

DEED OF LEASE

between

ECONOMIC DEVELOPMENT AUTHORITY OF FALLS CHURCH, a body politic and
corporate and political subdivision of the Commonwealth of Virginia, as

Landlord

and

Tenant, specified on Exhibit A attached hereto

for the

Premises, specified on Exhibit A attached hereto

_____, 2022

*Note that for purpose of finalizing the form of ground lease, and in light of a form of ground lease being required for the developer separately from the form of ground lease for the Senior Living, Office Pad & B-3 Garage Ground Leases (the "TC Leases"), we have bracketed and italicized certain provisions (and footnoted the same) to reflect these differences.

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LIST OF EXHIBITS

- Exhibit A – Key Terms
- Exhibit A-1 – Base Rent
- Exhibit A-2 – Supplemental Rent
- Exhibit B-1 – Legal Description of Project Land
- Exhibit B-2 – Depiction of Project Land
- Exhibit C – Legal Description of the Project
- Exhibit D – Schedule of PILOT Payments
- Exhibit E – Title Matters

DEED OF LEASE

This DEED OF LEASE (this "Lease") made as of ___ the day of _____, 2022 (the "Effective Date") between ECONOMIC DEVELOPMENT AUTHORITY OF FALLS CHURCH, a body politic and corporate and political subdivision of the Commonwealth of Virginia, in its proprietary capacity as the owner of certain land in Falls Church, Virginia and not in its governmental or regulatory capacity ("Landlord"), having an office at 300 Park Avenue, Falls Church, Virginia 22046, and the tenant identified on Exhibit A attached hereto ("Tenant"), having an office at the Tenant's Address identified on Exhibit A attached hereto.

RECITALS

A. Landlord, as successor-in-interest to the city of Falls Church, Virginia, a city incorporated in the Commonwealth of Virginia, is the legal owner of the Project Land (as defined herein).

B. Landlord and FCGP Development LLC, as predecessor-in-interest to Tenant, entered into that certain Comprehensive Agreement, dated June 12, 2019, as amended (the "Comprehensive Agreement") regarding the development, construction, use, and operation of an approximately 9.45 acre tract of land with an address of 7124 Leesburg Pike, Fall Church, Virginia 22046 and described on Exhibit C attached hereto (the "Project Land") for the mixed-used project described in the Comprehensive Agreement (the "Project").

C. Immediately prior to the date of this Lease, certain portions of the Project were subjected to a commercial condominium regime evidenced by a certain Commercial Condominium Declaration identified on Exhibit A attached hereto (the "Commercial Condominium").

D. Tenant wishes to enter into a lease of, and develop, redevelop, use, and operate, that certain portion of the Project (as defined below) commonly known as the Condo Lot identified on Exhibit A attached hereto, the legal description of which is set forth on Exhibit B-1 attached hereto, and is further depicted on Exhibit B-2 attached hereto (as so described and identified on such Exhibit B-1 and Exhibit B-2 (the "Premises").

E. Landlord desires to lease to Tenant, and Tenant desires to Lease from Landlord, the Premises (defined below), in accordance with the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE 1 DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings:

“Abandoned” shall mean: (a) within one hundred twenty (120) days after a casualty on the Premises, the failure to diligently prosecute all work necessary to protect and secure the occupants of the Premises and the public from and against injury to persons and property, including, if necessary, to commence demolition of any Improvements destroyed as the result of a casualty and clear the debris on the Premises; and (b) the failure to Restore within five (5) years after a casualty or to maintain or operate the Premises for a period of five (5) years.

“Additional Costs” shall consist of all other sums of money besides Base Rent, including without limitation, payments to Depository of Impositions (if and as applicable) and all costs, expenses and charges of every kind and nature (including, without limitation, all public and private utilities and services and any easement or agreement maintained for the benefit of the Premises) relating to the Premises or required under this Lease as the same shall become due from and be payable by Tenant to Landlord hereunder and which shall be paid on or before the respective due dates of such sums.

“Affiliate” shall mean a Person that Controls, is Controlled by, or is under common Control with another Person. In the case of an individual, an Affiliate means and includes any individual who is a member of the immediate family of a Person, including without limitation a spouse, a lineal descendant or ancestor of any of the foregoing, or a trust for the benefit of any of the foregoing.

“Applicable Laws” shall mean any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus affecting or relating to Tenant or the Premises.

“Appraisal” shall mean an appraisal for the determination of Market Value, prepared by an Appraiser in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation (or the comparable standards of any successor organization) then in effect, utilizing customary valuation methods for properties similar to the Premises.

“Appraiser” shall mean a reputable Member of the Appraisal Institute (MAI) (or any successor organization) with at least ten (10) years of experience appraising properties similar to the Premises in the Northern Virginia/Greater Washington, DC Metropolitan Area which is not an Affiliate of any party to this Lease.

“Approved GC Manager” means a general contractor or project manager that has constructed or managed the construction of improvements similar to the Building (including, without limitation, uses that are substantially similar to the intended use of the Building under the Zoning Approvals), aggregating no less than 500,000 square feet in the previous five (5) years and has not commenced litigation against Landlord during the previous ten (10) year period.

[“Approved Senior Living Developer” shall mean Trammell Crow Company or any Affiliate thereof.]

[“Approved Senior Living Operator”] shall mean Sunrise Senior Living, Brightview Senior Living, Solera Senior Living, Ingleside, SRG – Senior Resource Group, or any Person reasonably approved by Landlord.

“Approved Subleases” shall have the meaning provided in Section 10.06(a).

“Approved Subtenants” shall have the meaning provided in Section 10.06(a).

“Bankruptcy Code” shall mean Title 11 of the United States Code.

“Bankruptcy Default” shall have the meaning provided in Section 23.01(g).

“Base Rent” shall have the meaning provided in Exhibit A-1.

“Beneficial Interest” shall mean (A) a general or limited partnership interests of a Person, if such Person is a partnership; or (B) a membership interest of a Person, if such Person is a limited liability company; or (C) issued or outstanding capital stock of a Person, if such Person is a corporation.

“Building” shall mean the building hereafter erected on the Project Land in which the Premises constitutes a material portion of such building.¹

“Business Days” shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the Commonwealth of Virginia or the federal government.

“Certificate of Occupancy” shall mean a certificate of occupancy issued by the City under the applicable provisions of the *Code of the City of Falls Church, Virginia*.

“City” or “City Council” shall mean the city of Falls Church, Virginia or its city council, acting on behalf of the City, in its governmental or regulatory capacity.

“City Manager” shall mean the City Manager of Falls Church, Virginia, or if such officer or office title ceases to exist, any subsequent officer of the City whose duties primarily include those of the City Manager as they existed on the Effective Date.

“Commencement of Construction” shall mean the commencement of on-site construction of a Building or other Construction Work (or if for Restoration or capital improvements, as determined by Tenant and approved by Landlord, which approval shall not be withheld so long as such Construction Work complies with the Project Covenants and the terms of this Lease (or otherwise in Landlord’s discretion, which will not be unreasonably withheld, conditioned or delayed)), as applicable, including any excavation or pile driving but not including test borings, test pilings, surveys and similar pre-construction activities.

¹ NTD: Note that additional of “in which the Premises constitutes a material portion of such building” was added to make clear that only one building was applicable because the “Project Land” is inclusive of the entire 9+ acre site.

“Commercial Condominium” shall have the meaning set forth in the Recitals of this Lease.

“Commercial Condominium Declaration of Covenants, Conditions and Restrictions” shall mean that certain Commercial Condominium Declaration of Covenants, Conditions, Restrictions and Easements identified on Exhibit A attached hereto.

“Comprehensive Agreement” shall have the meaning provided in the Recitals.

“Construction Agreements” shall mean any direct agreements between Tenant and a third party for Construction Work, Restoration, capital improvements, rehabilitation, alteration, repair or demolition performed pursuant to this Lease.

“Construction Covenant” shall mean that certain Construction Covenant identified on Exhibit A attached hereto.

“Construction Work” shall mean the Initial Construction Work, or any other construction of Improvements, Restoration, capital improvements, rehabilitation, renovation, alteration, repairs, replacements or demolition work performed by or on behalf of Tenant under this Lease.

“Consumer Price Index” shall mean the Consumer Price Index for all Urban Consumers (1982-1984=100), Washington-Arlington-Alexandria, DC-VA-MD-WV, all Items, published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index published by the United States Department of Labor, Bureau of Labor Statistics, appropriately adjusted; provided, that if there shall be no successor index, a substitute index or the appropriate adjustment of such successor index, as the case may be, shall be determined by Landlord, in its reasonable discretion.

“Control/Controlled/Controlling” shall mean, as applicable, (i) (a) ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation, or (b) ownership of a controlling interest of an entity which is not a corporation, or (ii) the possession of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute or according to the provisions of a contract. If (i) or (ii) are correct, or not both not violated, then a change of Control shall not have occurred.

“Deficiency” shall have the meaning provided in Section 23.04(c).

“Depository” shall mean a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, to serve as Depository pursuant to this Lease. In the event Tenant fails to designate a Depository within ten (10) Business Days after request of Landlord, Landlord shall have the right to designate such Depository. Notwithstanding the foregoing, in the event a Mortgage exists on the Lease, any Institutional Lender designated by the Mortgagee (including, without limitation, the Mortgagee) as a Depository shall be deemed approved by Landlord and Tenant hereunder.

“Due Date” shall mean, with respect to an Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof.

“Easement” shall have the meaning provided in Section 24.01.

“EDA” shall have the meaning provided in Section 4.09.

“EDA Incentives” shall have the meaning provided in Section 4.09.

“Effective Date” shall mean the meaning set forth in the Preamble.

“Environmental Activity” shall have the meaning provided in Section 14.03.

“Event of Default” shall have the meaning provided in Section 23.01.

“Expiration Date” shall mean (i) the Fixed Expiration Date or (ii) such earlier date upon which the term of this Lease shall expressly terminate as hereinafter provided.

“Final Completion” shall mean all of the following have occurred: (i) Substantial Completion of the Initial Construction Work has occurred, (ii) all “punch-list” items prepared in connection with satisfying the conditions to Substantial Completion for such Initial Construction Work have been completed or satisfied, (iii) (A) there are no existing mechanics’, laborers’ or materialmens’ liens or similar encumbrances related to the Initial Construction Work or (B) any existing mechanics’, laborers’ or materialmens’ liens or similar encumbrances on the Premises are being contested by Tenant in accordance with the provisions of Section 16.02 of the Lease, and (iv) the applicable statutory lien periods provided in Section 43-4 of the Code of Virginia have expired, or final lien waivers have been delivered.

“Fixed Expiration Date” shall have the meaning set forth on Exhibit A attached hereto.

“Fixtures” shall mean all fixtures incorporated in the Improvements, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, antennae, computers and sensors but excluding all personal property, equipment or removable fixtures which belong or are leased to Approved Subtenants or Tenant.

“Force Majeure” means an act or event, including, as applicable, an act of God, act of the public enemy, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism, fire, unavoidable casualty, epidemic or pandemic, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisitions and laws or orders of government or civil or military authorities, inability to procure or a general shortage or scarcity of labor, equipment, facilities, materials, or supplies in the open market due to enemy action or civil commotion (but not due to (A) costs of such labor, equipment, facilities, materials or supplies, (B) Tenant’s insolvency or financial condition or (C) the availability or applicability of insurance proceeds or condemnation awards), or any other cause, whether similar or dissimilar to the foregoing that is not within the reasonable control of Tenant, so long as, in

each case, (i) such act or event is not due to the fault or negligence of Tenant (or Landlord in the event Landlord's claim is based on a Force Majeure event), (ii) such act or event is not reasonably foreseeable and avoidable by Tenant (or Landlord in the event Landlord's claim is based on a Force Majeure event), and (iii) such act or event results in a delay in performance by Tenant or Landlord and is a direct cause of such delay. In no event shall Force Majeure be the basis for delaying any monetary obligations under this Lease.

"Governmental Authority(ies)" shall mean the United States of America, the Commonwealth of Virginia, the City, and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having lawful jurisdiction over the Premises or any portion thereof.

"Guarantor(s)" shall mean the guarantor(s) under the Guaranty(ies).

"Guaranty(ies)" shall have the meaning set forth on Exhibit A attached hereto.

"Hazardous Materials" shall have the meaning provided in Section 14.03.

"Imposition(s)" shall have the meaning provided in Section 4.01.

"Impositions Account" shall have the meaning provided in Section 5.01(a).

"Improvements" shall mean the Building, Fixtures, capital improvements, structures other improvements (whether permanent or temporary), and appurtenances of every kind and description (including footings and foundations) hereafter erected, constructed, or placed on the Premises, including, without limitation, and any and all alterations, replacements and Restoration thereof, additions thereto and substitutions therefor.

"Indemnitees" shall have the meaning provided in Section 18.01.

"Initial Construction Work" shall mean the development and construction of the initial Improvements to be constructed on the Premises, as identified in the Plans and Specifications therefor.

"Institutional Lender" means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a real estate investment trust, a religious, educational or eleemosynary institution, a governmental agency, body or entity, an employee, benefit, pension or retirement plan or fund, a commercial credit corporation, a commercial bank or trust company acting as trustee or fiduciary of various pension funds or other tax-exempt funds, or other form of entity that, in its ordinary course of business, is involved in the issuance or holding of mortgage loans secured by commercial developments, or of collateralized mortgage obligations or commercial mortgage backed securities, a corporation or other entity which is owned wholly by any other Institutional Lender of any such commercial bank or trust company acting as such trustee, or similar investment entity or other recognized financial institution that makes commercial loans for projects similar to the Improvements, or any combination of the foregoing; provided, that each of the above entities, or any combination of such entities, shall qualify as an Institutional Lender

within the provisions of this Section only if such entity shall: (i) be subject to the jurisdiction of the courts of the Commonwealth of Virginia (either state or federal) in any actions relating to the Premises or this Lease, (ii) each such entity shall have assets of at least Two Billion Dollars (\$2,000,000,000) (as such amount shall be adjusted on the fifth (5th) anniversary of the Effective Date and on each fifth (5th) anniversary of the Effective Date thereafter occurring during the Term, by the percent increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Effective Date occurs).

“Involuntary Rate” shall mean the Prime Rate (hereinafter defined) plus six percent (6%) per annum but, in no event in excess of the maximum permissible interest rate in effect in the Commonwealth of Virginia.

“Land Records” shall mean land records of the Circuit Court of Arlington County, Virginia.

“Landlord” shall have the meaning set forth in the Preamble.

“Landlord’s Termination Rights” shall have the meaning provided in Section 10.07(f).

“Lease” shall mean this Deed of Lease, including all exhibits, schedules, and attachments hereto, and as may further be amended, modified and supplemented from time to time.

“Lease Year” shall mean the twelve month period beginning on the Effective Date and each succeeding twelve month period during the Term.

“Market Value” shall mean the price, as applicable, that Landlord’s fee interest in the Project Land or Tenant’s leasehold interest in the Project Land and its fee interest in the Improvements will bring when offered for sale by a seller who desires but is not obligated to sell and bought by a buyer under no necessity of purchasing the applicable interest (as described herein) in the Premises at the time of the Appraisal, i.e., a fair market value.

“Mortgage” means any deed of trust, indenture, mortgage, or similar instrument which is commonly given to secure advances on real estate and leasehold estates under the laws of the Commonwealth of Virginia, provided such deed of trust, indenture, mortgage, or similar instrument is held by a Mortgagee. A deed of trust, indenture, mortgage or similar interest which is not held by a Mortgagee is not a “Mortgage” as such term is used in this Lease.

“Mortgagee” means the holder of a Mortgage on Tenant’s interest in this Lease and the leasehold estate created thereby and the Improvements, provided however that such holder: (a) is an Institutional Lender; (b) has been approved by Landlord, in its reasonable discretion, prior to the entering into of such Mortgage; or (c) has assumed, purchased or otherwise acquired a Mortgage initially entered into by a “Mortgagee” under clause (a) or (b) herein, on or after Completion of Construction with respect to the property encumbered by such Mortgage. No holder of any deed of trust, indenture, mortgage, or similar instrument which constitutes a lien on Tenant’s interest in all or any portion of the Premises will have the rights of a “Mortgagee” in this Lease unless it meets the definition set forth in the preceding sentence.

“New Lease” shall have the meaning provided in Section 10.08.

“New Tenant” shall have the meaning provided in Section 10.08(a).

“Non-Monetary Default” shall have the meaning provided in Section 23.01(b).

“Owner” shall have the meaning provided in Section 11.04.

“Permitted Use” shall mean all lawful purposes, subject to the Prohibited Uses.

“Person” shall mean an individual, corporation, partnership, joint venture, estate, trust, limited liability company or unincorporated association.

“Plans and Specifications” shall mean the completed final drawings and plans and specifications prepared by Tenant’s Architect that shall conform to any all required approvals of Governmental Authorities (including without limitation, Zoning Approvals), as the same may be modified from time to time.

“Premises” shall have the meaning set forth in the Recitals and includes the Improvements constructed thereon.

“Prime Rate” shall mean the prime or base rate announced as such from time to time by Bank of America, N.A., or its successors, at its principal office. In the event Bank of America, N.A. or its successor is no longer in business or no longer publishes a Prime Rate, Landlord, in its reasonable discretion, shall choose another nationally chartered banking institution for the purpose of determining the Prime Rate. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 360 day year with twelve months of 30 days each.

“Prohibited Uses” shall mean (a) a massage parlor (excluding massage services provided at day spas, salons or other similar reputable businesses), (b) a store providing off-track betting or gambling (excluding lottery, lotto, Keno or similar type of gaming), (c) a store whose primary purpose is the sale, rental or display of pornographic materials, (d) a store whose primary purpose is for the sale or display of firearms or other weapons, (e) a strip club, or (f) any other use prohibited under the Zoning Approvals.

“Project” shall have the meaning set forth in the Recitals of this Lease.

“Project Covenants” shall mean, collectively: (i) the Construction Covenant, (ii) Commercial Condominium Declaration of Covenants, Conditions and Restrictions, (iii) the Easement, and (iv) such other easements, declarations, covenants or other instruments in the Land Records related to the Project and to which the Premises is bound.

“Project Land” shall have the meaning set forth in the Recitals.

