



**Budget Amendment Form**

Department	Utility Administration	Date	7/15/2024
Fund(s) to be changed:	Enterprise Fund		

GL Account	GL Line Item	Transfer to:	Transfer from:
430.30.533.6201	Building Improvements	\$250,000.00	
430.00.389.3890	Appropriation of Fund Balance		\$250,000.00
TOTAL (Columns must be equal)		\$ 250,000.00	\$ 250,000.00

**Description:**  
 Transfer Enterprise Fund Balance to the Utility Administration - Building Improvement Account to increase Project #UF24-01 from \$50,000 to \$300,000 for Improvements per the lease at 1353 NW 79th St.

**APPROVED BY:**

Department Director: *[Signature]*

Date: 07/23/24

Chief Financial Officer: *[Signature]*

Date: 7/24/24

Village Manager: *[Signature]*

Date: 07/23/24

**RESOLUTION NO. 2024- 071**

**A RESOLUTION OF THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, APPROVING A LEASE AGREEMENT WITH 1353 NW LLC FOR THE LEASE OF THE REAL PROPERTY LOCATED AT 1353 NW 79 STREET (IDENTIFIED FOR PROPERTY TAX PURPOSES BY FOLIO NO. 30-3111-044-0110) FOR USE AS THE VILLAGE'S PUBLIC WORKS FACILITY; AMENDING THE BUDGET FOR FISCAL YEAR 2023-2024; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, North Bay Village (the "Village") desires to lease real property owned by 1353 NW LLC located at 1353 NW 79 Street, identified for property tax purposes by Folio No. 30-3111-044-0110, for the Village's public works purposes (the "Property"); and

**WHEREAS**, the Village Commission desires to approve the Lease Agreement in substantially the form attached hereto attached hereto as Exhibit "A" for the lease of the Property and certain improvements thereto (the "Agreement") and authorize the Village Manager to execute the Agreement and take all actions necessary to implement the terms and conditions of the Agreement; and

**WHEREAS**, Section 3.02(A) of the Village Charter provides that the Village Commission "may acquire property within or without the corporate limits of the Village for any municipal purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, or lease provided such amount of expenditure for real property shall not exceed twenty percent (20%) of the current total operating budget of the Village"; and

**WHEREAS**, on September 28, 2023, the Village Commission adopted Resolution No. 2023-109 approving the budget for fiscal year 2023-2024 (the "Budget"); and

**WHEREAS**, pursuant to Section 166.241, Florida Statutes, the Village Commission may amend a budget at any time within a fiscal year; and

**WHEREAS**, pursuant to Section 35.21 of the Village Code of Ordinances and Florida Law, the Village Commission desires to amend the Budget consistent with the staff memorandum accompanying this Resolution, by authorizing the line-item transfers as further provided in Exhibit "B" attached hereto and incorporated herein; and

**WHEREAS**, the Village Commission finds that adoption of this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2. Approval.** That the Village Commission hereby approves the Agreement in substantially the form attached hereto as Exhibit "A" for the lease of the Property. That the Village Commission hereby authorizes the Village Manager to execute the Agreement, subject to approval by the Village Attorney as to form and legal sufficiency.

**Section 3. Amending Budget.** That the Village Commission hereby approves an amendment to the budget by authorizing the line-item transfers as further provided in Exhibit "B" attached hereto and incorporated herein.

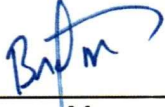
**Section 4. Implementation.** That the Village Commission authorizes the Village Manager and Village Attorney to take any and all action necessary to implement the intent and purpose of this Resolution.

**Section 5. Effective Date.** That this Resolution shall be effective immediately upon adoption.

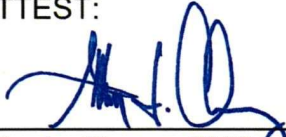
The foregoing Resolution was offered by Commissioner Streitfeld who moved its adoption. The motion was seconded by Commissioner Cuk and upon being put to a vote, the vote was as follows:

Mayor Brent Latham	<u>Yes</u>
Vice Mayor Richard Chervony	<u>Yes</u>
Commissioner Goran Cuk	<u>Yes</u>
Commissioner Andy Rotondaro	<u>Yes</u>
Commissioner Rachel Streitfeld	<u>Yes</u>

**PASSED AND ADOPTED** on this 15<sup>th</sup> day of July, 2024.

  
\_\_\_\_\_  
Brent Latham, Mayor

ATTEST:



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Alba L. Chang, CMC  
Village Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



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Weiss Serota Helfman Cole & Bierman, PL  
Village Attorney



## LEASE AGREEMENT

**THIS LEASE AGREEMENT** ("Lease") is entered into by and between **1353 NW LLC**, a Florida limited liability company, whose post office address is 714 E 19th Street, Brooklyn NY 11230 ("Landlord"), and **North Bay Village, a Florida municipal corporation, and/or assigns**, whose post office address is 1666 Kennedy Causeway, 3<sup>rd</sup> Floor, North Bay Village, FL 33141 ("Tenant").

### 1. AGREEMENT TO LEASE AND TERM

**A. Agreement to Lease Premises.** Tenant agrees to lease from Landlord, that certain real property with a gross area of approximately **33,507** square feet, including all improvements therein, including the approximately **2,579** square foot building ("Building") located at **1353 NW 79<sup>th</sup> Street, Miami, FL 33147-8264 (Folio # 30-3111-044-0110)** and shown and legally described as attached hereto and made a part hereof as Exhibit A (the "Premises"). The Landlord shall deliver, and the Tenant accepts, the Premises in its "as is" condition. Any building existing or constructed within the Premises shall hereafter be referred to as the "Building." Tenant agrees that its lease of the Premises shall be subject to the following terms and conditions.

**B. Condition of the Premises.** Tenant acknowledges that Tenant has had a reasonable opportunity to inspect the Premises prior to execution of this Lease and accepts the Premises from Landlord in "AS IS" "WHERE IS" condition existing on the date of execution of this Lease, without any express or implied representations or warranties of any kind by Landlord regarding the Premises, and Landlord shall not have any obligation to construct or install any tenant improvements or alterations or to pay for any such construction or installation, except as expressly set forth in this Lease. Tenant is renting said Premises in "AS-IS" "WHERE IS" condition. Tenant has previously reviewed and considered the nature of this transaction and the condition of the Premises. In electing to proceed with this transaction, Tenant shall have determined that the Premises are satisfactory to Tenant in all respects and is renting the Premises in its "AS IS" "WHERE IS" condition. Tenant acknowledges and agrees that (i) the rental amount was specifically negotiated on the basis of an "AS IS" "WHERE IS" transaction, and (ii) the "AS IS" "WHERE IS" nature of the transaction was a material inducement for Landlord to enter into this Lease. Tenant has and will rely solely on Tenant's own independent investigations and inspections, and Tenant has not relied and will not rely on any representation of Landlord. Tenant further acknowledges and agrees that, except for the specific representations made by Landlord in this Lease, Landlord has made no representations, is not willing to make any representations, nor held out any inducements to Tenant other than those exclusively set forth in this Lease; and Landlord is not and shall not be liable or bound in any manner by any express or implied warranties, guaranties, statements, representations or information pertaining to the Premises, except as set forth in this Lease. In furtherance of the foregoing, Tenant hereby acknowledges and agrees that, except as provided in Section 1G and the Work Letter attached, no promises to decorate, alter, repair, or improve the Premises, either before or after the execution of this Lease have been made to Tenant, or its designated representatives, by Landlord, or its designated representatives. Any future actions as may be needed to bring the Premises and its exterior areas in full compliance with all state, federal and

local laws, ordinances and regulations (including provisions of the Americans with Disabilities Act and related state and local laws, and including any mandatory occupancy certifications or re-certifications) shall be the sole responsibility of the Tenant, at its sole cost and expense. Subject to the limitations of F.S. 768.28, the Tenant shall indemnify, defend, and hold harmless the Landlord from and against any and all claims, actions, losses, damages, liability, and expenses (including, but not limited to, attorney's and other professional fees) of whatever nature for Tenant's failure to comply with all state, federal and local laws, ordinances and regulations (including provisions of the Americans with Disabilities Act and related state and local laws, and including any mandatory occupancy certifications or re-certifications). Further, Landlord makes no representation concerning the leased square footage. The parties hereto acknowledge that during the negotiations for this Lease, the parties discussed the rent as a function of an amount per square feet of rentable space. Prior to the execution of this Lease, Tenant has had the opportunity to inspect the space and satisfy itself as to the size and suitability of the space for its intended purposes. The parties hereby agree that the agreed upon rent shall be due and payable regardless of the actual square feet in the demised premises and Tenant acknowledges that Landlord makes no representation or warranty as to the actual size of the premises. Any reference to or discussions concerning a rental per square of space is superseded by this provision.

