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**GROUND LEASE**

BY  
AND  
BETWEEN

**THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**  
**("DBCRA")**

AND

**HATCHER CONSTRUCTION & DEVELOPMENT, INC.**

---

REGARDING PROPERTY COMMONLY KNOWN AS

20 AND 26 NW 6<sup>TH</sup> AVENUE

LOCATED IN

DELRAY BEACH, PALM BEACH COUNTY, FLORIDA

## GROUND LEASE

THIS GROUND LEASE (this "Lease") is made as of \_\_\_\_\_, 2019, between the Delray Beach Community Redevelopment Agency ("Landlord"), and Hatcher Construction & Development, Inc., a Florida corporation ("Tenant").

A. In consideration of the mutual agreements contained in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord that certain real property located in Delray Beach, Palm Beach County, Florida, and being more particularly described in Exhibit "A" attached to this Lease, together with all appurtenant easements, rights and privileges (the "Property" or the "Property"). The Property are leased subject to the following (the "Permitted Encumbrances"): (a) rights of the public in streets and highways adjoining the Property, if any; (b) zoning and building laws, ordinances, resolutions and regulations; (c) real estate taxes and assessments for public improvements which are not delinquent and not yet due and payable, (d) set back lines, easements, rights of way, encroachments, boundary line disputes and other matters which would be disclosed by an accurate survey and inspection of the Property to which Tenant does not object as a "Title Defect" (as defined in Section 4.3) pursuant to the terms of this Lease; (e) all easements, rights of way, agreements, covenants, restrictions of record, and other matters affecting title to the Property to which Tenant does not object as a Title Defect pursuant to the terms of this Lease; and (f) any reservations, exceptions or other conveyances of oil, gas, or other minerals as exist of record.

B. Subject to the terms and conditions of this Lease, Tenant intends to develop upon the Property (the "Project") anticipated to be based upon the conceptual site plan and related specifications set forth on Exhibit "B" (the "Conceptual Plan"), consisting of approximately Six Thousand (6,000.00) square feet; such Conceptual Plan has been prepared prior to the execution of this Lease and prior to the performance of the inspections and investigations permitted hereby and the receipt by Tenant of all necessary governmental approvals which are a condition precedent to certain obligations under this Lease, and the Conceptual Plan itself is merely a conceptual approximation of what Tenant anticipates may be the ultimate developed use of the Property. It is anticipated that Tenant shall construct a building and other improvements upon the Property (all such buildings and improvements constructed by Tenant or to be constructed by Tenant, but not any improvements existing as of the Effective Date of this Lease, are herein referred to as the "Improvements").

C. In accordance with the terms and provisions set forth herein, the Landlord and Tenant have simultaneously entered into a Purchase and Sale Agreement for the real property. In the event of any conflict between the terms of this Ground Lease and the Purchase and Sale Agreement, the terms of this Ground Lease shall prevail. The Purchase and Sale Agreement is incorporated herein and identified as Exhibit C.

In consideration of the foregoing, of the covenants and provisions contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### SECTION 1. *Term*

- 1.1 Effective Date. The Effective Date of this Lease shall be the date upon which the last party to this Lease, be it Landlord or Tenant, fully executes it.
- 1.2 Commencement Date. Commencement Date shall mean the date thirty-one (31) calendar days subsequent to the date upon which the following conditions (the "Conditions") have been satisfied: (i) Tenant's site plan, as approved by the City Commission of the City of Delray Beach, has become final and all appeal periods with respect thereto have expired. Notwithstanding the foregoing, the Commencement Date shall not occur if the Tenant provides a Termination Notice (as defined in Section 3.3) to Landlord prior to the end of the Site Analysis Period (as defined in Section 3.3).
- 1.3 Lease Years. For purposes of this Agreement, the first "Lease Year" shall commence upon the Commencement Date and end on the last day of the fourth (4<sup>th</sup>) full calendar quarter thereafter (e.g, if the Commencement Date is \_\_\_\_\_, then the first Lease Year shall commence on the Commencement Date and end on -); and each Lease Year thereafter shall commence upon the first day after the end of the prior Lease Year, and shall end on the last day of the fourth (4<sup>th</sup>) full calendar quarter thereafter (continuing the example above, the second Lease Year would commence on \_\_\_\_\_, and end on \_\_\_\_\_).
- 1.4 Property shall mean that certain real property owned by the Landlord and located at 20 and 26 NW 6<sup>th</sup> Avenue, Delray Beach, Florida.
- 1.5 Term. Subject to the satisfaction of certain conditions set forth in this Lease, the terms and conditions of this Lease shall become effective upon the Effective Date, but the Term of this Lease (and Tenant's obligations in connection with the tenancy hereunder) shall not commence until the Commencement Date and shall end upon the expiration of Lease Year, unless sooner terminated, including pursuant to the exercise of any option provided for under this Lease.
- 1.6 Lease and Parking Rights. Subject to satisfaction of all conditions set forth in Section 3.5, Landlord hereby demises and leases the Property to Tenant, and Tenant accepts possession of the Property from Landlord, subject to the terms and conditions of this Lease. In connection with the lease of the Property, throughout the Term of this Lease, including following an Option Closing (as defined in Section 20.1) upon such terms as are set forth in Section 2.3.

## SECTION 2. *Payments*

### 2.1 Deposits.

- 2.1.1 Deposit. Within five (5) business days following the Effective Date, Tenant shall deposit with the law firm of Goren, Cherof, Doody & Ezrol, P.A., as escrow agent ("Escrow Agent"), an amount equal to One Thousand and 00/100 Dollars (\$1,000.00) ("Deposit") which shall be held in Escrow Agent's IOTA trust account with Centennial Bank, NA ("Trust Account") in accordance with the terms of this Lease. The First Deposit shall be refundable

at any time prior to the expiration of the Site Analysis Period, for any reason or for no reason, upon any termination by either party in accordance with the terms of Section 3.3. Thereafter, the First Deposit shall be refundable only upon a default by Landlord under the terms of this Lease, which default continues beyond any applicable grace or cure period.

2.1.2 Treatment of Deposit. At such time as all of the conditions of Section 3.8 have been satisfied, Tenant shall deliver written notice thereof to Landlord and to Escrow Agent. Escrow Agent shall, within five (5) business days after the date of such notice, deliver the Lease Deposit to Landlord, and as a result thereof, the Lease Deposit shall thereafter be non-refundable for any reason other than as a result of a default by Landlord under this Lease.

2.2 Rent. Tenant shall pay Landlord as annual rent (the “Base Rent”) for the Property the following:

2.2.1 For Lease Years 1 through 5, the Base Rent shall be equal to \$1.00 per year, triple net and shall be payable within 10 days following the first day of the first month of the anniversary date of the first five (5) years.

2.2.2 For Lease Years 6 through 10, the Base Rent shall be adjusted to be 4.0% of the appraised value of \$650,000.00 as determined by an appraisal prepared by Parrish & Edwards, Inc. dated January 18, 2019 and shall be payable monthly in the amount of \$2,167.00. The Base Rent shall be due and payable within 10 days following the first day of each consecutive month.

2.2.3 For Lease Years 11 through 15, the Base Rent shall be adjusted to 6.0% of the appraised value of \$650,000.00 as determined by an appraisal prepared by Parish & Edward, Inc. dated January 18, 2019 , and shall be payable monthly in the amount of \$3,250.00 for year 11. Thereafter, the Base Rental lease payments to the DBCRA shall increase annually by 2.5% during this third five-year term and shall be payable as follows:

|         |                      |
|---------|----------------------|
| Year 11 | \$3,250.00 per month |
| Year 12 | \$3,331.25 per month |
| Year 13 | \$3,414.53 per month |
| Year 14 | \$3,499.89 per month |
| Year 15 | \$3,587.39 per month |

2.2.4 Commencing on the 16<sup>th</sup> year and for the balance of the term of the Lease, the Base Rent shall be adjusted to 8.0% of the appraised value of \$650,000.00 as determined by an appraisal prepared by Parish & Edward, Inc. dated January 18, 2019. Base Rent payments to the DBCRA shall increase annually by 2.5% during this time and be paid payable as follows:

|         |                      |
|---------|----------------------|
| Year 16 | \$4,333.00 per month |
| Year 17 | \$4,441.33 per month |

|         |                      |
|---------|----------------------|
| Year 18 | \$4,552.36 per month |
| Year 19 | \$4,666.17 per month |
| Year 20 | \$4,782.82 per month |
| Year 21 | \$4,902.39 per month |
| Year 22 | \$5,024.95 per month |
| Year 23 | \$5,150.58 per month |
| Year 24 | \$5,279.34 per month |
| Year 25 | \$5,411.32 per month |
| Year 26 | \$5,546.61 per month |
| Year 27 | \$5,685.27 per month |
| Year 28 | \$5,827.40 per month |
| Year 29 | \$5,973.09 per month |
| Year 30 | \$6,122.42 per month |
| Year 31 | \$6,275.48 per month |
| Year 32 | \$6,432.36 per month |
| Year 33 | \$6,593.17 per month |
| Year 34 | \$6,758.00 per month |
| Year 35 | \$6,926.95 per month |
| Year 36 | \$7,100.13 per month |
| Year 37 | \$7,277.63 per month |
| Year 38 | \$7,459.57 per month |
| Year 39 | \$7,646.06 per month |
| Year 40 | \$7,837.21 per month |

2.2.5 The Tenant will have the option to purchase the Property from the DBCRA at any time during the term of the Lease as provided for in Section 20 herein.

### SECTION 3. *Site Analysis Period*

3.1 Deliveries. Promptly after the execution of this Lease, Landlord agrees to deliver to Tenant true and correct copies of any of the following documents and any other documents relating to the Property, if they exist, which are in Landlord's possession:

- (a) All surveys of the Property showing the location of any improvements thereon and any easements encumbering the Property.
- (b) Soil, topographical, environmental and other reports relating to the Property.
- (c) All written contracts for repair, maintenance, garbage removal, concessions, vending, service contracts, and other services to be performed with respect to the Property.
- (d) All written leases, licenses, concessions, and tenancies with tenants occupying or having the right to occupy any portion of the Property, and Landlord's written statement of any oral leases, licenses, concessions, and tenancies with tenants,

licensees, concessionaires, or others occupying or having the right to occupy or use any portion of the Property.

