

City Clerk File No. Ord. 14.136

Agenda No. 3.6 1st Reading

Agenda No. 4.A. 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.136

TITLE:

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO ENTER INTO A LEASE/PURCHASE AGREEMENT AS LESSEE WITH JERSEY CITY MUNICIPAL, LLC, AS LESSOR FOR OFFICE SPACE TO BE CONSTRUCTED AT THE MLK HUB ON A PORTION OF LOT 17, BLOCK 21201 AT THE INTERSECTION OF KEARNEY AVENUE AND MARTIN LUTHER KING DRIVE

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, the City of Jersey City ("City") has a need for office space for the Department of Health and Human Services, the Department of Public Safety, and the Department of Housing Economic Development and Commerce; and

WHEREAS, Lot 17 in Block 21201 on the City's Tax Map is a 6.95 acre parcel of land located near the intersection of Kearney Avenue and Martin Luther King Drive; and

WHEREAS, subject to the approval of this Lease/Purchase Agreement by the City's governing body, Jersey City Municipal, LLC ("JCM") intends to obtain a subdivision of Lot 17 to establish a 0.556 acre vacant lot, purchase the vacant lot, and construct a three story office building of approximately 60,000 square feet ("Property") which the City will lease; and

WHEREAS, the basic term of the Lease/Purchase Agreement is twenty-five (25) years with base rent payments commencing on the date of substantial completion of the building, but not later than October 1, 2016; and

WHEREAS, JCM offers to lease 60,000 square feet of office space to the City at \$21.40 per square foot for a monthly basic rent of \$107,000.00 or \$1,284,000.00 annually for the first five years of the lease term; and

WHEREAS, the basic rent for years six (6) through twenty-five (25) of the lease term shall be accordance with Exhibit "B" of the Lease Agreement attached hereto; and

WHEREAS, the City shall have the option to purchase the Property for \$1.00 at the end of the lease term; and

WHEREAS JCM will construct the "Base Building Work" described in Exhibit "C" of the Lease/Purchase Agreement attached hereto; and

WHEREAS, JCM will perform on the City's behalf the initial fit-up work in or to the building and shall provide the City with an allowance of \$50.00 per square foot or \$3,000,000.00 for 60,000 square feet for the initial fit-up work; and

WHEREAS, the Lease/Purchase Agreement is a bondable triple net lease and City will be responsible for maintenance and repair costs for the building and the costs for insurance, real estate taxes and utilities; and

WHEREAS, N.J.S.A. 40A:12-5 provides that a municipality may by ordinance acquire property by purchase, gift, devise, lease, exchange, condemnation, or installment purchase agreement; and

WHEREAS, it is the intent of the City and the JCM to treat the Lease/Purchase Agreement as an installment purchase agreement pursuant to N.J.S.A. 40A:12-5(b) such that the obligation of the City to make payments under the Lease/Purchase Agreement shall be valid and binding for the term thereof and shall not be otherwise subject to annual appropriation.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. Subject to such modifications as may be deemed necessary or appropriate by Corporation Counsel, the Mayor or Business Administrator is authorized to execute a Lease/Purchase Agreement in substantially the form attached with Jersey City Municipal, LLC for an office building to be constructed at the MLK HUB, on a 0.556 acre parcel of vacant land that is currently part of the 6.95 acres of land known as Lot 17 in Block 21201 on the City's Tax Map;
2. The authorization for this Lease/Purchase Agreement is subject to the construction by Jersey City Municipal, LLC, at its own expense, of the improvements described in paragraph C1 of Exhibit "C" of Lease Agreement attached hereto;
3. The Lease/Purchase Agreement shall require that the Landlord will obtain a performance bond and under no circumstances shall such performance bond require any payment from the City's insurance policies for completion of the work described on Exhibit C;
4. The basic term of the Lease/Purchase Agreement is twenty-five (25) years commencing on the date that is the earlier of (i) substantial completion of the improvements or (ii) October 1, 2016;
5. The rent, not including the expenses that are the responsibility of the City, for years one through five of the lease term shall be \$21.40 per square foot for a monthly basic rent of \$107,000 or \$1,284,000 annually. Subsequent years' rent shall be as set forth in Schedule "B" of the attached Lease Agreement;
6. Pursuant to N.J.S.A. 40A:12-5(b), the obligation of the City to make payments under the Lease/Purchase Agreement is valid and binding for the term thereof and shall not otherwise be subject to annual appropriation; and
7. The Mayor and Business Administrator are authorized to take all actions to carry out the purposes and intent of the foregoing resolutions.
 - A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
 - B. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
 - C. This ordinance shall take effect at the time and in the manner as provided by law.
 - D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted. For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

APPROVED: _____

Corporation Counsel

APPROVED: _____
Business Administrator

Certification Required
Not Required

LEASE/PURCHASE AGREEMENT

between

JERSEY CITY MUNICIPAL, LLC,

as Landlord

and

CITY OF JERSEY CITY,

as Tenant

Dated _____, 2014

BOND LEASE

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Exhibit "A" - The Leased Premises

Exhibit "B" - Basic Rent

Exhibit "C" - Definition of Base Building Work and Fit-Up Work

This **LEASE/PURCHASE AGREEMENT** (this "**Lease**") is made as of this ____ day of _____ 2014, by and between JERSEY CITY MUNICIPAL, LLC, a _____ having an office at _____, Attention: _____ ("**Landlord**"), and the CITY OF JERSEY CITY, a _____ having its principal office at _____, Attention: _____ ("**Tenant**").

In consideration of the rents and provisions herein stipulated to be paid and performed, Landlord and Tenant hereby covenant and agree as follows:

1. **CERTAIN DEFINITIONS.**

- (a) "**Action**" shall mean Action as defined in Paragraph 19(e).
- (b) "**Additional Rent**" shall mean all sums required to be paid by Tenant under this Lease other than Basic Rent, which sums shall constitute rental hereunder.
- (c) "**Adjoining Property**" shall mean all sidewalks, curbs, gores and vault spaces adjoining any of the Leased Premises.
- (d) "**Alteration**" or "**Alterations**" shall mean any or all changes, additions, improvements, reconstructions or replacements of any of the Improvements, both interior or exterior, and ordinary and extraordinary.
- (e) "**Base Building Work**" is defined in Exhibit C.
- (f) "**Basic Rent**" shall mean Basic Rent as defined in Paragraph 4.
- (g) "**Basic Rent Commencement Date**" shall mean the earlier of the Date of Substantial Completion and October 1, 2016.
- (h) "**Basic Rent Payment Dates**" shall mean the Basic Rent Payment Dates as defined in Paragraph 4.
- (i) "**Basic Term**" means the period from the Basic Rent Commencement

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Date to the Expiration Date.

(j) **"Code"** shall mean Code as defined in Paragraph 19(d).

(k) **"Commencement Date"** shall mean the date on which Landlord shall have acquired title to the Leased Premises subject to Permitted Encumbrances, it being understood that a series of events must take place before such acquisition can occur (e.g., and not by way of limitation, the subdivision of the land from a larger parcel of real property must be approved and implemented).

(l) **"Condemnation"** shall mean a Taking and/or a Requisition.

(m) **"Date of Substantial Completion"** is defined in Exhibit C.

(n) **"Default Rate"** shall mean the default rate of interest under the first Mortgage or if there is no Mortgage an annual rate of interest equal to the Prime Rate plus five (5) percentage points, but in no event greater than the maximum interest rate permitted by Legal Requirements.

(o) **"Documents of Record"** shall mean each document recorded in the local real estate records of the County where the Leased Premises are located and applicable to the Leased Premises.

(p) **"Environmental Claim"** shall mean Environmental Claim as defined in Paragraph 26(a).

(q) **"Environmental Laws"** shall mean Environmental Laws as defined in Paragraph 26(a).

(r) **"Event of Default"** shall mean an Event of Default as defined in Paragraph 19.

(s) **"Expiration Date"** shall mean an Expiration Date as defined in

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Paragraph 3.

(t) **"Fit-Up Work"** shall mean the Fit-Up Work as defined in Section 49.

(u) **"Guaranties"** shall mean guaranties as defined in Paragraph 6(c).

(v) **"Improvements"** shall mean the Improvements as defined in Paragraph 2

(w) **"Indemnified Party"** shall mean Indemnified Party as defined in Paragraph 26(E).

(x) **"Insurance Requirement"** or **"Insurance Requirements"** shall mean, as the case may be, any one or more of the terms of each insurance policy required to be carried by Tenant under this Lease and the requirements of the issuer of such policy, and whenever Tenant shall be engaged in making any Alteration or Alterations, repairs or construction work of any kind (collectively, **"Work"**), the term "Insurance Requirement" or "Insurance Requirements" shall be deemed to include a requirement that Tenant obtain or cause its contractor to obtain completed value builder's risk insurance when the estimated cost of the Work in any one instance exceeds the sum of \$150,000 and that Tenant or its contractor shall obtain worker's compensation insurance or other adequate insurance coverage covering all persons employed in connection with the Work, whether by Tenant, its contractors or subcontractors and with respect to whom death or bodily injury claims could be asserted against Landlord.

(y) **"Interim Term"** shall mean the period from the Commencement Date to the Basic Rent Commencement Date.

(z) **"Land"** shall mean the Land as defined in Paragraph 2.

(aa) **"Leased Premises"** shall mean the Leased Premises as defined in Paragraph 2.

(bb) **"Legal Requirement"** or **"Legal Requirements"** shall mean, as the case

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may be, any one or more of all present and future laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those which by their terms are not applicable to and do not impose any obligation on Tenant, Landlord or the Leased Premises) and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Tenant, to Landlord or to any of the Leased Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Leased Premises, even if compliance therewith (i) necessitates structural changes or improvements (including changes required to comply with the "Americans with Disabilities Act") or results in interference with the use or enjoyment of any of the Leased Premises or (ii) requires Tenant to carry insurance other than as required by the provisions of this Lease.

(cc) **"Lender"** shall mean the entity or entities identified to Tenant as such in writing, which makes a Loan to Landlord, secured in whole or in part by a Mortgage and evidenced by a Note or Notes or which is or are the holder of a Mortgage and Note(s) as a result of an assignment of a whole or partial interest therein, and when a Mortgage secures multiple Notes held by one or more noteholders, the trustee acting on behalf of such holders, provided such trustee has been identified as such in writing to Tenant.

(dd) **"Loan"** shall mean a loan made by a Lender to Landlord secured in whole or in part by a Mortgage and evidenced by a Note or Notes.

(ee) **"Losses"** shall mean Losses as defined in Paragraph 34.

(ff) **"Materials of Environmental Concern"** shall mean Materials of Environmental Concern as defined in Paragraph 26(a).

(gg) **"Mortgage"** shall mean a mortgage, deed of trust, deed to secure debt or similar security instrument from Landlord to Lender that encumbers the Leased Premises.

(hh) **"Net Award"** shall mean the entire award payable to Landlord by reason of a Condemnation, less any actual and reasonable expenses incurred by Landlord in collecting
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such award.

(ii) **“Net Proceeds”** shall mean the entire proceeds of any property casualty insurance required under Paragraph 13(a), less any actual and reasonable expenses incurred by Landlord or Tenant in collecting such proceeds.

(jj) **“Net Surplus Award”** shall mean the Net Surplus Award as defined in Paragraph 12(b).

(kk) **“Notice”** or **“Notices”** shall mean Notice or Notices as defined in Paragraph 21.

(ll) **“Note”** or **“Notes”** shall mean a promissory (or senior secured) note or notes hereafter executed from Landlord to Lender, which Note or Notes will be secured in whole or in part by a Mortgage and an assignment of leases and rents (which assignment of leases and rents may be included within the Mortgage rather than in a separate document).

(mm) **“Permitted Encumbrances”** shall mean those covenants, restrictions, reservations, liens, conditions, encroachments, easements and other matters of title that affect the Leased Premises as of Landlord's acquisition thereof, and are recorded in the land records of the county in which the Leased Premises are located (any unrecorded documents that are referenced in a recorded document), but excepting any such matters arising from the acts of Landlord (such as liens arising as a result of judgments against Landlord).

(nn) **“Person”** shall mean any and all person(s) and/or entity(ies), including, but not limited to, Landlord.

(oo) **“Prime Rate”** shall mean the rate of interest announced publicly by Citibank, N.A. or its successor, from time to time, as Citibank N.A.'s or such successor's base rate, or if there be no such base rate, then the rate of interest charged by Citibank, N.A. or such successor to its most creditworthy customers on commercial loans having a ninety (90) day duration.

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(pp) **“Regulated Activity”** shall mean the Regulated Activity as defined in Paragraph 26(a).

(qq) **“Remedial Work”** shall mean the Remedial Work as defined in Paragraph 26(a).

(rr) **“Rent”** shall mean Basic Rent and Additional Rent.

(ss) **“Requisition”** shall mean any temporary condemnation or confiscation of the use or occupancy of any of the Leased Premises by any governmental authority, civil or military, whether pursuant to an agreement with such governmental authority in settlement of or under threat of any such requisition or confiscation, or otherwise.

(tt) **“Restoration”** shall mean the restoration of the Leased Premises after any Taking or damage by casualty as nearly as possible to their value, condition and character existing immediately prior to such Taking or damage and shall include the demolition, planning, and permitting periods required to complete such restoration.

(uu) **“Restoration Award”** shall mean the Restoration Award as defined in Paragraph 12(b).

(vv) **“Restoration Fund”** shall mean the Restoration Fund as defined in Paragraph 15.

(ww) **“Restoration Notice”** shall mean the Restoration Notice as defined in Paragraph 15(g).

(xx) **“S&P”** shall mean Standard & Poor’s, a division of The McGraw-Hill Companies, Inc, its successors and/or assigns.

(yy) **“State”** shall mean the State of New Jersey.

(zz) **“Taking”** shall mean any transfer of title to any of the Leased Premises in

or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceedings.

(aaa) **"Taxes"** shall mean taxes of every kind and nature (including real, *ad valorem* and personal property, income, franchise, withholding, profits and gross receipts taxes); all charges and/or taxes for any easement or agreement maintained for the benefit of any of the Leased Premises; all general and special assessments, levies, permits, inspection and license fees; all utility charges, all ground rents, and all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed upon or assessed, prior to or during the Term, against Landlord, Tenant or any of the Leased Premises as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair or possession thereof, or any activity conducted on the Leased Premises, or the Basic Rent or Additional Rent, including without limitation, any gross income tax, sales tax, use tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Basic Rent or Additional Rent.

(bbb) **"Tenant's Allowance"** is defined in Paragraph 49.

(ccc) **"Tenant Insurance Payment"** shall mean the Tenant Insurance Payment as defined in Paragraph 14(c).

(ddd) **"Term"** shall mean the Interim Term and the Basic Term of this Lease, as extended pursuant to any extension option that has become effective.

(eee) **"Trade Fixtures"** shall mean all items of personal property which (a) are attached to the Improvements (b) owned by Tenant and used in the operation of the business conducted on the Leased Premises and (c) can be removed without material damage to the Improvements.

(fff) **"Trustee"** shall mean the Trustee as defined in Paragraph 14(a).

2. **DEMISE OF PREMISES.** Landlord hereby demises and lets to Tenant and Tenant hereby takes and leases from Landlord for the Term and upon the provisions hereinafter specified the following described property (collectively, the "**Leased Premises**"): (i) the premises described in **Exhibit "A"** attached hereto and made a part hereof together with the easements, rights and appurtenances thereunto belonging or appertaining (collectively, the "**Land**"); (ii) the buildings, structures, fixtures and other improvements constructed and to be constructed on the Land (collectively, the "**Improvements**"), and (iii) the equipment, together with all additions and accessions thereto, substitutions therefor and replacements thereof permitted by this Lease.

