AMENDMENT NO. 1 TO LEASE AGREEMENT
(COUNCIL TOWERS NORTH)

This Amendment No. 1 to the Lease Agreement dated July 9, 1976, is entered into this day of _____, 2018 ("Amendment No. 1") between the **CITY OF MIAMI BEACH**, a Florida municipal corporation ("City" or "Lessor"), **and MIAMI BEACH SENIOR CITIZENS HOUSING DEVELOPMENT CORPORATION, INC.**, a non-profit Florida corporation ("Lessee").

WITNESSETH:

WHEREAS, on or about July 8, 1976, the City Commission of the City of Miami Beach adopted Resolution No. No. 1976-15085, approving a Lease Agreement between the City and Senior Citizens Housing Development Corporation of Miami Beach ("Lease"), for certain air rights and easements to City-owned property located at 1040 Collins Avenue, for the construction and operation of a residential building for elderly housing ("Council Towers North" or the "Building"), and with the City retaining the rights to the management and operation of the municipal parking lot on the ground floor below the demised premises; and

WHEREAS, the Lease had an initial term of fifty (50) years, expiring on July 8, 2026; and

WHEREAS, the Building was completed in 1979, and includes 125 residential dwelling units, providing quality affordable rental housing for low-income seniors; and

WHEREAS, on or about March 8, 1978, and in accordance with Section 34 of the Lease, the original lessee, Senior Citizens Housing Development Corporation of Miami Beach, assigned the Lease to Lessee, and such assignment was duly recorded in O.R. Book 9967, Page 271 of the public records of Miami-Dade County; and

WHEREAS, Lessee desires to obtain financing, either through a leasehold mortgage, low income housing tax credit equity providers, or other financing vehicles eligible for affordable/elderly housing projects such as the Building, for the purpose of constructing certain capital improvements or other renovations to the Building, including building systems, individual dwelling units, and common areas, with the intent for such improvements, as defined more fully in Section II of this Amendment No. 1, to improve security, safety, and the quality of living conditions for the Building's residents; and

WHEREAS, in order to obtain long-term financing for the Lessee's proposed renovations, Lessee requests an extension of the Term, for a period of fifty (50) years, following the expiration of the initial term on July 8, 2026; and

WHEREAS, in view of the City Commission's desire to support and incentivize affordable housing projects within the City of Miami Beach, including affordable elderly housing, the City Commission desires to extend the term of the Lease, and waives the competitive bidding and appraisal requirements of Chapter 82-37 and 82-39 of the City Code, finding it in the best interests of the City to do so.

NOW THEREFORE, the Lessor and Lessee for and in consideration of the mutual covenants, agreements and undertakings herein contained, do by these present mutually covenant and agree to amend the Lease Agreement, as follows:

I. **Recitals.** The recitals to this Amendment No. 1 are incorporated by reference as if fully set forth herein. Lessee warrants and represents that the recitals to this Amendment No. 1 are true and correct

II. **Lessee's Construction of Additional Improvements at the Building.**

A. Lessee shall, at its sole cost and expense, be solely responsible for the design, development and construction of renovation improvements at the Building, including renovations to individual dwelling units thereof, as generally described in the scope of work set forth in **Exhibit "A"** attached hereto, and in accordance with the requirements set forth herein (the "Additional Improvements").

B. The Additional Improvements shall include all work that may be required for the Building to be in compliance with all applicable laws (including, without limitation, the Florida Building Code), and Miami-Dade County's forty (40) year re-certification requirements.

C. The Additional Improvements shall also include enhancements to generator capacity to ensure the continued operation of HVAC, elevators, life safety systems, and other Building systems after a tropical storm, hurricane, or other acts of God that may impact the Building and the safety of residents in the Building. Specifically, Lessee shall acquire sufficient generators to maintain ambient temperatures at 80 degrees or less for a period of up to ninety-six (96) hours in the event of a loss of electrical power or other emergency situation.

D. If necessary, Lessee shall obtain the requisite financing, in accordance with the provisions of this Lease (as amended herein), to complete the Additional Improvements, with the proceeds of such financing used for the design, development and construction of the Additional Improvements.

E. Prior to commencing with the construction of the Additional Improvements, Lessee shall submit its proposed final plans for the Additional Improvements to the Lessor, to permit the Lessor (in its proprietary capacity as Lessor pursuant to this Lease, and without limiting Lessor's regulatory right of review or approval of the Additional Improvements in its capacity as an Agency Having Jurisdiction), to verify that the Lessee's final plans for the Additional Improvements satisfy the requirements set forth in this Amendment No. 1.