**C. Term.** Landlord demises the above Premises for a term commencing on July 1, 2024 (the "Commencement Date") and terminating on the fifth (5th) anniversary of the Commencement Date ("Termination Date"). The lease term ("Initial Term") shall commence on the Commencement Date and end on the Termination Date.

**D. Base Rent.**

<b>Rent From</b>	<b>Rent to</b>	<b>Base Rent Amount Per Month</b>
Month 1	Month 12	\$19,750.00
Month 13 (except July 10, 2025)	Month 24	\$20,342.50
Month 25	Month 36	\$20,952.78
Month 37	Month 48	\$21,581.36
Month 49	Month 60	\$22,228.80

Notwithstanding the above rent schedule, the Tenant shall not be obligated to pay Rent for Month 13 of the Initial Term. The Tenant shall have an option to extend for an additional 5 years (such additional term, the "Renewal Term" and, together with the Initial Term, the "Lease Term"). Tenant shall give Landlord nine (9) months prior written notice of intention to exercise the option to renew this Lease for the Renewal Term. Rental rate for the Renewal Term shall be as follows:

<b>Rent From</b>	<b>Rent to</b>	<b>Base Rent Amount Per Month</b>
Month 1	Month 12	\$ 23,562.53
Month 13	Month 24	\$24,976.28
Month 25	Month 36	\$26,474.86

Lessor (\_\_\_\_) (\_\_\_\_) and Tenant (RR) (\_\_\_\_) acknowledge receipt of a copy of this page which is 2



Month 37	Month 48	\$28,063.35
Month 49	Month 60	\$29,747.15

Tenant will be responsible to maintain the property insured and for payment of all real estate taxes and assessment charges for the extent of the lease and the renewal. Tenant shall not be responsible for any increase in real estate taxes occurring as a result of a sale of the property during the first five (5) years of Lease Term. Rent will not be subject to sales tax pursuant to Rule 12A-1.038(1) F.A.C. because Tenant is a government entity with a Consumer's Certificate of Exemption.

**E. Definitions and Payments of Rent.**

1. Definitions of "Rent," "Additional Rent" and "Base Rent." The term "Rent" when standing alone in this Lease generally refers collectively to Base Rent and Additional Rent. When prepaid Base Rent due on the Rent Commencement Date (first month's rent) does not include all items of Additional Rent due for the period that is prepaid, such unpaid items of Additional Rent may be invoiced later by Landlord and shall be paid in accordance with the provisions of Section 1.E.2. (or elsewhere if applicable) of this Lease. The term "Additional Rent" is to be construed broadly, and includes all payments other than Base Rent due to Landlord from Tenant under this Lease as allowed by law to be treated as an item of rent, including, but not limited to, applicable taxes such as sales, use or excise taxes, items directly payable to Landlord or its designee such as certain utility obligations, late fees and interest, items for which Tenant is obligated to reimburse Landlord such as attorney's fees and litigation costs incurred by Landlord in enforcing its rights under this Lease, Tenant's pro rata share of impact fees assessed by governmental, quasi-governmental or private agencies or departments, along with any and all other items of payment designated as Additional Rent under this Lease. The term "Base Rent" means minimum rent due. By definition, Base Rent does not include items of Additional Rent.

2. Payments of Rent. Tenant shall also pay to Landlord, concurrently with the payments of Base Rent, the amount of any applicable sales, use or excise tax with respect thereto, whether the same be levied, imposed or assessed by the State of Florida or any other federal, state, county or municipal government entity or agency. Rent shall generally be payable in advance on or before the first day of the month via electronic transfer or certified check to Landlord's account. There shall be no waiver on the part of Landlord on account of a delay in invoicing or billing for an item of Additional Rent. If an item of Additional Rent cannot be, or for whatever reason, is not calculated and/or invoiced in advance, such item of Additional Rent shall be payable the first day of the month, following calculation and invoicing of same, via electronic transfer or certified check to Landlord's account. All payments made by Tenant shall be applied to the earliest items of outstanding, unpaid Rent, notwithstanding any request or direction from Tenant otherwise.

**F. Security Deposit.** Upon execution of this Lease, Tenant shall pay a Security Deposit of \$39,500 .



**G. Landlord Work.** Subject to approval by the Village Commission, Tenant desires to make improvements to the Premises, and Tenant desires to have Landlord make them, after the Commencement Date, upon the terms and conditions set forth in Exhibit B to this Lease ("Initial Improvements"). In the event the Village Commission does not approve the Initial Improvements by July 30, 2024, Tenant shall have the right to terminate this Lease effective as of August 16, 2024 by providing notice thereof to Landlord and the security deposit shall be returned to Tenant.

## **2. USE OF THE PREMISES.**

**A. Permitted Use.** Tenant shall use and occupy the Premises solely to provide the needs of North Bay Village Department of Works, including, without limitation, general office use, vehicle storage and light maintenance, parking and community engagement. Neither the Premises nor any other part of the Building shall be used or occupied for any other purpose. Tenant's use and occupation of the Premises along with the Building must, at all times, be in compliance with, and not in violation of, any and all applicable laws, statutes, ordinances and codes in effect during the Lease Term of this Lease. Nothing in this section 2 nor any section hereunder shall be interpreted as a warranty by Landlord concerning whether the relevant authority or authorities will approve Tenant's desired use and occupation of the Premises, and Tenant hereby acknowledges and understands that Landlord makes no representation or warranty as to whether the use of the Premises permitted under this Lease shall be permissible and compliant with all applicable laws, statutes, ordinances and codes in effect during the Lease Term of this Lease. Tenant assumes all risk in that regard and failure by Tenant to obtain governmental approvals or permits shall not excuse Tenant from full performance hereunder.

**B. Hazardous Substances.** Tenant, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively referred to herein as "Tenant Affiliates") shall not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Premises by Tenant or by Tenant Affiliates without the prior written consent of Landlord (which may be granted, conditioned or withheld in the sole discretion of Landlord), save and except only for Permitted Hazardous Substances, which Tenant or Tenant Affiliates may bring, store and use in reasonable quantities for their intended use in the Premises, but only in full compliance with all applicable laws, ordinances, orders, rules and regulations. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Landlord or to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Tenant may, without Landlord's prior consent, but upon notice to Landlord and in compliance with all applicable laws, ordinances, orders, rules and regulations, use any ordinary and customary materials reasonably required to be used by Tenant in the normal course of the Permitted Use, so long as such use does not expose the Premises, or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any



liability therefor. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Landlord, Tenant shall immediately give written notice of such fact to Landlord, and provide Landlord with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance. Tenant agrees to indemnify, subject to the limitations of F.S. 768.28, defend and hold Landlord and its Affiliates (defined above) harmless for, from and against any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorneys' fees and expenses, court costs, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature that arise during or after the Lease Term directly or indirectly from or in connection with the presence, suspected presence, or release of any Hazardous Substance in or into the air, soil, surface water or groundwater at, on, about, under or within the Premises, or any portion thereof caused by Tenant or Tenant Affiliates.