3. **TERM.** Tenant shall have and hold the Leased Premises for an initial term commencing on the Commencement Date and ending on the Basic Rent Commencement Date (the "**Interim Term**") and a Basic Term of 25 years (300 months) commencing on the Basic Rent Commencement Date and ending on the last day of the 300th month thereafter (the "**Expiration Date**").

4. **RENT.** (a) Tenant shall pay to Landlord or Lender, if so directed by Landlord or Lender, as annual rent for the Leased Premises during the Basic Term ("**Basic Rent**"), the sums set forth on **Exhibit B**, which rent shall be paid in equal monthly installments in advance commencing on the Basic Rent Commencement Date and continuing on the same day of each month thereafter during the Basic Term (the said days being called the "**Basic Rent Payment Dates**"), and shall pay the same at Landlord's address set forth below, or at such other place or to such other Persons (not exceeding two (2) in number) and in such proportions as Landlord from time to time may designate to Tenant in writing, in funds which at the time of such payment shall be legal tender for the payment of public or private debts in the United States of America and if required by Landlord or Lender by wire transfer in immediately available federal funds to such account in such bank as Landlord or Lender, as the case may be, shall designate from time to time. Whenever any payment hereunder shall be stated to be due on a day which is not a business day, such payment shall be made on the first business day preceding such scheduled due date. Landlord's financing (the "**Financing**") contemplates that Landlord's interest rate (the "**Interest Rate**") related to its Financing will be 4.6% (the "**Interest Rate**"). Notwithstanding any other

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provision herein, to the extent the Interest Rate rises above 4.6 percent, then the annual rental amount as shown on Exhibit B for years 6-25 shall be increased by an amount equal to the amount of the increase in the annual debt service payable by the Landlord. The rental amount per square foot and the monthly payments shown on Exhibit B shall be adjusted accordingly.

(b) If any installment of Basic Rent is not paid on the date due, Tenant shall pay Landlord interest on such overdue payment at the Default Rate, accruing from the due date of such payment until the same is paid. If any installment of Basic Rent is not paid for a period of three (3) days after notice of default thereof by Landlord or Lender, Tenant shall pay Landlord a late charge in an amount equal to the lesser of the late charge, if any, under the first Mortgage (and if there is no Mortgage five (5%) percent of the unpaid installment of Basic Rent) or the highest late charge permitted by Legal Requirements.

(c) Tenant shall pay and discharge before the imposition of any fine, lien, interest or penalty may be added thereto for late payment thereof, as Additional Rent, all other amounts and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added by the party to whom such payment is due for nonpayment or late payment thereof. In the event of any failure by Tenant to pay or discharge any of the foregoing, Landlord and Lender shall have all rights, powers and remedies provided herein, by law or otherwise, in the event of nonpayment of Basic Rent. Any Additional Rent payable to Landlord shall be paid, within fifteen (15) days after demand therefor, to the party to whom Basic Rent is paid.

(d) Anything set forth in this Lease or in any other document or under applicable Legal Requirements or elsewhere to the contrary notwithstanding, (i) the obligation of Tenant to pay Basic Rent shall commence on the Basic Rent Commencement Date and Tenant shall be obligated to commence and continue to pay Basic Rent and Additional Rent regardless of (A) Landlord's, Landlord's affiliate's or any other party's failure to commence or complete the construction of the Improvements or punchlist items or other obligations pertaining thereto, (B) whether or not Tenant has accepted possession of the Improvements or any space therein,

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(C) the availability of funds sufficient to complete the construction, punchlist items and other obligations pertaining thereto, and/or (D) whether or not funds for such purposes have been appropriated and (ii) Tenant shall have no right to abate or reduce rents or to terminate or cancel this Lease or declare a constructive eviction or exercise any other remedies under this Lease or under applicable Legal Requirements as a result of the events described in this Section 4.

(e) If the Basic Rent Commencement Date is other than the first day of the month, Tenant shall pay the prorated share of Basic Rent and Additional Rent. The parties shall execute a Certificate of Commencement of this Lease in recordable form confirming the Basic Rent Commencement Date.

5. **BOND LEASE.** (a) It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, and that Basic Rent, Additional Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events, and not otherwise subject to annual appropriation, and that the obligations of Tenant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease. This is a bond lease and Basic Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense, except as otherwise specifically set forth herein. This Lease shall not terminate and Tenant shall not have any right to terminate this Lease during the Term. Tenant agrees that it shall not take any action to terminate, rescind or avoid this Lease notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Landlord, (ii) the exercise of any remedy, including foreclosure, under the Mortgage, (iii) any action with respect to this Lease (including the disaffirmance hereof) which may be taken by Landlord under the Federal Bankruptcy Code or by any trustee, receiver or liquidator of Landlord or by any court under the Federal Bankruptcy Code or otherwise, (iv) the Taking of the Leased Premises or any portion thereof, (v) the prohibition or restriction of Tenant's use of the Leased Premises under any Legal Requirement or otherwise, (vi) the destruction of or damage or casualty to the Leased Premises or

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any portion thereof, (vii) the eviction of Tenant from possession of the Leased Premises, by paramount title, constructive eviction or otherwise, or (viii) default by Landlord hereunder or under any other agreement between Landlord and/or any of its affiliates and Tenant. Tenant waives all rights which are not expressly stated herein but which may now or hereafter otherwise be conferred by law to quit, terminate or surrender this Lease or any of the Leased Premises; to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense of or to Basic Rent, Additional Rent or any other sums payable under this Lease, and for any statutory lien or offset right against Landlord or its property, each except as otherwise expressly provided herein.

(b) All costs and expenses (other than depreciation, interest on and amortization of debt incurred by Landlord, and costs incurred by Landlord in financing or refinancing the Leased Premises) and other obligations of every kind and nature whatsoever relating to the Leased Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable prior to the expiration or earlier termination of the Term (whether or not the same shall become payable during the Term or thereafter) shall be paid and performed by Tenant.

(c) Tenant shall pay directly to the proper authorities charged with the collection thereof all charges for water, sewer, gas, oil, electricity, telephone and other utilities or services used or consumed on the Leased Premises during the Term, whether designated as a charge, tax, assessment, fee or otherwise, including, without limitation, water and sewer use charges, impact fees and taxes, if any, all such charges, fees and taxes to be paid as the same from time to time become due. It is understood and agreed that Tenant shall be responsible, as part of The Fit-Up Work, for distribution of utilities throughout the Improvements and for making arrangements with the utility companies for commencement of services. Landlord shall be under no obligation to furnish any utilities to the Leased Premises and shall not be liable for any interruption or failure in the supply of any such utilities to the Leased Premises.

6. **TITLE AND CONDITION.** (a) The Leased Premises are demised and let subject to the Permitted Encumbrances and all Legal Requirements and Insurance Requirements, including any existing violation of any thereof, without representation or warranty by Landlord; it being understood and agreed, however, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any thereof which for any reason may have expired.

(b) Without limiting the effect of Landlord's covenant set forth in Paragraph 8(c), the Landlord makes no, and expressly hereby denies any, representations or warranties regarding the condition or suitability of, or title to, the Leased Premises. Tenant agrees that, with respect to matters affecting title, it takes the Leased Premises "AS IS," without any such representation or warranty.

(c) Landlord hereby conditionally assigns, without recourse or warranty whatsoever, to Tenant, all warranties, guaranties and indemnities, express or implied, and similar rights which Landlord may have against any manufacturer, seller, engineer, contractor or builder in respect of any of the Leased Premises, including, but not limited to, any rights and remedies existing under contract or pursuant to the Uniform Commercial Code (collectively, the "guaranties"). Such assignment shall remain in effect so long as no Event of Default exists hereunder or until the expiration or sooner termination of this Lease. Landlord shall also retain the right to enforce any guaranties so assigned in the name of Tenant upon the occurrence of an Event of Default. Landlord hereby agrees to execute and deliver at Tenant's sole cost and expense such further documents, including powers of attorney, as Tenant may reasonably request (and which in the good faith judgment of Landlord, do not adversely affect a substantial interest of Landlord), in order that Tenant may have the full benefit of the assignment effected or intended to be effected by this Paragraph 6. Upon the occurrence of an Event of Default or the expiration or termination of this Lease, the guaranties shall automatically revert to Landlord. The foregoing provision of reversion shall be self-operative and no further instrument of reassignment shall be required. In confirmation of such reassignment, Tenant shall execute and deliver promptly any certificate or other instrument which Landlord may request at Tenant's sole cost and expense. Additionally, upon the occurrence of an Event of Default or the expiration or

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sooner termination of this Lease, Tenant shall, at Landlord's request and at Tenant's sole cost and expense, assign to Landlord all claims against third parties for damages to the Leased Premises to the extent that such damages are Tenant's responsibility to repair pursuant to the provisions of this Lease, and all warranties, guaranties and indemnities, express or implied, and similar rights which Tenant may have against any manufacturer, seller, engineer, contractor or builder in respect of any of the Leased Premises, including, but not limited to, any rights and remedies existing under contract or pursuant to the Uniform Commercial Code. Any monies collected by Tenant under any of the guaranties or under the prior sentence after the occurrence of and during the continuation of an Event of Default shall be held in trust by Tenant and promptly paid over to Landlord.

7. **TAXES; INSURANCE AND LEGAL REQUIREMENTS.** (a) Tenant shall, subject to the provisions of Paragraph 18 hereof relating to contests, no later than fifteen (15) days before interest or penalties are due thereon, pay and discharge all Taxes and provide Landlord with a paid receipt therefor. Nothing herein shall obligate Tenant to pay, and the term "Taxes" shall exclude, federal, state or local (i) franchise, capital stock or similar taxes, if any, of Landlord, (ii) income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its net income, or (iii) any estate, inheritance, succession, gift, capital levy or similar taxes unless the taxes referred to in clauses (i) and (ii) above are in lieu of or a substitute for any other tax or assessment upon or with respect to any of the Leased Premises which, if such other tax or assessment were in effect at the commencement of the Term, would be payable by Tenant. In the event that any assessment against any of the Leased Premises may be paid in installments, Tenant shall have the option to pay such assessment in installments; and in such event, Tenant shall be liable only for those installments (and all resulting interest thereon) which become due and payable in respect of the Term. Tenant shall prepare and file all tax reports required by governmental authorities which relate to the Taxes. If Tenant is not permitted to file any tax reports or pay any Taxes directly to the applicable governmental authorities, Tenant shall remit such Taxes, no later than fifteen (15) business days prior to the date when due, to Landlord and, at Landlord's request, shall cooperate with Landlord in the preparation of such tax reports. Landlord, at Tenant's expense, shall prepare and file such tax reports and pay such Taxes to the {00239109.DOCX}

applicable governmental authorities until Tenant has obtained permission to do so. Promptly after the date hereof, Tenant shall endeavor to obtain permission to file all tax reports and pay Taxes directly to the applicable governmental authorities. Tenant shall deliver to Landlord and Lender, upon receipt, copies of all settlements and notices pertaining to the Taxes which may be issued by any governmental authority and, prior to delinquency, receipts for payments of all Taxes made during each calendar year of the Term.

(b) Tenant shall promptly comply with and conform to all Legal Requirements, all Documents of Record and all Insurance Requirements, subject to the provisions of Paragraph 18 hereof.

8. USE. (a) Tenant may use the Leased Premises for any lawful purpose other than any use that will (i) have an adverse effect on the value of the Leased Premises, (ii) increase the likelihood that Tenant, Landlord or Lender would incur liability under any provisions of Environmental Laws, as defined in Paragraph 26 of this Lease, or (iii) result or give rise to any environmental deterioration or degradation of the Leased Premises. In no event shall the Leased Premises be used as a dry cleaners or for any purpose which shall violate any of the provisions of any Permitted Encumbrances applicable to the Leased Premises either specifically or through broader application to any center or industrial park of which the Leased Premises may be a part. Tenant agrees that with respect to any such Permitted Encumbrances, Tenant shall observe, perform and comply with and carry out the provisions thereof required therein to be observed and performed by Landlord. If under applicable zoning laws, the use of all or any portion of the Leased Premises is or shall become a non-conforming right, Tenant shall not cause or permit such non-conforming right to be discontinued or abandoned.

(b) Subject to Tenant's rights of contest under Paragraph 18 hereof, Tenant shall not permit any unlawful occupation, business or trade to be conducted on any of the Leased Premises or any use to be made thereof contrary to applicable Legal Requirements or Insurance Requirements. Subject to Tenant's rights of contest under Paragraph 18 hereof, Tenant shall not use, occupy or permit any of the Leased Premises to be used or occupied, nor do or permit

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anything to be done in or on any of the Leased Premises, in a manner which would (i) violate any certificate of occupancy or equivalent certificate affecting any of the Leased Premises, (ii) make void or voidable any insurance which Tenant is required hereunder to maintain then in force with respect to any of the Leased Premises, (iii) affect in any manner the ability of Tenant to obtain any insurance which Tenant is required to furnish hereunder, (iv) cause any injury or damage to any of the Improvements unless pursuant to Alterations permitted under Paragraph 11 hereof, or (v) constitute a public or private nuisance or waste.

(c) Subject to all of the provisions of this Lease, so long as no Event of Default exists hereunder, Landlord covenants that neither it nor any party claiming by, through or under it, shall do any act to disturb the peaceful and quiet occupation and enjoyment of the Leased Premises by Tenant. Landlord may enter upon and examine any of the Leased Premises at reasonable times after reasonable notice and during business hours and exercise any rights and privileges granted to Landlord under the provisions of this Lease. During an Event of Default or in an emergency, Landlord's access to the Leased Premises shall not be restricted as provided in the immediately preceding sentence.

9. **MAINTENANCE AND REPAIR.** (a) Tenant shall at all times, including, but not limited to, any Requisition period, put, keep and maintain the Leased Premises, including, without limitation, the roof, landscaping, parking areas, walls (interior and exterior), footings, foundations and structural components of the Leased Premises, and the Adjoining Property, in good repair and appearance, and shall promptly make all repairs and replacements (substantially equivalent in quality and workmanship to the original work) of every kind and nature, whether foreseen or unforeseen, which may be required to be made upon or in connection with any of the Leased Premises in order to keep and maintain the Leased Premises in good condition and order of repair, except for ordinary wear and tear. Tenant shall do or cause others to do all shoring of the Leased Premises or Adjoining Property or of foundations and walls of the Improvements and every other act necessary or appropriate for preservation and safety thereof, by reason of or in connection with any excavation or other building operation upon any of the Leased Premises or Adjoining Property, whether or not Landlord shall, by reason of any Legal Requirements or Insurance

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Requirements, be required to take such action or be liable for failure to do so. Landlord shall not be required to make any repair, whether foreseen or unforeseen, or to maintain any of the Leased Premises or Adjoining Property in any way, and Tenant hereby expressly waives the right to make repairs at the expense of the Landlord, which right may otherwise be provided for in any law now or hereafter in effect. Tenant shall, in all events, make all repairs for which it is responsible hereunder promptly, and all repairs shall be in a good, proper and workmanlike manner.

