

POST-CLOSING OCCUPANCY AGREEMENT

THIS POST-CLOSING OCCUPANCY AGREEMENT (the “**Agreement**”) is made this ___ day of ___, 2018 (the “**Effective Date**”), by and between **CAL B ROSENBAUM**, an individual (the “**Seller**”), and the **CITY OF CORAL GABLES**, a municipal corporation existing under the laws of the State of Florida (the “**City**”).

WHEREAS, of even date herewith, the Seller has conveyed fee simple title to the City of that certain real property located at 7000 Old Cutler Road, Coral Gables, Florida 33143 (the “**Property**”), as more particularly described in that certain Agreement for Purchase and Sale dated as of _____, 2018 (the “**Purchase Contract**”).

WHEREAS, the parties have mutually agreed that Seller have continued occupancy of the Property for a limited period of time subsequent to the conveyance of the Property to the City, and the City has agreed to permit such occupancy, subject to the terms hereof.

NOW, THEREFORE, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Agreement.** The Seller and the City acknowledge and agree that they have closed the transaction for the conveyance of the Property as of the Effective Date of this Agreement and agree to enter into this Agreement upon those terms and conditions more particularly set forth herein.

2. **Occupancy Term.** Seller, his family, any caretakers, or heirs (each, an “**Authorized Occupant**”), shall have the right to occupy the Property for a period not to exceed two (2) years (the “**Occupancy Period**”) following the Closing. The Occupancy Period shall terminate on a date being the earlier of: (i) two (2) years following the Closing and/or (ii) the date Seller or (after the death of Seller or Seller’s assignment) any Authorized Occupant voluntarily vacates the Property. Notwithstanding the foregoing, prior to occupying the Property, any Authorized Occupant intending to occupy the Property, excluding the Seller, shall provide prior written notice to the City and agree to comply with the terms and conditions of this Agreement. No later than the expiration of the Occupancy Period, any and all Authorized Occupants in possession of the Property shall peacefully vacate the Property.

Notwithstanding the foregoing, if the Property becomes uninhabitable during the Occupancy Period due to a natural disaster or other casualty, Seller and any Authorized Occupant occupying the Property shall temporarily vacate the Property, at the sole cost of Seller and Authorized Occupant, while the City performs the necessary repairs. If the damage to the Property is substantial (in excess of \$50,000.00) making the Property untenable, in the City’s sole discretion (if the Property is damaged in a manner that is not suitable and fit for a person to live or endangers the health and safety of occupants), or if the City determines, in its sole discretion, that it is unable to rebuild in a timely manner, then the Occupancy Period shall terminate and the Seller and all Authorized Occupants shall permanently vacate the Property.

3. **No Further Encumbrances.** No Authorized Occupant shall, during the Occupancy Period: (a) execute or record any instrument or encumbrance against the Property whatsoever, (b) create or cause to create any lien against the Property whatsoever that will not be removed within 90 days, or (c) make or cause to make any material alterations or improvements to the Property, without City's prior written consent.

4. **Maintenance; Insurance.** Seller shall have no liability for actions caused by the City, its employees, agents or invitees. Seller and any other Authorized Occupant in possession of the Property agree to maintain general liability insurance, reasonably acceptable to the City, with a minimum coverage of \$2,000,000 limit per occurrence. Upon request, Seller and any other Authorized Occupant, as applicable, agree to provide to the City a copy of the certificate of liability insurance. The City shall maintain property insurance for the Property, but, except as provided in Exhibit "A" attached hereto and made a part hereof, the City shall not be required to maintenance or repair the Property during the Occupancy Period.

5. **Expiration of Occupancy Term.** Upon the expiration of the Occupancy Period, all Authorized Occupants shall have removed all personal property from the Property including, without limitation, all furniture, equipment and other personal effects or may abandon the property on site. All Authorized Occupants must surrender all keys for the Property and any Authorized Occupant in possession of the Property must surrender the Property to City upon the expiration of the Occupancy Period. No Authorized Occupant shall change any locks on the Property without the City's prior written consent, which shall not be unreasonably withheld.