### **3. CARE, MAINTENANCE, REPAIRS AND ALTERATIONS.**

**A. Tenant's Obligations.** Tenant acknowledges that the Premises are in good order and repair, unless otherwise stated herein. Tenant shall, at Tenant's sole cost and expense and at all times, maintain the Premises and every part thereof in good order, condition and repair (whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises) including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, including but not limited to, plumbing, HVAC (but only if the HVAC presently installed has been operating for less than 5 years), ventilating and air conditioning systems, electrical, lighting, fixtures, ceilings, walls (interior and exterior), ceilings, utility systems, floors, windows, and doors. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Tenant covenants and agrees with Landlord, at Tenant's sole cost and expense, to repair or replace any damage to the Building or the Premises, including any equipment or facilities as specified above, caused by Tenant or Tenant's agents, contractors, employees, customers, invitees, or visitors. Tenant's covenant and agreement to repair and replace such damage applies regardless of whether the damage is caused by intentional misconduct, negligence, or failure to properly maintain the equipment and facilities as specified above. Said repairs and replacements shall restore Building and the Premises to as good a condition as existed prior to such damage, and shall be performed in compliance with all legal requirements. If Tenant fails to make such required repairs or replacements in an expeditious manner, Landlord may, at its option, make such repairs or replacements as needed. In such case, Tenant shall pay the cost thereof to Landlord on demand as Additional Rent. All repairs and replacements required to be made by Tenant as set forth in this sub-paragraph shall be in accordance with specifications set forth by Landlord and shall be subject to Landlord's final review and approval in its discretion. Notwithstanding the foregoing, and except to the extent that the need for repairs arises from damages was caused by Tenant's negligence, Tenant shall not be responsible to perform repairs that cost in excess of Ten Thousand Dollars (\$10,000) per occurrence (such repairs, "Major Repairs") with no more than two (2) occurrences per year.



**B. Landlord's Obligations.** Landlord shall deliver the Premises to Tenant, and Tenant agrees to accept the Premises from Landlord in its existing "AS-IS", "WHERE-IS" and "WITH ALL FAULTS" condition, and Landlord shall have no obligation to maintain, refurbish, repair, replace or otherwise improve any portion of the Premises throughout the Lease Term, except for: 1) maintenance of the exterior, the roof, foundation and structure of the building, which shall include exterior painting of the Building when necessary, and 2) maintenance of the grass on the Premises, which shall include regular lawn care and cutting service, and 3) Major Repairs. If Landlord fails to timely repair or maintain the Premises as required under this Leases within thirty (30) days after written request by Tenant, then Tenant shall have the right to make such repairs at Landlord's expense and Landlord shall reimburse Tenant for any amount paid and any expense upon invoice. In the event Tenant, is not reimbursed within thirty (30) days following invoice, Tenant shall have the right to offset such expenses against Rent.

**C. Alterations.** Tenant shall not make nor cause to be made any alterations, additions, or improvements (collectively "Alterations") in, on, under or about the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant will obtain, at its sole cost and expense, all permits and approvals required in connection with any Alterations and Landlord shall reasonably approve all plans prior to the commencement of such work. All contractors working on such work shall be licensed in the state of Florida and have appropriate insurance for such work, which insurance shall name Landlord as additional insured. All Alterations shall be constructed at Tenant's sole cost and expense (except in any case the Initial Improvements per Section 1G). Tenant shall promptly pay for all materials supplied and work done in respect to the Premises so as to ensure that no lien is recorded against any portion of the Building or Premises or against Landlord's or Tenant's interest therein. Any Alteration to the Premises, which is attached to the Premises, including any Building existing or built upon the Premises, becomes an addition or fixture which shall be deemed to be part of the Premises and therefore becomes property of the Landlord. Notwithstanding the foregoing, the Landlord expressly approves of the Tenant's installation of a security system on the Premises including the following: 8 vandal proof CCTV cameras—5 outdoors and 3 indoors—with night vision and 4 MP resolution, an access-controlled keypad on the main door, and a panic alarm for after-hours security.

**D. PERMITS AND APPROVALS FOR TENANT'S WORK AND USE; LANDLORD APPROVAL.** Except as specifically set forth in this Lease, Landlord has not and does not make any representations as to the commercial suitability, physical condition, compatibility or any other matter affecting or relating to the Premises in relation to Tenant's intended use and occupancy thereof, and Tenant hereby acknowledges that no such representations not otherwise expressly stated in this Lease have been made. EXCEPT AS SPECIFICALLY SET FORTH IN THIS LEASE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TENANT HEREBY ACKNOWLEDGES THAT (I) LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, MARKETABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE OR OTHERWISE, AND (II) ANY IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED. Tenant is responsible for ensuring, at Tenant's sole expense, that Tenant's use of the Premises complies with all applicable laws including, without limitation, applicable zoning ordinances. Without limiting the foregoing and



in addition to Tenant's obligations hereunder, it shall be Tenant's responsibility and obligation to obtain all permits and licenses required for transacting its business in the Premises including, without limitation, building, occupancy, use and other governmental permits and/or approvals required in connection with the construction of Tenant's Work and a certificate of occupancy for the Premises upon completion thereof (or an equivalent if the governmental authority having jurisdiction does not issue certificates of occupancy). Tenant shall satisfy its responsibility and obligation to obtain all of the foregoing in an expeditious manner including, without limitation: payment of all fees and charges including any available expedite fees; providing all requested information and data, including making appropriate adjustments to Tenant's plans and specifications as required by the applicable governmental authorities and resubmitting revised plans and specifications as necessary to such authorities, in a prompt and timely manner; if deemed necessary by Tenant, engaging a so-called "permit expeditor" to assist with the pursuit and issuance of the permits, licenses and approvals; and otherwise cooperating with the applicable governmental authorities in an expeditious manner. Tenant's obligations hereunder shall include, without limitation, the payment of all utility connection/hookup/meter fees and charges, and any development impact fees, assessed with respect to the Premises resulting solely from Tenant's use and/or Tenant's Work. In the event Landlord pays any such fees on Tenant's behalf, Tenant shall reimburse Landlord for such fees as Additional Rent within ten (10) days of Tenant's receipt of an invoice therefore from Landlord.

**4. ORDINANCES, STATUTES, AND GOVERNMENT AGENCIES.** Tenant shall comply with all laws, statutes, ordinances, codes and other requirements of all municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises and the Building, and occasioned by or affecting the use thereof by Tenant. Tenant shall be responsible for payment of its pro-rata share, as determined by Landlord when feasible, of any and all impact fees charged or assessed by applicable governmental, quasi-governmental, private agencies or departments. If Tenant fails to pay any such required assessed fees which relate to the Premises, Landlord has the right to pay such fees on behalf of Tenant, and charge Tenant as Additional Rent, the amount of such payment, along with an administrative fee.

**5. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublease any portion of the Premises without the prior written consent of the Landlord, which shall be in the sole and absolute discretion of Landlord. Any such assignment or subletting without Landlord's prior written consent shall be void, and at the option of the Landlord, result in the termination of this Lease. For purposes of this Section 5, if Tenant is a corporation or limited liability company, a merger, reorganization, dissolution, consolidation, sale, transfer or pledge of stock or membership interests, which creates a change of voting control of Tenant that involves more than 49% of the voting securities of Tenant, shall constitute an assignment of this Lease.

