

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 4, 2019 [ ] Consent [X] Regular  
[ ] Ordinance [ ] Public Hearing

Department: Department of Housing and Economic Sustainability

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a tri-party Agreement with the Mary Alice Fortin Child Care Foundation, Inc. (MAFCCF) and the Palm Beach County Housing Authority (PBCHA), related to the continued operation of the child care center at New South Bay Villas.

**Summary:** Staff recommends Board of County Commissioner's approval of the Agreement, which will consent to MAFCCF's continued operation of a child care center on the site of the PBCHA's New South Bay Villas property. PBCHA owns the property, located at 110 Harrelle Drive in South Bay, where in 2013 they received assistance from the County through the Neighborhood Stabilization Program (NSP) and the Community Development Block Grant (CDBG) Program for acquisition and housing rehabilitation. The tri-party agreement is a Non-Disturbance and Attornment Agreement, which means that the County will not interfere with the PBCHA/MAFCCF lease, and provides that if the County acquires the property through foreclosure, it will honor the existing lease. Additionally, the Agreement provides the County's formal consent to the lease between PBCHA and MAFCCF, and the use of the portion of the property for the purposes of the child care center. The County holds three (3) Declarations of Restrictions (DORs) recorded against the property which were taken to secure the funding assistance and which require the provision of affordable housing for low and moderate income persons. Since PBCHA's acquisition of the property, MAFCCF has informally operated a child care center in a non-residential section of the property providing free services to approximately 50 local children. PBCHA and MAFCCF have executed a lease to memorialize the terms for continued operation of the child care center. Staff has no objections to the lease between MAFCCF and PBCHA, and recommends approval and execution of the tri-party Agreement. District 6 (HF)

**Background and Policy Issues:** On June 16, 2009, the County entered into Agreement (R2009-0998) with NOAH Development Corporation providing \$466,512 in CDBG funds for hurricane hardening of South Bay Villas. On January 21, 2013, the County entered into Agreement (R2013-0384) with PBCHA providing \$1,023,945.83 in NSP3 funds and \$384,075.76 in CDBG funds for the acquisition and rehabilitation of South Bay Villas. On February 3, 2015, the Agreement was amended (R2015-0189) to provide NSP2 funding to replace the CDBG funding and to increase the total amount to \$1,797,136.87. PBCHA successfully acquired, rehabilitated, and combined the property with an adjacent site to form New South Bay Villas, a development of 131 affordable rental apartments for low and moderate income families.

- Attachment(s):**  
1. Non-Disturbance and Attornment Agreement  
2. Lease between MAFCCF and PBCHA

Recommended By: Jonathan Brown 5/20/19  
Department Director Date

Approved By: [Signature] 5/31/19  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

| Fiscal Years             | 2019 | 2020 | 2021 | 2022 | 2023 |
|--------------------------|------|------|------|------|------|
| Capital Expenditures     |      |      |      |      |      |
| Operating Costs          |      |      |      |      |      |
| External Revenues        |      |      |      |      |      |
| Program Income           |      |      |      |      |      |
| In-Kind Match (County)   |      |      |      |      |      |
| <b>NET FISCAL IMPACT</b> |      |      |      |      |      |

|   |  |  |  |  |  |
|---|--|--|--|--|--|
| # ADDITIONAL FTE POSITIONS (Cumulative) |  |  |  |  |  |
|---|--|--|--|--|--|


Is Item Included In Current Budget? Yes  No   
 Does this Item include the use of Federal funds? Yes  No

Fund \_\_\_\_\_ Dept. \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_ Program Code/Period \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

No fiscal impact.

**C. Departmental Fiscal Review:**

  
 Shairette Major, Fiscal Manager II

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 5/22/19  
 OFMB 9/11/19 SP/21 5/21

 5/29/19  
 Contract Development and Control

**B. Legal Sufficiency:**

 5/30/19  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

## NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **NON-DISTURBANCE AND ATTORNMENT AGREEMENT** is dated as of April 30, 2019 (the "**Agreement**"), between **PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida ("County")**, whose address is 301 North Olive Avenue, 6<sup>th</sup> Floor, West Palm Beach Fl., 33401, **MARY ALICE FORTIN CHILD CARE FOUNDATION, INC.**, a Florida nonprofit corporation, whose address is 201 Chilean Avenue, Palm Beach, FL 33480 ("**Tenant**") and **PALM BEACH COUNTY HOUSING AUTHORITY**, a political subdivision of the State of Florida whose address is 3432 West 45<sup>th</sup> Street, West Palm Beach, FL 33407 ("**Landlord**").

### BACKGROUND

A. Tenant has or is about to enter into a Lease with The Palm Beach County Housing Authority ("**Landlord**") (the "**Lease**") for the real property described on Exhibit A, attached hereto (the "**Leased Premises**").

B. The leased premises are subject to certain restrictive covenants set forth in the following Declarations (collectively the "**Declarations**"):

- i) Declaration of Restrictions, as recorded on June 3, 2010 in Official Records Book 23880, Page 0981 of the Public Records of Palm Beach County, granting and encumbering the Premises with certain conditions and restrictions deemed covenants running with the land, and was accepted in writing by Landlord by the Acceptance of Conditions and Restrictions as recorded in Official Records Book 25785, Page 1262 of the Public Records of Palm Beach County and amended by the First Amendment to the Declaration of Restrictions and Acceptance of Conditions and Restrictions as recorded in Official Records Book 27967, Page 0156 of the Public Records of Palm Beach County (collectively, "**2010 Declaration**").
- ii) Declaration of Restrictions, which was recorded in Official Records Book 25785, Page 1259 of the Public Records of Palm Beach County thereafter, which imposed certain restrictions on the Premises (collectively, "**2013 Declaration**").
- iii) Declaration of Restrictions and recorded in Official Records Book 27501, Page 1451 of the Public Records of Palm Beach County, which imposed certain restrictions on the Premises ("**2015 Declaration**").

C. As a condition of entering into the Lease, Tenant has requested that the County recognize Tenant's rights under the Lease, on the terms and conditions hereinafter provided.

### AGREEMENT

**NOW, THEREFORE**, the parties hereto, in consideration of the mutual covenants herein contained, and intending to be legally bound, hereby agree as follows:

1. The County hereby consents to the Lease which hereby is and shall be subject and subordinate at all times to the Declarations

2. **NON-DISTURBANCE.**

So long as Tenant complies with Tenant's obligations under the Lease and is not in default under any of the terms, covenants or conditions of the Lease, County will not disturb Tenant's use, possession and enjoyment of the Leased Premises to operate a licensed childcare facility within the leased premises in accordance with the standards set forth in Florida Statute §402.305 (2018) and activities related to such services.

3. **ATTORNMEN**

If County acquires the Property by forfeiture, by deed in lieu of forfeiture, or by any other means:

- (a) Tenant shall make a full and complete attornment to County so as to establish direct privity between the County and the Tenant with respect to the Lease; and
- (b) All rights and obligations of Tenant under the Lease shall continue in full force and effect and be enforceable against Tenant by County, with the same force and effect as if such Lease had been originally made and entered into directly by and between County, as Lessor thereunder, and Lessee.

4. **MISCELLANEOUS.**

3.1. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns and shall be applicable to any extensions of the term of the Lease, as provided therein.

