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# MIAMI BEACH

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## Agreement of Ground Lease

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2021-173-KB  
FOR MIXED-USE DEVELOPMENTS INCORPORATING  
CLASS A OFFICE SPACE WITH RESPECT TO  
CITY-OWNED PARKING LOT P26

**AGREEMENT OF GROUND LEASE**

**between**

**CITY OF MIAMI BEACH, FLORIDA**

**(“Owner”)**

**and**

**LINCOLN ROAD PROPERTY OWNER II, L.P. (“Tenant”)**

**Dated as of \_\_\_\_\_, 2022**

**LINCOLN LANE P26 PROJECT**

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## AGREEMENT OF GROUND LEASE

**THIS AGREEMENT OF GROUND LEASE**, dated as of the \_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation duly organized and existing under the laws of the State of Florida, as Owner, and **LINCOLN ROAD PROPERTY OWNER II, L.P.**, a Delaware limited partnership, as Tenant.

### RECITALS

**WHEREAS**, on June 23, 2021, pursuant to the authorization of the Mayor and City Commission, the City administration (the “**Administration**”) issued a Request for Proposals 2021-173-KB for mixed-use developments incorporating Class A office space on City-owned parking lots P25, P26, P27 and parking garage G5 in the area of Lincoln Lane North located in the City (the “**RFP**” or “**Request for Proposals**”); and

**WHEREAS**, the City issued the RFP in order to solicit qualified development teams to bid on certain publicly-owned sites identified in the RFP; and

**WHEREAS**, on January 12, 2022, the City received proposals from three (3) firms: Lincoln Road Property Owner, L.P., an Affiliate of Tenant; Lincoln Road Holdings LLC, a Florida limited liability company, an Affiliate of 1664 Meridian Avenue, LLC, a Florida limited liability company (“**TPC Developer**”); and Infinity Collective LLC; and

**WHEREAS**, on February 1, 2022, an Evaluation Committee appointed by the City Manager and approved by the Mayor and City Commission, reviewed and evaluated all proposals; and

**WHEREAS**, upon review of the results of the Evaluation Committee and an assessment of the proposals, the City Manager recommended that the Mayor and City Commission authorize the Administration to (a) negotiate with Tenant (a joint venture among Integra Investments, LLC, Starwood Capital Group Holdings, L.P. and The Comras Company) with regards to P25 and P26 as a single project, and if the Administration is not successful in negotiating an agreement with Tenant, authorizing the Administration to negotiate with TPC Developer in regard to P25 and P26 and (b) negotiate with TPC Developer (a joint venture among The Peebles Corporation, Scott Robins Companies, Inc. and the Baron Corporation) with regards to P27 (the “**Option 3 Project**”), and if the Administration is not successful in negotiating an agreement with TPC Developer, authorizing the Administration to negotiate with Tenant in regard to P27; and

**WHEREAS**, on February 23, 2022, the City Commission adopted Resolution No. 2022-32054, authorizing the Administration to negotiate with Tenant with regard to P25 and P26 and to negotiate with TPC Developer in regard to P27; and

**WHEREAS**, said negotiations have been concluded and the Mayor and City Commission, in Resolution No. [\_\_\_\_\_], adopted after two (2) duly noticed public hearings held



pursuant to the Development Agreement Act set forth in Chapter 163 of the Florida Statutes, and Sections 82-36 through 82-40 of the City Code, determined that it is in the best interest of the City to enter into an Agreement of Ground Lease for the Land (as hereinafter defined), an Agreement of Ground Lease for the P25 Land (as hereinafter defined), and Development Agreement with Tenant for the development of the Project; and

**WHEREAS**, Owner and Tenant are entering into this Lease for the Land.

## **TERMS OF AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the foregoing, and of the mutual covenants and agreements contained herein, the Parties agree as follows:

