

**Exhibit B-2**

**AGREEMENT TO LEASE AND GROUND LEASE**

**WITH PURCHASE OBLIGATION**

**BETWEEN**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**AND**

**[Insert Developer Name]**

**THIS AGREEMENT TO LEASE AND GROUND LEASE WITH PURCHASE OBLIGATION** (this “Ground Lease”) made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and effective as of the date the last Party executed this Ground Lease (the “Effective Date”) by and between the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, an instrumentality of the State of New Jersey, whose address is 36 West State Street, P.O. Box 990, Trenton, New Jersey, 08625 (“NJEDA” or “Ground Lessor”), and \_\_\_\_\_, a [State of Formation/incorporation], [entity type], whose address is \_\_\_\_\_ (“Ground Lessee”). In this Ground Lease, Ground Lessor and Ground Lessee are collectively referred to as the “Parties.”

**RECITALS**

**WHEREAS**, NJEDA is an independent State authority established pursuant to N.J.S.A. 34:1B-1, et seq, in but not of the Department of Treasury, which serves as the State's principal agency for driving economic growth; and

**WHEREAS**, the State of New Jersey, through Legislation (Public Law 2024, Chapter 25 amending N.J.S.A. 34:1B-7.13a.), has charged the NJEDA to maximize the development potential of certain properties formerly owned by NJT in the State of New Jersey through transit-oriented development projects; and

**WHEREAS**, NJEDA issued a Request for Qualifications and Proposals (“RFQP”), a copy of which is attached hereto and incorporated herein as **Exhibit A**, to qualify eligible respondents to participate in a sealed bid process to purchase or ground lease with a mandatory end of term purchase to develop land located at 101 West Elizabeth Avenue, City of Linden, New Jersey (“Linden”) which consists of approximately 2.074 acres of land in Union County, New Jersey and known as Block 254, Lot 10, on the City of Linden Tax Map, including, but not limited to, all future Improvements and Alterations (as such terms are defined herein) constructed thereon (the “Premises”); and

**WHEREAS**, NJEDA acquired the Premises from New Jersey Transit Corporation, an instrumentality of the State of New Jersey (“NJT”) pursuant to that certain Purchase and Sale Agreement for Real Property dated as of June 30, 2025 (“NJT PSA”) and Bargain and Sale Deed with certain Covenants Against Grantor’s Acts (“NJT Deed”) pursuant to which Ground Lessor is the owner of the Premises; and

**WHEREAS**, NJEDA and Linden have agreed to a Development Plan for the Premises, a copy of which is attached hereto and incorporated herein as **Exhibit B**; and

**WHEREAS**, Ground Lessee was the successful respondent to the RFQP to ground lease and redevelop the Premises, a copy of which is attached hereto and incorporated herein as **Exhibit C** (“Response”); and

**WHEREAS**, Ground Lessor selected Ground Lessee based upon the factors (in the RFQP and the Response concerning Ground Lessee’s proposed Project (as hereinafter defined) for the Premises) that are material to Ground Lessor selection of the Ground Lessee (criteria are listed in no particular order and with no particular weight): (i) Purchase and/or Ground Lease Price; (ii) Realistic and Feasible Project Plan; (iii) Achievable and Sustainable Financing; (iv) Project Schedule, Replacement Parking Plan, Compliance with Municipal Land Use and NJT Reserved Rights; (vi) Affordable Housing Inclusion; (vii) Sustainable Design & Energy Efficiency; and (viii) Developer and Management Team Experience.

**WHEREAS**, Ground Lessee seeks to lease from Ground Lessor the Premises (hereinafter referred to as the “Premises”) shown on **Exhibit D** attached hereto; and

**WHEREAS**, Ground Lessee, upon the expiration of the Term (defined below) on the terms and conditions set forth herein, seeks to purchase from Ground Lessor, as owner of the Premises, the Premises.

## **ARTICLE I BASIC LEASE INFORMATION**

1.1 Fundamental Lease Provisions/Definitions. For convenience, this **ARTICLE I** summarizes certain fundamental economic and business terms and definitions used in this Ground Lease. If these fundamental terms or definitions conflict with the balance of the Ground Lease, the latter shall control.

1.1.1 **“Additional Rent Commencement Date”**: The date immediately following the date of the expiration of the Permit and Approval Period (as such term is defined herein).

1.1.2 **“Agreement to Lease Period”**: The period of time commencing on the Effective Date and ending upon the earlier of (i) the date of the Due Diligence Termination Notice; or (ii) the date of the Permit and Approval Termination Notice; or (iii) the date of the Financing Termination Notice.

1.1.3 **“Alterations”** as defined in Section 8.1.

1.1.4 **“Bankruptcy Code”**: Title 11 of the United States Code.

1.1.5 **“Base Rent”**: \$ \_\_\_\_\_, the minimum base rent, as increased pursuant to Section 5.1.5.

1.1.6 **“Base Rent Commencement Date”**: The date that is the earlier of: (i) the date of Substantial Completion (as such term is defined herein) of the Project; (ii) the date the first unit of

the Project becomes occupied; or (iii) the date Linden issues the certificate of occupancy for the first phase of the Project.

- 1.1.7 “**Business Entity**” as defined in Exhibit H.
- 1.1.8 “**Casualty**” as defined in Section 10.1.
- 1.1.9 “**Closing**” or “**Closing Date**” shall have the meaning ascribed to such terms in Section 17.1.
- 1.1.10 “**Condemnation**” as defined in Section 11.1.
- 1.1.11 “**Construction Documents**” as defined in Section 4.2.4.
- 1.1.12 “**Construction Period**” as defined in Section 4.2.1.
- 1.1.13 “**Deed**” as defined in Section 17.10.1.
- 1.1.14 “**Default Rate**” as defined in Section 13.2.1.
- 1.1.15 “**Due Diligence Extension Payment**” as defined in Section 2.2.1(ii).
- 1.1.16 “**Due Diligence Extension Period**” as defined in Section 2.2.1(ii).
- 1.1.17 “**Due Diligence Period**” as defined in Section 2.2.1(ii).
- 1.1.18 “**Due Diligence Termination Notice**” as defined in Section 2.2.1(vii).
- 1.1.19 “**Effective Date**”: The date set forth in the preamble.
- 1.1.20 “**Environmental Claim**” as defined in Section 19.1.2.
- 1.1.21 “**Environmental Laws**” as defined in Section 19.1.3.
- 1.1.22 “**Environmental Report**” as defined in Section 19.1.4.
- 1.1.23 “**Event of Default**” as defined in Section 13.1.
- 1.1.24 “**Expiration Date**”: The expiration date of the Term.
- 1.1.25 “**Extension Term**” as defined in Section 17.1.2.
- 1.1.26 “**Fee Mortgage**” as defined in Section 16.1.
- 1.1.27 “**Fee Mortgagee**” as defined in Section 16.1.
- 1.1.28 “**Financial Assurances and Guarantees**” has the meaning ascribed to such term in Section 4.2.3(iii).

- 1.1.29 “**Financing Period**” as defined in Section 2.2.3.
- 1.1.30 “**Financing Period Extension**” as defined in Section 2.2.3.
- 1.1.31 “**Financing Period Extension Payment**” as defined in Section 2.2.3.
- 1.1.32 “**Force Majeure**” as defined in Section 20.13.
- 1.1.33 “**Fund**” as defined in Section 10.2.
- 1.1.34 “**Ground Lessee**”: \_\_\_\_\_.
- 1.1.35 “**Ground Lessor**”: NJEDA.
- 1.1.36 “**Hazardous Substances**” as defined in Section 19.1.1.
- 1.1.37 “**Impositions**” as defined in Section 5.3.2.
- 1.1.38 “**Improvements**” as defined in Section 4.2.2.
- 1.1.39 “**Indemnitee**” as defined in Section 9.4.
- 1.1.40 “**Indemnitor**” as defined in Section 9.4.
- 1.1.41 “**Initial Due Diligence Period**” as defined in Section 2.2.1.
- 1.1.42 “**Initial Financing Period**” as defined in Section 2.2.3.
- 1.1.43 “**Initial Permit and Approval Period**” as defined in Section 2.2.2.
- 1.1.44 “**Initial Option Payment**” as defined in Section 5.1.
- 1.1.45 “**Insurance Requirements**”: The requirements, whether now or hereafter in force, of any insurer or a fire insurance rating organization or any other organization performing the same or similar functions, applicable to the Premises, or the use or manner of use thereof.
- 1.1.46 “**Leasehold Mortgage**” as defined in Section 18.1.
- 1.1.47 “**Leasehold Mortgagee**” as defined in Section 18.1.
- 1.1.48 “**Lease Year**” as defined in Section 4.1.
- 1.1.49 “**Legal Requirements**”: All laws, statutes, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, and the appropriate agencies, officers, departments, boards and commissions thereof, whether now or hereafter in force, including, but not limited to those pertaining to environmental matters, applicable to the Premises or the use or manner of use of the foregoing.
- 1.1.50 “**Linden**”: City of Linden, New Jersey.

1.1.51 “**New Lease**” as defined in Section 18.2.4.

1.1.52 “**New Lease Delivery Date**” as defined in Section 18.2.4.

1.1.53 “**New Lease Option Period**” as defined in Section 18.2.4.

1.1.54 “**Option Payments**”: Payments made by Ground Lessee to Ground Lessor pursuant to Section 5.1 herein. On the Effective Date, Ground Lessee shall pay to Ground Lessor an amount equal to \$ \_\_\_\_\_ in immediately available funds.

1.1.55 “**Permit and Approval Period**” as defined in Section 2.2.2.

1.1.56 “**Permit and Approval Period Extension**” as defined in Section 2.2.2

1.1.57 “**Permit and Approval Period Extension Payment**” as defined in Section 2.2.2.

1.1.58 “**Permitted Encumbrances**” as defined in Section 17.4.

1.1.59 “**Permitted Exceptions**” as defined in Section 15.1.

1.1.60 “**Permitted Use**” as defined in Section 3.1.

1.1.61 “**Personal Property**”: as defined as in such term as in Section 20.18.

1.1.62 “**PILOT Agreement**”: The Payment-in-Lieu-of-Taxes Agreement to be negotiated and entered into directly by the Ground Lessee and Linden.

1.1.63 “**Premises**”: The located at 101 West Elizabeth Avenue, Linden which consists of approximately 2.074 acres of land in Union County, New Jersey and known as Block 254, Lot 10, on the City of Linden Tax Map, including, but not limited to, all future Improvements, including all Alterations, constructed thereon as more particularly described on **Exhibit D** attached hereto and incorporated herein by this reference.

1.1.64 “**Project**” shall have the meaning ascribed to such term as in the Response, as amended and approved by Ground Lessor during the Permit and Approval Period, as set forth in Section 2.2.2 herein. Also referred to herein as “The Project.”

1.1.65 “**Project Financing**” as defined in Section 2.2.3.

1.1.66 “**Purchase**” as defined in Section 17.1.

1.1.67 “**Purchase Deposit**” as defined in Section 17.1.1.

1.1.68 “**Purchase Price**” as defined in Section 17.1.

1.1.69 “**Reasonable Expense**” as defined in Section 12.1.

1.1.70 “**Redevelopment Agreement**” as defined in Section 2.2.2.

1.1.71 “**Remedial Work**” as defined in Section 19.2.2.

1.1.72 “**Rent**” as defined in in Section 5.1.6.

1.1.73 “**Required Permits**” as defined in Section 2.2.2.

1.1.74 “**Second Option Payment**” as defined in Section 5.1.1.

1.1.75 “**Substantial Completion**” as defined in Section 4.2.1.

1.1.76 “**Successor Ground Lessor**” as defined in Section 16.1.

1.1.77 “**Term**”: The Construction Period (as such term is defined herein) *plus* [\_\_\_\_\_] Years, commencing on the Term commencement Date until the Expiration Date (as such term is defined herein) of the Term.

1.1.78 “**Term Commencement Date**”: The date following the expiration of the Permit and Approval Period.

1.1.79 “**Title Company**” as defined in Section 17.3.3.

1.1.80 “**Title Contingency Period**” as defined in Section 17.3.1.

1.1.81 “**Title Notice**” as defined in Section 17.3.1.

1.1.82 “**Transfer**” as defined in Section 7.1.2.

1.1.83 “**Triple Net Lease**” as defined in Section 5.1.8.

1.2 **Exhibits:**

**Exhibit A:** RFQP

**Exhibit B:** Development Plan

**Exhibit C:** Response

**Exhibit D:** Legal Description of Premises

**Exhibit E:** Permitted Exceptions and NJT Requirements

**Exhibit F:** Memorandum of Ground Lease

**Exhibit G:** Estoppel Certificate

**Exhibit H:** NJEDA Requirements

**Exhibit I:** Flood Risk Disclosure

1.3 **Schedules:**

**Schedule 4.2.2:** Construction Schedule

**Schedule 9.1:** Insurance Requirements

**Schedule 17.1:** Purchase Price Formula

## ARTICLE II AGREEMENT TO LEASE

2.1 Agreement to Lease the Premises. Ground Lessor is charged with the development of the Premises in accordance with the Development Plan attached hereto as **Exhibit B**. Upon all other terms and conditions hereinafter in this Ground Lease specified, Ground Lessor hereby agrees to demise and let unto Ground Lessee, and Ground lessee agrees to rent from Ground Lessor, commencing on the Term Commencement Date of this Ground Lease and for the Term hereinafter set forth, the Premises, as more particularly described in **Exhibit D** attached hereto and incorporated herein by this reference, together with all easements for access, ingress, egress and rights appurtenant thereto (the “Premises”), together with all Improvements (as such term is defined herein) Ground Lessee shall construct on the Premises. Ground Lessor shall deliver the Premises to Ground Lessee in “AS IS” condition. Ground Lessor makes no warranties or representations regarding the adequacy of the Premises for Ground Lessee’s intended use, and Ground Lessee attests that it has not relied on any such representation or warranty.

2.2 Conditions. Prior to the expiration of the Agreement to Lease Period, Ground Lessee shall have satisfied the following conditions.

### 2.2.1 Due Diligence.

(i) Ground Lessee shall have a period of ninety (90) calendar days from the Effective Date of this Ground Lease (the “Initial Due Diligence Period”) to examine, inspect and investigate the condition of the Premises, including, without limitation, the physical, legal, economic and the environmental condition of the Premises to determine, in Ground Lessee’s sole and absolute discretion, whether the Premises’s condition is acceptable to Ground Lessee. Ground Lessee shall work diligently to complete its due diligence review of the Premises prior to the expiration of the Initial Due Diligence Period; provided, however, in no event shall the Due Diligence Period be extended except as set forth in Section 2.2.1(ii) herein.

(ii) In the event Ground Lessee has failed to complete its due diligence only during the Initial Due Diligence Period, Ground Lessee may extend the Initial Due Diligence Period for two (2) consecutive forty-five (45) calendar day extensions each extending the expiration of the Initial Due Diligence Period (each a “Due Diligence Extension Period” and, together with the Initial Due Diligence Period, the “Due Diligence Period”); provided, however: (i) Ground Lessee shall promptly pay Ground Lessor a non-refundable payment of Twenty-Five Thousand Dollars (\$25,000.00) for each Due Diligence Extension Period (each a “Due Diligence Extension Payment”) prior to the expiration of the Initial Due Diligence Period or the first Due Diligence Extension Period, as the case may be; and (ii) Ground Lessee at all times during the Due Diligence Period, has diligently conducted its due diligence examination and inspection of the Premises. Each Due Diligence Extension Payment shall be made directly to Ground Lessor. If the Closing (as such term is defined herein) occurs, any Due Diligence Extension Payments paid to Ground Lessor by Ground Lessee will be credited against the Base Rent and

if this Ground Lease is terminated for any reason, the Due Diligence Extension Payments(s) are non-refundable.

(iii) Subject to Section 2.2.1(iv) and **ARTICLE IX**, Ground Lessor hereby grants to Ground Lessee and its duly authorized representatives a limited right of entry onto the Premises solely for the purpose of conducting customary, non-intrusive due diligence inspections relating to the Premises's proposed use, including the Project, physical and environmental condition of the Premises during the Due Diligence Period.

(iv) During the Due Diligence Period, Ground Lessee, its agents, contractors, subcontractors, architects, engineers, representatives, consultants and employees (collectively, "Ground Lessee's Agents") shall have the right to enter the Premises for the purpose of making inspections at Ground Lessee's sole risk, cost and expense, as provided herein provided that: (i) Ground Lessee must give Ground Lessor two (2) full business days' prior telephone, email or other written notice of any such inspection or test; and (ii) prior to Ground Lessee or Ground Lessee's Agents access or performance of any inspection or test, Ground Lessee shall deliver a certificate of insurance to Ground Lessor evidencing that Ground Lessee and Ground Lessee's Agents have in place commercial general liability insurance with limits of at least Two Million Dollars (\$2,000,000.00) for bodily or personal injury or death for its activities on the Premises covering any accident arising in connection with the presence of Ground Lessee or Ground Lessee's Agents on the Premises, which insurance shall name Ground Lessor as an additional insured thereunder, and shall be primary and non-contributory. If any inspection or test (whether performed before or after the Effective Date of this Ground Lease) disturbs the Premises, Ground Lessee will restore the Premises to the same condition as existed before the inspection or test. Ground Lessee shall indemnify, defend and hold harmless Ground Lessor from and against any and all losses, costs, damages, claims, or liabilities caused by any such entry or inspection performed by Ground Lessee and/or Ground Lessee's Agents including any liens or encumbrances filed or recorded against the Premises as a consequence of Ground Lessee's due diligence investigations. Ground Lessee shall not be liable for, and this indemnity expressly excludes any liability for, any pre-existing condition discovered while performing an inspection, unless such pre-existing condition was caused or exacerbated by Ground Lessee or Ground Lessee's Agents. This indemnity shall survive the Closing and any termination of this Ground Lease. All inspections shall be non-invasive in nature, including visual inspections, surveys, and records reviews. No "Phase II Site Assessment" or subsurface activities including, without limitation, soil borings, environmental sampling, excavation, drilling, or disturbance of any building materials shall be performed without Ground Lessor's prior written consent, which may be given, conditioned, or withheld in Ground Lessor's commercially reasonable discretion. "Phase II Site Assessment" means as to the Premises, site testing, investigations, sampling and inspections required to determine the extent, concentration and depth of any Hazardous Substances (as defined herein) that may exist on such Premises, when a Phase I assessment conducted on by or on behalf of Ground Lessee's identifies potential environmental concerns or recommends further investigation, which is acceptable to Ground Lessor in its sole discretion.

(v) On or before the end of the Due Diligence Period, Ground Lessee shall provide Ground Lessor, at no cost to Ground Lessee, copies of, any and all, site investigation reports obtained by Ground Lessee including but not limited to environmental reports and testing results.

(vi) Within ten (10) business days of the Effective Date, Ground Lessor shall deliver to Ground Lessee a copy of any documents in Ground Lessor's possession or control which

have not previously been made available to Ground Lessee and relate to the environmental condition of the Premises, including but not limited to: (i) environmental assessments, and (ii) technical studies. Ground Lessee hereby acknowledges that it has reviewed the environmental information and reports made available by Ground Lessor during its review of the RFQP.

(vii) Notwithstanding anything to the contrary in this Ground Lease, Ground Lessee may terminate this Ground Lease in Ground Lessee's sole and absolute discretion, whether the Premises's condition is acceptable to Ground Lessee by giving written notice to Ground Lessor on or before the expiration of the Due Diligence Period (the "Due Diligence Termination Notice") and, in such event; provided, however, each Due Diligence Extension Payment, including all accrued interest thereon, shall remain the property of Ground Lessor, and neither Party shall have any rights or obligations hereunder, except pursuant to any provisions which by their terms survive any termination of this Ground Lessee. If Ground Lessee does not give the Due Diligence Termination Notice on or before the expiration of the Due Diligence Period, Ground Lessee shall be deemed to have waived the right to terminate this Ground Lease.

(viii) From the Effective Date until the expiration of the Agreement to Lease Period or the earlier termination of this Ground Lease, Ground Lessee shall maintain public liability and property damage insurance insuring against any liability arising out of entry on to or inspections of the Premises by Ground Lessee or Ground Lessee's Agents, which insurance shall (i) be in the amount of Two Million Dollars (\$2,000,000.00) combined single limit for injury to or death of one or more persons in an occurrence, and for damage to tangible property (including loss of use) in an occurrence; and (ii) automobile liability and, if necessary, excess liability insurance with a limit of not less than Two Million Dollars (\$2,000,000) each accident, which insurance shall (a) cover liability arising out of any auto, including owned vehicles if and when Ground Lessee acquires an owned vehicle, hired vehicles and non-owned vehicles; and (b) name Ground Lessor as an additional insured on a primary and non-contributory basis; and (iii) workers' compensation and employers' liability covering all employees of Ground Lessee who enter the Premises during Ground Lessee's investigation of the Premises, which insurance shall: (x) be in accordance with applicable statutes of the State of New Jersey and endorsed to include coverage for any federal or other state law that may be found to have legal jurisdiction, as applicable; (y) not be less than Two Million Dollars (\$2,000,000) each accident for bodily injury by accident or each employee for bodily injury by disease; and (z) apply as primary coverage with respect to claims made against Ground Lessor by Ground Lessee's and/or any Ground Lessee's Agent's employees. To the extent any investigation of the Premises on behalf of Ground Lessee is to be carried out by a subcontractor of Ground Lessee, Ground Lessee shall be responsible for subcontractors maintaining insurance, including naming Ground Lessor as an additional insured on a primary and non-contributory basis. Prior to Ground Lessee commencing any activities under this Ground Lease, Ground Lessee shall obtain Ground Lessor's written approval that the insurance certificates, along with any additional information requested by Ground Lessor, evidencing the insurance required under this Section 2.2.1, are acceptable. The provisions of this Section 2.2.1 shall survive the termination or Closing under this Ground Lease.

#### 2.2.2 Permit and Approval Period.

(i) Ground Lessee shall have one hundred eighty (180) calendar days, commencing with the expiration of the Due Diligence Period (the "Initial Permit and Approval Period"), to receive approval of the redevelopment agreement by Linden (the "Redevelopment Agreement") and all other necessary State, County, and Municipal permits and approvals for the development, construction

and use and occupancy of the Project, including all future permits required to operate the Project (the “Required Permits”) for the Project. Ground Lessee shall work diligently to obtain such Required Permits. In the event Ground Lessee has failed to obtain the Required Permits prior to the expiration of the Initial Permit and Approval Period, Ground Lessee may extend the Initial Permit and Approval Period for two (2) consecutive forty-five (45) calendar day extensions (each a “Permit and Approval Period Extension” and, together with the Initial Permit and Approval Period, the “Permit and Approval Period”); provided, however: (i) Ground Lessee shall pay Ground Lessor a non-refundable payment of Twenty-Five Thousand Dollars (\$25,000.00) (each a “Permit and Approval Period Extension Payment”) for each exercised Permit and Approval Period Extension; and (ii) Ground Lessee at all times during the Permit and Approval Period has worked diligently to obtain the Required Permits. Each Permit and Approval Period Extension Payment shall be made directly to Ground Lessor. If Closing occurs, any Permit and Approval Period Extension Payment paid to Ground Lessor by Ground Lessee will be credited against the Base Rent. If Ground Lessee does not provide written notice to Ground Lessor that Ground Lessee has obtained all the Required Permits within the Permit and Approval Period), Ground Lessor or Ground Lessee may terminate this Ground Lease and, in such event, Ground Lessor shall be entitled to keep the Deposit and Permit and Approval Period Extension Payment(s) and any interest accrued thereon as non-refundable. Upon such termination by Ground Lessor, neither Party shall have any rights or obligations hereunder, except pursuant to any provisions which by their terms survive any termination of this Ground Lease. Notwithstanding anything to the contrary herein, the Permit and Approval Period shall be deemed automatically extended for such period of time as any appeal periods related to the Required Permits are active.