(b) If Tenant shall be in default under any of the provisions of this Paragraph 9, Landlord or Lender may, after thirty (30) days Notice to Tenant and failure of Tenant to commence to cure during said period or to diligently prosecute such cure to completion once begun, but immediately upon notice in the event of an emergency (that is, imminent danger of injury to persons or property), do whatever is necessary to cure such default as may be reasonable under the circumstances for the account of and at the expense of Tenant. In the event of an emergency, before Landlord or Lender may avail itself of its rights under this Paragraph 9(b), Landlord or Lender, as the case may be, shall send Notice to Tenant of the situation by phone, electronic mail or other available communication. All actual and reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred by Landlord or Lender, together with interest thereon at the Default Rate from the date of payment or incurring the expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord or Lender (as applicable) on demand. Landlord and Tenant agree that, in the event of an emergency, expenditures which might otherwise be unreasonable (such as overtime) may nevertheless be reasonable under the circumstances.

(c) Tenant shall from time to time replace with other similar operational equipment or parts any of the mechanical systems or other equipment included in the Improvements which shall have become worn out, obsolete or unusable for the purpose for which it is intended, been taken by a Condemnation as provided in Paragraph 12, or been lost, stolen, damaged or destroyed as provided in Paragraph 14. Tenant shall repair at its sole cost and expense all damage to the Leased Premises caused by the removal of equipment or any other

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personal property of Tenant at any time, including upon expiration or earlier termination of this Lease.

10. **LIENS.** Tenant shall not, directly or indirectly, create or permit to be created or to remain, and shall discharge, within fifteen (15) days after the lien is filed, any lien on any of the Leased Premises, on the Basic Rent, Additional Rent or on any other sums payable by Tenant under this Lease, other than the Mortgage (and any assignment of leases, rents or profits collateral thereto), the Permitted Encumbrances and any mortgage, lien, encumbrance or other charge created by or resulting from any act or omission by Landlord or those claiming by, through or under Landlord except Tenant. Tenant shall provide Landlord with a copy of any notice of lien within five (5) business days after Tenant's receipt of such notice of lien.

11. **ALTERATIONS.** Tenant may make any Alterations without the prior written consent of the Landlord provided such Alterations comply with all of the following provisions: (a) the fair market value of the Leased Premises shall not be lessened as a result of any such Alteration, nor shall the structural integrity of the Leased Premises be impaired; (b) the Alteration and any Alteration theretofore made or thereafter to be made shall not in the aggregate reduce the gross floor area of the Improvements, nor shall any such Alteration materially adversely affect access to the Improvements; (c) the Alteration shall be performed in a good and workmanlike manner, and shall be expeditiously completed in compliance with all Legal Requirements, (d) all work done in connection with any such Alteration shall comply with all Insurance Requirements, (e) Tenant shall promptly pay all costs and expenses of any such Alteration, and shall discharge all liens filed against the Leased Premises arising out of the same, (f) Tenant shall procure and pay for all permits and licenses required in connection with any such Alteration, (g) all such Alterations shall be the property of Landlord and shall be subject to this Lease, (h) any Alteration the estimated cost of which exceeds \$150,000 shall be made under the supervision of a licensed architect or engineer in accordance with detailed plans and specifications which shall be submitted to Landlord and Lender at least thirty (30) days prior to the commencement of the Alterations, and shall be secured by cash or unconditional letter of credit (in such form and issued by an institutional lender reasonably acceptable to Landlord and lender) equal to 125% of the

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estimated cost of the Alteration. Upon completion of any Alteration in excess of \$150,000, Tenant will provide as-built plans and specifications or record drawings to Landlord and Lender.

12. **CONDEMNATION.** (a) Immediately upon obtaining knowledge of the institution of any proceeding for Condemnation, Tenant shall notify Landlord and Lender thereof and Landlord and Lender shall be entitled to participate in any Condemnation proceeding at Tenant's expense. Landlord and Lender, immediately upon obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Tenant thereof and Tenant shall have the right to participate in such proceedings at its own expense. Subject to the provisions of this Paragraph 12 and Paragraph 15, Tenant hereby irrevocably assigns to Lender or to Landlord, in that order, any award or payment in respect of any Condemnation, except that Tenant does not assign to Lender or to Landlord any award or payment on account of Tenant's Trade Fixtures or other tangible personal property, moving expenses and similar claims, if available, to the extent Tenant shall have a right to make a separate claim therefor against the condemnor; it being agreed, however, that Tenant shall in no event be entitled to any payment that reduces the award or payment to which either Lender or Landlord is or would be entitled for the Condemnation.

(b) Subject to the requirements of Paragraph 15, the Net Award of such Condemnation shall be retained by Lender, if any, or, if no Lender, then Landlord and, promptly after such Condemnation, Tenant shall commence and diligently continue to perform the Restoration whether or not the Net Award shall be sufficient to do so. Upon the payment to Lender or Landlord of the Net Award of a Taking which falls within the provisions of this subparagraph (b), Landlord and Lender shall, to the extent received, make that portion of the Net Award equal to the cost of Restoration (the "**Restoration Award**") available to Tenant for Restoration, in accordance with the provisions of Paragraph 15 (as if Landlord or Lender were acting as Trustee and the Restoration Award were the Restoration Fund) and the balance remaining (the "**Net Surplus Award**") shall be the property of Lender or Landlord, in that order, and shall be applied, at Lender's or Landlord's option, in that order, as follows: Tenant shall receive that portion of the Net Surplus Award equal to the present value (calculated at a discount rate of 12%) of the reductions in the Basic Rent that would have occurred had Lender or

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Landlord, as the case may be, elected to retain the entire Net Surplus Award and give Tenant a reduction in Basic Rent in the same proportion as the percentage of the building area subject to the Taking; that portion of the Net Surplus Award in excess of the amount so received by Tenant shall be retained by Lender, if any, or, if no Lender, then Landlord; and the Basic Rent shall not be reduced.

(c) In the event of a Requisition of any of the Leased Premises, Landlord shall apply the Net Award of such Requisition, to the extent available, to the installments of Basic Rent, Additional Rent or other sums payable by Tenant hereunder thereafter payable and Tenant shall pay any and all unpaid balance remaining thereafter. Upon the expiration of the Term, any portion of such Net Award that shall not previously have been credited to Tenant on account of the Basic Rent and Additional Rent shall be retained by Landlord.

(d) Except with respect to an award or payment to which Tenant is entitled pursuant to the foregoing provisions of this Paragraph 12, no agreement with any condemnor in settlement of or under threat of any Condemnation shall be made by either Landlord or Tenant without the written consent of the other, and of Lender, if the Leased Premises are then subject to a Mortgage, which consent shall not be unreasonably withheld or delayed provided such award or payment is applied in accordance with this Lease.

13. **INSURANCE.** (a) Tenant shall maintain at its sole cost and expense the following insurance on the Leased Premises:

(i) Insurance against loss or damage to the Improvements under an ISO "Special Form" Policy (or its equivalent) which shall include terrorism insurance (unless unavailable under such form of insurance policy), flood insurance (if the Leased Premises are in a flood zone) and earthquake insurance (if customarily required by lenders for property similar to, and in an area which has a similar earthquake potential as, the Leased Premises), and which may otherwise contain other exclusions if endorsements providing insurance for such exclusions are either not available or cannot be obtained at a commercially reasonable premium, in amounts

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to prevent Landlord or Tenant from becoming a co-insurer under the applicable policies, and in any event in amounts not less than 100% of the full, actual replacement cost of the Improvements (excluding footings and foundations and parts of the Improvements which are not insurable) and which may contain a deductible of not more than \$150,000.

(ii) Contractual and commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about any of the Leased Premises or the Adjoining Property, which insurance shall be written on a so-called "occurrence basis," and shall provide minimum protection with a combined single limit in an amount not less than \$5,000,000 (or in such increased limits from time to time to reflect declines from the date hereof in the purchasing power of the dollar as Landlord or Lender may reasonably request) and which may contain a deductible of not more than \$50,000.

(iii) Worker's compensation insurance covering all persons employed by Tenant on the Leased Premises in connection with any work done on or about any of the Leased Premises.

(iv) Pollution legal liability, on a claims-made policy form, with limits of \$10,000,000 for each incident and \$15,000,000 in the aggregate (as of each annual policy renewal date), with a deductible of not more than \$100,000 per incident with respect to the Leased Premises (including the Motor Fuels Equipment), providing coverage for on-site clean-up expenses and third party claims arising out of pollution conditions, as set forth in the form of policy provided to Landlord prior to the Commencement Date.

(v) Rental loss insurance covering a period of 18 months in an amount equal to all Basic Rent and Additional Rent payable under this Lease over the immediately following 18-month period; the amount of such rental loss insurance shall be increased from time to time as and when Basic Rent and/or Additional Rent payable under this Lease increases.

(vi) If terrorism insurance is unavailable under the type of policy described in Section 13(a)(i) above, a separate all risk terrorism policy covering the Leased

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Premises in an amount not less than the actual replacement cost of the Improvements and which may contain a deductible of not more than \$50,000.

(b) The insurance required by Paragraph 13(a) shall be written by companies having a claim rating ability of not worse than AA from S&P. All companies providing insurance required by Paragraph 13(a) shall be authorized to do an insurance business in the State or otherwise agreed to by Landlord and Lender. The insurance policies shall be for a term of not less than one year, and shall (except for worker's compensation insurance and the insurance required under Paragraph 13(a)(i) above) name Landlord, Tenant and any Lender as additional insured parties, as their respective interests may appear and shall name Lender, if any, as mortgagee and loss payee on the insurance required under Paragraph 13(a)(i) above. If said insurance or any part thereof shall expire, be withdrawn, become void by breach of any condition thereof by Tenant or become void for any other reason or should the insurer's rating decrease to a rating worse than AA from S&P as required above, Tenant shall immediately obtain new or additional insurance that satisfies the requirements of this Lease.

(c) Each insurance policy referred to above shall, to the extent applicable, contain standard non-contributory mortgagee clauses in favor of any Lender. As evidence of the insurance specified in Paragraph 13(a)(i),(iv), (v) and (vi), required to be maintained by Tenant, Tenant shall deliver to Landlord and Lender an ACORD 28 (2003) Evidence of Property Insurance or other certificate providing at least the same assurances (or, if limited by Legal Requirements, then a certificate providing as many of the same assurances as allowed by applicable law). As evidence of the insurance specified in Paragraph 13(a)(ii) and (iii), required to be maintained by Tenant, Tenant shall deliver to Landlord and Lender an ACORD 25 Certificate of Insurance or other certificate providing at least the same assurances. Each such ACORD certificate shall provide that the insurance company will give Landlord and Lender at least 30 days written notice prior to the termination or cancellation of, or changes to, the policy. Each policy required to be carried by Tenant shall also provide that any loss otherwise payable thereunder shall be payable notwithstanding (i) any act or omission of Landlord, or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment, (ii)

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the occupation or use of any of the Leased Premises for purposes more hazardous than permitted by the provisions of such policy, (iii) any foreclosure or other action or proceeding taken by any Lender pursuant to any provision of the Mortgage upon the happening of an event of default therein, or (iv) any change in title or ownership of any of the Leased Premises. If requested by Lender, Tenant shall deliver a copy of the requested insurance policy to Lender.

(d) Tenant shall pay, at least thirty (30) days before they become due, all premiums for the insurance required by this Paragraph 13, shall renew or replace each policy and shall deliver to Landlord and Lender, the appropriate assurances for such renewals or replacements in accordance with the provisions of this Paragraph 13 at least thirty (30) days before expiration of the then-effective coverage. In the event of Tenant's failure to maintain any of the insurance required by this Paragraph 13, Landlord or Lender shall be entitled to procure such insurance. Any sums expended by Landlord or Lender in procuring such insurance shall be Additional Rent and shall be repaid by Tenant, together with interest thereon at the Default Rate, from the time of payment by Landlord or Lender until fully repaid by Tenant immediately upon written demand therefor by Landlord or Lender, as the case may be.

(e) Anything in this Paragraph 13 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to Paragraph 13(a) may be carried under a "blanket" policy or policies covering other properties or liabilities of Tenant, provided that such "blanket" policy or policies shall specifically allocate to the Leased Premises the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate policy insuring only the Leased Premises in compliance with the provisions of this Paragraph 13. In the event any such insurance is carried under a blanket policy, Tenant shall deliver to Landlord and Lender upon request a certified copy of those provisions of the blanket policy that pertain to the Leased Premises to evidence the issuance and effectiveness of the policy, the amount and character of the coverage with respect to the Leased Premises and the presence in the policy of provisions of the character required in the above sections of this Paragraph 13.

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(f) Tenant hereby waives any and all rights of recovery against Landlord and Lender, or against their respective officers, employees, agents or representatives; for loss of or damage to property or the property of others under its control, if such loss or damage is covered by any insurance policy (whether or not described in this Lease) in force, or required by the terms of this Lease to be in force at the time of such loss or damage. Tenant shall obtain for the benefit of Landlord and Lender on any property insurance policy required hereunder a waiver of any right of subrogation which the insurer might otherwise acquire against Landlord or Lender (or such party's officers, employees, agents or representatives) by virtue of the payment of any loss covered by insurance or otherwise.

14. **DAMAGE, DESTRUCTION.** (a) In the event of any casualty loss exceeding \$150,000, Tenant shall give Landlord and Lender immediate notice thereof. Tenant shall adjust and compromise any and all such claims, with the consent of Lender and Landlord, not to be unreasonably withheld or delayed and Landlord and Lender shall have the right to join with Tenant therein. All proceeds shall be paid to a Trustee which shall be a federally insured bank or other financial institution, selected by Landlord and Tenant and reasonably satisfactory to Lender (the "**Trustee**"). If the Leased Premises shall be covered by a Mortgage, Lender, if it so desires, shall be the Trustee. Each insurer is hereby authorized and directed to make payment under said policies directly to such Trustee instead of to Landlord and Tenant jointly; and Tenant hereby appoints such Trustee as Tenant's attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease after approval by Tenant of such Trustee, if Trustee is other than Lender, such approval not to be unreasonably withheld or delayed.

(b) In the event of any casualty (whether or not insured against) resulting in damage to the Leased Premises or any part thereof, the Term shall nevertheless continue and there shall be no abatement or reduction of Basic Rent, Additional Rent or any other sums payable by Tenant hereunder. The Net Proceeds of such insurance payment shall be retained by the above-mentioned Trustee and, promptly after such casualty, Tenant shall commence and diligently continue to perform the Restoration to the Leased Premises. Upon payment to the Trustee of such Net Proceeds, the Trustee shall, to the extent available, make the Net Proceeds

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available to Tenant for restoration, in accordance with the provisions of Paragraph 15. Tenant shall, whether or not the Net Proceeds are sufficient for the purpose, promptly repair or replace the Improvements as nearly as possible to their value and condition and character immediately prior to such event and otherwise in accordance with all Insurance Requirements and Legal Requirements and the provisions of this Lease (including Tenant's making any desired Alterations allowed hereunder) and the Net Proceeds of such loss shall thereupon be payable to Tenant, subject to the provisions of Paragraph 15 hereof.

(c) In the event that any damage or destruction shall occur at such time as Tenant shall not have maintained insurance in accordance with Paragraph 13(a)(i), or if such insurance is maintained with a deductible permitted by this Lease Tenant shall pay to the Trustee the amount of the proceeds that would have been payable had such insurance program been in effect or the amount of the deductible, as the case may be (the "**Tenant Insurance Payment**").

15. **RESTORATION.** The Net Proceeds and Tenant Insurance Payment (the aggregate of which and any interest thereon being herein defined as the "**Restoration Fund**") paid to the Trustee shall be disbursed by the Trustee in accordance with the following conditions:

(a) At the time of any disbursement, no Event of Default shall exist and no mechanics' or materialmen's liens shall have been filed and remain undischarged and unbonded.