6. **Access.** At all times during the Occupancy Period, the City may conduct reasonable inspections of the Property, so long as the City gives any Authorized Occupant in possession of the Property reasonable advance notice of at least one (1) business day prior to any such entry onto the Property (except in the case of an emergency in which case no prior notice shall be required). City shall respect the privacy and quiet enjoyment of Seller and any Authorized Occupant.

7. **Risk of Loss.** The City shall not be liable for any loss by reason of damage, theft, or otherwise to the contents, belongings and personal effects of any Authorized Occupant, or their agents, guests, visitors or other invitees located in or about the Property, or for damage or injury to any Authorized Occupant or their agents, guests, visitors or other invitees.

8. **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Agreement, in no event shall the City be liable to Seller or any other Authorized Occupant for any indirect, punitive, special consequential or incidental damages whatsoever. The Seller agrees that none of the City's directors, officers, employees or agents shall have any personal obligation hereunder, and the Seller shall not seek to assert any claim or enforce any of its rights hereunder against such directors, officers, employees or agents. This provision shall survive the expiration or termination of this Agreement.

9. **Compliance with Laws.** Seller and any Authorized Occupant shall comply with all applicable statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force, or which may hereafter be in force, pertaining to the Property,

occasioned by or affecting the use thereof by Seller or any Authorized Occupant.

10. **Defaults.** In the event of a default by Seller hereunder, the City shall have the right to pursue any and all remedies available at law or in equity against the Seller.

11. **Miscellaneous.** In the event of any dispute or litigation arising from this Agreement or the subject matter hereof, the parties hereby consent to venue for any dispute or litigation arising hereunder, in Miami-Dade, County, Florida. Neither this Agreement, nor any notice thereof, shall be recorded in the public records of any county in the State of Florida. The foregoing provision is self-operative and Seller agrees to execute any reasonable instrument, as may be requested by City's lender(s), if any, to evidence such subordination. This Agreement sets forth the entire understanding between Seller and City with regard to the subject matter hereof, and shall not be changed, modified or amended except by an instrument, in writing, signed by the party against whom the enforcement of any such change, modification or amendment is sought. Neither Seller nor City has made any statement, promise or agreement, either verbally or in writing, in conflict with the terms of this Agreement, or which in any way modifies, varies, alters, enlarges or invalidates any of its provisions. Time is of the essence in this Agreement. This Agreement may be executed by the parties in separate counterparts with the same effect as if all parties had signed the same documents.

12. **Sovereign Immunity.** Seller and City acknowledge that the Florida Doctrine of Sovereign Immunity bars all claims against the City other than claims arising out of this Agreement. Specifically, Seller acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of the Agreement. Nothing in the Agreement shall be intended to operate as a waiver of City's sovereign immunity, as set forth in the Florida Constitution and Florida Statutes Chapter 768.28

13. **Counterparts.** All such counterparts shall be deemed an original, shall be construed together, and shall constitute one and the same instrument. Telefaxed copies and/or electronically transmitted copies bearing the signatures of the parties shall be deemed original conforming copies for purposes of this Agreement.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGES]

[SIGNATURE PAGE TO POST-CLOSING OCCUPANCY AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

Cal B. Rosenbaum, an individual

March____, 2018

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

[SIGNATURE PAGE TO POST-CLOSING OCCUPANCY AGREEMENT]

CITY:

CITY OF CORAL GABLES, a municipal corporation existing under the laws of the State of Florida

By: _____

Name: Peter Iglesias

Title: City Manager

Date: _____, 2018

Approved for Form and Legal Sufficiency:

By: _____

Name: Miriam Soler Ramos

Title: City Attorney

Attestation of Signatures:

By: _____

Name: Walter J. Foeman

Title: City Clerk

Exhibit "A"

Maintenance responsibilities shall be distributed between Seller and City in the following manner:

- Seller shall be responsible for regular repairs and maintenance, including, but not limited to HVAC filters, landscape maintenance, and minor plumbing.
- The City shall be responsible for non-regular repairs and maintenance costs exceeding \$500.00 per occurrence, including all capital improvements greater than \$500.00