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GROUND LEASE AGREEMENT

BETWEEN

THE HOUSING AUTHORITY  
OF THE  
CITY OF KEY WEST

AND

CREATIVE CHOICE MANAGEMENT, INC.

NONREC

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## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I      <u>DEMISED PREMISES</u></b>	
Section 1.01    Description of Premises.....	1
Section 1.02    Owner-Grantee Agreement.....	1
Section 1.03    Priority of HUD Regulations.....	1
<b>ARTICLE II      <u>TERM</u></b>	
Section 2.01    Effective Date.....	1
Section 2.02    Initial Term.....	2
<b>ARTICLE III     <u>RENT</u></b>	
Section 3.01    Lump Sum Rent.....	2
Section 3.02    Base Rent.....	2
Section 3.03    Percentage Rent.....	3
Section 3.04    Monies to Develop the Community Center Improvements.....	3
Section 3.05    Payment in Lieu of Real Property Taxes.....	3
Section 3.06    Additional Rent.....	3
Section 3.07    Definition of Gross Income.....	4
Section 3.08    Statements of Receipts and Disbursements..	4
Section 3.09    Financial Reporting.....	5
Section 3.10    Books and Records.....	5
Section 3.11    Right to Audit.....	5
Section 3.12    No Partnership.....	6
Section 3.13    Legal, Tender and Place of Payment.....	6
Section 3.14    Net Lease.....	6
Section 3.15    Failure to Operate.....	6
Section 3.16    Lessee's Default .....	6
<b>ARTICLE IV      <u>PAYMENT OF TAXES</u></b>	
Section 4.01    Other Taxes, Assessments and Charges.....	7
Section 4.02    Additional Rent.....	7
Section 4.03    Proration.....	7
Section 4.04    Real Estate Taxes.....	8
<b>ARTICLE V       <u>NON-SUBORDINATION</u></b>	
Section 5.01    .....	8
<b>ARTICLE VI      <u>MECHANIC'S LIENS</u></b>	
Section 6.01    No Lien.....	8
Section 6.02    Release of Lien.....	8
<b>ARTICLE VII     <u>INDEMNIFICATION</u></b>	
Section 7.01    Indemnification by Lessee.....	8
Section 7.02    Indemnification by Lessor.....	9
<b>ARTICLE VIII    <u>INSURANCE</u></b>	
Section 8.01    Public Liability Insurance.....	9
Section 8.02    Fire and Extended Coverage Insurance.....	9
Section 8.03    Workmen's Compensation, Rent Loss Insurance and Other Insurance.....	10
Section 8.04    Insuring Unfinished Improvements.....	10
Section 8.05    General Provisions With Respect to Insurance.....	11
Section 8.06    Non-Liability of Landlord.....	11
Section 8.07    Inability to Perform.....	11
Section 8.08    Insurance Claims.....	12
<b>ARTICLE IX      <u>CONDEMNATION</u></b>	
Section 9.01    Total Permanent Taking.....	12

Section 9.02	Partial Taking .....	12
Section 9.03	Taking for Temporary Use.....	12
Section 9.04	Distribution of Awards.....	12
Section 9.05	Lessee Waiver of Claim.....	13
ARTICLE X	<u>CONSTRUCTION</u>	
Section 10.01	Construction of Improvements.....	13
Section 10.02	Completion of Construction.....	14
Section 10.03	Alterations.....	14
ARTICLE XI	<u>FINANCING</u>	
Section 11.01	Construction and Permanent Financing.....	15
Section 11.02	Refinancing.....	17
ARTICLE XII	<u>REPAIR OBLIGATIONS</u>	
Section 12.01	.....	17
ARTICLE XIII	<u>FAILURE TO PERFORM DEFAULTS, REMEDIES</u>	
Section 13.01	Defaults, Conditional Limitation.....	18
Section 13.02	Lessor's Re-entry.....	19
Section 13.03	Deficiency.....	20
Section 13.04	Percentage Rent after a Default.....	21
Section 13.05	Waiver of Right of Redemption.....	21
Section 13.06	Waiver of Trial by Jury.....	21
Section 13.07	Lessor's Right to Perform for Account of Lessee.....	21
Section 13.08	Additional Remedies, Waivers, Etc.....	21
Section 13.09	Distrainment.....	22
ARTICLE XIV	<u>ADDITIONAL COVENANTS OF LESSEE</u>	
Section 14.01	Permitted Use.....	22
Section 14.02	Maintenance as Rental Property.....	23
Section 14.03	Re-examination of Income.....	23
Section 14.04	Termination.....	23
Section 14.05	Occupancy of Demised Premises.....	23
ARTICLE XV	<u>QUIET ENJOYMENT</u>	
Section 15.01	.....	23
ARTICLE XVI	<u>RIGHT OF ENTRY</u>	
Section 16.01	.....	23
ARTICLE XVII	<u>LESSOR'S RIGHT OF FIRST REFUSAL</u>	
Section 17.01	.....	24
ARTICLE XVIII	<u>ARBITRATION</u>	
Section 18.01	.....	24
ARTICLE XIX	<u>LAWS, WASTE OR NUISANCE</u>	
Section 19.01	.....	24
ARTICLE XX	<u>UTILITY CHARGES</u>	
Section 20.01	.....	25
ARTICLE XXI	<u>ENVIRONMENTAL CONTAMINATION AND INDEMNITY</u>	
Section 21.01	.....	25
ARTICLE XXII	<u>ASSIGNMENT OF INTEREST, PRIORITY OF LIEN</u>	
Section 22.01	.....	26

ARTICLE XXIII MISCELLANEOUS

Section 23.01 Estoppel Certificates..... 26

Section 23.02 Attorney's Fees and Costs..... 27

Section 23.03 The Project..... 27

Section 23.04 Radon Gas..... 27

Section 23.05 Covenants Running with the Land..... 27

Section 23.06 No Waiver..... 27

Section 23.07 Written Modifications..... 27

Section 23.08 Notices..... 28

Section 23.09 Liability Continued..... 28

Section 23.10 Captions..... 28

Section 23.11 Index..... 28

Section 23.12 Controlling Law; Venue..... 28

Section 23.13 Holding Over..... 28

Section 23.14 Termination of Subleases..... 28

Section 23.15 Rental Commencement Date of Lease..... 28

Section 23.16 Force Majeure..... 29

Section 23.17 Recording this Lease..... 29

Section 23.18 Time is of the Essence..... 29

Section 23.29 No Joint Venture..... 29

Section 23.20 Joint and Several Liability..... 29

Section 23.21 Calendar Days..... 29

Section 23.22 Severability..... 29

Section 23.23 No Deductions or Offsets..... 29

Section 23.24 Entire Agreement..... 29

LIST OF EXHIBITS

Exhibit A Description of Demised Premises

Exhibit B Owner-Grantee Agreement

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (hereinafter referred to as the "Lease") is made and entered into at Key West, Monroe County, Florida, on this \_\_\_\_\_ day of \_\_\_\_\_, 1989, by and between The Housing Authority of the City of Key West, a body politic organized under the U.S. Housing Act of 1937, as amended, having its principal office at 1400 Kennedy Drive, Key West, Florida (hereinafter referred to as the "Lessor") and Creative Choice Management, Inc., a Florida corporation, with its principal place of business at 115 Inlet Way, Palm Beach Shores, Florida (hereinafter referred to as the "Lessee").

Lessor and Lessee, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for Ten Dollars and 00/100 (\$10.00) and other valuable considerations the receipt and sufficiency of which are hereby acknowledged, agree as follows:

## ARTICLE I

Demised Premises

Section 1.01 Description of Premises. Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the rents and the prompt performance by Lessee of the covenants and agreements, to be kept and performed by Lessee, Lessor does hereby lease to Lessee, and Lessee hereby leases from Lessor, the premises situated in Monroe County, Florida described on Exhibit A attached hereto, together with all improvements that have been, or in the future may be, placed thereon (hereinafter referred to as "Demised Premises"), for the purpose of constructing, operating and maintaining thereon a housing project in accordance with the terms hereof and the Owner-Grantee Agreement, defined hereinbelow, and which premises are part of a larger parcel to be occupied by the Frederick Douglass Project (hereinafter referred to as the "Project").

Section 1.02 Owner-Grantee Agreement. Lessor, Lessee and the City of Key West entered into an agreement dated the 21st day of August, 1989 (hereinafter referred to as the "Owner-Grantee Agreement"), a copy of which is attached hereto as Exhibit B, which set forth in greater detail the rights and obligations of the parties with respect to the Project. All of the terms and conditions of the Owner-Grantee Agreement are incorporated herein in their entirety by reference. To the extent the terms thereof conflict with the terms of this Lease, then the terms of this Lease shall control, except that if such conflict concerns a Housing Development Grant ("HDG") regulation or a United States Department of Housing and Urban Development ("HUD") regulation, then the terms of the Owner-Grantee Agreement shall control.

Section 1.03 Priority of HUD Regulations. It is understood and agreed to by all parties to this Lease that during the Project Term (hereinafter defined), the housing project shall be completed and operated in accordance with all applicable HUD regulations. In the event that a dispute should arise regarding any provision of this Lease, the applicable HUD regulation shall control. In addition, should any term of this Lease or any other agreement between parties, either written or oral, conflict with any applicable HUD regulation, the HUD regulation shall control.

## ARTICLE II

Term

Section 2.01 Effective Date. This Lease shall become effective when duly executed by Lessor and Lessee upon the date Lessor executes this Lease ("Effective Date"). \*

611762

OFF REC 1109 PAGE 0415

Section 2.02 Initial Term. The initial term of this Lease shall commence on the Effective Date and shall expire ninety-nine (99) years after the Effective Date, unless sooner terminated as provided herein ("Demised Term").

### ARTICLE III

#### Rent

Section 3.01 Lump Sum Rent. Lessee covenants and agrees to pay to Lessor as lump sum rent on the closing of the HDG awarded to the City of Key West for the Project the sum of Six Hundred Fifty Thousand Dollars (\$650,000.00).

Section 3.02 Base Rent. Lessee covenants and agrees to pay to Lessor beginning on the fifteenth (15th) day of the seventeenth (17th) month following the date the Building Department for the City of Key West issues a Certificate of Occupancy for the residential building to be constructed by Lessee on the Demised Premises and annually thereafter for the Demised Term, the Base Rent, without any setoffs or deductions whatsoever.

The Base Rent for years one (1) through five (5) shall be Ten Thousand Dollars (\$10,000.00) per year and shall be paid from the Residual Receipts. Residual Receipts is defined as that portion of the Gross Income (hereinafter defined) received from the Demised Premises for the preceding year after payment of (i) the debt secured by the first position mortgage, the S.A.I.L. second mortgage and the Affordable Demonstration Loan third mortgage, placed on Lessee's leasehold interest in the Demised Premises, the amount, terms and form of which debt instruments and mortgages shall be expressly approved by Lessor, pursuant to HUD requirements, prior to entering into same and (ii) the actual operating expenses of the Demised Premises to be approved by Lessor as per HUD guidelines and standard local business practice. Pursuant to the terms of the Second Article, III, of Attachment A to the Owner-Grantee Agreement, Lessor shall not unreasonably withhold or delay the above-referenced approvals.