**6. UTILITIES AND WASTE DISPOSAL.**

**A. Landlord under no Obligation to Provide Utilities.** Landlord shall have no obligation to provide the Premises with heat, air conditioning, electricity, gas, ventilation,

cable, Internet, telephone, water, sewer, or other utilities, except as expressly provided for in this Lease. Unless provided for elsewhere in this Lease, all applications and connections for utility services on the Premises shall be made in the name of the Tenant only and at Tenant's sole cost, and Tenant shall be solely liable for utility charges as they become due. All utility payments required to be made by Tenant to Landlord shall be deemed items of Additional Rent. Notwithstanding the foregoing, Landlord warrants and represents that heat, air conditioning, electricity, ventilation, water, sewer lines are installed and in operable condition.

**B. Electricity.** In the event that electricity is not separately metered or sub-metered on the Commencement Date, then until such time as electricity is separately metered or sub-metered, Tenant shall pay Landlord the cost of electricity based upon meter readings. All payments for electricity required to be made by Tenant to Landlord shall be deemed items of Additional Rent.

**C. Water and Sewer Services.** Water and sewer services are not included as part of Base Rent. Tenant shall pay its share usage based upon meter readings directly to the utility provider. The foregoing water and sewer costs as addressed in this sub-paragraph are for usage only. Tenant shall, in addition to costs resulting from usage, be responsible for impact fees related to or otherwise applicable to the Premises, and charged separately by applicable government agencies or other applicable water and sewer department(s), as set forth in greater detail in Section 4 of this Lease.

**D. Waste Disposal.** Landlord is not obligated to provide for disposal of waste or trash generated by Tenant. Tenant must make separate arrangements to dispose of such items away from the Premises. Landlord shall be under no obligation to provide Tenant with recycling facilities. Nothing contained in this sub-paragraph shall be construed to allow Tenant to bring prohibited materials or items onto or into the Building or Premises.

**7. ENTRY AND INSPECTION.** Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Landlord at any time within ninety (90) days prior to the expiration of this Lease, to place upon the Premises "To Let" or "For Lease" signs, and permit prospective new tenants to inspect the Premises thereafter. Landlord may gain entry in case of an emergency at any time of day or night without notice. For any other entry, the Landlord shall provide notice twenty-four (24) hours before such entry, which entry shall be no earlier than 8:00 a.m. and shall not unreasonably disrupt Tenant's activities at the Premises, but which may occur or continue after normal business hours as circumstances dictate.

**8. POSSESSION.** If Landlord is unable to deliver possession of the Premises to Tenant on the Commencement Date, Landlord shall not be liable for any damages caused thereby, nor shall this Lease be void or voidable, but Tenant shall not be liable for any Rent until possession is delivered. Landlord may extend the estimated delivery date of the Premises, at the sole discretion of Landlord. In the event the Premises are delivered to Tenant after the Commencement Date: (i) If such date of delivery is on a date other than the first day of the calendar month, the Commencement Date shall be extended until the date of actual delivery and Tenant shall be responsible for pro rated rent for such month, (ii) the Rent Commencement



Date shall be extended to the first day of that calendar month which immediately follows the date of actual delivery of the Premises to Tenant, and (iii) all other dates following the Rent Commencement Date set forth in Section 1C, along with the Termination Date, and all dates set forth in Sections 1F and 1G shall also be so extended accordingly, along with any and all other such dates elsewhere in this Lease which logically should be so extended, but which are otherwise not explicitly addressed herein.

**9. INDEMNIFICATION OF LANDLORD.** Landlord shall not be liable for, and, subject to the limitations of F.S. 768.28, Tenant does hereby indemnify and save Landlord harmless of and from, all fines, suits, claims, demands, losses and actions (including attorneys' fees and costs) for any injury to person or damage to or loss of property on or about the Premises or Building or otherwise to the extent caused by the negligence, willful misconduct, or breach of this Lease by Tenant, its employees, subtenants, invitees or by any other person entering the Premises or Building under express or implied invitation of Tenant, arising out of Tenant's use of the Premises or Building, or any breach of Tenant's obligations under this Lease. Landlord shall not be liable or responsible for any loss or damage to any property, or death or injury to any person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, by other tenants or invitees of the Building or Premises or of any other matter beyond control of Landlord, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Building or Premises, or failure to make repairs, or from any cause whatever, except Landlord's gross negligence or willful misconduct. Tenant's indemnification obligations contained in this Section 9 and elsewhere in this Lease shall survive expiration of the Lease Term and all Renewal Terms. All payments due from Tenant to Landlord as indemnity obligations under this Lease shall be deemed items of Additional Rent.

**10. INSURANCE.** Tenant shall obtain and keep in full force and effect, a) commercial general liability insurance coverage, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury, personal injury and property damage; and b) property insurance against "all risks" including flood (with no exclusion for windstorm) against all risks of loss. Tenant's insurance coverage shall have deductible amounts and be written on companies to be approved by Landlord in its discretion. The Certificate of Insurance shall provide for a ten-day written notice to Landlord in the event of cancellation or material change of coverage. In the event that Landlord reasonably determines that Tenant has failed to comply with its obligations regarding insurance coverage as set forth in this Lease, Landlord may, but shall not be obligated to, force place such insurance. In such case, the cost of such forced place insurance to Landlord shall be deemed an item of Additional Rent under this Lease for which Tenant is obligated to pay Landlord along with an administrative charge. Tenant is further encouraged to maintain insurance coverage for damage to contents and items of personal property contained or stored within the Premises. Landlord shall not be responsible for or liable for any damage to contents or items or personal property contained within the Premises or Building, regardless of the cause of such damage. To the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other, through subrogation, on account of any and all claims Landlord or Tenant may have against the other with respect to



property insurance actually carried, or required to be carried hereunder. The Landlord shall be named as an Additional Insured.

**11. EMINENT DOMAIN.** If the Premises or any part thereof or any estate therein, or any other part of the Building materially affecting Tenant's use of the Premises, shall be condemned or taken by eminent domain, Landlord or Tenant may terminate this Lease on the date when title vests pursuant to such taking. Rent, shall be apportioned as of said date of termination of the Lease, and any Rent paid for any period beyond that date shall be repaid to Tenant. Tenant shall not be entitled to any part of the award for such taking or any part or any payment in the lieu thereof, but Tenant may file a claim for any taking of property owned by Tenant, and for moving expenses.

**12. DESTRUCTION OF PREMISES.**

**A. Partial Destruction of Premises or Building.** In the event of a partial destruction of the Premises during the Lease Term or any Renewal Term(s), Landlord may elect to repair the damage within one hundred and eighty (180) days following issuance of applicable building permits under existing governmental laws and regulations, provided that such repairs can be made during such time frame. In such case, said partial destruction shall not terminate this Lease. However, Tenant shall be entitled to a proportionate reduction of Rent during such time that repairs interfere with the business of Tenant on the Premises. If such repairs cannot be made within said one hundred and eighty (180) day period following issuance of applicable building permits, or if Landlord shall elect not to make such repairs, this Lease shall terminate. In the event that the Building or Premises is destroyed to an extent of not less than one-third of the replacement costs thereof, Landlord or Tenant may elect to either terminate this Lease upon fifteen (15) days notice to the other Party whether the Premises are damaged or not. If there is no damage to the Premises, and Landlord does not elect to terminate this Lease, Tenant shall not be entitled to a reduction in Rent.

**B. Total Destruction of Building or Premises.** In the event a total destruction of the Premises or Building occurs Landlord or Tenant may elect to terminate the Lease upon fifteen (15) days notice to the other Party. If neither Party elects to terminate this Lease, Landlord shall repair the Premises, provided that such repairs can be made within one hundred and eighty (180) days following issuance of applicable building permits under existing governmental laws and regulations. If Landlord elects to repair, Tenant shall not be required to pay Rent until it obtains use of the Premises, and at and after such time, Tenant shall be entitled to a proportionate reduction of Rent during such time that repairs shall interfere with the business of Tenant on the Premises. If such repairs cannot be made within said one hundred and eighty (180) day period following issuance of applicable building permits, or if Landlord shall not elect to make such repairs, this Lease shall terminate.