(ii) As part of the Permit and Approval Period, Ground Lessee may obtain Ground Lessor permitted amendments to the Redevelopment Plan as approved by Linden and confirm such additional terms of Ground Lessee’s approved terms in the Redevelopment Agreement and to reflect any negotiated tax PILOT or financing covenants; provided, however, in no event shall the Redevelopment Plan be amended in such a manner as to require a new RFQP to be issued. Ground Lessee shall obtain Ground Lessor’s written consent prior to requesting such amendments to Linden; such consent not being unreasonably withheld, delayed or conditioned by Ground Lessor. Any amendment shall be deemed part of the Redevelopment Plan and the Response and added to **Exhibit B** and **Exhibit C**.

(iii) Notwithstanding anything to the contrary in this Ground Lease, Ground Lessee may terminate this Ground Lease in Ground Lessee’s sole and absolute discretion, whether the Premises’s condition is acceptable to Ground Lessee by giving written notice to Ground Lessor on or before the expiration of the Permit and Approval Period (the “Permit and Approval Termination Notice”) and, in such event; provided, however, each Permit and Approval Extension Payment, including all accrued interest thereon, shall remain the property of Ground Lessor, and neither Party shall have any rights or obligations hereunder, except pursuant to any provisions which by their terms survive any termination of this Ground Lessee. If Ground Lessee does not give the Permit and Approval Termination Notice on or before the expiration of the Permit and Approval Period, Ground Lessee shall be deemed to have waived the right to terminate this Ground Lease. In the event this Ground Lease is terminated at the expiration of the Permit and Approval Period, Ground Lessee shall deliver to Ground Lessor, copies of all Required Permit applications, drawings or information associated therewith and Required Permits issued.

### 2.2.3 Financing Period.

(i) Ground Lessee shall have one hundred eighty (180) calendar days commencing the end of the Due Diligence Period, to secure development financing (the “Project Financing”), on terms and conditions reasonably acceptable to Ground Lessee in its sole discretion, for the Project (the “Initial Financing Period”). In the event Ground Lessee has failed to obtain the Project Financing prior to the expiration of the Initial Financing Period, Ground Lessee may extend the Initial Financing Period for two (2) consecutive forty-five (45) calendar day extensions (each a “Financing Period Extension” and, together with the Initial Financing Period, the “Financing Period”); provided, however: (i) Ground Lessee shall pay Ground Lessor a non-refundable payment of Twenty-Five Thousand Dollars (\$25,000.00) (each a “Financing Period Extension Payment”) for each Financing Period Extension and; (ii) Ground Lessee as all times during the Financing Period has diligently worked to obtain the Project Financing. Any Financing Period Extension Payment(s) shall be made directly to Ground Lessor. If Closing occurs, any Financing Period Extension Payment(s) paid to Ground Lessor by Ground Lessee will be credited against the Base Rent. If Ground Lessee does not obtain the Project Financing within the Financing Period, Ground Lessor or Ground Lessee may terminate this Ground Lease by giving written notice to the other Party and, in such event, the Deposit and interest accrued thereon shall be returned to Ground Lessee; provided, however, any Financing Period Extension Payment(s) made to Ground Lessor shall remain the property of Ground Lessor, including accrued interest thereon, as non-refundable, and neither Party shall have any rights or obligations hereunder, except pursuant to any provisions which by their express terms survive any termination of this Ground Lease.

(ii) . Notwithstanding anything to the contrary in this Ground Lease, Ground Lessee may terminate this Ground Lease in Ground Lessee’s sole and absolute discretion, whether the Premises’s condition is acceptable to Ground Lessee by giving written notice to Ground Lessor on or before the expiration of the Financing Period (the “Financing Termination Notice”) and, in such event; provided, however, each Financing Extension Payment, including all accrued interest thereon, shall remain the property of Ground Lessor, and neither Party shall have any rights or obligations hereunder, except pursuant to any provisions which by their terms survive any termination of this Ground Lessee. If Ground Lessee does not give the Financing Termination Notice on or before the expiration of the Financing Period, Ground Lessee shall be deemed to have waived the right to terminate this Ground Lease.

2.3 Failure to Satisfy Contingencies For the avoidance of doubt, the Financing Period shall run concurrently with the Permit and Approval Period. In the event any of the foregoing contingencies are not satisfied or waived by Ground Lessee through written notice to Ground Lessor within the Agreement to Lease Period, then the Agreement to Lease shall be automatically terminated and this Ground Lease shall not go into effect.

2.4 Indemnification and Insurance Obligations. For the avoidance of doubt, the indemnification and insurance obligations set forth in this **ARTICLE II** and the indemnification and insurance obligations set forth in **ARTICLE IX** shall be binding upon and applicable to Ground Lessee commencing on the Effective Date, as applicable to the activities of Ground Lessee during the Agreement to Lease Period.

### **ARTICLE III GROUND LEASE**

3.1 Permitted Use. Following Ground Lessee obtaining the Required Permits and Project Financing, Ground Lessee may use and occupy the Premises (or permit the use and occupancy of

the Premises by permitted users and occupants) for the construction and operation of the Project on the Premises, as more particularly shown on the plans and specifications of the Response, as revised after Ground Lessee's receipt of the Required Permits, attached hereto as **Exhibit C-1** (as the same may be modified pursuant to **ARTICLE VIII**) and for no other use or purpose (the "Permitted Use"); provided, however, Ground Lessor has made no representations or warranties in respect of the fitness or the zoning of the Premises for the Project. The Project will consist of a first-class facility in compliance with the requirements set forth herein. The Project is further described and depicted in the RFQP and the Response, as revised after Ground Lessee's receipt of the Required Permits, subject to any required approvals by Ground Lessor to modify the Project, is attached hereto as part of **Exhibit C-1**. Ground Lessee shall not use, improve, occupy or permit or suffer the use, improvement or occupancy of the Premises or any part thereof: (i) in any manner which will constitute a violation of the Legal Requirements or the Insurance Requirements; or (ii) in any manner which would cause any fire insurance or other policy or policies of insurance in respect of the Premises and/or the Improvements (as such term is defined herein) or protecting Ground Lessor to be cancelled. Ground Lessee covenants that the Permitted Use is a permitted use under Linden's land use ordinances and that it is entering into this Ground Lease with the intent to construct the Project on the Premises.

3.2 Prohibited Uses and Activities. Ground Lessee shall only use the Premises for the Permitted Use set forth in Section 3.1. Without limiting the foregoing, in no event shall Ground Lessee: (i) use the Premises for a purpose which would render the Premises an "Industrial Establishment" as defined in the New Jersey Industrial Site Recovery Act; or (ii) use or permit the Premises to be used for any dangerous or noxious trade or business or for any unlawful purpose or toxic purpose. Ground Lessee shall, at its own cost and expense, comply with all requirements imposed by the New Jersey Department of Environmental Protection, or other Legal Requirement. Furthermore, Ground Lessee shall not permit any unlawful occupation, business or trade to be conducted on any of the Premises or any use to be made thereof contrary to applicable Legal Requirements or Insurance Requirements. Tenant will not use, occupy or permit any of the Premises to be used or occupied, nor do or permit anything to be done in or on any of the Premises, in a manner which would (i) violate any certificate of occupancy, zoning compliance certificate, or equivalent certificate affecting any of the Premises, (ii) make void or voidable any insurance which Ground Lessee is required hereunder to maintain then in force with respect to any of the Premises, (iii) adversely affect in any material manner the ability of Ground Lessee to obtain any insurance which Ground Lessee is required to furnish hereunder, (iv) cause any injury or damage to any of the Improvements (other than for Alterations permitted under this Ground Lease), or constitute a public or private nuisance or waste.

3.3 Compliance with Legal Requirements. Ground Lessee shall, throughout the Term (hereinafter defined), at no expense whatsoever to Ground Lessor, promptly comply or cause compliance with all Legal Requirements applicable to Ground Lessee's use of the Premises, both foreseen and unforeseen, ordinary and extraordinary, and whether or not the same shall presently be within the contemplation of the Parties hereto or shall involve any change in any Legal Requirement.

3.3.1 Ground Lessee shall indemnify and hold Ground Lessor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) in connection with Ground Lessee's failure or delay in complying with any Legal Requirement.

3.3.2 Ground Lessee shall obtain and keep in full force and effect any and all Required Permits required in connection with the lawful and proper use, occupancy, operation and

management of the Premises and Ground Lessee shall indemnify and hold Ground Lessor harmless from and against any and all claims, liabilities, damages, losses, costs and expenses (including attorneys' fees) in connection therewith.

#### **ARTICLE IV TERM; CONSTRUCTION PERIOD**

4.1 Term. This Ground Lease shall become legally binding on the Effective Date. Notwithstanding, the term of this Ground Lease shall commence on the Term Commencement Date and shall continue for the duration of the Construction Period and shall expire on the last day of the [ ] Lease Year following the Construction Period (the "Term"), as provided below in this Section 4.1. For purposes of this Ground Lease, the term "Lease Year" shall mean each twelve (12) month period commencing January 1, except for the first Lease Year which shall commence on the Term Commencement Date and end on the December 31<sup>st</sup> following the Term Commencement Date. The Lease Years in the Term shall be referred to herein numerically from the commencement of the Term. Upon the Term Commencement Date, the Parties shall execute a written statement confirming the Term Commencement Date and the expiration date of the Term (the "Expiration Date"); provided, however the enforceability of this Ground Lease shall not be affected if either Party fails or refuses to execute such statement.

#### 4.2 Construction of Improvements.

4.2.1 Construction Period. When used herein, the term "Construction Period" refers to the time commencing on the expiration of the Permit and Approval Period, as may be extended, and continuing until the sooner of (a) the date that the Project shall have been completed in accordance with this Ground Lease, the Development Plan and any Construction Documents (as such term is defined herein) agreed upon in accordance with this Section 4.2 (other than minor punch list items), including, without limitation, that such work has been completed in a good and workman like manner, in compliance with applicable Legal Requirements and Ground Lessee's receipt of a certificate of occupancy or temporary certificate of occupancy from Linden ("Substantial Completion"), (b) the date in which the first unit of the Project becomes occupied, or (c) [ ] months following the commencement of the Construction Period (the "Term Commencement Date").

4.2.2 Construction Per Development Documents and Schedule. During the Construction Period, and subject to the conditions and provisions set in this Section 4.2, Ground Lessee shall, at its sole cost and expense, in accordance with all Legal Requirements, construct on the Premises those certain improvements, and those certain Alterations to and renovations, if any, of the Premises (collectively, the "Improvements"), to be constructed in accordance with the Development Plan and the Proposal. The construction of the Improvement shall be in accordance with Ground Lessee's proposed development and construction schedule attached hereto as Schedule 4.2.2 (the "Construction Schedule"), as the same may be modified from time to time with the approval of Ground Lessor and Linden, which approval shall not be unreasonably withheld and will be deemed given if not denied by written notice to Ground Lessee. The construction of the Improvements shall commence on or about the construction commencement date as set forth on the Construction Schedule and shall be substantially completed no later than the completion date therefor set forth the Construction Schedule.

4.2.3 Conditions Precedent to Commencement of Construction. The right and obligation of Ground Lessee to commence the construction of the Improvements shall be subject to and contingent upon the satisfaction of the following conditions precedent on or before the commencement of such construction:

(i) No Event of Default (as such term is defined herein) shall have occurred and then be continuing under this Ground Lease or under any other agreement Ground Lessor and Ground Lessee with respect to the Premises, and Ground Lessee shall have met all material requirements required to be met prior to commencement of the construction of the Improvements as set forth the Construction Schedule.

(ii) All of the contingencies set forth in Section 2.2.1, Section 2.2.2 and Section 2.2.3 shall have been met and satisfied, and Ground Lessee shall evidence, to the satisfaction of Ground Lessor (in Ground Lessor's reasonable discretion), the availability of Ground Lessee's internal capital, or of any combination of financing, pledges and internal capital, together with a reasonable contingency, if appropriate, sufficient for the financing of the Project.

(iii) Ground Lessee shall post all financial assurances and guarantees required pursuant to Linden ordinances for performance, maintenance and site restoration with the municipality and name Ground Lessor as a beneficiary (the "Financial Assurances and Guarantees"). This Section 4.2.3(iii) shall survive the termination or Closing (as such term is defined herein) under this Ground Lease.

(iv) Ground Lessee shall provide Ground Lessor with all reasonably relevant construction plans, drawings and schematics.

#### 4.2.4 Development Document Approvals.

(i) Ground Lessee shall be required to provide all construction agreements, development agreements and other plans, designs, drawings, models, samples, sketches, computer records and specifications related to the construction of the Project (the "Construction Documents"), the Improvements no later than fifteen (15) days prior to the commencement of such construction such documents are related to.

(ii) Ground Lessor shall, within five (5) business days after receipt of the Construction Documents, either approve or disapprove of Construction Documents, and, if disapproved, Ground Lessor shall advise Ground Lessee in writing in detail of the required changes. Ground Lessor's approval shall not be unreasonably withheld or conditioned. Ground Lessee shall have no obligation to agree to any change requested by Ground Lessor if such refusal is for Good Cause. As used in this Section 4.2.4, the term "Good Cause" shall mean that such requested changes to the Construction Documents or the Improvements anticipated by such changes to the Construction Documents: (i) fail to comply with applicable Legal Requirements; (ii) involve requirements which impose a significant ongoing cost to the Ground Lessee with respect to the Premises beyond the Term; (iii) involve requirements which impair the architectural integrity, mechanical systems or electrical systems of the Improvements or are incompatible with the mechanical systems or electrical systems of the Improvements; or (iv) involve items which impair, on a permanent basis, the future longevity or value of the Improvements. Ground Lessee shall then cause the Construction Documents to be revised to

accommodate Ground Lessor's changes. If Ground Lessor fails to respond within five (5) business days after receipt of the complete Construction Documents, such Construction Documents shall be deemed approved.

(iii) Ground Lessor's approval of the Construction Documents, and any alterations, additions or modifications thereof, shall not create responsibility on the part of Ground Lessor for completeness, sufficiency or compliance with Legal Requirements, it being understood that Ground Lessor is reviewing such documents for the own limited purposes set forth in this Section 4.2.4. Ground Lessee shall pay the actual, third-party costs without mark-up with respect to the preparation and revision of the Construction Documents and any changes, modifications, deletions or additions thereto.

#### 4.2.5 Oversight of Construction. During the Construction Period:

(i) All certifications of payment by Ground Lessee's architect of payment applications by Ground Lessee or any Ground Lessee's Agent for work performed to construct the Improvements shall be addressed to Ground Lessor in addition to Ground Lessee and the Leasehold Mortgagee.

(ii) Ground Lessor and its architects and engineers, and any authorized representative of Ground Lessor, and any of them, may (but shall not be obligated to), from time to time during normal business hours, inspect the construction of the Improvements and all construction drawings and documents, change orders, addenda, computer records, shop drawings and samples in the possession of Ground Lessee. At Ground Lessor's request, Ground Lessee shall furnish Ground Lessor with copies of all construction drawings and documents, change orders, addenda, shop drawings and samples not previously delivered to Ground Lessor. If requested by Ground Lessor during the construction of the Improvements and, to the extent reasonably feasible, Ground Lessee shall promptly take such steps as are necessary to cause corrections to be made to the construction of the Improvements which are in violation of the terms and provisions of this Ground Lease approved or deemed to have been approved by Ground Lessor.

(iii) Promptly upon the completion of the Improvements, Ground Lessee shall deliver to Ground Lessor, with a copy to Linden: (A) certificate of occupancy or temporary certificate of occupancy from Linden; (B) an American Institute of Architect's certificate of substantial completion, or an equivalent certificate, as required by Ground Lessee's construction contract signed by Ground Lessee architect addressed to Ground Lessee, the Leasehold Mortgagee and Ground Lessor; (C) copies of such certificates of occupancy as shall be necessary and obtainable for the use and occupancy of the Improvements; (D) copies of the final and complete releases by Ground Lessee's general contractors (and their subcontractors, or on behalf of their subcontractors) of their rights to file or assert a mechanic's lien against any part of the Premises; and (E) one complete set of reproducible "as-built" or record drawings of the Premises showing all Improvements constructed on the Premises. Such "as-built" or record drawings may, at Ground Lessee's option, consist of shop drawings cross-referenced with the construction drawings, including all revisions or changes.

(iv) Notwithstanding anything to the contrary herein, in no event shall the review of any documents, agreements, instruments, drawings, plans, specifications, designs or any other similar information by Ground Lessor or any of Ground Lessor's agents, contractors, subcontractors, architects, engineers, representatives, consultants and employees (collectively, "Ground Lessor's

Agents”) be deemed to shift any liability related to the construction of the Project to Ground Lessor or any Ground Lessor’s Agents.

4.2.6 Assignment of Documents. If any Event of Default occurs resulting in the termination of this Ground Lease or such other cancellation of this Ground Lease pursuant to the terms hereof, Ground Lessee hereby assigns to Ground Lessor, all of Ground Lessee’s right, title and interest in and to any and all Construction Documents made or prepared for Ground Lessee or by Ground Lessee’s order with respect to the Premises or any Improvements to be constructed thereon. Ground Lessee shall include the provisions of this subsection, directly or by side letter, in any agreement Ground Lessee may enter into with the architects or engineers engaged by Ground Lessee or on behalf of Ground Lessee, which agreements shall further provide that such architects and engineers shall promptly honor Ground Lessor written notice and demand, when served by registered mail, return receipt requested, that Ground Lessee has committed an Event of Default resulting in the termination of this Ground Lease, or that this Ground Lease has been otherwise canceled pursuant to the terms hereof, and that all such Construction Documents, to the extent of Ground Lessee’s right, title and interest therein, be promptly delivered to Ground Lessor. Ground Lessor agrees that such assignment and delivery of such Construction Documents to Ground Lessor shall not, in any way, nullify or compromise the architects' or engineers' rights under their respective agreements with Ground Lessee. Such Construction Documents can be used in connection with the Improvements to be constructed after payment to the architects and engineers of any commercially reasonable fees, costs and expenses then due the architects and engineers, and, to the extent any such Construction Documents are not stamped and sealed, such architects and engineers shall not be responsible for the completeness and accuracy thereof and Ground Lessor shall waive any claims and damages it may assert against any such architect and engineer on account of the use thereof. In no event shall the architects' and engineers' responsibility be greater than as provided for under their agreement(s) with Ground Lessee. Ground Lessee shall promptly after execution thereof deliver to Ground Lessor a true copy of every such architects' and engineers' agreement. Ground Lessor agrees that its rights pursuant to this subsection shall be subordinate to any assignment of Ground Lessee’s right, title and interest in such documents to any Leasehold Mortgage(s) holding a first mortgage lien on the Premises.

4.2.7 During the Construction Period, Ground Lessee shall erect a fence around the Premises and shall take all other reasonable steps that are necessary to preclude unauthorized individuals from gaining access to the construction site.

4.3 Ownership of Improvements. Ground Lessor agrees that during the term of this Ground Lease, Ground Lessor shall have no right, title or ownership interest in or to the Improvements and/or any fixtures, machinery, equipment, apparatus, appliances, goods, chattels or other property which may at any time during the Term of this Ground Lease be constructed, erected, installed, attached, placed or located upon, in or on the Improvements or any portion thereof; and any and all of the same may at any time during the Term hereof be changed, altered or improved, notwithstanding that any of the same may be attached to the realty and notwithstanding any rule, regulation or statute to the contrary. Upon expiration or other termination of the Ground Lease for any reason other than the purchase of the Premises by Ground Lessee, title to the Improvements shall pass to Ground Lessor.

4.4 Affirmative Operating Covenants. Ground Lessee agrees that:

4.4.1 Commencement of Operations. Ground Lessee shall commence the operation of the Project at the Premises in accordance with the terms and conditions of this Ground Lease,

the Development Plan and the Proposal, promptly upon the earlier of: (i) the date of Substantial Completion of the Project; (ii) the date in which Ground Lessee receives a certificate of occupancy or temporary certificate of occupancy for the Project from Linden; or (iii) the date in which the first unit within the Project is occupied.

4.4.2 Continuous Operation. Ground Lessee shall at all times operate the Project in accordance with the development goals set forth in the RFQP, the Proposal and the Development Agreement.

## **ARTICLE V OPTION PAYMENTS; RENT; UTILITIES AND OTHER EXPENSES**

5.1 Option Payments. Upon the completion of the Agreement to Lease Period (without any termination of the Ground Lease), then Ground Lessee shall pay to Ground Lessor the sum of five percent (5%) of the present value of Base Rent payments *plus* the Purchase Price (the “Initial Option Payment”).

5.1.1 In the event Ground Lessee has not commenced construction on or before the date that is twelve (12) months after the receipt of all Required Permits, then Ground Lessee shall pay to Ground Lessor an additional five percent (5%) of the present value of the remaining Base Rent payments *plus* the Purchase Price (the “Second Option Payment” and, together with the Initial Option Payment, the “Option Payments”) on or before the date that is twelve (12) months after the Permit and Approval Period”. In the event Ground Lessee has failed to commence construction on or before the date that is twenty-four (24) months after the Permit and Approval Period, notwithstanding anything to the contrary herein, Ground Lessor may, in its sole discretion, elect to: (i) terminate this Ground Lease in accordance with the termination provisions herein, and upon such termination Ground Lessee shall promptly surrender possession of the Premises and Ground Lessor shall be entitled to keep any and all payments made by Ground Lessee hereunder; or (ii) require that Ground Lessee purchase the Premises in accordance with the terms of **ARTICLE XVII** herein.

5.1.2 Each Option Payment covers a period of twelve (12) months. In the event construction has not commenced during the twelve (12) month period covered by the applicable Option Payment, then no part of the applicable Option Payment shall be applicable to the payment of any Base Rent due hereunder.

5.1.3 Each Option Payment shall be immediately released to Ground Lessor, and shall be non-refundable, and shall not be applicable to the payment of any Base Rent due hereunder except as follows:

(i) If after the payment of an Option Payment for the ensuing twelve (12) month period construction commences, then that Option Payment shall be applied to the portion of the Base Rent applicable due between the commencement of construction and the end of such twelve (12) month period. By way of example and not of limitation, if the construction commences six (6) months after the then applicable twelve (12) month period covered by the Option Payment, then fifty (50%) percent of the Option Payment shall be applicable to the Base Rent then first due and payable.

