
Ground Lease

_____, Landlord

and

_____, Tenant

Location of Premises

Street: _____
Town/Village/City: _____
County: _____
State: New York
Tax Map Identification No. _____

FORM OF GROUND LEASE (2009):

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Ground Lease

AGREEMENT OF LEASE, dated as of _____, ____, 20__, between _____, a _____ [corporation/limited partnership/limited liability company], having offices at _____, _____, New York _____, as landlord (“**Landlord**”) and _____, a _____ [corporation/limited partnership/limited liability company], having offices at _____, _____, New York _____, as tenant (“**Tenant**”).

WITNESSETH:

Landlord and Tenant, for themselves, their legal representatives, successors and permitted assigns, hereby agree as follows:

Article I. Basic Terms and Definitions; Rules of Construction

Section 1.01 The following basic terms, as used in this Lease and in all amendments to the Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

- (a) **Land:** All that certain plot, piece or parcel of land located in the City/Village/Town of _____, County of _____, State of New York, which land is described in Exhibit 1 annexed hereto.
- (b) **Improvements:** All buildings and other improvements now located, or hereafter erected, on the Land, together with all fixtures now or in the future installed or erected in or upon the Land or such improvements and owned or leased by Landlord or Tenant (including boiler(s), equipment, elevators, escalators, machinery, pipes, conduit, wiring, septic systems, wells, heating, ventilation and air conditioning systems).
- (c) **Premises:** The Land, the Improvements, and all rights, privileges, easements, and appurtenances to the Land and Improvements, including all right, title and interest of Landlord, if any, in and to any development rights, strips or gores of land adjoining the Land and in and to any land lying in the bed of any road, highway, street or avenue adjoining the Land to the center line thereof. References in this Lease to the “Premises” shall be construed as if followed by the phrase “or any part thereof” unless the context otherwise requires.
- (d) **Base Rent:** The rent set forth in Exhibit 2 annexed hereto.

- (e) **Commencement Date:** _____.
- (f) **Expiration Date:** The last day of the month in which occurs the ____ anniversary of the Commencement Date, as same may be extended pursuant to Article XXVIII.
- (g) **Guarantor:** _____.
- (h) **Interest Rate:** Three (3) percentage points above the rate of interest publicly announced from time to time by Citibank, N.A., or its successor, as its “base rate” (or such other term as may be used by Citibank, N.A. or its successor, from time to time, for the rate presently referred to as its “base rate”), but in no event greater than the maximum rate permitted by applicable Law. If Citibank, N.A. or its successor no longer publicly announces such rate, then another bank prime rate (or its equivalent) selected by Landlord shall be used by Landlord in lieu of such base rate.
- (i) **Landlord’s Notice Address:** _____.
- (j) **Market Value:** The most probable price which a property (whether fee estate, leasehold estate, or the Premises, as the case may be) should bring in a competitive and open market under all conditions requisite for a fair sale, the buyer and seller (or assignee and assignor in the case of the sale of a leasehold estate) each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus, under the following conditions:
- i. Buyer and seller (or assignor and assignee, as the case may be) are typically motivated; and
 - ii. Both parties are well informed or well advised, and acting in what they consider their best interests; and
 - iii. A reasonable time is allowed for exposure in the open market; and
 - iv. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
 - v. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
- (k) **Outside Delivery Date:** _____.
- (l) **Party Responsible for Transfer Taxes:** _____.
- (m) **Permitted Use:** All uses of the Premises that are permitted by applicable Law.

- (n) **Personal Property:** All furniture and other personal property owned or leased by Landlord or Tenant or any Affiliate of Landlord or Tenant, located upon the Premises and used in the operation of the Premises, excluding trucks and cars.
- (o) **Rent Address.** _____, _____, New York _____ Attn: _____; or at such other address(es) as Landlord may, from time to time, designate by notice to Tenant given in the manner prescribed in this Lease.
- (p) **Rent Commencement Date:** The date that is _____ months after the Commencement Date.
- (q) **Tenant's Notice Address:** _____.
- (r) **Landlord's Broker:** _____.
- (s) **Tenant's Broker:** _____.

Section 1.02 The following terms, as used in this Lease and in all amendments to the Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings and/or be construed, as the case may be, as set forth below:

- (a) **Additional Rent:** All amounts payable by Tenant under this Lease, other than the Base Rent, and whether or not designated as Additional Rent, are deemed "Additional Rent."
- (b) **Affiliate:** Any Person that directly or indirectly controls, is controlled by, or is under common control with the designated Person or any officer, director, managing or general partner, or member of such designated Person.
- (c) **Business Days:** Monday through Friday, excluding holidays observed by the State of New York, the federal government of the United States, and/or the labor unions servicing the Building.
- (d) **CPI Fraction.** A fraction (which shall never be less than one), the numerator of which is the Price Index (hereinafter defined) most recently published prior to the applicable date and the denominator of which is the Price Index most recently published prior to the Commencement Date. The term **Price Index** means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (or any successor thereto), for All Urban Consumers, U.S. City Average, All Items (1982-1984). If such Consumer Price Index is terminated, a successor or substitute index, appropriately adjusted, shall be reasonably selected by Landlord. If such Consumer Price Index is converted to a different standard reference base or is otherwise revised, the Price Index shall be determined with the use of such conversion factor, formula or conversion table as may be published by the Bureau of Labor Statistics or, if such Bureau shall not publish same, then with the use of such conversion factor, formula or table as may be reasonably selected by Landlord.

- (e) **Liabilities:** All losses, claims, suits, demands, costs, liabilities, and expenses, including reasonable attorneys' fees, penalties, interest, fines, judgment amounts, fees, and damages, of whatever kind or nature.
- (f) **Fee Lender:** The holder of any Fee Mortgage.
- (g) **Fee Mortgage:** Any mortgage, deed of trust, assignment of leases and rents, financing statement or other agreement or instrument, and all modifications, extensions, supplements, consolidations and replacements thereof, other than a Subjected Fee Mortgage, that secures repayment of any indebtedness by the grant of a lien, security interest or other encumbrance on the fee estate of Landlord in the Premises and/or Landlord's interest in this Lease, the Improvements, and/or the Personal Property, whether executed before or after this Lease.
- (h) **Governmental Authority.** Any federal, state, county, municipal or other governmental or regulatory authority, agency, board, department, bureau, body, commission, or instrumentality, or quasi-governmental authority, and any court, arbitrator, or other administrative, judicial or quasi-judicial tribunal, or any other public or quasi-public authority, having jurisdiction over the Premises or the matter at issue.
- (i) **Including:** "Including" means "including but not limited to." **Includes** means "includes without limitation."
- (j) **Institutional Lender:** A savings and loan association, savings bank, commercial bank or trust company, insurance company, educational institution, welfare, pension or retirement fund or system, any other entity subject to supervision and regulation by the insurance or banking departments of the State of New York or by a department or agency of the United States exercising similar functions (or any successor department or departments hereafter exercising the same functions as said departments), any governmental agency or entity insured by a governmental agency, a finance company, a private mortgage company, a conduit or pooled mortgage investment fund, a real estate investment trust, an investment bank, or any other lender generally considered an "institutional" real estate lender and which makes loans secured by real estate as an ordinary part of its business, provided that in order for any of such entities to be included as an "Institutional Lender," it shall be subject to service of process within New York State and shall either (i) have a net worth of at least \$_____ and assets that have a value of at least \$_____, or (ii) be a real estate mortgage investment conduit ("REMIC") or similar vehicle so long as the mortgage held by the REMIC or similar vehicle is serviced by an entity that meets the requirements of clause (i) above or by a rated servicer, or (iii) any entity controlled by any of the entities described in clause (i) or (ii) above. An entity meeting the foregoing requirements shall be deemed an Institutional Lender whether acting individually or in a fiduciary capacity. Notwithstanding the foregoing, no Affiliate of Tenant shall be deemed an Institutional Lender.
- (k) **Insurance Requirements:** Any code, order, directive, recommendation, or requirement of any fire insurance rating body applicable to the Premises.

- (l) **Landlord Parties:** Landlord, Landlord's managing agent, and all of their Affiliates, officers, directors, shareholders, members, managers, partners, and employees.
- (m) **Law:** Any present or future law, statute, ordinance, regulation, code, judgment, injunction, arbitral award, order, rule, directive, proclamation, decree, common law or other requirement, ordinary or extraordinary, foreseen or unforeseen, of the Federal or any state or local government, or any political subdivision, arbitrator, department, commission, board, bureau, agency or instrumentality thereof, or of any court or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, or of any other public or quasi-public authority or group, having jurisdiction over the Premises; and any reciprocal easement, covenant, restriction, or other agreement, restriction or easement of record affecting the Premises as of the date of this Lease or subsequent thereto.
- (n) **Lenders:** All Leasehold Lenders and all Fee Lenders.
- (o) **Legal Requirements:** All requirements of Law.
- (p) **Person:** Any individual, corporation, partnership, firm or other legal entity.
- (q) **Qualified Appraiser:** An appraiser having an MAI designation from the Appraisal Institute or any successor entity (or such other equivalent designation or certification as may be used by the Appraisal Institute or any successor entity in lieu of an MAI designation) and who has at least 10 years experience in valuing commercial property within _____ County, New York
- (r) **Rent:** The Base Rent and Additional Rent.
- (s) **Requirements:** All applicable Legal Requirements and Insurance Requirements.
- (t) **Subjected Fee Mortgage:** A fee mortgage or other lien on Landlord's fee estate given by Landlord, as an accommodation to Tenant, to further secure Tenant's Leasehold Mortgage financing, together with any and all modifications, extensions, supplements, consolidations and replacements thereof.
- (u) **Substantial Completion:** Alterations (including the Initial Construction) shall be deemed "**Substantially Complete**" or "**Substantially Completed,**" and "**Substantial Completion**" shall be deemed to have occurred, when (i) Tenant's architect delivers to Landlord a certification that the Alterations have been completed with the exception of minor punch list items and insubstantial details of construction, mechanical adjustment or decoration, in accordance with the plans and specifications approved by the Governmental Authorities and, if applicable, Landlord, and (ii) Tenant shall have obtained and furnished to Landlord all approvals, permits, sign-offs, and other documents required by Law to be issued in connection with such Alterations, including any letter of completion, permanent or temporary certificate of occupancy, and/or amendment of certificate of occupancy, and (iii) Tenant delivers to Landlord a final release and waiver of mechanics lien covering all of the Alterations, in form and substance reasonably satisfactory to Landlord, executed by each of

(A) the Major Contractors and (B) as applicable, the general contractor, construction manager, and/or design-builder.

(v) **Sublease:** Any lease, sublease, license or other agreement for the use or occupancy of space in the Improvements (other than this Lease). “**Subtenant**” means any tenant, licensee or other occupant of space in the Improvements (other than Tenant).

(w) **Unavoidable Delays:** Delays due to strikes, lockouts, acts of God, inability to obtain labor or materials, government restrictions, enemy action, terrorist attack, civil commotion, fire or other casualty, shortages of materials, or other causes of a like nature beyond the reasonable control of Landlord or Tenant, as the case may be.

Section 1.03 The following terms, wherever used in this Lease (unless the context requires otherwise), shall have the meanings in the Sections of this Lease set forth below after such terms:

Abandonment Notice	Section 15.04	Hazardous Substance	Section 7.02
Alterations	Section 6.02	Impositions	Section 4.01
Alterations Letter of Credit	Section 6.07	Initial Construction	Section 5.01
Alterations LC Amount	Section 6.07	Insolvency Event	Section 17.03
Award	Section 12.01	LC Amount	Section 5.01
Bank	Section 5.01	Leasehold Lender	Section 14.02
BID	Section 4.01	Leasehold Mortgage	Section 14.02
[Omitted]		Lender Cure Notice	Section 15.03
Broker	Section 19.01	Lender Notice	Section 15.01
Building Department	Section 5.01	Letter of Credit	Section 5.01
Casualty Termination Work	Section 11.04	Liability Policy	Section 9.02
Comparison Area	Section 9.01	Major Contractors	Section 5.01
Condemnation Restoration	Section 12.05	Manager	Section 9.10
Construction Completion Date	Section 5.06	Material	Section 7.02
Construction Completion Guaranty	Section 5.01	New Lease	Section 15.07
Construction Contracts	Section 5.03	Parent Entity	Section 16.01
Construction Security	Section 5.01	Partial Taking	Section 12.05
Customary	Section 9.01	Property Damage Policy	Section 9.02
Depository	Section 11.02	Release	Section 7.02
Design Contracts	Section 5.03	Remedial Action	Section 7.02
Environmental Laws	Section 7.02	Restoration	Section 11.01
Estimated Construction Cost	Section 5.06	SNDA	Section 16.05
Event of Default	Section 17.01	Substantial Taking	Section 12.03
Extension Conditions	Section 28.01	Taking	Section 12.01
Extension Notice	Section 28.01	Temporary Taking	Section 12.04
Extension Option	Section 28.01	Term	Section 2.01
Extension Term	Section 28.01	Timetable	Section 5.06
Final Governmental Approval	Section 7.02	Value of the Fee Estate	Section 12.01
Financing Commitment	Section 5.06	Value of the Leasehold Estate	Section 12.01
Full Replacement Cost	Section 9.02		

Article II. Lease of Property; “As Is” Condition; Commencement Date Agreement; Term of Lease; Permitted Use

Section 2.01 Subject to the terms and conditions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises for a term that shall commence on the Commencement Date and end on the Expiration Date (as such term may be extended from time to time pursuant to Article XXVIII) (the “**Term**”), subject to earlier termination pursuant to any of the terms, covenants, or conditions of this Lease or pursuant to Law.

Section 2.02 Tenant has examined the Premises and accepts possession of the Premises in its “AS IS” condition on the Commencement Date. Except as otherwise expressly provided in this Lease, (a) Tenant has full responsibility for the condition, alteration, maintenance, management, repair and replacement of the Premises, and (b) except as otherwise expressly provided in this Lease, Landlord has no obligation whatsoever to perform any work or make any repairs with respect to the Premises, to furnish any services with respect to the Premises, or to incur any expenses with respect to the Premises, and (c) Landlord has no responsibility with respect to the condition of the Premises (including any latent defects). Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease. Without limiting the generality of the preceding provisions, Tenant, by taking possession of the Premises or any portion thereof, shall conclusively be deemed to have agreed that the Premises were in satisfactory condition as of the Commencement Date.

Section 2.03 Promptly following the Commencement Date, Landlord and Tenant shall enter into an agreement, in the form annexed hereto as Exhibit 3, confirming the Commencement Date, the Rent Commencement Date, and the initial Expiration Date. The failure of either or both parties to execute such agreement shall not affect the occurrence of the Commencement Date, the Rent Commencement Date, or the initial Expiration Date.

Section 2.04 If Landlord fails to give Tenant vacant possession of the Premises on the Commencement Date, Landlord shall have no liability to Tenant and this Lease shall remain in full force and effect according to its terms, but the Term shall not commence until the date on which Landlord delivers vacant possession of the Premises to Tenant (which date thereafter shall be deemed the “**Commencement Date**”). This Section constitutes an express provision to the contrary pursuant to Section 223-a of the New York Real Property Law (or any similar Law), which Landlord and Tenant agree is inapplicable to this Lease; and Tenant hereby waives any right to damages or to rescind this Lease which Tenant might otherwise have under that Law. Notwithstanding the foregoing, if Landlord fails to deliver vacant possession of the Premises on or before the Outside Delivery Date, Tenant may, upon thirty (30) days’ prior notice to Landlord, at Tenant’s option, elect to terminate this Lease by giving Landlord notice of termination. Upon the date thirty (30) days after such termination notice is received by Landlord, this Lease and the term thereof shall end and expire as fully and completely as if such date were the date set forth in this Lease as the stated Expiration Date of the term of the Lease and the parties shall have no further liability to one another under this

Lease, except that any prepaid Rent or Security Deposit shall be refunded to Tenant and except with respect to those provisions of this Lease that expressly survive such termination. However, if Landlord delivers vacant possession of the Premises to Tenant within such 30-day period, such termination notice shall be void and of no further force or effect and this Lease shall continue in full force and effect as if such termination notice had not been given.

Section 2.05 Subject to all of the other terms, covenants and conditions of this Lease, Tenant shall use the Premises only for the Permitted Use. Notwithstanding the foregoing, Tenant shall not at any time use or occupy the Premises, or suffer or permit anyone else to use or occupy the Premises, (a) in any manner that violates the provisions of this Lease, and Requirement or the certificate of occupancy, if any, for the Premises, or (b) so as to cause waste, (c) so as to violate any insurance policy then issued in respect of the Premises, (d) so as to create a nuisance, or (e) for the sale of obscene or pornographic materials or the conduct of obscene, pornographic or similar disreputable activities. Further, the Premises may not be leased to or occupied in whole or in part by the United States of America, any state or local government within the United States of America, any foreign government, the United Nations, or any agency, department, bureau, or political subdivision of any of them or any Person having sovereign immunity.

Article III. Rent

Section 3.01 During the Term, Tenant shall pay Landlord the Base Rent, in equal monthly installments, in advance, on the first day of each month during the Term, without notice, bill or demand.

Section 3.02 Notwithstanding the foregoing, provided no Event of Default has occurred and is continuing, Tenant shall not be required to pay Base Rent from the Commencement Date until the Rent Commencement Date.

Section 3.03 If the Rent Commencement Date is not the first day of a month, the Base Rent for the month in which the Rent Commencement Date occurs shall be apportioned according to the number of days in that month.

Section 3.04 Tenant shall pay all Additional Rent that is payable to Landlord within fifteen (15) days after Tenant is billed for such amount, unless a different time period is specified in this Lease. Landlord shall have the same rights and remedies with respect to non-payment of Additional Rent as Landlord has with respect to Base Rent.

Section 3.05 Rent payable to Landlord shall be paid to Landlord at Landlord's Address in lawful money of the United States of America by good check or, at Landlord's request, by wire transfer. All Rent shall be paid without notice, demand, deduction, abatement or setoff, except as otherwise expressly provided in this Lease. A bill for Rent payable to Landlord sent by first class mail to the address to which Notices are to be given under this Lease shall be deemed a proper demand for the payment of the amounts set forth therein, but nothing contained herein shall be deemed to require Landlord to send a Rent bill or otherwise make any demand for the payment of Rent except where such notice or demand is expressly required by the terms of this Lease.

Section 3.06 This is an absolutely net lease. Accordingly, Landlord shall receive a net return from the Premises equal to the Base Rent, without deduction for any expense or charge for the Premises (except as otherwise expressly provided in this Lease). Tenant shall pay as Additional Rent all expenses, of every kind and nature, relating to or arising from the Premises, including Impositions and expenses arising from the leasing, management, operation, maintenance, repair, use, or occupancy of the Premises and all construction relating to the Premises, except as otherwise expressly provided in this Lease. Notwithstanding the foregoing, so long as no Event of Default has occurred, Landlord agrees to pay all of the following expenses: (a) any expenses expressly agreed to be paid by Landlord in this Lease, (b) debt service and other payments with respect to any Fee Mortgage, (c) expenses incurred by Landlord to monitor and administer this Lease, unless otherwise expressly provided in this Lease, (d) expenses incurred by Landlord in the ownership, leasing, management, operation, maintenance, repair, use or occupancy of the Premises with respect to periods prior to the Commencement Date (subject to adjustment of Impositions as provided in Article IV), and (e) other expenses that are personal to the Landlord, including Landlord's income taxes.

Section 3.07 Landlord's delay in rendering, or failure to render, any statement or bill for Additional Rent for any period shall not waive Landlord's right to render a statement or collect such Additional Rent for that or any subsequent period. If Landlord delivers to Tenant an incorrect statement with respect to any Rent, Landlord shall have the right to give Tenant a corrected statement for the period covered by the incorrect statement and to collect the correct amount of the Rent.

Section 3.08 If at any time during the Term the Rent is not fully collectible by reason of any Law, Tenant shall enter into such agreements and take such other action as Landlord reasonably requests and which is not prohibited by any Law, to permit Landlord to collect the maximum permissible Rent (but not in excess of the Rent). If such Law terminates prior to the Expiration Date (a) the Rent shall be paid in accordance with this Lease, and (b) Tenant shall pay to Landlord, if not prohibited by any Law, the Rent which would have been paid but for such Law, less the actual amount of Rent paid by Tenant to Landlord during the period of such Law.

Section 3.09 If any installment of Base Rent or any Additional Rent is not paid within five (5) days of the date due under this Lease, Tenant shall pay Landlord, as Additional Rent, a late charge equal to five percent (5%) of the overdue amount for, among other things, defraying the expenses incident to handling such delinquent payments. Such charge shall be in addition to, and not in lieu of, any other remedy Landlord may have.

Section 3.10 If any installment of Base Rent or any Additional Rent is not paid within ten (10) days of the date due under this Lease, Tenant shall pay Landlord, as Additional Rent, in addition to the above-described late charge, interest on the overdue amount at the Interest Rate. Such overdue Rent shall bear interest from the date first due (without regard to any grace period) until the date such Rent is paid. Such interest shall be in addition to, and not in lieu of, any other remedy Landlord may have.