- (e) All architectural drawings, engineering studies, plans, and specifications and contracts relating to any prior or contemplated construction activity relating to the Property.
- (f) All warranties and guaranties from any contractors, subcontractors, vendors, and suppliers relating to their performance, quality of workmanship, and quality of materials supplied in connection with the construction, manufacture, development, installation, and operation of any and all fixtures, equipment, items of personal property and improvements located in or used in connection with the Property.
- (g) Governmental approvals and permits, agreements relating to impact fees, and developer's agreements.

To the extent that any of the foregoing Materials are assignable, Landlord shall assign the rights with respect to such Materials to Tenant, and, if requested by Tenant, Landlord shall cooperate with Tenant in seeking reliance letters or similar assurances from any professionals who prepared any of the Materials providing for Tenant to rely upon the information, opinions, and conclusions contained in the Materials.

- 3.2 Access. Landlord shall provide Tenant, together with Tenant's agents and representatives, complete access to any portion of the Property for the purpose of making a physical inspection of the Property to determine whether, in Tenant's sole and absolute discretion, the Property is suitable for Tenant's purposes. Such inspection may include, among other things, survey, site, engineering, geotechnical, appraisal, environmental, and feasibility studies. Tenant hereby agrees to indemnify and hold harmless Landlord from and against any material loss, liability, damages, costs, or expenses incurred by Landlord as a result of the exercise of the right of inspection granted to Tenant under this paragraph.
- 3.3 Site Analysis Period. Tenant shall have an eighteen (18) month "Site Analysis Period" in which to ascertain whether the Property is acceptable to Tenant and to obtain all necessary approvals, permits and licenses necessary for the development of the Property in substantial conformance with the Conceptual Plan. "Site Analysis Period" shall mean the period commencing on the Effective Date of this Lease and expiring on the date which is the last day of the eighteenth (18<sup>th</sup>) month subsequent to the Effective Date. If the Property is determined to be unacceptable to Tenant in its sole discretion, Tenant shall notify the Landlord by providing written notice (a "Termination Notice") of its determination that the Property is unacceptable for its intended use no later than 5:00 p.m. Florida time on the final day of the Site Analysis Period, in which event the First Deposit shall be returned to Tenant, and neither party shall have any further rights or obligations hereunder.

- 3.4 Submittal Period. Tenant shall during the Site Analysis Period seek and secure all approvals, permits and licenses (“Approvals”) deemed by Tenant and Landlord to be necessary or advisable in connection with the development of the Property in accordance with the Site Plan (“Submittal Period”). Landlord agrees to execute such consents and other documents requested by Tenant and to otherwise cooperate with Tenant in obtaining all licenses, platting and zoning approvals, and other permits and governmental approvals as may be necessary or required for the development of the Property in accordance with the Site Plan and Tenant’s intended use. Tenant’s securing final and unappealable site plan approval in such form and upon such terms and conditions as it shall reasonably determine is a condition precedent to Tenant’s further obligations hereunder. In connection with obtaining the Approvals, Tenant agrees to diligently pursue and make application for such Approvals as it shall determine are necessary. If Tenant does not obtain all the necessary approvals, permits and licenses within the eighteen (18) month Site Analysis Period then in that event either the Tenant or the Landlord may elect to terminate this lease by providing written notice to the other party no less than thirty (30) calendar days in advance of the date of termination.
- 3.5 Lease Conditions. The terms and conditions of this Lease shall not become effective unless and until:
- 3.5.1 All conditions to the occurrence of the Commencement Date have occurred.
- 3.5.2 The Title Insurance Company (as defined in Section 4.1) is prepared to and will issue on the Commencement Date at Tenant’s expense, a title policy to Tenant insuring Tenant’s leasehold interest in the Property, free and clear of all liens and encumbrances.
- 3.5.3 Tenant has secured all Approvals and building permits and licenses required and necessary for the development of the Property.
- 3.6 Permitted Use. Tenant shall develop the Property for use development comprised of retail, office, and any other lawful use consistent with the City’s Land Development Regulations.
- 3.7 Bonds. Tenant shall use commercially reasonable efforts to cause Landlord to be named as an additional obligee (subordinate to any construction lender) on any payment or performance bond issued with respect to construction of improvements. Prior to the issuance of a building permit, Tenant will obtain a surety bond (a) for any and all improvements which may be required within dedicated rights of way and/or public facility easements, and (b) for all public works pursuant to section 255.05 Florida Statutes, as same may be amended from time to time.

#### SECTION 4. *Title and Title Insurance*

- 4.1 Title Commitment. No later than ninety (90) days subsequent to the Effective Date, Tenant shall obtain, at Tenant’s sole cost and expense, a commitment for an ALTA

owner's title insurance policy in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Title Commitment").

- 4.2 Status of Title. Landlord agrees to convey to Tenant a leasehold interest in the Property, and Tenant agrees to acquire a leasehold interest in the Property, free and clear of all liens and encumbrances other than any liens and encumbrances accepted or deemed accepted by Tenant under this Lease (the "Permitted Title Exceptions").
- 4.3 Review Period. Tenant shall have ninety (90) days from the Effective Date to obtain and review the Title Commitment and notify Landlord of any objections Tenant may have to any title exceptions reported in the Title Commitment ("Title Defects"). Tenant shall notify Landlord in writing ("Title Objection Notice") specifying the Title Defects and the curative action required to render such matters acceptable to Tenant. Landlord shall have a period of thirty (30) calendar days to notify Tenant of Landlord's agreement or refusal to cure or remove the Title Defects prior to the Commencement Date. If Landlord does not agree within such thirty (30) calendar day period to cure or remove the Title Defects by the Commencement Date, Tenant may: (i) accept title to the Property as it then is without modification to the terms hereof or claim against Landlord therefore; or (ii) demand a refund of the Lease Deposit, which shall forthwith be returned to Tenant by Escrow Agent, and thereafter Tenant and Landlord shall be released from all further obligations under this Lease except those that specifically survive termination. If Tenant fails to demand a return of the Lease Deposit within five (5) calendar days after receipt of Landlord's notice or of Landlord's failure to provide such notice to Tenant, Tenant shall be deemed to have elected to accept title to the Property. If Landlord agrees to cure or remove a Title Defect prior to the Commencement Date, but Landlord fails to cure or remove such Title Defect prior to the Commencement Date, such failure shall be a default by Landlord and Tenant shall have the remedies set forth in Section 15.4 of this Lease or Tenant shall have the right to terminate this Lease and receive a return of the Lease Deposit. Notwithstanding anything to the contrary in this Section 4.3, if title to the Property is unmarketable because of liens in a liquidated amount that can be released if satisfied by payment of money alone (and provided that such liens were caused by the action or inaction of Landlord and not by any action or inaction of Tenant or any failure of Tenant to comply with the terms of this Lease or to pay any amount required by this Lease to be paid by Tenant), then Tenant shall have the option to accept title to the Property as it then is and to have the Escrow Agent reserve a portion of the Lease Deposit such that, at the time of the Commencement Date, such liens shall be paid from the Lease Deposit, and the amount due Landlord shall be reduced by such amount, or Landlord shall remove the same by statutory permitted bond. Landlord agrees that Landlord shall use its best efforts to cure the Title Defect within the time limits set forth in this Lease. Notwithstanding the foregoing, Landlord agrees that Landlord shall pay all outstanding governmental or quasi-governmental assessments, and any outstanding judgments or liens against Landlord and/or the Property, including all penalties and interest, which existed prior to the Commencement Date as a result of any action or inaction by Landlord or any of its agents, employees, beneficiaries, contractors or invitees.

- 4.4 Additional Title Defects. If at any time subsequent to the delivery of the Title Commitment and prior to the Commencement Date, title to the Property is found to be subject to additional exceptions not revealed by the Title Commitment (“Additional Title Defects”), Tenant shall give written notice of such Additional Title Defects to Landlord no later than thirty (30) calendar days prior to the Commencement Date, or if discovered fewer than thirty (30) calendar days prior to the Commencement Date, then promptly upon discovery thereof. Any Additional Title Defects, other than those created by, through or under Tenant, shall be removed of record by Landlord and, if necessary, the Commencement Date shall be delayed by a period not to exceed sixty (60) calendar days to allow such removal. If such Additional Title Defects are not corrected within such sixty (60) calendar day period, then Tenant shall have the same options upon written notice from Landlord as Tenant has been granted in Section 4.3 as if Landlord did not cure such Title Defects. Notwithstanding the foregoing, if Landlord is responsible for causing such Additional Title Defects, Landlord shall be obligated to remove such Additional Title Defects.
- 4.5 Survey. No later than ninety (90) days subsequent to the Effective Date, Tenant shall obtain at Tenant’s expense, a currently dated survey (the “Survey”) of the Property prepared by a Florida licensed surveyor certified to Tenant, Tenant’s attorney, Tenant’s lender, if any, and Title Company. If the Survey shows any easements, encroachments or other matters, any of which may impair Tenant’s proposed development or use of the Property, or affect marketability and/or insurability of the Property or that will prevent removal of the survey exception from the Title Commitment, the same shall be treated as a Title Defect and such Title Defect shall be governed by the provisions contained within Section 4.3 of this Lease.

## SECTION 5. *Repair and Maintenance*

- 5.1 Tenant’s Obligations. Tenant acknowledges that if, upon completion of the Site Analysis Period, Tenant delivers notice to Landlord that Tenant has determined that the Property is acceptable to Tenant, Tenant shall be deemed to have accepted the Property in its “as is” condition, subject, however, to those specific representations and warranties made by Landlord and Landlord’s indemnification obligations set forth in this Lease. Throughout the Term, Tenant, at its sole cost and expense, shall keep and maintain all of the Property, including all of the Improvements, in good repair and condition and shall make all repairs, replacements and renewals, foreseen or unforeseen, ordinary or extraordinary, necessary to put or maintain the Property in such state of repair and condition.
- 5.2 Landlord’s Obligations. Except as may be specifically set forth in this Lease, Landlord shall not be required to maintain, repair or rebuild all or any part of the Property. Tenant waives the right to (a) require Landlord to maintain, repair, or rebuild all or any part of the Property, or (b) make repairs to the Property at the expense of Landlord pursuant to any legal requirement, contract, easement, covenant, condition or restriction at any time in effect. In addition, from and after the Commencement Date, Tenant shall keep the Property in a safe and sanitary condition as required by all applicable governmental laws, codes, and regulations.