5.1.4 Base Rent. On the Base Rent Commencement Date, Ground Lessee shall pay to Ground Lessor Base Rent. For the avoidance of doubt, the minimum base rent shall be deemed Base Rent under this Ground Lease unless specifically stated otherwise.

5.1.5 Annual Rent Increase. Commencing on the first anniversary of the Base Rent Commencement Date, and on each anniversary after that during the Term, Ground Lessee shall pay to Ground Lessor an amount equal to: (i) for the first anniversary of the Base Rent Commencement Date, the Base Rent multiplied by the greater of (a) one hundred two percent (102%) or (b) the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items (1982–84 = 100), not seasonally adjusted, as published by the U.S. Bureau of Labor Statistic (the product of which being referred to herein as “Base Rent”); and (ii) for every anniversary thereafter, the Base Rent then in effect multiplied by the greater of (a) one hundred two percent (102%) or (b) the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items (1982–84 = 100), not seasonally adjusted, as published by the U.S. Bureau of Labor Statistic (each such amount being deemed “Base Rent” for the next Lease Year). The CPI-U increase will be calculated by comparing the index published two (2) months before the applicable anniversary date with the index for the same month one year earlier. If the CPI-U is discontinued or materially changed, a comparable government index will be used.

5.1.6 No Abatement. No abatement, diminution or reduction of the Option Payments, Base Rent, or other charges or payments required to be paid by Ground Lessee pursuant to the terms of this Ground Lease (all of which payments, other than Base Rent and Option Payments, shall be deemed to be “Additional Rent” and, together with Base Rent, collectively, “Rent”), shall be claimed by, or allowed to, Ground Lessee for any inconvenience, interruption, cessation or loss of business or otherwise, caused directly or indirectly by any present or future laws, ordinances, orders, rules, regulations or requirements of any Federal, State, County or Municipal governments, or by any other cause or causes beyond the control of Ground Lessor, including, without limitation, casualty to the Premises nor shall this Ground Lease in any way be affected by any such causes, except as expressly provided in this Ground Lease.

5.1.7 Net Lease. This Ground Lease is a "Triple Net Lease" meaning that Ground Lessee is responsible for payment of all charges set forth in the Ground Lease, including, but not limited to, those charges specified in **ARTICLE VI**, **ARTICLE VIII**, **ARTICLE IX** and **ARTICLE X**. All costs, expenses and obligations of every kind and nature whatsoever relating to the ownership, operation, management, development, construction, use, or occupancy of the Premises and the Project and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable during the Term in accordance with the provisions of this Ground Lease (whether or not the same shall become payable prior to or during the Term or thereafter, but in each case only if such payment is payable on account of a period occurring during the Term) shall be paid by Ground Lessee except as otherwise expressly provided herein. Except as otherwise expressly provided in this Ground Lease, this Ground Lease is an absolute triple net lease and, notwithstanding any present or future law to the contrary, shall not terminate except as otherwise expressly provided herein, nor shall Ground Lessee be entitled to any abatement, reduction, diminution, set-off, counterclaim, defense or deduction with respect to any Base Rent, Additional Rent, Option payments or other sums payable hereunder, nor shall the obligations of Ground Lessee hereunder be affected, by reason of: (i) any damage to or destruction of the Premises or any portion thereof; (ii) any defect in the condition, design, operation or fitness for use of the Premises or

any portion thereof; (iii) any taking of the Premises or any part thereof by Condemnation (as such term is defined herein) or otherwise; (iv) any prohibition, limitation, interruption, cessation, restriction or prevention of Ground Lessee's use, occupancy or enjoyment of the Premises, or any interference with such use, occupancy or enjoyment by any person; (v) any eviction by paramount title or otherwise; (vi) construction on or renovation of the Premises; or (vii) any failure in the Premises to comply with Legal Requirements, or any other cause whether similar or dissimilar to the foregoing. Ground Lessee's obligation to pay the Option Payments, Base Rent, and Additional Rent and to perform the covenants and agreements required to be performed by it hereunder, shall in no way be affected, impaired, or excused in any respect because Ground Lessor is unable, for any reason whatsoever, to fulfill any of its obligations.

5.2 Late Charge. If Ground Lessee fails to make any payment under this Ground Lease within ten (10) calendar days of when due, Ground Lessee shall pay Ground Lessor a payment equal to five percent (5%) of the amount due.

5.3 Additional Rent. Commencing on the Additional Rent Commencement Date, and continuing until the expiration or earlier termination of this Ground Lease, Ground Lessee shall be responsible for payments of all Additional Rent, at its sole expense and costs, including, but not limited to:

5.3.1 All utilities, including water, heat and electricity for the Premises (and any such charges related to installing such utilities in and on the Premises).

5.3.2 All taxes, assessments, water and sewer rents, charges, license fees, levies, permit fees or other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever which at any time during the Term of this Ground Lease may be assessed, levied, confirmed, imposed upon or become due or payable out of or in respect of, or become a lien on, the Premises, or any part thereof (the "Impositions") including any assessments made against the fixtures, equipment or inventory owned by Ground Lessee or Ground Lessor (if located on the Premises) and including any Impositions due under the PILOT Agreement to be negotiated and entered into directly by the Ground Lessee and Linden (the "PILOT Agreement"). Ground Lessee shall be deemed to have complied with this covenant if payment of any such taxes, assessments or other charges is made by Ground Lessee within the period in which payment is permitted without penalty or interest. Assessments for governmental improvements may be paid in the maximum number of installments permitted by law. Subject to (i) Section 5.3.7, (ii) if the Premises is not subjected to any liens, fines or penalties, and (iii) if Ground Lessee first pays in full any municipal or state taxes, assessments, license fees or impositions, then Ground Lessee shall have the right at its own cost and expense to contest the validity of any municipal or state taxes, assessments, license fees or impositions payable by Ground Lessee. Any such contest may be made in the name of Ground Lessor or Ground Lessee, as Ground Lessee may reasonably determine, and Ground Lessor shall cooperate reasonably with Ground Lessee but without expense to Ground Lessor. Ground Lessee shall be entitled to any refund of any excess payments made by Ground Lessee. In the first or last year of the Term, Ground Lessee's liability shall be apportioned so that Ground Lessee pays only for such part of the tax year that shall be included in the term of this Ground Lease.

5.3.3 Nothing herein contained shall require Ground Lessee to pay Federal or State Income Taxes assessed against the Ground Lessor, or any gift, estate, succession, inheritance or transfer taxes of Ground Lessor imposed as owner of the fee of the Premises or any taxes imposed upon

rent as such, payable by Ground Lessee under this Ground Lease; provided, however, that if at any time during the Term the methods of taxation prevailing at the Term Commencement Date hereof shall be altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and the Improvements there shall be levied, assessed and imposed a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, upon the rents received therefrom, or measured by or based in whole or in part upon the Premises and imposed upon Ground Lessor, then all such taxes, assessments, levies, impositions, or charges or any part thereof so measured or based shall be deemed to be included within the term "Impositions" for the purposes hereof to the extent that such imposition would be payable if the Premises were the only property of Ground Lessor subject to such imposition, and Ground Lessee shall pay and discharge the same as herein provided in respect of the payment of impositions. Ground Lessee shall, in addition to the foregoing, pay any new taxes of a nature not presently in effect, but which may be hereafter levied against or imposed upon Ground Lessor or the Premises if such tax shall be based on or arise out of the ownership, use or operation of the Premises.

5.3.4 Upon request of Ground Lessor, Ground Lessee shall furnish to Ground Lessor, or if requested by Ground Lessor, furnish to any Fee Mortgagee (as such term is defined herein), within twenty-five (25) business days after the date when such Imposition will become due, official receipts if available of the appropriate taxing authority, or other evidence reasonably satisfactory to Ground Lessor or such Fee Mortgagee evidencing the payment thereof. The certificate, receipt or bill of the appropriate official designated by law to make or issue the same shall be prima facie evidence that such Imposition is; due and unpaid, or has been paid at the time of the making or issuance of such certificate, receipt or bill.

5.3.5 In the event the Premises is deemed to owe "rollback taxes", Ground Lessee shall be the sole party responsible for the payment of said taxes and shall indemnify and hold harmless Ground Lessor from the payment of said taxes.

5.3.6 Ground Lessor agrees to submit to Ground Lessee all invoices which are sent to Ground Lessor for real estate taxes upon the Premises at least thirty (30) calendar days prior to the last date that the same may be paid without penalty or interest, or if a discount shall be available for early payment, at least thirty (30) calendar days prior to the last day that such discount is available, provided Ground Lessor received the invoices at least sixty (60) calendar days prior to said due dates. Otherwise, Ground Lessor shall furnish invoices to Ground Lessee within ten (10) calendar days of Ground Lessor's receipt of such invoices. Ground Lessee shall have the right to direct the taxing authorities to send tax bills directly to Ground Lessee, provided copies are simultaneously provided to Ground Lessor. In the event Ground Lessee directs the taxing authority to send tax bills directly to Ground Lessee, Ground Lessee shall notify Ground Lessor of same, in writing, and said notification shall relieve Ground Lessor from the obligation to submit invoices for real estate taxes to Ground Lessee. Upon payment of real estate taxes by Ground Lessee, Ground Lessee shall provide to Ground Lessor proof of payment of same.

5.3.7 Proration of Taxes. Ground Lessee shall reimburse Ground Lessor within thirty (30) calendar days after Ground Lessee receives from Ground Lessor an invoice for the amount of all real estate tax payments made by Ground Lessor for which Ground Lessee is liable pursuant to Section 5.3.2 hereof. Each invoice shall be accompanied by a computation of the amount payable.

(i) If the Term shall expire on any date other than the last day of a tax fiscal year, the amount payable by Ground Lessee during the tax fiscal year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to three hundred sixty-five (365). A similar proration shall be made for the tax fiscal year in which the Term commences.

(ii) Ground Lessor shall have the right to contest real estate taxes and to control any settlement thereof (i) in any Event of Default (after any applicable period to cure), and (ii) during the last five (5) years of the Term of this Ground Lease.

## **ARTICLE VI UTILITIES**

6.1 Utility Usage. Ground Lessor expressly makes no representation or warranty about the availability and/or suitability of utilities servicing the Premises. To the extent the Premises are not served by a utility or any existing utility needs to be relocated, Ground Lessee shall have the right to enter into agreements for the construction of utilities or relocation of utilities to serve the Premises and Ground Lessor shall execute such easements and agreements as may be reasonably required by the utility providers on such providers' standard forms; provided, that: (i) Ground Lessee agrees to hold Ground Lessor harmless from and against any costs arising out of such agreements during the Term; (ii) Ground Lessee ensures that at all times such utility providers have insurance no less than the amounts required hereunder; and (iii) Ground Lessee provides Ground Lessor with copies of all such executed agreements within three (3) days of execution. Ground Lessee shall pay all charges for sewer, water, gas and electricity or other services furnished to the Premises or the occupants thereof together with any required connection fees.

6.2 Non-Liability of Ground Lessor. Ground Lessor shall not be liable for any damage or injury which may be sustained by Ground Lessee or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, sewer, waste or the like or the electrical or other utility failure resulting from any reason other than the gross negligence or willful misconduct of Ground Lessor.

## **ARTICLE VII ASSIGNMENT AND SUBLETTING**

### 7.1 Assignment and Subletting.

7.1.1 Subject to the terms of **ARTICLE XVII**, Ground Lessor shall have the absolute and unconditional right, without Ground Lessee's consent, to sell, transfer, or assign, at any time and from time to time, fee title to the Premises and Ground Lessor's interest in this Ground Lease to any person, including any Fee Mortgagee. In connection with any such sale, assignment or transfer, Ground Lessor shall be entitled to transfer all of its rights, titles and interest in this Ground Lease to such purchaser, assignee or transferee (whereupon such transferee shall be deemed to have assumed all of the obligations and liabilities of Ground Lessor under this Ground Lease), without the consent of Ground Lessee, but Ground Lessee shall be given written notice of any such sale, assignment and transfer within thirty (30) days after consummation and closing thereof. In the event of any such sale or assignment, Ground Lessee shall attorn to such purchaser or assignee and Ground Lessor shall be relieved, from and after the date of such transfer or conveyance, of liability for the performance of any obligation of Ground Lessor contained

herein (except for obligations or liabilities which accrued prior to such assignment or sale), provided such assignee assumes all of Ground Lessor's obligations arising after the date of such assignment and Ground Lessee receives a copy of such assignment and assumption. Ground Lessee shall execute, acknowledge and deliver any documents reasonably requested by Ground Lessor, any such transferee, or Fee Mortgagee relating to such assignment of this Ground Lease by Ground Lessor, provided that the same do not materially reduce any of Ground Lessee's or Leasehold Mortgagee's rights hereunder, increase the monetary obligations of Ground Lessee in more than a de minimis amount, or materially increase any of Ground Lessee's or Leasehold Mortgagee's obligations hereunder or result in any adverse tax consequences to Ground Lessee.

7.1.2 As used in this **ARTICLE VII**, the term "Transfer" means (i) any sale, assignment or other transfer of Ground Lessee's interest in this Ground Lease and/or the leasehold estate, (ii) any sublease of all or substantially all of the Premises, (iii) any sale, assignment or other transfer of a sublease by Ground Lessee, and (iv) any sale, assignment or other transfer of any interest in Ground Lessee or in any person that directly or indirectly owns Ground Lessee; provided, however, that the term "Transfer" shall not include (x) any Leasehold Mortgage that is permitted under this Ground Lease, any assignment or collateral assignment of any Leasehold Mortgage entered into in accordance with the terms hereof by the Leasehold Mortgagee thereunder or the consummation of a foreclosure or deed-in-lieu of foreclosure by the holder of a Leasehold Mortgage (but any Transfer by a person that acquired Ground Lessee's interest in this Ground Lease and the leasehold estate, or the equity interests in Ground Lessee or Ground Lessee's direct or indirect owners, in each case pursuant to a foreclosure or deed-in-lieu of foreclosure, shall be a Transfer for purposes of this Ground Lease), and (y) any transfer directly as a result of the legal incapacity of a natural person, of any direct or indirect stock, partnership interests, beneficial interests or membership interests in Ground Lessee previously held by such natural person to the person or persons lawfully entitled thereto, and (z) subleases entered into in accordance with the terms of this Article.

7.1.3 Ground Lessee agrees that in the case of a permitted assignment of this Ground Lease, Ground Lessee will, not less than thirty (30) days prior to the execution and delivery of any such assignment as described in this Article, give notice of such assignment to Ground Lessor and any Fee Mortgagee.

7.1.4 Ground Lessee shall not be permitted to: (i) assign this Ground Lease; or (ii) sublet the whole of the Premises. Ground Lessee shall be permitted to sublet the Premises for the purpose of residential or commercial subleases pursuant to the Redevelopment Agreement.

(i) Each sublease of the Premises or any part thereof shall:

- 1) At all times, be subject and subordinate to the provisions of this Ground Lease;
- 2) Have a scheduled expiration no later than the calendar day immediately preceding the Expiration Date, unless otherwise required by the Legal Requirements;
- 3) Not be with an affiliate of Ground Lessee without the prior written consent of Ground Lessor; and

4) contain provisions which provide that, (A) if this Ground Lease terminates, for any reason, then at the option of Ground Lessor, such sublease shall terminate and such sublessee shall have no rights against Ground Lessor, (B) in such event, such sublessee, only at the option and request of Ground Lessor, shall attorn to Ground Lessor and recognize Ground Lessor as such sublessee's direct landlord under such sublease, and (C) such sublessee shall execute and deliver, at any time and from time to time, upon the request of Ground Lessee, Ground Lessor, any Fee Mortgagee, or any Leasehold Mortgagee, any instrument necessary or appropriate to evidence such attornment.

7.1.5 No sublease under, or permitted assignment, of this Ground Lease (or any rejection in bankruptcy or other default by any assignee or sublessee hereunder) will relieve the original Ground Lessee of its obligations hereunder, which will continue as the obligations of a principal and not as the obligations of a surety or a guarantor. Notwithstanding any merger, consolidation or sale (i) of Ground Lessee, (ii) of any parent, subsidiary or affiliate of Ground Lessee, or (iii) of any or all of the assets of Ground Lessee or any parent, subsidiary or affiliate of Ground Lessee, Ground Lessee (and any successor of Ground Lessee by such merger, sale or consolidation) will continue to be obligated for all of Ground Lessee's obligations hereunder without any abatement, diminution, set-off, reduction, rebate, termination, or decrease, except as expressly provided in this Ground Lessee. The joint and several liability of Ground Lessee and any immediate and remote successor in interest of Ground Lessee (by permitted assignment or otherwise), and the due performance of the obligations of this Ground Lease on Ground Lessee's part to be performed or observed, will not in any way be discharged, released or impaired by any (A) stipulation which extends the time within which an obligation under this Ground Lease is to be performed, (B) waiver of the performance of an obligation required under this Ground Lease, or (C) failure to enforce any of the obligations set forth in this Ground Lease.

7.1.6 Upon the occurrence and during the continuance of an Event of Default (as such term is defined herein) under this Ground Lease, Ground Lessor (and/or Ground Lessor's designee) will have the right to collect and enjoy all rents and other sums of money payable under any sublease of all or any portion of the Premises, and Ground Lessee hereby irrevocably and unconditionally assigns such rents and money to Ground Lessor (and/or Ground Lessor's designee), which assignment(s) may be exercised upon and after (but not before) the occurrence of an Event of Default so long as such Event of Default is continuing. All amounts collected by Ground Lessor (and/or Ground Lessor's designee) hereunder shall be applied by Ground Lessor in any manner or order of priority it chooses in its sole and absolute discretion. In the event this Lease is terminated following an Event of Default or otherwise in accordance with the terms hereof and the Leasehold Mortgagee fails to enter into a New Lease (as such term is defined herein) by the end of the New Lease Option Period (as such term is defined herein, and to the extent applicable), Ground Lessor, may, in its sole discretion (without any obligation to do so), elect to recognize any one or more of the subleases as a direct lease between Ground Lessor (and/or Ground Lessor's designee) and such sublessee. Under no circumstances shall Ground Lessor (and/or Ground Lessor's designee) have liability under any subleases unless and until Ground Lessor so elects to recognize such sublease.

7.1.7 If a Transfer occurs in violation of the provisions of this Article then such Transfer shall be void and of no force and effect against Ground Lessor; provided, however, Ground Lessor (or its designee) may collect an amount equal to the then Rent from the transferee, assignee, subtenant, or other applicable party as a fee for its use and occupancy of the Premises. If the Premises or any part thereof is sublet to, or occupied by, or used by, any person other than Ground Lessee, whether or

not in violation of this Article, Ground Lessor (or its designee), after the occurrence of and during the continuance of an Event of Default, including, without limitation, a subletting or occupancy in violation of this Article, may collect any item of Rent or other sums paid by any sublessee, user or occupant as a fee for its use and occupancy, and shall apply the net amount collected to the Rent reserved in this Ground Lease. No Transfer, subletting, occupancy or use, whether with or without Ground Lessor's prior consent, nor any such collection or application of Rent or fee for use and occupancy, shall be deemed a waiver by Ground Lessor of any term, covenant or condition of this Ground Lease or, except as expressly provided in such consent or as expressly provided otherwise in this Article, the acceptance by Ground Lessor of such assignee, sublessee, occupant or user as ground lessee hereunder. The consent by Ground Lessor to any Transfer, subletting, occupancy or use, to the extent required under this Article, shall not relieve Ground Lessee from its obligation to obtain the express prior consent of Ground Lessor to any further Transfer, subletting, occupancy or use which requires Ground Lessor's consent hereunder.

## **ARTICLE VIII ALTERATIONS, MAINTENANCE AND REPAIRS**

8.1 Alterations and Repairs. Ground Lessee shall, at its sole cost and expense, construct the Improvements on the Premises, and in connection therewith shall do all site work, paving and other work so that the Premises will be suitable for the Improvements and in accordance with the Permitted Use and the Response, as approved or modified by Linden. All demolitions, removals, constructions, changes, additions, expansions, modifications, reconstructions, repairs or replacements of any of the Improvements, both interior or exterior, and ordinary and extraordinary, whether voluntary or in connection with any restoration, repair, replacement or rebuilding, performed by Ground Lessee shall be required or permitted to do under the provisions of this Ground Lease (collectively, "Alterations") shall be performed in a first-class workmanlike manner and in accordance with all Legal Requirements, Insurance Requirements, the plans and specifications submitted therefor, the Response, as approved or modified by Linden. Upon the completion of each Alteration, the Alterations shall be deemed Improvements under this Ground Lease. No building will be erected on the Premises that extends to or abuts any property line of the Premises or that is used as part of a building located in whole or in part on property other than the Premises.

8.1.1 At all times, Ground Lessee and/or any Ground Lessee's Agent performing the Alterations, shall have valid building permits (including any Required Permits) for such construction and shall use first class materials reasonably approved by Ground Lessor. All permits, certificates and other authorizations, including the Required Permits, shall be obtained by Ground Lessee, at Ground Lessee's sole cost and expense. Ground Lessee shall obtain a temporary or permanent certificate of occupancy from Linden prior to occupying the Premises for the Permitted Use and shall obtain all other requisite certificates as required by law.

8.1.2 Any entry on the Premises by Ground Lessee and/or any Ground Lessee's Agent shall be deemed to be under and subject to all of the terms, covenants, provisions and conditions of this Ground Lease.

8.1.3 Ground Lessee is solely liable and responsible for all materials, work, installations, equipment, decorations, and other items that are brought upon or installed in or on the Premises, and Ground Lessee shall have no liability whatsoever in connection therewith.

8.1.4 Any signs posted by Ground Lessee or its Leasehold Mortgagees (as such term is defined herein) or any Ground Lessee's Agent shall be in conformance (in all material respects) with all Legal Requirements.

8.1.5 Promptly after completion of the construction of the Project, and again upon completion of any Alterations (other than minor Alterations or other Alterations for which as-built plans are not customary), Ground Lessee, at no cost to Ground Lessor, shall provide Ground Lessor with a complete set of as-built plans and specifications therefore.

8.1.6 All Improvements (including all Alterations) and fixtures, whether temporary or permanent in character, made in or to the Premises by Ground Lessee, shall become part of the Premises at the expiration or termination of this Ground Lease (and such expiration or termination is not the result of Ground Lessee exercising its rights under **ARTICLE XVII**), except those which are readily removable without causing material damage to the Premises (which shall be the property of the Ground Lessee).

8.2 Fixtures. Any inventory, furniture, machinery and equipment that Ground Lessee or its sublessee's use or install on the Premises prior to or during the Term, whether or not the law deems it to be part of the realty, and any other personal property, shall become Ground Lessor's property at the end of the Term provided Ground Lessee has not purchased the Premises in accordance with **ARTICLE XVII** or at the termination of this Ground Lease before the conclusion of the Term, (collectively, "Ground Lessee's Personal Property").

