

FIRST AMENDMENT TO AGREEMENT OF LEASE

This **FIRST AMENDMENT TO AGREEMENT OF LEASE** (this “**Amendment**”), is made as of the ___ day of _____, 2022 (the “**Effective Date**”), by and between **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation of the State of Florida (“**Owner**”), and **CLPF – LINCOLN, LLC**, a Delaware limited liability company (“**Tenant**”).

WHEREAS, Owner and Tenant (as successor in interest to Lincoln Plaza Partners, LLC) previously entered into that certain Agreement of Lease, dated as of September 1, 1999 (the “**Lease Agreement**”), pursuant to which Owner agreed to lease to Tenant, and Tenant agreed to lease from Owner, the Premises (as defined in the Lease Agreement), for the development, management and operation of a parking garage, office space, retail space and/or commercial space as more particularly described in the Lease Agreement; and

WHEREAS, Owner and Tenant desire to enter into this Amendment to amend the Lease Agreement as hereinafter set forth; and

WHEREAS, on July ___, 2022, the City Commission adopted Resolution No. _____ approving this Amendment and authorizing the Mayor and City Clerk to execute this Amendment.

NOW, THEREFORE, for and in consideration of the above-stated premises and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Tenant hereby agree as follows:

1. **Incorporation of Recitals; General Provisions.** The foregoing recitals are true and correct and are incorporated in and made a part of this Amendment by reference. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed thereto in the Lease Agreement.

2. **Sale of Project and Transfer.**

(a) **Additional Definitions in Section 1.1.** Section 1.1 of the Lease Agreement is hereby amended to add or modify the following definitions:

“**Affiliate**” or “**Affiliates**” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, by Governmental Requirements or otherwise, or the power to elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to such Person (it being acknowledged that a Person shall not be deemed to

lack Control of another Person even though certain decisions may be subject to “major decision” consent or approval rights of limited partners, shareholders or members, as applicable).

“**Debt**” has the meaning provided in **Section 11.2(a)**.

“**Institutional Lender**” means a Person which, as of the date of closing of any financing provided by such Person to Tenant or Mezzanine Borrower (or as of the date such Person acquires an interest in such financing after the date of closing), is (a) a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity; (b) an insurance company organized and existing under the laws of the United States of America or any state thereof or a foreign insurance company in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity; (c) an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a “REMIC” under the Internal Revenue Code of 1986, as amended, a hedge fund, an opportunity fund, a public or private debt fund or other public or private investment entity in each case whether acting as principal or agent; (d) a brokerage or investment banking organization in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity as principal or agent; (e) an employees’ welfare, benefit, pension or retirement fund; (f) an institutional leasing company; (g) a financing subsidiary or division of a New York Stock Exchange listed company; (h) any governmental agency or entity insured by a governmental agency, (i) a private wealth management firm managing commercial lending investments for one or more families or (j) any combination of any of the foregoing (provided that each such lender satisfies the Institutional Lender criteria (other than in connection with a syndicated loan meeting the requirements expressly set forth below)); provided that each of the above Persons shall qualify as an Institutional Lender only if (i) it is not a Prohibited Person, (ii) as of the date of closing of any financing provided by such Person to Tenant or Mezzanine Borrower (or as of the date such Person acquires an interest in such financing after the date of closing), it has total assets of not less than One Hundred Seventy-Five Million Dollars (\$175,000,000) adjusted for inflation from and after July 1, 2022 and (iii) it is not an Affiliate of Tenant (it being further agreed that none of the standards set forth in this definition shall be applicable to participants in a loan secured by the Recognized Mortgage or a Mezzanine Loan which is held by an Institutional Lender whether acting individually or in a fiduciary or representative (such as an agency) capacity). The term “**Institutional Lender**” also includes an Affiliate of an Institutional Lender as described in this paragraph. In the event of a syndicated loan, if as of the date of the closing of any financing, the lenders holding not less than fifty-one percent (51%) of the outstanding principal balance of such loan secured by the Recognized Mortgage or

such Mezzanine Loan, are Institutional Lenders, then the syndicated loan shall be deemed to be made by an Institutional Lender. Without limiting the foregoing, for reference purposes, in the case of any syndicated loan secured by a Recognized Mortgage obtained by Tenant or syndicated Mezzanine Loan obtained by the Mezzanine Borrower, references herein to “Recognized Mortgagee” and “Recognized Mezzanine Lender,” respectively, shall refer to the Institutional Lender that is the administrative agent or collateral agent for the applicable syndicate.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; a foreign government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Recognized Mortgagee**” means an Institutional Lender that is the holder of a Recognized Mortgage, provided, in the case of a syndicated loan, references herein to “Recognized Mortgagee” shall refer to the Institutional Lender then serving as the administrative agent or collateral agent for the syndicate of lenders. A Recognized Mortgagee may not be an Affiliate of Tenant except (a) if Tenant is an Affiliate of a Recognized Mortgagee that has caused this Lease to be assigned to such Affiliate in lieu of foreclosure of the Recognized Mortgage of such Recognized Mortgagee and (b) an Affiliate that is a credit fund or other investment vehicle that provides loans in the ordinary course of its business may be part of a lending group constituting a Recognized Mortgagee so long as such Affiliate (i) does not own, collectively with any other Affiliate, more than forty-nine percent (49%) of the debt with respect to Tenant or the Project; (ii) is not the lead lender or agent for the lending group; and (iii) otherwise meets the definition of Institutional Lender.

(b) **Additional Definitions in Section 10.2.**

(i) Section 10.2 of the Lease Agreement is hereby amended to add the following definitions:

“**Controlling Interest Transfer**” means any Transfer to any proposed Transferee that will result in such Transferee having the power to direct and Control, directly or indirectly, the business and affairs of Tenant.

“**Domestically Sponsored Fund**” means any private equity fund, real estate investment trust or other pooled investment vehicle which directly or indirectly owns an Equity Interest in Tenant or a Permitted Buyer and whose sponsor and/or

manager is an entity organized under the laws of the United States of America or any state thereof.

“Exempt Pledge” means a single pledge (other than in connection with the Mezzanine Loan) by a single Person of such Person’s indirect Equity Interests in Tenant in favor of one Institutional Lender providing financing secured by substantial collateral in addition to such indirect Equity Interests in Tenant.

“OFAC Regulations” means all applicable orders, rules, regulations, sanctions programs and recommendations of the Office of Foreign Asset Control of the U.S. Department of Treasury, including without limitation the Specially Designated Nationals and Blocked Persons List, as the same may be amended.

“Prohibited Person” shall mean any of the following Persons: any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder to the extent the same are then effective: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended; or (iii) any Person who has engaged in any dealings or transactions (A) in contravention of the applicable money laundering laws or regulations or conventions or (B) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time or any published terrorist or watch list that may exist from time to time; or (iv) any Person with whom U.S. Persons are prohibited to engage in transaction pursuant to the OFAC Regulations, including without limitation any person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order, as the same may be amended or supplemented from time to time; or (v) any Affiliate of any of the Persons described in paragraphs (i) through (iv) above.

“Publicly Traded U.S. Company” means any publicly traded company organized under the laws of the United States of America or any state thereof.

“U.S. Person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

(ii) Section 10.2(a) of the Lease Agreement is hereby further amended by deleting the definition of “Assignment” in its entirety and replacing it with the following:

“Assignment” means a sale, exchange, assignment, transfer or other disposition by Tenant of all or a portion of Tenant’s Interest in the Premises, whether by operation of law or otherwise, which is not a Transfer or a Master Sublease. The creation, pledge or granting of the Recognized Mortgage to the Recognized Mortgagee or of the Mezzanine Loan Documents to the Recognized Mezzanine Lender shall not constitute an Assignment or a Transfer.”

