

## **GROUND LEASE (Kayla at Library Place)**

This Ground Lease (this "**Ground Lease**") is made as of \_\_\_\_\_, 2023 (the "**Effective Date**"), among THE CITY OF NORTH MIAMI, a Florida municipal corporation ("**Landlord**"), and KAYLA AT LIBRARY PLACE, LLC, a Florida limited liability company, or assigns ("**Tenant**").

### **PREAMBLE**

A. City is the owner of certain real property located in the City of North Miami, Miami-Dade County, Florida, and described on Exhibit A attached hereto and incorporated herein (the "**Premises**"), which City desires to have developed with the use of private and/or public funds. (An adjacent parcel (the "**Chamber Parcel**") owned by the North Miami Chamber of Commerce, Inc., a Florida not-for-profit corporation ("**Chamber**"), is to be developed together with the Premises as part of the Project (as defined below) pursuant to a separate Ground Lease between Chamber and Tenant.)

B. In connection with the development proposal approved by Landlord, Landlord and Tenant desire that Tenant construct, and thereafter own and operate 115 units of residential rental housing units, of which i) forty percent (40%) will be low-income housing tax credit units qualifying for occupancy pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "**Code**"), to be occupied by tenants whose income does not exceed 60% of area median income for Miami-Dade County, Florida ("**AMI**") and ii) sixty percent (60%) will be workforce housing units to be occupied by tenants whose income does not exceed 100% of AMI, together with other related site improvements and amenities, to be known as Library Place (the "**Project**"), on certain real property identified above as the Premises, which Premises are being ground leased by Landlord to Tenant.

C. On June 14, 2022, the City Council of the City duly adopted its Resolution no. 2022-R-75 (the "**Resolution**"), approving the lease by the City, as Landlord, of the Premises to Tenant in accordance with the terms set forth in this Lease. The Resolution was amended by the City Council to include a revised description of the Premises pursuant to Resolution no. 2022-R-178, adopted on October 25, 2022.

### **LEASE**

In consideration of the foregoing preamble, mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant, with the intent to be legally bound, hereby agree as follows

### **ARTICLE I- GRANT OF LEASED PREMISES; TERM; TITLE**

#### **1.01 Grant of Leased Premises.**

(a) Landlord hereby grants and demises the Premises to Tenant to be effective as of the Effective Date and to have and to hold for a term commencing on the Possession Date and expiring on the seventieth (70<sup>th</sup>) anniversary thereof (together with any extended term provided for below, the "**Lease Term**"), unless sooner terminated as provided herein. All air rights over the platted alleys, as described in Exhibit A, are also hereby granted to Tenant during the Lease Term as a part of the Premises and Tenant may construct improvements over the alleys in compliance with all laws, ordinances and regulations so long as such alleys remain open as publicly dedicated alleys. Landlord shall deliver exclusive possession of the Premises to the Tenant on the date on which Tenant closes on its construction financing and equity syndication (the "**Possession Date**"), at which time Tenant shall take possession of the Premises.

1.02 Extension of the Lease Term. Provided that there is no Event of Default by Tenant then outstanding (beyond any applicable notice and/or cure period), Tenant shall have the right to extend the Lease Term for up to two (2) consecutive extension terms of five (5) years each (the "**First Extension Term**" and the "**Second Extension Term**", respectively), on the same terms and conditions applicable between Landlord and Tenant during the original Lease Term. Tenant shall give Landlord not less than nine (9) months' notice before i) the end of the original Lease Term if it wishes to exercise its option with respect to the First Extension Term and ii) the end of the First Extension Term if it wishes to exercise its option with respect to the Second Extension Term. Time is of the essence with respect to Tenant's giving notice to Landlord under this Section 1.02. If Tenant fails to give timely notice to Landlord of its exercise of the First Extension Term, Tenant's right to the Second Extension Term shall be of no further force or effect.

1.03 Premises. The Premises consists of those certain tracts or parcels of land located in North Miami, Miami-Dade County, Florida as more particularly described in Exhibit A attached hereto and incorporated herein, together with all appurtenances, easements and rights of way related thereto and the improvements thereon.

1.04 Title Matters. Tenant shall have the right to order a title insurance commitment on the Premises, within the ninety (90) days following the Effective Date. In the event the title insurance commitment shall reflect encumbrances or other conditions impairing marketable title ("**Defects**"), or if any update or continuation of the title insurance commitment obtained by Tenant before the Possession Date in connection with its construction financing or equity syndication reveals any new Defects, then Landlord, upon notification of the Defects, shall immediately and diligently proceed to cure same and shall have a reasonable time within which to cure the Defects. If, after the exercise of all reasonable diligence, Landlord is unable to clear the Defects, then Tenant may accept the Defects or Tenant may terminate the Lease and the parties shall be released from further liability.

1.05 Construction of Improvements. The Project shall be constructed in accordance with requirements of all laws, ordinances, codes, orders, rules and regulations (collectively "**Applicable Laws**") of all governmental entities having jurisdiction over the Project (collectively "**Governmental Authorities**"), including, but not limited to, the City, Miami-Dade County, Miami-Dade County Housing Finance Authority and the State of Florida.

(a) Tenant shall apply for and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required by applicable Governmental Authorities for the

construction, development, zoning, use and occupation of the Project. Landlord agrees to cooperate with and publicly support Tenant's effort to obtain such approvals, permits and licenses, provided that such approvals, permits and licenses shall be obtained at Tenant's sole cost and expense.

(b) Construction of the Project shall be performed in a good and workmanlike manner and in conformity with all Applicable Laws.

(c) It is understood that a material inducement for Landlord entering into this Lease is the expectation, agreement and requirement that the Premises will include the Improvements, during the entire Term, consisting of approximately (a) 115 multifamily residential units and (b) 10,500 sq. ft. of commercial space, as more fully described and/or depicted on Exhibit B (collectively, the "**Improvements**").

(d) Landlord and Tenant agree that Tenant shall be accorded all benefits and burdens of ownership of the Premises for as long as this Lease shall remain in effect. At all times during the term of this Lease, the Improvements shall be owned by the Tenant and, during the term, the Tenant alone shall be entitled to all of the tax attributes of ownership including, without limitation, the right to claim depreciation or cost recovery deductions, the right to claim housing tax credits described in Section 42 of the Code and the right to amortize capital costs and to claim any other federal tax benefits attributable to the Improvements.

(e) The effectiveness of this Ground Lease is expressly conditioned upon Tenant's successful negotiation and consummation of a ground lease with the Chamber for the remainder of the land underlying the Project, which is owned by the Chamber. If a ground lease between Tenant and the Chamber has not been negotiated and consummated, by June 30, 2023, then, at Tenant's sole option, this Ground Lease may be canceled and terminated, and neither party shall have any further rights or obligations hereunder

1.06 Low-Income Housing Tax Credits. The Project is, or will be, subjected to and benefited by the terms and conditions of the low-income housing tax credit requirements as set forth in the Code, and as required by Florida Housing Finance Corporation during the appropriate extended use period.

1.07 Closing on Construction Financing. Subject to Unavoidable Delays, in the event Tenant shall not close on the construction financing, including syndication of the housing tax credits, by December 31, 2024, either party shall have the right to terminate this Lease (and such event shall not be deemed an Event of Default) and Landlord and Tenant shall have no further obligation to each other under this Lease, except as to such matters as expressly survive termination, by delivering written notice to the other party.

1.08 **Unavoidable Delays.** Other than Tenant's obligation to pay any amounts due to Landlord provided for in this Lease or to maintain all insurance required by this Lease, the party obligated to perform under this Lease shall not be required to perform and shall be entitled to a reasonable extension of time because of its inability to meet an obligation or a time frame or deadline specified in this Lease, where such failure or inability to perform is caused by an Unavoidable Delay. "**Unavoidable Delays**" shall mean delays beyond the control of a party required to perform, such as delays due to strikes; a natural catastrophe, such as an earthquake, hurricane, flood or tornado, that could not have been prevented; fires; enemy action; civil disturbance; sabotage; restraint by court or public authority; litigation or formal administrative challenges by third parties to the execution or performance of this Lease or the procedures leading to its execution or to the process of entitlement for the Premises; pandemic or epidemic or related governmental shutdown or slowdown affecting the Tenant's ability to obtain entitlements, permits, approvals or any required consents, or to assemble a capable workforce for the commencement or completion of Construction or to obtain materials or services; or moratoriums. Notwithstanding anything in this Lease to the contrary, if a party shall be delayed in the performance of any act required under this Lease by reason of any Unavoidable Delay, and the party then provides notice of the Unavoidable Delay 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 the period equivalent to the period of the delay.

## **ARTICLE II- REPRESENTATIONS AND WARRANTIES**

2.01 **Landlord's Representations and Warranties.** Landlord hereby represents and warrants to Tenant as follows:

(a) **Title.** Landlord owns fee simple, good and marketable title to the land underlying the Premises and there are no mortgages or other encumbrances affecting Landlord's fee simple title to the Premises.

