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**2020-57 (1<sup>ST</sup> READING):** AN ORDINANCE APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, OF A GROUND LEASE BETWEEN THE CITY, AS LESSOR, AND 9<sup>TH</sup> AVENUE OWNER, LLC, AS LESSEE, WITH RESPECT TO HISTORIC BUILDINGS LOCATED AT 505, 507 AND 509 NINTH AVENUE IN THE CITY OF MYRTLE BEACH, TOGETHER WITH A SUB-LEASE BETWEEN 9<sup>TH</sup> AVENUE OWNER, LLC, AS LESSOR, AND THE CITY OF MYRTLE BEACH, AS LESSEE, WITH RESECT TO THE HISTORIC BUILDINGS; AND OTHER MATTERS RELATING THERETO.

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**Applicant/Purpose:** Finance / to provide for the City to lease the properties it owns at 505, 507, and 509 9<sup>th</sup> Avenue North to the 9<sup>th</sup> Avenue Owner, LLC, for redevelopment using federal and state historic tax credits.

**Brief:**

- City purchased the properties from DRC last year and engaged Rogers & Lewis law firm to assist in bringing in tax credit investors.
- The investors will form a limited liability corporation to use tax credits to finance a portion of the redevelopment costs of the properties.
- The City, which cannot use tax credits itself, will lease the property to the 9<sup>th</sup> Avenue Owners, LLC, the membership of which will consist of
  - Federal Tax Credit Investor (96% member)
  - State Tax Credit Investor (3% member), &
  - A managing member, 9<sup>th</sup> Avenue Manager, LLC (1% member).
  - DRC will be the sole member of the 9<sup>th</sup> Avenue Manager, LLC.

**Issues:**

- The 9<sup>th</sup> Avenue owner achieves owner status by virtue of a long-term ground lease.
- Tax Credit investors contribute capital which is paid in increments as the developer completes the project.
- That capital investment offsets as much as \$1.0 million of the total project costs of roughly \$1.8 million.
- The City has a term sheet from a proposed lender for the infrastructure improvements and financing costs, most of which will be retired as the tax credit's investors contribute funds.
- Remaining costs will be amortized or retired with proceeds from lease of the properties.

**Public Notification:** Normal notification for 1<sup>st</sup> reading.

**Alternatives:**

- Do not do the project. Sell the properties for current value if an investor can be found.

**Financial Impact:**

- Negligible net impact to City for some administrative costs.

**Manager's Recommendation:**

- I recommend 1<sup>st</sup> reading (12/8/20).

**Attachment(s):** Proposed ordinance.

CITY OF MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA

AN ORDINANCE APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, OF A GROUND LEASE BETWEEN THE CITY, AS LESSOR, AND 9<sup>TH</sup> AVENUE OWNER, LLC, AS LESSEE, WITH RESPECT TO HISTORIC BUILDINGS LOCATED AT 505, 507 AND 509 NINTH AVENUE IN THE CITY OF MYRTLE BEACH, TOGETHER WITH A SUB-LEASE BETWEEN 9<sup>TH</sup> AVENUE OWNER, LLC, AS LESSOR, AND THE CITY OF MYRTLE BEACH, AS LESSEE, WITH RESECT TO THE HISTORIC BUILDINGS; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, IN COUNCIL DULY ASSEMBLED, AS FOLLOWS:

SECTION 1. The City Council of the City of Myrtle Beach, South Carolina (the "Council"), hereby finds and determines:

(a) The City of Myrtle Beach, South Carolina (the "City"), is an incorporated municipality located in Horry County, South Carolina (the "County"), and as such has all powers granted to municipalities by the Constitution and general laws of this State.

(b) Section 5-7-40 of the Code of Laws of South Carolina 1976, as amended, empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property.

(c) The City is the fee owner of certain historic buildings (the "Buildings") located at 505, 507 and 509 9<sup>th</sup> Avenue, in the City of Myrtle Beach. The Buildings are on the National Historic Register and are vacant.

(d) Due to their ages and vacancy, certain renovation expenditures made with respect to the Buildings are eligible for various federal and state tax credits (the "Tax Credits").

(e) The City is not an eligible recipient of the Tax Credits.

(f) The City desires to enter into a Ground Lease (the "Ground Lease") with 9<sup>th</sup> Avenue Owner, LLC, a South Carolina limited liability company (the "Tax Credit Developer"), for the purposes of leasing the Buildings and related land to the Tax Credit Developer for the rehabilitation and renovation of the Buildings (the "Project"). The Tax Credit Developer is an eligible recipient of Tax Credits.

(g) The City also desires to enter into a Sub-Lease (the "Sub-Lease," and together with the Ground Lease, the "Leases") with the Tax Credit Developer for the purposes of leasing the Project to allow the City to utilize the Buildings, as rehabilitated and renovated, in

1 connection with its program of downtown redevelopment.

2  
3 (h) It is in the best interest of the City to enter into the Leases in order to further the  
4 City's program of downtown redevelopment.

5  
6 SECTION 2. Approval of Transaction. The Council does hereby approve the sub-leasing of  
7 the Buildings from the Tax Credit Developer pursuant to the Leases. The forms of the Ground  
8 Lease and the Sub-Lease are attached to this Ordinance as Exhibits A and B, respectively, and  
9 are incorporated herein by reference.

