# Memorandum

MIAMI-DADE COUNTY

**Date:** June 3, 2008

**To:** Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 8(F)(1)(E)

**From:** George M. Burgess
County Manager

**Subject:** Lease Agreement at 10785 N.W. 58 Street, Doral
for the Miami-Dade Public Library System
Property # 3018-00-00

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RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing execution of a Lease Agreement at 10785 N.W. 58 Street, Doral, with U.S. Retail Income Fund VI, LP, a Delaware Limited Partnership, for library and office space to be occupied by Miami-Dade Public Library System. The attached Lease Agreement has been prepared by the General Services Administration at the request of the Miami-Dade Public Library System.

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|---|---|
| PROPERTY: | 10785 N.W. 58 Street, Doral |
| COMMISSION DISTRICT: | 12 |
| COMMISSION DISTRICTS IMPACTED: | Countywide |
| OWNER: | U.S. Retail Income Fund VI, LP<br>a Delaware Limited Partnership |
| COMPANY PRINCIPALS: | Duerr Christian, President<br>Kip Marshall, Vice President<br>Brad Garner, Vice President<br>Michael Sauer, Vice President<br>Michael Weaver, Treasurer |
| OWNER TRACK RECORD: | The County has no record of negative performance issues with U.S. Retail Income Fund VI, LP |
| USE: | 2,975 square feet of air-conditioned space. |
| JUSTIFICATION: | The Miami-Dade Public Library System has been operating a branch library from this location since 2003 and has a need to continue providing library services to the community. |

LEASE TERM: Five years with one additional five-year renewal option period.

EFFECTIVE DATES: Commencing upon approval of the Board and terminating five years thereafter.

RENTAL RATE: The annual base rent for the first year of the initial lease term will remain the same as the current annual rate of $76,755.00, which is equal to $25.80 per square foot. The annual rent for the second through fifth lease years and any renewal thereof will be increased each year by the Consumer Price Index. In no event shall the rental increase exceed five percent (5%).

LEASE CONDITIONS: The Landlord is responsible for electrical lines, fixtures, plumbing, roof and roof leaks, windows doors and frames, fire equipment, common areas, grounds maintenance, air conditioning, heating equipment and Tenant's improvements. The County is responsible for utilities, janitorial and custodial services for the demised space.

The County is responsible for its proportionate share of the building's Common Area Maintenance (CAM), estimated at $5.77 per square foot on an annual basis, which is equal to $17,165.75 annually or $1,430.48 on a monthly basis.

FINANCIAL IMPACT: The total financial impact for the first lease year is estimated to be $105,023.45, which is comprised of the following:

**First Year Occupancy Cost:**

| | Total Dollars | PSF |
|---|---|---|
| Annual Base Rent | | |
| Annual Base Rent: | $ 76,755.00 | $25.80 |
| Direct Expense: | | |
| CAM: | $ 17,165.75 | $ 5.77 |
| Electricity: | $ 4,462.50 | $ 1.50 |
| Water & Sewer: | $ 892.50 | $ .30 |
| Custodial & Janitorial: | $ 2,677.50 | $ .90 |
| Total Base Rent: | $101,953.25 | $34.27 |
| Indirect Expense: | | |
| Lease Management Fee: (4%) | $ 3,070.20 | |
| **Total Cost to County, first year:** | $105,023.45 | |

| | |
|---|---|
| CANCELLATION PROVISION: | The County may cancel this lease or any portion thereof by giving Landlord 90 days prior written notice. |
| FUNDING SOURCE: | Library taxing district funds. This item has been budgeted by the Miami-Dade Public Library System. |
| OTHER PROPERTIES EVALUATED: | 9500 N.W. 41 Street, Doral — $25.00 PSF for a full service lease plus Common Area Maintenance (CAM). No space available on the ground level, plus build-out and relocation expenses.<br><br>9800 N.W. 41 Street, Doral — $25.00 PSF for a full service lease plus electric and CAM, build-out and relocation expenses.<br><br>10305 N.W. 41 Street, Doral — $23.00 PSF for a full service lease plus operating expenses, taxes and insurance, build-out and relocation expenses. |
| LEASE MONITOR: | Margaret Araujo, Real Estate Officer. |
| DELEGATED AUTHORITY: | Authorizes the County Mayor or his designee to execute the lease agreement, exercise the cancellation option for the demised premises, or any portion thereof, and exercise the renewal option. |

Director
General Services Administration

# MEMORANDUM
**(Revised)**

**TO:** Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

**DATE:** June 3, 2008

**FROM:** R. A. Cuevas, Jr. County Attorney

**SUBJECT:** Agenda Item No. 8(F)(1)(E)

**Please note any items checked.**

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)(E)
6-3-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT AT 10785 N.W. 58 STREET, DORAL, WITH U.S. RETAIL INCOME FUND VI, LP, A DELAWARE LIMITED PARTNERSHIP, FOR PREMISES TO BE UTILIZED BY THE MIAMI-DADE PUBLIC LIBRARY SYSTEM AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Lease Agreement between U.S. Retail Income Fund VI, LP a Delaware Limited Partnership, for premises to be utilized by the Miami-Dade Public Library System, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or his designee to exercise any and all other rights conferred therein.