Article IV. Payment of Impositions and Utilities

Section 4.01 “**Impositions**” shall mean, collectively, (a) all real estate taxes, all special assessments and all other property assessments, including all assessments for public improvements or betterments, whether or not commenced or completed within the term of this Lease and [for New York City] all Business Improvement District (“**BID**”) charges and assessments, (b) all ad valorem, sales and use taxes, (c) all rent and occupancy taxes and all similar taxes, (d) all personal property and other taxes on the Personal Property, (e) all water, sewer, and other utility charges imposed by any Governmental Authority, (f) all fines, fees, charges, penalties, and interest imposed by any Governmental Authority or utility, and (g) all other governmental charges and taxes, in each case of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary, which are at any time during or with respect to the Term assessed, levied, charged, confirmed or imposed with respect to the Premises, the Personal Property or the use, leasing, ownership or operation thereof, or become payable out of or become a lien upon the Premises, the sidewalks or streets adjoining the Premises, or the Personal Property or the rents or income therefrom. Notwithstanding the foregoing, Impositions shall not include (i) any tax imposed on Landlord’s income or receipts (whether net or gross), (ii) any mortgage recording tax imposed with respect to any Fee Mortgage (other than a Subjected Fee Mortgage, as to which Tenant shall pay any mortgage tax), (iii) subject to Article XXVI [Transfer Taxes], any tax imposed with respect to the sale, exchange or other disposition by Landlord of the Premises (unless imposed in connection with a Subjected Fee Mortgage), including any lease by Landlord of all or part of the Premises, or (iv) franchise taxes, excess profits taxes, capital gains taxes, and taxes on doing business that are imposed on Landlord. If at any time during the Term the present method of real estate taxation or assessment is changed so that there is substituted for the type of Impositions presently being assessed or imposed on real estate, or in lieu of any increase in such Impositions, a tax described in clauses (i) or (iv) that is imposed solely on owners of real estate, such substitute taxes shall be deemed to be included within the term “Impositions.”

Section 4.02 Throughout the Term, Tenant will pay, or cause to be paid, all Impositions as and when the same shall become due and payable, provided that if any Imposition may by Law be paid in installments, Tenant may pay such Imposition in installments as permitted by Law.

Section 4.03 If any of the Impositions are paid, levied or assessed on a fiscal year basis, and if the Commencement Date occurs on a day other than the first day of such fiscal year or the Expiration Date occurs on a day other than the last day of such fiscal year, such Impositions shall be apportioned between Landlord and Tenant on a *per diem* basis as of the Commencement Date and/or Expiration Date, as the case may be. To the extent any assessments payable in installments affect the Premises at the Commencement Date or Expiration Date, (a) installments payable prior to the Commencement Date and after the Expiration Date shall be payable by Landlord, (b) installments payable after the Commencement Date and before the Expiration Date shall be payable by Tenant, and (c) any installment payable with respect to a fiscal period in which the Commencement Date or Expiration Date occurs shall be apportioned between Landlord and Tenant on a *per diem* basis.

Section 4.04 Notwithstanding the foregoing, but subject to Section 4.03, Tenant shall not be responsible for (a) any Impositions that accrued prior to the Commencement Date, or (b) any fines, fees, charges, penalties, or interest imposed by any Governmental Authority with respect to periods prior to the Commencement Date or with respect to any notice of violation of Law issued and outstanding as of the Commencement Date.

Section 4.05 Tenant shall pay, or shall cause to be paid, all Impositions directly to the Governmental Authority charged with the collection thereof. Tenant shall deliver to Landlord, promptly upon request, photostatic copies of the receipted bills or other evidence reasonably satisfactory to Landlord showing the payment of such Impositions. If a Leasehold Mortgage requires escrow payments of any of the Impositions to the holder of such Leasehold Mortgage, Tenant may pay such Impositions to such holder; provided that the foregoing shall not relieve Tenant of its obligation to cause all Impositions to be timely paid to the applicable Governmental Authorities or to provide Landlord with proof of timely payment.

Section 4.06 If the Premises are encumbered by a Fee Mortgage that is not prohibited by the terms of this Lease, the following shall apply: If any Fee Lender requires that amounts (estimated and/or actual) necessary to pay any Impositions and/or insurance premiums be deposited with it in advance (which right, if any, shall be subject to the rights of the holder of any Leasehold Mortgage), Tenant, upon at least thirty (30) days' prior written notice from Landlord, shall pay the amounts so required to the Fee Lender in accordance with the requirements of such Fee Lender. Payment by Tenant of such amounts to the Fee Lender in accordance with the requirements of such Fee Lender shall constitute full satisfaction of Tenant's obligations hereunder with respect to the amounts paid to the Fee Lender. If any Imposition for which such payment is timely made to the Fee Lender is not paid when due, Landlord (and not Tenant) shall take such steps as are necessary to cause the same to be paid. If any Imposition for which such payment has been made to the Fee Lender becomes delinquent, Tenant may, but shall not be obligated to, pay the same and deduct the amount of such payment, plus any interest and penalties and any other reasonable expenses of Tenant incurred in connection therewith, from the next ensuing installment or installments of Rent.

Section 4.07 Subject to the provisions of any Leasehold Mortgage, Tenant may, at Tenant's sole cost and expense, endeavor from time to time to reduce the assessed valuation of the Premises for the purpose of reducing the Impositions payable by Tenant. Notwithstanding the foregoing, Tenant shall timely pay all Impositions. Landlord agrees to offer no objection to such contest or proceeding and, at the request of Tenant, to reasonably cooperate with Tenant in pursuing such contest or proceeding, but without expense to Landlord. Any such contest or proceeding shall be brought in Tenant's name unless otherwise required by Law, in which case the contest or proceeding may be brought in Landlord's name. Tenant agrees to indemnify and hold Landlord harmless from all Liabilities arising by reason of or in connection with any such proceeding. If Tenant does not intend to institute proceedings in any real estate tax fiscal year to reduce the assessed valuation of the Premises, Tenant shall give Landlord notice thereof no later than the date thirty (30) days before the last date by which such proceedings may be filed, and Landlord then may, at its option, and at Landlord's expense, institute such proceedings. If Landlord initiates one or more such proceedings, the expenses of such proceeding(s) shall be paid by Landlord, but Tenant shall reimburse Landlord for such expenses, as Additional Rent, out of (a) any refund of Impositions received by Tenant, and/or (b) any reduction in Impositions realized by Tenant as a result of such proceeding(s), but in each case only to the extent such refund, reduction or savings are realized or received by Tenant.

Section 4.08 If all or any part of an Imposition is refunded to either party (whether through cash payment or credit against Impositions), the party who paid the Imposition to which the refund relates shall be entitled to such refund to the extent such refund relates to any Imposition paid by such party. If either party receives a refund (whether by cash payment or credit) to which the other party is

entitled, the receiving party shall promptly pay the amount of such refund or credit to the entitled party, less the receiving party's expenses, if any, in obtaining such refund or credit.

Section 4.09 If there are any proceedings to contest the assessed valuation of the Premises pending as of the Commencement Date, Landlord shall continue to prosecute such proceedings and Tenant shall reasonably cooperate with Landlord in Landlord's prosecution of such proceedings. If the final resolution of such proceedings results in a reduction of the assessed valuation of the Premises for the tax year in which the Commencement Date occurs, Tenant shall reimburse Landlord, as Additional Rent, for its equitable share of the legal expenses incurred by Landlord with respect to such proceeding (considering the value of the benefit to Tenant as compared to the value of the benefit to Landlord resulting from such proceeding). If, by reason of any contest or proceeding conducted by Landlord, all or any part of the amount of any Imposition paid by Landlord is refunded or credited to Tenant or Landlord (whether by cash payment or credit against Impositions), Landlord shall be entitled to receive the same (to the extent such refund or credit relates to any Imposition paid by Landlord) and, if so refunded or credited to Tenant, Tenant agrees promptly to pay Landlord the portion of such refund or credit that belongs to Landlord. Any refund or credit of any Imposition relating to the tax year in which the Commencement Date occurs shall be prorated as of the Commencement Date between Landlord and Tenant on a *per diem* basis; and the party who is paid the refund shall pay the other party, within 15 days of receipt of such refund, the other party's pro rata share of such refund.

Section 4.10 If the Premises are in New York City, the following shall apply: Provided no Event of Default has occurred, Tenant shall represent the Premises and the Landlord: (a) if the Premises are located in a BID, in all proceedings of and matters relating to the BID, including voting, and (b) in all matters and proceedings relating to any proposal to include the Premises within a BID.

Section 4.11 Tenant shall obtain and pay for all utilities directly from and to the utilities and vendors serving the Premises, including fuel, gas, electric, water, sewer service, trash collection, and telephone and internet service.

Article V. Initial Construction

Section 5.01 The following terms, as used in this Lease and in all amendments to this Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

(a) **Building Department:** The building department of the Town/City of _____, State of New York [*in New York City, the New York City Buildings Department*].

(b) **Construction Security:** The Construction Security shall consist of the security described in each box checked below (*check appropriate box*):

☐ a guaranty (the "**Construction Completion Guaranty**") in the form annexed hereto as Exhibit 4, properly completed, signed and acknowledged by _____ (the "**Guarantor**").

☐ a letter of credit (the “**Letter of Credit**”) in favor of Landlord, in the form annexed hereto as Exhibit 5, issued by a commercial bank that is a member of the New York Clearing House and that has an office in the City [Town/Village] of _____ (the “**Bank**”) at which the Letter of Credit may be drawn, and in an amount (the “**LC Amount**”) at least equal to 125% of the Estimated Construction Cost, but no less than \$_____.

The Construction Security shall also include such other security as Landlord may reasonably require.

- (c) **Initial Construction:** The initial construction of the Improvements described in Section 5.02 below, including all related demolition and excavation activities.
- (d) **Major Contractors:** Those contractors and/or subcontractors performing the following work at the Premises: concrete, masonry, carpentry/drywall, HVAC, electrical, roofing, and plumbing.

Section 5.02 Tenant shall construct, in accordance with the requirements of this Lease, a modern, air conditioned and heated *[multi-family residential building/commercial office building [development]/shopping center]* meeting the requirements set out in Exhibit 6 annexed hereto. Such building shall be an independent, free standing structure located entirely within the boundaries of the Land. Tenant shall spend at least \$_____ for the hard costs (labor and materials) of constructing such building. Such building(s) and the Improvements constructed or installed in connection therewith and all appurtenances thereto are sometimes referred to as the “**Facility.**”

Section 5.03 Tenant shall not commence the Initial Construction until Tenant has met all of the following conditions:

- (a) Tenant has obtained the Financing Commitment and delivered a copy to Landlord, such Financing Commitment is in full force and effect, and Tenant has complied with all of the material terms and conditions of the Financing Commitment; and
- (b) Tenant has furnished to Landlord evidence reasonably satisfactory to Landlord that Tenant has sufficient funds available to it to build and complete the Facility; and
- (c) Tenant has contacted all appropriate utilities and verified the location, depth and nature of all utilities affecting the Land and any areas bordering upon the Land; and
- (d) Landlord has approved the final plans and specifications for the Initial Construction; and
- (e) Tenant has delivered to Landlord (i) copies of all permits, approvals, and authorizations required by the Building Department and all other Governmental Authorities for the Initial Construction, and (ii) copies of the plans and specifications for the Facility stamped approved by the Building Department; and
- (f) Tenant has delivered to Landlord the Construction Security; and
- (g) Tenant has delivered to Landlord a fully executed and delivered construction contract with a general contractor, or a fully executed and delivered design-build contract, together with executed and delivered contracts for each of the Major Contractors, or a fully executed and delivered construction management contract together with executed and delivered contracts

for each of the Major Contractors (collectively, the “**Construction Contracts**”), for the construction of the Facility, meeting the requirements of this Article; and

- (h) Tenant has delivered to Landlord fully executed and delivered agreements between Tenant and the architect and engineers engaged to design the Facility (“**Design Contracts**”) meeting the requirements of this Article; and
- (i) Subject to the rights of the Leasehold Lenders and any Fee Lenders, an assignment to Landlord of all of Tenant’s right, title and interest in and to (a) the Construction Contracts and Design Contracts, (b) all preliminary, final, and working plans, specifications, and drawings and construction documentation prepared in connection therewith, and (c) all intellectual property rights in any of the foregoing, which assignment shall be in form reasonably satisfactory to Landlord (provided that Landlord shall not exercise its rights as assignee unless and until this Lease has been terminated and each Leasehold Lender has failed to exercise its right to a New Lease); and
- (j) Tenant has obtained, and has caused its general contractors, construction managers, architects, and subcontractors to obtain, the insurance required by Article VI and has delivered to Landlord certificates (in form reasonably acceptable to Landlord) evidencing such insurance, except that, with respect to liability insurance the “Wrap Up” liability insurance shall have a limit of liability of \$_____; and
- (k) Tenant’s design-builder, construction manager, contractors, and subcontractors shall have furnished to Landlord the indemnification agreement required by Article VI.

Section 5.04 Each of the Construction Contracts and Design Contracts shall include the following provisions, in form and substance reasonably satisfactory to Landlord:

- (a) As to the Design Contracts, a provision, subject to the rights of the Leasehold Lenders and Fee Lenders, permitting Landlord, its successors and assigns, to use the plans and specifications prepared pursuant to such Design Contracts, in connection with the construction, maintenance, operation, alteration of, and addition to the Facility; and
- (b) An acknowledgement by the architect, engineer, general contractor, design/builder, construction manager, and/or Major Contractor that the contract has been assigned to Landlord, subject to the rights of the Leasehold Lenders and Fee Lenders, that such architect, engineer, general contractor, design/builder, construction manager, and/or Major Contractor consents to such assignment and will perform its obligations under such contract if all sums due under the contract are paid (provided that such assignment shall not be deemed an assumption of such contract by Landlord); and an agreement that such provisions may not be modified without the Landlord’s consent. Notwithstanding the foregoing, Landlord shall not exercise any of its rights as assignee unless and until this Lease has been terminated and each Leasehold Lender has failed to timely exercise its right to enter into a New Lease.

If any of the Construction Contracts or Design Contracts are materially modified, Tenant shall deliver to Landlord a copy of such modification. Tenant shall not modify any such Construction Contract or Design Contract to limit or negate any of the requirements of this Section.

Section 5.05 Landlord’s approval of the plans and specifications for the Initial Construction shall not be unreasonably withheld, conditioned or delayed. If Landlord fails to grant or deny any such

request for Landlord's approval within thirty (30) calendar days after Landlord has received Tenant's request for such approval, three (3) complete sets of plans and specifications, and all additional information reasonably requested by Landlord, such approval shall be deemed granted if (and only if) Tenant's consent request contains, on the front page of the request, in bold capitalized letters, a statement that Landlord's approval shall be deemed given pursuant to Sec. 5.05 of this Lease if Landlord fails to deny or grant its approval within thirty (30) days of receipt of the such request, plans and specifications, and any reasonably required additional information. Such approved plans and specifications may not be materially modified without Landlord's approval, such approval not to be unreasonably withheld, conditioned or delayed. If Landlord fails to grant or deny any such request for Landlord's approval to any material modification(s) to the approved plans and specifications within seven (7) calendar days after Landlord has received Tenant's request for such approval, three (3) complete sets of the plans and specifications reflecting such material modification(s), and all additional information reasonably requested by Landlord, such approval shall be deemed granted. No approval by Landlord, and no inspection by Landlord or its representatives of the Initial Construction, shall be deemed an assurance or representation by Landlord that any aspect of the Initial Construction, or the plans and specifications therefor, comply with applicable Legal Requirements or with the requirements of this Lease.

Section 5.06 Tenant shall construct the Facility in accordance with the following timetable (the "Timetable"):

- a. On or before the date _____ months after the date of this Lease, Tenant shall complete and submit to Landlord final plans and specifications for the Facility.
- b. On or before the date _____ months after the date of this Lease, Tenant shall submit to Landlord a certification by Tenant's architect and by Tenant of the reasonably estimated cost of building the Facility, including but not limited to the costs of labor and materials, professional fees, interest on borrowed funds during the construction period and all other construction financing costs, all Impositions and insurance premiums attributable to the construction period, and all costs and expenses of compliance with all applicable Legal Requirements (the "**Estimated Construction Cost**").
- c. If Tenant is financing all or part of the Initial Construction, then on or before the date _____ months after the date of this Lease, Tenant shall obtain a commitment from one or more Lenders for (i) a construction loan to fund the construction of the Facility, in an amount at least equal to ____% of the Estimated Construction Cost, but in no event less than \$_____, and (ii) permanent financing in an amount at least equal to the principal amount of such construction loan (collectively, the "**Financing Commitment**") and deliver a copy of same to Landlord.
- d. On or before the date _____ months after the date of this Lease, Tenant shall have complied with the conditions set forth in Section 5.03 and shall have commenced construction of the Facility.
- e. On or before the date _____ months after the date of this Lease, Tenant shall have Substantially Completed the Facility. The date the Facility is Substantially Completed is the "**Construction Completion Date**."

Tenant's failure to comply with the requirements of the Timetable shall be deemed a material default under this Lease. If Tenant fails to comply with the Timetable, Tenant shall have a period of thirty (30) days to cure such default after Landlord gives Tenant notice of such default. Notwithstanding the foregoing, if Tenant fails to comply with the requirements of the Timetable by reason of any Unavoidable Delay, Tenant's time to perform such obligation shall be extended for such period of time as may be reasonably necessary to perform such obligation, provided that such extension of time shall not exceed six (6) months.

Landlord may, at its sole option, if Tenant fails to comply with the requirements of the Timetable and to cure such default within the applicable time period provided above, enter upon the Premises for any one or more of the following purposes: to complete construction of the Facility, to secure any partially completed construction on the Premises, and/or to take any measures Landlord deems necessary to safeguard and protect the Premises, the Improvements thereon, the materials stored thereon, the safety of the public, and the safety of buildings and improvements adjacent to the Premises. Tenant agrees to reimburse Landlord, as Additional Rent, for all costs and expenses of every kind and nature incurred by Landlord pursuant to the preceding sentence. If Landlord takes over the construction of the Facility, Tenant promptly shall remove its employees and such of its agents and contractors as Landlord shall specify from the Premises and shall refrain from interfering with the construction or protection of the Facility in any manner. Landlord's rights under this paragraph shall be in addition to, and not in lieu of, any other remedy Landlord may have.

Section 5.07 No Affiliate of Tenant shall be engaged to act as (i) general contractor for the Facility, or (ii) the construction manager of the Facility, or (iii) design-builder, and/or (iv) a Major Contractor.

Section 5.08 If the Construction Security for the Initial Construction is a Letter of Credit, the following shall apply:

- (a) To secure Tenant's performance of its obligations under this Article, Tenant shall deliver the Letter of Credit to Landlord prior to commencement of the Initial Construction. Landlord may draw on such Letter of Credit if (i) this Lease is terminated by reason of Tenant's default, or (ii) any mechanic's lien is recorded against the Premises that is not discharged within thirty (30) days after Tenant receives notice thereof, or (iii) Tenant fails to timely perform the obligations set forth in the Timetable and to cure such default within the time period provided in Section 5.06, or (iv) Landlord receives notice from the issuer of the Letter of Credit that it is not renewing the Letter of Credit, or (v) Tenant materially defaults under the Leasehold Mortgage and the Leasehold Lender has given Tenant notice of default, or (vi) if the Facility is not Substantially Completed at least sixty (60) days before the Letter of Credit expires. All costs incurred by Landlord in seeking to draw on such Letter of Credit, including reasonable attorneys fees in connection with any litigation relating to the Letter of Credit, shall be payable by Tenant to Landlord as Additional Rent. The proceeds of the Letter of Credit may be applied against any Rent due Landlord, any damages incurred by Landlord by reason of Tenant's breach of this Lease, and any costs incurred by Landlord in (x) completing construction of the Facility, (y) demolishing and removing any unfinished construction and restoring the Land to substantially its original condition, and/or (z)

safeguarding and protecting the Premises, the Improvements thereon, the materials stored thereon, the safety of the public, and the safety of buildings and improvements adjacent to the Premises. Tenant acknowledges that such damages may include construction financing costs and Landlord's reasonable attorneys' fees.

- (b) If Landlord, at any time or from time to time, reasonably requests an amendment of the Letter of Credit that does not amend the material terms thereof (for example, to change the Landlord's address for notices), Tenant promptly shall cause the Letter of Credit to be so amended. If the Letter of Credit is lost, stolen, or mutilated, Tenant shall cooperate with Landlord, promptly upon Landlord's request, to replace such Letter of Credit. If Landlord draws on the Letter of Credit, Tenant shall, within five (5) business days after demand by Landlord, deliver to Landlord an additional Letter of Credit meeting the requirements of this Article or amend the existing Letter of Credit so that, at all times, the amount of the Letter of Credit held by Landlord, together with any Letter of Credit proceeds held by Landlord not yet applied to any default by Tenant, equals the LC Amount.
- (c) Landlord shall return the Letter of Credit to Tenant for cancellation or termination (as the case may be), and shall reasonably cooperate with Tenant to effect such cancellation or termination, upon Tenant's request, after all of the following conditions are met but no sooner than nine (9) months after the Construction Completion Date: (i) the Construction Completion Date has occurred, and (ii) no mechanics liens have been filed against the Premises that have not been discharged of record, and (iii) Tenant is not in default under this Lease.

If Landlord sells or otherwise transfers the Land and Landlord's interest in this Lease, Landlord may transfer the Construction Security to the vendee or transferee. Upon such transfer, Landlord shall be released by Tenant from all liability for the return of the Construction Security, and Tenant shall look solely to the new landlord for the return of the Construction Security.

Section 5.09 The materials, fixtures, machinery and equipment to be installed in the Facility shall be of good or first rate quality and new. If required by Landlord, Tenant shall furnish reasonably satisfactory evidence to Landlord as to the kind and quality of materials, fixtures, machinery and equipment. All construction work associated with the Facility shall comply in all material respects with the requirements of the final plans and specifications approved by Landlord. All work in connection with the construction of the Facility shall be prosecuted with reasonable dispatch, subject to Unavoidable Delays and subject to the Timetable (to the extent applicable).

Section 5.10 If Tenant initially obtains a temporary certificate of occupancy for the Facility, Tenant shall keep such temporary certificate of occupancy in full force and effect until the date that a permanent certificate of occupancy is issued for the Facility, and Tenant shall obtain and deliver to Landlord a permanent certificate of occupancy for the Facility within ____ months after issuance of the initial temporary certificate of occupancy, subject to reasonable extension of such time period for Unavoidable Delays.

