease, Tenant shall be responsible for repairs and maintenance to exit lighting, emergency lighting, and fire extinguishers for the Premises. In no event shall Landlord be liable for damages resulting from the failure to furnish HVAC, elevator, water, janitor, or other service, and any interruption or failure shall in no manner constitute an eviction of Tenant or entitle Tenant to abatement of any rent due under this Lease.

22. **SECURITY DEPOSIT.** The Security Deposit shall be held by Landlord as security for Tenant's full and faithful performance of this Lease including the payment of rent. Tenant grants Landlord a security interest in the Security Deposit. The Security Deposit may be commingled with other funds of Landlord and Landlord shall have no liability for payment of any interest on the Security Deposit. Landlord may apply the Security Deposit to the extent required to cure any default by Tenant. If Landlord so applies the Security Deposit, Tenant shall deliver to Landlord the amount necessary to replenish the Security Deposit to its original sum within five days after notice from Landlord. The Security Deposit shall not be deemed an advance payment of rent or a measure of damages for any default by Tenant, nor shall it be a defense to any action that Landlord may bring against Tenant.

23. **OPTION TO PURCHASE.** Commencing upon the first day of the third anniversary of the Commencement Date and continuing thereafter throughout the Lease Term, Tenant shall have the option to purchase the Premises ("Purchase Option") upon forty-five (45) days prior written notice to Landlord the day that is forty-five (45) days following delivery of the notice of exercise of the Purchase Option, being herein referred to as "Closing Date"), upon the following conditions:

23.1 The Purchase Option shall apply to the entirety of the Premises. Tenant must purchase the entire Premises and may not purchase a portion thereof;

23.2 At the time of the exercise of the Purchase Option and on the Closing Date, Tenant shall not be in default under this Lease beyond any applicable grace or notice periods, and no condition shall exist which with the giving of notice or passage of time, or both, could result in a default under this Lease;

23.3 The net purchase price for the Premises shall be \$11,250,000.00 (the "Purchase Price");

23.4 Tenant shall pay all closing costs customary for a purchaser in similar transactions for property located in Miami-Dade County, Florida;

23.5 There shall be no contingencies on Tenant's obligation to close;

23.6 Base Rent and all other amounts due under this Lease shall be paid through the Closing Date;

23.7 The conveyance of the Property shall be by special warranty deed, subject to the matters set forth on EXHIBIT "B" hereto (collectively, the "Permitted Exceptions");

23.8 The Purchase Option, once exercised, shall be irrevocable, and any failure to close on the purchase shall be deemed a default under this Lease;

23.9 The owner's title insurance policy shall be issued by Tenant's counsel, and the premium thereon shall be paid by Tenant;

23.10 Real Estate Taxes for the year of closing shall be prorated as of the Closing Date;

23.11 Notwithstanding anything contained herein to the contrary, in the event of default by Tenant under this Lease that is not cured within the applicable grace period, the Purchase Option shall automatically terminate and shall be of no further force and effect; and



23.12 During the period of time between any exercise of the Purchase Option by Tenant and the Closing Date, the parties' rights and obligations, including Tenant's obligation to pay rent to Landlord, shall continue to be governed by this Lease, and the parties expressly agree that the doctrine of equitable conversion shall not apply.

**24. PURCHASE AGREEMENT COOPERATION AND CONTINGENCY.**

24.1 Tenant acknowledges that Landlord is finalizing an Agreement of Purchase and Sale (the "Purchase Agreement") by and between Landlord, on the one hand, and, among other parties, Wildcat Center, LLC, the current owner of the Premises (collectively, the "Seller"), on the other hand, pursuant to which Landlord shall purchase, among other things, the Premises from Seller. Tenant hereby agrees to cooperate with and assist, in its governmental capacity, Landlord in connection with Landlord's efforts to execute, perform, and timely close on the sale of the Premises pursuant to such Purchase Agreement.