### **Article 1 - Voter Referendum, Effective Date and Definitions**

#### **Section 1.1 Voter Referendum.**

The Parties acknowledge and agree that, pursuant to Section 1.03(b)(2) of the City Code, this Lease and the rights and obligations herein, are subject to and contingent upon the approval by vote of a majority (i.e., greater than 50%) of the voters voting thereon in a City-wide referendum on November 8, 2022 (the “**2022 Referendum**”) or such later date in 2023 as further described in this Section (each such subsequent referendum, a “**2023 Referendum**” and along with the 2022 Referendum, each, a “**Referendum**”). The effectiveness of the Development Agreement (as hereinafter defined) shall be contingent upon voter approval of this Lease and the P25 Ground Lease in a Referendum. In the event that the 2022 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, then Tenant may, within ninety (90) days after the date on which it is determined that the 2022 Referendum was not successful, request that the City Commission consider adopting a resolution calling for a special election for approval of this Lease and the P25 Ground Lease in a 2023 Referendum, and Tenant shall pay its pro rata share (based on the total number of questions on the ballot) of the costs of such special election. If (a) the City Commission declines to adopt a resolution calling for approval of this Lease and the P25 Ground Lease in a 2023 Referendum or (b) within such ninety (90) day period after the date on which it is determined that the 2022 Referendum was not successful, Tenant either fails to so notify the City or notifies the City that it wishes to terminate this Lease, the P25 Ground Lease and the Development Agreement, then in any such event, this Lease, the P25 Ground Lease and the Development Agreement shall be deemed null and void and the Parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder. In the event that, following Tenant’s request, the City Commission adopts a resolution calling for a 2023 Referendum and the 2023 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, in each case following the last date on which a 2023 Referendum occurred, this Lease, the P25 Ground Lease and the Development Agreement shall be deemed null and void and the Parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

## **Section 1.2 Effective Date.**

If a Referendum is successful and all requirements of the City Code and applicable law are satisfied, this Lease shall be effective upon the latest to occur of (a) the Parties' mutual execution and delivery of this Lease, (b) the approval of this Lease by the City Commission in accordance with the City Code, (c) the City Commission's adoption of a resolution accepting the certification of the official results of the applicable election with respect to the applicable Referendum, (d) the Parties' mutual execution and delivery of the Development Agreement and the P25 Ground Lease, and (e) the Parties recording and delivery of the Development Agreement in accordance with Section 27.17 thereof ("**Effective Date**"). Upon approval of this Lease, the P25 Ground Lease and the Development Agreement by the City Commission in accordance with the City Code, the Parties shall each execute this Lease, the P25 Ground Lease and the Development Agreement and deliver original signatures of this Lease, the P25 Ground Lease and the Development Agreement to an escrow agent reasonably approved by the Parties to be held in escrow and released upon certification of the official results of a successful Referendum.

## **Section 1.3 Definitions.**

For all purposes of this Lease the terms defined in this Section 1.3 shall have the meanings set forth below, the other provisions of this Section 1.3 shall apply, and capitalized terms used but not otherwise defined in this Lease have the meanings provided in the Development Agreement.

**"Acceptable Operator"** means any Person which has the following qualifications:

1. The Acceptable Operator must be, or have a management contract with, a Property Manager.
2. The Acceptable Operator must establish and maintain an onsite property management office within a portion of the Project.
3. The Acceptable Operator and any Property Manager hired by the Acceptable Operator shall have no outstanding code violations for which notice has been served (other than those which are being corrected or contested diligently and in good faith) against any property owned or managed by such Acceptable Operator within the City of Miami Beach, Miami-Dade County and any cities located within Miami-Dade County.
4. The Acceptable Operator must have been in the business of operating similar Class A office and mixed-use retail projects and parking garages for the past seven (7) years (or have management personnel who have been in the business of operating similar Class A office and mixed-use retail projects and parking garages for the past seven (7) years), or if Tenant engages more than one Acceptable Operator for any of the Components in accordance with this Lease, such Acceptable Operator must have been in the business of operating similar projects to such Component within a mixed-use project similar to the Premises for the past seven (7) years (or have management personnel who have been in the business of operating such similar projects to such Component for the past seven (7) years); and

5. An Acceptable Operator shall not be a Foreign Instrumentality.

Any entity contracted as an Acceptable Operator must continue to meet the above requirements throughout its service as an Acceptable Operator under this Lease unless any such requirements are expressly waived by the Owner, in writing and in Owner's sole and absolute discretion.

**"Acceptable Owner"** has the meaning provided in **Exhibit B**

**"Acceptable Owner Criteria"** has the meaning provided in **Exhibit B**.

**"Accounting Principles"** means generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants, except as otherwise provided by this Lease, with such changes as Owner and Tenant shall mutually agree are consistent with this Lease in order to reflect technologies and methodologies not addressed in the Accounting Principles.