**13. LATE CHARGES AND INTEREST.** If any payment due Landlord shall not be paid, within five (5) days after such payment is due or accrued, Tenant shall pay, in addition to the payment then due, an administrative charge of five (5%) percent of the past due payments. All payments due Landlord shall bear interest at the lesser of 18% per annum or the maximum interest rate allowed by law, accruing from the date the obligation arose through the date



payment is actually received by Landlord. All late charges and interest under this paragraph shall be deemed items of Additional Rent.

**14. DEFAULT.** Each of the following shall be an event of default under this Lease: (a) Tenant fails to make any payment of an item of Rent, be it Base Rent or Additional Rent, or Security Deposit, when due, which failure continues for 3 days after written notice from Landlord to Tenant; (b) Tenant or any Guarantor for Tenant's obligations under this Lease becomes bankrupt, insolvent, makes an assignment for the benefit of creditors, takes the benefit of any insolvency act, or if any debtor proceedings are filed by or against Tenant or any Guarantor; (c) Tenant abandons the Premises; (d) Tenant transfers this Lease in violation of Section 5 or any other applicable provision of this Lease; (e) Tenant or Guarantor fails to deliver an estoppel certificate within the time period required by this Lease; (f) Tenant fails to maintain required insurance coverage under this Lease; (g) If any of the representations or warranties made by Tenant, or any Guarantor under this Lease, to Landlord are not true and accurate in any respect; (h) Landlord or Tenant fails to perform any other obligation under this Lease, which failure continues for fifteen (15) days after written notice thereof from Landlord to Tenant.

**15. REMEDIES.** In the event of any Default by Tenant, which Default is not cured after any applicable notice provided, in addition to all remedies available by law and in equity, Landlord may at any time thereafter, and without limiting Landlord on the exercise of any right or remedy which Landlord may have by reason of such default, Landlord may: (i) terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord; (ii) terminate Tenant's right to occupy the Premises by any lawful means and re-enter and take possession of the Premises (without terminating this Lease); (iii) INTENTIONALLY DELETED; (iv) elect to enter and repossess the Premises and relet the Premises for Tenant's account, holding Tenant liable in damages for all expenses incurred in any such reletting and for any difference between the amount of rent received from such reletting and the rent due and payable under the terms of this Lease; (v) enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expense which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action; and (vi) exercise all other remedies available to Landlord at law or in equity, including, without limitation, injunctive relief of all varieties and as may be set forth under Chapter 83 of the Florida Statutes.

If Tenant defaults, Landlord may, but shall have no obligation to, perform the obligations of Tenant, and if Landlord, in doing so, makes any expenditures or incurs any obligation for the payment of money, including attorneys' fees and costs, the sums so paid or obligations incurred by Landlord shall be paid by Tenant to Landlord within five (5) days of rendition of a bill or statement to Tenant therefore, and in such case, said obligations shall be deemed items of Additional Rent. All Landlord's remedies shall be cumulative and not exclusive. Forbearance by Landlord to enforce one or more of the remedies herein provided upon default shall not be deemed or construed to constitute a waiver of such default. No failure to enforce any term or provision of this lease shall be deemed a waiver by Landlord. Upon any default by Landlord



under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary, exercise any of its rights provided at law or in equity.

**16. ATTORNEYS FEES.** Tenant shall pay all costs, expenses and reasonable attorney's fees (including fees performed by paralegals and other assistants, as well as expert fees) that may be incurred or paid by Landlord in enforcing the covenants and conditions of the Lease, including, but not limited to, those incurred prior to litigation, during litigation, and up through and including all trial and appellate levels of litigation. All such fees and costs are items of Additional Rent under this Lease. In connection with any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to this Lease, be it for recover of the Premises, for any sum due hereunder, or any other matter relating to the Lease, the successful or prevailing party or parties shall be entitled to recover attorney's, paralegal's, and legal assistant's fees and disbursements (including fees, costs and disbursements which would not otherwise be taxable as costs in the proceeding) and expert witness fees through and including all post-judgment and appellate levels.

**17. SECURITY DEPOSIT.** Tenant shall deposit with Landlord, that sum designated in Section 1.F. of this Lease as a security deposit (the "Security Deposit"). Said Security Deposit shall serve as security for the performance of Tenant's obligations under this Lease, including without limitation, the surrender of possession of the Premises to Landlord as herein provided. If Landlord applies any part of the Security Deposit to cure any default of Tenant, Tenant shall on demand, deposit with Landlord in the amount so applied so that Landlord shall have the full Security Deposit on hand at all times during the Lease Term and any Renewal Terms. The Security Deposit shall be held by Landlord as security for Tenant's full and faithful performance of all of its obligations under this Lease, including, but not limited to, payment of Rent. Tenant grants Landlord a security interest in the Security Deposit. The Security Deposit may be commingled with other funds of Landlord. Landlord shall have no liability for payment of any interest on the Security Deposit. Landlord may apply the Security Deposit to the extent required to cure any default by Tenant, including a default in payment of Rent. If Landlord applies the Security Deposit to cure a default, Tenant shall deliver to Landlord the amount necessary to replenish the Security Deposit to its original sum within five (5) days after notice from Landlord. If Tenant fails to timely pay Rent when due on three (3) or more separate occasions during the Lease Term and/or any Renewal Term, Landlord may demand an addition to the Security Deposit in an amount equal to one month's Base Rent at the time of such demand. If Tenant continues to fail to timely pay Rent when due on three (3) or more separate occasions during the Lease Term and/or any Renewal Term, following Landlord's prior demand for an addition to the Security Deposit on account of late payment of Rent, Landlord may demand a further addition to the Security Deposit in an amount equal to one month's Base Rent at the time of such later demand. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant, nor shall it be a defense to any action that Landlord may bring against Tenant.

**18. WAIVER.** No failure of Landlord to enforce any term or obligation of Tenant shall be deemed to be a waiver of such term or obligation by Landlord, or Landlord's right to enforce such term or obligation in the future.



**19. NOTICES.** Except as otherwise provided for herein, the address appearing in the opening paragraph of this Lease shall be the designated address for provision of notices to Landlord, and the address of the Premises shall be the designated address for provision of notices to Tenant. Landlord may change its designated address for provision of notices by providing Tenant with a notice of change of address. Any notice to be given under this Lease may be given either by a party itself or by its attorney or agent and shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as Federal Express), or by the United States Postal Service, Express, Priority, registered or certified mail, with tracking information, in each case addressed to the respective party at said party's notice address. If Tenant is absent from the Premises (or, if applicable, any other address which serves as the designated address for providing notices to Tenant), Landlord may provide notice by posting same at a conspicuous location on the Premises such as the front door of the Premises. A notice shall be deemed effective upon (i) receipt; (ii) the date sent if it is returned to the addressor because it is refused, unclaimed, or the addressee has moved; or (iii) if posted, the date of posting.

**20. HEIRS, ASSIGNS, SUCCESSORS.** This Lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties. The terms "Landlord" and "Tenant" as used in this Lease shall also refer to the predecessors and successors in interest of such parties, when the context of reference so requires.