The Base Rent for years six (6) through the end of the Project Term shall be Twenty Thousand Dollars (\$20,000.00) per year. Project Term is defined as that period of time beginning on the date the Building Department for the City of Key West issues a Certificate of Occupancy for the residential building to be constructed by Lessee on the Demised Premises and continuing thereafter for twenty five (25) years, unless a different period is required by HUD, in which event the term shall run until such date.

The Base Rent for the year beginning the day following the expiration of the Project Term and continuing annually thereafter for the remainder of the Demised Term shall be in an amount equal to the sum of Twenty Thousand Dollars (\$20,000.00) plus the average Percentage Rent (hereinafter defined) paid during the last ten (10) years of the Project Term.

Section 3.03 Percentage Rent. In addition to payment of the Base Rent as set forth hereinabove, Lessee shall pay Lessor beginning on the fifteenth (15th) day of the thirty-sixth (36th) month following the date the Building Department for the City of Key West issues a Certificate of Occupancy for the residential building to be constructed by Lessee on the Demised Premises and continuing annually thereafter within thirty (30) days after the expiration of each lease year until the expiration of the Demised

Term, without any setoffs or deductions whatsoever, Percentage Rent.

The Percentage Rent for the first year such rent is due as set forth in the preceding sentence through the expiration of the Project Term, shall be equal to fifty percent (50%) of the Net Residual Receipts received from the Demised Premises. Net Residual Receipts is defined as that amount of the Residual Receipts remaining after payment of the Base Rent, less a preferred return to Lessee equal to twelve percent (12%) per annum of the actual equity dollars invested in the Project as defined by HUD, by Lessee, which return however shall not exceed Seventy Two Thousand Dollars (\$72,000.00), unless expressly approved in writing by Lessor, which approval shall not be unreasonably withheld, less payments on those debts secured by those mortgages in the fifth and latter positions placed on Lessee's leasehold interest in the Demised Premises, the amounts, terms and forms of which debt instruments and mortgages shall be expressly approved by Lessor which approval shall not be unreasonably withheld or delayed, but before federal income taxes. In the event there are not sufficient Residual Receipts from which to pay the above-referenced preferred return, then such preferred return shall accumulate and become due and payable the first year that there are sufficient Residual Receipts.

The Percentage Rent for the year beginning the day following the expiration of the Project Term and continuing annually thereafter for the remainder of the Demised Term, shall be in an amount equal to the difference, if any, between five percent (5%) of the Gross Income (hereinafter defined) received from the Demised Premises for the lease year just concluded and the Base Rent paid for that lease year.

Percentage Rent shall be considered Additional Rent (hereinafter defined) under this Lease. It is the intent of the parties hereto that the Percentage Rent is to be based upon all rent generated from the Demised Premises, including rents which are paid to Lessee pursuant to a lawful lease, and Lessee further agrees that any subleases or assignments are to be at "arms length" for full and adequate consideration with regard to these terms and conditions.

**Section 3.04 Monies to Develop the Community Center Improvements.** Pursuant to the terms of the Owner-Grantee Agreement, Lessee shall develop the community center phase of the Project and shall bear all costs of said development. Lessee covenants and agrees to pay all such costs in a timely manner and as same become due. Lessee's payment of same shall be considered Additional Rent hereunder. Thus the failure of Lessee to pay all such costs as they come due shall constitute a Default in the payment of rent under the terms of this Lease.

**Section 3.05 Payment in Lieu of Real Property Taxes.** Lessee shall pay to Lessor as Additional Rent each year of this Lease commencing on the Effective Date of this Lease, within fifteen (15) days of receipt of a bill for same, a payment in lieu of real property taxes equal to the assessed value of the Demised Premises multiplied by the millage of the City of Key West, based upon the real property being assessed by the Monroe County property appraiser as if it were owned in fee simple by Lessee. This assessment will take into account the use to which the Demised Premises are put. In the event the Demised Premises becomes subject to real estate taxes in the future (i.e. it is no longer owned by Lessor or if property owned by governmental bodies such as Lessor and leased to private persons become subject to taxation) then Lessee shall be responsible for the payment of such taxes in lieu of payment under this Section. In such event, the provisions of Article IV hereof shall apply.

**Section 3.06 Additional Rent.** All monies to be paid by Lessee under the terms hereof, with the exception of Base Rent, shall be considered Additional Rent, including, but not limited to,

Percentage Rent, payments in lieu of real property taxes as set forth in Section 3.05 hereinabove, all other taxes to be paid by Lessee under Article IV of this Lease and all monies to be paid to develop the community center phase of the Project as set forth in Section 3.04 hereinabove. Lessor shall have the same rights and remedies upon Lessee's failure to pay the Additional Rent as Lessor has for the non-payment of the Base Rent. Lessor, at its election, shall have the right, but not the obligation, to pay for or perform any act which requires the expenditure of any sums of money by reason of the failure or neglect of Lessee to perform any of the provisions of this Lease within the time period applicable thereto. In the event Lessor shall elect to pay such sums or perform such acts requiring the expenditure of monies, Lessee agrees to reimburse and pay Lessor, upon demand, all such sums, which shall be deemed for the purpose of securing the collection thereof to be Additional Rent hereunder and payable by Lessee as such.

Section 3.07 Definition of Gross Income. Gross Income shall mean all monies payable to or value received by Lessee arising out of or relating to the use, occupation or operation of the Demised Premises or any improvements located thereon, including but not limited to, monies or other value received from subtenants or any other source, including by any business or enterprise operated thereon except as set forth hereinbelow. Gross income shall not include:

- (a) The utility charges segregated in any sublease from the rent payable thereunder and paid to Lessee as a reimbursement for the supplying of utilities to such subtenant;
- (b) Proceeds of insurance if used to restore or repair the Demised Premises as set forth in Section 8.02 hereof;
- (c) Proceeds of condemnation;
- (d) Actual refunds or credits to tenants for overpayment of rent;
- (e) Security deposits and other refundable deposits which are held by Lessee in separate accounts and have not been taken into income by Lessee;
- (f) The amount which Lessee is reimbursed by subtenants for attorneys' fees and accounting fees payable to third parties incurred in connection with the collection of delinquent rent only to the extent that said delinquent rent and said fees are collected;
- (g) The amounts which Lessee is reimbursed by subtenants for ad valorem real property taxes and governmental assessments;
- (h) Any monies received by Lessee from any coin operated machines placed on the Demised Premises such as laundry machines, snack machines and cigarette machines;
- (i) Any late charges received by Lessee from any subtenant; and
- (j) Any monies received by Lessee from any subtenant for damage caused by said subtenant to their rental unit or any other part of the Demised Premises; provided all of such monies are used by Lessee to restore the damage.

Section 3.08 Statements of Receipts and Disbursements. On or before the twentieth (20th) day of each calendar month, commencing the calendar month following the Effective Date, Lessee shall furnish to Lessor a statement of receipts and disbursements for the preceding month indicating the Gross Income received from the Demised Premises, through rentals and otherwise, Residual Receipts, Net Residual Receipts, and all payments made and expenses, disbursements and charges incurred in connection with the construction, operation, management or



maintenance of or otherwise in connection with the Demised Premises and in accordance with the terms of the Owner-Grantee Agreement.

**Section 3.09 Financial Reporting.** Within ninety (90) days following the end of each lease year, Lessee shall furnish Lessor with an itemized and detailed statement, to be certified as correct by the employee of Lessee authorized so to certify, which shall set forth the Gross Income, Residual Receipts, Net Residual Receipts received from the Demised Premises and all payments made, charges, expenses, disbursements incurred in connection with the construction, operation, management, maintenance of or otherwise in connection with the Demised Premises for the year just concluded. Each statement shall also show an itemization of all claimed exclusions from Gross Income. In the event the amount owed by Lessee to Lessor hereunder as shown thereby, is more than that paid to Lessor as Base Rent and/or Percentage Rent for said year, then, with the delivery of such statement, Lessee shall pay to Lessor the difference owed to Lessor. In the event the amount owed by Lessee to Lessor hereunder as shown thereby, is less than that paid to Lessor as Base Rent and/or Percentage Rent for said year, then, within fifteen (15) days of the delivery of such statement Lessor shall refund to Lessee the difference.

**Section 3.10 Books and Records.** Lessee shall keep full, accurate, complete and proper books, records and accounts of the Gross Income, Residual Receipts, Net Residual Receipts, for cash and on credit, received from the Demised Premises, and all payments, charges, expenses, disbursements and other monies paid out, charges and accounts, incurred in connection with the Demised Premises in a form agreeable to Lessor at its offices located at 115 Inlet Way, Palm Beach Shores, Florida or at such other address as Lessee may designate in writing to Lessor; such books, records, and accounts shall be kept and maintained, properly added and totalled for a period of three (3) years after the end of each lease year and shall, at all reasonable times, be open to the inspection of Lessor, Lessor's auditor, or other authorized representative or agent of Lessor. The books and records pertaining to any particular lease year may be moved to another location within the continental limits of the United States two (2) years following the conclusion of that particular lease year provided Lessee notifies Lessor of such proposed change in location in writing at least thirty (30) days prior to moving same.

**Section 3.11 Right to Audit.** For the purpose of enabling Lessor to check the accuracy of any such statements, and the sufficiency of any rental payment made in accordance therewith, Lessee shall, for a period of three (3) years after submission to Lessor of any such statement, keep safe and intact of all Lessee's records, books, accounts and other data which in any way bear on Lessee's Gross Income and any authorized deductions therefrom as shown by any such statement and shall, upon thirty (30) days written request, make the same available to Lessor in Key West, Florida, Lessor's auditor, representative or agent for examination at any time during such three (3) year period. If Lessor shall contend that an error may exist with respect to Lessee's books, records, paper or files and shall notify Lessee thereof before the end of such three (3) year period, then such period shall be extended until Lessor's contention has been finally determined.

At any time during said three (3) year period, Lessor shall have the right to inspect and cause an audit to be made of Lessee's books and records and all other papers and files by an auditor of Lessor's own selection. Any such inspection shall be conducted during regular business hours. If any audit reveals a discrepancy of three percent (3%) or more from the statements previously furnished by Lessee to Lessor then Lessee shall immediately pay the cost of such audit as well as the additional monies therein

shown to be payable by Lessee to Lessor; otherwise, the cost of such audit shall be paid by Lessor.

The acceptance by Lessor of any money paid to it by Lessee as Base Rent or Additional Rent for the Demised Premises as shown by any statement furnished by Lessee shall not be deemed an admission of the accuracy of the statement, or of the sufficiency of the amount of rental payment, but Lessor shall be entitled, at any time within three (3) years after the receipt of any such rental payment, to question the sufficiency of the amount thereof and the accuracy of the statements furnished by Lessee to justify the same.