(c) **Restrictions on Sale of the Project or Transfer.** Section 10.3(b) of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“No Sale of the Project or Transfer to a Foreign Instrumentality. Notwithstanding anything in this Lease to the contrary, there shall not be any Sale of the Project or any Transfer to a Foreign Instrumentality; provided that, notwithstanding the foregoing or anything contained in this Article 10 or elsewhere in this Lease, nothing herein shall, or shall be construed to, prohibit or restrict the indirect ownership of Equity Interests in Tenant or a Permitted Buyer (as hereinafter defined) at any time by any one or more Foreign Instrumentalities, so long as (a) any such Equity Interests in Tenant held by a Foreign Instrumentality are owned indirectly by such Foreign Instrumentality through a Domestically Sponsored Fund or a Publicly Traded U.S. Company; (b) the interests in such Domestically Sponsored Fund or Publicly Traded U.S. Company owned by any such Foreign Instrumentalities are non-Controlling Interests; (c) subject to the next sentence, such Foreign Instrumentalities with interests, whether direct or indirect, in the Domestically Sponsored Fund or a Publicly Traded U.S. Company are not, to Tenant’s knowledge, Prohibited Persons and (d) such Domestically Sponsored Fund and/or Publicly Traded U.S. Company maintains a compliance program to ensure it does not permit any Foreign Instrumentalities that are Prohibited Persons to acquire direct interests in the applicable Domestically Sponsored Fund or Publicly Traded U.S. Company or Tenant in violation of applicable federal laws of the United States of America. In the event Tenant obtains knowledge that any such Foreign Instrumentality holds an indirect Equity Interest in Tenant in violation of clause (c) of this Section, such ownership shall not be an Event of Default under this Lease, but Tenant shall use best efforts to cure such violation as soon as reasonably practicable but in any case not later than three (3) months following the date that it first obtains knowledge of such violation (which cure may be effected by the applicable Domestically Sponsored Fund and/or Publicly Traded U.S.

Company complying with the applicable federal laws of the United States of America with respect to such Prohibited Person's indirect interest in the Tenant). Upon Owner's written request from time to time, Tenant shall certify to the City that, to its knowledge, there is no Foreign Instrumentality having an indirect interest in Tenant as permitted by this Lease that is a Prohibited Person. For the avoidance of doubt, no Foreign Instrumentality shall be entitled to exercise control over Tenant or the day to day operation and leasing of the Premises."

(d) **Amendments to Sections 10.4, 10.5 and 10.6.**

(i) The following language is hereby deleted from the last sentence of Section 10.4(c) of the Lease Agreement:

"(for purposes of this **Section 10.4(c)** only, the term "Transfer" shall include a transfer of an Equity Interest in a Person or Persons having an Equity Interest, directly or indirectly, in Tenant)."

(ii) Sections 10.5 and 10.6 of the Lease Agreement are hereby amended to replace the terms "Transfer" and "proposed Transfer" with the terms "Controlling Interest Transfer" and "proposed Controlling Interest Transfer," respectively, such that the terms, provisions and/or requirements of Sections 10.5 and 10.6 shall apply only to a Sale of the Project and/or a Controlling Interest Transfer.

3. **Mezzanine Financing.** Article 11 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

"Article 11 - Mortgages and Financing

Section 11.1 Right to Mortgage and Other Financing.

(a) Except for an Exempt Pledge or as otherwise expressly provided for in this Article 11, Tenant shall not mortgage, pledge, hypothecate or otherwise encumber Tenant's Interest in the Premises or permit to be mortgaged, pledged, hypothecated or otherwise encumbered all or any portion of the direct or indirect Equity Interests in Tenant.

(b) Tenant shall have the right to mortgage, pledge, hypothecate or otherwise encumber Tenant's Interest in the Premises to secure Debt by a Recognized Mortgage without Owner's approval, provided, the loan agreement or other debt instruments secured by the Recognized Mortgage must be for Debt exclusively related to the Premises. Tenant acknowledges and agrees that the loan secured by the Recognized Mortgage shall not be cross-defaulted with any other loan.

(c) The Mezzanine Borrower shall have the right to secure a Mezzanine Loan to finance or refinance the direct and/or indirect Equity Interests of Tenant and, in conjunction with and to secure that financing, such Mezzanine Borrower may enter into a pledge of all (but not less than all) of its direct and/or indirect Equity Interests in Tenant in favor of the Mezzanine Lender in accordance with this Article 11. For the avoidance of doubt, there shall not be more than one Mezzanine Loan outstanding at any time. Tenant acknowledges and agrees that the Mezzanine Loan shall not be cross-defaulted with any other loan (other than the loan secured by the Recognized Mortgage).

Section 11.2 Definitions.

(a) **“Debt”** means the principal amount of debt and interest thereon (x) of Tenant and secured by Tenant’s Interest in the Premises, together with any other amounts owed by Tenant under the Recognized Mortgage to the Recognized Mortgagee, or (y) of Mezzanine Borrower and secured by a pledge of all (but not less than all) of the direct or indirect Equity Interests in Tenant, together with any other amounts owed by Mezzanine Borrower under the Mezzanine Loan Documents to the Recognized Mezzanine Lender, or (z) to the extent permitted hereby, of Tenant to the Institutional Lender providing the C-PACE financing. In addition, Debt shall include any debt obtained in connection with (i) a required Casualty Restoration or Condemnation Restoration, as applicable, if the Net Insurance Proceeds are, or the Net Condemnation Award is, inadequate to achieve the required Casualty Restoration or Condemnation Restoration, as applicable and (ii) any advances made by the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable, with respect to Tenant’s Interest in the Premises for the payment of taxes, assessments, insurance premiums or other costs incurred for the protection of Tenant’s Interest in the Premises or the liens, pledges or security interests created by the Recognized Mortgage or the Mezzanine Loan Documents, as applicable, and reasonable expenses incurred by the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable, by reason of a Default by Tenant under such Recognized Mortgage or under this Lease.

(b) **“Mezzanine Borrower”** means the borrower under the Mezzanine Loan, which borrower is the owner, directly or indirectly, of all of the Equity Interests of Tenant.

(c) **“Mezzanine Loan”** means the mezzanine loan, if any, made by the Recognized Mezzanine Lender to the Mezzanine Borrower to provide financing or refinancing related to the Premises in accordance with this Lease, which shall be secured by a pledge of the direct and/or indirect Equity Interests in Tenant.

(d) **“Mezzanine Loan Documents”** means, collectively, any loan agreement, promissory note, pledge, guaranty, UCC-1 Financing Statement, or other documents evidencing or securing the Mezzanine Loan.

(e) **“Mortgage”** means any mortgage or deed of trust, and all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof, that constitutes a lien on all or a portion of Tenant’s Interest in the Premises, and any security interest in or assignment of the Lease or the rents, issues or profits related thereto. Notwithstanding anything to the contrary set forth herein, Tenant shall not enter into and shall not permit to exist at any time any Mortgage on the Property other than a single Recognized Mortgage in favor of the Recognized Mortgagee.

(f) **“Recognized Mezzanine Lender”** means an Institutional Lender that is making the Mezzanine Loan to the Mezzanine Borrower.

(g) **“Recognized Mortgage”** means the single Mortgage (i) that secures Debt exclusively for and directly related to the Premises; (ii) that is held by a Person (other than an Affiliate except as contemplated in the definition of Recognized Mortgagee) which is an Institutional Lender, (iii) that expressly provides that it is subject to the terms of this Lease and, except as expressly set forth herein regarding Owner’s subordination in certain circumstances of its right to Percentage Rent, is subordinate to Owner’s Interest in the Premises (including Owner’s interest in the Lease), and (iv) a copy of which is provided in accordance with **Section 11.4(a)**.

Section 11.3 Effect of Mortgages.

(a) **Owner’s Interest.** No Mortgage or other encumbrance executed by Tenant or the Mezzanine Borrower shall extend to or be a lien or encumbrance upon, Owner’s Interest in the Premises or any part thereof or any appurtenant rights thereto which have not been granted to Tenant under this Lease. A Mortgage may extend to and be a lien or encumbrance upon the entire Tenant’s Interest in the Premises and shall at all times, without the necessity for the execution of any further documents, be subject and subordinate to Owner’s Interest in the Premises.