10  
11 SECTION 3. Approval of Leases. The form, terms and provisions of the Leases, together  
12 with such changes as the officers of the City authorized to execute and deliver the Lease shall  
13 approve, are hereby approved. The City Manager and Deputy City Manager, or either one of  
14 them, acting alone, are hereby authorized and directed to execute, acknowledge and deliver,  
15 and the City Clerk is hereby authorized and directed to attest, the Leases in the name and on  
16 behalf of the City. The Leases are to be in substantially the forms attached to this Ordinance as  
17 Exhibits A and B, with such changes to the forms thereof as shall be approved by the City  
18 Manager or Deputy City Manager, or either one of them, acting alone, such person's or persons'  
19 execution and delivery thereof to constitute conclusive evidence of approval of any and all  
20 changes or revisions therein from the form of Leases now before this meeting.

21  
22 SECTION 4. Authorization. The Mayor, the City Manager, the Deputy City Manager, the  
23 Chief Financial Officer, the City Attorney and the City Clerk, for and on behalf of the City, are  
24 fully empowered and authorized to take such further action and to execute and deliver such  
25 additional documents as may be necessary to effect the execution and delivery of the Leases in  
26 accordance with the terms and conditions therein set forth, and the transactions contemplated  
27 hereby and thereby, and the action of such officers in executing and delivering any of such  
28 documents is hereby fully authorized.

29  
30 SECTION 5. Effective Date. The provisions of this Ordinance shall be effective upon its  
31 adoption.

32  
33 ENACTED by the City Council of the City of Myrtle Beach, South Carolina, this \_\_\_\_ day of  
34 \_\_\_\_\_ 2020.

35  
36  
37 \_\_\_\_\_  
38 (SEAL) Mayor, City of Myrtle Beach, South Carolina

39  
40  
41 \_\_\_\_\_  
42 Clerk, City Council of the City  
43 of Myrtle Beach, South Carolina

44  
45  
46 Date of First Reading: 12-8-2020

47  
48 Date of Second Reading:  
49

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2  
3

EXHIBIT A  
FORM OF GROUND LEASE

1  
2  
3

**EXHIBIT B**

**FORM OF SUB-LEASE**

# **FORM OF GROUND LEASE**

**between**

**THE CITY OF MYRTLE BEACH,**

**(the “Landlord”)**

**and**

**9<sup>th</sup> AVENUE OWNER, LLC,  
a South Carolina limited liability company,**

**(the “Tenant”)**

**Dated as of [\_\_\_\_\_], 2021**

## **GROUND LEASE**

**505, 507 and 509 Ninth Avenue**

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- A Property Description
- B Notice Addresses
- C Insurance Requirements

## **GROUND LEASE**

THIS GROUND LEASE (together with Exhibits hereto, which are incorporated herein by this reference, "**this Lease**") is made effective as of [\_\_\_\_], 2021, by and between THE CITY OF MYRTLE BEACH (the "**Landlord**"), and 9<sup>th</sup> AVENUE OWNER, LLC, a South Carolina limited liability company ("**Tenant**").

## **RECITALS**

**WHEREAS**, Landlord is the owner in fee simple title of certain Land (as defined herein), which it has agreed to lease under the terms and conditions hereof to Tenant for Tenant's development and rehabilitation of the historic buildings (collective, the "**Building**") upon the Land, as more specifically described in Section 4.1 (the "**Project**"), intended to satisfy the requirements of Section 47 of the Code throughout the recapture period specified in Section 50(a)(1) of the Code (the "**HTC Compliance Period**").

**NOW THEREFORE, IN CONSIDERATION** of the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of that tract of land (the "**Land**"), in the City of Myrtle Beach, South Carolina, which is more particularly described in Exhibit A attached hereto,

**TOGETHER WITH** any and all rights, alleys, ways, waters, privileges, roads, appurtenances and advantages, to the same belonging or in any way appertaining (all of which, together with the Land, are hereinafter referred to collectively as the "**Premises**"), including the existing and future Improvements on or under the Land,

**TO HAVE AND TO HOLD** the Premises unto Tenant, its successors and permitted assigns, for and during the Term set forth herein,

**ON THE TERMS AND SUBJECT TO THE CONDITIONS** which are hereinafter set forth:

### **Section 1. DEFINITIONS.**

1.1. Specific. As used herein, the following terms have the following meanings:

"**Annual Rent**" has the meaning given it in subsection 3.1.

"**Bankruptcy**" shall be deemed, for any person, to have occurred either:

(a) if and when such person (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such person or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of

any insolvency law, or (v) files an answer admitting the material allegations of a petition filed against such person in any bankruptcy, reorganization or insolvency proceeding; or

(b) if (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating such person a bankrupt or an insolvent, approving a petition seeking such a reorganization, or appointing a receiver, trustee or liquidator of such person or of all or a substantial part of its assets, or (ii) there otherwise commences with respect to such person or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for any period of one hundred twenty (120) consecutive days after the expiration of any stay thereof.

**“Business Day”** means any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Myrtle Beach, South Carolina.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Commencement Date”** has the meaning given it in paragraph 2.1.1.

**“Environmental Laws”** means any and all Federal, State or local laws, pertaining to health, safety, or the environment now or at any time hereafter in effect and any judicial or administrative interpretation thereof (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or hazardous substances (as such term is defined in any such law), or exposure to hazardous substances) including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reorganization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, the federal Clean Water Act of 1977, all regulations and laws adopted by the Occupational Safety and Health Administration, and any other environmental or health conservation or protection laws.

**“Event of Default”** has the meaning given it in subsection 13.1.

**“Force Majeure”** means any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, (c) failure or shortage of materials, electrical power, gas, water, fuel oil, or other utility or service, (d) riot, war, insurrection or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather condition, (g) other act of God, or (h) other cause similar or dissimilar to any of the foregoing and beyond the reasonable control of the person in question.