**21. SUBORDINATION.** So long as Tenant's possession is not disturbed, this Lease is and shall be subordinated to all existing and future liens and encumbrances, including, but not limited to, any bona fide mortgage, deed of trust, or any other hypothecation for security which has been or which hereafter may be placed upon the Premises and/or Building. Tenant agrees that the aforesaid subordination of this Lease shall remain in place notwithstanding any renewals, modifications, consolidations, replacements, and/or extensions hereof. Tenant shall execute any commercially reasonable documents in addition to this Lease which may be required to effectuate such subordination, and failing so to do within ten (10) days after written demand shall constitute a default on the part of Tenant.

**22. LIENS.** The interest of Landlord in the Premises and/or Building shall not be subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. This exculpation is made with express reference to § 713.10, Florida Statutes. If any lien is filed against the Premises or Building for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond under § 713.24, Florida Statutes, within ten days after notice to Tenant. If any such lien is recorded and not discharged by Tenant as above required, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Landlord as Additional Rent. Further, Tenant shall indemnify, subject to the limitations of F.S. 768.28, defend, and save Landlord harmless from and against any damage or loss, including attorneys' fees and costs, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in the Premises or Building by or on behalf of Tenant. Tenant shall notify every contractor making improvements to the Premises or Building that the interest of the Landlord in the Premises and Building shall not be subject to



liens. All indemnity obligations set forth in this Section shall be deemed to be items of Additional Rent.

**23. END OF TERM.** Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease in good order and condition, broom-clean. Tenant shall be liable to Landlord for all damages, including but not limited to, any and all incidental and consequential damages, that Landlord may suffer by reason of a violation of this paragraph, as well as by reason of any holding over by Tenant. Tenant shall indemnify, subject to the limitations of F.S. 768.28, defend, and save Landlord harmless against all costs, claims, loss, or liability resulting from delay by Tenant in surrendering the Premises, including, but not limited to, any claims made by any succeeding Tenant founded on any delay. All Alterations made by Landlord or Tenant to the Premises shall become Landlord's property on the expiration or sooner termination of the Lease. On the expiration or sooner termination of the Lease, upon demand by Landlord, Tenant shall restore the Premises to its condition on the Commencement Date; provided, however, that all improvements including any Building shall become property of the Landlord and shall be turned in without waste or delay. On the expiration or sooner termination of the Lease, Tenant, at its expense, shall remove from the Premises, all of Tenant's personal property. Tenant shall also repair any damage to the Premises caused by the removal. If Tenant fails to perform any of the foregoing obligations, Landlord may do so on behalf of Tenant, and in such case, Landlord shall be entitled to reimbursement of its costs incurred in doing so, with such costs being items of Additional Rent under this Lease. Any items of Tenant's property that shall remain in the Premises after the expiration or sooner termination of the Lease, may, at the option of Landlord, be deemed to have been abandoned, and will be treated in accordance with applicable provisions of Chapter 715, Florida Statutes. Abandonment of the Premises shall be determined as provided in § 83.05(3), Florida Statutes, and in such case, such items may be retained by Landlord as its property to be disposed of by Landlord, without accountability to Tenant or any other party, in the manner Landlord shall determine, and at Tenant's expense.

#### **24. MISCELLANEOUS.**

**A. Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, Landlord or Tenant shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, hurricanes, windstorm, shortages of labor or materials, theft, fire, public enemy, injunction, insurrection, court order, requisition of other governmental body or authority, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the control of Landlord or Tenant. However, the provisions of this sub-paragraph are inapplicable to any provision of this Lease requiring the payment of money, including without limitation, Rent and additional charges. Such payments shall continue to be made despite any acts of God as described in this sub-paragraph.

**B. Holdover.** The failure of Tenant to surrender the Premises on the Termination Date (or at such time that the Lease may be terminated otherwise as called for in this Lease or by operation of law), and the subsequent holding over by Tenant without the consent of Landlord, shall result in the creation of a tenancy at will at double the Rent and other charges payable at



the time of the date provided herein for the termination of this Lease and in addition thereto, Tenant shall be liable to Landlord for any and all damages which may be suffered by Landlord as the result of such holdover. This provision does not give Tenant any right to hold over at the expiration of the term of this Lease, and shall not be deemed to be a renewal of the lease either by operation of law or otherwise.

**C. Signage and Displays.** Tenant shall be permitted to install signs in, on and about the Premises to the maximum extent permitted by local laws and regulations. Notwithstanding the foregoing, Tenant shall not display, inscribe, paint, print, maintain or affix on any place, or about the Premises or Building, any sign, notice, legend, direction, figure, or advertisement, except as approved in writing by Landlord in its sole discretion. All plans for signage must be submitted in advance to Landlord prior to application for any and all permits and/or any other required approvals for erection of same, and in any event prior to installation of same. No signage or displays shall be erected until such time that Tenant procures all required permits and approvals. Landlord shall have no obligation to apply for any permits or approvals for said signage or displays. The sole obligation to apply for all required permits and approvals for signage and displays shall lie with Tenant. Any and all signage and displays shall be in full compliance with all statutes, ordinances and requirements of all municipal, county, state and federal authorities now in force and shall otherwise fully comply with the provisions of Section 4 of this Lease. All signage must be consistent with the character of the Building and Premises and all plans for signage are subject to Landlord's prior approval which shall be determined in Landlord's sole discretion.

**D. Landlord Liability Limited.** Landlord shall have no personal liability with respect to any of the provisions of this Lease. If Landlord is in breach or in default with respect to its obligations or covenants under the Lease, Tenant shall look solely to the interest of the Landlord in the Premises for the satisfaction of Tenant's remedies, and no other property or assets of the Landlord shall be subject to judgment, or to levy, execution or other enforcement procedure for such satisfaction. No other properties or assets of Landlord shall be subject to levy, execution, or other enforcement procedures for the satisfaction of any judgment (or other judicial process) or for the satisfaction of any other remedy of Tenant arising out of or in connection with this Lease, the relationship of Landlord and Tenant, or Tenant's use of the Premises or Building. In the event of a transfer of title or ownership interest in the Premises or Building by Landlord, the Landlord as named in this Lease (and in the case of any subsequent transfers, the then grantor) shall be relieved from all liability which would otherwise accrue and after the date of such transfer with respect to Landlord's obligations thereafter to be performed. The obligations contained in this Lease to be performed by Landlord shall, subject to the above, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

**E. Estoppel.** Tenant shall, from time to, time, upon request by Landlord, promptly, within five (5) days after receipt of such request, execute and acknowledge a written instrument in form reasonably satisfactory to Landlord certifying to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person specified by Landlord, as to the validity and force and effect of the Lease as then constituted, as to the existence of any default on the part of any party hereunder, as to the dates to which and the amounts in which Rent and



other charges hereunder have been paid in advance, as to the existence of any counterclaims, offsets or defenses hereunder on Tenant's part and as to any other matters requested by Landlord.

**F. No Partial Rent Payments.** Except as otherwise provided for in this Lease, all payments of Rent must be made in full when due. Payment or receipt of a payment of Rent of less than the amount stated in the Lease shall be deemed to be nothing more than partial payment on Tenant's account. Under no circumstances shall Landlord's acceptance of partial payment constitute accord and satisfaction. Landlord's acceptance of partial payment shall not be deemed a waiver of Landlord's right to collect the balance due on the total amount due from Tenant, despite any endorsement, stipulation or other statement on any check, blank check, money order, etc. otherwise. Landlord may accept any partial payment check with any conditional endorsement without prejudice to Landlord's right to recover the balance remaining due, or to pursue any other remedy available under this Lease. Partial payments shall be applied in accordance with other applicable provisions of this Lease.

**G. Modifications.** Any modification to this Lease must be made in a writing signed by Landlord, in which the Landlord states and agrees to the modification.

**H. Initial Payment.** Until such time that both Landlord and Tenant execute this Lease, the deposit or negotiation by Landlord of the amount due in Section I.F. of this Lease shall not bind Landlord to the terms and provisions of this Lease, and until such time that this Lease becomes effective because of the foregoing, Landlord may refund any amounts so provided by Tenant pursuant to Section I.F., with no further obligation accruing to the parties.

