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LEASE  
BETWEEN

Doc# 1691648  
Bk# 2357 Pg# 126

UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA

LESSOR

AND

OLD TOWN KEY WEST DEVELOPMENT, LLC

LESSEE

DATED Dec. 20, 2004

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### LEASE AGREEMENT

THIS LEASE made and entered into at Key West, Monroe County, Florida, on December 30 2004, by and between Utility Board of the City of Key West, Florida (referred to as the "Lessor") and Old Town Key West Development, LLC (referred to as the "Lessee").

### PREAMBLE

Lessor is the electric utility for Key West, Florida and owns the decommissioned Steam Plant Building located on Trumbo Road in the Key West Bight area of Old Town Key West (the "Building"). Lessor sought to lease the Building and the adjacent property (the "Overall Property") to a private developer in order to obtain income from the Overall Property for its ratepayers while maintaining ownership of the Overall Property.

Lessor solicited proposals for redevelopment of the Overall Property. The City of Key West has a critical lack of affordable housing, and all the proposals received by the Lessor called for redevelopment of the Building into upscale residential housing and a portion of the Overall Property being used for an affordable housing community. Lessor selected Old Town Key West Development, Ltd. (the "Developer") as the preferred developer after a series of public meetings.

The Developer's plan for redevelopment of the Overall Property as presented to Lessor included, but was not limited to, the following elements:

(a) Retaining the Building with minimal modifications to the exterior walls, thereby maintaining the historic appearance of the Building. The Building facade facing Trumbo Road would not be modified, but the balance of the exterior walls of the Building would be modified to add balconies and windows. The Building as well as the Affordable Housing Units would be designed with an Art Deco theme consistently applied for the entire Property.

(b) Removal of all equipment on or in the Overall Property as well as any and all demolition and cleaning needed to make the Overall Property suitable for the proposed development.

(c) Unless otherwise agreed by Lessor, the Overall Property, after redevelopment, would be utilized for: (i) up to 19 market rate luxury residential condominium units in the Building ("Market Rate Units"); and (ii) 38 affordable residential units located on the property adjacent to the Building ("Affordable Housing Units").

Lessor requires the development of the Affordable Housing Units as a condition to the Lease for redevelopment of the Building into the Market Rate Units.

Because of the differing requirements for successful financing and development of the two communities to be built on the Overall Property, and because of the differing natures of the two communities, it was agreed that the Overall Property would be divided for leasing purposes. Lessor

would grant one lease for the Affordable Housing Units (this Lease) and another lease for the property needed for the Market Rate Units. This Lease is for the portion of the Property devoted to the creation of the Affordable Housing Units. The Lessor and the Lessee, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for One Dollar and 00/100 (\$1.00) and other valuable considerations paid in hand simultaneously with the execution and delivery of this Lease, receipt whereof is hereby acknowledged, agree as follows:

## ARTICLE I

### Definitions

"Affordable Housing Unit" shall mean a residential housing unit that meets the requirements set forth in Section 122-1466 of the Code of Ordinances of the City of Key West, or any successor ordinance.

"Building" shall mean the decommissioned Steam Plant Building located on Trumbo Road in the Key West Bight area of Old Town Key West.

"Construction Period" shall mean the period beginning on the issuance of the building permit for construction of the Affordable Housing Units and continuing for eighteen months thereafter.

"Commencement Date" shall mean the date this Lease is fully executed and delivered by all parties and the date that the Lessee shall be entitled to begin to occupy the Demised Premises for purposes of development and construction of the Project.

"Demised Premises" shall mean the property leased to Lessee pursuant to this Lease for development of the Affordable Housing Units. The Demised Premises are depicted on attached Exhibit "B" and legally described on attached Exhibit "C".

"Lease" shall mean this lease for the creation of the Affordable Housing Units on the Demised Premises.

"Lessor" means the Utility Board of the City of Key West, Florida.

"Lessee" means Old Town Key West Development, LLC, the developer of the Affordable Housing Units.

"Market Rate Unit" shall mean a residential condominium unit located in the Building. The Market Rate Units are not required to be an Affordable Housing Unit as described in the Code of Ordinances of the City of Key West.

"Overall Property" shall mean the Building and the adjacent property as depicted on attached Exhibit "A".

"Overall Project" shall mean redevelopment of the Overall Property with the Building containing up to nineteen (19) Market Rate Units and a portion of the Overall Property used to build multi-family housing containing a total of 38 Affordable Housing Units.

"Project" shall mean the redevelopment of the Demised Premises primarily for the Affordable Housing Units.

"Rent" shall mean any sum of money due to the Lessor under this Lease for any reason.

"Site Plan" shall mean the Site Plan attached hereto as Exhibit "E" and approved by Lessor.

"Term" the period beginning at the end of the Construction Period and continuing for ninety-nine years, plus any agreed upon extension of this Lease.

## ARTICLE II

### Demised Premises

Section 2.01 Lessor's Demise. Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the rents and the prompt performance by the Lessee of the covenants and agreements, to be kept and performed by the Lessee, the Lessor does lease, let, and demise to the Lessee and the Lessee hereby leases from the Lessor, the following described premises, situate, lying, and being in Monroe County, Florida:

See Attached Exhibit's "B" and "C"

Section 2.02 Conditions. The demise is likewise made subject to the following:

- (a) Conditions, restrictions, and limitations, if any, there be now appearing of record;
- (b) Zoning ordinances of Key West, the County of Monroe, State of Florida, and any other applicable governmental body now existing or which may hereafter exist by reason of any legal authority during the life of this Lease;
- (c) Any questions of survey, the Lessee having satisfied itself as to the boundary lines and contents of the Demised Premises above described and likewise satisfied itself with a sufficiency of the present title of the Lessor; and
- (d) The proper performance by the Lessee of all of the terms and conditions contained in this Lease.

### ARTICLE III

#### Term

To have and to hold the Demised Premises for a term of ninety-nine (99) years commencing on the Commencement Date, and ending ninety-nine (99) years from the end of the Construction Period thereafter, both dates inclusive, unless sooner terminated as hereinafter provided. Lessee shall be given possession on the Commencement Date and the terms and conditions set forth herein shall be binding on the parties as of the Commencement Date. Lessee shall have the right to occupy the Demised Premises as of the Commencement Date in order to allow Lessee to commence demolition, construction, as well as other activities related to the development and construction of the Project.

### ARTICLE IV

#### Rent

Section 4.01. Lessee covenants and agrees to pay to Lessor promptly when due, without notice or demand, and without deduction or offset, annual Rent for the Demised Premises during the Term in the amount of one and no/100 dollar (\$1.00).

Section 4.02. Additionally, in the event there are modifications in the rules, laws, and/or regulations affecting the Affordable Housing Units so that the rents chargeable to the tenants of Affordable Housing Units may be increased to allow a greater profit to Lessee than available under existing laws, Lessee covenants and agrees to pay Lessor a monthly installment in the amount of fifty percent (50%) of any such increased profit.

Section 4.03. All amounts payable under Section 4.01 and 4.02 hereof, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, 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, each payment to be paid to Lessor at the address set forth herein 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. Except for any income tax payable by the Lessor, Lessee shall pay any and all taxes, including any local surcharge or other tax, on the Rent payable pursuant to this Lease in addition to the sums otherwise set forth herein.

Section 4.04. It is intended that the Rent provided for in this Lease shall be absolutely net to Lessor throughout the Term, free of any taxes, costs, utilities, insurance expenses, liabilities, charges or other deductions whatsoever, with respect to the Demised Premises and/or the ownership, leasing, operation, maintenance, repair, rebuilding, use or occupation thereof.

Section 4.05. All amounts payable by Lessee to Lessor under any of the provisions of this Lease, if not paid when due as provided for in this Lease shall bear interest at the highest rate allowable under Florida law from the time they become due until paid in full by Lessee. In addition, Lessee shall pay a late fee in the amount of ten (10%) percent of any amount due from Lessee to

Lessor, which is not paid within ten (10) days of the due date for such payment as to any sums due for Rent and within thirty (30) days for any other sums due from Lessee pursuant to this Lease; provided, however, such payment shall not excuse or cure any default by Lessee under this Lease. It is agreed by the parties hereto that said late fee should be for reimbursement to Lessor for collection charges incurred as a result of the overdue rent. Such late fee shall be in addition to any interest payable by Lessee as set herein from Lessee's failure to pay any Rent due hereunder. In the event that any check, bank draft, order for payment or negotiable instrument given to Lessor for any payment under this Lease shall be dishonored for any reason whatsoever not attributable to Lessor, Lessor shall be entitled to charge Lessee an administrative charge of Fifty Dollars (\$50.00). In addition, Lessor shall be reimbursed by Lessee for any costs incurred by Lessor as a result of said instrument being dishonored.

