



**CITY MANAGER**  
**CITY MANAGER SIGNATURE REQUEST ROUTING FORM**

Rev: 13 | Revision Date: 09/29/2025

**SECTION 1 | SUMMARY INFORMATION**

Date: 11-24-25

Commission Agenda Item  Letter to the Commission (LTC)  Letter to External Stakeholder(s)  Other Document

Document Title/Purpose: CEA (Arlidge & Laramore) Non-Profit Grant Agre.,  
2) Recognition to Leasehold Mtgs, 3) Ground Lease, 4) And. 3 Restated  
Dev. Agre.

Commission Meeting Date: 11-4-25 CAM #: 25-09103 Item #: 2-1

CAM attached:  Yes  No Action Summary Attached:  Yes  No CIP FUNDED:  Yes  No  
 Community Investment Plan (CIP) Project defined as having a life of at least 10 years and a cost of at least \$100,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement. Term "real property" includes land, real estate, realty, or real.

**SECTION 2 | REQUESTOR (CHARTER OFFICE/DEPARTMENT)**

Charter Office: CAO Router Name: Erica Keiper Ext: 6088

Department: \_\_\_\_\_ Router Name: \_\_\_\_\_ Ext: \_\_\_\_\_

Department Approval (Director/Chief): Name \_\_\_\_\_ Init \_\_\_\_\_ Date: \_\_\_\_\_

\*Return Document To: Erica Keiper Department: CAO Ext: 6088

\*REMINDER: Once review and signature at the last level of government (Federal, State, County) is complete, scan the final record copy and send to the City Clerk's Office.

Scan Date: \_\_\_\_\_ Attach Certified Resolution #: \_\_\_\_\_ Original form route to CAO:  Yes  No

**THE FOLLOWING SECTIONS ARE FOR CHARTER OFFICE USE ONLY**

**SECTION 3 | CITY ATTORNEY'S OFFICE (CAO):** CAO signed/routed Required  Yes  No

Is the attached Granicus document final?  Yes  No Number of Originals Attached: 5

Attorney's Name: Lynn Schomay Approved as to Form:  Yes  No Initials: [Signature]

Route to: Finance (if applicable) Date: \_\_\_\_\_ Route to: CCO Date: 11-24-25

**SECTION 4 | CITY CLERK'S OFFICE (CCO)**

City Clerk Office Receive and Scan Date: \_\_\_\_\_ Number of Originals: \_\_\_\_\_

Route to CMO Date: \_\_\_\_\_ Route to Mayor Date: \_\_\_\_\_

**SECTION 5 | CITY MANAGER'S OFFICE (CMO)**

LOG #: \_\_\_\_\_ Date Received: \_\_\_\_\_ Received From: \_\_\_\_\_

To CM/ACM:  R. Williams  C. Cooper  Y. Matthews  B. Rogers

Approved Init.: \_\_\_\_\_ for continuous routing to Rickelle Williams, City Manager/Executive Director

Disapproved: \_\_\_\_\_ Comments: \_\_\_\_\_

CMO Executive Assistant Route to: CCO | HR | OMB | Other: \_\_\_\_\_ Date: \_\_\_\_\_

SIGN HERE

This instrument was prepared by,  
record and return to:  
Terry M. Lovell, Esq.  
Bilzin Sumberg Baena Price & Axelrod LLP  
1450 Brickell Avenue, 23rd Floor  
Miami, FL 33131

**GROUND LEASE  
BETWEEN  
FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY  
AND  
SISTRUNK APARTMENTS, LLC**

**Basic Lease Information**

**EFFECTIVE DATE:** AS OF DECEMBER 1, 2025

**LANDLORD:** FORT LAUDERDALE COMMUNITY  
REDEVELOPMENT AGENCY

**TENANT:** SISTRUNK APARTMENTS, LLC

**PREMISES:** CERTAIN LAND SITUATED IN THE CITY OF FORT  
LAUDERDALE, COUNTY OF BROWARD, AND  
STATE OF FLORIDA, AS MORE PARTICULARLY  
DESCRIBED IN EXHIBIT A

**LEASE PAYMENT:** AS PROVIDED IN SECTION 6.1

**TERM:** AS PROVIDED IN SECTION 5.2

**LANDLORD'S ADDRESS:** FORT LAUDERDALE COMMUNITY  
REDEVELOPMENT AGENCY  
914 Sistrunk Blvd., Suite 200,  
Fort Lauderdale, FL 33311  
Attention: Executive Director

**TENANT'S ADDRESS:** SISTRUNK APARTMENTS, LLC  
c/o Magellan Housing, LLC  
2035 North Miami Avenue, #101  
Miami, Florida 33127  
Attention: Amay Inamdar

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The Basic Lease Information is part of the Lease, however, if any of the Basic Lease Information contradicts any provision of the Lease, then the provision of the Lease prevails.

## TABLE OF CONTENTS

### ARTICLE 1 RECITALS

### ARTICLE 2 INCORPORATION OF RECITALS, DEMISE OF LEASEHOLD INTEREST

Section 2.1 Incorporation of Recitals

Section 2.2 Leasehold Interest

Section 2.3 "As Is" Condition

Section 2.4 ADA Compliance

### ARTICLE 3 IMPROVEMENTS

Section 3.1 Development Constructed

Section 3.2 Compliance with Laws

Section 3.3 Approvals, Permits and Licenses

Section 3.4 Ownership of Development

Section 3.5 Completion Date

Section 3.6 Contractor Indemnity

Section 3.7 Standards of Construction

Section 3.8 Comply with Applicable Law

Section 3.9 Comprehensive General Liability Insurance

Section 3.10 Insurance Requirements for Construction Contracts

Section 3.11 Certificates

### ARTICLE 4 REPRESENTATIONS AND WARRANTIES

Section 4.1 Landlord's Representations and Warranties

Section 4.2 Tenant's Representations and Warranties

### ARTICLE 5 TERM

Section 5.1 Commencement Date

Section 5.2 Term of Lease

### ARTICLE 6 LEASE PAYMENT

Section 6.1 Lease Payment

Section 6.2 Payments by Tenant upon Commencement of Construction of the  
Development

### ARTICLE 7 TAXES; OPERATING EXPENSES

- Section 7.1 Taxes
- Section 7.2 Project Operating Expenses
- Section 7.3 Utility or Service Charges
- Section 7.4 Governmental Charges or Services
- Section 7.5 Payments and Receipts
- Section 7.6 Lessee's Challenge of Tax
- Section 7.7 Lessor's Remedy for Lessee's Nonpayment

#### ARTICLE 8 INSURANCE; PAYMENT AND PERFORMANCE BONDS

- Section 8.1 Tenant's Insurance and Payment and Performance Bonds
- Section 8.2 Landlord's Insurance

#### ARTICLE 9 USE OF PREMISES, COMPLIANCE WITH LAWS, AND TENANT'S INDEMNITY

- Section 9.1 Permitted Use
- Section 9.2 Compliance with Laws
- Section 9.3 Community Benefit
- Section 9.4 Tenant's Indemnity
- Section 9.5 Lessor's Liability
- Section 9.6 Landlord's Rights

#### ARTICLE 10 ENVIRONMENTAL CONDITIONS

- Section 10.1 Tenant's Environmental Covenants
- Section 10.2 Landlord's Environmental Covenants
- Section 10.3 Tenant's Environmental Indemnity
- Section 10.4 Environmental Testing
- Section 10.5 Environmental Procedure; Consent to Assignment
- Section 10.6 Environmental Definitions
- Section 10.7 Survival

#### ARTICLE 11 ASSIGNMENTS, SUBLEASES AND TRANSFERS

- Section 11.1 Consent Required
- Section 11.2 Subsequent Assignment
- Section 11.3 Request for Consent
- Section 11.4 Transfer by Landlord

## ARTICLE 12 LEASEHOLD FINANCING

- Section 12.1 Right to Mortgage
- Section 12.2 Consent Required for Termination and Amendments
- Section 12.3 Default Notice
- Section 12.4 Notice to Equity Investor and Leasehold Mortgagee
- Section 12.5 Procedure on Default
- Section 12.6 Extension of Cure Period
- Section 12.7 Right to New Lease
- Section 12.8 Assumption of Tenant's Obligations
- Section 12.9 Non-Curable Defaults
- Section 12.10 No Merger
- Section 12.11 Landlord's Fee to Remain Unsubordinated
- Section 12.12 Sale of Premises

## ARTICLE 13 MAINTENANCE AND REPAIR

- Section 13.1 Tenant's Obligations

## ARTICLE 14 ALTERATIONS

- Section 14.1 Not Applicable
- Section 14.2 No Liens

## ARTICLE 15 SURRENDER

- Section 15.1 Expiration of Term

## ARTICLE 16 CASUALTY, CONDEMNATION

- Section 16.1 Damage or Destruction to Premises
- Section 16.2 Distribution
- Section 16.3 Condemnation

## ARTICLE 17 DEFAULT AND REMEDIES

- Section 17.1 Landlord's Right to Perform
- Section 17.2 Events of Default
- Section 17.3 Remedy
- Section 17.4 Tenant's Right to Perform
- Section 17.5 Excusable Delay
- Section 17.6 Not Applicable

## ARTICLE 18 MISCELLANEOUS

- Section 18.1 No Brokers
- Section 18.2 Recordation
- Section 18.3 Time of Essence
- Section 18.4 No Waiver
- Section 18.5 Personal Liability
- Section 18.6 Captions and Gender
- Section 18.7 Entire Agreement
- Section 18.8 Amendment
- Section 18.9 Severability
- Section 18.10 Notices
- Section 18.11 Waiver of Jury Trial
- Section 18.12 Cooperation
- Section 18.13 Additional Releases, Utility Easements
- Section 18.14 Governing Law and Venue
- Section 18.15 Cumulative Rights
- Section 18.16 Non-Merger
- Section 18.17 No Third Party Beneficiary
- Section 18.18 Not Applicable
- Section 18.19 Quiet Enjoyment
- Section 18.20 Counterparts
- Section 18.21 Litigation Fees
- Section 18.22 Limited Liability of Landlord
- Section 18.23 Access
- Section 18.24 Not Applicable
- Section 18.25 Delegation
- Section 18.26 Estoppel Certificate
- Section 18.27 No Waiver of Sovereign Immunity
- Section 18.28 Public Entity Crime
- Section 18.29 Scrutinized Companies
- Section 18.30 Florida Foreign Entities Act

Section 18.31 Non-liability of Agency Officials

Section 18.32 Inspection of Books and Records

Section 18.33 Public Records

Section 18.34 Radon Gas

Section 18.35 Signage

## GROUND LEASE

THIS GROUND LEASE (this "Lease") executed and effective as of December 1, 2025 (the "Effective Date"), is by and between Fort Lauderdale Community Redevelopment Agency, ("Landlord" "Lessor" or "CRA") a Community Redevelopment Agency created pursuant to Chapter 163, Part III, Florida Statutes, (the "Act") whose address 914 Sistrunk Blvd., Suite 200, Fort Lauderdale, FL 33311, and Sistrunk Apartments, LLC, a Florida limited liability company ("Tenant" or "Lessee"), whose address is c/o Magellan Housing LLC, 2035 North Miami Avenue, Suite 101, Miami, FL 33127, Attention: Amay Inamdar. Landlord and Tenant are jointly referred to herein as the "Parties". Pursuant to that certain Interlocal Agreement among Broward County, the City of Fort Lauderdale, and the Fort Lauderdale Community Redevelopment Agency (CRA) Regarding the Extension of the NW-Progresso Redevelopment Area, recorded June 13, 2025, as Instrument #120270022 in the Official Records of Broward County, Florida (the "Interlocal Agreement"), the Landlord will sunset in ten (10) years from November 7, 2025. The successor landlord is subject to and shall be determined by the Interlocal Agreement, notwithstanding any provisions in the Ground Lease to the contrary.

### ARTICLE 1 RECITALS

**WHEREAS**, Landlord is the owner of the real property on Exhibit A (the "Premises" or "Leased Premises") and

**WHEREAS**, the CRA issued a Request for Proposals and Notice of Intent on July 2, 2020 to dispose of the Premises, and the only respondent was Sistrunk Apartments, LLC; and

**WHEREAS**, at their meeting of November 4, 2020, the RFP evaluation committee of the Landlord unanimously recommended donating the Property to Sistrunk Apartments, LLC and approved the Project; and

**WHEREAS**, at their meeting of January 12, 2021, the CRA Advisory Board for the Northwest-Progresso-Flagler Heights Community Redevelopment Area ("Redevelopment Area") approved the project and the funding request; and

**WHEREAS**, this project shall consist of seventy-two (72) rental units and approximately 2,200 square feet of commercial space (the "Improvements"). The Improvements shall be constructed on the Premises owned by Landlord and leased to Tenant hereunder. The Premises and the Improvements constructed thereon, and developed and operated by Tenant, known as the "Aldridge" and the "Laramore" are referred to herein as the "Development" and is anticipated to start construction in 2025 and complete construction in 2027; and

**WHEREAS**, the Board of Commissioners of the CRA finds that development of the Project will enhance the physical appearance of the Redevelopment Area, create affordable housing, create quality space for new and existing businesses, retail spaces, as well as facilitate a responsive and proactive business climate, all in accordance with and in furtherance of the Redevelopment Plan, as authorized by and in accordance with the Act; and

**WHEREAS**, the CRA Board finds that Sistrunk Apartments, LLC, and its principal has demonstrated that it has the financial capacity, legal ability, development experience and qualifications to develop this Project; and

**WHEREAS**, initially the parties agreed that Eighty Percent (80%) of the residential units would be set aside for households whose median income does not exceed Eighty Percent (80%) or area median income, as adjusted for family size, for the Broward County metropolitan area as published by the United States Department of Housing and Urban Development and rental rates for the residential units shall be set according to the United States Department of Housing and Urban Development guidelines for a minimum of fifteen (15) years; and

**WHEREAS**, both parties seek to revise the income levels of the persons eligible to rent the residential units and the term of the restrictions; and

**WHEREAS**, the parties desire to enter into a long term ground lease in lieu of conveying fee simple title to the Premises; and

**WHEREAS**, as it is assumed the Landlord is a governmental entity for purposes of Florida Statute, Section 196.19782 (the "Property Tax Exemption Statute"), the Development's rental units shall be rented in the following way so as to comply with the requirements of the Property Tax Exemption Statute: (i) for the first thirty years after the Development becomes available for occupancy, all of the rental units in the Development will be used for rental to individuals or families whose income, as adjusted for family size, is, on average, not greater than sixty (60%) of Broward County Florida Area Median Income, as established by the United States Department of Housing and Urban Development, or its successor ("HUD"); and (ii) for the remaining term of the Lease, all of the rental units in the Development will be used for rental to individuals or families whose income, as adjusted for family size, is, on average, not greater than one-hundred and twenty (120%) of Broward County Florida Area Median Income, as established by HUD. In addition, the residential rental units shall be leased at Affordable Rents as defined in Florida Statute, Section. 420.004 (3); and

**WHEREAS**, both parties acknowledge that the Broward County Property Appraiser will make the ultimate determination as to whether the Landlord is a governmental entity and whether the Development will qualify for exemption from real property taxes under the Property Tax Exemption Statute. In addition, if approved, such an exemption may not qualify the Premises for an exemption from non-ad valorem taxes. Landlord shall not be obligated to file an action in a court of competent jurisdiction or file an administrative appeal in the event the exemption is denied. Tenant may at its election and at its expense file such an action or administrative appeal and Landlord will join and consent and cooperate with prosecution of the action, provided Tenant bears all expense related thereto.