(b) **Mortgagee’s Rights Not Greater than Tenant’s.** The execution and delivery of the Recognized Mortgage shall not give or be deemed to give the Recognized Mortgagee any greater rights against Owner than those granted to Tenant hereunder, except as otherwise expressly provided in this Lease.

Section 11.4 Notice and Right to Cure Tenant Defaults.

(a) **Notice to Owner.** Tenant shall deliver to Owner, promptly after execution by Tenant or Mezzanine Borrower, (i) with respect to the Recognized Mortgagee, a true and correct copy of the recorded Recognized Mortgage, and any amendment, modification or extension thereof (other than any amendments or modifications to cure any ambiguities or scrivener’s errors or that are otherwise de minimis in nature) together with the name and address for notices of the Recognized Mortgagee and (ii) with respect to the Recognized Mezzanine Lender, a true and correct copy of any pledge agreement executed in connection with the Mezzanine Loan and any amendment, modification or extension thereof (other than any amendments or modifications to

cure any ambiguities or scrivener's errors or that are otherwise de minimis in nature), together with the name and address for notices of the Recognized Mezzanine Lender.

(b) **Notice to Recognized Mortgagee and Recognized Mezzanine Lender.** Owner shall give to the Recognized Mortgagee and the Recognized Mezzanine Lender, in the manner provided by the provisions of **Section 26.1** at such address as Tenant has delivered to Owner pursuant to **Section 11.4(a)** or as the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, may from time to time deliver to Owner in accordance with **Section 26.1**, a copy of each notice of Default at the same time as it gives notice of Default to Tenant, and no such notice of Default shall be deemed effective with respect to the Recognized Mortgagee or the Recognized Mezzanine Lender unless and until a copy thereof shall have been so received by or refused by the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable. Owner shall also give the Recognized Mortgagee and Recognized Mezzanine Lender notice ("**Notice of Failure to Cure**") in the event Tenant fails to cure a Default within the period, if any, provided in this Lease for such cure, promptly following the expiration of such period (i.e., an Event of Default). Only Events of Default expressly described in the Notice of Failure to Cure may give rise to a termination of this Lease by Owner pursuant to its termination rights hereunder. Owner shall be deemed to have fulfilled its notice obligation by providing the required notice to the address delivered to Owner in accordance with **Section 11.4(a)** or at such other address as the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, may from time to time deliver to Owner in accordance with **Section 26.1**, and Owner shall not be responsible for any liability in the event such address is not current.

(c) **Right and Time to Cure.** Subject to the provisions of Section 11.13, either the Recognized Mortgagee or the Recognized Mezzanine Lender shall have the right to cure or caused to be cured the Event(s) of Default set forth in the Notice of Failure to Cure. The Recognized Mortgagee and the Recognized Mezzanine Lender shall have a concurrent period of ninety (90) days after receipt of the Notice of Failure to Cure (the "**Cure Period**" which, for the avoidance of doubt, shall not be extended pursuant to the provisions of **Section 25.1(b)**), in the case of any Event of Default, to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured, subject to the provisions of **Section 25.1(b)**. Nothing contained herein shall be construed as imposing any obligation upon (x) the Recognized Mortgagee or the Recognized Mezzanine Lender to so perform or comply on behalf of Tenant or (y) Owner to notify the Recognized Mezzanine Lender of whether the Recognized Mortgagee cured (or caused to be cured) any such Event(s) of Default or to notify the Recognized Mezzanine Lender of whether the Recognized Mortgagee cured (or caused to be cured) any such Event(s) of Default. Anything contained in this Lease to the contrary notwithstanding, Owner shall have no right to terminate this Lease prior to the delivery of a Notice of Failure to Cure or following the delivery of a Notice of Failure to Cure if, within the Cure Period, (x) the Recognized Mortgagee complies with clauses (i), (ii) and (iii) below, or (y) the Recognized Mezzanine Lender complies with clauses (i), (ii) and (iv) below:

(i) notify Owner in writing of the Recognized Mortgagee's or Recognized Mezzanine Lender's, as applicable, desire to cure the matter described in such Notice of Failure to Cure;

(ii) pay or cause to be paid all Rental and/or Impositions then due and in arrears as specified in the Default Notice from Owner to the Recognized Mortgagee and the Recognized Mezzanine Lender (provided, however, that such Recognized Mortgagee or Recognized Mezzanine Lender shall not be required to pay or cause to be paid any amounts payable by Tenant under **Section 28.1(b)** to the extent such amounts relate to any Lease Year other than the Lease Year for which the most recent Annual Financial Statements have been made available to Owner; provided further, however, in the event that the Recognized Mortgagee or Recognized Mezzanine Lender (A) provides notice to Owner pursuant to **Section 11.4(c)(i)**, and (B) files a foreclosure or other enforcement action within the Cure Period, and diligently prosecutes such foreclosure or other enforcement action, the Recognized Mortgagee's and/or Recognized Mezzanine Lender's curative obligations with regard to an Event of Default as provided in this **Section 11.4(c)(ii)** shall be governed by the provisions of **Section 11.4(c)(iii)** (with respect to a Recognized Mortgagee) or **Section 11.4(c)(iv)** (with respect to a Recognized Mezzanine Lender));

(iii) with respect to the Recognized Mortgagee, cure or cause to be cured all Defaults by Tenant in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (including the payment of Rental and/or Impositions), or if any such Default is of such a nature that it cannot reasonably be remedied before the end of the Cure Period (but is otherwise reasonably susceptible to cure), Recognized Mortgagee shall, (A) by or before the end of the Cure Period advise Owner of the Recognized Mortgagee's intention to institute all steps (and from time to time, as reasonably requested by Owner, the Recognized Mortgagee shall advise Owner of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (B) thereafter diligently prosecute to completion all such steps necessary to remedy the same, it being acknowledged by Owner that, if possession or control of the Premises is required to effect such cure, the diligent, continuous prosecution of a foreclosure or other enforcement action that would result in possession or control of the Premises by the Recognized Mortgagee, and the continuing efforts by the Recognized Mortgagee to effect such cure following completion of such foreclosure or other enforcement action, shall constitute a part of the steps necessary to remedy such Default, and during the period of such pursuit, all other obligations of Tenant under this Lease, to the extent they are susceptible of being performed by the Recognized Mortgagee (e.g., payment of all Rental and Impositions), are being performed; provided, however, Percentage Rent shall be due only if, and to the extent that, Project Revenues are sufficient to pay Percentage Rent after payment of Operating Expenses and Debt Service in respect of the loan secured by the Recognized Mortgagee, it being understood and agreed that Debt Service in respect of any Mezzanine Loan shall be subordinate to the obligation to pay Percentage Rent. Until such time as the applicable Event of Default is fully cured, the Recognized Mortgagee shall provide to Owner a monthly statement setting forth Project Revenues and Operating Expenses. Nothing in

this Lease shall require the Recognized Mortgagee, or its Designee or Foreclosure Transferee to cure any Default of Tenant not reasonably susceptible of being cured by such Person (including, without limitation, the Defaults stated in **Section 25.1 (f), (g), (h), (i) and (k)**);

(iv) with respect to the Recognized Mezzanine Lender, cure all Defaults by Tenant in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (including the payment of Rental and/or Impositions), or if any such Default is of such a nature that it cannot reasonably be remedied before the end of the Cure Period (but is otherwise reasonably susceptible to cure), Recognized Mezzanine Lender shall, (i) by or before the end of the Cure Period, advise Owner of the Recognized Mezzanine Lender's intention to institute all steps (and from time to time, as reasonably requested by Owner, the Recognized Mezzanine Lender shall advise Owner of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same, it being acknowledged by Owner that, if title to the direct or indirect Equity Interests in Tenant is required to effect such cure, the diligent, continuous prosecution of a foreclosure under the Uniform Commercial Code of the Recognized Mezzanine Lender's security interest in all of the direct or indirect Equity Interests in Tenant or other enforcement action, and the continuing efforts by the Recognized Mezzanine Lender to effect such cure following completion of such foreclosure or other enforcement action, shall constitute a part of the steps necessary to remedy such Default, and during the period of such pursuit, all other obligations of Tenant under this Lease, to the extent they are susceptible of being performed by the Recognized Mezzanine Lender (e.g., payment of all Rental (including, for the avoidance of doubt, Percentage Rent) and Impositions), are being performed. Nothing in this Lease shall require the Recognized Mezzanine Lender or its Designee or UCC Transferee to cure any Default of Tenant not reasonably susceptible of being cured by such Person (including, without limitation, the Defaults stated in **Section 25.1 (f), (g), (h), (i) and (k)**).