**Section 3.12 No Partnership.** Base Rent and Percentage Rent shall be deemed and considered as part of the rental of the Demised Premises, and it is expressly understood by the parties hereto that said provision is strictly for payments only, and in no way shall be considered or construed as creating the legal relation of a partnership, or joint venture or other form of joint association between Lessee and Lessor. It is further expressly understood that Lessor is in no way responsible for any losses that Lessee may sustain at any time.

**Section 3.13 Legal, Tender and Place of Payment.** All amounts payable to Lessor under Section 3.01, 3.02, 3.03, 3.04, 3.05 and 3.06 hereof, shall be payable in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, and each payment to be paid to Lessor at 1400 Kennedy Drive, Key West, Florida 33040, or at such other place within the continental limits of the United States as Lessor shall from time to time designate by notice to Lessee.

**Section 3.14 Net Lease.** It is intended that the rent provided for in this Lease shall be absolutely net to Lessor throughout the Demised Term, free of any taxes, costs, utilities, insurance expenses, obligations charges or other deductions whatsoever, with respect to the Demised Premises and/or the ownership, leasing, operation, maintenance, repair, rebuilding, use or occupation thereof or any improvements thereon.

**Section 3.15 Failure to Operate.** In the event Lessee abandons the Demised Premises or the residential building to be constructed by Lessee on the Demised Premises then Lessee shall pay to Lessor an amount equal to the Base Rent and the Percentage Rent paid during the year immediately preceding for any period in which the Demised Premises are abandoned or in which Lessee fails to substantially operate the residential building. Lessee shall also, in such event, continue to pay all other Additional Rent. In the event, Lessee abandons the Demised Premises or fails to operate substantially the building thereon for a period of two (2) consecutive years, such will be considered a Default under Article XIII herein.

**Section 3.16 Lessee's Default.** All payments, including Base Rent and Additional Rent, are due and must be received on the date for payment set forth herein. Failure of Lessor to receive same on the date same are due, shall constitute a default under Article XIII hereof by Lessee. All amounts payable by Lessee to Lessor under any of the provisions of this Lease, if not paid within fifteen (15) days of the date when due as provided for in this Lease, shall bear interest at twelve percent (12%) per annum or the highest rate allowed under Florida law whichever is less, from the date same was due until paid in full by Lessee.

## ARTICLE IV

Payment of Taxes

## Section 4.01 Other Taxes, Assessments and Charges.

(a) In addition to the payments to be made to Lessor in lieu of property taxes, Lessee shall pay, before any fine, penalty, interest, or cost may be added, or become due or be imposed for nonpayment thereof, all other taxes, including any applicable use or sales tax attributable to the Base Rent and Percentage Rent provided for hereunder, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, including all solid waste charges and assessments, excises, levies, licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, or any kind and nature, whatsoever, which, at any time after the date possession is delivered to Lessee and continuing throughout the term of this Lease, may be assessed, levied, confirmed, imposed upon, or become due and payable out of or in respect of, or become a lien on, the Demised Premises, or any improvements and tangible personal property thereon, or any part thereof or any appurtenance thereto, or otherwise arising out of the rent and income received by Lessee from subtenants, any use or occupation of the Demised Premises, or any document to which Lessee is a party creating or transferring an interest or estate in the Demised Premises.

(b) Lessee shall pay the other taxes, assessments and charges as enumerated in this Section and shall deliver official receipts evidencing such payment to Lessor within ten (10) days of request by Lessor for said receipts, which payment of taxes shall be made, and the receipts delivered if requested, before the tax, assessment, or charge, becomes delinquent in accordance with the law then in force governing the payment of such tax, assessment or charge. If, however, Lessee desires to protest or contest the validity of any other tax claim, assessment or charge, Lessee may do so at its sole cost and expense and in its own name without being in default hereunder, provided Lessee gives Lessor written notice of Lessee's intention to do so and (i) furnishes Lessor or the applicable governmental agency with a bond made by a surety company qualified to do business in the State of Florida, in an amount equal to one and one half (1-1/2) times the amount of the item or items intended to be contested, conditioned to pay such tax or tax items when the validity thereof shall have been determined, and which written notice and bond shall be given by Lessee to Lessor, not later than thirty (30) days before the tax item or items proposed to be contested would otherwise become delinquent or (ii) places in escrow a sum sufficient to pay the contested item and all penalties, interest owed, charges, costs and expenses which may be assessed against Lessee in connection therewith, or (iii) otherwise contests the validity of any tax or tax claim in the manner proscribed by applicable Florida law. In the event Lessee elects to contest the validity of any tax or tax claim, Lessee shall save Lessor harmless from and against all loss, cost, damage and expense incurred by or imposed upon Lessor as a result thereof.

Section 4.02 Additional Rent. All payments required to be made under this Article are for purposes of this Lease, considered to be Additional Rent in accordance with Section 3.06 hereof.

Section 4.03 Proration. The foregoing notwithstanding, the parties hereto understand and agree that the taxes, and payment in lieu of taxes as set forth in Section 3.05 hereof, for the first year of the Lease shall be prorated so that Lessee pays the taxes for the period of time from the Effective Date through the end of that tax year and for the last year of the Demised Term for the period of time from the beginning of the calendar year through the date this Lease is terminated.

Section 4.04 Real Estate Taxes. In the event the Demised Premises becomes subject to real estate taxes in the future (i.e. it is no longer owned by Lessor or property owned by governmental bodies such as Lessor and leased to private persons becomes subject to taxation) than Lessee shall be responsible for the payment of same. In such event, the provisions of this Article shall apply.

#### ARTICLE V

##### Non-Subordination

Section 5.01 Notwithstanding anything to the contrary contained in this Lease, Lessee shall have no right, power or authority to cause the fee simple interest in the Demised Premises of Lessor to be subordinated to any mortgage, lien or encumbrance of any nature whatsoever, at any time during the term of this Lease.

#### ARTICLE VI

##### Mechanic's Liens

Section 6.01 No Lien. Lessee shall not have the power or right during the term of this Lease, to subject the interest of Lessor in the Demised Premises to any mechanic's or materialmen's lien or liens of any kind, whatsoever.

Section 6.02 Release of Lien. Lessee will not permit or suffer to be filed or claimed against the interest of Lessor in the Demised Premises during the Demised Term of this Lease, any lien or claim of any kind for improvements made by or for Lessee or Lessee's subtenants, successors and/or assigns whether or not such work was done or made in accordance with any agreement between Lessor and Lessee or Lessee's subtenants, successors and/or assigns. If such lien be claimed or filed, it shall be the duty of Lessee, within five (5) days after Lessor shall have been given written notice of such claim and shall have transmitted written notice of the receipt of such claim unto Lessee or within five (5) days of Lessee becoming aware that a lien has been or may be filed, whichever is sooner, to cause the Demised Premises to be released from such claim, either by payment, by the posting of a bond, by the payment to the court of the amount necessary to relieve and release the Demised Premises from such claim, or in any other manner which, as a matter of law, will result, in releasing Lessor and the title of Lessor from such claim; and Lessee covenants and agrees, within such period of fifteen (15) days, to cause the Demised Premises and Lessor's interest therein to be released from the legal effect of such claim. Subject to the foregoing obligation to cause the Demised Premises to be released from such claim, Lessee shall have the right to protest any such claim if Lessee feels such are invalid. Lessee shall notify Lessor in writing within three (3) days after it has learned that a lien has been filed against the Demised Premises.

#### ARTICLE VII

##### Indemnification

Section 7.01 Indemnification by Lessee.

(a) As used in this Article VII "Claims" shall mean any and all claims, suits, proceedings, actions, causes of action, responsibility, liability, demands, judgments and executions.

(b) Lessee hereby indemnifies and agrees to save harmless Lessor from and against all Claims which either (i) arise from or are in connection with the possession, use, operation, maintenance, construction, repair, management or control of the Demised Premises or any portion thereof; (ii) arise from or in connection

with any act or omission of Lessee or Lessee's agents, employees, invitees, licensees, contractors, subcontractors, subtenants, successors and/or assigns; (iii) result from any default, breach, violation or nonperformance of this Lease by Lessee; or (iv) result in injury to person or property or loss of life sustained in or about the Demised Premises, its appurtenances and sidewalks, except for Claims which arise from the willful or grossly negligent acts of Lessor, its agents, employees or officials.

(c) If it becomes necessary for Lessor to defend any Claims(s) seeking to impose any such liability, Lessee will pay Lessor all costs and attorney's fees incurred by Lessor in effecting such defense periodically throughout the defense of such Claim(s), and such other sums which Lessor may be called upon to pay by reason the assertion of such Claim(s).

#### Section 7.02 Indemnification by Lessor.

(a) Lessor hereby indemnifies and agrees to save harmless Lessee from and against all claims which (i) arise from or in connection with any act or omission of Lessor or its employees; or (ii) result from any nonperformance or breach of this Lease by Lessor.

(b) If it becomes necessary for Lessee to defend any Claims(s) seeking to impose any such liability, Lessor will pay Lessee all costs and attorney's fees incurred by Lessee in effecting such defense periodically throughout the defense of such Claim(s), and such other sums which Lessee may be called upon to pay by reason the assertion of such Claim(s).

### ARTICLE VIII

#### Insurance

##### Section 8.01 Public Liability Insurance.

(a) Lessee shall obtain and maintain, at its expense, a policy or policies known as General Comprehensive Public Liability Insurance with respect to the Demised Premises, insuring Lessee, Lessor and any designee of Lessor, as their respective interests may appear, against any and all claims, demands made by any person whomsoever for personal injury, death and/or property damage which arise from any occurrence in, on or about the Demised Premises or any appurtenances or sidewalks of the Demised Premises, or which arises from any of the claims asserted against Lessor for which Lessee is required to indemnify Lessor as set forth in Section 7.01 hereinabove, and for all liability imposed by law.

(b) The coverage limits of the policy shall be at least One Million Dollars (\$1,000,000.00) with respect to any one person, at least Three Million Dollars (\$3,000,000.00) with respect to any one accident, and at least One Million Dollars (\$1,000,000.00) with respect to any property damage.

(c) Such insurance shall specifically insure Lessee against all liability imposed by law and all such policies shall name Lessee and Lessor as their respective interests may appear as insureds under such policies.

##### Section 8.02 Fire and Extended Coverage Insurance.

(a) Lessee will keep insured any and all buildings and improvements upon the Demised Premises insuring Lessee, Lessor and any designee of Lessor, as their respective interests may appear, against all loss or damage by fire, windstorm, flood, lightning, hurricane, hail, riot, civil commotion, vandalism and other contingencies and casualties, together with "extended coverage" which said insurance will be maintained in an amount which will be sufficient to prevent any party in interest from

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being or becoming a co-insurer on any part of the risk and which amount shall not be less than one hundred percent (100%) of the full replacement of the building and improvements.