(b) **Landlord and Approvals.** (i) Landlord has full right, power, and authority to make, execute, deliver, and perform its obligations under this Ground Lease; (ii) Landlord has obtained and received all required and necessary consents and approvals to enter into this Ground Lease with Tenant, including the adoption of the Resolution by the North Miami City Council, which Resolution remains in full force and effect and has not been rescinded or amended in any manner adverse to Tenant; and (iii) the entry by Landlord into this Ground Lease with Tenant and the performance of all of the terms, provisions, and conditions contained herein does not and will not, violate or cause a breach or default under any agreement or obligation to which Landlord is a party or by which it is bound.

(c) **Assessments.** There are no unpaid special assessments of which Landlord has received notice for sewer, sidewalk, water, paving, gas, electrical, or utility improvements or other capital expenditures, matured or unmatured, affecting the Premises.

(d) **Contractual Obligations.** Landlord is not obligated under any contract, lease or agreement, materially affecting the ownership, use, operation, management, maintenance, or lease of the Premises.

(e) Full Disclosure. No representation, statement, or warranty by Landlord contained in this Ground Lease or in any exhibit attached hereto contains or will contain any untrue statement of a material fact or omits a material fact necessary to make the statement of fact therein recited not misleading.

(f) Litigation. There is no action, suit, litigation, or proceeding pending or to Landlord's knowledge, threatened against Landlord that could prevent or impair Landlord's entry into this Ground Lease or performance of its obligations hereunder.

(g) Environmental. There are, to the actual knowledge of Landlord, no Hazardous Substances located in, on or under the Premises except as previously disclosed in writing by Landlord to Tenant. For the purposes hereof "**Hazardous Substances**" includes any substances, chemicals, materials or elements that are prohibited, limited or regulated by any and all federal, state or commonwealth, and local laws, regulations, statutes, codes, rules, resolutions, directives, orders, executive orders, consent orders, guidance from regulatory agencies, policy statements, judicial decrees, standards, permits, licenses and ordinances, or any judicial or administrative interpretation of, any of the foregoing, pertaining to the protection of land, water, air, health, safety or the environment whether now or in the future enacted, promulgated or issued (the "**Environmental Laws**"), or any other substances, chemicals, materials or elements that are defined as "hazardous" or "toxic," or otherwise regulated under the Environmental Laws, or that are known or considered to be harmful to the health or safety of occupants or users of the Premises. The term Hazardous Substances shall also include, without limitation, any substance, chemical, material, or element (i) defined as a 'hazardous substance' under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§ 9601, et seq.), as amended by the Superfund Amendment and Reauthorization Act of 1986, and as further amended from time to time and regulations promulgated thereunder; (ii) defined as a "regulated substance" within the meaning of Subtitle I of the Resource Conservation and Recovery Act (42 USC §6991-6991i), as amended from time to time and regulations promulgated thereunder; (iii) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 USC §1321), or listed pursuant to Section 307 of the Clean Water Act (33 USC §1317); (iv) defined as "hazardous," "toxic," or otherwise regulated under any Environmental Laws adopted by the state in which the Premises are located, or its agencies or political subdivisions; (v) which is petroleum, petroleum products or derivatives or constituents thereof, (vi) which is asbestos or asbestos-containing materials; (vii) the presence of which requires notification, investigation or remediation under any Environmental Laws or common laws; (viii) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; (ix) the presence of which on adjacent properties would constitute a trespass by the owner; (x) which is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (xi) which is lead-based paint or lead-based paint-containing materials; (xii) which are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; (xiii) which is radon or radon-containing or producing materials; or (xiv) which by any laws of any governmental authority requires special handling in its collection, storage, treatment or disposal. Notwithstanding any contrary provision of this paragraph (g), the term Hazardous Substances shall not apply to such substances that would otherwise meet such definition as long as (i) the use of such substance in, on or under the Premises is in compliance with all Environmental Laws and (ii) such substance is used in de minimis quantities incidental to the operation of the Premises.

2.02 Tenant's Representations and Warranties. Tenant hereby warrants and represents to Landlord as follows:

(a) Existence. Tenant is a limited liability company existing under the laws of the State of Florida.

(b) Authority. Tenant (i) has the power and authority to own its properties and assets, to conduct its business as presently conducted and to execute, deliver, and perform its obligations under this Ground Lease and (ii) has obtained all company authorizations and approvals which are necessary for it to execute, deliver, and perform its obligations under this Ground Lease.

(c) Binding Obligation. This Ground Lease has been duly and validly executed and delivered by Tenant and constitutes a legal, valid, and binding obligation of Tenant enforceable in accordance with its terms.

(d) Litigation. There is no pending or, to the best of Tenant's knowledge, threatened investigation, action, or proceeding by or before any court, any governmental entity or arbitrator which (i) questions the validity of this Ground Lease or any action or act taken or to be taken by Tenant pursuant to this Ground Lease or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition, financial or otherwise, of Tenant which will materially impair its ability to perform its obligations hereunder.

(e) Full Disclosure. No representation, statement, or warranty by Tenant contained in this Ground Lease or in any exhibit attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make such statement of fact therein not misleading.

### ARTICLE III- RENT

3.01 Ground Rent. Tenant shall pay to each Landlord a one-time payment of base rent ("Base Rent") for the Lease Term in the amount of Ten Dollars (\$10.00), to be delivered to each Landlord by Tenant on the Effective Date. Tenant acknowledges and agrees that the construction of affordable housing on the Premises is a material inducement for Landlord to offer the Premises on the terms set forth herein to Tenant, and but for Tenant's promise to provide such housing and to sublease such office space, the terms contained herein would not be offered.

3.02 Payments by Tenant. Other than as expressly set forth in this Ground Lease, all costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the Improvements or with respect to any interest of Landlord in the Premises, the Improvements, or this Ground Lease shall be the responsibility of Tenant.

### ARTICLE IV- TAXES, OPERATING EXPENSES, INSURANCE REQUIREMENTS, AND RESTORATION

4.01 Taxes. Tenant will pay any payments in lieu of real estate taxes, any real estate taxes and personal property taxes and assessments assessed, levied, confirmed, or imposed on the

Premises or the Improvements during the Lease Term whether or not now customary or within the contemplation of Landlord and Tenant. Tenant will pay all real estate transfer taxes that are required in connection with this Ground Lease. Landlord shall pay all local, state, or federal net income taxes assessed against Landlord, including but not limited to all sale and use taxes imposed by the state of Florida on the payment due under this Ground Lease; local, state, or federal capital levy of Landlord; or sales, excise, franchise, gift, estate, succession, inheritance, or transfer taxes of Landlord. Landlord shall have the obligation to: (i) cause any tax bills related to the Premises or Improvements to be sent directly to Tenant or (ii) provide copies of all bills directly to Tenant promptly after receipt.

#### 4.02 Operating Expenses.

(a) Tenant's Obligation. During the Lease Term, Tenant will pay or cause to be paid directly to the providers of such services all costs and expenses attributable to or incurred in connection with the ownership, use, leasing, occupancy, operation, maintenance, and repair of the Premises and the Improvements including without limitation (i) all energy sources for the Improvements, such as propane, butane, natural gas, steam, electricity, solar energy, and fuel oil; (ii) all water, sewer and trash disposal services; (iii) all maintenance, repair, replacement and rebuilding of the Improvements including, without limitation, all mechanical, electrical, HVAC, telecommunications and security systems within the Improvements, and all structural and non-structural components of the Improvements, both interior and exterior; (iv) all landscaping, maintenance, repair and striping of all parking areas of the Improvements; (v) all insurance premiums relating to the Premises, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; and (vi) the costs and expenses of all capital improvements or repairs (whether structural or non-structural) required to maintain the Improvements in good order and repair or required by any Governmental (or quasi-governmental) Authority having jurisdiction over the Premises and the Improvements.

(b) Permits and Licenses. Tenant will also procure, or cause to be procured any and all necessary permits, licenses, or other authorizations required for the installation and maintenance of wires, pipes, conduits, equipment, and appliances for use in supplying any such service to and upon the Premises and the Improvements. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

4.03 Insurance. During the Lease Term, Tenant shall maintain and keep in force insurance, naming Landlord as an additional insured, if applicable, in the type and for the amounts specified on Exhibit C, which types and amounts may be adjusted from time to time by Landlord in its reasonable discretion. All public liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not secondary to insurance coverage that Landlord may carry. If Tenant fails to maintain such insurance, at its election, and upon five (5) days' notice to Tenant, Landlord may, but shall not be obligated to, procure such insurance as may be necessary to comply with the insurance requirements of this Section 4.03, and Tenant shall repay to Landlord as Additional Rent the cost of such insurance. Tenant shall furnish to Landlord certificates of insurance which shall state that a thirty (30)-day notice of prior cancellation or change will be provided to Landlord.