## SECTION 6. *Compliance With Laws; Hazardous Waste*

6.1 Compliance with Laws. During the Term hereof, Tenant shall comply with and cause the Property to be in compliance with (i) all laws, ordinances, and regulations, and other governmental rules, orders, and determinations, whether or not presently contemplated (collectively, "Legal Requirements") applicable to the Property or the uses conducted on the Property, (ii) the provisions of any insurance policies required to be maintained by Tenant with respect to the Property, and (iii) the terms of any easements, covenants, conditions, and restrictions affecting the Property which are Permitted Encumbrances or which are created by or with the consent of Tenant after the Commencement Date. If any additions, alterations, changes, repairs or other work of any nature, structural or otherwise, shall be required or ordered or become necessary at any time during the Term because of any of these requirements, the entire expense of the same, irrespective of when the same shall be incurred or become due, shall be the sole liability of Tenant.

### 6.2 Hazardous Substances.

6.2.1 Compliance. During the Term hereof, Tenant shall not cause or permit any Hazardous Substance (as hereinafter defined) to be brought, kept or used in or about the Property by Tenant, its subtenants, agents, employees, contractors, or invitees except in commercial quantities similar to those quantities usually kept on similar premises by others in the same business or profession. Tenant shall store, use and dispose of such materials in compliance with all applicable federal, state and local laws, including, without limitation, Applicable Environmental Law (as hereinafter defined). If any Hazardous Substance which is found, kept or brought on, in or under the Property during the Term is released or otherwise results in any contamination of the Property or any adjoining property or the air, soil, surface water or ground water, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the affected area(s) to the condition existing prior to the introduction of any such Hazardous Substance, including, without limitation, any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any such Hazardous Substance on, in or under the Property or any release or suspected release or threat of release of any such Hazardous Substance in the air, soil, surface water or ground water (collectively, the "Remedial Work"). Tenant shall obtain all necessary licenses, manifests, permits and approvals to perform the Remedial Work. Tenant shall perform all Remedial Work and the disposal of all waste generated by the Remedial Work in accordance with Applicable Environmental Law.

6.2.2 Tenant Responsibility. Without limiting the generality of the foregoing or any other provision of this Lease, during the Term, Tenant shall be solely and completely responsible for responding to, defending against and/or complying with any administrative order, request, or demand relating to potential or actual contamination on the Property occurring after the Commencement Date

or any release occurring after the Commencement Date of any Hazardous Substance onto any adjoining property or the air, soil, surface water or ground water, or third party claims (including the claims of current or future subtenants in the Property, or other tenants or subtenants in units or parcels adjoining or near the Property) for Remedial Work or for the costs of any such Remedial Work or for the costs of any such Remedial Work which the third-party claimant has undertaken, whether such order, request, demand or claim names Landlord, Tenant or both, or refers to the property in any way, except where the contamination was caused solely by Landlord or occurred prior to the Commencement Date. The responsibility conferred under this paragraph includes but is not limited to responding to such orders, requests, demands and claims on behalf of Landlord and defending against any assertion of Landlord's financial responsibility or individual duty to perform thereunder.

6.2.3 Tenant Acts. Tenant shall indemnify, save harmless and defend Landlord from and against any and all claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses (including, without limitation, sums paid in settlement of claims, attorney's fees, consultant fees, expert fees and any fees and expenses incurred in enforcing this indemnity) incurred by, sought from or asserted directly or indirectly against Landlord during or after the Term as a result of the presence of any Hazardous Substance on, in or under the Property or any release of any Hazardous Substance into the air, soil, surface water or ground water, but in each of the foregoing instances only where such Hazardous Substance was brought, kept, or used by Tenant in or about the Property at any time during the Term or any extension thereof. Tenant shall assume, pursuant to the foregoing indemnity, any liabilities or responsibilities which are assessed against Landlord in any action described under this Section 6.2.3 and under Section 6.2.2 above.

6.2.4 Landlord Acts. Subject to Section 768.28 of the Florida Statutes, Landlord shall indemnify, save harmless and defend Tenant and any member, manager, officer, director, partner or shareholder of Tenant from and against any and all claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses (including, without limitation, diminution in value of Tenant's leasehold estate and sums paid in settlement of claims, attorney's fees, consultant fees, expert fees and any fees and expenses incurred in enforcing this indemnity) incurred by, sought from, or asserted directly or indirectly against Tenant during or after the Term as a result of the presence of any Hazardous Substance, which is brought, kept or used on, in or about the Property prior to, during, or after the Term of this Lease by Landlord, its agents, employees, contractors or invitees or which existed on, in, or about the Property as of the Commencement Date.

6.2.5 Survival. The obligations of Tenant and the indemnities set forth in this Section 6 shall survive the termination or expiration of this Lease.

6.2.6 No Representations. Notwithstanding the warranties set forth above, Landlord makes and shall make no representation or warranty either expressed or implied (except as specifically set forth in the Lease) regarding condition, operability, safety, fitness for intended purpose, use, governmental requirements, development potential, utility availability, legal access, economic feasibility, or any other matters whatsoever with respect to the Property. The Tenant specifically acknowledges and agrees that Landlord shall lease to the Tenant and Tenant agrees and acknowledges that it shall lease the Property on an “AS IS, WHERE IS, AND WITH ALL FAULTS” basis and that, except for the Landlord’s representations and warranties specifically set forth in this Lease, Tenant is not relying on any representations or warranties of any kind whatsoever, express or implied, from Landlord, its agents, officers, or employees, as to any matters concerning the Property including, without limitation, any matters relating to (1) the quality, nature, adequacy, or physical condition of the Property, (2) the quality nature, adequacy or physical condition of soils, fill, geology, or any groundwater, (3) the existence, quality, nature, adequacy or physical condition of utilities serving the Property, (4) the development potential, income potential, expenses of the Property, (5) the Property’s value, use, habitability, or merchantability, (6) the fitness, suitability, or adequacy of the Property for any particular use or purpose, (7) the zoning or other legal status of the Property, (8) the compliance of the Property or its operation with any applicable codes, laws, rules, regulations, statutes, ordinances, covenants, judgments, orders, directives, decisions, guidelines, conditions, or restrictions of any governmental or quasi-governmental entity or of any other person or entity, including, without limitation, environmental person or entity, including without limitation, environmental laws, (9) the presence of Hazardous Materials (as defined herein) or any other hazardous or toxic matter on, under, or about the Property or adjoining or neighboring property, (10) the freedom of the Property from latent or apparent vices or defects, (11) environmental matters of any kind or nature whatsoever relating to the Property, or (12) any other matter or matters of any nature or kind whatsoever relating to the Property.

6.2.7 Notwithstanding the disclaimers set forth in Section 6.2.6, during the term of this Lease, Tenant shall, and may peacefully have, hold and enjoy the Property against all persons claiming by, through or under Landlord, subject to the other terms hereof, provided that Tenant pays all rent and other sums required under this Lease to be paid by Tenant and performs all of Tenant’s covenants and agreements herein contained.

6.3 Hazardous Waste Definition. As used herein, the term “Hazardous Materials” means (i) those substances included within the definitions of “hazardous substances”, “hazardous materials”, “toxic substances” or “solid waste” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §960 et

seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S. C. §1801 et seq., or the Clean Water Act, 33 U.S.C. §1321 et seq., as amended, and in the regulations promulgated pursuant thereto; (ii) those substances listed in the United States Department of Transportation Table (49 CFR §172.101) or by the Environmental Protection Agency as “hazardous substances”, “hazardous materials”, “toxic substances” or “solid waste”, (iii) such other substances, materials and wastes which are regulated, or classified as hazardous or toxic, under applicable local, state or federal laws, ordinances or regulations; and any material, waste or substance which is petroleum, asbestos, polychlorinated, biphenyls, flammable explosives or radioactive materials.

## SECTION 7. *Mechanics’ Liens*

- 7.1 Limitation of Lien Rights. Pursuant to Florida Statutes Section 713.10, any and all liens or lien rights shall extend to and only to the right, title, and interest of Tenant in the Project, Improvements, Property, and this Lease.
- 7.2 Impact of Liens on Landlord’s Interest. The right, title, and interest of Landlord in the Property and this Lease shall not be subject to liens or claims of liens for improvements made by Tenant. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of or alteration to the Property, any Improvements, or any part thereof, nor as giving Tenant, any lender, subtenant, lessee, or sublessee any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage, or other encumbrance against Landlord’s interest in the Property, or any part thereof, or against any assets of Landlord, or against Landlord’s interest in any rent or other monetary obligations of Tenant under this Lease, or any other rights whatsoever with respect to this Lease.
- 7.3 Notice. Notice is hereby given, and Tenant shall cause all construction agreements entered into between Tenant and any general contractor or other contractor in privity with Tenant to provide that:
- (a) Landlord shall not be liable for any work performed or to be performed at the Property, or any part thereof, for Tenant, any lender, subtenant, lessee, or sublessee, or for any materials furnished or to be furnished to the Property, or any part thereof, for any of the foregoing; and
  - (b) No mechanic’s, laborer’s, vendor’s, materialmen’s, or other similar statutory lien for such work or materials shall be attached to or affect Landlord’s interest in the Property, or any part thereof, or any assets of Landlord, or any interest of Landlord’s in any rent or other monetary obligations of Tenant under this Lease, or any other rights whatsoever with respect to this Lease.

- 7.4 Contesting Liens. If Tenant desires to contest any such lien prohibited by this Section 7, it shall notify Landlord of its intention to do so within ten (10) business days of Tenant's receipt of notice of the filing of such lien. In such case, Tenant, at Tenant's sole cost and expense, shall protect Landlord by a good and sufficient bond against any such lien in any cost, liability, or damage arising out of such contest. The lien, if Tenant timely provides the bond described above, shall not be considered a default hereunder. In the event of any such contest, Tenant shall protect and indemnify Landlord against all loss, expense, and damage resulting therefrom.
- 7.5 Restatement. The terms of this Section 7 will be restated in the Memorandum of Lease in sufficient detail to satisfy the requirements of Section 713.10, Florida Statutes.