“Replacement Value” shall be deemed to be an amount equal to the costs of replacing any Building(s) or other the Improvements on the Premises (as applicable under the

circumstances) with new Improvements that contain substantially the same quality and character (and number of units, if such Building is residential in nature). Within ten (10) days of Landlord's request after Substantial Completion of any Improvements on the Premises that require a Certificate of Occupancy, Tenant shall deliver an estimate of or statement with respect to the Replacement Value prepared by the insurer(s) of the Premises or another disinterested insurance provider. Sixty (60) days prior to the tenth (10th) anniversary of the date of Substantial Completion and each subsequent tenth (10th) anniversary thereafter for the Term of this Lease, upon Landlord request, Tenant shall provide an estimate of or statement with respect to the Replacement Value prepared by the insurer(s) of the Premises or another disinterested insurance provider. Such estimate shall determine the current cost (including all hard and soft costs) of rebuilding the entire Premises, without regard to depreciation, which amount shall then be deemed to be the Replacement Value. The amount of Replacement Value shall be adjusted on each anniversary of the initial determination of Replacement Value and of each subsequent decennial redetermination of Replacement Value throughout the Term by a percentage equal to the percentage change in the appropriate index in Walker's Building Estimators Reference Book by the Frank R. Walker Company (or such other published index of construction costs which shall be selected from time to time by Landlord, *provided that* such index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the Building/Improvement/Premises) in effect on such anniversary date as compared to the same index in effect on the date of Substantial Completion or prior redetermination, whichever is latest.

“Rent” shall have the meaning provided in Section 3.04.

“Respective Allocations” shall have the meaning provided in Section 9.04(a).

“Restoration” shall have the meaning provided in Section 8.01.

“Restoration Funds” shall have the meaning provided in Section 8.05(a).

“Restore” shall have the meaning provided in Section 8.01.

“Right of First Offer” or “ROFO” shall have the meaning provided in Section 19.01.

“ROFO Premises” shall have the meaning provided in Section 19.01.

“ROFO Price” shall have the meaning provided in Section 19.01.

“ROFO Tenant Notice” shall have the meaning provided in Section 19.01.

“ROFO Terms” shall have the meaning provided in Section 19.02.

“Sale/Sell” shall have the meaning provided in Section 19.03.

“Sublease NDA” shall have the meaning provided in Section 10.06(g).

“Substantially All of the Premises” shall have the meaning provided in Section 9.01(b).

“Substantial Completion” or “Substantially Complete(d)” shall mean that the Improvements, or applicable component of the foregoing has been completed in substantial accordance with the Plans and Specifications and therefore a Certificate of Occupancy has been issued for such component, subject only to (i) minor matters that do not materially adversely affect the use of the Improvements or applicable component of the foregoing for their intended purpose and which have been identified by Tenant, with input from Tenant’s Architect, on a “punchlist,” and (ii) items of exterior landscaping that cannot then be completed pending appropriate seasonal opportunity and which have been identified by Tenant on the “punchlist”, which shall be determined separately for each Improvement located on the Premises, provided that areas that are intended to be subleased to an Approved Subtenant and the (sub)tenant improvements for space under its Approved Sublease have not been completed, Substantial Completion shall be deemed to have occurred if a core and shell (or equivalent permit) has been issued for such space.

“Supplemental Rent” shall have the meaning provided in Exhibit A-2.

“Taxes” shall mean federal, state and local real estate taxes, personal property taxes, or similar “ad valorem” taxes, occupancy or rent taxes or other assessments applicable to the Premises or Tenant’s ownership interests therein. The term “Taxes” does not include any federal, state, or local income taxes, sales or use taxes, gross receipts taxes, or other taxes or charges imposed upon Tenant as an entity or its partners or members, unless (and only to the extent that) any of the foregoing taxes in this sentence are secured or can be secured by a lien on the Premises when imposed.

“Tenant” shall have the meaning set forth in Exhibit A.

“Tenant’s Architect” shall mean a registered architect as selected by Tenant from time to time as the primary design professional in respect of the particular item of Construction Work or other action for which the services of an architect is required under any applicable provision of this Lease. It is acknowledged that in certain types of Construction Work or valuation of Improvements, the primary design professional for the item in question may be a licensed engineer rather than a registered architect and in any such cases, references to “Tenant’s Architect” herein shall be deemed to refer to such licensed professional engineer as selected by Tenant and approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed) as the primary design professional for the matter in question.

“Term” shall mean the term of this Lease as set forth in Article 2 hereof.

“Third Party Purchaser” shall have the meaning provided in Section 19.01.

“Title Matters” shall mean those matters affecting title to the Project Land, as of the Effective Date, as set forth in Exhibit E hereto.

“Transfer” shall have the meaning provided in Section 10.01(a).

“Voluntary Concessions” shall mean those voluntary agreements by Tenant contained in that certain document entitled, “*Voluntary Concessions, Community Benefits, Terms and*

Conditions,” that was approved by the City Council as part of, and a material condition to, the Zoning Approvals.

“Zoning Approvals” shall mean the “SEE Approval” (as defined and used in the Code of the City of Falls Church, Virginia), “SESP Approval” (as defined and used in the *Code of the City of Falls Church, Virginia*), the Voluntary Concessions and any and all other approvals of Governmental Authorities required to permit the development of the Premises as set forth in the SEE Approval and SESP Approval and in accordance with the Plans and Specifications.

ARTICLE 2 PREMISES AND TERM OF LEASE

Section 2.01. Premises.

Landlord does hereby demise and lease to Tenant, and Tenant does hereby lease, hire and take from Landlord, the Premises, subject to the Title Matters, TOGETHER WITH:

(a) all of the appurtenances, rights, privileges and easements, including without limitation, all development rights, in anyway now or hereafter appertaining thereto during the Term;

(b) the right of surface and subsurface support of the Building and other Improvements to be constructed or erected on, above and below the said Premises;

(c) the right to construct Improvements utilizing all development rights appurtenant to the Premises approved in the Zoning Approvals; and

(d) subject to Landlord’s right to consent, if any, the right to grant and record easements, subdivisions (including air rights subdivisions), condominium documents and other documents and instruments in connection with or relating to the development, construction, use, operation, enjoyment or management of the Premises.

Section 2.02. Term; Extensions.

The term of this Lease is ninety-nine (99) years, commencing on the Effective Date and expiring on the Fixed Expiration Date, subject to earlier termination in accordance with the terms set forth in this Lease (the “Term”). Tenant shall have the ongoing right to request an extension of the term of this Lease, at market terms and conditions, and Landlord may, in its discretion, negotiate an extension of the Lease, if desirable; provided however, for avoidance of doubt, nothing contained in this Section 2.02 will be considered an “option to exercise” or otherwise require Tenant or Landlord to agree to an extension.

Section 2.03. Use.

Tenant agrees that the Premises shall be used solely for a Permitted Use during the Term.

ARTICLE 3
RENT

Section 3.01. Base Rent and Supplemental Rent.

(a) Tenant shall pay to Landlord on or before the dates set forth on Exhibit A-1 attached hereto, the Base Rent identified therein.

(b) Tenant shall pay to Landlord on or before the first calendar day of December of each calendar year, the Supplemental Rent for the succeeding calendar year (i.e., December first through November thirtieth) set forth on Exhibit A-2 attached hereto.

Section 3.02. Proration of Impositions and Additional Costs.

Any Impositions or other Additional Costs that are due for any partial month, year or other applicable period in the calendar year in which the Effective Date occurs or the Expiration Date occurs shall be appropriately prorated.

Section 3.03. Net Lease.

It is the purpose and intention of Landlord and Tenant, and the parties hereto agree, that Base Rent shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever. In addition to the foregoing, all Additional Costs, expenses and other charges relating to the Premises of every kind and nature shall be paid by directly by Tenant, so that this Lease shall yield net to Landlord the Base Rent, except as otherwise specifically provided in this Agreement.

Section 3.04. Rent – Defined.

All of the amounts payable by Tenant to or for the benefit of Landlord pursuant to this Lease, including, without limitation, Base Rent, Supplemental Rent, Additional Costs, Impositions (including without limitations, any amounts to be paid or deposited into Impositions Accounts, if any), and all other sums, costs, and expenses shall constitute rent (“Rent”) under this Lease for the purpose of Tenant’s failure to pay any amounts due under this Lease after the expiration of any applicable notice and cure periods, and Landlord (in addition to all other rights and remedies) shall have all of the rights and remedies provided for herein and by law in the case of non-payment of rent. All Base Rent, Supplemental Rent, Additional Costs and Impositions shall be payable without offset or deduction (except as expressly provided in this Lease) at Landlord’s address set forth in this Lease or as Landlord may from time to time direct.

Section 3.05. Reimbursement of Expenses.

Tenant shall reimburse Landlord upon demand for all: (a) Additional Costs paid directly by Landlord in accordance with the terms of this Lease; and (b) expenses, including without limitation reasonable attorneys’ fees and disbursements, paid or incurred by Landlord in connection with any Event of Default, or arising out of enforcement of any indemnity or “hold harmless” agreement given or made by Tenant to Landlord in this Lease, or otherwise incurred by Landlord in connection with the successful enforcement of its rights and Tenant’s obligations

under this Lease. Upon Tenant's request, Landlord shall provide reasonable documentation of any Additional Costs paid by Landlord.

ARTICLE 4 IMPOSITIONS

Section 4.01. Impositions.

Tenant shall pay, as hereinafter provided, all of the following items (each, an "Imposition," and collectively, "Impositions") imposed by any Governmental Authority that are applicable to the Premises or the operation thereof: (a) Taxes; (b) water, water meter and sewer rents, rates and charges; (c) excises; (d) levies; (e) license and permit fees; (f) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, but only to the extent such service charges are of general applicability to all similarly situated property; (g) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto; and (h) any and all other governmental levies, fees, rents, proffers, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which with respect to any of the foregoing at any time during the Term are (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises, or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, or (ii) any appurtenances of the Premises, or (iii) any personal property (except personal property which is not owned by or leased to Tenant), Fixtures or other facility used in the operation thereof, or (vi) any amounts due to Landlord under this Lease, including Base Rent, Supplemental Rent, and Additional Costs (or any portion of either) payable by Tenant hereunder, each such Imposition, or installment thereof, during the Term to be paid not later than the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, relating to periods for which such installment is due, provided however, that Tenant shall have notified Landlord of its election to pay in installments prior to the Due Date of such Imposition.

Section 4.02. Receipts.

Tenant, from time to time upon the reasonable request of Landlord, shall promptly furnish to Landlord official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of Impositions.

Section 4.03. Landlord's Taxes.

Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit, capital or transfer gains taxes of Landlord

(if any), or any corporate franchise tax imposed upon Landlord (if any) or any transfer or gains tax imposed on Landlord (if any).

Section 4.04. Impositions Beyond Term.

Any Imposition relating to a period, a part of which is included within the Term and a part of which is included in a period of time before the Effective Date or after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Effective Date or the Expiration Date, as the case may be, so that Tenant shall pay the portion of such Imposition attributable to the part of such fiscal period included in the period of time after the Effective Date or before the Expiration Date.

Section 4.05. Tenant's Contest.

Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition shall be postponed if, and only as long as:

(a) (i) neither the Premises nor any part thereof, nor any interest of Landlord therein, nor any income of Landlord therefrom (except to the extent covered by security deposited in accordance with this Section 4.05) nor any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and Landlord by reason thereof be subject to any civil or criminal liability; and

(ii) Tenant shall have deposited with Depository, cash or other security reasonably satisfactory to Landlord in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may be assessed against or become a charge on the Premises or any part thereof in such proceedings; *provided however*, if a Mortgagee requires Tenant to deposit cash or other security reasonably acceptable to a Mortgagee in connection with any such contest, then Mortgagee's requirements shall take precedent over those provided in this Section 4.05(a) and shall satisfy Tenant's obligations under this Section 4.05(a), provided further, Tenant shall send notice to Landlord of such requirement with evidence reasonably satisfactory to Landlord of Tenant's compliance with such requirement.

(b) Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including attorney's fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depository shall return, with interest, if any, any amount deposited with it as aforesaid, provided however, that Depository, at Landlord's request, shall disburse said monies on deposit with it directly to the Governmental Authority to whom such Imposition is payable and any remaining monies, with interest, if any,

shall be returned promptly to Tenant. If, at any time during the continuance of such proceedings, Landlord shall, in its reasonable opinion, deem insufficient the amount deposited as aforesaid, Tenant, within fifteen (15) days after demand, shall make an additional deposit of such additional sums or other acceptable security as Landlord may reasonably request, and upon failure of Tenant to do so, the amount theretofore deposited may be applied at the request of Landlord to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including attorney's fees and disbursements) or other liability accruing in any such proceedings, and the balance, if any, with any interest earned thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord within ten (10) days after demand.

Section 4.06. Contest Not to Postpone Tenant's Obligation.

Tenant shall have the right to seek a reduction in the valuation of the Premises assessed for Taxes or other Impositions and to prosecute any action or proceeding in connection therewith, *provided that* no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05 hereof.

Section 4.07. Landlord Cooperation in Proceedings.

Landlord shall not be required to join in any proceedings referred to in Sections 4.05 or 4.06 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and cooperate in such proceedings or permit the same to be brought in its name; *provided that*, in connection with such cooperation, Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. In the event Tenant shall institute a proceeding referred to in Sections 4.05 or Section 4.06 hereof and no law, rule or regulation in effect at the time requires that such proceeding be brought by or in the name of Landlord, Landlord, nevertheless, shall, at Tenant's cost and subject to the reimbursement provisions hereinabove set forth, cooperate with Tenant in such proceeding. To the extent any such proceeding results in a refund, credit, or other recompense of Impositions paid by Tenant, Tenant shall be entitled to the full benefit thereof and Landlord shall assign any such refund, credit, or other recompense to Tenant or as Tenant may direct, except that Landlord shall be entitled to any refund, credit, or other recompense in connection with amounts paid by Landlord for any Impositions or as reimbursement for any amounts paid by Landlord in connection with such proceedings, if any.

Section 4.08. Tax Bills.

Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that the Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

Section 4.09. Economic Development Agreement.

Notwithstanding anything set forth in this Article 4 to the contrary, the City of Falls Church, Virginia, as predecessor-in-interest to Landlord, and FCGP Development LLC, as predecessor-in-interest to Tenant, are parties to a certain Economic Development Agreement dated on or about the date of this Lease (the “EDA”), whereby Tenant and other ground tenants of the Project (or a certain fee owner of the Project) shall receive certain economic incentives, which may include payments or reimbursements, for leasing, developing, constructing and operating such Persons respective premises in the Project, for a specified period of time as further set forth therein (the “EDA Incentives”). Pursuant to the EDA, Tenant’s allocation of such EDA Incentives are set forth in Exhibit D. The EDA Incentives set forth on Exhibit D (for each period set forth on Exhibit D) shall, notwithstanding anything to the contrary, automatically be credited to, and deducted from, Tenant’s obligation to pay Base Rent, Supplemental Rent or other Rent to Landlord, and further to the extent that any such EDA Incentives set forth on Exhibit D exceeds the amount of Base Rent, Supplemental Rent or additional rent payable by Tenant to Landlord (and Landlord does not otherwise pay or reimburse such excess amount to Tenant), such excess amount shall accrue (without interest) and be credited to Tenant’s next payment of Base Rent, Supplemental Rent or additional rent to Landlord. ***[If the EDA fails to pay or reimburse Tenant for any amounts payable to Tenant under the terms of the EDA, Tenant shall, in addition to any other rights or remedies of Tenant under the EDA, have the right to offset such unpaid or unreimbursed amount against all payments of Base Rent, Supplemental Rent or other Rent to Landlord, and further to extent any such Base Rent, Supplemental Rent or other Rent to Landlord exceeds the amount of Base Rent, Supplemental Rent or other Rent to Landlord, such excess amount shall accrue (without interest) and be credited to Tenant’s next payment of Base Rent, Supplemental Rent or additional rent to Landlord].***² The EDA Incentives allocated to Tenant may be further adjusted from time to time pursuant to the EDA.

ARTICLE 5
DEPOSITS FOR IMPOSITIONS

Section 5.01. Impositions Subject to Deposit.

Landlord, by written notice, may at any time during the pendency of an Event of Default hereunder:

(a) require Tenant to deposit each month into an account to be held with the Depository (the “Impositions Account”) an amount sufficient to pay the annual Taxes and, subject to Section 5.01(b), any Impositions required to be paid by Tenant hereunder at least thirty (30) days prior to the Due Date for such Impositions. Except as set forth in Section 5.05 below, Landlord agrees that the amounts so deposited with the Depository shall be used to pay the Impositions for which such amounts were deposited. The Impositions Account may be held by Depository as a single bank account; and

² Applicable to TC Leases only in lieu of prior sentence.

(b) require that Tenant provide to Landlord evidence of payment of any Impositions that Landlord allows Tenant to pay directly during such Event of Default, that are payable on a monthly or more frequent basis within ten (10) days after the Due Date for such Impositions. Landlord may, at any time during the pendency of an Event of Default, require that any Impositions that Landlord has allowed Tenant to pay directly be subject to the monthly deposit requirements of Section 5.01(a) and the other provisions of this Article 5.

Section 5.02. Intentionally Omitted.

Section 5.03. Rights of Mortgagee.

Notwithstanding anything in this Article 5 to the contrary, in the event that a Mortgagee shall require Tenant to deposit funds to insure payment of such Impositions, any amount so deposited by Tenant with such Mortgagee shall be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Article 5.

Section 5.04. Changes to Deposits to Impositions Account.

(a) If at any time the monies so deposited by Tenant are insufficient to pay the next installment of Impositions then due, Tenant shall, after demand therefor by Landlord, deposit the amount of the insufficiency into the Impositions Account to enable Depository to pay the next installment of Impositions at least thirty (30) days prior to the Due Date thereof.

(b) If at any time the amount of any Imposition is increased or Landlord receives information from the entity or entities imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Tenant under Section 5.01 would be insufficient to pay such Imposition thirty (30) days prior to the Due Date thereof, then upon notice from Landlord to Tenant of such fact, the monthly deposits shall thereupon be increased and Tenant shall deposit immediately with Depository sufficient monies for the payment of the increased Imposition. Thereafter, the monthly payments shall be adjusted so that Depository shall receive from Tenant sufficient monies to pay each Imposition at least thirty (30) days prior to the Due Date of such Imposition.

(c) For the purpose of determining whether Depository has on hand sufficient monies to pay any particular Imposition at least thirty (30) days prior to the Due Date thereof, deposits for each category of Imposition shall be treated separately. Depository shall not be obligated to use monies deposited for the payment of an Imposition not yet due and payable for the payment of an Imposition that is due and payable.

Section 5.05. Landlord's Rights During an Event of Default.

At Landlord's option during the pendency of an Event of Default by Tenant, Landlord may, upon notice to Tenant and subject to the rights of any Mortgagee, withdraw any monies deposited in an Impositions Account pursuant to Article 5 to pay Impositions that are due and payable but otherwise unpaid by Tenant or to cure any other Event of Default by Tenant. Subject to the rights of any Mortgagee, Landlord and Tenant shall enter into a mutually acceptable depository agreement consistent with the terms herein with the Depository with respect to the Impositions Account. If this Lease is terminated by reason of an Event of Default

or if Tenant is dispossessed of the Premises pursuant to Article 23 of the Lease, all monies deposited in the Impositions Account then held by Depository shall, at Landlord's direction, be paid and applied to Landlord in payment for such Event of Default and any and all other sums due under this Lease and Tenant shall promptly pay any resulting deficiency (if any).