Section 5.11 Tenant shall deliver the following documents to Landlord, promptly after the Facility is Substantially Completed: (i) copies of the “as built” plans for the Facility, including CAD drawings if requested by Landlord; (ii) a survey of the Premises showing the Facility and certified to Landlord by a licensed surveyor; (iii) all permits, certificates, and sign-offs required to be issued by applicable Legal Requirements in connection with the construction of the Facility; and (iv) when issued, any temporary or permanent certificate of occupancy issued with respect to the Facility.

Article VI. Alterations

Section 6.01 The provisions of this Article shall apply to the Initial Construction, except to the extent Article V may impose a higher standard, as well as all other Alterations.

Section 6.02 Tenant may, at its sole option and at its sole cost and expense, make any additions, replacements, changes, alterations, installations, repairs or improvements to the Premises (the “**Alterations**”) that Tenant, in its sole discretion, deems necessary or appropriate; except that Tenant shall not, without Landlord’s consent, which may be granted or denied in Landlord’s absolute discretion: (a) demolish all or substantially all of the Improvements, (b) alter the Improvements so as to reduce the aggregate rentable square footage of the Improvements, (c) reduce the height of the Improvements, (d) alter the Improvements so as to adversely affect the structural integrity of the Improvements, or (e) alter the nature of the Facility from the nature of the Facility required to be constructed under Section 5.02. Notwithstanding the foregoing, Landlord’s consent shall not be unreasonably withheld or delayed to any of the Alterations described in clauses (a) – (d) if such Alterations result from a material casualty not caused by Tenant or from a condemnation.

Section 6.03 All Alterations shall be made in a good and workmanlike manner, in compliance with all applicable Laws, and in compliance with the requirements of any Leasehold Mortgage, Fee Mortgage and/or Subjected Fee Mortgage, and shall conform in all material respects with the plans and specifications approved by the Building Department and, if applicable, the Landlord. Tenant shall complete all Alterations with reasonable diligence and shall, promptly after completion of such Alterations, obtain all certificates, sign-offs, licenses, permits, and approvals required by Law to be obtained with respect to the Alterations and with respect to all equipment, machinery and fixtures installed in connection with the Alterations. All materials, fixtures, machinery and equipment to be installed in the Improvements shall be of good quality and new.

Section 6.04 Tenant shall design and plan the staging of all work at the Premises, and perform all construction at the Premises, with the highest degree of care so as to ensure the safety of persons and property at and around the Premises. Tenant shall take appropriate action to ensure that all improvements owned by adjacent property owners shall not be damaged or disturbed.

Section 6.05 Tenant shall not commence any Alterations until Tenant has met all of the following conditions:

- (a) Tenant has obtained all permits, approvals, and authorizations required by the Building Department and all other Governmental Authorities for the Alterations; and

- (b) With respect to Alterations made after the Initial Construction, (i) Tenant has caused its general contractors, construction managers, architects, engineers, and subcontractors to obtain the insurance described in Exhibit 7, subject to Landlord's right to reasonably increase the limits of such insurance and to require such other and additional coverages as may be Customary, and (ii) Tenant has delivered to Landlord certificates (in form reasonably acceptable to Landlord) evidencing such required insurance; and
- (c) Tenant has obtained the insurance required by Section 6.06 below, and has delivered to Landlord certificates (in form reasonably acceptable to Landlord) evidencing such insurance; and
- (d) Tenant's design-builder, construction manager, contractors, and subcontractors have furnished to Landlord the indemnification agreement described in Exhibit 7 annexed hereto; and
- (e) If Landlord's consent is required for such Alterations, Landlord has consented to the final plans and specifications for the proposed Alterations; and
- (f) If the aggregate cost of the Alterations exceeds \$_____, Tenant has delivered to Landlord the Construction Security described in Section 6.07 below.

Section 6.06 Tenant shall maintain during any period that Tenant is engaged in performing Alterations, and shall deliver to Landlord prior to commencing the Alterations, the following insurance:

- (a) At all times during construction, (x) owner's contingent or protective liability insurance covering claims not covered by the Liability Policy described in Article IX, and (y) if the Property Damage Policy provided in Article IX does not provide protection, builder's risk insurance insuring against "all risks" (including terrorism and bioterrorism) to the Improvements and Personal Property, with (i) an agreed amount endorsement waiving co-insurance provisions, (ii) engineer's and architect's errors and omissions insurance with a general aggregate limit of at least \$1,000,000. Such builder's risk insurance shall include coverage against collapse, those coverages available under the so-called Installation Floater, damage or destruction of the Alterations (including the Facility while under construction), machinery, tools and/or equipment at the construction site, and damage or destruction to materials and supplies to be used or incorporated in the construction that are at or near the Premises. Such builder's risk insurance shall be written on a completed value basis (non-reporting full coverage), be in an amount not less than the total value of all Alterations under construction, have a deductible no greater than \$25,000.00, permit partial or full occupancy of the Premises, include waiver of subrogation in favor of Landlord, and shall be in form, with companies, for periods and in amounts reasonably required by Landlord.
- (b) If the reasonably estimated cost of the Alterations exceeds an amount equal to the product of \$_____ and the CPI Fraction, Tenant shall maintain at all times during the construction "Wrap-Up" liability insurance with a general aggregate limit of not less than an amount equal to the product of \$10,000,000 and the CPI Fraction, covering all construction managers, general contractors, Major Contractors, and subcontractors. Such coverage shall be in lieu of requiring separate liability policies from each of the foregoing Persons.

The Landlord Parties shall be named as additional insured on all liability policies required to be obtained by Tenant, its contractors, construction managers, design-builders, and Major Contractors, including any "Wrap-Up" insurance. Waiver of subrogation in favor of the Landlord Parties shall be provided in all insurance required under this Article and Article V.

Section 6.07 If the aggregate cost of the proposed Alterations, as reasonably estimated, exceeds \$_____, Tenant shall deliver to Landlord Construction Security reasonably acceptable to Landlord prior to the commencement of the Alterations. The following shall apply to such Construction Security:

- (a) *Construction Completion Guaranty.* A Construction Completion Guaranty in the form annexed hereto as Exhibit 4 shall be acceptable Construction Security if all of the following conditions are met: (i) the guarantor is approved by Landlord, which consent shall not be unreasonably withheld or delayed, and (ii) such guarantor has a tangible net worth in excess of \$_____, which net worth is evidenced by proof delivered to Landlord that is reasonably acceptable to Landlord.
- (b) *Letter of Credit.* If the Construction Security for the Alterations is a letter of credit, the following shall apply:
 - 1) The letter of credit (the "**Alterations Letter of Credit**") shall be a clean, irrevocable, standby letter of credit issued in favor of Landlord and shall meet all of the following requirements: Such letter of credit shall be in an amount (the "**Alterations LC Amount**") equal to 125% of the reasonably estimated cost of constructing the Alterations, including but not limited to the costs of labor and materials, interest on any funds borrowed to finance such construction (if any), all other financing costs, professional fees, and expenses of complying with all applicable Legal Requirements; shall be issued by a Bank at which the letter of credit may be presented for payment; shall be transferable one or more times without payment of any fee; shall be payable in whole or in partial drawings; shall be payable upon presentation of the original letter of credit and a sight draft in form reasonably acceptable to Landlord, with the form of sight draft annexed to the letter of credit; shall have an initial term that shall expire not less than six (6) months after the reasonably estimated date of completion of the Alterations, and shall automatically renew without amendment for consecutive periods equal in duration to the initial term unless the Bank gives Landlord notice of non-renewal (a "Non-Renewal Notice") by certified or registered mail, return receipt requested, at least 60 days before the then expiration date of the letter of credit; shall be governed by ISP 98; and shall be otherwise in form and substance reasonably satisfactory to Landlord. The final expiration date of the Alterations Letter of Credit shall be the later of (a) one (1) year after issuance of such letter of credit, and (b) one (1) year following the reasonably estimated completion date of the Alterations. Tenant shall furnish to Landlord, together with the draft Alterations Letter of Credit, evidence of the reasonably estimated cost of construction.
 - 2) Landlord may draw on such Alterations Letter of Credit if (i) this Lease is terminated by reason of Tenant's default; or (ii) any mechanics lien is filed against the Premises that is

not discharged within 30 days after Tenant is given notice thereof, or (iii) Tenant fails to complete the Alterations in accordance with the provisions of this Lease, or (iv) Landlord receives notice from the Bank that it is not renewing the Alterations Letter of Credit and the conditions described in Subparagraph (4) below have not been met. All costs incurred by Landlord in seeking to draw on the Alterations Letter of Credit, including reasonable attorneys' fees in connection with any litigation relating to the Alterations Letter of Credit, shall be payable by Tenant to Landlord as Additional Rent. The proceeds of the Alterations Letter of Credit may be applied against (x) any Rent due Landlord and (y) any damages incurred by Landlord by reason of Tenant's breach of this Lease, and (z) the cost of completing the Alterations.

- 3) If Landlord, at any time or from time to time, reasonably requests an amendment of the Alterations Letter of Credit (for example, to change the Landlord's address for notices), Tenant promptly shall cause the Alterations Letter of Credit to be so amended. If the Alterations Letter of Credit is lost, stolen, or mutilated, Tenant shall cooperate with Landlord, promptly upon Landlord's request, to replace such Alterations Letter of Credit. If Landlord draws on the Alterations Letter of Credit, Tenant shall, within five (5) days after demand by Landlord, deliver to Landlord an additional letter of credit meeting the requirements of this Section or amend the existing Alterations Letter of Credit so that, at all times, the amount of the Alterations Letter of Credit held by Landlord, together with any Alterations Letter of Credit proceeds held by Landlord not yet applied to any default by Tenant, equals the Alterations LC Amount.
- 4) Upon Tenant's request, Landlord shall return the Alterations Letter of Credit to Tenant for cancellation or termination (as the case may be), and shall reasonably cooperate with Tenant to effect such cancellation or termination, after all of the following conditions have been met: (i) the Alterations have been Substantially Completed, and (ii) no mechanics liens have been filed against the Premises that have not been discharged of record, and (iii) Tenant is not in default of this Lease.

If Landlord sells or otherwise transfers the Land and Landlord's interest in this Lease, Landlord may transfer the Construction Security to the vendee or transferee. Upon such transfer, Landlord shall be released by Tenant from all liability for the return of the Construction Security, and Tenant shall look solely to the new landlord for the return of the Construction Security.

Section 6.08 To the extent reasonably necessary, and without violating applicable Law, Landlord shall, at no out-of-pocket expense to Landlord, cooperate with Tenant in Tenant's efforts to obtain the required permits, approvals, and authorizations for the construction of the Alterations and the operation of the Improvements in accordance with the provisions of this Lease, including by joining in applications for building permits, subdivision plat approvals, certificates of dedication, public works or other agreements, utility easements, permits for sewer, water and other utility services, and the dedication to the applicable governmental authorities of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are reasonably necessary or desirable.

Section 6.09 At all times during the Term, the Facility, all other Improvements, all Alterations, and all Personal Property acquired (or leased) by Tenant or Tenant's Affiliates shall be the property of Tenant, but shall remain on the Premises except as hereinafter provided. During the Term, Tenant alone shall be entitled to all of the tax attributes of ownership of the Facility, all other Improvements, all Alterations and all Personal Property acquired (or leased) by Tenant or Tenant's Affiliates, including, without limitation, the right to claim depreciation or cost recovery deductions. Upon the expiration or sooner termination of the Term, the Facility, all other Improvements, all Alterations, and all Personal Property acquired (or leased) by Tenant or Tenant's Affiliates shall become the sole property of Landlord at no cost to Landlord, free and clear of all liens, leases and encumbrances and in good condition, subject only to reasonable wear and tear, except that Tenant may remove from the Premises at the Expiration Date any of Tenant's Personal Property that is moveable, but any damage caused by such removal shall be repaired by Tenant in a good and workmanlike manner.

Section 6.10 Notwithstanding the foregoing, Tenant may replace any fixtures, machinery, equipment and Personal Property from time to time, provided such replacements are new and of quality and utility at least equal to the fixtures, machinery, equipment and Personal Property being replaced. Any such replacements shall remain on the Premises and become the property of Landlord at the expiration or sooner termination of this Lease as provided above.

Section 6.11 Tenant shall deliver to Landlord, upon request, copies of the "as built" plans for all buildings, including the Facility, constructed on the Premises and all material Alterations (including replacements of or material Alterations to building systems, structural alterations to the structural elements of the buildings, and additions to the buildings), including CAD drawings, and any temporary or permanent certificate of occupancy issued with respect to such buildings.

Section 6.12 Landlord, its architects, engineers and representatives shall have the right to inspect the Land and the Improvements (to the extent then constructed) from time to time during the construction of the Facility and any Alterations.

Section 6.13 Tenant shall keep the Premises and this Lease free from any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect or engineer and free from any similar lien or encumbrance with respect to work, material or services alleged to have been performed for Tenant. If any such lien or encumbrance is filed or recorded, Tenant shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after Tenant receives notice of such lien or encumbrance. If Tenant fails to discharge such lien or encumbrance within such thirty (30) day period, Landlord may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as Landlord deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by Tenant. The amount so paid and costs incurred by Landlord shall be deemed Additional Rent under this Lease payable within thirty (30) days after Tenant is billed therefor. Nothing in this Lease shall be deemed in any way to: (a) constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of the Premises; or (b) evidence Landlord's agreement to subject the Premises to any such lien.

Article VII. Compliance with Law; Environmental Laws; Contest

Section 7.01 Tenant, at Tenant's expense, shall comply, and shall cause the Subtenants to comply, in all material respects at all times, with all Laws applicable to the Premises, the occupancy of the Premises, any Alterations, and/or any property on or activities at the Premises. Without limiting the foregoing, Tenant shall promptly cure all violations of Law as to which a notice of violation has been issued or as to which a directive or order has been issued by any public officer or other person having authority, promptly discharge of record any such notice of violation, promptly comply with any such order or directive, and pay all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation or requirement of Law.

Section 7.02 Without limiting the foregoing:

(a) The following terms, as used in this Lease and in all amendments to the Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings and/or be construed, as the case may be, as set forth below:

- i) **Environmental Laws** shall mean all Laws (a) relating to the environment, human health or natural resources; (b) regulating, controlling or imposing liability or standards of conduct concerning Hazardous Substances; (c) relating to the remediation of the Premises for Hazardous Substances, including investigation, response, clean-up, remediation, prevention, mitigation or removal of any Hazardous Substance; or (d) requiring notification or disclosure of releases of Hazardous Substances or of the existence of any environmental conditions on or at the Premises, as any of the foregoing may be amended, supplemented, or supplanted from time to time.
- ii) **Hazardous Substances** shall mean any and all substances, materials, chemicals and/or wastes which now or hereafter are classified or considered to be hazardous or toxic, or that are or become regulated by any Governmental Authority because of toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity under any Environmental Law applicable to the Premises, and shall also include (1) gasoline, diesel fuel, and other petroleum hydrocarbons; (2) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (3) polychlorinated biphenyls; (4) radon gas; and (5) flammable liquids and explosives.
- iii) **Remedial Action** shall mean the investigation, response, clean up, remediation, prevention, mitigation or removal of contamination, environmental degradation or damage caused by, related to or arising from the existence, generation, use, handling, treatment, storage, transportation, disposal, discharge, Release (including a continuous Release) or emission of any Hazardous Substance, including the investigation, removal or closure of any underground storage tanks and any soil or groundwater investigation, remediation or other action required under or necessary to comply with any Environmental Laws.
- iv) **Release** shall mean the release or threatened release of any Hazardous Substances into or upon or under any land, water or air, or otherwise into the environment, including by

means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, powering, escaping, emptying, placement and the like.

- v) **“Material,”** as used to describe Tenant’s compliance obligations in this Article, shall mean that the failure to so comply may reasonably be expected to result in material risk of (1) physical injury or illness to any individual, (2) criminal liability or (3) fines or Remedial Action or compliance costs in excess of the product of \$_____ and the CPI Fraction (as of the date such materiality is to be determined).
- (b) Subject to subparagraph (c) below, Tenant, at Tenant’s expense, shall comply, and shall cause its Subtenants to comply, in all material respects at all times, with all Environmental Laws. Such compliance includes Tenant’s obligation, at its expense, to take Remedial Action when required by Law (in accordance with applicable Law and this Lease) and to pay all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation or requirement of Law.
- (c) Tenant shall notify Landlord promptly if (i) Tenant becomes aware of the presence or Release of any Hazardous Substance at, on, under, within, emanating from or migrating to the Premises in any quantity or manner, which could reasonably be expected to violate in any material respect any Environmental Law or give rise to any Material liability or the obligation to take Remedial Action or other material obligations under any Environmental Law, or (ii) Tenant receives any written notice, claim, demand, request for information or other communication from a Governmental Authority, or a third party, regarding the presence or Release of any Hazardous Substance at, on, under, within, emanating from or migrating to the Premises or related to the Premises which could reasonably be expected to violate in any material respect any Environmental Law or give rise to any Material liability or obligation to take Remedial Action or other material obligations under any Environmental Law.
- (d) Tenant shall take and complete any Remedial Action with respect to the Premises in full compliance with all Laws and shall, when such Remedial Action is completed, submit to Landlord written confirmation from the applicable Governmental Authorities that no further Remedial Action is required to be taken (**“Final Governmental Approval”**). In connection with any Material Remedial Action, (i) Tenant shall promptly submit to Landlord its plan of Remedial Action and all material modifications thereof, (ii) Tenant shall use an environmental consultant reasonably acceptable to Landlord, and (iii) Tenant shall apprise Landlord, on a quarterly basis (or more frequently if reasonably requested by Landlord), of the status of such remediation plan and provide Landlord with copies of all correspondence, plans, proposals, contracts and other documents relating to such plan or proposed plan. If Tenant’s environmental consultant determines that there is not a reasonable likelihood of obtaining Final Governmental Approval prior to the third anniversary of the date on which the remediation plan is first submitted to Landlord, a certificate to that effect shall be provided to Landlord by such environmental consultant on behalf of Tenant, which certificate shall also state, to the reasonable satisfaction of Landlord, the status of the Remedial Action and the schedule for completion of the Remedial Action, the reasons why such Final Governmental Approval is not likely to be obtained within such time period and that all Remedial Actions to date have been completed in accordance with all Environmental Laws.

Section 7.03 Tenant shall have the right to contest, at its sole cost, by appropriate legal proceedings, the amount or validity of any fine, charge or penalty imposed in connection with an alleged violation of Law, the validity of any Law to the Premises, the validity of any application of any Law to the Premises, the existence of any violation of Law, and/or the validity of any issued notice of violation of Law (the “**Contested Obligation**”). Tenant may defer payment and/or performance of the Contested Obligation to the extent that and so long as Tenant is diligently contesting, at its expense, by appropriate legal proceedings the existence, amount or validity of the Contested Obligation, provided that all of the following conditions are met:

- (a) There is no outstanding Event of Default.
- (b) Such contest is made and prosecuted in good faith.
- (c) Such proceeding shall operate during the pendency thereof to prevent (i) the sale, forfeiture or loss of Landlord’s fee estate in the Premises, and (ii) the forfeiture or loss of the Base Rent or Additional Rent, and (iii) any interference with the use or occupancy of the Premises, and (v) the cancellation of any insurance policy required to be maintained by Tenant pursuant to Article IX of this Lease. In addition, such proceeding shall not create a material risk that any of the foregoing will occur.
- (d) If the applicable loan documents require the Leasehold Lender’s and/or Fee Lender’s consent, such consent(s) has(have) been obtained. Tenant shall furnish to Landlord, promptly upon request, evidence of such consent.
- (e) If the reasonably estimated cost of curing or discharging the Contested Obligation and of satisfying any potential civil and/or criminal penalties if judgment is not in favor of Tenant exceeds \$_____, Tenant shall have furnished to Landlord a bond or other security reasonably acceptable to Landlord, to secure Tenant’s obligations under this Article VII, in an amount equal to 125% of the reasonably estimated cost of curing or discharging the Contested Obligation plus the reasonably estimated penalties.
- (f) Tenant is not contesting a criminal liability, penalty, or sanction.
- (g) Tenant reimburses Landlord, within 10 days of being billed therefor, for all Liabilities incurred by Landlord in connection with such contest.
- (h) Landlord is not exposed to any risk of criminal liability, penalty, or sanction.
- (i) Tenant shall, promptly upon Landlord’s request, apprise Landlord of the status of the contest and provide Landlord with copies of all documentation relating to such contest.
- (j) Tenant promptly and diligently prosecutes such contest to final conclusion by appropriate legal proceeding, but Tenant shall have the right to attempt to settle or compromise such

contest, subject to receipt of Landlord's consent, which shall not be unreasonably withheld, if the settlement or compromise will in Landlord's reasonable judgment have a material impact on the use and occupancy of the Premises.

Tenant shall indemnify and save Landlord harmless against any and all Liabilities incurred by Landlord in connection with any such contest or the Contested Obligation. Tenant shall, promptly after the final determination of such contest, comply with the requirements of such determination and pay all amounts levied, assessed, charged or imposed on any of the Landlord Parties, Tenant, the Premises or any part thereof, in connection therewith, together with all fines, penalties, interest, costs and Liabilities.

Article VIII. Repairs and Maintenance

Section 8.01 Tenant, at its own expense, shall at all times, subject to the provisions of Articles XI and XII (a) maintain the Premises in an orderly and safe condition, in a good state of repair, and in a manner consistent with the standards of operation and maintenance of first class properties similar to the Premises, and (b) make such repairs, replacements and Alterations to the Premises as are necessary to keep it in the condition required by the preceding clause (a) and to comply with the requirements of Article VII, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen.

Section 8.02 Tenant shall not permit any waste of the Premises or permit any nuisance to exist on the Premises.

Section 8.03 Tenant shall keep the entire Premises, including adjoining sidewalks, substantially free of any accumulation of dirt, rubbish, snow and ice.

Section 8.04 Unless otherwise expressly provided in this Lease, Landlord is under no obligation to maintain, repair, clean, alter or improve the Premises, to comply with any Requirements, or to provide any service to the Premises.