## **SECTION 8. *Payment of Costs Regarding the Property***

- 8.1 Triple Net Lease. This Lease is a "triple net" lease. Tenant shall pay all rent and all other charges due under this Lease during the Term without notice or demand and free from any charges, taxes, assessments, impositions, claims, damages, expenses, deductions, set-offs, counterclaims, abatements, suspensions, or defenses of any kind. It is the intention of the parties that the obligations of Tenant shall be separate and independent covenants, that the rent and all other charges payable by Tenant shall continue to be payable in all events during the Term, and that the obligations of Tenant shall continue unaffected unless the requirement to pay or perform the same shall have been terminated or modified pursuant to an express provision of this Lease or unless this Lease shall have expired or been terminated. Except as otherwise specifically provided in this Lease, during the Term hereof, Tenant shall pay and be responsible to Landlord for all costs, expenses, obligations, liabilities, and acts necessary to and for the proper use, operation, maintenance, care and occupancy of the Property.
- 8.2 Utilities. Tenant, at its sole cost and expense, shall obtain and promptly pay for all utility services furnished to or consumed on the Property during the Term, including, but not limited to, electricity, gas, water, sewer, heat, telephone, cable, internet, telecommunication, garbage collection, and all charges related to any of these services.
- 8.3 Taxes; Assessments; etc. As set forth in Section 8.1, this Lease is a triple net lease. Accordingly, Tenant shall pay, prior to delinquency: any and all taxes, assessments, levies, fees, fines, penalties, and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are during the Term hereof imposed or levied upon or assessed against (a) the Property, (b) the Improvements on the Property, or (c) this Lease, the leasehold estate hereby created or which arises in respect of the operation, possession or use of the Property. Tenant shall deliver to Landlord proof of payment of taxes required to be paid by Tenant hereunder. If Tenant fails to pay any of the foregoing before they become delinquent,

Landlord, after notice to Tenant, may pay such delinquent taxes, assessments, levies, fees, fines, penalties and governmental charges, and all expenditures and costs incurred thereby shall be payable as additional rent hereunder within thirty (30) calendar days after such notice to Tenant. If the Property or any portion thereof are included in a tax parcel with other properties, Tenant shall be responsible for only that portion of taxes and assessments allocated to the Property, as determined in Landlord's reasonable judgment; in such event, Landlord shall furnish to Tenant copies of tax bills together with statements of the amount due from Tenant, and Tenant shall pay these amounts to Landlord no later than the later of occur of (i) thirty (30) calendar days after receipt of Landlord's statement, and (ii) fifteen (15) calendar days prior to the last day when such taxes may be paid and still receive the maximum discount afforded by law. Tenant's obligations under this Section shall survive the expiration or termination of this Lease with respect to any amounts payable with respect to any period prior to the expiration or termination of this Lease. Tenant may, if it desires, contest the validity or amount of any such tax, in which event, Tenant shall pay to the applicable taxing authority at least the minimum amount required in order to contest such tax obligation, in which case Tenant may subsequently seek a refund upon a favorable determination or shall otherwise remit to the applicable taxing authority the unpaid balance, if any, following an unfavorable determination. Tenant shall not be deemed in default under this Lease during the pendency of any contest with respect to any tax which is the subject of such contest.

## SECTION 9. *Insurance*

- 9.1 Liability Insurance. As of the Effective Date, Tenant shall provide and keep in force, at its sole cost and expense, with responsible insurance companies reasonably acceptable to Landlord, comprehensive general liability insurance covering the Property and providing coverage with maximum limits of liability of not less than One Million Dollars (\$1,000,000) for personal injury to or death of any one person, Two Million Dollars (\$2,000,000) for personal injury to or death of any group of persons as a result of one accident, and One Million Dollars (\$1,000,000) for property damage. Such policy shall name Landlord as an additional insured.
- 9.2 Casualty Insurance. Tenant, at its sole expense, shall keep all Improvements on the Property insured against loss by fire and all of the risks and perils usually covered by an "all risk" endorsement to a policy of fire insurance upon property comparable to the Improvements, including vandalism and malicious mischief endorsements, in an amount equal to at least eighty percent (80%) of the replacement cost of the Improvements. Tenant shall furnish to Landlord evidence of coverage and any renewals or replacements of this insurance. Landlord shall be named an additional insured under this policy. Landlord, however, waives all rights and disclaims any interest in any insurance adjustments and settlements with respect to damage to the Improvements unless this Lease is terminated, in which event the proceeds shall be paid to Landlord.

- 9.3 Evidence of Insurance. Prior to Tenant taking possession of the Property, Tenant shall provide satisfactory evidence of all required insurance to Landlord, in the form of either: (a) a certificate of insurance; or (b) a certified copy of the actual insurance policy. All insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of ten (10) calendar days of notification to Tenant. Tenant shall, in addition to any other obligation to indemnify the Landlord and to the fullest extent permitted by law, protect, defend, indemnify, and hold harmless the Landlord, its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged: a) bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting, or claimed to have resulted, in whole or in part from any actual or alleged act or omission during the Term of the Tenant, anyone directly or indirectly employed by Tenant, or anyone for whose acts Tenant may be liable in the performance of the obligations under the Lease; or b) violation of law, statute, ordinance, governmental administration order, rule, regulation, or infringement of patent rights by Tenant in the performance of the obligations under the Lease; or c) liens, claims or actions made by the Tenant or any subcontractor of Tenant under workers compensation acts; disability benefit acts, other employee benefit acts, or any statutory bar. Any cost of expenses, including attorney's fees, incurred by the Landlord to enforce this Lease shall be borne by the Lessee.
- 9.4 Survival. Upon expiration of this Lease, or the completion of all obligations and duties provided for in this Lease, or in the event of termination of this Lease for any reason, the terms and conditions of this Article shall survive indefinitely with respect to all matters arising during or with respect to periods prior to any such expiration or termination.
- 9.5 Right to Select Counsel. Landlord reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all reasonable costs and fees associated therewith shall be the responsibility of Tenant under the indemnification agreement. Nothing contained herein is intended nor shall it be construed to waive Landlord's rights and immunities under the common law or Florida Statute 768.28 as amended from time to time.
- 9.6 Insurance Obligation. The Tenant shall maintain such insurance in full force and effect during the term of this Lease, including any renewal terms. The Tenant shall provide to the Landlord's Risk Manager current certificates of all insurance required under this Lease prior to beginning any work under this Lease. No material change or cancellation of any policies shall be made by the Tenant unless the Tenant has first provided the Landlord with written notice of the change or cancellation no less than thirty (30) calendar days prior to the effective date of cancellation or change. Tenant shall provide that the insurance company issuing the insurance policy or policies shall not have the right of subrogation against the Landlord. On or before the Commencement Date of this Lease, and thereafter not less than fifteen (15) calendar days prior to the expiration dates of said policy or policies, Tenant shall provide copies of policies or certificates of insurance evidencing coverages required by this

Lease. Tenant shall be responsible for the payment of all deductibles and self-insurance retentions, and any covered or insured loss shall be payable notwithstanding any act or negligence of the Tenant which might otherwise result in the forfeiture of said insurance.

- 9.7 Insured Amount. Tenant shall maintain at all times insurance covering all of the items included in Tenant's improvements, infrastructure, appurtenances, and related trade fixtures and personal property, from time to time in or upon the Property, and alterations, additions or changes made by Tenant in an amount not less than eighty (80%) percent of their full replacement cost as determined from time to time by the Landlord during the Term, providing protection against vandalism and malicious mischief.
- 9.8 Payment. The Tenant shall pay all claims, losses, liens, settlements, or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs. Furthermore, Tenant shall indemnify and save the Landlord harmless from any claim, damage, loss, or suit resulting to the Landlord, its agents, employees, officials, and representatives as a result of Tenant's or any of its subcontractors failure to obtain or maintain such insurance. Notwithstanding anything to the contrary in this Lease, Tenant shall not be obligated to pay, indemnify or hold Landlord, its agents, employees, officials, and representatives harmless from or against any claim, damage, loss, or suit resulting to Landlord, its agents, employees, officials, and representatives as a result of the gross negligence or intentional misconduct of any of Landlord, its agents, employees, officials, and representatives.

## SECTION 10. *Financing*

- 10.1 Tenant's Financing. Tenant shall have the right during the Term to subject the Improvements and Tenant's leasehold interest in the Property to one or more mortgages, deeds of trust, assignments of lease, security agreements or other methods of financing or refinancing (a "Mortgage," any holder of which is called a "Mortgagee"), or to any one or more extensions, modifications or renewals or replacements of a Mortgage. Tenant shall immediately notify Landlord in writing of the name and address of any Mortgagee.
- 10.2 Delivery of Financing Commitment. At such time as Tenant receives a loan commitment or other evidence of a loan which it intends to accept, Tenant shall provide to Landlord within ten (10) days of Landlord's written request a copy of such loan commitment or other evidence.

## SECTION 11. *Rights of Mortgagee*

- 11.1 Notice to Mortgagee. If Tenant shall be in default under this Lease, and the applicable grace period for cure by Tenant shall have expired, Landlord shall send a copy of the written notice of the default to Mortgagee at its address as provided in writing to Landlord by Tenant. Mortgagee shall have thirty (30) calendar days after

delivery of the written notice from Landlord within which to cure or remove the default, and if the default cannot with diligence be cured within the thirty (30) calendar day period, then Mortgagee shall have a reasonable time thereafter but not to exceed sixty (60) calendar days to effect such cure, provided that Mortgagee promptly commences to cure the same and thereafter pursues the curing of the default with diligence. Notwithstanding any other provision of this Lease, at any time when any Mortgage is in effect, Landlord shall not have any right pursuant to this Lease or otherwise to terminate this Lease due to Tenant's default unless Landlord shall have first given a copy of the written notice of default to Mortgagee and unless Mortgagee shall have failed to cure or remove, or cause to be cured or removed, the default, within the time required by this Section 11.