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

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of June, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MR

Monica Rizo

# LEASE AGREEMENT

This AGREEMENT made on the day of , 2008, by and between U.S. RETAIL INCOME FUND VI, LP, a Delaware Limited Partnership, hereinafter called the "LANDLORD," and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter called the "TENANT,"

***WITNESSETH:***

That LANDLORD, for and in consideration of the restrictions and covenants herein contained, hereby leases to TENANT and TENANT hereby agrees to lease from LANDLORD the demised premises described as follows:

> 2,975 rentable square feet of air-conditioned office space, located at 10785 N.W. 58 Street, Doral, Florida 33165, together with parking in common with other tenants.

TO HAVE AND TO HOLD unto the said TENANT for a term of Five (5) years, commencing on the effective date of the resolution of the Board of County Commissioners approving this Lease Agreement and terminating Five years thereafter, for and at a total annual base rental of Seventy-Six Thousand Seven Hundred Fifty-Five Dollars and 00/100 ($76,755.00) for the first lease year, payable in twelve (12) equal monthly installments of Six Thousand Three Hundred Ninety-Six Dollars and 25/100 ($6,396.25), payable in monthly installments in advance on the first day of every month to U.S. Retail Income Fund VI LP, P.O Box 932281, Atlanta, Georgia 31193-2281 or at such other place and to such other person as LANDLORD may from time to time designate in writing. The annual rental rate for the second through the fifth lease year of the initial lease term and any subsequent renewal option period; shall be increased by the Consumer Price Index (CPI) as per Article XX, "Rent Adjustment" of this Lease agreement. The October monthly installment rental payment for each year will be processed by Miami-Dade County after the close of the County's fiscal year, for each calendar year.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

## ARTICLE I
## USE OF DEMISED PREMISES

The area of the demised premises shall be used by TENANT for a Miami-Dade County Public Library for the performance of work incidental thereto, which will necessarily entail services performed for the general public.

## ARTICLE II
## CONDITION OF DEMISED PREMISES

TENANT hereby accepts the Demised Premises to be in a state of good repair and suitable for usage by TENANT at the commencement of this Lease Agreement.

## ARTICLE III
## UTILITIES

TENANT, during the term hereof, shall pay all charges for electricity, water, and all other utilities used by TENANT.

## ARTICLE IV
## MAINTENANCE

LANDLORD agrees to provide, repair or replace, as necessary, and maintain and keep in good repair, condition, and appearance, during the term of this Lease Agreement or any extension or renewal thereof, the exterior of the building and the following:

Plumbing and electrical lines, excluding the demised premises;
Air-conditioning and heating equipment as referenced in Exhibit "A";
Roof, roof leaks and all other structural elements of the building;
Windows, doors, and frames not covered by TENANT's Plate Glass Insurance Policy;

LANDLORD, at its sole cost and expense, shall perform or cause to be performed in the demised premises during the term of this Lease Agreement (except for Saturdays, Sundays, and holidays) the aforementioned maintenance services as described above and as referenced in Exhibit "A" HVAC System "Preventive Maintenance for Leased Space."

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Upon failure of LANDLORD to effect repairs or perform the above-stated services pursuant to this Lease Agreement after five (5) days' written notification to do so by TENANT, TENANT may cause the repairs to be made and deduct their cost from the rental payments due and to become due until in each instance TENANT has fully recovered such costs in accordance with audited costs of repair furnished by TENANT to LANDLORD.

In the event of an emergency, TENANT after proper notification to the LANDLORD and failure of the LANDLORD to take immediate action, may perform repairs that are the LANDLORD's responsibility and receive a credit against rental payments or a cash reimbursement from LANDLORD for the actual costs thereof. During the term of this Lease Agreement or any renewal thereof, if in TENANT's reasonable judgment a condition exists with respect to any matter in which the LANDLORD is obligated to maintain, that which adversely affects TENANT's operations, and after proper notice, LANDLORD fails to repair same as required, TENANT may make such repairs and deduct the cost thereof from rental payments or any other amounts due to LANDLORD hereunder. All of the aforesaid repairs shall be made with reasonable diligence and in a good and workmanlike manner.

TENANT shall be responsible for the interior of the demised premises including janitorial and custodial services. LANDLORD shall be responsible for air-conditioning maintenance.

## ARTICLE V
## ALTERATIONS BY TENANT

TENANT may not make any alterations, additions, or improvements in or to the demised premises without the written consent of LANDLORD. All additions, fixtures, or improvements (except but not limited to store and office furniture and fixtures which are readily removable without injury to the demised premises) shall be and remain a part of the demised premises at the expiration of this Lease Agreement. Subject to the above, any removable partitions installed by TENANT within the demised premises shall remain TENANT's property and may be removed by TENANT upon the expiration of the Lease Agreement or any renewal or cancellation thereof. Throughout the term of this Agreement, LANDLORD agrees to provide any additions, fixtures, or other improvements that TENANT may request, and

TENANT shall reimburse LANDLORD for the actual costs of expenses associated with such additions, fixtures, or improvements separately invoiced to the TENANT by LANDLORD for such services.

## ARTICLE VI
## DESTRUCTION OF DEMISED PREMISES

In the event the demised premises or any portion thereof should be destroyed or so damaged by fire, windstorm, or other casualty, to the extent that the demised premises are rendered untenantable or unfit for the purpose of TENANT, either party may cancel this Lease Agreement by the giving of written notice to the other at any time after the occurrence of the fire, windstorm, or other casualty. In the event of cancellation under this Article, neither party shall be responsible to the other party for any expense associated with the cancellation, and TENANT shall only be liable to LANDLORD for such rents as may be due as of the date of such fire, windstorm, or other casualty.