3.2. **Modifications.** This Agreement may not be supplemented, amended or modified unless set forth in writing and signed by the parties hereto.

3.3. **Notices.** All notices and communications under this Agreement shall be in writing and shall be given by either (a) hand delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid) to the addresses listed in this Agreement. Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (iii) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

3.4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed and delivered this Non-Disturbance Agreement under seal as of the day and year first above written.

WITNESS:

[Signature]  
Name: KEVIN P MAHONEY

TENANT:

[Signature]  
Name: Mary Alice Fortin Childcare Center, Inc.  
By: Lesly S. Smith, President

WITNESS:

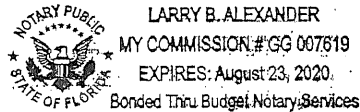
[Signature]  
Name: LARRY B ALEXANDER

STATE OF FLORIDA            )  
  )SS:  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of April, 2019 by Lesly S. Smith as President of Mary Alice Fortin Childcare Center, Inc. Such person is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature]  
Name: Larry B. Alexander

My commission expires:  
Notary Public  
Commission No. \_\_\_\_\_



(COUNTY SEAL BELOW)

**PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida**

**BOARD OF COUNTY COMMISSIONERS**

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

By: \_\_\_\_\_  
Mack Bernard, Mayor

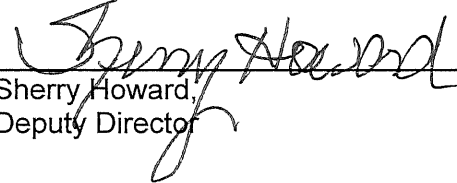
By: \_\_\_\_\_  
Deputy Clerk

Document No.: \_\_\_\_\_

Approved as to Form  
and Legal Sufficiency

Approved as to Terms and Conditions  
Dept. of Housing and Economic Sustainability

By: \_\_\_\_\_  
James Brako,  
Assistant County Attorney

By:   
Sherry Howard,  
Deputy Director

WITNESSES:

Maxine Gayle  
Signature of Witness 1

Maxine Gayle  
Print or type name of Witness 1

[Signature]  
Signature of Witness 2

L.A. Quavial Lane  
Print or type name of Witness 2

LANDLORD:

PALM BEACH COUNTY HOUSING  
AUTHORITY, a political subdivision of the  
State of Florida

By: Carol Jones-Gilbert

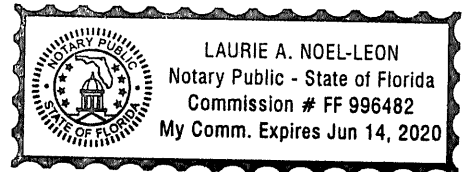
Name: Carol Jones-Gilbert

Title: Executive Director/CEO

STATE OF FLORIDA  
COUNTY OF PALM BEACH

This instrument was acknowledged before me this 7<sup>th</sup> day of May,  
2019, by Carol Jones-Gilbert, as Chief Executive Officer of the PALM BEACH  
COUNTY HOUSING AUTHORITY, a political subdivision of the State of Florida, who is  
personally known to me or has produced \_\_\_\_\_ as  
identification.

[Signature]  
Notary Public - State of Florida  
Notary Print Name: \_\_\_\_\_



## SCHEDULE A

### Description of the Premises

The North 166 feet of Tract 35 of the Amended Plat and Re-Subdivision of Section 14 Township 44 South, Range 36 East and Plat of the Town of South Bay, City of South Bay, Palm Beach County, Florida as recorded in Plat Book 7, Page 46, Public Records of Palm Beach County, Florida; that is lying West of the southerly prolongation of the Easterly right-of-way of Northwest Ninth Avenue less the North 33 feet thereof. Together with the non-exclusive right to use the "Shared Use Areas" as defined in Article I of the Shared Use Agreement by and between THE PALM BEACH COUNTY HOUSING AUTHORITY ("PBCHA"), a political subdivision of the State of Florida, and NEW SOUTH BAY VILLAS, LTD, ("NSBV, LTD"), a Florida limited partnership made effective March 2, 2017, as recorded in Official Records Book 28951, Page 1412 of the Public Records of Palm Beach County ("**Shared Use Agreement**").



## LEASE

THIS LEASE ("Lease") is made and entered into as of April 15, 2019 (the "Date of this Lease"), by and between Landlord and Tenant.

### WITNESSETH:

Subject to and on the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the certain tract of land, and improvements located therein, located in the City of South Bay, Palm Beach County, Florida, as hereinafter described.

1. **DEFINED TERMS; LEASE INFORMATION.** The key business terms of this Lease and the defined terms used in this Lease are as follows:

1.1 **Landlord.** PALM BEACH COUNTY HOUSING AUTHORITY, a political subdivision of the State of Florida.

1.2 **Tenant.** MARY ALICE FORTIN CHILD CARE FOUNDATION, INC., a Florida not for profit corporation.

1.3 **Premises.** A parcel of land with the legal description, and improvements located therein, described in **EXHIBIT "A"** attached hereto. Tenant's leasing of the Premises shall include such rights to use the Shared Use Areas (as defined in **EXHIBIT "A"**) located on the adjacent property that is leased by New South Bay Villas, Ltd. ("**NSBV**") as set forth in the Shared Use Agreement between Landlord and NSBV, subject to the terms of this Lease and the Shared Use Agreement.

1.4 **Permitted Use.** To operate a licensed child care facility in accordance with the standards set forth in Fla. Stat. § 402.305 (2018), and activities related to such services, subject to the provisions of this Lease. Tenant shall give priority to families living in the adjacent community owned and operated by NSBV to fill 10% of the total enrollment in the facility operated by Tenant.

1.5 **Commencement Date.** This Lease shall commence as of the Date of this Lease.

1.6 **Lease Term.** An initial term commencing on the Commencement Date and continuing for 60 full calendar months (5 years) (plus any partial calendar month in which the Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Commencement Date falls on a day other than the first day of a month, then for purposes of calculating the length of the Lease Term, the first month of the Lease Term shall be the month immediately following the month in which the Commencement Date occurs.

1.6.1 **Renewal Terms.** Tenant shall have the right to extend the term for up to two (2) additional terms of five (5) years (each, a "Renewal Term"). Each Renewal Term shall be automatic unless this Lease is cancelled by either Landlord or Tenant as provided herein. Each renewal of the term shall be subject to the condition that there has been no uncured Events of Default or any repeated or serious defaults by Tenant for which Landlord has provided Tenant with notice prior to the date of each renewal and at the time of such

renewal, no event has occurred that, with the giving of notice, the passage of time or both, would constitute an Event of Default.

1.6.2 **Tenant's Termination Option.** Tenant shall have a right to terminate this Lease at any time with thirty (30) days written notice to the Landlord.

