

Environmental Indemnity Agreement

This Environmental Indemnity Agreement (“**Agreement**”) is made and entered into as of the date the last party signs this Agreement, by and between NORTH BROWARD HOSPITAL DISTRICT D/B/A BROWARD HEALTH, a Florida special independent taxing district (the “**Subtenant**”), and CITY OF FORT LAUDERDALE, a Florida municipal corporation, (the “**City**” or “**Prime Landlord**”).

RECITALS

WHEREAS, the City is the owner of real property located at 840 North Federal Highway, Fort Lauderdale, Florida 33304 (the “**Property**”) which is currently encumbered by a Ground Lease by and between the City and YOUNG MEN’S CHRISTIAN ASSOCIATION OF SOUTH FLORIDA, INC., a Florida not for profit corporation (the “**Sublandlord**”); and

WHEREAS, Sublandlord intends to construct a free-standing emergency facility for the benefit of Subtenant in accordance with the proposed Sublease by and between Sublandlord and Subtenant; and

WHEREAS, Subtenant may generate medical waste in the ordinary course and scope of Subtenant’s activities and operations on the Property; and

WHEREAS, such medical waste may constitute “Hazardous Materials” as defined herein; and

WHEREAS, the City desires to ensure that it is indemnified and held harmless from any and all liabilities, damages, claims, costs, and expenses arising from or relating to any environmental contamination, including without limitation, medical waste, remediation, disposal, removal or cleanup activities on the Property, including but not limited to those activities and operations of the Subtenant on the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. Intentionally Omitted.**
- 2. Indemnification by Subtenant.**

The Subtenant hereby agrees to extent allowable under Florida law to indemnify, defend, and hold harmless the City, its elected officials, officers, employees, agents, and representatives (collectively, the “**Indemnified Parties**”) from and against any and all claims, actions, suits, proceedings, damages, liabilities, fines, penalties, losses, costs, and expenses (including reasonable attorneys’ fees and expenses) arising out of, in connection with, or related to:

2.1. The presence, release, discharge, use, generation or storage of any Hazardous Materials (as defined below) on, under, or about the Property, solely and directly arising or resulting from Subtenant’s activities or operations on the Property.

2.2. Any environmental cleanup, remediation, investigation, removal, or other response actions required by any federal, state, or local government authority or agency or by law to address

the presence or release of Hazardous Materials at, on, over, under or across the Property, solely and directly arising or resulting from Subtenant's activities or operations on the Property, including any costs incurred by the City in connection with such actions.

2.3. Any breach by the Subtenant of any environmental laws, regulations, or ordinances applicable to the environmental condition of the Property or directly arising or resulting from Subtenant's activities or operations on the Property.

2.4 Failure to obtain or provide all required or necessary inspections, investigations, applications, permits, plans, licenses, audit, reports, consent orders, and the like; and, all cleaning, detoxification, remediation, cleanup and disposal; and all tests, audit, monitoring, and reporting; and all fees, costs, assessments, fines and penalties charged by environmental agencies that are solely and directly arising or resulting from Subtenant's activities or operations on the Property.

2.5 Liability for damages resulting from the personal injury or death of any agent, licensee, guest, invitee, patient, sub-subtenant, vendor, employee or volunteer of Subtenant arising directly from the presence, release, discharge, use, generation or storage of any Hazardous Materials related to the Subtenant's activities or operations.

3. Environmental Laws

3.1 Environmental Laws. For purposes of this Agreement, "**Environmental Laws**" shall mean any and all applicable federal, state, and local statutes, regulations, ordinances, and rules governing or relating to the protection of the environment, public health, safety or relating to the protection of the environment (including soil, water and air quality) or establishing liability for the cleanup or other response to environmental contamination or for damage to any natural resource and the release or threatened release of Hazardous Materials, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), Emergency Planning and Community Right to Know Act, the Federal Clean Water Act and the Florida Environmental Protection Act (F.S. 403).

3.2 Hazardous Materials. "**Hazardous Materials**" means any hazardous or toxic substances, materials or wastes, including, but not limited to medical wastes and those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table, 49 CFR 172.101 or by the Environmental Protection Agency as hazardous substances, 40 CFR Part 302, as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radon, (v) any substance designated as a "hazardous substance" pursuant to Sec. 311 of the Clean Water Act, 33 U.S.C. Sec. 1251, *et seq.* or listed pursuant to Sec. 307 of the Clean Water Act, 33 U.S.C. Sec. 1317, (vi) defined as "hazardous waste" pursuant to Sec. 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, *et seq.*, (vii) defined as a "hazardous substance" pursuant to Sec. 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, *et seq.*, or (viii) designated as a "hazardous substance" as defined in Chapter 403, Part IV, Florida Statutes, or (ix) any other similar federal, state or local regulations.