**I. Radon Gas Disclosure.** In accordance with the requirements of applicable Florida law, the following notice is hereby given:

**RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT IS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM THE COUNTY PUBLIC HEALTH UNIT FOR THE COUNTY IN WHICH THE BUILDING IS LOCATED.**

**J. Brokers.** Tenant represents to Landlord that if no broker is named below, Tenant has not dealt with any broker, or, the only broker it has dealt with in this transaction is **Colliers International, LLC**, a Florida Realty, as Tenant's real estate broker ("Authorized Broker"), who will be paid a commission solely by Tenant in accordance with a separate commission agreement with the Tenant. Except for the foregoing Authorized Broker, the Tenant represents to Landlord that Tenant has not consulted, dealt or negotiated in any manner concerning this Lease transaction with any other real estate broker, salesman, agent, or finder. Tenant agrees to indemnify, subject to the limitations of F.S. 768.28, and hold Landlord harmless from and against any or all claims of liability, including attorneys' fees and costs (at both the trial and

appellate levels) resulting from or arising out of any misrepresentations in this paragraph. This indemnity obligation shall survive the termination or early expiration of this Lease. All amounts due to Landlord from Tenant under this sub-paragraph shall constitute Additional Rent. Landlord represents that it has not dealt with consulted, dealt or negotiated in any manner concerning this Lease transaction with any other estate broker, salesman, agent, or finder. Landlord agrees to indemnify and hold Tenant harmless from and against any or all claims of liability, including attorneys' fees and costs (at both the trial and appellate levels) resulting from or arising out of any misrepresentations in this paragraph. This indemnity obligation shall survive the termination or early expiration of this Lease.

**K. Applicable Law, Venue.** This Lease shall be governed by Florida law. Exclusive venue for any litigation arising out of or relating to this Lease shall lie in a court of competent jurisdiction in Miami-Dade County, Florida.

**L. JURY TRIAL WAIVER: EACH PARTY IRREVOCABLY WAIVES ITS RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS RELATING TO ITS SUBJECT MATTER.**

**M. Administrative Fee.** If Tenant is required to do some act or pay some charge to a person other than Landlord and Tenant fails to do so, Landlord may do so on behalf of Tenant. In such case, Landlord may charge Tenant an administrative fee in an amount not to exceed 10% of Landlord's costs incurred, but not less than \$50.00. Such administrative fee shall be deemed an item of Additional Rent under this Lease. For purposes of this Lease, the terms "Administrative Fee" and "Administrative Charge" shall be deemed interchangeable.

**N. Severability.** Every provision of this Lease is intended to be severable. If any term or provision hereof is deemed illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity or legality of the remainder of this Lease.

**O. Incorporation by Reference.** Every appendix, exhibit, schedule, and other document attached to this Lease, along with any amendment or addendum to the Lease is and will be incorporated into this Lease by reference.

**P. Headings.** All headings contained herein are for convenience purposes only and shall have no legal significance.

**Q. Drafting and Construction.** Landlord and Tenant acknowledge that the provisions and language of this Lease have been negotiated freely between the parties. Both parties have had the opportunity to confer with legal counsel regarding the terms and provisions of this Lease. Tenant agrees that no provision of this Lease shall be construed against Landlord by reason of Landlord having drafted such provision, and Landlord agrees that no provision of this Lease shall be construed against Tenant by reason of Tenant having drafted such provision. In the event a reference to a section or paragraph in this Lease is in error, the Lease shall be construed to refer to such section or paragraph that is most logically associated with said reference whenever possible.



**R. Gender.** Any reference herein to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural and vice versa, unless the context requires otherwise.

**S. Due Authority.** Tenant represents that the execution and delivery of this Lease has been duly authorized by all necessary and proper action taken on the part of Tenant's Managers, Members, Officers, Board of Directors, Shareholders, Partners or other applicable persons or body with the power to authorize same, and that the individual executing this Lease on behalf of Tenant has full power and authority to do so.

**T. References to Statutes.** All references to statutes shall be deemed to refer to that provision of the referenced statute or chapter of statutes in effect at the time of execution hereof, as amended, revised or replaced from time to time.

**U. Recording Prohibited.** The recording by Tenant, by any attorney, agent or representative of Tenant, or by any contractor or sub-contractor of Tenant, of this Lease, any memorandum of lease, or any other similar document that could make this Lease or terms hereof a matter of public record, with the Recorder for Miami-Dade County, Florida, or other applicable authority or recorder of public or official documents, is expressly prohibited.

**V. Landlord Consent or Approval.** Whenever this Lease calls for the consent or approval of Landlord, such consent or approval must not be unreasonably withheld or delayed and shall be in writing, unless provided for elsewhere in this Lease.

**W. Public Records.** The Parties agree to comply with the applicable provisions of Chapter 119, Florida Statutes.

**25. ENTIRE AGREEMENT.** The forgoing constitutes the entire agreement between the parties and may be modified only by writing signed by both parties. The following Exhibits are made a part of this Lease before the parties' execution hereof, and are incorporated into this Lease by reference.

**Exhibit A – Legal Description**

Exhibit B – Landlord's Work (To be provided in more detail and cost to be added to rent in Year 1)


- Remove/Install asphalt per Tenant plan
- Add landscaping (per Tenant plan)
- Install fencing (per Tenant plan)
- Install storage hangar for trucks (per Tenant plan)

**(Signature page to follow. Remainder of page intentionally left blank)**

Signed and sealed by the parties on the date and year below written.

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
  
\_\_\_\_\_

Approved as to form and legal sufficiency  
for North Bay Village, Florida only:

\_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, PL  
Village Attorneys

**LANDLORD:**


1353 NW LLC, a Florida limited liability  
company

By: \_\_\_\_\_  
Azad Ali, *Manager*

Dated: \_\_\_\_\_

**TENANT:**

North Bay Village, a Florida municipal  
corporation, and/or assigns

By:   
\_\_\_\_\_  
Dr. Ralph Rosado, *Village Manager*

Dated: \_\_\_\_\_ 07/11/24 \_\_\_\_\_

**EXHIBIT A**

**Legal Description**

The land referred to herein below is situated in the county of Miami-Dade, state of Florida, and is described as follows:

A portion of Lots 1 and 2, Block 2, Amended Plat of Hillside Acres, according to the plat thereof as recorded in Plat Book 7, Page 35, Public Records of Miami-Dade County Florida being more particularly described as follows:

Beginning at the NW corner of said Lot 2, thence run South 89°30'10" East, along the North lines of said Lots 1 and 2, for a distance of 189.73 feet to a point lying 5 feet West of the NE Corner of said Lot 1; thence run South 0°19'15" West, along a line lying 5 feet West of and parallel to the East line of said Lot 1, for a distance of 162.88 feet to a point on a circular curve to the right, concave to the Northwest, whose radius lies at a bearing of North 14°43'51" West from said point, said circular curve being the Northwest Right-Of-Way line of 81st street extension as shown on the Right-Of-Way map recorded in Plat Book 78, Page 88, Public Records of Miami-Dade County; thence run Southwesterly, along the arc of said circular curve to the right, whose elements are a radius of 500 feet and a central angle of 10°07'09" for an arc distance of 88.31 feet to a point lying 35 feet North of the South line of said Lot 1; thence run North 89°29'07" West, along a line lying 35 feet North of and parallel to the South lines of said Lots 1 and 2, for a distance of 103.89 feet to a point on the West line of said Lot 2 lying 35 feet North of the SW Corner of said Lot 2; thence run North 0°38'42" East, along the said West line of Lot 2, for a distance of 178.42 feet to the point of beginning.