**"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.

**"Alterations"** has the meaning provided in **Section 14.5(a)**.

**"Annual Financial Statements"** has the meaning provided in **Section 28.1(c)**.

**"Annual Report"** has the meaning provided in **Section 27.1(b)**.

**"Assignee"** has the meaning provided in **Section 10.2(b)**.

**"Assignment"** has the meaning provided in **Section 10.2(a)**.

**"Back Rent"** has the meaning provided in **Section 10.2(c)**.

**"Bankruptcy or Judicial Action"** has the meaning provided in **Section 25.3(b)**.

**"Base Rent"** has the meaning provided in **Section 3.2(c)**.

**"Base Rent Commencement Date"** means the fifth (5<sup>th</sup>) anniversary of the Commencement Date.

**"Building Equipment"** means all installations incorporated in, located at or attached to and used or usable in the operation of, or in connection with, the Premises and shall include, but shall not be limited to, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof, excluding,

however, any personal property which is owned by subtenants, licensees, concessionaires or contractors (except to the extent any of the foregoing are Affiliates of Tenant).

“**Building Index**” has the meaning provided **Section 7.12(b)**.

“**Building Official**” means “Building Official” as defined in the City Code.

“**Building Permit**” or “**Full Building Permit**” has the meaning provided in the Development Agreement.

“**Buildout Stage**” has the meaning provided in the Development Agreement.

“**Business Day**” or “**business day**” means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed and are, in fact, closed.

“**Casualty Restoration**” has the meaning provided in **Section 8.2(a)**.

“**Certificate of Completion**” means a certificate of completion issued by the applicable Governmental Authority for the applicable Improvements, including any such certificate designated as “Temporary” or “Partial” in nature (referred to herein as a “**Temporary Certificate of Completion**”), provided such Certification of Completion (including any Temporary Certificate of Completion) allows for the beneficial use and occupancy of the applicable Improvement in accordance with applicable Laws and Ordinances. A Certificate of Completion or Temporary Certificate of Completion may be issued separately for (a) the Parking Component, (b) the Retail Component and (c) Office Component or such other portions of the Project as may be authorized by the Building Official.

“**Certificate of Occupancy**” means a certificate of occupancy issued by the applicable Governmental Authority for the applicable Improvements, including any such certificate designated as “Temporary” or “Partial” in nature (referred to herein as a “**Temporary Certificate of Occupancy**”), provided such Certificate of Occupancy (including any Temporary Certificate of Occupancy) allows for the beneficial use and occupancy of the applicable Improvement in accordance with applicable Laws and Ordinances. A Certificate of Occupancy (or Temporary Certificate of Occurance) may be issued separately for (a) the Parking Component, (b) the Retail Component, and (c) the Office Component or such other portions of the Project as may be authorized by the Building Official.

“**City**” means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida. In all respects hereunder, the City’s obligations and performance is pursuant to the City’s position as the owner of the Land acting in its proprietary capacity. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the City’s building, fire, code enforcement, police department or otherwise), shall be deemed to have occurred pursuant to the

City's regulatory authority as a governmental body and shall not be attributable in any manner to the City as a party to this Lease or in any way deemed in conflict with, or a default under, the City's obligations hereunder.

**"City Delays"** has the meaning provided in the Development Agreement.

**"CO Date"** means the date on which Tenant receives a Certificate of Occupancy for any portion of the Project.

**"Commencement Date"** means the NTP Date, or if the NTP Date is not the first day of a calendar month, then the first day of the calendar month immediately following the calendar month in which the NTP Date occurs.

**"Commissioner"** means a duly elected or appointed member of the City Commission of the City of Miami Beach.

**"Community Benefit Organization"** means a not for profit organization or department or agency of any Governmental Authority mutually approved by Owner and Tenant, each acting reasonably and in good faith.

**"Community Benefit Suite"** has the meaning provided in **Section 6.1(b)**.

**"Component"** means, as applicable, any of the Office Component, the Retail Component and the Additional Parking Component, each as defined in the Development Agreement.

**"Condemnation Restoration"** has the meaning provided in **Section 9.2(b)**.

**"Confirmation of Dates Certificate"** has the meaning provided in the Development Agreement.

**"Consenting Party"** has the meaning provided in **Section 26.2(c)(i)**.

**"Construction Agreements"** means all agreements executed in connection with any Construction Work affecting the Premises and the Improvements, including, without limitation, any Early Work, a Restoration, Alteration or other Construction Work performed in connection with the use, maintenance or operation of the Premises.

**"Construction Lender"** means the Institutional Lender that is the Recognized Mortgagee and is providing the Construction Loan.

**"Construction Loan"** means the loan to be provided by the Construction Lender for the development and construction of the Project in accordance with this Lease and the Development Agreement.