#### 4.04 Restoration.

(a) If the Improvements shall be damaged or destroyed in whole or in part, Tenant shall give prompt notice thereof to Landlord. The net amount of all insurance proceeds received by Tenant with respect to such damage or destruction, after deduction of the reasonable costs and expenses incurred by Landlord in collecting the same (the "**Net Proceeds**"), shall, subject to the terms of any Permitted Leasehold Mortgage, be disbursed by Landlord in accordance with the terms and conditions set forth herein to pay for the costs and expenses of the Restoration (defined below), provided that (i) no Event of Default (defined below) has occurred and remains uncured under this Ground Lease, (ii) except as otherwise agreed to by Landlord and subject to the terms of any Permitted Leasehold Mortgage, Tenant proceeds promptly after the insurance claims are settled with the restoration, replacement, rebuilding or repair of the Improvements as nearly as possible to the condition the Improvements were in immediately prior thereto (the "**Restoration**"), (iii) the Restoration shall be done in compliance with all Applicable Laws, (iv) all costs and expenses incurred by Landlord in connection with making the Net Proceeds available for the Restoration, including, without limitation, reasonable counsel fees and inspecting engineer fees incurred by Landlord, shall be paid out of the Net Proceeds, (v) Landlord, in its reasonable discretion, shall have determined that the Restoration is in its best interest, provided that Landlord hereby acknowledges and agrees that Restoration of the Project is in Landlord's best interest during the initial fifteen (15) years of the tax credit compliance period pursuant to Section 42 of the Code, and (vi) Tenant deposits sufficient additional funds which, when added to the Net Proceeds, will pay for the costs and expenses of the Restoration. Tenant shall not be excused from repairing or maintaining the Premises and/or Improvements as provided in this Section or restoring all damage or destruction to the Premises and/or Improvements, regardless of whether or not there are insurance proceeds available to Tenant or whether any such proceeds are sufficient in amount, and the application or release by Landlord of any insurance proceeds shall not cure or waive any default or notice of default under this Ground Lease or invalidate any act done pursuant to such default or notice of default.

(b) Net Proceeds Held in Trust. Subject to the terms of any Permitted Leasehold Mortgage as to the holding and disbursement of the Net Proceeds, the Net Proceeds shall be held in trust by Landlord and shall be paid by Landlord to, or as directed by, Tenant from time to time during the course of the Restoration upon the written request of Tenant if the work for which payment is requested has been done in a good and workmanlike manner and substantially in accordance with the plans and specifications thereof, if any, and (i) either no mechanics' or other liens or encumbrances on the Premises arising out of the Restoration exist or any such liens or encumbrances have been stayed, discharged or bonded, and (ii) the balance of the Net Proceeds plus the balance of any deficiency deposits given by Tenant to Landlord pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the Restoration.

(c) Disbursement of Net Proceeds. Subject to the terms of any Permitted Leasehold Mortgage, notwithstanding anything to the contrary contained herein, if the Net Proceeds shall be less than \$500,000.00, the Net Proceeds shall be disbursed directly to Tenant for payment of costs of Restoration, and the Landlord shall not be entitled to hold or disburse such Net Proceeds.

(d) Discretion of Landlord. Landlord shall not be entitled to share in the proceeds of any insurance policy except as specifically set forth herein and Landlord further acknowledges that any and all excess insurance proceeds after all disbursements for the Restoration have been completed shall belong to Tenant.

## **ARTICLE V- USE OF PREMISES; COVENANTS RUNNING WITH THE LAND**

5.01 Permitted Use. During the Lease Term, or such lesser period as may be permitted by law, Tenant will continuously set aside forty-six (46) units located on the Premises as new affordable rental housing units in compliance with Section 42 of the Code and any requirements of Florida Housing Finance Corporation, and Tenant shall continuously use and operate all units in a manner which strictly satisfies the requirements of this Ground Lease.

5.02 Compliance with Laws. Tenant shall not use, occupy, suffer or permit any portion of the Premises to be used or occupied in violation of any Applicable Law, certificate of occupancy, or other governmental requirement. Tenant will comply with all Applicable Laws and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any other similar body, having jurisdiction over the Premises and Improvements.

### **5.03 Special Provisions Relating to Compliance with Environmental Laws.**

(a) Tenant's Environmental Covenants. Without limitation of any of Tenant's other covenants, agreements and obligations under this Ground Lease, Tenant hereby specifically covenants and agrees to fulfill the responsibilities set forth below with respect to environmental matters:

(i) Tenant shall comply with all Environmental Laws applicable to Tenant relative to the Premises and Improvements. Tenant shall identify, secure, and maintain all required governmental permits and licenses as may be necessary for the Premises and Improvements, or otherwise required by Tenant's activities. Tenant shall maintain such permits and licenses in effect and shall renew them in a timely manner, and Tenant shall comply and use reasonable efforts to cause all third parties to comply with the terms of such permits and licenses. All Hazardous Substances present, handled, generated or used by Tenant on the Premises will be managed, transported and disposed of in a lawful manner.

(ii) Tenant shall provide Landlord with copies of all forms and other information concerning any releases, spills or other incidents relating to Hazardous Substances or any violations of Environmental Laws promptly upon the discovery of such releases, spills, or incidents.

(b) Landlord's Environmental Covenants. Without limitation of any of Landlord's other covenants, agreements, and obligations under this Ground Lease, Landlord hereby specifically covenants and agrees to provide Tenant with copies of all forms and other information concerning any releases, spills, or other incidents relating to Hazardous Substances or any violations of Environmental Laws with respect to the Premises of which Landlord has actual knowledge.

**5.04 Tenant's Environmental Indemnity.** Tenant covenants and agrees to indemnify, defend, and hold Landlord free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements, or expenses (including reasonable attorneys' fees) which may at any time be imposed upon, reasonably incurred by, or asserted or awarded against Landlord in connection with or arising from:

(a) the existence of any Hazardous Substances which are first placed on, in, or under all or any portion of the Premises during the Lease Term except to the extent so placed by Landlord; or

(b) any violation of any Environmental Laws by Tenant at or relating to the Premises which does not arise out of conditions existing prior to the Possession Date.

**5.05 Responsibility of Landlord.** Landlord shall not be responsible under this Ground Lease for any claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, arising out of (i) any activity by Tenant or its agents or contractors carried on or undertaken on or off the Premises following the Possession Date in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Substances located or present on or under the Premises (except to the extent of any activity carried on or undertaken solely by or contracted for by Landlord or its agents and except to the extent that any Hazardous Materials are located or present on or under the Premises prior to the Possession Date); or (ii) the failure of Tenant or its agents or contractors following the Possession Date to comply with any Environmental Laws relating to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Substances into, on, under or from the Premises whether or not such failure to comply was known or knowable, discovered or discoverable following the Possession Date.

**5.06 Restrictions Applicable to the Premises and the Improvements.**

(a) The provisions of this Section 5.06 are intended to create a covenant running with the land and shall be binding upon Landlord and Tenant and each of their respective successors and assigns and all subsequent owners of the Premises and the Improvements, including, without limitation, any entity which succeeds to Tenant's interest in the Premises and the Improvements.

(b) Tenant shall not execute any agreement, lease, conveyance or other instrument whereby the Premises and Improvements or any part thereof is restricted upon the basis of race, color, creed, religion, ancestry, national origin, handicap, age, sex, or marital status in the sale, lease, rental, use, or occupancy of the Premises and the Improvements.

(c) Tenant shall not discriminate in the use, sale, lease, or occupancy of the Premises and the Improvements against any person upon the basis of race, color, creed, religion, ancestry, national origin, handicap, age, sex, or marital status.

(d) Tenant shall comply with all State, Federal and local laws, rules, and regulations in effect from time to time, prohibiting discrimination or segregation by reason of race, color, creed, religion, ancestry, national origin, handicap, age, sex, or marital status in the sale, lease, use, or occupancy of the Premises and the Improvements.

**5.07 Indemnification.** Tenant shall indemnify, defend, save and hold Landlord and its officers, officials, directors, agents and employees (collectively with Landlord, the "**Landlord Parties**") harmless from and against any and all claims, actions, damages, losses, liabilities, costs and expenses (including court costs, attorneys' fees, and cost of claim processing, investigation and litigation) arising out of or in connection with (a) any breach of this Ground Lease by Tenant, (b) any violation, or alleged violation by Tenant, its affiliates, joint venture partners, agents or employees of any of them or anyone for whose acts they may be liable (collectively with Tenant, the "**Tenant Parties**") of state, federal, or local law, rule or regulation; (c) any bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, arising out of or related to the occupancy and/or use of the Premises by any one or more of the Tenant Parties. Such indemnity shall apply to any such claim, action, damage, loss, liability, cost or expense caused in whole or in part by any act or omission (negligent or otherwise) by any one or more of the Tenant Parties, regardless of whether or not it is caused in part by the Landlord Parties indemnified hereunder unless caused by the negligence or willful misconduct of the Landlord Parties or a failure to act by the Landlord Parties when a duty to act is present. It is the specific intention of the parties that the Landlord Parties shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Landlord Parties, be indemnified by Tenant from and against any and all claims described in this Section 5.07. It is agreed that Tenant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Premises, Tenant agrees to waive all rights of subrogation against the Landlord Parties for losses arising from the use, occupancy or condition of the Premises.