If neither party shall exercise the foregoing right of cancellation, LANDLORD shall cause the building and demised premises to be repaired and placed in good condition within one hundred twenty (120) days following the date of casualty, time being of the essence. If the demised premises sustained damages such that repairs cannot be completed within one hundred eighty (180) days, TENANT shall be entitled to cancel the Lease Agreement by the giving of written notice to LANDLORD at any time, notwithstanding the commencement of any repairs by LANDLORD. TENANT shall not be liable for rent during such period of time as the demised premises remain totally untenantable by reason of fire, windstorm or other casualty.

In the event of partial destruction or damages to the demised premises which do not render the demised premises wholly untenantable, the rents shall be proportionately abated in accordance with the extent to which TENANT is deprived of use, occupancy or full enjoyment of the premises, unless TENANT exercises its right of cancellation as set forth above.

## ARTICLE VII
## DISABLED INDIVIDUALS

LANDLORD understands, recognizes, and warrants to the best of its knowledge that all common

areas are, and shall at all times be maintained, in accordance with the requirements for disabled individuals contained in the Americans with Disabilities Act of 1990 (the "ADA") and Section 553.501 et seq. of the Florida Statutes, as presently written and as may be hereafter amended.

LANDLORD further warrants that the demised premises and access thereto, including but not limited to restrooms, hallways, entryways to the street, and accessible parking, if parking is provided under the Lease Agreement, shall be in compliance with the accessibility standards for government programs contained in the ADA and all requirements of Section 553.501 et seq. of the Florida Statutes LANDLORD covenants and agrees that the demised premises and access thereto shall at all times be maintained in accordance with the requirements of Section 255.21 of the Florida Statutes at LANDLORD's cost and expense, except where changes are required as a result of TENANT's change in program or work force.

LANDLORD agrees to correct any and all violations of the obligations of LANDLORD under this Section within thirty (30) days of written notice by TENANT of the existence of the same, provided that, if such violations cannot feasibly be corrected within said thirty (30) day period, then LANDLORD agrees to commence such repairs within said thirty (30) day period and to diligently pursue the completion of same within a reasonable period thereafter.

LANDLORD recognizes and agrees that throughout the term of the Lease Agreement, TENANT may in its discretion change its employees or programs which operate from the demised premises. LANDLORD agrees that TENANT may at TENANT's expense and subject to LANDLORD's prior reasonable approval, make such changes to the demised premises or the access thereto as may be required by TENANT to accommodate disabled individuals or to provide program accessibility in connection with any such change in TENANT's programs or work force.

## ARTICLE VIII
## NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved in the demised premises above described shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT for any damage to said personal property unless caused by or due to negligence or willful misconduct of LANDLORD,

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LANDLORD's agents or employees.

## ARTICLE IX
## SIGNS

Interior and/or exterior signs will be of the design and form of letter to be first approved by LANDLORD and in accordance with local codes and attached sign criteria. The cost of such signage and installation to be paid by TENANT. All signs shall be removed by TENANT at termination of this Lease Agreement and any damage or unsightly condition caused to building because of or due to said signs shall be satisfactorily corrected or repaired by TENANT. Exterior signs are limited to the building's standard directory and standard door sign; no exterior signs should be placed outside the building.

## ARTICLE X
## LANDLORD'S RIGHT OF ENTRY

LANDLORD or any of its agents shall have the right to enter said demised premises during all reasonable working hours, upon the giving of reasonable prior notice, unless an emergency exists, to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof of said building or to exhibit said demised premises and to put or keep upon the doors or windows thereof a notice "FOR RENT" at any time within ninety (90) days before the expiration of this Lease Agreement, or any extension or renewal thereof.

## ARTICLE XI
## LIABILITY FOR DAMAGE OR INJURY

TENANT shall not be liable for any damage or injury which may be sustained by any party or person on the demised premises other than the damage or injury caused solely by the negligence of TENANT, subject to all limitations of Florida Statutes, Section 768.28.

## ARTICLE XII
## PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Lease Agreement, LANDLORD agrees that TENANT shall and may peaceably have, hold, and enjoy the demised premises above described, without

hindrance or molestation by LANDLORD.

## ARTICLE XIII
## SURRENDER OF DEMISED PREMISES

TENANT agrees to surrender to LANDLORD at the end of the term of this Lease Agreement, or any extension thereof, said demised premises in as good condition as said demised premises were at the beginning of the term of this Lease Agreement, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted.

## ARTICLE XIV
## INDEMNIFICATION AND HOLD HARMLESS

TENANT does hereby agree to indemnify and hold harmless the LANDLORD to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of that Statute whereby the TENANT shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000, or any claim or judgments or portions thereof, which, when totaled with all other occurrence, exceeds the sum of $200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the TENANT. However, nothing herein shall be deemed to indemnify the LANDLORD from any liability or claim arising out of the negligent performance or failure of performance of the LANDLORD or any unrelated third party.