**“Fee Estate”** means Landlord’s fee simple interest in all the Land and the appurtenances included with the Land.

**“Improvements”** means the historic building located on the Land, and all fixtures and personal property, all off-street parking areas on the Property; all common areas at the Property, and all replacements, additions and alterations thereto.

**“Institutional Lender”** means any commercial bank, savings bank, savings and loan institution or insurance company authorized to do business in South Carolina, or any governmental entity.

**“Landlord”** means, The City of Myrtle Beach, and its successors and assigns as holder of the Fee Estate.

**“Land Records”** means the Land Records of the County of Horry, South Carolina.

**“Lease”** means this Ground Lease, including amendments thereto and extensions thereof, if any.

**“Lease Year”** means (a) the period commencing on the Commencement Date and terminating on the first (1<sup>st</sup>) anniversary of the last day of the calendar month containing the Commencement Date, and (b) each successive period of twelve (12) calendar months thereafter during the Term.

**“Leasehold Estate”** means the leasehold estate in the Premises held by Tenant under this Lease and its fee interest in the Improvements and any fee or other interest in the Property acquired by Tenant hereafter.

**“Legal Requirements”** has the meaning given it in subsection 4.3(h).

**“Mortgage”** means any mortgage or deed of trust at any time encumbering any or all of the Property, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Property (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein.

**“Mortgagee”** means the Person secured by a Mortgage.

**“Permitted Encumbrances”** means any and all encumbrances of record existing as of the date hereof.

**“Person”** means a natural person(s), a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity.

**“Premises”** means the Land more particularly described on Exhibit A attached hereto and incorporated herein by this reference and all appurtenances, easements and rights of way related to the Land.

**“Project”** or **“Property”** means collectively the Premises and the Improvements.

**“Rent”** means all Annual Rent.

**“Restoration”** means the repair, restoration or rebuilding of any or all of the Property after any damage thereto or destruction thereof, with such alterations or additions thereto as are made by Tenant in accordance with this Lease, together with any temporary repairs or improvements made to protect the Property pending the completion of such work.

**“Tenant”** means 9<sup>th</sup> Avenue Owner, LLC, a South Carolina limited liability company, and its successors and permitted assigns as holder of the Leasehold Estate.

**“Term”** has the meaning given it in subsection 2.1.1.

**“Termination Date”** has the meaning given it in subsection 2.1.1.

1.2. General. Any other term to which meaning is expressly given in this Lease shall have such meaning.

## **Section 2. TERM.**

2.1. Lease. Landlord agrees to lease the Premises to Tenant on the terms and conditions set forth in this Lease.

2.1.1. Original Term. This Lease shall be for a term (**“Term”**) commencing on the effective date hereon (**“Commencement Date”**), and (b) terminating on the ninety-ninth (99<sup>th</sup>) anniversary of the Commencement Date (the **“Termination Date”**, except that if the date of such termination is hereafter advanced to an earlier date or postponed pursuant to paragraph 2.2.1 or any other provision of this Lease, or by express, written agreement of the parties hereto, or by operation of law, the date to which it is advanced or postponed shall thereafter be the **“Termination Date”** for all purposes of this Lease). Possession shall be delivered on the Commencement Date.

2.1.2. Surrender. Tenant shall, at its expense, at the expiration of the Term or any earlier termination of this Lease, promptly yield up to Landlord the Premises, any of the Improvements and personal property which remains at the Premises as of the Termination Date, in reasonable order and repair, ordinary wear and tear and damage by casualty, or condemnation excepted. Upon such expiration or termination (whether by reason of an Event of Default or otherwise), Tenant shall thereafter have no right at law or in equity in or to any or all of the Property (including the Improvements) and shall be conclusively deemed to have abandoned same, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of Tenant (but subject to the rights of any person then holding any lien, right, title

or interest in or to the Fee Estate and to the lien of all Permitted Encumbrances then outstanding).

## 2.2. Holding Over.

2.2.1. Nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Premises after the expiration of the Term or any earlier termination of this Lease. If and only if Tenant continues to occupy the Premises after such expiration or termination after obtaining Landlord's express, written consent thereto:

(a) such occupancy shall (unless the parties hereto otherwise agree in writing) be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, by at least thirty (30) days before the end of any calendar month, that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate; and

(b) subject to the provisions of subsection 2.2.2, but anything in the remaining provisions of this Section to the contrary notwithstanding, the monthly rent payable with respect to each such monthly period shall equal one-twelfth (1/12) of the Annual Rent (such amount being the "**Monthly Rent**") for the Lease Year during which such expiration or termination occurred, as aforesaid.

2.2.2. If Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease without having obtained Landlord's express, written consent thereto, then without altering or impairing any of Landlord's rights under this Lease or applicable law, Tenant hereby agrees to pay a sum equaling One Hundred and 00/100 Dollars (\$100.00) per each day of such holdover occupancy to Landlord immediately on demand by Landlord as monthly rent for the Premises, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease, as aforesaid, until Tenant surrenders possession of the Premises to Landlord. Nothing in this Lease shall be deemed in any way to give Tenant any right to remain in possession of the Premises after such expiration or termination, regardless of whether Tenant has paid any such Rent to Landlord.