(b) In the event of destruction of the buildings or improvements upon the Demised Premises or any part thereof by fire, windstorm, or other casualty for which insurance shall be payable and as often as such insurance money shall have been paid to Lessor and Lessee, all proceeds so paid shall be deposited in a joint account of Lessor and Lessee in a bank located in the City of Key West designated by Lessor, and shall be made available to Lessee for the construction or repair, as the case may be, of any building, buildings or improvements, damaged or destroyed by fire, windstorm, or other, casualty for which insurance money shall be payable. All such proceeds shall be paid out by Lessor and Lessee from said joint account from time to time on the estimate of any reliable architect licensed in the State of Florida having jurisdiction over such reconstruction and repair, certifying that the amount of such estimate is being applied to the payment of the reconstruction or repair and at a reasonable cost therefore provided, however, that the total amount of money necessary for the reconstruction or repair of any building, buildings or improvements destroyed or injured has been used by Lessee for such purpose and its application for such purpose assured.

(c) In the event of the destruction or damage of the buildings and improvements upon the Demised Premises or any part thereof, and as often as any building or improvement on the Demised Premises shall be destroyed or damaged by fire, windstorm, or other casualty, Lessee shall promptly rebuild and repair the same to the same or greater total square footage that existed prior to the damage and in such manner that the building or improvement so rebuilt and repaired, and the personal property so replaced or repaired, shall be of the same or higher value as the said building or improvement and the personal property upon the Demised Premises prior to such damage or destruction, and shall have the same rebuilt and ready for occupancy within fifteen (15) months from the time when the loss or destruction occurred. The fifteen (15) month period for reconstruction shall be enlarged, if necessary as a result of delays caused, without fault or neglect on the part of Lessee, by act of God, strikes, lockouts, or other conditions, other than matters of refinancing the property, which are beyond Lessee's control.

(d) All insurance proceeds received by Lessee or Lessor under the terms of this Section 8.02, shall be applied solely to the repair and replacement of the building or improvement so damaged or destroyed.

**Section 8.03 Workmen's Compensation, Rent Loss Insurance and other Insurance.** Lessee shall maintain (i) Workmen's Compensation Insurance as required by all applicable federal, state, local or other laws including employer's liability with a limit of at least Five Hundred Thousand (\$500,000.00); (ii) Rent Loss Insurance, insuring Lessee and Lessor against loss of rent in the event of a fire or other catastrophe in the amount of twelve (12) months gross rent or the maximum available at the time coverage is to be obtained, not to exceed twelve (12) months; and (iii) such other insurance as is reasonably required by Lessor or as required by a leasehold mortgage of Lessee.

**Section 8.04 Insuring Unfinished Improvements.** Lessee shall maintain insurance insuring Lessee and Lessor for damage to all unfinished buildings and improvements caused by the elements listed in Section 8.02(a) hereinabove, theft or vandalism for the full replacement value of said unfinished buildings and improvements.

**Section 8.05 General Provisions With Respect to Insurance.**

(a) On or before Lessee enters the Demised Premises for any reason, and before any insurance policy shall expire, Lessee shall deliver to Lessor the insurance policy, or a renewal thereof, or in the case of a renewal, reasonable proof that the policy has been renewed or extended, as the case may be, together with evidence of payment of applicable premiums.

(b) All insurance policies required to be carried under this Lease by or on behalf of Lessee or Lessor shall provide, and any certificate evidencing the existence of any insurance policies, shall certify, that, unless Lessor shall be given thirty (30) days written notice of any cancellation of failure to renew, or material change to, the policies, as the case may be, (i) the insurance shall not be cancelled and shall continue in full force and effect, (ii) the insurance carrier shall not fail to renew the insurance policies for any reason, and (iii) no material change may be made in an insurance policy. As used in this Lease, the term "insurance policy" shall include any extensions or renewals of an insurance policy.

(c) In the event that either party shall at any time deem the limits of the insurance then carried to be either excessive or insufficient, the parties shall endeavor to agree on the proper and reasonable limits for such insurance carried with the limits thus agreed on until further change pursuant to the provisions of this Section. However, if the parties shall be unable to agree thereon, the proper and reasonable limits for such insurance then to be carried shall be determined in accordance with the rules of the American Arbitration Association. Such determination as to the proper and reasonable limits for such insurance shall be binding on the parties and such insurance shall be carried with the limits as thus determined until such limits shall again be changed pursuant to the provisions of this Section. The expenses of such determination shall be borne equally by the parties.

(d) Lessee shall pay premiums for all of the insurance policies which Lessee is obligated to carry on the Demised Premises under the terms of this Lease. The payment of same shall be considered Additional Rent under Section 3.06 of this Lease.

(e) All insurance required to be maintained by Lessee hereunder shall be insured by financially solvent and responsible Best-rated insurance companies licensed and authorized to do business in the State of Florida and satisfactory to Lessor.

**Section 8.06 Non-Liability of Landlord.** Lessor shall not be responsible or liable to Lessee for any loss or damage caused by the acts or omissions of any persons occupying any space adjacent to or adjoining the Demised Premises.

**Section 8.07 Inability to Perform.**

(a) If Lessor fails to perform any of its obligations under this Lease as a result of force majeure, Lessor shall not be liable for loss or damage caused as a result of such failure to perform and Lessee shall not be released from any of its obligations under this Lease.

(b) If Lessor is delayed or prevented from performing any of its obligations as a result of force majeure, the period of delay or prevention shall be added to the time herein provided for the performance of any such obligation.

(c) In the event there is a change in the insurance industry in the United States such that the insurance which Lessee is required to maintain under this Article is not obtainable by Lessee except at excessively high costs, then at such time



Lessor and Lessee shall agree on a reasonable equivalent. If the parties cannot reach an agreement on this matter then such equivalent shall be determined by and in accordance with the rules of the American Arbitration Association, whose decision shall be binding on the parties.

**Section 8.08 Insurance Claims.** No damage or destruction to any buildings or improvements by fire, windstorm, or any other casualty shall be deemed to entitle Lessee to surrender possession of the Demised Premises or to terminate this Lease or to violate any of its provisions or to cause any rebate or reduction in the rent when due or thereafter becoming due under the terms hereof; and if the Lease shall be cancelled for Lessee's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of this Lease, be deemed immediately to become the absolute and unconditional property of Lessor.

#### ARTICLE IX

##### Condemnation

**Section 9.01 Total Permanent Taking.** If the entire Demised Premises shall be permanently taken by the exercise of the right of eminent domain for any public or quasi-public improvement or use, this Lease and the Demised Term hereby granted shall then automatically expire on the date when title to the Demised Premises so taken shall vest in the appropriate authority or on the date when possession is required to be surrendered, whichever is later.

##### **Section 9.02 Partial Taking.**

(a) If so substantial a portion of the Demised Premises or any building or improvement thereon shall be taken so as to render that portion not taken unsuitable and unusable for the purposes to which the Demised Premises shall then be devoted, then Lessee shall have the right to terminate this Lease upon sixty (60) days written notice to Lessor from the date when title to the portion(s) of the Demised Premises so taken shall vest in the appropriate authority or, on the date physical possession is required to be surrendered, whichever is later. If any part of the Demised Premises shall be so taken and the Lease shall not be terminated, as aforesaid, then the Lease and all of the terms and provisions thereof shall continue in full force and effect except to the extent compliance shall be rendered impossible or impracticable by reason of the taking.

(b) If the portion of the Demised Premises so taken does not render the Demised Premises unsuitable and unusable for the purposes to which the Demised Premises were devoted, then this Lease shall continue in full force and effect and Lessee shall continue to comply with Lessee's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the taking.

**Section 9.03 Taking for Temporary Use.** If there is a taking of the Demised Premises for temporary use, this Lease shall continue in full force and effect and Lessee shall continue to comply with Lessee's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the taking.

**Section 9.04 Distribution of Awards.** On such entire taking or substantial partial taking under Section 9.02(a) hereinabove of Lessee's leasehold estate in the Demised Premises, the award of damages for such taking shall be apportioned between the parties on equitable and just principles in accordance with their respective interests and in the following order of priority:



(i) The holder of the mortgage in first position and placed on Lessee's leasehold interest shall be entitled to the award to the extent of the unpaid balance of the mortgage debt.

(ii) In the event there is any excess proceeds remaining, Lessor and Lessee shall share in the excess according to the following formula:

(1) Lessee's interest in the Demised Premises shall be valued based upon the value of its leasehold estate in the Demised Premises and the improvements located thereon, giving due consideration to the number of years remaining in the Demised Term, the condition of the improvements at the time of condemnation and the monies spent by Lessee for the construction of the building and improvements on the Demised Premises.

(2) Lessor's interest in the Demised Premises shall be valued based upon the value of the Demised Premises and the improvements located thereon as encumbered by the leasehold interest of Lessee, giving due consideration for the reversionary value of the Demised Premises and said improvements.

In the event of a partial taking under Section 9.02(a) where Lessee does not elect to terminate the Lease, or under Section 9.02(b) hereinabove or a temporary taking under Section 9.03 hereinabove, then Lessee shall upon the receipt of the award in condemnation, make all necessary repairs or alterations (exclusive of Lessee's trade fixtures, decorations, signs and contents) to restore the portion of the Demised Premises remaining to as near its former condition as the circumstances will permit, and to the building thereon, to the extent necessary to make the portion of the building not so taken a complete architectural unit, provided, however, that Lessor, in any event, shall not be required to spend for such repair and alteration work an amount in excess of the respective amounts received by Lessor as damages for the taking of such part of the Demised Premises and of the building of which it forms a part, and Lessee, at Lessee's expense, shall make all necessary repairs and alterations to Lessee's fixtures, decorations, signs and contents on the Demised Premises.

Section 9.05 Lessee Waiver of Claim. Lessee hereby waives any rights it may have with respect to file a separate claim against the authority taking the Demised Premises.

## ARTICLE X

### Construction

#### Section 10.01 Construction of Improvements.

(a) Lessee shall construct on the Demised Premises (i) a building containing fifty (50) residential units (12-one bedroom units, 25 two-bedroom units, and 13 three-bedroom units), seventeen (17) of which units shall be available for occupancy by lower or very low income households for the Project Term; (ii) limited commercial space to be utilized as agreed upon by Lessor and Lessee; (iii) sufficient parking for subtenants in compliance with parking requirements of the City of Key West; and (iv) related improvements.

(b) Lessee shall have the right to alter or demolish the improvements existing on the Effective Date of this Lease in accordance with the terms of the Owner-Grantee Agreement.

(c) The building and improvements shall be constructed in accordance with the plans and specifications approved by the City

of Key West and Lessor and shall be in accordance with applicable HUD regulations.

#### Section 10.02 Completion of Construction.

(a) Lessee shall use its best efforts to obtain all permits necessary for the construction of the building and improvements on the Demised Premises. Upon obtaining all necessary permits, Lessee shall diligently perform the construction of same or insure that same is diligently performed.

(b) Lessee covenants and agrees that the building and improvements described in Section 10.01 hereinabove shall be substantially completed within twelve (12) months following the start of construction, unless otherwise required by HUD. Substantial Completion shall, at a minimum mean, that (i) Lessee has obtained a final Certificate of Occupancy for the residential building from the Building Department for the City of Key; (ii) Lessee has obtained a Certificate of Substantial Completion from its architect; and (iii) the building shall be available for occupancy with minor, "punch-list" work remaining, which work can be performed without interfering with the use and occupation thereof.