Section 4.06. Upon the Commencement Date, Lessee shall pay or cause to be paid to Lessor a deposit in the amount of Ten Thousand and no/100 Dollars (\$10,000.00)(the "Deposit") to be held as a deposit to secure performance of Lessee's obligations hereunder.

The Deposit may be commingled by Lessor with other funds and shall not bear interest.

In the event of any default of any provision of this Lease, the Deposit, or such portion of the Deposit as needed to cure the default, may be retained by Landlord and may be applied toward damages arising from the default. The Deposit shall not be construed as liquidated damages. Upon yielding of the Demised Premises at the termination of this Lease, and provided no default has occurred, the deposit shall be returned to Lessee without interest.

If Lessor conveys its interest under this Lease, the Deposit, or the part not previously applied, shall be turned over to Lessor's grantees or assigns, and Lessee shall release Lessor from any liability with respect to the Deposit upon receipt of notice that the Deposit has been received by the assignee. This provision shall also apply to subsequent grantees or assigns. Lessee shall not assign, pledge, mortgage or otherwise hypothecate its interest in the Deposit.

The Deposit is not made in payment of rent. If the Deposit, or any portion thereof, is appropriated and applied by Lessor for the payment of overdue rent or other sums due and payable to Lessor, then Lessee shall, within thirty (30) days after written demand by Lessor, remit to Lessor a sufficient amount in cash to restore the Deposit to the amount required by this Section. Failure to pay the sums needed to restore or increase the Deposit to the required amount within such thirty (30) day period shall be deemed a default under this Lease

## ARTICLE V

### Non-Subordination

Notwithstanding anything to the contrary contained in this Lease, the fee simple interest in the Demised Premises shall not be subordinated to any leasehold mortgage, lien or encumbrance of any nature whatsoever. Furthermore, the Lessor's right to receive payment under this Lease shall not be subordinated to any to any debt or equity financing, leasehold mortgage, lien, encumbrance or



obligation of any nature whatsoever.

## ARTICLE VI

### Payment of Taxes and Utilities

**Section 6.01 Lessee's Obligations.** As additional Rent, the Lessee shall pay and discharge, as they become due, promptly and before delinquency, all taxes, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature, whatsoever, which at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on, the Demised Premises, or any improvements thereon, or any part thereof or any appurtenance thereto, or otherwise arising out of the rent and income received by the Lessee from subtenants, any use or occupation of the Demised Premises, and such franchises as may be appurtenant to the use of the Demised Premises, or any document (to which the Lessee is a party) creating or transferring an interest or estate in the Demised Premises. With regards to special assessments, if the right is given to pay either in one sum or in installments, Lessee may elect either mode of payment and Lessee's election shall be binding on Lessor.

**Section 6.02 Obligations Altered.** Nothing herein shall require the Lessee to pay municipal, state, or federal income taxes assessed against the Lessor, municipal, state, or federal capital levy, estate, gift, succession, inheritance, or transfer taxes of the Lessor, or Lessor's legal representative, corporate franchise taxes imposed upon any corporate owner of the fee of the Demised Premises; provided, however, that if at any time during the term of this Lease the methods of taxation prevailing at the commencement of the term hereof shall be altered so as to cause the whole or any part of the taxes, assessments, levies, impositions, or charges now levied, assessed and imposed, wholly or partially as a capital levy, or otherwise, on the rents received therefrom, or of any tax, corporation franchise tax, assessments, levy (including, but not limited to any municipal, state, or federal levy), imposition or charge, or any part thereof, shall be measured by or based in whole or in part upon the Demised Premises and shall be imposed upon the Lessor, then all such taxes, assessments, levies, impositions, or charges, or the part thereof so measured or based, shall be paid and discharged by the Lessee. All rebates on account of any taxes, rates, levies, charges, or assessments required to be paid, shall belong to Lessee.

**Section 6.03 Mode of Payment.** The Lessee shall pay the taxes and other charges as enumerated in this Article and shall deliver official receipts evidencing such payment to the Lessor, which payment of taxes shall be made and the receipts delivered, at least 30 days before the tax, itself, would become delinquent in accordance with the law then in force governing the payment of such tax or taxes. If, however, the Lessee desires to contest the validity of any tax or tax claim, the Lessee may do so without being in default hereunder, provided the Lessee gives the Lessor notice of the Lessee's intention to do so and furnishes the Lessor or the applicable governmental agency with a bond with a surety made by a surety company qualified to do business in the State of Florida or pays cash to a recognized Escrow Agent in Monroe County, one and one half times the amount of the tax

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 or equivalent cash shall be given by the Lessee to the Lessor, not later than 60 days before the tax item or items proposed to be contested would otherwise become delinquent.

Section 6.04 Lessee's Default. If the Lessee shall fail, refuse, or neglect to make any of the payments required in this Article, then the Lessor may pay the same, and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might 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 the Lessee to the Lessor, upon the demand of the Lessor, and the payment thereof may be collected or enforced by the Lessor in the same manner as though such amount were an installment of rent specifically required by the terms of this Lease to be paid by the Lessee to the Lessor, upon the day when the Lessor demands repayment thereof or reimbursement therefor of and from the Lessee; but the election of the Lessor to pay such taxes shall not waive the default thus committed by the Lessee.

Section 6.05 Proration. The foregoing notwithstanding, the parties hereto understand and agree that the taxes for the first year (beginning on the Commencement Date) and the last year of the term shall be prorated proportionately between the Lessor and the Lessee.

## ARTICLE VII

### Mechanic's Liens

Section 7.01 No Lien. The Lessee shall not have the power to subject the interest of the Lessor in the Demised Premises to any mechanic's or materialmen's liens or lien of any kind.

Section 7.02 Release of Lien. The Lessee will not permit or suffer to be filed or claimed against the interest of the Lessor in the Demised Premises during the continuance of this Lease, any lien or claim of any kind (excepting for the mortgage referred to in Article XV), and if such lien be claimed or filed, it shall be the duty of the Lessee, within thirty (30) days after the Lessor shall have been given written notice of such a claim having been filed, or within thirty (30) days after the Lessor shall have been given written notice of such claim and shall have transmitted written notice of the receipt of such claim unto the Lessee (whichever thirty (30) day period expires earlier) to cause the Demised Premises be released from such claim, either by payment or by the posting of bond or 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, within such period of thirty (30) days, in releasing the Lessor and the title of the Lessor from such claim; and the Lessee covenants and agrees, within such period of thirty (30) days, so as to cause the Demised Premises and the Lessor's interest therein to be released from the legal effect of such claim.

Section 7.03 Lessee's Default. If the Lessee shall fail, refuse, or neglect to perform its obligations as required in this Article, then the Lessor may pay any sums required to cause the Demised Premises and the Lessor's interest therein to be released from the legal effect of such claim

and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might 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 the Lessee to the Lessor, upon the demand of the Lessor, and the payment thereof may be collected or enforced by the Lessor in the same manner as though such amount were an installment of rent specifically required by the terms of this Lease to be paid by the Lessee to the Lessor, upon the day when the Lessor demands repayment thereof or reimbursement therefor of and from the Lessee; but the election of the Lessor to pay such amount shall not waive the default thus committed by the Lessee.

## ARTICLE VIII

### Governing Law, Cumulative Remedies

**Section 8.01 Governing Law.** All of the rights and remedies of the respective parties shall be governed by the provisions of this instrument and by the laws of the State of Florida as such laws relate to the respective rights and duties of lessors and lessees.

**Section 8.02 Cumulative Remedies.** During the continuance of the Lease, the Lessor shall have all rights and remedies which this Lease and the laws of the State of Florida assures to him. All rights and remedies accruing to the Lessor shall be cumulative, that is, the Lessor may pursue such rights as the law and this Lease affords to him in whatever order the Lessor desires and the law permits without being compelled to resort to any one remedy in advance of any other.