## ARTICLE XV
## ASSIGNMENT OR SUBLET

TENANT shall not assign this Lease Agreement or any part thereof or sublet all or any part of the demised premises without prior written consent of LANDLORD, which shall not be unreasonably withheld. Any assignment or subletting consented to by LANDLORD shall be evidenced in writing in a form acceptable to LANDLORD.

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## ARTICLE XVI
## SUCCESSORS IN INTEREST

It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

## ARTICLE XVII
## ASSIGNMENT BY LANDLORD

If the interests of LANDLORD under this Lease Agreement shall be transferred voluntarily or by reason of foreclosure or other proceedings for enforcement of any mortgage on the demised premises, TENANT shall be bound to such transferee (herein sometimes called the "Purchaser") for the balance of the term hereof remaining, and any extension or renewals thereof which may be effected in accordance with the terms and provisions hereof, with the same force and effect as if the Purchaser were the LANDLORD under this Lease Agreement, and TENANT does hereby agree to attorn to the Purchaser, including the Mortgagee under any such mortgage if it be the Purchaser, as its LANDLORD, said attornment to be effective and self-operative without the execution of any further instruments upon the Purchaser succeeding to the interest of the LANDLORD under this Lease Agreement. The respective rights and obligations of TENANT and the Purchaser upon such attornment, to the extent of the then remaining balance of the term of this Lease Agreement and any such extensions and renewals, shall be and are the same as those set forth herein. In the event of such transfer of LANDLORD's interests, LANDLORD shall be released and relieved from all liabilities and responsibility to TENANT thereafter accruing under this Lease Agreement or otherwise and LANDLORD's successor by acceptance of rent from TENANT hereunder shall become liable and responsible to TENANT in respect to all obligations of the LANDLORD under this Lease Agreement. LANDLORD and TENANT agree that the rights created by this Lease Agreement shall be subordinate to any other instruments affecting the demised premises, such as mortgages, subsequent purchase agreements, or encumbrances, whether presently in existence or

later created or filed.

## ARTICLE XVIII
## SUBORDINATION

Tenant covenants that this Lease Agreement is and at all times shall be subject and subordinate to the lien of any mortgages now existing or which LANDLORD or any subsequent owner of the demised premises shall make covering said demised premises, or the building of which said premises are a part, and to any and all advances made or to be made under said mortgage or mortgages and to the interest thereon.

## ARTICLE XIX
## OPTION TO RENEW

Provided this Lease Agreement is not otherwise in default, TENANT, through its County Manager or his designee, is hereby granted the option to extend this Lease Agreement for one (1) additional five-year renewal option period upon the same terms and conditions, except as herein provided in Article XX, "Rent Adjustment," of the Lease Agreement, by giving LANDLORD notice in writing at least ninety (90) days prior to the expiration of this Lease Agreement or any extension thereof.

## ARTICLE XX
## RENT ADJUSTMENT

The base rent for each twelve-month period during the renewal period shall be computed by multiplying the Base Rent of Seventy-Six Thousand Seven Hundred Forty Dollars and 60/100 ($76,740.60) by a fraction whose numerator shall be the Consumer Price Index (CPI) for the month which is two months prior to the date of such period and whose denominator shall be the Consumer Price Index (CPI) for April 1, 2009 For purposes hereof, the Consumer Price Index to be used shall be the National Consumer Price Index for all Wage Earners & Clerical Workers, U.S. City Average (All items: 1982-84=100) issued by the U.S. Department of Labor, Bureau of Labor Statistics or any successor agency of the United States that shall issue indexes or data of similar type. In no event shall the rent adjustment exceed five percent (5%)

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per annum or be less than the rent for the immediately preceding year.

## ARTICLE XXI
## NOTICES

It is understood and agreed between the parties hereto that written notice addressed and sent by certified or registered mail, return receipt requested, first class, postage prepaid and addressed as follows:

**TENANT:**

General Services Administration
Real Estate Development Division
Real Estate Section
111 N.W. First Street, Suite 2460
Miami, Florida 33128

**LANDLORD:**

C/O BVT Management Services, Inc.
400 Interstate North Parkway
Suite 700
Atlanta, Georgia 30339

**WITH A COPY TO:**

US Retail Income Fund VI, LP
P.O Box 932281
Atlanta, Georgia 31193-2281

shall constitute sufficient notice to TENANT, and written notice addressed to LANDLORD, and mailed or delivered to the address as stated above, shall constitute sufficient notice to LANDLORD to comply with the terms of this Lease Agreement. Notices provided herein in this paragraph shall include all notices required in this Lease Agreement or required by law.

## ARTICLE XXII
## ADDITIONAL RENT

1. Throughout the term of this Lease Agreement, TENANT shall pay LANDLORD in addition to the rental otherwise specified herein, "Common Area Maintenance" (CAM) for the Doral Isles Plaza, which is estimated at five dollars and 77/100 ($5.77) per square foot and shall become additional rent payable with the monthly installment of rent under the terms of this Lease. CAM charges for each of the subsequent years will be based on estimated operating expenses to be submitted by the LANDLORD to the TENANT.