**NOW, THEREFORE**, in consideration of these presents, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby enter into this Ground Lease on the terms and conditions set forth herein.

**ARTICLE 2**  
**INCORPORATION OF RECITALS, DEMISE OF LEASEHOLD INTEREST**

**Section 2.1 Incorporation of Recitals.**

The recitals are hereby incorporated into this Lease by reference and are made a part hereof.

**Section 2.2 Leasehold Interest.**

(a) Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises upon the terms and conditions stated herein, and subject to the following ("Permitted Encumbrances"):

- i. Each and any condition, restriction, covenant, easement and/or limitation recorded against the Leased Premises, and in the event of a conflict between any condition, restriction, covenant, easement and/or limitation recorded against the Leased Premises or this Lease, the most restrictive shall apply. The Leased Premises may be encumbered by easements which impact development of the site. The Lessee shall be responsible for vacating any and all easements or other restrictions; and
- ii. Existing or future land planning, land use or zoning laws, building codes, ordinances, statutes or regulations of any governmental entity or agency for the United States of America, State of Florida, Broward County or City of Fort Lauderdale, or any other governmental agency having jurisdiction over the Leased Premises and with legal authority to impose such restrictions; and
- iii. LESSEE's satisfactory performance of all the terms and conditions contained in this Lease: and
- iv. Underground and overhead utilities facilities, including, but not limited to, water, wastewater, storm water and electrical lines, telephone and telecommunications facilities lines and septic tank, if any.

(b) Tenant shall have the right to pass and repass over all existing ways and public areas located on or in the surrounding Premises and all utilities and service conduits and facilities thereon to facilitate the Development. In connection therewith, Landlord agrees to execute and deliver all easements, licenses, permits and/or applications necessary for the Development, and any costs related thereto shall be Tenant's responsibility.

**Section 2.3 "AS IS" Condition.**

(a) LESSEE acknowledges that prior to the Commencement Date hereof it has performed sufficient inspections of the Leased Premises in order to fully assess and make itself aware of the condition of the Leased Premises and all improvements thereon, and that LESSEE

is leasing the Leased Premises in its "AS IS" condition. Except as may be expressly set forth in or required by this Lease, LESSEE acknowledges that the LESSOR has made no other representations or warranties as to the condition or status of the Leased Premises and that LESSEE is not relying on any representations or warranties of the LESSOR or any broker(s) or agent of LESSOR in leasing the Leased Premises. Except as may be expressly set forth in this Lease, LESSEE acknowledges that neither LESSOR nor any agent or employee of LESSOR has provided any other representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning with respect to:

1. The nature, quality or condition of the Leased Premises, including, without limitation, the water, soil and geology.
2. The suitability of the Leased Premises for any and all activities and uses which LESSEE may conduct thereon.
3. The compliance of or by the Leased Premises or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body.
4. The habitability, merchantability or fitness for a particular purpose of the Leased Premises; or
5. Any other matter with respect to the Leased Premises.

Without limiting the foregoing, LESSOR does not and has not made and specifically disclaims any other representation or warranty regarding the presence or absence of any Hazardous Substances, at, on, under or about the Leased Premises or the compliance or non-compliance of the Leased Premises with any laws, rules, regulations or orders regarding Hazardous Substances Laws. Hazardous Substances shall also include Radon Gas. LESSEE further acknowledges that neither LESSOR nor any agent of LESSOR has provided any representation or warranty with respect to the existence of asbestos or other Hazardous Substances on the Leased Premises. Accordingly, as between LESSOR and LESSEE under this Lease, the physical condition of the Leased Premises and compliance with all applicable laws, statutes, ordinances or regulations with respect to the physical condition of the Leased Premises shall be the sole responsibility and obligation of LESSEE.

**Section 2.4. ADA Compliance.**

(a) LESSEE shall have the continuing obligation of compliance at its sole cost and expense with the Americans With Disabilities Act, as the same may be amended from time to time, with respect to the Leased Premises.

**ARTICLE 3**  
**IMPROVEMENTS**

**Section 3.1 Development Constructed.**

(a) Tenant shall construct the Improvements on the Premises at its sole expense and subject to the terms and conditions of this Lease and reasonable financing documents necessitated by Tenant's construction financing.

**Section 3.2 Compliance with Laws.**

(a) The Development shall be constructed in a good and workmanlike manner and in accordance with the requirements of all applicable provisions of all applicable laws, ordinances, codes, orders, rules and regulations of all governmental authorities, agencies or departments having jurisdiction over the Development, including, but not limited to, Landlord and the City of Fort Lauderdale, Florida (the "City"). Nothing herein shall be deemed a waiver of the City's exercise of its police powers and regulatory authority with respect to this Development.

**Section 3.3 Approvals, Permits and Licenses.**

Tenant and Landlord shall apply for and prosecute, or cause to be applied for and prosecuted, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use and occupancy of the Development. Landlord shall cooperate with Tenant as may be necessary to facilitate the same, but Tenant shall bear the cost of all approvals, permits and licenses.

**Section 3.4 Ownership of Development.**

Landlord and Tenant acknowledge and agree that Tenant shall be the owner of the Improvements during the term of the Lease, and as such, Tenant shall be entitled to all depreciation deductions and low-income housing tax credits or other benefits for income tax purposes relating to the Improvements. In all events, at termination or expiration of this Lease, all right, title and interest in the Premises with all Improvements thereon (except that personal property and trade fixtures of LESSEE and sublessees and others shall remain the property of such parties and may be removed by such parties prior to the end of the Lease) shall revert to and be owned by LESSOR free of any encumbrances or obligations created by or through LESSEE.

**Section 3.5. Completion Date.**

(a) Within four (4) years of the Commencement Date, LESSEE shall complete the Development (as described in a site plan approved by the City) as evidenced by a Certificate of Occupancy or Completion, as applicable, issued by the appropriate governing authority. The inducement to grant a ninety nine (99) year lease is the representation, warranty, covenant and undertaking by Lessee that it will construct, operate, manage and maintain the Development and provide affordable housing in accordance with the terms and condition of this Lease and the Declaration of Restrictive Covenant executed and recorded simultaneously herewith. In the event, Lessee fails to construct the improvements in substantial conformity with an approved set of Plans and Specifications and final site plan approval within four (4) years from the Commencement Date of this Lease, then subject to the terms set forth in this Lease, the LESSOR, acting by and through the Board of Commissioners of the CRA, or its successor, shall have the right to terminate this Lease, and it shall be of no further force and effect, except those matters which survive termination. Lessee shall surrender possession within sixty (60) days upon written demand for return of the

Leased Premises and all parties shall be released from any further liability, except those matters which survive termination. Upon termination of the Lease, LESSEE shall restore the Leased Premises to the condition existing prior to termination of the Lease and LESSOR reserves the right to recover damages arising from LESSEE failure to restore the Leased Premises as set forth herein and in Article 17. In the event the planned improvements are substantially complete but a Certificate of Occupancy or Completion has not been issued within the four (4) year period, and the LESSEE is diligently pursuing completion of the improvements according to the approved site plan, LESSOR, acting by and through the Executive Director, shall have the right to extend the construction period to complete the Development which approval shall not be unreasonably withheld but in no event shall the extended period to complete the improvements exceed five (5) years.

**Section 3.6            Contractor Indemnity.**

LESSEE and/or its Affiliates (an entity controlled by or under common control with Lessee) shall include in any contract for labor, services or materials to be provided in connection with the construction of Improvements between LESSEE or its Affiliate and a general contractor constructing such Improvements (each a "Third Party Contractor") a provision for an indemnification clause whereby the Third Party Contractor shall indemnify, defend, and hold harmless LESSEE and LESSOR for any and all claims, suits, causes of action, and proceedings, for all loss, costs, damages, or expenses, including, but not limited to, attorneys' fees and court costs through all trial and appellate levels and post judgment proceedings, with respect to claims for personal injury and/or property damage asserted against LESSOR, LESSEE, or both LESSOR and LESSEE, which are alleged to have been caused by the Third Party Contractor, its subcontractors, subconsultants, agents and employees in connection with performing or providing such labor, services or materials and/or any other of its obligations under the applicable contract and arising out of such Third Party Contractor's negligence and/or wrongful acts and omissions. The Third Party Contractor shall retain legal counsel to defend LESSOR with competent legal counsel reasonably acceptable to LESSOR.

### **Section 3.7 Standards of Construction.**

(a) As between LESSOR and LESSEE, LESSEE shall ensure that any and all construction of the Improvements shall be performed in such a manner as to provide that the Improvements on the Premises shall:

- Be properly designed, structurally sound, safe for human occupancy (to the extent applicable), and free from any unusual hazards;
- Comply in all material respects with approved plans and the governmental approvals; and
- Comply in all material respects with the terms and provisions of this Lease.
- Construct the improvements in a good and workmanlike manner.
- Construct the improvements in compliance with American with Disabilities Act
- (ADA) requirements.

### **Section 3.8 Comply with Applicable Law.**

(a) All Improvements constructed or installed by LESSEE, its agents, or contractors, shall conform to all applicable state, federal, county, and local statutes, ordinances, building codes, fire codes, and rules and regulations, as amended.

### **Section 3.9 Comprehensive General Liability Insurance.**

(a) The general contractor performing construction of any Improvements or upon any Improvement located on the Premises shall provide, pay for and maintain in force, during the time such work is being performed, comprehensive general liability insurance with limits of at least (i) \$1,000,000; (ii) \$1,000,000 with a \$2,000,000 umbrella and \$5,000,000; and (iii) \$1,000,000 with a \$5,000,000 umbrella; all on a per occurrence combined single limit for bodily injury liability and property damage liability.

**Section 3.10 Insurance Requirements for Construction Contracts.**

(a) LESSEE agrees to include the following insurance requirements in any agreement it or its Affiliates enters into with any contractor(s) performing construction work on the Premises and LESSEE further agrees to provide to LESSOR, prior to commencement of the improvements with respect to such contract, certificates of insurance evidencing the contractor's compliance with the requirements of this Section: Without limiting any of the other obligations or liabilities of any contractor performing work which requires a building permit, such contractor shall provide, pay for, and maintain in force until all of its work to be performed has been completed, the insurance coverages set forth herein. Workers' Compensation insurance for all employees working on the Premises in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. Comprehensive General Liability as provided in the Section above. Business Automobile Liability with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. LESSOR is to be expressly included as an "Additional Insureds" as their interest may appear. LESSEE shall not allow the use of the Premises or the Improvements thereof to be performed in a manner which would invalidate or cancel any insurance policy or coverage to be maintained by LESSEE pursuant to this Lease. Builder's Risk in an amount which is commercially reasonable.

**Section 3.11 Certificates.**

(a) With respect to the insurance to be obtained, LESSEE shall provide to LESSOR prior to commencement of the Improvements on the Premises, certificates of such applicable insurance evidencing the insurance coverage as specified above. LESSOR may require that the delivery of copies of policies and declaration pages which shall provide that they should not be cancelled without thirty (30) days advanced written notice to LESSOR.

**ARTICLE 4  
REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Landlord's Representations and Warranties.**

Landlord hereby represents and warrants to Tenant that:

(a) The person signing this Lease on behalf of Landlord is authorized duly and validly to so sign.

**Section 4.2 Tenant's Representations and Warranties.**

Tenant hereby warrants and represents to Landlord that:

(a) Tenant is, and as of the Commencement Date will be, a duly organized and lawfully existing limited liability company under the laws of the State of Florida.

(b) Tenant has, and as of the Commencement Date will have the full right, power and authority to make, execute, deliver and perform this Lease.

(c) The person signing this Lease on behalf of Tenant is authorized duly and validly to so sign.

## ARTICLE 5

### TERM

#### **Section 5.1 Commencement Date.**

The "Commencement Date" shall be the date that the Tenant closes on its construction financing with respect to the Development. Tenant shall close on its construction financing on or before December 31, 2025. If the closing has not occurred on or before December 31, 2025, the Parties shall execute and record a termination of this Lease.

#### **Section 5.2 Term of Lease.**

This Lease shall be effective as of the Effective Date for a minimum term (i) commencing on the Commencement Date, and (ii) unless otherwise provided by law, terminating on the latest to occur of: (A) ninety-nine (99) years from the date the Development becomes available for occupancy as evidenced by issuance of a Certificate of Occupancy; or (B) December 31, 2127 (the "Term").