## ARTICLE IX

### Indemnification of Lessor

**Section 9.01 Indemnification by Lessee.** During the entire term of the Lease, the Lessee will indemnify, defend and save harmless the Lessor against any and all claims, debts, demands, or obligations which may be made against the Lessor or against the Lessor's title in the Demised Premises, arising out of, or in connection with, or in any way related to the Demised Premises, except to the extent such claims may be caused by negligence or misconduct of the Lessor (or its agents or employees in the conduct of work for or at the direction of the Lessor); and if it becomes necessary for the Lessor to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and reasonable attorneys' fees incurred by the Lessor in effecting such defense in addition to any other reasonable sums which the Lessor may be called upon to pay by reason of the entry of a judgment against the Lessor in the litigation in which such claim is asserted.

Except for loss or damage arising out of Lessor's grossly negligent or intentional acts, Lessor shall not be liable to Lessee, or to Lessee's assignees or sublessees or the employees, agents, contractors, or invites of any such person, firm or entity, for any injury or damage to person or property in or about the Demised Premises.

**Section 9.02 Insurance.** On the Commencement Date the Lessee shall cause to be written

and in full force and effect a policy or policies of insurance as noted in Article X insuring the Lessee against any and all claims and demands made by any person or persons whomsoever for injuries received in connection with the operation and maintenance of the Demised Premises, improvements, and buildings located on the Demised Premises. All such policies shall name the Lessee and the Lessor (and any lender holding a mortgage on the Demised Premises), as their respective interests may appear, as the persons insured by such policies; and the original or a duplicate original of each of such policy or policies shall be delivered by the Lessee to the Lessor promptly upon the writing of such policies, together with adequate evidence of the fact that the premiums are paid. Any loss adjustment shall require the written consent of both the Lessor and Lessee.

Section 9.03. Policy Limit Changes. The policy limits for the comprehensive liability insurance may be reviewed by Lessor every five (5) years and adjusted upward, if, in the reasonable discretion of Lessor such increase in coverage is prudent or if similar projects have begun to require greater insurance coverage.

## ARTICLE X

### Insurance

Section 10.01 Property Insurance. From and after the Commencement Date, the Lessee will keep insured any and all buildings and improvements upon the Demised Premises against all loss or damage by fire, flood and windstorm, together with "all risks" "extended coverage," which said insurance will be maintained in an amount which will be sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk, which amount shall not be less than full Replacement Cost value of the Demised Premises, and all of such policies of insurance shall include the name of the Lessor as an additional insured and shall fully protect both the Lessor and the Lessee as their respective interests may appear. In the event of destruction of the said buildings or improvements by fire, flood, windstorm, or other casualty for which insurance shall be payable and as often as such insurance money shall have been paid to the Lessor and the Lessee, said sums so paid shall be deposited in a joint account of the Lessor and the Lessee in a bank located in the County in which the Demised Premises is located designated by the Lessee, and shall be made available to the Lessee for the construction or repair, (including any modification to the improvements sought by the Lessee and approved in writing by the Lessor with Lessor's approval not unreasonably withheld) as the case may be, of any building or buildings damaged or destroyed by fire, flood, windstorm, or other casualty for which insurance money shall be payable and shall be paid out by the Lessor and the Lessee from said joint account from time to time on the estimate of any reliable architect licensed in the State of Florida having jurisdiction of 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 therefor; provided, however, that the total amount of money necessary for the reconstruction or repair of any building or buildings destroyed or injured has been provided by the Lessee for such purpose and its application for such purpose assured. In the event of the destruction or damage of the buildings and improvements or any part thereof, and as often as any building or improvement on said Demised Premises shall be destroyed or damaged by fire, flood, windstorm, or other casualty, the Lessee shall rebuild and repair the same 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 diligently prosecute the reconstruction or repairs without delay and have the same rebuilt and ready for occupancy as soon as reasonably possible from the time when the loss or destruction occurred. The 15-month period for reconstruction shall be enlarged by delays caused without fault or neglect on the part of the Lessee, by act of God, strikes, lockouts, or other conditions (other than matters of refinancing the property) beyond the Lessee's control. Notwithstanding the foregoing, the provisions of any leasehold mortgage shall control as to the uses and disbursement of funds for reconstruction of the improvements in the event of any casualty or damage to such improvements.

While the Project, or any replacement thereof, is in the course of construction, and whenever appropriate while any alterations are in the course of being made, the aforesaid fire and extended coverage insurance shall be carried by Lessee in builder's risk form written on a completed value basis.

Notwithstanding anything to the contrary in the immediately preceding paragraph, in case of destruction of all of the improvements on the Demised Premises from any cause so as to make all units untenable occurring during the last ten (10) years of the Term of this Lease, Lessee, if not then in default under this Lease and if there is no leasehold mortgage or other similar encumbrance on the Lessee's interest in the Demised Premises, may elect to terminate this Lease by written notice to Lessor within thirty (30) days after the occurrence of the destruction. In the event of termination, there shall be no obligation on the part of Lessee to restore or repair the improvements on the Demised Premises, nor any right of the Lessee to receive any proceeds collected under any insurance policies covering the improvements. If Lessee elects not to terminate this Lease in the event of destruction during the last ten (10) years of this Lease, the proceeds of all insurance covering the improvements shall be made available to Lessee for repairs, and Lessee shall be obligated to repair as set forth above.

Section 10.02 Commercial General Liability Insurance. Lessee shall maintain Commercial General Liability Insurance beginning on the Commencement Date and continuing during the entire Term of this Lease. The Commercial General Liability shall cover those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form [ISO Form CG 00-01] as filed for use in Florida without the attachment of restrictive endorsements other than the elimination of medical payments and fire damage legal liability.

General Aggregate	\$1,000,000
Products/Completed Operations	\$1,000,000
[coverage for 3 years after project completion]	
Personal & Advertising Liability	\$500,000
Each Occurrence	\$1,000,000
Contractual Liability	\$1,000,000

Additional Named Insured: The Utility Board of the City of Key West shall be included as an additional insured for Commercial General Liability.

Section 10.03 Environmental Impairment Responsibility. The Lessee and/or its contractors

acknowledge that the performance of this Lease is, or may be, subject to Federal, State and local laws and regulations enacted for the purpose of protecting, preserving or restoring the environment. The Lessee shall at the sole cost of the Lessee or its Contractors, be responsible for full compliance with any such laws or regulations.

The Lessee's performance under Lease shall include, but not by way of limitation, the following:

- A. Performance in a manner to minimize disturbance of or damage to the environment.
- B. To the extent caused by the performance of this Lease by or on behalf of the Lessee or its Contractors, the clean-up, repair or restoration of the environment to the extent required by any Federal, State or local laws or regulations.
- C. The Lessee and or its Contractors shall be responsible for any fines, penalties, damages or assessments made against the Lessee or its Contractors or the Lessor resulting from the performance of this Lease by or on behalf of the Lessee.
- D. The Lessee's obligation under this Section shall survive the termination of this Lease, and shall not be limited in any manner by acceptance or final payment under the Lease terms.

Section 10.04 Other Insurance. Lessee shall maintain such other insurance and in such amounts as may from time to time be reasonably required by the Lessor against other insurable hazards which at the time are commonly insured against in the case of demolition and construction of buildings and/or in the case of premises similarly situated, due regard being or to be given to the height or type of building, its location, construction, use and occupancy. In the event the Lessee believes the Lessor's requirement for such additional insurance is unreasonable the reasonableness of Lessor's request shall be determined in accordance with the rules of the American Arbitration Association. Such determination as to the requirement of coverage and the proper and reasonable limits for such insurance then to be carried 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. This procedure may only be requested on each five (5) year anniversary date of the lease.

