

GROUND LEASE AGREEMENT

between

CITY OF MIAMI BEACH
as Lessor

and

[CFC- MIAMI BEACH PROPERTIES LLC]
as Lessee

DATED AS OF _____, 2021

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions.....	2
Section 2. Term.....	9
Section 3. Rent	10
Section 4. Financing of the Project	11
Section 5. Taxes and Assessments.....	12
Section 6. Utility Services.....	12
Section 7. Payments for the Lessee by the Lessor	13
Section 8. Compliance by the Lessee with Laws and Ordinances.....	13
Section 9. Quiet Enjoyment; Environmental Warranty	13
Section 10. Construction of Improvements.....	14
Section 11. Operation of the Project.....	20
Section 12. Security Interest.....	24
Section 13. Assignment of Lease	25
Section 14. Maintenance of Property.....	25
Section 15. Annual Budget.....	26
Section 16. Indemnification Agreement	28
Section 17. Insurance	28
Section 18. Police Services	31
Section 19. Damage and Destruction	31
Section 20. Condemnation	33
Section 21. Estoppel Certificates.....	34
Section 22. Access to Premises.....	35
Section 23. Property Subject to Zoning.....	35
Section 24. Events of Default and Remedies	35
Section 25. Expiration or Termination.....	37
Section 26. Mortgaging of the Leasehold	38
Section 27. Option to Purchase	42
Section 28. Notices	43
Section 29. Submission of Matters to the Lessor for Approval.....	44
Section 30. Holding Over by the Lessee	45
Section 31. Environmental Matters	45
Section 32. Property Condition	46
Section 33. Leasehold Condominium	46
Section 34. Release of Portions of the Property	46
Section 35. Miscellaneous.....	46
Section 36. Books and Records; Audit Rights	50
 EXHIBIT A	 LEGAL DESCRIPTION OF THE PROPERTY
EXHIBIT B	CITY DEVELOPMENT AGREEMENT

GROUND LEASE AGREEMENT

This **GROUND LEASE AGREEMENT** (this "**Ground Lease**"), made and entered into as of the ____ day of ____, 2021, is between **CITY OF MIAMI BEACH**, a Florida municipal corporation (the "**Lessor**"), and **CFC- MIAMI BEACH PROPERTIES LLC** (the "**Lessee**"), a single-member limited liability company organized and existing under the laws of the State of Florida and wholly-owned affiliate of Community Finance Corporation, a not-for-profit corporation of the State of Arizona.

WITNESSETH:

WHEREAS, the Lessor is the owner of certain property (the "**Property**") owned by the Lessor as more particularly described in Exhibit "A" attached hereto, incorporated in and by reference made a part hereof; and

WHEREAS, the Lessor and the Lessee (each a "**Party**," and together the "**Parties**") desire for the Lessee to develop, acquire, construct, furnish, equip, and operate a mixed use development with residential workforce housing, dormitory-style housing, and cultural or retail uses on the Property, along with associated site development and various related amenities and improvements on the Property (the "**Project**"); and

WHEREAS, the Lessor desires to lease the Property to the Lessee for the purpose of developing, constructing, and operating the Project for the use and benefit of local workforce and the students and other persons participating in dance education and other cultural program offerings of the Miami City Ballet, Inc., South Florida's premier classical ballet company; and

WHEREAS, the _____ (the "**Issuer**") has determined to issue its Workforce Housing Revenue Bonds (CFC – Miami Beach Properties LLC- Miami Beach Workforce Housing Project), Series 2021A (the "**Series 2021A Bonds**") and its Taxable Workforce Housing Revenue Bonds, (CFC – Miami Beach Properties LLC- Miami Beach Workforce Housing Project), Series 2021B (the "**Series 2021B Bonds**", together with the Series 2021A Bonds, the "**Series 2021 Bonds**") under and pursuant to the terms of a Trust Indenture (the "**Indenture**") of even date herewith between the Issuer and _____, as Trustee (the "**Trustee**") and to lend the proceeds of the Series 2021 Bonds to the Lessee for the purpose of financing the costs of acquiring, constructing, furnishing, and equipping the Project under and pursuant to the terms of a Loan Agreement of even date herewith between the Issuer and the Lessee; and

NOW, THEREFORE, in consideration of the premises, the rental to be paid hereunder, the mutual covenants and agreements herein set forth by each Party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each Party, the Parties do hereby mutually covenant and agree as follows:

The Lessor does hereby let the Property unto the Lessee, subject only to Permitted Encumbrances (as defined herein), and the Lessee does hereby take and hire the Property from the Lessor, subject to Permitted Encumbrances.

TOGETHER WITH all appurtenances, rights, privileges, and easements benefiting, belonging, or pertaining thereto, and together with the buildings, structures, and improvements erected or to be erected thereon.

TO HAVE AND TO HOLD the Property for the term set forth herein unless this Ground Lease shall be sooner terminated as hereinafter provided.

This Ground Lease and all rights of the Parties hereunder are expressly subject to the provisions as hereinafter set forth, all of which the Parties respectively agree to keep, abide by, and perform during the Term.

Section 1. Definitions. The following terms as used in this Ground Lease Agreement, shall have the following meanings, unless the context indicates otherwise:

"Additional Bonds" means any additional notes, bonds, or other instruments issued and secured under the Indenture, other than the Series 2021 Bonds.

"Annual Period" means the twelve (12) month period commencing on _____ 1 of each calendar year and ending on _____ 30 of the immediately succeeding calendar year.

"Architect" shall have the meaning ascribed to it in the City Development Agreement.

"Architect's Agreement" means that certain Agreement for Design Services dated _____, 2021, between the Developer, as owner, and the Architect, as architect, pursuant to which the Architect has agreed to provide certain architectural and engineering services in connection with the construction of the Project, and any amendments thereof and/or supplements thereto. **[conform with D.A.]**

"Area Educators" means any person earning less than 120% of the then-appliable area median income (AMI) for Miami-Dade County (as such AMI is determined from time to time in accordance with Chapter 58 of the City Code), who is employed as a teacher or teacher's aide at any public or private school in Miami-Dade County, on a full-time or part-time basis.

"Artists" means any person earning less than 120% of the then-appliable area median income (AMI) for Miami-Dade County (as such AMI is determined from time to time in accordance with Chapter 58 of the City Code), and who is either (1) actively involved in the practice of creative arts, including, without limitation, in the area of music, dance, drama or other performing arts; creative writing; painting, sculpture, photography, or other fine arts; graphic arts/web design; craft arts; industrial design; costume design; fashion design; and film, television, radio and/or print production; or (2) an employee of a non-profit or governmentally owned museum or other cultural organization works with, displays, or promotes the creative arts.

"Asset Manager" means, initially, Servitas, LLC, a limited liability company organized under the laws of the State, and thereafter, any other approved management company employed by the Lessee to manage the Project.

"Assigned Agreements" means, collectively, the Construction Contracts, Occupancy Agreements and the Management Agreement.

"Assignment of Contracts and Agreements" means the Assignment of Contracts and Agreements of even date herewith by the Lessee in favor of the Trustee, as the same may be amended and/or supplemented from time to time as permitted by the Indenture.[conform with DA]

"Building Equipment" means all installations incorporated in, located at or attached to and used or usable in the operation of, or in connection with, the Premises and shall include, but shall not be limited to, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof, excluding, however, any personal property which is owned by subtenants, licensees, concessionaires or contractors of the Lessee, or any personal property of the Lessee that has not been purchased with any of Bond proceeds or Revenues of the Project.

"Bond Documents" has the meaning given in the Indenture.

"Bonds" means, collectively, the Series 2021 Bonds and any Additional Bonds.

"Borrower " has the meaning given in the Indenture.

"Borrower Development Agreement" means the Development Agreement of even date herewith between the Lessee and the Developer, as the same may hereafter be amended or modified in accordance with the terms hereof and thereof.

"Borrower Documents" has the meaning given in the Indenture.

"Business Day" means any day other than a Saturday, a Sunday, or a day on which banking institutions in the State are authorized or obligated by law to close.

"City Development Agreement" means that certain Development Agreement between the City of Miami Beach and Servitas, LLC and joined to by Lessee, dated _____, 20__, governing the development of the Project, recorded in Official Records Book _____, Page ____ of the Public Records of Miami-Dade County, Florida, a copy of which is attached hereto as **Exhibit "___"** and incorporated by reference herein.

"City Manager" means the chief administrative officer of the Lessor.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commencement Date" means _____ [____], 2021, which date shall be the date of the Financial Closing (as that term is defined in the City Development Agreement).

"Construction Contracts," means the Development Agreement between Servitas and Lessee], the General Construction Contract, Architect's Agreement, and the other contracts, if any, relating to the construction thereof between the Developer, the General Contractor, the Architect, or the Borrower and construction professionals or suppliers of materials and Equipment.

"Construction Documents" means collectively, the Construction Agreements, Plans and Specifications, and Permits. [conform to D.A.]

"Consumer Price Index" means the Consumer Price Index For All Urban Consumers (CPI-U); U.S. City average (1982-84=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor.

"Corporation" means Community Finance Corporation, a non-profit corporation duly organized and existing under the laws of the State, and its successors and assigns.

"County" means Miami-Dade County, Florida.

"Debt Service Coverage Ratio" has the meaning given in the Indenture.

"Debt Service Reserve Fund" has the meaning given in the Indenture.

"Developer" means Servitas, LLC, a limited liability company organized and existing under the laws of the State, and its permitted successors and assigns.

"Dormitory Housing" means up to thirty-two (32) beds of dormitory-style housing (utilizing an entire floor or a portion of two floors) for Miami City Ballet dancers, students and other program participants, and MCB personnel only, as such term may be further described in the City Development Agreement.

"Eligible Residents" means, for the Workforce Housing Units, eligible individuals earning less than 120% of the area median income for Miami-Dade County ("AMI"), consistent with all applicable requirements relating to workforce housing as provided in Chapter 58 of the City Code, with approximately fifty percent (50%) of such units rented to tenants earning less than 80% of AMI, and the remaining units rented to tenants earning between 80% and 120% AMI. In order of acceptance priority, (i) Artists and Area Educators, nurses, law enforcement personnel, firefighters, and other personnel employed in the City of Miami Beach (Tier 1); (ii) Income-eligible workers employed in the City of Miami Beach in the hospitality and entertainment industries (Tier 2); and (iii) Income-eligible workers employed within Miami-Dade County, with priority for income-eligible workers employed within the City of Miami Beach. For purposes of the Dormitory Housing for MCB, "Eligible Residents" shall mean [] (each, an **"Eligible Resident"**).

"Event of Default" has the meaning given in Section 24 hereof.

"Equipment" means all machinery, equipment, fixtures, appliances, furniture, and any other personal property of any kind or description owned by the Lessee and incorporated within or for the exclusive benefit of the Project.

"Expenses" has the meaning given in the Indenture.

"GAAP" means those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board and its predecessors or pronouncements of the American Institute of Certified Public Accountants or those principles of accounting that have other substantial

authoritative support and are applicable in the circumstances as of the date of application, as such principles are from time to time supplemented and amended.

"General Construction Contract" means the Construction Contract of even date herewith between the Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Project.

"General Contractor" means _____, a limited liability company organized and existing under the laws of the State of Florida and licensed to do business in the State, and its permitted successors and assigns.

"Governmental Authorities" has the meaning given in the Indenture.

"Governmental Requirements" means any law, enactment, statute, code, order, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, or other similar requirement of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued, affecting the Premises or the construction and/or operation of the Project thereon. Notwithstanding anything to the contrary in this Ground Lease, the Lessee retains its right to challenge Governmental Requirements in accordance with all other applicable Governmental Requirements.

"Ground Lease" means this Ground Lease Agreement, as the same may be amended and/or supplemented from time to time in accordance with the provisions hereof and of the Indenture.

"Improvements" means any building (including footings and foundations), Building Equipment, and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Property (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"Indenture" means the Trust Indenture of even date herewith between the Issuer and the Trustee, as the same may be amended and/or supplemented from time to time in accordance with the provisions thereof.

"Independent Counsel" means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state of the United States and not in full-time employment of the Lessee, the Lessor, or the Transferee.

"Initial Management Agreement" means the Management Agreement of even date herewith between the Lessee and the Manager, as the same may be amended and/or supplemented from time to time in accordance with the provisions thereof and of the Indenture.

"Issuer" means _____ and its successors and assigns.

"Lease Year" means each twelve (12) month period commencing on the first day of _____ of a calendar year and ending on the last day of _____ of the immediately succeeding calendar year; provided the first Lease Year shall commence on the Commencement Date and end on _____, 202__.

"Leasehold Estate" shall have the meaning given in Section 2(b) hereof.

"Lessee" means CFC- Miami Beach Properties LLC, a single-member limited liability company organized under the laws of the State, whose sole member is the Corporation, and its successors and assigns.

"Lessor" or **"City"** means City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139, and its successors and assigns. In all respects hereunder, Lessor's obligations and performance is pursuant to Lessor's position as the owner of the Property acting in its proprietary capacity. In the event Lessor exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the Lessor's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to Lessor's regulatory authority as a governmental body and shall not be attributable in any manner to Lessor as a party to this Ground Lease or in any way deemed in conflict with, or a default under, the Lessor's obligations hereunder.

"Lessor Representative" means the Person or Persons designated by the Lessor to serve as the Lessor's representatives in connection with the design, acquisition, construction, furnishing, equipping, and operation of the Project. The initial Lessor Representatives of the Lessor shall be the City's Office of Capital Improvements Director or his or her designee (**"FPC Representative"**), with respect to construction and permitting related matters, and City's Property Management Director or his or her designee, with respect to leasing, management, and operations matters.

"Loan Agreement" means the Loan Agreement of even date herewith between the Issuer and the Lessee, as the same may be amended and/or supplemented from time to time in accordance with the provisions of the Indenture.

"Management Agreement" means (i) the Initial Management Agreement and (ii) any management or similar agreement between the Lessee and any successor Manager to be responsible for the management and operation of the Premises, as the same may be amended and/or supplemented from time to time in accordance with the provisions hereof, thereof, and of the Indenture, and subject to the consent of the Lessor, in accordance with Section 11 of this Ground Lease.

"Manager" means, initially, [Pinnacle], LLC, a limited liability company organized under the laws of the State, and thereafter, any other approved management company employed by the Lessee to manage the Project, subject to the consent of the City Manager in accordance with Section 11 of this Ground Lease.

"Master MCB Sublease" means the master sublease between the Lessee and Miami City Ballet of even date herewith, as the same may be amended and/or supplemented from time to time in accordance with the provisions thereof, which Master Sublease is intended to provide the Miami City Ballet with the exclusive right to use and occupy the Dormitory Housing.

"Maximum Annual Debt Service" has the meaning given in the Indenture.

"**Miami City Ballet**" or "**MCB**" shall mean Miami City Ballet, Inc., a not-for-profit charitable cultural organization headquartered at 2200 Liberty Avenue.

"**Mortgagee Lease**" means a lease of the Premises entered into between a Permitted Leasehold Mortgagee, as lessee, and the Lessor, as lessor, as a result of a termination hereof by reason of any Event of Default for the remainder of the Term effective as of the date of termination hereof, at the same Rent and upon the same terms, provisions, covenants, and agreements as contained in this Ground Lease and subject to no additional exceptions or encumbrances other than Permitted Encumbrances and to the rights, if any, of the parties then in possession (actual or constructive) of any part of the Premises.

"**Net Available Cash Flow**," with respect to each Lease Year, means the amount of Project Proceeds available to be distributed to the Lessor with respect to such Lease Year in accordance with the provisions of Section 513(b) or (c) of the Indenture, which amounts are intended to be the annual surplus or net revenues of the Project, after the payment of all operating expenses and satisfaction of all debt service and maintenance reserve and other requirements, as set forth in the Indenture.

"**Occupancy Agreements**" means, collectively, the leases, rental agreements, license agreements or other similar agreements for the use of individual residential workforce housing units within the Project, which agreements shall contain a term of not less than six months and one day, and not more than twelve (12) months, in duration..

"**Operating Account**" has the meaning given in the Indenture.

"**Opinion of Counsel**" means an opinion in writing of Independent Counsel who or that is reasonably acceptable to all recipients thereof and who or that may be counsel to the Lessee, the Lessor, or the Transferee.

"**Outstanding**" has the meaning given in the Indenture.

"**Permitted Leasehold Mortgage**" has the meaning given in Section 26 hereof.

"**Permitted Leasehold Mortgagees**" means, collectively, the holders of the indebtedness secured by the Permitted Leasehold Mortgages or any agent or fiduciary therefor and any designee thereof for the purpose of taking title to the Lessee's interests in this Ground Lease or entering into a Mortgagee Lease (each, a "**Permitted Leasehold Mortgagee**").