## ARTICLE 6

### LEASE PAYMENT

#### **Section 6.1 Lease Payment.**

There shall be annual lease payments (collectively, the "Lease Payment") in the amount of Eleven Thousand One Hundred Eleven and No/100 Dollars (\$11,111) which will be the current rent restricted appraised value (\$1,100,000) of the Premises divided by 99. Subject to Net Cash Flow (as such term is defined in Tenant's Amended and Restated Operating Agreement), Tenant will pay Landlord the Lease Payment annually starting on the first January 1 after the Commencement Date and continuing thereafter on each January 1 until the end of the Term. In the event that any annual Lease Payment is not made because of the lack of Net Cash Flow, such annual Lease Payment shall bear interest at Four and 55/100 percent (4.55%) – the annual Long-term Applicable Federal Rate as of the Effective Date until paid from future Net Cash Flow from the Tenant. Any remaining balance of the accrued and unpaid Lease Payment at the end of the Term shall be immediately due and payable at such time. The Lease Payment will be paid at the address specified for Landlord in the Basic Lease Information, or at such other address as Landlord may direct from time to time by written notice. Following a foreclosure by the senior Leasehold Mortgagee and the Leasehold Mortgagee and Landlord entering into a new lease under Section 12.7, the Lease Payment shall be reduced to \$1 per year.

#### **Section 6.2 Payments by Tenant upon Commencement of Construction of the Development.**

All costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use or occupation of the Premises or the Development shall be the responsibility of Tenant.

**ARTICLE 7**  
**TAXES; OPERATING EXPENSES**

**Section 7.1 Taxes.**

Tenant will pay or cause to be paid (i) any real estate taxes which are assessed against the Premises by any taxing authority during the Term, or (ii) any payments to the extent required by a cooperation agreement or amendment thereto providing for payments in lieu of taxes which is entered into by Tenant or Landlord with the City or any other taxing entity during the Term. Tenant will pay or cause to be paid all real estate recordation taxes incident to this Lease, if any. Each party agrees to cooperate with any effort on the part of the other party to appeal any tax assessment.

**Section 7.2 Project Operating Expenses.**

Tenant will pay or cause to be paid all costs and expenses attributable to or incurred in connection with the operation, maintenance and repair of the Premises and the Development (collectively, the "Operating Expenses") during the Term.

**Section 7.3 Utility or Service Charges.**

Beginning on the Effective Date, LESSEE agrees to pay all utility service charges including, but not limited to gas, electricity, telephone, telecommunications, heating, air conditioning, water & sewer, storm water utility fees, and other similar service charges attributed to the Leased Premises. If any of these charges remain unpaid after they become due, LESSOR may exercise its remedies as set forth in Article 17. LESSOR shall not be liable to LESSEE for damage nor otherwise because of LESSEE's failure to arrange for or to obtain any utilities or services referenced above for the Leased Premises that are supplied by parties. No such failure, interruption or curtailment may constitute a constructive or partial eviction.

**Section 7.4 Governmental Charges or Services.**

Beginning on the Effective Date and subject to the provisions of Section 7.1, LESSEE must pay all ad valorem and non-ad valorem taxes and other governmental fees, charges or assessments that are related to the Leased Premises or personalty situated thereon or operations conducted thereon that arise during the term of the Lease. Nothing shall preclude the LESSEE from seeking an exemption from ad valorem and other taxes due to its status as a tax-exempt organization under Internal Revenue Code Section 501c (3) or under the Property Tax Exemption Statute. LESSEE shall pay all such taxes and other charges when due and before any fine, penalty, interest or other cost is added, becomes due, or is imposed by operation of law for nonpayment. These taxes and other charges include, but are not necessarily limited to the following:

- 7.4.1 All taxes, assessments, water, sewer, connection fees, garbage rates and charges, public utility charges, excise levies, licenses and permit fees.
- 7.4.2 All such charges whether they are general or special, ordinary or extraordinary, foreseen or unforeseen, assessed, levied, confirmed or imposed upon the Leased Premise or use thereof or improvements thereto or personalty situated thereon.
- 7.4.3 All such charges that arise from, become payable from or with respect to, or become a lien on any of the following:
- (a) All or any part of the Leased Premises or use thereof or improvements thereto or personally situated thereon.
  - (b) Any appurtenance to the Leased Premises.
  - (c) The rent and income received by the LESSEE from any subtenant.
  - (d) Any use or occupation of the Leased Premises.
  - (e) Any document to which the LESSEE is a party and that creates or transfers an interest or estate in the Leased Premises.
  - (f) Sales or use tax arising from LESSEE's operations; or
  - (g) Any taxes or charges applicable to the Rent paid under this Lease.
  - (h) Nothing shall prevent the LESSEE from seeking exemption from any and all sales and use taxes due to its status as a non-for-profit corporation.

Beginning on the Effective Date, all costs, expenses, sales or use taxes, or taxes of any nature or kind, special assessments, connection fees, and any other charges, fees or like impositions incurred or imposed against the Leased Premises, to the extent applicable, or any use thereof, including revenue derived therefrom, and any costs, expenses, fees, taxes or assessments in or upon the real property or improvements constructed thereon shall be made and paid by LESSEE in accordance with the provisions of this Lease, it being the intent of the parties that, except as may be specifically provided for herein, LESSEE is responsible for paying all the expenses and obligations that relate to the Leased Premises or any improvements thereon and that arise or become due during the Term. Should any such tax rate change under the Florida Sales Tax Statute or other applicable statutes, LESSEE shall pay LESSOR the amounts reflective of such changes.

#### **Section 7.5                      Payments and Receipts.**

Upon LESSOR's written request, LESSEE shall deliver to LESSOR official receipts that show payment of all charges required under this Article and contained in LESSOR's written request. These receipts must be delivered to the place where the Rent payments are to be made. The LESSEE shall pay every tax or other charge required to be made under this Article before the charge or tax becomes delinquent under the law then governing payment of the tax or other

charge, unless the tax or charge is challenged by LESSEE in accordance with Section 7.6 of this Lease.

**Section 7.6                    LESSEE'S Challenge of Tax.**

LESSEE may contest the validity of any tax, tax claim, or charge or assessment, described herein without being in default for nonpayment of taxes under this Lease, provided LESSEE complies with terms and conditions of this Section. LESSEE must give LESSOR written notice of LESSEE's intention to contest and LESSEE must also furnish LESSOR with a bond with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by LESSOR. The bond or cash must be in an amount equal to the 1.25% of the amount of the taxes, claim, charge or assessment together with estimated penalties and interest being contested and must be conditioned upon payment of the taxes, claim, charge or assessment once the validity has been determined. LESSEE must give the written notice accompanied by evidence of the bond or escrow to LESSOR not later than sixty (60) days before the contested taxes would otherwise become delinquent.

**Section 7.7                    LESSOR'S Remedy for LESSEE'S Nonpayment.**

If LESSEE fails, refuses, or neglects to pay any taxes, fees, assessments or other governmental charges under this Article, unless challenged as provided in Section 7.6 of this Lease, the LESSOR may pay them. On LESSOR's demand, LESSEE shall reimburse LESSOR all amounts LESSOR has paid, plus expenses and attorney's fees reasonably incurred in connection with such payments, together with interest at the rate of six (6%) per cent per annum from the date LESSOR paid such outstanding taxes, fees, assessments or other governmental charges, up to but not exceeding the maximum rate of interest allowable under Florida law. On the day LESSOR demands repayment or reimbursement from LESSEE, LESSOR is entitled to collect or enforce these payments in the same manner as a payment of Rent. The LESSOR's election to pay the taxes, fees, assessments or other governmental charges does not waive LESSEE's default.

**ARTICLE 8**  
**INSURANCE; PAYMENT AND PERFORMANCE BONDS**

**Section 8.1    Tenant's Insurance and Payment and Performance Bonds.**

Tenant will, at its sole expense, obtain and keep in force, adequate insurance and payment and performance bonds to protect Tenant and Landlord from loss as follows:

- (a)
  - i. **Commercial General Liability Insurance.** A commercial general liability insurance policy, in standard form, insuring LESSEE during the Term of this Lease, shall be provided with policy limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury, property damage and personal and advertising injury and \$1,000,000 each

occurrence and \$2,000,000 aggregate for products and completed operations. The policy must include coverage for Contractual Liability and Independent Contractors. CRA, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the LESSEE. The coverage shall contain no special limitation on the scope of protection afforded to CRA, its officials, employees, or volunteers.

(b)

- i. **Property Coverage.** Coverage must be afforded in an amount not less than 100% of the insurable value of the Improvements with a maximum deductible of \$25,000 on each claim. Coverage form shall include, but not be limited to all risk coverage including flood and windstorm with no coinsurance clause. This policy shall insure the interests of CRA as owner in the property against all risk of physical loss and damage, and name CRA as a loss payee.
- ii. **Property Coverage/Builders Risk.** As a condition precedent to the commencement of the construction of the Improvements, the following insurance policy is required and coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a maximum deductible of \$25,000 each claim. Coverage form shall include, but not be limited to, All risk coverage including flood and windstorm with no coinsurance clause, guaranteed policy extension provision, storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project, and equipment breakdown for cold testing of all mechanized, pressurized, or electrical equipment. This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage, and name CRA as a loss payee. This insurance shall remain in effect until the Improvements are completed.
- iii. **Business Automobile Liability.** Coverage must be afforded for all owned, hired, scheduled, and non-owned vehicles for bodily injury and property damage in an amount not less than \$1,000,000 combined single limit each accident. If the LESSEE does not own vehicles, the LESSEE shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the commercial general liability policy or separate business auto liability policy.
- iv. **Workers' Compensation Insurance.** LESSEE shall maintain Workers' Compensation Insurance Limits: Per Chapter 440, Florida Statutes, with Employers' Liability of \$500,000. Any firm performing work on behalf of CRA must provide Workers' Compensation insurance to LESSEE prior to

the commencement of said work. Exceptions and exemptions will be allowed by Risk Manager, if they are in accordance with Florida Statute. Lessee must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act, if applicable.

- v. Providing and maintaining adequate insurance coverage is a material obligation of LESSEE and LESSEE shall provide CRA a certificate of insurance evidencing such coverage. LESSEE's insurance coverage shall be the primary insurance coverage for the Leased Premises and any insurance or self-insurance maintained by City of Fort Lauderdale, its officials, employees, or volunteers shall be excess of LESSEE's insurance and shall be non-contributory. The limits of coverage under each policy maintained by LESSEE shall not be interpreted as limiting LESSEE's liability and obligations under this Lease. All insurance policies shall be through insurers authorized or eligible to write policies in Florida and possess an A.M. Best rating of "A-" or better, subject to the approval of the Risk Manager.
- vi. The coverages, limits and/or endorsements required herein protect the primary interests of CRA, and these coverages, limits and/or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect LESSEE against any loss exposures, whether as a result of this Lease or otherwise. The requirements contained herein, as well as CRA's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by LESSEE under this Lease.
- vii. **Insurance Certificate Requirements.** The insurance certificates required to be provided herein shall comply with the following:
  - 1. LESSEE shall provide CRA with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Lease.
  - 2. LESSEE shall provide a Certificate of Insurance to CRA with a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
  - 3. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of LESSEE to provide the proper notice as described herein.
  - 4. In the event the Term goes beyond the expiration date of the insurance policy, LESSEE shall provide CRA with an updated Certificate of Insurance no later than ten (10) days prior to the

expiration of the insurance currently in effect. The CRA reserves the right to suspend the Agreement until this requirement is met.

5. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.
6. CRA shall be named as an Additional Insured with a Waiver of Subrogation.
7. The Lease or other identifying reference must be listed on the certificate.
8. The Certificate Holder should read as follows:

Fort Lauderdale Community Redevelopment Agency  
101 NE 3<sup>rd</sup> Avenue, Suite 2100  
Fort Lauderdale, FL 33301

(c) LESSEE has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. If LESSEE's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Lease, LESSEE may provide an Umbrella/Excess insurance policy to comply with this requirement.

(d) Any exclusions or provisions in the insurance maintained by the LESSEE that excludes coverage for work contemplated in this Lease shall be deemed unacceptable and shall be considered an event of default.

(e) All required insurance policies must be maintained throughout the Term or as applicable, and any lapse in coverage shall be considered breach of this Lease. In addition, Lessee must provide confirmation of renewal of coverage by providing an updated certificate should any policies expire prior to the expiration of this Lease. CRA reserves the right to review, at any time, coverage forms and limits of LESSEE's insurance policies.

(f) All notices of any claim/accident (occurrences) associated with work being performed under this Lease, shall be provided to LESSEE's insurance company and the Risk Manager as soon as practicable.

(g) It is LESSEE's responsibility to ensure that all subtenants and subcontractors comply with these insurance requirements. All coverages for subcontractors shall be subject to all of the requirements stated herein. LESSEE further confirms that LESSEE's insurance will apply as excess over any other valid and collectible coverage of their vendors. Any and all deficiencies are the responsibility of the LESSEE.

(h) Payment and Performance Bonds. Tenant will cause the general contractor, at its sole expense, to obtain and keep in force during the construction of the Improvements on the Premises, performance bonds, materials payment bonds, and labor payments bonds in an amount equal to one hundred percent (100%) of the contract sum of the improvements on the Premises reasonably satisfactory to Landlord. The payment and performance bonds required of Tenant hereunder will be delivered to Landlord.

**Section 8.2 Landlord's Insurance**. The Landlord is subject to all the benefits, protections and immunities provided under F.S. 768.28 and nothing herein shall be deemed a waiver of the benefits, protections and immunities provided under said statute. Further, the Landlord is a dependent of the City of Fort Lauderdale which is self-insured pursuant to and in accordance with F.S. 768.28. If the City of Fort Lauderdale fails to maintain self-insurance, then the Landlord agrees to purchase at its expense and keep in force during the term of this Lease, comprehensive general liability insurance, including personal injury and property damage in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregated for incidents in or on the Leased Premises arising from acts or omissions of Landlord. Said policies shall be issued by an insurance company licensed to do business in the state of Florida and shall not be canceled unless thirty (30) day prior written notice of cancellation has been sent to the Tenant.

## ARTICLE 9

### USE OF PREMISES, COMPLIANCE WITH LAWS, AND TENANT'S INDEMNITY

#### **Section 9.1 Permitted Use**

Tenant shall throughout the Term continuously use and operate the Premises and the Development only for the following uses, and such other uses as are reasonably and customarily attendant to such uses: construction, development, marketing for lease and leasing of the Improvements for residential and commercial and retail uses as permitted under the City's Unified Land Development Regulations ("ULDR") and in accordance with the Affordable Housing Requirement set forth herein.