Notwithstanding the foregoing provisions of this **Section 11.4(c)**, following the delivery of a Notice of Failure to Cure, within five (5) Business Days following the written request of the Recognized Mortgagee and/or the Recognized Mezzanine Lender (which request may be contained in the written notice to Owner from the Recognized Mortgagee and/or Recognized Mezzanine Lender, as applicable, pursuant to **Section 11.4(c)(i)**), Owner shall deliver to the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, a statement certifying the aggregate amount of Rental and/or Impositions then due and/or in arrears hereunder (including Percentage Rent if the amount then due and/or in arrears is known to Owner) and the estimated per diem increase in such amount, but no such request shall increase any of the time periods provided for in this **Section 11.4(c)**.

(d) **Acceptance of Performance.** Owner shall accept performance pursuant to and in accordance with this **Article XI** by the Recognized Mortgagee or the Recognized Mezzanine Lender of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(e) **Other Rights of the Recognized Mortgagee and Recognized Mezzanine Lender.** Notwithstanding any other provision of this Lease, no payment made to Owner by the Recognized Mortgagee or the Recognized Mezzanine Lender shall constitute such Person's agreement that such payment was, in fact, due under the terms of this Lease.

(f) **Owner's Self-Help Rights.** Notwithstanding the foregoing provisions of this **Section 11.4**, if, as applicable, the Recognized Mortgagee or Recognized Mezzanine Lender fails (for any reason) to cure any Default by Tenant described in **Section 11.4(c)(iii)** or **(iv)**, as applicable, within the Cure Period following receipt of the Notice of Failure to Cure regarding such Default, then Owner may upon notice, but shall be under no obligation to, perform the obligation of Tenant the breach of which gave rise to such Default, without waiving or releasing Tenant from its obligations with respect to such Default. Tenant hereby grants Owner access to the Premises in order to perform any such obligation. Any amount paid by Owner in performing Tenant's obligations as provided in this **Section 11.4(e)**, including all costs and expenses incurred by Owner in connection therewith, shall constitute Rental hereunder and shall be reimbursed to Owner within thirty (30) days following Owner's demand therefor, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(g) **Acceptance of Owner's Performance.** Tenant shall cause the loan documents with respect to any Recognized Mortgagee and the Mezzanine Loan Documents of the Recognized Mezzanine Lender to contain a provision requiring that the Recognized Mortgagee and the Recognized Mezzanine Lender, respectively, must accept performance by Owner, within the applicable grace periods available to Tenant, to cure Defaults under any covenant, condition or agreement on Tenant's part to be performed under such loan documents or Mezzanine Loan Documents, as applicable, with the same force and effect as though performed by Tenant.

Section 11.5 Recognized Mortgagee, Recognized Mezzanine Lender or its Designee, as Tenant Under this Lease.

If the Recognized Mortgagee or its Designee becomes Tenant under this Lease or if Mezzanine Lender or its Designee becomes the owner of all of the direct or indirect Equity Interests in Tenant, then, in that event, the Recognized Mortgagee, the Recognized Mezzanine Lender or such Designee shall, during the period of its tenancy:

(a) pay or cause to be paid, as applicable, all current Rental and/or Impositions commencing as of the date such Recognized Mortgagee or its Designee becomes Tenant or Recognized Mezzanine Lender or its Designee becomes the holder of all of the direct or indirect Equity Interests in Tenant (the "Reinstatement Date"); provided, however, if the Recognized Mortgagee or its Designee becomes the Tenant, Percentage Rent which was due for periods prior to the Reinstatement Date shall be forgiven and shall not thereafter be payable;

(b) comply with all the covenants and conditions of this Lease, including the payment of Rental and/or Impositions; except for payment of Rental and/or Impositions shall be as specified in this **Section 11.5**;

(c) pay all Back Rent and/or Impositions that were due and owing as of the Reinstatement Date in the following manner:

(i) Monthly; provided, however, if the Recognized Mortgagee or its Designee or its Foreclosure Transferee becomes the Tenant, then the payment of Back Rent and Impositions that were due and owing as of the Reinstatement Date shall be payable only to the extent sufficient funds are received by such Recognized Mortgagee, its Designee or its Foreclosure Transferee from Project Revenue after deducting Operating Expenses, Debt Service (solely in respect of the loan secured by the Recognized Mortgage, which Debt Service shall be retained by the Recognized Mortgagee) and amounts paid pursuant to **Section 11.5(a)**;

(ii) Back Rent and/or Impositions that were due and payable as of the Reinstatement Date shall continue as an obligation of the Recognized Mortgagee, Recognized Mezzanine Lender or any Designee until paid in full ; and

(d) pay all Percentage Rent which accrues subsequent to the Reinstatement Date as follows:

(i) For so long as a Recognized Mortgagee or its Designee is Tenant, Percentage Rent shall be payable monthly, but only to the extent that funds are available therefor after making the payments set forth in **Section 11.5(a), (b) and (c)** above. If the Recognized Mortgagee or its Designee becomes the Tenant, Percentage Rent shall be waived (and not accrued) to the extent that Project Revenue in any Lease Year is not sufficient to pay Percentage Rent after payments have been made with respect to amounts set forth in **Sections 11.5(a)-(c)**.

(ii) Upon a Foreclosure Transfer by a Recognized Mortgagee or its Designee, any amounts of Percentage Rent accrued, but unpaid due to the insufficiency of funds pursuant to **Section 11.5(d)(i)**, shall be forgiven.

For the avoidance of doubt, the provisions in **Section 11.4(c)** and this **Section 11.5** that provide for the abatement, deferral, subordination and/or forgiveness of Back Rent, Impositions and/or Percentage Rent are applicable only in respect of a Recognized Mortgagee, Debt Service associated with a Recognized Mortgage, and/or a Foreclosure Transfer by a Recognized Mortgagee to a Foreclosure Transferee, and are not intended to be applicable to any Recognized Mezzanine Lender, Debt Service associated with a Recognized Mezzanine Loan or a Foreclosure Transfer by a Recognized Mezzanine Lender to UCC Transferee. In addition, notwithstanding anything herein to the contrary, there shall be no abatement, deferral, subordination and/or forgiveness of Back Rent, Impositions and/or Percentage Rent if any portion of the Equity Interest

in the Person that is the First Transferee is owned, either legally or beneficially, by the tenant under this Lease that was foreclosed upon.

Section 11.6 Execution of New Tenant's Documents.

(a) **Notice of Termination.** If this Lease is terminated by reason of an Event of Default, or by reason of the rejection thereof by or on behalf of Tenant in bankruptcy or for any other reason, Owner shall give prompt notice thereof to the Recognized Mortgagee and the Recognized Mezzanine Lender (“**Notice of Termination**”).