"**Permitted Encumbrances**" has the meaning given in the Indenture.

"**Plans and Specifications**" means the detailed plans and specifications for the construction of the Project fully identifying and describing all mechanical, electrical, and plumbing systems, materials, signage, design, colors of exterior paints, and other finishes prepared by the Architect or by architects and engineers acceptable to the Architect, as approved or deemed approved by the City Manager (or the City Manager's designee) in accordance with the provisions of Section 10(e) hereof and as amended from time to time by the Lessee with the consent of the Lessor, a copy of which is or will be on file with the Lessor. [conform to D.A. language]

"Premises" means the Project and the Property.

"Primary Leasehold Mortgage" means the leasehold mortgage which is a senior/first lien on Lessee's interest in this Ground Lease and the leasehold interest created hereby and the Project, which shall be evidenced by, and the Lessor shall be able to rely absolutely on, a title report current as of the time of any determination and prepared by a generally recognized title insurance company doing business in Miami-Dade County, Florida, or upon a certificate of Lessee, signed and verified by a duly authorized representative of the Lessee.

"Primary Leasehold Mortgagee" means the Permitted Leasehold Mortgagee who is the holder of the Primary Leasehold Mortgage, initially the Trustee.

"Project" means the mixed use residential workforce and dormitory housing project known as the Collins Park Artist/Workforce Housing Project, as further delineated in the City Development Agreement.

"Property" means the land located in the City as more particularly described in Exhibit "A" attached hereto, incorporated in and by reference made a part hereof.

"Refinanced Trustee Mortgage" means any amendment, modification, or replacement of the Trustee Mortgage resulting from the refinancing of the Bonds.

"Renewal Term" shall have the meaning ascribed to it in Section 2(a) of this Ground Lease.

"Rent" means the annual rental payable by the Lessee to the Lessor in accordance with Section 3 hereof.

"Repair and Replacement Fund" has the meaning given in the Indenture.

"Revenues" has the meaning given in the Indenture.

"Schedule of Performance" means the construction schedule set forth in the Construction Contract.

"Series 2021 Bond" or **"Series 2021 Bonds"** means any or all of the Series 2021A Bonds or the Series 2021B Bonds.

"Series 2021A Bond" or **"Series 2021A Bonds"** means any or all of the \$[] Miami Dade Industrial Authority Workforce Housing Revenue Bonds (CFC- Miami Beach Properties LLC- Miami Beach Workforce Housing Project), Series 2021A issued under the Indenture.

"Series 2021B Bond" or **"Series 2021B Bonds"** means any or all of the \$[] Miami Dade Industrial Authority Taxable Workforce Housing Revenue Bonds (CFC- Miami Beach Properties LLC- Miami Beach Workforce Housing Project), Series 2021B issued under the Indenture.

"State" means the State of Florida.

"Substantial Completion" means:[conform to D.A.]

(i) the Project, including all life safety systems, shall have been substantially completed in accordance with the Plans and Specifications and applicable laws and as required by the Construction Documents;

(ii) all required occupancy permits for the Project shall have been issued and the Project shall be reasonably capable of being occupied for its intended purposes;

(iii) a punch list of any unfinished items relating to the Project shall have been prepared by the Developer and shall have been approved by the Lessor Representative; and

(iv) all Governmental Authorities shall have given any necessary approval to occupancy of the Project on a temporary basis pending the occurrence of final completion thereof.

"Surplus Fund" means the fund of that name created in accordance with the provisions of the Indenture.

"Term" shall have the meaning given in Section 2(a) hereof.

"Termination Date" means the date on which the Term ends by termination or expiration hereof.

"Transferee" shall have the meaning given in Section 34(a) hereof.

"Trustee" means _____, as Trustee under the Indenture, and its successors and assigns in such capacity.

"Trustee Mortgage" means the Leasehold Deed of Trust, Assignment of Rents and Subleases, and Fixture Filing of even date herewith by the Lessee in favor of the Trustee, as the same may be amended and/or supplemented from time to time in accordance with the provisions of the Indenture.

"Trustee Security Interests" shall have the meaning given in Section 12(a) hereof.

"Workforce Housing Units" shall have the meaning ascribed to it in the City Development Agreement.

Section 2. Grant of Lease; Term.

(a) Subject to the terms and conditions of this Ground Lease, the Lessor, as of the Commencement Date, demises and leases the Property to Lessee, and Lessee leases and takes possession from Lessor, the Property, for the Term, for the development and construction of the Project, and operation of the Premises.

(b) The initial term of the leasehold estate of the Lessee in the Property created hereunder (the **"Leasehold Estate"**) shall commence on the Commencement Date and shall expire

on _____ of the last Lease Year prior to the 50th anniversary of the Commencement Date (“Initial Term”). Provided that the Lessee is in good standing and not in default of the Ground Lease, the Term of this Ground Lease may be extended for two consecutive periods of twenty years each (each, a “Renewal Term”) on mutual agreement of Lessor and Lessee, on the same terms and conditions as set forth in this Ground Lease (collectively, the Initial Term and Renewal Term(s), the “Term”).

(b) Within thirty (30) days following the Commencement Date, Lessor and Lessee shall execute a commencement date memorandum in such form as will enable the memorandum to be recorded in the Public Records of Miami-Dade County, in each case, setting forth the Commencement Date and the Expiration Date, determined according to this Ground Lease.

(c) On the Termination Date, the Lessee and Lessor shall be released from, and relieved of, all of its obligations hereunder and under any other agreements relating to the Project to which the Lessor and the Lessee are then a party without any further action on the part of the Lessor or the Lessee. [Parties to cooperate with respect to assignments.]

Section 3. Rent. (a) The Lessee covenants and agrees to pay to the Lessor throughout the Term as Rent an annual amount equal to the Net Available Cash Flow.

(b) The Rent shall be payable in respect of each Lease Year within thirty (30) days of receipt by the Lessee and the Trustee of the annual financial statements and audit report for the corresponding Annual Period of the Lessee provided to the Trustee in accordance with the provisions of the Loan Agreement and the satisfaction of any additional conditions precedent to the distribution of the Net Available Cash Flow as provided in Section 513(b) and (c) of the Indenture.

(c) If the Net Available Cash Flow for a Lease Year shall be zero (0) or a negative amount, no Rent shall be paid to the Lessor hereunder for such Lease Year, and it is understood that the Lessor shall have no liability or obligation, express or implied, to contribute or to pay the Lessee for any such deficit in Net Available Cash Flow.

(d) For purposes hereof, the Lessor agrees that the Lessee may, in each Lease Year, charge, in each Lease Year, cause to be charged Rent for the units comprising the Project sufficient to comply with all of the covenants and agreements of the Lessee contained in the Bond Documents, provided, however, the maximum rent charged to tenants of the Workforce Housing Units shall comply with the provisions of Section 11(c) of the Ground Lease

(e) Payment of all Rent and all other sums due to the Lessor under this Ground Lease shall be made payable to the Lessor and delivered to the Lessor at the address shown in Section 28 hereof or at such other place as the Lessor may notify the Lessee in writing from time to time.

(f) *Lessor’s Use and Distribution of Net Available Cash Flow.* As the Project involves a public-private partnership that expressly includes the goal of supporting the cultural activities of the MCB, the City has agreed to designate the MCB as a beneficiary of a portion of the Net Available Cash Flow generated from the operation of the Premises, subject to and contingent upon the MCB remaining (i) headquartered in Miami Beach, Florida and (ii) in occupancy of the Dormitory Housing units for the Premises, pursuant to the Master MCB Sublease, and in good

standing and not in default thereunder. Subject to the foregoing, all Net Available Cash Flow to be distributed each year in the following order of priority:

(i) First, the Lessor shall retain all Net Available Cash Flow, until such time as the Lessor has been fully reimbursed for all Project Costs (as such term is defined in the City Development Agreement) advanced or covered by the Lessor in support of the development and construction of the Project.

(ii) Second, and only after the Lessor has been fully reimbursed for all Project Costs pursuant to Section 3(f)(i) above, the Net Available Cash Flow, if any, shall be distributed to the MCB as a grant by the Lessor to the MCB, to offset the MCB's annual rental charges for its use of the Dormitory Housing pursuant to the Master Sublease, which amount is initially estimated to be \$_____. In the event the Net Available Cash Flow is insufficient to cover the MCB's annual rent under the Master Sublease in any given year, MCB shall nevertheless be responsible for payment of its rental obligations in accordance with the Master Sublease (with no carry over or other right to reimbursement from the Net Available Cash Flow in any subsequent year).

(iii) Third, and only after MCB's annual rental obligation for the Dormitory Housing has been fully reimbursed in any given Lease Year, the remaining Net Available Cash Flow shall be retained by the Lessor, first to cover any rental obligations of the Lessor, in the event the Lessor elects to enter into a master sublease for the use of the ground floor for cultural purposes ("Ground Floor Master Sublease"), with any remaining Net Available Cash Flow to be used by the Lessor for any other purpose, at its sole discretion.

(iv) [Fourth, and only after Lessor receives either (x) full reimbursement for its annual rental obligation pursuant to any Ground Floor Master Sublease, if Lessor elects to enter into such agreement, or (y) the amount of \$_____ [representing the value of the rental obligation for the Ground Floor Master Sublease], Net Available Cash Flow shall be used to offset MCB's additional rental costs for Additional Dormitory Housing (as such term is defined in the City Development Agreement), in the event the MCB elects to expand its Master Sublease to include Additional Dormitory Housing.][**Subject to further discussion between City and MCB.**]

(v) Fifth, any remaining Net Available Cash Flow after the distributions set forth in Section 3(f)(i) through (iv) above, shall be retained by the Lessor, for use at the Lessor's sole discretion.

(g) In the event the conditions in Section 3(f) relating to the MCB are not satisfied, all Net Available Cash Flow shall be retained by the Lessor, as Rent, for use at Lessor's sole discretion. **[Sections 3(f) and (g) are included herein to provide context for the City's intent regarding the use of funds; however, the parties anticipate that the above provisions will not be included as part of the Lease, and instead more appropriately belong in either the Indenture, or in a Resolution or other document approved by the City Commission].**

Section 4. Financing of the Project. The Lessee shall, at its own cost and expense, obtain all financing required for the design, acquisition, construction, furnishing, equipping, and

operation of the Project, including the issuance of the Series 2021 Bonds. The Lessee agrees to provide the Lessor with copies of all material information and documentation relating to any form of proposed financing. The Lessee agrees that except for the financing contemplated by the Bond Documents, all financing relating to the design, acquisition, construction, furnishing, equipping, and operation of the Project, or any amendment, renewal, refinancing, or refunding of same during the Term shall be subject to the prior approval of the City Manager, which approval shall not be unreasonably withheld, so long as any such financing does not (i) increase the aggregate principal amount outstanding, (ii) extend the final maturity dates or amortization period of the financing, or (iii) otherwise result in Lessee materially increasing the rental amounts owed by Eligible Residents. In no event shall any financing approved by the Lessor hereunder be modified so as to increase the principal amount outstanding or the term or amortization period of the financing except with respect to an increase in number of Workforce Housing units contemplated hereby.

Section 5. Taxes and Assessments. (a) It is hereby determined and declared by the Lessor and the Lessee that nothing contained in this Ground Lease is intended to change the degree to which the interest or estate of the Lessee created by this Ground Lease is subject to *ad valorem* property taxes; however, to the extent assessed, the Lessee shall bear and pay to the public officer charged with the collection thereof, before the same shall become delinquent, and shall indemnify, save, and hold harmless the Lessor from the payment of, any and all taxes, assessments, license fees, excises, imposts, fees, and charges of every sort, nature and kind (collectively, "***Taxes***" and each, a "***Tax***") that during the Term are or might be levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of the Lessee or the Lessor in and to the Property. If the Lessor subsequently sells or transfers fee simple title to the Property and such sale or transfer alone results in the levy, assessment, charge, or imposition of *ad valorem* taxes against the Premises or causes the Property to become subject to such levy, assessment, charge, or imposition, the successor Lessor shall be responsible for the payment of such Taxes, and the Lessee shall have no liability therefor. The Lessor agrees to use its best efforts to assist the Lessee in attempting to secure an exemption from *ad valorem* property taxation with respect to the Premises (including, without limitation, modifications to the Ground Lease or the Term thereof, if necessary).

(b) If the imposition of any Tax shall be deemed by the Lessee or the Lessor to be improper, illegal, or excessive, the Lessee may, in its own name, dispute and contest the same and, in such event and to the extent permitted by law, any such Tax need not be paid until adjudged to be valid; provided, however, the Lessee shall first notify the Lessor in writing of such dispute and contest and shall comply with the requirements of the Bond Documents concerning the contest of Taxes. Unless so contested, any Tax shall be paid by the Lessee within the time provided by law, and if contested, any such Tax shall be paid before the imposition of a lien on the Premises with respect thereto.

Section 6. Utility Services. The Lessee shall make application, obtain and pay, and be solely responsible, for all utilities required, used, or consumed on the Premises, including, but not limited to gas, water (including water for domestic uses and for fire protection), telephone, electricity, cable (if any), internet, sewer service, storm-water services, garbage collection services, or any similar service (collectively, the "***Utility Services***" and each, a "***Utility Service***"). In the event that any charge for any Utility Service supplied to the Premises shall not be paid by the Lessee to the applicable Utility Service supplier when due, then the Lessor shall be permitted, ten (10) days after written notice to the Lessee, but shall not be required to, pay such charge for and

on behalf of the Lessee, with any such amount paid by the Lessor being repaid by the Lessee to the Lessor within twenty (20) days after demand therefor by the Lessor.

Section 7. Payments for the Lessee by the Lessor. If the Lessee shall fail to procure the insurance required to be procured by the Lessee under this Ground Lease or shall fail to pay any premium of insurance, Tax, or any other sum in this Ground Lease required to be paid by the Lessee (other than Rent), the Lessor may, after expiration of the applicable cure period and after notifying the Lessee and the Trustee, at the Lessor's option, elect to follow one of the options provided in Section 24(b) hereof or may, without declaring an Event of Default, procure on behalf of the Lessee any such insurance, and pay on behalf of the Lessee any such payment or payments as may be necessary. Any sum(s) so paid or expended by the Lessor on behalf of the Lessee shall immediately be reimbursed and paid by the Lessee to the Lessor within twenty (20) days after demand therefor by the Lessor. Notwithstanding anything to the contrary herein, in the event Lessor makes any payments pursuant to this Section, and Lessee fails to reimburse Lessor for such amounts as provided herein, then such failure to make payment to Lessor shall constitute an Event of Default pursuant to Section 24 of this Ground Lease. [parties continuing to discuss]

Section 8. Compliance by the Lessee with Governmental Requirements. At all times during the Term, the Lessee shall conform to, obey, and comply in all material respects with all Governmental Requirements that in any way are applicable to this Ground Lease or the use or operation of the Premises or any repair, replacement, demolition, renovation, construction, restoration, or excavation being done on or to the Premises. The Lessee, in its own name and at its sole cost and expense, shall have the right to contest the validity of any Governmental Requirement contemplated under this Section. The Lessee shall use its best efforts not to use the Premises or any part thereof, or to suffer or to permit the Premises or any part thereof to be used, in any manner that would constitute a legal nuisance or an unreasonable annoyance to any resident, employee, or visitor to the Project or for any hazardous purpose, or for any other purpose that is inconsistent with the use restrictions set forth in Section 11 of this Ground Lease or the Project restrictions as set forth in the City Development Agreement. In the event, at any time during the Term, or thereafter, as the result of the Lessee's acts or omissions to act during the Term, any addition, alteration, change, or repair or other work of any nature, structural or otherwise, shall be lawfully required or ordered by an applicable Governmental Authority or become necessary on account of any Governmental Requirement then in effect, or on account of any other reason with respect to the Premises, the entire expense thereof, regardless of when the same shall be incurred or become due, shall be paid by the Lessee and, in no event, shall the Lessor be called upon to contribute thereto or do or pay for any work of any nature whatsoever on or relating to the Premises.

Section 9. Quiet Enjoyment; Environmental Warranty.

(a) *Quiet Enjoyment.* The Lessor represents and warrants that it owns fee simple, marketable title to the Property subject to no restrictions, liens, or other encumbrances other than Permitted Encumbrances. The Lessor further covenants and agrees that, throughout the Term, the Lessee may peaceably and quietly enjoy the Property subject, however, to zoning and land use restrictions, Permitted Encumbrances, and the Lessee's fulfillment of the covenants and agreements contained herein.