24.2 Landlord and Tenant hereby agree that this Lease, along with Tenant's and Landlord's obligations therein, is contingent upon the Landlord, in its sole and absolute discretion, electing to proceed with the purchase of the Premises from Seller pursuant to the Purchase Agreement and closing thereunder, such that title to the Property is vested in Landlord (the "Contingency"). If the Purchase Agreement is terminated for any reason, including a default by Landlord thereunder, such termination shall serve to terminate this Lease in all respects, and Landlord shall have no liability to Tenant as a result of such termination. Upon satisfaction of the Contingency, Tenant hereby agrees that Escrow Agent shall be authorized to disburse the First Month's Rent and the Security Deposit to Landlord. In the event that the Contingency is not satisfied, or, in Landlord's reasonable determination, cannot be satisfied: (i) this Lease shall be deemed null and void and neither party shall have any obligations or liability to the other, and (ii) Escrow Agent shall be authorized to refund the First Month's Rent and the Security Deposit to Tenant.

**25. PERSONAL PROPERTY.**

25.1 Tenant acknowledges and agrees that all tangible personal property, including, but not limited to all fixtures (including so-called trade fixtures), furniture, and equipment, located on the Property as of the Commencement Date is and shall remain the property of Landlord, and Tenant is hereby granted a license to use such personal property during the term of this Lease, and all provisions of Section 10 of this Lease concerning disclaimers and waivers as to the condition of the Property apply equally to all personal property. Landlord has no obligation to maintain or replace any such personal property, all such obligations being hereby expressly assumed by Tenant. Notwithstanding the foregoing, in the event Tenant exercises the Purchase Option, Landlord agrees to convey such personal property in its then "as-is, where-is, with all faults" condition, to Tenant on the Closing Date by quit-claim bill of sale.

25.2 Landlord acknowledges and agrees that all tangible personal property purchased by Tenant and delivered to the Property after the Commencement Date (the "Tenant Personal Property") is and shall remain the property of Tenant following the expiration or earlier termination of this Lease; provided, however, that (i) with respect to any Tenant Personal Property affixed or attached to the Property, and/or (ii) in the event of an uncured Tenant default of this Lease, such Tenant Personal Property shall become the Property of Landlord and shall remain with the Property upon the expiration or earlier termination of this Lease.

**26. GOVERNMENTAL REGULATIONS.** Tenant shall promptly comply with all laws, codes, and ordinances of governmental authorities, including the Americans With Disabilities Act of 1990 and all similar present or future laws.

**27. SIGNS.** Tenant may place on any portion of the Property, including on any exterior door, wall, or window of the Premises, or within the interior of the Premises, any signage that complies with all applicable governmental laws, codes, orders, and regulations. Tenant will purchase, install, maintain, and insure any signage at its sole cost and expense. Tenant shall remove its signs upon the expiration or sooner termination of the Lease Term and repair any damage caused by the removal.

**28. BROKER** Tenant and Landlord each represent and warrant to the other that it has neither consulted nor negotiated with any broker or finder regarding the Premises or this Lease. Landlord and Tenant shall each indemnify, defend, and hold the other harmless from and against any claims for commissions from any real estate broker or finder with whom it has dealt in connection with this Lease or the Premises.

**29. END OF TERM.** Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease in good order and condition, broom-clean, except for reasonable wear and tear. Tenant shall be liable to Landlord for all damages, including any consequential damages, that Landlord may suffer by reason of any holding over by Tenant, and Tenant shall indemnify, defend, and save Landlord harmless against all costs, claims, loss, or liability resulting from delay by Tenant in so surrendering the



Premises, including any claims made by any succeeding tenant founded on any delay. All Alterations made by Landlord or Tenant to the Premises shall become Landlord's property on the expiration or sooner termination of the Lease Term. On the expiration or sooner termination of the Lease Term, Tenant, at its expense, shall remove from the Premises all of Tenant's personal property, all computer and telecommunications wiring, and all Alterations that Landlord designates by notice to Tenant. Tenant shall also repair any damage to the Premises caused by the removal. Any items of Tenant's property that shall remain in the Premises after the expiration or sooner termination of the Lease Term, may, at the option of Landlord, be deemed to have been abandoned, and in that case, those items may be retained by Landlord as its property to be disposed of by Landlord, without accountability to Tenant or any other party, in the manner Landlord shall determine, at Tenant's expense.

**30. ATTORNEYS' FEES.** The prevailing party in any litigation arising out of or in any manner relating to this Lease shall be entitled to recover from the losing party reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings. In addition, if Landlord becomes a party to any suit or proceeding affecting the Premises or involving this Lease or Tenant's interest under this Lease, other than a suit between Landlord and Tenant, or if Landlord engages counsel to collect any of the amounts owed under this Lease, or to enforce performance of any of the agreements, conditions, covenants, provisions, or stipulations of this Lease, without commencing litigation, then the costs, expenses, and reasonable attorneys' fees and disbursements incurred by Landlord shall be paid to Landlord by Tenant.