- 11.2 Acceptance of Cure. Subject to the terms of an agreed upon subordination agreement between Landlord and any Mortgagee, if any, Landlord will accept a timely and complete performance by Mortgagee of any covenant, agreement, or obligation of Tenant contained in the Lease with the same effect as though performed by Tenant.
- 11.3 New Lease. If this Lease is terminated for any reason, including, but not limited to, any termination following Mortgagee's failure to cure a default as permitted in Section 11.1, or in the event of the rejection or disaffirmance of this Lease pursuant to bankruptcy laws or other laws affecting creditors' rights, Landlord will enter into a new lease of the Property with Mortgagee, or with any affiliated party of Mortgagee designated by the Mortgagee, within 30 days after the request of Mortgagee referred to below. The new lease shall be effective as of the date of termination, rejection, or disaffirmance of this Lease and shall be upon the same terms and provisions contained in this Lease (including the amount of rent and other sums due from Tenant hereunder and including all rights and obligations with respect to the Option described herein). In order to obtain a new lease, Mortgagee must make a written request to Landlord for the new lease within 30 days after Mortgagee is notified of the effective date of termination, rejection, or disaffirmance of the Lease, as the case may be, and the written request must be accompanied by a copy of the new lease, duly executed and acknowledged by Mortgagee or the affiliated party of Mortgagee designated by Mortgagee as tenant. In addition, Mortgagee shall cure all defaults under the Lease that can be cured by the payment of money and pay to Landlord all rent and other sums that would have been due and payable by Tenant under this Lease but for the rejection, disaffirmance, or termination. Any new lease made pursuant to this Section 11.3 shall be senior and superior to any other encumbrances on the Property. Mortgagee's rights under this Section 11.3 are in addition to, and not limited by, Mortgagee's right to cure under Section 11.1. From the effective date of termination, rejection, or disaffirmance of this Lease to the date of execution and delivery of such new lease or the expiration of the period during which Mortgagee may make a request, Mortgagee may, upon payment of the rent and any other sums as may be due from Tenant, use and enjoy the leasehold estate created by this Lease without hindrance by Landlord.
- 11.4 Delay for Foreclosure. If Landlord has given Mortgagee notice of Tenant's default under Section 11.1 and Mortgagee desires to cure Tenant's default but is unable to do

- so while Tenant is in possession of the Property, or if Landlord has elected to terminate this Lease and Mortgagee desires to obtain a new lease pursuant to Section 11.3 but has not yet acquired Tenant's leasehold interest in this Lease, then Mortgagee shall have the right to postpone the specified date for effecting a cure of this Lease but in no event shall that postponement exceed one hundred twenty (120) calendar days or obtaining a new lease for a period reasonably sufficient to enable Mortgagee or its designee to acquire Tenant's interest in this Lease by foreclosure of its Mortgage or otherwise, as long as Mortgagee pays Landlord the rent and other sums due under this Lease during the postponement. Mortgagee shall exercise the right to extend the cure period or the date for obtaining a new lease by giving Landlord written notice at least three (3) calendar days prior to the last date that Landlord would otherwise be entitled to elect a cure or obtain a new lease and by tendering to Landlord any rent and other charges then in default.
- 11.5 No Surrender. If any Mortgage is in effect, Landlord will not accept a voluntary surrender of this Lease.
- 11.6 Obligations regarding Covenants. The provisions of this Section 11 are for the benefit of Mortgagee and may be relied upon and shall be enforceable by any Mortgagee. Neither Mortgagee nor any other holder or owner of the indebtedness secured by the Mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Tenant contained in this Lease, unless and until Mortgagee or that holder or owner acquires the interest of Tenant.
- 11.7 Certain Conditions; Rights of Landlord. In order for any Mortgagee to be entitled to the benefits provided by this Section 11.7, the Mortgagee must expressly agree in a written agreement with Landlord in recordable form as follows: (i) that the Mortgagee will give Landlord notice of any default by Tenant under such Mortgage, and that Landlord will have the option, but not the obligation, to exercise either of the following rights within thirty (30) calendar days after receipt of such notice: (A) Landlord may cure said default within such 30-calendar day period if it shall so choose, unless such default is of such a nature that it cannot be completely cured within such 30-calendar day period, in which event Landlord shall have such longer period as shall be reasonably necessary to cure such default if Landlord shall so choose, provided Landlord commences such cure with such 30-day period and thereafter diligently pursues such cure to completion, or (B) Landlord may purchase the outstanding loan secured by the Mortgage and all related documents by giving the Mortgagee written notice of its intent to do so within such 30-day period; (ii) the purchase price for the loan shall be the total of (A) the outstanding principal balance of the loan as accelerated, (B) all accrued but unpaid interest, (C) all costs incurred by Mortgagee in connection with any of its attempts to collect the loan and enforce its remedies, including reasonable attorneys' fees and other costs in connection with preparation for foreclosure, and (D) all other amounts due and owing under the loan documents; provided, however, the purchase price shall not include any prepayment penalties or fees; and (iii) the transfer of the loan to Landlord will be without recourse. Tenant hereby consents to any cure by Landlord of any default by Tenant under a Mortgage. Tenant shall reimburse Landlord for all payments, costs and

expenses made, paid or incurred, together with interest thereon (which payments costs, expenses and interest shall be considered additional rent hereunder), by Landlord in connection with the cure of any such default or the acquisition of any loan by Landlord, including attorney's fees, immediately upon receipt of Landlord's written demand for reimbursement.

## SECTION 12. *Casualty*

- 12.1 Duty to Repair. Except as otherwise provided in this Section 12 and subject to the terms and conditions of any Mortgage, if the Improvements or any part thereof shall be damaged or destroyed by any casualty or cause whatsoever, Tenant shall within five (5) calendar days after Tenant becomes aware that any casualty to the Improvements or any part thereof is of a material nature give written notice thereof to Landlord, and Tenant shall be responsible to restore, repair, or rebuild the Improvements to substantially the same condition that existed prior to such damage or destruction. Tenant shall commence reconstruction, repair, restoration, or rebuilding of the damaged or destroyed portion within ninety (90) calendar days following the later to occur of (i) the date when Tenant may commence repairs on the damaged Improvements after having satisfied all requirements with respect to the inspections and investigations required in connection with the claims procedures required by any insurer in connection with any applicable insurance policies, and (ii) receipt of all permits and approvals required to be obtained from applicable authorities in connection with the restoration of the Improvements, and thereafter Tenant shall diligently pursue the same to completion.
- 12.2 Tenant's Election to Terminate. In case of any damage or destruction occurring in the last 10 years of the Term rendering the project untenable, Tenant may, at Tenant's option, by notice in writing given Landlord within thirty (30) calendar days after the occurrence of such damage or destruction, elect to terminate this Lease. This Lease shall then terminate on the date specified in the notice, except as provided below and except with respect to obligations and liabilities of Landlord and Tenant under this Lease that have arisen on or before such date of termination. In the event of termination, the insurance proceeds payable in connection with the damage or destruction of the Improvements shall be payable to the Mortgagee in the event that a Mortgage is in effect, with the balance payable to Landlord. In no event shall Landlord be entitled to any proceeds or compensation awarded for Tenant's lost profits under any policy of insurance maintained by Tenant. Upon this termination, regardless of the amount of proceeds available, Tenant shall satisfy and cause to be released any mortgages (including any Mortgage), liens or other encumbrances placed or suffered to be placed on the Property by Tenant. In addition, Tenant shall do any work (e.g. demolition) necessary that the Property will be surrendered to Landlord in safe and proper condition.
- 12.3 Landlord's Election to Terminate. Tenant's failure to commence its repair, restoration, rebuilding, or reconstruction of the Improvements in accordance with this Section 12, shall, unless such failure is due to circumstances which are beyond the

control of Tenant, be deemed a default under this Lease, subject to such notice and cure periods as are set forth in Section 15 of this Agreement.

- 12.4 Payment of Proceeds. Subject to the terms and conditions of any Mortgage, all insurance proceeds paid on account of such damage or destruction, less the reasonable cost, if any, incurred in connection with adjustment of the loss and the collection thereof, shall be paid to Tenant and are to be applied solely to the payment of the costs of the aforesaid restoration, repair, rebuilding, or reconstruction, including the cost of temporary repairs or for the protection of Property pending the completion of permanent restoration, repairs, rebuilding, or reconstruction. Following completion of the restoration or repair work, any balances of the insurance money paid to Tenant shall be retained by Tenant.
- 12.5 No Abatement. No destruction of or damage to the Improvements by fire or any other casualty or cause shall relieve Tenant from any term or provision of this Lease. Except as otherwise set forth in this Lease, Tenant waives any rights now or hereafter conferred upon it by statute or other applicable law to terminate or surrender this Lease or the Improvements or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage. If the Improvements shall be damaged or rendered wholly or partially untenable by fire or other casualty during the Term, no rent shall abate during such period, whether the Property is tenantable or not.

### SECTION 13. *Condemnation*

- 13.1 Participation in Proceedings. In the event that the Property, in whole or in any part, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between Landlord, Tenant, and those authorized to exercise such right (any such matters being herein referred to as a "Taking"), Landlord, Tenant, and any person having an interest in the award or awards, including, without limitation, any Mortgagee, shall have the right to participate in any such condemnation proceedings or agreement for the purpose of protecting their interests hereunder. Each party so participating shall pay its own expenses therein.
- 13.2 Effect of Taking; Termination of Lease. If at any time during the Term or the renewal term of this Lease there shall be a Taking of substantially all of the Property, this Lease shall terminate and expire on the date of such Taking. For the purpose of this Article, "substantially all of the Property" shall be deemed to have been taken if the Taking would result in fifty-one percent (51%) or more of the Improvements being removed or rendered unusable, or if the portion of the Improvements so taken, in Tenant's reasonable judgment, would render the remainder of the Improvements insufficient for the economic and feasible operation thereof by Tenant.
- 13.3 Allocation of Proceeds. Any award or compensation paid on account of any Taking shall be paid to Tenant; provided, however, to the extent such award or compensation is required to be paid to a Mortgagee pursuant to a Mortgage, Tenant's share of such award or compensation shall be paid to such Mortgagee.

- 13.4 Continuation of Lease After Taking. If any Taking shall not be of substantially all of the Property, this Lease shall continue after any such partial Taking and shall remain unaffected, except that Tenant shall commence the restoration work in the time-frame specified below and diligently pursue the same to completion. Tenant shall commence the restoration work within thirty (30) calendar days following its receipt of the condemnation award and all permits and approvals required to be obtained by applicable authorities in connection with the restoration of the Improvements, and thereafter Tenant shall diligently pursue the same to completion.
- 13.5 Taking of Lesser Interests. In the event of the Taking of an easement or any other taking which shall be of an interest or estate in the Property less than a fee simple, as a result of which the Property shall be insufficient for the economic and feasible operation thereof by Tenant, this Lease shall terminate and expire with the same force and effect as in the case of a Taking pursuant to Section 13.2 hereof. Otherwise, such Taking shall be deemed insufficient to terminate this Lease, and the division of the award shall be governed by Section 13.3 hereof. For purposes of this Section, any change of grade of a roadway on which the Property abuts, to the extent that such change impairs Tenant's use of the Property and requires Tenant to make changes to the Property to restore such use, shall be deemed a partial Taking subject to this Section 13, and any recovery as a result of the same shall be paid to Tenant to the extent provided in this Section 13 for restoration costs.