#### **Section 9.2 Compliance with Laws**

Tenant shall not use or occupy or suffer or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy, or other governmental requirement. Tenant will comply with 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. Tenant agree that the commercial or residential space shall not be used for those non-permitted uses as provided in Section 47-12 of the ULDR and shall not be used for the following (i) "adult uses" as such term is defined in Section 47-18.2 of the ULDR; or (ii) liquor store, tattoo parlor or bar; or convenience kiosk as provided in the ULDR, during the term of the Lease.

#### **Section 9.3 Community Benefit**

The Tenant agrees that 100% of the residential units in the Premises shall be leased to individuals or families whose income, as adjusted for family size, is, on average, not greater than sixty percent (60%) of Broward County Area Median Income ("Eligible Persons"), as established by the United States Department of Housing and Urban Development, or its successor, for thirty (30) years starting from the date of occupancy by the first residential tenant ("Affordable Housing Requirement"). All of the residential units, as adjusted for size of unit, shall be leased at Affordable Rents. Affordable Rents shall mean payment of rent which does not exceed thirty percent (30%) of the occupant's gross monthly income including utility charges. Tenant shall provide such reports and supporting documents as evidence of the income of each Eligible Person as required by the Landlord. Tenant, at its expense, shall provide to Landlord an annual written report ("Rental Report") certifying that all residential tenants meet the initial requirements at the time of initial lease commencement. The first Rental Report shall be submitted on the Completion Date and each subsequent annual Rental Report on its anniversary for the preceding calendar year. Each Rental Report shall be certified by a third party State of Florida registered certified public accountant or consultant, chosen by Landlord, verifying the complete and accurate nature of the Rental Report. Notwithstanding any language contained herein to the contrary, the Landlord shall accept as the Rental Report the rental reports submitted to the Florida Housing Finance Corporation. Each Rental Report subsequent to the "sunset" of the Landlord shall be submitted to its successor.

#### **Section 9.4 Tenant's Indemnity.**

9.4.1 LESSEE shall protect, defend, indemnify and hold harmless the LESSOR, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of LESSEE under this Lease, conditions contained therein, the location, construction, repair, maintenance, use or occupancy of the Leased Premises or improvements located thereon, or the breach or default by LESSEE of any covenant or provision of this Lease except for any occurrence arising out of or resulting from LESSOR's breach of this Lease or the gross negligence or intentional acts of the LESSOR, its officers, agents and employees acting within the course and scope of their employment. This indemnity shall survive termination of this Lease and is not limited by insurance coverage.

9.4.2 Without limiting the foregoing any and all such claims, suits, causes of action relating to personal injury, death, damage to property or defects in construction completed by Lessee, or its agents, or its affiliates or its subtenants or assignees, rehabilitation or restoration of the Leased Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, including, without limitation, the Property Tax Exemption Statute, ordinance, administrative order, rule or regulation or decree of any court, except for any occurrence arising out of or resulting from LESSOR'S breach of this Lease, or gross negligence or intentional acts of LESSOR, or its officers, agents and employees acting within the course and scope of their employment ("Claims"), is included in the indemnity.

9.4.3 LESSEE further agrees to investigate, handle, respond to, provide defense for, and defend any such Claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the

LESSOR, LESSEE shall assume and defend not only itself but also the LESSOR in connection with any such Claims and any such defense shall be at no cost or expense whatsoever to LESSOR, provided that LESSOR, exercisable by LESSOR's Executive Director or Risk Manager (the "Risk Manager") shall retain the right to select counsel of its own choosing, subject to the LESSEE'S approval which shall not be unreasonably withheld, conditioned or delayed.

**Section 9.5 LESSOR'S Liability.**

In no event shall LESSOR'S liability for any breach of this Lease exceed the amount of Rent then remaining unpaid for the Term. This provision is not intended to be a measure or agreed amount of LESSOR'S liability with respect to any particular breach and shall not be utilized by any court or otherwise for the purpose of determining any liability of LESSOR hereunder except only as a maximum amount not to be exceeded in any event. This limitation does not apply to acts of malfeasance, gross negligence or intentional acts of LESSOR or its employees or agents acting within the course and scope of their employment. Furthermore, no property, whether real or personal, including the Leased Premises or other assets of LESSOR shall be subject to levy, execution or other enforcement procedure for the satisfaction of LESSEE's remedies under or with respect to this Lease and LESSOR shall not be liable for any deficiency.

**Section 9.6 Landlord's Rights.**

(a) Notwithstanding the foregoing, LESSOR may conduct annual inspections of the Leased Premises at LESSOR'S sole cost and expense, upon three (3) days prior written notice. Said inspection shall take place during normal business hours at a reasonable time mutually agreed to between the parties.

- I. **Liability for Personal Property.** All personal property placed or moved onto the Leased Premises is at the sole risk of LESSEE or other owner of such personal property. LESSOR shall not be liable for any damage to such personal property, or for personal injuries to LESSEE or any of LESSEE's subtenants, agents, servants, employees, contractors, guests or invitees or to trespassers on the Leased Premises that arise from any person's tortious acts or omissions, regardless of the status of the person; provided, however, that if the damage or injury is caused by LESSOR's tortious acts or omissions, then, to the extent the damage or injury in question is caused by LESSOR's tortious acts or omissions, then LESSEE's liability to LESSOR hereunder shall be proportionately abated.
- II. **Liability for Damages or Injuries.** LESSOR shall not be liable for any damage or injury incurred or sustained in, on or about the Leased Premises when such damage or injury results from the tortious acts or omissions of any person, including LESSEE's guests, subtenants, invitees, servants, agents, employees or contractors or trespassers on the Leased Premises; provided, however, that if the damage or injury is caused by LESSOR's tortious acts or omissions, then, to the extent the damage or injury in

question is caused by LESSOR's tortious acts or omissions, then LESSEE's liability to LESSOR hereunder shall be proportionately abated.

**ARTICLE 10**  
**ENVIRONMENTAL CONDITIONS**

**Section 10.1 Tenant's Environmental Covenants.**

Tenant has no liability for any environmental conditions that existed or arose on the Premises prior to the Term, unless such environmental condition(s) was caused by the negligence or actions of Tenant or Tenant's employees, agents, or subcontractors. Both parties acknowledge that Ardaman & Associates, Inc. conducted an Phase I Environmental Site Assessment of the Leased Premises and its assessment did not reveal any Recognized Environmental Conditions, or Controlled Environmental Conditions, Historical Environmental Conditions or De minimis Conditions ("Environmental Baseline") Tenant shall not be responsible for removing or rendering harmless any pre-existing Prohibited Substances (as hereinafter defined) from the Premises but shall advise Landlord and cooperate and coordinate the remediation work. Without limitation of any of Tenant's other covenants, agreements and obligations under this Lease, Tenant hereby specifically covenants and agrees to fulfill the responsibilities set forth below with respect to environmental matters and Hazardous Materials or Prohibited Substances:

(a) Tenant, its Affiliates, agents, employees, and contractors shall comply with all applicable provisions of all Environmental Laws (as hereinafter defined) applicable to the Premises, the Development, and Tenant's use of the Premises. All required governmental permits and licenses issued to Tenant, its Affiliates, agents, employees, and contractors and associated with the Premises and the Development shall remain in effect or shall be renewed in a timely manner, and Tenant, its agents, employees and contractors shall comply therewith.

(b) Tenant shall not itself, and Tenant shall not permit any other person, including, but not limited to, third parties with whom Tenant contracts in regard to this Lease, to bring onto the Premises any (i) asbestos or asbestos-containing material or polychlorinated biphenyl material, or (ii) hazardous substances or hazardous waste as defined under any federal, state or local law, that may require remediation under applicable law (other than quantities or such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction, occupancy and operation of the Development on the Premises), or (iii) soil containing volatile organic compounds (collectively (i)-(iii) are the "Prohibited Substances"). Tenant shall be liable for the consequences of, and responsible for removal and lawful disposal, at its sole expense, of any Hazardous Materials, Prohibited Substances, or both brought onto the Premises, resulting from a default under this Section.

(c) Tenant shall immediately notify Landlord, in writing and provide Landlord with copies of all forms, notices and other information received by or on behalf of Tenant, its agents, employees, and contractors concerning any releases, spills or other incidents relating to Hazardous Materials, Prohibited Substances, or both, or any violations of Environmental Laws at or relating to the Premises when and as supplied to any government agency. Tenant shall also comply with all laws, ordinances, regulations and orders of all governmental, regulatory and other

public and quasi-public agencies, authorities and entities having jurisdiction over the same with respect thereto.

**Section 10.2 Landlord's Environmental Covenants.**

If applicable, prior to the Commencement Date, without limitation of any of Landlord's other covenants, agreements and obligations under this Lease, Landlord hereby specifically covenants and agrees to provide Tenant with copies of all forms, notices and other information received by or on behalf of Landlord concerning any released, spills or other incidents relating to Hazardous Materials or Prohibited Substances, or any violations of Environmental Laws at or related to the Premises when and as supplied to any governmental agency.

**Section 10.3 Tenant's Environmental Indemnity.**

(a) Effective on the Effective Date, LESSEE agrees to and shall indemnify, defend and hold LESSOR harmless of and from any and all claims, demands, fines, penalties, causes of action, administrative proceedings liabilities, damages, losses, costs and expenses, which are asserted against the LESSOR for bodily injury, disease, sickness, death, property damage (including the loss of use therefrom), damage or injury to the environment or natural resources, or some or all of the foregoing, and which relate, refer, or pertain to:

1. the existence of Hazardous Substances on, under, or over the Leased Premises, or
2. Hazardous Substances being released into the air, water, groundwater, or onto the ground in connection with the use of or operations on the Leased Premises, or
3. gaseous emissions (excluding methane, radon, and other naturally occurring gases) from the Leased Premises, or
4. the use, generation, or storage of Hazardous Substances on the Leased Premises, or
5. the disposal of Hazardous Substances, or
6. some or all of the foregoing.

This indemnity applies regardless of whether the activity occurred before or during the Term as a result of Hazardous Substances brought onto the Leased Premises by any person whomsoever, including without limitation, any subtenant, licensee or invitee, other than LESSOR, its agents, servants, employees, contractors or licensees engaged to perform services on the Leased Premises and/or other than as set forth in the Environmental Baseline.

(b) Effective on the Effective Date, LESSEE shall further indemnify, defend and hold LESSOR harmless from and against any and all liability, including, but not limited to, all damages directly arising out of the use, generation, storage or disposal of Hazardous Substances in, on, under, above or about the Leased Premises before or during the Term,

including, without limitation the following when required by Hazardous Substances Laws or by governmental entities and agencies that enforce Hazardous Substances Laws (herein “**Environmental Agencies**”):

1. all required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like; and,
2. all cleaning, detoxification, remediation, cleanup and disposal; and
3. all tests, audit, monitoring, and reporting; and
4. all fees, costs, assessments, fines and penalties charged by Environmental Agencies.

This indemnification shall not extend to any claim, demand, fine, penalty, cause of action, liability, damage, loss, cost or expense related to the presence of Hazardous Substances that are caused by LESSOR, its agents, servants, employees, contractors or licensees engaged to perform services on the Leased Premises and/or as set forth in the Environmental Baseline.

(c) Except for Hazardous Substances set forth in the Environmental Baseline, effective on the Effective Date, LESSEE further agrees that its indemnification obligations shall include, but are not limited to, liability for damages resulting from the personal injury or death of any agent, licensee, subtenant, vendor, employee or volunteer of LESSEE or the subtenant, regardless of whether LESSEE or the subtenant has paid the employee under the Workers’ Compensation Laws of the State of Florida, or other similar federal or state legislation for the protection of employees.

(d) LESSEE agrees that the foregoing obligations to indemnify, defend and hold LESSOR harmless, effective on the Effective Date, extends to and includes all reasonable attorneys’ fees, experts’ fees and costs incurred in the defense of any of the foregoing claims or demands as well as enforcement of the provisions of this Article respecting Hazardous Substances. The indemnification provided in this Lease is effective on the Effective Date and shall survive the termination of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitation for such claim or cause of action.

(e) LESSOR reserves the right to select counsel of its own choosing, subject to LESSEE approval, which shall not be unreasonably, withheld, conditioned or delayed, in the event LESSEE is called upon to defend LESSOR pursuant to this indemnity.

#### **Section 10.4 Environmental Testing.**

(a) At any time during the Term, LESSOR may, upon reasonable prior written notice to LESSEE (taking into account the potential disruption of the LESSEE’s operation) enter upon the Leased Premises for the purpose of conducting environmental tests (“**LESSOR’S Tests**”) to determine the presence and/or extent of contamination by Hazardous Substances in, on, under, above, within or about the Leased Premises. LESSOR shall not be entitled to conduct the LESSOR’S Tests unless:

1. An Environmental Agency shall have issued a notice of violation with respect to the Hazardous Substances on, within, above, about or under the Leased Premises; or
2. LESSOR has probable cause to believe that LESSEE, the Subtenant or any other subtenant has violated Hazardous Substance Laws relating to the LESSEE's use of the Leased Premises.

(b) LESSOR'S Tests shall be at the sole cost and expense of LESSOR. The cost and expenses relating to the LESSOR'S Tests shall not be included in the scope of any indemnification set forth in this Article, unless the LESSOR'S Tests reveal the presence of Hazardous Substances at levels that are in violation of the Hazardous Substances Laws. No LESSOR'S Tests shall be conducted until LESSOR has provided to LESSEE the name of the environmental engineering firm licensed to perform such work in the State of Florida (the "Permitted Firm").

#### **Section 10.5 Environmental Procedure; Consent to Assignment.**

(a) Any provisions herein to the contrary notwithstanding, LESSEE, or its proposed assignee, whichever the case may be, shall, at its own cost and expense, furnish to LESSOR an updated Phase I Environmental Assessment and/or Phase II Environmental Assessment of the Leased Premises, by a Permitted Firm, as a condition precedent to LESSOR's consent to an assignment of the leasehold interest or any part thereof. The foregoing is referred to hereinafter as the "**Environmental Procedure.**"

(b) The Environmental Procedure shall include a qualitative and quantitative analysis of the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises.