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2. The term "Common Area Maintenance" (CAM) shall include the total costs and expenses incurred in connection with the management, operation of the building, insurance, preventive and corrective maintenance and repair of the Shopping Center. The implementation and costs for which shall be at the sole discretion of LANDLORD, whether paid to employees of LANDLORD or parties engaged by LANDLORD, including without limitation: all forms of security, janitorial, landscaping, building repairs, painting, parking lot repairs and improvements, property maintenance allocations, lift stations, administration of water and sewer facilities, real estate taxes, light fixtures repair and replacement, fire sprinkler systems inspection and maintenance, electricity, sanitary control, removal of trash, rubbish, garbage and other refuse; rental of machinery or equipment for such maintenance, administration of capital reserves and ADA compliance requirements; the cost of personnel to implement such services (including social security, unemployment and disability insurance); association fees and special assessment fees assessed to the shopping center, property and general liability insurance, as well as any other insurances deemed necessary by the LANDLORD.

3. The annual determination of CAM shall be made by LANDLORD and certified by a certified public accountant, licensed in the State of Florida, selected by LANDLORD shall be binding upon LANDLORD and TENANT. At TENANT's request, the LANDLORD shall furnish the TENANT a statement and subject to an audit by the TENANT. TENANT may review the books and records supporting such determination in the office of LANDLORD, or LANDLORD's agent, during normal business hours, upon giving LANDLORD five (5) days advance written notice within sixty (60) days after receipt of such determination, but in no event more often than once in any one year period. LANDLORD will give TENANT written notification of the amount of such estimate and TENANT agrees that it will pay, by increase of its monthly installments of rent due, additional

rent in the amount of such estimate. Such increase shall commence annually on the anniversary of this Lease Agreement.

4. When the above mentioned actual determination of TENANT's liability for CAM is made for any Lease Year and when TENANT is so notified in writing, then:

If the total additional rent, TENANT actually paid on account of CAM expenses for the lease year is less than TENANT's liability for CAM expenses, then, LANDLORD shall credit the difference against the next due rental payments to be made by TENANT. If the total "Additional Rent" TENANT actually paid on account for CAM expenses for the lease year is less than TENANT's liability for CAM expenses, then TENANT shall pay such deficiency to LANDLORD as "Additional Rent" in one lump sum within thirty (30) days of receipt of LANDLORD's bill.

## ARTICLE XXIII
## ENVIRONMENTAL QUALITY

Without prejudice to any other obligation of LANDLORD pursuant to this Lease Agreement, LANDLORD shall at all times comply with the following requirements:

A. INDOOR AIR QUALITY. LANDLORD shall at all times maintain the Heating, Ventilating, and Air Conditioning System (HVAC) and shall perform at least the minimum periodic preventive maintenance on the HVAC system equipment as specified in the attached Exhibit "HVAC System Preventive Maintenance For Leased Space" applicable to TENANT premises.

B. WATER QUALITY. LANDLORD shall, prior to occupancy by TENANT and following any build-out, changes, or repairs by LANDLORD involving the plumbing system, have the drinking water sampled and tested for lead by a recognized Testing Laboratory. Results of such tests shall not exceed the EPA standard for lead in drinking water of 15 PPB. The drinking water test shall be paid for by LANDLORD and the original test results shall be furnished to TENANT.

C. NOTICE OF RENOVATION OPERATIONS. LANDLORD shall act to prevent the

degradation of indoor air quality during any building renovation, remodeling, and similar activities that could allow off-gassing from embodied chemicals in construction materials, furniture, or equipment into spaces occupied by and common areas used by TENANT. LANDLORD and its designated contractor will use only nontoxic paint or other surface coatings and will cause the space to be continuously ventilated with outside air to prevent the build-up of chemical gases from construction materials, carpet, carpet glues, or other emissive materials during the build-out or renovation of the demised space.

## ARTICLE XXIV
## HOLDOVER

If TENANT, with LANDLORD's consent, remains in possession of the demised premises after expiration of the term and if LANDLORD and TENANT have not executed an expressed written agreement as to such holding over, then such occupancy shall be a tenancy from month to month at a monthly rental for the first month, after expiration of the term, equivalent to one hundred percent (100%) of the monthly rental in effect immediately prior to expiration, such payments to be made as herein provided. In the event of such holding over, all of the terms of the Lease Agreement including the payment of all charges owing hereunder other than rent shall remain in force and effect on said month to month basis.

## ARTICLE XXV
## IMPROVEMENTS OF THE DEMISED PREMISES

Subject to the terms, condition and covenants of this Lease Agreement, LANDLORD at LANDLORD's cost and expense, shall complete items one (1) through six (6) listed below, which shall be completed sixty (60) days after the lease agreement has been fully executed by all parties, which include:

1. Shampoo carpet.
2. Replace stained and damaged ceiling tiles.
3. Repair and/or replace defective light fixtures and light covers.
4. Repaint the interior of the demised premises as necessary.
5. Clean air conditioning grills/vents.
6. Perform an HVAC system preventive maintenance as per Exhibit "A," attached.

## ARTICLE XXVI
## TERMINATION RIGHTS OF TENANT

TENANT, through its County Manager or his designee, shall have the right to terminate this Lease Agreement, or any portion thereof, by giving LANDLORD at least ninety (90) days' written notice prior to its effective date.

## ARTICLE XXVII
## HEATING, VENTILATION, AND AIR-CONDITIONING

LANDLORD acknowledges that it is responsible for providing and maintaining, at no cost or expense to TENANT, a good, sufficient, and safe heating, ventilation, and air conditioning system to cool and heat the entire premises uniformly, and sufficient for TENANT's use of the demised premises.