(b) Environmental Warranty. The Lessor, represents, warrants and covenants to the Lessee that: **[Parties continuing to discuss this section, pending Phase I and II reports]**

(i) as of the date hereof, to Lessor's knowledge and without independent investigation or inquiry, the Property is in full compliance with all Environmental Laws;

(ii) as of the date hereof, to Lessor's knowledge and without independent investigation or inquiry, and except as disclosed in the Environmental Reports, (A) there are no Hazardous Materials that have been spilled, disposed of, or otherwise released at, on, under or about the Property, that are or have been migrating to or from the Property, or otherwise are located on the Property, regardless of source, and (B) there are no Hazardous Materials that originated at or otherwise are related to or have affected the Property and have caused or threatened to cause any environmental contamination or otherwise have caused or threatened to cause any liability under any Environmental Laws; (C) there are no, and to the Lessor's knowledge, never have been any underground storage tanks, above-ground storage tanks, wastewater impoundments, or areas used for waste treatment, storage, or disposal activities at, on, in, or under the Property; and (D) there are no activities or conditions that exist, and to Lessor's knowledge, have ever existed and remain unresolved at, on, in, under, or otherwise associated with the Property that violate any Environmental Laws or could reasonably be expected to result in any claim or liability under any Environmental Laws.

Section 10. Construction of Improvements.

(a) The Project shall be developed and constructed in accordance with, and subject to all requirements set forth in, the City Development Agreement, which provisions are incorporated by reference as if fully set forth herein. As of the Commencement Date, Lessee expressly assumes all of the obligations of the Developer under the City Development Agreement (except for any obligations which have been fully satisfied or performed by the Developer prior to the Commencement Date). In addition to the foregoing, the Lessee shall enter into the [Development Agreement] which shall contemplate the Developer's entering into the Construction Contract and the Architect's Agreement for the development of the Project, in accordance with the City Development Agreement.

(b) Lessee's Security for Performance. As security for the Lessee's performance hereunder as it relates to the design and construction of the Project, the Lessee grants to the Lessor a security interest in the Construction Documents as provided in, and subject to the provisions of, Section 12(a) hereof.

(c) Default in Construction. In the event the Developer, the General Contractor, or the Architect shall fail to perform in accordance with the provisions of any of the Construction Documents to which it is a party in connection with the design, acquisition, construction, furnishing, and/or equipping of the Project, the Lessee shall exercise all of the rights and remedies available to the Lessee in each such Construction Document(s) in consultation with the Lessor. If an Event of Default shall occur and be continuing or if the Lessee shall default under the [Development Agreement], the Lessor may, subject to the rights of the Trustee, assert the rights

of the Lessee under the terms of the Borrower Development Agreement, the Construction Contract, and the Architect's Agreement.

(d) Commencement of Construction. The Lessee shall commence and pursue to completion the design, acquisition, construction, furnishing, and equipping of the Project on the Property and associated site development on the Project outside the boundaries of the Property, in accordance with the Construction Documents and in accordance with the Schedule of Performance.

(e) Construction Approvals by the Lessor. Prior to commencing any excavation, construction, paving, or any other work associated with the Property or the Project, the Lessee shall deliver to the Lessor for its approval three (3) sets of the proposed Plans and Specifications. The right of approval of the Lessor with respect to the Plans and Specifications shall include, but not be limited to, the compatibility of the exterior appearance of any improvement with the public activities of the Lessor on adjacent portions of the Project. The Lessor shall have a period of ten (10) Business Days after receipt to approve or reject such proposed Plans and Specifications, with any objection being accompanied with a description of measures to be taken by the Lessee that will result in approval upon resubmission (or why resubmission of any similar proposal would be rejected). Failure to approve or reject any proposed Plans and Specifications within such ten (10) Business Day period shall be deemed approved by the Lessor. The Lessor agrees not to withhold unreasonably the approval required by this subsection. Approval of submissions or resubmissions by the Lessor shall not relieve the Lessee from the obligation to obtain all other necessary approvals and permits required by all Governmental Authorities or from complying in all material respects with the Plans and Specifications, the Construction Documents, and all applicable building codes and ordinances. **[Parties to conform with final City D.A. prior to second reading]**

(f) Modifications to Plans and Specifications. Once the Plans and Specifications shall be submitted to and approved by the Lessor or the proposed Plans and Specifications shall be deemed approved in accordance with subsection (e) of this Section, no changes or material changes, modifications, or alterations to the Plans and Specifications may be made without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. The Plans and Specifications must at all times continue to comply with the requirements of this Ground Lease. If the Lessee seeks to make a change, modification or alteration to the Plans and Specifications, the Lessee shall provide a written request to the Lessor, seeking approval of the change, modification or alteration. Within ten (10) Business Days after written request from the Lessee, the Lessor shall either approve the proposed changes to the Plans and Specifications or specify the particular changes with reasonable detail, if possible, which must be made to such document(s) for them to be reasonably acceptable to the Lessor. The Lessee shall incorporate such revisions as are reasonably acceptable to the Lessee and submit the same for the Lessor's approval or rejection, the Lessor having ten (10) Business Days in which to respond. If Lessor does not notify the Lessee in writing within ten (10) Business Days of any changes the Lessor desires to be made to the proposed changes to the Plans and Specifications, then such change or modification shall be deemed approved. **[Parties to conform with final City D.A. prior to second reading]**

(g) Construction According to Approved Plans. All construction activities must be coordinated with the appropriate departments of the Lessor. A mandatory pre-construction meeting shall be conducted by the Lessee prior to the start of any construction activities for the purpose of reviewing security procedures, utility coordination, access to the Property, and construction coordination issues. The meeting shall be attended, at a minimum, by the Lessor Representative (FPC Representative), the Lessee, the Developer, and the General Contractor's project manager and superintendent. All building materials for the Project must be new and of good quality in accordance with the Construction Documents and the Plans and Specifications. The Lessor reserves the right, at the Lessor's sole cost and expense, to monitor the Lessee's construction of the Project from its inception, and the Lessor shall be permitted to participate in all construction meetings contemplated by the Construction Documents and to receive all reports of the Independent Architect/Engineer (as defined in the Loan Agreement); provided that the failure of the Lessor Representative (FPC Representative) to attend any such construction meeting of which they, he, or she shall have been notified shall not cause a delay in the holding thereof on the scheduled date thereof. At a minimum, the following restrictions must be placed upon construction activities, and the Lessee shall provide for the incorporation of these restrictions in the Construction Documents:

(i) access to the construction site shall be limited to those involved with the work;

(ii) for construction activities requiring access to the Lessor's drives and parking areas, access shall be restricted to those times approved by the Lessor, which approval will not be unreasonably withheld;

(iii) construction activities shall not unreasonably interfere with entry or exit to the Project, Project parking or drives, or pedestrian circulation paths or walks without prior written consent from the Lessor;

(iv) the Lessee shall notify the Lessor in writing at least seventy-two (72) hours in advance when coordination meetings requiring the Lessor's participation shall be required;

(v) the Lessee shall provide an eight foot (8') high chain link security fence (or higher, if required to comply with any Governmental Requirements, and which fence may not contain razor or barbed wire) with lockable gates at the perimeter of the construction site and staging area.

(vi) the Lessee, throughout the construction period, shall be responsible for the enforcement of discipline and good order among the workers on the site;

(vii) Project toilet facilities and parking areas shall not be used by construction personnel;

(viii) signage, which shall be subject to the prior written approval of the Lessor Representative (FPC Representative), shall be provided and maintained at all entrances to the Project to direct deliveries, construction personnel, etc. to the construction site; and

(ix) the Lessee and the Lessee's contractors shall not bury or burn or otherwise dispose of construction debris on the Property or on any other portion of the Project.
[Parties to conform with final City D.A. prior to second reading]

(h) Payment of Bills for Construction. The Lessee covenants and agrees to pay or cause to be paid, currently as they become due and payable in accordance with the terms of the Construction Documents and the Bond Documents, all bills for labor, materials, insurance, and bonds, and all fees of architects, engineers, contractors, and subcontractors and all other costs and expenses incident to any construction in or on the Premises; provided, however, that the Lessee may, in good faith, in its own name, dispute and contest any such bill, fee, cost, or expense, and in such event, any such item need not be paid until adjudged to be valid. Unless so contested by the Lessee, all such items shall be paid by the Lessee within the time provided by law, and if contested, any such item shall be paid before the issuance of an execution on a final judgment with respect thereto. The Lessee shall provide the Lessor Representative (FPC Representative) with copies of each Application for Payment (and all supporting documentation) submitted by the General Contractor, each Certificate of Payment issued by the Architect prior to payment thereof, and evidence of payment of each such Application for Payment.

(i) All Liens and Rights are Subordinate to the Lessor. Except for the rights of the Trustee and/or any other Permitted Leasehold Mortgagee, including, without limitation, their respective rights referenced in Sections 10(b), 12(a), 26, and 34(a) hereof **[parties to update section references prior to finalizing]**, the Lessee's rights, as well as the rights of any other person or entity, including, but not limited to, any mortgagee, architect, independent contractor, assignee, sublessee, sub-contractor, prime or general contractor, mechanic, laborer, materialman, or other lien or claim holder, shall always be and remain subordinate, inferior, and junior to the Lessor's title, interest, and estate in the Property the Premises, and this Ground Lease. The Lessee shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance, or charge levied on account of any mechanic's, laborer's, or materialman's lien, or any security agreement, conditional bill of sale, title retention agreement, chattel mortgage, or otherwise (a "**Lien**") that might or does constitute a lien, encumbrance, or charge upon the Premises, or any part thereof, or the income therefrom, having a priority or preference over or ranking on a parity with the estate, rights, or interest of the Lessor in the Premises or any part thereof, or the income therefrom. Nothing in this Ground Lease shall be deemed or construed in any way as constituting the consent or request of the Lessor, express or implied, by inference or otherwise, to the filing of any Lien against the Premises by any contractor, subcontractor, laborer, materialman, architect, engineer, or other Person for the performance of any labor or the furnishing of any materials or services for or in connection with the Premises or any part thereof.

(j) Completion of Construction by the Lessor. The Lessor acknowledges that the Lessee has collaterally assigned to the Trustee all of the Lessee's right, title, interest, and remedies in and to the Construction Documents pursuant to the Assignment of Contracts and Agreements, and has secondarily assigned the same to the City, subject to the rights of the Trustee. The Lessee covenants and agrees that in the event (i) the Lessee shall abandon or fail to complete the construction of Improvements undertaken by the Lessee in accordance with all material requirements hereof, (ii) such failure shall not be solely the result of the occurrence of an Event of Default, **and** (iii) the Trustee shall not elect to complete construction of such Improvements pursuant to the terms of the Assignment of Contracts and Agreements, the Lessor may, at its

option (but without any obligation so to do and without prejudice to any other rights the Lessor may have under this Ground Lease) complete the acquisition, construction, furnishing, and equipping of the Project as an expense of the Project and, as nearly as practicable and proper, according to the Plans and Specifications previously approved or deemed approved by the Lessor.

(k) *Title to the Improvements.* The title to all Improvements now or hereafter located on the Property including those to be constructed in accordance with the Plans and Specifications and the Construction Documents shall be vested in the Lessee until the expiration of the Term or earlier termination of this Ground Lease, at which time all title to and ownership of said Improvements shall automatically and immediately vest (without the necessity of any further action being taken by the Lessee or the Lessor or any instrument being executed and delivered by the Lessee to the Lessor) in the Lessor.

(l) *Architects, Engineers, Contractors, Specialists, and Consultants.* The Lessee shall require, or cause the Developer or the General Contractor to require, any architects, engineers, contractors, subcontractors, specialists, and consultants engaged in connection with the design, acquisition, construction, furnishing, and equipping of the Project to perform their respective obligations under the terms of the Construction Documents to be licensed in accordance with Florida law and to obtain and maintain payment and performance bonds pursuant to subsection (o) of this Section, and as required by the City Development Agreement.

(m) *Permits, Laws, and Ordinances.* The Lessee shall as a construction expense, comply and cause its contractors and subcontractors to comply in all material respects with all Governmental Requirements of all Governmental Authorities that may now or hereafter, from time to time, be established and that are or shall be applicable to the Lessee as they relate to the Project, including without limitation, the Americans With Disabilities Act of 1990, and shall take, as otherwise provided herein, all action necessary to cause the Project to comply in all material respects with all provisions of the Construction Documents, the Loan Agreement, and this Ground Lease applicable to the Lessee.

(n) *Construction Site.* The Lessee shall cause the Developer confine its operations to the Property and shall not store any material or equipment on property of the Lessor outside the boundaries of the Property, except as approved in writing and subject to such conditions as may be specified and approved by the Lessor. The Lessee shall protect all work and shall at all times keep and cause its contractors to keep the construction site reasonably clean and free from waste materials and rubbish.

(o) *Payment and Performance Bonds.* The Lessee shall provide or cause to be provided to the Lessor payment and performance bonds in a form and from a surety approved by the Lessor, in accordance with the Construction Documents, to include requiring the General Contractor and appropriate subcontractors to provide payment and performance bonds. The bonds shall be dual obligee surety bonds payable in favor of the Trustee, as primary obligee, and in favor of the Lessee and the Lessor as additional obligees.

(p) *Reports and Information.* The Lessee shall provide the Lessor with copies of all material documents and correspondence provided to or generated by the Lessee in connection with the performance of the Construction Documents including those related to the satisfaction

of the items in the Schedule of Performance and shall provide the Lessor with monthly progress reports in a form reasonably satisfactory to the Lessor demonstrating compliance with the construction requirements of the Plans and Specifications and the Construction Documents and this Ground Lease for the previous month. In addition, the Schedule of Performance must be updated at least monthly to assure the Lessor that construction of the Project will be complete in sufficient time to allow for occupancy thereof on or before _____, 2022. The Lessee shall deliver or cause to be delivered to the Lessor Representative (FPC Representative) copies of all soil reports, surveys, hazardous wastes or toxic materials reports, feasibility studies, and other similar written materials prepared for the Lessee pursuant to the Construction Documents or the Bond Documents with respect to the Property or the Project within ten (10) days after receipt by the Lessee.

(q) *Substantial Completion of the Project.* As soon as practicable (however, in no event to exceed six (6) calendar months) after the Substantial Completion of the Project, the Lessee shall furnish to the Lessor Representative:

(i) one complete set of final "as-built" Plans and Specifications of the completed Project in digital auto-CAD format;

(ii) a current, accurate, properly labeled, and certified (by the hereafter stated surveyor or engineer), "as-built" plat of survey prepared by a Florida registered land surveyor or professional engineer depicting to scale the location of the completed Project, as the same have been constructed; and

(iii) one complete set of operations and maintenance manuals for all systems, equipment, furniture, and fixtures relating to the Project of the Project.

(r) *Failure to Provide Project on Schedule.* If the Lessee shall not deliver the number of resident units contemplated in the Construction Documents in accordance with the Schedule of Performance for the Project, the Lessee shall be liable for the incremental costs of providing housing for Eligible Residents who shall have entered into Occupancy Agreements to occupy residential units within the Project, but who shall not be permitted to occupy such units on or before the guaranteed date of delivery thereof (collectively, the "***Affected Residents***" and each, an "***Affected Resident***"). Incremental costs means the sum of:

(i) the cost of alternative housing for each Affected Resident;

(ii) the cost of any necessary and reasonable storage facilities for possessions of each Affected Resident; **and**

(iii) any necessary and reasonable moving services for each Affected Resident from such housing to the Project; **or**

(iv) as an alternative to (i) through (iii), and at the election of each Affected Resident, a daily amount equal to his or her daily rent under his or her lease, sublease, license, rental, or other similar agreement.

If any Workforce Housing Units shall not be delivered for occupancy on time as described above, the Lessor and the Lessee shall nevertheless proceed with the execution of Occupancy Agreements with the intent that revenues therefrom will be paid by Affected Residents and then paid to the Trustee for the Bonds under the provisions of the Loan Agreement as if the Project had been completed on time and with the Lessee providing payment of the actual costs of alternative housing and transportation as described above. Notwithstanding the foregoing, Lessee shall exercise its good-faith diligent efforts to coordinate the execution of Occupancy Agreements with the date for Substantial Completion of the Project, so as to minimize costs and disruption to Eligible Residents.

Section 11. Operation of the Project.

(a) Use of Premises. Throughout the Term of this Lease, Lessee shall use the Premises solely for the Project purposes as set forth in the City Development Agreement, which purposes shall be limited to the operation of the Workforce Housing Units, Dormitory Housing, and ground-floor cultural or retail uses, provided, however, that in no event shall any such ground floor cultural or retail uses include any of the Prohibited Uses, as set forth in Section 11(f) below.