(c) Lessee shall complete all remaining "punch-list" work as quickly as possible thereafter, but in no event more than thirty (30) days after Substantial Completion. If Lessee shall fail to complete same within the thirty (30) day period, except if such failure is due to shortages in materials which is beyond the control of Lessee, however which in no event shall exceed a total of sixty (60) days from Substantial Completion, Lessor may complete the remaining work and charge Lessee for the cost thereof or deduct same from any monies which may be due to Lessee hereunder or under the Owner-Grantee Agreement.

**Section 10.03 Alterations.** Lessee shall have the right to make such alterations and improvements to any building on the Demised Premises which may from time to time be on the Demised Premises as Lessee may deem necessary, or to replace any such building with a new one of at least equal value, provided that, prior to making any structural alterations or improvements or to replacing any such building, Lessee shall:

(a) comply with all of the terms and conditions that were applicable to the construction of the original improvements as set forth in the Owner-Grantee Agreement which Lessee is now proposing to alter, including but not limited to, obtaining all necessary consents from Lessor, the City of Key West and HUD; and provided,

(b) there shall remain for the Project Term a building on the Demised Premises containing at least fifty (50) residential units (i) seventeen (17) of which shall remain occupied or available for occupancy by lower or very low income households and the remaining units as affordable housing such that the total rents charged for same do not exceed the permitted amounts for affordable housing under the Growth Management Ordinance of the City of Key West, or if repealed, its substitute or equivalent, by more than fifteen (15%) percent; and (ii) at the expiration of the Project Term and for so long as determined by the Lessor and Lessee, there shall remain a building on the Demised Premises containing at least fifty (50) residential units all of which shall be maintained as affordable housing within the limits set by the Growth Management Ordinance of the City of Key West or if repealed, its substitute or equivalent, as determined by Lessor and Lessee.

Lessee shall be responsible to insure that all alterations and/or improvements conform to and comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules, regulations and orders.

## ARTICLE XI

Financing

## Section 11.01 Construction and Permanent Financing.

- (a) Lessee shall be responsible to secure all financing necessary for the construction of the building and improvements to be built on the Demised Premises. Lessor agrees to cooperate with Lessee in its endeavor to obtain such financing, provided however that in no event shall Lessor be required to expend any monies or incur any liability in connection therewith. Nor shall Lessor be required to encumber or subordinate its fee interest in the Demised Premises. In connection therewith Lessee shall comply with such terms and conditions as set forth in the Owner-Grantee Agreement.
- (b) In connection with the securing of such financing, Lessee shall have the right to mortgage or otherwise pledge its leasehold interest in the Demised Premises as security for such indebtedness, provided that (i) the debt does not exceed the value of the buildings and improvements; (ii) each debt instrument provides that it shall be paid in full prior to the expiration of the Demised Term; and (iii) Lessee shall obtain the express approval of Lessor prior to executing any documents which may act to encumber the Demised Premises.
- (c) Lessee shall provide Lessor with a certified copy of each mortgage or other document in which the Demised Premises is pledged as security, with the recording information reflected thereon.
- (d) Lessor agrees that when giving notice to Lessee with respect to any default under the provisions of this Lease, Lessor will also serve a copy of such notice upon the leasehold mortgagee.
- (e) In case Lessee shall default under any of the provisions of this Lease, the holder of any mortgage secured by Lessee's interest in the Demised Premises, shall have the right to cure such default whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which Lessee is required to do or perform and Lessor shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by Lessee. The leasehold mortgagee, upon the date of mailing by Lessor of the notice referred to in subparagraph (d) of this Section shall have, in addition to any period of grace extended to Lessee under the terms and conditions of this Lease for a non-monetary default, a period of sixty (60) days within which to cure any non-monetary default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of the Lessee for failure to pay Base Rent, Additional Rent, or failure to pay any amount otherwise required under the terms of this Lease, the leasehold mortgagee shall leave thirty (30) days from the date the notice of default was mailed to the leasehold mortgagee within which to cure such default.
- (f) In the event of the termination of this Lease or of any succeeding Lease made pursuant to the provisions of this Section prior to this stated expiration date, Lessor will enter into a new lease of the Demised Premises with the leasehold mortgagee or, at the request of such leasehold mortgagee, to a corporation formed by or on behalf of such leasehold mortgagee or by or on behalf of the holder of the note secured by the leasehold mortgagee held by such leasehold mortgagee, for the remainder of the term, effective on the date of such termination, at the Base Rent and Additional Rent and upon the covenants, agreements, terms, provisions and limitations contained in this Lease, provided that such leasehold mortgagee makes written request and executes, acknowledges and delivers to Lessor such new lease within thirty

(30) days from the date of such termination and such written request and such new lease is accompanied by payment to Lessor of all amounts then due to Lessor, including reasonable counsel fees, court costs and disbursements incurred by Lessor in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by Lessor subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the rent thereafter becoming due under such new lease. Any new lease referred to in this Section shall not require any execution, acknowledgment or delivery by Lessor in order to become effective as against Lessor and Lessor shall be deemed to have executed, acknowledged and delivered any such new lease immediately upon receipt by Lessor of such new lease accompanied by (i) payment to Lessor of all amounts then due to Lessor of which the leasehold mortgagee shall theretofore have received written notice; and (ii) an agreement by the leasehold mortgagee to pay all other amounts then due to Lessor of which the leasehold mortgagee shall not theretofore have received written notice. In addition, immediately upon receipt by Lessor of such new lease, as provided in this Section, Lessor shall be deemed to have executed, acknowledged and delivered to the leasehold mortgagee an assignment of all subleases covering the Demised Premises which theretofore may have been assigned and transferred to Lessor and all subleases under which subtenants shall be required to attorn to Lessor pursuant to the terms and conditions of such subleases or this Lease. Such assignment by Lessor shall be deemed to be without recourse as against Lessor. Within ten (10) days after a written request therefor by the leasehold mortgagee, such assignment or assignments shall be reduced to a writing in recordable form and executed, acknowledged and delivered by Lessor to the leasehold mortgagee.

(g) The leasehold mortgagee may become the legal owner and holder of this Lease by foreclosure of its mortgage or as a result of the assignment of this Lease in lieu of foreclosure, whereupon such leasehold mortgagee shall immediately become and remain liable under this Lease.

(h) Any leasehold mortgage shall be specifically subject and subordinate to Lessor's rights under this Lease. The sentence immediately preceding shall not be deemed or construed, by implication or otherwise, to impose or establish upon Lessee's interest in this Lease or upon the lien of any leasehold mortgagee the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment, or tax created directly or indirectly by, through or against Lessor or Lessor's interest in this Lease. Despite any provision which is or may appear to be to the contrary in this Lease, under no circumstances whatsoever shall the fee simple title interest of Lessor in the Demised Premises, or any portion thereof, be subordinated to any leasehold mortgage.

(i) It is the intention of Lessor and Lessee in entering into this Lease to create an instrument and an interest in Lessee which is capable of being financed pursuant to a leasehold mortgage. Accordingly, Lessor agrees to cooperate with Lessee during the term of this Lease in obtaining a leasehold mortgage. To this extent, Lessor agrees to not unreasonably withhold its consent to any non-material revisions to this Lease that may be requested by a leasehold mortgagee as an inducement to said leasehold mortgagee for making its leasehold mortgage and execute any lease modification agreements that may be required to reflect such non-material revisions. Notwithstanding the foregoing, it is understood that Lessor shall be under no obligation to change any material or financial terms hereof or to consent to the subordination of Lessor's fee interest.

(j) Lessee understands and acknowledges that it does not have the authority to bind Lessor to any agreement; that Lessor's

express consent is required on any instrument of indebtedness purporting to obligate Lessor to repay any debt, committing the proceeds of the Project or otherwise in any way encumbering the Demised Premises and/or Project.

(k) Lessee shall not enter into any agreement whether verbal or written which is in contravention of the terms of this Lease or of the Owner-Grantee Agreement.

(l) Lessee shall provide copies to Lessor of all documentation received from or sent to any lending institution by Lessee, prior to sending or immediately upon receiving same.

(m) Lessee agrees to obtain from any person or entity with an interest in the leasehold estate conveyed under this Lease, if required by HUD, their agreement in writing to maintain the Project as low income housing in accordance with the Housing Development Grant regulations promulgated by HUD and the Owner-Grantee Agreement throughout the Project Term, in the event of foreclosure.

**Section 11.02 Refinancing.** In the event Lessee elects to refinance its interest in the Demised Premises during the Project Term in excess of the original debt and/or mortgage amounts, Lessee must, prior to executing any instrument in connection with such refinancing, including an application to any lending institution or other lender, obtain the written consent of Lessor, and, if required by HUD, the consent of HUD. Lessor shall not unreasonably withhold such consent if the Base Rent and Additional Rent received by it shall not be altered or in any way diminished or affected thereby or if such the proceeds of such refinancing are needed to make necessary improvements to the Demised Premises and/or the building(s) constructed thereon. In the event Lessee does elect to so refinance, all of the terms of this Section 11.01 hereinabove shall apply.

## ARTICLE XII

### Repair Obligations

#### Section 12.01

(a) During the Demised Term, Lessee will keep in good state of repair and in first class condition (it being understood that "first class condition" shall be deemed to be in comparison to other improvements of similar age and design located in the City of Key West, Florida) any and all buildings, fixtures, and equipment which are brought or constructed or placed upon the Demised Premises by Lessee, nor will Lessee suffer or permit any strip, waste, or neglect of any building or other property to be committed, and that Lessee will repair, replace and renovate such property as often as it may be necessary in order to keep the improvements and other property which is the subject matter of this Lease in first class repair and condition.

(b) Lessee shall maintain in good state of repair, replacement and in first-class condition, the common areas of and utilities on the Demised Premises and the interior and exterior of the building(s) constructed thereon, which shall include, without limiting the generality of the foregoing, the obligation to maintain, paint, clean, inspect and illuminate same, to remove all conditions that interfere with the proper use of same, and to keep all of the facilities on the Demised Premises which are available to the subtenants, including but not limited to, the laundry facilities, in good working order.

(c) Lessee shall make all necessary structural repairs to the roof, foundation, exterior walls and interior walls of the building(s) constructed on the Demised Premises.



(d) Lessee shall make all necessary repairs to, and replace when necessary, any and all appliances, windows, fixtures and appurtenances located on the Demised Premises.

(e) Lessee shall make all necessary repairs to, and replace when necessary, any and all pipes, plumbing, lines, ducts, wires and conduits located on the Demised Premises.

(f) Lessee shall keep the Demised Premises and the building(s) located thereon free of vermin and in a clean and sanitary condition.

#### ARTICLE XIII

##### Failure to Perform Defaults, Remedies

###### Section 13.01 Defaults, Conditional Limitation.

(a) Each of the following events shall constitute a Default:

(i) If an event of insolvency should occur; each of the following events shall be regarded as events of insolvency:

(1) If Lessee shall make an assignment for the benefit of creditors.