#### **SECTION 14. *Assignment; Subletting***

- 14.1 Restriction. Except for any assignment or subletting permitted pursuant to this Lease, Tenant shall not assign this Lease or sublet all or any portion of the Property (other than residential or commercial leases of all or any portion of the Improvements entered into in the ordinary course of Tenant's business) unless and until Tenant shall first obtain Landlord's prior written consent..
- 14.2 Continuing Liability. In the event of any assignment of this Lease or sublease of all or a portion of the Property, Tenant shall not be relieved from liability for any of the obligations hereunder without Landlord's written consent, which shall not be unreasonably withheld.

#### **SECTION 15. *Defaults; Remedies***

- 15.1 Default. If one or more of the following events ("Defaults") shall happen and be continuing: (a) Tenant fails to pay within five (5) calendar days of when due any amount to be paid under this Lease by Tenant and the failure continues for ten (10) calendar days after receipt by Tenant of written notice from Landlord; (b) Tenant fails to perform or observe any other covenant or condition to be performed or complied with by Tenant under this Lease, and the failure continues for ten (10) calendar days after receipt by Tenant of written notice from Landlord; or, if the default complained of is not a monetary default and is of such a nature that it cannot reasonably be completely cured or remedied within such ten (10) calendar day period, Tenant fails to commence to cure the default during the ten (10) calendar day period, or does not

thereafter diligently pursue such remedy or cure to completion; (c) Tenant files a petition in bankruptcy or a petition or answer seeking reorganization under the Federal Bankruptcy Code or any other applicable statute; or (d) an order is entered adjudicating Tenant a bankrupt or approving an involuntary petition seeking a reorganization of Tenant under the Federal Bankruptcy Code or any other applicable statute or appointing a receiver, trustee or conservator for all or any substantial part of the property of Tenant, and the order is not vacated or stayed within ninety (90) calendar days of entry; then, and in any of those events (but subject to the provisions of Section 15.3 below), Landlord shall have the right, at its option, then or at any time while the default continues, to give a written notice specifying a date on which this Lease shall terminate, and on that date, subject to the provisions of this Section relating to the survival of Tenant's obligations, this Lease shall terminate; provided, however, that Tenant shall have the right to nullify Landlord's termination by curing the default prior to the termination date set forth in Landlord's notice.

- 15.2 Right to Cure Defaults. If Tenant shall fail to make any payment of taxes, assessments or other charges, maintain required insurance coverages, or perform any other act required to be made or performed under this Lease, Landlord, without waiving or releasing any obligation or default, may (but shall be under no obligation to) following reasonable prior written notice to Tenant, make the payment or perform the act for the account and at the expense of Tenant. All sums so paid by Landlord shall constitute additional rent and shall be paid by Tenant to Landlord on demand, together with interest thereon from the date said funds were advanced at a rate equal to the lower of (i) eighteen percent (18%), or (ii) the highest rate permissible at law.
- 15.3 Tenant Remedies. Notwithstanding anything to the contrary in this Lease, if Landlord defaults on its obligations hereunder to convey to Tenant possession of the leasehold interest contemplated by this Lease in accordance with the terms of this Lease, Tenant shall have all remedies at law or in equity, including, but not limited to, the remedy of specific performance.

## SECTION 16. *Quiet Enjoyment*

- 16.1 Tenant's Right to Quiet Enjoyment. Tenant, upon paying all rent and other charges provided for, and upon observing and keeping all covenants, agreements and conditions of this Lease to be kept on its part, shall quietly have and enjoy the Property during the term of this Lease without hindrance or molestation by anyone claiming by, through or under Landlord; subject, however, to the exceptions, reservations and conditions of this Lease.
- 16.2 Waste. During the Term, Tenant shall not permit, commit, or suffer waste or impairment of the Project, or any part thereof; provided, however, demolition of existing improvements on the Property existing on the Commencement Date shall not constitute waste.
- 16.3 Surrender. At the expiration or earlier termination of the Term (other than upon any purchase of the Property pursuant to the Option), Tenant shall yield the Property to

Landlord in good order and repair. Except as otherwise provided in this Lease (including, without limitation, upon any purchase of the Property pursuant to the Option), the Improvements and any other leasehold improvements shall become the sole property of Landlord at the expiration of the term without any compensation to Tenant. By expiration or earlier termination of this Lease, Tenant (and any tenant of any of the Improvements) may remove any of Tenant's (or any such tenant's) trade fixtures, furniture, furnishings, and other personal property from the Property, and Tenant shall repair any damage which may result to the Property from such removal. In the event Tenant fails to remove those items, the items shall be deemed abandoned and shall be the property of Landlord. On or before the expiration or termination of this Lease, Tenant shall cause any mortgages, deeds of trust, liens or encumbrances created by, through or under Tenant to be fully released and discharged.

## SECTION 17. *Estoppel Certificate*

- 17.1 Estoppel Certificate. Landlord or Tenant shall at any time and from time to time upon not less than ten (10) calendar days' prior written notice from the other party execute, acknowledge and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the requested party's knowledge, any uncured defaults on the part of the requesting party hereunder, or specifying such defaults if any are claimed. Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against any bona fide prospective purchaser, subtenant, assignee, or encumbrancer of all or any portion of the Property or the real property of which the Property are a part to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser, subtenant, assignee, or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to challenge acts committed by the other party for which approval by the issuer of the estoppel certificate was required but not sought or obtained. Subject to the foregoing, the requested party's failure to deliver such statement within such time shall be conclusive upon such requested party (i) that this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) that there are no uncured defaults in the requesting party's performance known to the requested party except as noted therein, and (iii) that not more than one year's rental has been paid in advance unless otherwise stated.
- 17.2 SNDA. Upon a request by Landlord, this Lease, and Tenant's rights hereunder shall be subject and subordinate to the lien of any mortgages or deeds of trust or other similar instrument that may now exist or may hereafter be placed upon the Property and all renewals, replacements, and extensions thereof provided the holder of such

mortgage or deed of trust shall execute and deliver a Subordination, Non-Disturbance and Attornment Agreement in recordable form mutually acceptable to the parties thereto.

#### SECTION 18. *Non-Subordination of Landlord's Interest*

- 18.1 Non-Subordination of Landlord's Interest. Notwithstanding any provision in this Lease to the contrary, Landlord's fee interest in and ownership of the Property and Landlord's rights and interest in this Lease (including, without limitation, the rights to rents, public charges, and other monetary obligations of Tenant to Landlord under this Lease) shall not be subject or subordinate to or encumbered by any financing for the Project or lien or encumbrances affecting Tenant's interest in this Lease or the Improvements or by any acts or omissions of Tenant or any sublessee hereunder. In this regard, all rents and other monetary obligations of Tenant to Landlord under this Lease then payable at any point in time during the Term shall be paid by Tenant to Landlord and shall be superior in right to all claims or rights hereunder or described above in this Section.

#### SECTION 19. *Confidentiality*

- 19.1 Confidentiality. Except to the extent required by applicable law, specifically Chapter 119 of the Florida Statutes as may be amended from time to time, Landlord and Tenant agree that the terms and conditions of this Lease, and all other agreements and instruments executed and delivered by the respective parties in connection with this Lease, including all preliminary drafts of such documents (collectively, the "Transaction Documents"), shall remain confidential. Neither Landlord nor Tenant or their respective agents and representatives, shall distribute or make publicly available the Transaction Documents, or any part thereof, to any third party unless required by law to do so.
- 19.2 Permitted Disclosures. Notwithstanding the foregoing, the parties may provide copies hereof to their respective attorneys, and Tenant may provide copies of the Transaction Documents and any preliminary drafts thereof to (i) prospective third party lenders or equity partners with whom Tenant is negotiating to provide financing related to the Property, the Project, or the Improvements, and (ii) any party who is contemplating either a direct or indirect acquisition of or investment in all or any part of the Property, the Project, or the Improvements.

#### SECTION 20. *Option to Purchase*

- 20.1 Grant and Exercise of Option. Provided Tenant is not then in default of any terms or provisions of this Lease beyond any applicable grace period, Tenant shall have the option at any time after the Commencement Date and the first seven (7) years of the Term to purchase the Property for a purchase price of two hundred thousand (\$200,000.00) Dollars and consistent with upon the terms and conditions set forth in a Purchase and Sale Agreement to be entered into between the Tenant and Landlord herein (the "Option"). Tenant shall exercise the Option by executing and delivering

to Landlord written notice (the "Option Notice") of its intention to exercise the Option, together with all relevant information to the proposed exercise, including, without limitation, the Option Purchase Price (as defined in Section 20.2.2). Unless and until a closing occurs pursuant to an Option Notice and pursuant to the Purchase and Sale Agreement (the "Option Closing"), Landlord and Tenant shall continue to comply in all respects with the terms and conditions of this Lease as then in effect. A copy of the Purchase and Sale Agreement is attached to this Ground Lease and identified as Exhibit C. Landlord agrees not to offer the Property for sale for the first seven (7) years of the Term.