(b) Lessee's Obligation to Continuously Operate. Upon completion of construction of the Project, the Lessee shall continuously operate the Premises to serve Eligible Residents (with the exception of the ground floor cultural or retail uses) and shall enter into the Initial Management Agreement.

(c) All Workforce Housing Units shall be marketed and rented solely to Eligible Residents, with approximately fifty percent (50%) of such units rented to Eligible Residents earning less than 80% of AMI, and the remaining units rented to Eligible Residents earning between 80% and 120% AMI. The monthly rent for the Workforce Housing Units shall not exceed 30% of the then applicable AMI. All Occupancy Agreements for the Workforce Housing Units shall have a duration of twelve (12) months. The restrictions relating to the Workforce Housing Units shall extend for the duration of the Term, notwithstanding the durations otherwise identified in Chapter 58 of the City Code.

(d) The order of priority of booking of Eligible Residents for the Workforce Housing Units shall be as follows:

(i) Tier 1 – Artists and Area Educators, nurses, law enforcement personnel, firefighters, and other personnel employed in the City of Miami Beach;

(ii) Tier 2 – Eligible workers employed in the City of Miami Beach in the hospitality and entertainment industries; and

(iii) Tier 3 – Any other income-eligible workers employed within Miami-Dade County, with priority for income-eligible workers employed within the City of Miami Beach (collectively, the “Eligible Residents”).

(e) Any Workforce Housing Unit remaining vacant for at least sixty (60) consecutive days may be offered and leased to any other Eligible Resident in a subsequent tier.

(f) *Prohibited Uses.*

(i) With respect to the Workforce Housing Units, any rentals for a period of less than six months and one day shall be strictly prohibited.

(ii) With respect to the ground-floor cultural or commercial retail uses, in no event shall the ground-floor space be rented for any of the following purposes:

(A) the sale, as its principal business purpose, of any merchandise which such Person in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise;

(B) the sale of insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire;

(C) a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale;

(D) the sale of medical marijuana or paraphernalia incidental thereto;

(E) coinbox entertainment (pinball, video games, moving pictures operated by coins);

(F) casino gambling, or games of chance or reward;

(G) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or extra-hazardous;

(H) any purpose that constitutes a nuisance of any kind (public or private);

(I) check cashing facilities;

(J) pawn shops;

(K) the sale of firearms;

(L) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops;

(M) political offices;

(N) military recruiting;

(O) consular, legation or any other offices of foreign governments;

(P) tire sales;

(Q) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops;

(R) the sale of major appliances as a primary business; and

(S) in any manner that will violate any approvals of applicable Governmental Authorities, Certificate of Occupancy or certificate of use for the Premises, or which will violate any Governmental Requirements (collectively, the "Prohibited Uses").

(g) Such Prohibited Uses shall be reviewed and amended on terms mutually agreeable to the City and Master Lessee not less than once each twenty (20) years. Lessee shall ensure that the provisions of this Section 11 are incorporated as a material term in the Management Agreement, to ensure the Manager's compliance with all applicable use restrictions set forth herein. Lessee shall further cause for the Operating Plan to be developed consistent with the use restrictions set forth in this Section 11.

(b) Management of Improvements. The Lessee shall not modify, amend, or renew the Initial Management Agreement or enter into any other Management Agreement with a new Manager for the Project without the City Manager's prior written consent, which consent shall not be unreasonably withheld. **[Parties continuing to discuss]**

(c) Administration of Funds. The Lessee and the Lessor agree that at all times while the Bonds are Outstanding, all gross revenues of the Project shall be deposited with the Trustee and administered in accordance with the terms of the Indenture.

(d) Debt Service Coverage Ratio. Commencing on the first full Annual Period following Substantial Completion of the Project, the Lessee shall use commercially reasonable efforts to operate the Project such that the Debt Service Coverage Ratio shall at all times be not less than 1.20. Beginning with the Annual Period ending _____, 20__, the Lessee shall deliver to the Lessor a certificate disclosing the Debt Service Coverage Ratio as of the end of each Annual Period, at the time of the delivery of the Lessee's annual audited financial statements pursuant to subsection (f) below, calculated based upon such annual audited financial statements. Notwithstanding the foregoing to the contrary, the Lessee's failure to maintain a Debt Service Coverage Ratio of not less than 1.20 shall not constitute an "**Event of Default**" hereunder.

(e) Annual Audited Financial Statements. The Lessee shall, not later than one hundred eighty (180) days following the end of each Annual Period commencing with the Annual Period ending _____, 20__, provide to the Lessor its annual audited financial statements, prepared by an independent auditor in accordance with GAAP. Additionally, at the time of the Lessee's delivery of its annual audited financial statements, the Lessee shall provide a certificate to the Lessor setting forth the Debt Service Coverage Ratio for such Annual Period, calculated based upon the Lessee's annual audited financial statements. As soon as available, but in no event later than thirty (30) days after the end of each quarter, Lessee shall make available at the Project for inspection and examination (or photocopying) by Lessor or its representatives an unaudited statement of Revenues or Expenses for both the current month and Lease Year to date.

(f) Operating Plan. The Lessee and the Manager agree to work with the Lessor to establish an operating plan, which shall address, among other matters, standard forms of occupancy agreements; the priority of Eligible Residents in accordance with the tiers for the booking of Eligible Residents as provided in Section 11(d) of this Ground Lease; the process and record-keeping requirements for verification of income-eligibility and other requirements for Eligible Residents, along with a lottery system or other process for the selection and placement of Eligible Residents within each of the priority tiers set forth in Section 11(d) of this Ground Lease, subject to Lessor's approval of such selection process to ensure that the placements of Eligible Residents are made fairly and equitably and free of favoritism or individual bias; use of the Lessor's trademarks and service marks for purposes of advertising or marketing the Project to Eligible Residents; details concerning the management and operation of the Premises, including with respect to the provision of custodial/janitorial services, landscaping, maintenance/repairs of the Improvements, security services, utilities, resident complaints, coordination of services with master sublessees, and the like; hours of operation for the Ground Floor retail or cultural uses; services to be provided by the Lessor in accordance with subsection (g) of this Section, and the use of the Lessor's online resources for purposes of advertising and marketing the Project to Eligible Residents. The Operating Plan shall be subject to City Manager approval, with such approval not to be unreasonably withheld, provided, however, that the lottery system or other proposed process for the placement of Eligible Residents within each tier shall be subject to the Lessor's approval. **[parties continuing to discuss]** Lessor and the Lessee mutually agree to review such Operating Plan on not less than an annual basis in consultation with the Manager, and such Operating Plan may be revised from time to time at the mutual agreement of the Lessor, the Lessee, and the Manager.

(g) Services Provided by the Lessor. Unless otherwise mutually agreed upon between the Lessor and the Lessee, the Lessor agrees to those services described in Section 7 of the Ground Lease; provided, however that the costs incurred by Lessor for the provision of such services shall be paid or reimbursed to Lessor in accordance with the terms of the Bond Documents.

(h) Parking. The Lessor shall provide access to up to fifty-eight (58) monthly parking passes at the City garage facility located at 340 23rd Street ("Collins Park Garage") , with the monthly parking passes available for purchase by the residents of the Workforce Housing Units, at the then applicable City rate, on a first-come-first-served basis, so long as the Collins Park Garage is operated by the City and open to the public. In the event of damage or other casualty or force majeure event requiring the closure of the Collins Park Garage, either on a temporary basis or otherwise, Lessor shall exercise diligent, good-faith efforts to identify an alternative City public parking facility to accommodate the residents, subject to availability.

(i) Coordination of Services with MCB pursuant to Master MCB Sublease. Lessee shall be responsible for coordination with MCB of any property-management related services in connection with Miami City Ballet's use of the Dormitory Housing, in accordance with the Master MCB Sublease, including, without limitation, the provision of adequate maintenance or repairs, lighting, security (including, without limitation, any specific security arrangements that may be required for the protection of minors utilizing the Dormitory Housing), resident complaints, or other property-management related services.

(j) *Lessor's Priority Right to Ground Floor Master Sublease.* Prior to any rental or occupancy of the ground floor portion of the Premises ("Ground Floor"), the Lessor shall have the exclusive, priority right to enter into a Ground Floor Master Sublease, in order to activate the Ground Floor for cultural purposes, at the Lessor's sole discretion, either directly through Lessor's personnel or a third-party vendor providing management services to Lessor for the Ground Floor activations, or via a sub-sublease to a cultural organization or other entity, for cultural programming within the Ground Floor. Subject to mutual agreement between Lessor and Lessee, Lessee anticipates that the initial annual rental charges to the Lessor for the Ground Floor Master Sublease, inclusive of common area maintenance and utility charges, shall approximate \$_____. In the event Lessor elects to not enter into a Ground Floor Master Sublease, Lessor shall provide Lessee with at least _____ days prior written notice of Lessor's election to waive its priority rights to rent the Ground Floor, to permit Lessee appropriate time to market the Ground Floor for retail purposes.

Section 12. Security Interest.

(a) *Pledge, Assignment, and Grant of Security.* As security for the Lessee's performance of its obligations hereunder and subject to the rights of the Trustee, the Lessee hereby assigns and pledges to the Lessor, and hereby grants to the Lessor a security interest in, all of the Lessee's right, title, and interest in and to the Assigned Agreements, including, without limitation: (i) all rights of the Lessee to receive moneys due and to become due under or pursuant to the Assigned Agreements; (ii) all rights of the Lessee to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to the Assigned Agreements; (iii) claims of the Lessee for damages arising out of or for breach of or default under the Assigned Agreements; and (iv) the right of the Lessee to terminate the Assigned Agreements, to perform thereunder, and to compel performance and otherwise exercise all remedies thereunder. The Lessor acknowledges that, pursuant to the Assignment of Contracts and Agreements, the Lessee will grant to the Trustee security interests in various items of collateral including, but not limited to, the Assigned Agreements and certain rights and remedies with respect thereto (collectively, the "***Trustee Security Interests***"). Any and all security interests granted to the Lessor by the Lessee as security for the performance by the Lessee's of its obligations under this Ground Lease (including, but not limited to, the security interest granted in this Section) shall be subject to the provisions of Section 36(i) hereof and subordinate in all respects to the Trustee Security Interests.

(b) *Further Action and Documents.* The Lessee agrees that from time to time, at the expense of the Lessee, the Lessee will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Lessor may reasonably request, in order to perfect and protect any pledge, assignment, or security interest granted or purported to be granted hereby or to enable the Lessor to exercise and enforce its rights and remedies hereunder with respect to any Assigned Agreements.

(c) *Financing Statements.* The Lessee hereby authorizes the Lessor to file one or more financing and/or continuation statements, and amendments thereto, relating to all or any part of the Assigned Agreements without the signature of the Lessee where permitted by law. A photocopy or other reproduction of this Ground Lease or any financing statement covering the Assigned Agreements or any part thereof shall be sufficient as a financing statement where permitted by law.

(d) Lessor Appointed Attorney-in-Fact. The Lessee hereby irrevocably appoints the Lessor the Lessee's attorney-in fact, with full authority in the place and stead of the Lessee and in the name of the Lessee or otherwise, if an Event of Default shall have occurred and be continuing, to take any action and to execute any instrument that the Lessor may deem necessary or advisable to accomplish the purposes of this Ground Lease, subject in all cases to the rights of the Trustee, including, without limitation:

(i) to obtain insurance required to be paid to the Lessor pursuant to Section 17 hereof in the event the Lessee shall fail to obtain such insurance;

(ii) to ask, demand, collect, sue for, recover, compromise, receive, and give acquittance and receipts for moneys due and to become due under or in connection with the Assigned Agreements; and

(iii) to file any claims or take any action or institute any proceedings that the Lessor may deem necessary or desirable to enforce compliance with the terms and conditions of any Assigned Agreement or the rights of the Lessor with respect to any of the Assigned Agreements.

(e) Lessor May Perform. If the Lessee shall fail to perform any agreement contained herein, the Lessor may itself perform, or cause performance of, such agreement, and the reasonable expenses of the Lessor incurred in connection therewith shall be payable by the Lessee to the Lessor within twenty (20) days after demand therefor by the Lessor.

(f) Lessor's Duties. The powers conferred on the Lessor hereunder are solely to protect its interest in the Assigned Agreements and shall not impose any duty upon it to exercise any such powers. The Lessor shall have no duty to take any necessary steps to preserve rights against prior parties or any other rights pertaining to any Assigned Agreements.

Section 13. Assignment of Lease. Except as otherwise provided in Section 26 hereof, the Lessee and its successors and assigns, shall not have the right to assign, transfer or sublease this Ground Lease or any interest herein or any right or privilege appurtenant hereto or to sublease the Premises or any portion thereof, unless the written consent of the Lessor, by and through the City Commission at its sole and absolute discretion, shall first be had and obtained. Any assignment or transfer for which consent is required but which is nevertheless made without such written consent shall be void *ab initio*. Any other provisions hereof to the contrary notwithstanding, the Lessee shall, without the consent or approval of the Lessor, have the right, in the ordinary course of business, to enter into Occupancy Agreements in accordance with the criteria set forth in the Management Agreement.

Section 14. Maintenance of Property. The Lessee shall, at all times during the Term, at the Lessee's sole cost and expense, keep and maintain the Premises and all adjoining areas out to the perimeter pavement, and appurtenances and every part thereof, and any and all buildings, other structures or Improvements that may exist on, in, or be made a part of the Premises, in good order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen. The Lessee shall be required to follow any maintenance schedule proposed by the

Developer. In the event the Lessee shall fail to perform any of its obligations as required hereunder, after notice and right to cure pursuant to the terms and provisions of Section 24(a) hereof, the Lessor may (but shall not be required to) perform and satisfy same, and the Lessee hereby agrees to reimburse the Lessor for the reasonable cost thereof promptly upon demand. The Parties agree that it shall be the Lessee's sole responsibility at all times during the Term to maintain the Premises in a first-class condition. All required maintenance and repair during the Term shall be complete when the Premises shall be surrendered to the Lessor. **[Parties continuing to discuss maintenance standards.]**

Section 15. Annual Budget. (a) The Lessee shall develop in good faith, in its discretion and after consultation with the Lessor, a line-item operating and capital budget for the Project for each Annual Period (collectively, the "*Annual Budgets*" and each, an "*Annual Budget*") commencing with the Annual Period ending _____, 2023. The Annual Budget shall set forth among other matters, those items usually contained in budgets of similar nature, including, but not limited to, the following:

- (i) the categories of anticipated Revenues and the projected amounts of each category of such Revenues;
- (ii) the amounts to be deposited to the Repair and Replacement Fund and any other reserve fund established under the Indenture during such Annual Period and the amounts contained therein as of the first day of such Annual Period;
- (iii) all anticipated capital expenditures;
- (iv) the projected reasonable amounts of all Expenses;
- (v) sufficient information to explain the basis for the budgeted Revenues, capital expenditures, and Expenses; and
- (vi) the amount of projected Revenues sufficient to comply with any applicable covenants contained in the Bond Documents.

(c) The Annual Budget shall reflect all anticipated Expenses paid, incurred, or accrued or to be paid, incurred, or accrued by the Lessee or on behalf the Lessee by another Person, such as (by way of example) the Manager under the Management Agreement. The Annual Budget shall include any input provided by a budget oversight committee consisting of a representative of the Lessee, Manager, Asset Manager, Lessor and MCB (for so long as MCB is in good standing under the Master MCB Sublease for the Dormitory Housing) ("Budget Oversight Committee").

(d) Following review and input by the Budget Oversight Committee, the Lessee shall submit to the Lessor's City Manager for the City Manager's approval a proposed Annual Budget not later than ninety (90) days prior to the commencement of each Annual Period. The City Manager (or the City Manager's designee) shall give the Lessee notice of its approval of the Annual Budget as submitted or of its disapproval of one or more of the matters contained therein not later than sixty (60) days prior to the commencement of such Annual Period, or, if later, sixty (60) days after the Lessor shall have provided the information described in Section 11(f) hereof to the Lessee. If the Lessor shall fail to give notice of approval or disapproval in a timely manner,

then the Annual Budget as submitted shall be deemed approved by the Lessor. If the Lessor shall give notice of its disapproval, the Lessee and Lessor promptly, in good faith, shall develop an Annual Budget on which they both may agree. In the event that the Lessee and the Lessor fail to reach agreement not later than thirty (30) days prior to the commencement of an Annual Period, the Annual Budget for the then current Annual Period, as increased for all Expenses (other than salaries and payroll expenses) by the increase, if any, in the Consumer Price Index shall be implemented for the next Annual Period until agreement is reached on a new Annual Budget. For the avoidance of doubt, in no event shall salaries and payroll expenses be increased until such time as the Parties have reached agreement on a new Annual Budget. If the proposed Annual Budget has not been approved prior to the beginning of the Annual Period and contains provisions regarding the modification of rents for the Annual Period, those rents shall be applied to the Project for the applicable Annual Period.