**5.08 Survival.** This Article V shall survive the expiration or early termination of this Ground Lease.

## **ARTICLE VI- CONVEYANCES, ASSIGNMENTS AND TRANSFERS**

**6.01 Consent.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant, except that other than as set forth elsewhere in this Ground Lease, Tenant may not assign or sublet its interest in this Ground Lease without the prior written consent of Landlord and, if required under the terms of any Permitted Leasehold Mortgage, any Permitted Leasehold Mortgagee. Any attempted transfer without such consent shall be null and void.

**6.02 Prohibited Transfers.** Tenant agrees for itself and its successors and assigns in interest hereunder that it will not, other than in accordance with the granting of liens under Permitted Leasehold Mortgages: (1) assign this Ground Lease or any of its rights under this Ground Lease as to all or any portion of the Premises, or (2) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of any or all of the Premises, or the occupancy or use thereof, other than in accordance with this Ground Lease (including but not limited to (i) any sale at foreclosure (other than by a

Permitted Leasehold Mortgagee) or by the execution of any judgment of any or all of Tenant's rights hereunder, or (ii) any Transfer by operation of law), without first obtaining Landlord's express written consent thereto; provided, however, notwithstanding anything to the contrary in this Ground Lease, Tenant may, upon reasonable prior notice to Landlord but without first obtaining Landlord's consent, convey or dedicate land for use as streets, alleys, or other public rights-of-way, and make grants and easements for the establishment, operation and maintenance of public utilities.

**6.03 Additional Restrictions on Transfers.** In addition to the transfers described in Section 6.02, no transfer, conveyance, or assignment shall be made, without the prior written approval of Landlord, of: (1) any interest of a managing member (any such interest being referred to as a "**Controlling Interest**") of Tenant; or (2) a Controlling Interest in any entity that has a Controlling Interest in Tenant (each of such transfers, conveyances and assignments, together with the transfers described in Section 6.02, is hereafter referred to as a "**Transfer**"). Landlord agrees that it will not unreasonably withhold, delay, or condition a request by Tenant for consent to an internal reorganization of the corporate structure of Tenant or any of the members of Tenant. Furthermore, notwithstanding the above, the non-managing member of Tenant may remove any managing member or manager of Tenant without Landlord consent in accordance with the terms of Tenant's Operating Agreement.

**6.04 No Remedy for Unauthorized Transferee.** Any person to whom any Transfer is attempted without such consent shall have no claim, right, or remedy whatsoever hereunder against Landlord, and Landlord shall have no duty to recognize any person claiming under or through the same.

**6.05 Permitted Transfers.** Notwithstanding anything in this Ground Lease to the contrary, by its execution of this Ground Lease, Landlord is deemed to have consented to any lease of a new housing rental unit to a tenant.

**6.06 Subsequent Assignment.** Landlord's consent to one conveyance, assignment, or transfer will not waive the requirement of its consent to any subsequent conveyance, assignment, or transfer.

**6.07 Request for Consent.** If Tenant requests Landlord's consent to a specific conveyance, assignment, or Transfer, Tenant shall provide to Landlord (a) the name and address of the proposed person or entity; (b) a copy of all proposed conveyance, assignment, or transfer instruments and other legal agreements involved in effecting a transfer; (c) satisfactory information about the nature, business, and business history of the proposed person or entity; (d) banking, financial, or other credit information, and references about the proposed person or entity sufficient to enable Landlord to determine the financial responsibility and qualifications of the proposed person or entity; (e) an instrument in writing satisfactory to Landlord and in recordable form wherein the proposed transferee expressly assumes all of the obligations of the transferor; and (f) satisfactory evidence that the transferee will comply with such other conditions as Landlord may determine are necessary to achieve and safeguard the purposes of this Ground Lease.

**6.08 Documentation of Assignment.** Upon the granting of any consent by Landlord with respect to a conveyance, assignment, or transfer by Tenant, this Ground Lease shall be binding

upon and inure to the benefit of Landlord, the assignee, and their respective successors and permitted assigns.

6.09 Permitted Leasehold Mortgages. Neither Tenant nor any permitted successor in interest to the Premises or any part thereof shall, without the prior written consent of Landlord in each instance, engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Premises, except for leasehold mortgages securing construction, interim or permanent financing and refinancing of Tenant's leasehold interest in the Premises (the "**Permitted Leasehold Mortgages**"). With respect to the Permitted Leasehold Mortgages, the following provisions shall apply:

(a) When giving notice to Tenant with respect to any Event of Default, the Landlord will also send a copy of such notice to i) each equity investor holding a membership interest in Tenant, and their respective successors and/or assigns (each, an "**Investor**") and ii) the holder of each Permitted Leasehold Mortgage (each a "**Permitted Leasehold Mortgagee**"), provided that each such Investor or Permitted Leasehold Mortgagee shall have delivered to Landlord in writing a notice naming itself as an Investor or the holder of a Permitted Leasehold Mortgage and registering the name and post office address to which all notices and other communications to it may be addressed.

(b) Each Permitted Leasehold Mortgagee and the Investor shall be permitted, but not obligated, to cure any Event of Default under this Ground Lease within the same period of time specified for Tenant to cure such default, or such longer time as is permitted in Section 6.09(d), below. No notice by Landlord to Tenant of an Event of Default under this Ground Lease shall be effective unless Landlord has given written notice to each Investor and each Permitted Leasehold Mortgagee whose notice information has been provided to Landlord. Tenant authorizes the Investor and each Permitted Leasehold Mortgagee to take any such action at such party's option and does hereby authorize entry upon the Premises for such purpose. Additionally, Tenant may delegate irrevocably to any Permitted Leasehold Mortgagee the authority to exercise any or all of Tenant's rights hereunder, including, but not limited to the right of Permitted Leasehold Mortgagee to participate (in conjunction with or to the exclusion of Tenant) in any proceeding, arbitration or settlement involving condemnation or eminent domain affecting Tenant's leasehold interest in the Premises, but no such delegation shall be binding upon Landlord unless and until either Tenant or the Permitted Leasehold Mortgagee in question shall give to Landlord a true copy of a written instrument effecting such delegation, in form required for recording. Any provision of this Ground Lease that gives Permitted Leasehold Mortgagee the privilege of exercising a particular right of Tenant hereunder on condition that Tenant shall have failed to exercise such right shall not be deemed to diminish any privilege that Permitted Leasehold Mortgagee may have, by virtue of a delegation of authority from Tenant, to exercise such right without regard to whether or not Tenant shall have failed to exercise such right.

(c) Landlord agrees to accept payment or performance by any Permitted Leasehold Mortgagee or the Investor as though the same had been done by Tenant.

(d) In the case of an Event of Default other than in the payment of money, and provided that a Permitted Leasehold Mortgagee has commenced to cure the default and is

proceeding with due diligence to cure the default, Landlord will refrain from terminating this Ground Lease for a reasonable period of time (not to exceed one hundred sixty (160) days from the date of the notice of default) within which time the Permitted Leasehold Mortgagee may either (i) obtain possession of the Premises (including possession by receiver); (ii) institute foreclosure proceedings and complete such foreclosure; or (iii) otherwise acquire Tenant's interest under this Ground Lease. The Permitted Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which was the subject of the notice shall have been cured.

(e) Any Permitted Leasehold Mortgagee or other acquirer of Tenant's leasehold estate and interest in this Ground Lease pursuant to foreclosure, an assignment in lieu of foreclosure or other proceedings, any of which are permitted without Landlord's consent, may, upon acquiring Tenant's leasehold estate and interest in this Ground Lease, without further consent of Landlord, sell and assign the leasehold estate and interest in this Ground Lease on such terms and to such persons and organizations as are acceptable to such Permitted Leasehold Mortgagee or acquirer and thereafter be relieved of all obligations under this Ground Lease, provided such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Ground Lease.