**"Construction Rent"** has the meaning provided in **Section 3.2(b)**.

**“Construction Rent Commencement Date”** means the first anniversary of the Commencement Date.

**“Construction Work”** means any construction work performed under any provision of this Lease affecting the Premises and the Improvements, including, without limitation, any Work to develop and construct the Temporary Replacement Parking in accordance with the Development Agreement, Early Work, the initial construction of the Project, a Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Premises.

**“Control” “Controlling” and “Controlled”** 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).

**“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.

**“Core and Shell Stage”** has the meaning provided in the Development Agreement.

**“C-PACE”** has the meaning provided in **Section 11.1(d)**.

**“CPI”** means the Consumer Price Index for All Urban Consumers for the United States, all items, index base period 1982-84=100 (commonly referred to as CPI-U), as published periodically by the United States Bureau of Labor Statistics.

**“Cure Period”** has the meaning provided in **Section 11.3(c)**.

**“Date of Taking”** has the meaning provided in **Section 9.1(c)(i)**.

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

**“Declaration”** has the meaning provided in the Development Agreement.

**“Default”** means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

**“Default Notice”** has the meaning provided in **Section 25.1(b)**.

**“DEP”** means the State of Florida Department of Environmental Protection.

“**DERM**” means the Miami-Dade County Department of Environmental Resources Management.

“**Development Agreement**” means that certain Development Agreement by and between Owner, as owner, and Tenant and Lincoln Lane Property Owner, L.P., collectively, as developer, dated as of the Effective Date.

“**Due Diligence Period**” has the meaning provided in the Development Agreement.

“**Early Work**” has the meaning provided in the Development Agreement.

“**Economic Force Majeure**” means economic conditions or events that materially impair access to debt or equity markets by developers for development of projects in the United States similar to the Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession, which occurs prior to the Commencement of Construction.

“**Environment**” has the meaning provided in **Section 35.1(c)**.

“**Environmental Complaint**” has the meaning provided in **Section 35.6**.

“**Environmental Condition**” has the meaning provided in **Section 35.1(d)**.

“**Environmental Damages**” has the meaning provided in **Section 35.1(e)**.

“**Environmental Laws**” has the meaning provided in **Section 35.1(b)**.

“**Environmental Permit**” has the meaning provided in **Section 35.1(f)**.

“**EPA**” means the Environmental Protection Agency of the United States.

“**Equity Interest**” has the meaning provided in **Section 10.2(d)**.

“**Event of Default**” has the meaning provided in **Section 25.1**.

“**Effective Date**” has the meaning provided in **Section 1.2**.

“**Exempt Pledge**” has the meaning provided in **Section 10.2(f)**.

“**Exempt Transfer**” has the meaning provided in **Section 10.2(f)**.

“**Expiration of the Term**” means the expiration of the Initial Term of this Lease, or the expiration of any Extension Terms thereof, as the case may be, or on such earlier date as this Lease may be terminated as provided herein.

“**Extension Term**” shall have the meaning provided in **Section 2.1(b)**.

**“Final Certificate of Occupancy”** has the meaning provided in the Development Agreement.

**“First Extension Term”** has the meaning provided in **Section 2.1(b)**.

**“First Transferee”** has the meaning provided in **Section 11.11(c)**.

**“Force Majeure Event”** means the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies, whether actual or threatened; orders of any civil or military authority; civil commotion; insurrections; riots; acts of terrorism; war; epidemics; pandemics; any public health emergency requiring quarantine, business closures mandated by Governmental Authorities or shelter in place orders; any governmental moratorium preventing the issuance of Permits and Approvals; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts and other natural disasters; verifiable and industry-wide inability to procure or a general shortage of labor, equipment, utilities, facilities, materials or supplies in the open market, or failure or unavailability of transportation generally; or other similar extraordinary causes beyond the commercially reasonable control of the Party claiming such inability. In no event shall “Force Majeure Event” include economic hardship or financial inability to perform specific to the Party nor shall it include Economic Force Majeure.

**“Foreclosure Transferee”** and **“Foreclosure Transfer”** have the meanings provided in **Section 11.11(c)**.

**“Foreign Instrumentality”** means a foreign (i.e., non-United States of America) government or instrumentality thereof or a Person Controlled thereby that is not a Prohibited Person.

**“Foundation Stage”** has the meaning provided in the Development Agreement.

**“Foundation Stage Possession Conditions”** has the meaning provided in the Development Agreement.

**“General Partner(s)”** means the Partner(s) who can legally bind the limited partnership.

**“Governmental Authority or Authorities”** means the United States of America, the State of Florida, the City (acting in its governmental, not proprietary, capacity), Miami-Dade County, and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Tenant, or any owner, tenant or other occupant of, or over or under the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises, or airspace over the Premises.