(c) If the Environmental Procedure establishes the presence of Hazardous Substances at levels that are in violation of the Hazardous Substance Laws, then LESSOR may withhold consent to the assignment of the leasehold interest or any part thereof, until security is posted with LESSOR which is deemed by LESSOR to be reasonably adequate to cover 150% of the projected costs of any legally required clean-up, detoxification or remediation of the Leased Premises from the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises and any and all fines or penalties associated therewith.

#### **Section 10.6 Environmental Definitions.**

For the purpose of this Lease, the following definitions shall apply:

(a) "Environmental Laws" means any present or future federal, state or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42, U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq. ("TOSCA"); the Clean Air Act, 42 U.S.C.

Section 7401 et seq.; and the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called "Superfund" or "Super lien" law; and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. ("OSHA"), as each is from time to time amended and hereafter in effect.

(b) "Hazardous Materials" means: (i) "hazardous substances" as defined by CERCLA; (ii) "hazardous wastes," as defined as RCRA; (iii) any hazardous, dangerous or toxic chemical, waste, pollutant, containment or substance ("pollutant") within the meaning of any Environmental Law prohibiting limited or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant; (iv) petroleum crude oil or fraction thereof; (v) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq. and amendments thereto and reauthorizations thereof; or (vi) asbestos containing materials in any form or condition, or polychlorinated biphenyls in any form or condition.

#### **Section 10.7      Survival.**

The agreements, representations and warranties of Landlord and Tenant respectively in this Article 10 shall survive the expiration or early termination of this Lease.

### **ARTICLE 11** **ASSIGNMENTS, SUBLEASES AND TRANSFERS**

#### **Section 11.1      Consent Required.**

(a) Consent. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant, except that Tenant may not assign or sublet its interest in this Lease without the prior written consent of Landlord, other than entering into residential leases of the Improvements in the ordinary course of Tenant's business and other than a commercial sublease for the Development's retail spaces. Any attempted transfer without such consents shall be null and void.

(b) No transfer, conveyance, or assignment shall be made without the prior written approval by Landlord of: (i) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") of Tenant, or (ii) a Controlling Interest in any entity which has a Controlling Interest in Tenant, or (iii) any other interest in Tenant, or in any partner or member thereof (each of such transfers, conveyances and assignments, together with the transfers described in Section 11.1(b) hereof, is hereafter referred to as a "Transfer"). Notwithstanding the foregoing, the consent of Landlord shall not be required where a business organization that has a limited interest (non-controlling and non-managing) in Tenant transfers a non-controlling and non-managing interest in Tenant or an interest in the business organization, including, without limitation, the transfer of the non-controlling and non-managing member interest of RBC Community Investments LLC, an Illinois limited liability company or its affiliate (the "Equity Investor"), to an affiliated investment fund of the Equity Investor, provided, that Tenant in the case of such a transfer: (i) provides Landlord with written notice of such transfer following such transfer; and (ii) certifies to Landlord that the transferee entity(ies), as appropriate, remains obligated to fund its equity contribution in accordance with the

terms of the organizational documents of Tenant. Landlord agrees that they will not unreasonably withhold, or delay, or condition a request by Tenant for consent by Landlord, to an internal reorganization of the corporate or partnership structure of Tenant or any of the partners, members or stockholders of Tenant. Additionally, notwithstanding the foregoing, Landlord's consent shall not be required for any removal of Tenant's managing member or Class B member and replacement of such member (s) with Equity Investor or an affiliate thereof pursuant to the terms of Tenant's Operating Agreement.

(c) 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.

#### **Section 11.2 Subsequent Assignment.**

In cases where Landlord's consent is required, Landlord's consent to one assignment will not waive the requirement that Tenant obtain consent to any subsequent assignment.

#### **Section 11.3 Request for Consent.**

If Tenant requests Landlord's consent to a specific assignment, Tenant shall provide to Landlord such information as may reasonably be required by Landlord. Landlord agrees that they will not unreasonably withhold, or delay, or condition a request by Tenant for consent to a specific assignment. If no response is received after seven (7) business days after receipt of written request by Tenant, it will be deemed that Landlord has given consent or approval.

#### **Section 11.4 Transfer by Landlord.**

(a) Landlord shall not transfer all or any portion of its interest in the Premises without the prior written consent of the Equity Investor and any Leasehold Mortgagee (as hereinafter defined), if applicable, and upon any such approved transfer, the transferee shall assume all of Landlord's obligations under this Lease and, in any event, Landlord shall not transfer all or any portion of its interest in the Premises if the same would cause a violation of any applicable laws or regulations, any terms of this Lease, or any agreement or contract to which Landlord is a party or by which Landlord is bound. It has been disclosed that Landlord shall sunset within ten (10) years from and its successor shall be determined by operation of law or pursuant to the Interlocal Agreement. Notwithstanding the foregoing, the Equity Investor and Leasehold Mortgagee agrees that a transfer of the Landlord's reversionary fee interest in the Leased Premises shall not be in violation of this Section provided that the transferee owner remains a governmental entity as defined under the Property Tax Exemption Statute and the transferee provides written notice of the transfer within 10 days prior to the transfer and enters into a recognition agreement with the Tenant. The Tenant shall bear all costs and expenses in connection with the preparation and recordation of the recognition agreement. Notwithstanding this prohibition, the Tenant, Equity Investor and Leasehold Mortgagee agree and acknowledge that the Landlord may assign the rental income and/or revenue under this Lease to Invest Fort Lauderdale, Inc. or other non-profit selected by Landlord or its successor.

**ARTICLE 12**  
**LEASEHOLD FINANCING**

**Section 12.1 Right to Mortgage.**

With the prior written consent of Landlord, Tenant may grant one or more mortgages of its interest in the Lease (each, a "Leasehold Mortgage") to lenders and, in connection therewith, to collaterally assign this Lease to such lenders. In no event shall Landlord ever be required to execute any such mortgage, or any note secured thereby or any other obligation securing any such note, or to subordinate Landlord's fee interest in the Premises or any portion thereof to the lien of any such mortgage. Tenant shall identify the name of each mortgagee ("Leasehold Mortgagee") for such portion of the Premises and the address(es) to which notices to the Leasehold Mortgagee are to be sent, and for purposes of this Lease the term "Leasehold Mortgagee" shall include any trustee acting with respect to any tax-exempt bond financing encumbering the Premises. Landlord agrees to execute any additional documents or further assurances as may be reasonably requested by any Leasehold Mortgagee in connection with any Leasehold Mortgage permitted by this Article 12.

**Section 12.2 Consent Required for Termination and Amendments.**

No termination, cancellation, surrender, modification, or amendment of this Lease by agreement between Landlord and Tenant shall be effective as to the Equity Investor or any Leasehold Mortgagee unless consented to in writing by the Equity Investor and such Leasehold Mortgagee.

**Section 12.3 Default Notice.**

Landlord, upon providing Tenant with any notice of (i) default under this Lease, and/or any financing or regulatory documents between Landlord and Tenant, or (ii) a termination of this Lease, shall at the same time send a copy of such notice to the Equity Investor and every Leasehold Mortgagee, if applicable, identified by written notice to Landlord, provided, however, that the failure to provide such additional notices shall not invalidate any duly delivered notice to Tenant. From and after such notice has been given to the Equity Investor and the Leasehold Mortgagee, the Equity Investor and such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 12.4 and 12.5 hereof to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Landlord shall accept such performance by or at the instigation of the Equity Investor or such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes the Equity Investor and any and each Leasehold Mortgagee to take any such action at the Equity Investor's and such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the Equity Investor and such Leasehold Mortgagee for such purpose.

**Section 12.4 Notice to Equity Investor and Leasehold Mortgagee.**

Anything contained in this Lease to the contrary notwithstanding, if any default shall occur and remain uncured beyond all applicable grace or cure periods of this Lease, which entitles Landlord to terminate this Lease as to all or any portion of the Premises to take any other remedial action against Tenant, Landlord shall have no right to terminate this Lease or take such remedial action unless, following the expiration of the period of time given Tenant to cure such default, Landlord shall notify the Equity Investor and each Leasehold Mortgagee, if applicable, to the extent of Landlord's actual knowledge of their existence, of Landlord's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination, if such default is capable of being cured by the payment of money, and at least forty-five (45) calendar days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions of Section 12.5 hereof shall apply if, during such thirty (30) or forty-five (45) calendar day notice period, the Equity Investor or any Leasehold Mortgagee:

(a) Notifies Landlord of the Equity Investor's or such Leasehold Mortgagee's desire to nullify such notice; and

(b) Pays or causes to be paid all payments then due and in arrears applicable to the subject portion(s) of the Premises, as specified in the notice given to the Equity Investor and such Leasehold Mortgagee and which becomes due during such thirty (30) or forty-five (45) day period; and

(c) Complies or in good faith, with reasonable efforts, commences to comply with any non-monetary requirements of this Lease applicable to the subject portion(s) of the Premises then in default and except as provided in the following sentence, reasonably susceptible of being complied with by the Equity Investor or such Leasehold Mortgagee.

No Leasehold Mortgagee shall be required during such thirty (30) day or forty-five (45) day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against Tenant's interest in this Lease or any part thereof which is (a) authorized by this Lease, and (b) junior in priority to the lien of the Leasehold Mortgage, if applicable, held by such Leasehold Mortgagee.

#### **Section 12.5 Procedure on Default.**

If Landlord shall elect to terminate this Lease by reason of any default of Tenant, which default has not been cured within the applicable cure period, and the Equity Investor or a Leasehold Mortgagee, if applicable, shall have proceeded in the manner provided for by Section 12.4 hereof, the specified date for such termination as fixed by Landlord in its notice given pursuant to Section 12.4 hereof shall be extended for a period of six (6) months if Equity Investor or Leasehold Mortgagee:

Pay or cause to be paid, any monetary obligations of Tenant under this Lease, as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or any part thereof which is junior in priority to the lien of the Leasehold Mortgage, if applicable, held by such Leasehold Mortgagee, and (ii)

past non-monetary obligations then in default and not reasonably susceptible of being cured by the Equity Investor or such Leasehold Mortgagee; and

except to the extent enjoined and stayed, take steps to acquire or sell Tenant's interest in this Lease, by foreclosure of such Leasehold Mortgagee, or other appropriate means and prosecute the same to completion with reasonable efforts.

**Section 12.6 Extension of Cure Period.**

If at the end of the six-month period specified in Section 12.5 hereof, the Equity Investor or such Leasehold Mortgagee, if applicable, is complying with Section 12.5 hereof, and provided that neither the Equity Investor nor any Leasehold Mortgagee shall be permitted to avail itself of additional cure periods as described at Sections 12.4 and 12.5. Notwithstanding the cure period shall not exceed 12 months from the date notice of default was sent by Landlord to the Equity Investor and Leasehold Mortgagee. If the material default continues and is not cured, then the Leasehold Mortgagee shall institute foreclosure proceedings within 24 months after notice of default was sent by Landlord to Leasehold Mortgagee. Thereafter, if neither party has cured the material default or institute foreclosure proceedings, then the Landlord shall have to right to avail itself of any and all legal remedies including without limitation termination of the Lease.

**Section 12.7 Right to New Lease.**

In the event that the Lease is terminated by Landlord, Landlord shall, if requested by Leasehold Mortgagee, if applicable, grant to the Leasehold Mortgagee a new lease on the following terms and conditions:

(a) In the event of the termination of this Lease prior to its stated expiration date, Landlord agrees that it will enter into a new lease of the Premises with any Leasehold Mortgagee, if applicable, or, at the request of such Leasehold Mortgagee, if necessary, including but not limited to a corporation or other entity formed by or on behalf of such Leasehold Mortgagee, for the remainder of the Term effective as of the date of such termination, and upon the same covenants, agreements, terms, provisions, and limitations herein contained, provided (i) such Leasehold Mortgagee makes written request upon Landlord for such new lease within thirty (30) days from the date Landlord notifies such Leasehold Mortgagee of such termination and such written request is accompanied by payment to Landlord of all amounts then due to Landlord under this Lease but for such termination and the new lease is executed within six (6) months after the date Landlord notifies Leasehold Mortgagee of the default, (ii) such Leasehold Mortgagee pays or causes to be paid to Landlord at the time of the execution and delivery of such new lease any and all sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable counsel fees, court costs, and costs and disbursements incurred by Landlord in connection with any such termination and in connection with the execution and delivery of such new lease and (iii) such Leasehold Mortgagee agrees to reinstate the lien and take the Premises subject to the loan of any other Leasehold Mortgagee which held a lien senior in priority to the lien of such Leasehold Mortgagee if such senior Leasehold Mortgagee had also requested a new lease and tendered the required payments(s).

(b) Any new lease made pursuant to this Section 12.7 shall have the same priority as this Lease (except with respect to any non-electing Leasehold Mortgagee) and shall be prior to any mortgage or any lien, charge or encumbrance of the fee of the Premises created by Landlord for a term of years equal to the balance of the Term.

(c) Any mortgage or deed of trust upon Landlord's interest in the Premises permitted in accordance with Section 11.4 hereof and any action by such mortgagee or trustee or beneficiary of such deed of trust by way of receivership, foreclosure, exercise of power of sale, or deed in lieu thereof shall be subject and subordinate to this Lease and to the new lease to be given pursuant to this Section 12.7 and any mortgagee or holder of such mortgage or the beneficiary and trustee of any such deed of trust must recognize this Lease and any new lease and all rights of Tenant and each Leasehold Mortgagee hereunder and thereunder.

(d) The right to request a new lease must be exercised by the requesting Leasehold Mortgagee within 2 years after notice of default has been sent by the Landlord to the requesting Leasehold Mortgagee.