(b) **Request for and Execution of New Tenant's Documents.** If, within ninety (90) days of receipt of Notice of Termination (the “**New Documents Option Period**”), the Recognized Mortgagee or Recognized Mezzanine Lender shall request, in writing, a new lease for the remainder of the Term, on the same terms and conditions as set forth in this Lease (the “**New Tenant's Documents**”), then, subject to the provisions of **Sections 11.6(c) and 11.7**, within ninety (90) days after Owner shall have received such request from the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, Owner shall execute and deliver, to an escrow agent and subject to escrow instructions, each as mutually agreed by Owner and such Person, New Tenant's Documents covering the remainder of the Term with the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable, or its applicable Designee, Foreclosure Transferee, or UCC Transferee, in each case, that has satisfied the requirements set forth in **Section 10.3 and 10.4** (such Person, a “**New Tenant**”). Such New Tenant's Documents shall be effective upon the execution thereof by both Owner and such New Tenant. The New Tenant's Documents shall be at the then current Rental and/or Impositions (subject, however to **Sections 11.4 and 11.5**, to the extent applicable) and otherwise contain all of the covenants, conditions, limitations and agreements, and all of Tenant's rights and remedies, contained in this Lease (including, without limitation, a conveyance by Owner of all then-existing Improvements) and shall be accepted by such New Tenant in “AS IS” “WHERE IS” and “WITH ALL FAULTS” condition without any representation or warranty by Owner; provided, however, that Owner shall not be deemed to have represented or covenanted that such New Tenant's Documents are superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant; provided, further, such New Tenant's Documents will have the same priority over any encumbrances on the estate of Owner which Tenant has or had by virtue of this Lease and the New Tenant will not have any obligation to perform any acts under this Lease which shall at such time have already been performed by Tenant.

Concurrently with the execution and delivery of such New Tenant's Documents, Owner shall assign to the New Tenant all of its right, title and interest in and to moneys (including, without limitation, (i) subrents collected which have not been applied or are not being held for application to Rental and/or Impositions and the costs incurred by Owner to operate, maintain and repair the Premises and (ii) insurance and condemnation proceeds which have not been applied or are not being held for application to the costs incurred by Owner to restore the Premises), if any, then held by or payable to Owner which Tenant would have been entitled to receive but for termination of

this Lease or Owner's exercise of its rights upon the occurrence of an Event of Default; provided, however, that Owner shall not be required to assign such moneys to such New Tenant unless and until such New Tenant shall have cured all Events of Default that existed under this Lease prior to the execution of such New Tenant's Documents to the extent such Events of Default are reasonably susceptible to cure by such New Tenant.

Upon the execution and delivery of New Tenant's Documents under this **Section 11.6(b)**, all Master Subleases which theretofore may have been assigned to Owner shall be assigned and transferred, without recourse, representation or warranty, by Owner to the New Tenant named in such New Tenant's Documents. Between the date of termination of this Lease and the date of execution and delivery of the New Tenant's Documents, Owner shall not enter into any new Master Subleases, cancel or modify any then existing Master Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable.

For so long as the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, (or its Designee) shall have the right to enter into the New Tenant's Documents with Owner pursuant to this **Section 11.6(b)**, Owner shall not enter into a new lease of the Land with any Person other than the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its Designee), without the prior written consent of the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable. The provisions of **Section 11.6(b)** shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if **Section 11.6(b)** were a separate and independent contract made by Owner, Tenant and the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of the New Tenant's Documents to the extent requested and entered into in accordance with and pursuant to this **Section 11.6(b)** below, the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, may use and enjoy the leasehold estate created by this Lease without hindrance by Owner. Notwithstanding anything to the contrary set forth in this **Section 11.6(b)** or otherwise, if the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable (or its Designee) fails to timely request, or thereafter fails to timely execute and deliver the New Tenant's Documents to Owner within thirty (30) days after Owner's delivery of the executed New Tenant's Documents to the escrow agent, Owner shall have no further obligation, and the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, (or its Designee) shall have no further right, to enter into the New Tenant's Documents or to use and enjoy the leasehold estate. The aforesaid agreement of Owner to enter into New Tenant Documents with the Recognized Mortgagee or the Recognized Mezzanine Lender, or its respective Designee, shall be deemed a separate agreement between Owner and the Recognized Mortgagee and between Owner and the Recognized Mezzanine Lender, in each case, separate and apart from this Lease as well as a part of this Lease, and shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by any party.

(c) **Conditions Precedent to Owner's Execution of New Tenant's Documents.** The provisions of **Section 11.6(b)** notwithstanding, Owner shall not be obligated to enter into New Tenant's Documents with the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC Transferee) unless:

(i) the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC Transferee) shall pay to Owner, concurrently with the execution and delivery of the New Tenant's Documents, all unpaid Rental and/or Impositions due under this Lease (subject, however to **Sections 11.4** and **11.5**, to the extent applicable) up to and including the date of the commencement of the term of the New Tenant's Documents and all reasonable out-of-pocket expenses, as evidenced by receipted bills therefor, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, the termination of this Lease and the preparation of such New Tenant's Documents, less the net revenue of the Premises actually received by Owner from the date of termination of this Lease to the date of execution of the New Tenant's Documents, with any excess of the total of such sums and expenses to be applied by Owner to the payment of Base Rent or Percentage Rent, as applicable, (subject, however to **Sections 11.4** and **11.5**, to the extent applicable) due under such New Tenant's Documents; and

(ii) in the case of a Default or Event of Default, the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC Transferee) shall promptly after execution of the New Tenant's Documents, satisfy all obligations and cure all Events of Defaults existing or continuing under this Lease at the time of its termination (as though the Term had not been terminated) and which are reasonably susceptible to cure by such Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC Transferee).

(d) **No Waiver of Default.** The execution of New Tenant's Documents shall not constitute a waiver of any Default existing or continuing immediately before termination of this Lease and, except as to a Default which is not reasonably susceptible of being cured by the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC Transferee) (e.g., the insolvency of Tenant), the New Tenant under the New Tenant's Documents shall cure, within the applicable periods in such New Tenant's Documents (which periods shall be identical to the periods set forth in **Section 25.1**), all Defaults existing under this Lease immediately before its termination. Nothing in this Lease shall require the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC Transferee), as a condition to the exercise of its right to enter into New Tenant's Documents, to cure any Default of Tenant not reasonably susceptible of being cured by such Person (e.g., a bankruptcy-related Default of Tenant).

(e) **Payments under Lease.** If the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC

Transferee) shall enter into New Tenant's Documents pursuant to this Article and if, upon such termination of this Lease, Tenant, but for such termination, would have been entitled to receive any amount pursuant to the provisions of this Lease, then Owner agrees that, subject to any rights of setoff Owner may have, the same shall be paid to the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC Transferee), as the New Tenant under the New Tenant's Documents, in the same manner and to the same extent as it would have been paid or apply the same to or for the benefit of the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its applicable Designee, Foreclosure Transferee or UCC Transferee) as if this Lease had not been terminated.

(g) The provisions of this **Section 11.6** shall survive the Expiration of the Term.

Section 11.7 Application of Proceeds from Insurance or Condemnation Awards.

To the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to the Premises, or the proceeds of an award paid in connection with a taking referred to in Article 9, be applied to restore any portion of the Premises, no Person (whether the Recognized Mortgagee, Recognized Mezzanine Lender or otherwise) shall have the right to apply the proceeds of insurance or awards toward the payment of the sum secured by its loan documents, except for the reasonable costs of collection thereof; provided, however, Recognized Mortgagee and Recognized Mezzanine Lender shall be permitted "additional insureds" under any insurance policies maintained with respect to the Premises.

Section 11.8 Appearance at Condemnation Proceedings.

The Recognized Mortgagee and Recognized Mezzanine Lender shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

Section 11.9 Rights Limited to Recognized Mortgagee and Recognized Mezzanine Lender.