**31. NOTICES.** Any notice to be given under this Lease may be given either by a party itself or by its attorney or agent and shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as FedEx), or by the United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed effective upon receipt or the date sent if it is returned to the addressee because it is refused, unclaimed, or the addressee has moved. Tenant shall simultaneously deliver a copy of all notices to Landlord to: Shutts & Bowen LLP, 200 South Biscayne Blvd., Suite 4100, Miami, Florida 33131, Attn: Robert Cheng.

**32. FORCE MAJEURE.** For purposes of this Lease, the term "Unavoidable Delay" shall mean any delays due to strikes, lockouts, civil commotion, war or warlike operations, acts of terrorism, acts of a public enemy, acts of bioterrorism, epidemics, pandemics, quarantines, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, inability to obtain any material, utility, or service because of governmental restrictions, hurricanes, floods, or other natural disasters, acts of God, or any other cause beyond the direct control of the party delayed. Notwithstanding anything in this Lease to the contrary, if Landlord or Tenant shall be delayed in the performance of any act required under this Lease by reason of any Unavoidable Delay, then provided notice of the Unavoidable Delay is given to the other party within ten days after its occurrence, performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a reasonable period, in no event to exceed a period equivalent to the period of the delay. The provisions of this article shall not operate to excuse Tenant from the payment of Rent or from surrendering the Premises at the end of the Lease Term, and shall not operate to extend the Lease Term. Delays or failures to perform resulting from lack of funds or the increased cost of obtaining labor and materials shall not be deemed delays beyond the direct control of a party.

### **33. GENERAL PROVISIONS.**

**33.1 Miscellaneous.** The words "including" and "include" and similar words will not be construed restrictively to limit or exclude other items not listed. If any provision of this Lease is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Lease shall remain in full force, if the essential provisions of this Lease for each party remain valid, binding, and enforceable. The parties may amend this Lease only by a written agreement of the parties. There are no conditions precedent to the effectiveness of this Lease, other than those expressly stated in this Lease. Landlord and Tenant intend that faxed or PDF format signatures constitute original signatures binding on the parties. This Lease shall bind and inure to the benefit of the heirs, personal representatives, and, except as otherwise provided, the successors and assigns of the parties to this Lease. Each provision of this Lease shall be deemed both a covenant and a condition and shall run with the land. Any liability or obligation of Landlord or Tenant arising during the Lease Term shall survive the expiration or earlier termination of this Lease.

**33.2 Radon Gas.** The following notification is provided under Section 404.056(5), Florida Statutes: "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 your county health department."

**33.3 Exhibits.** All exhibits, riders, and addenda attached to this Lease shall, by this reference, be incorporated into this Lease. The following exhibits are attached to this Lease:



EXHIBIT "A" - Legal Description of the Project  
EXHIBIT "B" - Permitted Exceptions

34. **GUARANTY.** N/A.

35. **GOVERNING LAW; VENUE.** This Lease shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of laws principles. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO THE TRANSACTION CONTEMPLATED HEREBY, THIS LEASE, THE PREMISES OR THE RELATIONSHIP OF LANDLORD AND TENANT HEREUNDER, EACH PARTY IRREVOCABLY (A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF A FEDERAL OR STATE COURT OF COMPETENT JURISDICTION SITTING IN MIAMI-DADE COUNTY, FLORIDA (INCLUDING THE APPELLATE COURTS THEREOF) AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH SUIT, ACTION OR PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. This Section 35 shall expressly survive the expiration or any earlier termination of the Lease Term.