Folio Number: 30-3111-044-0110



## EXHIBIT B WORK LETTER

This Work Letter is entered into on this \_\_\_\_ day of \_\_\_\_\_ 202\_\_ by and between \_\_\_\_\_ (“**Landlord**”) and North Bay Village, a Florida municipal corporation (“**Tenant**”). All capitalized terms appearing in this Work Letter Agreement (“**Letter**”) shall have the same meaning as those appearing in the attached Lease between Landlord and Tenant (“**Lease**”), except as expressly modified herein.

This Letter, when fully executed by both parties, shall modify, amend, and supplement the Lease as follows:

### 1. **Conceptual Design**

- a. Attached hereto as Exhibit B-1 is a space plan showing the size, nature and location of the Initial Improvements, as approved by Landlord and Tenant (the “**Conceptual Design**”), which shall consist of:
  - i. About 695 LF of chainlink fencing on East and West side (with mesh) and North side (no mesh) of property
  - ii. About 135 LF of wood fencing on Southeast corner of property
  - iii. About 9,700 sq. ft. of "rolled six-inch rock base and one-inch durable weatherproof asphaltic pavement" on North side of property
  - iv. Asphalt removal 4,300 sq. ft. area for landscaping below
  - v. Hangar with mesh for truck storage measuring 60ft (length) x 45ft (width) x 16ft (height)
  - vi. About 4,300 sq. ft. of grass and landscaping on Southeast corner of property - clusia hedges throughout along wood fence, other plants to meet the remaining 4,300 sqft required for landscaping per County Zoning = 6,100 sqft total.
- b. Tenant shall not without Landlord’s prior written approval make any changes to the Conceptual Design except in accordance with Section 3(b) below.

### 2. **Construction of Initial Improvements**

- a. Landlord will construct the Initial Improvements. The Tenant will reimburse the Landlord an amount not to exceed \$300,000 for the Initial Improvements. Landlord shall be responsible for securing and paying for all applicable permits and government approvals in accordance with all local, state and federal ordinances, regulations, codes, administrative orders, statutes and laws. Provided Tenant does not make any material changes to its requirements set forth in Section 1 that cause an increase in costs, Tenant will not be responsible for any cost overrun in connection with the Initial Improvements and Landlord shall be responsible for any costs in excess of \$300,000. Tenant shall make an initial payment of \$100,000 (the “Construction Deposit”) to pay for the Initial Improvements. Landlord shall apply the Construction Deposit to the initial invoices submitted by contractors working on the Tenant Improvements.

Thereafter, Tenant shall reimburse Landlord for the Initial Improvements on a monthly basis upon Landlord's presentation of invoices for the construction of the Initial Improvements. Landlord shall provide evidence of payment for all such invoices no later than 3 days after receiving payment from Tenant. Landlord shall complete the Initial Improvements except for minor or insubstantial punch-list items (which items shall not adversely affect Tenant's conduct of its ordinary business activities in the Leased Premises), in accordance with all applicable Laws, and with all requisite inspections and delivery of documentation to Tenant from the appropriate governmental authority stating the Premises is approved for occupancy ("Substantially Completed"). Landlord and Tenant will reasonably coordinate the Tenant's business activities on the Premises with the Landlord's construction activities to minimize disruption.

- b. The Initial Improvements shall be constructed by Landlord or its contractors in accordance with the Conceptual Plans. Landlord shall own the Initial Improvements to the Premises.
- c. If Tenant desires to change the Conceptual Design and/or requests Landlord to perform additional work to the Premises outside the scope of the Conceptual Design, then such work shall be performed by Landlord at Tenant's expense pursuant to a written change order executed by Tenant. Prior to commencing any such work requested by Tenant, Landlord will submit to Tenant written estimates of the cost of any such work. If Tenant fails to approve any such estimate within ten (10) days, then the same shall be deemed disapproved in all respects by Tenant, and Landlord shall not be authorized to proceed thereon. If Tenant approves the estimate of such work, then Landlord shall prepare and Tenant shall execute a written change order and Tenant shall deposit with Landlord the additional cost of such work or materials prior to Landlord's commencement of such work. Landlord will use reasonable care in preparing the cost estimates, but they are estimates only and do not limit Tenant's obligation to pay for the actual additional cost of the additional work, whether or not it exceeds the estimated amounts.
- d. **"Substantial Completion"** shall mean the date when the Initial Improvements have been substantially completed as certified by Landlord or Landlord's architect in accordance with the Conceptual Design and all permits are closed, excepting only such details, omissions, decorations and mechanical adjustments of the type normally found on an architectural "punch list" that do not materially impair Tenant's use and enjoyment of the Premises nor adversely affect Tenant's conduct of its ordinary business activities in the Premises and will not delay Tenant's ability to obtain a license to operate the Premises in accordance with Section 3 of the Lease. (The definition of Substantial Completion shall also define the terms "Substantially Completed" and "Substantially Complete").



e. If, for any reason other than through no fault of Landlord or a change order executed by Tenant expressly indicating different dates, the Initial Improvements are not Substantially Complete on or before October 1, 2024, Tenant shall receive a day for day abatement of rent, which abatement shall be in addition to the abatement set forth in Section 1(i) and shall apply once payment of Base Rent commences. If, for any reason other than through no fault of Landlord or a change order executed by Tenant expressly indicating different dates, the Initial Improvements are not Substantially Completed by December 1, 2024, Tenant may, at its option, terminate the Lease and obtain a reimbursement of payments made for the Initial Improvements. Within fifteen (15) days following Substantial Completion, Tenant shall provide Landlord with a punch list of items requiring completion and/or correction with regard to the Initial Improvements to the Premises (“**Punch List**”) and Landlord shall complete the Punch List as soon as reasonably practical, but in any event within thirty (30) days following Substantial Completion.

f. Landlord shall not cause any liens to be placed on the Premises.

**3. Selection of Contractor**

Landlord, acting in its sole and absolute discretion shall have the right to select the contractor for the Initial Improvements.

**4. Agreement**

Except as expressly modified by this Letter, the Lease and all the covenants, agreements, terms, provisions, and conditions thereof shall remain in full force and effect and are hereby ratified and affirmed by Landlord and Tenant.

The above terms and conditions are confirmed and agreed as of the date first written above by:

**Landlord:** \_\_\_\_\_

**Tenant: North Bay Village**

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

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

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

**Name:** Dr. Ralph Rosado

**Title:** \_\_\_\_\_

**Title:** Village Manager

**EXHIBIT B-1  
CONCEPTUAL DESIGN**



Lessor ( ) ( ) and Tenant ( RR ) ( ) acknowledge receipt of a copy of this page which is 24



## Annabelle Rodriguez

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**From:** Leonardo Cosio  
**Sent:** Tuesday, July 23, 2024 4:03 PM  
**To:** Annabelle Rodriguez; Mayte Gamiotea  
**Cc:** account temp; Ralph Rosado  
**Subject:** Need Budget Amendment to be Executed  
**Attachments:** Budget Amendment.pdf; Reso.pdf; Lease Exhibit B Work Letter - 1353 NW 79 ST.pdf

Good afternoon,

Attached are the items needed to finalize the execution of this budget amendment. I am not able to pay the \$100,000 to the landlord of the new PW facility at 1353 NW 79 ST until the funds are transferred to that account. Please advise.

Thank you!



## Leo Cosio

CHIEF OF STAFF TO THE VILLAGE MANAGER

Phone:  
Mobile:  
Email: [lcosio@nbvillage.com](mailto:lcosio@nbvillage.com)  
Website: [northbayvillage-fl.gov](http://northbayvillage-fl.gov)  
Address: 1666 Kennedy Causeway Suite 300  
North Bay Village, FL.33141



PLEASE NOTE: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.