Section 5.06. Interest on Impositions Account.

Any interest paid on monies deposited pursuant to this Article 5 shall become a part of the Impositions Account and shall be applied pursuant to the foregoing provisions. Within sixty (60) days of Tenant's cure of the Event of Default, the funds in the Impositions Account shall be disbursed to Tenant.

ARTICLE 6
LATE CHARGES

Section 6.01. Late Charges for Rent.

If any payment of Rent shall become overdue beyond the due date thereof (or if no such date is set forth in this Lease, then such due date for purposes of this Article 6 shall be deemed to be the date upon which demand therefor is made), and continues to be overdue for a period of five (5) days, then a late charge on the sums so overdue equal to the Involuntary Rate shall commence and be charged until the date of actual payment, and become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment. The late charges will be considered Additional Costs and shall be paid by Tenant within ten (10) days after demand.

Section 6.02. No Waiver of Landlord's Rights.

No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 23.

ARTICLE 7
INSURANCE

Section 7.01. Required Insurance.

Tenant shall maintain (or cause to be maintained) at Tenant's sole cost and expense, the insurance required to be carried pursuant to this Article 7.

Section 7.02. Insurance Requirements for the Premises.

(a) At all times during the Term after Substantial Completion of any Improvements on the Premises, Tenant shall maintain or cause to be maintained insurance for the Premises, and for any and all Improvements, equipment, motors and machinery owned or leased by Tenant and located, installed in or used in connection with the Premises, including all alterations, renovations, replacements, substitutions, changes and additions thereto, such insurance shall

insure against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered) and such other hazards, casualties, risks and contingencies now covered by or that may hereafter be considered as included within a standard "broad form" policy and against loss or damage by other risks and hazards covered by a standard extended coverage insurance policy (including without limitation, fire, lightning, hail, hurricane, windstorm, tidal wave, explosion, acts of terrorism, riot and civil commotion, vandalism, malicious mischief, strike, water damage, sprinkler leakage, burglary, theft, mold and microbial matter (to the extent available at commercially reasonable rates) in an amount equal to the Replacement Value, subject to commercially reasonable sub-limits. Tenant shall name Landlord and any Mortgagees as additional insureds on such policy or policies.

(b) At all times during the Term, Tenant shall maintain and keep in force commercial general liability insurance in standard form, protecting Tenant, and naming Landlord and any Mortgagees as additional insureds, against personal injury, including without limitation, bodily injury, death or property damage and elevator and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than Ten Million Dollars (\$10,000,000) [*Two Million Dollars (\$2,000,000)*]³ per occurrence, subject to adjustment every year after the end of the first Lease Year to reflect the increase, if any, in the Consumer Price Index from the end of the first Lease Year[; *provided however, that all such increases shall be deferred each year until the sum of the total increase in the Consumer Price Index equals at least Two Million Dollars (\$2,000,000) in the aggregate, at which time Landlord shall provide written notice to Tenant setting forth such calculation and requiring that the applicable amount of commercial general liability insurance hereunder be correspondingly increased by Two Million Dollars (\$2,000,000); provided further, however, this Two Million Dollars (\$2,000,000) threshold will again be deferred each year until the Two Million Dollars (\$2,000,000) threshold is reached again in the manner set forth hereinabove. All such policies shall cover the entire Premises*]⁴.

(c) At all times during the Term, Tenant shall maintain and keep in force flood insurance in an amount at least equal to the maximum limit of coverage available with respect to the Premises under the "Flood Disaster Protection Act of 1973," and which otherwise complies with the national flood insurance program as set forth in said Act as well as subsequent amendments or successors thereto, *provided that* such insurance shall be required only if and so long as the Premises are or become included in a United States Department of Housing and Urban Development (or successor agency) designated flood prone area. If Tenant is required to maintain such flood insurance policy, then Landlord and any Mortgagees shall be listed as additional insureds on such policy.

(d) At all times during the Term, at its own cost and expense, Tenant shall provide and keep in force or cause to be provided and kept in force a policy covering business automobile liability which shall have minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability, subject to adjustment every year after the end of the first Lease Year to reflect any increases that

³ \$2M instead of \$10M for TC Leases.

⁴ Not applicable to TC Leases.

are consistent with and customary for other comparable properties of comparable age and quality in the Northern Virginia area. This shall be an “any-auto” type of policy including owned, hired, non-owned and employee non-ownership coverage, if applicable. Landlord and Mortgagees shall be listed as additional insureds on such policy.

(e) Beginning when Tenant first commences to rent/sublease of any portion of the Premises (e.g., Approved Sublease) and at all times thereafter during the Term, Tenant shall maintain business or rental interruption insurance (including rental value) in form and substance reasonably acceptable to Landlord and any Mortgagee and in an annual aggregate amount equal to the estimated gross revenues from the Approved Subleases (including, without limitation, the loss of all rental payable by all of the Approved Subtenants under Approved Subleases (whether or not such leases are terminable in the event of a fire or casualty)), such insurance to cover losses for a period from the time of loss until all repairs are fully completed with reasonable diligence and dispatch with an extended period of indemnity of one hundred eighty (180) days.

Section 7.03. Insurance Required During Construction Work.

In addition to the insurance required to be carried in Section 7.02 or otherwise in this Lease, during any time that Tenant is performing or is causing the performance of Construction Work on the Premises, Tenant shall maintain (or cause to be maintained) the following insurance on the Premises:

(a) a complete value “all risk” builders risk insurance on any and all Improvements for which Construction Work is being done in an amount equal to the Replacement Value thereof. Landlord and Mortgagees shall be listed as additional insureds on such policy;

(b) worker’s compensation insurance in an amount not less than as required by the laws of the Commonwealth of Virginia and applicable federal laws;

(c) employer’s liability insurance in an amount not less than the amount maintained by prudent owners of properties in Falls Church, Virginia comparable to the Premises; and

(d) errors and omissions insurance policies for the architects, engineers and other professionals engaged by or on behalf of Tenant in connection with the Construction Work in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, subject to adjustment every year after the end of the first Lease Year to reflect any increases that are consistent with and customary for other comparable properties of comparable age and quality in the Northern Virginia area.

Section 7.04. Additional Insurance Requirements.

(a) All insurance policies required by this Article 7 shall be issued by responsible companies authorized to issue insurance in the Commonwealth of Virginia, and have an AM Best rating of not less than A:VII or other similar rating in the event an AM Best rating is no longer available (as determined by Landlord in its reasonable discretion).

(b) Landlord and Tenant shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant shall

execute and deliver to Landlord such proofs of loss and other instruments which may reasonably be required for the purpose of obtaining the recovery of any such insurance proceeds.

(c) Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord and any other parties designated by Landlord with a bona fide insurable interest are included therein as additional insureds with respect to liability and property, as their interests may appear. Tenant shall immediately notify Landlord of the carrying of any such separate insurance and shall cause copies of the declaration page(s) of the same to be delivered as in this Lease hereinafter required.

(d) *[Tenant shall provide written notice to Landlord promptly after Tenant is aware that any insurance claim or insurance proceeding estimated to equal or exceed: (i) Two Hundred Thousand Dollars (\$200,000.00), if prior to Substantial Completion; or (ii) Five Hundred Thousand Dollars (\$500,000.00), if after Substantial Completion; has been filed against Tenant, subject to adjustment every year after the end of the first Lease Year to reflect the increase, if any, in the Consumer Price Index from the end of the first Lease Year; provided however, that all such increases shall be deferred each year until the sum of the total increase in the Consumer Price Index equals at least Twenty Five Thousand Dollars (\$25,000.00) in the aggregate, at which time the figure in this Section 7.04(d) shall be deemed to have increased by Twenty Five Thousand Dollars (\$25,000.00); provided further, however, this Twenty Five Thousand Dollars (\$25,000.00) threshold will again be deferred each year until the Twenty Five Thousand Dollars (\$25,000.00) threshold is reached again in the manner set forth hereinabove]*⁵.

(e) Tenant shall procure policies for all such insurance required by any provision of this Lease for periods of not less than one (1) year (if such policy term is customary and available) and shall procure renewals or replacements thereof from time to time and deliver evidence of the same to Landlord prior to the expiration thereof.

(f) Any insurance required under this Article 7 may be effected by a policy or policies of blanket insurance covering the Premises and any other property in which any of the members or partners of Tenant or any affiliates of any such members or partners has an interest; provided however, that the amount of the total insurance allocated to the Premises shall be such as to furnish protection equivalent to that provided by separate policies in the amounts herein required.

Section 7.05. Deposit of Insurance Premiums.

Landlord, by written notice, may at any time during the pendency of an Event of Default hereunder, require Tenant, during the pendency of an Event of Default, to deposit on the first (1st) day of each calendar month with the Depository an amount sufficient to pay the annual premiums for insurance required to be carried by Tenant hereunder when the same shall become due and payable; provided however, if an Event of Default exists due to Tenant's failure to pay

⁵ Not applicable to TC Leases.

insurance premiums when due, Landlord may (a) require payment to be made on demand or (b) pay such insurance premiums at any time while such Event of Default is continuing, whereupon Tenant shall be obligated to reimburse Landlord therefor on demand, plus interest at the Involuntary Rate, as Additional Costs, from the day of Landlord's payment until receipt of Tenant's reimbursement therefor. Notwithstanding the foregoing, in the event that a Mortgagee shall require Tenant to deposit funds to insure payment of insurance premiums, any amount so deposited by Tenant with such Mortgagee shall be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Section 7.05.

Section 7.06. Delivery of Policies and Certificates.

Upon the execution and delivery of this Lease and thereafter prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, copies of each of the policies required by this Article 7 evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord. Landlord will not be deemed to have responsibility for or knowledge of the accuracy, adequateness or compliance of such policies with the requirements set forth in this Article 7. Tenant shall, upon the written request of Landlord, obtain and deliver to Landlord, within fifteen (15) days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to Landlord, as certificate holder, in reasonable detail the insurance policies then being maintained by Tenant in accordance with the requirements of this Article 7, and providing for the non-cancellation of such policies except upon thirty (30) days' prior written notice to Landlord (or ten (10) Business Days in the case of non-payment of premium).

Section 7.07. Waiver of Subrogation.

Tenant hereby waives any and every claim which arises or may arise in its favor and against Landlord during the Term, for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises or any portion thereof or any claims for loss for which Landlord may be liable under this Lease, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recoverable under such policies. This waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to the Premises or any of Tenant's (or its Approved Subtenants, subtenants or licensees) property located within or upon, or constituting a part of, the Premises. Inasmuch as the said waiver will preclude the assignment of any claim by way of subrogation (or otherwise) to an insurance company (or any other person), Tenant agrees immediately to give each insurance company which has issued to it policies of insurance, written notice of the terms of this waiver, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of coverage by reason of the waiver.

Section 7.08. Landlord's Right to Procure Insurance.

If Tenant fails to obtain and maintain insurance as in this Lease provided, Landlord may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor. All premiums so paid by Landlord shall constitute Additional Costs. Such Additional Costs shall be payable by Tenant within ten (10) Business Days after written notice from

Landlord that Landlord has made payment of such premiums and reimbursement is being demanded therefor. The payment by Landlord of premiums for any such insurance policy shall not be, or be deemed to be, a waiver or release of the Event of Default by Tenant with respect thereto or the right of Landlord to pursue any other remedy under this Lease or by law in relation to such Event of Default.

ARTICLE 8
CASUALTY; RESTORATION; USE OF INSURANCE PROCEEDS

Section 8.01. Tenant's Obligation to Restore.

(a) If all or any part of any of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give immediate notice thereof to Landlord. Tenant shall elect, such election to be made within one hundred eighty (180) days after a casualty by notice to Landlord (subject to extension reasonably required by Tenant to settle with its insurers, if Tenant is choosing to Restore), to either: (i) Restore (as defined below) the Premises, in which event the provisions of Section 8.01(b) shall apply; or (ii) terminate this Lease in accordance with Section 8.02 (when applicable); and in either event in accordance with the provisions of this Article 8. In all events, following a casualty, Tenant shall timely and in good faith institute and, within ninety (90) days after a casualty on the Premises (subject to Force Majeure) thereafter diligently prosecute all work necessary to protect and secure the occupants of the Premises and the public from and against injury to persons and property.

(b) In the event Tenant elects to Restore under this Article 8, Tenant shall commence Restoration at a time of its choosing (subject to Section 23.01(c)), ***provided that Tenant has secured the Premises as provided in Section 8.01(a)***.⁶ When Tenant so elects, irrespective of whether such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient, Tenant shall commence to repair, alter, restore, replace and rebuild the Premises (collectively, "Restore," or "Restoration"), at least to the extent of the value it would have had absent the casualty and as nearly as possible to the condition, quality and class of the Premises existing immediately prior to such occurrence (or, if the Initial Construction Work had not reached Substantial Completion at the time of casualty, then Tenant shall complete the Initial Construction Work in accordance with the Plans and Specifications through Final Completion), with such changes or alterations as Tenant may elect to make, *provided that*, after the Restoration, the Premises shall be in substantial conformity with the original Zoning Approvals and Plans and Specifications; with any material changes as mutually agreed to by Tenant and Landlord, acting in their reasonable discretion. Notwithstanding anything hereinabove to the contrary, no approval by Landlord shall be required if the cost of Restoration, as reasonably estimated by Tenant and agreed to by Landlord, in its reasonable discretion (and the failure to agree will be resolved in accordance with Article 31 below), will be less than twenty percent (20%) of the Replacement Value of the Premises.

⁶ Not applicable to TC Leases.

(c) Notwithstanding any right to terminate in Section 8.01(a) or Section 8.02 herein, in the event that [(i)] the Initial Construction Work has not been Substantially Completed at the time of the casualty[, or (ii) if any amount of Base Rent set forth on Exhibit A-1 remains unpaid (or remaining Base Rent is not prepaid in connection with a termination and in accordance with Section 8.02(b)(ii))]⁷, Tenant shall commence Restoration of the Premises as provided in Section 8.01(b) within one hundred eighty (180) days after the casualty, subject to Force Majeure.

(d) Subject to Force Majeure, in the event Tenant does not commence Restoration within the applicable periods provided above, and thereafter diligently prosecute such Restoration to completion, then it shall be an Event of Default hereunder.

(e) In no event will Landlord be obligated to Restore the Premises or any portion thereof or to pay any of the costs or expenses thereof.

Section 8.02. Right to Terminate Lease.

(a) Notwithstanding any Restoration requirements in Section 8.01 above, in the event there is damage to or destruction of all or any part of the Premises by fire or other casualty, after: (i) Substantial Completion of the Initial Construction Work, and (ii) all amounts of Base Rent under Exhibit A-1 have been paid (or are prepaid under Section 8.02(b)(ii) below) and any other Rent then due and owing to Landlord has been paid; then, in lieu of Restoration, Tenant shall have the option to terminate this Lease by notice to Landlord, given within one hundred eighty (180) days after the date of such casualty. Failure by Tenant to provide notice of termination as required herein will be deemed an election to Restore the Premises in accordance with Section 8.01 above.

(b) Tenant's right to terminate this Lease in the event of a casualty shall be conditioned on the following:

(i) Tenant shall timely and in good faith institute and, subject to Force Majeure, within ninety (90) days after a casualty on the Premises thereafter diligently prosecute all work necessary to protect and secure the occupants of the Premises and the public from and against injury to persons and property;

(ii) in the event all payments of Base Rent required to be paid under Exhibit A-1 have not been paid (whether or not such amounts were yet due and payable at the time of such casualty), Tenant shall pay all remaining amounts of Base Rent to Landlord;

(iii) if requested by Landlord (to be given within thirty (30) days after receipt of Tenant's termination notice), Tenant shall work diligently to demolish and return the Premises to Landlord free of any or all Improvements thereon (as identified in Landlord's notice) at no cost or expense to Landlord; and

⁷ Not applicable to TC Leases.

(iv) all remaining proceeds of insurance (after such demolition and clearing of the debris) (if any) shall be (i) first, paid to the Mortgagee, to the extent of its then outstanding loan (including all principal, interest and fees then due and owing under the Mortgage), (ii) second, paid to Tenant to repay all equity that it has invested in the Premises, and (iii) third, paid to Landlord.

Failure to meet the conditions under this Section 8.02(b) will be an Event of Default under this Lease without further notice or cure period being required. This section shall survive termination of this Lease.

(c) At the time of such termination or expiration of this Lease under this Section 8.02, Tenant shall surrender and deliver the Premises to Landlord, free and clear of all of Tenant's (and its subtenant's) personal effects unrelated to the operation of the Premises. Tenant, upon such termination, surrender and removal, shall except as provided in Section 8.02(b), be released and discharged from any and all obligations that thereafter would have otherwise accrued had this Lease not been so terminated.

Section 8.03. Restoration in Accordance with Applicable Laws and Project Covenants.

Tenant shall conduct its Restoration in accordance with all Applicable Laws, including obtaining any approvals required by the City in order to comply with the Zoning Approvals. Tenant acknowledges that any Restoration of the Premises may require protective means and methods during construction as the type required during the Initial Construction Work. Tenant agrees that any Restoration which affects the regular construction or operation of the Project shall be done in accordance with all rules and procedures contained in the Project Covenants and otherwise in accordance with all Applicable Laws.

Section 8.04. Control of Proceeds.

So long as a Mortgagee holds a Mortgage on all or any portion of the Premises that is the subject of a casualty and the proceeds of any fire or casualty insurance with respect thereto have been made payable to such Mortgagee as provided in the Mortgage (or other loan documents in connection with the Mortgage), or to an insurance trustee acting on Mortgagee's behalf, for application in accordance with the terms of the Mortgage, such proceeds shall be held and disbursed by the Mortgagee to apply to the costs of Restoration pursuant to such provisions as the Mortgage may provide therefor. In the event that there is not a Mortgage secured by the Premises at the time of such casualty (or any existing Mortgage is fully discharged by application of a portion of the insurance proceeds), or in the event the proceeds of fire or casualty insurance are not required to be paid to a Mortgagee or insurance trustee to Restore the Premises under the terms of the applicable Mortgage but are nevertheless available to Tenant for such purposes and such proceeds exceed Two Million Dollars (\$2,000,000) (as such amount shall be adjusted on the fifth (5th) anniversary of the Effective Date and on each fifth (5th) anniversary of the Effective Date thereafter occurring during the Term, by the percent increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Effective Date occurs), then, so long as Tenant does not elect to terminate the Lease, the insurance proceeds (or remaining proceeds after the first use of insurance proceeds to discharge Mortgages) shall be deposited with the Depository

(other than proceeds for rent insurance) and shall be subject to monthly disbursement procedures as more fully described in Section 8.05 below. If the insurance proceeds available for such purpose are not sufficient to Restore the Premises to its prior condition or to a condition in compliance with this Lease, Tenant shall nonetheless, at its own cost and expense, provide the funds necessary, or obtain new financing as necessary, to Restore the Premises to such condition. Provided no Event of Default then exists, any excess insurance proceeds remaining after the Restoration of the Premises shall be paid over to Tenant or as Tenant may direct. If Depository is to disburse the insurance proceeds, the provisions of Section 8.05 shall apply.