#### **Section 12.8 Assumption of Tenant's Obligations.**

For purposes of Articles 11 and 12, the making of a Leasehold Mortgage, if applicable, shall not be deemed to constitute an assignment or transfer of this Lease or Tenant's interest created hereby, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of Tenant's interests under this Lease so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, but a Leasehold Mortgagee may become the holder of Tenant's leasehold estate and succeed to Tenant's interest in this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, and any purchaser at any sale of Tenant's interest under this Lease in any proceeding for the foreclosure of any mortgage or the assignee or transferee of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any mortgage shall be deemed to be an assignee or transferee approved by Landlord and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder, but only for so long as such purchaser or assignee is the owner of Tenant's interest in this Lease. No Leasehold Mortgagee (or its assignee or nominee) shall be or become liable to Landlord as an assignee of this Lease or otherwise unless and until it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee (or its assignee or nominee) such liability in which event Leasehold Mortgagee's (or its assignee's or nominee's) liability shall be limited to the period of time during which it expressly assumes such liability. If after the limited period of time has expired, if applicable, and no successor tenant has been identified and a written assumption of liability agreement has been entered into between the Landlord and the successor tenant, then Landlord, at its election, may terminate the Lease unless Equity Investor cures all defaults and assumes all obligations under this Lease. Notwithstanding anything herein to the contrary, any Leasehold Mortgagee or other assignee or successor of any Leasehold Mortgagee of Tenant's leasehold estate and interest in this Lease pursuant to foreclosure, an assignment in lieu of foreclosure or other proceedings, any of which are permitted without the Landlord's consent, may, upon acquiring the Tenant's leasehold estate and interest in this Lease, sell and assign the leasehold estate and interest in this Lease on such terms and to such persons and organizations as are acceptable to such

Leasehold Mortgagee or acquirer, without the consent of Landlord. Upon an assignment as contemplated herein, Leasehold Mortgagee shall thereafter be relieved of all obligations under this Lease, provided such assignee has delivered to the Landlord its written agreement to be bound by all of the provisions of this Lease.

**Section 12.9 Non-Curable Defaults.**

Nothing in this Article 12 shall require the Equity Investor or any Leasehold Mortgagee, if applicable, or its designee as a condition to the exercise of rights provided under this Article 12 to cure any default of Tenant not reasonably susceptible of being cured by the Equity Investor or such Leasehold Mortgagee or its designee as such susceptibility is reasonably determined solely by Landlord. The foregoing shall not be deemed to excuse any Leasehold Mortgagee from performing covenants relating to the condition of the Development on the Premises, operation in compliance with this Lease, or other similar matters requiring access to or control of the Premises, from and after such time as such Leasehold Mortgagee acquires Tenant's interest in this Lease by foreclosure or otherwise.

**Section 12.10 No Merger.**

So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of Tenant therein shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by any single owner, other than by termination of this Lease by Landlord in compliance with the provisions of this Article 12.

**Section 12.11 Landlord's Fee to Remain Unsubordinated.**

Landlord and Tenant expressly acknowledge and agree that Landlord shall have no obligation under this Lease or otherwise to subordinate fee title of Landlord in the Premises or any rights of Landlord in this Lease to the leasehold estate of Tenant created by this Lease or to join any such mortgage or encumbrance or otherwise in any manner subordinate the fee title of Landlord in and to the Premises or interest of Landlord under this Lease. Notwithstanding the foregoing, Landlord agrees not to encumber all or any portion of its interest in the Premises or its fee estate with any mortgage, deed of trust, deed to secure debt or other instrument in the nature thereof which is not expressly subordinate to Tenant's interest and to any Leasehold Mortgage, without the prior written consent of Tenant and each Leasehold Mortgagee. Tenant shall not subordinate Tenant's interest in the Premises or the Development to any lien or encumbrance granted by Landlord. In the event of any conveyance or encumbrance which is not expressly subordinate to Tenant's estate under this Lease and to any Leasehold Mortgagee, Landlord agrees to cause any mortgage, trustee or holder of such interest to enter into a no disturbance agreement (subject to each Leasehold Mortgagee's prior review and approval) with Tenant.

**Section 12.12 Sale of Premises.**

In the event of any sale or conveyance of the Premises by Landlord any such sale or conveyance of all or any part of the Premises shall be subject to this Lease and all of the provisions

hereof and notice of such sale shall be provided to the Equity Investor and each Leasehold Mortgagee.

**ARTICLE 13**  
**MAINTENANCE AND REPAIR**

**Section 13.1 Tenant's Obligations.**

At its expense, LESSEE shall maintain the Leased Premises in a good state of repair and in a condition consistent with the Permissible Uses. LESSEE shall not suffer or permit the commission of any waste or neglect of the grounds, landscaping, buildings, the fixtures and equipment that LESSEE brings, constructs or placed on the Leased Premises. LESSEE shall repair, replace and renovate the Leased Premises and all the improvements located thereon as often as is necessary to keep these items in a good state of repair.

**ARTICLE 14**  
**ALTERATIONS**

**Section 14.1 Not Applicable.**

**Section 14.2 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 Development or any change, alteration or addition thereto. Any lien that is not released or bonded within thirty (30) days shall constitute an Event of Default under Section 17.2 hereof.

**ARTICLE 15**  
**SURRENDER**

**Section 15.1 Expiration of Term.**

At the end of this Lease (whether upon the expiration date or sooner termination), Tenant will surrender the Premises in its then "as-is" condition. All right, title and interest in the Improvements shall revert to the Landlord upon expiration or termination of this Lease.

**ARTICLE 16**  
**CASUALTY, CONDEMNATION**

**Section 16.1 Damage or Destruction to Premises.**

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, the Development or any portion thereof. Subject to Section 16.2 hereof, if during the Term, the Development shall be damaged or destroyed by casualty, Tenant shall repair or restore the Development as provided

for in any financing documents secured by a Leasehold Mortgage, if applicable, so long as it is lawful, and all Leasehold Mortgagees, where applicable, agree that it is feasible to do so. Adequate insurance proceeds are to be deposited into an account, at Leasehold Mortgagee's direction and for the benefit of Leasehold Mortgagee to complete such repairs and restoration of the Improvements and any proceeds not used to rebuild or restore the improvements on the Premises, if any, shall be disbursed pursuant to the terms and conditions of the senior Leasehold Mortgage. Upon the occurrence of any such casualty, Tenant, promptly and with all due diligence, shall, subject to any financing document secured by a Leasehold Mortgage, if applicable, and the operating agreement of Tenant, apply for and collect all applicable insurance proceeds recoverable with respect to such casualty, for the benefit of any Leasehold Mortgagees, if applicable. In the event that more than twenty percent (20%) of the value of the Development, the Premises, or both are damaged or destroyed, and Tenant shall determine, subject to the rights of the holders of any Leasehold Mortgage, if applicable, and shall notify Landlord in writing within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the Premises to substantially the same condition in which they existed prior to the occurrence of such casualty, Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Tenant terminates this Lease pursuant to this Section, Tenant shall surrender possession of the Premises to Landlord immediately and assign to Landlord (or, if same has already been received by Tenant, pay to Landlord) all of its right, title, and interest in and to the proceeds from Tenant's insurance upon the Premises, subject to the prior rights of any Leasehold Mortgagees, as referenced in Section 16.2 hereof.

**Section 16.2 Distribution.**

In the event that this Lease is terminated (in whole or in part) pursuant to Section 16.1 hereof, the insurance proceeds received as the result of the subject casualty shall be distributed and disbursed as on a to be determined basis, subject to lender approval.

**Section 16.3 Condemnation.**

(a) 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 the Premises cannot be used by Tenant in a commercially reasonable manner for the purposes for which they were used immediately before the Taking, then this Lease shall, at Tenant's sole option, subject to the rights of any Leasehold Mortgagee, if applicable, terminate on the earlier of the vesting title to the Premises in the condemning authority, or the taking of possession of the Premises by the condemning authority.

(b) Landlord and Tenant agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to this Article, this Lease shall continue in effect as to the remainder of the Premises and the Development, and the net amounts owed or paid to the parties or to which either of the parties may be or become entitled by reason of any Taking 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 the Parties in collecting such award or payment (the "Net Condemnation Award") shall be distributed and disbursed Notwithstanding the foregoing, to the extent permitted in any Leasehold Mortgage, if applicable, the Net Condemnation Award shall be used by Tenant to make the remainder of the Premises a

complete, unified and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking, subject to any applicable requirements of any Leasehold Mortgage, if applicable. However, Tenant is not obligated to expend any sums to restore the Premises that are in excess of the Net Condemnation Award made available to it for that purpose.

(c) If there shall be a temporary Taking with respect to all or any part of the Premises or of Tenant's interest in this Lease, then the Term shall not be reduced and Tenant shall continue to pay in full all charges required herein except Operating Expenses attributable to the taken property, without reduction or abatement thereof at the times herein specified; provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary Taking.

(d) If there is a Taking, whether whole or partial, Landlord (solely in its capacity as Landlord under this Lease and not in its capacity, if applicable, as maker of any loan to Tenant) and Tenant shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, subject to the rights of any Leasehold Mortgagee, taking into consideration the fact that Landlord's interest in the Premises is limited to the land and the Development, for which Landlord shall have contributed an amount toward the construction thereof (the actual aggregate amount so contributed being referred to as the "Landlord's Contribution,") as encumbered by this Lease, and a reversionary interest in the Premises and the Development upon the expiration of the Term. If the Premises shall be restored as is contemplated in Section 16.3(b) hereof, Tenant shall be entitled to recover the costs and expenses incurred in such restoration out of any Net Condemnation Award. Thereafter, if the condemning authority does not make separate awards, the Parties agree that any Net Condemnation Award will be allocated between them on a proportionate basis, taking into account the portion of Landlord's Contribution that has not been repaid to Landlord. If the Parties are unable to agree as to the exact percentage of such allocation or if such allocation is no longer applicable because of the repayment of Landlord's Contribution, and the Parties are unable to agree as to the amounts that are to be allocated to the respective interests of each party, then each party shall select an independent M.A.I. real estate appraiser (an "Appraiser"). Each Appraiser shall separately determine the amount of the balance of the Net Condemnation Award allocated to each party. If the percentage allocated to Landlord by one Appraiser is within ten percent (10%) of the percentage allocated to Landlord by the other Appraiser, then the two percentage allocations shall be averaged, and such average percentage shall be the percentage allocated to Landlord, with the remaining percentage of the balance of the Net Condemnation Award to be allocated to Tenant. If the percentage allocated to Landlord by an Appraiser is not within ten percent (10%) of that allocated to Landlord by the other Appraiser, then the two Appraisers shall select a third appraiser, who shall independently determine the percentage of the balance of the Net Condemnation Award that should be allocated to each party, and the average of the percentages determined by the three Appraisers to be allocable to Landlord shall be the percentage that is allocated to Landlord and the remaining percentage of the balance of the Net Condemnation Award shall be allocated to Tenant.

(e) Landlord and Tenant agree that all then-existing Leasehold Mortgagees, to the extent permitted by law and to the extent their interests are affected by the Taking, shall be made a party to any Taking proceeding.

(f) For so long as a Leasehold Mortgage held by the most senior Leasehold Mortgagee, the following provisions shall control: (i) Tenant shall not be permitted to terminate this Lease unless the most senior Leasehold Mortgage has been paid in full; (ii) most senior Leasehold Mortgagee shall have participation rights for adjustment and losses related to hazard insurance proceeds; (iii) the hazard insurance proceeds must be paid to either the most senior Leasehold Mortgagee or to an independent trustee acceptable to most senior Leasehold Mortgagee; (iv) Landlord shall not be entitled to receive any hazard insurance proceeds until the Premises has been fully restored or the most senior Leasehold Mortgage has been paid in full; (v) Tenant's obligation to rebuild after a Casualty shall be limited to the amount of available insurance proceeds; (vi) no one other than Tenant and most senior Leasehold Mortgagee shall have rights regarding restoration of the Premises after such Casualty or the administration and disbursement of hazard insurance proceeds; (vii) hazard insurance proceeds shall be applied in accordance with the most senior Leasehold Mortgage loan documents.

## **ARTICLE 17**

### **DEFAULT AND REMEDIES**

#### **Section 17.1 Landlord's Right to Perform.**

(a) Landlord's Option. If Tenant fails to pay when due amounts payable under this Lease within the time permitted for its performance, then Landlord, after thirty (30) calendar days' prior written notice to Tenant and without waiving any of its rights under this Lease, may (but will not be required to) pay such amount, unless Tenant notifies Landlord in writing during such thirty (30) calendar day period that Tenant is withholding the subject payment due to a dispute as to the legitimacy or correctness of same and takes steps reasonably necessary to protect Landlord's interests. In the event any such dispute results in litigation, then Tenant shall deposit the disputed amount in the registry of the court having jurisdiction over the litigation. If Tenant fails to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after thirty (30) calendar days' prior written notice to Tenant and without waiving any of its rights under this Lease, may (but will not be required to) perform such obligation, unless Tenant notifies Landlord in writing during such thirty (30) calendar day period that Tenant is withholding the subject performance due to a dispute as to the legitimacy or correctness of same and takes steps reasonably necessary to protect Landlord's interests or that Tenant has commenced the curing of such default within such thirty (30) calendar day period and shall prosecute in good faith the curing of same continuously thereafter until the same is, in fact, cured within a commercially reasonable period of time which shall not exceed 180 days.

(b) Landlord's Reimbursement. All amounts which Tenant is obligated to pay under this Lease, which if not paid may be paid by Landlord, and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such Tenant obligations will be payable by Tenant to Landlord within thirty (30) calendar days after Landlord has notified Tenant in writing of the amounts incurred by Landlord on its behalf and shall constitute additional obligations of Tenant to Landlord and shall be deemed additional rent, with interest accrued thereon at the rate equal to two percent (2%) above the prime rate then in effect, as published from time to time in the Wall Street Journal. Landlord shall provide Tenant with invoices and other reasonable evidence of the amounts paid or incurred by Landlord in connection with its exercise of its rights pursuant to this Article.

### **Section 17.2 Events of Default.**

At the option of Landlord, the occurrence of any of the following events shall constitute and are defined as an "Event of Default" by Tenant:

(a) Tenant defaults in the due and punctual payment of the Lease Payment or of any amounts due under this Lease, and such default continues for thirty (30) calendar days; or

(b) Tenant vacates (except by reason of casualty or condemnation) the Premises for a period of more than thirty (30) consecutive days, or abandons the Premises; or

(c) This Lease or the Premises or any part of the Premises 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 bonded off within ninety (90) calendar days after its levy; or

(d) Tenant breaches any of the other agreements, terms, covenants, or conditions, including without limitation the Community Benefit described in Article 9, Section 9.3 which this Lease requires Tenant to perform, including without limitation the provisions of Article 12 hereof, and such breach continues for a period of thirty (30) calendar days after notice by Landlord to Tenant; provided, however, if the nature of the breach is such that it cannot be cured by Tenant reasonably within the period of thirty (30) calendar days, Tenant shall not be deemed in default of this 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 within a commercially reasonable period of time which shall not exceed 180 days; or

(e) Tenant fails to complete construction of the Development by the completion date as described in Article 3, Section 3.5; or

(f) A lien is placed on the Premises, with the exception of any Permitted Encumbrances, if applicable, approved in writing by Landlord, that is not released or bonded no later than thirty (30) days of filing; or

(g) Tenant uses the Premises for uses other than the permitted use provided for in Section 9.1 hereof; or

(h) Tenant makes any assignment in violation of this Lease.