- 20.2 Title Matters. Within twenty (20) calendar days from Tenant's exercise of its option, Tenant shall obtain, at Tenant's sole cost and expense, a commitment for an owner's title insurance policy. Landlord and Tenant shall follow substantially the same procedures, and shall have the same obligations, as set forth in Section 4 in order for Tenant to satisfy itself with the condition of title, with corresponding adjustments regarding the applicable dates.
- 20.3 Closing Coordination. Subject to satisfaction of all of the other conditions to an Option Closing, the Option Closing shall occur in escrow upon such escrow conditions as Landlord, Tenant, their respective attorneys, and any other interested parties agree (e.g., a title company or a lender providing financing that will fund the purchase pursuant to the Option). If no Option Closing has occurred by the date which is one hundred twenty (120) calendar days following delivery of an Option Notice, unless the parties have otherwise agreed in writing, Tenant shall be deemed to have revoked such Option Notice, in which case the Lease shall continue in full force and effect, and Tenant shall retain its Option to purchase all or any portion of the Property at any time thereafter, which Option may be exercised by Tenant, at its sole and absolute discretion, in the method set forth in Section 20.1 hereof. Such revocation shall not constitute a default under this Lease, and the parties acknowledge and agree that there shall be no penalty against Tenant, that Landlord shall not have been damaged thereby, and that Landlord shall have no need for any remedy with respect thereto. For the avoidance of doubt, although there shall be no penalty to Tenant in connection with any such deemed revocation, Tenant shall in all events remain liable for the payment of any applicable rent or other fees for the applicable time periods.
- 20.4 Closing Deliveries. Landlord shall deliver to Tenant at closing a special warranty deed, a bill of sale, and all other affidavits and other appropriate instruments of transfer and sale to fully effectuate the purchase of the Property and the transfer of all assets (real and personal, tangible and intangible) of Landlord in connection with the Property to Tenant, free and clear of all encumbrances. All documents are to be in form and substance satisfactory to Tenant, its counsel, and any title insurer to be issuing a title insurance policy in connection with the Option Closing.
- 20.5 Payment. At the Option Closing, Tenant will pay to Landlord by wire transfer of funds the Option Purchase Price, subject to pro-rations and adjustments as set forth in

this Lease or otherwise applicable for similarly situated property in Palm Beach County.

20.6 Tenant's Conditions. Tenant shall not be obligated to close on the acquisition of the Property unless and until:

- (a) Title to the Property is delivered in accordance with the provisions of this Lease and the Title Company is prepared to and will issue on the Option Closing Date, at Tenant's expense, an owner's policy of title insurance to Tenant, in the amount of the Option Purchase Price (or of the total acquisition cost, if a party is acquiring both the Property and the Improvements located thereon), insuring that marketable fee simple title to the Property is vested in Tenant, free and clear of all liens and encumbrances, specifically including the mortgage and any other mortgages placed on the Property or the Property by Landlord.
- (b) Landlord is not in default in the performance of any of its obligations under this Lease beyond any applicable grace periods, or if any of the representations or warranties of Landlord are untrue or inaccurate in any material respect as of the Option Closing Date.

20.7 Landlord's Conditions. Landlord shall not be obligated to convey the Property unless and until:

- (a) Tenant has delivered the Option Purchase Price.
- (b) Tenant is not in default in the performance of any of its obligations under this Lease beyond any applicable grace periods, except for any default that would be cured as a result of the Option Closing.

20.8 Tenant Remedies. If Landlord defaults on its obligations hereunder to convey the Property to Tenant in accordance with the terms of this Lease, Tenant shall have all remedies at law or in equity, including, but not limited to, the remedy of specific performance.

20.9 Assignment. The parties acknowledge that the exercise of an Option could occur where it is anticipated that the Property will be transferred to a purchaser of the Improvements located upon the Property, or to an entity intending to acquire title to such Property in order to develop the Improvements upon the Property. In such event, the parties shall coordinate such that Tenant may assign its right at closing on the Property to receive title to such Property to such proposed acquirer, such that Landlord may deliver title to the Property directly to such proposed acquirer, in order to avoid any potential gaps in title and in order to minimize the transaction costs related to such transaction.

20.10 Landlord does grant to the Tenant a one time Right of First Refusal effective upon the eighth (8<sup>th</sup>) Anniversary of the Commencement Date; and

Beginning on the eight (8<sup>th</sup>) anniversary date of the Commencement Date of this Agreement, if the Landlord desires to convey the property to a third party, the Tenant will have the right of first refusal to purchase the property on the same terms than those proposed by the proposing party. The right of first refusal will operate as follows:

- a. **Unsolicited Proposals.** If an unsolicited proposal comes to the Landlord which the Landlord is interested in pursuing, Landlord will provide Tenant with a copy of the proposal, and Tenant will have a period of thirty (30) days in which to notify the Landlord in writing that it wishes to exercise its right of first refusal and to purchase the Property. Tenant will then have a period of thirty (30) days from its notice to the Landlord to sign a Purchase and Sale Agreement with Landlord. If Tenant fails to sign a Purchase and Sale Agreement within the 30-day period, the Landlord may thereafter enter into the Purchase and Sale Agreement for its own benefit with a third party.
- b. **Conveyance Requested by Landlord.** If the Landlord desires to sell the Property , Landlord will provide Tenant with written notice of the Landlord's desire, and Tenant will have a period of 30 days in which to notify Landlord that Tenant wishes to purchase the Property from the Landlord. Tenant will then have a period of 30 additional days from the date of its notice to the Landlord to sign a Purchase and Sale Agreement for the purchase of the Property from the Landlord. If Tenant fails to sign Purchase and Sale Agreement within the thirty (30) day period, the Landlord may thereafter issue a request for proposals (if required) for the sale of the Property, and may enter into a Purchase and Sale Agreement for the sale of the Property, without further notice to Tenant.

## SECTION 21. *Warranties*

- 21.1 **Landlord's Warranties.** Landlord represents and warrants to Tenant that: Landlord has full authority to execute, deliver and perform this Lease and each instrument and agreement to be executed and delivered by Landlord pursuant hereto and to take all of the actions contemplated hereby to be taken by Landlord, including, but not limited to, delivery of possession of the Property to Tenant, free and clear of all title exceptions, except as provided herein; there is no pending proceeding to which Landlord is a party, or of which it has been given notice concerning any condemnation proceedings, which would materially and adversely affect the Property; there are no actions, suits, investigations or proceedings pending or, to the best of Landlord's knowledge, threatened to be brought in any court or before any governmental agency which could have a materially adverse effect on the ability of Tenant to develop the Property or prohibit possession of the Property by Tenant as contemplated by this Lease, nor are there any unsatisfied judgments or consent decrees which could have any such effect. Landlord is not in default with respect to or in violation of any order, writ, injunction or decree of any court, governmental department, agency or instrumentality having jurisdiction over the Property, which

related to the Property; no toxic and/or hazardous wastes have been used or stored on, under or about the Property by Landlord, nor has Landlord received notice of the presence of toxic and/or hazardous waste on, under, or about the Property; and there are no other tenants of the Property or other licensees, occupants, invitees, or guests with any right to occupy or enter upon the Property.

22.2 Tenant Expenses. The Tenant shall obtain all necessary licenses, permits and inspections necessary to operate the Project on the Property at its own expense.

21.3 Bond. The Landlord approved General Contractor for the Project shall post a legally sufficient Performance and Payment Bond in an amount representing 100% of the cost of construction or in the alternative the Tenant shall post a legally sufficient Payment Bond in an amount representing 100% of the cost of construction. The Bond posted by the General Contractor or the Bond posted by the Tenant shall identify the Landlord as an additional obligee. Prior to commencing construction of the Project, Tenant shall provide Landlord with a copy of the Payment Bond or the Contractor's Performance and Payment Bond. In the event any contractor or subcontractor records a Claim of Lien, pursuant to Chapter 713, Florida Statutes against the Property, Tenant shall take all necessary action to insure that the Claim of Lien is released from the Property within ten (10) calendar days from its recordation or else shall protect Landlord by a good and sufficient bond against any such lien or any cost, liability, or damage arising in connection with any such lien.

## SECTION 22. *Provisions with Respect to Escrow Agent*

22.1 Escrow Agent. It is understood and agreed that the duties of Escrow Agent are purely ministerial in nature. In addition to, and not in limitation of, any other provisions of this Lease with respect to Escrow Agent, it is further agreed that:

22.1.1 No Obligations. Escrow Agent shall not be responsible for the performance by Tenant or Landlord of their respective obligations under this Lease. Escrow Agent shall not be liable or responsible to perform any act pertaining to this Lease other than as set forth in this Lease, or because of the loss of any monies arising through insolvency or the act or default or omission of any person other than Escrow Agent.

22.1.2 Reliance. Escrow Agent shall have the right to act in reliance upon any document, instrument or signature believed by it in good faith to be genuine and to assume (unless it has reason to believe otherwise) that any person purporting to give any notice or instructions in accordance with this Lease or in connection with any transaction to which this Lease relates has been duly authorized to do so. Escrow Agent shall not be obligated to make any inquiry as to the authority, capacity, existence or identity of any person purporting to give any such notice or instructions. Escrow Agent is authorized, in its sole discretion, to disregard any and all notices or instructions given by Tenant or Landlord or by any other person, firm or corporation, except only such notices or instructions as are herein provided for and orders or process of any court.

- 22.1.3 Conflicting Instructions or Uncertainty. In the event that Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions with respect to the Deposit which, in its sole opinion, are in conflict with either other instructions received by it or any provision of this Lease, it shall be entitled to hold the Deposit, or a portion thereof, pending the resolution of such uncertainty to Escrow Agent's sole satisfaction, by entry of an order, judgment or decree by a court or courts of competent jurisdiction or otherwise; or Escrow Agent, at its option, may deposit the Deposit in the registry of a court of competent jurisdiction, in a proceeding to which all parties in interest are joined. Upon so depositing such Deposit and filing its complaint and interpleader, Escrow Agent shall be completely discharged and released from further liability.
- 22.1.4 No Liability. Escrow Agent shall not be liable for any action taken or omitted hereunder except in the case of its bad faith, gross negligence or willful misconduct. Escrow Agent shall be entitled to consult with counsel of its own choosing and shall not be liable for any action taken, suffered or omitted by it in reasonable reliance upon the advice of such counsel. Any reasonable expenses incurred by Escrow Agent in connection with such consultation shall be reimbursed jointly and severally by the parties hereto.
- 22.1.5 Indemnification. Subject to Section 768.28 of the Florida Statutes, Tenant and Landlord, jointly and severally, indemnify Escrow Agent and holds it harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature, which it may incur or with which it may be threatened directly or indirectly arising from or in any way connected with the Deposit or which may result from Escrow Agent following instructions from any of them; and in connection therewith, each of Tenant and Landlord, jointly and severally, indemnifies Escrow Agent against any and all expenses, including attorneys' fees and the cost of defending any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. Escrow Agent will be vested with a lien on the Deposit to secure the aforementioned indemnity.
- 22.1.6 Right to Select Attorneys. Escrow Agent will have the right to utilize the services of the attorneys of its choice, and such election will not affect or in any way prejudice or limit Escrow Agent's entitlement to reasonable attorneys' fees for the services of such attorneys as set forth herein.
- 22.1.7 Limitation of Duties. This Lease sets forth exclusively the duties of Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligation shall be read into this Lease against Escrow Agent.