(b) If the cost of Restoration exceeds \$150,000, prior to commencement of the Restoration, the architects, contracts, contractors and plans and specifications for the Restoration shall have been approved by Landlord and Lender, which approval shall not be unreasonably withheld or delayed.

(c) Each request for disbursement shall be accompanied by a certificate of Tenant, signed by Tenant's architect or other professional designated by Tenant, describing the completed work for which payment is requested, stating the cost incurred in connection therewith and stating that Tenant has not previously received payment for such work and the certificate to be delivered by Tenant upon completion of the work shall, in addition, state that the

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work has been completed and complies with the applicable requirements of this Lease and all Legal Requirements and Insurance Requirements.

(d) Disbursements shall be made from time to time in an amount not exceeding the cost of the work completed since the last disbursement upon receipt by Landlord and Lender of (1) satisfactory evidence, including architects' certificates, of the stage of completion, of the estimated cost of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts and plans and specifications approved by Landlord and Lender, (2) waivers of liens, (3) a satisfactory bring down of title insurance, and (4) other evidence of cost and payment so that Landlord and Lender can verify that the amounts disbursed from time to time are represented by work that is completed in place and free and clear of mechanics' liens and mechanics' lien enforcement actions.

(e) The Trustee, at Landlord's or Lender's election, shall retain ten (10%) percent from each disbursement of the Restoration Fund until the Restoration is fully completed and the Leased Premises are available for their intended use, in the reasonable judgment of the Lender, including the issuance of any necessary certificate of occupancy.

(f) Prior to commencement of Restoration and at any time during Restoration, if the estimated cost of Restoration, as reasonably determined by Landlord or Lender, exceeds the amount of the Restoration Fund, the amount of such excess shall be paid by Tenant to the Trustee to be added to the Restoration Fund prior to any further disbursement or Tenant shall fund at its own expense the costs of such Restoration until the remaining Restoration Fund is sufficient for the completion of the Restoration. Except for the payment to Landlord or Lender of the Net Surplus Award, referred to in Paragraph 12(b), any sum in the Restoration Fund which remains in the Restoration Fund upon the completion of Restoration shall be paid to Tenant.

(g) If Tenant does not diligently pursue the completion of the Restoration to the satisfaction of Landlord, Landlord shall have the right to give written Notice to Tenant, which notice shall specify the exact reason(s) Landlord maintains that Tenant is not pursuing the completion of the Restoration (the "**Restoration Notice**"). Upon receipt of the Restoration

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Notice, Tenant shall have thirty (30) days to either: (i) cure the deficiencies specified in the Restoration Notice, or if such deficiency cannot be cured within such period of thirty (30) days, such period shall be extended for such longer time as reasonably necessary provided that Tenant has commenced to cure such deficiency within said period of thirty (30) days and is actively, diligently and in good faith proceeding with continuity to remedy such failure; or (ii) demonstrate to Landlord in writing, with sufficient supporting documentation attached, that to the extent that Tenant is not hampered by a legal impediment not caused by Tenant (which shall include, without limitation, delays or stoppages caused by delays in the permitting process), Tenant is actively, diligently, and in good faith proceeding with continuity to complete the Restoration. If Tenant fails to do either of the preceding within such thirty (30) day period, Landlord shall have the right (without limiting its right to exercise its rights and remedies under Paragraphs 19 and 20) to take over control of the Restoration, in which event Landlord shall have access to the Restoration Fund to perform such Restoration. In such event, any sum which remains in the Restoration Fund upon the completion of the Restoration shall be paid to Landlord.

16. **SUBORDINATION TO FINANCING.** (a) Subject to the following provisions of this Paragraph 16(a), Tenant agrees that this Lease shall, upon Landlord's and Lender's (if any) written request, be subject and subordinate to the lien of any Mortgage, and Tenant agrees, upon demand, without cost to Landlord or Lender, to execute instruments as may be required to further effectuate or confirm such subordination. So long as no Event of Default shall be outstanding, Tenant's tenancy shall not be disturbed, nor shall this Lease be affected by any default under such Mortgage, and in the event of a foreclosure or other enforcement of any such Mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale or pursuant to a deed in lieu thereof shall be bound to Tenant for the Term of this Lease and any extensions thereof, the rights of Tenant hereunder shall expressly survive, and this Lease shall in all respects continue in full force and effect so long as no Event of Default by Tenant has occurred and is continuing. So long as no Event of Default by Tenant has occurred and is continuing, Tenant shall not be named as a party defendant in any such foreclosure suit, except as may be required by Legal Requirements. Any Mortgage to which this Lease is now or hereafter subordinate shall provide, in effect, that during {00239109.DOCX}

the time this Lease is in force all insurance proceeds and condemnation awards shall be permitted to be used for restoration in accordance with the provisions of this Lease.

(b) Notwithstanding the provisions of subdivision (a) of this Paragraph 16, the holder of the Mortgage to which this Lease is subject and subordinate, as provided in said subdivision (a), shall have the right, at its sole option, at any time, to subordinate and subject the Mortgage, in whole or in part, to this Lease by recording a unilateral declaration to such effect.

(c) At any time prior to the expiration of the Term, Tenant agrees, at the election and upon demand of any owner of the Leased Premises, or of Lender who has granted non-disturbance to Tenant pursuant to Paragraph 16(a) above, to attorn, from time to time, to any such owner or Lender, upon the then executory terms and conditions of this Lease, for the remainder of the term originally demised in this Lease and for any renewal term, provided that such owner or Lender shall then be entitled to possession of the Leased Premises subject to the provisions of this Lease. The provisions of this subdivision (c) shall inure to the benefit of any such owner or Lender, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the foreclosure of the Mortgage, shall be self-operative upon any such demand, and no further instrument shall be required to give effect to said provisions.

(d) Each of Tenant and Landlord agrees that, if requested by the other, each shall, without charge, enter into (i) a Subordination, Non-Disturbance and Attornment Agreement reasonably requested by Lender, provided such agreement contains provisions relating to non-disturbance in accordance with the provisions of subparagraph (a), and (ii) an agreement with Lender whereby Tenant shall agree for the benefit of Lender that Tenant will not, without in each case the prior written consent of Lender, (a) amend, modify, cancel or surrender the term of this Lease except as expressly permitted by the provisions of this Lease, or enter into any agreement with Landlord so to do, or (b) pay any installment of Basic Rent more than one (1) month in advance of the due date thereof or otherwise than in the manner provided for in this Lease.

17. ASSIGNMENT, SUBLEASING. (a) Tenant may not assign its interest in this Lease. Tenant may sublease any portion(s) of the Leased Premises with the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. No sublease shall relieve Tenant of its obligations hereunder, which shall continue as the obligations of a principal and not as the obligations of a surety or a guarantor. Notwithstanding any merger, consolidation or sale (i) of the Tenant, (ii) of any parent, subsidiary or affiliate of the Tenant or (iii) of any or all of the assets of the Tenant or any parent, subsidiary or affiliate of the Tenant, the Tenant (and any successor of the Tenant by such merger, sale or consolidation) shall continue to be obligated for all of the Tenant's obligations hereunder without any abatement, diminution, set-off, reduction, rebate, termination, or decrease. The joint and several liability of Tenant named herein and any immediate and remote successor in interest of Tenant, and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not in any way be discharged, released or impaired by any (i) agreement which modifies any of the rights or obligations of the parties under this Lease, (ii) stipulation which extends the time within which an obligation under this Lease is to be performed, (iii) waiver of the performance of an obligation required under this Lease, or (iv) failure to enforce any of the obligations set forth in this Lease, unless in each case, the same has been consented to by Landlord and Lender.

(b) Each sublease of the Leased Premises or any part thereof shall be subject and subordinate to the provisions of this Lease, and a duplicate original thereof shall be delivered to Landlord and Lender within fifteen (15) days after the execution and delivery of such sublease. Actions affecting the Leased Premises by the subtenant (including, but not limited to, a holding over by a subtenant after the expiration or sooner termination of this Lease) shall also be deemed actions taken by Tenant.

(c) Upon the occurrence of an Event of Default under this Lease, Landlord shall have the right to collect and enjoy all rents and other sums of money payable under any sublease of any of the Leased Premises, and Tenant hereby irrevocably and unconditionally assigns such rents and money to Landlord, which assignment may be exercised upon and after (but not before) the occurrence of an Event of Default. All subleases shall provide that upon

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notice from Landlord and/or Lender of an Event of Default, all rent due under such sublease shall be paid as so directed.

(d) In the event of a termination of this Lease, any subtenant of the Leased Premises shall, at the option of Landlord or Lender, exercisable within thirty (30) days after such termination, attorn to Landlord. Each subtenant who hereafter takes an interest in the Leased Premises shall be deemed to have agreed to the provisions of this Paragraph 17(d). Tenant covenants that each sublease of the Leased Premises hereafter executed shall contain a clause expressly providing that the subtenant thereunder shall attorn to Landlord, upon request of Landlord or Lender, in the event of a termination of this Lease, but the absence of such a clause from any sublease shall not relieve the subtenant from the provisions of this Paragraph 17(d). In the event Landlord and Lender expressly waive such right of attornment or do not timely exercise the option to have a subtenant attorn as aforesaid, such sublease shall automatically terminate.

18. PERMITTED CONTESTS. Notwithstanding any provision of this Lease to the contrary, after prior Notice to Landlord and Lender, Tenant shall not be required to (i) pay any Tax or (ii) comply with any Legal Requirement, so long as Tenant shall contest, in good faith and at its expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its or Landlord's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (v) the collection of, or other realization upon, the Tax so contested, (w) the sale, forfeiture or loss of any of the Leased Premises, any Basic Rent or any Additional Rent to satisfy the same or to pay any damages caused by the violation of the same, (x) any interference with the use, occupancy, sale or financing of any of the Leased Premises, (y) any interference with the payment of any Basic Rent or any Additional Rent, and (z) the cancellation of any fire or other insurance policy. In no event shall Tenant pursue any contest with respect to any Tax or Legal Requirement referred to above in such manner that exposes Landlord, Tenant or Lender, to any criminal or civil liability, penalty or sanction. Tenant shall provide Lender or Landlord in that order, as security for such contest, an amount of cash or unconditional letter of credit (in such form and issued by an institutional lender reasonably

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acceptable to Landlord and Lender) equal to 125% of the amount being contested. While any such proceedings are pending and the required security is held by Lender or Landlord, in that order, Lender or Landlord, as the case may be, shall not have the right to pay, remove or cause to be discharged the Tax or Legal Requirement thereby being contested unless Landlord or Lender reasonably believes that any one or more of the conditions in subdivisions (v) through (z) shall not be prevented during the pendency of the contest. Tenant further agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant shall, so long as all of the conditions of the first sentence of this Paragraph 18 are at all times complied with, have the right to attempt to settle or compromise such contest through negotiations. Tenant shall pay any and all judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof.

19. **DEFAULT.** The occurrence of any one or more of the following events shall constitute an Event of Default under this Lease:

(a) Tenant's failure to make any payment of Basic Rent when due which continues unremedied for a period of three (3) days, provided, however, Tenant shall not be entitled to an opportunity to cure such default if Tenant has failed to make Basic Rent payments on or before the date when due on two (2) or more occasions within the previous twelve (12) month period.

(b) Tenant's failure to make payment of Additional Rent or other sum herein required to be paid by Tenant and such default shall continue for a period of ten (10) days after notice by Landlord or Lender to Tenant.

(c) Tenant's failure to duly perform and observe the provisions of Paragraph 22(b) and such default shall continue for a period of five (5) days after notice by Landlord or

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Lender to Tenant.

(d) Tenant's failure to duly perform and observe, or Tenant's violation or breach of, any other provision hereof if such failure shall continue for a period of thirty (30) days after notice thereof from Landlord or Lender, or if such failure cannot be cured within such period of thirty (30) days, such period shall be extended for such longer time as reasonably necessary (not to exceed a total of ninety (90) days) provided that Tenant has commenced to cure such default within said period of thirty (30) days and is actively, diligently and in good faith proceeding with continuity to remedy such failure. Tenant agrees that after receiving any such notice of default referred to above in this subparagraph (d), Tenant shall, upon request of Landlord or Lender, advise the requesting party of Tenant's progress in curing such default.

(e) Tenant becomes insolvent within the meaning of the United States Bankruptcy Code, as amended (the "**Code**"), files or notifies Landlord that it intends to file a petition under the Code, initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (any of the foregoing hereinafter referred to as, an "**Action**"), becomes the subject of either a petition under the Code or an Action, or is not generally paying its debts as the same become due.

(f) A court shall enter an order, judgment or decree appointing a receiver or trustee for it or for any of the Leased Premises or approving a petition filed against Tenant which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and such order, judgment or decree shall remain in force, undischarged or unstayed, sixty days after it is entered.

(g) Tenant shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution, or shall, in any manner, permit the divestiture of all or substantially all of its assets other than in connection with a merger or consolidation of Tenant, as the case may be, into, or a sale of all or substantially all of Tenant's assets to, another corporation provided that the survivor of such merger or consolidation, or the purchaser of such assets, shall assume all of Tenant's obligations under this Lease by a written instrument, in form and

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substance satisfactory to Landlord and Lender, accompanied by an opinion of counsel, satisfactory to Landlord and Lender, stating that such instrument of assumption is valid, binding and enforceable against the parties thereto in accordance with its terms, and provided further that, immediately after giving effect to any such merger or consolidation or sale of such assets, the survivor of such merger or consolidation, or the purchaser of such assets, as the case may be, shall have a consolidated tangible net worth equal or greater than that of Tenant, as the case may be, immediately prior to such merger or consolidation or sale of such assets, as the case may be.

(h) The estate or interest of Tenant in any of the Leased Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within sixty (60) days after such levy or attachment.

Tenant acknowledges and agrees that all notice periods provided in this Paragraph 19 are in lieu of, and not in addition to any notice periods provided by law.

20. **LANDLORD'S REMEDIES.** After the occurrence of an Event of Default by Tenant, Landlord shall have the right to exercise the following remedies:

(a) Landlord may, at its option, continue this Lease in full force and effect, without terminating Tenant's right to possession of the Leased Premises, in which event Landlord shall have the right to collect Basic Rent, Additional Rent and all other charges when due. In the alternative, Landlord shall have the right to peaceably re-enter the Leased Premises on the terms set forth in subparagraph (b) below, but without such re-entry being deemed a termination of the Lease or an acceptance by Landlord of a surrender thereof. Landlord shall also have the right, at its option, from time to time, without terminating this Lease, to relet the Leased Premises, or any part thereof, with or without legal process, as the agent, and for the account, of Tenant upon such terms and conditions as Landlord may deem advisable (which terms may be materially different from the terms of this Lease), in which event the rents received on such reletting shall be applied (i) first to the reasonable and actual expenses of such reletting and collection, including without limitation necessary renovation and alterations of the Leased

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Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid, and (ii) thereafter toward payment of all sums due or to become due Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Tenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Leased Premises in excess of the rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Leased Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth below.

(b) Landlord may terminate this Lease by written notice to Tenant specifying a date therefor, which shall be no sooner than ten (10) days following notice to Tenant, and this Lease shall then terminate on the date so specified as if such date had been originally fixed as the expiration date of the Term. In the event of such termination, Landlord shall be entitled to recover from Tenant the worth at the time of the payment by Tenant of all of the following:

(i) Any obligation which has accrued prior to the date of termination, plus,

(ii) The amount of unpaid Basic Rent, Additional Rent and all other charges which would have accrued after termination until the time of the payment by Tenant, plus,

(iii) The amount by which the unpaid Basic Rent and Additional Rent for the balance of the Term (excluding any option periods not previously exercised) exceeds the fair and reasonable rental value of the Leased Premises for such period (taking into account, among other factors, the anticipated duration that the Leased Premises would be unoccupied prior to reletting and the anticipated costs of reletting the Leased Premises, including those types of costs set forth in (a)(i) above).