Article IX. Insurance; Compliance with Insurance Requirements

Section 9.01 The following basic terms, as used in this Lease and in all amendments to the Lease (unless otherwise specified or unless the context otherwise requires), shall have the following meanings: A "**Customary**" form of policy or amount of coverage or endorsement or other aspect of insurance is that form of policy, amount of coverage, endorsement or other aspect that is then customarily required by prudent Institutional Lenders for similar properties in the vicinity of the Premises (the "**Comparison Area**").

Section 9.02 Tenant, at Tenant's sole expense, shall maintain at all times during the Term (except as otherwise specifically provided below), and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises, the following insurance:

Liability Insurance. Tenant shall maintain a policy of commercial general liability insurance in Customary form (the “**Liability Policy**”) protecting Tenant against claims of third parties for bodily injury, death, personal injury, and property damage (including personal injury liability covering libel, slander, false arrest and malicious prosecution, and fire and water damage legal liability) occurring in, upon, or about the Premises and any appurtenances thereto. Such policy shall include contractual liability coverage covering Tenant’s indemnification obligations under this Lease with respect to covered claims. Subject to Landlord’s right (as set forth below) to require Tenant to increase coverage limits, such policy shall have a per occurrence combined single limit of at least ____ Million Dollars (\$_____) annually and per location.

Property Insurance. Effective on and after the Construction Completion Date, Tenant shall maintain property insurance covering the Improvements and Personal Property insuring against (a) all risks, including fire, other risks and losses caused by explosion of boilers and other pressurized equipment, insured under the then Customary form of policy (as of the Commencement Date, the required form of policy shall be Causes of Loss -- Special Form) and shall cover increases in costs incurred by reason of changes in ordinances or laws, and (b) loss of rents in an amount at least equal to gross receipts from all sources of income from the Premises, as reasonably estimated, for a period of at least 24 months (but in no event in an amount less than Base Rent and all regularly recurring Additional Rent payments for a period of at least 24 months, as reasonably estimated) notwithstanding that the policy may expire prior to the end of such period, and which coverage shall contain an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired or restored, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss or the expiration of 12 months from the date that the Improvements are repaired or replaced and operations are resumed, whichever first occurs, notwithstanding that the policy may expire prior to the end of such period; and (c) losses due to disruption of utility services originating away from the Improvements (the “**Property Damage Policy**”). With respect to losses to property, such policy shall be in an amount equal to 100% of the Full Replacement Cost (hereinafter defined) of the Improvements and Personal Property, but such coverage shall be, in any event, at least sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies. The term “**Full Replacement Cost**” shall mean the actual replacement cost of the Improvements and Personal Property, including the cost of demolition and debris removal and without deduction for depreciation and excluding the cost of excavation, foundations and footings. Such policy shall not exclude losses caused by flood, mold, fungus or acts of terrorism (including bioterrorism). With respect to losses covered by the insurance described in clause (b), the amount of the rental loss or business income insurance, as applicable, shall be determined initially upon Substantial Completion of the Improvements and at least once each year thereafter based on Tenant’s reasonable estimate of the gross income from the Premises for the succeeding period of coverage.

Workers Compensation. Tenant shall maintain workers compensation insurance as required by law and which shall include employer's liability insurance for all employees of Tenant, in accordance with the statutory limits required by Law.

Automobile Insurance. Tenant shall maintain a policy of Automobile Liability insurance on owned, non-owned and hired motor vehicles used in connection with the operation of the Improvements with a combined single limit for bodily injury and property damage of not less than ____ Million Dollars (\$_____).

Insurance Required by Lenders. To the extent any Leasehold Lender may require Tenant to obtain any insurance coverage not required by this Lease, or require additional insurance coverage, or require a different or more highly rated insurance company to issue the insurance, or impose any requirement relating to Tenant's insurance that is more stringent than the requirements of this Lease, Tenant shall comply with such Leasehold Lender's insurance requirements.

No insurance coverage obtained by Tenant pursuant to this Article shall contain a deductible or self-insured retention in excess of _____ Dollars (\$_____) without the prior written consent of the Landlord; provided that such maximum deductible or self-insured retention may be increased on the tenth anniversary of the Commencement Date, and every 10-year anniversary thereafter, to equal the product of \$_____ and the CPI Fraction.

Whenever, in Landlord's reasonable judgment, good business practice and changing conditions indicate a need for additional liability limits or different types of insurance coverage, Tenant shall, within twenty (20) days after Landlord's request, obtain such insurance coverage, at Tenant's expense; provided that the requested amounts and types of coverage are Customary and provided that Landlord shall not require any increase in the limits of coverage of the Liability Policy more than once every three (3) years.

Section 9.03 All policies required by this Article shall be issued by insurance companies licensed to do business in the State of New York. All such insurers shall have a claims paying ability rating of no less than "A-8" and a financial class category rating of at least "VIII" by A.M. Best Company (or any successor rating agency or entity reasonably selected by Landlord if A.M. Best Company discontinues publishing ratings of insurance companies or if the rating system is changed). If it is commercially impracticable to obtain insurance from an insurer with an "A-8" rating and a financial size category of at least "VIII" because of changes in the insurance industry or conditions in the Comparison Area, Tenant's insurers shall have a policy holder's rating that is at least equal to the Customarily required rating.

Section 9.04 Such policies may be carried under a blanket policy covering the Premises and other locations of Tenant and Tenant's Affiliates, if such blanket policy contains an endorsement that guarantees a minimum limit available for the Premises equal to the minimum limits required by this Article and that the minimum limits shall not be reduced for claims made with respect to other properties, and otherwise complies with this Article.

Section 9.05 The Liability Policy shall name Tenant as insured and shall include as additional insureds the Landlord Parties and all Lenders. Notwithstanding the foregoing, to the extent this Section or any other Section of this Lease requires the Landlord Parties and/or Lenders to be (a) included as additional insured in any policy of insurance or (b) benefited by a waiver of subrogation endorsement, such requirement shall be triggered as to any Fee Lender or as to Landlord's managing agent only when Landlord has advised Tenant of the names and addresses of such entities and requested such inclusion.

Section 9.06 If the Premises are not encumbered by a Leasehold Mortgage: (a) the Property Damage Policy shall name Landlord as loss payee as its interest may appear and shall expressly provide that any losses thereunder shall be adjusted with Landlord, Tenant, and any Fee Lender; and (b) such policies shall include a standard New York mortgagee endorsement with respect to each Fee Lender; and (c) all proceeds paid under such policies shall be applied in accordance with the requirements of this Lease. If the Premises are encumbered by a Leasehold Mortgage, the provisions of Article XV shall govern with respect to loss payee status and application of mortgage proceeds.

Section 9.07 All insurance policies required by this Article shall (i) contain endorsements that such insurance may not be canceled or amended, except upon not less than thirty (30) days prior written notice to Landlord, and (ii) be written as primary policies not contributing to or in excess of any policies carried by Landlord, and (iii) each contain a Waiver of Subrogation endorsement, in form and substance reasonably satisfactory to Landlord, in favor of the Landlord Parties.

Section 9.08 Concurrently with execution of this Lease and thereafter at least fifteen (15) days prior to the expiration of any policy, Tenant shall deliver to Landlord a binding certificate or certificates evidencing the insurance required by this Article in form and content reasonably satisfactory to Landlord, together with evidence of payment of the annual premium for each policy; except that the initial certificate evidencing the Property Damage Policy shall be first delivered on or before the Construction Completion Date. In addition, Tenant shall at any time and from time to time during the Term, promptly upon Landlord's request, furnish Landlord with a copy of the then current paid-up policy, appropriately authenticated by the insurer or, at Landlord's option, the Declarations page of such policy evidencing the required insurance.

Section 9.09 If Tenant fails to maintain the insurance required by the foregoing provisions of this Article or to timely furnish to Landlord the required evidence of such insurance and payment of the insurance premiums, Tenant shall be responsible for all Liabilities incurred by Landlord with respect to such default, including any Liabilities that would have been covered by the insurance Tenant is required to maintain. If Tenant fails to maintain any of the insurance required by this Article, Landlord may, at its option, in addition to exercising any other remedies available to it under this Lease or at law, obtain the insurance described in this Article, in which event Tenant shall reimburse Landlord, as Additional Rent, within 10 days of being billed therefor, for the costs incurred by Landlord to obtain such insurance.

Section 9.10 Tenant also shall require the Persons described below to carry the following insurance.

Subtenants. Tenant shall require all of its Subtenants to:

- (a) maintain Customary insurance required of tenants in similar properties (which insurance, as to any tenant serving liquor, shall include liquor law sales and dram shop coverage and check room liability), and
- (b) include the Landlord Parties as additional insured on their commercial general liability policies (or equivalent policies); and
- (c) obtain a waiver of subrogation endorsement in all policies in favor of the Landlord Parties.

Contractors, Subcontractors, Etc. Tenant shall require all of its Subtenants' contractors, subcontractors, design-builders, construction managers, consultants, and other entities providing services, materials or labor to all or any portion of the Premises to:

- (a) include as additional insured in their commercial general liability policies the Landlord Parties; and
- (b) obtain a waiver of subrogation endorsement in all policies in favor of the Landlord Parties,

in each case to the same extent Tenant requires such contractors, subcontractors, construction managers, design-builders, consultants, and other entities to include Tenant as additional insured and/or to obtain a waiver of subrogation endorsement in favor of Tenant.

Property Manager. Tenant shall cause the company engaged to manage all or substantially all of the Improvements (the "**Manager**") to maintain at all times during the term of its management agreement, and thereafter for so long as Manager continues to manage the Improvements:

Workers compensation insurance as required by Law and which shall include employer's liability insurance for all employees of Manager; and

Liability Insurance with a per occurrence combined single limit of at least ____ Million Dollars (\$_____) (annually and per location) including the Landlord Parties as additional insured; and

Fidelity insurance with a coverage limit of at least ____ Million Dollars (\$____); and

Automobile liability insurance on owned, non-owned and hired motor vehicles used in connection with the operation of the Improvements with a combined single limit

for bodily injury and property damage of not less than ____ Million Dollars (\$____); and

Professional liability (Errors & Omissions a/k/a malpractice) insurance coverage having a policy limit of not less than ____ Million Dollars (\$____) per claim occurrence and _____ Dollars (\$____) in the aggregate.

Each of the required coverages, excluding the professional liability insurance, fidelity insurance, and automobile liability insurance, shall contain a Waiver of Subrogation endorsement, in form and substance reasonably satisfactory to Landlord, in favor of the Landlord Parties.

Section 9.11 Tenant, at Tenant's expense, shall comply, and shall cause its Subtenants to comply, in all material respects at all times, with all Insurance Requirements.

Article X. Indemnity

Section 10.01 Tenant shall indemnify and hold harmless the Landlord Parties from and against any and all Liabilities arising from or in connection with all of the following: (a) the Premises and/or any operations or activities thereon during the Term and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises, except to the extent such Liabilities arise out of Landlord's negligence or misconduct; (b) any act, omission, negligence, or misconduct of Tenant and/or any of Tenant's officers, directors, employees, partners, members, agents, contractors, invitees, or Subtenants; (c) any accident, injury or damage (including death) occurring in, at or about the Premises during the Term and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises, except to the extent such Liabilities arise out of the Landlord's negligence or misconduct; (d) any breach or default by Tenant under this Lease; (e) any claims made by Subtenants during or after the Term (including claims for return of security deposits and prepaid rent), except to the extent such claims arise out of Landlord's negligence or misconduct; and (f) any holdover by Tenant, or by any Person(s) holding through Tenant, after the Expiration Date. If any action or proceeding is brought against Landlord and/or any Landlord Party by reason of any such claim(s), Tenant, upon notice from Landlord or such Landlord Party, shall resist and defend such action or proceeding by counsel reasonably satisfactory to Landlord or such Landlord Party.

Article XI. Casualty Damage and Destruction

Section 11.01 If the Premises are damaged or destroyed by fire or other cause (ordinary or extraordinary), Tenant shall give Landlord prompt notice of such event and, except as provided in Section 11.03, shall repair such damage and restore the Premises to the condition existing prior to such damage or destruction and to a standard and quality no less than the construction of the original Improvements (the "**Restoration**"). Such repair and restoration shall be effected with reasonable diligence, subject to reasonable delays for adjustment of the insurance loss. Subject to Section 11.03, such obligation shall survive any termination of this Lease. Rent (including Base Rent and

Impositions) shall not be abated by reason of any such damage or destruction and Tenant's obligations under this Lease shall not be affected by reason of such damage or destruction. Except as provided in Section 11.03, this Lease shall not terminate solely by reason of such damage or destruction.

Section 11.02 Unless Tenant terminates this Lease pursuant to Section 11.03, the proceeds of any Property Damage Policy shall be disbursed as follows, subject to the rights of the Leasehold Lenders:

- (a) If the reasonably estimated cost of the Restoration is less than \$_____, all proceeds of the Property Damage Policy shall be paid to Tenant, to be used for the repair and restoration of the Premises.
- (b) If the reasonably estimated cost of the Restoration equals or exceeds \$_____, the proceeds of the Property Damage Policy shall be paid to a commercial bank or trust company selected by Landlord that is subject to supervision and regulation by state or federal Governmental Authority and that has capital, surplus, and undivided profits in an amount at least equal to the product of \$1,000,000,000.00 and the CPI Fraction (the "**Depository**"), to be disbursed to Tenant in reimbursement of Tenant's repair and restoration costs in accordance with the following provisions:
 - 1) No disbursements shall be made unless and until the following conditions have been met:
 - a) Tenant delivers to Landlord and Depository a final and complete set of plans and specifications for the Restoration and a certification of the estimated cost of the Restoration by an architect or cost estimator approved by Landlord, such approval not to be unreasonably withheld or delayed.
 - b) If the net insurance proceeds available for the Restoration are less than the reasonably estimated cost of Restoration, Tenant shall deliver to the Depository sufficient funds to make up the deficiency.
 - c) Tenant delivers to Landlord and the Depository copies of all permits, approvals, and authorizations required by the Building Department and all other Governmental Authorities for the Restoration.
 - 2) Once the foregoing conditions have been met Depository shall disburse the insurance proceeds to Tenant, subject to a 10% retainage, from time to time as the Restoration progresses in accordance with Depository's customary construction loan advance procedures, provided:
 - a) There is no Event of Default under this Lease.
 - b) With respect to each disbursement, Tenant delivers to Depository and Landlord (i) a certification of Tenant's architect that the sums requested have been earned and are due, the Restoration is being completed substantially in accordance with the plans and specifications given to Landlord, and the amounts requested are then due and payable, and (ii) releases and waivers of mechanic's lien, in form and substance reasonably satisfactory to Depository, executed by each of (A) the Major Contractors and (B) as applicable, the general contractor, construction manager, and/or design-builder, in each case for periods prior to and covered by the disbursement then requested.

- c) If at any time Landlord reasonably determines that the funds then held by the Depository are insufficient to fund the balance of the Restoration, progress payments shall cease until Tenant delivers to the Depository sufficient funds to make up the deficiency.
 - d) No mechanic's lien or similar lien or other encumbrance, other than a permitted Leasehold Mortgage, have been filed against the Premises, and no stop notices have been issued by any Governmental Authority to Landlord or Tenant, that have not been discharged by bonding or otherwise.
 - e) The final disbursement of the insurance proceeds and Tenant's funds shall not be made until (y) Restoration is Substantially Completed, and (z) Tenant has complied with Depository's other customary construction loan advance procedures.
- 3) Tenant shall pay all of the Depository's fees and all out-of-pocket costs incurred by Landlord in connection with such Restoration, including any out-of-pocket fees incurred by Depository and Landlord for architectural and engineering review and/or revisions of Tenant's plans and specifications and inspection of the work site and the Restoration. All such fees and costs shall be paid to Landlord and Depository within twenty (20) days after Tenant is billed for same. No such review or inspection shall be deemed a warranty or representation that such plans and specifications or the Restoration complies with applicable Legal Requirements or with the provisions of this Lease.

Section 11.03 Notwithstanding the foregoing, if the Premises are damaged or destroyed by fire or other cause during the last 5 years of the Term and such damage or destruction was not caused by the misconduct of Tenant and the cost to restore the Premises, as reasonably estimated, would equal or exceed 50% of the Full Replacement Cost of the Improvements, Tenant may, at its option, terminate this Lease by notice given to Landlord no later than thirty (30) days after such fire or other causal event, provided all of the following conditions are met:

- (a) Tenant is not in default of this Lease, which default is not cured within the applicable cure period (if any), and
- (b) Tenant has paid all Rent then due, and
- (c) Tenant has maintained in full force and effect any insurance required by Section 9.02 of this Lease and the insurance maintained by Tenant fully covers the damage, and
- (d) Tenant pays Landlord an amount equal to such policy's deductible, and
- (e) Tenant assigns to Landlord all of its right, title and interest in the proceeds of any insurance covering the loss and reasonably cooperates with Landlord's efforts to obtain such insurance proceeds (which obligation to assign and cooperate shall survive any termination of this Lease), and
- (f) no Leasehold Lender or Person claiming through Tenant has a claim upon any insurance proceeds covering the loss, and
- (g) Tenant has completed the Casualty Termination Work (hereinafter defined) in a good and workerlike manner and in compliance with all Laws, and
- (h) There are no Subtenants whose leases or occupancy agreements have not been validly terminated by reason of such damage or destruction; and
- (i) all insurance proceeds covering the loss are paid to Landlord, subject to the right of any Fee Lender.

If such notice is given, this Lease shall cease and come to an end as of the later of the date forty five (45) days after the date Landlord receives such notice and the date all of the foregoing conditions are met. Subject to the requirements of Section 11.04, Tenant shall not be required to repair such damage or destruction if the foregoing conditions are met. Tenant shall continue to pay all Base Rent and Additional Rent, including Impositions, until all insurance proceeds covering the Loss are paid to Landlord (subject to the right of any Fee Lender). If, for any reason, all insurance proceeds are not paid to Landlord (or the Fee Lender) or if the insurance company refuses to pay the insurance proceeds to Landlord, Tenant's termination notice shall be void and this Lease shall be deemed in full force and effect.

Section 11.04 If Tenant exercises its option to terminate this Lease pursuant to Section 11.03 of this Lease, Tenant, at Tenant's sole expense, shall demolish the Improvements (except as otherwise directed in writing by Landlord, which direction shall be given to Tenant within thirty (30) days after Landlord receives Tenant's notice of termination pursuant to Section 11.03), remove all debris, grade the Land, and adequately secure the site during such remediation work (collectively, the **"Casualty Termination Work"**).

Article XII. Condemnation

Section 12.01 The following basic terms, as used in this Lease and in all amendments to this Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

- (a) The term **"Taking"** shall mean a taking during the Term of all or any part of the Premises, or any interest therein or right accruing thereto including any right of access, by or on behalf of any Governmental Authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Premises as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Premises. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.
- (b) The term **"Award"** shall mean the condemnation award and/or proceeds of the Taking, including any interest earned on the Award.
- (c) The term **"Value of the Fee Estate"** means the Market Value of Landlord's fee estate in the Premises, determined as if (i) the Premises were unimproved, encumbered by this Lease, and unencumbered by any lien representing a monetary obligation (such as a Subjected Fee Mortgage (if any) or a Fee Mortgage), and (ii) all Extension Options had been exercised, and (iii) no Taking was pending, threatened or under consideration. The Value of the Fee Estate shall be determined immediately prior to title vesting in the condemning authority or its designee. [For purposes of this Article, the Value of the Fee Estate shall, at a minimum, equal the applicable value set forth on Exhibit __ to this Lease.]

- (d) The term **“Value of the Premises”** means the Market Value of the Premises, determined as if (i) the Premises were encumbered by this Lease, and unencumbered by any lien representing a monetary obligation (such as a Subjected Fee Mortgage (if any) or a Fee Mortgage), and (ii) all Extension Options had been exercised, and (iii) no Taking was pending, threatened or under consideration. The Value of the Premises shall be determined immediately prior to title vesting in the condemning authority or its designee.
- (e) The term **“Value of the Improvements”** means the Value of the Premises less the Value of the Fee Estate. The Value of the Improvements shall be determined immediately prior to title vesting in the condemning authority or its designee.

Section 12.02 Landlord and Tenant shall each notify the other if it becomes aware of a threatened or possible Taking (including any letter of interest from the condemning authority or its designee), or the commencement of any proceedings or negotiations which might result in a Taking. Landlord and Tenant shall have the right to appear in such proceedings, as their interests may appear, and be represented by their respective counsel.

Section 12.03 If there is (i) a Taking of the entire Premises or of more than ___% of the rentable area of the Improvements, or (ii) a Taking (if the Premises include a parking lot or parking facility) that results in the loss of more than ___% of the number of parking spaces available at the Premises (each, a **“Substantial Taking”**), the Term of the Lease shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated Expiration Date of this Lease. The Award for a Substantial Taking (other than a Temporary Taking that involves a Substantial Taking, which is dealt with below) shall be allocated as follows:

- (a) Landlord shall be entitled to claim and recover from the condemning authority the Value of the Fee Estate;
- (b) Tenant shall be entitled to claim and recover from the condemning authority an amount equal to the Value of the Improvements, multiplied by a fraction, the numerator of which is the number of months (and any fractional part thereof) occurring between the date of the Taking and the Expiration Date (determined as if all Extension Options had been exercised) and the denominator of which is the number of months (and any fractional part thereof) occurring between the Commencement Date and the Expiration Date (determined as if all Extension Options had been exercised); and
- (c) the balance of the Award, if any, shall be paid to Landlord.