1.6.3 **Landlord's Termination Option.** Landlord shall have the right to terminate this Lease for cause pursuant to the terms of Section 8. In addition, Landlord shall have the right to terminate this Lease at any time with at least twelve (12) months written notice to Tenant and provided that Landlord shall pay to Tenant: (i) the then-current depreciated value of any capital repairs and replacements made by Tenant with respect to the Premises pursuant to its obligations under this Lease, except to the extent that the repair or replacement was necessitated by Tenant's misuse, negligence, or willful misconduct, and (ii) Tenant's reasonable out-of-pocket expenses incurred in connection with moving Tenant's personal property from the Premises. Upon receipt of Landlord's termination notice, Tenant shall provide Landlord with an itemized list of the capital repairs and replacements made by Tenant prior to such date pursuant to its obligations under this Lease, together with reasonable supporting documentation. The depreciated value shall be determined on a straight-line basis over the useful life of the repair or replacement in question.

1.7 **Rent.** One Dollar (\$1) of U.S. currency paid in advance of the Commencement Date, for the entire Lease Term, receipt of which is hereby acknowledged by the Landlord.

1.8 **Calculation of Time.** Any time periods provided for or dates specified in this Lease, which shall end or occur on a Saturday, Sunday, or a national legal holiday, shall extend to 5:00 p.m. (where the Premises are located) of the next business day.

1.9 **Notices.** Any notice or consent required by or on behalf of either Landlord or Tenant to the other shall be given in writing and shall be sent by certified mail, with a return receipt, or by a nationally recognized overnight delivery service to the address stated below, or at such other address as may be specified, from time to time, by notice in the manner herein set forth. Notice shall be deemed given upon the receipt of the notice by the addressee. Notice to the Landlord shall be delivered to **3432 West 45<sup>th</sup> Street, West Palm Beach, FL 33407**. Notice to the Tenant shall be delivered to **201 Chilean Avenue, Palm Beach, FL 33480**, with a copy to **Jones Foster, P.A., Attn: Larry B. Alexander, Esq., 505 South Flagler Drive, Suite 1100, West Palm Beach, FL 33401**.

1.10 **Representatives.** Tenant hereby appoints the Executive Director of Tenant as its representative for any communications with Landlord regarding this Lease. Landlord hereby appoints the Executive Director of the Landlord or his or her designee for its representative for any communications with Tenant regarding this Lease. Each party confirms that its appointed representative is authorized to communicate with the other party on its behalf and that the other party may rely on any information or statement furnished by the other party's representative. Each party may appoint a new representative at any time by written notice to the other party in accordance with Section 1.9.

2. **TERM; ACCESS**

2.1 **Term.** This Lease shall constitute a legally binding and enforceable agreement as of the Date of this Lease. Tenant shall have and hold the Premises for the Lease Term. The Lease Term shall begin on the Commencement Date.

2.2 **Access.** Tenant currently has the right to possess the Premises.

3. **USE.** Tenant shall use the Premises only for the Permitted Use.

4. **RENT.**

**Net Lease.** The Rent shall be absolutely net to Landlord, free of any expense, charge, or other deduction whatsoever as to the Premises or the operation, management, maintenance, repair, or replacement of the Premises. Landlord shall not be required to furnish any service or facility whatsoever to the Premises. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises and any portion of them, including any obligations of Landlord, as owner of the Premises, under any existing matters of record encumbering the Premises. Notwithstanding the foregoing, the parties agree that the Tenant shall not be responsible for the operation, management, maintenance, repair, or replacement of those portions of the Shared Use Areas (as defined in **EXHIBIT "A"**) that are located outside of the Premises, except as described in Section 5.2 below.

5. **OPERATING COSTS.**

5.1 **General.** Tenant shall be solely responsible for all Real Estate Taxes (defined below), and maintenance, repairs, and replacements relating to the Premises, plus sales tax and assessments, if any, to the extent not exempt (collectively, "**Operating Costs**") for the period beginning on January 1, 2019 and ending on the expiration or earlier termination of this Lease. Upon the full execution of this Lease, Tenant shall reimburse Landlord for Operating Costs in the amount of \$6,831.19, which amount was incurred directly by Landlord for insurance for the period January 1, 2019 through May 15, 2019, solid waste removal for the period January 1, 2019 through September 30, 2019, and legal expenses incurred in connection with the review and negotiation of this Lease since January 1, 2019.

5.1.1 **Real Estate Taxes.** "**Real Estate Taxes**" shall mean all taxes, assessments, excises, levies, and other charges by any governmental or quasi-governmental authority or pursuant to any existing covenants or restrictions of record that are assessed, levied, or in any manner imposed on the Premises, including all charges on the tax bills for the Premises, which are general or special, ordinary or extraordinary, foreseen or unforeseen, or of any kind and nature whatsoever, and which shall during or in respect to the Lease Term, be assessed, levied, charged, confirmed, or imposed on, or become due and payable out of, or become a lien on the Premises or appurtenances or facilities used in connection with the Premises; provided, however, that the following taxes are excluded from Real Estate Taxes: any franchise, excise, income, gross receipts, profits, or similar tax assessed on or relating to the income of Landlord, and any capital levy, estate, gift, inheritance, transfer, or similar tax assessed by reason of any inheritance, devise, gift,

or transfer of any estate in the Premises by Landlord. This section shall only apply to the extent the Premises are not exempt from Real Estate Taxes.

5.1.2 Landlord and Tenant will cooperate in order to have the Premises separately assessed for non-exempt tax purposes. Landlord and Tenant agree to cooperate to execute such applications and other documents required by the Palm Beach County Property Appraiser so that the Premises will continue to be exempt from Real Estate Taxes.

5.1.3 **Payment.**

(a) **If Premises Separately Assessed.** For all tax years (or portions thereof) during the Lease Term for which the Premises are separately assessed for Real Estate Tax purposes, Tenant shall timely pay, directly to the taxing authority, 100% of the Real Estate Taxes levied and assessed upon the Premises, if any. All such Real Estate Taxes shall be paid by not later than December 31 of the year for which such taxes are levied or by such other applicable due date so as to avoid any penalties, and Tenant shall deliver to Landlord evidence of payment of such Real Estate Taxes from time to time, at Landlord's request.

(b) **If Premises Not Separately Assessed.** For all tax years (or portions thereof) for which the Premises are not separately assessed for Real Estate Tax purposes, and are not exempt from Real Estate Taxes due to Tenant's use of the Premises, Tenant shall pay Tenant's Allocated Share (defined below) of Real Estate Taxes, as reasonably determined by Landlord, assessed against the Tax Parcel (defined below) to Landlord in the manner provided under this subsection. Tenant shall pay that portion of Real Estate Taxes which are assessed and levied during the Lease Term against the property of which the Premises are a part ("**Tax Parcel**") properly allocated ("**Tenant's Allocated Share**") to the Premises. Tenant shall pay Tenant's Allocated Share of Real Estate Taxes within 30 days after a receipt by Tenant of a copy of the tax bill and a statement from Landlord showing the Real Estate Taxes due and the calculation of Tenant's Allocated Share.

5.1.4 **Contest.** Tenant or its designees shall have the right to contest or review all Real Estate Taxes applicable to the Premises or the failure of the Premises to remain exempt by legal proceedings ("**Contest Proceedings**") (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents necessary to accomplish the proceeding). Tenant shall not commence a lawsuit to contest the assessed value of the Premises without Landlord's consent, which will not be unreasonably withheld, conditioned, or delayed. Tenant shall pay and discharge any amounts that are levied, assessed, or imposed against the Premises, including all penalties, fines, interest, attorneys' fees, and costs as a result of the Contest Proceedings, and shall pay all Real Estate Taxes assessed, as a condition precedent to Tenant instituting the Contest Proceedings.