(2) If Lessee shall file or acquiesce to a petition in any court (whether or not pursuant to any statute of the United States or of any state) in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings.

(3) If Lessee shall make an application in any such proceedings for, or acquiesce to, the appointment of a trustee or receiver for it or all or any portion of its property.

(4) If any petition shall be filed against Lessee to which it does not acquiesce, in any court (whether or not pursuant to any statute of the United States or any state) in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and the proceedings shall not be dismissed, discontinued or vacated within thirty (30) days.

(5) If Lessee shall be adjudicated a bankrupt, or if any petition referred in clause (4) shall be approved by any court.

(6) If, any proceeding pursuant to the application of any person other than Lessee to which it does not acquiesce, a receiver or trustee shall be appointed for Lessee, or for all or any portion of the property of Lessee, and the receivership or trusteeship shall not be set aside within thirty (30) days after such appointment.

(ii) If Lessee's interest in this Lease is assigned by operation of law.

(iii) If Lessee shall refuse to take possession of the Demised Premises or shall permit the Demised Premises to remain unoccupied and unattended.

(iv) If Lessee shall fail to perform its obligations under, or fail to observe, Article VI "Mechanic's Liens", Article VIII "Insurance", Article X "Construction", Article XI "Financing", Article XII "Repair" and Article XXII "Assignment".

(v) If Lessee shall fail to pay any installment of Base Rent, Additional Rent, or any other charge required to be paid by Lessee under this Lease when the same shall become due and payable.

(vi) If Lessee shall fail to perform or observe any of its other obligations under this Lease .

(vii) If Lessee commits a Substantive Violation as defined by HUD under the terms of the Owner-Grantee Agreement, the Grant Agreement defined therein, or related agreements.

(viii) If Lessee commits a material default under the Owner-Grantee Agreement.

(ix) If Lessee shall fail to tender any monies due under the Two Million, Two Hundred Thirty-Three Thousand, Six Hundred Thirty-Five Dollar (\$2,233,635.00) loan made by the City of Key West to Lessee in connection with the Project the terms of which loan shall be set forth in a promissory note to be executed by Lessee to the City of Key West in accordance with the terms set forth in the First Article, III, of Attachment A to the Owner-Grantee Agreement, which debt is to be secured by a mortgage on Lessee's leasehold interest in the Demised Premises. Such promissory note shall provide that if at the expiration of the Project Term, Lessee has fully complied with all applicable HDG and HUD regulations and is not in default under the terms of this Lease then Lessor shall, be required only to repay a total of One Million, One Hundred Sixteen Thousand, Eight Hundred Eighteen Dollars (\$1,116,818.00), with credit being given for all Base Rent and Percentage Rent paid hereunder.

(b) In the event of a Default by Lessee hereunder for failure to tender Base Rent or Additional Rent as same become due, Lessor shall provide written notice to Lessee of said Default. Lessee shall then have five (5) days from its receipt of the notice to cure such Default.

(c) In the event of a Default by Lessee hereunder, other than for failure to tender Base Rent or Additional Rent, Lessee shall have the right to cure such Default within twenty (20) days after written notice thereof unless, despite good faith and due diligence by Lessee, Lessee is prevented from curing the Default within said twenty (20) day period due to causes beyond the reasonable control of Lessee, in which event the curative period shall be extended for such time as Lessee is prevented from curing the Default. Once such cause is removed, the time period shall continue to run.

(d) If Lessee shall fail to cure a Default within the prescribed time period then, at the expiration of said period, all of the right, title and interest of Lessee under this Lease shall terminate however, such shall not operate as a termination of Lessee's liabilities under this Lease. Lessee shall then quit and surrender possession of the Demised Premises to Lessor. Lessor shall then have the option to terminate the Lease, thereby terminating Lessee's further liability under the Lease. Lessor shall provide written notice to Lessee of its election to terminate or not terminate the Lease; if Lessor elects not to terminate the Lease, then Lessee's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, and notwithstanding any re-entry, repossession or dispossession under Section 13.02.

Section 13.02. Lessor's Re-entry. If Lessee shall be in Default under this Lease and shall fail to cure same within the provided curative period, Lessor or its agents or employees may immediately or any time thereafter re-enter the Demised Premises and remove Lessee, Lessee's agents, any subtenants, any licensees, any concessionaires and any invitees, and any of its or their property from the Demised Premises. Re-entry and

removal may be effectuated by summary dispossession proceedings, by any suitable action or proceeding at law, by force, or otherwise such action shall not be considered a termination of the Lease unless and until Lessor has formally declared in writing signed by Lessor that the Lease is terminated. If Lessee shall be in Default and shall fail to cure same, Lessor may repossess and enjoy the Demised Premises. Lessor shall be entitled to the benefits of all provisions of law respecting the speedy recovery of lands and tenements held over by Lessee or proceedings in forceable entry and detainer. Lessor shall not be liable in any way in connection with any action it takes pursuant to this Section. Lessee's liability shall survive Lessor's re-entry, the institution of summary proceedings, and the issuance of any warrants with respect thereto.

### Section 13.03 Deficiency.

(a) (i) If Lessee shall be in Default under Section 13.01(a) and Lessor does not elect to terminate the Lease under Section 13.01(b), Lessee shall remain liable for accrued liabilities to the extent legally permissible, for the Base Rent, Additional Rent and all other charges Lessee would have been required to pay, until the date this Lease would have expired had such cancellation not occurred. Lessee's liability for Base Rent and Additional Rent shall continue notwithstanding re-entry, repossession or relet of the Demised Premises by Lessor.

(ii) If Lessee shall be in Default under Section 13.01(a) and Lessor does not elect to terminate the Lease under Section 13.01(b), Lessee shall pay Lessor annually, the difference between the sum of the Base Rent, Additional Rent and the expenses to which Lessor may be put in re-entering the Demised Premises, repossessing the Demised Premises, making good any Default of Lessee, painting, altering or dividing the Demised Premises, putting the Demised Premises in proper repair, protecting and preserving the Demised Premises by placing watchmen and caretakers thereon, reletting the Demised Premises (including reasonable attorney's fees and disbursements, and brokerage fees, in so doing) and any other reasonable expenses which Lessor may incur during the occupancy of any new tenant, minus (ii) the proceeds of any reletting.

(iii) At the end of each lease year, Lessor shall give written notice to Lessee of the sum owed by Lessee under Section 13.03(a)(ii) for that year. Lessee agrees to pay the sum owed within thirty (30) days of the date of Lessor's notice to Lessee that said sum is due. Each payment shall be made to Lessor at Lessor's notice address or such other address as Lessor may designate by giving notice to Lessee. Any suit brought by Lessor to enforce collection of said monies for any one month shall not prejudice Lessor's right to enforce the collection of monies owed for any subsequent month.

(iv) In addition to the foregoing, Lessee shall pay to Lessor such sums as the court which has jurisdiction thereover may adjudge as reasonable attorney's fees with respect to any successful lawsuit or action instituted by Lessor to enforce the provisions of this Lease.

(v) In the event Lessor does not elect to terminate the Lease in the event of a Default by Lessee and Lessor relets the Demised Premises, Lessee shall be entitled to receive any Net Residual Receipts which may be remaining after payment to Lessor of the Percentage Rent due Lessor, after Lessor is reimbursed for all monies which may also be owed to Lessor such as past due rent and those monies to be paid to Lessor as set forth in Section 13.03(a)(ii) hereinabove.



(b) Lessor shall use reasonable efforts to attempt to relet all or any part of the Demised Premises for all or any part of the unexpired portion of the term of this Lease or for any longer period. Lessor may accept any reasonable rental then obtainable; grant any reasonable concessions of rent; and agree to paint or make any special repairs, alterations, and decorations for any new tenant as it may deem advisable in its sole and absolute discretion.

**Section 13.04 Percentage Rent After a Default.** For the purpose of computing Percentage Rent after a Default, Gross Income within any Lease Year shall be deemed to be the average of Lessee's Gross Income during all of the five (5) lease years preceding the lease year in which the Default occurred.

**Section 13.05 Waiver of Right of Redemption.** Lessee hereby waives, to the extent legally permissible, for itself and all persons claiming by, through, or under it, any right of redemption or for the restoration of the operation of this Lease under any present or future law in case Lessee shall be dispossessed for any cause, or in case Lessor shall obtain possession of the Demised Premises as herein provided.

**Section 13.06 Waiver of Trial by Jury.** Lessee and Lessor hereby waive all right to trial by jury in any claim, action, proceeding or counterclaim by either Lessor or Lessee against each other on any matters arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee, and/or Lessee's use or occupancy of the Demised Premises.

**Section 13.07 Lessor's Right to Perform for Account of Lessee.**

(a) If any monies are due and owing to someone other than Lessor, then Lessor may, upon five (5) days written notice to Lessee, which may be prior to a Default by Lessee, pay the same and the amount and expenses which have been reasonably incurred because of or in connection with such payments, together with interest on all such amounts, at the highest rate allowed by law shall be repaid by Lessee to Lessor, upon the demand of Lessor, within five (5) days of the date Lessor demands repayment thereof or reimbursement therefor of and from Lessee; but the election of Lessor to pay such taxes shall not waive the Default thus committed by Lessee.

(b) If Lessee shall be in Default under this Lease and Lessee has failed to cure said Default, Lessor may cure the Default for the account and at the expense of Lessee. If Lessor cures a Default on the part of Lessee, Lessee shall reimburse Lessor for any amount expended by Lessor in connection with the cure, including reasonable attorneys fees, penalties and any other expenses incurred by Lessor.

(c) In the event either is forced to bring an action arising out of this Section, the terms of Section 23.02 hereof shall apply.

(d) Lessor shall also be entitled to interest at the maximum legal rate on the amount specified in subsections (a), (b) and (c) from the date the expense is incurred to the date of reimbursement.

(e) The amounts specified in subsections (a), (b), (c) and (d) shall be deemed to be Additional Rent.

**Section 13.08 Additional Remedies, Waivers, Etc.**

(a) The rights and remedies of Lessor set forth herein shall be in addition to any other right and remedy now and hereafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. Lessor may exercise its rights and remedies at any times, in any order, to any extent, and as often as Lessor deems advisable without regard to whether the exercise

of one right or remedy, precedes, concurs with or succeeds the exercise of another.

(b) A single or partial exercise of a right or remedy shall not preclude a further exercise thereof, or the exercise of another right or remedy from time to time.

(c) No delay or omission by Lessor in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a Default.

(d) No waiver of a Default shall extend to or affect any other Default or impair any right or remedy with respect thereto.

(e) No action or inaction by Lessor shall constitute a waiver of a Default.

(f) No waiver of a Default shall be effective unless it is in writing.