2.3. Title to and Alterations of Improvements. Notwithstanding any provision in this Lease to the contrary, at all times during the Term of this Lease, the Improvements and all alterations and additions shall be owned by Tenant for tax purposes and Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the federal historic rehabilitation tax credits pursuant to Section 47 of the Code and the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Improvements. Landlord makes no representation or warranty of any kind with respect to tax attributes of ownership, including but not limited to the availability of federal or state historic tax rehabilitation credits. At the expiration or earlier termination of the Term of this Lease, or any portion thereof, in accordance herewith, Tenant shall peaceably leave, quit and surrender the Premises in the manner required under paragraph 2.1.2. Upon such expiration or termination, the Premises and any Improvements

remaining (other than personal property and equipment owned by tenants) shall become the sole property of Landlord at no cost to Landlord in "as is" condition, and subject to all matters of record.

### **Section 3. RENT.**

3.1. Amount. As rent for the Premises, Tenant shall pay to Landlord annual installments of [One Dollar (\$1.00)] ("**Annual Rent**") for a period of ninety-nine (99) years commencing on the Commencement Date.

3.2. Security Deposit. None.

3.3. Leasehold Obligations.

3.3.1. Net Lease. Other than as is expressly set forth in this Lease, all costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of Tenant's Leasehold Estate in the Property, or this Lease generally shall be the sole responsibility of and payable by Tenant.

3.3.2. Property Tax Exemption. The Tenant shall be solely responsible for, and shall pay, all general and special ad valorem property taxes, assessments and user or impact fees, if any.

### **Section 4. USE OF PROPERTY.**

4.1. Nature of Use. Tenant shall throughout the Term continuously use and operate the Premises and the Improvements for the following uses and such other uses as are reasonably and customarily attendant to such uses: rehabilitation, construction, development of the Property as commercial and/or retail space.

4.2. Compliance with Environmental Laws. Tenant, throughout the Term and at its sole expense, in its rehabilitation, possession and use of the Improvements, shall not (a) cause or permit the escape, disposal or release of any biologically or chemically active or other Hazardous Substances brought onto the Property by Tenant or its agents or contractors, or (b) allow the storage or use of such Hazardous Substances in any manner not sanctioned by law or by the standards prevailing in the industry for the storage and use of such substances or materials, or (c) allow any Hazardous Substances to be brought onto the Property except to use in the ordinary course of Tenant's business, and then only after written notice is given to Landlord of the identity and intended use of such substances or materials. For purposes of this Lease, "**Hazardous Substances**" shall include those substances and materials subject to regulation under any applicable Environmental Law. If any lender or governmental agency reasonably requires testing to ascertain whether or not there has been any release of hazardous materials on the Premises for which Tenant is responsible hereunder while this Lease is in effect, then the costs thereof shall be paid by Tenant if such requirement applies to the Property. Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Premises.

4.3. Representations, Warranties and Covenants of Landlord. As an inducement to Tenant to enter into and proceed under this Lease, Landlord warrants and represents to Tenant as follows, which warranties, representations and covenants are true and correct as of the date of this Lease:

4.3.1. Landlord has good and marketable, fee simple title to the Premises, subject only to Permitted Encumbrances, and has the right, power and authority to enter into this Lease, to lease the Land to Tenant in accordance with the terms, provisions and conditions contained in this Lease, and has received all applicable governmental consents and approvals in connection therewith, and no other party has any right or option to or in connection with the Premises;

4.3.2. There is no litigation proceeding, or other action pending or, to the best knowledge and belief of Landlord, threatened, affecting the Property or Landlord's estate therein;

4.3.3. Landlord has received no written notice, and has no actual knowledge, nor has Landlord been otherwise advised, of any pending or threatened condemnation, building or zoning code violation relating to all or any part of the Property;

4.3.4. Landlord has received no written notice and has no actual knowledge of the intention of any party holding an easement affecting the Property or any part thereof to expand the exercise of any such easement beyond the scope of the present exercise thereof (as by replacing or expanding existing facilities, conduits (including underground or overhead wires, cables or pipes) or systems for sewers, water, electric, gas, cable and other utilities);

4.3.5. The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreement relating to the Property to which Landlord is a party or by which it is bound;

4.3.6. The Property is unoccupied and vacant, and there is no tenant, lessee or other occupant of the Property having any right or claim to possession or use of the Premises; and possession of the Premises is hereby delivered free of the rights or claims of any tenants, occupants or other parties in possession of, or claiming any right to possession or use of the Premises;

4.3.7. There are no unpaid special assessments of which Landlord has received notice for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Property;

4.3.8. There are no outstanding notices of, nor, to Landlord's actual knowledge, any violations of any applicable laws, ordinances, notices, orders, rules, regulations and requirements of applicable federal, state and municipal governments, public or quasi-public authorities and all departments, commissions, bureaus boards and officers thereof affecting any portion of the Property (collectively the "**Legal Requirements**");



4.3.9. To the best of Landlord's actual knowledge, neither the Property nor any part thereof has been used for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, transportation or disposal of any Hazardous Substances and no Hazardous Substances have been installed, used, stored, handled or located on or beneath the Property, which Hazardous Substances, if found on or beneath the Premises, or improperly disposed of off of the Premises, would subject Tenant, any subtenant, the owner or occupant of the Property to damages, penalties, liabilities or an obligation to perform any work, cleanup, removal, repair, construction, alteration, demolition, renovation or installation in or in connection with the Property ("***Environmental Cleanup Work***") in order to comply with any environmental law or Legal Requirements applicable to Hazardous Substances. No notice from any governmental authority or any Person has ever been served upon Landlord, its agents or employees, claiming any violation of any Legal Requirement pertaining to Hazardous Substances or any liability thereunder, or requiring or calling any attention to the need for any Environmental Cleanup Work on or in connection with the Premises, and neither Landlord, its agents or employees has ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order; and