**“Initial Term”** shall have the meaning provided in **Section 2.1**.

**“Imposition(s)”** has the meaning provided in **Section 3.5(b)**.



**“Improvement(s)”** means any building (including footings and foundations), Building Equipment, and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

**“In Balance”** means, as of the date of Commencement of Construction, that the sum of (a) the then unfunded amount of the Construction Loan available to Developer for payment of Project Construction Costs to achieve Substantial Completion of the Project, plus (b) the then unfunded amount of the Mezzanine Loan, if any, available to Developer for the payment of Project Construction Costs to achieve Substantial Completion of the Project, plus (c) the then unfunded amount of any C-PACE financing for the Project (to the extent permitted by this Lease and subject to satisfaction of the conditions therefor set forth in this Lease) available to Developer for the payment of Project Construction Costs to achieve Substantial Completion of the Project, plus (d) the Funded Equity, plus (e) any additional cash amounts deposited with the Recognized Mortgagee by Developer in order to fund the difference, if any, between the sum of (a), (b), (c) and (d) above is adequate to pay all of the then remaining Project Construction Costs as set forth in the current Development Budget through Substantial Completion of the Project.

**“Institutional Lender”** means a Person which, as of the date of closing of the applicable 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 federal or U.S. state chartered commercial bank or national bank or any of its subsidiaries;
- (b) a federal or U.S. state chartered savings bank, savings and loan association, credit union, or trust company;
- (c) an insurance company organized and existing under the laws of the United States of America or any state thereof;
- (d) 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);
- (e) 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;
- (f) an employees’ welfare, benefit, pension or retirement fund;
- (g) an institutional leasing company;
- (h) a financing subsidiary or division of a New York Stock Exchange listed company;

(i) any U.S. Government agency or entity insured by a U.S. Government agency;

(j) a private wealth management firm managing commercial lending investment for one or more families;

(k) a securitization trust that is rated by S&P, Fitch or Moody's (or any like-extant national rating agency);

(l) 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)); or

(m) any Person comparable to those described in clauses (a) - (c) above organized under the laws of any Specified Country or any state, province or subdivision thereof;

provided that each of the above Persons shall qualify as an Institutional Lender only if: (i) it is not a Prohibited Person, (ii) it is not a Foreign Instrumentality (except as permitted under clause (k) above), (iii) 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 (in name or under management) in excess of \$500,000,000.00 (or, with respect to a Mezzanine Lender, \$100,000,000.00) adjusted for inflation and (iv) it is not 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 of Tenant that is a credit fund or other investment vehicle that provides loans in the ordinary course of its business may be a lender or participant in any financing permitted under this Lease so long as such Affiliate (i) does not own, collectively or 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) such Affiliate of Tenant otherwise satisfies the definition of an Institutional Lender under this Lease. It is 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 fifty-one percent (51%) of the outstanding principal balance of such loan secured by the Recognized Mortgage or such Mezzanine Loan, as applicable, is held by Institutional Lenders, then the syndicated loan shall be deemed to be made by an Institutional Lender. Without limiting the foregoing, for references 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.

"**Land**" means the real property and air rights, if any, described on **Exhibit A** attached hereto and incorporated by reference herein.

**“Late Charge Rate”** has the meaning provided in **Article 4**.

**“Lawsuit”** means any lawsuit, action, proceeding, appeal or petition for writ of certiorari challenging the validity, legal propriety, issuance, execution or effectiveness, as applicable, of the Project Approvals, the Project Amendments, the Development Agreement, this Lease or the P25 Ground Lease or any such challenge relating to any approval required under the City Code and/or the City Charter.

**“Lease”** means, collectively, this Agreement of Ground Lease and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Lease or by mutual agreement of the parties.

**“Lease Year”** means: (a) the period commencing on the Commencement Date and expiring on the last day of the twelfth (12<sup>th</sup>) calendar month thereafter, (b) each succeeding 12-month period thereafter and (c) the final shorter period, if any, ending on the last day of the Term.

**“Lender Rights”** has the meaning provided in **Section 11.13**.

**“Lincoln Lane Easement Area”** has the meaning provided in **Section 2.1(j)**.

**“Lincoln Lane Improvements”** has the meaning provided in **Section 2.1(j)**.

**“Lincoln Lane Reservation”** has the meaning provided in **Section 2.1(j)**.

**“Major Alteration”** has the meaning provided in **Section 14.5(c)**.

**“Major Alteration Plans and Specifications”** means the final plans and specifications customarily required to obtain a building permit from the City of Miami Beach, Florida for any Major Alteration.