## SECTION 23. *Notices*

- 23.1 Notice Procedure. Any notice required or permitted to be given to a party under the provisions of this Lease shall be in writing and may be delivered via courier or hand-delivery, by nationally recognized overnight air courier, or by certified or registered United States mail, postage prepaid, return receipt requested, addressed as follows:

Landlord: Delray Beach Community Redevelopment Agency  
20 North Swinton Avenue  
Delray Beach, Florida 33444

with a copy to: Goren, Cherof, Doody & Ezrol, P.A.  
3099 E. Commercial Blvd., Suite 200  
Fort Lauderdale, FL 33308  
Attn: Donald J. Doody, Esq.

Tenant: Hatcher Construction & Development, Inc.  
710 W. Atlantic Ave.  
Delray Beach, Florida 33444  
Attn: William Hatcher

with a copy to: Simon and Schmidt  
766 SE 5<sup>th</sup> Avenue  
Delray Beach, Florida 33483  
Attn: David W. Schmidt, Esq.

Escrow Agent: GOREN, CHEROF, DOODY & EZROL, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Attn: Donald J. Doody, Esquire

Each such notice, request, or other communication shall be considered given and shall be deemed delivered (a) on the date delivered if by personal delivery or courier service; or (b) on the date on which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. Rejection, refusal to accept, or inability to deliver shall be deemed to be a receipt of such notice, request, or other communication. The respective attorneys for Tenant and Landlord are hereby authorized to give any notice pursuant to this Lease on behalf of their respective clients. Copies of applicable notices shall be given to Escrow Agent.

- 23.2 Change of Address. Either party may, from time to time, change its notice address by written notice to the other party at its then-current mailing address, in accordance with the provisions of this section.

## SECTION 24. *Radon Gas*

- 24.1 Notice. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the County Public Health Unit.

#### SECTION 25. ***Reduced Rental Rate.***

In consideration of a base rental payment that is less than a fair market rate, Tenant agrees and acknowledges that it shall offer to potential tenants to be located in a minimum of twenty-five (25%) percent of the net square feet of rental space in the Improvement a base rent of thirty (\$30.00) dollars or less per square foot inclusive of any and all common area maintenance (CAM) for no less than seven (7) years subsequent to Tenant obtaining a certificate of occupancy for the Improvement. The failure of Tenant to offer the reduced rental rate referenced above for the seven (7) year period shall constitute an event of default under Section 15.1 herein.

#### SECTION 26. ***Miscellaneous***

- 26.1 No Waiver. No waiver of any condition or covenant of this Lease shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Lease shall be construed to be a waiver on the part of Landlord of any right or remedy in law or otherwise.
- 26.2 Binding Effect. This Lease and the covenants and agreements of the parties shall be binding upon and inure to the benefit of Landlord and its successors and assigns and to the benefit of Tenant and its permitted successors and assigns.
- 26.3 Severability. If any provision of this Lease, or its application to any person, entity or circumstance is specifically held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease and the application of the provisions hereof to other persons, entities or circumstances shall not be affected thereby and, to that end, this Lease shall continue to be enforced to the greatest extent possible consistent with law and the public interest; provided, however, that if the invalidity or unenforceability of any provision hereof would result in Landlord being required to perform the obligations required hereunder without being entitled to develop and operate the Project and use the Improvements and Parking Rights in a productive manner, then such provision may not be severed from the Lease, and the Lease as a whole shall be invalid or unenforceable.
- 26.4 Counterparts. This Lease may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 26.5 Governing Law. This Lease shall be governed by the laws of the state of Florida and venue shall be in Palm Beach County, Florida.

- 26.6 Memorandum of Lease. Landlord and Tenant have executed and delivered to each other a Memorandum of Lease for recording. Landlord shall promptly record the Memorandum of Lease in the appropriate public records in and for Palm Beach County, Florida. This Lease shall not be recorded unless Tenant shall have consented thereto.
- 26.7 Costs. Whenever, in this Lease, anything is to be done or performed by Tenant or Landlord, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of Tenant or Landlord, as the case may be.
- 26.8 Brokers. Tenant and Landlord represent and warrant to each other that neither has had any dealings or discussions with any broker or agent, licensed or otherwise) in connection with this Lease. Landlord and Tenant each covenants to protect, defend, hold harmless and indemnify the other from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any claim by any brokers or agents for brokerage commissions relating to this Lease alleged to be due because of dealings or discussions with the indemnifying party.
- 26.9 Force Majeure. Whenever performance is required of any party hereunder, such party shall use commercially reasonable diligence to perform and take all reasonably necessary measures to perform its obligations; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God (including, without limitation, hurricanes and other tropical storms and the weather conditions and market conditions resulting therefrom), significant variations from normal weather conditions reasonably expected during the period in question, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or causes beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended to account for any such delay.
- 26.10 Conditions and Covenants. All of the provisions of this Lease shall be deemed as running with the land, and construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.
- 26.11 Survival of Indemnities. All representations, warranties, and indemnities under this Lease shall survive the expiration or sooner termination of this Lease.
- 26.12 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of partners or co-venturers, or creating or establishing the relationship of a joint venture between Tenant and Landlord, or as appointing or constituting Tenant as the agent or representative of Landlord for any purpose or in any manner whatsoever.

- 26.13 Interpretation; Conflict. Landlord and Tenant acknowledge that they were each represented by counsel in connection with this Lease and that each of them or their respective counsel reviewed and revised this Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease. The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Lease as a whole and not to any particular provision of this Lease, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Lease unless otherwise specified. The words denoting persons shall include corporations, partnerships, limited liability companies, and other entities, and vice versa. The word “day” shall be interpreted to mean a calendar day unless specifically provided that such day is a “business day”, which shall mean any day other than Saturday, Sunday, or any national legal holiday or other legal holiday recognized by the City of Boynton Beach, Florida; the term “days subsequent to” shall be interpreted to mean such period immediately following the referenced date or event. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.
- 26.14 Headings, Interpretation, Entire Agreement. The headings used in this Lease are inserted for convenience and are not to be considered in the construction of the provisions of this Lease. This Lease constitutes the entire agreement of the parties with respect to the subject matter hereof and may be amended or modified only in writing signed by both parties, and all prior agreements or understandings between the parties, either oral or written, are superseded by this Lease.
- 26.15 Attorneys’ Fees and Costs. In all matters relating to the enforcement or preservation of rights and remedies under this Lease, and in all matters of collection, whether or not an event of default has actually occurred or has been declared and thereafter cured, the losing party shall reimburse the prevailing party for all costs and expenses, and the prevailing party shall be entitled to recover its reasonable legal fees and expenses. The parties agree that a party’s legal fees and expenses shall include, without limitation: (a) reasonable attorneys’ and paralegals’ fees and disbursements; (b) the fees and expenses of any litigation (including appeals), bankruptcy, insolvency, receivership and any other similar proceeding, including, without limitation, attorney’s fees and costs; (c) court costs; (d) the expenses of such party, its employees, agents, attorneys and witnesses in preparing for litigation, administrative, bankruptcy, insolvency and other proceedings and for lodging, travel, and attendance at meetings, hearings, depositions, and trials; and (e) consulting and witness fees and expenses incurred by such party in connection with any litigation or other proceeding.
- 26.16 Waiver of Trial by Jury. To the fullest extent permitted by applicable law, the parties hereto shall and they hereby do intentionally, knowingly, and voluntarily waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant’s use or occupancy of the Property and/or any claim or injury or damage.

26.17 Contingent Nature of Leasehold Interest. Notwithstanding the use of the terms “Tenant” and “Landlord” and “Lease” throughout this agreement, the parties hereto acknowledge and agree that until such time as all of the conditions to this agreement have been satisfied such that the Commencement Date occurs prior to the termination of this agreement, the “Tenant” shall only have those rights to perform the inspections provided for in this agreement and to access the property as permitted in this agreement, and the “Tenant” shall not have any right to the exclusive possession of the Property unless and until the Commencement Date occurs. As a result, the parties acknowledge and agree that, although the terms of this agreement are binding upon the parties and their permitted successors and assigns from the Effective Date hereof, the parties do not intend that this agreement should be considered to constitute an effective lease or serve to convey a leasehold interest from “Landlord” to “Tenant” unless and until “Landlord” delivers possession of the Property to “Tenant” on the Commencement Date, at which point the parties acknowledge and agree that this agreement shall constitute a lease.

26.18 Transfer of Assignments. Tenant may not transfer or assign its rights under this Agreement or its rights as Tenant except as set forth in this Agreement.

Transfers. For purposes of this Agreement, a “Transfer” is a sale, assignment or conveyance of any of the following:

- a. The Improvement;
- b. Any interest in the Improvement, or any part thereof;
- c. Any interest in Tenant;
- d. Any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or

26.19 Subleases. A Sublease of any leasehold space located in the Improvement will not be considered a Transfer under this Agreement.

26.20 General Restriction on Transfers and Assignment. No Transfer or assignment may be made, suffered or created by Tenant, or its permitted successors, assigns, or transferees unless it complies with the provision of this Agreement and obtains the written consent of the Landlord. Any Transfer that violates this Agreement will be null and void and of no force and effect.

*(Signatures appear on the following pages)*

Executed as of the day and year first written above.

**WITNESSES:**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

**LANDLORD:**

**Delray Beach Community Redevelopment  
Agency**

By: \_\_\_\_\_

Name: Shelly Petrolia

Title: Chair

**TENANT:**

**Hatcher Construction & Development,  
Inc., a Florida corporation**

By: \_\_\_\_\_

Name: William E. Hatcher

Title: President

**EXHIBIT A**

**Land**

20 NW 6<sup>th</sup> Avenue

The East 130 feet of the North 100 feet of the South 302.1 feet of the South one-half of Block 12 of the CITY OF DELRAY BEACH (formerly Linton) according to the Plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida.

Folio No. – 12-43-46-16-01-012-0060

26 NW 6<sup>th</sup> Avenue

Lot 17, Block 12, MONROE SUBDIVISION, according to the plat thereof, recorded in Plat Book 14, Page 67, Public Records of Palm Beach County, Florida.

Folio No. - 12-43-46-17-01-012-0170

**EXHIBIT B**

**Conceptual Site Plan**

**[SEE ATTACHED]**

**EXHIBIT C**  
**Purchase and Sale of Real Property Agreement**

**[SEE ATTACHED]**