Section 12.04 If all or any portion of the Premises is taken temporarily (a **“Temporary Taking”**), the following shall apply. If (i) the Temporary Taking (whether or not a Substantial Taking) ends prior to the then Expiration Date or (ii) a portion of the Premises is Taken for a period that will end after the then Expiration Date but such Taking is not a Substantial Taking, then:

- (a) This Lease shall remain in full force and effect, including as to the portion Taken and there shall be no change in Tenant's obligations under this Lease; and
- (b) There shall be no reduction in Rent; and
- (c) If clause (i) applies, the entire Award shall be paid to Tenant; and
- (d) If clause (ii) applies, the portion of the Award allocable to the period prior to the Expiration Date shall be paid to Tenant and the portion of the Award allocable to the period after the Expiration Date shall be paid to Landlord.

If, however, the Temporary Taking involves a Substantial Taking and the term of the Temporary Taking extends beyond the then Expiration Date, Tenant may, at its option, but subject to the rights of the Leasehold Lender, terminate this Lease as of the date of the Taking, by notice given prior to the date of the Taking, in which event this Lease shall be terminated as of the date of the Taking as fully and completely as if such date were the stated Expiration Date of this Lease and Landlord shall be entitled to the entire Award. If Tenant does not so elect to terminate this Lease, this Lease shall remain in full force and effect, there shall be no reduction in Rent and clause (d) above shall govern the distribution of the Award.

Section 12.05 If the Taking is not a Substantial Taking or a Temporary Taking (a **"Partial Taking"**), this Lease shall remain in full force and effect; provided, however, that on the date of such Taking this Lease shall terminate as to the portion of the Premises taken, which portion shall no longer be deemed part of the Premises. From and after the date of such Partial Taking, the Base Rent shall be reduced in an amount equal to ____% of the portion of the Award actually paid to Landlord. Whether or not the Award is sufficient to restore the Improvements, Tenant shall promptly restore the Improvements, to the extent reasonably practicable given the nature and scope of the Taking and the requirements of applicable Law, to their condition immediately prior to such Partial Taking in accordance with the provisions of this Lease and to a standard and quality no less than the construction of the original Improvements (the **"Condemnation Restoration"**). The Award for the Partial Taking shall be allocated as follows:

- (a) If the Partial Taking includes any of the Improvements (including any parking area), the Award shall first be applied to effect the Condemnation Restoration. The balance of the Award (if any) shall be allocated between Tenant and Landlord as follows:
 - 1) Landlord shall be entitled to an amount equal to the diminution in the Value of the Fee Estate,
 - 2) Tenant shall be entitled to an amount equal to the diminution in the Value of the Improvements, and
 - 3) the balance of the Award, if any, shall be paid to Landlord.

If there is a Leasehold Lender, the portion of the Condemnation Award to be applied to Condemnation Restoration shall be paid to the Leasehold Lender and applied to such

restoration in accordance with the procedures established in the Leasehold Mortgage, and Tenant's portion of the Award shall be paid in accordance with the provisions of the Leasehold Mortgage. If no Leasehold Mortgage encumbers the Premises at the time of the Partial Taking, then (y) if the cost of the Condemnation Restoration, as reasonably estimated, is less than \$_____, the portion of the Award needed to effect the Condemnation Restoration shall be paid to Tenant, who shall effect the Condemnation Restoration, and (z) if the cost of effecting the Condemnation Restoration is equal to or greater than \$_____, the portion of the Award needed for restoration of the Improvements shall be paid to a Depository, who shall distribute such portion of the Award to Tenant as the Restoration progresses in the same manner as provided in Section 11.02 with respect to insurance proceeds and subject to the same conditions.

- (b) If the Partial Taking does not include any portion of the Improvements, the entire Award shall be paid to the Landlord.

Section 12.06 Notwithstanding the foregoing: To the extent any Award is allocated to reimbursement for real estate taxes and assessments that have been paid with respect to periods after the date title vests in the condemning authority or its designee, such portion shall be paid to the party who paid such taxes and assessments. To the extent any Award is allocated to reimbursement of prepayment penalties, such portion shall be paid to (a) Tenant with respect to any Leasehold Mortgage, (b) Landlord with respect to any Fee Mortgage, and (c) Tenant with respect to any Subjected Fee Mortgage.

Section 12.07 Landlord's and Tenant's rights under this Article shall be subject and subordinate to the rights of all Lenders.

Section 12.08 If this Lease terminates pursuant to this Article, Landlord, within ten (10) Business Days after this Lease terminates, shall return to Tenant all Rent previously paid that is attributable to the period after such termination. The termination of this Lease shall not affect those obligations and liabilities of Tenant under this Lease that accrued before the termination of this Lease or that relate to periods before such termination, which obligations shall survive termination.

Section 12.09 Nothing in this Article is included for the benefit of the condemning authority, the intent being only to set out the rights of the parties *vis`a vis* one another.

Article XIII. Estoppel Certificates

Section 13.01 Landlord and Tenant shall, at any time and from time to time, within ten (10) Business Days following receipt of written request from the other party, execute, acknowledge and deliver a written statement certifying: that this Lease is in full force and effect and unmodified (or, if modified, stating the nature and date of such modification); the Commencement Date; the then Expiration Date; whether any Extension Options have been exercised and describing the Extension Term(s) to which such option(s) relate; the dates to which the Rent reserved hereunder has been paid

and the amount of such Rent; whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Lease (and, if so, specifying each such default of which the signer shall have knowledge); if the signer is the Tenant, that Tenant is not in default of any of its obligations under this Lease; and as to such other matters regarding this Lease as may reasonably be requested. Failure to deliver such statement within said ten (10) Business Days' period shall be conclusive as to the facts stated in the requested certification and binding upon the party who failed to deliver such certification.

Article XIV. Mortgages

Section 14.01 Fee Mortgages. Landlord may mortgage its fee interest in the Premises, unless Landlord has granted a Subjected Fee Mortgage which is outstanding; provided that any such mortgage meets the requirements of this Lease, including Section 15.15.

Section 14.02 Leasehold Mortgages. Tenant may, from time to time, grant to any Institutional Lender providing financing or refinancing to Tenant with respect to the Premises a mortgage lien encumbering Tenant's interest in the Premises and its interest in, to and under this Lease, together with an assignment of leases and rents and a security interest in any Personal Property owned by Tenant, in order to secure the repayment of such financing, including interest thereon, and the performance of all of the terms, covenants and agreements on the Tenant's part to be performed or observed under all agreements executed in connection with such financing or refinancing (collectively, a "**Leasehold Mortgage**"; and each holder of a Leasehold Mortgage, a "**Leasehold Lender**"). No such Leasehold Mortgage, lien or security interest shall attach to Landlord's interest in this Lease or the Premises or to any personal property owned by Landlord nor shall any such assignment affect Landlord's interest in this Lease, or in any leases and rents or other proceeds from the Premises. Tenant may have one or more Leasehold Mortgages at any time.

Section 14.03 Subjected Fee Mortgage. As an accommodation to Tenant, Landlord shall, at Tenant's request, upon the terms and conditions hereinafter set forth, further secure Tenant's Leasehold Mortgage financing by granting the Leasehold Lender a Subjected Fee Mortgage and executing and delivering to the Leasehold Lender, promptly upon Tenant's request, such documents, agreements and instruments as the Leasehold Lender shall reasonably require to create and perfect such lien; provided that (a) Tenant pays all costs and expenses incurred by Landlord in connection therewith, which expenses shall include Landlord's reasonable legal fees and all recordation fees, mortgage taxes and other charges; (b) all such loan documentation shall be acceptable to Landlord in its reasonable determination; and (c) the loan documents shall expressly provide that none of the Landlord Parties shall have any personal responsibility or liability whatsoever for the indebtedness secured by such loan documentation or for the performance or observance of any of the terms, covenants, or conditions of such loan documents. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all Liabilities arising from or related to Landlord's execution of such loan documentation, including loss of the Premises by reason of Tenant's default under the Leasehold Mortgage. Concurrent with Landlord's execution and delivery of such loan documentation, Tenant shall provide such security, and shall execute and deliver, to Landlord, any agreement and/or instrument evidencing such indemnification and/or perfecting such security, as

Landlord may reasonably request. [THIS SECTION TO BE OMITTED IF LANDLORD DOES NOT AGREE TO SECURE TENANT'S LEASEHOLD FINANCING WITH A MORTGAGE ON LANDLORD'S FEE INTEREST]

Article XV. Leasehold Lender Protections

Section 15.01 Tenant shall give Landlord prompt notice of each Leasehold Mortgage, together with contact information for notices to the Leasehold Lender (such notice and/or any notice given by Lender to Landlord of its contact information, collectively, the "**Lender Notice**"). Tenant promptly shall furnish Landlord with a complete copy of each Leasehold Mortgage (including all documents and instruments comprising the Leasehold Mortgage) and all amendments, extensions, modifications and consolidations thereof, certified as such by Tenant.

Section 15.02 After receipt of a Lender Notice, Landlord shall give such Leasehold Lender, in the manner provided by the notice provisions of this Lease, a copy of each notice of default given by Landlord to Tenant, at the same time that Landlord gives such notice of default to Tenant or promptly thereafter. No such notice of default given by Landlord to Tenant shall be effective unless and until a copy of such notice shall have been so given to each such Leasehold Lender at the last address furnished to Landlord. Notice to a Leasehold Lender shall be deemed given on the date received by the Leasehold Lender. The Leasehold Lender shall have the right, but not the obligation (except as provided in the next section), to cure such default or to cause such default to be cured, within the time periods set out in Section 15.03 below.

Section 15.03 Landlord shall not exercise its right to terminate this Lease following a default by Tenant if:

- (a) As to a monetary default, the Leasehold Lender cures such default on or before the date that is the later of (i) thirty (30) days after the date such default is required to be cured by Tenant under the terms of this Lease and (ii) thirty (30) days after the date Leasehold Lender is given notice of Tenant's default; and
- (b) As to a non-monetary default, (i) Landlord receives written notice from the Leasehold Lender (the "**Lender Cure Notice**"), within thirty (30) days after Leasehold Lender is given Landlord's notice of Tenant's default, that Leasehold Lender agrees to remedy the default, and (ii) Lender cures such default on or before the date that is the later of (A) sixty (60) days after the date such default is required to be cured by Tenant under the terms of this Lease, and (B) sixty (60) days after the date Leasehold Lender is given notice of Tenant's default, provided, however, that if any non-monetary default is not capable of being remedied by the Leasehold Lender within such time period, Leasehold Lender shall have such greater period of time as is necessary to cure such default if Leasehold Lender shall:
 - i) commence to remedy the default within such period and shall diligently continue to prosecute such cure to completion, or
 - ii) if possession of the Premises is required in order to cure such default, institutes judicial or non-judicial foreclosure proceedings within such sixty (60) day period and diligently

prosecutes such proceedings in order to obtain possession directly or through a receiver, and, upon obtaining such possession, commences promptly to cure the default and diligently prosecutes the same to completion, provided that, during the period in which such action is being taken and any foreclosure proceedings are pending, all of the other obligations of Tenant under this Lease, to the extent they are reasonably susceptible to being performed by Leasehold Lender, shall be performed.

If such non-monetary default is of such a nature that it cannot be cured by Leasehold Lender (for example, the bankruptcy of Tenant), and if Leasehold Lender succeeds Tenant to the position of tenant hereunder, Landlord shall not terminate this Lease by reason of such default unless the Leasehold Lender consents in writing to such termination.

Section 15.04 At any time after the delivery of the Lender Cure Notice, Leasehold Lender 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 or will discontinue such proceedings, and that it relinquishes all right to a New Lease (the “**Abandonment Notice**”). In such event, Leasehold Lender shall have no further obligation to cure Tenant’s default(s). Landlord may, at any time after receipt of such Abandonment Notice or upon Leasehold Lender’s failure to comply with the requirements of Section 15.03 above, terminate this Lease in accordance with the terms thereof, without any obligation to give Leasehold Lender a New Lease.

Section 15.05 Subject to the preceding sections, no Leasehold Lender shall become liable under the provisions of this Lease, or any lease executed pursuant to this Article, unless and until such time as it becomes, and then only for as long as it remains, the tenant under the leasehold estate created by this Lease. No Leasehold Lender or designated Affiliate of a Leasehold Lender shall have any personal liability under this Lease except to the extent of its interest in this Lease, even if it becomes Tenant or assumes the obligations of Tenant under this Lease.

Section 15.06 Subject to Section 15.03, Leasehold Lender has no obligation to cure any default of Tenant under the Lease.

Section 15.07 If this Lease is terminated for any reason, or if this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditors’ rights, Landlord shall give prompt notice thereof to each of the then Leasehold Lenders whose contact information Landlord has received in a Lender Notice, in the manner provided by the notice provisions of this Lease. Landlord, upon written request of any such Leasehold Lender (or if more than one Leasehold Lender makes such request, the Leasehold Lender whose Leasehold Mortgage has the most senior lien), made any time within thirty (30) days after the giving of such notice by Landlord, shall promptly execute and deliver to such Leasehold Lender a new lease of the Premises (the “**New Lease**”), naming such Leasehold Lender or its designee as the tenant under this Lease, for the remainder of the Term upon all of the terms, covenants, and conditions of this Lease (including options to extend the term of this Lease, if any) except for such provisions that must be modified to reflect such termination, rejection or disaffirmance and the passage of time, if such Leasehold Lender shall pay to Landlord, concurrently with the delivery of such New Lease, all unpaid Rent due under this Lease up

to and including the date of the commencement of the term of such New Lease. Leasehold Lender or its designee shall execute and deliver to Landlord such New Lease within thirty (30) days after delivery of such New Lease by Landlord to Leasehold Lender. Upon execution and delivery of such New Lease, Leasehold Lender shall cure or cause to be cured all defaults existing under this Lease which are capable of being cured by such Leasehold Lender or its designee promptly and with diligence after the delivery of such New Lease.

Section 15.08 The New Lease and the leasehold estate thereby created shall, subject to the terms and conditions of this Lease, have the same priority as this Lease with respect to any mortgage, including any Fee Mortgage or Subjected Fee Mortgage, of the Premises or any leasehold interest therein or any other lien, charge or encumbrance thereon, whether or not the same shall then be in existence. Landlord shall execute, and shall cause any Fee Lender to execute, any instruments reasonably necessary to maintain such priority. Concurrent with the execution and delivery of such New Lease, Landlord shall pay (or shall cause any depository or Fee Lender to pay) to the tenant named in the New Lease, any moneys (including insurance and condemnation proceeds) then held by Landlord (and/or such depository or Fee Lender) that would have been payable to Tenant as of the date of execution of the New Lease but for the termination of this Lease. With respect to any moneys held by Landlord under the terms of this Lease that would not be payable to Tenant if the Lease had not been terminated, Landlord shall continue to hold, and to disburse such moneys, in accordance with the terms of this Lease.

Section 15.09 If a Leasehold Lender has timely requested a New Lease, Landlord shall not, between the date of termination of this Lease and the date of execution of the New Lease, without the written consent of such Leasehold Lender, terminate any Sublease, disturb the occupancy, interest or quiet enjoyment of any Subtenant, or accept any cancellation, termination or surrender of such Sublease (unless such termination or disturbance shall be effected as a matter of law on the termination of this Lease or is pursuant to the provisions of such Sublease(s)) or enter into any lease of all or part of the Premises (other than a new lease with a Subtenant entitled to a new lease pursuant to the terms of a subordination, non-disturbance and attornment agreement or similar agreement), which consent of such Leasehold Lender shall not be unreasonably withheld, conditioned or delayed. Upon the execution and delivery of a New Lease under this Article, all security deposits of Subtenants and all prepaid rent moneys of Subtenants that are in Landlord's possession shall be transferred to the tenant under the New Lease, and all such leases that have been made by Landlord, shall be assigned and transferred, without recourse, by Landlord to the tenant named in such New Lease.

Section 15.10 If more than one Leasehold Lender has requested a New Lease, and the Leasehold Lender whose Leasehold Mortgage had the most senior lien does not execute a New Lease or does not fully comply with the provisions of this Article regarding the delivery of such New Lease, Landlord shall continue to offer, seriatim in order of the priority of their respective Leasehold Mortgages, such New Lease to the remaining requesting Leasehold Lenders, who shall have ten (10) days from the date of receipt of such offer to execute such New Lease and to fully comply with the provisions regarding the delivery of such New Lease, until the earlier of (a) the execution and delivery of a New Lease and (b) the expiration of the offer period for the requesting Leasehold Lender whose lien is most junior. As long as any Leasehold Lender shall have the right to enter into a New Lease with Landlord pursuant to this section, Landlord shall not, without the prior written

consent of all Leasehold Lender(s) that continue to have potential succession rights to a New Lease, terminate any Sublease, disturb the possession, interest or quiet enjoyment of any Subtenant, or accept any cancellation, termination or surrender of any such Sublease (unless such termination or disturbance shall be effected as a matter of law on the termination of this Lease or is pursuant to the provisions of such Sublease(s)) or enter into a lease of all or part of the Premises (except for a New Lease with a Leasehold Lender entitled to such New Lease or a new lease with a Subtenant entitled to a new lease pursuant to the terms of a subordination, non-disturbance and attornment agreement or similar agreement). If no Leasehold Lender has the right to be offered a New Lease, Landlord shall be free of all obligations to the Leasehold Lenders and shall be free to lease all or any part of the Premises at Landlord's sole discretion.

Section 15.11 Landlord's agreement to enter into a New Lease with Leasehold Lender shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by either Landlord or Tenant. The provisions of this Article shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if this Article were a separate and independent contract made by Landlord, Tenant and Leasehold Lender. The provisions of this Article are for the benefit of Leasehold Lender and may be relied upon and shall be enforceable by Leasehold Lender as if Leasehold Lender were a party to this Lease.

Section 15.12 Until each Leasehold Lender has been given a Lender Cure Notice and this Lease has been terminated, Landlord shall have no right and expressly waives any right arising under applicable Law in and to the rentals, fees, and other amounts payable to Tenant under any Sublease, to the extent such rentals and fees are assigned by Tenant to Leasehold Lender.

Section 15.13 If one or more Leasehold Mortgages is in effect, then, without the prior written consent of every Leasehold Lender that has delivered the Lender Notice to Landlord: (a) this Lease shall not be modified, amended or terminated by the parties hereto, and (b) the Premises shall not be surrendered by Tenant, and Landlord shall not accept any such surrender of this Premises by Tenant. Notwithstanding the foregoing, (i) this Lease may be terminated by the parties, and the Premises surrendered by Tenant in connection with such termination, in connection with a casualty or condemnation in accordance with the terms of this Lease, and (ii) Landlord may terminate this Lease by reason of Tenant's default in accordance with the terms and conditions of this Lease, subject to the Leasehold Lender's rights under this Article. If a Leasehold Lender becomes the owner of the leasehold estate, such Leasehold Lender shall not be bound by any modification, amendment, or termination of this Lease made subsequent to the date of its Leasehold Mortgage and delivery to Landlord of the Lender Notice except for (i) a termination effected in connection with a casualty or condemnation in accordance with the terms of this Lease, and (ii) a termination occurring by reason of Tenant's default in accordance with the terms and conditions of this Lease, subject to the Leasehold Lender's rights under this Article, and (iii) a modification or amendment effected with such Leasehold Lenders' consent.

Section 15.14 If and when a Leasehold Lender or its designee succeeds Tenant as the tenant under this Lease or becomes the tenant under a New Lease, as the case may be, it may assign this Lease and/or sublease all or part of the Premises without the consent of Landlord.

Section 15.15 If one or more Leasehold Mortgages is in effect, the following shall apply: All Fee Mortgages shall be expressly subject and subordinate to this Lease, any New Lease, and all amendments, modifications, and extensions thereof; and shall include the Fee Lender's agreement to execute and deliver to the Leasehold Mortgagee's designee, for recording, with respect to any New Lease, a subordination agreement containing such terms as are reasonably acceptable to the Leasehold Lender. Landlord shall not enter into any Fee Mortgage that violates this Section. Tenant shall not subordinate this Lease to any Fee Mortgage without the prior written consent of all Leasehold Lenders. Concurrently with the execution and delivery of this Lease, Landlord shall cause all Fee Lenders to execute and deliver to Tenant, for recording, a subordination agreement that is recordable and that is in such form and that contains such terms as are reasonably acceptable to the Tenant and Leasehold Lender. However, the failure by any such Fee Lender to deliver any such subordination agreement (with respect to this Lease or any New Lease) shall not affect the rights of the Leasehold Lender(s) hereunder.

Section 15.16 Landlord shall, within ten (10) days after it receives the request of any Leasehold Lender or prospective Leasehold Lender, provide an estoppel certificate as to such matters pertaining to this Lease as are reasonably requested by such Leasehold Lender or prospective Leasehold Lender.

Section 15.17 Leasehold Lender shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Premises or any improvements thereon and Leasehold Lender shall have the right to supervise and control the receipt and disbursements of all insurance proceeds. All insurance proceeds shall be applied to restore the Premises, subject to Leasehold Lender's right to supervise and control receipt and disbursement of all insurance proceeds in accordance with the terms of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien. Unless this Lease is terminated pursuant to Section 11.03, Tenant shall be entitled to the balance of any insurance proceeds available after full restoration of the Premises and payment of the debt secured by all Leasehold Mortgages.

Section 15.18 If there is a Taking, Leasehold Lender shall have the right to participate in any condemnation proceedings and settlement discussions and shall have the right to supervise and control the receipt and disbursement of all Awards payable to Tenant. All Awards payable to Tenant shall be applied in accordance with the terms of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien.

Section 15.19 If a Substantial Taking occurs, Tenant's share of the Award shall be at least equal to the total Award less the Value of the Fee Estate; and Tenant shall only be entitled to the balance of the Award available (if any) after payment of the debt secured by all Leasehold Mortgages and after payment to Landlord of the portion of the Award payable to Landlord.

Section 15.20 If there is a Partial Taking, the Award shall first be applied to effect the Condemnation Restoration, subject to Leasehold Lender's right to supervise and control receipt and disbursement of the proceeds of the Award in accordance with the terms of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien. The balance of the Award (if any) shall be allocated between Tenant and Landlord as

follows: (i) Landlord shall be entitled to claim and recover from the condemning authority the diminution in the Value of the Fee Estate, (ii) Tenant shall be entitled to claim and recover from the condemning authority the diminution in Value of the Leasehold Estate, and (iii) the balance of the Award, if any, shall be paid to Landlord.