#### Section 13.09 Distraint.

(a) If Lessee shall be in Default under this Lease, the following shall apply: To the extent permitted by law, Lessor shall have a right of distress for rent and a lien on all of Lessee's fixtures, merchandise and equipment in the Demised Premises as security for rent and all other charges payable under this Lease. The right of distress shall be in addition to all other rights which Lessor may have if Lessee shall be in Default. Lessee pledges with, and assigns to, Lessor all of the rents, issues, and profits which might otherwise accrue to Lessee for the use, enjoyment, and operation of the Demised Premises and, in connection with such pledging of the rents, Lessee covenants and agrees with Lessor that if Lessor, upon the Default of Lessee, elects to, file suit in chancery to enforce the Lease and protect Lessor's rights, then Lessor may, as ancillary to such suit, apply to any court having jurisdiction thereof for the appointment of a receiver of all and singular the Demised Premises, the improvements, and buildings located thereon; and, thereupon, it is expressly covenanted and agreed that the court shall, forthwith, appoint a receiver with the usual powers and duties of receivers in like cases, and such appointment shall be made by such court as a matter of strict right to Lessor and without reference to the adequacy or inadequacy of the value of the property, which is subject to the Landlord's lien, or to the solvency or insolvency of Lessee and without reference to the commission of waste. Nothing in this Section contained shall be construed as empowering Lessor to collect rents accruing from the Demised Premises, unless and until Lessee is in Default.

(b) Lessor agrees to waive this lien if so required by the holder of any Leasehold Mortgage in order for Lessee to secure the financing referred to in Article XI hereof.

#### ARTICLE XIV

##### Additional Covenants of Lessee

Section 14.01 Permitted Use. Lessee covenants and agrees, warrants and represents that the Demised Premises shall be used, maintained and managed in accordance with the terms of the Owner-Grantee Agreement and contain a low income housing project to be constructed by Lessee, which shall consist of a building containing fifty (50) residential units (12 one-bedroom units, 25 two-bedroom units, and 13 three-bedroom units), seventeen (17) of which units shall be available for occupancy by lower or very low income households for a period of not less than the Project Term, shall contain limited commercial space to be utilized as agreed upon by Lessor and Lessee and shall contain sufficient parking for tenants in compliance with parking requirement of the City of Key West.

Section 14.02 Maintenance as Rental Property. The residential building to be constructed by Lessee on the Demised Premises referred to in Section 14.01 herein, shall be maintained as affordable rental housing in accordance with the terms of the Owner-Grantee Agreement. Lessee shall not be permitted to convert any units in the said building to condominium or cooperative ownership or to any other form of ownership. It is the intention of Lessee to request that Lessor sell its interest in the Demised Premises to Lessee at the expiration of the Project Term. Lessee understands and acknowledges that Lessor has not agreed or disagreed to sell its interest to Lessee at such time.

Section 14.03 Re-examination of Income. Lessee shall re-examine the household income of all subtenants at the expiration of each subtenant's lease period during the Project Term. In the event that the re-examination indicates that the subtenant no longer qualifies as a lower income household as defined by the HUD regulations or HDG regulations, Lessee shall take such appropriate action as required by HUD.

Section 14.04 Termination. At the termination of this Lease, Lessee will peaceably and quietly deliver possession to Lessor, the Demised Premises and all buildings and improvements, including any fixtures, equipment and all personal property which Lessee may have brought, placed, or constructed upon the Demised Premises pursuant to the provisions of Article X of this Lease, and which have not been removed by Lessee prior to the termination of the Lease. All such property remaining shall be deemed conveyed by Lessee to Lessor.

Section 14.05 Occupancy of Demised Premises. Lessee agrees to use its best efforts to keep the residential building to be constructed by it on the Demised Premises fully occupied and subleased during the Demised Term.

#### ARTICLE XV

##### Quiet Enjoyment

Section 15.01 Lessor covenants and agrees with Lessee that so long as Lessee keeps and performs all of the covenants and conditions by Lessee to be kept and performed, Lessee shall have quiet and undisturbed and continued possession of the Demised Premises.

#### ARTICLE XVI

##### Right of Entry

Section 16.01 Lessor and his agents shall have the right to enter upon the Demised Premises at all reasonable times to examine the condition and use thereof, provided that Lessor give Lessee twenty-four (24) hours notice prior to entering the Demised Premises and provided that such right shall be exercised in such manner so as not to interfere with Lessee in the conduct of Lessee's business on such Demised Premises; and if the Demised Premises are damaged by fire, hurricane, or by any other casualty which caused the Demised Premises to be exposed to the elements, then Lessor may enter upon the Demised Premises without prior notice to make emergency repairs; but if Lessor exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse Lessee from its obligation to keep the Demised Premises in repair and Lessee shall, upon demand of Lessor, immediately reimburse Lessor for the cost and expense of such emergency repairs.

## ARTICLE XVII

Lessor's Right of First Refusal

Section 17.01 Lessee agrees that if at any time during the term of this Lease, Lessee receives a bona fide offer to purchase Lessee's interest in the Demised Premises, any contract which may be entered into between Lessee and such bona fide purchaser shall provide the sale of Lessee's interest shall be subject to Lessor's right of first refusal as hereinafter set forth. In the event that Lessee receives a written offer or executes a written contract as above set forth, Lessor shall have the option, to be exercised within twenty (20) days after receipt by Lessor of written notice of the terms of such offer, to enter into a contract with Lessee, and Lessee agrees to enter into such contract with Lessor, on the same terms and conditions as said offer to purchase. Lessee shall submit a duplicate original of the executed contract embodying all of the terms and conditions of said executed contract to Lessor for such purpose. If, after the receipt of such notice, Lessor shall fail to exercise its option by signing and returning within the twenty (20) day period a copy of said contract to Lessee together with a down payment therein provided, Lessee shall have the right to conclude the proposed sale on the same terms, and no other, as in the offer or contract originally afforded to Lessee. Notwithstanding Lessor's failure to exercise such option, Lessor's option shall remain in force and be binding on any subsequent owner or owners of Lessee's interest in the Demised Premises in connection with any subsequent sale to the same extent as if said subsequent owner or owners were Lessee herein, and said subsequent owner or owners shall be required to do all things required of Lessee in this Lease prior to any such sale of the Demised Premises.

## ARTICLE XVIII

Arbitration

Section 18.01 Whenever this Lease provides that a claim, dispute, question or other matters to be decided, determined or settled by arbitration, the arbitration shall be by a board of three (3) arbitrators and shall take place in Monroe County, Florida, in accordance with the rules and regulations of the American Arbitration Association then pertaining and judged on the award rendered may be entered in any court of competent jurisdiction including a federal court.

## ARTICLE XIX

Laws, Waste or Nuisance

Section 19.01 Lessee shall, at its own expense and cost,

- (a) comply with all governmental laws, ordinances, orders and regulations affecting the Demised Premises now in force or which hereafter may be in force;
- (b) comply with and execute all rules, requirements and regulations of the Board of Fire Underwriters, and Lessee's and Lessor's insurance companies;
- (c) not suffer, permit or commit any waste or nuisance;
- (d) not permit any outside/exterior storage of garbage or other materials except in enclosed dumpsters or similar containers; and
- (e) not to permit the accumulation or burning of any rubbish or garbage; and
- (f) not to permit loitering on the Demised Premises.

Lessee recognizes that Lessor will be damaged in the event Lessee violates any provisions of this Paragraph, and, accordingly, without notice to Lessee, Lessor may enter upon the Demised Premises at any time to correct any violation hereunder and Lessee shall reimburse Lessor immediately upon demand, as additional rent, the cost of any such correction undertaken by Lessor.

#### ARTICLE XX

##### Utility Charges

Section 20.01 Lessee shall be solely responsible, at Lessee's expense, for the installation of all utilities and utility meters necessary to service the Demised Premises, in accordance with plans and specifications to be approved in writing by Lessor. Lessee shall pay all installation expenses, connection and capacity reservations and charges and hook-up fees related thereto. Lessor shall not be liable to Lessee for any damages, actual, direct or consequential, in the event of any interruption in supply of any utilities. Lessee agrees that it will not install any equipment which will exceed or overload the capacity of any utility facilities and that if any equipment installed by Lessee shall require additional utility facilities, then same shall be installed at Lessee's expense in accordance with plans and specifications to be approved in writing by Lessor. Lessee shall be solely responsible for and shall promptly pay all permits, reservation charges and charges for use or consumption for heat, sewer, water, gas, electricity, telephone, solid waste or any other utility services.

#### ARTICLE XXI

##### Environmental Contamination and Indemnity

Section 21.01 Lessee represents and warrants to and covenants with Lessor that neither Lessee nor any employee, agent, licensee, invitee, or customer of Lessee shall (i) dispose of on, bury beneath, or percolate beneath the Demised Premises or any improvements thereon any toxic, explosive or Hazardous Substances; (ii) remove from the Demised Premises or any improvements thereon and store off site of the Demised Premises any toxic, explosive or Hazardous Substance; (iii) Release (as herein defined) or permit the Release of Hazardous Substances on or from the Demised Premises or any improvements thereon; (iv) use or permit the use of the Demised Premises or any improvements thereon for the handling, transportation or disposal of a Hazardous Substance; and (v) manufacture, treat, store or dispose of any Hazardous Substance on the Demised Premises or any improvements thereon.

Lessee shall, at all times during the term of this Lease, comply with all federal, state and local hazardous waste and environmental rules, regulations, statutes, codes, ordinances and other laws including those hereinafter enacted, applicable to the Demised Premises and/or any improvements thereto and/or Lessee's use thereof, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA").

For purposes hereof, the term "Hazardous Substance" means any one or more of the following (a) any substance deemed hazardous under Section 101(14) of CERCLA, (b) any other substance deemed hazardous by the Environmental Protection Agency pursuant to Section 102(a) of CERCLA, (c) petroleum (including, without limitation, crude oil or any fraction thereof), (d) any substance deemed hazardous pursuant to Section 1004(5) of RCRA, (e) any solid waste identified in Section 1004(27), of RCRA or (f) any other hazardous or toxic substance, material, compound, mixture,

solution, element, pollutant, or waste regulated under any federal, state or local statute, ordinance or regulation including those hereinafter enacted. The term "Release" shall have the meaning given to such term in Section 101(22) of CERCLA.

Lessee shall pay, perform, discharge, defend, indemnify and hold Lessor harmless from and against all claims, orders, demands, actions, proceedings and/or suits, and all losses, costs, damages and expenses (including, but not limited to, court costs, technical consultant fees and expenses, and reasonable attorneys' fees, paraprofessional fees and expenses at all trial and appellate levels and post judgment proceedings and regardless of whether or not any action, proceeding or suit may be instituted) arising or resulting from any act, occurrence or omission in violation of or contrary to the covenants, representations and warranties made herein. Such indemnifications shall include, but not be limited to, claims made against Lessor with respect to contamination of the soil and/or groundwater, damage to the environment and natural resources, and injury or damage to persons or property, the costs of any health assessment or health effects study, the costs of any environmental audit revealing the existence of Hazardous Waste in violation of the terms of this Lease, and any costs of removal or remedial action incurred in connection with the cleanup of the Hazardous Substance on the Subject Property or any improvements thereon, whether such liability arises under the terms hereof, or under RCRA, CERCLA, or any other federal, state, and/or local statute, ordinance, or regulation, including those hereinafter enacted, or common law.