5.2 **Utilities and Trash.** Tenant shall pay the cost of all utilities serving the Premises, as charged based on Tenant's utility consumption. Tenant shall also reimburse Landlord for the costs of any utilities consumed by the Premises that are part of the Shared Use Areas and not separately metered and for refuse charges relating to the removal of trash generated by the Premises from the dumpster that is a part of the Shared Use Areas.

6. **NO ASSIGNMENT OR SUBLETTING.**

**Tenant Transfer.** Tenant may not assign, sublease, or transfer any of its rights under this Lease, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without the prior written consent of the Landlord, which consent may be withheld in Landlord's sole discretion.

7. **INSURANCE AND INDEMNITY.**

7.1 **Tenant's Insurance.** Tenant shall, throughout the term of this Lease, and at the Tenant's cost, provide and keep in force: (i) commercial general liability insurance with respect to the Premises with the limits of not less than Five Million Dollars (\$5,000,000) per occurrence/aggregate, which coverage may be provided in part by an umbrella policy, and (ii) workers' compensation insurance as required by statute. In addition, the Tenant expressly assumes the obligation to name such parties as additional insureds as may be required of the owner of the Premises under any existing restrictions or covenants of record to which this is subject and subordinate, including the Shared Use Agreement (as defined in Exhibit "A") and the Declarations of Restrictions in favor of the Palm Beach County Board of County Commissioners, so long as such party has an insurable interest. Landlord shall, at no cost to Landlord, cooperate with Tenant to provide Tenant's insurance company with such documentation as may be reasonably required for Tenant to fulfill the foregoing requirements. Tenant shall also maintain "all-risk" casualty insurance in an amount adequate to cover the full insurable value of the building improvements located on the Premises. Building insurance shall be written for the replacement cost of the building. All insurance policies shall be written with insurance companies reasonably acceptable to Landlord. The commercial general liability insurance policy will name Landlord and NSBV as additional insureds, and the casualty insurance policy shall name Landlord as a loss payee. If Landlord discovers that Tenant is required to name any other party as an additional insured or loss payee pursuant to the terms of any existing covenant of record, then the parties shall reasonably cooperate to ensure that Tenant's insurance company is able to provide the applicable coverage, so long as such party has an insurable interest. Within thirty (30) days after the date that this Lease is fully executed, as such period of time may be extended by Landlord in its reasonable discretion so long as Tenant is using diligent efforts to obtain such coverage, Tenant shall provide Landlord with certificates evidencing the insurance coverages required under this Lease. Thereafter, Tenant shall provide evidence of such insurance coverages upon request. Tenant's insurance shall be primary, and any insurance maintained by Landlord shall be excess and noncontributory. Landlord shall the right to reasonably increase the amount or expand the scope of insurance to be maintained by Tenant hereunder from time to time to the extent customary in the marketplace.

7.2 **Waiver of Subrogation.** Landlord and Tenant each expressly, knowingly, and voluntarily waive and release their respective rights of recovery that they may have against the other or the other's agents, employees, or contractors for loss or damage to its property and loss of business directly or by way of subrogation or otherwise as a result of the acts or omissions of the other party or the other party's agents, employees, or contractors (specifically including the negligence or intentional misconduct of either party or its agents, employees, or contractors), to the extent any such claims are covered by the property insurance carried or required to be carried under the terms of this Lease (whether or not actually carried by either party), or other property insurance that either party may carry at the time of an occurrence. Landlord and Tenant shall obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its

insurer concerning the commercial general liability and property insurance maintained by it for the Premises and the improvements located on the Premises. This section shall control over any other provisions of this Lease in conflict with it and shall survive the expiration or sooner termination of this Lease.

7.3 **Indemnity.** Tenant indemnifies Landlord and its affiliates, agents, officers, directors, managers, employees, and contractors from any and all costs, penalties, damages, claims, causes of action, obligations, liabilities and expenses (including attorneys' fees) suffered by or claimed against Landlord, directly or indirectly, based on, arising out of or resulting from: (a) Tenant's use and occupancy of the Premises or the Shared Use Areas or the business conducted by Tenant therein, (b) any act or omission by Tenant or Tenant's agents, affiliates, officers, directors, managers, employees, assignees, subtenants, contractors, clients, customers or invitees (c) any breach or default in the performance or observance of Tenant's covenants or obligations under this Lease, including without limitation any failure to surrender the Premises upon the expiration or earlier termination of the Term, or (d) damage to or destruction of the Premises structure, or any part thereof, or of any abutting real property caused by or attributable to the act, omission or negligence of Tenant or Tenant's agents, affiliates, officers, directors, managers, employees, assignees, subtenants, contractors, clients, customers or invitees. Tenant will employ counsel satisfactory to Landlord. Tenant's indemnity under this Section will survive the termination of this Lease. The foregoing indemnity shall not cover any costs, penalties, damages, claims, causes of action, obligations, liabilities or expenses to the extent based on Landlord's negligent or intentional acts.

## 8. **DEFAULT.**

8.1 Any of the following occurrences or acts shall constitute an event of default ("**Event of Default**") by Tenant under this Lease: (a) Tenant fails to pay when due any required Operating Costs or Real Estate Taxes and the failure continues for ten (10) days after Tenant's receipt of written notice from Landlord describing in detail such failure; (b) Tenant fails to perform any other covenant required to be performed by Tenant under this Lease and the failure continues for thirty (30) days after Tenant's receipt of written notice from Landlord describing such failure, or, if the default complained of is of such a nature that it cannot reasonably be completely cured or remedied within such thirty (30) day period and Tenant fails to commence to cure such default during the thirty (30) day period or does not thereafter diligently prosecute such remedy or cure to completion; (c) Tenant abandons the Premises for a period of thirty (30) consecutive days or longer; or (d) Tenant files for bankruptcy, or a petition in bankruptcy is filed against Tenant and not dismissed within sixty (60) days.

If an Event of Default shall have occurred and is continuing, then Landlord may terminate this Lease and exercise all rights and remedies available at law or in equity to evict Tenant. In such event, Landlord may recover from Tenant all expenses Landlord incurs in enforcing its rights under this Lease, including reasonable attorney's fees and costs, together with any costs of repairing the Premises to the condition required under this Lease.

If an Event of Default occurs and is continuing, Landlord's sole remedy shall be to terminate this Lease and recover the Premises, as provided above, except as follows.

During the continuance of an Event of Default, which can be cured by the payment of money, (including but not limited to Tenant's failure to provide the insurance required herein or to pay the Real Estate Taxes) Landlord shall have the right, upon at least ten (10) business days prior written notice to Tenant, to cure such Event of Default, in which case Tenant shall reimburse Landlord for all actual, reasonable costs incurred and paid by Landlord in curing such Event of Default.

8.2 **Jurisdiction and Venue.** Any legal action or proceeding arising out of or in any way connected with this Lease shall be instituted in a court (federal or state) located in Palm Beach County, Florida, which shall be the exclusive jurisdiction and venue for any litigation concerning this Lease. Landlord and Tenant shall be subject to the jurisdiction of those courts in any legal action or proceeding. In addition, Landlord and Tenant waive any objection that they may now or hereafter have to the laying of venue of any action or proceeding in those courts, and further waive the right to plead or claim that any action or proceeding brought in any of those courts has been brought in an inconvenient forum.