Section 15.21 If there is a Temporary Taking that does not extend beyond the then Expiration Date, this Lease shall continue and the entire Award shall be payable to Tenant, subject to the provisions of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien. If there is a Temporary Taking of a portion of the Premises for a period that will end after the then Expiration Date but such Taking is not a Substantial Taking, the portion of the Award allocable to periods after the Expiration Date shall be paid to Landlord and the portion of the Award allocable to the period prior to the Expiration Date shall be paid to Tenant, subject to the provisions of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien. If there is a Temporary Taking that extends beyond the then Expiration Date (without taking into account any Extension Options) and such Taking is a Substantial Taking, this Lease shall terminate as of the date the condemning authority or its designee takes occupancy of the Premises, as fully and completely as if such date was the stated Expiration Date of this Lease, and Landlord shall be entitled to the entire Award.

Section 15.22 If any dispute under this Lease is required to be resolved by arbitration, every Leasehold Lender that has delivered the Lender Notice to Landlord shall have the right to participate in such proceeding and shall be given notice of its commencement at least twenty (20) days prior thereto.

Section 15.23 There shall be no merger of this Lease or the leasehold estate created by this Lease with a fee interest in the Premises by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, this Lease or the leasehold estate created by this Lease and the fee estate in the Premises, unless and until such Person and every Leasehold Lender and Fee Lender shall join in a written instrument expressly providing for such merger and such instrument is recorded.

Section 15.24 To the extent any of the other provisions of this Lease are inconsistent with the provisions of this Article, so long as any Leasehold Mortgage remains in effect, the provisions of this Article shall control and shall be read in a manner to give the protection of the provisions hereof to the holder(s) of such Leasehold Mortgage.

Section 15.25 Landlord and Tenant shall each, from time to time, execute, acknowledge and deliver such further instruments, and perform such additional acts, as the other and/or a Leasehold Lender may reasonably request in order to effectuate the intent and purposes of this Article.

Article XVI. Assignment; Sublease; and Non-Disturbance

Section 16.01 Except as permitted by Article XIV, Tenant may not assign this Lease or sublease all substantially all of the Premises in a single transaction or related transactions, or otherwise transfer (whether by operation of law or otherwise) all or substantially all of its interest in this Lease or the

Premises, before: (i) Substantial Completion of the Facility; and (ii) the execution and delivery of written leases for at least ____ (____%) percent [____ square feet] of the rentable square footage of the Facility to Persons for their occupancy. If Tenant is a corporation, partnership, limited liability company, or other entity, the transfer (whether by a single transfer or by a series of related or unrelated transfers) of 50% or more of the stock, partnership interests, membership interests, or other interests of Tenant, or of any Parent Entity (hereinafter defined), however accomplished and whether effected voluntarily or by operation of Law, shall be deemed an assignment of this Lease, whether such transfer(s) shall involve a transfer or transfers of outstanding interests of Tenant and/or the issuance of interests in Tenant (whether stock, partnership, membership interests or other interests). A **“Parent Entity”** is any entity that owns 50% or more of the stock, partnership interests, general partnership interests, membership interests, or other interests of Tenant.

Section 16.02 Subject to the provisions of Section 16.01, Tenant may assign this Lease or sublease all or substantially all of the Premises in a single transaction or related transactions without the prior consent of Landlord; provided, however, that Tenant shall, promptly after such assignment or sublease (i) provide notice to Landlord specifying the name, address and employer identification number of the assignee or subtenant, together with a completed and signed W-9 for such assignee or subtenant; and (ii) deliver to Landlord a true and complete copy of the assignment or sublease, as the case may be, and all related agreements; and (iii) furnish current information as to the financial responsibility of the proposed assignee or subtenant, any parent entity, and the principals controlling the assignee or subtenant. No such assignment or sublease, nor any amendment thereto, shall be effective unless and until Tenant delivers to Landlord, within ten (10) days of execution thereof, a duplicate original of the fully-executed instrument of assignment or sublease or amendment.

Section 16.03 Subject to the provisions of Sections 16.01 and 16.02, Tenant may sublet all or any part of the Premises without the consent of Landlord; provided, however, that no Sublease of all or any part of the Premises shall be deemed effective unless it contains substantially the following provisions (properly modified to reflect the terminology of the sublease and properly completed with respect to any blanks):

- (a) This lease [sublease] is subject and subordinate to the underlying Lease between _____, as tenant, and _____, as landlord (“Overlandlord”), dated _____, as same has been amended, modified, extended and/or assigned (the “Ground Lease”), and to all matters to which the Ground Lease is subordinate. In the event of a default by the tenant under the Ground Lease that results in the termination of the Ground Lease, the tenant [subtenant] hereunder shall, at the option of Overlandlord, and subject to the rights of any Leasehold Lender (as such term is defined in the Ground Lease), attorn to and recognize Overlandlord as the landlord hereunder and shall, promptly upon the Overlandlord’s request, execute and deliver all instruments necessary or appropriate to confirm such attornment and recognition, but any failure to execute such instruments shall not affect such attornment and recognition. Notwithstanding such attornment and recognition, Overlandlord shall not be: (i) liable for any previous act or omission of the landlord hereunder; (ii) subject to any offset or defense that shall have accrued to the tenant hereunder against said landlord; or (iii) bound by any prepayment of more than one month’s rent or for any security deposit which shall not have been delivered to Overlandlord. The tenant hereunder hereby waives all rights under

any present or future law to elect, by reason of the termination of the Overlease, to terminate this lease or surrender possession of the premises demised hereby; and

- (b) Subject to the rights of any Leasehold Lender: If Overlandlord gives the tenant hereunder notice that the landlord hereunder has defaulted in payment of any Base Rent or Additional Rent payable under the Overlease beyond any applicable grace period, the tenant hereunder shall pay all rent and additional rent payable hereunder to Overlandlord, which amounts Overlandlord shall apply to the Base Rent and Additional Rent payable under the Overlease and amounts paid to Overlandlord shall be credited against tenant's obligations hereunder to the landlord hereunder.

Section 16.04 Notwithstanding any assignment of this Lease or subletting of all or part of the Premises, Tenant shall remain liable for the payment of the Rent and for the timely observance and performance of all of the terms, covenants and conditions of this Lease on the Tenant's part to be performed or observed. Tenant's obligations under this Lease shall be unaffected by (a) any modification of this Lease by Landlord and any assignee of this Lease, except that Tenant's obligations hereunder shall be determined as if such modification had not been effected unless the assignee is an Affiliate of Tenant, (b) any discharge or release of any assignee of this Lease in connection with any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors, (c) any rejection or disaffirmation of this Lease in any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors, or (d) any reduction, modification, impairment or limitation of the liability of any assignee of this Lease, its successors or assigns, or of Landlord's remedies under this Lease, in connection with any bankruptcy, reorganization or other insolvency proceeding or any assignment for the benefit of creditors. In addition, if Landlord is required to disgorge or pay back to the assignee's estate any payments made by the assignee under the Lease in connection with any bankruptcy, reorganization or insolvency proceeding, the assigning (or any predecessor) Tenant's obligations as to such payments shall be reinstated. If this Lease has been assigned and is rejected in connection with any bankruptcy or other insolvency proceeding by the assignee, the assignor or any predecessor Tenant shall, at the election of Landlord, enter into a new lease with Landlord upon the executory terms and conditions of this Lease as of the date of such rejection, subject to the rights of the Leasehold Lender.

Section 16.05 Landlord, at the request of Tenant, shall enter into subordination, non-disturbance and attornment agreements with one or more Subtenants of Tenant in the form annexed hereto as Exhibit 8 (the "SNDA") provided all of the following conditions are met:

- (a) The Subtenant is leasing at least ____ rentable square feet of the Improvements; and
- (b) The Subtenant is not an Affiliate of Tenant at any time during the term of its lease with Tenant; and
- (c) There is no outstanding default in payment of Base Rent or Additional Rent and there is no outstanding Event of Default; and
- (d) The rent payable by such Subtenant shall be at least equal to the then market rental rates.

Article XVII. Default; Insolvency Events; and Conditions of Limitation

Section 17.01 This Lease and the term and estate thereof is subject to the conditional limitation set forth below. If any of the following events occur (each, an “**Event of Default**”):

- (a) If Tenant fails to pay Rent to Landlord when the same is due and payable under the terms of this Lease and such failure continues for a period of ten (10) days after written notice thereof is given to Tenant, or
- (b) Tenant fails to timely perform its obligations under the Timetable; or
- (c) Tenant fails to discharge any mechanic’s or other lien that is its obligation to discharge under the terms of this Lease within the applicable time period provided in this Lease; or
- (d) Tenant, whether by action or inaction, fails to timely perform or observe any of the other terms, covenants or conditions of this Lease and such default is not remedied within twenty (20) days after written notice thereof is given to Tenant, provided that if such default cannot, with reasonable diligence, be fully remedied within such 20-day period, Tenant shall have as long as is reasonably necessary to cure such default, but in no event longer than three (3) months after the date such default notice is given to Tenant, provided Tenant commences compliance within such 20-day period (or as promptly as reasonably possible in an emergency) and thereafter pursues compliance to completion with reasonable diligence; or
- (e) Tenant deserts or abandons the Premises for thirty or more consecutive days; or
- (f) A receiver is appointed for Tenant or any property of Tenant in any action, suit, or proceeding by or against Tenant and such appointment is not vacated or annulled within one hundred twenty (120) days, or
- (g) The interest of Tenant in this Lease or the rents from the Premises is sold under execution or other legal process;

then Landlord may, at any time during the continuance of such Event of Default, give Tenant notice of termination of this Lease and, upon the date five (5) days after service of such notice, this Lease and the term and estate thereof (whether or not the Commencement Date shall have occurred) shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Lease, but Tenant shall remain liable for damages as provided in this Lease and Landlord may resort to and enforce any of the remedies provided in Article XVIII below.

Section 17.02 This Lease and the term and estate thereof is subject to the further conditional limitation that if any of the following events occur (“**Insolvency Events**”):

- (a) Tenant makes an assignment for the benefit of its creditors, or
- (b) If an involuntary petition is filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, and such petition is not dismissed within one hundred twenty (120) days after the date filed; or
- (c) Tenant shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by Tenant under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a petition shall be filed by Tenant under the arrangement provisions of the United States Bankruptcy Act or under the provisions of any law of like import; or
- (d) Any guarantor of some or all of Tenant's obligations under this Lease, during the period that the guaranty is in effect, dies or becomes incapacitated, is dissolved or liquidated, makes an assignment for the benefit of his/her/its creditors, is the debtor named in a voluntary petition in bankruptcy, is the debtor named in an involuntary petition in bankruptcy which petition is not discharged within 120 days, has a receiver appointed for his/her/its assets which receivership is not vacated or annulled within 120 days, or is the subject of any other insolvency proceeding and such insolvency proceeding is not dismissed within 120 days;

then Landlord may, at any time during the continuance of such Insolvency Event, give Tenant notice of termination of this Lease and, upon the date five (5) days after service of such notice, this Lease and the term and estate thereof (whether or not the Commencement Date shall have occurred) shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Lease, but Tenant shall remain liable for damages as provided in this Lease and Landlord may resort to and enforce any of the remedies provided in Article XVIII below

Section 17.03 If an Insolvency Event occurs and Tenant assigns this Lease pursuant to the provisions of the United States Bankruptcy Code and the aggregate base rents payable by the Subtenants are less than the Aggregate Subtenant Rent (as such term is defined in the Guaranty), such assignee shall, as part of its obligation to provide adequate assurance of performance under the Bankruptcy Code, furnish to Landlord a signed and acknowledged guaranty, in the form annexed to this Lease as Exhibit 10, from a principal of the assignee reasonably acceptable to Landlord, except that if the Construction Completion Date has occurred, such Guaranty shall be modified to remove references to the Construction Completion Date.

Article XVIII. Remedies

Section 18.01 If (a) this Lease is terminated pursuant to Article XVII, or (b) Landlord reenters or obtains possession of the Premises by summary proceedings or any other action or proceeding, or (c) Landlord reenters or obtains possession by any other legal act (which Landlord may do without

further notice and without liability or obligation to Tenant or any occupant of the Premises if this Lease is terminated pursuant to Article XVII, all of the provisions of this Section shall apply (in addition to any other applicable provisions of this Lease):

- (a) Tenant shall immediately vacate the Premises and surrender the Premises to Landlord in good order, condition and repair, excepting reasonable wear and tear and damage that is not Tenant's obligation to repair; and, if Tenant fails to surrender the Premises in such condition, Tenant shall reimburse Landlord for all costs incurred by Landlord to restore the Premises to such condition.
- (b) Landlord, at Landlord's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of Landlord, Tenant or otherwise, as determined by Landlord, to any person and on any terms, but Landlord shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on Landlord or relieve Tenant of any obligation or liability under this Lease), and (ii) make any changes to the Premises as Landlord, in Landlord's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on Landlord or relieving Tenant of any obligation or liability under this Lease.
- (c) Tenant shall pay Landlord the following amounts:
 - 1) All Rent payable to the date on which this Lease is terminated or Landlord reenters or obtains possession of the Premises; and
 - 2) Any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the periodic Additional Rent for each year thereof to be the same as was payable for the 12 month period immediately preceding the termination, re-entry or obtaining of possession); and (ii) the rents, if any, applicable to that period collected under any reletting of any portion of the Premises; and Tenant shall pay any such deficiency in monthly installments on the days specified in this Lease for payment of installments of the Base Rent, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice Landlord's right to collect the deficiency for any subsequent month. Tenant shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent.

In lieu of any further deficiency pursuant to this subparagraph (2), Landlord may recover from Tenant, and Tenant shall pay Landlord, on request, as liquidated damages for such further deficiency, the amount by which (i) the unpaid Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the 12-month period immediately preceding the termination, re-entry or obtaining of possession) exceeds (ii) the then fair market rental value of the Premises, including the

Additional Rent for the same period, both discounted to present value at the annual rate of ____%.

- 3) Any costs and expenses incurred by Landlord in connection with the termination, reentry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting.
- (d) Tenant shall deliver to Landlord all sums held by Tenant with respect to Subtenants of the Premises, including prepaid rents, estimated prepayments relating to real estate taxes, operating expenses, and other expenses; all security deposits; and all guaranties of Subtenant obligations (whether full or partial guaranties); and shall transfer to Landlord at Tenant's expense any letters of credit, bonds and other security instruments issued to Tenant on behalf of such Subtenants in accordance with the requirements of the issuer thereof.
- (e) Nothing contained in this Lease shall be considered to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages or otherwise by any Law.

Section 18.02 Tenant hereby waives (a) the service of any notice of intention to re-enter or obtain possession of the Premises or to institute any legal action in connection therewith, and (b) on its own behalf and on behalf of all persons claiming under Tenant, including all creditors, any rights Tenant and all such persons might otherwise have under any Law to redeem the Premises, to re-enter or repossess the Premises, or to restore this Lease, after (i) Tenant is dispossessed pursuant to any Law or by any Authority, (ii) Landlord reenters or obtains possession of the Premises pursuant to any legal act, action or proceeding, or (iii) the date of termination of this Lease, whether by operation of law or pursuant to this Lease.

Section 18.03 Either party may seek to enjoin any breach or threatened breach of any provision of this Lease. The right of any party to exercise any particular remedy available under this Lease, at law or in equity, shall not preclude such party from exercising any other remedy it might have pursuant to this Lease, in law or in equity. Each right and remedy specified in this Lease and each other right or remedy that may exist at law, in equity or otherwise upon breach of any provision in this Lease, shall be deemed distinct, separate and cumulative; and no right or remedy, whether exercised or not, shall be deemed to be in exclusion of any other unless otherwise expressly provided in this Lease.

Section 18.04 If Landlord commences any summary proceeding against Tenant, Tenant shall not interpose any counterclaim in that proceeding (unless the failure to impose the counterclaim would preclude Tenant from asserting in a separate legal action the claim which is the subject of the counterclaim), and shall not seek to consolidate the proceeding with any other legal action.

Section 18.05 If (a) there is then an Event of Default, or (b) if Tenant fails to comply with any obligation under this Lease which in Landlord's reasonable opinion creates an emergency, Landlord may, but is not obligated to, cure the default. Tenant shall reimburse Landlord, as Additional Rent,

for all Liabilities incurred by Landlord in connection therewith, within ten (10) days after Tenant is billed for such Liabilities.

Section 18.06 Tenant shall reimburse Landlord, as Additional Rent, for all costs and expenses incurred by Landlord in connection with any default by Tenant in the performance or observance of any of the terms, covenants or conditions on Tenant's part to be observed or performed under this Lease, including all costs and expenses incurred in interpreting and enforcing Landlord's rights and in instituting, prosecuting or defending any legal action by or against Tenant, including summary proceedings, or in connection with any dispute under this Lease. Such amounts shall be paid to Landlord within ten (10) days after Tenant is billed for such costs and expenses.

Section 18.07 No payment by Tenant or receipt by Landlord of a lesser amount than the Rent shall be considered other than on account of the Rent. No endorsement or statement on any check or letter accompanying any check or payment shall prevent Landlord from cashing the check or otherwise accepting the payment, without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy.

Section 18.08 Tenant waives Tenant's right, if any, to designate the items against which any Rent payments made by Tenant pursuant to this Lease are to be credited and Tenant agrees that Landlord may apply any payments made by Tenant to any Rent items Landlord sees fit irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payments shall be credited.

Section 18.09 All legal actions relating to this Lease shall be adjudicated in any New York state courts or in any federal court having jurisdiction in the county in which the Premises are located. Tenant irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this Lease and waives any claim that any legal action relating to this Lease brought in any such court has been brought in an inconvenient forum. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by Law or this Section, is necessary in order to confer jurisdiction upon the person of Tenant and the subject matter in question in any such court.

Section 18.10 The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be considered to be restricted to their technical legal meanings.

Article XIX. Broker

Section 19.01 Tenant represents and warrants that it has not dealt with any broker other than Landlord's Broker and Tenant's Broker (collectively, "**Broker**") in connection with this Lease. Tenant shall indemnify and hold Landlord harmless from and against any and all claims for any brokerage fee or commission with respect to this lease transaction by any broker with whom Tenant has dealt or is alleged to have dealt (other than the Broker). Landlord shall indemnify and hold Tenant harmless from and against any and all claims for any brokerage fee or commission with respect to this lease transaction by any broker with whom Landlord, but not Tenant, has dealt or is alleged to have dealt (other than the Broker). Landlord shall pay [Landlord's Broker/Broker] the

commission or commissions payable in respect of this Lease transaction in accordance with a separate brokerage agreement between Landlord and [Landlord's Broker/Broker]. The provisions of this Section shall survive any termination of this Lease.

Section 19.02 Tenant shall keep the Premises and this Lease free from any broker's lien, other than the lien of any broker that Landlord is obligated to pay pursuant to this Lease.

Article XX. No Impairment of Landlord's Title

Section 20.01 Nothing contained in this Lease, other than any provisions relating to a Subjected Fee Mortgage, 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 to 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.

Section 20.02 In amplification and not in limitation of the foregoing, Tenant shall not permit 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 reasonably tend to impair Landlord's title to or interest in the Premises 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.

Section 20.03 Except for the Subjected Fee Mortgage, Tenant shall not cause, or permit any Subtenant to cause, Landlord's fee estate in the Premises to be encumbered by any lien or other encumbrance, including any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect, or engineer with respect to work, material or services alleged to have been performed at or with respect to the Premises. If any such lien or encumbrance is filed or recorded, Tenant shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after Tenant receives notice of such lien or encumbrance. If Tenant fails to discharge such lien or encumbrance within such thirty (30) day period, Landlord may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as Landlord deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by Tenant. The amount so paid and costs incurred by Landlord shall be deemed Additional Rent under this Lease payable within thirty (30) days after Tenant is billed therefor. Nothing in this Lease shall be deemed in any way to: (a) constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of the Premises; or (b) evidence Landlord's agreement to subject its fee estate to any such lien.

Article XXI. Quiet Enjoyment

Section 21.01 Landlord covenants that if and so long as Tenant observes and performs each and every covenant, agreement, term, provision and condition of this Lease on the part of Tenant to be observed and performed, Tenant shall quietly enjoy the Premises without hindrance or molestation of Landlord or any Person acting through Landlord (other than any holder of the Subjected Fee Mortgage, if any, and any grantee or successor thereto), subject to the covenants, agreements, terms, provisions and conditions of this Lease.

Article XXII. Limitation of Landlord Liability

Section 22.01 If Landlord sells, assigns, or otherwise transfers (whether by operation of law or otherwise) all or part of its or their interest in the Premises or this Lease, (a) the transferor shall be relieved of all obligations and liabilities of Landlord under this Lease accruing after the effective date of the transfer, and (b) the transferee shall be deemed to have assumed all of Landlord's obligations and liabilities under this Lease effective from and after the effective date of the transfer.

Section 22.02 Landlord, its partners, members, shareholders, officers, directors and principals, disclosed and undisclosed, shall have no personal liability under or in connection with this Lease. Tenant shall look only to Landlord's interest in the Premises and this Lease for the satisfaction of Tenant's remedies or to collect any judgment requiring the payment of money by Landlord or such persons under or in connection with this Lease. No other assets of Landlord or such persons shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies or the collection of any judgment under or in connection with this Lease. If Tenant acquires a lien on such other property or assets by judgment or otherwise, Tenant shall promptly release that lien by signing, acknowledging and delivering to Landlord any instrument, prepared by Landlord, required for the lien to be released.

Article XXIII. Waiver of Jury Trial

Section 23.01 LANDLORD AND TENANT EACH WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE PREMISES, INCLUDING ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY AND OTHER STATUTORY REMEDY WITH RESPECT THERETO.