## ARTICLE XXVIII
## HVAC MAINTENANCE

Without limiting the obligations of LANDLORD as set forth in ARTICLE IV of this Lease Agreement, LANDLORD shall be required to initiate and maintain a commercial HVAC system maintenance contract, or contracts, subject to TENANT's approval prior to LANDLORD's execution of said contract, which shall call for regular maintenance and service to such systems in accordance with industry standards.

## ARTICLE XXIX
## WAIVER OF LANDLORD'S LIEN

LANDLORD, for itself and its successors and assigns, does hereby waive all rights to levy and/or distraint and all lien rights accrued and accruing as to all personal property, machinery, fixtures, and equipment, affixed or otherwise, now or hereafter belonging to or in the possession of TENANT. Further, TENANT may at its discretion remove from time to time all or part of its personal property, machinery, trade fixtures, and equipment.

## ARTICLE XXX
## FORCE MAJEURE

TENANT and LANDLORD shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Lease Agreement when prevented from so doing by cause or causes beyond TENANT's or LANDLORD's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of TENANT or LANDLORD.

## ARTICLE XXXI
## LANDLORD'S DEFAULT

It shall constitute a default of this Lease Agreement by LANDLORD if, except as otherwise provided in this Lease Agreement, LANDLORD fails to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by LANDLORD, where such failure shall continue for a period of thirty (30) days after written notice thereof from TENANT to LANDLORD; provided, however, that if the nature of LANDLORD's non-compliance is such that more than thirty (30) days are reasonably required for its cure, then LANDLORD shall not be deemed to be in default if LANDLORD commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. In the event of any such default by LANDLORD, TENANT may at any time terminate this Lease Agreement within fifteen (15) days written notice to LANDLORD or bring an action for damages, or injunctive relief (it being recognized that in such event TENANT is irreparably harmed for which there is no adequate remedy at law). No remedy of TENANT provided for in the Lease Agreement shall be considered to exclude or suspend any other remedy provided for herein, but the same shall be cumulative and in addition to TENANT's remedies at law or in equity.

## ARTICLE XXXII
## WAIVER

If, under the provisions hereof, LANDLORD or TENANT shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of LANDLORD's or TENANT's rights hereunder, unless expressly stated in such settlement agreement. No waiver by LANDLORD or TENANT of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by LANDLORD or TENANT of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by TENANT or receipt by LANDLORD of lesser amount than the monthly installments of rent (or additional rent obligations stipulated) shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to LANDLORD be deemed an accord and satisfaction and LANDLORD may accept such check or payment without prejudice to or waiver of LANDLORD's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Lease Agreement. No reentry by LANDLORD and no acceptance by LANDLORD of keys from TENANT shall be considered an acceptance of a surrender of this Lease Agreement.

## ARTICLE XXXIII
## DEFAULT OF TENANT

If TENANT shall fail to pay any monthly installment or item of rent on the date when the same becomes due or shall violate or fail to perform any of the other conditions, covenants, or agreements herein made by TENANT, and if such violation or failure continues for a period of thirty (30) days after written notice thereof to TENANT by LANDLORD, except for failure to pay rent, which shall have a fifteen (15) day period for cure after written notice thereof to TENANT by LANDLORD, and further, if

TENANT shall be diligently attempting to cure such failure to perform any other conditions, covenants, or agreements, the time to cure such failure shall be extended for so long as TENANT shall diligently prosecute such cure, then LANDLORD may proceed with any remedy available at law or in equity in the State of Florida or by such other proceedings, including reentry and possession, as may be applicable. All rights and remedies of LANDLORD under this Lease Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to LANDLORD under applicable law.

## ARTICLE XXXIV
## ASSIGMENT BY LANDLORD

If the interests of LANDLORD under this Lease Agreement shall be transferred voluntarily or by reason of foreclosure or other proceedings for enforcement of any mortgage on the demised premises, TENANT shall be bound to such transferee (herein sometimes called the "Purchaser") for the balance of the term hereof remaining, and any extension or renewals thereof which may be effected in accordance with the terms and provisions hereof, with the same force and effect as if the Purchaser were the LANDLORD under this Lease Agreement, and TENANT does hereby agree to attorn to the Purchaser, including the Mortgagee under any such mortgage if it be the Purchaser, as its LANDLORD, said attornment to be effective and self-operative without the execution of any further instruments upon the Purchaser succeeding to the interest of the LANDLORD under this Lease Agreement. The respective rights and obligations of TENANT and the Purchaser upon such attornment, to the extent of the then remaining balance of the term of this Lease Agreement and any such extensions and renewals, shall be and are the same as those set forth herein. In the event of such transfer of LANDLORD's interests, LANDLORD shall be released and relieved from all liabilities and responsibility to TENANT thereafter accruing under this Lease Agreement or otherwise and LANDLORD's successor by acceptance of rent from TENANT hereunder shall become liable and responsible to TENANT in respect to all obligations of the LANDLORD under this Lease Agreement. Notwithstanding any law to the contrary, LANDLORD

and TENANT agree that the rights created by this Lease Agreement shall be subordinate to any other instruments affecting the demised premises, such as mortgages, subsequent purchase agreements, or encumbrances, whether presently in existence or later created or filed.