## **Section 5. OPERATING EXPENSES.**

### **5.1. Operating Expenses.**

5.1.1. **Tenant's Obligation.** Tenant will pay (or cause to be paid) directly to the providers of such services all costs and expenses attributable to or incurred in connection with the development, construction, completion, marketing, leasing and occupancy of the Premises and the Improvements (collectively, "***Operating Expenses***") including without limitation (a) all energy sources for the Improvements, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer and trash disposal services; (c) all rehabilitation, maintenance, repair, replacement and rebuilding of the Improvements, without limitation, (d) all landscaping, maintenance, repair and striping of all parking areas; (e) all insurance premiums relating to the Premises and the Improvements, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; and (f) the cost and expenses of all capital improvements or repairs (whether structural or non-structural) required by any governmental or quasi-governmental authority having jurisdiction over the Premises or the Improvements.

5.1.2. **Permits and Licenses.** Tenant shall procure, or cause to be procured, at Tenant's sole cost and expense, any and all necessary permits, licenses, or other authorizations required for the rehabilitation, construction and occupancy of the Improvements and the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such service to the Improvements and upon the Premises. Landlord agrees to use Landlord's best reasonable efforts, at Tenant's sole cost and expense, to cooperate with Tenant in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authority with respect to any construction or other work to be performed on the Premises and grant (or cooperate in processing as regards third party providers), all permits, licenses, easements and other governmental authorizations that are

necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Landlord shall use Landlord's reasonable efforts, at Tenant's sole cost and expense, to cooperate in the relocation or termination of easements currently encumbering the Premises to the extent that same may be reasonably necessary or desirable in connection with the Improvements. Tenant shall be entitled, without payment to Landlord, for tap or connection fees, to tap into the existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Premises. Landlord agrees to use Landlord's reasonable efforts to assist Tenant to obtain waiver, reduction or deferral, as applicable, of all fees and other charges otherwise payable in connection with obtaining any permits, licenses, easements and other authorizations required by any governmental authority with respect to any construction or other work to be performed on the Premises in connection with the Improvements.

#### **Section 6. INSURANCE AND INDEMNIFICATION.**

6.1. Insurance to be maintained by Tenant. Tenant shall maintain or cause to be maintained throughout the Term of this Lease casualty (including flood and earthquake) and commercial general liability insurance as set forth in the attached **EXHIBIT C**. Proof of insurance shall be filed with the Landlord at the inception and any renewal of any policy.

6.2. Insureds. Each such policy shall name Landlord as an additional insured thereon.

6.3. Insurer. All insurance required and all renewals of insurance shall be issued by companies of recognized responsibility licensed to issue such policies and otherwise transact business in the State of South Carolina. All insurance policies will expressly provide that such policies will not be cancelled or altered without thirty (30) days' prior written notice to Landlord.

6.4. Indemnification. Beginning on the commencement date, the Tenant agrees to pay and to defend, indemnify and hold harmless the Landlord from and against any and all liabilities, losses, damages, causes of action, suits, claims, demands, judgments, costs and expenses of any kind or any nature whatsoever (including, without limitation, remediation costs, environmental assessment costs, governmental compliance costs, and reasonable expert's and attorneys' fees and expenses), known or unknown, foreseen or unforeseen, which may at any time be imposed upon, incurred by, or asserted or awarded against Landlord, its employees, agents, members or other persons serving in an advisory capacity to any of them or against the Property or any portion thereof, arising from: any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property on the Property, in each case arising out of the use, possession, ownership, condition or occupation of the Property, the building or any part thereof (but not of any other property) from and after the date hereof to the extent arising out of the acts or omissions of Tenant or any subtenant; violation by the Tenant, its employees, agents, or members, or invitees of any of them, of any environmental law affecting the property or the building or any part thereof or the ownership, occupancy or use thereof from and after the date hereof; provided, however, that notwithstanding the foregoing, the Tenant shall not have any liability to Landlord for any loss or damage arising out of the existence of any hazardous substance at the Property as of the date hereof, or acts of Landlord or persons under the control or direction

of Landlord or out of any release or threat of release of hazardous substance for which Landlord is responsible. The foregoing indemnification shall not be construed as creating any rights in or conferring any rights to any third parties.

## **Section 7. IMPROVEMENTS TO PREMISES.**

### **7.1. Rehabilitation of Improvements.**

7.1.1. Alterations. Landlord agrees that Tenant owns the Improvements for tax purposes and shall have the right to make such alterations, additions and changes thereto as Tenant deems necessary or appropriate, including, without limitation, and replacement thereof.

7.1.2. Estoppel Certificates. Landlord and Tenant agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from a permitted assignee or other interested party, Landlord or Tenant will execute, acknowledge and deliver to the other party a statement in writing certifying: (a) that this Lease is unmodified (or if modified, stating such modifications) and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certified (if such be the case), there is no default, set-off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any such persons.

7.1.3. Mortgage of Landlord's Fee Estate. Landlord shall not sell, transfer, assign, convey, or otherwise encumber all or any portion of its interest in the Property, without the prior written consent of the Tenant.