Section 10.05 Delivery of Policies. On or before the Commencement Date and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this section, the certificates of all such policies of insurance shall be delivered to the Lessor by the Lessee along with the receipted bills evidencing the fact that the premiums therefore are paid; but nothing herein contained shall be construed as prohibiting the Lessee from financing the premiums where the terms of the policies are for three (3) years or more and in such event the receipts shall evidence it to be the fact that the installment premium payment or payments are paid at or before their respective maturities. Where, however, there is a mortgage on the Demised Premises created pursuant to the provisions contained in Article XV of this Lease, captioned "Mortgage Financing," and if, under the terms of such mortgage, it is obligatory upon the Lessee to cause the originals of the policies to be delivered to the mortgagee, then the Lessee shall deliver to the Lessor duplicate certificates of such policies. The policies or duplicate certificates thereof, as the case may be, shall be delivered by the Lessee to the Lessor at least ten days prior to the effective date of the

policies.

**Section 10.06 Proceeds Payable to Mortgagee.** If any mortgagee holding a mortgage created pursuant to the provisions of Article XV elects, in accordance with the terms of such mortgage, to require that the proceeds of the insurance be paid to the mortgagee, then such payment shall be made, but in such event, it shall still be obligatory upon the Lessee to create the complete fund with the leasehold mortgagee in the manner set forth in this Article to assure and complete the payment for the work of reconstruction and repair.

**Section 10.07 Damages; Insurance Proceeds; Joint Bank Account.** Any excess of money received from insurance remaining in the joint bank account after the reconstruction or repair of such building or buildings, if the Lessee is not in default, shall be paid to the Lessee, and in the case of the Lessee not entering into the reconstruction or repair of the building or buildings within a period of six months from the date of payment of the loss, after damage or destruction occasioned by fire, windstorm, flood or other cause, and diligently prosecuting the same with such dispatch as may be necessary to complete the same in as short a period of time as is reasonable under the circumstances after the occurrence of such damage or destruction, then the amount so collected, or the balance thereof remaining in the joint account, as the case may be, shall be paid to the Lessor and it will be at the Lessor's option to terminate the Lease, unless terminated by Lessee within the last ten (10) years of the Lease as set forth above, and retain such amount as liquidated and agreed upon damages resulting from the failure of the Lessee to promptly, within the time specified, complete such work of reconstruction and repair.

**Section 10.08 Direct Repayment.** The foregoing notwithstanding, in the event the insurance proceeds are the sum of One Hundred Thousand and 00/100 Dollars (\$100,000) or less, then such proceeds shall be paid directly to the Lessee without the necessity of creating the joint bank account, and Lessee shall use such funds to make the replacements or repairs.

**Section 10.9 General Requirements.** All insurance to be provided by Lessee under this Lease shall be effected under valid and enforceable policies in such forms, issued by insurers of recognized financial responsibility qualified to do business in Florida which have been approved by Lessor, which approval shall not be unreasonably withheld. All policies of insurance provided for in this Article shall, to the extent obtainable, contain clauses or endorsements to the effect that (a) no act or negligence of Lessee or anyone acting for Lessee or for any sublessee or occupant of the Demised Premises which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as Lessor, and that (b) such policy of insurance shall not be changed or cancelled without at least thirty (30) days written notice to the Lessor, and that (c) the Lessor shall not be liable for any premiums thereon or subject to any assessments thereunder.

## ARTICLE XI

### Insurance Premiums

The Lessee shall pay premiums for all of the insurance policies which the Lessee is obligated to carry under the terms of this Lease, and will deliver to the Lessor evidence of such payment before the payment of any such premiums become in default, and the Lessee will cause renewals of expiring policies to be written and the policies or copies thereof, as the Lease may require, to be delivered to Lessor at least ten days before the expiration date of such expiring policies.

## ARTICLE XII

### Assignment

Without the written consent of Lessor, first obtained in each case, Lessee shall not assign or sublet any portion of the Demised Premises, or change management of the Demised Premises, except the Lessee may assign this Lease to Steamplant Condominium, LLC, or Edwin O. Swift, as provided in the Binding Contract for Lease between Steamplant Condominium, LLC and Lessor. Therefore, in the event Lessee desires to assign this Lease to said entity or person, Lessor's consent will not be required. Additionally, Lessor acknowledges and agrees that the Affordable Housing Units are to be developed as units for lease to third parties; therefore, these units may be occupied without Lessee obtaining consent from Lessor for such subletting. When consent of the Lessor is required, Lessor's consent may not be unreasonably withheld. This Lease is freely assignable by the Lessor, and upon such assignment the Lessor's liability shall cease. The liability of the original Lessee executing this Lease shall continue after assignment of this Lease by the original Lessee only until all the Affordable Housing Units have been completed and Certificates of Occupancy for all of the Affordable Housing Units have been obtained. Any assignment or sublease in contravention hereof is void and shall be considered a default of this Lease. Lessee may collaterally assign this Lease in connection with any leasehold mortgage financing.

## ARTICLE XIII

### Condemnation

Section 13.01 Eminent Domain, Cancellation. If, at any time during the continuance of this Lease, the Demised Premises or the improvement or building or buildings located thereon, or any portion thereof is taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the rent and other adjustments made as shall be just and equitable under the circumstances. If the Lessor and the Lessee are unable to agree upon what division, annual abatement of rent or other adjustments as are just and equitable, within thirty (30) days after such award has been made, then the matters in dispute shall, be determined in accordance with the rules of the American Arbitration Association. Such determination made by the arbitration shall be binding on the parties. If the legal title to the entire Demised Premises be wholly taken by condemnation, the Lease shall be cancelled.

Section 13.02 Apportionment. Although the title to the building and improvements placed by the Lessee upon the Demised Premises will pass to the Lessor, nevertheless, for purpose of



condemnation, the fact that the Lessee placed such buildings on the Demised Premises shall be taken into account, and the deprivation of the Lessee's use of such buildings and improvements shall, together with the term of the Lease remaining, be an item of damage in determining the portion of the condemnation award to which the Lessee is entitled. In general, it is the intent of this Section that, upon condemnation, the parties hereto shall share in their awards to the extent that their interests, respectively, are depreciated, damaged, or destroyed by the exercise of the right of eminent domain. In this connection, if the condemnation is total, the parties agree that the condemnation award shall be allocated so that the then value of the property, as though it were unimproved property, shall be allocated to the Lessor, and the then value of the building or buildings thereon shall be allocated between the Lessor and Lessee after giving due consideration to the number of years remaining in the term of this Lease and the condition of the buildings at the time of condemnation.

#### ARTICLE XIV

##### Construction

Section 14.01 Zoning. Lessee will obtain all necessary zoning modifications, or otherwise obtain the right to build the Affordable Housing Units on or before April 30, 2003. In the event Lessee does not obtain such approvals by April 30, 2003, Lessee may terminate this Lease by giving written notice to Lessor, or Lessee may elect to extend the Lease on a month to month basis, for a period up on one (1) year, at a monthly rate of five thousand and 00/100 Dollars (\$5,000.00).

Section 14.02 Permitting/Financing. Lessee will obtain all necessary allocations and acquire financing for the Affordable Housing Units on or before December 31, 2003. In the event Lessee does not obtain such approvals and financing, Lessee may terminate this Lease by giving written notice to Lessor on or before December 31, 2003, or Lessee may elect to extend the Lease on a month to month basis, for a period up to one (1) year, at a monthly rate of five thousand and 00/100 (\$5,000.00).

Section 14.03 Project. The plans and specifications for the work to be performed by the Lessee on the Overall Property must be presented to and approved by Lessor in writing prior to submission of any application or request to the City of Key West or any other governmental agency and prior to execution of the Lease. The plans and specifications for the Project may be submitted for approval to the Board of the Lessor and the Lessee must provide the plans and specifications within a reasonable time prior to a regularly scheduled Board meeting so that the Board can consider the matter in the normal course of business. Lessor shall not unreasonably withhold approval, and in the event of disapproval, Lessor shall give Lessee an itemized statement of the reasons for disapproval within ten (10) days after the Board of the Lessor considers the plans and specifications. Additionally, if the plans and specifications are not approved or disapproved by Lessor within ten days after they are considered by the Board of the Lessor, then said plans and specifications shall be deemed approved by Lessor. Any modifications to the initial plans and specifications subsequent to the Commencement Date must also be approved in writing, in advance, by Lessor with the same process being used.