8.3 Liens. Ground Lessee shall promptly pay when due the entire cost of all work done by Ground Lessee or any Ground Lessee's Agent to the Premises and shall keep the Premises free of any and all liens, including, but not limited to, liens for labor or materials. Should construction, mechanics', materialmen's or other liens be filed against the Premises by reason of the acts of Ground Lessee or anyone claiming under Ground Lessee, then Ground Lessee shall cause the lien to be canceled and discharged of record by bond or otherwise within thirty (30) calendar days of receiving actual notice of such lien at no cost to Ground Lessor.

8.3.1 Ground Lessee shall be permitted to contest any liens if: (i) Ground Lessee provides Ground Lessor and any Leasehold Mortgagee an amount of cash or bond equal to one hundred twenty-five percent (125%) of the amount being contested, or other form of security satisfactory in the reasonable opinion of any Leasehold Mortgagee and Ground Lessee in assuring the payment, compliance, discharge, removal or other action, including all costs, attorneys' fees, interest and penalties, in the event that the contest is unsuccessful (which cash, bond or other security shall be sufficient to pay such lien and all associated costs and expenses thereto); and (ii) indemnify Ground Lessor and any Ground Lessee from and against any Loss (as such term is defined herein) arising from or related to such lien or contest of such lien.

8.3.2 The Parties hereto agree that Ground Lessor shall not be at any time liable or responsible for the cost, in whole or in part, of any Improvement or other work, labor or materials performed by or on behalf of Ground Lessee or any Ground Lessee's Agent of any kind or nature whatsoever, whether or not such work, labor or materials are required of Ground Lessee pursuant to the provisions hereof in connection with or upon the Premises.

8.3.3 Ground Lessee agrees that in the event any Ground Lessee's Agent or any person whatsoever shall seek to impose a lien on the Premises or any part thereof, for work performed by, for or on behalf of Ground Lessee, by the service of or filing of a notice of any nature or kind whatsoever as may be contemplated under applicable Legal Requirements, or in the event any such Ground Lessee's Agent or such other person shall, under applicable Legal Requirements, file a stop notice relating to work or labor done or material supplied at, to or for the Premises, Ground Lessee shall forthwith proceed to obtain an effective cancellation or discharge of such lien, notice and/or stop notice by bonding or otherwise in writing in form which will be accepted for filing by Linden. If Ground Lessee shall be unable to procure such effective cancellation or discharge within thirty (30) calendar days following the filing of any such lien or notice, Ground Lessor shall have the right to do either or both of the following:

(i) Declare an Event of Default under this Ground Lease; and/or

(ii) Take such steps and pay such monies as may be necessary to obtain an effective cancellation or discharge of such lien, notice and/or stop notice in which event such monies as shall be expended by Ground Lessor, together with interest shall be considered Additional Rent hereunder and shall be due and payable on demand by Ground Lessor. Interest shall be five percent (5%) percent in excess of the prime rate of the Wall Street Journal or its successors.

8.4 Maintenance, Repair and Replacement. Ground Lessee, at its own cost and expense, shall take good care of and maintain, repair and replace, as applicable, (i) the Premises, including but not limited to all Improvements and Ground Lessee's Personal Property therein, thereon or that which may service the Premises, (ii) all rights of way, curbs and appurtenances thereto, and (iii) any easements in accordance with any maintenance and repair obligations relating thereto, and shall keep all of the foregoing in good order and condition, and free of any dirt, rubbish, snow, ice, nuisances, and unlawful obstructions. Ground Lessor shall have no maintenance, repair or replacement obligations under this Ground Lease.

## **ARTICLE IX INSURANCE AND INDEMNIFICATION**

9.1 Ground Lessee's Insurance. Ground Lessee shall cause insurance coverage types and amounts to be maintained during the periods stated (collectively, the "Insurance Requirements") as set forth on Schedule 9.1 attached hereto and incorporated by reference herein. Ground Lessee and Ground Lessor agree that every three (3) years the Insurance Requirements shall be updated to reflect the current market insurance levels. Notwithstanding, Ground Lessor, in its sole discretion, reserves the right to review and amend the Insurance Requirements contained in this Ground Lease and may require additional insurance coverage and in such amounts as Ground Lessor may require. Ground Lessee, and all of its agents, contractors or consultants doing work on the Premises, shall provide such additional types of insurance in such amounts as Ground Lessor shall require. All insurance policies required pursuant to this Section 9.1 and contained on Schedule 9.1 are subject to the prior written approval of Ground Lessor and shall include waivers of subrogation against Ground Lessor. All insurance policies required pursuant to Section 9.1 and contained on Schedule 9.1 shall contain an endorsement stating that the policy is not subject to cancellation or material change until thirty (30) calendar days after Ground Lessor has received written notice thereof as evidenced by return receipt of certified letter to Ground Lessor.

9.2 Insurance Certificates. All of the foregoing insurance policies required pursuant to Section 9.1 above shall be written with companies licensed to do business in New Jersey with an AM Best rating of A-VII or better. All such policies may be maintained under Ground Lessee's blanket insurance coverage so long as they otherwise comply with the requirements set forth above. Ground Lessee shall furnish Ground Lessor with a certificate of insurance along with the additional insured endorsement evidencing the coverage required to be carried by Ground Lessee hereunder.

9.3 Insurance Covenants. Ground Lessee shall not permit any Insurance Requirement to lapse nor shall Ground Lessee fail to maintain the Insurance Requirements hereunder. Ground Lessee shall furnish Ground Lessor a Certificate of Insurance on the date that each Insurance Requirement is required to be obtained evidencing that all such Insurance Requirement is in effect and that Ground Lessor will be given at least five (5) days prior written notice of cancellation or non-renewal. Not later than thirty (30) days prior to the expiration of any insurance policy, evidence of renewals or replacement certificates shall be delivered to Ground Lessor. In the event Tenant shall fail to procure any Insurance Requirement required under the terms hereof or any renewal of or replacement for any Insurance Requirement that is expiring or has been canceled, after reasonable prior notice to Ground Lessee, Ground Lessor may, but shall not be obligated to, procure such Insurance Requirement on behalf of Ground Lessee and the cost thereof shall be payable to Ground Lessor as Additional Rent within ten (10) days following written demand therefore.

9.4 Indemnification. The Ground Lessee, its affiliates and subsidiaries (in this capacity, the "Indemnitor") shall indemnify, pay, protect, defend, save and hold harmless Ground Lessor and its employees, officers, trustees, contractors, representatives, and agents (in this capacity, collectively, the "Indemnitee") from and against any and all actions, damages, liabilities, losses, claims, demands, costs, expenses (including reasonable attorneys' fees and litigation costs (which includes but is not limited to the Indemnitor's defending itself against any loss or enforcing the Indemnitor's duty to indemnify Indemnitee), liens (including construction liens), proceedings, economic loss, and judgments of any nature arising from or in connection with: (i) any injury to, or death of, or personal injury of any person, or loss or damage to the Premises or any property of the Indemnitor which is caused by the Indemnitor and /or any Ground Lessee's Agent (or any party related to Ground Lessee's affiliates and subsidiaries that would otherwise classify as a Ground Lessee's Agent were they performing for Ground Lessee); (ii) Leased Premises the use, non-use, occupancy, condition, design, construction, maintenance, repair, rebuilding, of any of or otherwise relating to, the Premises or any part thereof, whether or not any of the Indemnitees had or should have had knowledge or notice of the defect or conditions; and (iii) any lien or claim which may be alleged to have arisen against or on the Premises, or any lien or claim which may be alleged to have arisen out of this Ground Lease and created or permitted to be created by, through or under Ground Lessee against any assets of Ground Lessor under any Legal Requirement, or any liability which may be asserted against Ground Lessor with respect thereto .

## **ARTICLE X DAMAGE OR DESTRUCTION**

10.1 Damage and Destruction. If the Premises is damaged or destroyed during the Term by a fire or other casualty ("Casualty"), this Ground Lease shall continue in effect (except as herein specifically provided) and Ground Lessee's obligation to rebuild or restore the Premises shall be as follows:

10.1.1 Except as provided in Section 10.1.2 below, Ground Lessee shall repair any damage to the Premises and restore the same (as nearly as practicable) to its condition prior to the Casualty or to an alternative condition and plan then suitable to the needs of Ground Lessee but having a market value at least equivalent to the market value of the Premises prior to the Casualty and in accordance with the original Required Permits.

10.1.2 During the last two (2) years of the Term, Ground Lessee shall have the right to not restore or repair any damage and to terminate this Ground Lease as of the date of such damage or destruction. If Ground Lessee exercises such right of termination, the entire Fund (defined in Section 10.2 below) shall be retained by or paid to Ground Lessor and Ground Lessee shall have no right or interest in or to the Fund.

10.2 Casualty Fund. The net amount of the insurance proceeds, if any, on account of such damage or destruction to the Premises, after reimbursement out of such proceeds for any costs and expenses (including reasonable attorneys' fees) for collection thereof, and any deposits made by Ground Lessee pursuant to the provisions of Section 10.4 (such net proceeds and deposits being collectively called the "Fund") shall be received by Ground Lessor and held by Ground Lessor at a banking institution reasonably acceptable to Ground Lessor and Ground Lessee in an interest-bearing account (with interest being added to the Fund), and such Fund shall be applied by Ground Lessor in accordance with the following provisions:

10.2.1 Ground Lessee shall be entitled out of the Fund to the cost to Ground Lessee of making temporary repairs or doing other work to protect the Premises pending adjustment of the insurance loss or the making of permanent repairs, restoration, replacements or rebuilding.

10.2.2 Ground Lessee shall be entitled, out of the Fund, to payments from time to time as the work progresses in amounts equal to a maximum of ninety percent (90%) of the cost of labor and material incorporated into and used in such work and one hundred percent (100%) of soft costs (including architects' and engineers' fees), provided and upon condition that (i) the work shall have been done substantially in accordance with the plans and specifications therefor, any other requirements contained in this Section, and the provisions of **ARTICLE VIII** and **ARTICLE IX**, (ii) the remaining amount of the Fund shall be sufficient to pay in full for all of the remaining work (or Ground Lessee shall have provided, to Ground Lessor's reasonable satisfaction, evidence of available funds in excess of the Fund sufficient to pay in full for the remaining work), and (iii) a certificate of a registered architect or professional engineer satisfactory to Ground Lessor stating that such conditions have been met shall have been delivered to Ground Lessor.

10.2.3 Ground Lessee shall be entitled out of the Fund to the remaining ten percent (10%) of the cost of labor and material incorporated into and used in such work when such work shall have been substantially completed and paid for in accordance with the provisions of this Ground Lease and a certificate of a registered architect or professional engineer satisfactory to Ground Lessor stating that such conditions have been met shall have been delivered to Ground Lessor.

10.2.4 At Ground Lessor's request, Ground Lessee shall furnish to Ground Lessor at the time of any such progress or final payment, a title search or other evidence satisfactory to Ground Lessor that the Premises and the interests therein of Ground Lessor and Ground Lessee shall be free from (i) liens for labor performed or claimed to have been performed or materials supplied or claimed to have

been supplied and (ii) chattel mortgages, conditional sales contracts, title retention agreements, security interests and agreements, financing agreements, financing statements and any similar agreements, in connection with such work (except as permitted under **ARTICLE XVIII** hereof). Notwithstanding any provision to the contrary, Ground Lessee shall not be entitled to any amount out of the Fund while any such lien or other encumbrance shall remain unsatisfied of record.

10.3 Any amounts received by Ground Lessee out of the Fund shall be held by Ground Lessee in trust and applied only for the purpose of repairing, restoring, replacing or rebuilding the Premises. Any excess in the Fund not used to repair, restore or rebuild the Premises shall be paid to Ground Lessor.

10.4 If the net amount of the insurance proceeds, if any, on account of such damage or destruction shall be insufficient to pay the entire cost of such work (as estimated by a registered architect or professional engineer reasonably satisfactory to Ground Lessor, which estimate shall be delivered to Ground Lessor before the commencement of such work), Ground Lessee shall, prior to commencing such work, deposit the amount of the deficiency into the Fund, and thereafter from time to time such additional amounts as shall be needed to meet any increases in estimates made by said registered architect or professional engineer. If the net amount of said insurance proceeds, if any, shall be insufficient to pay the entire cost of such work, Ground Lessee shall pay and be responsible for the deficiency.

10.5 If any of such insurance proceeds shall remain after the full completion of such repairs, restoration, replacements or rebuilding, the excess shall be retained by or paid over to Ground Lessee.

10.6 Ground Lessee shall commence the work to be performed by it under this Article within sixty (60) calendar days from the date of such damage or destruction (which period Ground Lessor shall extend upon Ground Lessee's reasonable request from time to time), and shall complete the same in accordance with the provisions of this Ground Lease with reasonable diligence and as promptly as may be practicable. If Ground Lessee fails to comply with any of the provisions of this Article, Ground Lessor shall have the right, but not the obligation, after thirty (30) calendar days' notice to Ground Lessee and without waiving or releasing Ground Lessee from any obligations of Ground Lessee hereunder, to do the repair, replacement or rebuilding as is required under the provisions of this Article, in which event the moneys then in the Fund and the moneys which Ground Lessee is obligated to add to the Fund and/or to pay toward any deficiency shall be made available to such person performing such work.

10.7 Except as expressly provided to the contrary, the provisions of this Ground Lease shall be unaffected by any damage or destruction by fire or other cause, whether or not covered by insurance, and Ground Lessee shall remain and continue liable for the payment of all Option Payments, Base Rent, Additional Rent, Purchase Price and other charges payable by Ground Lessee hereunder, without reduction or abatement.

10.8 Ground Lessor and Ground Lessee shall cooperate with each other, to such extent as such other Party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of, any insurance proceeds that may be due in the event of any loss, and each Party will execute, acknowledge and deliver to the other such instruments as may be required to facilitate the recovery of any insurance proceeds.

10.9 Ground Lessee shall give prompt notice to Ground Lessor of all fires and other occurrences in, on or about the Premises which result in any personal injury or death or in any damage or destruction to the Premises or any part thereof.

## **ARTICLE XI EMINENT DOMAIN**

11.1 Automatic Termination. If, after the Effective Date and prior to the expiration of the Term, the whole of the Premises shall be taken under power of eminent domain by any public or private authority (collectively, "Condemnation"), then this Ground Lease and the Term shall cease and terminate as of the date of such taking, subject, however, to the right of Ground Lessee, at its election, to continue to occupy the Premises, subject to the terms and provisions of this Ground Lease, for all or such part, as Ground Lessee may determine, of the period between the date of such taking and the date when possession of the Premises shall be taken by the taking authority, and subject to Ground Lessee's obligation to pay any Option Payment, Base Rent and Additional Rent through the date it relinquishes possession of the Premises.

11.1.1 Notwithstanding any other provision herein set forth, in the event of a taking of less than substantially all of the Premises, this Ground Lease shall continue unaffected subject to all of the terms and conditions hereof, it being understood that the distribution of proceeds of any condemnation award shall be made as set forth herein.

11.1.2 Notwithstanding any other provision herein set forth, in the event of a taking of more than substantially all of the Premises, Ground Lessee herein shall have the right to elect, upon written notice to Ground Lessor, to continue this Ground Lease with regard to the remaining Premises subject to all of the terms and conditions hereof, it being understood that the distribution of proceeds of any condemnation award shall be made as set forth herein.

11.2 Partial Taking. In the event of a Condemnation with respect to which Ground Lessee shall not have the right to elect to terminate this Ground Lease or, having such right, shall not elect to terminate this Ground Lease, this Ground Lease and the Term shall continue in full force and effect for that portion of the Premises which shall not have been expropriated or taken.

11.3 Award - Lease Not Terminated. In the event of a Condemnation of any portion of the Premises and the Ground Lease is not terminated, the award (together with any interest which may have accrued thereon) paid by the condemning authority (after payment of expenses incurred in connection with collecting the same) shall be allocated as follows:

11.3.1 First, Ground Lessee shall receive so much of the award as is necessary to restore the Premises and the Improvements and for the value of the Premises, the Improvements and Ground Lessee's fixtures taken, which value shall be determined by the condemning authority; and

11.3.2 Second, Ground Lessor shall receive the value of the damage to its remainder interest in the Premises, which value shall be determined by the condemning authority.

11.3.3 If at any time during the term of this Ground Lease there shall be a taking of unimproved land, then and in that event, Ground Lessor herein shall be entitled to the full award for

the land and any and all damages by virtue of such taking, and this Ground Lease shall continue in full force and effect but the Base Rent shall be reduced subsequent to the taking as provided herein. All provisions hereof shall continue in full force and effect, and the Premises shall consist of that portion of the Premises remaining subsequent to such taking.

11.4 Award - Lease Terminated. In the event of a Condemnation and this Ground Lease is terminated as herein provided, the award (together with any interest which may have accrued thereon) paid by the condemning authority (after payment of expenses incurred in connection with collecting the same) shall be allocated as follows:

11.4.1 Ground Lessee shall receive so much of the award equitably attributable to the taking of Ground Lessee's interest under this Ground Lease, the value of the unexpired Term (net of future Rent payable by Ground Lessee), the Improvements, Ground Lessee's fixtures, equipment, landscaping, signs, moving and relocation expenses which value shall be determined by the condemning authority;

11.4.2 Ground Lessor shall receive so much of the award equitably attributable to Ground Lessor's interest in the Ground Lease and its reversionary interest and value of the land making up the Premises itself which value shall be determined by the condemning authority.

11.4.3 Nothing herein contained shall be construed as preventing Ground Lessee from being entitled to any separate award made to Ground Lessee for the taking of Alterations and/or Ground Lessee's Personal Property, or from claiming all or any portion of its award directly against the condemning authority.

11.5 Termination. In the event of any termination of this Ground Lease as the result of the provisions of this **ARTICLE XI**, the Ground Lessor and Ground Lessee, effective as of such termination, shall be released, each to the other, from all liability and obligations thereafter arising under this Ground Lease, and this Ground Lease shall become null and void and of no further force or effect, except for any then-pending obligation of Indemnitor to indemnify the Indemnitee as set forth in this Ground Lease, and except for the warranties and representations of Ground Lessor under **ARTICLE XIX** and the Surrender Provisions of Section 20.18 and except for an amount equal to all Option Payments, Base Rent and Additional Rent through the date of termination.

## **ARTICLE XII SELF HELP**

12.1 Self Help. If an Event of Default occurs related to the performance of any obligation (including obligations to reimburse or pay money hereunder) imposed on it by this Ground Lease and Ground Lessee does not cure such Event of Default within thirty (30) calendar days after written notice from Ground Lessor specifying the Event of Default, Ground Lessor, without waiver of or prejudice to any other right or remedy it may have, shall have the right but not the obligation, at any time thereafter, to cure such Event of Default for the account of Ground Lessee, if applicable, and Ground Lessee shall reimburse Ground Lessor within ten (10) calendar days upon receipt of the invoice for any reasonable amount paid and any Reasonable Expense so incurred (which, in the case of a monetary Event of Default, shall be the amount of money owed by the Ground Lessee). "Reasonable Expense" shall mean the reasonable and documented expense incurred by Ground Lessor as a consequence of Ground Lessee's

uncured Event of Default. If such Event of Default cannot be cured within the time frames set forth in **Article XIII**, no self-help will be available if, during the cure period, Ground Lessee is diligently proceeding to cure such Event of Default. Where necessary to prevent injury to persons or damage to property, Ground Lessor may cure an Event of Default before the expiration of the prescribed notice period, but after giving such written or oral notice to the Ground Lessee as is practical under the circumstances. Notwithstanding anything to the contrary herein, any Event of Default occurring related to Ground Lessee's failure to maintain any of the Insurance Requirements, Ground Lessor shall be permitted to take any self-help action if such Event of Default has not been cured within one (1) business day.

### **ARTICLE XIII DEFAULT**

13.1 Events of Default. The occurrence of any one (1) or more of the following events will constitute an event of default (an "Event of Default") under this Ground Lease:

13.1.1 Ground Lessee's failure to make any payments of Base Rent, Additional Rent, Option Payments or any other sum herein required to be paid by Ground Lessee when due and continues for a period of ten (10) days after written notice by Ground Lessor.

13.1.2 Ground Lessee's failure to duly perform and observe the provisions of Section 20.12 subject to the time periods set forth therein.

13.1.3 Ground Lessee's failure to commence construction on or before the date that is twenty-four (24) months following the expiration of the Permit and Approval Period. Notwithstanding anything to the contrary herein, in the event of the foregoing, Ground Lessee shall not be entitled to any notice, grace or cure period.

13.1.4 Ground Lessee's failure to: (i) maintain Insurance Requirements substantially in accordance with the requirements of this Ground Lease, including in **ARTICLE IX**; (ii) adhere to the Insurance Requirements covenants set forth in **ARTICLE IX**; or (iii) upon Ground Lessor receiving notice of Ground Lessee's failure to maintain any Insurance Requirement, cure any lapse of Insurance Requirement or failure to maintain such Insurance Requirement within three (3) Business Days of Ground Lessor's notice thereof.

13.1.5 If Ground Lessee (i) is adjudicated bankrupt or insolvent in a bankruptcy action, or (ii) consents to the appointment of a receiver or trustee for itself or for any of the Premises, (iii) files or acquiesces to (as applicable) a voluntary or involuntary petition seeking relief under Title 11 of the United States Code (the "Bankruptcy Code") which seeks relief under the Bankruptcy Code undischarged and unstayed ninety (90) days after it is entered, (iv) makes a general assignment for the benefit of creditors, or (v) is liquidated or dissolved or begins proceedings toward its liquidation or dissolution.

13.1.6 A court enters an order, judgment or decree appointing a receiver or trustee for it or for any of the Premises or approving a petition filed against Ground Lessee which seeks relief under the Bankruptcy Code undischarged and unstayed ninety (90) days after it is entered.

13.1.7 Any judgment or lien is levied upon or attached on the Premises (other than if such judgment or lien is levied solely because of an act or omission of the Ground Lessor) and such estate or interest is about to be sold or transferred or such process is not vacated or discharged within ninety (90) days after such levy or attachment (subject to Ground Lessee's rights to contest the same pursuant to and in accordance with the terms and conditions set forth in this Ground Lease).

13.1.8 Any representation or warranty made by Ground Lessee herein proves to have been incorrect when made in any material respect, such incorrect representation or warranty has, or is reasonably expected to have, a material adverse effect on Ground Lessor or the Premises, and, if Ground Lessee did not intentionally make such false representation or warranty, Ground Lessee does not take such action as Ground Lessor may reasonably require to protect Ground Lessor from or compensate Ground Lessor for such material adverse effect within thirty (30) days after receipt by Ground Lessee of written notice from Ground Lessor; provided, however, in cases where Ground Lessee intentionally made such materially and adversely false representation and warranty of Ground Lessor or intentionally breached a covenant of Ground Lessee that materially and adversely affected Ground Lessor, no cure or correction period shall exist.