As used in this Paragraph 20(b), the term, "worth at the time of the payment", shall be computed by allowing simple interest at the Default Rate on the obligations referred to in clauses (i) and (ii) of this Paragraph 20(b), and employing a discount rate equal to 4% on the obligations referred to in clause (iii) of this Paragraph 20(b), on the amount of the obligations payable on the date of such calculation. In the event this Lease shall be terminated as provided above, by summary proceedings or otherwise, Landlord, its agents, servants or representatives may immediately or at any time thereafter peaceably re-enter and resume possession of the Leased Premises and remove all persons and property therefrom, by summary dispossession or similar proceedings.

(c) Tenant agrees that neither Landlord nor Lender shall have any obligation to mitigate damages hereunder following a termination of this Lease due to an Event of Default, and in any action or claim by Landlord or Lender against Tenant due to breach of this Lease following an Event of Default the amount of damages to which Landlord and/or Lender may be entitled shall not be reduced to reflect any loss which Landlord or Lender may be able to recover by reletting of the Leased Premises or other efforts at mitigation. To the extent that applicable law requires Landlord to mitigate damages, Tenant agrees that it shall have the burden of proving the amount of damages which Landlord and/or Lender may be able to recover by mitigation and that Landlord shall have no obligation to subdivide the Leased Premises or to lease the Leased Premises other than on a triple net basis to a tenant whose long term debt is rated at least investment grade by Standard & Poor's Corporation.

(d) Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, as Additional Rent, such reasonable and actual expenses as Landlord may incur in recovering possession of the Leased Premises, placing the same in good order and condition and repairing the same for reletting, and all other reasonable and actual expenses, commissions and charges incurred by Landlord in exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including without limitation attorneys' fees).

(e) Except as provided in Paragraph 9(b) or 13(d), at any time upon prior

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notice to Tenant, Landlord and Lender shall have the right, but shall not be required, to pay such sums or do any act which requires the expenditure of monies which may be necessary or appropriate by reason of the failure or neglect of Tenant to comply with any of its obligations under this Lease (Landlord and Lender shall not, however, exercise any such rights unless the failure or neglect shall have ripened into an Event of Default), and in the event of the exercise of such right by Landlord or Lender, Tenant agrees to pay to Landlord or Lender forthwith upon demand, as Additional Rent, all such sums including reasonable attorneys fees, together with interest thereon at the Default Rate.

(f) The various rights and remedies reserved to Landlord herein are cumulative, the rights and remedies described in Paragraph 20(a)-(e) shall survive termination of this Lease and Landlord may pursue any and all such rights and remedies and any other available to Landlord under applicable law or equity, whether at the same time or otherwise (to the extent not inconsistent with specific provisions of this Lease). To the extent permitted under applicable law, Landlord expressly reserves its right to forcibly dispossess Tenant from the Leased Premises, whether peaceably or otherwise, without judicial process.

21. **NOTICES.** All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given pursuant to the provisions of this Lease (collectively "Notice" or "Notices") shall be in writing and shall be deemed to have been given for all purposes (i) three (3) days after having been sent by United States mail, by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address as stated below, or (ii) one (1) day after having been sent by Federal Express, United Parcel Service or other nationally recognized air courier service, to the Addresses stated below:

- (a) If to Landlord, at the address set forth on the first page of this Lease.
- (b) If to Tenant, at the address set forth on the first page of this Lease.
- (c) If to Lender, at the address provided for such purpose.

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If any Lender shall have advised Tenant by Notice in the manner aforesaid that it is the holder of a Mortgage and stating in said Notice its address for the receipt of Notices, then simultaneously with the giving of any Notice by Tenant to Landlord, Tenant shall serve one or more copies of such Notice upon Lender in the manner aforesaid and no Notice shall be effective unless and until Lender shall be sent a copy thereof. Landlord agrees that Tenant shall be entitled to rely on any such notice from any party who Tenant has been notified by Landlord is a "Lender" hereunder. For the purposes of this Paragraph, any party may substitute its address by giving fifteen days' notice to the other party in the manner provided above.

22. **MEMORANDUM OF LEASE; ESTOPPEL CERTIFICATES.** (a) Tenant shall execute, deliver and record, file or register from time to time all such instruments as may be required by any present or future law in order to evidence the respective interests of Landlord and Tenant in any of the Leased Premises, and shall cause a memorandum of this Lease, and any supplement hereto or to such other instrument, if any, as may be appropriate, to be recorded, filed or registered and re-recorded, refiled or re-registered in such manner and in such places as may be required by any present or future law in order to give public notice and protect the validity of this Lease. In the event of any discrepancy between the provisions of said recorded memorandum of this Lease or any other recorded instrument referring to this Lease and the provisions of this Lease, the provisions of this Lease shall prevail.

(b) Landlord and Tenant shall, at any time and from time to time, upon not less than fifteen (15) days' prior written request by the other (or, in the case of an estoppel certificate requested of either, upon not less than fifteen (15) days' prior written request of Lender), execute, acknowledge and deliver to the other and Lender, if applicable, a statement in writing, executed by Landlord or Tenant by its duly authorized officer thereof certifying (i) that this Lease (a copy of which shall be attached to such statement) is unmodified and in full effect (or, if there have been modifications, that this Lease is in full force and effect as modified, setting forth such modifications), (ii) the dates to which Basic Rent payable hereunder has been paid, (iii) that, to the knowledge of the party executing such certificate, no default by either Landlord or Tenant exists hereunder or specifying each such default of which such party may

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have knowledge; (iv) the remaining Term hereof; (v) with respect to a certificate signed by Tenant, that to Tenant's knowledge there are no proceedings pending or threatened against Tenant before or by any court or administrative agency which if adversely decided would materially and adversely affect the financial condition and operations of Tenant or if any such proceedings are pending or threatened to said party's knowledge, specifying and describing the same; (vi) with respect to a certificate signed by Tenant, that no rent has been paid under the Lease for more than one (1) month in advance; and (vii) with respect to a certificate signed by Tenant, that to Tenant's knowledge Tenant is in full compliance with all federal, State and local laws, ordinances, rules and regulations affecting its use of the Leased Premises, including but not limited to the handling, storage and disposal of hazardous and/or toxic materials used or generated as a result of its business conducted on or about the Leased Premises. It is intended that any such statements may be relied upon by Lender, the recipient of such statements or their assignees or by any prospective mortgagee, purchaser, or subtenant of the Leased Premises.

23. **SURRENDER AND HOLDING OVER.** Upon the expiration or earlier termination of this Lease, Tenant shall peaceably leave and surrender the Leased Premises to Landlord in the condition the Leased Premises are required to be maintained pursuant to the provisions of this Lease except for ordinary wear and tear and damage by fire, casualty or condemnation but only to the extent Tenant is not required to repair the same hereunder. Tenant may remove at Tenant's sole cost and expense from the Leased Premises on or prior to such expiration or earlier termination Trade Fixtures and personal property which are owned by Tenant or third parties other than Landlord, and Tenant at its expense shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Trade Fixtures and personal property not so removed at the end of the Term or within fifteen (15) days after the earlier termination of the Term for any reason whatsoever shall become the property of Landlord, and Landlord may thereafter, at Tenant's sole cost and expense, cause such property to be removed from the Leased Premises. Landlord shall not in any manner or to any extent be obligated to reimburse Tenant for any property which becomes the property of Landlord as a result of such expiration or earlier termination. Upon such expiration or earlier termination, no party shall have any further rights or obligations hereunder except as specifically provided herein.

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Any holding over by Tenant of the Leased Premises after the expiration or earlier termination of the term of this Lease or any extensions thereof, with the consent of Landlord, shall operate and be construed as tenancy from month to month only, at one hundred fifty percent (150%) of the Basic Rent reserved herein and upon the same terms and conditions as contained in this Lease. Notwithstanding the foregoing, any holding over without Landlord's consent shall entitle Landlord, in addition to collecting Basic Rent at a rate of one hundred fifty percent (150%) thereof, to exercise all rights and remedies provided by law or in equity, including the remedies of Paragraph 20.

If to the extent there is any Legal Requirements with respect to the transfer of possession of the Leased Premises from Tenant to Landlord, Tenant shall be obligated to comply therewith and reimburse Landlord for any costs it incurs in connection therewith. The obligations of Tenant and the rights and remedies of Landlord under this Paragraph 23 shall survive the expiration or earlier termination of this Lease.

24. **NO MERGER OF TITLE.** There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Leased Premises by reason of the fact that the same Person may acquire or hold or own, directly or indirectly, (i) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate and (ii) the fee estate or ownership of any of the Leased Premises or any interest in such fee estate or ownership. No such merger shall occur unless and until all Persons having any interest in (x) this Lease or the leasehold estate created by this Lease and (y) the fee estate in or ownership of the Leased Premises including, without limitation, Lender's interest therein, or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

25. **LANDLORD AND LENDER EXCULPATION.** Anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Landlord's interest in the Leased Premises and shall not be enforced against the Landlord individually or personally. Tenant agrees that any assignment

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by Landlord to Lender of Landlord's interest in this Lease; or the rent, payable hereunder, whether absolute or conditional in nature or otherwise, whether such assignment is made to the Lender solely as additional collateral related to a mortgage or otherwise, and the acceptance thereof by Lender shall never be treated as an assumption by Lender of any obligations of Landlord hereunder unless Lender shall, by notice sent to Tenant, specifically elect, and that Lender shall be treated as having assumed Landlord's obligations hereunder only upon purchase of the Leased Premises pursuant to foreclosure of the Mortgage or by deed in lieu thereof, or other conveyance and then only subject to the limitations set forth in the first sentence hereof. In addition, the parties hereto acknowledge and agree that Landlord may condition any consent or approval required under this Lease on Landlord's receipt of the written consent or approval of Lender if required under the documents relating to the Mortgage.

26. **MATERIALS OF ENVIRONMENTAL CONCERN.** (a) For the purposes of this Paragraph 26, the terms listed below shall have the meanings ascribed herein:

"Environmental Claim" means any claim, action, investigation or written notice by any Person alleging potential liability (including, without limitation, potential liability for Remedial Work, investigatory costs, cleanup costs, governmental response costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based on or resulting from (A) the presence, or release or threatened release of any Materials of Environmental Concern on, in, under, at or emanating from the Leased Premises, or (B) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

"Environmental Laws" shall include all Legal Requirements (along with common law or strict liability provisions, and any judicial or administrative interpretations thereof, including any applicable judicial or administrative orders or judgments) relating to health, safety, industrial hygiene, Materials of Environmental Concern, pollution, the environment, or related matters including, but not limited to each of the following, as enacted as of the date hereof or as hereafter amended; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.

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§6901 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.

“Materials of Environmental Concern” means any hazardous or toxic waste, hazardous or toxic substance, pollutant, contaminant, oil or petroleum product, or other solid, liquid, or gaseous substance or product (i) that is currently or hereafter listed, regulated, or designated as, or is determined to be (in whole or in part), toxic, hazardous, or harmful (or words of similar meaning and regulatory effect), or with respect to which governmental regulatory obligations (including, without limitation, recordkeeping, remedial or closure obligations) may be imposed, under any Environmental Laws, or (ii) exposure to which may pose an environmental, health, or safety threat or hazard.

“Regulated Activity” means the use, presence, release or threatened release, discharge, generation, manufacture, recycling, transportation, processing, refinement, treatment, storage, disposal or other handling of Materials of Environmental Concern.

“Remedial Work” means, without limitation, investigation, characterization, testing, sampling, monitoring, removal, response, remedial actions, transportation, disposal, restoration, cleanup, and similar activities.

(b) Tenant represents and warrants to Landlord that neither the Leased Premises, nor any portion thereof, has been used by Tenant or, to the best of Tenant’s knowledge, by any prior owner or tenant for a Regulated Activity except to the extent expressly permitted by the terms of this Paragraph 26(b). Tenant covenants that it (i) will comply, and will cause the Leased Premises to comply, with all Environmental Laws applicable to the Leased Premises; (ii) will not use, and shall prohibit the use of, the Leased Premises for Regulated Activities (other than the storage or handling of Materials of Environmental Concern in connection with operations conducted at the Leased Premises at the commencement of the Term and maintenance of the Leased Premises in the ordinary course of business and in commercially reasonable quantities as a consumer and generator thereof, subject to compliance with applicable

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Environmental Laws); (iii) will not install or permit the installation on the Leased Premises of any tanks, pits, sumps or surface impoundments (unless and only to the extent this Lease specifically permits Tenant to do so); (iv) shall respond to the presence of Materials of Environmental Concern on, in or under the Leased Premises in accordance with Paragraph 26(c) of this Lease; *provided, however*, that in the event that Tenant believes that applicable Environmental Laws requires reporting to governmental authorities with respect to the Leased Premises or environmental conditions at the Leased Premises, it shall first promptly notify Landlord in writing, and the parties shall cooperate in determining whether such requirements apply before any such reporting requirements are addressed; (v) shall cause any Alterations of the Leased Premises to be done in a way which complies with applicable Environmental Laws relating to exposure of persons working on or visiting the Leased Premises to Materials of Environmental Concern and, in connection with any such Alteration, shall remove any Materials of Environmental Concern present upon the Leased Premises which are not in compliance with applicable Environmental Laws or which may present a risk to persons working on or visiting the Leased Premises; (vi) shall not install in the Leased Premises, or permit to be installed in the Leased Premises, asbestos or any asbestos-containing materials in any form that is or could be friable or any other Materials of Environmental Concern that could reasonably be expected to prove a present or future risk to human health or the environment; and (vii) shall cause the Leased Premises to be operated and maintained in such a manner so that mold, other indoor air pollutants, and/or other materials, the exposure to which may pose human health risks, do not present such an exposure risk at the Leased Premises. Additionally, Landlord agrees that Tenant may use household and commercial cleaners and chemicals to maintain the Leased Premises, provided that such use is in compliance with all Environmental Laws. Landlord and Tenant acknowledge that any or all of the cleaners and chemicals described in this Paragraph may constitute Materials of Environmental Concern. However, Tenant may use, handle and store such chemicals and cleaners that are Materials of Environmental Concern provided that in doing so Tenant complies with all Environmental Laws.

(c) If, at any time during the Term, Materials of Environmental Concern shall be found in, on, at, under or emanating from the Leased Premises, then Tenant shall (without {00239109.DOCX})

cost to Landlord and Lender, except to the extent otherwise provided in Paragraph 26(e) of this Lease) promptly conduct such Remedial Work as is provided in Paragraph 26(h) of this Lease.