7.2. Joinder. Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals or certificates of dedication thereon, public works or other agreements and permits for sewer, water or other utility services, other instruments of dedication or other permits or approvals, the granting of or entry into which by any governmental or quasi-governmental authority having jurisdiction over the Property is necessary to permit (a) the development, rehabilitation, improvement, use and occupancy of the Property for the purposes permitted by this Lease, without violating applicable law; and (b) the dedication to the City of Myrtle Beach and/or the State of South Carolina after the Commencement Date of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are, in Tenant's opinion, necessary or desirable in connection therewith.

## **Section 8. REPAIRS AND MAINTENANCE.**

8.1. Repairs. Tenant shall, throughout the Term and at its expense,

- (a) keep the Premises in good order and condition (ordinary wear and tear excepted) and in compliance with applicable building and health and safety codes; and

(b) promptly make any and all repairs, ordinary or extraordinary, foreseen or unforeseen, to the Property (including but not limited to the landscaping thereon) as are necessary to maintain it in good condition, subject, in the event of casualty or condemnation to receipt of applicable insurance and/or condemnation proceeds therefor, and Landlord shall have no obligation hereunder as to the same.

8.2. Maintenance. Tenant shall keep and maintain all of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice.

### **Section 9. LANDLORD'S RIGHT OF ENTRY.**

9.1. Inspection and repair. Subject to the rights of any tenant under any lease of space in the Premises, Landlord shall be entitled to enter the Property during Tenant's normal business hours to (a) inspect the Property at any time, upon forty-eight (48) hours' advance written notice and (b) make any repairs thereto and/or take any other action therein which is required by applicable law, or which Landlord is permitted to make by any provision of this Lease, after giving Tenant at least twenty (20) Business Days' prior written notice of Landlord's intention to take such action; provided that Tenant doesn't timely cure same. Landlord may, while taking any such action upon the Property, store therein any and all necessary materials, tools and equipment, and Tenant shall have no liability to Landlord for any damage to or destruction of any such materials, tools and equipment, except if and to the extent that such damage or destruction is proximately caused by the negligence of Tenant. Landlord shall use its best efforts to not disrupt the rights of tenants at the Property.

### **Section 10. FIRE AND OTHER CASUALTIES.**

10.1. Damages or Destruction to Premises. Tenant shall give prompt notice to Landlord after the occurrence of any fire, earthquake, flood, act of God or other casualty to or in connection with the Premises, the Improvements or any portion thereof (hereinafter sometimes referred to as a "**Casualty**"). Subject to Section 10.2 below, if during the Term the Improvements shall be damaged or destroyed by Casualty, Tenant shall repair or restore the Improvements, so long as Tenant reasonably determines that it is feasible to do so and provided that sufficient insurance proceeds are available to do so. In the event that Tenant shall determine by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice.

10.2. Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to Section 10.1 hereof, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, if the Property is subject to a mortgage securing any obligation or guarantee of Landlord, to the Mortgagee thereof and (b) second, the balance, if any, of such insurance proceeds shall be paid to Landlord.

### **Section 11. CONDEMNATION.**

11.1. Notice of Taking. Forthwith upon receipt by either Landlord or Tenant of notice of the institution of any proceedings for the taking or condemnation of all or a portion of the

Property or Improvements by the government of the United States, State of South Carolina, City of Myrtle Beach, or any other governmental authority, or any corporation under the right of eminent domain (a **"Taking"**), the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

11.2. Special Account. If a Total Taking (as defined in Section 11.3), the full amount of any award for any Taking (the **"Award"**), shall, notwithstanding any allocation made by the awarding authority, be paid, and allocated as set forth below provided that there shall first be deducted from the Award in the order stated (A) first, any outstanding amounts secured by any deed of trust on the Property; and (B) second, any Rent outstanding prior to the Taking owed by the Tenant, which shall be paid to the Landlord. If a Total Taking, or a Partial Taking (pursuant to Section 11.4), the remainder of the Award (the **"Remainder"**) shall be allocated (x) to the Landlord, an amount equal to the product of the amount allocated to the Property multiplied by the Landlord's Percentage (hereafter defined), and (v) to the Tenant, an amount equal to the product of the amount allocated to the Premises multiplied by the Tenant's Percentage (hereafter defined). The **"Landlord's Percentage"** shall equal the fair market value, at the time of the Taking of the Premises encumbered by this Lease, plus the residual fair market value of the Improvements as of the expiration of the Term (the **"Land Value"**) divided by the sum of the Land Value and the Improvements Value. The **"Improvements Value"** shall be the fair market value of the Improvements, as of the date of the Taking, taking into account the then remaining Term of this Lease. The **"Tenant's Percentage"** shall equal the Improvements Value divided by the sum of the Land Value and the Improvements Value. The portion of the Award so allocated to the Landlord shall be known herein as the **"Landlord's Award,"** and the portion so allocated to the Tenant shall be known herein as the **"Tenant's Award."**

11.3. Total Taking. In the event of a permanent Taking of the fee title to or of control of the Premises or of the entire Leasehold Estate hereunder (a **"Total Taking"**), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any Rent payable or obligations owed by the Tenant to the Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full.

11.4. Partial Taking; Procedures and Criteria for Course of Action. In the event of a permanent Taking of all or less than all of the Premises (a **"Partial Taking"**),

(a) if Tenant reasonably determines that the continued use and occupancy of the remainder of the Premises by the Tenant is or can reasonably be made to be economically viable, structurally sound, and otherwise feasible based upon the amount of eminent domain proceeds available for the purpose of paying for such restoration (the **"Restoration Criteria"**), then, the entire Award shall be applied to restoration of the Premises and the Premises shall be restored pursuant to Section 10.1; or

(b) if the continued use and occupancy of the remainder of the Premises by the Tenant is not or cannot, in Tenant's reasonable judgment, be made to be economically viable, structurally sound, and otherwise feasible, then this Lease

may be terminated by Tenant pursuant to Section 10.1 and the Award applied pursuant to Section 11.2.