## ARTICLE XXXV
## NON-DISTURBANCE

The Lease Agreement shall be subordinate and subject to all ground or underlying leases and mortgages covering the fee of the property, or which at any time thereafter affect the property, and to all renewals, modifications, or replacements thereof; provided, however, that with respect to any ground lease agreement, underlying lease agreement, or mortgage subsequent to the date of this Lease Agreement, such subordination shall not be effective unless and until LANDLORD shall obtain from any and all such ground lessors, underlying lessors, and/or lenders a written agreement with TENANT wherein any and all such ground lessors, underlying lessors, and/or lenders shall agree that the Lease Agreement shall not be divested or in any way affected by foreclosure, other default proceedings, or other succession in interest by or under any ground lease agreement, lease agreement mortgage, or obligation secured thereby, so long as TENANT complies with the terms, conditions, and covenants of this Lease Agreement and performs its obligations under this Lease Agreement (said agreement being referred to herein as a "Non-Disturbance Agreement"). If LANDLORD shall so fail to obtain a Non-Disturbance Agreement from any ground lessor, holder of any mortgage, or underlying lessor, then the parties recognize that this Lease Agreement shall be and remain superior to any such ground lease agreement, underlying lease agreement, and/or mortgage entered into or executed subsequent to the date of this Lease Agreement. Further, with respect to any and all existing ground lease agreement, underlying lease agreement, and/or mortgage, prior to the commencement of the construction of LANDLORD's work, LANDLORD shall obtain from any and all ground lessors, underlying lessors, and/or lenders a Non-Disturbance Agreement. LANDLORD and TENANT agree that the terms, conditions, and covenants contained herein shall not be altered or affected

by any subsequent change in ownership of the Property by reason of foreclosure, conveyance, or otherwise any document purporting to transfer ownership in the Property, whether presently in existence or not, shall be subordinate to this Lease Agreement, and subject to the terms, obligations, and covenants herein. In the event that a change of ownership in the Property results in any additional costs to TENANT by material alteration of the terms of this Lease Agreement, LANDLORD agrees to indemnify TENANT for such costs.

## ARTICLE XXXVI
## RESPONSIBILITY FOR DAMAGE TO DEMISED PREMISES

If TENANT shall fail to perform its obligations under ARTICLE IV "Maintenance" after thirty (30) days' written notice from LANDLORD, then LANDLORD shall have the right to make such repairs or replacements and any reasonable cost so incurred by LANDLORD shall be paid by TENANT, in which event such cost shall become additional rent payable with the installment of rent next becoming due under the terms of this Lease Agreement.

## ARTICLE XXXVII
## LANDLORD'S RIGHT TO REPAIR

LANDLORD shall have access to all air conditioning and heating equipment and to all other mechanical, electrical, plumbing and utility installations servicing the Building and the demised Premises upon twenty-four (24) hours prior written notice to TENANT, except in the event of an emergency, in which case such notice shall be reasonable under the circumstances. At the election of TENANT, LANDLORD shall be accompanied by an employee of TENANT, except in the event of an emergency. LANDLORD shall use its best efforts to minimize any interference to TENANT's usage of the demised Premises during the exercise of any rights granted to LANDLORD herein. In the event that, because of the act or negligence of LANDLORD, its employees, agents, or contractors, LANDLORD shall fail to provide, or cause to be provided, to substantially all of the demised premises, air conditioning, plumbing (unless LANDLORD shall provide other facilities in the building), any elevator service or electricity for more than two (2) continuous business days, the rent shall equitably abate based on any substantial portion

of the demised premises affected until the situation is corrected. Notwithstanding anything contrary to the above, any act caused by force majeure is not included herein.

## ARTICLE XXXVIII
## ESTOPPEL CERTIFICATES

LANDLORD and TENANT agree, at any time and from time to time, upon not less than thirty (30) business days prior written notice by such party, to execute, acknowledge, and deliver to the other a statement in writing:

A. certifying that this Lease Agreement has been unmodified since its execution and is in full force and effect (or if Lease Agreement has been modified since its execution, that it is in full force and effect, as modified, and stating the modifications);

B. stating the dates, if any, to which the rent and sums hereunder have been paid by TENANT;

C. stating whether or not to the knowledge of LANDLORD or TENANT, as the case may be, there are then existing any defaults under this Lease Agreement (and, if so, specifying the same); and

D. stating the address to which notices to LANDLORD or TENANT, as the case may be, should be sent. Any such statement delivered pursuant thereto shall provide that such statement may be relied upon by LANDLORD or TENANT or any prospective purchaser or mortgagee or lessee or assignee of the Property, or any part thereof or estate therein.

## ARTICLE XXXIX
## RULES AND REGULATIONS

TENANT agrees to abide by LANDLORD's rules and regulations ("Rules and Regulations") for the shopping center, as such Rules and Regulations shall be compiled by LANDLORD from time to time. A copy of the current Rules and Regulations is attached to this Lease Agreement. TENANT agrees to instruct its employees to park in the area designated by LANDLORD as employees' parking area. TENANT shall not permit its employees to park in any area of the shopping center other than that designated by LANDLORD as employees' parking area.

## ARTICLE XL
## RADON GAS

Radon is a naturally occurring, naturally active gas that, when accumulated in a building in sufficient quantities, may present a health risk to persons who are exposed to it over time. Levels of radon gas that exceeds State guidelines have been found in buildings in Florida. Additional information regarding radon gas and radon testing may be obtained from your public health unit.