8.3 **Limitation of Remedies; Exculpation.** Landlord and Tenant each waive all rights they may have to consequential damages, lost profits, punitive damages, or special damages of any kind. Neither party's officers, employees, agents, directors, shareholders, partners, nor affiliates shall ever have any personal liability under this Lease. Tenant agrees to look to Landlord's interest in the Premises for any and all damages it may recover from Landlord pursuant to this Lease.

## 9. ALTERATIONS.

9.1 **General. "Alterations"** shall mean any alteration, addition, or improvement to the Premises of any kind or nature. Following the Date of this Lease, Tenant shall not make any alterations whatsoever to the Premises, except for purely cosmetic alterations, without first obtaining Landlord's consent, which consent will not be unreasonably withheld. Prior to making any Alterations, Tenant shall provide Landlord with details of the proposed work, including but not limited to drawings, specifications, estimates and evidence of insurance carried by the applicable contractors, for Landlord's review and reasonable approval. Tenant's contractors and subcontractors performing work at the Premises will be required to carry worker's compensation as required by statute, commercial general liability insurance with combined single limit bodily injury and property damage per occurrence of \$1,000,000 and general aggregate limits of \$2,000,000 and automobile liability insurance of \$2,000,000 bodily injury per person and \$2,000,000 property damage, all naming Landlord as an additional insured. Tenant shall provide Landlord with notice of completion of the work, together with evidence that all related invoices were paid, and permit Landlord to inspect the completed work.

9.2 **Cooperation.** Landlord shall reasonably cooperate with Tenant (including by timely signing applications) in obtaining any necessary governmental approvals for any work that Tenant intends to perform on the Premises that has been consented to by Landlord.

9.3 **Tenant's Costs; Title to Alterations.** Tenant shall be responsible for the cost all Alterations, including the cost of all utility connections, capacity, concurrency, and impact fees payable to any governmental authority, including sewer, water, transportation, or service impact fees (collectively, the "Impact Fees"). Title to the Alterations shall automatically vest in Tenant until the expiration or sooner

termination of this Lease, whereupon title to the Alterations shall automatically pass to, vest in, and become the property of Landlord.

9.4 **As-Is Condition.** Tenant, being the present occupant of the Premises, acknowledges that it is familiar with the physical condition of the Premises, and that it will accept and occupy the Premises under this Lease in AS IS condition as the Premises exist on the date of this Lease, and that Landlord shall have no obligation to improve, repair, or prepare the Premises for occupancy by Tenant under this Lease. Tenant acknowledges that except as expressly set forth in this Lease, neither Landlord, nor any agent of Landlord, has made any representation or warranty, express or implied, as to the present or future suitability of the Premises for the conduct of Tenant's Permitted Use.

10. **LIENS.**

10.1 The interest of Landlord in the Premises shall not be subject in any way to any liens, including construction liens, for alterations made by or on behalf of Tenant. This exculpation is made with express reference to Fla. Stat. § 713.10. Tenant represents to Landlord that any improvements that might be made by Tenant to the Premises are not required to be made under the terms of this Lease. Tenant shall notify every contractor making improvements to the Premises that the interest of the Landlord in the Premises shall not be subject to liens.

10.2 If any lien is filed against the Premises for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond under Fla. Stat. § 713.24, within 30 days after notice to Tenant. Further, Tenant shall indemnify, defend, and save Landlord harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in the Premises by or on behalf of Tenant.

11. **ACCESS TO PREMISES.** Landlord shall have access to the Premises upon reasonable notice to Tenant for inspection purposes, in order to determine whether or not Tenant's use of the Premises are in compliance with this Lease.

12. **NO SECURITY INTEREST IN PERSONAL PROPERTY.** Landlord waives any contractual, statutory, or other landlord's lien on any trade fixtures, furniture, equipment, and other personal property installed in or located on the Premises by Tenant (except non-trade fixtures).

13. **CASUALTY DAMAGE.** If during the Lease Term, the buildings or other improvements on the Premises shall be damaged or destroyed by fire or other casualty, Tenant may, at its option, either restore or repair the Premises or terminate the Lease. If the Tenant elects to restore or repair the damaged or destroyed improvements on the Premises, the proceeds of insurance payouts shall be used to repair and restore the damage caused by the casualty. If Tenant elects to terminate the Lease under the above circumstances, Tenant shall surrender possession of the Premises to Landlord and assign to Landlord (or, if already received by Tenant, pay to Landlord) all of its rights, title, and interest in all of the proceeds from Tenant's casualty insurance applicable to the damage to the improvements.

14. **CONDEMNATION.**



14.1 **Definition of Taking.** For purposes of this article, any of the following three events shall be deemed a "Taking": (a) if any part of the Premises are taken or condemned through the exercise of the power of eminent domain by any governmental or private board, body, or agency having the right to exercise such power; (b) if any part of the Premises are conveyed to any condemning authority under threat of condemnation before or after proceedings have been commenced to acquire the property by the condemning authority; or (c) if a "Taking" is judicially declared in any proceeding in which Landlord is a party.

14.2 **Total Taking.** In the event of a Taking of all of the Premises, this Lease shall terminate on the date on which possession of the Premises are delivered to the condemning authority (the "Condemnation Date").

14.3 **Partial Taking.** If a Taking shall affect less than but a material portion of the Premises which will render the Premises unsuitable for restoration for the continued use of the Premises for the Permitted Use, then Tenant may, not later than 90 days after such occurrence, deliver to Landlord notice of termination specifying the date of termination ("Lease Termination Date").

14.4 **Allocation of Award.** Any award of proceeds resulting from a Taking will belong solely to Landlord, and Tenant hereby waives any right to make any claim therefore as the result of this Lease, provided, however, that Landlord is not entitled to any award specifically made to Tenant for relocation expenses and the taking of Tenant's fixtures, furniture or leasehold improvements (exclusive of that portion paid for by Landlord), less depreciation computed from the date of said improvements to the expiration of the original Lease Term.

14.5 **Condemnation Proceedings.** Each of Landlord and Tenant may appear in any such proceeding or action, to negotiate, prosecute, and adjust any claim for any award or compensation on account of any Taking as it relates to their respective interests in the Premises. All amounts paid in connection with any Taking of the Premises shall be applied pursuant to this article, and all such amounts are defined as the "Award".

14.6 **Continuation.** If a Taking of the Premises or any part of it occurs but Tenant does not give notice of termination as provided in this article, then this Lease shall continue in full force and effect. Any Award payable for such Taking shall be allocated between Landlord and Tenant in accordance with Florida law and Tenant shall promptly repair and restore the Premises to the same condition (as nearly as practicable) as existed immediately before the Taking (assuming for this purpose that the Premises were in compliance with the terms of this Lease) and as required by then existing laws. In the event of any temporary Taking, this Lease shall remain in full force and effect and Tenant shall be entitled to receive the Award allocable to such temporary Taking.