(f) In the event of a termination of this Ground Lease prior to its stated expiration date, Landlord will enter into a new lease for the Premises with the Permitted Leasehold Mortgagee (or its nominee) ("**Replacement Tenant**"), for the remainder of the Lease Term, effective as of the date of such termination (the "**New Lease**"), at the same Base Rent and Additional Rent and subject to the same covenants and agreements, terms, provisions, and limitations herein contained, provided that:

(i) Landlord receives the Permitted Leasehold Mortgagee's written request for such New Lease within thirty (30) days from the date of such termination and notice thereof by Landlord to the Permitted Leasehold Mortgagee (including an itemization of amounts then due and owing to Landlord under this Ground Lease), and such written request is accompanied by payment to Landlord of all amounts then due and owing to Landlord under this Ground Lease and, within ten (10) days after the delivery of an accounting therefor by Landlord, pays any and all costs and expenses, including reasonable counsel fees, court costs, and disbursements made by Landlord in connection with any such default and termination as well as in connection with the execution and delivery of the New Lease, less the net income collected by Landlord from the Premises subsequent to the date of termination of this Ground Lease and prior to the execution and delivery of the New Lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the Base Rent and Additional Rent thereafter becoming due under the New Lease; and

(ii) Upon the execution and delivery of the New Lease at the time payment is made in (i) above, all subleases which thereafter may have been assigned and transferred to Landlord shall thereupon be assigned and transferred without recourse by Landlord to Replacement Tenant.

(iii) Notwithstanding the foregoing, the New Lease shall be subject to the liens of the Permitted Leasehold Mortgages which existed immediately prior to the termination

of this Ground Lease (other than that of Replacement Tenant) and, further, shall not impact the rights, priorities and interests of the Permitted Leasehold Mortgagees set forth therein.

Notwithstanding the foregoing and to the extent permitted by Section 42 of the Code, the deadline to complete construction of the Improvements set forth in Section 1.07 shall be extended for such period of time as may be reasonably required by the Permitted Leasehold Mortgagee or its nominee to complete construction. If at the time of termination of this Ground Lease prior to its stated expiration date there exists more than one Permitted Leasehold Mortgagee, then references to the "Permitted Leasehold Mortgagee" in this subsection (f) shall apply to the Permitted Leasehold Mortgagee then holding the senior mortgage encumbering the Premises (the "**Senior Mortgage**").

(g) At no time shall Landlord's fee title in the Premises, or Landlord's interest in the Ground Lease be subordinated in any manner to the interests of any Permitted Mortgagee or any person claiming by or through Tenant. Landlord shall reasonably consider such amendments to this Lease as may be reasonably requested by any Permitted Leasehold Mortgagee, provided that such amendments do not increase, or in the sole opinion of the Landlord, unreasonably alter the obligations of Landlord under this Lease.

6.10 Tenant's Investor. On or about the Possession Date, Tenant's Investor will be admitted as a member of the Tenant.

(a) Cure Rights. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not exercise any of its remedies hereunder without having given notice of the Event of Default or other breach or default to the Investor (following the admission of the Investor) simultaneously with the giving of notice to Tenant. The Investor shall have the same cure period after the giving of a notice as provided to Tenant, plus an additional period of thirty (30) days. If the Investor elects to cure the Event of Default or other breach or default, Landlord agrees to accept such performance as though the same had been done or performed by Tenant.

(b) Investor. Notwithstanding anything to the contrary contained in this Lease, following the admission of the Investor, the Investor shall be deemed a third-party beneficiary of the provisions of this Section for the sole and exclusive purpose of entitling the Investor to exercise its rights to notice and cure, as expressly stated herein. The foregoing right of the Investor to be a third-party beneficiary under the Lease shall be the only right of Investor (express or implied) to be a third-party beneficiary hereunder.

(c) New Manager. Landlord agrees that it will take no action to effect a termination of the Lease by reason of any Event of Default or any other breach or default without first giving to the Investor a reasonable time of not less than sixty (60) days after i) Landlord's notice to Tenant and Investor of such Event of Default or any other breach or default and ii) the expiration of Tenant's cure period ("**Manager Replacement Deadline**"), to replace Tenant's Manager and cause the new Manager to cure the Event of Default or other breach or default. As a condition of such forbearance, Landlord must receive notice from the Investor of the substitution of a new Manager of Tenant not later than the Manager Replacement Deadline and Tenant, following such substitution or admission of the new Manager, shall thereupon proceed with due diligence to cure such Event of Default or other breach or default as soon as reasonably possible. In no event, however, shall Landlord be required to engage in the forbearance described in this

Section for a period longer than three (3) months, regardless of the due diligence of the Investor or the new Manager.

(d) Tax Credit Compliance Period. For the 15-year tax credit compliance period, Landlord and Tenant shall not agree between themselves to any material amendment, modification or supplement to this Lease negatively impacting tax credit compliance without the prior written consent of the Investor, which consent will not be unreasonably delayed, conditioned or withheld.

6.11 Estoppel Certificates. Each party hereto shall, at any time and from time to time within ten (10) days after being requested to do so by the other party and/or any Permitted Leasehold Mortgagee in writing, execute, acknowledge, and address and deliver to the requesting party not more than twice per calendar year (or, at the latter's request, to any existing or prospective Permitted Leasehold Mortgagee, transferee or other assignee of the requesting party's interest in the Premises or under this Ground Lease which acquires such interest in accordance with this Ground Lease) a certificate in recordable form:

(a) Certifying (i) that this Ground Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (ii) that Tenant has accepted possession of the Premises, and the date on which the Lease Term commenced; (iii) as to the dates to which any Base Rent or Additional Rent and other charges arising hereunder have been paid; (iv) as to the amount of any prepaid Base Rent or Additional Rent or any credit due to Tenant hereunder; (v) as to whether, to the best of such party's knowledge, information and belief, the requesting party is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and (vi) as to any other fact or condition reasonably requested by the requesting party; and

(b) Acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

6.12 Permitted Corporate Transfers. Notwithstanding anything to the contrary set forth elsewhere in this Ground Lease, Tenant may, without Landlord's prior written consent, assign all or part of this Ground Lease, or sublease all or a part of the Premises, to:

(a) any entity which has the power to direct Tenant's management and operation, or any corporation whose management is controlled by Tenant; or

(b) any entity a majority of whose voting equity is owned by Tenant; or

(c) any entity in which or with which Tenant, its successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation, so long as the liabilities of the entities participating in such merger or consolidation are assumed by the entity surviving such merger or created by such consolidation.

## **ARTICLE VII- MAINTENANCE AND REPAIR**

7.01 Tenant's Obligations. Tenant will, at its sole cost and expense, maintain the Premises and the Improvements and make repairs, restorations, and replacements to the Improvements, including without limitation the landscaping; heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems and other systems for the furnishing of utilities or services to the Premises, structural roof, walls, and foundations; and the fixtures and appurtenances as and when needed to preserve them in good working order and condition, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, and contractors. All such repairs, restorations, and replacements will be in quality and class equal to or better than the original work or installations.

7.02 No Obligation of Landlord. Landlord shall not be required to perform or to pay for any maintenance, or make or pay for any repairs, replacements or improvements of any kind whatsoever to the Premises or the Improvements or any part thereof during the Lease Term, regardless of the cause necessitating any such maintenance, repairs, replacements, or improvements, in recognition that this Ground Lease shall be net in all respects to Landlord. Tenant expressly waives the right to make repairs at the expense of Landlord as may be provided in any statute, law, or ordinance in effect as of the Possession Date.

## ARTICLE VIII- LIENS

8.01 No Liens. Tenant shall not have any right, authority, or power to bind Landlord, the Premises or any other interest of Landlord in the Premises and will pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto. Tenant shall not permit to remain any encumbrances of the Improvements, except the Permitted Leasehold Mortgages. Tenant shall comply with all laws which provide for the waiver of liens which may arise under any contract for labor or materials for the Improvements and Tenant shall comply with the requirements of Chapter 713, Florida Statutes, regarding the filing of a Notice of Commencement prior to the commencement of any work at the Premises to construct the Improvements or otherwise improve the Premises. Landlord agrees to execute, or join in the execution of, any such Notice of Commencement and any amendment or termination thereof. Tenant will comply in all respects with the requirements of Chapter 713, Florida Statutes regarding proper payments to and obtaining partial and final releases from all contractors, subcontractors, material suppliers and other parties who have given notices to owner or may be otherwise entitled to file liens against the Premises. NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES, OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR TO ANYONE HOLDING ANY OF THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN AND TO ANY OF THE PREMISES. PURSUANT TO FLORIDA STATUTES SECTION 713.10(2) (a), TENANT HEREBY ACKNOWLEDGES RECEIPT OF NOTICE THAT THE INTEREST OF LANDLORD IN THE PREMISES SHALL NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS MADE BY TENANT. TENANT FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF FLORIDA STATUTES SECTION 713.10(2)(a)

STATE THAT TENANT SHALL NOTIFY ANY CONTRACTOR MAKING ANY SUCH IMPROVEMENTS, AND THAT THE KNOWING OR WILLFUL FAILURE OF TENANT TO PROVIDE SUCH NOTICE TO ITS CONTRACTOR SHALL RENDER THE CONTRACT BETWEEN TENANT AND ITS CONTRACTOR VOIDABLE AT THE OPTION OF THE CONTRACTOR. LANDLORD SHALL BE PERMITTED TO POST ANY NOTICES ON THE PREMISES REGARDING SUCH NON-LIABILITY OF LANDLORD.