Any and all construction on the Demised Premises during the Term of this Lease shall be constructed in a good and workmanlike manner, pursuant to written contracts with licensed contractors and in accordance with any and all requirements of local ordinances and with all rules, regulations and requirements of all departments, boards, officials and authorities having jurisdiction thereof. It is understood and agreed that the plans and specifications for all construction shall be prepared by a duly qualified architect licensed in the State of Florida. Furthermore, no construction shall be commenced on the Demised Premises unless all the following have occurred: (a) the Lessee, at Lessee's expense, shall have filed with the appropriate governmental bodies having jurisdiction with respect to the subject of the proposed construction, complete plans, specifications, certificates and any other documents required for the proposed construction, and (b) as to construction work with a cost of greater than \$100,000, there shall be delivered to the Lessor payment and performance bonds running to the Lessor as obligee conditioned on completion of the construction in accordance with the plans and specifications free and clear of all mechanics or other liens and free and clear of all financing statements under the Uniform Commercial Code or any successor statute. Such bonds shall be in an amount of the entire cost of construction in accordance with the plans and specifications as approved by Lessor as such cost of construction is stipulated in the construction contract between Lessee and its general contractor and must guarantee full performance of the contract for the construction in accordance with the plans and specifications as approved by Lessor.

Lessee further represents and warrants that any alterations, modifications, up fit or construction performed by or for Lessee at the Demised Premises shall be performed in compliance with the requirements of the Americans With Disabilities Act of 1990, as amended (the "ADA"). Lessee further represents and covenants that it shall conduct its occupancy and use of the Demised Premises in accordance with the ADA (including, but not limited to, modifying its policies, practices, and procedures, and providing auxiliary aids and services to disabled persons). Moreover, Lessee shall abide by any and all applicable laws and regulations concerning any handicap or disability access or use now existing or hereafter imposed as such is applicable from time to time to the Demised Premises and the improvements thereon.

Lessee acknowledges that one of the inducements to the Lessor for the making of this Lease is the improvement of the Demised Premises in accordance with the terms hereof.

**Section 14.04 Completion Date.** Lessee shall complete construction of the Affordable Housing Units within eighteen (18) months after the Building Permit is issued for the Affordable Housing Units, unless Lessee experiences delays caused without fault or neglect on the part of Lessee, by act of God, strikes, lockouts, or other conditions beyond Lessee's control.

## ARTICLE XV

### Mortgage Financing

**Section 15.01.** Lessee intends and shall make a good faith attempt to obtain financing for the Affordable Housing Units through a combination of SHIP and SAIL Loans and equity raised by its syndication to an equity investor of Federal low income housing Tax Credits. Furthermore, unless

Lessee is unable to obtain financing for the Affordable Housing Units, through such a combination of SHIP and SAIL Loans and the sale of tax credits, the rents for the Affordable Housing Units shall be set as set forth in the affordable housing ordinance City of Key West Code Section 122-1466 which rent is equal to the rents permitted to be charged under the Federal LIHTC program. Lessee further acknowledges that rents may be lower on certain of the units in the event a SAIL loan is obtained.

Section 15.02. In the event the above types of financing are not obtained, Lessee shall still have the right to mortgage the property.

(a) The Lessee shall have the right to encumber, by mortgage or other proper instrument, Lessee's interest under this Lease, together with all buildings and improvements placed by Lessee on the Demised Premises, to a Federal or State Savings & Loan Association, governmental entity, Bank or Trust Company, Insurance Company, Pension Fund or Trust (or to a private lender so long as the terms and conditions of the financing from private lender are on substantially similar terms to those then existing by the other lenders referred to in this section) or similar lending institution authorized to make leasehold mortgage loans in the State of Florida without obtaining the prior consent of the Lessor, subject, however, to the other terms and conditions of this Lease.

(b) If the Lessee shall mortgage its leasehold interest and if the holder of the mortgage or pledge shall forward to the Lessor a duplicate original of the mortgage in form proper for recording, or a copy of the mortgage certified as a true copy by the Office of Official Records of Monroe County, Florida, together with a written notice setting forth the name and address of the leasehold mortgagee, then until the time that the leasehold mortgage shall be satisfied of record, the following provisions of this Section 15.02 shall apply.

(c) When giving notice to the Lessee with respect to any default under the provisions of this Lease, the Lessor will also serve a copy of such notice upon the leasehold mortgagee. No such notice to the Lessee shall be deemed to have been given unless a copy of such notice has been mailed to such leasehold mortgagee, which notice must specify the nature of each such default.

(d) In case the Lessee shall default under any of the provisions of this Lease, the leasehold mortgagee 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 the Lessee is required to do or perform and the Lessor shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by the Lessee. The leasehold mortgagee, upon the date of mailing by Lessor of the notice referred to in subparagraph (c) of this Section 15.02 shall have, in addition to any period of grace extended to the 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 rent, or failure to pay any amount otherwise required under the terms of this Lease (e.g., including, but not limited to, taxes or assessments), the leasehold mortgagee shall have thirty (30) days from the date the notice of default was mailed to the mortgagee within which to cure such default.

(e) Upon the happening of any default and upon receipt of notice of default from the Lessor, the Lessee agrees to notify the leasehold mortgagee promptly in writing of such occurrence and shall state in the notice what action has been or will be taken by the Lessee to cure the default.

(f) In the case of any default by the Lessee, other than in the payment of money under this Lease, the Lessor, so long as no default in respect of the payment of minimum annual rental, Percentage Rent and any monetary obligation shall exist, will take no action to effect a termination of the term of this Lease after the service of a notice provided for in Article XVI by reason of any such default, without first giving to the leasehold mortgagee a reasonable time, not to exceed ninety (90) days from the mailing of the default notice by Lessor to Lessee, with a copy to such mortgagee, within which either (i) to obtain possession of the Demised Premises (including possession by a receiver) and cure such non-monetary default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure proceedings and complete such foreclosure or otherwise acquire the Lessee's interest under this Lease with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default shall be timely cured, and provided further, that nothing in this Section 15.02 shall preclude the Lessor from exercising any rights or remedies under this Lease with respect to any other default by the Lessee during any period of such forbearance.

(g) In the event of the termination of this Lease or of any succeeding Lease made pursuant to the provisions of this Section 15.02 (g) prior to this stated expiration date, the 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 mortgage held by such leasehold mortgagee, for the remainder of the term, effective on the date of such termination, at the rent and Percentage 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 the 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 the Lessor of all amounts then due to the Lessor, including reasonable counsel fees, court costs and disbursements incurred by the 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 the 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 15.02(g) shall not require any execution, acknowledgment or delivery by the Lessor in order to become effective as against the Lessor and the Lessor shall be deemed to have executed, acknowledged and delivered any such new Lease immediately upon receipt by the Lessor of such new Lease accompanied by (i) payment to the Lessor of all amounts then due to the 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 the Lessor of which the leasehold mortgagee shall not theretofore have received written notice. In addition, immediately upon receipt by the Lessor

of such new Lease, as provided in this Section 15.02(g), the 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 the Lessor and all subleases under which subtenants shall be required to attorn to the Lessor pursuant to the terms and conditions of such subleases or this Lease. Such assignment by the Lessor shall be deemed to be without recourse as against the 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 the Lessor to the leasehold mortgagee.

(h) 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, which shall not require Lessor's consent, whereupon such leasehold mortgagee shall immediately become and remain liable under this Lease as provided in Section 15.02 (i) below, except that, notwithstanding anything contained in this lease to the contrary, such leasehold mortgagee may assign this Lease without the Lessor's consent to any institutional assignee (as identified in (a) above) at any time whether prior or subsequent to the construction or completion of buildings, or other structures and improvements erected or to be erected upon the Demised Premises.

(i) In the event that a leasehold mortgagee shall become the owner or holder of the Lessee's interest by foreclosure of its mortgage or by assignment of this Lease in lieu of foreclosure or otherwise, the term "Lessee," as used in this Lease, means only the owner or holder of the Lessee's interest for the time being so that, in the event of a sale, assignment (as permitted by Section 15.02(h) above) or other disposition of the Lessee's interest in this Lease by the mortgagee, the mortgagee shall be entirely freed and relieved of all covenants and obligations of the Lessee under this Lease and it shall be deemed and construed, without further agreement between the Lessor and the mortgagee or between the Lessor, the mortgagee and the mortgagee's purchaser or assignee at any such sale or upon assignment of Lessee's interest, that the purchaser or assignee of Lessee's interest has assumed and agreed to carry out any and all covenants and obligations of Lessee.