36. **CONSTRUCTION; MERGER.** THIS LEASE HAS BEEN NEGOTIATED "AT ARM'S-LENGTH" BY LANDLORD AND TENANT, EACH HAVING THE OPPORTUNITY TO BE REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE AND TO NEGOTIATE THE FORM AND SUBSTANCE OF THIS LEASE. THEREFORE, THIS LEASE SHALL NOT BE MORE STRICTLY CONSTRUED AGAINST EITHER PARTY BECAUSE ONE PARTY MAY HAVE DRAFTED THIS LEASE. THIS LEASE SHALL CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES CONCERNING THE MATTERS COVERED BY THIS LEASE. ALL PRIOR UNDERSTANDINGS AND AGREEMENTS HAD BETWEEN THE PARTIES CONCERNING THOSE MATTERS, INCLUDING ALL PRELIMINARY NEGOTIATIONS, LEASE PROPOSALS, LETTERS OF INTENT, AND SIMILAR DOCUMENTS, ARE MERGED INTO THIS LEASE, WHICH ALONE FULLY AND COMPLETELY EXPRESSES THE UNDERSTANDING OF THE PARTIES. THE PROVISIONS OF THIS LEASE MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS.

37. **NO RELIANCE; INCONTESTABILITY.** EACH PARTY AGREES IT HAS NOT RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS LEASE, AND EACH PARTY HEREBY WAIVES AND RELEASES ALL CLAIMS AND CAUSES OF ACTION FOR FRAUD IN THE INDUCEMENT OR PROCUREMENT OF THIS LEASE, IT BEING THE PARTIES' INTENT THAT THIS LEASE BE INCONTESTABLE ON ACCOUNT OF ANY CLAIM OF FRAUD, OR FOR ANY OTHER REASON. THE FOREGOING WAIVER AND RELEASE IS MADE BY EACH PARTY IN CONSIDERATION OF THE OTHER PARTY'S RECIPROCAL WAIVER AND RELEASE, AND IS A MATERIAL INDUCEMENT FOR EACH PARTY IN ENTERING INTO THIS LEASE.

38. **JURY WAIVER; COUNTERCLAIMS.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE LANDLORD/TENANT RELATIONSHIP, OR THE PROJECT. TENANT FURTHER WAIVES THE RIGHT TO INTERPOSE ANY PERMISSIVE COUNTERCLAIM OF ANY NATURE IN ANY ACTION TO OBTAIN POSSESSION OF THE PREMISES.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, this Lease has been executed on behalf of Landlord and Tenant as of the Date of this Lease.

LANDLORD:

TR WILDCAT INVESTMENT, LLC, a Florida limited liability company

By: James D. Tate  
Name: James D. Tate  
Title: President  
Date Executed: 11/24/21



## CITY ACKNOWLEDGMENT

ATTEST: City of North Miami, a Florida municipal Corporation: "City"

By:   
Vanessa Joseph, Esq.  
City Clerk

By:   
Theresa Therilus, Esq.  
City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By:   
Jeff P. H. Cazeau  
City Attorney

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

The North Half (N 1/2) of Block 6, Less the South 25.5 feet of the West 137.5 feet thereof, of Subdivision of Portion of Foster and Sanchez Tract, according to the Plat thereof, as recorded in Plat Book 31, Page 45, of the Public Records of Miami-Dade County, Florida.



EXHIBIT "B"

PERMITTED EXCEPTIONS

1. General or special taxes and assessments required to be paid in the year 2021 and subsequent years.
2. Orders relating to Water and Sewer Service recorded in Official Records Book 13177, Page 1681; Official Records Book 13177, Page 1683; Official Records Book 12740, Page 3060, and Official Records Book 12740, Page 3058, all of the Public Records of Miami-Dade County, Florida.
3. Terms, Conditions, and Obligations set forth in that certain Non-Exclusive Utility Easement recorded in Official Records Book 26728, Page 674, of the Public Records of Miami-Dade County, Florida.
4. Dedications and Reservations contained on the Plat of Subdivision Of A Portion of Foster And Sanchez Tract, as recorded in Plat Book 31, Page 45, of the Public Records of Miami-Dade County, Florida.
5. Easement in favor of Florida Power & Light Company, as recorded in Official Records Book 27820, Page 1033, of the Public Records of Miami-Dade County, Florida. (Also known as Lot 21 Wildcat Recreation Center)
6. Grant of Easements in favor of Storer Cable TV of FLA., Inc., d/b/a Storer Cable Communications, as recorded in Official Records Book 11821, Page 1489 and Official Records Book 10661, Page 195, all of the Public Records of Miami-Dade County, Florida. (Also known as Lot 21 Wildcat Recreation Center)
7. Various Overhead Utility Lines and Utility Poles lying outside of or without the benefit of a recorded easement, as disclosed by that certain Survey dated February 23, 2021, prepared by Fortin, Leavy, Skiles, Inc. under Job No. 201189.