15. **REPAIR AND MAINTENANCE.** Landlord shall have no maintenance obligation concerning the Premises and no obligation to make any repairs or replacements, in, on, or to the Premises, except for the Shared Use Areas defined in EXHIBIT "A", as is further described below. Tenant assumes the full and sole responsibility for the condition, operation, repair, replacement, and maintenance of the Premises, including all improvements, throughout the Lease Term. Tenant shall maintain the Premises and all improvements, except for the Shared Use Areas, in good order and repair, casualty exempt. In furtherance of the foregoing, Tenant shall, during the initial term of this Lease, undertake the repairs and maintenance activities listed in the Capital

Improvement Plan attached hereto as **EXHIBIT "B"**. The parties shall cooperate to determine the appropriate schedule for each activity identified in the Capital Improvement Plan. Landlord shall have the right to inspect the Premises throughout the Term of this Lease to ensure that the Premises is maintained in good condition throughout the Term. Tenant's repair and maintenance activity shall be subject to the provisions of Section 9.1. Tenant may install a security access system restricting access to the Premises. Landlord shall enforce the terms of the Shared Use Agreement with respect to the maintenance of the Shared Use Areas.

16. **ESTOPPEL CERTIFICATES.** From time to time, Landlord or Tenant, on not less than ten (10) business days' prior notice, shall execute and deliver an estoppel certificate in a form generally consistent with the requirements of institutional lenders or prospective purchasers and certified to the requesting party and any mortgagee or prospective mortgagee or purchaser of the interest of the requesting party.

17. **LEASEHOLD MORTGAGE**

17.1 **Leasehold Mortgage.** Tenant shall not mortgage or otherwise encumber Tenant's leasehold estate.

17.2 **Premises Mortgage.** The Premises are not encumbered by a ground lease or mortgage as of the Date of this Lease. This Lease (including all rights of Tenant hereunder) is subject and subordinate to any future mortgage, deed of trust or other indenture (each a "Mortgage") encumbering the Premises, and all renewals, replacements and extensions thereof, and all advances and interest under any Mortgage, provided the holder of such Mortgage enters into a Subordination Non-Disturbance Agreement with Tenant. This Section is self operative and no further instrument is required; nevertheless, Tenant agrees to execute within ten (10) business days of Landlord's written request, any documents required by any Mortgage holder to evidence such subordination, non-disturbance. If in connection with any future financing of the Premises, the holder of any Mortgage requests modifications in this Lease, Tenant will not unreasonably withhold or delay its consent to such modifications, provided that they do not unreasonably increase the obligations of Tenant hereunder or materially and adversely affect the leasehold interest created by this Lease. Landlord shall not record any encumbrance against the Premises that increases Tenant's obligations or adversely affects Tenant's rights under this Lease without Tenant's prior written consent.

18. **NO WAIVER.** The failure of a party to insist on the strict performance of any provision of this Lease or to exercise any remedy for any default shall not be construed as a waiver. The waiver of any noncompliance with this Lease shall not prevent subsequent similar noncompliance from being a default. No waiver shall be effective unless expressed in writing and signed by the waiving party. No notice to or demand on a party shall of itself entitle the party to any other or further notice or demand in similar or other circumstances.

19. **GOVERNMENTAL REGULATIONS.** Tenant shall comply with all laws, orders, and regulations of all county, municipal, state, federal, and other applicable governmental authorities, now in force or that may hereafter be in force, and shall faithfully observe, in the use of the Premises, all municipal and county ordinances and state and federal laws now in force or that may hereafter be in force that shall impose any duty on Tenant concerning the Premises or the use or occupancy of the Premises, including all laws relating to fire and safety, accessibility for persons with disabilities, and hazardous materials. Tenant shall obtain all licenses and permits from time to time required to enable Tenant to use and occupy the Premises for the Permitted Use. Tenant will

not use or permit the Premises to be used in violation of any Federal or State environmental laws. Tenant will not use, generate, release, store, treat, dispose of, or otherwise deposit, in, on, under or about the Premises, any Hazardous Materials (as defined under Federal or State laws), nor will Tenant permit or allow any third party to do so, without Landlord's prior written consent. The foregoing shall not preclude Tenant from using materials commonly used in a day care setting, provided that Tenant properly uses, handles and disposes of the same in accordance with applicable law and the manufacturers' instructions with respect thereto. Tenant shall pay to Landlord on demand any penalties assessed against the Premises or Landlord as a result of Tenant's violation of this Section, as well as all reasonable costs and expenses paid or incurred by Landlord in the enforcement of this Section.

20. **BROKER.** Landlord and Tenant each represent and warrant that they have neither consulted nor negotiated with any broker or finder regarding the Premises. Tenant shall indemnify, defend, and hold Landlord harmless from and against any claims for commissions from any real estate broker with whom it has dealt in connection with this Lease. Landlord shall indemnify, defend, and hold Tenant harmless from and against any claims for commissions from any real estate broker with whom Landlord has dealt in connection with this Lease.

21. **END OF TERM.** Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease or Tenant's right of possession in good order and condition, except for reasonable wear and tear. If Tenant shall fail to surrender the Premises, then Landlord shall have the right to exercise all rights and remedies available at law or in equity to evict Tenant, and Landlord shall have the right to recover from Tenant all reasonable legal expenses incurred by Landlord in connection with Landlord's exercise of such rights. All Alterations made by Landlord or Tenant to the Premises shall become Landlord's property on the expiration or sooner termination of the Lease Term. On or before the expiration or sooner termination of the Lease Term, Tenant, at its expense, within 30 days after such expiration or termination of the Lease, shall remove all of Tenant's moveable personal property from the Premises. Tenant shall also repair any damage to the Premises caused by the removal. Any items of Tenant's property that shall remain in the Premises on the 30<sup>th</sup> day after the expiration or sooner termination of the Lease Term, may, at the option of Landlord and without notice, be deemed to have been abandoned, and in that case, those items may be retained by Landlord as its property to be disposed of by Landlord, without notice to Tenant or any other party, in the manner Landlord shall determine, and Tenant shall reimburse Landlord for all costs incurred by Landlord in disposing Tenant's property or making repairs that Tenant was required to make under the Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

22. **ATTORNEYS' FEES.** Except as otherwise provided in this Lease, the prevailing party in any litigation arising out of or in any manner relating to this Lease, including the declaration of any rights or obligations under this Lease, shall be entitled to recover from the losing party reasonable attorneys' fees and costs, including fees for litigating the fees incurred and fees in connection with bankruptcy or appellate proceedings.

23. **EXCUSABLE DELAY.** For purposes of this Lease, the term "Excusable Delay" shall mean any delays (other than the payment of monetary obligations) due to strikes, lockouts, civil commotion, war or warlike operations, acts of terrorism, acts of a public enemy, acts of bioterrorism, epidemics, quarantines, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls,

inability to obtain any material, utility, or service because of governmental restrictions, hurricanes, floods, or other natural disasters, acts of God, or any other cause beyond the direct control of the party delayed. Notwithstanding anything in this Lease to the contrary, if Landlord or Tenant shall be delayed in the performance of any act required under this Lease by reason of any Excusable Delay, then performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a reasonable period, in no event to exceed a period equivalent to the period of the delay.

24. **QUIET ENJOYMENT.** Landlord covenants and agrees that on Tenant's performing all of the other provisions of this Lease on its part to be performed, Tenant may peaceably and quietly hold and enjoy the Premises for the Lease Term without hindrance or interruption by Landlord or any other person claiming by, through, or under Landlord.