(j) Within ten (10) days after written request by Lessee or by Lessee's leasehold mortgagee, or in the event that upon any sale, assignment or mortgaging of Lessee's interest in this Lease by Lessee or Lessee's leasehold mortgagee, an offset statement shall be required from the Lessor, the Lessor agrees to deliver in recordable form a certificate to any proposed leasehold mortgagee, purchaser, assignee or to Lessee, certifying (if such be the case) (i) the amount of rental and Percentage Rent due under the Lease, if any, and the date to which rentals have been paid; (ii) that this Lease is in full force and effect; (iii) that the Lessor has no knowledge of any default under this Lease, or if any default exists, specifying the nature of the default; and (iv) that there are no defenses or offsets which are known and may be asserted by the Lessor against the Lessee in respect of obligations pursuant to this Lease.

(k) So long as the Lessee's interest in this Lease shall be mortgaged to a leasehold mortgagee, the parties agree for the benefit of such leasehold mortgagee, that they shall not surrender or accept a surrender of this Lease or any part of it, nor shall they cancel, abridge or otherwise modify this Lease or accept material prepayments of installments of rent to become due without the prior written consent of such mortgagee in each instance.

(l) Reference in this Lease to acquisition of the Lessee's interests in this Lease by the leasehold mortgagee shall be deemed to refer, where circumstances require, to acquisition of the Lessee's interest in this Lease by any purchaser at a sale on foreclosure of the leasehold mortgage and provisions applicable to the leasehold mortgagee in such instance or instances shall also be applicable to any such purchaser.

(m) So long as the Lessee's interest in this Lease shall be mortgaged to a leasehold mortgagee, the parties agree for the benefit of such leasehold mortgagee that the Lessor shall not sell, grant or convey to the Lessee all or any portion of the Lessor's fee simple title to the Demised Premises without the prior written consent of such mortgagee. In the event of any such sale, grant or conveyance by the Lessor to the Lessee, the Lessor and the Lessee agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the Demised Premises. This subparagraph (m) shall not be construed to prevent a sale, grant or conveyance of the Lessor's fee simple title by the Lessor to any person, firm or corporation other than the Lessee, its successors, legal representatives and assigns, so long as this Lease is not terminated.

(n) Reference in this Lease to a leasehold mortgagee shall be deemed to refer where circumstances require, to any assignee (subject to the provisions of subparagraph (h), above) of a leasehold mortgagee; provided that such assignee shall forward to the Lessor a duplicate original of the assignment of the leasehold mortgage in form proper for record or a copy of such assignment, certified as a true copy by the Office of Official Records of Monroe County, together with a written notice setting forth the name and address of the assignee.

(o) Any leasehold mortgage shall be specifically subject and subordinate to the 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 the Lessee's interest in this Lease or upon the lien of any leasehold mortgage 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 the Lessor or the 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 the Lessor in the Demised Premises, or any portion of them, be subordinated to any leasehold mortgage.

(p) 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 mortgagee for making its leasehold mortgage. Notwithstanding the foregoing, it is understood that Lessor shall be under no obligation to change any of the financial terms hereof or to consent to any subordination. In the event the Lessor believes the Lessee request for modification of this Lease is unreasonable, the reasonableness of Lessee's request shall be determined in accordance with the rules of the American Arbitration Association. Such determination shall be binding on the parties. The expenses of such determination shall be borne equally by the parties.

## ARTICLE XVI

### Default

**Section 16.01 Notice of Default.** Lessee shall not be deemed to be in default under this Lease in the payment of rent or the payment of any other moneys as herein required or in the furnishing of any bond or insurance policy when required herein unless Lessor shall first give to Lessee ten (10) days' written notice of such default and Lessee fails to cure such default within such ten (10) days of said notice.

Except as to the provisions or events referred to in the preceding paragraph of this section which refer to monetary and insurance obligations, Lessee shall not be deemed to be in default under this Lease unless Lessor shall first give to Lessee thirty (30) days' written notice of such default, and Lessee fails to cure such default within such thirty (30) day period or, if the default is of such a nature that it cannot be cured within thirty (30) days, Lessee fails to commence to cure such default within such period of thirty (30) days or fails thereafter to proceed to the curing of such default with all possible diligence.

Regardless of the notice and cure periods provided herein, in the event that more rapid action is required to preserve any right or interest of the Lessor in the Demised Premises or other detrimental occurrence (such as, but not limited to, payment of insurance premiums, actions to prevent construction or judgment lien foreclosures or tax sales), then the Lessor is empowered to take such action and to request reimbursement or restoration from the Lessee as appropriate.

**Section 16.02 Default.** In the event of any breach of this Lease by Lessee, Lessor, and after the necessary notice provided to any leasehold mortgagee, in addition to the other rights or remedies it may have, shall have the immediate right to terminate this Lease according to law. Furthermore, in the event of any breach of this Lease by Lessee, Lessor, and after the necessary notice provided to any leasehold mortgagee, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Demised Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee. Should Lessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this Lease or it may, from time to time, without terminating this Lease, relet the Demised Premises or any part of the Demised Premises for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rent or rents and on such other terms and conditions as Lessor in its sole reasonable discretion may deem advisable with the right to make alterations and repairs to the Demised Premises. On each such re-letting:

(a) Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than Rent due under this Lease, the expenses of such re-letting and of such alterations and repairs, incurred by Lessor, and the amount, if any, by which the rent reserved in this Lease for the period of such re-letting (up to but not beyond the term of this Lease) exceeds the

amount agreed to be paid as rent for the Demised Premises for such period on such re-letting; or

(b) At the option of Lessor, rents received by such Lessor from such re-letting shall be applied, first, to the payment of any expenses of such re-letting and of such alterations and repairs; second, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied in payment of future Rent as the Rent may become due and payable under this Lease.

If Lessee has been credited with any Rent to be received by such re-letting under above option (a), and such Rent shall not be promptly paid to Lessor by the new tenant, or if such rentals received from such re-letting under above option (b) during any month is less than that to be paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Lessor. Such deficiency shall be calculated and estimated for the remaining term of this Lease and paid in a lump sum based on the present value of all such future deficiencies. Notwithstanding the foregoing, if Lessor elects to actually occupy and use the Demised Premises for its own account and not for the Lessee's account during any balance of the term of this Lease, Lessee shall not be obligated to pay any rental or deficiency during the period of Lessor's occupancy for its own account.

Notwithstanding any such re-letting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of such breach, including the cost of recovering the Demised Premises, which amounts shall be immediately due and payable from Lessee to Lessor.

In addition to the other rights of Lessor upon a default, the Lessor may immediately accelerate the balance of the payments due under this Lease.

Section 16.03 Lessor's Right to Perform. In the event that Lessee by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default under this Lease and such failure shall continue for a period of thirty (30) days after written notice from Lessor specifying the nature of the act or thing to be done or performed, then Lessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering on the Demised Premises for such purposes, with notice, if Lessor shall so elect), and Lessor shall not be or be held liable or in any way responsible for any loss, inconvenience, or annoyance resulting to Lessee on account thereof, and Lessee shall repay to Lessor on demand the entire expense thereof, including compensation to the agents and employees of Lessor. Any act or thing done by Lessor pursuant to the provisions of this section shall not be or be construed as a waiver of any such default by Lessee, or as a waiver of any covenant, term, or condition herein contained or the performance thereof, or of any other right or remedy of Lessor, hereunder or otherwise. All amounts payable by Lessee to Lessor under any of the provisions of this Lease, if not paid when the amounts become due as in this Lease provided, shall bear interest from the date they become due until paid at the highest rate allowed by law.

Section 16.04 Default Period. All default and grace periods shall be deemed to run concurrently and not consecutively.



Section 16.05 Legal Costs; Receiver. The Lessee pledges with, and assigns to, the Lessor all of the rents, issues, and profits which might otherwise accrue to the Lessee for the use, enjoyment, and operation of the Demised Premises and, in connection with such pledging of the rents, the Lessee covenants and agrees with the Lessor that if the Lessor, upon the default of the Lessee, elects to file suit in chancery to enforce the Lease and protect the Lessor's rights, then the 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 the 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 the Lessee and without reference to the commission of waste. Nothing in this Section contained shall be construed as empowering the Lessor to collect rents accruing from the Demised Premises, unless and until the Lessee is in default.