(e) From time to time during or in respect to an Annual Period, the Lessee shall have the right to modify the Annual Budget, which amendment shall be subject to the Lessor's prior written consent unless: (i) the amendment shall be to reflect additional Revenues or the receipt of insurance or condemnation proceeds; (ii) the amendment shall be for an amount in respect to a line item (A) that does not increase or decrease, when added to all other changes to that line item, either the original amount of that line item or an increased amount approved by the City Manager (or the City Manager's designee) and then in effect by more than ten percent (10%), and (B) that does not increase the original total amount of Expenses or an increased amount approved in writing by the Lessor and then in effect by more than five (5) percent (5%) or (iii) the amendment shall be necessary to preserve life or property. An Annual Budget for an Annual Period, as so amended, shall, after such amendment, be the Annual Budget for such Annual Period.

(f) The Lessee shall operate the Project and make expenditures in connection with the Project in accordance with the Annual Budget.

(g) For each month within an Annual Period, the Lessee shall submit to the Lessor not later than thirty (30) days after the end of such month, a Budget Reconciliation Statement.

(h) The Lessor acknowledges that there may be certain periods (e.g., the summer months) when the Revenues may be inadequate to pay all of the Expenses (collectively, the "**Shortfall Periods**" and each, a "**Shortfall Period**") and agrees that provision should be made for the funding of any such liquidity shortfalls (collectively, the "**Shortfalls**" and each, a "**Shortfall**") during the periods when the Revenues are more than adequate to pay all of the Expenses (collectively, the "**Surplus Periods**" and each, a "**Surplus Period**"). The Lessor therefore authorizes the Lessee to make provision for such Shortfalls by arranging to have amounts deposited in the Operating Account (as defined in the Indenture) during Surplus Periods to be in excess of that which is required to pay Expenses during such Surplus Periods with such excesses to be in the amounts of the anticipated Shortfalls. The Lessor also acknowledges that the funding for a Shortfall Period in one Annual Period may be made during a Surplus Period occurring in the immediately preceding Annual Period. The Lessee agrees that any such funding for a Shortfall Period shall be clearly and completely identified in the Annual Budget submitted to and approved by the Lessor. Except as provided herein with respect to the process for adjustments for anticipated Shortfalls, Lessor shall have no liability for Shortfalls or obligation to cover Shortfalls in the event the Revenues are insufficient to cover the Expenses.

Section 16. Indemnification Agreement. Subject to the limitations set forth in Section 36(l) of this Ground Lease, the Lessee hereby releases and agrees to indemnify and hold harmless the Lessor and all of its trustees, officers, employees, directors, agents, and consultants (hereinafter collectively referred to as the "***Indemnitees***") of and from any and all claims, demands, liabilities, losses, costs, or expenses for any loss including but not limited to bodily injury (including death), personal injury, property damage, expenses, and reasonable attorneys' fees to the extent due to any negligent act or omission on the part of the Lessee, its agents, employees, or others (other than the agents and employees of the Lessor, if any) working at the direction of the Lessee or on its behalf, or due to the application of any pertinent federal, State, or local law, rule, or regulation or the violation of by the Lessee, its agents, employees, or others (other than the agents and employees of the Lessor, if any) working at the direction of the Lessee of any such federal, State, or local law, rule, or regulation. This indemnification extends to the successors and assigns of the Lessee, and this indemnification survives the expiration or termination of this Ground Lease and the dissolution or, to the extent allowed by law, the bankruptcy of the Lessee. This indemnification does not extend beyond the scope hereof and the Construction Documents and the work undertaken thereunder, and does not extend to claims exclusively between the Parties arising from the terms or regarding the interpretation hereof. Lessee shall cause for the Initial Management Agreement (and any subsequent Management Agreement), the Master MCB Sublease, and Occupancy Agreements, and any vendor agreement between Lessee and any third-party involving services in excess of \$50,000 to release, indemnify and hold harmless the Indemnitees in the same manner, and to the same extent, as Lessee has agreed to release, indemnify and hold harmless the Indemnitees in accordance with this Section.

Section 17. Insurance. (a) *General.* It is the intent of the Parties that all risk of loss relating to the Project be shifted from Lessee to insurance to the maximum extent practicable. Accordingly, unless the Lessor shall otherwise agree in its sole discretion to maintain insurance for the Project, the Lessee shall maintain, or cause to be maintained, insurance covering the risks enumerated in items (i) through (vi) below. Such insurance shall be written on an occurrence basis unless the Lessor shall otherwise consent in writing. Each policy shall provide that such insurance shall be primary coverage without reduction or right of offset or contribution on account of any insurance provided by the Lessor to itself or its officers, officials, or employees, that such insurance shall not be altered or cancelled without thirty (30) days' written notice to the Lessor and that, with the exception of professional liability and workers' compensation coverage, such policies shall name the Lessor as an additional insured. The insurance policies purchased by the Lessee must be issued by a company authorized to conduct business in the State and by a company acceptable to the Lessor and that has a Best Policyholders Rating of "A" or better and with a financial size rating of Class VIII or larger. Notwithstanding anything else herein contained, the rights of the Lessor to any insurance policies covering the Premises or the Project (or any portion thereof) and any and all proceeds paid or payable thereunder shall be in all respects junior and subordinate to the rights of the Trustee under the Bond Documents or any other Primary Leasehold Mortgage.

(i) **Construction Insurance Requirements.**

(A) During the construction period, the Lessee shall cause the Developer to cause the General Contractor to obtain and maintain in full force and effect: (1) All Risk and Builder's Risk - Completed Value Form Property Insurance in accordance with the Loan Agreement and this Ground Lease, and (2) payment and

performance bonds for labor and materials with respect to the Construction Contract in accordance with the Loan Agreement this Ground Lease (and/or City Development Agreement, as applicable).

(B) During the construction period, the Lessee shall cause the General Contractor and the Architect to maintain professional liability (errors and omissions) coverage for claims or damages arising from professional services provided. Such policies shall include prior acts coverage sufficient to cover the services under the applicable agreement, the limits of which shall not be less than \$5,000,000 per claim/\$5,000,000 annual aggregate with a deductible or self-insured retention amount not greater than \$500,000 per claim. Such insurance shall be maintained during the term of such service provider's services, and for a period equal to the statute of repose after completion of the services.

(ii) General Liability. Comprehensive general liability insurance providing insurance (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per occurrence) covering all claims for bodily injury and property damage, including not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, to include personal and advertising injury, general aggregate, products and completed operations aggregate insurance beginning at the completion of each Project component, and contract liability to cover all insurable obligations under the Ground Lease.

(iii) Automobile. Commencing on the date any vehicle shall be acquired or hired by the Lessee for use with respect to the Project, automobile liability insurance providing insurance (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per occurrence) to the extent of not less than a combined single limit of One Million Dollars (\$1,000,000) per accident covering liability arising out of the use of any Lessee vehicle or such vehicles used in conjunction with the Project, whether owned, non-owned, or hired, and including personal injury protection and uninsured motorist protection in the minimum statutory limits where required by law.

(iv) Workers' Compensation. Commencing on the date the first employee of the Lessee shall be hired, workers' compensation coverage or other similar coverage covering all of the Lessee's employees on the Premises, as required by the laws of the State, including, with respect to workers' compensation insurance, Coverage B-Employer's liability limits of: bodily injury by accident - Five Hundred Thousand Dollars (\$500,000) each accident; and bodily injury by disease - Five Hundred Thousand Dollars (\$500,000) each employee (and, in this regard, the Lessee shall require all subcontractors performing work on the Project to provide an insurance certificate showing proof of workers' compensation insurance);

(v) Fidelity Bonds. From and after Substantial Completion of the Project, the Lessee shall maintain fidelity bonds or employee dishonesty insurance in the amount of One Million Dollars (\$1,000,000) for all officers, agents, and employees of the Lessee (including, without limitation, all officers, agents, and employees of the Manager) with the responsibility of handling any revenues generated from the operation of the Project.

(vi) Umbrella Coverage. Additional umbrella or excess liability coverage in the amount of Ten Million Dollars (\$10,000,000) in the aggregate, which shall include all coverages required by (ii), (iii), and (iv) hereof.

(vii) Commercial Property Insurance. From and after Substantial Completion of the Project, Lessee shall maintain commercial property insurance in an amount of the insurable value of all Improvements located on the Premises under an “all risk” form, including damage by water, flood, tornado, hurricane and earthquake in an amount not less than the replacement cost value of the Improvements.

(c) Loss Payable Clauses. The contracts of insurance required by this Section shall contain standard loss payable clauses in favor of any Permitted Leasehold Mortgagee, the Lessor, and the Lessee as their respective interests may appear.

(d) Delivery of Insurance Certificates. Upon the commencement hereof and at each policy renewal date, the Lessee shall furnish to the Lessor at the address set forth in Section 28 hereof an insurance certificate or renewal certificate evidencing all insurance required to be carried by the Lessee in accordance with this Ground Lease, listing the Lessor as the certificate holder. The insurance certificate must document that the liability insurance coverage purchased by the Lessee includes contractual liability coverage to insure the indemnity agreement as stated herein.

(e) Evidence of Payment of Premiums. The Lessee shall, within twenty (20) days of payment, furnish to the Lessor duplicate receipts or satisfactory evidence of the payment of all premiums on any and all insurance required to be carried by the Lessee in accordance with this Ground Lease.

(f) Lessor Provided Insurance. From and after Substantial Completion of the Project, the Lessor shall maintain following insurance with respect to the Project (collectively, “**Lessor Provided Insurance**”):

(i) insurance upon the repair or replacement basis in an amount of not less than one hundred percent (100%) of the then actual cost of replacement (excluding costs of replacing excavations and foundations, but without deduction for depreciation) thereof (with deductible provisions not to exceed One Hundred Thousand Dollars (\$100,000)) against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke and such other risks as are now or hereafter included in the uniform standard extended coverage endorsement in common use for similar structures (including vandalism and malicious mischief); and

(ii) business interruption insurance (also referred to as “business income” or “loss of rents” insurance) covering loss of revenues and other income by the Lessee by reason of total or partial suspension of, or interruption in, the operation of the Project caused by covered damage to or destruction of the Project in an amount not less than the Maximum Annual Debt Service on the Bonds plus twelve (12) months’ budgeted expenses (other than interest on the Bonds) minus those expenses avoided as a result of and during the period of interruption.

(g) *Other Requirements Related to Lessor Provided Insurance.* The Lessor Provided Insurance shall be written on an occurrence basis unless the Lessee shall otherwise consent in writing. Each policy shall provide that such insurance shall be primary coverage without reduction or right of offset or contribution on account of any insurance provided by the Lessee to itself or its officers, officials, or employees, that such insurance shall not be altered or cancelled without thirty (30) days' written notice to the Lessee and that such policies shall name the Lessee as an additional insured. The insurance policies purchased by the Lessor must be issued by a company authorized to conduct business in the State and by a company acceptable to the Lessee and that has a Best Policyholders Rating of "A" or better and with a financial size rating of Class VIII or larger. Notwithstanding anything else herein contained, the rights of the Lessee to any insurance policies covering the Premises or the Project (or any portion thereof) and any and all proceeds paid or payable thereunder shall be in all respects junior and subordinate to the rights of the Trustee under the Bond Documents or any other Primary Leasehold Mortgage.

Section 18. Police Services. The Premises shall be subject, at all times during the Term, to the jurisdiction of the Lessor's police department.

Section 19. Damage and Destruction. [parties continuing to discuss]

(a) *Repair of Damaged Improvements.* Should any Improvements be damaged or destroyed by fire or any other casualty (collectively, a "Casualty") whatsoever during the Term, the Lessee, except as hereafter provided in this subsection, shall, at its sole cost and expense, within (i) ninety (90) days after receiving insurance proceeds with respect to any such Casualty or (ii) within one hundred eighty (180) days from the date of such Casualty, commence the work of repair, reconstruction, restoration, or replacement of the Improvements ("Reconstruction Work") and shall prosecute the Reconstruction Work with all reasonable dispatch, so as to fully complete such Reconstruction Work as expeditiously as reasonably possible consistent with the nature and extent of the Casualty, with such Improvements to be repaired, reconstructed, or restored as nearly as practicable to the same condition as prior to such Casualty. Anything in this Ground Lease to the contrary notwithstanding, the period of time within which the Lessee shall be hereinabove obligated to complete the Reconstruction Work shall be extended for the period of any delay in said completion not within the reasonable control of the Lessee.

(b) To the extent any Primary Leasehold Mortgagee exercises any right or option to retain and apply any portion of the proceeds of any insurance (or condemnation awards) toward payment of the sum secured by the Primary Leasehold Mortgage, Lessee shall diligently and expeditiously undertake to secure and close on Leasehold Mortgage loans to finance the Reconstruction Work, and thereafter, to commence and fully complete such Reconstruction Work as expeditiously as reasonably possible consistent with the nature and extent of the Casualty.

(i) Notwithstanding the foregoing, if, during the last ten (10) years of the Initial Term or any Renewal Term, the Improvements are totally destroyed or so damaged as to render them unusable, then (i) Lessee or the Lessor may terminate this Ground Lease by delivery of written notice of such termination to the other Party not later than sixty (60) days after the occurrence of such Casualty, whereupon this Ground Lease will terminate as of the date of such casualty. Upon such termination, the insurance proceeds shall be payable as follows (subject in all cases to the requirements and rights of any Primary

Leasehold Mortgage): (A) first, to demolish the Improvements and clear the site of all Improvements and debris to the Lessor's reasonable satisfaction, (B) second to reimburse Lessee for the fair market value of the Improvements as of the date prior to such Casualty and (C) third, the balance, if any, to the Lessor. If neither the Lessor nor Lessee timely elect to terminate this Ground Lease in accordance with this Section, Lessee shall restore the Premises in accordance with Section 19(a) hereof.

(c) Waiver of Subrogation. Where permitted by law, each Party hereby waives all rights of recovery by subrogation or otherwise (including claims related to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage), against the other Party, and its respective officers, agents, or employees.

(d) Inadequacy of Insurance Proceeds. Lessee shall use diligent, good faith efforts to satisfy all conditions of any Permitted Leasehold Mortgage to permit release and disbursement of such proceeds towards the costs of the Reconstruction Work. Notwithstanding anything to the contrary set forth in this Ground Lease, Lessee's liability hereunder to timely commence and complete restoration of the damaged or destroyed Improvements shall be absolute, irrespective of whether the insurance proceeds received, if any, are adequate to pay for such restoration.

(e) No Lessor Obligation to Provide Property Insurance. Lessee acknowledges and agrees that Lessor shall have no obligation to provide any property insurance on any Improvements or for the Premises. If Lessor does provide any property insurance coverage, Lessee acknowledges that such insurance shall be for the sole benefit of the Lessor and Lessee shall have no right or claim to any such proceeds.

(f) Compliance. Lessee's compliance with the requirements of this Section 19 shall not relieve the Lessee of its liability, or be construed to relieve or limit, Lessee of any responsibility, liability, or obligation imposed under any other portion of this Ground Lease, or by law, including any indemnification obligations which Lessee owes to Lessor.

(g) Right to Examine. The Lessor reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including binders, amendments, exclusions, riders and applications), or applicable portions of any master insurance policy, to determine the true extent of coverage. The Lessee agrees to permit such inspection and make available such policies or portions thereof at the offices of the Lessor.

(h) Personal Property. Any personal property of the Lessee or of others placed in the Premises shall be at the sole risk of the Lessee or the owners thereof, and the Lessor shall not be liable for any loss or damage thereto for any cause except as a result of the gross negligence or willful misconduct of the Lessor or its employees, agents or contractors.

(i) The Lessor and the Lessee specifically agree that, except as otherwise provided in this Ground Lease, damage to or destruction of any Improvements on or within the Property at any time during the Term, by fire or any other Casualty whatsoever, shall not work a termination hereof or authorize the Lessee or those claiming by, through or under the Lessee to quit or surrender possession of the Property or any part thereof, and shall not release the Lessee in any

way from its liability to pay the Lessor the Rent herein provided for, or from any of the provisions hereof.

(j) Termination Prior to Completion of Reconstruction Work. In the event of the termination hereof before the expenditure of the full amount of such insurance proceeds for the Reconstruction Work, any unexpended balance thereof, including any interest previously earned by such balance, shall inure to and become the sole property of the Lessor.