25. **TENANT'S REPRESENTATIONS.** Tenant represents and warrants as follows:

25.1 Tenant is duly organized, validly existing, and in good standing under the laws of the State in which it was formed and is duly qualified to transact business in the State in which the Premises are located.

25.2 Tenant has the rights and full power to execute, deliver, and perform its obligations under this Lease.

25.3 The execution and delivery of this Lease, and the performance by Tenant of its obligations under this Lease, have been duly authorized by all necessary action of Tenant, and do not contravene or conflict with any provisions of Tenant's governing documents or any other agreement binding on Tenant.

25.4 The individual executing this Lease on behalf of Tenant has full authority to do so.

26. **LANDLORD'S REPRESENTATIONS.** Landlord represents and warrants as follows:

26.1 Landlord is duly organized, validly existing, and in good standing under the laws of the State in which it was formed and is duly qualified to transact business in the State in which the Premises are located.

26.2 Landlord has the right and full power to execute, deliver, and perform its obligations under this Lease.

26.3 The execution and delivery of this Lease, and the performance by Landlord of its obligations under this Lease, have been duly authorized by all necessary action of Landlord, and do not contravene or conflict with any provisions of Landlord's governing documents or any other agreement binding on Landlord.

26.4 The individual executing this Lease on behalf of Landlord has full authority to do so.

26.5 The Premises are not subject to any existing mortgages or claims for construction liens resulting from work performed by or on behalf of Landlord.

26.6 Landlord has not received any notice, nor is it aware of any pending Taking affecting the Premises.

26.7 This Lease will not result in a breach of, or constitute a default under, any agreement to which Landlord or the Premises are subject.

27. **RECORDATION.** Landlord and Tenant shall execute and deliver to each other a Memorandum of Lease in the form attached to this Lease as **EXHIBIT "C"**, which may be recorded by the Tenant in the Public Records of Palm Beach County, Florida, at the Tenant's expense.

28. **OPTION TO EXTEND; HOLDING OVER.**

28.1 Except as provided in Section 1.6.1, Tenant shall have no option to extend the Lease Term unless and until Tenant and Landlord enter into a written agreement extending the Lease Term, with no obligation on either party to so agree. A holding over by the Tenant beyond the expiration of the term of this Lease shall only operate as an extension of this Lease from month to month on the same terms and conditions, in effect immediately prior to the expiration of the term of this Lease. Such month-to-month tenancy may be terminated by either Tenant or Landlord by giving thirty (30) days advance written notice to the other party.

29. **GENERAL PROVISIONS.**

29.1 **Miscellaneous.** The words "including" and "include" and similar words will not be construed restrictively to limit or exclude other items not listed. If any provision of this Lease is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Lease shall remain in full force, if the essential provisions of this Lease for each party remain valid, binding, and enforceable. The parties may amend this Lease only by a written agreement of the parties. There are no conditions precedent to the effectiveness of this Lease, other than those expressly stated in this Lease. Landlord and Tenant intend that faxed or PDF format signatures constitute original signatures binding on the parties. This Lease shall bind and inure to the benefit of the heirs, personal representatives, and, except as otherwise provided, the successors and assigns of the parties to this Lease. Each provision of this Lease shall be deemed both a covenant and a condition and shall run with the land. Any liability or obligation of Landlord or Tenant arising during the Lease Term shall survive the expiration or earlier termination of this Lease. The terms Landlord and Tenant, as herein contained, shall include singular and/or plural, masculine, or feminine.

29.2 **State mandated radon notice.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

29.3 **Time is of the essence.** It is understood and agreed between parties hereto that the time is the essence of all terms, provisions, and covenants of this Lease. Whenever consent of the Landlord or Tenant shall be required hereunder, such consent shall not be unreasonably withheld or delayed.

29.4 **Exclusive Use.** Landlord represents that Tenant's Use of the Premises does not conflict with exclusive use provisions granted by Landlord to anyone else. Landlord further agrees that Tenant shall have the exclusive use of the Premises for the Term of the Lease.

29.5 **Exhibits.** All exhibits, riders, and addenda attached to this Lease shall, by this reference, be incorporated into this Lease. The following exhibits are attached to this Lease:

- EXHIBIT "A" – Legal Description of the Premises
- EXHIBIT "B" – Capital Improvement Plan
- EXHIBIT "C" – Form of Memorandum of Lease

30. **CONSTRUCTION; MERGER.** THIS LEASE HAS BEEN NEGOTIATED "AT ARM'S-LENGTH" BY LANDLORD AND TENANT, EACH HAVING THE OPPORTUNITY TO BE REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE AND TO NEGOTIATE THE FORM AND SUBSTANCE OF THIS LEASE. THEREFORE, THIS LEASE SHALL NOT BE MORE STRICTLY CONSTRUED AGAINST EITHER PARTY BECAUSE ONE PARTY MAY HAVE DRAFTED THIS LEASE. THIS LEASE SHALL CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES CONCERNING THE MATTERS COVERED BY THIS LEASE. ALL PRIOR UNDERSTANDINGS AND AGREEMENTS HAD BETWEEN THE PARTIES CONCERNING THOSE MATTERS, INCLUDING ALL PRELIMINARY NEGOTIATIONS, LEASE PROPOSALS, LETTERS OF INTENT, AND SIMILAR DOCUMENTS, ARE MERGED INTO THIS LEASE, WHICH ALONE FULLY AND COMPLETELY EXPRESSES THE UNDERSTANDING OF THE PARTIES.

31. **JURY WAIVER.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE LANDLORD/TENANT RELATIONSHIP, OR THE PREMISES.

IN WITNESS WHEREOF, this Lease has been executed on behalf of Landlord and Tenant as of the Date of this Lease.

WITNESSES:

LANDLORD:

PALM BEACH COUNTY HOUSING AUTHORITY, a political subdivision of the State of Florida

\_\_\_\_\_  
Signature of Witness 1

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

\_\_\_\_\_  
Print or type name of Witness 1

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

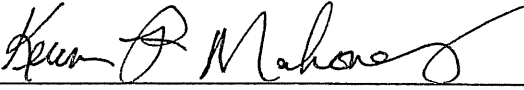
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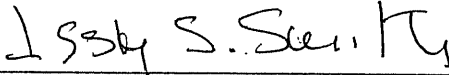
\_\_\_\_\_  
Signature of Witness 2

\_\_\_\_\_  
Print or type name of Witness 2

TENANT:

MARY ALICE FORTIN CHILD CARE FOUNDATION, INC., a Florida not for profit corporation

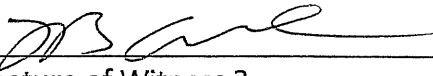
  
Signature of Witness 1

By: 

Kevin P Mahoney  
Print or type name of Witness 1

Name: Lesly S. Smith

Title: president

  
Signature of Witness 2

Larry B. ALEXANDER  
Print or type name of Witness 2

IN WITNESS WHEREOF, this Lease has been executed on behalf of Landlord and Tenant as of the Date of this Lease.