Section 8.05. Conditions Precedent to Restoration Funds.

The following shall be conditions precedent to each payment made to Tenant by Depository if required in Section 8.04 above:

(a) Subject to the provisions of these Sections 8.05, Section 8.06 and, if applicable, Section 8.07, Depository shall pay over to Tenant from time to time, upon the following terms, any monies which may be received by Depository from insurance provided by Tenant (other than rent or business interruption insurance) or cash or the proceeds of any security deposited with Depository pursuant to Section 8.07 (collectively, the “Restoration Funds”); provided however, that Depository, before paying such monies over to Tenant, shall be entitled to reimburse itself and Landlord therefrom to the extent, if any, of the necessary, actual, reasonable and proper expenses (including reasonable attorney’s fees) paid or incurred by Depository and Landlord in the collection of such monies. Depository shall pay to Tenant, as hereinafter provided, the Restoration Funds, for the purpose of the Restoration.

(b) Prior to commencing any Restoration, Tenant shall furnish Landlord with an estimate of the cost of such Restoration, prepared by Tenant’s Architect. Landlord, at Landlord’s expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Restoration. If there is any dispute as to the estimated cost of the Restoration, such dispute shall be resolved by dispute resolution in accordance with the provisions of Article 31, and any time required to resolve such dispute shall constitute a Force Majeure in the Restoration process.

(c) Subject to the provisions of Section 8.05, Section 8.06 and, if applicable, Section 8.07, the Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, upon application to be submitted by Tenant to Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation in the Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant. If any vendor’s, mechanic’s, laborer’s, or materialman’s lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration of the Premises is created or permitted to be created by Tenant and is filed against Landlord, or any assets of, or funds appropriated to, Landlord, Tenant shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise). Notwithstanding the foregoing, subject to the provisions of Section 8.05(d), the existence of any such lien shall not preclude Tenant from receiving any installment of Restoration Funds, provided such lien will be discharged with funds from such installment.

(d) The amount of any installment to be paid to Tenant shall be (i) the product of (x) the total Restoration Funds and (y) a fraction, the numerator of which is the cost of labor and materials theretofore incorporated (or delivered to the Premises to be incorporated) by Tenant in the Restoration and the denominator of which is the total estimated cost of the Restoration, such estimated cost determined in accordance with Section 8.05(b), less (ii) (A) all payments theretofore made to Tenant out of the Restoration Funds, plus (B) (I) ten percent (10%) of the amount so determined until completion of fifty percent (50%) of the Restoration, as determined by Landlord (in its reasonable discretion), and (II) five percent (5%) of the amount so determined thereafter until Final Completion of the Restoration. Upon Final Completion of and payment for the Restoration by Tenant, or in the event no Restoration is required and Tenant stabilizes the Premises as required in Section 8.01(a), the balance of the Restoration Funds shall be paid over to Tenant.

(e) There shall be submitted to Depository and Landlord the certificate of Tenant's Architect in industry standard form to the effect that (i) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate, (ii) no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds previously received by Tenant, (iii) the sum then requested does not exceed the value of the services and materials described in the certificate, and (iv) the balance of the Restoration Funds held by Depository will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion.

(f) There shall be furnished to Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien with respect to the Premises or the Restoration created or permitted to be created by Tenant affecting Landlord, or the assets of, or funds appropriated to, Landlord, which had not been satisfied or discharged (by bonding or otherwise) except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn.

(g) At the time of making such payment, there is no existing Event of Default on the part of Tenant.

Section 8.06. No Abatement of Rent.

Except as expressly provided herein to the contrary, this Lease shall not terminate or be forfeited or be affected in any manner, nor will there be any reduction or abatement of the Rent payable hereunder, by reason of damage to or total, substantial or partial destruction of any of the Premises or any part thereof or by reason of the untenability of the same or any part thereof,

for or due to any reason or cause whatsoever, except to the extent resulting from the gross negligence or willful misconduct of Landlord or Landlord's employees. Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rent, shall continue as though the Premises had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind.

Section 8.07. As-Built Plans.

For any completed Restoration, the cost of which exceeds twenty percent (20%) of the Replacement Value of the Improvements, Tenant shall deliver to Landlord, within forty-five (45) days of the Final Completion of such Restoration, a complete set of "as-built" plans thereof (which may be in the form of field marked copies of the original Plans and Specifications) together with a statement in writing from Tenant's Architect, that such plans are complete and correct in all material respects.

ARTICLE 9
CONDEMNATION

Section 9.01. Taking of All or Substantially All of a Building/the Premises.

(a) If the whole or Substantially All of the Premises (defined below) is taken for any public or quasi- public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rent payable by Tenant hereunder shall be equitably adjusted as of the date of such taking. To the extent more than one Building exists on the Premises, this Article 9 will also be applicable on a Building-by-Building basis, i.e., to the extent the whole or Substantially All of a Building (or portion of the Premises on which the Building is located) is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking with respect to such Building and related portion of the Premises, and the Rent payable by Tenant hereunder shall be equitably adjusted as of the date of such taking. The termination of the Lease shall not affect Tenant's and Landlord's rights to any and all awards and damages relating to their respective interests in the Premises for such taking as more particularly set forth in Section 9.04 below.

(b) The term "Substantially All of the Premises" shall mean such portion of: (i) a Building or (ii) the Premises; as when so taken would leave remaining a balance of such Building or the Premises (as applicable) which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not (under economic conditions, applicable zoning laws or building regulations then existing or prevailing), in Tenant's reasonable judgment, permit the economic operations of the Premises for its Permitted Use(s) hereunder.

(c) Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by the other party of such awards.

Section 9.02. Date of Taking.

For purposes of this Article 9, the “date of taking” shall be deemed to be the earlier of (i) the date on which actual possession of the whole or Substantially All of the Premises (or Building, as applicable), or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or Virginia law or (ii) the date in which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or Virginia law.

Section 9.03. Partial Taking; Tenant’s Obligation to Restore.

If less than Substantially All of the Premises shall be so taken, this Lease and the Term shall continue as to the portion of the Premises remaining without abatement of Base Rent or diminution of any of Tenant’s obligations hereunder. Tenant, whether or not the award or awards, if any shall be sufficient for the purpose, shall (subject to Force Majeure) proceed diligently to Restore any Improvements that are a part of the Premises not so taken so that the latter shall be complete, operable and in good condition and repair in conformity with the requirements of Article 8 to the extent feasible. In the event of any partial taking pursuant to this Section 9.03, the entire award shall be paid to Depository, except that if such balance shall be less than Five Million Dollars (\$5,000,000) (as such amount shall be adjusted on the fifth (5th) anniversary of the Effective Date and on each fifth (5th) anniversary of the Effective Date thereafter occurring during the Term, by the percent increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Effective Date occurs), such balance shall be payable, in trust, to Tenant for application to the cost of Restoration of Improvements that are the part of the Premises not so taken; and after completion of such Restoration, if there is no Mortgagee, then any remaining award shall be paid to Tenant. Subject to the provisions and limitations in this Article 9, Depository shall make available to Tenant as much of that portion of the award actually received and held by Depository, if any, less all necessary and proper expenses paid or incurred by Depository and the Mortgagee in the condemnation proceedings, as may be necessary to pay the cost of Restoration of the part of the Premises remaining. Such Restoration shall be done in accordance with and subject to the provisions of Article 8. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 8. Any balance of the award held by Depository and any cash and the proceeds of any security deposited with Depository pursuant to Section 9.04 remaining after completion of the Restoration shall be paid to Tenant. Notwithstanding anything in this Section 9.03 to the contrary, for so long as a Mortgagee holds a Mortgage on the Premises, any award from a partial taking may be made payable to such Mortgagee (or a Depository designated by Mortgagee) and disbursed for Restoration in the same manner as insurance proceeds pursuant to Article 8 above; further, if Mortgagee does not make any portion of such award available for Restoration, in lieu of Restoration, Tenant shall be permitted to stabilize the Premises in accordance with Section 8.01(a), subject to Section 23.01(c). Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards. Tenant and its Approved Subtenants shall have the exclusive right to any and all awards and damages in

respect to each of their respective interests in such taking, and Landlord hereby waives any and all claims to any part thereof provided the same shall not impair Landlord's ability to pursue a separate claim for damages relating to Landlord's interest in the Premises.

Section 9.04. Condemnation Award.

In any condemnation proceedings, Landlord and Tenant each agree to cooperate in obtaining the highest award possible and agree to request that separate awards be made for Landlord's and Tenant's interests in the Premises or any Building(s) and other Improvements so taken. In the event of a condemnation resulting in the termination of this Lease, and separate awards are not made for Landlord's and Tenant's interests in the Premises and the Improvements, any compensation which may be awarded on account of the taking of all of the Premises, and Improvements by eminent domain shall be fairly allocated between the ownership of the fee and the leasehold estates in accordance with the loss and damage suffered by each, taking into consideration all the relevant facts and circumstances, as set forth herein. Tenant's interest in any award made with respect to the taking of the Premises and Improvements (or any portion thereof) shall be based upon the fair market value of Tenant's leasehold interest, the fair market value of the Improvements at the time of the taking, and the value of any personal property of Tenant which is taken, and Landlord's interest in any award made with respect to the taking of the Premises and Improvements (or any portion thereof) shall be based upon the fair market value of Landlord's fee interest in the Premises. In making a determination of each party's right to a portion of the Award by Appraisal, the foregoing factors shall be considered equitably in order to ensure that there is no double accounting for the value of similar items. If the parties are unable to agree on the allocation of the condemnation award between Landlord and Tenant (the "Respective Allocations") within thirty (30) days after the condemnation proceedings have terminated, the allocation shall be determined by Appraisal, using the method hereinafter set forth:

(a) Landlord and Tenant shall each designate in writing, within seven (7) days after the expiration of the aforementioned thirty (30) day period, an Appraiser for purposes of determining the Respective Allocations. Within fifteen (15) days after the designation of the Appraisers, the two Appraisers so designated shall designate a third Appraiser of the same qualifications. The Appraisers so designated shall, within sixty (60) days after the date of the third Appraiser is designated, determine the Respective Allocations in accordance with this Section 9.04.

(b) If the three Appraisers are unable to agree upon the Respective Allocations, then the Respective Allocations shall be the average of the two closest Appraisals. Landlord and Tenant shall each cooperate with the Appraisers and provide all information reasonably requested by the Appraisers to all three (3) Appraisers at the same time. Any information provided by Landlord or Tenant to the Appraisers shall also simultaneously be delivered to the other party hereto. Each Appraisers shall give written notice to the parties stating his determination, and shall furnish to each party a copy of such determination signed by him.

(c) The determination of such Appraisers shall be final and binding upon the parties and a final judgment thereon may be entered in a court of competent jurisdiction on the petition of either party. If either party, or the two Appraisers designated by the parties, fail to timely

designate an Appraiser (or a replacement Appraiser pursuant to the next sentence), then either party may apply to a court of competent jurisdiction to make such designation. In the event of the failure, refusal or inability of any Appraiser to act, a new Appraiser with the qualifications described above shall be appointed promptly in his stead. The party who designated the Appraiser so failing, refusing or unable to act shall designate the replacement Appraiser, or, if the Appraiser failing, refusing or unable to act was the Appraiser designated jointly by the parties' Appraisers, the parties' Appraisers shall jointly designate the replacement Appraiser.

(d) Landlord and Tenant shall each bear the cost of its Appraiser and Landlord and Tenant shall share equally the cost of the third Appraiser. If the Appraisers shall fail to make the determination herein provided, then either party shall have the right to institute such action or proceeding in such court as shall be appropriate in the circumstances and Tenant and Landlord shall share equally the cost of such action.

Section 9.05. Temporary Taking.

If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rent payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided however, that:

(a) if the taking is for a period not extending beyond the Term and if such award or payment is made less frequently than in monthly installments, the same shall be paid to and held by Depository (subject to Mortgagee's rights set forth in Section 9.04 above) as a fund which Depository shall apply from time to time to the payment of Rent, except that, if such taking results in changes or alterations in any of the Premises which would necessitate an expenditure to Restore such Premises to their former condition, then, a portion of such award or payment considered by Landlord, in its reasonable opinion, as appropriate to cover the expenses of the Restoration shall be retained by Depository, without application as aforesaid, and applied and paid over toward the Restoration of such Premises to their former condition, and further, if there is no Mortgagee, then any remaining award shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, such award or payment shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to Depository and applied in accordance with the provisions of Section 9.05(a), provided however, that the amount of any award or payment allowed or retained for the Restoration of the Premises and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to such Restoration.

Section 9.06. Sale in Lieu of Condemnation.

In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 9.07. Participation in Proceedings.

Landlord, Tenant and any Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 9.08. Claims for Personal Property.

Notwithstanding anything to the contrary contained in this Article 9, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant and its Approved Subtenants shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its Approved Subtenants (but not including any Fixtures) and for relocation expenses of Tenant or its Approved Subtenants, and all awards and damages in respect thereof shall belong to Tenant and its Approved Subtenants, and Landlord hereby waives any and all claims to any part thereof; *provided however*, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its tenants, or awards and damages, shall be addressed as provided in Section 9.04.

Section 9.09. City as Condemning Authority.

Notwithstanding anything to the contrary contained in this Article 9, if the City is the party exercising the right of condemnation, eminent domain, or taking for any public or quasi-public purpose, Landlord shall be deemed to have no interest in any award made in connection therewith, and the entire award shall belong to Tenant.

ARTICLE 10
ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

Section 10.01. Transfer Prior to Final Completion.

Prior to Final Completion, Tenant may not sell, assign or otherwise transfer, by operation of law or otherwise: (A) any interest in all or any portion of this Lease, or (B) any Beneficial Interest in Tenant (whether in one or multiple transactions), which, when aggregated, (i) equate to more than fifty percent (50%) of a Beneficial Interest of Tenant or (ii) result in a change of Control of Tenant (any and all of the foregoing, being a "Transfer"). Notwithstanding the preceding sentence, the preceding restriction does not apply to a Transfer to [(X) *an Approved Senior Living Developer*;⁸] (Y) an Affiliate of Tenant; or (Z) if prior written approval of Landlord is obtained, which approval under this clause (Z) will not be unreasonably withheld, conditioned, or delayed, if:

(a) the proposed transferee shall have (or shall be Controlled by an entity that has) arranged for construction management services through a general contractor or project manager approved by Landlord in its sole but reasonable discretion provided that if such general contractor or project manager is an Approved GC Manager, such approval by Landlord shall not be unreasonably withheld, conditioned or delayed;

⁸ For Senior Living Lease only

(b) if any Guarantors are being released in connection with such transaction, the proposed transferee shall have replacement Guarantors acceptable to Landlord (which acceptance shall not be unreasonably withheld, *provided that* such replacement Guarantors have a financial net worth comparable to that of the Guarantors being released (provided further that a minimum net worth of Twenty Million Dollars (\$20,000,000) is deemed sufficient for a replacement Guarantor), as determined as of the date such Guarantors entered into such Guaranty(ies)) and shall cause such replacement Guarantors to enter into substantially the same Guaranties as any being released in connection with such Transfer (as reasonably determined by Landlord under this Lease) to complete the Improvements on the Premises;

(c) Tenant has notified Landlord of the proposed Transfer and submitted to Landlord the following documents and information (which documents may be unexecuted but shall, in all other respects, be in substantially final form) and such other information and documents Landlord may reasonably require:

(i) a copy of the proposed instrument(s) of assignment and assumption of: (1) this Lease wherein the transferee assumes responsibility for all of the rights, responsibilities, covenants and obligations, as 'Tenant' under this Lease and expressly agrees to be bound by the terms and conditions of documents of record affecting the Premises, or (2) Beneficial Interest in Tenant; as applicable, containing, inter alia, the name, address and telephone number of the assignee; and

(ii) a certificate of the assignee (or an authorized officer, general partner or managing member thereof), setting forth (x) in the case of a partnership or limited liability company, the names and addresses of all partners (general and limited (if applicable)) or members thereof of the assignee having a five percent (5%) or greater ownership interest in the assignee, (y) in the case of a corporation, the names and addresses of all persons having five percent (5%) or greater record ownership of stock in the assignee, and all directors and officers of the assignee; provided however, that in the case of an entity whose equity interests are publicly traded the names of the holders of publicly traded securities need not be disclosed;

(iii) *[any such other documents and information as Landlord may reasonably request to permit Landlord to evaluate whether the proposed assignee meets the criteria set forth in Section 10.01.⁹*

Landlord shall, within fifteen (15) Business Days after receipt of the foregoing, notify Tenant whether it grants its consent to such proposed Transfer. In the event that Landlord denies its consent to such proposed Transfer or determines that the information provided in the applicable certificate is insufficient to determine whether or not Landlord's consent may be reasonably withheld, conditioned or delayed, then Landlord shall notify Tenant in writing specifying the reasons for such denial or determination and Landlord may approve or deny the proposed Transfer in its sole and absolute discretion. If Landlord does not respond to Tenant with its determination within the applicable period, Tenant shall provide Landlord with a second notice and written request for approval, together with the submission of the criteria required by this

⁹ Not applicable to TC Leases.

Section 10.01. In the event that Landlord does not provide Tenant with notice of its approval or disapproval of the proposed Transfer within three (3) Business Days of receipt of the second request, Landlord shall be deemed to have approved that the documents and the information submitted establish compliance with the applicable provisions of this Section 10.01; provided, however, that such deemed approval shall only be effective if the transmittal letter accompanying such second request has written the following notice in bold-face capital letters in 14-point font or larger: “RESPONSE REQUIRED WITHIN THREE (3) BUSINESS DAYS OF RECEIPT. THIS ENVELOPE CONTAINS A REQUEST FOR APPROVAL WHICH, IN ACCORDANCE WITH THE LEASE BETWEEN LANDLORD AND TENANT IS SUBJECT TO APPROVAL BY LANDLORD, BUT SHALL BE DEEMED APPROVED IF YOU DO NOT DISAPPROVE SAME OR REQUEST ADDITIONAL INFORMATION IN WRITING PRIOR TO THE EXPIRATION OF THREE (3) BUSINESS DAYS AFTER RECEIPT. Tenant agrees to bear and shall pay or reimburse Landlord on demand for all out-of-pocket costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred by Landlord in connection with the review, approval and documentation of any transfer under this Section 10.01. If Landlord has consented (or is deemed to have consented) to the proposed transfer or has determined that the documents and information establish compliance with the applicable provisions of this Section 10.01, such consent or determination will still be conditioned upon the delivery to Landlord of the applicable executed documents of the approved Transfer, assignment, or conveyance and receipt of payment or reimbursement by Landlord as set forth in the preceding sentence. Any attempted or purported transfer, if made in contravention of this Section 10.01, shall be null and void and of no force and effect.