The rights granted to the Recognized Mortgagee under the provisions of this Lease shall not apply in the case of any Mortgagee that is not the Recognized Mortgagee. The rights granted to the Recognized Mezzanine Lender under the provisions of this Lease shall not apply in the case of any mezzanine lender that is not the Recognized Mezzanine Lender. Tenant acknowledges and agrees that no mortgage other than the Recognized Mortgage is permitted to encumber the Premises and Tenant's Interest in the Premises without Owner's prior written consent, which may be granted or withheld in its sole discretion. Tenant acknowledges and agrees that except for the Exempt Pledge, no loan documents, other than the Mezzanine Loan Documents, are permitted to encumber the direct or indirect Equity Interests in Tenant without Owner's prior written consent, which may be granted or withheld in its sole discretion.

Section 11.10 No Surrender or Modification.

Owner agrees not to accept a voluntary surrender, termination or modification of this Lease at any time while the Recognized Mortgage shall remain a lien on Tenant's leasehold estate or while the Mezzanine Loan Documents shall remain an encumbrance on the direct or indirect Equity Interests in Tenant. It is further understood and agreed that (a) the Recognized Mortgagee shall not be bound by any surrender, termination or modification of this Lease unless such surrender, termination or modification is made with the prior written consent of the Recognized Mortgagee, and this Lease shall not terminate by merger or otherwise as long as the lien of the Recognized Mortgage remains undischarged and (b) the Recognized Mezzanine Lender shall not be bound by any surrender, termination or modification of this Lease unless such surrender, termination or modification is made with the prior written consent of the Recognized Mezzanine Lender and this Lease shall not terminate by merger or otherwise as long as the lien of the Recognized Mezzanine Lender's pledge of all of the direct or indirect Equity Interests of Tenant remains undischarged. Notwithstanding the foregoing, Owner's waiver or postponement of any obligation of Tenant or any remedy Owner may have under this Lease shall not constitute a modification for purposes hereof.

Section 11.11 Recognized Mortgagee's Assignment Rights.

(a) Notwithstanding anything contained in Article 10 or elsewhere in this Lease to the contrary, (i) a Foreclosure Transfer described in **Sections 11.11(c)(i)(1)** or a Foreclosure Transfer described in **Section 11.11(c)(i)(2)(x)** to Recognized Mezzanine Lender or its Designee (in either case, other than to a Foreign Instrumentality except as permitted by Section 10.3(b) for so long as the City is Owner) shall not require the consent of Owner or constitute a breach of any provision of or a Default under this Lease, and shall not constitute a Right of First Offer Transaction subject to **Section 36.2** and (ii) a Foreclosure Transfer described in Section 11.11(c)(i)(2)(x) to a UCC Transferee other than Recognized Mezzanine Lender or its Designee or Section 11.11(c)(i)(2)(y), in either case, to a Permitted Buyer that is not, for so long as the City is Owner, a Foreign Instrumentality except as permitted by Section 10.3(b), shall not require the consent of Owner or constitute a breach of any provision of or a Default under this Lease, and shall not constitute a Right of First Offer Transaction subject to **Section 36.2**. Upon any such Foreclosure Transfer, Owner shall recognize the Foreclosure Transferee as Tenant or the UCC Transferee as the owner of all of the direct or indirect Equity Interests of Tenant hereunder, as applicable, provided, however, that such new Tenant or such owner, as applicable, shall deliver to Owner, or shall cause to be delivered to Owner, within thirty (30) days after the execution thereof, the appropriate instruments provided in **Sections 10.5** and **10.6** (subject to the provisions of **Section 11.11(b)**).

(b) Except as expressly provided otherwise in this Lease, the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, (or its applicable Designee, Foreclosure Transferee or UCC Transferee) shall not be liable under this Lease unless and until such time as it becomes Tenant or becomes the owner of all of the direct or indirect Equity Interests

of Tenant hereunder, as applicable, and then only for so long as it remains Tenant or such owner hereunder.

(c) Definitions:

(i) “**Foreclosure Transfer**” means, as applicable:

(1) a transfer occurring as a result of the foreclosure of the Recognized Mortgage, or any sale of Tenant’s Interest in the Premises, or any other transfer or assignment of Tenant’s Interest in the Premises by judicial proceedings pertaining to the Recognized Mortgage or by virtue of the exercise of any power contained in the Recognized Mortgage, or by an assignment-in-lieu or other consensual conveyance, or otherwise:

(x) by or on behalf of Tenant or pursuant to foreclosure proceedings to the Recognized Mortgagee (or its Designee or Foreclosure Transferee); or

(y) by or on behalf of Tenant or the Recognized Mortgagee (or its Designee or Foreclosure Transferee) or pursuant to foreclosure proceedings to a purchaser of Tenant’s Interest in the Premises at a foreclosure sale pursuant to the Recognized Mortgage or by the Recognized Mortgagee (or its Designee or its Foreclosure Transferee) after consummating a Foreclosure Transfer as described in clause (1)(x) above or after such foreclosure sale; or

(2) a transfer occurring as a result of the foreclosure pursuant to the UCC of the Recognized Mezzanine Lender’s pledge of all of the direct or indirect Equity Interests in Tenant, or any sale of all of the direct or indirect Equity Interests in Tenant, or any other transfer or assignment of all of the direct or indirect Equity Interests in Tenant pursuant to the UCC pertaining to the Mezzanine Loan Documents or by virtue of the exercise of any power contained in the Mezzanine Loan Documents, or by an assignment-in-lieu or other consensual conveyance, or otherwise:

(x) by or on behalf of Tenant or pursuant to foreclosure proceedings pursuant to the UCC to the Recognized Mezzanine Lender (or its Designee or UCC Transferee); or

(y) by or on behalf of Tenant or the Recognized Mezzanine Lender (or its Designee or Foreclosure Transferee) or pursuant to foreclosure proceedings pursuant to the UCC to a purchaser of all of the direct or indirect Equity Interests in Tenant at a UCC foreclosure sale pursuant to the Mezzanine Loan Documents or by the Recognized Mezzanine Lender (or its Designee or its Foreclosure Transferee) after consummating a Foreclosure Transfer as described in clause (2)(x) above or after such foreclosure sale.

(ii) “**Foreclosure Transferee**” means the purchaser, transferee or other assignee in a Foreclosure Transfer described in Section 11.11(c)(i)(1).

(iii) “**First Transferee**” means the Person that acquires Tenant’s Interest in the Premises that from a Recognized Mortgagee or its Designee that acquired Tenant’s Interest in the Premises pursuant to a Foreclosure Transfer described in Section 11.11(c)(i)(1).

(iii) “**UCC Transferee**” means the purchaser, transferee or other assignee in a Foreclosure Transfer described in Section 11.11(c)(i)(2).

(iv) “**Designee**” means, as applicable, (x) an Affiliate of the Recognized Mortgagee that is the designee or nominee of such Recognized Mortgagee or (y) an Affiliate of the Recognized Mezzanine Lender that is the designee or nominee of such Recognized Mezzanine Lender.

(d) If a Recognized Mortgagee or its Designee acquires Tenant's Interest in the Premises pursuant to a Foreclosure Transfer, all accrued but unpaid Percentage Rent shall be forgiven and shall not thereafter be due and payable (except to the extent that the Recognized Mortgagee has failed to pay amounts it was required to pay pursuant to **Section 11.4(c)(iii)** and/or **Section 11.5(d)(i)**).

(e) All accrued but unpaid Percentage Rent at the time of a conveyance by a Recognized Mortgagee or its Designee to a First Transferee shall be forgiven and shall not thereafter be due and payable (except to the extent the Recognized Mortgagee or its Designee failed to pay amounts it was required to pay pursuant to **Section 11.4(c)(iii)** and/or **Section 11.5(d)(i)**).

Section 11.12 Notices of Defaults under Financing.

Tenant shall give to Owner copies of all notices of Default received from or delivered by the Recognized Mortgagee and/or the Recognized Mezzanine Lender within ten (10) days after receiving written notice of same from such Person.