(d) During the Term of this Lease, Tenant shall provide prompt written notice to Landlord and Lender of any of the following matters:

(i) any proceeding or investigation commenced or threatened by any governmental authority with respect to the release, threatened release or presence of any Materials of Environmental Concern affecting the Leased Premises in, on, under, from or migrating towards the Leased Premises;

(ii) any lien, action or notice with respect to the Leased Premises resulting from any violation or alleged violation of Environmental Laws or any proceeding or investigation commenced or threatened by any governmental authority with respect to the presence, suspected presence, release or threatened release of Materials of Environmental Concern from, onto, under, or migrating onto or toward the Leased Premises;

(iii) all written notices of any pending or threatened investigation or claims made or any lawsuit or other legal action or proceeding brought by any Person with respect to the Leased Premises against (A) Tenant or Landlord or the Leased Premises, or (B) any other party occupying the Leased Premises or any portion thereof, in any such case relating to any loss or injury allegedly resulting from any Materials of Environmental Concern or relating to any violation or alleged violation of Environmental Laws; or

(iv) knowledge of the presence of Materials of Environmental Concern in, on, or under the Leased Premises, or any written notice received by Tenant of any occurrence or condition on any real property adjoining or in the vicinity of the Leased Premises, which reasonably could be expected to (A) lead to the Leased Premises or any portion thereof being (x) in violation of any Environmental Laws, (y) subject to any deed recordation or restriction on ownership, occupancy, transferability or use under any Environmental Laws or Legal Requirements, or (z) impacted by Materials of Environmental Concern, including, without

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limitation, being subject to a remedial obligation under Environmental Laws, or (B) subject Tenant, Landlord, or Lender to any Environmental Claim; and

(v) the commencement of any Remedial Work, the status of the Remedial Work on an ongoing basis, and completion of the Remedial Work.

(e) Tenant shall be solely responsible for and shall defend, reimburse, indemnify and hold Landlord and Lender, any affiliates of the foregoing, and each of their respective directors, officers, employees, shareholders, members, partners, agents, successors and assigns (including, without limitation, any participants in a loan by Lender) (each such Person being an "Indemnified Party") harmless from and against all demands, claims, actions, causes of action, assessments, losses, damages, liabilities, investigations, or written notices, including costs and expenses of any kind (including without limitation, diminution in property value and expenses of investigation by engineers, environmental consultants and similar technical personnel and fees and disbursements of counsel), arising out of, in respect of or in connection with (i) Tenant's breach of its representations, warranties, covenants or other obligations in this Lease; (ii) the occurrence of any Regulated Activity at, on or under the Leased Premises at any time during or prior to the Term of this Lease; (iii) any Environmental Claim with respect to the Leased Premises against any Indemnified Party or any Person whose liability for such Environmental Claim any Indemnified Party or Tenant has or may have assumed or retained, or may be charged with, either contractually or by operation of law (provided that after the Commencement Date Landlord shall not contractually assume liability for an environmental liability which Landlord would not otherwise have by operation of law without the consent of Tenant); (iv) the release, threatened release or presence of any Materials of Environmental Concern at, on, under, in, emanating from or migrating to or from, the Leased Premises, regardless of how discovered by Tenant, Landlord or any third party, except to the extent that Tenant can demonstrate that such release, threatened release or presence occurred solely subsequent to the Term of this Lease; (v) any Remedial Work required to be performed pursuant to any Environmental Law or the terms hereof with respect to matters arising or

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occurring prior to or during the Term; (vi) any matters arising under or relating to any Environmental Law and relating to the Tenant, the Leased Premises or activities at the Leased Premises, or (vii) all other direct or indirect consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties). Notwithstanding the foregoing, Tenant shall not be responsible, nor be required to reimburse, indemnify, or hold an Indemnified Party harmless, to the extent that the gross negligence or willful misconduct (which gross negligence or willful misconduct Tenant shall establish) of the Indemnified Party materially contributed to the liability from which Tenant would otherwise be required to reimburse, indemnify or hold harmless under this Paragraph 26(e). Except as otherwise specifically provided herein, the indemnification provisions in this Lease shall be applicable whether or not negligence of an Indemnified Party is alleged or proven irrespective of whether negligence or a strict liability standard may apply.

(f) Upon Landlord's or Lender's request, at any time as Landlord or Lender has reasonable grounds to believe that (i) Materials of Environmental Concern (except to the extent those substances are permitted to be used by Tenant under Paragraph 26(b) in the ordinary course of its business and in compliance with all Environmental Laws) are or have been released, stored or disposed of or are otherwise present under, on, or around the Leased Premises, (ii) the Leased Premises may be in violation of the Environmental Laws, or (iii) the Leased Premises may be subject to a remedial obligation under Environmental Laws, Tenant shall provide, at Tenant's sole cost and expense, an inspection or audit of the Leased Premises prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Landlord and Lender indicating whether the Materials of Environmental Concern are present at the Leased Premises; and, if so, the nature and extent of such presence. If Tenant fails to provide such environmental reports within fifteen (15) days after such request, Landlord may, at Tenant's expense, order the same; and Tenant hereby grants to Landlord and Lender and their respective employees and agents access to the Leased Premises upon reasonable notice and a license to undertake such inspection or audit. The foregoing notwithstanding, in the event of an emergency, Landlord or Lender may have any such inspection or audit conducted immediately at Tenant's

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expense.

(g) Without limiting the foregoing, where indicated by the environmental reports delivered to Landlord in connection with its purchase of the Leased Premises or in any other environmental assessment and where the particular conditions on the Leased Premises which formed the basis for such indication still exist, Tenant shall conduct and pursue to completion Remedial Work as provided in Paragraph 26(h) of this Lease and shall provide documentation as required by Landlord or Lender and access to the Leased Premises upon reasonable notice, by Landlord or Lender, and their respective agents, to review and assess the environmental condition of the Leased Premises.

(h) Consistent with its obligations under Paragraphs 8(a), 26(c), 26(e), and 26(f) of this Lease, Tenant shall conduct Remedial Work to the extent required by Environmental Laws and in compliance with Environmental Laws. Tenant, with approval and concurrence of Landlord, will negotiate with the relevant governmental authorities regarding the nature and extent of environmental conditions to be remediated and the work plans and/or remedial action plans to be performed by Tenant. Landlord and Tenant agree to work together to approve cleanup criteria and Remedial Work for the Leased Premises that comply with applicable Environmental Laws and are consistent with (i) the then existing zoning for the Leased Premises, and (ii) the redevelopment of the Leased Premises in the future. If Tenant proposes cleanup criteria for soils that would permit contaminants to remain in place and that would require (a) special handling of soils in connection with redevelopment activities, (b) additional cost for offsite disposal of soils, or (c) governmental approval for disturbance of soils following closure, then approval of those cleanup criteria shall be at the sole discretion of the Landlord. If Tenant proposes cleanup criteria for groundwater that would require a deed restriction or otherwise limit or prohibit the use of groundwater at the Leased Premises, then approval of those cleanup criteria shall be at the sole discretion of the Landlord. Any other restrictions proposed to be included as part of a final confirmation of closure issued for all or any part of the Leased Premises must be approved by Landlord, which shall have the right to grant or deny such approval in its sole and absolute discretion.

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(i) The obligations of Tenant to indemnify Landlord pursuant to Paragraph 26(e) and the rights and remedies of Landlord under Paragraph 26(e) shall survive the expiration or earlier termination of this Lease. Persons indemnified under this Lease will continue to be afforded the protections under this Paragraph 26 notwithstanding the assignment or other transfer of this Lease by such Persons.

(j) If recommended by any environmental assessment or audit of the Leased Premises, Tenant shall establish and comply (or cause to be established and complied) with an operations and maintenance program with respect to the Leased Premises, in form and substance reasonably acceptable to Landlord and Lender, prepared by an environmental consultant reasonably acceptable to Landlord and Lender, which program shall address any asbestos-containing material or lead based paint that may now or in the future be detected at or on the Leased Premises. Without limiting the generality of the preceding sentence, Landlord or Lender may require: (i) periodic notices or reports to Landlord and Lender in form, substance and at such intervals as Landlord or Lender may specify; (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters; (iii) at Tenant's sole expense, supplemental examination of the Leased Premises by consultants specified by Landlord or Lender; (iv) access to the Leased Premises by Landlord and Lender, its agents or servicer, to review and assess the environmental condition of the Leased Premises and Tenant's compliance with any operations and maintenance program; and (v) variation of the operations and maintenance program in response to the reports provided by any such consultants.

27. **ENTRY BY LANDLORD AND LENDER.** Landlord, Lender and their authorized representatives shall have the right upon reasonable notice (which shall be not less than 48 hours except in the case of emergency) to enter the Leased Premises at all reasonable business hours, (and at all other times in the event of an emergency), for (i) the purpose of inspecting the same, including, without limitation, the right to conduct an environmental inspection of the Leased Premises, or for the purpose of doing any work under Paragraph 9, and may take all such action thereon as may be necessary or appropriate for any such purpose (but nothing contained in this Lease or otherwise shall create or imply any duty upon the part of Landlord or Lender to make

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any such inspection or do any such work), and Tenant shall cooperate with all such inspections, work and/or action; *provided, however*, that if a default has occurred and is continuing, such inspections and work shall be at Tenant's sole cost and expense, and (ii) the purpose of showing the Leased Premises to prospective Lenders. No such entry shall constitute an eviction of Tenant but any such entry shall be done by Landlord and/or Lender in such reasonable manner as to minimize any disruption of Tenant's business operation.

28. **FINANCIAL STATEMENTS.** Unless publicly available, at Landlord or Lender's request, Tenant shall provide the prior fiscal year's annual audited financial statements.

29. **NO USURY.** The intention of the parties being to conform strictly to the usury laws now in force in the State, whenever any provision herein provides for payment by Tenant to Landlord of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid shall be deemed reduced to such legal rate.

30. **BROKER.** Landlord and Tenant represent and warrant to each other that neither party negotiated with any broker in connection with this Lease and that this Lease was negotiated directly by Landlord and Tenant. Each party hereby agrees to indemnify the other against all claims, damages, costs and expenses incurred by the indemnified party as a result of the breach of the foregoing representation or warranty by the indemnifying party.

31. **WAIVER OF LANDLORD'S LIEN.** Landlord hereby waives any right to distraint Trade Fixtures or any property of Tenant and any Landlord's lien or similar lien upon Trade Fixtures and any other property of Tenant regardless of whether such lien is created or otherwise. Landlord agrees, at the request of Tenant, to execute a waiver of any Landlord's or similar lien for the benefit of any present or future holder of a security interest in or lessor of any of Trade Fixtures or any other personal property of Tenant. Landlord acknowledges and agrees in the future to acknowledge (in a written form reasonably satisfactory to Landlord and Tenant) to such Persons at such times and for such purposes as Tenant may reasonably request that Trade Fixtures are Tenant's property and not part of Improvements (regardless of whether or to what extent such Trade Fixtures are affixed to the Improvements) or otherwise subject to the terms of this Lease.

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32. **NO WAIVER.** No delay or failure by either party to enforce its rights hereunder shall be construed as a waiver, modification or relinquishment thereof.

33. **SEPARABILITY.** If any term or provision of this Lease or the application thereof to any provision of this Lease or the application thereof to any Person and/or circumstance shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to Persons and/or circumstance(s) other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

34. **INDEMNIFICATION.** Tenant agrees to defend, pay, protect, indemnify, save and hold harmless Landlord and Lender, any entity controlled by Landlord or Lender and each of their respective officers, directors, employees, shareholders, agents, members and partners and each of their respective successors and assigns (including, without limitation, any participant, holder of a trust certificate or holder of any beneficial direct or indirect interest in a Loan by Lender), from and against any and all liabilities, losses, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, arising from (a) any of the Leased Premises or Adjoining Property, (b) the use, non-use, occupancy, ownership, condition, design, construction, maintenance, repair, rebuilding, casualty or condemnation of any of or otherwise relating to, the Leased Premises or Adjoining Property, including, but not limited to, any matter arising under or relating to any Environmental Law, any injury to or death of any person or persons or any loss of or damage to any property, real or personal, in any manner arising therefrom connected therewith or occurring thereon, or (c) any default by Tenant or Event of Default under this Lease (collectively, "Losses"), whether or not Landlord or Lender has or should have knowledge or notice thereof, if any, causing or contributing to said Loss and whether or not the event in question arose prior to or after the date of this Lease. In case any action or proceeding is brought against Landlord or Lender by reason of any such Loss, Tenant covenants upon notice from Landlord or Lender to defend Landlord and/or Lender in such action, with the expenses of such defense paid by Tenant, and Landlord or Lender will cooperate and assist in the defense of such

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action or proceeding if reasonably requested so to do by Tenant. The obligations of Tenant under this Paragraph 34 shall survive the expiration or earlier termination of this Lease.

35. **PERMITTED ENCUMBRANCES.** Tenant agrees that Tenant is obligated to and shall perform all obligations of the owner of the Leased Premises and pay all expenses which the owner of the Leased Premises may be required to pay in accordance with the Permitted Encumbrances. Tenant further covenants and agrees to indemnify, defend and hold harmless Landlord and Lender against any claim, loss or damage suffered by Landlord or Lender by reason of Tenant's failure to perform any obligations or pay any expenses as required under any of the Permitted Encumbrances or comply with the terms and conditions of any of the Permitted Encumbrances as hereinabove provided during the term of this Lease.

36. **EXPENSES.** Whenever this Lease provides for the reimbursement by Tenant of costs and expenses of Landlord or Lender or any other party, such reimbursement obligation shall be limited to actual, out-of-pocket third-party costs and expenses (including reasonable attorney's fees and expenses). In addition to any other costs payable hereunder by Tenant, Tenant acknowledges and agrees that whenever (i) it makes a request of Landlord and/or Lender or seeks Landlord's and/or Lender's consent or approval to any matter with respect to this Lease, (ii) a casualty or Condemnation occurs or (iii) there is a default by Tenant or Event of Default under this Lease; or (iv) Landlord or Lender incurs expenses in connection with satisfying any obligations of Landlord or Tenant which are required to be performed after the date of this Lease pursuant to any Permitted Encumbrance, Tenant shall pay all reasonable costs and expenses incurred by Landlord and/or the Lender (including without limitation, reasonable attorney's fees and expenses) arising out of the foregoing.

37. **HEADINGS.** The paragraph headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease.

38. **MODIFICATIONS.** This Lease may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of any such

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modification, amendment, discharge or waiver is sought. Each of Tenant and Landlord agrees that it will not modify or amend this Lease without the written consent of Lender within any period during which there is a Lender hereunder. In the event of any inconsistent instruction from Landlord and Lender, Tenant shall comply with the instruction of Lender.

39. **SUCCESSORS, ASSIGNS.** The covenants of this Lease shall run with the Land and bind Tenant, the heirs, distributees, personal representatives, successors and permitted assigns of Tenant and all present and subsequent encumbrances and subtenants of any of the Leased Premises, and bind Landlord, its successors and assigns, and inure to the benefit of each of the parties hereto, their respective executors, administrators, heirs, successors and assigns, as the case may be. In the event there is more than one person that composes Tenant, the obligation of each shall be joint and several. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners of the Leased Premises or holder of the Mortgage in possession at the time in question of the Leased Premises and in the event of any transfer or transfers of the title of the Leased Premises, the Landlord herein named (and in case of any subsequent transfers or conveyances, the then Landlord) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

40. **COUNTERPARTS.** This Lease may be executed in several counterparts, which together shall be deemed one and the same instrument.

41. **TIME OF THE ESSENCE.** Time is of the essence in this Lease and each and every provision hereof in which any date or time is specified.

42. **GOVERNING LAW.** This Lease shall be governed by and construed according to the laws of the State.

43. **LENDER AS THIRD PARTY BENEFICIARY.** Lender shall be deemed a third party beneficiary with respect to all provisions of this Lease that purport to confer benefits upon Lender or impose obligations upon Tenant or Landlord in order to protect the interests of Lender.