Upon an assignment of the Lease in accordance with this Section 10.01, the assignee of Tenant shall become directly liable to Landlord for all obligations of Tenant hereunder, and Tenant shall be relieved of all liability arising thereafter under this Lease.

Section 10.02. Transfer After Final Completion.

After Final Completion, and *provided that* the Premises will be managed by a professional manager (which may be an affiliate of Tenant) with, at least ten (10) years of experience managing such asset type, Tenant may Transfer the Lease and make other Transfers upon receipt of the consent of Landlord, which will be solely conditioned upon satisfaction of the following conditions:

(a) Tenant provides Landlord with at least ten (10) Business Days’ prior notice of such Transfer; and

(b) accompanying the notice required in subsection (a) above, Tenant delivers the information required under Section 10.01(c) (including, without limitation, an executed assumption of the Lease or Beneficial Interest (as applicable) containing the information set forth in such Section).

Upon an assignment of the Lease in accordance with this Section 10.02, the assignee of Tenant shall become directly liable to Landlord for all obligations of Tenant hereunder, and Tenant shall be relieved of all liability arising thereafter under this Lease.

Section 10.03. Exemptions.

Nothing contained in this Article 10 shall prohibit or limit any of the following (all of which may occur without Landlord's approval, except as expressly provided for in this Lease): (i) Tenant's creation of a Mortgage or any foreclosure sale or deed-in-lieu of foreclosure resulting from a Mortgagee's exercise of its rights under a Mortgage all in accordance with the requirements set forth in this Lease; (ii) any pledge of the Beneficial Interest in Tenant or any member or other Person to an Institutional Lender or Mortgagee, or any foreclosure of such Beneficial Interest resulting from a Mortgagee's exercise of its rights with respect to such pledge, all in accordance with the requirements governing such creation or foreclosure of such interests as set forth in this Lease; (iii) the sublease of all or any portion of the Premises to third party subtenants, so long as such sublease complies with this Lease; or (iv) the granting of utility and similar easements required in connection with the development of the Project pursuant to the Zoning Approvals. In addition, any mechanics', materialmen's or other involuntary lien that is bonded over, or insured against, or that is released in each case within the applicable notice and cure period under this Lease or applicable Project Covenants shall not constitute a Transfer.

Section 10.04. Null and Void; Event of Default.

Any attempted or purported Transfer, if made in contravention of this Article 10, shall be null and void and of no force and effect and shall constitute an Event of Default under this Agreement (without notice and cure period) and shall be subject to Landlord's remedies contained in this Agreement.

Section 10.05. Consent Limited to Transaction.

Any consent by Landlord under Section 10.01 above shall apply only to the specific transaction thereby authorized and shall not relieve Tenant from any requirement hereunder of obtaining the consent of Landlord to any further sale or assignment of this Lease or Transfer or subletting of the Premises as an entirety or substantially as an entirety.

Section 10.06. Approved Subleases; Assignment of Subleases; Collection of Subrent; Sublease NDA.

(a) Tenant may, without Landlord's consent or approval and without any notification to Landlord, enter into subleases [(or other occupancy arrangements with residents of the senior living facility being operated on the Premises)¹⁰] for the Premises or a portion thereof. Each sublease shall obligate the subtenant pursuant thereto to occupy and use the Premises included therein for purposes consistent with the Applicable Laws, the Permitted Use and the provisions of this Lease. Except as otherwise provided below, with respect to each and every sublease under the provisions of this Lease, it is further agreed that:

(i) no subletting shall be for a term ending later than one day prior to the Fixed Expiration Date;

¹⁰ For Senior Living Lease only

(ii) each sublease shall specifically state that *[(A)]* it is subject to all of the terms, covenants, agreements, provisions, and conditions of this Lease, *and (B) if there is a termination of this Lease, or if Landlord shall exercise its rights to dispossess Tenant or to re-enter the Premises, any subtenant will at Landlord's election, attorn to Landlord and Landlord will have all rights of Tenant under such sublease, including without limitation, the right to collect any rent or other sums due or accruing to Tenant, as sublandlord under such sublease, and to enforce those rights by court proceeding or otherwise]*¹¹; and

(iii) the receipt by Landlord of any amounts from any subtenant or other occupant of any part of the Premises shall not be deemed or construed as releasing Tenant from Tenant's obligations hereunder.

Leases satisfying the requirements of this Section 10.06(a) are referred to in this Lease as "Approved Subleases," and the subtenants then under Approved Subleases are "Approved Subtenants".

(b) *[Except for Affiliates of Tenant, Landlord shall recognize any subtenant, management company or service provider, including without limitation an Approved Senior Living Operator, under any management agreement or operating agreement (or similar arrangement) that is providing services of a senior living provider being operated in the Improvements whether through a lease, sublease, occupancy agreement or other occupancy arrangement as an Approved Subtenant under an Approved Sublease, provided such agreement between Tenant and such third party otherwise complies with clauses (i) and (ii) of Section 10.06(a) above and so long as such third party is not in default, beyond applicable notice and cure periods, under its applicable agreement.*

(c) *Provided that no occupancy agreement or other written agreement with any resident of the senior living facility being operated on the Premises contains (or purports to contain) a real property interest (e.g. sublease, sub-sublease, etc.) in the Premises, no such agreement shall be subject to this Section 10.06.]*

(d) The fact that a violation or breach of any of the terms, provisions or conditions of this Lease results from or is caused by an act or omission by any Approved Subtenant, or sub-subtenant of an Approved Subtenant, shall not relieve Tenant of Tenant's obligation to cure the same. Tenant shall take any and all reasonable steps necessary to prevent any such violation or breach.

(e) During the existence of an Event of Default by Tenant, Landlord may, subject to the rights of any Mortgagee in this Lease, collect subrent and all other sums due under Approved Subleases, and apply the net amount collected to Rent, but no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease or the acceptance by Landlord of any Approved Subtenant as tenant hereunder, or a release of Tenant from performance by Tenant of its obligations under this Lease.

¹¹ Not applicable to TC Leases.

(f) During the pendency of an Event of Default, Landlord, its agents and representatives, subject to the terms of the Approved Subleases, shall have a right of entry in, and sufficient possession of, the Premises to permit and ensure the collection by Landlord of the rentals and other sums payable under the Approved Subleases. The exercise of the right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof and, should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided however, that such rights shall become operative and effective only if (a) an Event of Default exists, or (b) this Lease and the Term have been cancelled or terminated pursuant to the terms, covenants and conditions hereof, or (c) there occurs repossession under a dispossession warrant or other re-entry or repossession by Landlord under the provisions hereof or applicable law, and then only as to such of the Approved Subleases that Landlord has agreed to take over and assume.

(g) Landlord shall, upon Tenant's request made at any time or from time to time, enter into a non-disturbance and attornment agreement in a commercially reasonable form reasonably acceptable to Landlord (the "Sublease NDA"), with respect to any Approved Sublease. The Approved Sublease NDA will contain, inter alia, the following: (1) Landlord's acknowledgment that no consent or approval of the Approved Sublease by Landlord is required for the execution, delivery and performance of the Approved Sublease; (2) so long as the Approved Subtenant under an Approved Sublease is not in default, beyond any notice and cure period under the Approved Sublease, the possession by Approved Subtenant of the space under the Approved Sublease shall not be disturbed, affected, impaired by a termination of this Lease; and (3) if this Lease is terminated, Landlord will recognize Approved Subtenant as tenant under the Approved Sublease, which will continue as a direct lease between Landlord and Approved Subtenant. Landlord shall enter into such Sublease NDA within fifteen (15) Business Days after Tenant's request therefor.

Section 10.07. Leasehold Mortgages.

(a) Tenant shall have the right to mortgage or pledge its interest in this Lease to one or more Mortgagees which at any time and from time to time during the Term, *provided that* (x) until Final Completion of the initial Improvements has occurred, all proceeds from any loan secured by a Mortgage of Tenant's interest in this Lease shall be used by Tenant only in connection with the costs of pre-development, development, construction, carry, and operations of the Improvements and the Premises, and (y) no holder of any Mortgage, nor anyone claiming by, through or under any such Mortgage, shall by virtue thereof, acquire any greater rights hereunder than Tenant has, except the right to cure or remedy Tenant's defaults or become entitled to a New Lease as more fully set forth in this Section 10.07 and Section 10.08 and such other rights as are expressly granted to Mortgagees hereunder. *[Any]¹² No Mortgage [shall be effective unless, (i) such Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease, and (ii) Mortgages]¹³* shall contain in substance the following

¹² Insert for TC Leases and delete "No".

¹³ Not applicable to TC Leases.

provisions (subject to such modifications as shall be requested by a Mortgagee that are consistent with similar prevailing language generally required by Institutional Lenders making similar loans):

“This instrument is executed upon condition that (unless this condition be released or waived by Landlord under said Lease or its successors in interest by an instrument in writing) no purchaser or transferee of said Lease at any foreclosure sale hereunder, or other transfer authorized by law by reason of a default hereunder where no foreclosure sale is required, shall, as a result of such sale or transfer, acquire any right, title or interest in or to said Lease or the leasehold estate hereby mortgaged or pledged as between such transferee and said Landlord, unless and until (i) Landlord has been given written notice of such sale or transfer of said Lease and the effective date thereof, and (ii) such purchaser or transferee has delivered to Landlord a duplicate original or certified copy of the instrument of sale or transfer to Landlord.

“The purchaser or transferee of said Lease shall, effective from and after the effective date of the foreclosure or transfer in lieu of foreclosure, assume and agree to perform all of the terms, covenants and conditions of the Lease to be observed or performed on the part of Tenant from and after the effective date of the foreclosure or transfer in lieu of foreclosure and, that no further or additional mortgage or assignment of the Lease hereby mortgaged may be made except in accordance with the provisions contained in Article 10 of the Lease.

“This mortgage is not a security interest in or lien on the fee interest in the premises covered by the Lease hereby mortgaged.

“In the event of foreclosure, the mortgagee shall not name, in such foreclosure action or otherwise, and in any event shall not disturb the possession or right to possession (except for default) of, any subtenants of Tenant under the Lease.

“This mortgage and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject to the terms of said Lease and the rights of the landlord thereunder, except as otherwise set forth in the Lease, as said Lease may have been previously modified, amended or renewed with the consent of the mortgagor or its predecessors in interest, or may hereafter be modified, amended or renewed with the consent of the mortgagee. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to Landlord to execute, acknowledge. and deliver any instruments reasonably requested by Landlord to evidence the foregoing.”

(b) Tenant or the Mortgagee shall give to Landlord written notice of the making of any Mortgage (which notice shall contain the name and office address of the Mortgagee) within ten (10) Business Days after the execution and delivery of such Mortgage and a duplicate original or certified copy thereof.

(c) Landlord shall give to each Mortgagee, at the address of such Mortgagee set forth in the notice from such Mortgagee or from Tenant, and otherwise in the manner provided by Article 25, a copy of each notice given by Landlord to Tenant hereunder (including any notices of Event(s) of Default under the Lease) at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, and although such notice by Landlord shall be

deemed to have been duly given to Tenant, no grace or cure period shall be deemed to have commenced with respect to Mortgagee's rights hereunder unless and until a copy thereof shall have been given to each such Mortgagee. Upon receipt of such notice, each Mortgagee shall have the right to remedy such Event of Default or cause the same to be remedied, within the following additional time periods (in each instance after the applicable period afforded Tenant for remedying the Event of Default or causing the same to be remedied has expired): (i) a period of ten (10) Business Days [~~fifteen (15) Business Days~~]¹⁴ more in the case of a monetary Event of Default, and (ii) a period of fifteen (15) Business Days [~~twenty (20) Business Days~~]¹⁵ more in the case of a non-monetary Event of Default, or in the case of a non-monetary Event of Default which shall require more than the additional fifteen (15) Business Days [~~twenty (20) Business Days~~]¹⁶ to cure using due diligence, then such longer period of time as will be necessary, so long as such Mortgagee shall have commenced to cure (or caused to be commenced such cure) within such additional fifteen (15) Business Days [~~twenty (20) Business Days~~]¹⁷ period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence and continuity; provided, however, that Mortgagee shall have no obligation to remedy any Event of Default, continue efforts to cure an Event of Default, foreclose, or obtain possession, and may, in its sole discretion, abandon its efforts upon reasonable prior notice to Landlord. Landlord shall accept performance by or on behalf of a Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. Landlord shall not object to any temporary entry onto the Premises by or on behalf of Mortgagee to the extent necessary to effect such Mortgagee's cure rights, provided such entry is in compliance with all Applicable Laws. If possession of the Premises or any part thereof is required in order to cure such Event of Default, Mortgagee shall notify Landlord within the applicable period afforded to Mortgagee hereunder, and Mortgagee's period for performance shall not commence until Mortgagee has gained such possession.

(d) During any period in which Mortgagee, in good faith and acting with reasonable diligence and continuity, is attempting or in the process of curing (or caused to be commenced such cure) an Event of Default within the time periods provided in Section 10.07(c), Landlord will not exercise any remedies to terminate this Lease or dispossess Tenant of possession thereof. At any time prior to the expiration of the additional cure period afforded Mortgagee under Section 10.07(c) to cure (or caused to be cured) the Event of Default, Mortgagee may send Landlord notice of its intention to institute foreclosure proceedings, and thereafter, provided Mortgagee commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining such possession, commences promptly to cure the Event of Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure), Landlord will not exercise any remedies to terminate this Lease or dispossess Tenant of possession thereof; *provided however, that: [(i) Mortgagee shall have first delivered to Landlord, in writing, its*

¹⁴ Longer period for TC Leases.

¹⁵ Longer period for TC Leases.

¹⁶ Longer period for TC Leases.

¹⁷ Longer period for TC Leases.

agreement to cure (or caused to be cured), and (ii)]¹⁸ during the period in which Mortgagee is curing (or causing such cure of) such Event of Default (and any foreclosure proceedings are pending), all of the other obligations of Tenant under this Lease are being duly performed (including, without limitation, payment of all Rent due hereunder (including further, without limitation, the payment of any Impositions or payments of installments for Impositions are being made to a Depository in accordance with Article 5 above)) within any applicable grace periods. However, at any time after the delivery of the aforementioned agreement, the Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord (except for any obligations assumed by the Mortgagee and accruing prior to the date it delivers such notice), and, thereupon, Landlord shall have the unrestricted right to terminate this Lease, dispossess Tenant of the Premises and to take any other action Landlord deems appropriate by reason of any uncured Event of Default by Tenant.

(e) Notwithstanding anything in this Section 10.07 to the contrary, a Mortgagee shall not be required to cure any non-monetary Events of Default of Tenant that are not capable of being cured by such Mortgagee, and if any Mortgagee, assignee or transferee shall acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such non-monetary Event of Default by Tenant that is not capable of being cured shall no longer be deemed an Event of Default.

(f) With respect to any non-monetary Event of Default, so long as a Mortgagee shall be diligently exercising its cure rights under this Section 10.07 with respect thereto within the applicable cure periods set forth above and so long as, if possession of the Premises is required to cure the same, Mortgagee shall be taking the actions required by clause (d) of this Section 10.07, Landlord shall not (i) re-enter the Premises, (ii) serve a termination notice, or (iii) bring a proceeding on account of such default to (A) dispossess Tenant or other occupants of the Premises, (B) re-enter the Premises, or (C) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii) being herein “Landlord’s Termination Rights”). In addition, with respect to any monetary Event of Default, Landlord shall not exercise any of Landlord’s Termination Rights so long as a Mortgagee shall be diligently exercising its cure rights under this Section 10.07 within the time periods set forth above. Upon any Mortgagee ceasing to diligently exercise such rights and undertaking such activities, Landlord may exercise any of Landlord’s Termination Rights hereunder. Nothing in the protections to Mortgagees provided in this Lease shall, however, be construed to either (i) extend the Term beyond the stated Fixed Expiration Date provided for in this Lease that would have applied if no Event of Default had occurred or (ii) require such Mortgagee to cure any non-monetary Event of Default by Tenant that is not capable of being cured and as a condition to preserving this Lease or, in the case of a Mortgagee only, to obtaining a New Lease as provided in Section 10.08.

(g) The exercise of any rights or remedies of a Mortgagee under a Mortgage, including the consummation of any foreclosure or transfer in lieu of foreclosure, shall not

¹⁸ Not applicable to TC Leases.

constitute an Event of Default; *provided however*, that any assignment of this Lease resulting from any such foreclosure or transfer in lieu of foreclosure to an entity other than a Mortgagee or an Affiliate of such Mortgagee shall be an Event of Default under this Lease unless such assignment meets the requirements of Section 10.01 or Section 10.02, as applicable.

(h) Except as provided in clause (d) of this Section 10.07, no Mortgagee shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby and no performance by or on behalf of such Mortgagee of Tenant's obligations hereunder shall cause such Mortgagee to be deemed to be a "mortgagee in possession" unless and until such Mortgagee shall take control or possession of the Premises.

(i) If there is more than one Mortgagee, the rights and obligations afforded by this Section 10.07 to a Mortgagee shall be exercisable only by the party whose collateral interest in the Premises is senior in lien (or which has obtained the consent of any Mortgagees that are senior to such Mortgagee).