WITNESSES:

LANDLORD:

PALM BEACH COUNTY HOUSING AUTHORITY, a political subdivision of the State of Florida

By: Carol A. Jones-Gilbert  
Name: Carol A. Jones-Gilbert  
Title: Executive Director/CEO

[Signature]  
Signature of Witness 1

Maxine Gayle  
Print or type name of Witness 1

[Signature]  
Signature of Witness 2

Calvarial Pace  
Print or type name of Witness 2

TENANT:

MARY ALICE FORTIN CHILD CARE FOUNDATION, INC., a Florida not for profit corporation

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

\_\_\_\_\_  
Signature of Witness 1

\_\_\_\_\_  
Print or type name of Witness 1

\_\_\_\_\_  
Signature of Witness 2

\_\_\_\_\_  
Print or type name of Witness 2



## EXHIBIT "A"

### Legal Description

The North 166 feet of Tract 35 of the Amended Plat and Re-Subdivision of Section 14 Township 44 South, Range 36 East and Plat of the Town of South Bay, City of South Bay, Palm Beach County, Florida as recorded in Plat Book 7, Page 46, Public Records of Palm Beach County, Florida; that is lying West of the southerly prolongation of the Easterly right-of-way of Northwest Ninth Avenue less the North 33 feet thereof (the "Premises").

Tenant's leasing of the Premises shall include the appurtenant, non-exclusive right to use the "Shared Use Areas" as defined in Article I of the Shared Use Agreement by and between THE PALM BEACH COUNTY HOUSING AUTHORITY ("PBCHA"), a political subdivision of the State of Florida, and NEW SOUTH BAY VILLAS, LTD, ("NSBV, LTD"), a Florida limited partnership made effective March 2, 2017, as recorded in Official Records Book 28951, Page 1412 of the Public Records of Palm Beach County ("Shared Use Agreement").

EXHIBIT "B"

CAPITAL IMPROVEMENT PLAN

| DESCRIPTION   | ESTIMATED COST       |
|---|----------------------|
| Painting  |                      |
|   | \$ 15,000.00         |
| Replace windows with impact resistant windows as and when replacement is necessary  | \$ 25,000.00         |
| Remove/trim trees on east side of property  | \$ 1,500.00          |
| Sidewalk on west side of building to be ADA compliant to the extent required by the applicable governmental authority                 | \$ 10,531.00         |
| New asphalt parking lot (minimum overlay and striping)  | \$ 30,781.00         |
| Replace all exterior building lights (not entry lights) as necessary to ensure that all lights are in good working order at all times | \$ 4,950.00          |
| Landscape improvements  | \$ 5,000.00          |
| Mold remediation and repairs  | \$ 20,000.00         |
| Interior/Exterior ADA Compliance to the extent required by the applicable governmental authority                                      | \$ 10,000.00         |
| HVAC repair and replacement as necessary to ensure that the HVAC system is in good working order at all times                         | \$ 15,668.00         |
| <hr/>   |                      |
| <b>TOTAL ESTIMATED COST OF WORK</b>   | <b>\$ 138,430.00</b> |

**EXHIBIT "C"**

Prepared by and  
when recorded return to:

Larry B. Alexander, Esq.  
Jones Foster P.A.  
505 South Flagler Drive, Suite 1100  
West Palm Beach, FL 33401

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between **PALM BEACH COUNTY HOUSING AUTHORITY**, a political subdivision of the State of Florida, with the principal office of 3432 West 45<sup>th</sup> Street, West Palm Beach, FL 33407 ("**Landlord**") and **MARY ALICE FORTIN CHILD CARE FOUNDATION**, a Florida not for profit corporation, with the principal address of 201 Chilean Avenue, Palm Beach, FL 33480 ("**Tenant**").

1. TERM AND PREMISES. For the initial term of Five (5) years plus two five year renewal terms and upon the provisions set forth in that certain Lease dated the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Landlord and Tenant ("**Lease**"), all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein, Landlord leases to Tenant, and Tenant leases from Landlord, those certain premises ("**Premises**") with the legal description of:

The North 166 feet of Tract 35 of the Amended Plat and Re-Subdivision of Section 14 Township 44 South, Range 36 East and Plat of the Town of South Bay, City of South Bay, Palm Beach County, Florida as recorded in Plat Book 7, Page 46, Public Records of Palm Beach County, Florida; that is lying West of the southerly prolongation of the Easterly right-of-way of Northwest Ninth Avenue less the North 33 feet thereof.

Tenant's leasing of the Premises shall include the appurtenant, non-exclusive right to use the "Shared Use Areas" as defined in Article I of the Shared Use Agreement by and between THE PALM BEACH COUNTY HOUSING AUTHORITY ("PBCHA"), a political subdivision of the State of Florida, and NEW SOUTH BAY VILLAS, LTD, ("NSBV, LTD"), a Florida limited partnership made effective March 2, 2017, as recorded in Official Records Book 28951, Page 1412 of the Public Records of Palm Beach County ("**Shared Use Agreement**").

2. PURPOSE OF MEMORANDUM OF LEASE. This Memorandum of Lease is prepared for the purposes of recording a notification as to the existence of the Lease but in no way modifies the express and particular provisions of the Lease. In the event of a conflict between the terms of the Lease and the terms of this Memorandum of Lease, the terms of the Lease shall control. This Memorandum and the Lease shall run with the title to the Premises and shall be binding upon and inure for the benefit of the parties hereto and their respective successors and assigns.

3. THE LEASE CONTAINS THE FOLLOWING PROVISION.

"The interest of Landlord in the Premises shall not be subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. This exculpation is made with express reference to Fla. Stat. § 713.10. Tenant represents to Landlord that any improvements that might be made by Tenant to the Premises are not required to be made under the terms of this Lease. Tenant shall notify every contractor making improvements to the Premises that the interest of the Landlord in the Premises shall not be subject to liens."

4. This Memorandum of Lease may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to be one and the same document. Signature pages may be taken from a counterpart and attached to other counterparts to form one document, which shall constitute a fully executed document that may be recorded.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Memorandum of Lease as of the day and year first above written.

[Signature pages to follow]

WITNESSES:

LANDLORD:

\_\_\_\_\_  
Signature of Witness 1

PALM BEACH COUNTY HOUSING AUTHORITY, a  
political subdivision of the State of Florida

\_\_\_\_\_  
Print or type name of Witness 1

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

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

\_\_\_\_\_  
Signature of Witness 2

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

\_\_\_\_\_  
Print or type name of Witness 2

STATE OF FLORIDA  
COUNTY OF PALM BEACH

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of the PALM BEACH COUNTY HOUSING AUTHORITY, a political subdivision of the State of Florida, who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public - State of Florida  
Notary Print Name: \_\_\_\_\_

TENANT:

MARY ALICE FORTIN CHILD CARE  
FOUNDATION, INC., a Florida not for profit  
corporation

\_\_\_\_\_  
Signature of Witness 1

\_\_\_\_\_  
Print or type name of Witness 1

\_\_\_\_\_  
Signature of Witness 2

\_\_\_\_\_  
Print or type name of Witness 2

By:

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

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

STATE OF FLORIDA  
COUNTY OF PALM BEACH

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the MARY ALICE FORTIN CHILD CARE FOUNDATION, INC., a Florida not for profit corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public - State of Florida

Notary Print Name: \_\_\_\_\_