## ARTICLE XVII

### Repair Obligations

During the continuance of this Lease the Lessee will keep in good state of repair any and all buildings, furnishings, fixtures, landscaping and equipment which are brought or constructed or placed upon the Demised Premises by the Lessee, nor will the Lessee suffer or permit any strip, waste, or neglect of any building or other property to be committed, except for that of normal wear and tear, and that the Lessee will repair, replace and renovate such property as often as it may be necessary in order to keep the buildings and other property which is the subject matter of this Lease in first class repair and condition.

## ARTICLE XVIII

### Demolition

Section 18.01 Conditions Precedent to Demolition by Lessee. Although it is the Lessee's duty under the terms hereof to keep and maintain any buildings and improvements on the Demised Premises in good repair, this shall not be construed as empowering the Lessee to demolish any buildings on the Demised Premises or any substantial part thereof or to cause any item of major repair and construction to be made unless and until the Lessee:

(a) Causes plans for the new buildings or the new construction to be prepared in full accordance with the applicable laws, building codes, zoning ordinances, and all applicable statutes and ordinances, and deliver the plans to the Lessor for its approval (which approval shall not be unreasonably withheld) at least thirty (30) days before the work proposed to be done pursuant thereto is actually commenced; and

(b) Furnishes the Lessor with a performance and payment bond with corporate

surety, guaranteeing the doing and completion of the work; or in lieu of furnishing such bond:

(c) Creates an escrow fund with any bank or trust company selected by the Lessee, into which there shall be paid by the Lessee the full cost of the work of repair and replacement, which cost shall be evidenced by the bona fide bid of a responsible general contractor or the aggregate of the bona fide estimates of reliable subcontractors and materialmen, all of which evidence must be submitted by the Lessee to the Lessor not later than 30 days before the work itself starts, which escrow fund will be utilized to pay for the work as it progresses upon the requisition of the contractor and the certificate of an architect supervising the work, but disbursements from which escrow fund will be made upon the written order the Lessor and the Lessee, the Lessor binding itself, if it elects to exercise such joint control over the escrow fund, to approve or cause to be approved progress payments promptly so long as the balance remaining in the escrow fund is sufficient to cause the work to be carried through to completion and paid for, and full and final waivers and releases procured from all person who furnish work, labor, services, and/or materials to the job. In the event that any lender is providing funds for the construction, then such lender's requirements for disbursements shall control.

Section 18.02 Replacement Value. The work of reconstruction, repair, and replacement must have a value of not less than the value of the building or buildings or the portion thereof then being demolished and replaced and repaired.

Section 18.03 Demolition Defined. For the purposes of this Article, no work will be deemed a "demolition" or a major repair so as to bring it within the terms of this Section of the Lease unless it constitutes either the actual destruction of a building or a substantial part thereof or unless it constitutes a remodeling which, in substance, requires the tearing down of a substantial part of a building. The changing of openings or the removal and/or relocating of partition walls, or other work inside the building designed to accommodate itself to better occupancy, shall not be deemed major repair and construction within the meaning of this Article. The provisions of this Article shall not be applicable to the removal of any building or structure on the Demised Premises at the time of the execution of this Lease.

## ARTICLE XIX

### Additional Covenants of Lessee, Lessor

Section 19.01 Legal Use. The Lessee covenants and agrees with the Lessor that the Demised Premises will be used primarily for the construction and operation of a multi-unit affordable housing complex and the other matters as may be set forth in this Lease, with related amenities and facilities, and for no other purposes whatsoever without Lessor's written consent, which shall not be unreasonably withheld.

Section 19.02 Termination. At the termination of this Lease the Lessee will peaceably and quietly deliver possession of the Demised Premises and all improvements, and including any fixtures, and equipment which the Lessee may have brought, placed, or constructed upon the

Demised Premises pursuant to the provisions of Article XIV of this Lease, to the Lessor.

Section 19.03 Recovery of Litigation Expense. In the event of any suit, action or proceedings at law or in equity, by either of the parties hereto against the other by reason of any matter or thing arising out of this Lease, including any eviction proceedings, the prevailing party shall recover not only its legal costs, but reasonable attorneys' fees including appellate, bankruptcy and post-judgment collection proceedings for the maintenance or defense of said action or suit, as the case may be. Any judgment rendered in connection with any litigation arising out of this Lease shall bear interest at the highest rate allowed by law.

Section 19.04 Electric Power Service. Lessor shall be the exclusive provider of electric power service to the Demised Premises and the Project during the term of this Lease.

Section 19.05 Condition of the Demised Premises. Lessee agrees to accept the Demised Premises in its presently existing condition "as-is". It is understood and agreed that the Lessee has determined that the Demised Premises and the Overall Property is acceptable for its purposes and hereby certifies same to Lessor. Lessor shall have no responsibility for utilities for the Demised Premises. Lessee, at its sole cost and expense, shall bring or cause to be brought to the Demised Premises adequate connections for water, electrical power, telephone, stormwater and sewage and shall arrange with the appropriate utility companies for furnishing such services with no obligation therefore on the part of Lessor. Lessee acknowledges that the Lessor, and any agent, has made no representations or promises in regard to the Demised Premises except as set forth in this Lease. Lessee has examined the Demised Premises, the sidewalks and structures adjoining the same, any subsurface conditions, and the present uses and non-uses thereof. The Lessor makes no express warranties and disclaims all implied warranties, including, without limitation, those relating to the structure of the Building, building systems and/or the environmental condition of the Building or the Demised Premises. Lessee accepts the same in the condition in which they now are, without representation or warranty, express or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the nature, condition, or usability of the Demised Premises, or the uses to which the Demised Premises may be put. The Lessor shall not be responsible for any latent defect or change of condition in the Building, improvements, and personalty, or of title, and the Rent hereunder shall not be withheld or diminished on account of any defect in such title or property, any change in the condition thereof, any damage occurring thereto, or the existence with respect thereto of any violations of the laws or regulations of any governmental authority.

Section 19.06 Hazardous Materials. The Lessee will be responsible to obtain its own environmental reports or studies as it deems prudent. Prior to the execution of this Lease, Lessor has attempted to identify all of the environmental issues and/or conditions regarding the Demised Premises and the Overall Property, but KEYS makes no representations or warranties concerning any of the Overall Property. The Lessee acknowledges that the Demised Premises contains lead paint and asbestos and that the Lessee has been provided environmental information regarding the Overall Property. The Lessee will be responsible to have the asbestos and any lead based paint, as well as any other environmental conditions or hazards removed or otherwise mitigated at its sole expense in accordance with all local, state and federal laws.

Lessee, its sublessees, and assignees shall not permit the presence, handling, storage or transportation of hazardous or toxic materials or medical waste ("hazardous waste") in or about the Demised Premises, except in strict compliance with all law, ordinance, rules, regulations, order and guidelines of any government agency having jurisdiction and the applicable board of insurance underwriters. In no event shall hazardous waste be disposed of in or about the Demised Premises. Lessee shall obtain and maintain throughout the term of this Lease all licenses and permits required in connection with Lessee's activities involving hazardous waste. For purposes herein, the term hazardous materials or substances shall mean any hazardous, toxic or radioactive substance material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement and shall include petroleum products and asbestos as well as those materials defined as hazardous substance or hazardous waste in the Comprehensive Environmental Response Compensation and Liability Act and/or the Resource Conservation and Recovery Act.

Lessee shall notify Lessor immediately of any discharge or discovery of any hazardous waste at, upon, under, or within the Demised Premises. Lessee shall, at its sole cost and expense, comply with all remedial measures required by any governmental agency having jurisdiction. Lessee shall promptly forward to Lessor copies of all orders, notices, permits, applications, or other communications under reports received by Lessee in connection with any discharge or the presence of any hazardous waste or any other matters relating to the toxic waste or any similar laws or regulations, as they may affect the Demised Premises.