(j) In addition to the other rights, notices and cure periods afforded to the holders of any Mortgage, Landlord further agrees that:

(i) without the prior written consent of each holder of a Mortgage, Landlord will neither agree to any modification or amendment of this Lease, nor accept a surrender or cancellation of this Lease;

(ii) Landlord shall consider in good faith any modification to the Lease requested by a Mortgagee or prospective Mortgagee as a condition or term of granting financing to Tenant, *provided that* the same does not materially increase Landlord's obligations or diminish Landlord's rights and immunities hereunder;

(iii) the holder of the Mortgage most senior in lien priority on this Lease shall have the right to participate in any dispute resolution proceedings under Article 31 hereof;

(iv) the holder of the Mortgage most senior in lien priority on this Lease shall have the right to participate in the adjustments of any insurance claims of the nature set forth in Article 7 and Article 8 hereof and condemnation awards of the nature set forth in Article 9 hereof and to serve as the Depository (subject to any terms, conditions and covenants applicable to Mortgagee(s), as set forth in such Articles)

(v) at the request of Tenant from time to time, Landlord shall execute and deliver an instrument addressed to the holder of any Mortgage confirming that such holder is a Mortgagee and entitled to the benefit of all provisions contained in the Lease which are expressly stated to be for the benefit of Mortgagees; and

(vi) Landlord agrees that contemporaneously with Tenant obtaining a loan from a Mortgagee, Landlord shall execute an agreement with the Mortgagee and any guarantor of Tenant's obligations to such Mortgagee (e.g., pursuant to a completion guaranty) setting forth the rights of each of said parties, and in any event providing that (i) Landlord's rights to enforce any Guaranty(ies), seek to collect from the Guarantor any amounts or otherwise assert or enforce

any other rights or remedies under any Guaranty(ies) shall, in each case, be fully and completely subject and subordinate to the rights of the Mortgagee to enforce its rights and remedies under the agreements evidenced by the Mortgage (including without limitation any guaranty); and (ii) Landlord shall cooperate with any enforcement rights exercised by the Mortgagee, whether such enforcement efforts are exercised by the Mortgagee before or after Landlord exercises its rights under the Guaranty(ies). In the event Tenant fails to pay or perform any of its obligations under this Lease, which results in Landlord having the right to enforce any Guaranty(ies), Landlord shall notify the Mortgagee in writing of such failure(s) and, if such Mortgagee does commence to exercise its rights under any applicable agreement evidenced by the Mortgage (including any guaranty) within ninety (90) days after its receipt of such notice and Mortgagee does not thereafter diligently prosecute such rights to cure an Event of Default under the terms of Section 10.07(d), Landlord may exercise its rights under any Guaranty(ies).

Section 10.08. New Lease.

If Tenant has mortgaged its interest in this Lease in accordance with its terms, for so long as any such Mortgage is outstanding and of record, Mortgagee shall have the option to obtain a new lease (a "New Lease") in accordance with the terms of this Section 10.08:

(a) Mortgagee shall send written notice to Landlord in accordance with Article 25 of its exercise of the option to obtain a New Lease within sixty (60) days after Landlord gives Mortgagee notice in accordance with Section 10.07(c) above that the Lease has terminated (which notice Landlord agrees to give promptly), and Landlord shall enter into a New Lease of the Premises with the Mortgagee or any designee of the Mortgagee within thirty (30) days after such exercise (such Mortgagee or such designee, the "New Tenant").

(b) The New Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Rent and upon all of the same agreements, terms, covenants and conditions of this Lease. Upon the execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for its termination, as aforesaid, and shall otherwise with reasonable diligence commence to remedy any non-monetary Events of Default under this Lease that are of a nature or type that are capable of being cured by a party other than Tenant and shall pay all costs and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such Events of Default and termination, the recovery of possession of said Premises and the preparation, execution and delivery of such New Lease. In the event of a dispute between the parties as to the reasonability of New Tenant's diligence in remedying non-monetary Events of Default as provided in the preceding sentence, such dispute shall be determined by dispute resolution as provided in Article 31. Landlord shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that Landlord has not previously recovered possession of same. As between Landlord and such New Tenant, any such New Lease and the leasehold estate thereby created, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

(c) Upon the execution and delivery of a New Lease under this Section 10.08, all Approved Subleases which theretofore may have been assigned to Landlord thereupon shall be assigned and transferred, without recourse, by Landlord to the New Tenant. Between the date of termination of this Lease and the date of execution and delivery of the New Lease, Landlord shall not enter into any new subleases, cancel or modify in any material respect any then-existing Approved Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of the Mortgagee, not to be unreasonably withheld or delayed, except as permitted in the Approved Subleases.

(d) If there is more than one Mortgagee, Landlord shall enter into a New Lease with the Mortgagee (or designee of such Mortgagee) whose Mortgage is senior in lien (or which has obtained the consent of any Mortgagees that are senior to such Mortgagee) as the Mortgagee (or designee of such Mortgagee) entitled to the rights afforded by this Section 10.08.

(e) Any rejection of this Lease by any trustee of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding which would otherwise cause this Lease to terminate, shall, without any action or consent by Landlord, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the senior Mortgagee or its nominee or designee. Such Mortgagee may reject the transfer of this Lease upon such transfer upon giving notice thereof to Landlord no later than sixty (60) days after notice from Landlord of such transfer. Such Mortgagee shall thereupon have no further obligations hereunder. Alternatively, the senior Mortgagee may enter into a New Lease in accordance with the provisions of this Section 10.08.

(f) Except as expressly provided in Section 10.7(e) regarding Mortgagee not having to cure any non-monetary Event of Default by Tenant that is not capable of being cured, nothing in this Section 10.08 releases Tenant from any of its obligations under this Lease which have not been discharged or fully performed by Tenant or Mortgagee.

ARTICLE 11 CONSTRUCTION WORK; RESTORATION

Section 11.01. General Requirements for Construction Work.

All Construction Work shall comply with the following:

(a) After Commencement of Construction has occurred on any Construction Work, such Construction Work, shall be completed with reasonable promptness (subject to Force Majeure), in a good and workmanlike manner and, with respect to Construction Work for which this Lease requires Tenant to prepare Plans and Specifications, in substantial accordance with such Plans and Specifications, and all Applicable Laws.

(b) Tenant shall not commence any Construction Work unless and until (i) Tenant shall have obtained all necessary permits, consents, certificates and approvals of all Governmental Authorities with regard to the commencement of the particular Construction Work to be performed, and (ii) Tenant shall have delivered to Landlord certificates of insurance or copies of the declaration page(s) for the insurance required in connection with Construction Work by Article 7 hereof.

(c) Tenant shall make full and timely payment or shall cause full and timely payment to be made to all contractors, subcontractors, materialmen, engineers, architects or other Persons who have rendered or furnished services or materials for any Construction Work (including the Initial Construction Work) or contest or discharge such matters in accordance with Section 15.02 below, to the extent such matters result in a lien or encumbrance against the Premises.

Section 11.02. Supervision of Tenant's Architect.

All Construction Work: (a) in connection with the Initial Construction Work, (b) the estimated cost of which (determined as provided in Section 8.04(b) hereof) is twenty percent (20%) or more of the Replacement Value, either individually or in the aggregate, with other Construction Work which is to be performed upon any Improvement in any Lease Year or (c) that involves work that would materially change the exterior of any Building (excluding the painting of any Building) or the height, bulk or setback of any Building, shall be carried out under the supervision of Tenant's Architect.

Section 11.03. Completion of Construction Work.

Tenant shall carry out and complete the Initial Construction Work in accordance with the Plans and Specifications, Zoning Approvals, Applicable Laws, and the Project Covenants. Upon Substantial Completion of any Construction Work which, pursuant to the terms of this Lease is required to be carried out under the supervision of Tenant's Architect, Tenant shall, as soon as reasonably practicable, furnish Landlord with a Certificate of Occupancy applicable to such Construction Work (if any), together with a certificate of substantial completion substantially in the form of AIA Form G704.

Section 11.04. Construction Agreements.

Excluding any Construction Agreement under One Hundred Thousand Dollars (\$100,000.00), as increased every year after the end of the first Lease Year to reflect the increase, if any, in the Consumer Price Index from the end of the first Lease Year, all Construction Agreements shall include the following provisions, subject to any commercially reasonable and industry standard related changes requested by such ["Contractor"/["Subcontractor"/["Materialman"] and approved by Landlord (Landlord, for the purposes of this Section 11.04 only, is referred to as, "Owner"), such approval not to be unreasonably withheld:

["Contractor"/["Subcontractor"/Materialman"] hereby agrees that Owner shall not be liable in any manner for payment or otherwise to ["contractor"/["subcontractor"/["materialman"] in connection with the purchase of any building materials for the Premises and Owner shall have no obligation to pay any compensation to ["contractor"/["subcontractor"/["materialman"] by reason of such materials becoming incorporated into the Premises.

["Contractor"/["Subcontractor"/["Materialman"] hereby agrees that notwithstanding that ["contractor"/["subcontractor"/["materialman"] performed work at the Premises or any part thereof; Owner shall not be liable in any manner for payment or otherwise to ["contractor"/

["subcontractor"]/["materialman"] in connection with the work performed at the Premises.

Owner, as fee simple owner of the Property, shall be a third party beneficiary of all guarantees and warranties of ["contractor"]/["subcontractor"]/["materialman"] hereunder and such guarantees and warranties shall be enforceable against ["contractor"]/["subcontractor"]/ ["materialman"] by Owner.

Owner is not a party to this ["agreement"]/["contract"] nor will Owner in any way be responsible to any party for any and or all claims of any nature whatsoever arising or which may arise from such ["contract"]/["agreement"]. Notice is hereby given that Owner shall not be liable for any work performed or to be performed at the Premises for Tenant or any subtenant, for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Owner in and to the Premises or any part thereof, or any assets of, or funds appropriated to, Owner."

Section 11.05. Ownership Rights in Improvements.

Any and all Improvements constructed on the Premises by Tenant or on its behalf during the Term shall constitute the property of Tenant, and upon construction of the Improvements or the incorporation of materials therein, title thereto shall vest in Tenant, provided however, that nothing in this Section shall limit the Landlord's vesting of all right, title, and interest in such Improvements upon the expiration or earlier termination of the Term. Notwithstanding the foregoing, Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials or other Person in connection with the purchase of any materials or other Improvements on or for the Premises.

Section 11.06. Cooperation.

Landlord agrees to cooperate with Tenant to facilitate the development and construction of the Improvements. Landlord, in its reasonable discretion, shall grant (and assist in obtaining) easements and rights of way over the Project Land as reasonably necessary, for purposes of easements for ingress, egress, utilities (e.g. sewer, water, electric, gas, cable, telecommunications, phone and other similar utilities), maintenance and signage, crane swing, grading, temporary construction, as well as other reasonable easements necessary or desirable for the construction, development, use, maintenance and operation of the Premises. Subject to Landlord's approval rights in Article 8, Article 9, Article 11 and Article 12 of this Lease, Landlord, upon request of Tenant shall execute any site plans, development plans, construction documents, plats, plans, and permits, including without limitation applications needed therefor (e.g., building permits, grading permits, sheeting/shoring permits, occupancy permits or similar permits needed for or by a subtenant, etc.) that are necessary or required to be executed or confirmed by the fee owner of the Project Land for, related to or in connection with the construction, development, use or Restoration of the Improvements.

ARTICLE 12
REPAIRS AND MAINTENANCE

Section 12.01. Repairs to the Premises.

Tenant shall take good care of the Premises, including, without limitation, roofs, foundations and appurtenances thereto, water, sewer and gas connections, pipes and mains which are located on or service the Premises and all Fixtures, and shall put, keep and maintain the Premises in good and safe order and condition in a first class manner that is consistent with the maintenance of other comparable properties of comparable age and quality in the Northern Virginia area, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition in a good and workmanlike manner that is consistent with the construction and maintenance standards for the Initial Construction Work, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, provided however that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Article 8 and Article 9 hereof. When used in this Section 12.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be at least equal in quality and class to the original work and shall be made in compliance with all Applicable Laws.

Section 12.02. No Waste.

Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises and the Project.

Section 12.03. No Obligation on Landlord.

Except as expressly provided herein or in the Easement, Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to, nor to demolish any portion of the Premises. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises.

ARTICLE 13
RESERVED

ARTICLE 14
COMPLIANCE WITH LAWS AND INSURANCE COVERAGE; ENVIRONMENTAL
REQUIREMENTS

Section 14.01. Compliance with Applicable Laws.

Tenant promptly shall comply with all Applicable Laws, including those affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involves or requires any structural changes or additions in or to any of the Improvements, without regard to whether or not such changes or additions are required on

account of any particular use of the Premises, or any part thereof, may be put, and without regard to the fact that Tenant is not the fee owner of the Premises. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 14.02. Right to Contest.

Tenant, at its expense, after notice to Landlord, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Applicable Laws, *provided that*:

(a) Landlord shall not be subject to criminal penalty or liability or civil penalty or liability or to prosecution for a crime, nor shall the Premises or any part thereof be subject to being condemned or vacated, by reason of non-compliance of Applicable Laws or otherwise by reason of such contest;

(b) if an adverse decision in such proceeding or the failure to pay any judgment resulting from such adverse decision by reason of non-compliance of Applicable Laws or otherwise by reason of such contest could result in the imposition of any lien against the Premises, then before the commencement of such contest, Tenant shall:

(i) furnish to Landlord the bond of a surety company reasonably satisfactory to Landlord, or such other deposit or security in each case in form, substance and amount reasonably satisfactory to Landlord, and

(ii) indemnify Landlord against the cost of such non-compliance, criminal penalty or liability or civil penalty or liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest);

(c) Tenant shall keep Landlord regularly advised as to the status of such proceedings;

(d) such contest shall be prosecuted with diligence and in good faith to final adjudication, settlement, compliance or other disposition of the Applicable Laws so contested;

(e) such contest, and any disposition thereof (including, without limitation, the cost of complying therewith and paying all interest, penalties, fines, liabilities, fees and expenses in connection therewith), shall be at the sole cost of and shall be paid by Tenant;

(f) promptly after disposition of the contest, Tenant shall comply with such Applicable Laws to the extent determined by such contest; and

(g) notwithstanding any bond, deposit or other security furnished to Landlord, Tenant shall comply with all Applicable Laws in accordance with the applicable provisions of this Lease if the Premises, or part thereof, shall be in danger of being forfeited or if Landlord is in danger of being subject to criminal liability or penalty, or civil liability or penalty in connection with such contest.

Landlord shall be deemed “subject to prosecution for a crime” if Landlord or any of its respective officers, directors, partners, shareholders, agents or employees is charged with a crime of any kind whatever unless such charge is withdrawn ten (10) days before such party is required to plead or answer thereto.

Section 14.03. Environmental Requirements.

Tenant shall not undertake, or, to the extent within its reasonable control, permit or suffer any Environmental Activity other than (i) in compliance with all Applicable Laws and all of the terms and conditions of all insurance policies covering, related to or applicable to the Premises, and (ii) in such a manner as shall keep the Premises free from any lien imposed in respect of or as a consequence of such Environmental Activity. Tenant shall act in a commercially reasonable manner to ensure that any Environmental Activity undertaken or permitted at the Premises by Tenant, its agents or representatives, is undertaken in a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Premises. Tenant shall notify Landlord within twenty-four (24) hours (or the next Business Day if such twenty-four (24) hour period includes a day that is not a Business Day) of Tenant’s discovery of any known material release of Hazardous Materials from or at the Premises. Landlord shall have the right from time to time (not more often than once every twenty-four (24) months) and at Landlord’s expense to conduct a non-invasive environmental audit of the Premises during regular business hours, and Tenant shall reasonably cooperate in the conduct of such environmental audit. Landlord shall provide a copy of any such audit to Tenant. Landlord shall use its reasonable efforts to minimize interference with Tenant’s and any subtenant’s use and occupancy of the Premises in performing such environmental audit, and shall repair any damage to the Premises caused by the same, except that Landlord shall have no such repair obligation to the extent the damage was due to any Environmental Activity. If Tenant shall breach the covenants provided in this Section, then in addition to any other rights and remedies which may be available to Landlord under this Lease or otherwise at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord, as are necessary or reasonably appropriate to cure such breach. Tenant shall not be responsible for and shall have no liability in connection with any Environmental Activity undertaken or permitted by Landlord, its agents, employees, representatives, licensees, or invitees. For purposes of this Section, “Environmental Activity” means any storage, installation, existence, release, threatened release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the Premises, in violation of Environmental Laws, of (A) any substance, product, waste or other material of any nature whatsoever that is listed, regulated or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Clean Water Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right of Know Act of 1986, 42 U.S.C. § 11001, et seq., and the Virginia State Water Control Law, Va. Code Ann. § 62.1-44.2, et seq. (collectively, Environmental Laws”); (B) any substance, product, waste or other material of any nature whatsoever that may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (C) petroleum or crude oil or products thereof, other than petroleum and petroleum products that are contained within regularly-

operated motor vehicles or products used in connection with the construction, operation, and maintenance of the Premises; and (D) asbestos (the materials described in clauses (A) through (D) above are collectively referred to herein as "Hazardous Materials").

ARTICLE 15 DISCHARGE OF LIENS; BONDS

Section 15.01. Creation of Liens.

Subject to the provisions of Section 15.02 hereof, except as otherwise expressly provided in this Lease, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 15.02. Discharge of Liens.

If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 15.01 against the Premises or any part thereof or the Project, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant, within forty-five (45) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional ten (10) days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Landlord's making of the payment or incurring of the costs and expenses, shall constitute Rent and shall be paid by Tenant to Landlord within ten (10) days after demand. Notwithstanding the foregoing provisions of this Section 15.02, Tenant shall not be required to discharge (and Landlord shall not pay or discharge) any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security reasonably satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 15.03. No Authority to Contract in Name of Landlord.

Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any

services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant, any Approved Subtenants or other subtenants (or any sub-subtenants of either), for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof or any assets of, or funds appropriated to, Landlord. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

ARTICLE 16
"AS-IS"; POSSESSION; TITLE MATTERS

Section 16.01. As-Is Condition; No Representations.

Tenant acknowledges that Tenant is fully familiar with the Premises, the physical condition thereof, the Title Matters and the zoning status thereof. Tenant accepts the Premises in its existing legal and physical condition and state of repair, and, except as otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Project Land, the Improvements, the status of title thereof, the physical condition thereof, including, without limitation, the zoning or other laws, regulations, rules and orders applicable thereto, Taxes, or the use that may be made of the Premises, that Tenant has relied on no such representations, statements or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Premises.

Section 16.02. Delivery of Possession.

Landlord shall deliver possession of the Premises on the Effective Date vacant and free of occupants and tenancies, subject only to the Title Matters.

ARTICLE 17
LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 17.01. No Liability for Injury.

Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person or Governmental Authorities which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Premises (including, but not limited to, any common areas, Fixtures, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever except to the extent any of the foregoing shall have resulted from the gross negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees.

Section 17.02. No Liability for Utility Failure.

Landlord shall not be liable to Tenant or to any other Person or Governmental Authorities for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or Governmental Authorities or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas- mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees.

Section 17.03. No Liability for Soil Conditions.

In addition to the provisions of Sections 17.01 and Section 17.02, Landlord will not be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto, except to the extent (a) such injury or damage results from the activities of Landlord on the Premises or on land adjacent to the Premises or (b) Landlord has otherwise agreed in writing with Tenant or Tenant's predecessor-in-interest.

ARTICLE 18
INDEMNIFICATION OF LANDLORD AND OTHERS

Section 18.01. Indemnification.