Article XXIV. Notices

Section 24.01 Except as may be provided in this Lease, any notice or other communication under this Lease, other than any Rent bill, shall be in writing and shall be sent by United States express mail or by a nationally recognized overnight delivery service that provides receipts or by hand delivery addressed to the party for whom intended at its Notice Address. Any such notice or other communication shall be deemed given and received when delivered or refused or when delivery is

attempted on a Business Day during normal business hours. Rent bills to Tenant may be sent in the manner set forth above or may be sent by first class mail; provided that nothing contained in this Section shall be deemed to require Landlord to bill or otherwise make demand on Tenant for the payment of Rent, except where this Lease expressly requires billing.

Section 24.02 Either party may, by notice to the other party, designate a different address (or addresses) for notices and other communications intended for it, which designation shall become effective on the date such notice is received.

Article XXV. End of Term

Section 25.01 On the Expiration Date or such earlier date that this Lease terminates or expires, Tenant shall peaceably and quietly surrender the Premises to Landlord vacant (except for those Subtenants occupying under leases with Landlord), broom clean, in good order, condition and repair excepting reasonable wear and tear and damage that is not Tenant's obligation to repair, free and clear of all Subleases, liens, and other encumbrances (except for liens and encumbrances caused or expressly consented to by Landlord), and with all Personal Property acquired (or leased) by Tenant or Tenant's Affiliates and all personal property of Subtenants (except for the property of Subtenants occupying under leases with Landlord) removed. Tenant shall deliver to Landlord, on or before the Expiration Date or such earlier date that this Lease terminates or expires, upon Landlord's request, all licenses, permits, warranties, and guaranties then in effect for the Premises (and shall assign same to Landlord upon Landlord's request) and all books and records reasonably requested by Landlord. Tenant shall cooperate with Landlord to achieve an orderly transition of the Premises to Landlord's control. Landlord and Tenant shall, prior to the Expiration Date, (a) adjust for Impositions and all other appropriate expenses and income of the Premises, and (b) if a Memorandum of Lease has been recorded, execute a document in recordable form evidencing the termination of this Lease and all amendments thereto.

Section 25.02 Any personal property of Tenant or any Subtenant which shall remain on the Premises after the Expiration Date or such earlier date that this Lease terminates or expires, may, at the option of Landlord, be deemed to have been abandoned and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Tenant shall reimburse Landlord, as Additional Rent, for all costs and expenses incurred by Landlord in connection with disposing of such property.

Section 25.03 If the Premises are not vacated and surrendered in accordance with this Lease on the Expiration Date or sooner termination of this Lease, Tenant shall be liable to Landlord for (a) all Liabilities incurred by Landlord in connection with such holdover, including Liabilities incurred in connection with any summary proceedings, action or proceeding to recover possession of the Premises from Tenant and any Subtenants, and (b) per diem use and occupancy in respect of the Premises equal to the fair rental value of the Premises, and (c) all damages incurred by Landlord in connection with such holdover, including any lost opportunity damages incurred by Landlord. If only a portion of the Premises is timely vacated and surrendered, Tenant shall nevertheless remain liable for per diem use and occupancy with respect to the entire Premises, but any reletting proceeds

received by Landlord during the period of Tenant's holdover shall be credited against Tenant's liability for use and occupancy for the entire Premises. In no event shall this Section be construed as permitting Tenant (or other occupants) to remain in possession of the Premises after the Expiration Date or sooner termination of this Lease. Tenant shall indemnify, defend and hold harmless Landlord against all claims made by any succeeding tenants to the extent such claims arise by reason of the failure of Tenant (and all other occupants) timely to vacate and surrender the Premises (or any portion thereof) in accordance with this Lease. Landlord may recover amounts due it under this Section in any summary proceeding and/or any separate action or proceeding.

Section 25.04 No act or thing done by Landlord or Landlord's agents (including receipt of keys) during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord.

Article XXVI. Memorandum of Lease; Transfer Taxes

Section 26.01 Concurrently with the execution of this Lease, Landlord and Tenant shall execute and deliver to the other, a memorandum of this Lease, in the form attached hereto as Exhibit 9, together with such transfer tax returns and other documents as are required to record such memorandum in the office of the [Register of the City of New York, County of New York/Clerk of the County in which the Premises are located]. Tenant, at Tenant's expense, may record such memorandum of Lease. The parties shall modify such memorandum to reflect any requirements of the recording office. If this Lease is amended, Landlord and Tenant shall, promptly upon the request of either party, execute and deliver an amendment of such memorandum giving notice of such amendment. The party requesting such amendment shall pay the recording fees imposed in connection therewith. At the expiration or sooner termination of this Lease, each party shall, at the request of the other party, execute and deliver an instrument evidencing the termination of this Lease and Landlord may, at its sole cost and expense, record such instrument; but the failure of either party to execute and deliver such instrument shall not prevent or affect the termination of this Lease or serve to reinstate this Lease.

Section 26.02 The Party Responsible for Transfer Taxes shall pay all transfer taxes, including New York State Real Estate Tax [*for New York City*: and New York City Real Property Transfer Tax] imposed in connection with this Lease. Subject to Article XXVIII [Extension Option], if this Lease is amended, the party requesting such amendment shall pay all transfer taxes imposed in connection with such amendment.

Article XXVII. Guaranty

Section 27.01 Concurrently with execution of this Lease, Tenant shall deliver to Landlord a Guaranty in the form annexed hereto as Exhibit 10 executed by Guarantor and acknowledged.

Article XXVIII. Extension Option(s)

Section 28.01 Tenant is granted the option to extend the term of this Lease for ____ successive additional terms of _____ years each (each such additional term being referred to as an "**Extension Term**," and each such option being referred to as an "**Extension Option**") provided all of the following conditions (the "**Extension Conditions**") are met with respect to each Extension Term: (a) Tenant gives Landlord notice (the "**Extension Notice**") at least ____ prior to commencement of the Extension Term to which such notice relates, that it is exercising the Extension Option, and (b) at the date the Extension Option is exercised, and at the commencement of the Extension Term to which such option relates, Tenant is not in default of its obligations under the Lease, unless such default is cured within the applicable cure period; and (c) Tenant has not been more than 30 days late (counting from the due date) in the payment of the Base Rent and Taxes more than ____ times for all periods prior to the commencement of the applicable Extension Term,. Tenant shall deliver to Landlord, upon Landlord's request made within 1 month prior to or 1 month after the commencement of the applicable Extension Term, detailed audited financial statements for Tenant showing Tenant's net worth. Each such Extension Term shall commence at the expiration of the prior term. If any Extension Option is not timely exercised or if the Extension Conditions are not met with respect to any Extension Term, such Extension Option or Extension Term and all further Extension Options and Extension Terms shall be deemed null and void. TIME IS OF THE ESSENCE WITH RESPECT TO THE GIVING OF EACH EXTENSION NOTICE.

Section 28.02 If this Lease is terminated or expires for any reason, the Extension Options granted in this Article with respect to periods subsequent to such termination or expiration shall be deemed null and void.

Section 28.03 Each such Extension Term shall be upon all of the terms and conditions of this Lease, except as follows and as otherwise hereinafter provided:

- (a) Any rent concession granted in this Lease shall not apply to any Extension Term. Accordingly, Sections 3.02 and 3.03 shall be inapplicable to any Extension Term.
- (b) At the end of the ____th Extension Term the provisions of this Article shall be deemed null and void and there shall be no further extension of the term of this Lease pursuant to this Article.
- (c) Tenant shall not be required to build the Facility required by Article V.
- (d) The Base Rent payable during each Extension Term shall be determined in accordance with the provisions of Exhibit 2.

Section 28.04 If Tenant validly exercises an Extension Option and, as of the commencement of the applicable Extension Term, there is a dispute as to the amount of the Base Rent payable by Tenant as of the commencement of the Extension Term and such dispute has not been resolved in accordance with the terms of this Lease, Tenant shall pay the Base Rent proposed by Landlord in its Valuation Documents from the commencement of such Extension Term until such dispute is resolved. Such payment and acceptance shall be without prejudice to Tenant's position. The parties shall adjust any overpayment or underpayment by Tenant promptly after resolution of such dispute. If Tenant fails to comply with its obligations under this Section, Tenant shall be deemed to have waived its right to contest Landlord's determination of the Base Rent for such Extension Term.

Section 28.05 Tenant shall pay all transfer taxes, including New York State Real Estate Tax [*for New York City*: and New York City Real Property Transfer Tax] imposed in connection with each extension of the Term of this Lease, including any extension effected through the exercise of any Extension Option.

Article XXIX. Miscellaneous

Section 29.01 This Lease may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Section 29.02 Receipt or acceptance of Rent by Landlord and payment of any Rent by Tenant shall not be deemed to be a waiver of any default under the covenants, agreements, terms, provisions and conditions of this Lease, or of any right which Landlord or Tenant, as the case may be, may be entitled to exercise under this Lease. Failure to insist upon the strict performance of any of the provisions of this Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such provision, right, remedy or election, but the same shall continue and remain in full force and effect. The waiver by either party of any breach of this Lease shall not be deemed a waiver of any future breach.

Section 29.03 Consent of Landlord to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve Tenant from the obligation wherever required under this Lease to obtain the consent of Landlord to any other act or matter. If Tenant requests Landlord's consent or approval and Landlord fails or refuses to give such consent or approval, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent or approval, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where Landlord has expressly agreed in writing not to unreasonably withhold or delay its consent or where as a matter of law Landlord may not unreasonably withhold its consent.

Section 29.04 Landlord and Tenant acknowledge that they are not partners or joint venturers and that, except with respect to casualty insurance proceeds and condemnation awards (as set out in Articles XI and XII), they do not stand in a fiduciary relationship to one another.

Section 29.05 If any term or provision of this Lease or the application thereof to any person or circumstance 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.

Section 29.06 This Lease is governed by and shall be construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of law.

Section 29.07 The covenants, agreements, terms, provisions and conditions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and the permitted successors and assigns of Tenant.

Section 29.08 Upon the expiration of the Term of this Lease, neither party shall have any further obligation or liability to the other except as otherwise provided in this Lease and except for (a) such obligations as by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration, and (b) any liability for Rent, and (c) any liability for acts or omissions occurring during the Term, and (d) any liability under Article XIX and XXVI, all of which obligations shall survive such expiration.

Section 29.09 Each party represents and warrants (a) that this Lease has been duly authorized, executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, (b) that there are no actions, suits or proceedings pending or, to the knowledge of such party, threatened against or affecting such party, at law or in equity or before any Governmental Authority which would impair such party's ability to perform its obligations under this Lease, and (c) that the consummation of the transactions hereby contemplated and the performance of this Lease will not result in any breach or violation of, or constitute a default under any lease, bank loan or credit agreement. If Tenant is not an individual, Tenant shall provide to Landlord, upon Landlord's request, evidence that the execution and delivery of this Lease have been duly authorized by Tenant and that the person or persons executing and delivering this Lease on behalf of Tenant have been duly authorized to do so, together with a certified copy of Tenant's articles of incorporation, partnership agreement or operating agreement, as applicable, and all amendments thereto.

Section 29.10 There shall be no merger of this Lease or the leasehold estate created by this Lease with a fee interest in the Premises by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, this Lease or the leasehold estate created by this Lease and the fee estate in the Premises, unless and until such Person and every Leasehold Lender and Fee Lender shall join in a written instrument expressly providing for such merger and such instrument is recorded.

Section 29.11 If there is to be any excavation or construction on land adjacent to the Premises, Tenant shall permit the Person performing such excavation or construction to enter the Premises for the purpose of performing such work as is reasonably necessary or desirable to support and preserve the Facility, upon such terms and conditions as Tenant may reasonably impose, without any abatement of the Rent.

Section 29.12 This Lease represents the entire agreement of the parties with respect to the Premises, and, accordingly, all prior understandings and agreements between the parties with respect to the Premises are merged into this Lease, which alone fully and completely expresses the agreement of the parties.

Section 29.13 The table of contents, captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation.

Section 29.14 This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted.

Section 29.15 Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

Section 29.16 All terms and words used in this Lease shall be deemed to include any other number and any other gender as the context may require.

Section 29.17 The submission of drafts of and comments to this Lease, the negotiation of this Lease, and the exchange of correspondence concerning the negotiation and execution of this Lease shall have no binding force or effect and shall confer no rights nor impose any obligations, including brokerage obligations, on either party. This Lease shall become a binding agreement only after both Landlord and Tenant have executed this Lease and duplicate originals thereof (including any counterparts) shall have been delivered to the respective parties.

Section 29.18 This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

[Landlord]

By _____,
Name and Title:

[Tenant]

By _____,
Name and Title:

EXHIBIT 1

Description of Land

EXHIBIT 2

Base Rent

1. The Base Rent shall be:

- a. For the period commencing on the Commencement Date and ending on _____, an amount equal to \$_____ per annum (\$_____ per month);
- b. For the period commencing on _____ and ending on _____ (the "First Reset Rental Period"), an amount equal to the greater of (i) the annual Base Rent payable immediately before the commencement of the First Reset Rental Period and (ii) the "Reset Rent," which shall be determined as hereinafter provided;
- c. For the period commencing on _____ and ending on _____ (the "Second Reset Rental Period"), an amount equal to the greater of (a) the Base Rent payable for the First Reset Rental Period and (b) the Reset Rent, which shall be determined as hereinafter provided.

Each of the Reset Rental Periods set out above is referred to individually as a "Reset Rental Period").

2. If Tenant exercises an Extension Option in accordance with the terms of this Lease and the Lease term is extended, the Base Rent payable with respect to the applicable Extension Term shall be an amount equal to the greater of (a) the annual Base Rent payable immediately before the commencement of the applicable Extension Period, and (b) the Reset Rent.

[Percentage of Land Value Formula]

3. Determination of Reset Rent. The Reset Rent for each Reset Rental Period and each Extension Term shall equal ____% of the Market Value of the Land, determined as of the date one (1) year prior to the commencement of the Reset Rental Period or Extension Term, as the case may be. Such Market Value shall be determined (i) with reference to the highest and best use of the Premises as of such date, (ii) as if the Premises were vacant, unimproved, and free and clear of this Lease and the provisions thereof and of any lien or encumbrance evidencing a debt or judgment (including any mortgage, security interest, tax lien, or judgment lien), (iii) taking into account, to the extent relevant, any other encumbrances, restrictions, and covenants recorded in the land records against the Premises, (iv) as if no Taking, zoning change, or Landmarks designation was pending, threatened or under consideration, and (v) without reference to any savings Landlord may realize as a result of any extension of the Lease term, such as savings in brokerage commissions, free rent, and tenant concessions (the "**Land Value**"). *[The determination of the Land Value shall not take into account any changes in zoning laws effected after the Commencement Date. Accordingly, any increase or decrease in Floor Area Ratio, change in bulk or building height limits, and/or any change in the permitted use of the Land shall not be taken into account in determining the Land Value.]*

At any time after the date 18 months prior to the commencement of the Reset Rental Period or Extension Term, as the case may be, either Landlord or Tenant may give the other party notice (the “**Initiating Notice**”) that it desires to determine the Reset Rent for the next Reset Rental Period or Extension Term. If the parties fail to agree on such Reset Rent within 30 days after the date the Initiating Notice is given, then, within 60 days after the date the Initiating Notice is given, each party shall deliver to the other party a notice designating such party’s Qualified Appraiser and stating its determination of the Land Value together with an appraisal supporting such determination (collectively, the “**Valuation Documents**”). If one of the parties (the “**Delaying Party**”) fails to timely deliver the Valuation Documents to the other party (the “**Complying Party**”), and then fails to deliver to the Complying Party its Valuation Documents together with a good check payable to the Complying Party in an amount equal to the product of \$5,000.00 and the CPI Fraction (the “**Late Fee**”) within 10 business days after the Complying Party gives the Delaying Party notice of the Delaying Party’s failure to timely deliver the Valuation Documents, the Delaying Party shall be bound by the Complying Party’s statement of the Land Value and the Reset Rent shall be determined accordingly.

If the parties timely deliver their Valuation Documents (or if the Delaying Party delivers its Valuation Documents together with the Late Fee within the 10-business day period set out above) and their Qualified Appraisers reach agreement on the Land Value within 75 days after the Initiating Notice is received by the applicable party, the Reset Rent shall be determined with reference to the agreed Land Value. If the parties’ Qualified Appraisers are unable to reach agreement on the Land Value within such 75-day period, the parties’ Qualified Appraisers shall select a third Qualified Appraiser to determine the Land Value (the “**Arbitrator**”) within such 75-day period. If the parties’ Qualified Appraisers fail to select an Arbitrator to determine the Land Value within such 75-day period, either party may submit the dispute concerning the Land Value to the American Arbitration Association (or its successor) in New York City (the AAA@) for resolution. Such arbitration shall be conducted in accordance with the AAA’s then rules and regulations for commercial matters, provided that the AAA shall be requested to arbitrate such dispute in accordance with the following guidelines and rules:

- a. The Arbitrator shall be a Qualified Appraiser [*Alternate: an attorney whose area of concentration for at least 15 years has been commercial leasing and commercial real estate sales in _____ County, State of New York*]. If the parties do not agree upon the selection of an AAA Arbitrator within 30 days after the demand for arbitration is filed, the AAA shall select a Qualified Appraiser [*Alternate: an attorney whose area of concentration for at least 15 years has been commercial leasing and commercial real estate sales in _____ County, State of New York*] to act as Arbitrator within 45 days after the demand for arbitration is filed.
- b. The arbitration shall commence within 60 days after the Arbitrator is selected and shall be conducted in consecutive daily sessions of at least 8 hours from commencement of arbitration until completion. The arbitration shall be concluded within 7 business days after the arbitration is commenced. The arbitrator shall make a determination within 30 days after conclusion of the arbitration.

The Arbitrator shall determine the Land Value by selecting either the Landlord's or the Tenant's determination of the Land Value as set out in the Valuation Documents. The Arbitrator is not authorized to determine any other Land Value. The Arbitrator's determination of the Land Value shall be conclusive and binding on the parties; and the Reset Rent for the applicable Reset Rental Period or Extension Period shall be determined with reference to the Arbitrator's determination of the Land Value.

Each party shall pay the fees and charges of its own Qualified Appraiser and each party shall pay 50% of the fees and expenses billed by the Arbitrator and, if applicable, 50% of the fees and expenses billed by the AAA.

If the Reset Rent is not determined by the commencement of the applicable Reset Rental Period or Extension Period, Tenant shall pay Landlord, for the period between the commencement of the applicable Reset Rental Period or Extension Term and the last day of the month in which the Land Value is determined by the Arbitrator or is determined by agreement of the parties, an estimated Reset Rent equal to the Reset Rent that would be payable if the Land Value were equal to the average of the Land Values set out in Landlord's and Tenant's Valuation Documents. Within 30 days after the Land Value is determined by the Arbitrator or by agreement of the parties, (a) if the finally determined Reset Rent is greater than the estimated Reset Rent, Tenant shall pay Landlord the deficiency between the estimated Reset Rent and the finally determined Reset Rent, together with interest at the Interest Rate on the deficiency; and (b) if the finally determined Reset Rent is less than the estimated Reset Rent, Tenant shall receive a credit against the Reset Rent equal to the overpayment plus interest on the overpayment at the Interest Rate.

Landlord and Tenant are each authorized to delegate their rights under this provision to a Fee Lender or Leasehold Lender, as the case may be.

[CPI Formula]

3. Determination of Reset Rent. The Reset Rent for each Reset Rental Period and each Extension Term shall equal the product of \$_____ [*insert the Base Rent payable at the Rent Commencement Date*] and the CPI Fraction.

EXHIBIT 3

COMMENCEMENT DATE AGREEMENT

THIS COMMENCEMENT DATE AGREEMENT made as of the _____ day of _____, 200_, between _____ (“Landlord”) and _____ (“Tenant”).

RECITALS

- A. Landlord and Tenant are landlord and tenant under that certain ground lease dated as of _____, 200_, (the “Ground Lease”) pursuant to which Landlord has leased certain premises more particularly described therein to Tenant (the “Premises”). Capitalized terms not described herein are described in the Lease.
- B. The Commencement Date has occurred, the Rent Commencement Date and the initial Expiration Date are now known and Landlord and Tenant wish to confirm the dates.

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. The Commencement Date is _____.
2. The Rent Commencement Date is _____.
3. The initial Expiration Date is _____.
4. This Commencement Date Agreement is the document that Landlord and Tenant intended to execute pursuant to Section 2.03 of the Ground Lease.
5. Landlord and Tenant hereby ratify and confirm the terms and provisions of the Ground Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this instrument as of the date above written.

_____, Landlord

By: _____

_____, Tenant

By: _____

EXHIBIT 4

Construction Completion Guaranty

CONSTRUCTION COMPLETION GUARANTY

Lease: Lease, dated _____, 20__, between _____, as Landlord, and _____, as Tenant, for the Premises.

Premises: The land described on Exhibit 1 annexed hereto and all improvements thereon (as such Lease may be amended or modified).

Landlord: _____, its successors and assigns

Landlord's
Notice Address: _____

Tenant: _____, its successors and assigns

Guarantor: _____

Guarantor's
Notice Address: _____

Guarantor represents that he/she/it is the _____ of Tenant.

All terms capitalized in this Guaranty shall have the same meanings ascribed to them in the Lease, unless otherwise defined herein.

To induce Landlord to enter into the Lease and intending to be legally bound, Guarantor irrevocably guarantees to Landlord that:

1. Tenant shall timely construct, equip and complete the Facility in accordance with all of the terms, covenants and conditions of the Lease and shall pay all of the costs and expenses of such construction, equipping and completion.
2. Tenant shall timely make such alterations and improvements that are required by the terms of any lease, sublease or other occupancy agreement between Tenant and any Subtenant with respect to the initial subleasing of the Premises by Tenant (the "Initial Subtenant Improvements"), and shall pay all of the costs and expenses of the Initial Subtenant Improvements.
3. If any mechanic's lien or other lien is filed against the Premises or any part thereof or Tenant's leasehold estate in the Premises in connection with the construction of the Facility and/or the Initial Subtenant Improvements, Tenant shall cause such lien to be discharged within 30 days after Tenant is given notice thereof, by filing the bond required by law or otherwise.