4. Duration of Indemnification

The obligations of the Subtenant under this Agreement shall continue in full force and effect and shall expire upon expiration of any applicable statute of limitation for such claim or cause of action.

5. Defense of Claims

To the maximum extent permissible by federal and state law, in the event any claim or legal action is brought or asserted against the City or any of the Indemnified Parties arising from or related to any matters covered by this Agreement, the Subtenant shall, at its expense, defend the City or such Indemnified Party(ies) with counsel reasonably acceptable to the City. The City shall have the right to participate in any such defense at Subtenant's expense. Notwithstanding the foregoing, as it relates to claims or actions in tort, nothing in this Section shall extend or modify, or be construed or interpreted as an agreement by Subtenant to extend or modify, the limits provided in § 768.28, Florida Statutes, as amended.

6. No Waiver of Sovereign Immunity

Nothing in this Agreement shall be deemed to waive, limit, or modify in any way the City's or Subtenant's sovereign immunity limitations in tort claims or actions under § 768.28, Florida Statutes, as amended, nor shall this Agreement be construed to create any third-party beneficiary rights in any person or entity not a party to this Agreement.

7. Miscellaneous

7.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of law provisions. In the event of litigation arising from this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs through the appellate level.

7.2. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, agreements, and understandings, whether oral or written.

7.3. Amendments. No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and executed by both parties.

7.4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.5. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when delivered personally or sent by certified mail, return receipt requested, to the addresses of the parties set forth below or such other addresses as the parties may designate in writing.

As to City:

City of Fort Lauderdale
Attn: City Manager
101 NE 3rd Avenue, Suite 2100
Fort Lauderdale, FL 33301

With copy to:

City of Fort Lauderdale
Attn: City Attorney

1 East Broward Blvd, Suite 1320
Fort Lauderdale, FL 33301

As to Subtenant:

North Broward Hospital District
d/b/a Broward Health
Attn: Real Estate
1608 SE 3rd Avenue, #507
Fort Lauderdale, FL 33316

With copy to:

North Broward Hospital District
d/b/a Broward Health
Attn: Office of the General Counsel
1800 NW 49th Street
Fort Lauderdale, FL 33309

7.6 Compliance. Subtenant shall have the absolute responsibility to ensure that all operations or activities conducted upon the Property are in compliance with all Environmental Laws and all permits, licenses and other environmental agency approvals required for any such activity conducted upon the Property. Subtenant covenants that any and all Hazardous Materials removed from the Property shall be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposition of such Hazardous Materials and wastes and only in accordance with Environmental Laws and consistent with all conditions of any and all permits, licenses and other environmental agency approvals required for such removal and transportation. Subtenant's compliance obligations are limited to its sublease premises within the Property and any other areas within the Property over which it exercises dominion, control or possession or on which it has the right to store, use or generate Hazardous Materials.

7.7 Right of Entry for Prime Landlord Tests.

(a) At any time during the term of this Agreement, Prime Landlord, may, upon reasonable prior written notice to Subtenant and Sublandlord (taking into account the potential disruption of the Subtenant's and Sublandlord's operations) enter upon the Property for the purpose of conducting environmental tests ("**Prime Landlord's Tests**") to determine the presence and/or extent of contamination by Hazardous Materials in, on, under, above, within or about the Property. Prime Landlord shall not be entitled to conduct Prime Landlord's Tests unless:

- (i) An Environmental Agency shall have issued a notice of violation with respect to the Hazardous Materials on, within, above, about or under the Property; or
- (ii) Prime Landlord has probable cause to believe that Sublandlord or Subtenant has violated Hazardous Substance Laws relating to the Sublandlord or Subtenant use of the Property.

(b) Prime Landlord Tests shall be at the sole cost and expense of Prime Landlord. The cost and expenses relating to the Prime Landlord's Tests shall not be included in the scope of any indemnification set forth in this Agreement, unless Prime Landlord's Tests reveal the presence of Hazardous Materials at levels that are in violation of the Environmental Laws.

7.8 Independent Covenant. Both parties acknowledge and agree the obligations under this Agreement are separate and independent from any other obligations either party may owe to the other party under any other Agreement, including, without limitation, any Recognition Agreements.

IN WITNESS WHEREOF, the parties hereto have executed this Environmental Indemnity Agreement as of the dates set forth below.

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida

By: _____

Name: Rickelle Williams

Title: City Manager

Date: _____

ATTEST:

By: _____

Name: David R. Soloman

Title: City Clerk

Approved as to form and correctness:

D'Wayne M. Spence, Interim City Attorney

Lynn Solomon, Asst. City Attorney

**NORTH BROWARD HOSPITAL DISTRICT
D/B/A BROWARD HEALTH**, a Florida independent special taxing district

By: _____

Printed Name: _____

Its: _____

Date: _____