Tenant shall not do, or knowingly permit any Approved Subtenant, tenant of any Approved Subtenant, or any employee, agent or contractor of Tenant, to do any act or thing upon the Premises which may reasonably be likely to subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of Applicable Laws, and shall use its commercially reasonable efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability. Tenant, to the fullest extent permitted by law, shall indemnify and save Landlord and its agents, directors, supervisors, officers and employees (collectively, the "Indemnitees"), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including without limitation engineers', architects' and attorneys' fees and charges and reasonable value of any such in-house services) which may be suffered by, imposed upon or incurred by or asserted against any of the Indemnitees, by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the gross negligence or intentional misconduct of any of the Indemnitees:

- (a) construction of the Premises or any other work done in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof;

(c) any negligent or tortious act or failure to act (or act which is alleged to be negligent or tortious) within the Premises;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof;

(e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(f) any lien or claim against or on the Premises or any portion thereof, or any lien or claim created or permitted to be created in respect of the Premises against any assets of, or funds appropriated to any of the Indemnitees under the laws of the Commonwealth of Virginia or of any other Governmental Authority or any liability which may be asserted against any of the Indemnitees with respect thereto (other than the Title Matters or matters affecting title created by or at the direction of Landlord);

(g) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Approved Subleases, or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Article 4 and Section 14.02 hereof;

(i) any tax attributable to the execution, delivery or recording of this Lease or a memorandum of this Lease;

(j) subject to the rights of a Mortgagee pursuant to the terms of Section 10.07(j)(vi), any default beyond applicable notice and cure periods by Guarantor under the Completion Guaranty; or

(k) in connection with the enforcement of any indemnity or "hold harmless" agreement given or made by Tenant to Landlord in this Lease.

Section 18.02. Not Affected by Insurance.

The obligations of Tenant under this Article 18 shall not be affected in any way by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 18.03. Notice and Defense Process.

If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 18.01,

then, upon demand by Landlord, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and Landlord shall approve, which approval shall not be unreasonably withheld, conditioned, or delayed. The foregoing notwithstanding, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, Landlord may, following such consultation with Tenant as to the necessity of such engagement and the choice of such attorneys as is reasonable under the circumstances, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding and Tenant shall pay the reasonable fees and disbursements of such attorneys. Tenant shall control the settlement of any such claim, action, or proceeding. Landlord's consent to any such settlement shall not be required if such settlement provides solely for the payment of money and does not impose any other liability on Landlord; otherwise Landlord's consent to a proposed settlement will be required, provided such consent will not be unreasonably withheld.

Section 18.04. Survival.

The provisions of this Article 18 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

ARTICLE 19
RIGHT OF FIRST OFFER

Section 19.01. Right of First Offer.

Subject to and upon the terms and conditions hereinafter set forth, Landlord hereby grants to Tenant a right of first offer (the "Right of First Offer" or "ROFO") with respect to any proposed Sale of Landlord's interest in the Premises or any portion thereof (such interest subject to Sale being the "ROFO Premises"). If at any time Landlord elects to market or desires to sell the ROFO Premises or Landlord's interest therein to third parties unaffiliated with Landlord (each, a "Third Party Purchaser") then, Landlord shall give written notice thereof to Tenant. Landlord's notice shall invite Tenant to submit its desired price to purchase the ROFO Premises (the "ROFO Price"), together with the other terms and conditions of such listing, which terms and conditions shall reflect Tenant's good faith determination of market conditions and the market value of the ROFO Premises (the "ROFO Tenant Notice"). Tenant shall have the right, at Tenant's option, exercisable as hereinafter provided, to purchase Landlord's interest that is the subject of the proposed Sale (as defined below) on the terms and conditions set forth in this Article 19.

Section 19.02. ROFO Procedure.

If the parties agree on the ROFO Price and other business terms reflected in the ROFO Tenant notice, then the ROFO Price and other terms so agreed upon shall be deemed to be a part of the terms upon which Tenant shall have the right to exercise its ROFO and Landlord and Tenant shall negotiate in good faith the remaining terms and conditions of any purchase of the ROFO Premises for a period of thirty (30) days which other terms and conditions shall be

consistent with customary purchase and sale agreements for commercial property in the Northern Virginia area and proceed to closing of the sale. If the parties are unable to agree on the terms and conditions of the Sale of the ROFO Premises (the “ROFO Terms”) within the thirty (30) day period following Landlord’s receipt of ROFO Tenant Notice, then Landlord shall have the right to Sell the ROFO Premises to a Third Party Purchaser, *provided that* the price of such sale (including any agreed-upon credits, adjustments, or prorations) shall exceed the ROFO Price and contain all or equivalent ROFO Terms (or the higher purchase price can be justified by relative changes to the ROFO Terms).

Section 19.03. “Sale”/”Sell”.

As used herein, the terms “Sale” and “Sell” shall mean any sale, assignment, exchange, transfer or other disposition of, or the entering into of any loan for the sole purpose of defeating the Right of First Offer as to, either of the following: (a) all or any portion of the Premises, or (b) all or any portion of the ownership interests in Landlord; provided however, that the terms “Sale” and “Sell” shall not include: (i) ***[any sale, assignment, exchange, transfer or other disposition of all or any portion of the Premises to a Third Party Purchaser in a condemnation proceeding or pursuant to a conveyance in lieu of condemnation; (ii)]***¹⁹ the grant or conveyance from time to time of easements, rights-of-way, and comparable interests to utilities and governmental entities; (iii) except as provided above in this sentence, any conveyance resulting from the financing or refinancing of Landlord’s fee interest in the Premises or the foreclosure of a mortgage encumbering Landlord’s fee interest in the Premises, or any deed given in lieu of such foreclosure; or (iv) any sale, assignment, exchange, transfer or other disposition to a Governmental Authority or City.

ARTICLE 20
LANDLORD’S RIGHT OF INSPECTION;
RIGHT TO PERFORM TENANT’S COVENANTS

Section 20.01. Landlord’s Right to Inspect.

Subject to the rights of occupants of the Premises, Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency) for the purpose of (a) inspecting the same and (b) determining whether or not Tenant is in compliance with its obligations hereunder, *provided that*, except in any emergency, Landlord shall have given Tenant any notice and applicable cure rights to which Tenant is entitled as set forth in Section 23.01.

Section 20.02. Landlord’s Right to Cure.

At any time during an Event of Default under this Lease, upon notice to Tenant, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant’s behalf, including without limitation, curing any Non-Monetary Defaults under this Lease. Except for Landlord’s

¹⁹ Not applicable to TC Leases.

gross negligence or willful misconduct, Landlord shall not be liable for any damage of Tenant or any Approved Subtenant by reason of making such repairs or the performance of any such work.

Section 20.03. Reimbursement of Landlord.

All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any of Tenant's obligation pursuant to Section 20.02, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within ten (10) Business Days after Landlord shall have submitted to Tenant a statement, in reasonable detail, substantiating the amount demanded by Landlord. Any payment or performance by Landlord pursuant to Section 20.01 shall not be nor be deemed to be a waiver or release of breach or Event of Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of an uninsured damage to or destruction of the Premises. All sums required to be repaid by Tenant or reimbursed to Landlord hereunder shall constitute Rent.

Section 20.04. No Duty on Landlord.

Nothing in this Article 20 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment so long as such storage does not materially interfere with the operation of the Premises or the use of any portion of the Premises under Approved Subleases. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Force Majeure.

ARTICLE 21

NO ABATEMENT OF BASE RENT OR ADDITIONAL COSTS

Except as may be otherwise expressly provided herein, there shall be no abatement, offset, diminution or reduction of Base Rent, Supplemental Rent, or Additional Costs payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances.

ARTICLE 22
NO UNLAWFUL OCCUPANCY

Section 22.01. No Unlawful Use.

Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal or extra hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose in violation of any Certificate of Occupancy for the Premises or the applicable part thereof or of any Applicable Laws, or which may make void or voidable any insurance then in force on the Premises. Tenant shall take, promptly upon the discovery of any use that is not a Permitted Use, or that is an unlawful, illegal or extra hazardous use, such actions as Tenant deems necessary to address such unpermitted, unlawful, illegal or extra hazardous use.

Section 22.02. No Adverse Possession.

Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 23
EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 23.01. Events of Default.

Each of the following events shall be an “Event of Default” hereunder:

(a) if Tenant shall fail to pay any item of Rent or any part thereof, when the same shall become due and payable and such failure shall continue for thirty (30) days after notice from Landlord to Tenant;

(b) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease (and which does not otherwise expressly constitute an Event of Default under a different subsection of this Section 23.01), and such failure shall continue for a period of thirty (30) days after notice thereof by Landlord to Tenant (or such other cure period, if expressly set forth in this Lease) specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Force Majeure reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such thirty (30) day period and shall diligently and continuously prosecute the same to completion) (a “Non-Monetary Default”);

(c) if Tenant has Abandoned the Premises;

(d) if this Lease or the estate of Tenant hereunder shall be assigned or subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, in violation of the terms of this Lease and such transaction shall not be made to comply or voided ab initio within thirty (30) days after notice thereof from Landlord to Tenant;

(e) if a levy under execution or attachment (other than a Mortgage) shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, bonding, insured over or otherwise within a period of thirty (30) days; and

(f) if Tenant fails to Restore the Premises, if Tenant so elects or is required, in accordance with Section 8.01;

(g) if any of the following occur (each of the following individually and collectively referred to as a "Bankruptcy Default"):

(i) *[if Tenant shall admit, in writing, that it is unable to pay its debts as they become due]²⁰;*

(ii) if Tenant shall make an assignment for the benefit of creditors;

(iii) if Tenant shall file a voluntary petition under the Bankruptcy Code; or if such petition is filed against it, and an order for relief is not entered within ninety (90) days thereafter; or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, and such order of relief is not entered or appointment is not removed within ninety (90) days after the occurrence thereof;

(iv) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant or such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated. Notwithstanding the foregoing, any bankruptcy proceeding initiated by Landlord shall not be or become an Event of Default.

²⁰ Not applicable to TC Leases; insert "intentionally omitted" instead.

Section 23.02. Intentionally Omitted.

Section 23.03. Expiration and Termination of Lease.

(a) If an Event of Default shall occur under Section 23.01 (other than a Non-Monetary Event of Default or a Bankruptcy Default), Landlord (subject to Section 23.16 below) may, at any time thereafter, at its option, give notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than twenty (20) days after the giving of such notice, and if, on the date specified in such notice, Tenant shall have failed to cure the breach which was the basis for the Event of Default, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as of the date specified in the notice, and Tenant immediately shall quit and surrender the Premises.

(b) If this Lease is terminated as provided in Section 23.03(a), Landlord, without further notice, may re-enter and repossess the Premises, with proper legal process, using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor, and may dispossess Tenant by summary proceedings or other lawful process.

Section 23.04. Effect of Termination.

If this Lease shall be terminated as provided in Section 23.03(a), or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 23.03(b), hereof:

(a) Tenant shall pay to Landlord all Rent payable by Tenant under this Lease to the Expiration Date or to the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may complete all construction required to be performed by Tenant hereunder, if applicable, and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by Depository pursuant to Article 8, Article 9, Article 10 or Article 11) without relieving Tenant of any liability under this Lease which exists after the date of termination or dispossession or otherwise affecting any such liability, and/or let or relet the Premises for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the reasonable cost and expense of terminating this Lease or for re-entering, retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (ii) second, pay to itself the reasonable cost and expense sustained in securing a new tenant and other occupant, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, to the extent not duplicative of the amounts paid under subsections (c) and (d) below, the reasonable cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord hereunder. Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due

on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability;

(c) Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as "Deficiency") between the Rent reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term based on the then payable Rent and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 23.04(b) for any part of such period (first deducting from the rents collected under any such reletting all of the payments to Landlord described in Section 23.04(b), hereof); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for payment of installments of Rent, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(d) whether or not Landlord shall have collected any Deficiency installments as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any further Deficiencies, as and for liquidated and agreed final damages (it being agreed that it would be impracticable or extremely difficult to fix the actual damage), a sum equal to the amount by which the Rent reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term based on the then payable Rent exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the Involuntary Rate less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 23.04(c) for the same period; it being agreed that before presentation of proof of such liquidated damages to any court, commission or tribunal, if the Premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

Section 23.05. Survival of Obligations.

No termination of this Lease pursuant to Section 23.03(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Section 23.03(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such termination, repossession or reletting.

Section 23.06. Tenant's Waiver.

Except as may otherwise be expressly provided in this Lease, to the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 23.

Section 23.07. Successive Suits.

Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rent payable hereunder or any Deficiencies or other sums payable by Tenant to Landlord pursuant to this Article 23, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no Event of Default by Tenant and termination.

Section 23.08. Bankruptcy Defaults and Remedies.

(a) If any Bankruptcy Default shall occur, Landlord may (subject to Section 23.16 below), re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor, and undertake any leasing and property management duties, responsibilities or obligations that Landlord deems necessary or desirable for the Premises, provided such actions are commercially reasonable and consistent with the management of comparable properties in Northern Virginia. Landlord shall not be liable to indictment, prosecution or damages for any actions or failure to act by Landlord in its leasing or property management capacity, except to the extent such action or failure to act was due to the gross negligence or willful misconduct of Landlord. Any sums expended by Landlord in connection with Landlord's duties set forth in this Section 23.08(a) shall be Additional Costs and shall be paid by Tenant in accordance with the terms of this Lease. Failure to pay such Additional Costs in accordance with the terms hereof will (after the applicable notice and cure period) constitute an Event of Default by Tenant under Section 23.01(a) above.

(b) If an order for relief is entered or if a stay of proceeding or other acts becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such Bankruptcy Code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of all of Tenant's obligations under this Lease (including without limitation, the obligations set forth in Article 3, Article 4, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 19, Article 23 and Article 26 of this Lease).

(c) Notwithstanding anything in this Article 23 (other than Section 23.16) to the contrary, Landlord and Tenant agree that, in the event a Bankruptcy Default hereunder results in a liquidation of Tenant's assets under Chapter 7 of the Bankruptcy Code, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) days' notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession or trustee shall immediately quit and surrender the Premises as aforesaid.

(d) Nothing contained in this Article 23 (other than Section 23.16) shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy,

insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 23.

Section 23.09. No Reinstatement.

No receipt of monies by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless Landlord accepts such receipt and expressly waives and releases the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rent payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 23.10. Waiver of Notice of Re-Entry; Waiver of Jury Trial.

Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease are not restricted to their technical legal meaning.

Section 23.11. No Waiver by Landlord.

No failure by Landlord or any prior Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall

affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other than existing or subsequent breach thereof.

Section 23.12. Injunction.

In the event of a Non-Monetary Default or any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law Tenant waives any requirement for the posting of bonds or other security in any such action.

Section 23.13. Rights Cumulative.

Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. Landlord shall use commercially reasonable efforts to mitigate damages.

Section 23.14. Enforcement Costs.

Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant in breach of Tenant's obligations hereunder. After an Event of Default, Tenant also shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs, expenses, and reasonable attorneys' fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within fifteen (15) days after demand by Landlord.

Section 23.15. Waiver of Consequential Damages.

Under no circumstances, and notwithstanding anything to the contrary contained in this Lease, will Tenant or Landlord have responsibility under this Lease for indirect, consequential, punitive, special or other non-direct damages.

Section 23.16. Mortgagee Protections.

All rights of Landlord in this Article 23 and elsewhere in this Lease with respect to Events of Default shall be subject to the rights of Mortgagee in this Lease.

ARTICLE 24
EASEMENT

Section 24.01. Easement.

In connection with the initial development of the Project and to the extent necessary to provide ingress, egress, rights-of-way and utilities to and from the Premises or any portion of the Project in accordance with the other Project Covenants, Landlord may enter into, and record in the Land Records against the Project Land, one or more easements, covenants, and agreements (each, an "Easement") setting forth (as and when necessary), among other things, (a) easements for utilities, including sewer, water, electricity, gas, telecommunications, cable and storm water, (b) easements for ingress and egress, (c) maintenance covenants and standards including sharing the cost of maintenance and repair of the shared infrastructure facilities (e.g. roads, storm water, utilities), if any, (d) cooperation provisions regarding the ongoing and future development and construction of the Project including the obligation to grant easements necessary for the development and construction of the Project including temporary construction easements, and (g) such other terms and conditions customarily found in mixed-use developments similar to the Project, provided however, that no such Easement shall: (i) materially affect Tenant's use and enjoyment of the Premises, or (ii) pose any economic burden on Tenant beyond the direct benefit it obtains for the Premises; unless Tenant consents to such Easement, which consent shall not be unreasonably withheld, conditioned or delayed. If Tenant does not consent to an Easement or Landlord and Tenant are unable to resolve any dispute with respect to approval of the Easement, such dispute shall be resolved either: (1) as set forth in the other Project Covenants; or (2) if not provided for in the other Project Covenants, then Tenant or Landlord may resolve the matter in accordance with Article 31 below.

ARTICLE 25
NOTICES

Section 25.01. Notice Addresses.

Whenever it is provided in this Lease that a notice, demand, request, consent, approval, authorization, advice, submission or other communication (each of which is herein referred to as "Notice") is permitted or required to be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows:

(a) electronic mail transmission (with a copy sent the same day by one of the other methods permitted hereunder), (b) national overnight courier service or (c) hand delivery (with receipt acknowledged in writing by the office of the addressee), in each case to the parties as follows:

If to Landlord:

City of Falls Church, Virginia
300 Park Avenue
Falls Church, Virginia 22046
Attention: City Manager
e-mail: city-manager@fallschurchva.gov

With a copy to:

Office of the City Attorney
300 Park Avenue, Office #210E
Falls Church, Virginia 22046
Attention: City Attorney
e-mail: city-attorney@fallschurchva.gov

And with a copy to:

Arent Fox LLP
1717 K Street, NW
Washington, D.C. 20006
Attn: Jeffrey A. Mitchell
e-mail: Jeffrey.Mitchell@arentfox.com

If to Tenant:

As set forth on Exhibit A attached hereto.

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 25.01. Notices given by Landlord with respect to Base Rent, Supplemental Rent, Additional Costs, Impositions and all other Rent bills, as well as other routine, nonmaterial communications and correspondence, may be delivered by ordinary United States mail (in addition to the other methods set forth above) to Tenant.

Section 25.02. When Notices Deemed Given.

Every Notice shall be deemed to have been given or served as of the date marked on the receipt or date of refusal, whether or not also sent by electronic mail delivery. Notices given by United States mail shall be deemed given as of the third business day after being deposited in the United States mail.

Section 25.03. Notices to Mortgagees.

If requested in writing by the holder of any Mortgage (which request shall be made in the manner provided in Section 25.01 and shall specify an address to which Notices shall be given), a Notice of an Event of Default to a party shall also be given contemporaneously to such holder in the manner herein specified.

ARTICLE 26
SUBORDINATION; LANDLORD MORTGAGES

Section 26.01. Lease Not Subordinate.