13.1.9 Any fraud or embezzlement against Ground Lessor or with respect to the Premises on the part of Ground Lessee as determined by a final, non-appealable decision of court of competent jurisdiction; provided, however, notwithstanding the foregoing, if an Event of Default occurs pursuant to this clause and (i) was caused by an officer or employee of Ground Lessee, such event shall not be an Event of Default if (x) Ground Lessee removes the offending officer or employee from any duties related to the Premises promptly after Ground Lessee becomes aware of such conduct, as confirmed by Ground Lessor to its reasonable satisfaction, (y) such Event of Default is cured within thirty (30) days following Ground Lessee becoming aware of such Event of Default, and (z) Ground Lessee, at its sole cost and expense indemnifies Ground Lessor for any Losses sustained by Ground Lessor and any Indemnitee, which amounts shall be paid in full within thirty (30) days after receipt by Ground Lessee of notice from Ground Lessor of any such Losses.

13.1.10 With respect to any non-monetary Event of Default under the Ground Lease under any of the other terms, covenants, or conditions of this Ground Lease not specified in Section 13.1.1 to Section 13.1.8 above, if such Event of Default continues for a period of thirty (30) days after written notice by Ground Lessor thereof, provided, that if such Event of Default cannot be cured within such period of thirty (30) days, such period will be extended for such longer time as reasonably necessary provided that Ground Lessee has commenced to cure such Event of Default within said period of thirty (30) days and is actively, diligently and in good faith proceeding with continuity to remedy such Event of Default, but in no event shall the cure period for any non-monetary Event of Default exceed ninety (90) days, in the aggregate. Ground Lessee agrees that after receiving any such notice of Event of Default referred to herein, Ground Lessee will, upon request of Ground Lessor or any Fee Mortgagee, advise the requesting party of Ground Lessee's progress in curing such Event of Default. For the avoidance of doubt, the cure periods set forth in this Section 13.1.10 set forth in this Section 13.1.10 shall not apply to any Event of Default arising out of Section 13.1.4.

13.2 Ground Lessor's Remedies. Upon the occurrence of an Event of Default, with or without notice or demand, except to the extent such notice is expressly required in this Ground Lease, Ground Lessor shall be entitled, to exercise, at its option (in its sole and absolute discretion), concurrently,

successively, or in any combination, all remedies available at law or in equity, including, without limitation, any one (1) or more of the following:

13.2.1 Under and subject to the rights of any Leasehold Mortgagee, terminate Ground Lessee's right to possession of the Premises by any lawful means, in which case this Ground Lease shall terminate and Ground Lessee immediately shall surrender possession of the Premises and the Improvements to Ground Lessor. In such event Ground Lessor shall be entitled to recover from Ground Lessee all damages incurred by Ground Lessor by reason of such Event of Default including (i) the cost of recovering possession of the Premises; (ii) the worth at the time of the award of any unpaid Base Rent, Additional Rent and Option Payments which had been earned at the time of termination; (iii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and Option Payments which would have been earned after the termination until such time as Ground Lessor relets the Premises; (iv) reasonable expenses of placing the Premises in good order, condition and repair; (v) reasonable expenses of reletting, including any necessary renovation or alteration of the Premises; (vi) reasonable and actual attorneys' fees; (vii) that portion of any leasing commission paid by Ground Lessor and applicable to the unexpired Term of this Ground Lease; and (ix) any other amount necessary to compensate Ground Lessor for all the detriment proximately caused by Ground Lessee's failure to perform its obligations under this Ground Lease or which in the ordinary course of things would be likely to result therefrom. As used above, the "worth at the time of award" is computed by (x) allowing interest at the Default Rate (as such term is defined below) with respect to accrued amounts and (y) discounting such amounts to net present value with respect to future rental amounts, at a rate of ten percent (10%) per annum. Notwithstanding Ground Lessor's obligation to give notice to Ground Lessee prior to commencing a collection action, interest shall accrue on any outstanding monetary obligation, beyond its due date at a rate of five percent ( 5%) over the Wall Street Journal Prime Rate (which can be substituted for another reputable publisher of the Prime Rate if the Wall Street Journal is no longer in business), or the highest lawful rate, whichever is lower (the "Default Rate").

13.2.2 Under and subject to the rights of any Leasehold Mortgagee, Ground Lessor shall have the right to terminate Ground Lessee's right to possession of the Premises and repossess the Premises by any lawful means without terminating this Ground Lease. Ground Lessor shall use good faith and commercially reasonable efforts, to the extent required by applicable law of the state where the Premises are located, to re-let the Premises, in whole or in part, for the account of Ground Lessee for such Rent and upon such terms as may be satisfactory to Ground Lessor in Ground Lessor's sole discretion. For the purposes of that re-letting, Ground Lessor may repair and perform normal remodeling and Alterations to the Premises. If Ground Lessor fails to re-let the Premises, Ground Lessee shall pay to Ground Lessor the Base Rent, Additional Rent and Option Payments in this Ground Lease for the balance of the Term as those amounts become due in accordance with the terms of this Ground Lease (to the extent Ground Lessor has not exercised its right in Section 13.2.1 above to accelerate such amounts). If Ground Lessor re-lets all or any part of the Premises, but fails to realize a sufficient sum from the re-letting to pay the full amount of Base Rent, Additional Rent and Option Payments in this Ground Lease for the balance of the Term as those amounts become due in accordance with the terms of this Ground Lease, after paying all of the costs and expenses of all normal and customary decoration, repairs, and Alterations and the expenses of the re-letting and of the collection of the rent accruing from the re-letting, Ground Lessee shall pay to Ground Lessor the amount of any deficiency upon Ground Lessor's demand from time to time made. The timing of any such demands (and lawsuits relating thereto) shall be in the sole discretion of

Ground Lessor; and irregular demands or lawsuits relating thereto shall not be deemed a waiver of any claims or rights of Ground Lessor under this Ground Lease or otherwise at law or equity.

13.2.3 Maintain Ground Lessee's right to possession, in which case this Ground Lease shall continue in full force and effect whether or not Ground Lessee shall have abandoned the Premises. In such event Ground Lessor shall be entitled to enforce all of Ground Lessor's rights and remedies under this Ground Lease, including the right to recover Base Rent, Additional Rent and Option Payments as may become due hereunder.

13.2.4 Subject to the rights of any Leasehold Mortgagee, provided that Ground Lessor has first exercised its rights under either Section 13.2.1 or Section 13.2.2 above, to remove all or any portion Ground Lessor's tangible personal property and cause the same to be stored in a public warehouse or elsewhere at Ground Lessee's sole expense, without becoming liable for any loss or damage resulting therefrom and without resorting to legal or judicial process, procedure or action.

13.2.5 To bring an action against Ground Lessee for any damages sustained by Ground Lessor or, subject to the rights of any Leasehold Mortgagee, any equitable relief available to Ground Lessor.

13.2.6 To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Ground Lessee held by Ground Lessor under this Ground Lease against any sum owing by Ground Lessee.

13.2.7 To, for an Event of Default described in Section 13.1.3 herein, elect to: (i) terminate this Ground Lease in accordance with Section 13.2.1; or (ii) require that Ground Lessee purchase the Premises in accordance with the terms of **ARTICLE XVII** herein.

13.2.8 Subject to the rights of any Leasehold Mortgagee, to seek any equitable relief available to Ground Lessor, including, without limitation, the right of specific performance.

13.2.9 All powers and remedies given by this Section 13.2 to Ground Lessor, subject to applicable Legal Requirements, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Ground Lessor under this Ground Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Ground Lessee contained in this Ground Lease, and no delay or omission of Ground Lessor to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section 13.2 or by law to Ground Lessor may be exercised from time to time, and as often as may be deemed expedient, by Ground Lessor, subject at all times to Ground Lessor's right in its sole judgment to discontinue any work commenced by Ground Lessor or change any course of action undertaken by Ground Lessor. In the event of any breach or threatened breach by Ground Lessee of any of the covenants, agreements, terms or conditions contained in this Ground Lease, Ground Lessor shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Ground Lease.

13.2.10 Except as expressly provided to the contrary herein or prohibited by applicable Legal Requirements, Ground Lessee hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end which may otherwise be required to be given under any present or future law. Ground Lessee, for and on behalf of itself and all persons claiming by, through or under Ground Lessee, also waives any and all rights of redemption provided by any statute now in force or hereafter enacted or otherwise and any rights of re-entry or repossession or to restore the operation of this Ground Lease in case Ground Lessee shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Ground Lessor or in case of any expiration or termination of this Ground Lease, whether such dispossession, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Ground Lease. The terms “enter”, “reenter”, “entry” or “reentry”, as used in this Ground Lease shall not be restricted to their technical, legal meanings.

13.2.11 No receipt of monies by Ground Lessor from Ground Lessee after termination of this Ground Lease, or after the giving of any notice of termination of this Ground Lease shall reinstate, continue or extend the Term or affect any notice theretofore given to Ground Lessee, or operate as a waiver of the right of Ground Lessor to enforce the payment of Rent and any Option Payments payable by Ground Lessee hereunder or thereafter falling due, or operate as a waiver of the right of Ground Lessor to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Ground Lease or the commencement of suit or summary proceedings, or after final order or judgment for the possession of the Premises, Ground Lessor may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises (to the extent not duplicative of Rent being paid for the same period) or, at the election of Ground Lessor, on account of Ground Lessee’s liability hereunder.

**ARTICLE XIV  
INTENTIONALLY OMITTED**

**ARTICLE XV  
QUIET ENJOYMENT**

15.1 Covenant of Quiet Enjoyment. Ground Lessor covenants and warrants that it is the fee owner of the Premises, subject only to those matters set forth in **Exhibit E** attached hereto and by this reference made a part hereof (the “Permitted Exceptions”), and that it has good right and full power to let and lease the same. Provided that no Event of Default has occurred, Ground Lessee shall quietly have and enjoy the Premises during the term of this Ground Lease without hindrance or molestation, subject however, to the exceptions, reservations and conditions of this Ground Lease.

**ARTICLE XVI  
SUBORDINATION AND GROUND LESSOR’S RIGHT TO MORTGAGE**

16.1 Ground Lessor’s Right to Mortgage. Subject to the terms and conditions of this Ground Lease, Ground Lessor has the absolute and unconditional right, without the consent of Ground Lessee, to, directly or indirectly, encumber by mortgage, mezzanine loan, pledge, deed of trust, security agreement or other instrument in the nature thereof, including, without limitation, any modification,

amendment, spreader, consolidation or renewal of any of the foregoing (each, a “Fee Mortgage”), any of Ground Lessor’s right, title or interest in the Premises and/or this Ground Lease (including Ground Lessor’s reversionary interest in the Improvements set forth herein); provided that any such mortgage, mezzanine loan, pledge, deed of trust, security agreement or other instrument shall at all times during the Term be subject and subordinate to this Ground Lease and the rights, titles and interests of Ground Lessee and any Leasehold Mortgagee arising by virtue of this Ground Lease. Unless a non-disturbance/attornment agreement is delivered to Ground Lessee, this Ground Lease shall not be subordinated to such Fee Mortgage. The provisions of this Section 16.1 shall be self-operative, and no instrument of any such non-disturbance/attornment shall be required or needed by the holders of any such mortgage (a “Fee Mortgagee”); provided, however, (i) Ground Lessee shall execute, acknowledge and deliver any documents reasonably requested by Ground Lessor, any such transferee or Fee Mortgagee relating to such assignment of this Ground Lease by Ground Lessor or the Fee Mortgagee financing thereof, and (ii) Ground Lessor shall (or shall cause its Fee Mortgagee or such transferee, as the case may be, to) execute, acknowledge and deliver any documents reasonably requested by Ground Lessee or any Leasehold Mortgagee confirming or otherwise evidencing such assignment of this Ground Lease by Ground Lessor or the Fee Mortgagee financing thereof, as the case may be. In the event of any such assignment, transfer, mortgage, pledge, deed of trust, security agreement or other instrument, Ground Lessee shall attorn to such purchaser or assignee (any such purchaser or assignee, a “Successor Ground Lessor”). At any time prior to the expiration of the Term, Ground Lessee agrees, at the election and upon demand of any owner of the Premises, or of a holder of a Fee Mortgage who has granted non-disturbance to Ground Lessee pursuant to this Section, to attorn, from time to time, to any such owner or holder, upon the terms and conditions of this Ground Lease, for the remainder of the Term. The provisions of this Section shall inure to the benefit of any such owner or holder, shall be self-operative upon any such demand, and no further instrument shall be required to give effect to said provisions. Upon such non-disturbance/attornment, this Ground Lease shall continue in full force and effect as, or as if it were, a direct lease between the Successor Ground Lessor and Ground Lessee upon all of the terms, conditions and covenants as are set forth in this Ground Lease and shall be applicable after such attornment, except that a Successor Ground Lessor which is a Fee Mortgagee or which succeeds to the interest of Ground Lessor through the foreclosure of a Fee Mortgage or any purchaser in a foreclosure sale following the exercise of remedies under a Fee Mortgage shall not be: (i) liable for any previous act or omission of Ground Lessor (or its predecessor in interest) under this Ground Lease which have accrued prior to the date on which the Successor Ground Lessor acquires title to the Premises (but the foregoing shall not abrogate the obligation of Successor Ground Lessor with respect to a continuing default of Ground Lessor which, and to the extent, continue following such acquisition of the Premises by Successor Ground Lessor); (ii) bound by any previous modification of this Ground Lease, not expressly provided for in this Ground Lease or bound by any previous payment of Rent or sums paid more than one (1) month in advance, unless such modification or prepayment shall have been expressly approved in writing by the Fee Mortgagee; (iii) responsible for any monies then owing by Ground Lessor to the credit of Ground Lessee (other than those of a continuing nature and solely to the extent such amounts have actually been received by or are in the control of the Successor Ground Lessor); (iv) subject to any credits, offsets, claims, defenses, abatements, demands or counterclaims which Ground Lessee may have against Ground Lessor (or its predecessors in interest) not expressly set forth in this Ground Lease and which have theretofore accrued as of the date of the acquisition of the Premises by Successor Ground Lessor; (v) bound by any covenant to undertake or complete any construction; and (vi) required to account for any security or other deposit other than any such deposit that is actually delivered to the Successor Ground Lessor.

16.2 Notice to Fee Mortgagee. If Ground Lessor or a Fee Mortgagee gives Ground Lessee notice of the name and address of a Fee Mortgagee, then Ground Lessee shall thereafter give to any such Fee Mortgagee copies of all notices sent by Ground Lessee to Ground Lessor under this Ground Lease at the same time and in the same manner as and whenever Ground Lessee shall give any such notice to Ground Lessor, and no such notice shall be binding vis a vis such Fee Mortgagee unless a copy thereof has been sent to such Fee Mortgagee. Ground Lessee shall not seek to enforce any remedy it may have for any default on the part of Ground Lessor without first giving written notice, specifying the default in reasonable detail, to any Fee Mortgagee whose address has been given to Ground Lessee, and affording such Fee Mortgagee a reasonable opportunity (not less than sixty (60) days from the date of such notice) to perform Ground Lessor's obligations hereunder. Ground Lessee agrees, and shall cause any Leasehold Mortgagee to agree, to accept any cure of a default by Ground Lessor hereunder from any Fee Mortgagee of Ground Lessor as if performed by Ground Lessor. No default by Ground Lessor under this Ground Lease shall exist or shall be deemed to exist (a) as long as such Fee Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (b) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Fee Mortgagee within the period described above, as long as such Fee Mortgagee, in good faith, shall have notified Ground Lessee that such Fee Mortgagee intends to institute proceedings under the Fee Mortgage to acquire possession of the Leased Premises, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of this Ground Lease by reason of Ground Lessor's default hereunder, upon such Fee Mortgagee's written request, given within thirty (30) days after any such termination, Ground Lessee, within fifteen (15) days after receipt of such request, shall execute and deliver to such Fee Mortgagee or its designee or nominee a new lease of the Premises for the remainder of the Term of this Ground Lease upon all of the terms, covenants and conditions of this Ground Lease provided that, concurrently therewith, such default of Ground Lessor is cured notwithstanding such termination of the Lease. Neither such Fee Mortgagee nor its designee or nominee shall become liable under this Ground Lease unless and until such Fee Mortgagee or its designee or nominee becomes, and then only for so long as such Fee Mortgagee or its designee or nominee remains, the fee owner of the Premises. Such Fee Mortgagee shall have the right, without Ground Lessee's consent, to foreclose the Fee Mortgage and to convey Ground Lessor's interests hereunder to the purchaser at such foreclosure sale or pursuant to a deed-in-lieu thereof, in either case subject to the terms of this Ground Lease.

16.3 Succession by Fee Mortgagee. Subject to the terms of this **ARTICLE XVI**, the Fee Mortgagee shall have the right, but not the obligation, through Ground Lessor or as a Successor Ground Lessor, to perform on behalf of Ground Lessor any covenant or agreement under this Ground Lease to be performed by Ground Lessor by reason of being a Fee Mortgagee (or by power of attorney to the extent necessary and enforceable), and Ground Lessee shall accept such performance by any Fee Mortgagee, as if performed by Ground Lessor, and the Fee Mortgagee shall have the right to exercise any and all rights of Ground Lessor under this Ground Lease (through Ground Lessor or as a Successor Ground Lessor); provided, however, that such performance or exercise by the Fee Mortgagee shall not, prior to the Fee Mortgagee's succession to Ground Lessor's interest in the Premises through any foreclosure, operate to place responsibility for the control, care, management or repair of the Premises upon the Fee Mortgagee or impose responsibility for the carrying out of the terms and conditions of this Ground Lease, nor shall the Fee Mortgagee be responsible for or liable therefor.

16.4 Modification of ARTICLE XVI. Ground Lessee shall not unreasonably withhold, condition or delay its consent to any modifications to this **ARTICLE XVI** and other provisions of this Ground Lease relating to the rights of a Fee Mortgagee (including any prospective Fee Mortgagee that becomes a Fee Mortgagee contingent upon such modification), that are reasonably requested by a Fee Mortgagee (or prospective Fee Mortgagee), provided that (i) Ground Lessor pays Ground Lessee's reasonable, out-of-pocket costs and expenses in connection with any such modification (including, without limitation, reasonable attorneys' fees and disbursements) and (ii) any such modification does not (unless consented to in writing by Ground Lessee) (y) increase any monetary obligation of Ground Lessee under this Ground Lease, adversely affect the rights, benefits or protections of Ground Lessee or any Leasehold Mortgagee under this Ground Lease or increase the non-monetary obligations of Ground Lessee under this Ground Lease, except, in each case, to a de minimis extent, or (z) require this Ground Lease or Ground Lessee's interest in the Premises or any Leasehold Mortgage to be subordinate to the rights of the Fee Mortgagee (or a prospective Fee Mortgagee).

16.5 Subordination to Lease. So long as no Event of Default has occurred, Ground Lessee's interest in this Ground Lease and its tenancy, possession, interest and quiet enjoyment in the Premises will not be disturbed subject to the rights of Ground Lessor set forth in this Ground Lease. This Ground Lease shall not be affected by any default under any Fee Mortgage, and in the event of a foreclosure or other enforcement of any such Fee Mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale or pursuant to a deed-in-lieu thereof will be bound to Ground Lessee for the Term of this Ground Lease any extensions thereof, the rights of Ground Lessee hereunder will expressly survive, and this Ground Lease will in all respects continue in full force and effect (subject to any rights of such successor Ground Lessor with respect to any Event of Default that has occurred. So long as no Event of Default has occurred, Ground Lessee will not be named as a party defendant in any such foreclosure suit, except as may be required by Legal Requirements, and only to such extent.

16.6 Attornment. At any time prior to the expiration of the Term, Ground Lessee agrees to attorn, from time to time, to any owner of the Premises, any Fee Mortgagee, or any successor Ground Lessor succeeding Ground Lessor's interest under this Ground Lease, upon the then executory terms and conditions of this Ground Lease, for the remainder of the term demised in this Ground Lease, provided, that such owner of the Premises, any fee mortgagee or successor Ground Lessor assume the obligations of Ground Lessor under this Ground Lease thereafter arising in accordance with the terms of this Ground Lease. The provisions of this Section will inure to the benefit of any such owner of the Premises, any Fee Mortgagee or any successor Ground Lessor, and, as to Ground Lessee, apply notwithstanding that, as a matter of law, this Ground Lease would have otherwise terminated upon the foreclosure of any Fee Mortgage, will be self-operative, and no further instrument will be required to give effect to said provisions.

## **ARTICLE XVII PURCHASE OF PREMISES**

17.1 Purchase of Premises. Within twenty-five (25) business days following the expiration of the Term (the "Closing Date" or "Closing") (and during such time between the end of the Term and the Closing Date, all other obligations, including, but not limited to, the payment of Base Rent, Option Payments and Additional Rent and all other charges due and payable hereunder, shall continue as though the Term were extended through the Closing Date), Ground Lessee or, subject to the prior written approval of Ground Lessor within its sole discretion, a Related Entity (hereinafter defined) shall purchase

the Premises from Ground Lessor (“Purchase”) for the purchase price set forth on Schedule 17.1 attached hereto and incorporated by reference herein (the “Purchase Price”), by wire transfer to an account designated by Ground Lessor (it being agreed that in no event will Ground Lessor be required to accept an endorsed check), as follows:

17.1.1 \$ \_\_\_\_\_ on the date of expiration of the Lease Term (the “Purchase Deposit”); and \$ \_\_\_\_\_ on the Closing Date.

17.1.2 The Ground Lease shall continue for the period following the expiration of the Term to the Closing Date (the “Extension Term”) and Ground Lessee shall continue to make all payments required under the Ground Lease during the Extension Term. The Extension Term shall not exceed twenty-five (25) business days following the expiration of the Term.

17.1.3 The term “Related Entity” shall mean an entity which owns fifty-one percent (51%) or more of the ownership interests in Ground Lessee or an entity in which Ground Lessee owns fifty-one percent (51%) or more of the ownership interests. If Related Entity is approved by Ground Lessor to purchase the Premises, Ground Lessee and Related Entity shall collectively be referred to as “Ground Lessee”. Ground Lessee shall comply with the provisions of **ARTICLE IX** and **Exhibit G** of this Ground Lease with respect to any conveyance to a Related Entity.

17.2 Title to Premises. Ground Lessor shall give good and marketable record title, insurable at regular rates, subject to Section 17.4 and other encumbrances, restrictions and conditions of title acceptable to Ground Lessee.

17.3 Title Commitment.

17.3.1 Within forty-five (45) calendar days prior to the expiration of the Term (the “Title Contingency Period”), Ground Lessee shall provide Ground Lessor with a written notice setting forth any matters shown in the Title Commitment, other than Permitted Encumbrances (as such term is defined herein), which are not satisfactory to Ground Lessee, which such written notice required to specify the reason such matter(s) are not satisfactory, provided, however, in no event shall such matter(s) be any matter(s) Ground Lessor has not caused (the “Title Notice”). If Ground Lessee fails to provide the Title Notice by the end of the Title Contingency Period, it shall be deemed to have approved the condition of the Premises as shown in the Title Commitment.