(a) **Notices.** Tenant shall cause all loan documents with the Recognized Mortgagee and Recognized Mezzanine Lender to contain a provision requiring the Recognized Mortgagee and Recognized Mezzanine Lender, respectively, to send to Owner, simultaneously with the sending of any Default notices to Tenant, copies of all Default notices or other notices relating to the failure of Tenant to keep such loan documents in good standing, which notices are sent pursuant to any loan document or security document to Tenant.

(b) **Estoppel Requests.** Tenant shall cause loan documents with the Recognized Mortgagee and Recognized Mezzanine Lender to contain a provision requiring that such Institutional Lender shall comply with all reasonable estoppel requests of Owner. Owner shall comply with all reasonable estoppel requests of the Recognized Mortgagee and Recognized Mezzanine Lender.

Section 11.13 Priority. If at any time there is a Recognized Mortgagee and a Recognized Mezzanine Lender, and both have exercised any of the rights afforded by Sections 11.4, 11.5 or 11.6 (the “**Lender Rights**”), then the Recognized Mortgagee, to the exclusion of the Recognized Mezzanine Lender, shall be recognized by Owner as having exercised such right, for so long as such Recognized Mortgagee shall be exercising its rights under this Lease with respect thereto. For the avoidance of doubt, the foregoing provisions are not intended to, nor shall they, confer upon the Recognized Mezzanine Lender, its Designee or a UCC Transferee any rights that are included for the benefit of the Recognized Mortgagee, its Designee or Foreclosure Transferee, including, without limitation, any provisions that provide for the abatement, deferral, subordination and/or forgiveness of Back Rent, Impositions and/or Percentage Rent. Owner shall have the right to conclusively rely on any notice from Recognized Mortgagee and shall have no liability to any Person including Tenant, Recognized Mortgagee or Recognized Mezzanine Lender in connection therewith.”

4. **Subordination.**

(a) Section 12.1 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“In the event of a foreclosure under the Recognized Mortgage, Owner's right to Percentage Rent shall be subordinate, expressly as described in this Lease. This subordination shall not extend to (a) any Mortgage other than a first mortgage by a Recognized Mortgagee on Tenant's Interest in the Premises now or hereafter existing, (b) the Mezzanine Loan Documents, (c) any other liens or encumbrances hereafter affecting Tenant's Interest in the Premises or (d) any Master Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Master Subtenant's interest in the Premises.”

(b) Section 12.2 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“Owner’s proprietary interest in the Land, including, without limitation, Owner’s interest in this Lease, as the same may be modified, amended or renewed in accordance with the provisions of this Lease, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) the Mezzanine Loan Documents, (c) any other liens or encumbrances hereafter affecting Tenant’s Interest in the Premises or the direct or indirect Equity Interests in Tenant or (d) any Master Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Master Subtenant’s interest in the Premises.”

5. **Reserve Account.** Section 16.5 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“Section 16.5 Repair, Renovation and Replacement Reserve Account.

(a) Maintenance and operation of the Premises will be at no cost to Owner, and Tenant shall establish a separate interest bearing account (the “**Reserve Account**”) for the purpose of funding the repair, renovation and replacement of fixtures and equipment required for the operation of the Premises as a first-class project in accordance with the terms of this Lease, as well as to assure that funds are available for maintenance of the Premises from and after the CO Date. To fund the Reserve Account, Tenant shall deposit with Owner within thirty (30) days after the end of each month during the Term of this Lease from and after the CO Date an amount which is equal to the lesser of (i) one twelfth (1/12th) of the sum of (A) the product of Twenty-Five Cents (\$0.25) times the total number of square feet in the office space (including common areas) and (B) the product of Ten Cents (\$0.10) times the number of square feet in the Garage (including common areas) or (ii) the amount as may be required by the Recognized Mortgagee (the “**Required Reserves**”); provided, however, if the Recognized Mortgagee has no reserve requirement, then the Required Reserves shall be the amount set forth in clause (i) above. Owner, in its sole and absolute discretion, for any reason and for no reason whatsoever, may consider a reduction of the required payments to the Reserve Account as set forth in this **Section 16.5(a)** above any time after the CO Date. Within thirty (30) days after the end of each calendar year during the Term, Tenant shall certify to Owner the amounts then being held by Tenant as Required Reserves pursuant to this Section 16.1(a); provided, however, Tenant may instead certify the amounts of Required Reserves to Owner at the same time it delivers its accounting of Percentage Rent.

(b) Tenant shall make expenditures from the Reserve Account for the purposes permitted hereunder as is necessary to maintain or improve the Premises in accordance with this Lease (including capital expenditures); provided, however, that in the event that the Recognized Mortgage or the Mezzanine Loan Documents provide for a method or procedure for making or authorizing expenditures from the Reserve Account, the provisions of the Recognized Mortgage or Mezzanine Loan Documents shall control over the provisions hereof.

(c) Tenant hereby grants to Owner a security interest in the Reserve Account, and all profits and proceeds thereof, in order to secure Tenant’s obligations under this **Section 16.5**, which security interest in such Reserve Account shall be automatically fully subject and subordinate only to the rights of the Recognized Mortgagee. Tenant hereby agrees not to grant a security interest in the Reserve Account to any Person other than the Recognized Mortgagee or Owner. Owner shall execute and deliver all such instruments as the Recognized Mortgagee shall reasonably require in order to confirm Owner’s subordination of its security interest as aforesaid.

(d) During the period that (i) the Recognized Mortgagee is pursuing a foreclosure against Tenant; or (ii) the Recognized Mortgagee or its Designee is the Tenant under this Lease; or (iii) the Recognized Mezzanine Lender is pursuing a foreclosure of its pledge of all of the direct or indirect Equity Interests in Tenant; or (iv) the Recognized Mezzanine Lender or its Designee is the owner of all of the direct or indirect Equity Interests in Tenant, then such

Recognized Mortgagee or Recognized Mezzanine Lender, as applicable (or its Designee) shall have the option of not funding the Reserve Account; provided, however, such relief from funding shall not be deemed to affect in any way the operational and maintenance standards imposed upon the Project pursuant to this Lease (including, without limitation, **Section 6.4**); provided further, however, such relief from funding, in any event, shall end upon the earlier to occur of (A) four (4) years after the date of the earlier to occur of (i) the filing by the Recognized Mortgagee of the foreclosure of the Recognized Mortgage or the foreclosure by the Recognized Mezzanine Lender of its pledge of all of the direct or indirect Equity Interests in Tenant, as applicable, or (ii) the date upon which the Recognized Mortgagee or its Designee becomes the Tenant under this Lease or the date upon which the Recognized Mezzanine Lender or its Designee becomes the owner of all of the direct or indirect Equity Interests in Tenant, as applicable; or (B) the date a Foreclosure Transferee (other than the Recognized Mortgagee or Recognized Mezzanine Lender (or its Designee)) becomes the Tenant under this Lease; or (2) funding the Reserve Account as provided in this **Section 16.5**.

(e) Notwithstanding anything to the contrary herein contained, to the extent and during the period that the Recognized Mortgage or the Mezzanine Loan Documents, as applicable, contains provisions requiring Tenant to maintain a Reserve Account for the same purpose as this **Section 16.5**, the provisions of this **Section 16.5**, including, without limitation, the requirement to grant a security interest in favor of Owner (unless otherwise consented to by Recognized Mortgagee), shall be waived and the provisions of the Recognized Mortgage or Mezzanine Loan Documents, as applicable, shall be controlling, provided that Tenant maintains the Required Reserves with such Recognized Mortgagee or Recognized Mezzanine Lender, as applicable. In no event shall Tenant be required to maintain more than one (1) Reserve Account for the entire Project for the purposes set forth herein.”

6. **Creation of Liens.** Section 17.1(a) of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“(a) Tenant shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to **Section 17.2**, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Owner, or (iii) any other matter or thing whereby the estate, rights or interest of Owner in and to the Premises or any part thereof or appurtenance thereto might be materially impaired. Notwithstanding the above, Tenant shall have the right to execute the Recognized Mortgage, Mezzanine Borrower shall have the right to execute the Mezzanine Loan Documents in favor of the Recognized Mezzanine Lender, and Tenant shall have the right to execute subleases and other instruments (including, without limitation, equipment leases) as provided by, and in accordance with, the provisions of this Lease.”