Landlord's interest as Landlord in this Lease and in the Premises shall not be subject or subordinate to (a) any Mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens, security interests or encumbrances now or hereafter affecting Tenant's interest in this Lease.

Section 26.02. Landlord Mortgage.

Tenant's leasehold interest in the Premises shall be prior to any mortgage, lien or other encumbrance on Landlord's fee interest in the Premises, except Title Matters. As of the date hereof, Landlord represents to Tenant that there is no mortgage encumbering Landlord's interest in the Premises.

Section 26.03. No Impairment of Title.

Nothing contained in this Lease or any action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of Landlord in the Premises, other than this Lease and one or more Mortgages on Tenant's leasehold interest in this Lease. In amplification and not in limitation of the foregoing, Tenant shall not permit any portion of the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Lease, in such manner as might impair Landlord's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof. Notwithstanding the provisions of this Section 26.03 to the contrary, Tenant shall have the right to create customary and ordinary utility easements which are reasonably required in connection with any Construction Work or operation of the Premises for the Permitted Use and record in the Land Records documents to effectuate the same.

ARTICLE 27
REPRESENTATIONS AND WARRANTIES

Section 27.01. Landlord's Representations and Warranties.

Landlord hereby represents and warrants that:

(a) Landlord (i) has all requisite right, power and authority to execute and deliver this Lease and to perform its obligations under this Lease and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Lease. Landlord has the authority to lease the Premises to Tenant and to carry out Landlord's obligations hereunder. This Lease has been duly executed and delivered by Landlord, and constitutes the legal, valid and binding

obligation of Landlord, enforceable against it in accordance with its terms. The Person signing this Lease on behalf of Landlord is authorized to do so.

(b) The execution, delivery and performance by Landlord of this Lease and the transactions contemplated hereby and the performance by Landlord of its obligations hereunder will not violate any of the terms, conditions or provisions of (i) any judgment, order, injunction, decree, regulation or ruling of any court or other Governmental Authority, or law to which Landlord is subject or (ii) any agreement or contract to which Landlord is a party or to which it is subject.

(c) No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Lease by Landlord.

(d) There is no litigation, arbitration, administrative proceeding or other similar proceeding pending against Landlord which relates to the Premises.

Section 27.02. Tenant's Representations and Warranties.

Tenant hereby represents and warrants that:

(a) Tenant is a limited liability company, duly formed and validly existing and in good standing under the laws of the State of Delaware and has full power and authority under the laws of the Commonwealth of Virginia to conduct the business in which it is now engaged.

(b) Tenant has the full right, power and authority to enter in this Lease and to carry out Tenant's obligations hereunder and all requisite action necessary to authorize Tenant to enter into this Lease and to carry out its obligations hereunder have been taken. The Person signing this Lease on behalf of Tenant is authorized to do so.

(c) The execution, delivery, and performance of this Lease by Tenant and the transactions contemplated hereby and the performance by Tenant of its obligations hereunder do not violate any of the terms, conditions or provisions of (i) Tenant's organizational documents, (ii) any judgment, order, injunction, decree, regulation or ruling of any court or other Governmental Authority, or law to which Tenant is subject, or (iii) any agreement or contract to which Tenant is a party or to which it is subject. This Lease has been duly executed and delivered by Tenant, and constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms.

(d) No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Lease by Tenant.

(e) There are no actions, suits, arbitrations, governmental investigations or other proceedings pending, or to the knowledge of Tenant threatened, which might adversely affect its right to enter into or perform this Lease.

ARTICLE 28
CERTIFICATES BY LANDLORD AND TENANT

Section 28.01. Tenant Estoppels.

At any time and from time to time within fifteen (15) days after request by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rent have been paid, stating whether or not to the knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge, and certifying as to any other factual matter with respect to this Lease as Landlord or such other addressee may reasonably request.

Section 28.02. Landlord Estoppels.

At any time and from time to time within fifteen (15) days after request by Tenant, Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rent have been paid, and stating whether or not to the knowledge of Landlord, Tenant is in an Event of Default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such Event of Default of which Landlord may have knowledge, and certifying as to any other factual matter with respect to this Lease as Tenant or such other addressee may reasonably request.

ARTICLE 29
CONSENTS AND APPROVALS

Section 29.01. Consent Not a Waiver.

It is understood and agreed that, by the failure of Landlord to grant any consent or approval to Tenant to perform any act of Tenant requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval (except in any instance where Landlord has been deemed to have consented to or deemed to have approved something as expressly provided in this Lease), Landlord shall not be deemed to have waived its right to require such consent or approval, nor for any further similar act by Tenant for which approval or consent is required. Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent or approval under the terms of this Lease Tenant shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent or approval.

Section 29.02. Consent or Approval Not To Be Unreasonably Delayed.

Anywhere in this Lease where Landlord has agreed not to unreasonably withhold its consent or approval, Landlord also agrees that its consent or approval shall not be unreasonably conditioned or delayed.

Section 29.03. Landlord Not Liable for Money Damages.

Whenever in this Lease Landlord's consent or approval is required and this Lease provides that Landlord's consent or approval shall not be unreasonably withheld and Landlord shall refuse such consent or approval, or in any instance in which Landlord shall delay its consent or approval, Tenant shall in no event make, nor be entitled to make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed its consent or approval, subject to the last sentence of this Section 29.03. Tenant's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment or for a determination as to whether Landlord reasonably withheld its consent pursuant to the terms of the Lease, which shall be determined by a court of competent jurisdiction in the Commonwealth of Virginia. The prevailing party in any lawsuit brought under this Section 29.03 shall be entitled to recover its reasonable attorneys' fees and expenses incurred in such lawsuit from the non-prevailing party.

Section 29.04. Designation of Authority by Landlord.

Landlord hereby designates the City Manager and City Attorney (collectively, the "Landlord's Representative") as Landlord's representatives for the purposes of coordinating and overseeing Landlord's obligations under this Lease including without limitation providing or granting any approval or consent that may be required or requested of Landlord under this Lease and executing and delivering any easements, agreements, documents or other items under this Lease. Any change in the Landlord's Representative shall require the consent of Tenant, not to be unreasonably withheld, conditioned, or delayed. Whenever this Lease requires or permits the consent, approval or direction of Landlord, including, without limitations, consents, applications, and approvals for the Zoning Approvals, such consents and approvals shall not be unreasonably withheld, conditioned, or delayed (unless otherwise expressly set forth herein to the contrary), such consent, approval, or direction may be given by Landlord's Representative on Landlord's behalf and such decisions shall be final and conclusive and binding on Landlord. Landlord may change the Landlord's Representative by furnishing ten (10) days written notice of such change(s) to Tenant in accordance with the provisions of Section 25.01.

ARTICLE 30
SURRENDER AT END OF TERM

Section 30.01. Surrender at End of Term.

On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 23 hereof, Tenant shall well and truly surrender and deliver up to Landlord the Premises in its as-is condition. If the Term has

naturally expired, the Premises shall be delivered free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by or consented to by Landlord or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date, and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatsoever by Landlord; if the Lease has been terminated or a re-entry by Landlord has occurred pursuant to Article 23, then the Premises shall be delivered subject to all lettings, occupancies, liens, and encumbrances and their respective terms. Tenant shall have no obligation to remove any Improvements therefrom. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 30.02. Delivery of Premises Agreements.

On the last day of the Term or upon any earlier termination of the Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 23 hereof, Tenant shall deliver to Landlord all Approved Subleases (with Tenant's executed counterparts) and any service and maintenance contracts, to the extent assignable, then affecting the Premises which Landlord has elected to have assume, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for or otherwise pertaining to the Premises, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Improvements installed on the Premises, together with a duly executed assignment thereof to Landlord, all books and records and any and all other documents of every kind and nature whatsoever relating to the Premises that are in Tenant's possession and control.

Section 30.03. Abandonment of Personal Property.

Any personal property of Tenant or of any subtenant which shall remain on the Premises for thirty (30) days after the termination of this Lease and after the removal of Tenant or such subtenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such subtenant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any subtenant.

Section 30.04. Survival.

The provisions of this Article 30 shall survive any termination of this Lease.

ARTICLE 31 DISPUTE RESOLUTION

In the event of a dispute between Landlord and Tenant regarding any matters arising under this Agreement, Landlord and Tenant each covenant and agree to engage in good faith negotiations with the other in an attempt to promptly resolve such dispute. Except as otherwise specifically provided in this Agreement or as otherwise mutually agreed in writing by Landlord and Tenant, any dispute between the parties arising from or in connection with this Lease shall be resolved by judicial proceedings.

ARTICLE 32
ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

ARTICLE 33
QUIET ENJOYMENT

Landlord covenants that so long as this Lease is full force and effect and Tenant is not in default beyond applicable notice and grace periods hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming by, through or under Landlord and free of any encumbrance created or suffered by Landlord, except those encumbrances, liens or defects of title, created or suffered by Tenant and the Title Matters.

ARTICLE 34
INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 35
RECORDING OF MEMORANDUM

A memorandum of this Lease and of any amendment or modification of this Lease shall be recorded among the Land Records within five (5) business days after the Effective Date. Landlord and Tenant shall join in the execution of a memorandum of this Lease or a memorandum of any amendment or modification of this Lease in proper form for recordation and shall cooperate with each other to record such memoranda.

ARTICLE 36
RESERVED

ARTICLE 37
MISCELLANEOUS

Section 37.01. Captions.

The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 37.02. Table of Contents.

The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 37.03. Pronouns.

The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 37.04. Depository Charges.

Depository may pay to itself out of the monies held by Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay Depository any additional charges for such services.

Section 37.05. More than One Entity.

Subject to and except as provided in Section 24.02, if more than one entity is named as or becomes Tenant hereunder, Landlord may require the signatures of all such entities in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such entity shall designate another such entity as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation. Subject to Section 37.06, each entity named as Tenant shall be fully liable for all of Tenant's obligations hereunder. If all such parties designate in writing one entity to receive copies of all notices, Landlord agrees to send copies of all notices to that entity.

Section 37.06. Limitation of Liability.

(a) The liability of Landlord or of any Person who has at any time acted as Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes or action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, directors, officers, employees, agents or servants or either shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(b) *[Subject to and not in limitation of Guarantor's obligations under the Completion Guaranty,]*the liability of Tenant *[or of any Person who has at any time acted as Tenant hereunder for damages or otherwise]*²¹ shall be limited to Tenant's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, any funds held by Depository pursuant to any of the provisions of this Lease, and any other rights, privileges, licenses, franchises, claims, causes or action or other interests, sums or receivables appurtenant to the Premises. Neither Tenant nor any such Person nor any of the members, directors, officers, employees, agents or servants or either shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any such Person or any of the members, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

Section 37.07. No Merger.

There shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 37.08. No Brokers.

Each of the parties represents to the other that it has not dealt with any broker, finder or like entity in connection with this lease transaction. If any claim is made by any Person who shall claim to have acted or dealt with Tenant or Landlord in connection with this transaction, Tenant will pay the brokerage commission, fee or other compensation to which such Person is entitled, shall indemnify and hold harmless the other party hereto against any claim asserted by such Person for any such brokerage commission, fee or other compensation and shall reimburse such other party for any costs or expenses including, without limitation, reasonable attorneys' fees and disbursements, incurred by such other party in defending itself against claims made against it for any such brokerage commission, fee or other compensation.

Section 37.09. Amendments in Writing.

This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 37.10. Governing Law.

This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

²¹ Not applicable to TC Leases.

Section 37.11. Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 37.12. Sections.

All references in this Lease to “Articles” or “Sections” shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 37.13. Licensed Professionals.

All references in this Lease to “licensed professional engineer,” “licensed surveyor” or “registered architect” shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the Commonwealth of Virginia.

Section 37.14. Appropriations.

To the extent this Lease is construed to impose any financial obligations upon Landlord, any such financial obligations shall be binding to the extent of appropriations to Landlord by the City Council.

Section 37.15. No Joint Venture.

Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 37.16. Tax Benefits.

To the extent permitted by law, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Premises. Landlord, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 37.16, and Tenant shall pay Landlord’s reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 37.17. Submission Not an Offer.

Submission of this Lease by Landlord to Tenant does not constitute an offer by Landlord to lease the Premises upon the terms hereof, and in no event will Landlord be bound hereunder except upon the mutual execution and delivery by Landlord and Tenant of the Lease, and the approval of such execution by Landlord’s Board of Supervisors pursuant to applicable law.

Section 37.18. Deed of Lease.

For purposes of Section 55-2 of the Code of Virginia (1950), this Lease is and shall be deemed a deed of lease.

Section 37.19. Non-Discrimination.

Tenant shall not discriminate against faith-based organizations, against a bidder or offeror, or against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by federal law relating to discrimination.

Section 37.20. Americans with Disabilities Act Requirements.

Tenant shall comply with the Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and other programs, activities and services. Tenant agrees that Tenant's contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy.

Section 37.21. Equity Investor Requirements.

Landlord shall consider in good faith any modification to this Lease requested by Tenant as a condition or term of obtaining equity investment in the Premises, *provided that* the same does not increase Landlord's obligations or diminish Landlord's rights, remedies and immunities hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

CITY OF FALLS CHURCH, VIRGINIA, a city incorporated in the Commonwealth of Virginia

By: _____

_____, City Manager

Approved as to form:

Carol W. McCoskrie

City Attorney for the City of Falls Church

TENANT:

_____, a

By:

_____ Its:

EXHIBIT A

KEY TERMS

Tenant:	
Premises:	
Tenant's Address:	
Commercial Condominium Declaration:	
Condo Lot:	
Construction Covenant:	that certain Construction Covenant between Tenant and Landlord dated _____, 2022, and recorded in the Land Records at [_____].
Commercial Condominium Declaration of Covenants, Conditions and Restrictions:	that certain Commercial Condominium Declaration of Covenants, Conditions, Easements and Restrictions among FCGP Development LLC as "Declaration", Landlord, FCGP Condo Parcel Owner LLC, a Delaware limited liability company and West Falls Community Association, Inc., a Virginia non-stock corporation, dated _____, and recorded in the Land Records [at _____].
Fixed Expiration Date:	[Insert date that is 99 years from Effective Date]
Guaranty(ies):	that certain [Guaranty] executed by [_____] as guarantor for Tenant, dated on or about the date of this Lease.
Tenant's Address for Notice:	

EXHIBIT A-1

BASE RENT²²

Phase 1 Payments

<u>Payment Date</u>	<u>Base Rent²³</u>
June 30, 2022	[\$_____]
December 31, 2022	[\$_____]
June 30, 2023	[\$_____]
December 31, 2023	[\$_____]
June 30, 2024	[\$_____]
December 31, 2024	[\$_____]
June 30, 2025	[\$_____]
December 31, 2025	[\$_____]
June 30, 2026	[\$_____]

²² NTD: Rent for the following parcels will be \$0 – B1 office component; garage B3; and D1 senior housing.

²³ **NTD: To also include Profit Share of Land Value as determined under the Comprehensive Agreement.**

EXHIBIT A-2

SUPPLEMENTAL RENT

Payment #	Date	Amount	Payment #	Date	Amount
1	Dec-2025		48	Dec-2072	
2	Dec-2026		49	Dec-2073	
3	Dec-2027		50	Dec-2074	
4	Dec-2028		51	Dec-2075	
5	Dec-2029		52	Dec-2076	
6	Dec-2030		53	Dec-2077	
7	Dec-2031		54	Dec-2078	
8	Dec-2032		55	Dec-2079	
9	Dec-2033		56	Dec-2080	
10	Dec-2034		57	Dec-2081	
11	Dec-2035		58	Dec-2082	
12	Dec-2036		59	Dec-2083	
13	Dec-2037		60	Dec-2084	
14	Dec-2038		61	Dec-2085	
15	Dec-2039		62	Dec-2086	
16	Dec-2040		63	Dec-2087	
17	Dec-2041		64	Dec-2088	
18	Dec-2042		65	Dec-2089	
19	Dec-2043		66	Dec-2090	
20	Dec-2044		67	Dec-2091	
21	Dec-2045		68	Dec-2092	
22	Dec-2046		69	Dec-2093	
23	Dec-2047		70	Dec-2094	
24	Dec-2048		71	Dec-2095	
25	Dec-2049		72	Dec-2096	
26	Dec-2050		73	Dec-2097	
27	Dec-2051		74	Dec-2098	
28	Dec-2052		75	Dec-2099	
29	Dec-2053		76	Dec-2100	
30	Dec-2054		77	Dec-2101	
31	Dec-2055		78	Dec-2102	
32	Dec-2056		79	Dec-2103	
33	Dec-2057		80	Dec-2104	
34	Dec-2058		81	Dec-2105	
35	Dec-2059		82	Dec-2106	
36	Dec-2060		83	Dec-2107	
37	Dec-2061		84	Dec-2108	
38	Dec-2062		85	Dec-2109	
39	Dec-2063		86	Dec-2110	
40	Dec-2064		87	Dec-2111	
41	Dec-2065		88	Dec-2112	
42	Dec-2066		89	Dec-2113	
43	Dec-2067		90	Dec-2114	
44	Dec-2068		91	Dec-2115	
45	Dec-2069		92	Dec-2116	
46	Dec-2070		93	Dec-2117	

47 Dec-2071

94 Dec-2118

A-2-2

EXHIBIT B-1

LEGAL DESCRIPTION OF THE PREMISES

All that certain lot, piece or parcel of land, with improvements thereon and the appurtenances thereto belonging, lying and being in Falls Church, Virginia, and more particularly described as follows:

_____.

Tax Map ID number [_____].

EXHIBIT B-2

DEPICTION OF THE PREMISES

EXHIBIT C

DESCRIPTION OF THE PROJECT LAND

EXHIBIT D

EDA RE INCENTIVES²⁴

<u>Period of time (tax year)</u>	<u>EDA RE Tax Benefits</u>
Tax year 1 (12-month period commencing on the first July 1 following the date of this Lease)	All real estate taxes payable by Tenant
Tax year 2 (ensuing 12-month period after tax year 1; months 13-24 following the date of this Lease)	All real estate taxes payable by Tenant
Tax year 3 (ensuing 12-month period after tax year 2; months 25-48 following the date of this Lease)	The lesser of [\$_____] or the actual real estate taxes payable by Tenant
Tax year 4 (ensuing 12-month period after tax year 3; months 49-72 following the date of this Lease)	The lesser of [\$_____] or the actual real estate taxes payable by Tenant
Tax year 5 (ensuing 12-month period after tax year 4; months 73-96 following the date of this Lease)	The lesser of [\$_____] or the actual real estate taxes payable by Tenant
Tax year 6 (ensuing 12-month period after tax year 5; months 97-120 following the date of this Lease)	The lesser of [\$_____] or the actual real estate taxes payable by Tenant

²⁴ **NTD**: Language re: real estate taxes to be modified.

EXHIBIT E
TITLE MATTERS