17.3.2 Within fifteen (15) calendar days after receipt of the Title Notice, Ground Lessor shall advise Ground Lessee in writing of any title objections identified in the Title Notice that Ground Lessor is unable or unwilling to cure other than Liquidated Liens (the “Ground Lessor Response”). If Ground Lessor does not timely deliver the Ground Lessor Response stating that it will cure all objections set forth in the Title Notice, or if Ground Lessor delivers a Ground Lessor Response stating that it will not cure one or more specific objections set forth in the Title Notice, then Ground Lessee may, by written notice to Ground Lessor, terminate this Ground Lease and neither Party shall have any further rights or liabilities hereunder thereafter (except for return of the Purchase Deposit and interest to Ground Lessee and provisions that expressly survive termination of this Ground Lease); provided, however, that if Ground Lessee does not so terminate this Ground Lease, Ground Lessee shall accept title subject to such title defect(s) without reduction or abatement of the Purchase Price. It is distinctly understood and agreed

that Ground Lessor shall not be required to bring any action or proceeding, take any steps, or otherwise incur any expense to remove or cure any title defect(s).

17.3.3 If Ground Lessor, in its absolute discretion, elects to cure, satisfy and/or discharge any title defect(s), Ground Lessor shall, if necessary, be entitled to a reasonable adjournment of the Closing Date to do so. Without limiting the foregoing, if Ground Lessor, in its absolute discretion, decides to cure any defects related to any Fee Mortgage, then, Ground Lessor may use any portion of the Purchase Price to satisfy same, or Ground Lessor may deposit with a title insurance company licensed in the State of New Jersey (the "Title Company") sufficient monies or other assurances acceptable to the Title Company to insure the issuance of title insurance to Ground Lessee either free of any such liens or encumbrances, or with insurance against enforcement of same out of the Premises, provided, that there is no additional premium cost to Ground Lessee as a result thereof, or if there is an additional cost, Ground Lessor agrees to pay same.

17.3.4 Ground Lessee, at Ground Lessee's sole cost and expense, shall obtain the Title Commitment and related title insurance policy. If Ground Lessee elects to obtain a survey and/or title insurance for the Premises, such survey and title insurance shall be obtained at Ground Lessee's sole cost and expense.

17.4 Permitted Encumbrances. At the Closing, Ground Lessee shall accept the Premises in "AS IS, WHERE IS" condition, subject to the following:

17.4.1 "Permitted Encumbrances", means any and all (i) matters of public record as of the effective date of the Title Commitment, other than such mortgages and other monetary liens as Ground Lessor may satisfy at the Closing; (ii) matters that would be revealed by a physical inspection, or a complete and accurate survey of the Premises; (iii) rights-of-way and easements that do not materially interfere with Ground Lessee's Permitted Use of the Premises as set forth in Section 3.1 of this Ground Lease; (iv) rights of the public and adjoining owners in highways, streets, roads and lanes bounding the Premises; (v) retaining walls and other walls, bushes, trees, hedges, fences and the like extending from or onto the Premises, and any portion of the Premises lying in the bed of any public street; (vi) rights and easements relating to the construction, operation, and maintenance of utility lines, wires, cables, pipes, poles, distribution boxes and other such equipment in, on, over, or under the Premises; (vii) zoning and other governmental restrictions; (viii) matters common to any plat or subdivision in which the Premises is located; (ix) taxes, assessments and other public charges not due as of the Closing Date; (x) standard conditions and exceptions to title insurance contained in the currently effective ALTA Owner's Standard Form B Title Insurance Policy; (xi) the Permitted Exceptions set forth on Exhibit E attached hereto; and (xii) any and all other liens, encumbrances, defects in titles existing on the Effective Date or arose between the Effective Date and the Closing which are caused by or consented to by Ground Lessee or which result from the failure of Ground Lessee to comply with its obligations under any instrument or document or under law;

17.4.2 This Ground Lease;

17.4.3 Any subleases or licenses, and the rights of the subtenants, licensees and other occupants of all or any part of the Premises upon the Closing Date;

17.4.4 All notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the departments of housing and buildings, fire, labor, health or other State or municipal department having jurisdiction, against or affecting the Premises as of the date of the Closing Date; and

17.4.5 All information and documentation, including all environmental matters related to the Premises, Ground Lessee obtained during the Investigation Period or at any time during the Term of the Ground Lease; and

17.4.6 All information and documentation, including all environmental matters related to the Premises, disclosed in this Ground Lease and/or the RFQP; and

17.4.7 The title search dated XXXX for the Premises provided by Ground Lessor to Ground Lessee during the Investigation Period.

17.5 By reason of this Ground Lease, there shall be no apportionments for real estate taxes, utilities or similar adjustments between Ground Lessor and Ground Lessee, except that, on the Closing Date, Base Rent shall be prorated on a daily basis with Ground Lessee paying Base Rent up to and including the Closing Date.

17.6 All real and personal property attached to and used in connection with the Premises and owned by Ground Lessor shall be included in the sale but without any representation, warranty or liability on Ground Lessor's part.

17.7 If at the date of the Closing, there are any liens or encumbrances which Ground Lessor is obligated to pay and discharge in accordance with the terms of this Ground Lease, Ground Lessor, at the Closing, shall either (i) give Ground Lessee a credit against the Purchase Price (or make a payment to Ground Lessee) in an amount sufficient to satisfy the same (and Ground Lessor shall simultaneously deliver to Ground Lessee at the Closing title instruments in recordable form and sufficient to satisfy such liens and encumbrances of record together with the cost of recording or filing said instruments) or (ii) provided that Ground Lessor has made arrangements with the Title Company employed by Ground Lessee in advance of Closing, deposit with the Title Company sufficient moneys, acceptable to and required by it to insure obtaining and the recording of such satisfactions and the issuance of title insurance to Ground Lessee free of any such liens and encumbrances. The existence of any liens or encumbrances shall not be deemed objections to title if Ground Lessor shall comply with the foregoing requirements.

17.8 If (by no fault of Ground Lessor) Ground Lessor is unable to convey title in accordance with the terms of this **ARTICLE XVII** and Ground Lessee will not accept whatever title Ground Lessor is able to convey without reduction of the Purchase Price, then the sole liability of Ground Lessor will be to refund to Ground Lessee the Purchase Deposit and to pay the net cost of examining the title, which cost is not to exceed the charges fixed by the New Jersey Board of Title Underwriters, and the net cost of any survey made in connection herewith incurred by Ground Lessee, and upon such refund and payment being made, this entire **ARTICLE XVII** shall become void and of no further effect, and neither Ground Lessor nor Ground Lessee will have any obligations of any nature to the other under this **ARTICLE XVII**. Notwithstanding the foregoing, if Ground Lessor shall willfully fail to convey title in

accordance with this **ARTICLE XVII**, Ground Lessee shall have the right to pursue an action for specific performance.

17.9 The Closing shall take place at ten o'clock A.M. at the office of Ground Lessor or at such other place and manner as shall be mutually agreed upon by the Parties, on the date as the Parties hereto may agree upon (but not later than twenty-five (25) business days after the expiration of the Lease Term). The costs and charges of the Closing shall be paid by the Parties as such costs are customarily paid in transactions in Union County, New Jersey (subject to Section 17.10.4).

17.10 At the Closing:

17.10.1 Ground Lessor shall deliver to Ground Lessee a bargain and sale deed with covenants against grantor's acts (herein called the "Deed") in proper statutory short form for recording, duly executed and acknowledged so as to convey to Ground Lessee the entire fee simple interest in and to the Premises in accordance with Section 17.2;

17.10.2 Ground Lessor shall deliver to Ground Lessee evidence reasonably satisfactory to Ground Lessee and the Title Company, certifying that the sale has been duly authorized by appropriate action of the members of the Board of Ground Lessor (and any other required action of Ground Lessor);

17.10.3 Ground Lessee shall deliver to Ground Lessor the balance of the Purchase Price (i.e., an amount equal to the Purchase Price minus the Purchase Price Deposit), by a wire transfer to an account designated by Ground Lessor (it being agreed that in no event will Ground Lessor be required to accept an endorsed check);

17.10.4 Each of the Parties shall duly sign and swear to any and all certifications required in connection with the delivery and/or recording of the Deed. All transfer taxes, whether payable by Ground Lessor and/or Ground Lessee under applicable Legal Requirements, shall be paid by Ground Lessee who shall also pay for all recording fees. The said certifications and the amount of such taxes shall be delivered to the appropriate governmental authority authorized to receive the same promptly at or after the Closing; and

17.10.5 Ground Lessor shall deliver an Incumbency Certificate and F.I.R.P.T.A. to the Ground Lessee and the Title Company reasonably satisfactory in form and content to the Title Company.

17.10.6 Each of the Parties represents to the other that it dealt with no broker in connection with the sale transaction. The representation by each of the Parties as contained in the preceding sentence shall survive delivery of the Deed. Each Party agrees to give testimony to the effect set forth in said representation in case any action or proceeding is instituted by any person, firm or corporation for real estate brokerage commissions or fees in connection with this transaction.

17.11 At Closing the Ground Lessee will represent that Ground Lessee has had exclusive possession of the Premises, has maintained and operated the Improvements on the Premises and is thoroughly acquainted with their condition and agrees to take title "as is" on the date of the Closing. Ground Lessor has not made, and in this **ARTICLE XVII** does not make any representations of

warranties, express or implied, with respect to the physical condition, expenses or operations of the Premises, or the zoning law and regulations applicable thereto, and Ground Lessee acknowledges that no such representations or warranties have been made. Ground Lessee agrees that Ground Lessor shall not be liable or bound in any manner by representations, warranties, guaranties, promises, projections, statements, setups, or other information pertaining to the Premises made or furnished by it or any other person or entity including any real estate broker, agent or other person representing or purporting to represent Ground Lessor, whether verbally or in writing, except as expressly set forth herein.

17.12 GROUND LESSOR AND GROUND LESSEE AGREE THAT THE PREMISES SHALL BE SOLD AND GROUND LESSEE SHALL ACCEPT POSSESSION OF THE PREMISES ON THE CLOSING DATE “AS IS, WHERE IS, WITH ALL FAULTS” WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS ARTICLE, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL OR OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND GROUND LESSOR DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY. GROUND LESSEE SPECIFICALLY ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS ARTICLE, GROUND LESSEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM GROUND LESSOR, GROUND LESSOR’S AGENTS OR OTHER AGENTS OR BROKERS AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING WITHOUT LIMITATION THE CONDITION OR SAFETY OF THE PREMISES OR ANY IMPROVEMENTS THEREON.

17.13 Nothing contained in this **ARTICLE XVI** shall be deemed to require Ground Lessor to take or bring any action or proceeding or any other steps to remove any defect in or objection to title or to fulfill any condition or expend any monies therefor, nor shall Ground Lessee have any right of action against Ground Lessor, at law or in equity, for damages or specific performance in connection with any of the foregoing except for Ground Lessor's willful failure to Close.

## **ARTICLE XVIII LEASEHOLD FINANCING**

18.1 Mortgage by Ground Lessee. Ground Lessee may, from time to time, hypothecate, mortgage, pledge or alienate the Improvements and/or Ground Lessee’s leasehold estate and rights hereunder (a “Leasehold Mortgage”); provided, however, that no Leasehold Mortgagee, nor anyone claiming by, through or under any such Leasehold Mortgage, shall by virtue thereof, acquire any greater rights hereunder than Ground Lessee, except the right to cure or remedy any Events of Default or become entitled to a New Lease as more fully set forth in this **ARTICLE XVIII**. Financial institutional lenders which are a holder or holders of any such lien shall be referred to herein as “Leasehold Mortgagee”. Under no circumstances is Ground Lessee permitted to hypothecate, mortgage, pledge, alienate, lien or encumber Ground Lessor’s fee interest in the Premises in any manner whatsoever and in no event shall Ground Lessor be required to join in, or “subordinate” the Premises, any Fee Mortgage or any of Ground Lessor’s interests in the Premises to any Leasehold Mortgage (but, for the avoidance of doubt, the Fee Mortgage shall remain subject and subordinate to this Ground Lease and the leasehold estate created herein). Ground Lessee shall give Ground Lessor notice of any Leasehold Mortgagee. Notwithstanding anything herein

contained to the contrary but subject to Section 18.1.1 below, the Leasehold Mortgagee acquiring such leasehold estate shall be liable to perform the obligations imposed on Ground Lessee by this Ground Lease only during the period such Leasehold Mortgagee has ownership of said leasehold estate or control or possession of the Premises. So long as such Leasehold Mortgagee complies with the definition of "Leasehold Mortgage" contained herein, there shall be (A) no limit on the amount or nature of any obligation secured by a Leasehold Mortgage; (B) no restrictions on the purpose for which the proceeds of any such financing may be applied; (C) no restrictions on the nature or character of any Leasehold Mortgage; and (D) no restrictions on the assignment, sale or other transfer of any Leasehold Mortgage to any other person. Leasehold Mortgages may secure construction or permanent financing.

18.1.1 Notwithstanding the foregoing, the Leasehold Mortgagee shall be obligated to pay all real estate taxes due or owing prior to and through the period the Leasehold Mortgagee has ownership of said leasehold estate or control or possession of the Premises.

18.1.2 Notwithstanding anything in this Ground Lease to the contrary, Rent shall have a first payment and lien priority and shall not be subordinated in lien or payment priority to any Leasehold Mortgage and any other debt or financing of Ground Lessee.

18.1.3 Ground Lessee's making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of the leasehold estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under this Ground Lease, be deemed to be an assignee, transferee, or mortgagee in possession of the leasehold estate so as to require such Leasehold Mortgagee, as such, to assume or otherwise be obligated to perform any of Ground Lessee's obligations under this Ground Lease except when, and then only for so long as, such Leasehold Mortgagee has acquired ownership and possession of the leasehold estate (as distinct from its exercise of Leasehold Mortgagee's cure rights hereunder). After acquiring Ground Lessee's rights pursuant to a foreclosure event, Leasehold Mortgagee, and its successors and assigns, shall, subject to the provisions of this **ARTICLE XVIII**, be liable to perform Ground Lessee's obligations under this Ground Lease only until the Leasehold Mortgagee or its successors or assigns, transfers or assigns the leasehold estate. Leasehold Mortgagee and its successors or assigns, shall not, however, be required to cure any Event of Default under this Ground Lease occurring before acquisition of Ground Lessee's rights pursuant to a foreclosure event. Except as expressly otherwise provided elsewhere herein, Leasehold Mortgagee shall acquire greater rights or interest than Ground Lessee has under this Ground Lease. If any Leasehold Mortgagee (or its authorized representative) desires to enter the Premises to cure any Event of Default, then by entering the Premises, such Leasehold Mortgagee shall be deemed to have agreed to indemnify Ground Lessor in the same manner as this Ground Lease requires Ground Lessee to indemnify Ground Lessor, but solely regarding direct damages that Ground Lessor suffers as a result of any acts or omissions of such Leasehold Mortgagee (or its authorized representative) on or in the Premises in seeking to cure any such Event of Default.

18.1.4 If Ground Lessee enters into any Leasehold Mortgage that complies with the definition of "Leasehold Mortgage" contained herein, then the Leasehold Mortgagee under such Leasehold Mortgage shall be entitled to all rights granted in this Ground Lease (as against both Ground Lessor and any Successor Ground Lessor) from and after such date as Ground Lessee or the Leasehold Mortgagee has given Ground Lessor notice of such Leasehold Mortgage and Leasehold Mortgagee, accompanied by a copy of the Leasehold Mortgage, recorded or unrecorded. No change of address of such Leasehold Mortgagee, or assignment of such Leasehold Mortgage, shall be effective against Ground

Lessor unless and until such Leasehold Mortgagee shall have given Ground Lessor notice of such change or assignment.

18.1.5 A Leasehold Mortgagee's entitlement to rights granted in this Ground Lease shall not terminate unless and until such time, if any, as either (1) the Leasehold Mortgage shall have been satisfied and discharged of record, except through a foreclosure event; (2) such Leasehold Mortgagee has consented in writing to the termination of its rights; or (3) after Ground Lessor has complied with the applicable rights, Ground Lessor has validly terminated this Ground Lease, no Leasehold Mortgagee has validly requested (and is entitled to) a New Lease, and the New Lease Option Period has expired.

18.1.6 Ground Lessor shall, upon written request, acknowledge receipt of the name and address of any Leasehold Mortgagee (or proposed Leasehold Mortgagee) and confirm to such party that such party is or would be, upon closing of its loan to Ground Lessee or its acquisition of an existing Leasehold Mortgage, a Leasehold Mortgagee (in compliance, as of the date of such confirmation, with the definition of "Leasehold Mortgage" contained herein, including all applicable conditions and requirements set forth in such definition) entitled to all rights as provided in this Ground Lease. Such confirmation may, in Ground Lessor's discretion, be conditioned upon Ground Lessor's receipt and verification of evidence reasonably satisfactory to Ground Lessor that the person seeking such confirmation is entitled to such confirmation pursuant to this Ground Lease. Further, if, in connection with the entering into of a Leasehold Mortgage, the Leasehold Mortgagee requests reasonable modifications to this Ground Lease solely with respect to this **ARTICLE XVIII** or any other provisions of this Ground Lease affecting the rights or obligations of Leasehold Mortgagee (including, without limitation, any reasonable requests to comply with federally-insured or other regulated loan providers).

18.1.7 No Leasehold Mortgage shall attach to: (1) Ground Lessor's interest in this Ground Lease, in the Premises and Ground Lessor's remainder and/or reversionary interest in the Improvements, if any; (2) Ground Lessor's interest in any New Lease and the Premises thereunder; (3) any judgment obtained by Ground Lessor arising from Ground Lessee's breach of this Ground Lease; (4) Ground Lessor's and any Fee Mortgagee's rights and remedies under this Ground Lease; and (5) any rights of a Fee Mortgagee with respect to the Premises. Any Leasehold Mortgagee in the event of a foreclosure event or the grantee or successful bidder at the foreclosure, shall succeed only to the leasehold estate under this Ground Lease or obtain a New Lease, as applicable.

18.2 Notice To and Rights Of Leasehold Mortgagees. When giving notice to Ground Lessee with respect to any material Event of Default hereunder, Ground Lessor shall also serve a copy of such notice upon any Leasehold Mortgagee who shall have given Ground Lessor a written notice specifying its name and address. No such notice shall be effective against any Leasehold Mortgagee unless and until served on any Leasehold Mortgagee as herein provided. In the event any non-monetary Event of Default, any Leasehold Mortgagee shall have the right, for a period of thirty (30) calendar days after the grace period available to Ground Lessee for curing such Event of Default, to cure or make good, such Event of Default or to cause the same to be cured or made good, whether the same consists of the failure to pay Rent or the failure to perform any other obligation, and Ground Lessor shall accept such performances on the part of any Leasehold Mortgagee as though the same had been done or performed by Ground Lessee. Notwithstanding the foregoing, in the event that the Event of Default cannot be cured without obtaining possession of the Premises, then Ground Lessor shall not be entitled to terminate this Ground Lease by virtue of such Event of Default, provided that the Leasehold Mortgagee is attempting to gain possession of the Premises and thereafter diligently pursues the cure of such Event of Default.

18.2.1 As long as there is a Leasehold Mortgagee, neither the bankruptcy nor the insolvency of Ground Lessee shall operate nor permit Ground Lessor to terminate this Ground Lease as long as all Rent specified herein and all other charges of whatsoever nature payable by Ground Lessee continue to be paid in accordance with the term of this Ground Lease.

18.2.2 No cancellation, termination (including Ground Lessee's termination of this Ground Lease pursuant to any express right of termination in this Ground Lease or under applicable Legal Requirements), surrender, acceptance of surrender, abandonment, amendment, modification, or rejection of this Ground Lease, any waiver of any of Ground Lessee's material rights or benefits hereunder, or any other encumbrance on the Premises prohibited by this Ground Lease shall be made without the prior written consent of such Leasehold Mortgagee, nor shall any of such actions bind a Leasehold Mortgagee if done without Leasehold Mortgagee's consent. Nothing in this paragraph shall limit the right of Ground Lessor to terminate this Ground Lease upon the occurrence of an Event of Default and the expiration of all Leasehold Mortgagee's cure rights without cure of such Event of Default.

18.2.3 So long as the period for a Leasehold Mortgagee to exercise Leasehold Mortgagee's cure rights for any Event of Default has not expired, Ground Lessor shall not (i) re-enter the Premises on account of such Event of Default (but this shall not limit Ground Lessor's right of access to the Premises otherwise provided for under the express terms of this Ground Lease); (ii) give any notice terminating or electing to terminate this Ground Lease; or (iii) bring a proceeding on account of such Event of Default to (w) dispossess Ground Lessee under this Ground Lease; (x) reenter the Premises; (y) terminate this Ground Lease or the leasehold estate; or (z) otherwise (except as expressly permitted by this **ARTICLE XVIII**) exercise any other rights or remedies under this Ground Lease by reason of such Event of Default. Nothing in the rights granted to a Leasehold Mortgagee shall, however, be construed to either: (1) extend the Term beyond the expiration date provided for in this Ground Lease that would have applied if no Event of Default had occurred; (2) preclude Ground Lessor from exercising its rights under **ARTICLE XII** and **ARTICLE XIII** (other than Sections 13.2.1 and Sections 13.2.2) and, if so exercised, Ground Lessee shall pay Ground Lessor any sums required to be paid in accordance with **ARTICLE XXI** and **Article XIII**, as applicable, the failure to so pay any such required amount being an Event of Default hereunder; (3) preclude Ground Lessor from seeking and obtaining actual damages or injunctive and other equitable relief against Ground Lessee on account of such Event of Default; or (4) preclude Ground Lessor from seeking and obtaining the benefits of **ARTICLE XIX**.

18.2.4 Upon termination of this Ground Lease as a result of an Event of Default, a rejection hereof pursuant to Section 365 of the Bankruptcy Code or for any other reason (other than due to the occurrence of the end of Term), it being the intention of Ground Lessor, Ground Lessee and Leasehold Mortgagee to preserve this Ground Lease and the leasehold estate for the benefit of Leasehold Mortgagee without interruption or termination, Ground Lessor shall give notice to Leasehold Mortgagee within ten (10) Business Days thereof, and any Leasehold Mortgagee holding a Leasehold Mortgage which then remains unsatisfied of record shall have the option, within sixty (60) days after delivery of such notice (the "New Lease Option Period") to elect to receive from Ground Lessor a new lease (a "New Lease") of the entire Premises for the unexpired balance of the Term, on the exact same terms and conditions as in this Ground Lease, and Ground Lessor agrees to execute such New Lease, and each and every Fee Mortgage shall be subject and subordinate to such New Lease (and Ground Lessor shall promptly execute and deliver any reasonable instrument in form and substance reasonably acceptable to Ground Lessor and any then applicable Fee Mortgagee that any Leasehold Mortgagee may reasonably

request to evidence such subordination). Such Leasehold Mortgagee shall: (i) pay to Ground Lessor, on the delivery date of such New Lease (the “New Lease Delivery Date”): (A) all Base Rent, Additional Rent and Option Payments then due under this Ground Lease, as if this Ground Lease had not been terminated, including interest at the Default Rate or any Late Charge and (B) all reasonable out-of-pocket expenses, including transfer, documentary, stamp, recording or similar taxes and legal costs incurred by Ground Lessor in connection with any Event of Default and termination of this Ground Lease, recovery of possession of the Premises and the preparation and execution of the New Lease; (ii) remedy all non-monetary Events of Default that are susceptible to cure by such Leasehold Mortgagee within a reasonable period of time after the New Lease Delivery Date; (iii) thereafter observe and perform all covenants and conditions in such New Lease contained on the part of Ground Lessee to be observed and performed (including, without limitation, the payment of Rent hereunder); (iv) operate the Premises subject to the provisions requirements of the New Lease; and (v) be subject to, and shall be liable to perform the obligations imposed on the tenant under, such New Lease only during the period such person has title to the leasehold estate.