(k) Indenture Shall Control. Notwithstanding anything else herein contained, the provisions of the Indenture shall control in all respects the receipt, handling, and application of any and all insurance proceeds, it being acknowledged and agreed that the Trustee or such other Primary Leasehold Mortgagee, as their respective interests may appear, shall have a first and prior security interest therein.

Section 20. Condemnation.

(a) General. The term "**condemnation**" as used in this Ground Lease means the taking or appropriation of property, or any interest therein, in exercise of the power or right of eminent domain or such taking for public or quasi-public use or any state of facts relating to the taking or appropriation of property that, without an actual taking or appropriation, shall result in direct or consequential damages to the Project or to the Property or the leasehold interest therein. Such term shall also be deemed to include to the extent not otherwise defined in this paragraph, a temporary taking of the Property and/or the Project or any part thereof or the Improvements thereon for a period of one year or more, and the taking of the leasehold interest created therein.

(b) Total Condemnation. If all of the Project and the Property (or such substantial portion thereof as shall, in the Lessor's sole discretion, make it economically unfeasible to continue to operate the remaining portion for the purpose herein) shall be so condemned, this Ground Lease shall terminate on the date title to the Property shall vest in the condemnor; provided, however, that such termination shall be without prejudice to the rights of the Lessor to recover just and adequate compensation from any such condemnor. If this Ground Lease shall be terminated as provided in this subsection, the Lessee shall pay the Rent for the year in which the Property shall have been taken, up to the date of such termination. The Rent shall be payable within sixty (60) days after the date this Ground Lease shall be terminated.

(c) Division of Award - Total Condemnation. Subject to the controlling terms and conditions of the Indenture relating to the administration of condemnation proceeds, if the Property and the Project shall be totally condemned as provided in subsection (b) above, the condemnation proceeds shall be paid as follows:

(i) the Lessee first shall be entitled to receive such portion of the condemnation proceeds as shall equal the principal balance of all indebtedness secured by any Permitted Leasehold Mortgage then in effect, **plus** all interest accrued or to accrue on such sums through the date of payment or redemption of such indebtedness, **plus** any other direct out-of-pocket expenses incurred by the Lessee in connection with the condemnation not paid from the Operating Account which shall be directly paid to such Permitted Leasehold Mortgagee; and

(ii) the Lessor shall then be entitled to receive the balance of the condemnation proceeds.

(d) Partial Condemnation. In the event of a taking of less than a total taking as provided in subsection (b) above, this Ground Lease shall terminate as to the condemned portion of the Property on the date title to the condemned portion of the Property shall vest in the condemnor; provided, however, that such termination shall be without prejudice to the rights of the Lessor to recover just and adequate compensation from any such condemnor. The provisions hereof shall remain in full force and effect as to the portion of the Property not condemned.

(e) Division of Award - Partial Condemnation. Subject to the controlling terms and conditions of the Indenture relating to the administration of condemnation proceeds, if the Property and the Project shall be partially condemned as provided in subsection (d) above, the condemnation proceeds shall be paid as follows:

(i) the Lessee first shall be entitled to receive such portion of the condemnation proceeds as shall equal the principal balance of all indebtedness secured by any Permitted Leasehold Mortgage then in effect, **plus** all interest accrued or to accrue on such sums through the date of payment or redemption of such indebtedness, **plus** any other direct out-of-pocket expenses incurred by the Lessee in connection with the condemnation not paid from the Operating Account which shall be directly paid to such Permitted Leasehold Mortgage; and

(ii) the Lessor shall then be entitled to receive the balance of the condemnation proceeds. **[Parties continuing to discuss; needs to be consistent with final approach to restoration generally]**

Section 21. Estoppel Certificates.

(a) Upon the request of any Permitted Leasehold Mortgagee or any Person who may be permitted to take an assignment of this Ground Lease or who may become a Permitted Leasehold Mortgagee, the Lessor and the Lessee shall execute, acknowledge, and deliver to the other promptly upon request, in a form reasonably satisfactory to the requesting party, a certificate certifying as to the following:

(i) Validity of Lease: that this Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that this Ground Lease is in full force and effect, as modified, and stating the modifications);

(ii) Payment of Rent: the dates through which the Rent under this Ground Lease shall have been paid;

(iii) Amount of Rent Due: the amount of any Rent then payable; and

(iv) Defaults by the Lessee: that no notice has been given by the Lessor to the Lessee of any failure to comply under this Ground Lease that has not been cured and to the best of its knowledge and belief, and without any independent inquiry or investigation

thereof, no Event of Default exists (or, if there has been any notice given or an Event of Default exists, describing the same).

(b) Certificates from the Lessor and the Lessee pertaining to the same matters may be relied upon by any Person who may be permitted to take an assignment of this Ground Lease or who may become a Permitted Leasehold Mortgagee in accordance with the terms of this Ground Lease.

Section 22. Access to Premises. The Lessor and its authorized representatives, agents, employees, and attorneys may, but shall be under no duty to, enter the Premises at reasonable times and hours, subject to the rights of tenants in possession, if any, to inspect the Property in order to determine whether the Lessee is complying with its undertakings, duties, and obligations under this Ground Lease, to make such necessary repairs, additions, improvements, changes, or alterations to the Premises as the Lessor may elect to make in accordance with the terms and provisions hereof (the Lessor agreeing to provide five (5) Business Days' prior written notice of its intent to make such necessary repairs, additions, improvements, changes, or alterations to the Premises, except in the case of an emergency where no such prior notice shall be required), and to exhibit the same to prospective purchasers, operators, mortgagees, or tenants of the Premises. Such entry, inspection and repairs, additions, improvements, changes, or alterations as the Lessor may make of the Premises shall not constitute an eviction of the Lessee in whole or in part, and the Rent shall in no way abate by reason of loss or interruption of the business of the Lessee or otherwise while such work is being done. The Lessor agrees to employ its reasonable efforts to minimize any interruption to the business operations of the Lessee resulting from the Lessor's (or its designated representatives') work in or on the Premises. Nothing herein contained, however, shall be deemed or construed to impose upon the Lessor any obligation or liability whatsoever for care, supervision, repair, improvement, additions, change, or alteration to the Premises other than as herein expressly provided. Further, nothing in this Section shall be construed to permit the Lessor to make any material changes, improvements, and/or alterations to the Premises, including, without limitation, any demolition or removal thereof if such action would violate any restrictions imposed upon the Lessee with respect to the same under any Bond Document.

Section 23. Property Subject to Zoning. The Lessee takes the Property subject to all zoning regulations and ordinances now or hereafter in force including, but not limited to, those as to building line and setback.

Section 24. Events of Default and Remedies.

(a) *Events of Default Defined.* The following shall be "***Events of Default***" under this Ground Lease, and the term "***Event of Default***" means, whenever it is used herein, any one or more of the following events:

(i) The Lessee shall fail to pay the Rent or any other amounts due to the Lessor at the times specified herein.

(ii) The Lessee shall fail to continuously operate the Property in accordance with the [project use restrictions];

(iii) The Lessee shall fail to perform or cause to be performed any other term, covenant, condition, or provision hereof, other than as referred to in (i) above and to correct such failure within thirty (30) days after written notice specifying such shall have been given to the Lessee by the Lessor. In the case of any such failure that cannot with due diligence be corrected within such thirty (30) day period, but can be wholly corrected within a period of time not materially detrimental to the rights of the Lessor, it shall not constitute an Event of Default if corrective action shall be instituted by the Lessee within the applicable period and diligently pursued until the failure shall be corrected in accordance with and subject to any reasonable directions or limitations of time established in writing by the Lessor. **[Parties continuing to discuss]**

(iv) The Lessee shall be adjudicated a bankrupt.

(v) A permanent receiver shall be appointed for the Lessee's interest in the Premises and such receiver shall not be removed within ninety (90) days after notice from the Lessor to the Lessee to obtain such removal.

(vi) The Lessee shall voluntarily take advantage of any debtor relief proceedings under any present or future law whereby the Rent or any part thereof shall be reduced or payment thereof deferred or shall become subject to any such involuntary proceedings and said involuntary proceedings shall not be dismissed within ninety (90) days after notice from the Lessor to the Lessee to obtain such dismissal.

(vii) The Lessee shall make a general assignment for benefit of creditors.

(viii) Any of the Lessee's interest in the Premises under this Ground Lease shall be levied upon or attached under process against the Lessee, and the same shall not be satisfied or dissolved within ninety (90) days after notice from the Lessor to the Lessee to obtain satisfaction or dissolution thereof.

(b) Remedies. Subject to the provisions of Section 26(f) and 36(i) hereof, upon the occurrence of an Event of Default, the Lessor may pursue one of the following remedies:

(i) Terminate this Ground Lease immediately upon written notice thereof to the Lessee, and thereafter, without legal process, enter upon and take possession and control of the Premises to the complete exclusion of the Lessee. The Lessor may also demand, collect, and retain all rents due from tenants occupying the Premises, and the Lessor may otherwise treat and occupy the Premises as if this Ground Lease had expired pursuant to the terms hereof. The failure of the Lessor to exercise such rights after one or more Events of Default shall not be a waiver of the rights of the Lessor upon the occurrence of any subsequent Event of Default; or

(ii) As the Lessee's attorney-in-fact pursuant to the provisions of Section 12 of this Ground Lease, without terminating this Ground Lease, re-let the Premises upon obtaining the written consent of the Primary Leasehold Mortgagee. Such re-letting may be accomplished without advertisement and by private negotiations for such term or terms and at such rental or rentals as the Lessor in its sole discretion may deem proper and

advisable, with the right to make alterations and repairs to the Premises. Upon each such reletting:

(A) the Lessee shall be immediately liable to pay to the Lessor, in addition to any sums due hereunder, the reasonable cost and expenses of such reletting and of such alterations and repairs incurred by the Lessor; and

(B) subject to applicable law, rents received by the Lessor from such reletting shall be applied: First, to the payment of any costs and expenses of such re-letting and of such alteration and repair; Second, to the payment of Rent due and unpaid under this Ground Lease; and Third, the residue, if any, shall be held by the Lessor, in escrow, and (1) applied to the payment of the Rent as the same shall become due under this Ground Lease and (2) if any balance shall then remain, paid to the Lessee at the termination hereof. The Lessor shall in no event be liable to the Lessee for any interest on said residue.

Section 25. Expiration or Termination.

(a) *Extinguishment of the Lessee's Rights.* Upon the termination or expiration hereof from any cause, all rights and interests of the Lessee, and all persons whomsoever claiming by, through or under the Lessee (with the exception of any outstanding Occupancy Agreements and the rights of the Primary Leasehold Mortgagee to enter into a Mortgagee Lease pursuant to Section 26 hereof), shall immediately cease and terminate, and the Premises, including all Improvements (including, without limitation, all buildings, improvements, engines, machinery, dynamos, generators, boilers, furnaces, elevators, fire escapes, and all lifting, lighting, heating, cooling, refrigerating, air conditioning, ventilating, gas, electric and plumbing apparatus, appliances and fixtures, as well as other fixtures attached to or within the Premises), and all personal property (other than that which is owned by tenants of the Project) located thereon, shall thence forward constitute and belong to and be the absolute property of the Lessor or the Lessor's successors and assigns, without further act or conveyance, and without liability to make such compensation to the Lessee or to anyone whomsoever, and free and discharged from all and every lien, encumbrance, claim, and charge of any character created or attempted to be created by the Lessee at any time. The Lessee agrees, at the expiration or termination hereof, to surrender unto the Lessor, all and singular the Premises with then existing Improvements constructed and located thereon and therein, in the same condition as when the construction of such Improvements was completed, only natural and normal wear and tear excepted, unless the Lessee shall be relieved of the Lessee's obligation to repair, reconstruct, restore, or replace damaged or destroyed Improvements pursuant to Section 19(a) hereof.

(b) *Prepaid Items Assigned.* Upon the expiration of the Term, or upon the prior termination hereof from any cause, all expense items prepaid by the Lessee with respect to constructing, operating, maintaining, and protecting the Premises, including, but not limited to, prepaid insurance premiums, any tax and utility deposits, shall inure to the benefit of and become the property of the Lessor and to this extent the Lessee does hereby transfer, assign, and convey any such prepaid expense items to the Lessor.

(c) Amounts Remaining in Funds and Accounts. Upon the expiration of the Term, or upon the prior termination hereof from any cause, and subject, in the event of termination before the expiration of the Term of this Ground Lease, to the rights interests of the Trustee and/or any Permitted Leasehold Mortgagee, any amounts remaining in any fund, account, or reserve created in connection with the maintenance of the Property, or the management of the Project shall inure to the benefit of and become the property of the Lessor, and to this extent, the Lessee does hereby transfer, assign, and convey any such funds to the Lessor.

Section 26. Mortgaging of the Leasehold. [Parties continuing to discuss this Section; subject to Citi Group comments]

(a) The Lessee, and every permitted successor and assign of the Lessee, shall have the right in addition to any other rights granted in this Ground Lease to secure one or more financings or re-financings and may enter into a Primary Leasehold Mortgage in favor of a Primary Leasehold Mortgagee, and may otherwise encumber its interest in this Ground Lease, with the Lessor's consent, under any one or more leasehold deeds of trust or other security instrument pledging all or part of the Leasehold Estate to or for the benefit of a Permitted Leasehold Mortgagee, upon the condition that all rights acquired under any such financing or re-financing shall be subject to each of the provisions set forth in this Ground Lease and to all rights and interests of the Lessor herein (a "*Permitted Leasehold Mortgage*"), and provided, further that:

(i) any such secured financing of the Project exclusively secures debt of the Lessee to the Project;

(ii) any Permitted Leasehold Mortgage or other encumbrance executed by the Lessee in connection with a Permitted Leasehold Mortgage or otherwise will extend to or be a lien or encumbrance upon Lessor's interest in the Ground Lease or Property or in any rights appurtenant to Lessor's interests;

(iii) any Permitted Leasehold Mortgage or other encumbrance executed by the Lessee in connection with a Permitted Leasehold Mortgage shall at all times, without the necessary for the execution of any further documents, be subject and subordinate to the interest of the Lessor in the Premises, and the rights of the Lessor in the Premises and arising out of the Ground Lease shall not be affected by any Permitted Leasehold Mortgagee, nor shall the Lessor be deprived in any other way of its rights in the Premises or under this Ground Lease, except to the extent provided in this Section or in any subordination, non-disturbance and recognition agreement between the Lessor and the Primary Leasehold Mortgagee that is consistent with the terms of this Ground Lease; and

(iv) Lessee shall at all times remain liable hereunder for the payment of Rent and the performance of all covenants and conditions of this Ground Lease as provided in this Ground Lease.

Subject to the provisions of subsection (k) below, the Lessor may enter into a Refinanced Trustee Mortgage. If, from time to time, the Lessee or the Lessee's successors and assigns shall, with the consent of the Lessor, encumber this Ground Lease with a Primary Leasehold Mortgage, and if the holder thereof shall deliver to the Lessor an executed counterpart of such Primary

Leasehold Mortgage, together with each assignment thereof certified by such holder to be true together with written notice specifying the name and address of such holder and the pertinent recording data with respect to such Primary Leasehold Mortgage, the Lessor agrees that, anything in this Ground Lease to the contrary notwithstanding, from and after the date of receipt by the Lessor of such notice and for the term (duration) of such Primary Leasehold Mortgage, the following provisions shall apply:

(c) Consent to Amendment. There shall be no cancellation or surrender of this Ground Lease (except upon the expiration of the Term), or modification of this Section, or other provisions of this Ground Lease intended for the benefit of the Primary Leasehold Mortgagee, by the Lessor or the Lessee without the prior written consent of the Primary Leasehold Mortgagee, which consent shall not be unreasonably withheld. Notwithstanding the foregoing (but, in any event, subject to the Primary Leasehold Mortgagee's curative rights set forth in subsections (d) and (e) hereof), nothing herein shall be deemed to prohibit the Lessor from terminating this Ground Lease in accordance with its terms or exercising its option to purchase as provided for in this Ground Lease, if any. There shall be no material modification in the Primary Leasehold Mortgage or related documentation without the Lessor's prior written consent.