44. **INTENTIONALLY LEFT BLANK.**

45. **BANKRUPTCY.** (a) As a material inducement to Landlord executing this Lease, Tenant acknowledges and agrees that Landlord and Lender are each relying upon (i) the financial condition and specific operating experience of Tenant, (ii) Tenant's timely performance of all of its obligations under this Lease notwithstanding the entry of an order for relief under the Code for Tenant, and (iii) in the event of the entry of an order for relief under the Code for Tenant, this Lease being assumed within 60 days of such order, or this Lease being rejected within such 60 day period and the Leased Premises surrendered to Landlord. Accordingly, in consideration of the mutual covenants contained in this Lease and for other good and valuable consideration, Tenant hereby agrees that: (i) all obligations that accrue or become due under this Lease (including the obligation to pay Rent), from and after the date that an Action is commenced shall be timely performed exactly as provided in this Lease and any failure to so perform shall be harmful and prejudicial to Landlord and Lender; (ii) any and all obligations under this Lease that accrue or become due from and after the date that an Action is commenced and that are not paid as required by this Lease shall, in the amount of such Rents, constitute administrative expense claims allowable under the Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after the commencement of the Action; (iii) any extension of the time period within which Tenant may assume or reject this Lease without an obligation to cause all obligations accruing or coming due under this Lease from and after the date that an Action is commenced to be performed as and when required under this Lease shall be harmful and prejudicial to Landlord and Lender; (iv) any time period designated as the period within which Tenant must cure all defaults and compensate Landlord and Lender for all pecuniary losses which extends beyond the date of assumption of this Lease shall be harmful and prejudicial to Landlord and Lender; (v) any assignment of this Lease must result in all terms and conditions of this Lease being assumed by the assignee without alteration or amendment, and any assignment which

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results in an amendment or alteration of the terms and conditions of this Lease without the express written consent of Landlord and Lender shall be harmful and prejudicial to Landlord and Lender; (vi) any proposed assignment of this Lease to an assignee: that does not possess financial condition, operating performance and experience characteristics equal to or better than the financial condition, operating performance and experience of Tenant as of the date of this Lease with a financial condition equal to or better than the financial condition of the original guarantor of this Lease as of the date of this Lease, shall be harmful and prejudicial to Landlord and Lender; and (vii) the rejection (or deemed rejection) of this Lease for any reason whatsoever shall constitute cause for immediate relief from the automatic stay provisions of the Code, and Tenant stipulates that such automatic stay shall be lifted immediately and possession of the Leased Premises will be delivered to Landlord and Lender immediately without the necessity of any further action by Landlord or Lender.

(b) No provision of this Lease shall be deemed a waiver of Landlord's or Lender's rights or remedies under the Code or applicable law to oppose any assumption and/or assignment of this Lease, to require timely performance of Tenant's obligations under this Lease, or to regain possession of the Leased Premises as a result of the failure of Tenant to comply with the terms and conditions of this Lease or the Code.

(c) Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as such, shall constitute "rent" for the purposes of the Code.

(d) For purposes of this Article addressing the rights and obligations of Landlord and Tenant in the event that an Action is commenced, the term "Tenant" shall include Tenant's successor in bankruptcy, whether a trustee, Tenant as debtor in possession or other responsible person.

46. **ATTORNEYS' FEES.** In the event that either Tenant or Landlord employs an attorney or attorneys to enforce or defend any of the conditions, covenants, rights or obligations of this Lease, then the prevailing party shall be entitled to reimbursement from the other of all
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reasonable costs and expenses incurred by the prevailing party in so doing, including, but not by way of limitation, all reasonable attorneys' fees and all other reasonable costs incurred or paid by the prevailing party.

47. **PURCHASE OPTION.** Provided there is no uncured default under the Lease, Tenant shall have the right to purchase the Leased Premises after the Expiration Date (the "**Purchase Option**") for ONE DOLLAR (\$1.00) (the "**Purchase Price**"). Tenant's Purchase Option hereunder shall be subordinated to the Mortgage. Unless Tenant notifies Landlord in writing at least 180 days prior to the Expiration Date that it does not wish to exercise the Purchase Option, Tenant shall be deemed to have exercised the Purchase Option and closing shall occur within thirty (30) days following the Expiration Date (the "**Closing Date**"). Landlord shall convey title by special warranty deed, free from encumbrances other than (i) the Permitted Encumbrances, (ii) liens or encumbrances created or suffered through or by or with the consent of Tenant, and (iii) any installments of Taxes due and payable after the Closing Date. Such deed shall contain an agreement by grantee to observe and perform all of the covenants, conditions and restrictions contained in any instruments of record which were assumed by Landlord or deemed to have been assumed by Landlord on its acquisition of title. The acceptance of a deed by Tenant shall be deemed to be a full performance and discharge of every agreement and obligation on the part of Landlord to be performed pursuant to the provisions hereof. Tenant shall pay all conveyance, transfer, sales and like taxes and recordation fees required in connection with the purchase. If there are any adverse title matters other than those to which Landlord's conveyance under special warranty deed may be subject as set forth in subparagraphs (i) through (iii) above, upon request made a reasonable time before the Closing Date, Tenant shall provide at the closing separate funds for the foregoing, payable to each holder of such lien or encumbrances, and such funds shall be added to the Purchase Price payable to Lender or Landlord, as the case may be.

48. **CROSS ACCESS EASEMENT AGREEMENT.**

Within 180 days after the execution of this Lease Agreement, Landlord and the owner of the shopping center adjacent to the Leased Premises, more commonly known as the

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HUB Shopping Center, shall execute and send for recordation in the official records of the City of Jersey City, County of Hudson, State of New Jersey, a cross access easement agreement (the "Easement Agreement") for the purpose of providing sidewalks, driveways, parking spaces, and other common areas for ingress and egress for the benefit of the Leased Premises. The Easement Agreement shall be a Permitted Exception which runs with the Land.

49. BASE BUILDING AND FIT-UP WORK.

Landlord shall be responsible for constructing and completing the Base Building Work as defined in Exhibit C at Landlord's sole cost and expense. In addition to the Base Building Work, Landlord shall perform, on Tenant's behalf, the work to complete the construction of the Leased Premises in accordance with the provisions of Exhibit C (the "Fit-Up Work"). Landlord shall provide an allowance of \$50.00 per square foot towards the cost of the Fit-Up Work (the "Tenant's Allowance"). The square footage used in the calculation of the Tenant's Allowance shall be based upon the total square footage of the building as measured by the exterior dimensions of the building. Tenant shall be responsible for all costs of the Fit-Up Work which Landlord incurs exceeding the Tenant Allowance.

Landlord shall perform the Base Building Work and Fit-Up Work in a good and workmanlike manner in accordance with all applicable building codes and other Legal Requirements.

50. WARRANTY OF TITLE.

Landlord represents that it will have, effective as of the Commencement Date, title to the Land and that it has the full right, capacity and authority to enter into the Lease.

51. FORCE MAJEURE.

Except for the obligation of Tenant to pay Basic Rent and other charges as provided in this Lease and any payments due to Tenant from Landlord, the period of time during

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which Landlord or Tenant is prevented from performing any act required to be performed under this Lease by reason of fire, catastrophe, strikes, lockouts, civil commotion, acts of God or the public enemy, government prohibitions or preemptions, embargoes, inability to obtain material or labor by reason of governmental regulations or prohibitions, the act or default of the other party, or other events beyond the reasonable control of Landlord or Tenant, as the case may be, shall be added to the time for performance of such act. Anything herein contained to the contrary notwithstanding, the adverse financial condition of Landlord or Tenant shall not constitute Force Majeure. A party wishing to invoke this Section 51 shall give the other party notice of that intention within ten (10) days after the commencement of an event of Force Majeure and shall, at that time, specify the reasons therefor, the specific provisions of this Lease which will be delayed as a result, and the period of such extension, if known, or if not known, a reasonable estimate thereof.

52. **ACQUISITION.**

(a) Landlord shall proceed diligently and use reasonable and good faith efforts to acquire fee title to the Land.

(b) In the event that Landlord, despite diligent and commercially reasonable efforts by Landlord, has not acquired fee title to the Land within 90 days after the City of Jersey City approves the subdivision of land from a larger parcel ("Landlord's Satisfaction Date"), then either party may at its election, upon thirty (30) days' written notice to the other, at any time after Landlord's Satisfaction Date, elect to terminate this Lease. In the event that Landlord should acquire fee title to the Land prior to the end of such (30) day notice as provided for herein, Landlord shall so advise Tenant in writing and the notice of termination shall be deemed null and

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void and this Lease shall remain in full force and effect

(c) In the event that Landlord and Tenant have executed a short form or memorandum of this Lease for recording prior to Landlord's closing of title to the Land, Landlord shall cause such short form or memorandum to be duly recorded immediately after the deed of conveyance to Landlord, at Landlord's expense. Within five (5) days after the closing of title to the Land, Landlord shall give Tenant notice thereof.

53. **LANDLORD DEFAULT.**

If Landlord shall from time to time fail to perform any act or acts required of Landlord by this Lease and if such failure continues for thirty (30) days after receipt of notice from Tenant, Tenant shall then have the right, in addition to such remedies as may be available under law or in equity, at Tenant's option, to perform such act or acts, in such manner as Tenant deems reasonably necessary, and the full amount of the cost and expense so incurred shall immediately be owing by Landlord to Tenant but in no such event shall Tenant offset the amount of Basic Rent due and payable to Landlord and Tenant shall continue to pay in full Basic Rent due hereunder. If Landlord shall in good faith within said thirty (30) days commence to correct such breach, and diligently proceed therewith to completion, then Landlord shall not be considered in default.

54. **MEASUREMENT OF PREMISES.**

Within twenty (20) days after the completion of the first course of masonry for the exterior walls of the Premises, Landlord shall deliver to Tenant a certification to Tenant by Landlord's licensed architect, surveyor, or engineer of the exterior dimensions and the floor area

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(with the dimensions on which it is based) of the Leased Premises, the measurements of which shall be subject to confirmation by Tenant's licensed architect, surveyor, or engineer. If Landlord shall fail to deliver such certification to Tenant, Tenant shall have the right to have any such measurements made and certified to Landlord by Tenant's licensed architect, surveyor, or engineer. If the exterior dimensions and/or floor area of the Leased Premises vary from those shown on the approved plans and specifications, then within ten (10) days after receipt of the measurements from Landlord, Tenant shall provide Landlord with a certification from Tenant's licensed architect, surveyor, or engineer that the aggregate exterior dimensions of the premises is less than 59,500 square feet. If Tenant fails to deliver such certification to Landlord within the ten (10) day period, Tenant shall be deemed to have accepted Landlord's measurement. If Tenant timely delivers such certification to Landlord and such certification reflects that the exterior dimensions of the Leased Premises is less than 59,500 square feet, the Basic Rent and any other applicable provision of this Lease shall be reduced to conform to the actual measurement, and Tenant shall receive a proportional refund of any rent theretofore paid to Landlord. If the measurement of the Premises after Landlord corrects any work indicates that the exterior dimensions of the Leased Premises is 59,500 square feet or greater, the exterior dimensions shall be stipulated to be 60,000 square feet, and the Basic Rent shall be as set forth in Exhibit "B". Landlord and Tenant shall each promptly execute and deliver to the other an amendment memorializing any change to Basic Rent, or any other applicable provisions of this Lease, made pursuant to this Section.

55. PERFORMANCE BOND.

Landlord shall obtain a performance bond for the completion of the Work contemplated in Exhibit C and such performance bond shall name Tenant as an additional obligee, if allowable by the bonding company. In the event such Work is not completed by October 1, 2016, Tenant may execute its rights pursuant to such performance bond. If the performance bond does not name Tenant as an additional obligee, and the work is not complete by October 1, 2016, it shall be assignable to Tenant if Landlord does not execute its rights pursuant to such performance bond. Under no circumstances shall such performance bond require any payment from the City's insurance policies.

56. NATURE OF LEASE/INSTALLMENT PURCHASE. Notwithstanding anything to the contrary set forth in this Lease, the parties hereto intend that this Lease be treated as an installment purchase agreement pursuant to N.J.S.A. 40A:12-5(b), and that the obligation of the City to make payments hereunder are valid and binding for the term of the Lease and are not otherwise subject to annual appropriation.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have caused this instrument to be executed under seal as of the day and year first above written.

JERSEY CITY MUNICIPAL, LLC

By: _____
Name:
Title:

CITY OF JERSEY CITY

By: _____
Name:
Title:

EXHIBIT A

The "Leased Premises" will be built on an approximately 0.556 acre portion of a 6.95 acre parcel - Block 21201, Lot 17. It will be an L-shaped site located along the southwest corner of Lot 17 at the intersection of Kearney Avenue and Martin Luther King Drive.

The legal description shall be added to this Exhibit A upon completion of the subdivision process.

EXHIBIT B

Basic Rent

For purposes of this Exhibit B, the first lease year shall commence on the Basic Rent Commencement Date and shall terminate on the last day of the calendar month in which the 364th day after the Basic Rent Commencement Date occurs. Each lease year thereafter shall commence on the anniversary of the Basic Rent Commencement Date and shall continue for 364 days thereafter (or in the case of a leap year, the 365th day thereafter); *provided, however*, that the last lease year shall terminate on the Expiration Date.

1. [See Exhibit B]

EXHIBIT "B"

BASIC RENT

MLK City Hall Annex Building
Basic Rent
Based on 60,000 Square Feet

Year	\$PSF	\$Monthly	\$Annual
1	\$21.40	\$107,000	\$1,284,000
2	\$21.40	\$107,000	\$1,284,000
3	\$21.40	\$107,000	\$1,284,000
4	\$21.40	\$107,000	\$1,284,000
5	\$21.40	\$107,000	\$1,284,000
6	\$25.25	\$126,250	\$1,515,000
7	\$25.88	\$129,400	\$1,552,800
8	\$26.53	\$132,650	\$1,591,800
9	\$27.19	\$135,950	\$1,631,400
10	\$27.87	\$139,350	\$1,672,200
11	\$28.57	\$142,850	\$1,714,200
12	\$29.28	\$146,400	\$1,756,800
13	\$30.01	\$150,050	\$1,800,600
14	\$30.76	\$153,800	\$1,845,600
15	\$31.53	\$157,650	\$1,891,800
16	\$32.32	\$161,600	\$1,939,200
17	\$33.13	\$165,650	\$1,987,800
18	\$33.96	\$169,800	\$2,037,600
19	\$34.81	\$174,050	\$2,088,600
20	\$35.68	\$178,400	\$2,140,800
21	\$36.57	\$182,850	\$2,194,200
22	\$37.48	\$187,400	\$2,248,800
23	\$38.42	\$192,100	\$2,305,200
24	\$39.38	\$196,900	\$2,362,800
25	\$40.37	\$201,850	\$2,422,200

Jersey City, New Jersey
MLK

Year	Principal	Interest	Annual Debt Payment	Trustee Fee	Annual Rent Payments
1	131,694	1,147,306	1,279,000	5,000	1,284,000
2	137,881	1,141,119	1,279,000	5,000	1,284,000
3	144,359	1,134,641	1,279,000	5,000	1,284,000
4	151,142	1,127,858	1,279,000	5,000	1,284,000
5	158,243	1,120,757	1,279,000	5,000	1,284,000
6	401,610	1,108,390	1,510,000	5,000	1,515,000
7	459,163	1,088,712	1,547,875	4,925	1,552,800
8	520,386	1,066,311	1,586,697	5,103	1,591,800
9	585,477	1,041,012	1,626,489	4,911	1,631,400
10	654,643	1,012,634	1,667,276	4,924	1,672,200
11	728,099	980,984	1,709,083	5,117	1,714,200
12	806,074	945,861	1,751,935	4,865	1,756,800
13	888,807	907,052	1,795,859	4,741	1,800,600
14	976,548	864,333	1,840,880	4,720	1,845,600
15	1,069,561	817,467	1,887,027	4,773	1,891,800
16	1,168,122	766,206	1,934,328	4,872	1,939,200
17	1,272,522	710,290	1,982,811	4,989	1,987,800
18	1,383,064	649,442	2,032,507	5,093	2,037,600
19	1,500,069	583,375	2,083,444	5,156	2,088,600
20	1,623,872	511,783	2,135,655	5,145	2,140,800
21	1,754,825	434,347	2,189,172	5,028	2,194,200
22	1,893,296	350,730	2,244,026	4,774	2,248,800
23	2,039,674	260,578	2,300,252	4,948	2,305,200
24	2,194,365	163,518	2,357,883	4,917	2,362,800
25	2,357,795	59,160	2,416,955	5,245	2,422,200
Totals	25,001,291	19,993,864	44,995,155	124,245	45,119,400

EXHIBIT C

Exhibit C

C1. Landlord shall obtain all financing required for the construction of the "Base Building Work," meaning the construction of a three-story building (with two-story wings) of approximately 60,000 square feet as measured to the exterior dimensions of the building (the "Project") with the following construction characteristics attached as Schedule A and as follows:

- Foundations Poured in place reinforced concrete; reinforced slab on grade.
- Structural Systems Steel Frame, Metal Deck with Concrete topping.
- Roof System Steel Frame, Metal Deck, Insulation and (TPO) Thermoplastic Polyolefin Roof.
- Exterior Framing 6" Steel Studs, Insulation, Face Brick and Cast Stone.