Except for the mitigation and/or removal of the lead based paint and asbestos as described in this Lease, the Lessee shall not be liable to the Lessor for cleaning up, mitigation or removal of hazardous materials placed on the ~~Overall~~ Property by Lessor prior to the Commencement Date. The obligations, liabilities and responsibilities of Lessee, its sublessees and assignees, shall survive the expiration or termination of this Lease and shall include:

(a) The removal of any material deemed at any time to be hazardous waste on, within or released from the Demised Premises, whether such removal is done or completed by Lessee, Lessor or other person or entity and regardless of whether or not such removal is rendered pursuant to a court order or the order of a Governmental Agency (as defined below);

(b) Claims asserted by any person or entity (including, without limitation, any governmental agency or quasi-governmental authority, board, bureau, commission, department, instrumentality, public body, court, or administrative tribunal (a "Governmental Agency") in connection with or in any way arising out of the presence, storage, use, disposal, generation, transportation, or treatment of any hazardous waste at, upon, under or within the Demised Premises, after the time that Lessee became an occupant or had control of the Demised Premises;

(c) The preparation of an environmental audit on the Demised Premises, whether conducted or authorized by Lessee, Lessor or any third party, and the implementation of any such environmental audit's recommendations;

(d) To indemnify, defend and hold Lessor, its agents and mortgagees harmless

from and against any and all claims, liabilities, injuries, damages, costs and expenses (including attorney's fees and costs through appeal) arising out of or in connection with any breach of this Section and the following Section, including any direct, indirect, or consequential damages suffered by any individual or entity related in any way to Lessee's use, storage or possession of hazardous materials at the Demised Premises, including without limitation, claims by Lessee's officers, directors, employees, invitees, contractors and agents.

Section 19.10 Environmental Law Compliance. Lessee and Lessor acknowledge that certain federal, state and local laws, regulations and guidelines are now in effect, and that additional laws, regulations and guidelines may hereafter be enacted, relating to or affecting the Demised Premises concerning the impact on the environment of construction, land use, the maintenance and operation of structures and the conduct of business. Lessee will not cause, or permit to be caused, any act or practice, by negligence, omission, or otherwise, that would violate any said laws, regulations, or guidelines. Any violation of this covenant shall be an event of default under this Lease. Lessee shall have no claim against Lessor by reason of any changes Lessor may make in the Leased Premises under such laws, regulations, and guidelines. In the event any governmental agency makes a determination that Lessee's activities upon the Demised Premises or its environs have caused ecological damage or have violated any of the foregoing laws, rules, regulations or ordinances, Lessee will be responsible for all costs of clean-up, as well as all fines, penalties or assessments imposed by said governmental agencies, either during the term of this lease or after its termination.

## ARTICLE XX

### Representations, Warranties of Title and Quiet Enjoyment

Lessee acknowledges that Title to the leasehold estate created by this Lease is subject to all exceptions, easements, rights, rights-of-way, and other matters of record set forth on the Title Commitment issued by Chicago Title Insurance Company, dated December 2, 2002, a copy of which is attached hereto as Exhibit "D". Lessor makes no representations regarding title and the Lessee shall rely exclusively on the Title Insurance Commitment and the Policy of Title Insurance to be issued thereon. Lessee will be responsible for any title premium. Lessor represents that this Lease does not conflict with any other agreement to which Lessor is bound. Lessor represents and warrants that there are no material claims, causes of action or other proceedings pending or threatened in respect to the ownership, operation or environmental condition of the Demised Premises or any part thereof. Additionally, the Lessor covenants and agrees with Lessee that so long as the Lessee keeps and performs all of the covenants and conditions by the Lessee to be kept and performed, the Lessee shall have quiet and undisturbed and continued possession of the Demised Premises from claims by Lessor.

## ARTICLE XXI

### Right of Entry

Until such time that the Affordable Housing Units are leased to third parties, the 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 only that Lessor shall provide Lessee with five (5) days notice, and such right shall be exercised in such manner as not to interfere with the Lessee or any sublessee in the use of the Demised Premises. If the Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the Lessor may enter upon the Demised Premises to make emergency repairs; but if the Lessor exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse the Lessee from its obligation to keep the Demised Premises in repair and the Lessee shall, upon demand of the Lessor, immediately reimburse the Lessor for the cost and expense of such emergency repairs.

## ARTICLE XXII

### Rights of First Refusal

Section 22.01. In the event that, at any time during the Lease Term, and any extension thereof, Lessor shall receive a bona fide offer from any person to purchase its interest in the Demised Premises, and Lessor desires to accept the offer to purchase, then prior to accepting such offer, Lessor shall deliver to Lessee notice of the price and terms of such offer and of the intention to accept the same. Lessee shall have the right for sixty (60) days thereafter to purchase the Lessor's interest in the Demised Premises in its own name or in the name of a nominee, for the purchase price and on the terms specified in the notice. Within that sixty (60) day period, Lessee shall merely

provide notice of acceptance to Lessor, which shall include a signed contract on the same terms and conditions as the bonafide offer, together with a check for any deposits required in said bonafide offer. If Lessee shall not so elect within the stated period, Lessor may then sell its interest in the Demised Premises to said third person provided such sale is on the same terms and conditions for the price set forth in the notice. This provision shall not apply to transfers between Lessor and any other governmental agency or any legal successor of the Lessor.

Section 22.02. In addition to the right of first refusal to purchase the Lessor's interest in the Demised Premises as set forth above, the Lessor grants to Lessee the right of first refusal, during the Lease Term, and any extension thereof, to lease the Demised Premises after the expiration of the Lease Term on the same terms and conditions Lessor is willing to or has agreed to lease the Demised Premises to a third party. Lessor shall provide notice to Lessee of its intent to lease together with a term sheet containing all of the terms and conditions of the proposed lease.

Lessee shall have the right for sixty (60) days thereafter to lease the Demised Premises in its own name or in the name of a nominee, on the terms specified in the notice. If Lessee shall not so elect, by providing notice of acceptance, within the stated period, Lessor may then lease the Demised Premises to said third person provided such lease is on the same terms and conditions set forth in the notice.

### ARTICLE XXIII

#### Rights of Lessor

Lessor may install and maintain underground electric or other utility lines or equipment under the Demised Premises, but Lessor's rights hereunder shall not permanently interfere with Lessee's improvements or use of the Demised Premises, nor shall Lessor's installations unreasonably interfere with the rights of the Affordable Housing tenants.. Lessor shall be obligated to maintain any such equipment it installs on or under the Demised Premises, and Lessor shall be entitled to go upon those portions of the Demised Premises where the utility lines are located, but only for the purpose of performing installation, maintenance, repair, removal or the like as to any such equipment. Additionally, Lessor shall repair, at Lessor's expense, any damage to the Demised Premises caused by such maintenance, repair or removal. Furthermore, Lessor and Lessee recognize that Lessor may have facilities on the Demised Premises; therefore, Lessor shall have vehicular access over and across those portions of the Demised Premises necessary for obtaining access to the facilities, at any and all times, so long as such access does not unreasonably interfere with Lessee's use of the Demised Premises or its quiet enjoyment. With regards to this provision, Lessor represents and warrants that it will interfere as little as reasonably possible with the Lessee's use of the Demised Premises and Lessor will not install facilities or take other actions which would prevent Lessee and any sub-tenants from operating the Demised Premises for the use provided herein, with the exception for emergency situations. Lessor agrees to indemnify and hold Lessee harmless from any and all liability arising out of Lessors use of the property.

The Overall Property will contain the Market Rate Units, and the Affordable Housing Units. It is acknowledged that the various parties using the Overall Property will be sharing areas for ingress, egress, and utilities and a separate Declaration of Covenants and Easements will be created

and recorded to govern the rights and obligations of the parties as to the shared uses of portions of the Overall Property.

ARTICLE XXIV

Miscellaneous

Section 24.01 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 and particulars of any default thereunder;

(d) As to the existence of any offsets, 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.

In addition, Lessee will, within fifteen (15) days after written request from Lessor, provide Lessor with financial statements, including, at a minimum, an income statement and a balance sheet for the current and prior year, and other financial information reasonably requested by Lessor.

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 24.02 Duplicates; Recordation. The parties will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of Lease, setting forth a description of the Demised Premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may request.