7. **Leasehold Condominium.** The last sentence of Section 23.1(b)(viii) of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

“The rights and obligations of a Designee from a Recognized Mortgagee relative to Percentage Rent shall similarly apply.”

8. **Certain Bankruptcy Matters.** Section 25.3 of the Lease Agreement is hereby amended to add the following as a new subparagraphs (d) and (e):

“(d) As an additional inducement to and material consideration for Owner agreeing to this Lease, Tenant agrees that in the event any Bankruptcy or Judicial Action (as hereinafter defined) is commenced which subjects Owner to any stay in the exercise of Owner’s rights and remedies under this Lease, including the automatic stay imposed by section 362 of the United States Bankruptcy Code (individually and collectively, “Stay”), then, provided the Stay is lifted and released as to the Recognized Mortgagees and Recognized Mezzanine Lender (to the extent the applicable mortgage and mezzanine loan documents include Stay relief provisions), Tenant irrevocably consents and agrees to the Stay being lifted and released against Owner, and Owner shall thereafter be entitled to exercise all of its rights and remedies against Tenant under this Lease. Tenant acknowledges that it is knowingly, voluntarily, and intentionally waiving its rights to any Stay and agrees that the benefits provided to Tenant under the terms of this Lease are valuable consideration for such waiver. As used in this Section, the term “**Bankruptcy or Judicial Action**” shall mean any voluntary or involuntary case filed by or against Tenant under the Bankruptcy Code, or any voluntary or involuntary petition in composition, readjustment, liquidation, or dissolution, or any state and federal bankruptcy law action filed by or against Tenant, any action where Tenant is adjudicated as bankrupt or insolvent, any action for dissolution of Tenant or any action in furtherance of any of the foregoing, or any other action, case, or proceeding that has the effect of staying (or in which a Stay is being obtained against) the enforcement by Owner of its rights and remedies under this Lease.

(e) Notwithstanding the foregoing, in the event that Tenant seeks to assume and assign this Lease pursuant to section 365 of the Bankruptcy Code it will be required to provide to Owner adequate assurance of future performance which shall consist of evidence that such assignee satisfies the applicable “Acceptable Owner Criteria” set forth in **Exhibit B.**”

9. **Polystyrene and Plastic Straw and Stirrer Restrictions.**
The following is added as new Section 6.2(c) of the Lease:

(c) Tenant shall include the following provisions in any leases entered into with new tenants (or lease amendments entered into with existing tenants):

(i) Tenant shall not sell, use, provide food in, or offer the use of expanded polystyrene food service articles in the Premises. A violation of this section shall be deemed a default under the terms of this Lease. Notwithstanding the above, this section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by Tenant.

(ii) Tenant shall not sell, use, provide food in, or offer the use of single-use plastic beverage straws or single-use plastic stirrers in the Premises. A violation of this section shall be deemed a default under the terms of this Lease. Notwithstanding the above, the foregoing shall not restrict Tenant from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.

10. **Public Records Act.** The following is added as new Section 15.4 of the Lease:

“15.4 **Public Records Act.** Records copied by Owner, if any, shall be subject to the requirements of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes (“**Public Records Act**”). To the fullest extent permitted by law, Owner shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law; provided, however, that nothing herein shall preclude Owner or its employees from complying with the Public Records Act, and any such compliance shall not be deemed a default by Owner under this Lease.”

11. **Inspector General.** The following is added as new Section 15.5 of the Lease:

“15.5 **Inspector General.**

(a) Pursuant to Section 2-256 of the City Code, the City has established the office of the inspector general which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(b) The office of the inspector general is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the inspector general has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The inspector general shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including, but not limited to, project design, bid specifications, (bid/proposal) submittals, activities of Tenant, its officers, agents and employees,

lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(c) Upon ten (10) days' written notice to Tenant, Tenant shall make all requested records and documents available to the inspector general for inspection and copying. The inspector general is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including, but not limited to, Project design, bid specifications, (bid/proposal) submittals, activities of Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the Lease documents and to detect fraud and corruption.

(d) The inspector general shall have the right to inspect and copy all documents and records in Tenant's possession, custody or control which in the inspector general's sole judgment, pertain to performance of this Lease, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all Project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

(e) Tenant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Lease, for examination, audit, or reproduction, until three years after final payment under this Lease or for any longer period required by statute or by other clauses of this Lease. In addition:

(i) If this Lease is completely or partially terminated, Tenant shall make available records relating to the work terminated until three years after any resulting final termination settlement; and

(ii) Tenant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Lease until such appeals, litigation, or claims are finally resolved.

(f) The provisions in this Section 15.5 shall apply to Tenant, its officers, agents, employees, subcontractors and suppliers. Tenant shall incorporate the provisions in this Section 15.5 in all contracts, subcontracts and all other agreements executed by Tenant in connection with the performance of this Lease.

(g) Nothing in this Section 15.5 shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this Section 15.5 are neither intended nor shall they be construed to impose any liability on the City by Tenant or third parties."

12. **Representations and Warranties.** Owner hereby represents to Tenant, and Tenant hereby represents to Owner, that:

(a) it has full power and authority to enter into this Amendment and perform in accordance with its terms and provisions;

(b) that the individuals executing this Amendment on its behalf have the authority to bind it and to enter into this transaction;

(c) it has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Amendment; and

(d) the Lease Agreement, together with this Amendment, constitute its valid and binding obligations, enforceable against it in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or law).

13. **Memorandum of Amendment.** At Tenant's behest, a Memorandum of Amendment shall be recorded among the Public Records of Miami-Dade County, Florida, at the sole cost of Tenant, to give record notice of the terms of this Amendment.

14. **Effectiveness of Amendment.** Upon approval of this Amendment by the City Commission in accordance with the City Code, the Parties shall each execute this Amendment and deliver original executed copies of this Amendment to an escrow agent reasonably approved by the Parties to be held in escrow and released upon the closing of the contemplated sale of the Project by CLPF – Lincoln, LLC to 1691 Michigan Avenue Property Owner, L.P., provided, if such sale does not close on or before December 31, 2022, this Amendment shall be null and void and of no further force and effect.

15. **Miscellaneous Provisions.**

(a) Owner and Tenant hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Amendment.

(b) The Lease Agreement, as modified by this Amendment, sets forth all the covenants, promises, agreements, conditions and understandings between Owner and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than those set forth in the Lease Agreement, as modified by this Amendment.

(c) Except as expressly modified in this Amendment, all of the terms, covenants and conditions of the Lease Agreement shall remain in full force and effect and are ratified and confirmed; provided that in the event of a conflict between the terms, covenants and conditions of the Lease Agreement and this Amendment, the terms of this Amendment shall govern.

(d) This Amendment shall constitute a part of the Lease Agreement and references to the Lease Agreement hereafter shall automatically include a reference to this Amendment.

(e) This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. Facsimile or electronically transmitted signatures shall be deemed for all purposes to be originals.

Signature pages follow.

WITNESSES:

CLPF – LINCOLN, LLC, a Delaware limited liability company

Print Name: _____

By: Clarion Lion Properties Fund Holdings, L.P.,
a Delaware limited partnership
Its: Sole Member

Print Name: _____

By: CLPF-Holdings, LLC,
a Delaware limited liability company
Its: General Partner

By: Clarion Lion Properties Fund Holdings REIT,
LLC, a Delaware limited liability company
Its: Sole Member

By: Clarion Lion Properties Fund, LP,
a Delaware limited partnership
Its: Managing Member

By: Clarion Partners LPF GP, LLC, a
Delaware limited liability company
Its: General Partner

By: Clarion Partners, LLC,
a New York limited liability company
Its: Sole Member

By: _____
Name: _____
Title: _____

[SEAL]