F. With respect to the portion of the Additional Improvements that consist of renovations to individual dwelling units, Lessee shall phase the construction in such a manner as to minimize the disruptions associated with the relocation of residents in the Building. To the extent possible, Lessee shall relocate residents to other dwelling units that may be available in the Building, so as to maintain the continuity of social services and other on-site programming for residents in the Building as their individual dwelling units are being renovated. In furtherance thereof, Lessee agrees to maintain at least one dwelling unit in the Building as a temporary dwelling unit, to house resident(s) of the Building while their dwelling unit is being renovated.

III. **Registration of Residents for Emergency Evacuation Purposes.**

A. Lessee shall comply with and implement the Miami-Dade County's annual registration of eligible tenants for the County's Emergency Evacuation Assistance Program (EEAP), utilizing the forms attached hereto as **Exhibit "B"** (EEAP Application) and **Exhibit "C"** (Emergency Evacuation Pickup Sites) (or any successor forms as may be established by Miami-Dade County from time to time), for elderly and/or disabled residents of the Building who (1) are unable to evacuate on their own due to a specialized transportation need; (2) are homebound, unable to walk to a bus pickup point, and/or may otherwise not have access to transportation

options; or (3) have medical needs that prevent them from evacuating on their own, such as bed bound residents, or residents on life-sustaining medical equipment requiring electricity, or residents requiring assistance with daily life activities. In the event an evacuation order is issued for the area where the demised premises are located (whether such evacuation order is mandatory or voluntary), Lessee shall exercise diligent, good-faith efforts to encourage residents of the Building to evacuate the Building as soon as possible.

IV. Leasehold Mortgage or other Financing.

A. Notwithstanding any provision to the contrary in the Lease, including Section 7 thereof, Lessee may encumber the demised premises with a leasehold mortgage or other financing relating to the demised premises or the Lease ("Leasehold Financing") as follows: Lessor agrees to execute a non-disturbance agreement (containing language reasonably acceptable to the Lessor) for the benefit of Lessee and the holder of any leasehold mortgage or other financing encumbering the demised premises ("Lender") and to cooperate with Lessee's efforts to obtain financing, including the execution of any necessary documents, so long as such documents are subject to the reasonable approval of the Lessor's attorney. No Leasehold Financing shall be valid or of any force or effect unless and until Lessor has consented thereto in writing (which consent shall be conditioned upon Lessee's compliance with the terms set forth herein, and which consent shall not otherwise be unreasonably withheld) and a true copy of the original of each instrument creating and effecting such Leasehold Financing, together with written notice containing the name and post office address of the Lender has been delivered to the Lessor, to the attention of its Asset Management/Real Estate Department. Further, the Leasehold Financing shall specifically provide:

1. That the Leasehold Financing is subject to all of the terms, covenants and conditions of this Lease;

2. That the Leasehold Financing encumbers only the Lessee's interest created by this Lease in the demised premises and the Building;

3. That the rights of the Lessor pursuant to this Lease will not be affected by the terms of the Leasehold Financing;

4. That the Lender shall waive all right and option to obtain and apply proceeds of any insurance or the proceeds of any condemnation award toward payment of the sums secured by the Leasehold Financing to the extent such proceeds are required by the terms of this Lease for the demolition, repair or restoration of the demised premises;

5. That the Lender shall agree to send Lessor copies of all notices to Lessee in which such mortgagee claims that there exists one or more uncured defaults under the terms and provisions of the Leasehold Financing, such notices to be sent simultaneously to Lessor and Lessee;

6. That the Lender has obtained no interest whatsoever in the underlying fee of the demised premises as a result of the execution of the Leasehold Financing by Lessee;

   Only the Lender may acquire any right, title or interest in or to this Lease, by acceptance of a deed or other instrument of conveyance thereof, by purchase at a foreclosure sale or by transfer in lieu of foreclosure, and will conclusively be deemed to have accepted such right, title or interest subject to all of the terms, covenants and conditions of this Lease; it being the specific intent of Lessee and the Lender that the Leasehold Financing encumber only Lessee's leasehold interest created by this Lease in the Property, and that except as

specifically set forth in this Lease, the rights of Lessor shall not be affected by the terms of the Leasehold Financing; and

7. That the Leasehold Financing, and all rights thereunder, shall be subject and subordinate to Lessor's interest in the Property. The Lender shall upon demand, at any time, execute, acknowledge and deliver to Lessor, without expense to Lessor, any instrument that may be necessary or proper to confirm the subordination of the Leasehold Financing to the Lessor's interests in the Property.

V. <u>Physical Condition Standards/Compliance with HUD Standards</u>.

A. As part of Lessee's maintenance obligations under Section 10 of the Lease, and without limitation of Lessee's maintenance obligations as otherwise specified in the Lease, Lessee shall, at its expense, comply with the requirements of the Facility Condition Index attached hereto as **Exhibit "D,"** so as to maintain the Building in a Fair condition or better, as set forth in Exhibit "D."