### **Section 17.3 Remedy.**

(a) If any one or more Events of Default set forth in Section 17.2 hereof occurs, and continues beyond the applicable grace or cure periods, then Landlord may, at Landlord's sole and exclusive remedy, at law or in equity, but subject in all respects to the rights of any holder of a Leasehold Mortgage, if applicable, as set forth in Article 12 hereof, terminate this Lease by written notice to Tenant of its intention to terminate this Lease on the date (including any cure period described above) specified in such notice, and, on the date specified in such notice, Tenant's right to possession of the Premises and the Development will cease and the

estate conveyed by this Lease shall re-vest in Landlord. In addition, upon the occurrence of a material default under this Ground Lease, Landlord shall be entitled to pursue any and all legal or equitable remedies as permitted by law, including without limitation the right to pursue an action for specific performance and/or damages.

**Section 17.4 Tenant's Right to Perform.**

(a) Right to Perform Covenants. If Landlord shall, at any time, fail to perform any of its obligations hereunder or be in breach of any of its representations and warranties herein, Tenant shall, except in the event of an emergency, provide Landlord with notice of such default, and if Landlord does not commence action to cure any such default within the time period specified below after the giving of such notice, or immediately, in the event of an emergency, then Tenant may, without any obligation so to do and without waiving or releasing any obligation of Landlord contained in this Lease, take such actions and make such payment as may be necessary or appropriate to fulfill Landlord's obligations or otherwise cure any default of Landlord hereunder. In case of emergency, Tenant shall nevertheless make every effort to provide notice of default to Landlord. Where no emergency exists, and after giving notice to Landlord, Tenant shall allow Landlord thirty (30) calendar days to commence a cure, unless Tenant's interests would be jeopardized by such delay.

(b) Costs and Expenses. All reasonable sums so paid by Tenant and all reasonable and essential costs and expenses incurred by Tenant in connection with the performance of any of the obligations of Landlord hereunder, or on account of any breach by Landlord of its representations and warranties herein shall be payable by Landlord to Tenant, but only after Tenant provides Landlord with invoices and other evidence of the amounts paid and essential expenses incurred by Tenant in connection with its reasonable exercise of its rights pursuant to this Article.

(c) In no event shall LESSOR'S liability for any breach of this Lease exceed the amount of Rent then remaining unpaid for the Term. This provision is not intended to be a measure or agreed amount of LESSOR'S liability with respect to any particular breach and shall not be utilized by any court or otherwise for the purpose of determining any liability of LESSOR hereunder except only as a maximum amount not to be exceeded in any event. This limitation does not apply to acts of malfeasance, gross negligence or intentional acts of LESSOR or its employees or agents acting within the course and scope of their employment. Furthermore, no property, whether real or personal, including the Leased Premises or other assets of LESSOR shall be subject to levy, execution or other enforcement procedure for the satisfaction of LESSEE's remedies under or with respect to this Lease and LESSOR shall not be liable for any deficiency.

**Section 17.5 Excusable Delay.**

Any time deadline or limitation shall be subject to extension for any delay that arises from unforeseeable causes beyond the reasonable control and without the fault or negligence of Landlord or Tenant but such extension shall not exceed the actual period of such delay. Examples of such cause include, without limitation, (a) acts of God, or public enemy, (b) acts or failure to act by governmental entity in either their sovereign or contractual capacity, to the extent action by governmental entity is required hereunder, provided that the party hereunder seeking such action

from a governmental entity properly requests same in a timely manner and thereafter diligently pursues same, (c) intentionally omitted, (d) fires, (e) floods, (f) epidemics, (g) quarantine restrictions, (h) strikes or labor disputes, (i) freight embargoes, (j) unusually severe weather, (k) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the reasonable control and without the fault or negligence of Landlord or Tenant, as applicable, (l) delays caused by litigation commenced by someone other than Landlord, and Leasehold Mortgagees, and (m) unusual disruptions in financial markets. In no event shall financial ability or lack of financial resources be deemed an uncontrollable or unforeseen event.

**Section 17.6 Not Applicable.**

**ARTICLE 18  
MISCELLANEOUS**

**Section 18.1 No Brokers.**

Landlord and Tenant each represents and warrants to the other that it has not dealt with any broker or finder with regard to the Premises or this Lease. Each party shall indemnify the other party from and against any damages resulting from any losses, costs, commissions and/or reasonable attorneys' fees incurred as a result of the indemnifying party's breach of the foregoing representation and warranty.

**Section 18.2 Recordation.**

After the Commencement Date, Landlord and Tenant shall record this Lease among the Land Records of the County. At the expiration of the Term, Tenant shall execute a quitclaim termination of its interest in this Lease.

**Section 18.3 Time of Essence.**

Subject to Section 17.5 hereof, time is of the essence of each and every provision of this Lease.

**Section 18.4 No Waiver.**

No waiver of any condition or agreement in this 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 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 and officially approved by the Board of Commissioners of Landlord. Neither payment by Tenant, nor receipt from Landlord, of a lesser amount than any charges stipulated in this Lease will be deemed to be anything other than a payment on account of the same, and to the earliest due of the same. No endorsement or statement on any check, or any letter accompanying any check or payment will be deemed an accord and satisfaction. Landlord will accept such check for payment without prejudice to Landlord's rights to recover the balance of such amounts due or to pursue any other remedy available to Landlord. If this Lease is assigned, or if the Premises or any parts of the Premises are sublet or occupied by anyone other than Tenant, Landlord may collect any amounts due to Landlord under this Lease from the assignee, subtenant, or occupant and apply the net amount collected to the amount due under this Lease. No such

collection will be deemed a waiver of the covenant in this Lease against assignment and subletting, or the acceptance of assignee, subtenant, or occupant of Tenant, or a release of Tenant from the complete performance by Tenant to its covenants in this Lease.

**Section 18.5 Personal Liability.**

The liability of Tenant under this Lease is limited to Tenant's interest in the Premises. Neither Tenant, nor any member of Tenant, or any affiliate thereof, nor any officer, director, shareholder or employee of any of said entities, shall have any personal liability hereunder.

No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event any Leasehold Mortgagee's liability including, without limitation, liability under Section 10.1 hereof shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Lease. Landlord agrees that (i) each Leasehold Mortgagee or its designee or affiliate shall be automatically released from any liability that arises following the date of the transfer of the Premises to a third-party purchaser and (ii) any liability of a Leasehold Mortgagee and its assigns shall be limited to the value of its respective interests in the Premises.

**Section 18.6 Captions and Gender.**

The captions are inserted in this Lease only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this 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.

**Section 18.7 Entire Agreement.**

Except for those that specifically set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to one another with respect to this Lease.

**Section 18.8 Amendment.**

This Lease can be amended only by a written document agreed to and signed by Landlord and Tenant, the approval of which both Landlord and Tenant mutually agree not to unreasonably withhold, delay or condition, and with the written approval of the Equity Investor and all Leasehold Mortgagees, if applicable.

**Section 18.9 Severability.**

If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this 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 Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be



Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Attention: Roger W. Holmes  
E-mail: rholmes@nixonpeabody.com

A party may change its address or to whom a copy should be sent by giving written notice to the other Parties as specified herein. Landlord shall also provide written notice to any Leasehold Mortgagee, if applicable, in accordance with Section 12.3 hereof.

**Section 18.11 Waiver of Jury Trial.**

Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by one against the other on all matters arising out of this Lease or the use and occupancy of the Premises.

**Section 18.12 Cooperation.**

Landlord and Tenant agree that they will reasonably cooperate with one another in all respects in furtherance of the development of the Premises. In particular, Landlord recognizes that the varied sources of project funding make it extremely difficult to anticipate every potential provision that may be required in this Lease. From time to time, Tenant may request modifications to the Lease to satisfy the requirements of financing sources, which financing sources include without limitation, private lenders, equity sources, and governmental agencies. Landlord will use all reasonable efforts to accommodate the requests of such financing sources and will not unreasonably withhold or delay its approval and execution of modifications to this Lease which do not materially and adversely alter the basic terms hereof. Nothing herein shall impose upon Landlord any requirement to approve any modification or amendment to the Lease which would violate or contravene any applicable laws or any contract or agreement to which Landlord is a party or which is binding on Landlord. Landlord agrees that it will, upon request of Tenant, from time to time, but not more frequently than once a year, enter into an amended and restated lease combining into one document the entire Lease and all amendments and modifications theretofore entered into. In addition, Landlord or Tenant, as the case may be, shall execute, acknowledge and deliver to the other and/or to each Leasehold Mortgagee, within 20 days after request, its certificate certifying (i) that the Lease is unmodified and in full force and effect, (or, if there have been modifications, that this Lease is in full force and effect, as modified, and describing the modifications), (ii) the dates, if any, to which any amounts due under this Lease have been paid, (iii) whether there are the existing any charges, offsets or defenses against the enforcement by Landlord or Tenant to be performed or observed and, if so, specifying the same, (iv) whether there are then existing any defaults by Tenant or Landlord in the performance or observance by Tenant or Landlord of any agreement, covenant or condition hereof on the part of Tenant or Landlord to be performed or observed and whether any notice has been given to Tenant or Landlord of any default which has not been cured, and, if so, specifying the same, and (v) any other items reasonably requested by the Equity Investor or any Leasehold Mortgagee.

**Section 18.13 Additional Releases, Utility Easements.**

Landlord and Tenant acknowledge and agree that, in connection with the Development on the Premises, new roads may need to be built and new utilities may need to be installed in the Premises. In connection therewith, Landlord agrees to (i) participate in the dedication of such roads, execute and record all documents necessary to accomplish same, and release such portions of the Premises from this Lease provided at all times the Premises have legal access to a publicly dedicated road, and (ii) grant all easements as may be necessary in connection with the installation of the utilities, execute and record all documents necessary to accomplish same, and, if appropriate, release such utility easement areas from this Lease.

**Section 18.14 Governing Law and Venue.**

This Lease will be governed by and construed in accordance with the internal laws of the State of Florida, without regard to principles of conflicts of laws. However, federal law shall apply to provisions required by federal statutes, regulations or guidelines. In the event of litigation, the parties agree that venue for the prosecution of any state court proceedings shall be in the County, and any federal court proceeding shall be in the Southern District of Florida.

**Section 18.15 Cumulative Rights.**

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

**Section 18.16 Non-Merger.**

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

**Section 18.17 No Third Party Beneficiary.**

Nothing contained in this Lease or in any agreement or contract between the Parties may be deemed or construed to create any relationship of third party beneficiary. Notwithstanding, the Landlord shall be deemed a third party beneficiary under all covenant providing for the Community Benefit described in Article 9, Section 9.3.

**Section 18.18 Not Applicable.**

**Section 18.19 Quiet Enjoyment.**

Tenant, upon paying the Lease Payment and keeping, observing and performing all of the terms, covenants, agreements, provisions, conditions and limitations of this Lease on Tenant's part

to be kept, observed and performed, shall quietly have and enjoy the Premises during the Term without hindrance or molestation by anyone lawfully claiming by, under or through Landlord, subject, however, to the Permitted Encumbrances, reservations and conditions of this Lease.

**Section 18.20 Counterparts.**

This Lease may be executed in any number of counterparts, and each such counterpart will for all purposes be deemed an original, and all such counterparts shall constitute one and the same instrument. In order to expedite the transaction contemplated herein, facsimile or electronic signatures may be used in place of original signatures on this Lease. Landlord and Tenant intend to be bound by the signatures on the facsimile or electronically transmitted document, are aware that the other parties shall rely on the facsimile or electronic signatures, and hereby waive any defenses to the enforcement of the terms of this Lease based on the form of signature.

**Section 18.21 Litigation Fees.**

If Landlord and Tenant litigate any provision of this Lease or the subject matter of this Lease, the unsuccessful litigant will pay to the successful litigant all reasonable out-of-pocket costs and expenses, including reasonable attorneys' fees and court costs, actually incurred by the successful litigant at trial and on any appeal.

**Section 18.22 Limited Liability of Landlord. Intentionally Omitted.**

**Section 18.23 Access.**

Tenant agrees to grant a right of access to Landlord, or any of its authorized representatives, during regular business hours with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

**Section 18.24 Not Applicable.**

**Section 18.25 Delegation.**

Landlord, through its Executive Director or her designee, is authorized to grant or join in, as applicable, any plat or zoning applications, final plat(s), required dedications/designations, vacation of any roadway comprising a part of the Premises, covenants in lieu of unity of title, or modifications, declarations (including those requested or required by the City or any agency thereof as part of any application or any agency thereof as part of any application), permits, restrictive covenants, temporary and permanent easements, easement vacations or modifications, and other documents and/or agreements, including but not limited to water and sewer agreements, estoppels and non-disturbance and attornment agreements, as may be necessary or desirable for Tenant to develop, use and construct the Development, provided that such joinders by Landlord shall be at no cost to Landlord other than its cost to review such documents, shall not impose material additional obligations or liabilities or potential obligations or liabilities on Landlord, and also provided that form and provisions of such documents, shall be acceptable to Landlord in its reasonable discretion. Additionally, the Landlord's Executive Director, the City Mayor or the City Mayor's designee shall have the power, authority and right, on behalf of Landlord, in its capacity as Landlord hereunder, and without any further resolution or action of the Landlord's Board to, so

long as such approvals or actions do not cause Landlord to incur costs or additional contractual or other obligations and/or liabilities, and are consistent with the material provisions of this Lease:

(A) Review and approve (for avoidance of doubt, only to the extent approval of Landlord is required under this Lease, and this provision shall not be deemed to grant Landlord any approval rights that do not otherwise exist under this Lease), in writing, documents, applications, subleases, requests, estoppels and joinders and consents required or allowed by Tenant to be submitted to Landlord in accordance with the terms of this Lease, and generally take actions on behalf of Landlord to implement the terms hereof;

(B) Consent to and approve, in writing, actions, events, and undertakings by and/or for Tenant for which consent is required by Landlord under the existing terms of this Lease;

(C) Execute subordination agreements, recognition agreements, non-disturbance agreements and issue estoppel statements relating to this Lease, provided estoppel statements shall create no obligations to, or rights in, any third parties other than the rights of third parties to rely on such statements;

(D) Execute any and all documents on behalf of Landlord necessary or convenient to the foregoing approvals, consents, and appointments;

(E) Execute on behalf of Landlord, consistent with this Lease, any and all consents, agreements, easements, applications, or other documents, needed to comply with applicable regulatory procedures and secure permits or other approvals needed to accomplish the construction of any and all improvements in and refurbishments of the Premises as contemplated by this Lease; and

(F) Amend this Lease to correct any typographical or non-material errors, or to address revisions or supplements hereto of a non-material nature, or to incorporate commercially reasonable protections requested by any Leasehold Mortgagee customarily contained in ground leases based on the type of development and financing required for the Development, which revisions may include, without limitation, revisions to the cure period provided to Leasehold Mortgagees herein.