## ARTICLE IX- SURRENDER

9.01 Expiration of Lease Term. Upon the expiration of the Lease Term or sooner termination of this Ground Lease, Tenant will surrender the Premises and the Improvements in the condition set forth below. Tenant may not remove from the Premises any fixtures, equipment, or furniture without the approval of Landlord except in the ordinary course of business and for replacements or repair. Tenant expressly waives to Landlord the benefit of any law now in force or hereafter adopted requiring notice to vacate the Premises at the end of the Lease Term, and Tenant covenants and agrees to give up quiet and peaceful possession and to surrender the Premises together with all the Improvements thereon and appurtenances upon expiration of the Lease Term or earlier termination of this Ground Lease without further notice from Landlord. Tenant acknowledges and agrees that upon the expiration of the Lease Term or sooner termination of this Ground Lease any and all rights and interests it may have either at law or in equity to the Premises and Improvements shall immediately cease.

## ARTICLE X- CASUALTY; CONDEMNATION

10.01 Damage or Destruction. Tenant shall give prompt written notice to Landlord after the occurrence of any fire, earthquake, act of God, or other casualty to or in connection with the Premises or the Improvements or any portion thereof (each a "**Casualty**"). Except as otherwise agreed to by Landlord and subject to the provisions of the Permitted Leasehold Mortgages, if during the Lease Term, the Premises or the Improvements shall be damaged or destroyed by Casualty, and Landlord and all Permitted Leasehold Mortgagees shall have consented to release the Net Proceeds to Tenant (if consent of a Permitted Leasehold Mortgagee is required under its Permitted Leasehold Mortgage), Tenant shall repair or restore the Premises or the Improvements as nearly as possible to the condition the Premises or the Improvements were in immediately prior thereto. Notwithstanding the foregoing, Landlord consent shall not be required for the release of the Net Proceeds to Tenant provided the requirements for Restoration as set forth in Section 4.04 are satisfied. Upon the occurrence of any such Casualty, Tenant, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty. After payment of the Net Proceeds for the repair or restoration of the Premises and the Improvements, any excess sums remaining shall be paid to or retained by Tenant.

### 10.02 Condemnation.

(a) Taking. If, by exercise of the right of eminent domain or by conveyance made in response to the threat of the exercise of such right (in either case a "**Taking**"), all of the Premises are taken, or if so much of the Premises are taken that Tenant believes the Premises cannot be used by Tenant for the purposes for which they were used immediately before the Taking, then this Ground Lease shall terminate on the earlier of the vesting of title to the Premises

in the condemning authority, or the taking of possession of the Premises by the condemning authority.

(b) Condemnation Award. Subject to the terms of the Permitted Leasehold Mortgages, Landlord and Tenant agree that, in the event of a Taking that does not result in the termination of this Ground Lease pursuant to subsection (a) above, this Ground Lease shall continue in effect as to the remainder of the Premises, and the net amounts owed or paid to Landlord or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by Landlord in collecting such award or payment (the "**Net Condemnation Award**") will be disbursed in accordance with subsection (d) below to Landlord and/or Tenant. Tenant shall have the right to participate in negotiations of and to approve any such settlement with a condemning authority (which approval shall not be unreasonably withheld).

(c) Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Premises or of Tenant's interest in this Ground Lease, then the Lease Term shall not be reduced and Tenant shall continue to pay in full all rents, impositions and other charges required herein, without reduction or abatement thereof at the times herein specified.

(d) Subject to the terms of the Permitted Leasehold Mortgages, if there is a complete or partial Taking which affects only the use of the Premises during the Lease Term, Tenant shall be entitled to receive and retain the Net Condemnation Award. Subject to the terms of the Permitted Leasehold Mortgages, if there is a complete or partial Taking which affects the use of the Premises after the Lease Term, the Net Condemnation Award shall be apportioned between Tenant and Landlord based on the ratio of the remaining term hereof and the remaining expected useful life of the Premises following the expiration of the Lease Term.

(e) Subject to the terms of the Permitted Leasehold Mortgages, notwithstanding any provision herein to the contrary, Landlord shall be entitled to receive and retain any portion of the Net Condemnation Award apportioned to the land upon which the Improvements are located.

## **ARTICLE XI- QUIET ENJOYMENT**

11.01 Quiet Enjoyment. So long as there is no ongoing Event of Default (beyond any applicable notice and/or cure period), Tenant's possession of the Premises will not be disturbed by Landlord, its successors and assigns.

11.02 Landlord's Right of Inspection. Notwithstanding Section 11.01 above, Landlord, in person or through its agents, upon reasonable prior notice to Tenant, shall have the right to enter upon the Premises for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Tenant with its obligations under this Ground Lease.

## **ARTICLE XII- DEFAULT; REMEDIES**

### **12.01 Landlord's Right to Perform.**

(a) Landlord's Option. If Tenant fails to pay when due amounts payable under this Ground Lease or to perform any of its other obligations under this Ground Lease within the

time permitted for its performance, then Landlord, after ten (10) days' prior written notice to Tenant without waiving any of its rights under this Ground Lease, may (but will not be required to) pay such amount or perform such obligation. All amounts so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such obligations will be payable by Tenant to Landlord on demand and shall constitute Additional Rent (as defined in Section 12.01(b)).

(b) **Additional Rent.** Any and all payments that Tenant is required to make hereunder to or for the benefit of Landlord including expenditures to operate, repair and maintain the Premises and the Improvements shall be deemed to be "**Additional Rent**". All such Additional Rent shall be payable in accordance with the provisions of the Sections of this Ground Lease specifying the payment of such Additional Rent and shall be subject to the notice and cure rights provided in Section 12.02(a). The Base Rent and the Additional Rent payable hereunder shall be deemed "Rents" reserved by Landlord, and any remedies now or hereafter given to Landlord under the laws of the State of Florida for collection of the Rents shall exist in favor of Landlord, in addition to any and all other remedies specified in this Ground Lease.

12.02 **Events of Default.** The occurrence of any of the following events shall constitute an "**Event of Default**" by Tenant:

(a) Tenant defaults in the due and punctual payment of Base Rent and/or Additional Rent, and such default continues for ten (10) days after written notice from Landlord;

(b) Tenant vacates or abandons the Premises or any substantial part thereof for a period of more than thirty (30) consecutive days;

(c) This Ground Lease, the Premises or the Improvements or any part thereof are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged or stayed within ninety (90) days after its levy. Tenant shall notify Landlord in writing of its action to either satisfy or contest the levy and, if contested, of the matter's status on a monthly basis until concluded. If Tenant shall fail to cause such levy to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Landlord and the costs and expenses incurred by Landlord in connection therewith, shall be payable by Tenant and shall be paid by Tenant to Landlord on demand as Additional Rent hereunder;

(d) Tenant makes any sale, conveyance, assignment or transfer in violation of this Ground Lease;

(e) Tenant violates, breaches or fails to comply with any of the other material agreements, terms, covenants, or conditions which this Ground Lease requires Tenant to perform (and where such failure to comply is not otherwise specifically addressed in this Section 12.02), and such violation, breach or failure continues for a period of thirty (30) days after notice by Landlord to Tenant; provided that if the nature of the breach is such that it cannot be cured by Tenant within the period of thirty (30) days, Tenant shall not be deemed in default of this Ground

Lease if Tenant commences the curing of such default within such period of thirty (30) days and prosecutes in good faith the curing of same continuously thereafter until the same is, in fact, cured, but in no event shall the cure period be extended later than one hundred sixty (160) days after the notice from Landlord to Tenant;

(f) Tenant defaults under any agreement relating to the Project or Premises to which Landlord and Tenant are parties, which default is not cured under any permissible cure period provided for the same in such other agreements;

(g) Tenant shall be unable to pay Tenant's debts as the same shall mature;

(h) Tenant shall file a voluntary petition in bankruptcy or a voluntary petition seeking reorganization or to effect a plan or an arrangement with or for the benefit of Tenant's creditors;

(i) Tenant shall apply for or consent to the appointment of a receiver, trustee, or conservator for any portion of Tenant's property or such appointment shall be made without Tenant's consent and shall not be removed within ninety (90) days;

(j) Tenant shall fail to maintain and keep in force insurance in the type and for the amounts specified herein, naming Landlord as an additional insured and loss payee, as applicable, and such failure continues for a period of ten (10) days after notice by Landlord to Tenant; or

(k) Tenant breaches any covenants, terms, or agreements of any agreement or document relating to the Project or Premises to which Tenant and Landlord are parties, which breach is not cured under any permissible cure period provided for the same in such other agreements.