18.2.5 A Leasehold Mortgage shall not encumber or attach to the Premises or affect, limit, or restrict Ground Lessor’s rights and remedies under this Ground Lease except as expressly provided in this Ground Lease. Any Leasehold Mortgage shall be attached solely to the leasehold estate.

## **ARTICLE XIX ENVIRONMENTAL MATTERS**

### 19.1 Defined Terms.

19.1.1 Hazardous Substances. “Hazardous Substances” for purposes of this Ground Lease shall be interpreted broadly to include, but not be limited to, any material or substance that is defined or classified under applicable Legal Requirements as (a) a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14), Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as now or hereafter amended; (b) a “hazardous waste” pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903, 6921, as now or hereafter amended; (c) a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1); (d) a “hazardous air pollutant” under Section 112 of the Clean Air Act, 42 U.S.C. §7412, as now or hereafter amended; (e) a “hazardous material” under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §1802(4), as now or hereafter amended; “Hazardous Substances” shall also mean any substance that after release into the environment and upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities; “Hazardous Substances” shall also mean any substance within the following federal, state or local laws: Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Federal Insecticide Fungicide and Rodenticide Control Act (7 U.S.C. Section 136 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Section 11001 et seq.), the Clean Water Act (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), the Hazardous and Solid Waste Amendments of 1984 (Public Law 86-616, Nov. 9, 1984), the Industrial Site Recovery Act (N.J.S.A. 13:1K-6, et seq.), the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et seq.), the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), and the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), as

now or hereafter amended. “Toxic or Hazardous Substances” specifically includes, but is not limited to, asbestos, polychlorinated biphenyls (“PCBs”), petroleum and petroleum-based derivatives, and urea formaldehyde.

19.1.2 Environmental Claim. “Environmental Claim” for the purposes of this Ground Lease shall mean any claim, action, investigation or written notice by any person alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based on or resulting from (A) the presence, or release into the environment, of any Hazardous Substances at the Premises, or circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

19.1.3 Environmental Laws. “Environmental Laws” means laws and regulations pertaining to health, industrial hygiene, Hazardous Substances or the environment, including, but not limited to, each of the following, as enacted as of the Effective Date or as hereafter amended; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §96021 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the New Jersey Spill Compensation and Control Act, the New Jersey Industrial Site Recovery Act, : New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.); the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.); the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.); the Hazardous Substances Discharge: Reports and Notices Act (N.J.S.A. 13:1K-15 et seq.); the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.); the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 et seq.); the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.); and the Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1 et seq.); together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof, as well as all similar state statutes and local ordinances, and all regulations promulgated under any of those statutes, and all administrative and judicial actions respecting such legislation, state superfund and environmental clean-up statutes, with implementing regulations and guidelines; and all other Legal Requirements pertaining to Hazardous Substances.

19.1.4 Environmental Reports. “Environmental Report” means, individually and collectively as the context may require, each environmental report delivered to Ground Lessor in connection with the Premises pursuant to this Ground Lease from time to time, including, without limitation, any reports delivered during the Due Diligence Period.

## 19.2 Covenants of Ground Lessee.

19.2.1 Ground Lessee covenants and agrees that from and after the Effective Date, no Hazardous Substances will be brought onto or into the Premises by Ground Lessee or any Ground Lessee’s Agent, or otherwise be used or expressly permitted by Ground Lessee or any Ground Lessee’s Agent to be used in the Premises, except for commercially reasonable quantities of Hazardous Substances used or sold in the ordinary course of Ground Lessee’s (or any sublessee’s) business, and such Hazardous

Substances shall be transported, stored, and handled in accordance with all applicable Environmental Laws.

19.2.2 If, at any time during the Term, Hazardous Substances are found in or on the Premises, regardless of when such Hazardous Substances arose or were discovered, then Ground Lessee must (at Ground Lessee's sole cost and expense) promptly commence and diligently prosecute to completion all investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (collectively, "Remedial Work") to the extent required by Environmental Laws, and in compliance with Environmental Laws; provided, that Ground Lessor will not be required to accept any institutional control (such as a deed restriction) that restricts the permitted commercial use of the Premises as a condition to any remedial plan approved by any governmental authority in connection with such Remedial Work. The provisions of this paragraph shall apply to and be binding upon any successor, sublessee, or assign of Ground Lessee.

19.2.3 Executive Order 215 of 1989, as amended, requires an environmental assessment or environmental impact statement; Ground Lessee will fund and perform, on behalf of and for the benefit of Ground Lessor and Ground Lessee, at Ground Lessee's cost, any such requirement to the satisfaction of the NJDEP.

19.2.4 Upon Ground Lessor's or any Fee Mortgagee's request, at any time as Ground Lessor or such Fee Mortgagee has reasonable grounds to believe that Hazardous Substances (except to the extent those substances are permitted to be used by Tenant under this **ARTICLE XIX** in the ordinary course of its business and in compliance with all Environmental Laws) are or have been released, stored or disposed of or on or around the Premises in violation of Environmental Laws or that the Premises may be in violation of the Environmental Laws, Ground Lessee will provide, at Ground Lessee's sole cost and expense, an inspection or audit of the Premises prepared by a hydrogeologist or environmental engineer or other appropriate consultant reasonably approved by Ground Lessor and any Fee Mortgagee indicating the presence or absence of the reasonably suspected Hazardous Substances on the Premises or an inspection or audit of the Premises prepared by an engineering or consulting firm reasonably approved by Ground Lessor and any Fee Mortgagee indicating the presence or absence of friable asbestos or substances containing asbestos on the Premises. If Ground Lessee fails to provide such inspection or audit within sixty (60) days after receipt of such request, Ground Lessor may order the same, and Ground Lessee hereby grants to Ground Lessor and any Fee Mortgagee and their respective employees and agents access to the Premises upon reasonable notice and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Rate from the date of demand by Ground Lessor until actually paid by Ground Lessee, will be immediately paid by Ground Lessee on demand.

19.3 Representations of Ground Lessee. To Ground Lessee's actual knowledge except as set forth in any Environmental Report, as of the Effective Date there are no Hazardous Substances present on, in or under the Premises or any portion thereof in violation of any Environmental Laws. Notwithstanding the foregoing, at all times during the Term, to the extent that Ground Lessee has knowledge thereof, Ground Lessee will promptly provide notice in writing to Ground Lessor and any Fee Mortgagee of any of the following matters:

19.3.1 any proceeding or investigation commenced or threatened by any governmental authority with respect to the release, threatened release or presence of any Hazardous

Substances affecting the Premises or other potential environmental problem or liability in, under, from or migrating towards the Premises;

19.3.2 any lien, action or notice affecting the Premises, Ground Lessee or Ground Lessor resulting from any violation or alleged violation of Environmental Laws or any proceeding or investigation commenced or threatened by any governmental authority against Ground Lessee or Ground Lessor with respect to the presence, suspected presence, release or threatened release of Hazardous Substances from the Premises;

19.3.3 all written notices of any pending or threatened investigation or claims made or any lawsuit or other legal action or proceeding brought by any person against (i) Ground Lessee or Ground Lessor or the Premises, or (ii) any other party occupying the Premises or any portion thereof, in any such case relating to any loss or injury allegedly resulting from any Hazardous Substances or relating to any violation or alleged violation of Environmental Laws;

19.3.4 the discovery of any occurrence, condition or state of facts with respect to the Premises or written notice received by Ground Lessee of any occurrence or condition on any real property adjoining or in the vicinity of the Premises, which reasonably could be expected to lead to the Premises or any portion thereof being in violation of any Environmental Laws or subject to any restriction on ownership, occupancy, transferability or use under any Environmental Laws or which might subject Ground Lessor or any Fee Mortgagee to any Environmental Claim; and

19.3.5 the commencement and completion of any Remedial Work with respect to the Premises or any portion thereof.

19.4 Ground Lessee Indemnification. INDEMNITOR WILL BE SOLELY RESPONSIBLE FOR AND WILL DEFEND, REIMBURSE, INDEMNIFY AND HOLD THE INDEMNITEE HARMLESS FROM AND AGAINST ALL LOSSES, INVESTIGATIONS, OR WRITTEN NOTICES INCLUDING, COSTS AND EXPENSES OF ANY KIND (INCLUDING WITHOUT LIMITATION, REASONABLE EXPENSES OF INVESTIGATION BY ENGINEERS, ENVIRONMENTAL CONSULTANTS AND SIMILAR TECHNICAL PERSONNEL AND REASONABLE FEES AND DISBURSEMENTS OF COUNSEL), ARISING OUT OF, IN RESPECT OF OR IN CONNECTION WITH (I) INDEMNITOR'S BREACH OF ITS REPRESENTATIONS, WARRANTIES, COVENANTS OR OBLIGATIONS IN THIS **ARTICLE XIX**, (II) THE OCCURRENCE OF ANY REGULATED ACTIVITY BY INDEMNITOR AT, ON OR UNDER THE PREMISES AT ANY TIME DURING OR PRIOR TO THE TERM OF THIS GROUND LEASE, OR (III) ANY REMEDIAL WORK REQUIRED TO BE PERFORMED PURSUANT TO ANY ENVIRONMENTAL LAW OR THE TERMS HEREOF WITH RESPECT TO MATTERS ARISING OR OCCURRING PRIOR TO OR DURING THE TERM DUE TO ACTIVITIES OF INDEMNITOR.

19.5 Ground Lessor Representations. Ground Lessor makes no representation or warranty as to the environmental condition of the Premises.

19.6 Survival. The provisions of this **ARTICLE XIX** shall survive expiration or earlier termination of this Ground Lease and Closing under this Ground Lease.

**ARTICLE XX  
MISCELLANEOUS**

20.1 Holding Over. In the event of Ground Lessee's continued occupancy of the Premises after the expiration of the Term, or any earlier termination provided or permitted by this Ground Lease, such tenancy shall be deemed a month-to-month tenancy at a monthly Base Rent equal to two hundred percent (200%) of the monthly Base Rent during the last month of the Term which ended just prior to such holding over. All other covenants, provisions, obligations and conditions of this Ground Lease shall remain in full force and effect during such month-to-month tenancy, including, but not limited to, Ground Lessee's requirement to pay Additional Rent and the Option Payments.

20.2 Non-Waiver of Default. No acquiescence by either Party to any default by the other Party shall operate as a waiver of its rights with respect to the same or any other breach or default, whether of the same or any other covenant or condition. No waiver shall be effective unless it is in writing and signed by the Party giving the waiver.

20.2.1 The failure of Ground Lessor or Ground Lessee to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements of this Ground Lease or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of any such term, condition, provision, agreement or option. A receipt and acceptance by Ground Lessor or payment by Ground Lessee of Rent, or any other payment, or the acceptance of or making of performance of anything required by this Ground Lease to be performed by Ground Lessee with knowledge of the breach of any term, covenant, condition, provision, or agreement of this Ground Lease, shall not be deemed a waiver of such breach, nor shall any such acceptance of Rent in a lesser amount than is herein provided for (regardless, of any endorsement on any check or any statement in any letter accompanying payment of Rent) operate or be construed either as an accord and satisfaction or in any manner other than as a payment on account of the earliest Rent then unpaid by Ground Lessee. No waiver by Ground Lessor or Ground Lessee of any term, covenant, condition, provision or agreement of this Ground Lease shall be deemed to have been made unless expressed in writing and signed by Ground Lessor or Ground Lessee as the case may be.

20.3 Recording. This Ground Lease shall not be recorded. The Parties shall execute, acknowledge and deliver to each other duplicate originals of a short form or memorandum of this Ground Lease (the "Memorandum of Ground Lease") in substantially the form as shown on **Exhibit F** attached hereto and incorporated herein, describing the Premises and setting forth the Term of this Ground Lease. Ground Lessee shall have the right to record the Memorandum of Ground Lease at Ground Lessee's sole cost and expense. Ground Lessee shall also deliver in recordable form on the Effective Date and as often thereafter as required by Legal Requirements for recording purposes, a Termination of Memorandum of Ground Lease and Ground Lease, if applicable, in escrow to Ground Lessor's counsel which Ground Lessor shall be authorized to release for recording in the event of the expiration or earlier termination of the Ground Lease and/or the Closing pursuant to **ARTICLE XVII** does not take place.

20.4 Notice. Any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either Party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage

fully prepaid) or express mail service addressed to the other Party at their address set forth below and by electronic mail addressed to the other Party at their email address set forth below:

If to Ground Lessee: \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to Ground Lessor: New Jersey Economic Development Authority  
Executive Vice President, Real Estate  
Division 36 West State Street  
Trenton, New Jersey 08625  
Email: \_\_\_\_\_

or at such other address as may be specified from time to time in writing by either Party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given. Notice by email shall be deemed to have been given on the date of the email, however, notice by email is in addition to the other methods for such notices hereunder and may not be used as the sole method for such notices required under this Section 20.4. Notwithstanding the foregoing, in the event of a notice of default, the sender shall use certified mail or overnight delivery such as FedEx. Regular invoices for Rent or other monetary obligations of Ground Lessee may be sent by regular mail to Ground Lessee’s notice address.

20.5 Successors and Assigns. All covenants, promises, conditions, representations and agreements herein contained shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors (including sublessees), and assigns.

20.6 Partial Invalidity. If any provision of this Ground Lease or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Ground Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

20.7 Interpretation. In interpreting this Ground Lease in its entirety, any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Ground Lease shall be construed against either Party hereto. This Ground Lease shall be construed without regard to any presumption or other rule requiring construction against the drafting Party.

20.8 Headings, Captions, References, and Exhibits. The Section and Article captions contained in this Ground Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms “hereof” “hereunder” and “herein” shall refer to this Ground Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The terms “include”, “includes” and “including” incorporate the concept that such inclusion is “without limitation”. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders, and the

singular form shall include the plural when the context so requires. All Exhibits and the cover sheets attached hereto are hereby incorporated herein as though set forth in full.

20.9 Brokerage Commissions. Ground Lessor and Ground Lessee each warrant and represent to the other that there are no brokers' or finders' fees or any real estate commissions due to any broker, agent or other Party in connection with the negotiation or execution of this Ground Lease, or on behalf of either of them. Ground Lessee shall indemnify Ground Lessor with respect to compensation, commissions, fees or other sums claimed to be due or owing with respect to the representations made by Ground Lessee.

20.10 Governing Law/Disputes. This Ground Lease shall be construed and enforced in accordance with applicable New Jersey law, without regard to the conflicts of law provisions of the laws of New Jersey. Any and all claims against Ground Lessor based on contract law shall be made in accordance with and subject to the provisions of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.). Any and all claims against Ground Lessor based on tort law shall be made in accordance with and subject to the provisions of the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.).

20.11 Transfer Taxes. Notwithstanding anything to the contrary contained in this Ground Lease, the Term of this Ground Lease shall not exceed a total term of ninety-eight (98) years from the Term Commencement Date. Upon the request of either Party, the Parties shall execute an instrument memorializing the Term Commencement Date and the last day of the last Term. Any and all transfer taxes due and payable due to this Ground Lease or the conveyance of the Premises to Ground Lessee shall be paid by Ground Lessee.

20.12 Execution of Documents. Ground Lessor and Ground Lessee shall each cooperate with the other and execute such documents as the other Party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate from or alter the powers, rights, duties and responsibilities of the respective Parties. Ground Lessee agrees within a reasonable period of time after request therefor from Ground Lessor to execute in recordable form and deliver to Ground Lessor the estoppel certificate in form attached hereto as **Exhibit G.** Ground Lessor agrees to give Ground Lessee a comparable estoppel certificate within a reasonable period of time but no less than fifteen (15) calendar days after request therefor from Ground Lessee.

20.13 Force Majeure. Whenever a Party is required to perform an act under this Ground Lease by a certain time, except for the obligation to pay Option Payments, Base Rent, Additional Rent, or any other charges under the Ground Lease, said time shall be deemed extended (unless otherwise specifically provided in this Ground Lease, including, but not limited to Section 5.2.1 hereof) so as to take into account events of "Force Majeure". "Force Majeure" is any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such Party's control. Any claim for Force Majeure must be made in writing within ten (10) calendar days of the occurrence of the event giving rise to the claim or said claim is waived.

20.14 Intentionally Omitted.

20.15 Survival Generally. Any presumption to the contrary notwithstanding, all terms, covenants, conditions, warranties and representations contained in this Ground Lease, which by their nature impliedly or expressly involve the performance in any particular after the expiration or earlier termination of the Ground Lease or the completion of the Closing hereunder, shall survive the expiration or earlier termination of the Ground Lease or the completion of the Closing under the Ground Lease. All indemnities running to the benefit of Indemnitees shall survive the expiration or earlier termination of the Ground Lease or the completion of the Closing under the Ground Lease. These provisions shall be effective as to all such indemnities, waivers, terms, covenants, conditions, warranties and representations, notwithstanding that as to some or all of them, it is not expressly stated that they shall survive.

20.16 Signage. Ground Lessee shall have the right to modify its signs, set forth on the approved site plan and shall have the right to use its typical signage on the buildings and Ground Lessor shall not interfere with such modifications so long as Ground Lessee complies with the rules and regulations of applicable governmental authorities and any variances granted therefrom. Ground Lessee shall maintain such signs in good order and repair in compliance with all applicable governmental rules, regulations or ordinances.

20.17 Entire Agreement. This Ground Lease supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Ground Lessor and Ground Lessee as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

20.18 Surrender at Expiration. Upon expiration of the Term of this Ground Lease and Ground Lessee has not purchased the Premises in accordance with **ARTICLE XVII** hereof or upon the termination of this Ground Lease before the expiration of the Term on account of default or other reason pursuant to this Ground Lease, Ground Lessee shall surrender the Premises with the Improvements, which shall be broom clean and in good order, condition and repair (except for reasonable wear and tear) and Ground Lessee shall promptly repair any resultant damage to the Premises. Ground Lessee shall, on or before the date of expiration or earlier termination of the Ground Lease, pay all Option Payments, Base Rent, Additional Rent and all other charges due under this Ground Lease through the date of expiration or earlier termination. At surrender, title to the Premises shall be free and clear of any liens and or mortgages. In the event of surrender of the Premises with the Improvements Ground Lessee shall provide to Ground Lessor with a deed(s) or bill(s) of sale, as Ground Lessor may reasonably require or direct. Upon expiration or other termination of this Ground Lease, Ground Lessee shall have the right at its sole cost and expense to promptly remove all of Ground Lessee's signage, furniture, and all other personal property ("Personal Property") from the Premises, however, if Ground Lessee fails to promptly remove the Personal Property, as determined within Ground Lessor's sole discretion, the Alterations and Ground Lessee's Personal Property may, at the option of Ground Lessor, be retained by Ground Lessor as its sole property or disposed of by Ground Lessor in such manner as Ground Lessor may see fit, without accountability therefor at Ground Lessee's sole cost and expense.

20.19 Waiver of Jury Trial and Counterclaim. The Parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors under or connected with this Ground Lease or any of its provisions, any negotiations in connection therewith, or Ground Lessee's use or occupancy of the Premises. In case Ground Lessor shall commence summary proceedings or an action for non-payment of Rent, Option Payments or any other monetary obligations due hereunder

against Ground Lessee, Ground Lessee shall not interpose any counterclaim of any nature or description in any such proceeding or action unless compulsory under existing court rules or applicable law, but shall be relegated to an independent action at law.

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**ARTICLE XXI**  
**NJEDA REQUIREMENTS**

21.1 Ground Lessee covenants and agrees to comply with the requirements of NJEDA as set forth on **Exhibit H** attached hereto and incorporated by reference herein.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed this Ground Lease as of the Effective Date.

**GROUND LESSOR:**

New Jersey Economic  
Development Authority

**GROUND LESSEE:**

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_

Name:

Title:

Date:

## EXHIBIT A

## EXHIBIT B

## EXHIBIT C

## EXHIBIT D

## Exhibit E

### Permitted Exceptions and NJT Requirements

1. **General.** Ground Lessee shall: (i) obtain insurance coverage, including, without limitation, pollution legal liability covering whether the same is exacerbated by Ground Lessor's, Ground Lessee's or their respective contractors' work or any Hazardous Substances introduced onto the Premises by Ground Lessor, Ground Lessee or their respective contractors, with indemnification provisions benefiting NJT and the State of New Jersey as additional insured, including, without limitation, environmental liability; (ii) enter into an applicable Temporary Access Permit in NJT's standard form with NJT for any work on or impacting NJT's property; (iii) adhere to all "Title Matters" set forth in Schedule E1 to this Exhibit; and (iv) work with NJT and Ground Lessor to resolve any environmental issue.
2. **Notice to NJT.** Ground Lessee shall reasonably cooperate with Ground Lessor to provide NJT with a written notice of the date that Ground Lessee is expected to commence pre-construction or construction work is to commence on the Premises, such date being the date the Property Management Agreement entered into by and between NJT and Ground Lessor dated as of June 30, 2025 (the "Property Management Agreement") and that certain Operating Agreement by and between the City of Linden and NJT dated as of January 1, 2004 (the "Parking Operating Agreement") shall terminate and NJT shall return the Premises to Ground Lessee in the manner as set forth in the Property Management Agreement.
3. **Access Agreements.** Ground Lessee shall enter into NJT's form of non-invasive access agreement prior to conducting non-invasive, visual inspections of the Premises, in substantially the same form as attached hereto as Schedule E2 to this Exhibit. Ground Lessee shall enter into NJT's form of temporary access permit prior to conducting any invasive testing, in substantially the same form as attached hereto as Schedule E3 to this Exhibit.
4. **NJT's Access and Use to Premises.** Until the Term Commencement Date, Ground Lessee acknowledges and agrees that NJT has the right to operate and maintain public parking lot(s) on the Premises in accordance with Property Management Agreement. Ground Lessee represents and warrants that it has been given a copy of such Property Management Agreement prior to the Effective Date.
5. **Third-Party Parking Operating Agreement.** Ground Lessee acknowledges and agrees that the Parking Operating Agreement is in full force and effect. NJT shall have the right to continue to operate the parking lot on the Premises in accordance with the Parking Operating Agreement up until the Term Commencement Date. Ground Lessee shall cooperate with Ground Lessor to notify NJT at least ninety (90) days prior to the Term Commencement Date of such Term Commencement Date.