(d) Notices to Permitted Leasehold Mortgagee. The Lessor, upon serving the Lessee with any notice of an Event of Default, failure to comply, or termination, shall simultaneously serve a copy of such notice on the Primary Leasehold Mortgagee. If the Lessor shall serve the Lessee with a notice of a failure to comply with any term, covenant, condition, or provision hereof, the Primary Leasehold Mortgagee shall then have the same period after service of the notice on it as is given to the Lessee hereunder to remedy or cause to be remedied such failure, and the Lessor shall accept performances by or at the instigation of the Primary Leasehold Mortgagee as if it had been done by the Lessee. Any notice required to be given to the Primary Leasehold Mortgagee shall be posted in the United States mail, postage prepaid, certified, return receipt requested (and wired by telegraphic means or transmitted by facsimile transmission) and addressed to the Primary Leasehold Mortgagee at the address and to the attention of the person designated to the Lessor by such Primary Leasehold Mortgagee to receive copies of such notices and shall be deemed to have been served as of the date the said notice is received or refused by such Primary Leasehold Mortgagee.

(e) Curative Rights of Permitted Leasehold Mortgagees. In addition to the rights granted to any Primary Leasehold Mortgagee under this Section, the Primary Leasehold Mortgagee shall have an additional period of ninety (90) days to remedy or cause to be remedied any Event of Default of which it shall have received notice. **[Parties continuing to discuss.]**

(f) Limitation Upon Termination Rights of the Lessor. If the Lessor shall elect to terminate this Ground Lease upon the occurrence of an Event of Default, the Primary Leasehold Mortgagee shall also have the right to postpone and extend the date of termination as fixed by the provisions hereof for a period of not more than six (6) months from the expiration of the ninety (90) day period specified in subsection (c) hereof, provided that the Primary Leasehold Mortgagee shall pay the Rent and other charges required to be paid under this Ground Lease during such period and comply with the other terms of the Ground Lease in all material respects, and provided further, that the Primary Leasehold Mortgagee shall forthwith take steps necessary to acquire the Lessee's interest and estate in this Ground Lease by foreclosure of its Permitted Leasehold

Mortgage, or otherwise, and shall prosecute such action to completion with due diligence. If at the end of the six (6) month period, the Primary Leasehold Mortgagee hereof shall be actively engaged in steps to acquire or sell the Lessee's interest in this Ground Lease, the time for the Primary Leasehold Mortgagee to comply with the provisions of this subsection shall be extended for such period as shall be reasonably necessary to complete these steps with reasonable diligence and continuity. **[Parties continuing to discuss outside date/parameters]**

(g) Assignment. The Lessor agrees that in the event of any foreclosure under any Permitted Leasehold Mortgage, either by judicial proceedings or under power of sale contained therein all right, title, and interest encumbered by such Permitted Leasehold Mortgage may, without the consent of the Lessor, be assigned to and vested in the purchaser at such foreclosure sale subject and subordinate, however, to the rights, title, and interests of the Lessor; and, notwithstanding that the Lessor's consent to said assignment shall not have been obtained, any such assignee shall be vested by virtue of such assignment with any and all rights of the party whose estate was encumbered by such Permitted Leasehold Mortgage as though the Lessor had consented thereto. Any Permitted Leasehold Mortgagee, assignee or subsequent foreclosure purchaser must comply with, and shall be subject to, all terms, covenants and conditions of the Ground Lease.

(h) Mortgagee Leases. The Lessor agrees that in the event of a termination hereof by reason of the occurrence of any Event of Default, and subject to the rights herein granted to Leasehold Mortgagees, the Primary Leasehold Mortgagee shall have the option, but not the obligation, to enter into a Mortgagee Lease, with the Primary Leasehold Mortgagee, as lessee, for the remainder of the Term with the same covenants, conditions and agreements (except for any requirements which have been fully satisfied by Lessee or Lessor prior to termination); provided:

(i) The Primary Leasehold Mortgagee shall enter into a Mortgagee Lease within the six (6) month period specified in subsection (f) of this Section, with Lessor's obligation to enter into a Mortgagee Lease conditioned upon, on the date the Mortgagee Lease is executed, (a) Lessor receiving payment of all Rent due hereunder through the date of such Mortgagee Lease; (b) all monetary defaults having been cured; (iii) all non-monetary defaults susceptible to cure having been remedied and cured or Primary Leasehold Mortgagee, as lessee, having commenced such cure and continuing to diligently complete the cure; and (iv) the Lessor receiving payment of all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by the Lessor in connection with such Event of Default, the termination of this Ground Lease and the preparation of the new Mortgagee Lease, together with interest thereon at the lesser of the Default Rate or the highest rate permitted by law, from the due date or the date expended by the Lessor, as the case may be, to the date of actual payment from Primary Leasehold Mortgagee.

(ii) Lessor's delivery of the Mortgagee Lease shall be (a) made without representation or warranty of any kind or nature whatsoever either express or implied; (b) Primary Leasehold Mortgagee, as lessee, shall take such Premises "as-is" in its then current condition; and (c) upon execution and delivery of such Mortgagee Lease, Primary Leasehold Mortgagee, as lessee, at its sole cost and expense, shall be responsible for taking

such action as shall be necessary to cancel and discharge this Ground Lease and to remove Lessee from the Premises.

(iii) The Primary Leasehold Mortgagee, as lessee under the Mortgagee Lease, shall perform and observe all covenants contained in the Mortgagee Lease on the Lessee's part to be performed during such period of time commencing with the date of the execution of the Mortgagee Lease and terminating upon the abandonment or surrender of possession of the Premises under the said Mortgagee Lease.

(iv) The Primary Leasehold Mortgagee, as lessee under the Mortgagee Lease shall have the same right, title and interest in and to the Premises and the right to use the Improvements thereon as the Lessee had under this Ground Lease.

(i) Agreement Between the Lessor and the Primary Leasehold Mortgagee. The Lessor, upon request, shall execute, acknowledge, and deliver to the Primary Leasehold Mortgagee an estoppel and recognition agreement, in form reasonably satisfactory to the Primary Leasehold Mortgagee and the Lessor, by and among the Lessor, the Lessee, and the Primary Leasehold Mortgagee agreeing to all of the provisions of this Section.

(j) Limitation on Liability of the Permitted Leasehold Mortgagees. Notwithstanding any other provision hereof, the Lessor agrees that any Permitted Leasehold Mortgagee permitted under this Ground Lease shall in no manner or respect whatsoever be (i) liable or responsible for any of the Lessee's obligations or covenants under this Ground Lease (nor shall any rights of such Permitted Leasehold Mortgagee be contingent on the satisfaction of such obligations or covenants), or (ii) required to cure any Event of Default, provided; however, that if such Permitted Leasehold Mortgagee shall become the owner of the Leasehold Estate or shall become the lessee under a Mortgagee Lease, then such Permitted Leasehold Mortgagee shall be responsible and liable for all obligations and covenants accruing during such Permitted Leasehold Mortgagee's tenure as owner of the Leasehold Estate or as lessee under a Mortgagee Lease. Notwithstanding the foregoing, the liability of a Permitted Leasehold Mortgagee with respect to its obligations under this Ground Lease or any Mortgagee Lease shall be "non-recourse" and, accordingly, the Lessor's source of satisfaction of such obligations shall be limited to the Net Available Cash Flow and to the Lessee's interest in the Project, and the Lessor shall not seek to obtain payment through any judicial process or otherwise from any person or entity comprising such Permitted Leasehold Mortgagee or from any assets of such Permitted Leasehold Mortgagee other than the Net Available Cash Flow and the Lessee's interest in the Project.

(k) No Waiver of Lessee's Obligations or Lessor's Rights. Nothing contained herein or in any Permitted Leasehold Mortgage shall be deemed or construed to relieve Lessee from the full and faithful observance and performance of its covenants, conditions and agreements contained in this Ground Lease, or from any liability for the non-observance or non-performance thereof, or to require, allow or provide for the subordination to the lien of such Permitted Leasehold Mortgage or to any Permitted Leasehold Mortgagee of any estate, right, title or interest of the Lessor in or to the Ground Lease, Premises or Property (except for the right to Revenues generated hereunder, as provided in Section 54(i) of this Ground Lease), nor shall the Lessor be required to join in such mortgage financing or be liable for same in any way. Lessor's interest in the Property and this Ground Lease, as the same may be modified, amended or renewed, will not

at any time be subject or subordinate to (a) any mortgage now or hereafter placed upon Lessee's interest in this Ground Lease, or (b) any other liens or encumbrances hereafter affecting Lessee's interest in this Ground Lease. Lessor represents and warrants to Lessee that no mortgages currently exist against its fee interest in the Property, and acknowledges that this Lease shall not be subordinate to any future mortgage against the fee interest in the Property. Notwithstanding anything to the contrary contained in this Ground Lease, if all or any portion of the interest of Lessor in the Property or this Lease shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Ground Lease and the rights of Lessee hereunder shall continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Ground Lease. **[Parties continuing to discuss; subject to Citi Group comments]**

(l) *Refinanced Trustee Mortgage.* No consent or approval of the Lessor shall be required for any Refinanced Trustee Mortgage, *provided, however*, that the Lessor's prior written consent shall be required for:

(i) The issuance of any Additional Bonds the proceeds of which are not used to refund or defease any Outstanding Bonds or to pay the cost of issuance thereof, or

(ii) The restructuring, refunding or defeasance of any Outstanding Bonds that would:

(A) increase the aggregate principal balance of the Bonds outstanding immediately prior to the effective date of such restructuring, refunding or defeasance;

(B) extend the final maturity date of the Bonds or other indebtedness secured by the Trustee Mortgage beyond the final maturity date of the Bonds outstanding immediately prior to the effective date of such restructuring, refunding or defeasance; or

(iii) Any restructuring, refunding or refinancing of the Bonds, the result of which would require the Lessee to materially increase the rental payments of Eligible Residents.

Section 27. Option to Purchase. Throughout the Term, the Lessor, at its sole discretion, shall have the right and option to purchase the Lessee's right, title, and interest in and to the Project, this Ground Lease, and the applicable Occupancy Agreements (collectively, the "*Optioned Property*").

(b) *Exercise Notice.* The Lessor may exercise such option to purchase the Lessee's right, title and interest in and to the Optioned Property by delivering written notice (the "*Exercise Notice*") of such exercise to the Lessee, which Exercise Notice shall either state that the entirety of the Project is being purchased or identify with a metes and bounds description or lot and block description of the Optioned Property that Lessee desires to purchase.

(b) Purchase Price. If the option to purchase shall be exercised, the purchase price (the "**Option Price**") of the Lessee's right, title, and interest in and to the Optioned Property shall be equal to (i) the principal balance of all indebtedness relating to such purchase secured by any Permitted Leasehold Mortgage then in effect, if any, **plus** (ii) any premium payable upon the prepayment or redemption of such indebtedness, if any, **plus** (iii) all interest accrued or to accrue on such sums through the date of payment or redemption of such indebtedness, if any, **plus** (iv) all recording fees for satisfaction of the Lessee's loans relating to the Project, if any, **plus** (v) all transfer taxes in connection with the sale of the Optioned Property and all recording fees in connection with recording of any deed and assignment, **plus** (vi) any unpaid fees and/or other compensation due to the Lessee hereunder, plus (vii) all other expenses incurred by the Lessee in connection with the Closing (as defined herein) not paid from the Operating Account. This provision for the Lessor's option shall not be in derogation of the Lessor's power of eminent domain.

(c) Closing. The closing of the transfer of the Lessee's right, title and interest in and to the Optioned Property (the "**Closing**") shall be held on or before the date that is ninety (90) days after the date of the Exercise Notice, on such date and at such time and place as the Lessor and the Lessee shall agree. At Closing upon payment of the Option Price, title to the Project shall be conveyed by a limited warranty deed in recordable form executed by the Lessee, title to the Equipment shall be conveyed by a bill of sale containing limited warranties of title, this Ground Lease shall terminate as to the Optioned Property and the Lessee's interest in applicable Occupancy Agreements shall be conveyed by an assignment thereof containing limited warranties of title. If the Optioned Property shall be less than the entire Premises, then the Lessor and the Lessee shall execute an amendment to this Ground Lease at such closing amending the definition of the Premises.

(d) Title. The Optioned Property shall be conveyed free and clear of all loans, and shall be subject only to the applicable Occupancy Agreements, to Permitted Encumbrances, and to all matters occurring subsequent to the date hereof that would be disclosed by an accurate survey, title search, and inspection of the Premises.

(e) Release of Lessee. Upon the transfer of all of the Lessee's interest in the Optioned Property pursuant to this Section, the Lessee shall be released from, and relieved of, all of its obligations hereunder without any further action on the part of the Lessor or the Lessee.

Section 28. Notices.

(a) All notices, certificates, demands, requests, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail, postage prepaid, return receipt requested, or by personal delivery addressed as follows (email addresses are included for convenience only):

If to the Lessee:	CFC- Miami Beach Properties LLC
	Attention: President
	Telephone:
	E-Mail:

If to the Lessor: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Manager

with a copy to: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Attorney

If to the Trustee:
Attention:
Telephone:
E-Mail:

(b) Receipt of notices, certificates, or other communications hereunder shall occur upon actual delivery to any Person at any location where such Person may be found, or to an officer, agent, or employee of such Person at the address of such Person set forth above, subject to change as provided hereinabove. An attempted delivery in accordance with the foregoing, acceptance of which shall be refused or rejected, shall be deemed to be and shall constitute receipt; and an attempted delivery in accordance with the foregoing by mail, Electronic Means, messenger, or courier service (whichever shall be chosen by the sender) that is not completed because of changed address of which no notice shall have been received by the sender in accordance with this provision prior to the sending of the notice, certificate, or other communication shall also be deemed to be and constitute receipt. Any Person named in this Section may, by notice given to each of the others, designate any additional or different addresses to which subsequent notices, certificates, demands, requests, or other communications shall be sent.

(c) Notwithstanding anything contained herein to the contrary, any notice required to be given by the Lessor or the Lessee hereunder shall be deemed to have been given and shall be effective as of the date such notice is received or refused reflected on said notice. All notices, certificates, demands, requests, or other communications made by either Party to the other that are required or permitted by the provisions hereof shall be in writing.

Section 29. Submission of Matters to the Lessor for Approval. Except as to the extent expressly provided for herein to the contrary, any matter that is required to be submitted to and/or consented to or approved in writing by the Lessor or any matter that is required to be submitted to the Lessor that may become effective if not denied, rejected, or disapproved by the Lessor, as required under this Ground Lease, shall be submitted to the applicable Lessor Representative by hand or mailed by United States certified or registered mail return receipt requested or sent by national-recognized overnight courier, to the address of the Lessor designated for the giving of notice to the Lessor under Section 28 hereof and shall either be accepted, affirmed, or approved or denied, rejected, or disapproved by the Lessor within sixty (60) days after receipt unless a shorter period of time is expressly stated elsewhere herein. If the Lessor shall fail so to accept, affirm, or approve or deny, reject, or disapprove within such sixty (60) day or other such

shorter period as provided for herein, the Lessor's approval shall be assumed to have been unconditionally granted and the Lessee shall have the right to proceed on such matter so submitted. The Lessor shall inform the Lessee in writing of its acceptance, affirmation, or approval or denial, rejection, or disapproval of such submitted matter by United States certified or registered mail, return receipt requested, or sent by national-recognized overnight courier, to the address of the Lessee designated for the giving of notice to the Lessee in Section 28 hereof. Any review by the Lessor of any matter submitted to the Lessor is for the Lessor's own convenience and purpose only. By undertaking such review, the Lessor shall not have any liability to the Lessee or any other person, including, without limitation, the insurers and lenders of the Lessee.

Section 30. Holding Over by the Lessee. The Lessee shall not use or remain in possession of the Premises after the termination hereof. Any holding over, or continued use or occupancy by the Lessee after the termination hereof, without the written consent of the Lessor, shall not constitute a tenant-at-will interest in behalf of the Lessee, but the Lessee shall become a tenant-at-sufferance and liable for Rent and all other expenses, obligations, and payments in effect for the immediately preceding year of the Term. There shall be no renewal whatsoever hereof by operation of law.

Section 31. Environmental Matters.

(a) The Lessee covenants, represents, and warrants that the Lessee's use of the Premises shall not and will not involve the use, storage, generation, or disposal of Hazardous Materials in violation of any Environmental Laws, and that Lessee shall not cause or permit any Hazardous Materials to be brought, used, stored, generated, or disposed on or about the Premises by Lessee, its agents, employees, contractors, subcontractors, or invitees, unless such use shall be in compliance with all laws, including, without limitation, Environmental Laws and with all governmental authorities.