11.5. Restoration. If a decision is made pursuant to Section 10.1 to restore the remainder of the Premises following receipt of the Award, the Tenant shall promptly proceed, at its expense, to commence and complete the restoration pursuant to the provisions of Section 10, using the Award for such restoration, with any excess remaining after the completion of the restoration being payable to Tenant and Landlord, using the calculation set forth in such Section 11.2. If Tenant has decided pursuant to Section 10.1 to restore the remainder of the Premises, and if the cost of the restoration shall exceed the amount of the entire Award, the deficiency shall be paid by the Tenant.

11.6. Termination upon Non-Restoration. Following a Partial Taking, if a decision is made pursuant to Section 11.4(b) that the remaining portion of the Premises is not to be restored, the Tenant shall surrender the Premises to the Landlord and this Lease shall thereupon be terminated without liability or further recourse to the parties hereto.

11.7. No Waiver. No provisions in this Lease limit the rights of either the Landlord or Tenant to seek compensation from a condemning authority as provided by statute, common law, or the United States Constitution.

## **Section 12. ASSIGNMENT AND SUBLETTING.**

### **12.1. Transfer by Tenant.**

12.1.1. Tenant shall have the right to assign, sublet and encumber its interest under this Lease, from time to time, in full or in part, subject to the approval of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant shall not enter into any sublease of any portion of the Premises whose occupancy thereof would, singularly, or in the aggregate with other tenants or subtenants of the Premises, cause the Premises to be deemed to be "tax-exempt use property" under Sections 47(c)(2)(B)(v) or 168(h) of the Code (or any corresponding or related provision of the Code).

12.1.2. Tenant shall perform all of its obligations under all subleases, if any.

### **12.2. Transfer by Landlord.**

12.2.1. Subject to the provisions of Section 12.2.2 below, Landlord may assign this Lease or Landlord's reversion hereunder without the necessity of obtaining Tenant's consent or permission.

12.2.2. Notwithstanding anything herein to the contrary, Landlord (a) shall not assign or transfer this Lease to a person or entity that would cause a recapture or loss of all or any portion of the Historic Tax Credits; and (b) for itself and for each and every succeeding owner of Landlord's interest in the Premises, agrees that, prior to termination of the HTC Compliance Period, upon any Event of Default, Landlord's remedies shall be limited such that in no event shall Landlord have any right or remedy to terminate this Lease or Tenant's right to possession of the Premises hereunder.

### **Section 13. DEFAULT.**

13.1. **Definition.** As used in this Lease, each of the following events shall constitute an "Event of Default" by Tenant or Landlord, as applicable, unless such Event of Default is caused, in full or in part, by Force Majeure:

(a) if Tenant fails (a) to pay any Annual Rent or other sum which it is obligated to pay under this Lease, when and as it is due and payable hereunder, or (b) to perform any of its obligations under this Lease, in each case not cured within the grace period set forth below; or

(b) if Landlord (a) fails to pay any sum which it is obligated to pay under this Lease when and as it is due and payable hereunder, or (b) if Landlord fails to perform any of its obligations under this Lease, in each case not cured within the grace period set forth below; or

(c) if a Bankruptcy of Landlord or Tenant occurs.

13.2. **Notice; Grace Period.** Anything in this Section to the contrary notwithstanding, if an Event of Default occurs neither Landlord nor Tenant shall exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until:

(a) The non-defaulting party gives written notice thereof to the defaulting party;

(b) If such Event of Default consists of a failure to pay money, within ten (10) days after the non-defaulting party gives such written notice, the defaulting party fails to pay all of such money, or if such Event of Default consists of something other than a failure to pay money, within sixty (60) days after the non-defaulting party gives such written notice such Event of Default is not cured, or if such Event of Default is not reasonably curable within such period, the defaulting party has not commenced to proceed within such period actively, diligently and in good faith to begin to cure such Event of Default and to continue thereafter to do so until it is fully cured; and

(c) Following the grace periods set forth in this Section 13.2, the non-defaulting party shall be entitled, upon notice to the defaulting party, to pursue its available remedies at law or in equity; provided, that if the default is a default by Tenant and is caused, directly or indirectly, by a default by a subtenant of Tenant, Tenant shall be given such additional grace period as reasonably necessary to cause its subtenants to cure such default.

### **Section 14. CONDITION OF TITLE AND PREMISES.**

14.1. **Quiet Enjoyment.** Landlord hereby

(a) covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (i) is the owner of a fee simple estate in and to

the Premises, subject to the operation and effect of and only of the Permitted Encumbrances, and (ii) has the full right, power and authority to enter into this Lease and, thereby to lease the Premises; and

(b) warrants that Tenant will have quiet and peaceful possession of the Premises during the Term so long as all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to Sections 10, 11 or 13 or any other provision of this Lease.

### **Section 15. NOTICES.**

15.1. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (1) forty-eight (48) hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (2) the next Business Day after having been deposited (in time for delivery by such service on such Business Day) with Federal Express or another national courier service, or (3) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telefax or another means of immediate electronic communication, in each case to the address of such party set forth hereinabove or to such other address in the United States of America as such party may designate from time to time by notice to each other party hereto, or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party.