Guarantor will indemnify and hold harmless Landlord from and against any and all Liabilities incurred by Landlord if Tenant does not timely perform the obligations described in Paragraphs 1, 2, and 3 above, including but not limited to the following expenses:

A. At Landlord's option, (i) costs incurred to construct, equip and complete the Facility, or (ii) costs incurred to demolish the partially completed Facility, remove all debris, grade the Land, and adequately secure the site; and

B. Costs incurred to complete the Initial Subtenant Improvements; and

C. Costs incurred to discharge any such mechanic's liens, including bonding costs, costs to pay off or settle the claims for the mechanic's lien; and

D. Financing costs; and

E. All reasonable attorneys' fees and disbursements incurred in connection with such failure.

Landlord is not obligated to give Guarantor notice of any default by Tenant under the Lease or any termination notice, and Guarantor hereby waives such notices. Guarantor waives all other notices required or permitted to be given under the Lease or otherwise. Guarantor also waives acceptance and notice of acceptance of this Guaranty, and all demands for payment or performance.

Guarantor waives all defenses other than payment and performance in full.

Guarantor's liability under this Guaranty shall not be affected or impaired by any delay by or failure of Landlord in enforcing any of its rights or remedies under the Lease or at law, or by any deferral, waiver, settlement or release of Tenant's obligations under the Lease or any accord and satisfaction or any forbearance by Landlord in exercising any of its rights and remedies or by any other action, inaction, or omission by Landlord.

This Guaranty is independent of any security or remedies which Landlord has under the law. Landlord may proceed against Guarantor at any time, either independently of or concurrently with or in lieu of Landlord's application of any security held by Landlord or Landlord's exercise of any remedies Landlord may have against Tenant. Landlord is not required to resort to any security deposit or other collateral it may hold and is not required to pursue any remedies it may have against the Tenant. No application of any security held by Landlord shall be credited, offset or applied against any liability of Guarantor under this Guaranty. Nothing contained in this Guaranty shall be deemed to affect or limit any of Landlord's remedies against Tenant under the Lease or the law.

Guarantor's obligations under this Guaranty shall be unaffected by any discharge or release of the Tenant, its successors or assigns, or any of their debts, in connection with any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors;

any rejection or disaffirmation of the Lease in any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors; or any reduction, modification, impairment or limitation of the liability of the Tenant, its successors or assigns, or of Landlord=s remedies under the Lease, in connection with any bankruptcy, reorganization or other insolvency proceeding or any assignment for the benefit of creditors. In addition, if Landlord is required to disgorge or pay back to the Tenant=s estate any payments made by the Tenant under the Lease in connection with any bankruptcy, reorganization or insolvency proceeding, Guarantor=s obligations as to such payments shall be reinstated.

Guarantor=s liability shall be unaffected by any assignment of the Lease or sublet of the Premises. Guarantor=s liability shall not be affected or impaired by reason of any modification or amendment of the Lease, whether or not such modification or amendment is pursuant to any right or option contained in the Lease. Notwithstanding the foregoing, if Landlord and any assignee of the Lease (unless such assignee is controlled by, controls, or is under common control with Tenant or Guarantor) enter into a modification of the Lease and such modification increases the obligation of the tenant under the Lease, the liability of the Guarantor shall continue to be no greater than if such modification had not been made

Guarantor waives all right to trial by jury in any action or proceeding to which Landlord and Guarantor are party, with respect to any claim, counterclaim, cross-claim, or defense raised with respect to this Guaranty or the Lease.

Until all obligations of Tenant that are guaranteed under this Guaranty are fully performed, all claims Guarantor may have against Tenant (including but not limited to any claim Guarantor has against Tenant for reimbursement of any payments made or costs incurred by Guarantor pursuant to this Guaranty) are subordinated to Landlord=s claims against Tenant. Further, Guarantor shall not assert any claim Guarantor may have against Tenant (including but not limited to any claim Guarantor has against Tenant for reimbursement of any payments made or costs incurred by Guarantor pursuant to this Guaranty) until all obligations of Tenant that are guaranteed under this Guaranty are fully performed.

Guarantor shall reimburse Landlord for all costs and expenses incurred by Landlord in enforcing and/or attempting to enforce this Guaranty, including but not limited to court costs, reasonable attorneys' fees and disbursements. Guarantor shall so reimburse Landlord within 10 days after Landlord bills Guarantor for such costs and expenses.

If more than one person has signed this Guaranty, the term "Guarantor" shall be read as "Guarantors." The use of the singular shall be deemed to refer to the plural whenever the context so requires. The use of the masculine, feminine, or neuter genders shall be deemed to refer to another gender wherever the context so requires.

If more than one person or entity has signed this Guaranty, each of the undersigned shall be jointly and severally liable for all of the obligations hereunder. Any notice by the Landlord to any one of the undersigned Guarantors shall be deemed given to all of the Guarantors and shall have the same force and effect as though given to all persons constituting the Guarantor.

This Guaranty shall be binding upon Guarantor, his successors and legal representatives, and shall inure to the benefit of Landlord, its successors, grantees, legal representatives and assigns.

This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

Guarantor, for itself, its heirs, representatives, successors and assigns, hereby submits and consents to the jurisdiction of the courts located in the county in which the Premises are located (including the United States courts, New York State courts, and the New York City Civil Court) with respect to any lawsuit, claim (including any counterclaim and cross-claim), action or proceeding brought by or against Guarantor and/or its assets and arising out of or in connection with this Guaranty; and Guarantor agrees that such courts shall have sole jurisdiction over any lawsuit, claim (including any counterclaim and cross-claim), action or proceeding brought by or against Guarantor and/or its assets and arising out of or in connection with this Guaranty. The sole venue of any such lawsuit, claim, cross-claim, action or proceeding shall be solely in the county in which the Premises are located. Notwithstanding the foregoing, Sublandlord may enforce any judgment in any venue in which Guarantor's property may be located.

Guarantor, for itself and its representatives, successors and assigns, hereby agrees that any legal notice, process, petition or pleading may be served upon Guarantor by (i) any means lawful under the laws of the State of New York for service of process and/or (ii) by sending same to Guarantor at Guarantor's Notice Address by United States express mail or by a nationally recognized overnight delivery service or by hand delivery. Any such notice, summons, process, petition or pleading sent as provided in clause (ii) shall be deemed served when delivered or when refused or when delivery is attempted on a business day. Guarantor agrees that service of process effected upon Guarantor in accordance with the requirements of clause (ii) of this paragraph shall have the same force and effect as if Guarantor had been lawfully served with process.

Date:_____

WITNESS:

ACKNOWLEDGEMENT

STATE OF)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT 5

Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Date: _____

To:

Beneficiary:

Attn: _____

Applicant:

Amount:

Not exceeding USD
\$ _____

Expiration Date:

_____, _____

Gentlemen:

By order of our client, _____, we hereby establish our irrevocable Letter of Credit No. _____ in your favor for a sum or sums not to exceed \$ _____ (_____ and 00/100 U.S. Dollars) in the aggregate, effective immediately, and expiring on _____, _____ or any automatically extended expiry date.

This letter of credit shall be payable to you, in immediately available funds in U.S. Dollars, upon your presentation to us of the original of this letter of credit and a sight draft drawn on us in the form annexed hereto. All drafts must be marked: ADrawn under Letter of Credit No. of [Name of Issuing Bank]. One or more partial drawings under this Letter of Credit are permitted.

This Letter of Credit shall expire _____, 20__, but shall be deemed automatically extended, from time to time, without amendment, for a period of one year from the expiration date hereof and from each and every future expiration date, unless at least sixty (60) days prior to any expiration date we shall notify you by registered mail that we elect not to extend this Letter of Credit for any such additional period. The final expiration date hereof shall be _____.

We shall, immediately after each presentation of the Letter of Credit for a partial drawing, return this Letter of Credit to you, marking this Letter of Credit to show the amount paid by us and the date of such payment.

This Letter of Credit is transferable and may be transferred one or more times without cost to you upon presentation to us of a duly completed transfer instruction in the form annexed to

this Letter of Credit and the original Letter of Credit. We shall look solely to applicant for payment of the transfer fee.

We shall, upon receipt of your request, amend this Letter of Credit to change your address. Such amendment shall not require applicant's consent. We shall look solely to applicant for payment of any fee in connection with such amendment.

Presentation of documents may be made by fax transmission to _____ or to such other fax number as we may identify in a written notice to you. To the extent a presentation is made by fax transmission, you must (a) provide telephone notification thereof to us (telephone number _____ or to such other telephone number as we may identify in a written notice to you) prior to or simultaneously with the sending of such fax transmission and (b) send the original of the sight draft to us by overnight courier at the same address provided in this Letter of Credit for presentation of documents. Any demand made for payment by fax shall be followed by physical presentation of the original documents prior to the honoring of the draft(s).

We hereby agree to honor each draft drawn under and in compliance with this letter of credit, if duly presented at our offices at _____, New York, New York or at any other of our offices in New York, New York.

This Letter of Credit is subject to and governed by the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (AISP®). As to matters not addressed by the ISP, this Letter of Credit shall be governed and construed in accordance with New York law and applicable federal law.

[Name of Bank]

By:

[Annex Bank=s Form of Sight Draft]

EXHIBIT 6

Description of Facility

EXHIBIT 7

Contractor Indemnification and Insurance Agreement

[To be retyped on Letterhead of Tenant's General Contractor/Major Subcontractor/Construction Manager, addressed to Landlord, completed, signed, and delivered to Landlord prior to commencement of construction]

Tenant:

Premises:

Landlord:

The undersigned contractor or subcontractor (hereinafter called "Contractor") has been hired by _____ (hereinafter called "Tenant") or by Tenant's general contractor to perform certain work at the Premises (hereinafter called "Work"). As a condition to Contractor's engagement to perform the Work, and intending to be legally bound, Contractor agrees as follows:

1. Contractor shall indemnify and hold harmless Landlord, its affiliates, officers, directors, partners, members, and employees from and against all claims, demands, suits, liabilities, damages, losses and expenses, including reasonable attorneys' fees and disbursements, arising out of or in connection with any claims for personal injury, death or property damage occurring in connection with the Work (including any liability imposed by law), except to the extent such injuries to persons or property or death are due to the negligence of Landlord.
2. Upon the request of Landlord, Contractor shall require all of its subcontractors engaged in the Work to execute an agreement in the same form as this Agreement.
3. Contractor shall provide and maintain or cause to be maintained, at no expense to Landlord, until completion of Work, the following insurance:

a. As to Contractor:

- i. Workers' Compensation and Employers' Liability Insurance as required by law.
- ii. Commercial General Liability Insurance written on an occurrence basis, with a contractor's protective liability endorsement. Such insurance shall include Coverage for Completed Operations, Broad Form Property Damage (with any "XCU" exclusion deleted), and Contractual Liability (to specifically include coverage for the indemnification provision of this Agreement), and shall be in a combined limit of not less than \$_____.
- iii. Comprehensive Automobile Liability Insurance (covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Work) for not less than the following limits:

1. Bodily injury and death: Not less than \$_____ per person and \$_____ per occurrence.
2. Property damage: Not less than \$_____ per occurrence.

Contractor shall furnish a certificate from its insurance carrier or carriers to Landlord before commencing the Work, showing that it has complied with the above requirements regarding insurance and providing that the insurer will give Landlord not less than ten (10) days prior written notice of the cancellation of any of the foregoing policies. Such certificate(s) shall also evidence (x) that Landlord, Landlord's affiliates, and each of their directors, officers, partners, members, and employees, are included as additional insureds on the Commercial General Liability and Automobile Liability policies, and (y) that Waiver of Subrogation has been provided in favor of Landlord, Landlord's affiliates, and each of their directors, officers, partners, members and employees.

b. As to each Subcontractor engaged by Contractor:

- i. Workers' Compensation and Employers' Liability Insurance as required by law.
- ii. Commercial General Liability Insurance Including Protective and Contractual Liability Coverages with limits of liability at least equal to the above stated limits.
- iii. Commercial General Liability Insurance written on an occurrence basis, including Coverage for Completed Operations, Broad Form Property Damage (with any "XCU" exclusion deleted), and Contractual Liability (to specifically include coverage for the indemnification provision of this Agreement), in a combined limit of not less than \$_____
- iv. Comprehensive Automobile Liability Insurance (covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Work) for not less than the following limits:
 1. Bodily injury and death: Not less than \$_____ per person and \$_____ per occurrence.
 2. Property damage: Not less than \$_____ per occurrence.

Each subcontractor shall furnish a certificate meeting the requirements set forth above for Contractor's certificate.

Agreed to and executed this _____ day of _____, 20__.

Landlord:

By: _____

Contractor:

By: _____

EXHIBIT 8

SNDA FORM

EXHIBIT 9

Memorandum of Lease

MEMORANDUM OF LEASE

_____, as Landlord

and

_____, as Tenant,

Location of Premises

County:
Tax ID No.:
Street
Address:
Borough:

Record and Return To:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, made as of _____, 20__, between _____, a _____ [corporation/limited liability company] having an office at _____, New York _____ ("Landlord") and _____, a _____ [corporation/limited liability company], having an office at _____, New York _____ ("Tenant").

1. _____, as Landlord, and _____, as Tenant, are parties to that certain lease dated as of _____ (the "Lease"), covering that certain parcel of land and the improvements thereon described in Schedule A annexed hereto, and identified on the current Tax Map of the City of _____, County of _____, State of New York as _____ (the "Premises"). The Lease was executed on _____.
2. Landlord's address, as set forth in the Lease, is _____.
3. Tenant's address, as set forth in the Lease, is _____.
4. The term of the Lease is for ____ years.
5. The commencement date of the Lease is _____.
6. The expiration date of the Lease is _____, subject to earlier termination pursuant to the terms of the Lease or applicable law.
7. [Tenant has the right to extend the term of the Lease pursuant to the terms and conditions of Article ____ of the Lease.]
8. Landlord, its successors and assigns may, upon the expiration or sooner termination of the Lease, unilaterally execute and record an instrument evidencing the expiration or sooner termination of the Lease. Landlord, its successors and assigns, is hereby irrevocably appointed attorney-in-fact for Tenant, its successors and assigns, effective upon the expiration or sooner termination of the Lease, to execute and record such instrument.
9. All of the terms, covenants and conditions of the Lease are incorporated herein and made a part hereof. The purpose of this Memorandum is to give notice of the existence of the tenancy created by the Lease; and shall not be construed to vary or otherwise affect the rights or obligations of the parties under the Lease as it may be amended.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

LANDLORD:

By: _____

Name:

Title:

TENANT:

By: _____

Name:

Title:

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On the _____ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On the _____ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

SCHEDULE A
TO MEMORANDUM OF LEASE

Exhibit 10

Guaranty

GUARANTY

Lease: Lease, dated _____, 20__, between _____, as Landlord, and _____, as Tenant, for the Premises.

Premises: The land described on Exhibit 1 annexed hereto and all improvements thereon (as such Lease may be amended or modified).

Landlord: _____, its successors and assigns

Landlord's
Notice Address: _____

Tenant: _____, its successors and assigns

Guarantor: _____

Guarantor's
Notice Address: _____

To induce Landlord to enter into the Lease and intending to be legally bound, Guarantor has executed and delivered this Guaranty to Landlord. Each person signing this Guaranty represents that he is a principal of Tenant.

Guarantor guarantees to Landlord the full and timely performance and observance of all the terms, covenants, and conditions to be performed and observed by Tenant under the Lease, including but not limited to the obligation to pay Base Rent (as such term is defined in the Lease) and Additional Rent (as such term is defined in the Lease), through and including the date that both (a) the Construction Completion Date (as such term is defined in the Lease) has occurred and (b) the aggregate base rent payable by, and being collected by Tenant from, the Subtenants (as such term is defined in the Lease) exceeds \$_____ (the **"Aggregate Subtenant Rent"**).

Landlord is not obligated to give Guarantor notice of any default by Tenant under the Lease or any termination notice, and Guarantor hereby waives such notices. Guarantor waives all other notices required or permitted to be given under the Lease or otherwise. Guarantor also waives acceptance and notice of acceptance of this Guaranty, and all demands for payment or performance.

Guarantor waives all defenses other than payment and performance in full.

Guarantor's liability under this Guaranty shall not be affected or impaired by any delay by or failure of Landlord in enforcing any of its rights or remedies under the Lease or at law, or by any deferral, waiver, settlement or release of Tenant's obligations under the Lease or any accord and satisfaction or any forbearance by Landlord in exercising any of its rights and remedies or by any other action, inaction, or omission by Landlord.

This Guaranty is independent of any security or remedies which Landlord has under the law. Landlord may proceed against Guarantor at any time, either independently of or concurrently with or in lieu of Landlord=s application of any security held by Landlord or Landlord=s exercise of any remedies Landlord may have against Tenant. Landlord is not required to resort to any security deposit or other collateral it may hold and is not required to pursue any remedies it may have against the Tenant. No application of any security held by Landlord shall be credited, offset or applied against any liability of Guarantor under this Guaranty. Nothing contained in this Guaranty shall be deemed to affect or limit any of Landlord's remedies against Tenant under the Lease or the law.

Guarantor=s obligations under this Guaranty shall be unaffected by any discharge or release of the Tenant, its successors or assigns, or any of their debts, in connection with any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors; any rejection or disaffirmation of the Lease in any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors; or any reduction, modification, impairment or limitation of the liability of the Tenant, its successors or assigns, or of Landlord=s remedies under the Lease, in connection with any bankruptcy, reorganization or other insolvency proceeding or any assignment for the benefit of creditors. In addition, if Landlord is required to disgorge or pay back to the Tenant=s estate any payments made by the Tenant under the Lease in connection with any bankruptcy, reorganization or insolvency proceeding, Guarantor=s obligations as to such payments shall be reinstated.

Guarantor=s liability shall be unaffected by any assignment of the Lease or sublet of the Premises. Guarantor=s liability shall not be affected or impaired by reason of any modification or amendment of the Lease, whether or not such modification or amendment is pursuant to any right or option contained in the Lease. Notwithstanding the foregoing, if Landlord and any assignee of the Lease (unless such assignee is controlled by, controls, or is under common control with Tenant or Guarantor) enter into a modification of the Lease and such modification increases the obligation of the tenant under the Lease, the liability of the Guarantor shall continue to be no greater than if such modification had not been made

Guarantor waives all right to trial by jury in any action or proceeding to which Landlord and Guarantor are party, with respect to any claim, counterclaim, cross-claim, or defense raised with respect to this Guaranty or the Lease.

Until all obligations of Tenant that are guaranteed under this Guaranty are fully performed, all claims Guarantor may have against Tenant (including but not limited to any claim Guarantor has against Tenant for reimbursement of any payments made or costs incurred by Guarantor pursuant to this Guaranty) are subordinated to Landlord=s claims against Tenant. Further, Guarantor shall not assert any claim Guarantor may have against Tenant (including but not limited to any claim Guarantor has against Tenant for reimbursement of any payments made or costs incurred by Guarantor pursuant to this Guaranty) until all obligations of Tenant that are guaranteed under this Guaranty are fully performed.

Guarantor shall reimburse Landlord for all costs and expenses incurred by Landlord in enforcing and/or attempting to enforce this Guaranty, including but not limited to court costs, reasonable attorneys' fees and disbursements. Guarantor shall so reimburse Landlord within 10 days after Landlord bills Guarantor for such costs and expenses.

If more than one person has signed this Guaranty, the term "Guarantor" shall be read as "Guarantors." The use of the singular shall be deemed to refer to the plural whenever the context so requires. The use of the masculine, feminine, or neuter genders shall be deemed to refer to another gender wherever the context so requires.

If more than one person or entity has signed this Guaranty, each of the undersigned shall be jointly and severally liable for all of the obligations hereunder. Any notice by the Landlord to any one of the undersigned Guarantors shall be deemed given to all of the Guarantors and shall have the same force and effect as though given to all persons constituting the Guarantor.

This Guaranty shall be binding upon Guarantor, his successors and legal representatives, and shall inure to the benefit of Landlord, its successors, grantees, legal representatives and assigns.

This Guaranty shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

Guarantor, for itself, its heirs, representatives, successors and assigns, hereby submits and consents to the jurisdiction of the courts located in the county in which the Premises are located (including the United States courts, New York State courts, and the New York City Civil Court) with respect to any lawsuit, claim (including any counterclaim and cross-claim), action or proceeding brought by or against Guarantor and/or its assets and arising out of or in connection with this Guaranty; and Guarantor agrees that such courts shall have sole jurisdiction over any lawsuit, claim (including any counterclaim and cross-claim), action or proceeding brought by or against Guarantor and/or its assets and arising out of or in connection with this Guaranty. The sole venue of any such lawsuit, claim, cross-claim, action or proceeding shall be solely in the county in which the Premises are located. Notwithstanding the foregoing, Sublandlord may enforce any judgment in any venue in which Guarantor's property may be located.

Guarantor, for itself and its representatives, successors and assigns, hereby agrees that any legal notice, process, petition or pleading may be served upon Guarantor by (i) any means lawful under the laws of the State of New York for service of process and/or (ii) by sending same to Guarantor at Guarantor's Notice Address by United States express mail or by a nationally recognized overnight delivery service or by hand delivery. Any such notice, summons, process, petition or pleading sent as provided in clause (ii) shall be deemed served when delivered or when refused or when delivery is attempted on a business day. Guarantor agrees that service of process effected upon Guarantor in accordance with the requirements of clause (ii) of this paragraph shall have the same force and effect as if Guarantor had been lawfully served with process.

Date:_____

WITNESS:

ACKNOWLEDGEMENT

STATE OF)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public