### **12.03 Remedy.**

(a) If any one or more Events of Default set forth in Section 12.02 occurs, then, subject to all cure rights of Tenant, the Investor and all Permitted Leasehold Mortgagees, and further subject to the provisions of Section 12.03 (b) below, Landlord may terminate this Ground Lease by written notice to Tenant of its intention to terminate this Ground Lease on the date of such notice or on any later date specified in such notice, and, on the date specified in such notice, Tenant's right to possession of the Premises and the Improvements will cease and the estate conveyed by this Ground Lease shall revest in Landlord; provided that such revesting of the estate and the reentry by Landlord shall be subject to and limited by, and shall not defeat, render invalid or limit in any way the lien of any Permitted Leasehold Mortgage.

(b) Notwithstanding anything in this Lease to the contrary, the Landlord shall not have the right to terminate this Ground Lease after the Possession Date and prior to the later of (a) the expiration of the 15-year tax credit compliance date for the Project described in section 42 (i)(l), and (b) the withdrawal of the Investor as a member of the Tenant. or any Permitted Leasehold Mortgage remain outstanding (the "Standstill Period"). During the Standstill Period, Landlord shall not exercise any of its rights or remedies under this Ground Lease, other than to specifically enforce the Tenant's obligations hereunder, and this Ground Lease shall not be

terminated without (i) the prior written consent of the Investor and (ii) the failure of any holder of a Permitted Leasehold Mortgage to exercise its cure rights as provided for in this Ground Lease. Furthermore, so long as the Investor, and any of its successors or assigns, remains the investor member of the Tenant or any Permitted Leasehold Mortgage remains outstanding, Landlord shall not be permitted to exercise any right or remedy against Tenant, where the circumstance giving rise to each right or remedy resulted from an act or omission of Landlord or where the same would cause a default under any of the loan documents to which Tenant or the Premises is subject or the Tenant's Operating Agreement without the prior written consent of Investor and the holder of any Permitted Leasehold Mortgage.

## ARTICLE XIII

### UTILITIES; REPAIR AND RELOCATION OF UTILITIES

13.01 Tenant agrees that any and all utility accounts with respect to the Premises shall be in the name of Tenant. From and after the Lease Commencement Date, under no circumstance whatsoever, shall City be responsible for any utilities on the Premises, including, but not limited to, the installation, maintenance, initial cost or fee or any on-going charges or fees. Tenant agrees to pay any and all such utilities relating to the Premises in a timely manner, so as to avoid any encumbrance on the Premises. Tenant, at its sole cost and expense and with the prior written approval of the appropriate utility, agrees to maintain and repair, replace and relocate as necessary, utility facilities within the Premises required for the operation of the Premises and all existing and future Improvements, subject to the following conditions:

- (i) Such activity does not materially or adversely interfere with City's operations on any property outside the boundaries of the Premises; and
- (ii) Tenant complies with the provisions of all permits which have been issued and are affected by such repair and relocation.

13.02 Tenant agrees to grant to City and any public utility company, pursuant to separate instruments, non-exclusive perpetual easements for the installation, operation, maintenance, repair, replacement, relocation, and removal of utility lines and facilities (together with access incidental to such activities) such as water lines, fire lines, gas mains, electrical power lines, telephone lines, cable and internet services, storm and sanitary sewers and other utility lines and facilities (collectively, "**Utility Facilities**"), and such other easements as Tenant, City or such public utility companies may reasonably require from time to time. All such easements shall be over, under and across: (i) those portions of the Premises shown on the approved plans and Specifications for the Project; or (ii) such other locations on the Premises as may be requested by City or such public utility companies from time to time, so long as such locations are reasonably acceptable to Tenant, considering, among other things, whether such locations cause unreasonable interference with the construction, use and operation of the Project or undue expense to Tenant. The instruments granting such easements shall provide, among other things, that the grantee(s) shall not exercise their rights in such a manner as would cause unreasonable interference with the construction, use and operation of the Project.

## **ARTICLE XIV** **SIGNAGE**

14.01 Tenant shall have the exclusive right to construct, operate, and display onsite and offsite premise signage on the interior, exterior or other portions of the Premises as Tenant deems necessary and desirable so long as such signage complies with Applicable Laws and is approved by Landlord in advance, which approval will not be unreasonably withheld, conditioned or delayed.

## **ARTICLE XV** **MISCELLANEOUS**

15.01 No Brokers. Neither Landlord nor Tenant has dealt with any broker or finder with regard to the Premises or this Ground Lease. Both Landlord and Tenant will indemnify, defend, and hold the other harmless from and against any loss, liability and expense (including reasonable attorneys' fees and court costs) arising out of claims for fees or commissions in connection with this Ground Lease.

15.02 Access. Tenant agrees to grant a right of access to Landlord, the Comptroller General of the United States, or any of their duly authorized representatives, with respect to any books, documents, papers, or other records related to this Ground Lease in order to make audits, examinations, excerpts, and transcripts.

15.03 Recordation. Landlord and Tenant shall record a Memorandum of Ground Lease in the appropriate office of public record of Miami-Dade County, Florida. At the expiration of the Lease Term or earlier termination of this Ground Lease, Tenant shall execute a quit claim or other document reasonably requested by Landlord to confirm the termination of its interest in this Ground Lease. If Tenant refuses to do so within ten (10) days after receipt of a request from Landlord, Landlord may unilaterally record a notice of termination of this Ground Lease.

15.04 Time of Essence. Time is of the essence of each and every provision of this Ground Lease.

15.05 No Waiver. No waiver of any condition or agreement in this Ground Lease by either Landlord or Tenant will imply or constitute a further waiver by such party of the same or any other condition or agreement. No act or thing done by Landlord or Landlord's agents during the Lease Term will be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender will be valid unless in writing signed by Landlord. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the Additional Rent or other charges stipulated in this Ground Lease will be deemed to be anything other than a payment on account of the earliest stipulated Additional Rent. No endorsement or statement on any check, or any letter accompanying any check or payment as Additional Rent, will be deemed an accord and satisfaction. Landlord will accept such check for payment without prejudice to Landlord's right to recover the balance of such Additional Rent or to pursue any other remedy available to Landlord. If this Ground Lease is assigned, or if the Premises or any part of the Premises are sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant, or occupant and apply the net amount collected to the Additional Rent reserved in this Ground Lease.

No such collection will be deemed a waiver of the covenant in this Ground Lease against assignment and subletting, or the acceptance of the assignee, subtenant, or occupant as Tenant, or a release of Tenant from the complete performance by Tenant of its covenants in this Ground Lease.

**15.06 Limitation of Liability of Tenant.** Tenant shall not be liable to City for any incidental, consequential, special or punitive loss or damage whatsoever.

**15.07 Captions, Exhibits, Gender, Etc.** The captions inserted in this Ground Lease are only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Ground Lease. The Exhibits to this Ground Lease are incorporated into the Ground Lease. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

**15.08 Entire Agreement.** This Ground Lease and Exhibits hereto contain the entire agreement between Landlord and Tenant with respect to its subject matter and may be amended only by subsequent written agreement between them. Except for those that are specifically set forth in this Ground Lease, Landlord or Tenant has made no representations, warranties, or agreements to one another with respect to this Ground Lease.

**15.09 Amendment.** This Ground Lease may be amended only by a written document signed by Landlord and Tenant, with the written consent of the managing member of Tenant and each Permitted Leasehold Mortgagee. No amendment shall impair the obligations of Tenant to develop and operate the project in accordance all applicable requirements.

**15.10 Severability.** If any provision of this Ground Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Ground Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as a part of this Ground Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**15.11 Notices.** Any notice, request, demand, consent, approval, or other communication required or permitted under this Ground Lease shall be in writing and shall be given by either (a) hand-delivery, (b) first class, certified or registered mail return receipt requested (postage prepaid), (c) reliable overnight commercial courier, or (d) electronic mail, telecopy or other means of electronic transmission, if confirmed promptly by any of the methods specified in clauses (a), (b) and (c) of this sentence to the other party at its address set forth below. Notice by telecopy or other means of electronic transmission shall be deemed to have been given and received when sent. Notice by overnight courier service shall be deemed to have been given and received upon delivery. A party may change its address by giving written notice to the other parties as specified herein.

If to Landlord:

City of North Miami  
776 NE 125th Street \_\_\_\_\_  
North Miami, Florida 33161  
Attn: City Manager  
Email: [citymanager@northmiamifl.gov](mailto:citymanager@northmiamifl.gov)  
Phone: (305) 895-9888

With a copy to:

City of North Miami  
776 NE 125th Street  
North Miami, Florida 33161  
Attn: City Attorney  
Email: [cityattorney@northmiamifl.gov](mailto:cityattorney@northmiamifl.gov)  
Phone: (305) 895-9810

If to Tenant:

Kayla at Library Place, LLC  
2800 Ponce De Leon Blvd Suite 1160  
Coral Gables, Florida 33134  
Attn: Michael Wohl, Manager  
E-mail: [mwohl@coralrockgroup.com](mailto:mwohl@coralrockgroup.com)  
Phone: (305) 270-2228

With a copy to:

Stearns Weaver Miller Weissler Alhadoff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Attn: Brian J. McDonough, Esq.  
E-mail: [BMcDonough@stearnsweaver.com](mailto:BMcDonough@stearnsweaver.com)  
Phone: (305) 789-3350

**15.12 Attorneys' Fees.** If Landlord and Tenant litigate any provision of this Ground Lease or the subject matter of this Ground Lease, the unsuccessful litigant will pay the successful litigant all reasonable attorneys' fees and court costs incurred by it in connection with such litigation.