15.2. All notices required or permitted to be given under this Lease shall be deemed given in accordance with the foregoing paragraph of this Section 15, and addressed as set forth in Exhibit B. Any party may change its address by timely notice to the other party.

### **Section 16. GENERAL.**

16.1. Effectiveness. This Lease shall become effective on and only on its execution and delivery by each party hereto.

16.2. Complete understanding. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof.

16.3. Amendment. This Lease may be amended by and only by an instrument executed and delivered by each party hereto. Notwithstanding the foregoing, any such amendment shall require the consent of Tenant's members.

16.4. Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.



16.5. Applicable law. This Lease shall be given effect and construed by application of the law of the State of South Carolina, and any action or proceeding arising hereunder shall be brought in the State courts of Horry County, South Carolina.

16.6. Time of essence. Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

16.7. Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

16.8. Construction. As used herein, all references made (a) in the neutral, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, subsection, paragraph or subparagraph of this Lease.

16.9. Exhibits. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby incorporated herein and made a part hereof.

16.10. Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

16.11. Disclaimer of Partnership Status. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

16.12. Prevailing Party. In the event either party hereunder initiates judicial action against the other in order to enforce the terms, covenants and provisions of this Lease, the non-prevailing party in such judicial action shall reimburse the prevailing party in such judicial action for all expenses, fees, costs, including reasonable attorneys' fees incurred by the prevailing party in connection with such judicial action.

16.13. Benefit and Burden. This Lease shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

[SIGNATURES – NEXT PAGE]

**IN WITNESS WHEREOF**, each party hereto has caused this Lease to be executed on its behalf by its duly authorized representatives, the day and year first above written.

**LANDLORD:**            **THE CITY OF MYRTLE BEACH**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**            **9<sup>th</sup> AVENUE OWNER, LLC, a South Carolina  
limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

Property Description

[to be inserted]

EXHIBIT B

Notice Addresses

LANDLORD: The City of Myrtle Beach  
PO Drawer 2468  
Myrtle Beach, South Carolina 29578  
Attn.: [ ]  
Email: [ ]

*With copies to:* Rogers Lewis Jackson Mann & Quinn, LLC  
1901 Main Street, Suite 1200  
Columbia, South Carolina 29201  
Attn.: Chris Rogers, Esq.  
Email: [crogers@rogerslewis.com](mailto:crogers@rogerslewis.com)

TENANT: 9<sup>th</sup> Avenue Owner, LLC  
PO Drawer 2468  
Myrtle Beach, South Carolina 29578  
Attn.: [ ]  
Email: [ ]

*With copies to:* Rogers Lewis Jackson Mann & Quinn, LLC  
1901 Main Street, Suite 1200  
Columbia, South Carolina 29201  
Attn.: Chris Rogers, Esq.  
Email: [crogers@rogerslewis.com](mailto:crogers@rogerslewis.com)

## EXHIBIT C

### INSURANCE REQUIREMENTS

The insurance requirements Tenant with regard to the Property is set forth below. All insurance policies shall be underwritten by companies licensed to write such insurance in the state in which the Property is located, and shall be rated in the latest A.M. Best's Insurance Rating Guide with a rating of at least A- , and be in a financial category of at least IX. If an insurance policy is not available when required, then Certificates of Insurance detailing the policy terms and conditions as noted above shall be provided, but the policies must then be provided within sixty (60) days. All such policies shall include endorsements requiring at least thirty (30) days' prior written notice to Landlord of any cancellation, termination, or reduction of coverage therein. Notice of the renewal of any policy shall be made at least ten (10) days prior to the scheduled date of such renewal, and shall be in the form of endorsement to the policy. Notice to Landlord of any replacement of any policy shall be made at least ten (10) days prior to such replacement, and shall be in the form of a copy of the replacement policy, or by certificate, as noted above. Evidence of insurance may be provided on a Certificate of Insurance issued to Landlord and Tenant.

#### **1. *Liability Insurance***

Beginning on the Commencement Date and continuing throughout the Term of the Lease, Tenant shall obtain, or shall cause to be maintained, in full force and effect, the following policies of insurance; provided, that the coverage amounts set forth below are subject to increase, from time to time, at the written request of Landlord:

- ***Commercial General Liability Insurance***, insuring for third party claims of legal liability against Tenant, and caused by bodily injury, property damage, personal injury or advertising injury, arising out of the ownership or management of the Land and Building and including the costs to defend such actions brought against Landlord and Tenant, as well as hired and non-owned automobile liability insurance. The policy shall designate Tenant the named insured, and shall include an endorsement adding the Landlord (using form CG 2026 or equivalent) as an additional insured, and shall be primary coverage for the additional insured, without contribution from other valid insurance policies that may be available to the additional insured. Limits of the policy shall be at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the general aggregate. If coverage is provided under blanket policies insuring other locations or entities, then the general aggregate must apply to each insured location separately.
- ***Excess/Umbrella Liability Insurance***, with the Commercial General Liability, Automobile Liability, and Employers Liability policies scheduled as underlying policies. Limits of the policy shall be at least Three Million Dollars (\$3,000,000) per occurrence and in the annual aggregate. The policy shall designate Tenant as named insureds, and shall include an endorsement adding the Landlord in as an additional insured, and shall be primary coverage for the additional insured without contribution from other valid insurance policies that may be available to the additional insured.

## ***2. Casualty Insurance***

Casualty Insurance, including earthquake and flood coverages on the Improvements and Contents as shown on the attached schedule.

Builder's risk insurance, to include seismic, as shown in the attached schedule.