(b) For purposes of this Ground Lease, the term "***Hazardous Materials***" means asbestos, asbestos-containing materials, materials presumed by law to contain asbestos, polychlorinated biphenyls ("***PCBs***"), petroleum, petroleum byproducts (including but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity), natural or synthetic gas products, radioactive materials, and/or any hazardous or toxic substance, chemical or material, or any other environmentally regulated substance or material, waste, pollutant or contaminant, defined as such or regulated by any Environmental Laws. "***Environmental Laws***" means any federal, state or local statute, law, ordinance, code, common law, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning the protection of the environment, natural resources, health and safety, and/or activities involving any asbestos, asbestos-containing materials, materials presumed by law to contain asbestos, PCBs, petroleum, petroleum byproduct (including but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity) natural or synthetic gas products, radioactive materials, and/or hazardous or toxic substances, chemicals or materials, or any other waste, materials, pollutant or contaminant that is regulated to protect the environment, as may now or at any time hereafter be in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Clean Air

Act, the Clean Water Act, the Toxic Substances Control Act, the Emergency Planning and Community Right- To-Know Act, and the Occupational Safety and Health Act.

Section 32. Property Condition. EXCEPT AS MAY BE SET FORTH OR PROVIDED FOR HEREIN, THE LESSOR AND THE LESSEE ACKNOWLEDGE AND AGREE THAT, EXCEPT AS PROVIDED IN SECTION 9 HEREOF, NEITHER THE LESSOR OR ANY OF ITS TRUSTEES, OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES MAKES OR HAS MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF, THE PROPERTY'S PHYSICAL CONDITION, INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED WITH RESPECT TO THE PROPERTY, THE PROPERTY'S FITNESS OR SUITABILITY FOR ANY PARTICULAR USE, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS COLLATERAL TO OR AFFECTING THE PROPERTY OR ANY PORTION THEREOF, EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN, AND THAT THE LESSEE HAS INSPECTED THE PROPERTY AND LEASES THE PROPERTY "AS IS AND WHERE IS."

Section 33. Leasehold Condominium. Lessee shall have the right to create a leasehold condominium for the Project, if such condominium structure is deemed necessary to secure or preserve any exemption from ad valorem taxes, provided that at the time of creation of said leasehold condominium, the declaration of condominium (the "Declaration") is in compliance with Chapter 718, Florida Statutes, as amended, and the provisions of this Ground Lease; and further subject to the City Manager's approval of the form and substance of the Declaration. Lessee shall reimburse Lessor, as part of the Expenses, for all reasonable costs of Lessor's review of the proposed Declaration, including, but not limited to reasonable fees and costs of Lessor's outside counsel. The leasehold condominium shall be limited to three (3) units, consisting of the Ground Floor condominium unit, the Dormitory Housing condominium unit, and one (1) condominium unit comprising all of the Workforce Housing Units. The Rent shall be based upon the Revenues derived from the operations of each of the three units. The provisions of this Ground Lease related to transfers or assignments of the Ground Lease shall apply to any transfer or assignment of each of the three (3) units, respectively, in the same manner as applicable to a transfer or assignment of the Ground Lease.

Section 34. Release of Portions of the Property. The Parties also agree that any portion of the Property may, from time to time, upon the written agreement of the Parties, be released from the terms of this Ground Lease; subject, however, to the terms and conditions of the Bond Documents or, if the Bonds are no longer Outstanding, the applicable requirements of any other Primary Leasehold Mortgagee.

Section 35. Miscellaneous.

(a) **No Waiver of Rights by the Lessor.** No failure of the Lessor to exercise any power given the Lessor hereunder or to insist upon strict compliance by the Lessee with its undertakings, duties and obligations hereunder, and no custom or practice of the Parties at variance with the

provisions hereof shall constitute a waiver of the Lessor's right to demand exact compliance with the provisions contained in this Ground Lease.

(b) *Rights are Cumulative.* All rights, powers, and privileges conferred herein upon both Parties shall be cumulative.

(c) *Provisions are Binding Upon Assigns and are Real Covenants.* It is mutually covenanted, understood and agreed by and between the Parties, that each of the provisions hereof shall apply to, extend to, be binding upon and inure to the benefit or detriment of not only the Parties, but also the respective legal representatives, successors and assigns of the Parties, and shall be deemed and treated as real covenants running with the Property during the Term. The Parties further acknowledge and agree that the Trustee and any other Permitted Leasehold Mortgagee and their respective successors and assigns shall be deemed third party beneficiaries hereunder, but solely with respect to the enforcement of any rights or interests expressly granted hereunder to such Permitted Leasehold Mortgagees. Whenever a reference to either of the Parties is made, such reference shall be deemed to include the legal representatives, successors and assigns of said Party, the same as if in each case expressed.

(d) *Applicable Law; Venue.* This Ground Lease has been prepared and entered into by the Parties with the intention that the law of the State, exclusive of the State's rules governing choice of law, shall govern its construction.

(e) *All Genders and Numbers Included.* Whenever the singular or plural number, or masculine, feminine, or neuter gender is used in this Ground Lease, it shall equally apply to, extend to, and include the other.

(f) *Invalidity of Provision or Part Thereof.* In the event any provision, or any portion of any provision hereof shall be held invalid, the other provisions hereof and the remaining portion of said provision, shall not be affected thereby and shall continue in full force and effect.

(g) *Time is of the Essence.* All time limits stated in this Ground Lease are of the essence hereof.

(h) *Section Captions are to be Disregarded.* The captions of the numbered sections hereof are for purposes of identification and convenience only and are to be completely disregarded in construing this Ground Lease.

(i) *Subordination.* Except with respect to the Lessor's interest in the Ground Lease and the Lessor's fee interest in the Property, which interests shall not be subordinated to the rights of the Lessee, Permitted Leasehold Mortgagee, Trustee, or Bondholders, the Lessor agrees that the financing of the design, acquisition, construction, furnishing, and equipping of the Project will directly benefit the Lessor's operations and the Lessor agrees that its interest in and to the rents, revenues, issues and profits relating to the operation of the Project, including, without limitation, all insurance proceeds, reserve funds and gross revenues, as well as any and all rights to any and all contracts, agreements and other instruments in connection with the design, acquisition, construction, equipping, installation, and operation of the Project, including, without limitation, all Assigned Agreements shall be junior and subordinate to the interest of the Trustee in any such Assigned Agreements as granted or provided in any of the Bond Documents (collectively, the

"**Bond Collateral**"). So long as any of the indebtedness created, evidenced, or secured by any of the Bond Documents shall remain outstanding and unpaid, the Lessor shall not exercise any rights or remedies with respect to the Bond Collateral without obtaining the prior written consent of the Trustee or any other Primary Leasehold Mortgagee succeeding to the interests of the Trustee.

(j) Entire Agreement Contained Herein. The making, execution and delivery hereof by the Lessee has not been induced by any representations, statements, covenants or warranties by the Lessor except for those contained in this Ground Lease. This Ground Lease constitutes the full, complete and entire agreement between the Parties; no agent, employee, officer, representative or attorney of the Parties has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith modifying, adding to or changing the provisions hereof. No amendment hereof shall be binding unless such amendment shall be in writing, signed by both Parties and approved by the Primary Leasehold Mortgagee or Permitted Leasehold Mortgagee, as applicable, and attached to, incorporated in and by reference made a part hereof.

(k) No Partnership or Agency. Nothing in this Ground Lease is intended, or shall in any way be construed, so as to create any form of partnership or agency relationship between the Parties. The Parties hereby expressly disclaim any intention of any kind to create any partnership or agency relationship between themselves. Nothing in this Ground Lease shall be construed to make either Party liable for any of the indebtedness of the other, except as specifically provided herein.

(l) Limitation of Liability. Notwithstanding anything herein to the contrary, the liability of the Lessee hereunder (including, but not limited to its indemnity obligations) shall be limited to the Lessee's interest in the Premises and the rents, issues and surplus related thereto and, accordingly, the Lessor's sole source of satisfaction of such obligations shall be limited to such assets, and the Lessor shall not seek to obtain payment from any person or entity comprising the Lessee or from any assets of the Lessee other than those described herein, notwithstanding the survival of any obligation of the Lessee beyond the Term.

(m) Recordation of Memorandum of Lease. The Lessor and the Lessee agree that the Parties shall execute, seal, acknowledge, and deliver simultaneously with the execution hereof, in recordable form, a memorandum of lease setting forth the basic terms hereof.

(n) Counterparts. This Ground Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed original and all of which, when taken together, shall constitute one in the same document. The signature of any Party to any counterpart shall be deemed a signature too, and may be appended to, any other counterpart.

(o) Preservation of Tax Exemption. The Lessor shall not take any action with respect to the Project that would adversely affect the exemption, if any, of interest on any Bonds from gross income for federal income tax purposes or would otherwise result in a breach of any representations, conditions, or covenants of the Lessee as set forth in the Bond Documents.

(p) Language Construction. The language in all parts hereof shall be construed, in all cases, according to its fair meaning, and not for or against either Party. The Parties acknowledge

that each Party and its counsel have reviewed and revised this Ground Lease and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation hereof.

(q) City Manager's Delegated Authority. Notwithstanding any provision to the contrary in this Ground Lease, nothing herein shall preclude the City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Ground Lease, including, without limitation, any approval contemplated under this Ground Lease, any proposed amendment or modification to this Ground Lease, or any separate agreement relating to the Premises or otherwise referenced in this Ground Lease.

(r) Nondiscrimination. Lessee, Manager, and its employees, agents and representatives shall not discriminate against any employee, applicant for employment, vendor, Eligible Resident or invitee because of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation. Further, Lessee shall comply with the City of Miami Beach Human Rights Ordinance, set forth in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

(s) Independent Legal Counsel. The Parties mutually acknowledge that they each have had the opportunity to be represented by independent legal counsel in negotiations leading up to and in executing this Ground Lease.

(t) Electronic Signatures. The Parties agree that the electronic signature of a Party hereto shall be as valid as an original signature of such Party and shall be effective to bind such Party. The Parties further agree that any electronically signed document (including this Ground Lease) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation, or administrative proceeding, shall be admissible as between the Parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither Party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

(u) Lessor's Failure to Perform. If the Lessor shall fail to perform, or cause to be performed, any term, covenant, condition, or provision imposed upon it hereunder, and to correct

such failure within ten (10) Business Days after written notice specifying such is given to the Lessor by the Lessee, the Lessee shall have the right to perform such term, covenant, condition, or provision on behalf of the Lessor.

Section 36. Books and Records; Audit Rights.

(a) Lessee shall at all times during the Term of this Lease keep and maintain (separate from any of Lessee's other books, records and accounts), and shall cause the Manager to keep and maintain, accurate and complete records pertaining to the Premises related thereto, including, without limitation, books of account reflecting the Revenues and Expenses and such other matters referenced in this Ground Lease, in accordance with the GAAP with such exceptions as may be provided for in this Ground Lease, and provided that Lessee (and the Manager) may make such reasonable modifications in such books of account as are consistent with standard practice in accounting for its operations under management contracts generally. Lessor and its representatives shall have, during normal business hours and upon reasonable advance notice, access to inspect the books and records of Lessee and the Manager pertaining to the Revenues and Expenses of the Premises, including, without limitation, books of account properly reflecting the operations of the Premises, which books and records shall be kept at the Premises. Lessor shall have the right to cause an audit by Lessor's internal auditors (in accordance with GAAP) of such books and records to be made at any time (but not more frequently than one (1) time in any twelve (12) month period, as an Expense of the Project (a copy of which shall be delivered to Lessee). Such right of inspection and audit may be exercised at any time within three (3) years after the end of the Lease Year to which such books and records relate, and Lessee and Manager shall maintain all such books and records for at least such period of time and, if any dispute between the Parties has arisen and remains unresolved at the expiration of such period of time, for such further period of time until the resolution of such dispute. Notwithstanding anything to the contrary contained herein, in the event that Lessor determines to have such audit performed by its external auditors, Lessor shall pay the fees and expenses or said external auditors.

(b) If, upon any audit by Lessor as described above of the books or records of Lessee or Manager, (i) an error (which shall mean a mistake in calculation of Revenues, an accounting error, but shall exclude any error based on assertions that Lessee or Manager acted imprudently or unwisely in connection with the collection of the Revenues) shall be revealed which results in there being due to Lessor Net Available Cash Flow for any Lease Year for which Annual Financial Statements are being audited pursuant to this Section, the amounts of any such underpayments of Net Available Cash Flow which may be disclosed by such audit, together with interest accrued thereon at the Default Rate from the date on which such underpayment was made until the date of payment of the correct amount, shall be paid to Lessor upon thirty (30) days demand or (ii) an error (as defined in clause (i) above) shall be revealed which resulted in an overpayment by Lessee to Lessor of Net Available Cash Flow, Lessor shall remit the amount of such overpayment (less the cost of such audit) to Lessee within thirty (30) days after the completion of such audit. If Lessor does not notify Lessee of any error in the calculation of Net Available Cash Flow within three (3) years after the end of any Lease Year, then Lessor shall be deemed to have conclusively waived any and all objections with respect to any Net Available Cash Flow payments with respect to such Lease Year.

(c) Notwithstanding any of the foregoing provisions of this Section, so long as Lessor is the City or any instrumentality of the City, the following provisions shall be applicable to the books and records of the Project, the Annual Financial Statements, the Annual Budget and any other documents (collectively, the **“Project Documents”**) required to be delivered or made available to Lessor under this Ground Lease:

(i) All Project Documents shall be maintained at the Premises.

(ii) All Project Documents shall be made available to Lessor and its representatives as provided above.

(iii) If a copy of any Project Document is made by Lessor or any of its representatives and delivered to Lessor’s offices and Lessee believes that such Project Document may contain proprietary or confidential information of the Lessee that is exempt from public records disclosure under Florida law, there shall be attached to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

THE ATTACHED DOCUMENT CONTAINS BUSINESS OR FINANCIAL INFORMATION. THE ATTACHED DOCUMENT SHALL BE SUBJECT TO PUBLIC RECORDS DISCLOSURE, SOLELY IN ACCORDANCE WITH APPLICABLE LAW.

(d) Any third-party representatives (including, without limitation, any external auditors) of Lessor that review any Project Documents shall execute a confidentiality agreement mutually acceptable to Lessor and Lessee. If a copy of any Project Document is made by any such representative for use in the offices of such representative, there shall be attached to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

THE ATTACHED DOCUMENT CONTAINS BUSINESS OR FINANCIAL INFORMATION. THE ATTACHED DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT AND SHALL BE KEPT SOLELY IN THE OFFICES OF [INSERT NAME OF REPRESENTATIVE]. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICES AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH SUCH CONFIDENTIALITY AGREEMENT AND APPLICABLE LAW.

(e) Promptly following receipt of a request under any Governmental Requirement for the release of a copy of any Project Document, Lessor shall send notify Lessee of such request, but neither Lessor nor any Indemnitees shall incur any liability to Lessee if Lessor fails to provide any such notice.

(f) Neither Lessor nor any Indemnitee shall incur any liability to Lessee in the event any Project Document is stolen, misplaced or otherwise released in violation of the foregoing provisions of this Section.

(g) The obligations of Lessee and Lessor under this Section shall survive the Expiration of the Term.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this GROUND LEASE AGREEMENT to be duly executed in duplicate counterparts each of which shall be deemed to be an original, the day and year first above written.

CITY

Signed, sealed and delivered
in the presence of:

CITY OF MIAMI BEACH, FLORIDA, a
Florida municipal corporation

Print Name:

By: _____
Dan Gelber, Mayor

Print Name:

ATTEST

Approved for form and legal sufficiency

By: _____
City Clerk

By: _____
City Attorney

STATE OF FLORIDA)
 :
MIAMI-DADE COUNTY)

The foregoing instrument was acknowledged before me, by means of [] physical presence or [] online notarization, this ____ day of _____, 202_, by Dan Gelber, as Mayor of the City of Miami Beach, Florida who is personally known to me or who produced _____ as identification.

Commission Expires:

Notary Public
Commission Number: _____

LESSEE

Signed, sealed and delivered
in the presence of

CFC- Miami Beach Properties LLC

By: _____

Name:

Title:

Print Name:

Print Name:

STATE OF FLORIDA)

:

MIAMI-DADE COUNTY)

The foregoing instrument was acknowledged before me, by means of [] physical presence or [] online notarization, this ____ day of _____, 202_, by _____, as _____ of _____ who is personally known to me or who produced _____ as identification.

Commission Expires:

Notary Public

Commission Number:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 7, 9 and 11, less the northern 10 feet for right-of-way, and the northern 25 feet of Lots 10 and 12, Block 2, Miami Beach Improvement Company Subdivision, as recorded in Plat Book 5, Page 7 of the Public Records of Miami-Dade County, Florida.

Folio Number: 02-3226-001-0460

EXHIBIT B

CITY DEVELOPMENT AGREEMENT

[Note: The Development Agreement is a separate exhibit to the accompanying Planning Board/City Commission Memorandum.]