C2. Landlord shall, at its own cost and expense (except as provided herein), construct and perform the Base Building Work in accordance with the provisions of this Exhibit "C".

C3. When plans and specifications for the Base Building Work are complete, Landlord shall deliver to the Tenant final construction plans and specifications in conformity with Exhibit "C". Tenant shall notify Landlord within ten (10) days after receipt of the final plans and specifications ("Base Building Plans and Specifications") of Tenant's approval or disapproval of same. Tenant may only disapprove of the Base Building Plans and Specifications if the same: (i) do not conform to this Exhibit "C" or

(ii) would violate any applicable Legal Requirement (collectively, "Tenant's Permitted Objection"). In the event Tenant shall not approve such Base Building Plans and Specifications in accordance with this Section, Tenant shall notify Landlord in writing of any changes required by Tenant; and Landlord shall, within ten (10) days after receipt of Tenant's proposed changes, incorporate any such reasonable changes therein and deliver the final plans and specifications (as revised, the "Revised Base Building Plans and Specifications") to Tenant, for Tenant's approval. Tenant shall notify Landlord within five (5) days after receipt of the Revised Base Building Plans and Specifications of Tenant's approval or disapproval of same. The Base Building Plans and Specifications, as revised and approved, are referred to as the "Final Base Building Plans and Specifications." Landlord shall deliver to Tenant a Construction Schedule showing an estimated construction commencement date and a target date of Substantial Completion (defined below). The Construction Schedule shall include dates by which Tenant is required to deliver to Landlord plans and specifications (the "Plans and Specifications") for the Fit-Up Work. Landlord shall provide Tenant with any amendments to the Construction Schedule as construction progresses.

C4. Landlord shall apply for and obtain all permits, licenses and approvals required to perform the Base Building Work and the Fit-Up Work (together, the "Work") at Landlord's sole cost and expense. Landlord will, within a reasonable period of time, provide copies of all applications relating to the approvals to Tenant. Landlord shall perform the Work and cause the Improvements to be constructed in a good and workmanlike manner in accordance with the provisions of this Lease. Landlord shall

comply, and shall cause its contractors and subcontractors to comply, with all Legal Requirements applicable to the construction of the Improvements.

C5. Tenant shall submit the Plans and Specifications to Landlord, for Landlord's approval, in accordance with the Construction Schedule. Landlord shall review the Plans and Specifications for consistency with the Final Base Building Work and shall notify Tenant of its approval or disapproval within 15 days after submission. Landlord may only disapprove the Plans and Specifications if Landlord shall determine that the same: (i) do not conform to the Final Base Building Plans and Specifications; or (ii) would subject Landlord to any additional cost, expense or liability; or (iii) would violate any Legal Requirement. In the event Landlord shall not approve the Plans and Specifications, Landlord shall notify Tenant in writing of any changes required by Landlord; and Tenant shall incorporate any such reasonable changes therein and deliver the final Plans and Specifications (as revised, the "Revised Plans and Specifications") to Landlord, for Landlord's approval within ten (10) days after receipt of Landlord's proposed changes. Landlord shall notify Tenant within five (5) days after receipt of the revised Tenant's Plans of Landlord's approval or disapproval of same. Notwithstanding any other provision herein, in the event that there continues to be a dispute regarding the Plans and Specifications, the parties shall submit the Plans and Specifications to mediation and such Plans and Specifications shall be finalized within 30 days of submission to such mediator; provided however, the Landlord shall have the final ability to make reasonable adjustments to the Plans and Specifications. The Plans and Specifications, as revised and approved, are referred to as the "Final Tenant Work Plans and Specifications."

C6. Within 30 days after receipt of the Final Tenant Work Plans and Specifications, Landlord shall deliver to Tenant a budget for the performance of the Fit-Up Work in accordance with the Final Tenant Work Plans and Specifications (the "Tenant Work Budget"). If the Tenant Work Budget exceeds the amount of Tenant's Allowance, Landlord and Tenant shall promptly meet to discuss how the Final Tenant Work Plans and Specifications may be revised to bring the Tenant Work Budget within Tenant's Allowance. If Tenant desires nevertheless to proceed with the Fit-Up Work regardless of such overage, Tenant shall deliver to Landlord a notice (a) confirming Tenant's desire to proceed with the Fit-Up Work and acknowledging Tenant's responsibility to pay for the overage and (b) describing the source of funding to pay the overage.

C7. Following approval of the Final Tenant Work Plans and Specifications and the Tenant Work Budget, Tenant may make changes to the Fit-Up Work (a "Change Order"), provided that (a) if a Change Order results in an increase in the Tenant Work Budget, Landlord and Tenant shall follow the procedure described in C6 above and (b) if such Change Order results in a delay in the Date of Substantial Completion, Tenant shall confirm in writing the duration of the delay.

C8. Landlord and Tenant shall each designate one or more individuals to serve as its representatives in connection with the construction of the Improvements (a "Landlord Representative" and a "Tenant Representative"), who shall have authority to act on Landlord's and Tenant's behalf, respectively, in connection with the matters described in

this Exhibit C. Tenant shall have the right to monitor the performance of the Fit-Up Work, including participation by Tenant's Representative in construction meetings relating to the Fit-Up Work.

C9. Landlord shall require all architects, engineers, contractors and subcontractors engaged in connection with the performance of the Work to be licensed in accordance with Legal Requirements and to obtain and maintain errors and omissions insurance with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate in favor of both Landlord and Tenant.

C.10. As soon as practicable, and in no event later than 60 days after the Date of Substantial Completion, Landlord shall deliver to Tenant:

- (a) one complete set of final "as-built" plans and specifications for the completed Improvements;
- (b) an "as built" survey prepared by a registered land surveyor or engineer depicting the location of the Improvements on the Land; and
- (c) one complete set of operations and maintenance manuals for all systems, equipment, furniture and fixtures relating to the Improvements.

C11. The term "Date of Substantial Completion" means the date upon satisfaction of both of the following conditions: (a) the issuance of a certificate of occupancy by the appropriate governmental entity and (b) such completion as render the Improvements sufficient, suitable and ready for Tenant's immediate occupancy.

C12. Not later than the date Tenant has opened the Leased Premises for business, Landlord Representative and Tenant Representative together shall conduct a walk-through of the Leased Premises to compile a list of the "Punch List Items" (as hereinafter defined). Tenant shall deliver to Landlord a copy of said punch list within five (5) days after the walk-through. Landlord shall complete the Punch List Items within sixty (60) days after it receives a copy of said punch list. If Landlord fails to complete any Punch List Items within said sixty (60) day period, Tenant shall give Landlord notice thereof. If Landlord fails to complete such Punch List Items within five (5) days after Landlord receives Tenant's notice, Tenant shall have the right to complete such item(s) using its own contractors and receive reimbursement from Landlord for the reasonable costs and expenses thereof upon demand. If Landlord fails to reimburse Tenant for such costs, Tenant shall give notice to Landlord of the costs that Tenant incurred and Landlord shall reimburse Tenant within ten (10) days after the date Landlord receives such notice. The term "Punch List Items" shall mean such minor items which, when considered as a whole, do not adversely affect Tenant's ability to conduct its normal business operations in the Leased Premises.

SKANSKA

Jersey City HUB, Municipal Building – Brandywine Financial Services
Scope of Work Narrative - Interiors
Jersey City, NJ
August 8, 2014

Architectural:

- Base Scope of Core Work includes one 3 stop Hydraulic Elevator, 2500 lb capacity with drywall partition (rated shaft wall) enclosure. There is an add alternate for a second passenger elevator. Both to have standard cab finishes.
- The building entrance lobby on the first floor totals 324 sf and is enclosed by a drywall partition and includes a flooring allowance of \$30/sf and a ceiling allowance of \$8/sf furnished & installed. Interior of lobby walls to be painted with an allowance for a building directory (1) and other interior core building signage of \$5,000. ②
- Interior drywall column enclosures, interior of perimeter exterior wall drywall and ductwork shaft enclosures are assumed to be by tenant fitout costs and not included in the estimate. ③
- 3 sets of pan filled metal stairs are included – 2 that service all three floors & all enclosed in 2hr rated partitions that are painted with drywall ceilings and sealed concrete floors.
- Plastic laminate interior window sills have been included and an allowance of 20 hollow metal framed wood doors with standard door hardware at interior areas – Lobby, Stair wells, T/D rooms, MEP room, etc. ④
- Additional enclosed areas include 3 Tele/data closets – approximately 4' x 6' for each floor, enclosed with drywall partitions, sealed floors and no ceiling. The T/D rooms will each receive a 4' x 8' sheet of plywood for equipment mounting (by others). A general MEP room has been included at approximately 10' x 10' and enclosed with drywall partitions, sealed floors and no ceiling. A 5' x 10' elevator machine room has also been included with the same finishes as above.
- The building will be fully spray fireproofed with a wet sprinkler system with upright heads at future fit out areas. An add alternate has been provided if a fire pump is required if inadequate water pressure exists.

Fire Protection –

- Risers sized and installed for the complete building with tamper and flow switches
- All sprinkler heads installed at normal density. In areas where we install the ceilings, the heads will be semi recessed. In areas to be fit-out later, the heads are up turned until the fit-out is complete.

Plumbing --

- * Install 1 hot water heater for the janitors closet and future core bathrooms
- * Install a mop sink and hose Bibb for 1 janitors closet
- * Roof drains and rain water conductors are installed from the roof to ground level
- * Rough-in for drains, vents and water for future core toilet areas. Fit-out for complete Toilet Rooms are in the Tenant Fit-out.

Mechanical –

- Install all Air Conditioning on the roof
 - o First Floor - 50 Tons, Gas Fired, "DX" type
 - o Second Floor - 50 Tons, Gas Fired, "DX" type
 - o Third Floor - 20 Tons, Gas Fired, "DX" type

- ① Part of the Fit-Up Work.
- ② Costs above these amounts are within Tenant's Allowance.
- ③ Part of the Fit-Up Work.
- ④ Additional doors are part of the Fit-Up Work.

SKANSKA

Jersey City HUB, Municipal Building – Brandywine Financial Services
Scope of Work Narrative - Interiors
Jersey City, NJ
August 8, 2014

- Lobby and Stair – 5 Ton AC Unit Gas Fired, DX
- Exhaust Fan for the Elevator Machine Room – approximately 600 CFM
- Provisions for a roof mounted Exhaust Fan for the Future Toilet rooms are included
- Cabinet Unit Heaters installed at the base of the egress stairs
- Electric Baseboard heaters installed at the lobby windows
- Ductwork
 - Risers installed from the units on roof to each floor
 - 1 medium pressure duct run per floor
 - 6-Variable Air Boxes installed in the 1st & 2nd Floors for keeping the future tenant space at 50 degrees until fit-out
 - 5-VAV boxes installed on the 3rd floor for keeping the future tenant space at 50 degrees until fit-out

Electrical *

- Service
 - 1 – 1000 Ampere, 265/460 Volt main distribution panel for the building with branches to serve a mechanical panel and house panels and provisions for future tenants
 - 1 – 100 Ampere House lighting & site lighting panel
 - 1 – 30 KVA step down transformer
 - 1 – 100 Ampere 120/208 Volt panel for house receptacle loads
 - 1 – 200 ampere mechanical panel on the 3rd floor to serve the A/C units on the roof
- Lighting
 - Lighting for the lobby, t-5 fluorescent or CLF fluorescent down lights
 - Lighting on each landing of the stairs
 - Utility strip lights in the janitors closet and electrical room
 - Local switches where required
- Power
 - GFI's in the janitors closet
 - Duplex receptacles in the lobby
 - 120 volt connections for the telephone board, fire alarm and security panels
- Communications
 - Sleeves through the 2nd & 3rd floors for future extension of tenant telephone wiring
 - Provisions for wall telephones in the lobby, main electrical room & janitor closet (cable, jack & phone by others)
- Fire Alarm
 - Pull stations at exit doors
 - Horn strobes in lobby and stairs
 - Strobe provisions for the future bathrooms
 - Duct smoke detectors on roof with the A/C units
 - Connections to the sprinkler tamper and flow switches
 - Smoke detectors, heat detectors and provisions for elevator recall for the elevator
- Security & CCTV

SKANSKA

Jersey City HUB, Municipal Building – Brandywine Financial Services
Scope of Work Narrative - Interiors
Jersey City, NJ
August 8, 2014

- Provisions for security to be installed in the doors in the future
- 4 CCTV cameras with remote reporting via internet on the building perimeter
- Provisions for local main security & CCTV panels to be installed in the future

Ordinance of the City of Jersey City, N.J.



ORDINANCE NO. Ord. 14.136
 TITLE: 3.G OCT 8 2014 4.A

Ordinance authorizing the City of Jersey City to enter into a lease/purchase agreement as lessee with Jersey City Municipal, LLC, as lessor for office space to be constructed at the Martin Luther King Drive HUB on a portion of Lot 17, Block 21201 at the intersection of Kearney Avenue and Martin Luther King Drive.

RECORD OF COUNCIL VOTE ON INTRODUCTION											
OCT 08 2014 5-2											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI		ABSENT		YUN		✓		RIVERA		✓	
RAMCHAL		ABSENT		OSBORNE		✓		WATTERMAN		✓	
BOGGIANO			✓	COLEMAN		✓		LAVARRO, PRES.		✓	

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING											
Councilperson _____ moved, seconded by Councilperson _____ to close P.H.											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMAN			
BOGGIANO				COLEMAN				LAVARRO, PRES.			

✓ Indicates Vote

N.V.--Not Voting (Abstain)

SPEAKERS:

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson _____ moved to amend* Ordinance, seconded by Councilperson _____ & adopted											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMAN			
BOGGIANO				COLEMAN				LAVARRO, PRES.			

RECORD OF FINAL COUNCIL VOTE											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMAN			
BOGGIANO				COLEMAN				LAVARRO, PRES.			

✓ Indicates Vote

N.V.--Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on OCT 08 2014

Adopted on second and final reading after hearing on _____

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on

APPROVED:

 Robert Byrne, City Clerk

 Rolando R. Lavarro, Jr., Council President

Date _____

*Amendment(s):

APPROVED:

 Steven M. Fulop, Mayor

Date _____

Date to Mayor _____