#### ARTICLE XXII

##### Assignment of Interest, Priority of Lien

###### Section 22.01

(a) Lessee shall not transfer or assign this Lease or sublet the Demised Premises without the express written consent of Lessor. Any attempted transfer, assignment or subletting shall be void and confer no rights upon any third person. No assignment or subletting shall relieve Lessee of any obligations under this Lease. The consent by Lessor to any transfer, assignment or subletting shall not be deemed to be a waiver on the part of Lessor of any prohibition against any future transfer, assignment or subletting.

(b) If Lessor consents to any transfer, assignment or subletting, that consent shall not be effective unless and until Lessee gives notice of the assignment and a copy of the assignment agreement or sublease to Lessor, and the transferee, assignee or sublessee delivers to Lessor a written agreement in form and substance satisfactory to Lessor pursuant to which such transferee, assignee or sublessee assumes all of the obligations and liabilities of Lessee under this Lease.

#### ARTICLE XXIII

##### Miscellaneous

Section 23.01 Estoppel Certificates. Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser or proposed mortgagee or proposed purchaser, or any other person, firm, or corporation specified in such request:

(a) as to whether this Lease has been supplemented or amended, and, if so, the substance and manner of such supplement or amendment;

- (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted;
- (c) as to the existence of any default thereunder;
- (d) as to the existence of any counterclaims, or defenses thereto on the part of such other party;
- (e) as to the commencement and expiration dates of the term of this Lease; and
- (f) as to any other matters as may reasonably be so requested.

Any such certificate may be relied upon by the party who requested it and any other person, firm, or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing the same.

**Section 23.02 Attorney's Fees and Costs.** In the event any party is forced to bring a legal proceeding or seek legal assistance to enforce the terms and conditions hereof, the non-prevailing party in such proceeding or shall be responsible for the reasonable attorney's fees and costs incurred by the prevailing party in connection therewith.

**Section 23.03 The Project.** The Demised Premises are part of the larger Frederick Douglass Project referred to herein as the Project. The Project shall consist of two phases to be developed by Lessee, a residential phase to be developed on the Demised Premises, which as stated hereinabove shall contain a fifty (50) unit residential building and a community center phase to be developed on the property adjacent to and adjoining the Demised Premises in strict accordance with the First Article, IV, of Attachment A to the Owner-Grantee Agreement. The Project can only achieve its purpose of providing social and economic improvement to the City of Key West and the citizens thereof upon the proper development and completion of both phases of the Project. As set forth hereinabove, Lessee's responsibilities and obligations as developer of the Project are set forth in the Owner-Grantee Agreement attached hereto as Exhibit B and incorporated herein by reference. Failure of Lessee to develop the community center phase as agreed to in the Owner-Grantee Agreement shall constitute a Default under Section 13.01 hereof.

**Section 23.04 Radon Gas.** Lessor hereby notifies Lessee of the following:

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

**Section 23.05 Covenants Running with the Land.** All covenants, promises, conditions, and obligations herein contained or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of Lessor and Lessee and their respective heirs, legal representatives, successors, and assigns, except as otherwise provided herein.

**Section 23.06 No Waiver.** No waiver of a breach of any of the covenants in this Lease shall be construed to be a waiver of any succeeding breach of the same covenant.

**Section 23.07 Written Modifications.** No modification, release, discharge, or waiver of any provisions hereof shall be of any

force. effect, or value unless in writing signed by Lessor, or its duly authorized agent or attorney.

**Section 23.08 Notices.** If either party desires to give notice to the other in connection with and according to the terms of this Lease, such notice shall be given by registered or certified mail and it shall be deemed given when deposited in the United States mail with postage prepaid or next day delivery service and such notices shall be addressed as follows:

For Lessor: Executive Director  
The Housing Authority for the  
City of Key West  
1400 Kennedy Drive  
Key West, Florida 33040

with copy to: John M. Spottswood, Jr.  
Spottswood, Spottswood & Spottswood  
as Attorney for Lessor  
500 Fleming Street  
Key West, Florida 33040

For Lessee: Dilip Barot, President  
Creative Choice Management, Inc.  
115 Inlet Way  
Palm Beach Shores, Florida 33404

Nothing herein contained shall be construed as prohibiting the parties respectively from changing the place at which notice is to be given, but no such change shall be effective unless and until it shall have been accomplished by written notice given in the manner set forth in this Section.

**Section 23.09 Liability Continued.** All references to Lessee shall mean the persons who, from time to time, occupy the position of Lessee, although this shall not be construed as relieving a person of any liability incurred by them by reason of or in connection with their having been Lessee at one time.

**Section 23.10 Captions.** The captions used in this Lease are for convenience of reference only and in no way define, limit, describe the scope or intent of or in any way affect this Lease.

**Section 23.11 Index.** The index preceding this Lease under the same cover is for the purpose of the convenience of reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendment thereof.

**Section 23.12 Controlling Law; Venue.** This Lease shall be construed under the laws of the State of Florida, and the venue for any legal proceeding to enforce or determine the terms and conditions of this Lease shall be Monroe County, Florida.

**Section 23.13 Holding Over.** Any holding over after the expiration of the term of this Lease, with consent of Lessor, shall be construed to be a tenancy from month to month, at twice the monthly rental as required to be paid by Lessee for the period immediately prior to the expiration of the term hereof, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

**Section 23.14 Termination of Subleases.** Lessor agrees that in the event of the termination of this Lease because of any breach or default by Tenant, Lessor will not terminate any sublease(s) which shall still be in full force and effect or disturb the possession or leasehold rights of the subtenants.

**Section 23.15 Rental Commencement Date of Lease.** In order to establish the Rental Commencement Date of this Lease, as hereinabove referred to, Lessor and Lessee shall enter into a supplemental agreement immediately upon the completion of construction establishing the Rental Commencement Date and the



Demised Term of this Lease, as provided hereinafter. It is understood that none of the terms of this Lease shall be changed by said supplemental agreement and that its sole purpose shall be to establish the Rental Commencement Date and the Demised Term.

**Section 23.16 Force Majeure.** If either party hereto shall be delayed or prevented from the performance of any act required under this Lease by reason of acts of God, strikes, lockouts, delay in Governmental Approval, restrictive governmental laws or regulations, unusual delay in transportation, then upon notice to the other party, the performance of such act shall be excused for the period of the delay; provided however, the party delayed or prevented from performing shall make and continue to make good faith effort to remove the cause of delay or cause preventing performance.

**Section 23.17 Recording this Lease.** Either party may record a copy of this Lease against the Demised Premises.

**Section 23.18 Time is of the Essence.** Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings and conditions to be performed under this Lease.

**Section 23.19 No Joint Venture.** Lessor and Lessee shall not be considered by operation of this Lease as joint venturers or partners and neither shall have the power to bind or obligate the other except as provided herein.

**Section 23.20 Joint and Several Liability.** If Lessor consists of two or more individuals, as partners or otherwise, or two or more corporations, partnerships, trusts or other business associations or any combination thereof, their liability under this Lease shall be joint and several. If Lessor is a trust, the liability under this Lease shall be deemed to be the personal liability of the beneficiary or beneficiaries thereof, and in the latter instance, such liability shall be joint and several.

**Section 23.21 Calendar Days.** Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice or performance of any obligation hereunder falls on a Saturday, Sunday or federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or federal holiday.

**Section 23.22 Severability.** If any provision of this Lease shall be held by a court of competent jurisdiction to be invalid, void, unenforceable or inapplicable to any extent, this Lease to the extent unaffected thereby, except as may be necessary to make the remaining provisions of this Lease consistent with each other, shall remain valid and in force to the fullest extent permitted by law.

**Section 23.23 No Deductions or Offsets.** Notwithstanding anything to the contrary contained herein, in no event shall Lessee have the right to deduct or offset any amount from any Base Rent or Additional Rent due hereunder.

**Section 23.24 Entire Agreement.** This instrument contains the entire agreement between parties as of this date. The execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

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IN WITNESS WHEREOF, Lessor and Lessee have hereunto set their hands and seals, the day and year above written.

Signed, Sealed and Delivered in the presence of:

*Kathleen Gibson*

*Walter Pressow*

[corporate seal]

LESSOR:

THE HOUSING AUTHORITY OF THE CITY OF KEY WEST

BY:

*Haley Tichet*  
Name:  
Title:

LESSEE:

CREATIVE CHOICE MANAGEMENT, INC.

BY:

*D. Barot*  
Dilip Barot  
President

ATTEST:

*President*  
Name:  
Title:

STATE OF Florida )  
COUNTY OF Monroe ) SS.

Before me, the undersigned Notary Public in and for said State and County, on this 16th day of October, 19 89, personally appeared HARRY BERTHE to me known to be the CHAIRMAN of The Housing Authority for the City of Key West, and to be the identical person who signed and acknowledged that he signed the foregoing instrument as such CHAIRMAN of said corporation for and in behalf of said corporation, and that he executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my signature and affixed my official seal on the day and year aforesaid.

Jenda Kay Arnold  
Notary Public  
In and for said State and County

NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: JAN. 22, 1992.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

My commission expires:

STATE OF )  
 ) SS.  
COUNTY OF )

Before me, the undersigned Notary Public in and for said State and County, on this 12 day of October, 19 89, personally appeared Dilip Barot and Creative Choice Management, Inc., respectively, of Creative Choice Management, Inc. and known to be the identical persons who signed and severally acknowledged that they signed the foregoing instrument as such officers of said corporation for and in behalf of said corporation, and that they executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my signature and affixed my official seal on the day and year aforesaid.

Marlette Presson  
Notary  
In and for said State and County

NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: DEC. 15, 1991.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

My commission expires:

In the City of Key West and is part of Lots Five (5), Six (6), Nine (9) and Ten (10) all in Tract Three (3) according to Chas. W. Tift's map; said parcel of land hereby conveyed is being described by metes and bounds as follows:

Begin at the easterly corner of the intersection of Fort Street and Petronia Street (which point is also the westerly corner of said Lot Nine (9) and run thence in a northeasterly direction along the southeasterly side of Petronia Street, a distance of Two Hundred Ninety-two (292) feet to the northerly corner of Petronia Street and Emma Street; thence run in a southeasterly direction along the southwesterly side of Emma Street Two Hundred Forty-five (245) feet; thence run a southwesterly direction, at right angles to Emma Street, distance of One Hundred Ten (110) feet; thence run at right angles in a southeasterly direction Twenty-five (25) feet; thence run at right angles in a southwesterly direction One hundred Eight-five (185) feet to the northeasterly side of Fort Street; thence in a northwesterly direction along the northeasterly side of Fort Street, a distance of Two Hundred Seventy (270) feet to the point of begin.

Said parcel contains 1.765 acres more or less which is 76,900 square feet excluding all land for street purposes.