**15.13 Waiver of Jury Trial.** Landlord and Tenant may waive trial by jury in any action, proceeding, or counterclaim brought by either of them against the other on all matters arising out of this Ground Lease or the use and occupancy of the Premises.

**15.14 Governing Law.** This Ground Lease shall be governed by the law and construed in accordance with the laws of the State of Florida, without regard to principles of conflict of laws and with respect to any dispute hereunder, jurisdiction and venue shall lie exclusively with the courts of Miami-Dade County, Florida.

**15.15 Binding Effect.** This Ground Lease will inure to the benefit of, and will be binding upon, Landlord's successors and assigns except as otherwise provided in this Ground Lease. This Ground Lease will inure to the benefit of, and will be binding upon, Tenant's successors and assigns so long as the succession or assignment is permitted pursuant to the terms of this Ground Lease.

**15.16 Effect of Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Ground Lease is attached to this Ground Lease and shall be construed to be made a part of this Ground Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

15.17 Cumulative Rights. Except as expressly limited by the terms of this Ground Lease, all rights, powers, and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

15.18 Relationship of Parties, Limited Third Party Beneficiary. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Ground Lease, they are neither partners nor joint venturers, nor does a principal-agent relationship exist between them. Notwithstanding anything to the contrary set forth elsewhere in this Ground Lease, the managing member of Tenant and the Permitted Leasehold Mortgagees shall be deemed a third-party beneficiary with respect to all notice, cure, default, modification, amendment, casualty, and condemnation provisions herein to the extent such provisions expressly apply to such parties.

15.19 Non-Merger. Except upon expiration of the Lease Term or upon termination of this Ground Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Ground Lease or Tenant's estate created hereunder with the fee estate of the Premises or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Ground Lease, Tenant's estate created hereunder or any interest in this Ground Lease or Tenant's estate (including the Improvements), and (b) the fee estate in the Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord, having an interest in (i) this Ground Lease or Tenant's estate created hereunder, and (ii) the fee estate in the Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

15.20 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

**[SIGNATURE PAGE FOLLOWS]**

SIGNATURE PAGE TO GROUND LEASE  
(Kayla at Library Place)

IN WITNESS WHEREOF, the parties have executed this Ground Lease as of the Effective Date.

LANDLORD:

THE CITY OF NORTH MIAMI, a Florida  
municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

Attest:

\_\_\_\_\_ (SEAL)  
\_\_\_\_\_, City Clerk

Approved As To Form:

\_\_\_\_\_, City Attorney

TENANT:

Kayla at Library Place, LLC, a Florida limited  
liability company

By: \_\_\_\_\_, its Manager

**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

Lots 12 thru 19, Block 26 of Irons Manor Second  
Addition, according to the Plat thereof, as recorded in Plat  
Book 17, Page 39, of the Public Records of Miami-Dade  
County, Florida.

and

Air rights from a minimum elevation of 12.00 feet to a  
maximum elevation of 150.00 feet over the portion of the  
15 foot wide alley in Bock 26 of Irons Manor Second  
Addition, according to the Plat thereof, as recorded in  
Plat Book 17, Page 39, of the Public Records of Miami-  
Dade County, Florida, as set forth on the sketch and legal  
description attached as Exhibit A-1.

Tax folios: 06-2229-049-0480, 06-2229-049-0490 and 06-2229-049-0520

**EXHIBIT B**

**IMPROVEMENTS**

Eight story multi-family building with 115 residential units plus ground floor commercial area in accordance with site plans and building plans pending approval by the City of North Miami

## EXHIBIT C

### INSURANCE REQUIREMENTS

(A) Property Insurance. "All risk" property insurance with extended coverage against loss or damage by earthquake, mudslide, windstorm, flood with an endorsement for amended coverage, vandalism, malicious mischief, sprinkler leakage and special coverage, including flammable materials.

1. Amounts. As to windstorm and flood, such coverage shall be in the amounts required by the Permitted Leasehold Mortgages and the Investor, and as to all other perils such coverage and shall provide for 100% of the replacement cost of the Improvements (exclusive of foundation and excavation costs), Tenant's alterations, improvements, fixtures, equipment, furniture, and floor coverings, as reasonably determined from time to time, including the expense of the removal of debris as a result of damage by an insured peril (collectively, the "Insured Property") on the Premises.

2. Deductibles. The maximum deductibles for such coverage shall be as follows: (A) as to flood and windstorm, Five Percent (5%) of the completed building value; and (B) as to all other perils, such reasonable percentage as is approved by the Permitted Leasehold Mortgages and the Investor.

3. Loss Payees and Insureds. Landlord, Tenant, and any Permitted Leasehold Mortgagee shall be named as loss payees. Tenant shall be the first named insured, and Landlord and any Permitted Leasehold Mortgagee shall be named as additional insureds.

(B) Boiler and Machinery Insurance. Boiler and machinery insurance covering repair and replacement of all boilers and machinery serving or benefiting the Improvements. The policies of insurance shall be endorsed so as to provide use and occupancy coverage for the Improvements in such amount as may be reasonably acceptable to Landlord. Landlord, Tenant and any Permitted Leasehold Mortgagee shall be named as loss payees. Tenant shall be the first named insured, and Landlord and any Permitted Leasehold Mortgagee shall be named as additional insureds.

(C) Other Insurance to Be Carried. Beginning on the Possession Date and at all times during the Term, Tenant shall also, at Tenant's sole cost and expense but for the mutual benefit of Tenant and Landlord (with Landlord being named as an additional insured thereunder and with leasehold mortgage clauses for the benefit of any Permitted Leasehold Mortgagee, which clauses shall be consistent with the terms of this Lease), maintain the following insurance:

(i) CGL Insurance. Commercial General Liability insurance on a commercial general liability coverage form with "broad form" coverage, or its equivalent, including contractual liability, products and completed operations, personal injury, garage keepers liability, and products and completed operations, personal injury, and premises coverage against sums adjudicated to be payable by the insured on account of bodily injury, death or property damage occurring in or about the Premises (it being understood, however, that such coverage does not extend to damage to property in the insured's care, custody and control).

(1) Amounts. The limits of such coverage shall not be less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate single limit for bodily injury and property damage. No deductible in excess of amounts approved by the Permitted

Leasehold Mortgages and the Investor will be carried under this coverage without the City Manager's prior written consent, which shall not be unreasonably withheld.

(2) Umbrella Policy. Tenant shall further maintain an excess liability umbrella policy whose limits shall not be less than a combined single limit of Five Million Dollars (\$5,000,000).

(ii) Builder's Risk. During any periods of: (1) excavation and/or construction; (2) alteration; (3) restoration in the event of damage or destruction or condemnation; or (4) razing or demolition, at, in or on the Premises, the Improvements or any part of it, an all risk Builder's Risk policy (including extended coverage for fire, lightning, earth movement, flood, collapse, business interruption, hurricane, boiler and machinery) covering the interests of Landlord and Tenant. Such policy shall insure that portion of the Improvements which is affected by such activities for not less than One Hundred Percent (100%) replacement cost on a completed value basis (including foundations and pilings), and shall include coverage for the increased cost of construction due to the enforcement of any laws, as well as the contingent liability from the operation of buildings, and coverage for the demolition cost of undamaged portions of buildings.

(iii) E & O Coverage. In addition, Tenant shall cause all of the key or primary professionals retained by it in connection with any construction (e.g., architects and engineers) to procure errors and omission coverage reasonably satisfactory to Tenant for Tenant's and Landlord's benefit, in such amounts as are customarily carried by such professionals in Miami-Dade County, Florida.

(iv) Worker's Compensation. Worker's compensation and occupational disease coverage in the amounts and types required by Chapter 440, F.S., or any successor thereto. Only Tenant shall be named as an insured.

(v) Automobile Liability. Automobile liability insurance covering all owned, non-owned and hired vehicles used in conjunction with operations covered by this Lease. The policy or policies of insurance shall contain such limits as may be reasonably requested by Landlord from time to time but not less than One Million Dollars (\$1,000,000).

(vi) Other Coverage. In the event that any other type of legislation may be enacted imposing special liability upon Landlord or Tenant by virtue of its use for any special purposes, before Tenant shall so use the Premises and/or the Improvements or any part of it for such purposes, Tenant shall provide insurance in form and substance, and with insurers and limits reasonably satisfactory to Landlord and meeting commercial standards insuring the interests of Landlord and Tenant and naming Landlord as additional insured.