## Schedule E1

- I. Description of the Property:
  - a. Site Plan {Attached}
  - b. Parking Operating Agreement:
    - Operating Agreement and Lease between NJT and the City of Linden dated as of January 1, 2004, pursuant to which the City of Linden manages the Parking Lot.
- II. Zoning: Linden Station Area – Core Transit Village District – Mixed Use.
- III. Title Matters:
  - a. Rights reserved to NJT:
    - i. Minimum setback of 50 feet from edge nearest rail track. Additional setbacks from other NJT operational structures to be agreed upon by NJT, Ground Lessee and the City of Linden.
    - ii. Non-exclusive perpetual access to allow NJT to access, maintain and construct facilities including the rail platforms to be agreed upon by NJT, Ground Lessee and the City of Linden.
    - iii. Adequate parking provisions for NJT users in the Development Agreement to be agreed upon by NJT, Ground Lessee and the City of Linden. Current parking is 273 spaces.
- IV. Additional considerations:
  - a. Access to the inbound station on the opposite side of the rail right of way is via South Wood Avenue. Ground Lessee should consider providing pedestrian access to limit the distance from the new development to the inbound platforms.
  - b. The Premises is adjacent to railroad operated by Amtrak and may be subject to federal or Amtrak restrictions.

Schedule E2

NJT Form Non-Invasive Access Agreement

*See Attached.*

Schedule E3

NJT Form Temporary Access Agreement

*See Attached.*

**EXHIBIT F**  
**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE (this "Memorandum") is made as of \_\_\_\_, 20\_\_ by and between NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("Ground Lessor") and \_\_\_\_\_ ("Ground Lessee"), a New Jersey \_\_\_\_\_.

**Background**

Ground Lessor and Ground Lessee entered into a Ground Lease (the "Ground Lease") dated \_\_\_\_\_. Ground Lessor and Ground Lessee now desire to execute this Memorandum for the purpose of submitting it to be recorded among the appropriate land records of the office of the County Clerk of Union County.

NOW, THEREFORE, the parties state as follows with respect to the Ground Lease:

1. The name and address of the Ground Lessor in the Ground Lease: New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625.

2. The name and address of the Ground Lessee in the Ground Lease:

\_\_\_\_\_.

3. Date of execution of the Ground Lease: .

4. Description of the Premises as set forth in the Ground Lease: See Exhibit A attached hereto.

5. Date of commencement of the Term of the Ground Lease: .

6. Term of Ground Lease: \_\_\_\_\_ [ ] years from the date of commencement, unless terminated or extended as set forth in the Ground Lease.

7. This Memorandum has been prepared, signed and acknowledged for recording purposes, in order to give notice of the Ground Lease. This Memorandum is subject to all of the terms, conditions and provisions of the Ground Lease, and this Memorandum does not modify, increase, decrease or in any other way affect the rights, duties or obligations of Ground Lessor or Ground Lessee under the Ground Lease. Each of Ground Lessor and Ground Lessee has rights, duties and obligations under the Ground Lease but not stated in this Memorandum. If the Ground Lease and this Memorandum conflict, the Ground Lease governs and controls.

8. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed as of the day and year first above written.

Attest:

By:  
Name:  
Title:

Attest

By:  
Name:  
Title:

GROUND LESSOR:  
NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY

By:  
Name:  
Title:

GROUND LESSEE:

By:  
Name:  
Title:

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STATE OF NEW JERSEY  
COUNTY OF:

I HEREBY CERTIFY that on this \_\_\_day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public for the state and county aforesaid, personally appeared Brian Sabina known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Memorandum of Ground Lease, who acknowledged that s/he is the Chief Economic Growth Officer of New Jersey Economic Development Authority, has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Notary Public

My commission expires on \_\_\_\_\_.

STATE OF NEW JERSEY:  
COUNTY OF:

I HEREBY CERTIFY that on this \_\_\_day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public for the state and county aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Memorandum of Ground Lease, who acknowledged that s/he is the \_\_\_\_\_ of \_\_\_\_\_, a corporation/limited liability company organized and existing under the laws of the State of New Jersey; that s/he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Notary Public

My commission expires on \_\_\_\_\_

**EXHIBIT G  
ESTOPPEL CERTIFICATE**

Ground Lessor: New Jersey Economic Development Authority

Ground Lessee: \_\_\_\_\_

Premises: Block 254, Lot 10, 101 West Elizabeth Avenue, Linden, New Jersey

Lease: Ground Lease dated \_\_\_\_\_ between Ground Lessor and Ground Lessee with respect to the Premises

Ground Lessee hereby certifies as follows:

1. Ground Lessee is the holder of the tenant's interest under the Ground Lease and the Ground Lease is in full force and effect.
2. Ground Lessee is presently in possession of the Premises, the term of the Ground Lease commenced on \_\_\_\_\_, 20\_\_, and is presently scheduled to expire on \_\_\_\_\_, 20\_\_.
3. Base Rent, Additional Rent, the Option Payments and other charges payable by Ground Lessee under the Ground Lease have been paid through the date hereof, and Base Rent has not been paid more than one month in advance.
4. To the best knowledge of Ground Lessee, (a) neither Ground Lessor nor Ground Lessee is in default in performance or observance of the obligations under the Ground Lease; and (b) Ground Lessee presently has no defense, setoff or counterclaim against Ground Lessor arising under the Ground Lease.
5. The Ground Lease has not been assigned by Ground Lessee, nor modified, supplemented or amended, and constitutes the entire agreement between Ground Lessor and Ground Lessee with respect to the Premises, except for \_\_\_\_\_.
6. Under the Ground Lease, Ground Lessee is required to purchase the Premises within twenty-five (25) business days following the end of the Term of the Ground Lease.
7. To the best knowledge of Ground Lessee, no event has occurred which with the giving of notice or passage of time, or both, would constitute a default by Ground Lessor or Ground Lessee under the Ground Lease.

8. To the best of Ground Lessee's knowledge, Ground Lessee's use, maintenance and operation of the Premises complies in all material respects with applicable federal, state, county and municipal laws and regulations relating to health and safety and the environment.
9. To the best of Ground Lessee's knowledge, the Premises is not, and during the Term of the Ground Lease has never been, used to handle, treat, store, or dispose of oil, petroleum products, hazardous substances in any quantity, hazardous waste, toxic substances, regulated substances or hazardous air pollutants in violation of any environmental law.
10. Ground Lessee has not received written notice of any violation of any federal, state, county or municipal laws, regulations, ordinances, orders or directives relating to the use or condition of the Premises that remains uncured.
11. Except as provided in the Ground Lease, Ground Lessee is not entitled to, and has made no agreement with Ground Lessor or its agents or employees concerning, free rent, partial rent, rebate of rental payments, credit or offset or deduction in rent, or any other type of rental concession.
12. No actions, voluntary or otherwise, are pending against Ground Lessee under the bankruptcy laws of the United States or any state.

This certificate may be relied upon by Ground Lessor, by \_\_\_\_\_ (as a lender and as administrative and collateral agent for itself and any other lenders), by such other lenders and by their respective successors and assigns.

Ground Lessee:

\_\_\_\_\_

By:

\_\_\_\_\_

Name:

Title:

Date:

STATE OF NEW JERSEY  
COUNTY OF:

I HEREBY CERTIFY that on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public for the state and county aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Estoppel Certificate, who acknowledged that s/he is the \_\_\_\_\_ of \_\_\_\_\_, a corporation/limited liability company organized and existing under the laws of the State of New Jersey; that s/he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Notary Public

My commission expires on \_\_\_\_\_.

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## EXHIBIT H

### NJEDA REQUIREMENTS

#### 1. Affordability.

a. The Premises shall be subject to a Declaration as to Ground Lessee's affordability requirement pursuant to the greater of: (i) a five (5)-year deed restriction; or (ii) any affordability controls required by the municipality and/or applicable financing covenants. Such affordability requirements shall run with the land and survive Closing ("Affordability Declaration"). Ground Lessee is recommended to thoroughly review and understand Criterion 6: Affordable Housing & Special Needs Inclusion of the RFQP, the terms of which are incorporated by references as if fully set forth in this Exhibit.

b. Promptly after Closing, the Title Company shall record the Declaration and provide a copy of the Declaration to Ground Lessor and Ground Lessee within one hundred eighty (180) calendar days of Closing.

c. Ground Lessor shall execute and deliver to Ground Lessee a release of the Affordability Declaration, which shall be recorded by Ground Lessee, at Ground Lessee's sole cost, upon the issuance of the City of Linden's Certificate of Completion for the Project (assuming the Project remains in accordance with the Affordability Declaration).

2. Prevailing Wage. Section 3.3.5 of the RFQP (the "Prevailing Wage Provisions") is hereby incorporated by reference as if fully set forth in this Exhibit. Ground Lessee represents and warrants that it has read and understands the Prevailing Wage Requirements and what Ground Lessee's obligations thereunder are.

#### 3. Affirmative Action/Anti-Discrimination.

a. Ground Lessee hereby acknowledges and confirms that if Ground Lessor retains ownership of any portion of the Premises during any investigation, remediation, or construction of the proposed Project, all work related to the Project shall be subject to and comply with the Affirmative Action Requirements (as such term is defined herein) of Seller as more fully set forth in this Section and in Schedule G1 attached to this Exhibit and incorporated by reference hereto.

b. Every contract for the construction, alteration or repair of the Project or for the acquisition of materials, equipment, supplies or services for the Project shall contain provisions by which the contractor agrees that: (i) in the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under the contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates; and (ii) no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under the contract or any subcontract

hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex. The requirements set forth in Section and Schedule H1 shall be collectively referred to herein as the “Affirmative Action Requirements.”

4. **Conflicts of Interest**. Section 17 of the RFGP, including all subsections thereunder (the “Conflicts of Interests Provisions”), is hereby incorporated by reference as if fully set forth in this Exhibit. Ground Lesse represents and warrants that it has read and understands the Conflicts of Interest Provisions and what Ground Lesse’s obligations thereunder are.

5. **Political Campaign Contributions**.

a. For the purpose of this Section 5, the following shall be defined as follows:

i. “Contribution” means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act” P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300.00 during a reporting period are deemed “reportable” under these laws.

ii. “Business Entity” means:

1. A for-profit entity as follows:

- a. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of such corporation;
- b. in the case of a general partnership: the partnership and any partner;
- c. in the case of a limited partnership: the limited partnership and any partner;
- d. in the case of a professional corporation: the professional corporation and any shareholder or officer;
- e. in the case of a limited liability company: the limited liability company and any member;
- f. in the case of a limited liability partnership: the limited liability partnership and any partner;

- g. in the case of a sole proprietorship: the proprietor; and
  - h. in the case of any other form of entity organized under the laws of the State of New Jersey or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;
2. Any subsidiary directly or indirectly controlled by the business entity;
  3. Any political organization organized under Section 527 of the Internal Revenue Code is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and
  4. With respect to an individual who is included within the definition of business entity the individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, PL 2005, c.51 shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of Section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ("Chapter 51").
- iii. PL 2005, c.51 – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).
- b. The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Ground Lease by reference as material terms of this Ground Lease with the same force and effect as if P.L. 2005, c. 51 were stated here in its entirety. Compliance with P.L. 2005, c. 51 by Ground Lessee shall be a material term of this Ground Lease.
  - c. Ground Lessee hereby certifies to Ground Lessor that commencing on and after October 15, 2004, Ground Lessee (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Ground Lessee and Ground Lessor pursuant to P.L. 2005, c. 51. Ground Lessee hereby further certifies to Ground Lessor that any and all certifications and disclosures delivered to Ground Lessor by Ground Lessee (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be the material term of this Ground Lease and if the Treasurer of the State of

New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, Ground Lessor shall have the right to declare an Event of Default.

- d. Ground Lessee hereby covenants that Ground Lessee (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the termination of this Ground Lease. The provisions of this Section 23.4 are intended to and shall be a material term of this Ground Lease and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Ground Lessee (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, Ground Lessor shall have the right to an Event of Default.
- e. In addition to any other default specified in the Contract Documents, Ground Lessor shall have the right to declare an event of default under this Ground Lease if: (i) Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Ground Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution

Certification and Disclosure which was delivered by Ground Lessee to Ground Lessor in connection with this Ground Lease.

- f. Ground Lessee hereby acknowledges and agrees that pursuant to P.L. 2005, c. 51, Ground Lessee shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Ground Lease. If after the effective date of this Ground Lease and before the entire Option Payments, Purchase Price, Base Rent, Additional Rent and other charges under this Ground Lease are paid by Ground Lessee, any Contribution is made by Ground Lessee and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, Ground Lessor shall have the right to declare an Event of Default.
- g. Ground Lessee is required to provide written notice to the Ground Lessor no later than ninety (90) calendar days prior to any change in any of the entities or persons having an ownership interest in Ground Lessee (including but not limited to changes in ownership interests among existing owners, or the deletion of a current owner, or the addition of a new owner); Should Ground Lessee fail to provide such notice, the Ground Lessor shall give Ground Lessee thirty (30) calendar days' notice to effect a cure to the full satisfaction of Ground Lessor. In the event Ground Lessee fails to effect said cure, Ground Lessor may immediately thereafter terminate this Ground Lease without liability and without Ground Lessee being afforded any further opportunity to cure. Upon such termination, Ground Lessor shall retain all payments made by Ground Lessee under this Ground Lease, including, but not limited to, Base Rent, Additional Rent, Option Payments, and any accrued interest, except that the Second Option Payment (if any) and all subsequent Option Payments (if any) paid after the Second Option Payment shall be promptly returned to Ground Lessee without accrued interest.
- h. In the event Ground Lessor receives notice from Ground Lessee of a change in ownership or interest, at any time prior to the Closing and Ground Lessor determines that the change in ownership or interest, requires Ground Lessor to continue to do business with the principals of an ownership or interest who is of known moral or financial disrepute or is a party suspended or debarred from doing business with the State of New Jersey, Ground Lessor agrees to give Ground Lessee thirty (30) calendar days' notice to effect a cure to the full satisfaction of Ground Lessor. In the event Ground Lessee fails to effect said cure, Ground Lessor may immediately thereafter terminate this Ground Lease without liability and without Ground Lessee being afforded any further opportunity to cure. Upon such termination, Ground Lessor shall retain all payments made by Ground Lessee under this Ground Lease, including, but not limited to, Base Rent, Additional Rent, Option Payments, and any accrued interest, except that the Second Option Payment (if any) and all subsequent Option Payments (if any) paid after the Second Option Payment shall be promptly returned to Ground Lessee without accrued interest.

6. **Equal Employment Opportunity.** The requirements set forth in N.J.S.A. 10:5-31 *et seq.* (P.L.1975, c. 127) and, as more fully set forth in Schedule H2 (collectively, the “Equal Employment Opportunity Provisions”), are hereby incorporated by reference as if fully set forth in this Exhibit. Ground Lesse represents and warrants that it has read and understands the Equal Employment Opportunity Provisions and what Ground Lesse’s obligations thereunder are.

7. **Business Registration Certificate.** Section 7.11.4 of the RFQP (the “BRC Provisions”), is hereby incorporated by reference as if fully set forth in this Exhibit. Ground Lesse represents and warrants that it has read and understands the BRC Provisions and what Ground Lesse’s obligations thereunder are.

8. **Minority, Women and Veteran-Owned Businesses.** The requirements set forth in Schedule H3 (the “MWVB Provisions”) are hereby incorporated by references as if fully set forth in this Exhibit. Ground Lesse represents and warrants that it has read and understands the MWVB Provisions and what Ground Lesse’s obligations thereunder are.

Schedule H1

Affirmative Action Requirements

*See Attached.*

Schedule H2

Equal Employment Opportunity Provisions

*See Attached.*

Schedule H3

MWVB Provisions

*See Attached.*

**EXHIBIT I**  
**FLOOD RISK DISCLOSURE**

This Notice is provided pursuant to N.J.S.A.46:8-50, and is applicable to the property located at:

- o 101 West Elizabeth Avenue, Linden, New Jersey, 07036
- o Identified on the tax map as Block 254, Lot 10

1. Is any or all of the property located wholly or partially in the Special Flood Hazard Area (“100-year/1% Annual Chance Flood Plain”) according to FEMA’s current flood insurance rate maps for the leased premises area?

Yes, effective map \_\_\_\_\_ Yes, preliminary map \_\_\_\_\_ No \_\_\_\_\_

2. Is any or all of the property located wholly or partially in a Moderate Risk Flood Hazard Area (“500-year/0.2% Annual Chance Flood Plain”) according to FEMA’s current flood insurance rate maps?

Yes, effective map \_\_\_\_\_ Yes, preliminary map \_\_\_\_\_ No \_\_\_\_\_

3. Has any of the property including parking areas experienced any flood damage, water seepage, or pooled water due to a natural flood event?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unknown \_\_\_\_\_

If the answer is Yes, how many times has such an event occur:

If the answer is Yes, describe each such event, including date of event:

**Signature:**

Counterparty: \_\_\_\_\_

Landlord:

Date: \_\_\_\_\_

New Jersey Economic Development Authority

Date:

**Note:** Flood risks in New Jersey are growing due to the effects of climate change. Coastal and inland areas may experience significant flooding now and in the near future, including in places that were not previously known to flood. For example, by 2050, it is likely that sea-level rise will meet or exceed 2.1 feet above 2000 levels, placing over 40,000 New Jersey properties at risk of permanent coastal flooding. In addition, precipitation intensity in New Jersey is increasing at levels significantly above historic trends, placing inland properties at greater risk of flash flooding. These and other coastal and inland flood risks are expected to increase within the life of a typical mortgage originated in or after 2020. To learn more about these impacts, including the flood risk to your property, visit [flooddisclosure.nj.gov](http://flooddisclosure.nj.gov). To learn more about how to prepare for a flood emergency, visit [nj.gov/njoem/plan-prepare/floods](http://nj.gov/njoem/plan-prepare/floods). **Flood Insurance:** Flood insurance may be available to renters through FEMA’s National Flood Insurance Program to cover your personal property and contents in the event of a flood. A standard renter's insurance policy does not typically cover flood damage. You are encouraged to examine your policy to determine whether you are covered.

*This is an automated notice that is provided as a free public service and is intended for informational purposes only. This report does not constitute a delineation of regulated areas or an authorization to conduct any regulated activities upon the subject parcel.*

## **Schedule 9.1 Insurance Requirements**

- i. Commencing on the Effective Date and continuing during the Term, Ground Lessee shall maintain the following insurance:
  - 21.1.1 commercial general liability insurance for bodily injury, personal injury and property damage, with a minimum limit of \$1,000,000 each occurrence and \$2,000,000 in the aggregate;
  - 21.1.2 automobile liability insurance with a limit of not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned vehicles; and
  - 21.1.3 Excess liability insurance, following form over the commercial general liability and automobile liability in an amount not less than \$5,000,000; and
  - 21.1.4 Each of the foregoing insurance shall name Ground Lessor as an additional insured on a primary and noncontributory basis.
  - 21.1.5 Commencing at the start of the Construction Period and continuing during the Term, Ground Lessee shall maintain workers' compensation insurance for the benefit of Ground Lessee's employees to the extent required by applicable Legal Requirements;
- ii. Commencing at the start of the Construction Period and continuing until the completion thereof, and subsequently during any period of construction on the Premises, Ground Lessee shall maintain builder's risk insurance on a Special Form basis covering the interests of Ground Lessor, Ground Lessee, and any of Ground Lessee's contractors, as their interests may appear, which shall insure against physical loss or damage to all property incorporated or to be incorporated in the Improvements, including temporary buildings used for the storage of property to be incorporated into the Improvements. Such insurance shall be in an amount equal to the value of the Improvements on a replacement cost basis. Such insurance shall also cover all property to be incorporated into the Improvements which is stored off-site or in transit; and
- iii. Commencing on the Additional Rent Commencement Date and continuing during the Term, Ground Lessee shall maintain property insurance written on a Special Form basis covering the Improvements against direct physical loss or damage, including but not limited to loss or damage caused by: (i) fire, lightning, windstorm or hail, explosion, smoke, riot or civil commotion, aircraft, vehicles, and other perils customarily included within extended coverage; (ii) sprinkler leakage; (iii) vandalism and malicious mischief; and (iv) such other risks as are not otherwise excluded under the applicable Special Form policy, all in an amount not less than the full replacement cost of the Improvements (excluding footings and foundations).

To the extent allowable by law, Ground Lessee waives all rights against the Ground Lessor and their respective agents for recovery of damages to the extent these damages are covered by the policies listed above to be maintained by Ground Lessee.

If the policies of insurance purchased by Ground Lessee as required above do not expressly allow the insured to waive rights of subrogation prior to loss, Ground Lessee shall cause them to be endorsed with a waiver of subrogation as required above.

Commencing on the Effective Date and continuing until the expiration or earlier termination of this Ground Lease, the Ground Lessee shall cause all of its agents, contractors or consultants doing work on the Premises, including, but not limited to, any construction of Alterations, to name the Ground Lessor as an additional insured on a primary and non-contributory basis on their commercial general liability insurance, and if necessary excess liability, for bodily injury, personal injury and property damage, with a minimum limit of \$5,000,000 each occurrence and \$5,000,000 in the aggregate while in the course of initial construction and \$2,000,000 each occurrence and \$2,000,000 in the aggregate for any work on premises thereafter before said agent, contractor or consultant is permitted to undertake work on the Premises. Coverage shall be endorsed to allow for a waiver of the insurer's right of subrogation against Ground Lessor.

Commencing on the Effective Date and continuing until the expiration or earlier termination of this Ground Lease, Ground Lessee shall furnish to Ground Lessor a Certificate of Insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. A copy of the additional insured, primary/non-contributory and waiver of subrogation endorsements must accompany the certificate of insurance. All policies and corresponding certificates (or copy of policy endorsements) must show thirty (30) days prior written notice of cancellation (10 days notice for non-payment cancellation) to Ground Lessor. Failure of Ground Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure to identify a deficiency from evidence that is provided shall not be construed as a waiver of Ground Lessee's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this contract at Ground Lessor's option. Ground Lessee shall provide certified copies of all insurance policies required within ten (10) days of Ground Lessor's written request for such policies. If Ground Lessee fails to maintain the insurance as set forth herein, Ground Lessor shall have the right, but not the obligation, to purchase said insurance at Ground Lessee's expense, and in connection therewith, including without limitation, Ground Lessor's reasonable attorneys' fees, on demand. By requiring insurance herein, Ground Lessor does not represent that coverage and limits will necessarily be adequate to protect Ground Lessee, and such coverage and limits shall not be deemed as a limitation on Ground Lessee's liability under the indemnities granted to Ground Lessor in this Agreement.

Additional insurance requirements may be requested upon receipt and review of the Project.

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### **Schedule 17.1**

Annual Base Rent shall be at least 10.00% of the Purchase Price, where the Purchase Price equals the sum of (i) the net present value of remaining Base Rent and (ii) 95.00% of the Premises' appraised value at Closing.

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