(G) Cooperate with Tenant and any Leasehold Mortgagee providing financing with respect to the Development to address any commercially reasonable requirements of any such Leasehold Mortgagee.

#### **Section 18.26 Estoppel Certificate.**

Each party hereto shall, at any time and from time to time within twenty (20) days after being requested to do so by the other party and/or any Leasehold Mortgagee in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter's request, to any existing or prospective Leasehold Mortgagee, transferee or other assignee of the requesting party's interest in the Premises or under this Lease which acquires such interest in accordance with this Lease) a certificate in recordable form certifying:

(a) that this 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);

(b) that Tenant has accepted possession of the Premises, and the date which was or will be the Commencement Date;

(c) as to the dates to which rent and other charges arising hereunder have been paid;

(d) as to the amount of any prepaid rent or any credit due to Tenant hereunder;

(e) as to whether, to the best of such party's knowledge, information and belief, the other party is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default) or whether a condition exists which but for the passage of time or the giving of notice would result in a default hereunder;

(f) Landlord consents to the loan made or to be made, together with any refinancing thereof, by (i) the Housing Finance Authority of Broward County, Florida, as assigned to The Bank of New York Mellon Trust Company, N.A., a national banking association, in the amount of \$21,000,000, as to be converted to a permanent loan in the approximate amount of \$5,625,000, (ii) Broward County, a political subdivision of the State of Florida, in the amounts of \$3,960,000 and \$1,500,000, respectively, (iii) City of Fort Lauderdale, a municipal corporation of the State of Florida, in the amount of \$750,000, (iv) United Way of Broward County, Inc., a Florida not-for-profit corporation, in the amount of \$1,400,000, and (v) Sistrunk Lender, LLC, a Florida limited liability company, in the amount of \$9,000,000;

(g) all material terms of this Lease;

(h) a list of all documents evidencing this Lease;

(i) confirmation that Landlord agrees not to accept voluntary surrender or termination of this Lease at any time when the Premises are encumbered by the Leasehold Mortgage;

(j) as to any other fact or condition reasonably requested by the requesting party; and

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

**Section 18.27**      **No Waiver of Sovereign Immunity.** Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity by any agency, including LESSOR, to which sovereign immunity may be applicable. Nothing herein shall be considered as a waiver of the limitations set forth in Section 768.28, Florida Statutes, as amended.

**Nothing herein shall be construed as a right to encumber or subordinate the fee interest of**

**the LESSOR in the Leased Premises, which encumbrance or subordination is prohibited.**

**Section 18.28 Public Entity Crime.** As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, LESSEE certifies that its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287.133(3)(a), Florida Statutes.

**Section 18.29 Scrutinized Companies.** Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the LESSEE certifies it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes, as may be amended or revised, and that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes, as may be amended or revised. The LESSOR may terminate this Agreement at the LESSOR's option if the LESSEE is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes, as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes, as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes, as may be amended or revise.

**Section 18.30 Florida Foreign Entities Act.** Pursuant to the Florida Foreign Entities Act, Sections 692.202-205, Florida Statutes, Foreign Principals of Foreign Countries of Concern are prohibited from owning or acquiring any interest in certain types of Florida real property. LESSEE represents that neither it nor, to the best of LESSEE's knowledge, after due inquiry, any of LESSEE's principals, officers, directors, employees, subsidiaries, affiliates, agents or representatives, is a Foreign Principal as defined in the Florida Foreign Entities Act. LESSEE further represents and warrants that it, to the best of LESSEE's knowledge, after due inquiry, its principals, officers, directors, employees, subsidiaries, affiliates, agents and representatives are and have been in compliance, and will comply strictly throughout the performance of this Lease with the Florida Foreign Entities Act, and LESSEE has instituted and maintains policies and procedures reasonably designed to promote and achieve compliance with the Florida Foreign Entities Act and with the representations and warranties contained herein. LESSEE shall not take any action or omit to take any action that it believes, in good faith, would be in violation of the Florida Foreign Entities Act. LESSEE shall notify LESSOR immediately of any non-compliance with or breach of the covenants, representations and warranties contained in this Section 18.30.

LESSOR shall have the right to unilaterally terminate this Lease and/or pursue any other remedies available to it at law or in equity in the event of any non-compliance with or breach of the covenants, representations and warranties contained in this Section 12.27. LESSOR acknowledges that LESSEE will rely upon the foregoing representations and warranties to establish LESSEE's compliance with the Florida Foreign Entities Act and LESSEE shall execute the Anti-Human Trafficking Affidavit in accordance with Florida Statutes.

**Section 18.31 Non-liability of Agency Officials.** No member, official or employee of the Landlord shall be personally liable to the Tenant, or any of its affiliates, contractors, agent or any other person in the event of a default or breach by the Landlord or for any amount which may become due to the Tenant, or any other Person under the terms of this Agreement.

**Section 18.32 Inspection of Books and Records.** The Landlord shall have the right at all reasonable times to inspect the books and records of the Tenant pertaining to the performance of its obligations under this Agreement. Landlord shall have the right to audit the books, records, and accounts of Tenant that are related to this Agreement. Tenant shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement in accordance with generally accepted accounting practices and standards. All books, records, and accounts of Tenant shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Tenant shall make same available at no cost to Landlord in written form. Tenant shall preserve and make available, at reasonable times for examination and audit by Agency in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit, litigation or other action has been initiated and has not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings, litigation or other action. If the Florida public records law is determined by Landlord to be applicable, Tenant shall comply with all requirements thereof.

**Section 18.33 Public Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records, if any. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees for non-compliance with that law.

To the extent applicable, Tenant and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction and/or maintenance of the Development shall:

18.3.1 Keep and maintain public records that ordinarily and necessarily would be required by Landlord in order to perform the services rendered.

18.3.2 Upon request from Landlord's custodian of public records, provide Landlord with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes

(2016), as may be amended or revised, or as otherwise provided by law.

18.3.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to Tenant for the duration of the Agreement and as to Contractor for the duration of the contract term and following completion of said contract if Contractor does not transfer the records to Landlord.

18.3.4 To the extent applicable, upon completion of said construction or maintenance at the Development, transfer, at no cost, to Landlord all public records in possession of Tenant or Contractor or keep and maintain public records required by Landlord to perform the service. If Contractor transfers all public records to Landlord upon completion of the Development, Tenant and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Tenant or Contractor keeps and maintains public records upon completion of the Development, Tenant and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Landlord, upon request from Landlord's custodian of public records, in a format that is compatible with the information technology systems of Landlord.

**If Tenant or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to Landlord or Contractor's duty to provide public records relating to its contract, contact the Landlord's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 101 NE Third Avenue, Suite 2100, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.**

**Section 18.34 RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

**Section 18.35 Signage.** LESSEE shall be permitted to erect such signage, logo or symbol within the Leased Premises in accordance with rules, regulations and ordinances governing signage by the applicable governing authority. Notwithstanding, the LESSOR reserves the right to disapprove and/or remove any signage, symbol or logo which is offensive or reflects negatively on the image of the City or is an embarrassment to the City as determined by the City Commission.

[Signature Pages Follow]

IN WITNESS WHEREOF, and intending to be legally bound hereby, Landlord and Tenant have executed this Ground Lease as of the date first above written.

**WITNESSES:**

Ahleyk. Divo

Print Name: Ahleyk. Divo  
Address: 101 NE 5<sup>th</sup> Ave, Ste 2100  
Fort Lauderdale, FL 33301

Vou C. Howard

Print Name: Vou C. Howard  
Address: 101 NE 5<sup>th</sup> Ave, Ste 2100  
Fort Lauderdale, FL 33301

ATTEST  
By: [Signature]  
David Soloman, CRA Secretary



**LANDLORD**

**FORT LAUDERDALE COMMUNITY REDEVELOPMENT AGENCY**, a Community Redevelopment Agency created pursuant to Chapter 163, Part III

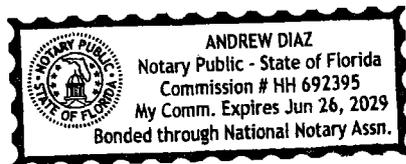
By: [Signature]  
Rickelle Williams, Executive Director

APPROVED AS TO FORM AND CORRECTNESS:  
D'Wayne M. Spence, Interim General Counsel

By: [Signature]  
Lynn Solomon, Assistant General Counsel

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 1<sup>st</sup> day of December, 2025 by Rickelle Williams, as the Executive Director of the Fort Lauderdale Community Redevelopment Agency, on behalf of the agency.

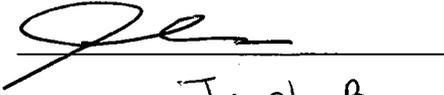


[Signature]  
Notary Public, State of Florida

Andrew Diaz  
Print, Type or Stamp Name

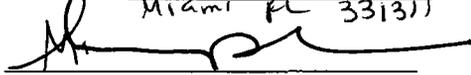
Personally Known  or Produced Identification   
Type of Identification Produced \_\_\_\_\_

**WITNESSES:**



Print Name: Joseph Beguiristain

Address: 1450 Brickell Ave, 23<sup>rd</sup> floor  
Miami FL 33131



Print Name: Katherine Pinedo

Address: 1450 Brickell Ave, 23<sup>rd</sup> floor  
Miami, FL 33131

**TENANT**

**SISTRUNK APARTMENTS, LLC,**  
a Florida limited liability company

By: Sistrunk Apartments Manager, LLC, a  
Florida limited liability company, its  
manager

By: Magellan Housing, LLC, a Florida  
limited liability company, its  
manager

By:   
Nikul A. Inamdar, Member

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 4<sup>th</sup> day of November, 2025 by Nikul A. Inamdar, as a member of Magellan Housing, LLC, a Florida limited liability company, as the manager of Sistrunk Apartments Manager, LLC, a Florida limited liability company, as the manager of Sistrunk Apartments, LLC, a Florida limited liability company, on behalf of the limited liability companies.



**KATHERINE PINEDO**  
Commission # HH 621819  
Expires December 16, 2028



Notary Public, State of Florida

Katherine Pinedo

Print, Type or Stamp Name

Personally Known  or Produced Identification   
Type of Identification Produced \_\_\_\_\_

**EXHIBIT A**  
**Property Description**

PARCEL 1:

Lots 9, 10, 11 and 12, Block 11, Less Road, LINCOLN PARK FIRST ADDITION, a Subdivision according to the plat thereof, as recorded in Plat Book 5, Page 1, of the Public Records of Broward County, Florida.

PARCEL 2:

Lot 2, Block 5, Less Road, of FIRST ADDITION TO TUSKEGEE PARK, a subdivision of Section Four (4), Township Fifty (50) South, Range Forty-Two (42) East, a subdivision according to the plat thereof, as recorded in Plat Book 9, Page 65, of the Public Records of Broward County, Florida.

PARCEL 3:

Lots 5, 6, Block 11, Less Road, LINCOLN PARK FIRST ADDITION, a Subdivision according to the plat thereof, as recorded in Plat Book 5, Page 1, of the Public Records of Broward County, Florida.

PARCEL 4:

Lots 3 and 4, Block 5, Less Road, FIRST ADDITION TO TUSKEGEE PARK, according to the plat thereof, as recorded in Plat Book 9, Page 65, of the Public Records of Broward County, Florida.

PARCEL 5:

Lots 5 and 6, Block 5, FIRST ADDITION TO TUSKEGEE PARK, according to the plat thereof as recorded in Plat Book 9, Page(s) 65, Public Records of Broward County, Florida.

Less and except therefrom:

That portion of Lots 5 and 6, Block 5 of FIRST ADDITION TO TUSKEGEE PARK, according to the plat thereof as recorded in Plat Book 9, Page 65, Broward County records, described as follows:

Begin at the Northwest corner of said Lot 5: thence go South  $89^{\circ} 45' 50''$  East along the North line of Lots 5 and 6, 77.52 feet to the Northeast corner of Lot 6: thence South  $00^{\circ} 04' 10''$  West along the East line of Lot 6, 33.18 feet: thence North  $89^{\circ} 55' 50''$  west, 5 feet to an intersection with a circular arc concave to the Southwest, the tangent of said arc bearing North  $00^{\circ} 04' 10''$  East: thence Northwesterly along said arc having a radius of 20 feet and a central angle of  $89^{\circ} 46'$ , an arc distance of 31.33 feet to a point of tangency on a line 35 feet South of and parallel to the North boundary of the SE 1/4 of section 4, Township 50 south, Range 42 east: thence North  $89^{\circ} 41' 50''$  West along said parallel line, 52.62 feet to the west line of Lot 5: thence North  $00^{\circ} 08' 10''$  East along said west line, 13.19 feet to the Point of Beginning.

PARCEL 6:

Lots 7 and 8, Block 11, Less Road, LINCOLN PARK FIRST ADDITION, a Subdivision according to the plat thereof, as recorded in Plat Book 5, Page 1, of the Public Records of Broward County, Florida.

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