B. As part of Lessee's maintenance obligations under Section 10 of the Lease, and without limitation of Lessee's maintenance obligations as otherwise specified in the Lease, Lessee further agrees to maintain the Building in a decent, safe and sanitary condition, and in good repair, in a manner that meets the Housing Quality Standards (HQS) of the U.S. Department of Housing and Urban Development with respect to multi-family dwelling units, including the Uniform Physical Condition Standards (UPCS) set forth in 24 CFR, Part 5, Subpart G, and 24 C.F.R. Part 200, Subpart P, and 24 C.F.R. Part 982, with respect to the Building, Building exterior, Building systems, individual dwelling units, Building common areas, and health and safety considerations affecting the Building and residents thereof. Lessee shall, upon thirty (30) day notice from the Lessor, promptly correct any individual deficiencies that may be identified from time to time with respect to any of the foregoing HQS or Uniform Physical Condition Standards, or otherwise with respect to Lessor's maintenance obligations as set forth in Section 10 of the Lease.

1. Lessee agrees to promptly provide the Lessor with a copy of any HUD physical condition assessment report relating to the Building or any portion thereof, including the HUD's Real Estate Assessment Center ("REAC") inspection report within thirty (30) days following Lessee's receipt of same from HUD. In addition, Lessee shall provide Lessor with Lessee's final HUD REAC score for the Building (or any successor uniform physical inspection protocol or scoring system that may be developed by HUD from time to time) within thirty (30) days following receipt of its final HUD REAC score.

2. Without limiting the Lessee's obligation to maintain the Building in a decent, safe and sanitary condition and in good repair, including Lessee's obligation to correct any individual deficiencies that may be identified from time to time with respect to any of the foregoing HQS or Uniform Physical Condition Standards, or otherwise with respect to the maintenance obligations set Section 10 of the Lease, Lessee specifically agrees to maintain, throughout the Term of this Lease (including any renewal Term provided for in this Amendment No. 1), an overall final REAC score of no less than 80 points. Lessee specifically agrees that an overall final REAC score of less than 80 points shall constitute a default of this Lease, entitling Lessor to terminate this Lease if such default(s) items is/are not cured no later than nine (9) months following HUD's release to Lessee of the final HUD REAC inspection report. If deficiencies remain unresolved after the nine (9) month cure period, the Lease shall be subject to immediate termination at Lessor's sole discretion. Should the federal government establish any successor inspection protocol scoring system to replace the REAC scoring system, Lessee agrees to maintain, throughout the Term (and any renewal Term herein), an overall final score that is equivalent to an overall REAC score

of 80 points or greater, with an overall physical condition assessment score indicating that the Building is being maintained in a good condition).

C. As part of Lessee's maintenance obligations under this Lease, as amended herein, Lessee shall be solely responsible for obtaining the forty (40) year re-certification for the Building, as required by the Miami-Dade County Code, and for recertifying the Building every ten (10) years thereafter, as required by the Miami-Dade County Code.

D. At Year 40 of the renewal term of this Lease (as provided in Section X of this Amendment No. 1), Lessee shall engage a third-party licensed engineering firm, selected and approved by both parties, to complete a Capital Needs Assessment (CNA) inspection as attached hereto as **Exhibit "E"** to ensure that the Building, its improvements and systems are structurally sound and in good working order and conform to the requirements of any Governmental Authority at the expiration of this Lease. Related costs of the CNA shall be paid by a reduction of Lessee's annual Lease payment for that given year only; unless the year of inspection coincides with already scheduled HUD required CNA inspection, in which case the Lessee shall pay for the inspection. The resulting CNA shall specify the remaining useful life of all building systems and assist the Lessor and Lessee's decision to develop a recapitalization plan for the property for the remainder of the Term, or for any extension thereof, if any is approved by the City Commission at its sole discretion. Notwithstanding the foregoing, all periodic or annual HQS or UPCS inspections required and performed by HUD, as outlined in Section V.B of this Amendment No. 1, shall continue until the expiration of the Lease .

E. With respect to the generator (as set forth in Section II of this Amendment No. 1), Lessee shall acquire and provide for the safe maintenance of sufficient fuel to ensure that in an emergency situation the generators can function to maintain ambient temperatures at 80 degrees or less for a period of up to ninety-six (96) hours in the event of a loss of electrical power. Lessee shall implement policies and procedures to ensure that the staff at the Building can effectively and immediately activate and maintain the generators and fuel required for the operation thereof.