## ARTICLE XLI
## AMENDMENT

All amendments to this Lease Agreement must be in writing and signed by LANDLORD prior to submittal to the Board of County Commissioners.

## ARTICLE XLII
## EMINENT DOMAIN

If the whole of the Premises shall be taken by any public authority under the power of eminent domain, then, at the time of taking the Term of this Lease Agreement shall cease, and the rent due shall be paid up to that day. If any part of the Premises shall be taken, and such partial taking shall render that portion not taken unsuitable for the business of TENANT, as determined by LANDLORD, then, the Term of this Lease Agreement shall cease and the rent due shall be paid up to that date. If such partial taking is not extensive enough to render the Premises unsuitable for business of TENANT then, this Lease Agreement shall continue in effect except that the minimum rent shall be reduced in the same proportion that the floor area of the Premises taken bears to the original floor area demised. If this Lease is not terminated pursuant to this Article XLII, LANDLORD shall, upon receipt of the condemnation award, make all necessary repairs or alterations to the building in which the Premises are located so as to constitute the portion of the building not taken a complete architectural unit, but, such work shall not

exceed the scope of the work to be done by LANDLORD in originally constructing said building. LANDLORD shall not be required to spend for such work an amount in excess of the amount received by LANDLORD as damages for the part of the Premises so taken. "Amount received by LANDLORD" shall mean that part of the condemnation award which is free and clear to LANDLORD of any collection of mortgages for the value of the diminished fee. If more than twenty percent (20%) of the floor area of the building in which the Premises are located shall be taken, LANDLORD may terminate this Lease upon thirty (30) days written notice to TENANT. All damages awarded for such taking shall belong to LANDLORD whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Premises; provided, however, that LANDLORD shall not be entitled to any portion of the award made to TENANT for cost of removal of stock and fixtures.

## ARTICLE XLIII
## GOVERNING LAW

This Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida.

## ARTICLE XLIV
## WRITTEN AGREEMENT

This Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by resolution approved by the Board of County Commissioners.

IN WITNESS WHEREOF, LANDLORD and TENANT have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

By: U.S. RETAIL INCOME FUND VI, LP
A Delaware Limited Partnership

Dawn Arnstein
WITNESS

By: Kip R. Marshal
Kip R. Marshal
Vice President, Asset Management
(LANDLORD)

WITNESS

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Carlos Alvarez
County Mayor
(TENANT)

Approved by the County Attorney as
to form and legal sufficiency.____

Exhibit "A"

## HVAC SYSTEM PREVENTIVE MAINTENANCE FOR LEASED SPACE

The following components are typically found in the Heating, Ventilating, and Air Conditioning (HVAC) systems in Miami-Dade County buildings; each component has the typical maintenance activity and minimum frequency noted:

I. FILTERS - Applicable to all supply conditioned air to TENANT premises:
   A. High-efficiency type (ASHRAE rated 85%) - preferred - changed every 2 years.
   B. Electrostatic antimicrobial - minimum acceptable - cleaned every 30 days.

II. OUTSIDE AIR INTAKE - applicable on all central systems:
   A. Check for cleanness and operation if motorized louvers - filter preferred - quarterly.

III. TEMPERATURE AND HUMIDITY - Temperature 73-78 degrees - Humidity 50-60%:
   A. ASHRAE generally accepted comfort zone for South Florida.
   B. Check controls and verify temperature and humidity are at or near guidelines - quarterly.

IV. AIR HANDLER - Separate type or self contained in AC package unit as applicable:
   A. Clean coils and check for leaks and loose connections - check quarterly.
   B. Lubricate fan motors and check belts - quarterly.
   C. Check air intake and exhaust - quarterly.
   D. Check fan motors for overheating and vibration - quarterly.
   E. Check structural frame for sturdiness - quarterly.
   F. Check and clean contact points in switches - quarterly.
   G. Check condensate drip pan for standing water. Clean and spray with algicide quarterly.
   H. Check, remove trash, and clean condensate drain and trap - quarterly.

V. COMPRESSOR - Separate or self-contained in AC package unit as applicable:
   A. Check for indication of leakage – quarterly or as needed.
   B. Check pressure and temperature - quarterly.

VI. PUMPS as applicable:
   A. Inspect belts for damage, tension, and alignment - quarterly.
   B. Check bearings and seals (motor and pump) - quarterly or semi-annually.
   C. Check phase voltage and impeller - yearly.

VII. COOLING TOWER as applicable:
   A. Check water level – quarterly or as necessary.
   B. Check oil level in gear reducers – quarterly or as necessary.
   C. Check for leaks and excessive noise or vibration – quarterly or as necessary.
   D. Check water quality/chemical treatment – quarterly or as necessary.

VIII. BUILDING EXTERIOR:
   A. Check for water infiltration into walls or above ceilings to prevent mold and mildew - quarterly.

IX. CEILING TILES:
   A. Check and replace any ceiling tile that shows water stains to prevent mold spores - quarterly.

X. SUPPLY AND RETURN AIR DUCTS:
   A. Remove ceiling diffuser and clean, check for visible sign of dirt around the opening or dirt coming out of duct openings on supply air diffusers - yearly. If they are dirty, then clean the ducts.