VI. Inspection and Audit.

A. As part of Lessor's right of inspection pursuant to Section 16 of the Lease, and without limitation of any rights of inspection otherwise specified therein, Lessee agrees that Lessor may inspect the Building any time upon reasonable notice by authorized representatives of the Lessor, or by any other State, County, Federal and/or municipal officer or agency having responsibilities for inspections of such operations and/or Building provided, however, that such right shall be exercised in such manner so as not to interfere with Lessee in the conduct of Lessee's activities ion the Building. In conducting any Building inspections, Lessor may, but shall not be required to use, the HUD inspection checklist form attached as Exhibit **F** hereto (or any successor form as may be established by HUD from time to time). Lessee agrees to within 24 hours of a written notice from the Lessor to undertake corrective actions to cure any deficiency cited by such inspectors. Throughout the term of this Lease, Lessee shall retain its financial and other records pertaining to its operation of the Building for the immediately preceding three (3) years, and such records shall be open and available to the City Manager or his designee, as deemed necessary by the City Manager or his designee, upon ten (10) business days' written notice from the City Manager or his designee that the Lessor desires to review said records.

VII. Municipal Parking on Ground Floor of Demised Premises. Nothing in this Amendment No. 1 shall apply to, or otherwise have any effect on, the municipal parking spaces (metered or otherwise) managed and operated by the City on the ground floor of the Building

below the demised premises, nor shall this Amendment No. 1 apply to, or have any effect on, any use agreements between Lessor and Lessee or other agreements related thereto.

VIII. Assignment/Transfer of Interests.

A. Lessee shall not assign sublease or encumber its interest in this Lease, as amended, or in the Building, without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that the foregoing shall not apply to (1) sub-leases or rentals of individual dwelling units in accordance with the terms and conditions of this Lease, (2) an assignment or sublease of the whole of the Lease to Lessee's parent entity, subsidiary, or entity that is controlled by or under common control with Lessee, or (3) an entity upon which Lessee is merged or consolidated. Lessor's consent to assignment shall be deemed to be "unreasonably withheld" if the proposed assignee is of such financial standing and responsibility at the time of such assignment as to give reasonable assurance of the payment of all rent and other amounts reserved in this Agreement and compliance with all the terms, covenants, provisions and conditions of this Lease, as amended. Any assignment in violation of this subsection shall be void.

IX. HUD/Related Federal Approvals. Pursuant to Sections 20 and 34 of the Lease, this Amendment No. 1, shall be subject to and contingent upon Lessee obtaining the consent of any regulatory agency with any interest in or jurisdiction over the Lessee or the Building, including the U.S. Department of Housing and Urban Development, the Federal Housing Commissioner, or any other agency or regulatory body, as applicable.

X. Renewal of Lease Term. Section 25 of the Lease is hereby deleted and replaced in its entirety with the following:

> Subject to and contingent upon Lessee's compliance with the terms and conditions of this Lease, as amended by this Amendment No. 1, and provided that Lessee is in good standing and not otherwise in default of any of its obligations hereunder, at the conclusion of the initial term of this Lease on July 8, 2026, this Lease shall be extended for an additional term of fifty (50) years, commencing on July 9, 2026, and expiring on July 8, 2076.

XI. Annual Survey. Lessee agrees to conduct an annual satisfaction survey of residents, in a form comparable to **Exhibit "G"** and shall provide Lessor with a copy of the survey results upon request (including, at Lessor's option, a copy of the individual surveys completed by residents).

XII. Ratification of Lease. Except as specifically amended herein, all other terms and conditions of the Lease shall remain in full force and effect. In the event there is a conflict between the provisions provided herein and the Lease, the provisions of this Amendment No. 1 to Lease shall govern.

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IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first written above.

BY LESSOR:

Attest: **CITY OF MIAMI BEACH, FLORIDA**

_____ _____

Rafael Granado, CITY CLERK Dan Gelber, MAYOR

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Mayor Dan Gelber and Rafael Granado, City Clerk, or their designees respectively, on behalf of the CITY OF MIAMI BEACH, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 2018.

My Commission Expires:

_____
Notary Public, State of Florida at Large
Commission No.:

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney RAP 2-26-18 Date

BY LESSEE:

Attest:

MIAMI BEACH SENIOR CITIZENS HOUSING DEVELOPMENT CORPORATION, INC.

_____
Signature

_____
Morton Bahr, PRESIDENT

_____
Print Name

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Morton Bahr, President, on behalf of the Miami Beach Senior Citizens Housing Development Corporation, Inc., who has produced identification or is known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 2018.

My Commission Expires:

_____
Notary Public, State of Florida at Large
Commission No.:

For purposes of this Commission Memorandum, the Exhibits to Amendment No. 1 to Lease Agreement for Council Towers North are intentionally omitted. They are identical to those contained in the Amendment No.1 to Lease Agreement for Council Towers South.