**“Management Agreement”** means a written agreement between Tenant and Acceptable Operator pursuant to which Acceptable Operator has agreed to manage and operate the Premises pursuant to and in accordance with the terms of this Lease, as the same may be amended from time to time hereof.

**“Mandatory Project Elements”** means the elements and components of the Project to be developed by the Developer in accordance with the Development Agreement as further described on **Exhibit D**, as the same may be modified by Developer from time to time in accordance with the Development Agreement.

**“Master Sublease(s)”** has the meaning provided in **Section 10.2(f)**.

**“Master Subtenant”** has the meaning provided in **Section 10.2(g)**.

**“Mayor”** means the Mayor of the City.

“**Mezzanine Borrower**” means the borrower under the Mezzanine Loan which is the owner of all of the direct and/or indirect Equity Interests of Tenant.

“**Mezzanine Loan**” means the mezzanine loan, if any, to be made by the Recognized Mezzanine Lender to the Mezzanine Borrower to provide financing exclusively for and directly related to the Premises in accordance with this Lease, which shall be secured by a pledge of all (but not less than all) of the direct and/or indirect Equity Interests in Tenant.

“**Mezzanine Loan Documents**” means, collectively, any loan agreement, promissory note, pledge agreement, guaranty, UCC-1 financing statement, or other documents evidencing or securing the Mezzanine Loan.

“**Mortgage**” has the meaning provided in **Section 11.2(b)**.

“**Mortgage Loan Documents**” means, collectively, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan exclusively for and directly related to the Project secured by, among other collateral, Tenant’s Interest in the Premises and entered into between Tenant and the Recognized Mortgagee.

“**Mortgagee**” means the holder of a Mortgage.

“**Net Condemnation Award**” has the meaning provided in **Section 9.1(c)(iii)**.

“**Net Insurance Proceeds**” has the meaning provided in **Section 8.2(a)**.

“**New Documents Option Period**” has the meaning provided in **Section 11.6(b)**.

“**Notice**” has the meaning provided in **Section 26.1**.

“**Notice of Failure to Cure**” has the meaning provided in **Section 11.4(b)**.

“**Notice of Termination**” has the meaning provided in **Section 11.6(a)**.

“**Notice to Proceed**” or “**NTP**” means a written letter or directive issued by the City Manager, or his or her designee, to Tenant to commence and proceed with the Early Work and corresponding construction of the Project in accordance with the Development Agreement. The date of issuance of NTP shall be determined by the City in accordance with Section 1.3(b) of the Development Agreement. Owner acknowledges and agrees that unless and until the Notice to Proceed is issued for the Project, no rent or other payments due under this Lease shall be made by Tenant and all of Tenant’s obligations hereunder with respect to development of the Project and corresponding deadlines therefor shall not commence until the Notice to Proceed for the Project is issued by Owner.

“**NTP Date**” means the date on which City issues the Notice to Proceed to Tenant with respect to the Project.

**“Outside P26 Commencement Date”** has the meaning provided in the Development Agreement.

**“Owner”** means the City, acting in its proprietary capacity, and any assignee or transferee of the entire Owner’s Interest in the Premises, from and after the date of the assignment or transfer pursuant to which the entire Owner’s Interest in the Premises was assigned or transferred to such assignee or transferee.

**“Owner Indemnified Parties”** means, collectively, the City (and any successor Owner), and their respective elected and appointed officials (including the City’s Mayor and City Commissioners), directors, officials, officers, shareholders, members, partners, holders of other ownership interests, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, mortgagees, trustees, partners, principals, invitees and Affiliates. An **“Owner Indemnified Party”** shall mean any of the foregoing.

**“Owner’s Interest in the Premises”** means Owner’s interest in the Land and Owner’s interest in this Lease.

**“P25 Land”** means the real property described in Exhibit A of the P25 Ground Lease.

**“P25 Ground Lease”** means that certain Agreement of Ground Lease between Owner and Lincoln Road Property Owner, L.P., a Delaware limited partnership (**“P25 Tenant”**), dated of even date herewith, pursuant to which P25 Tenant, as tenant, has agreed to lease the P25 Land from Owner, as landlord.

**“Parking Component”** means, collectively, the Public Parking Replacement Component and the Additional Parking Component.

**“Parking Operating Agreement”** has the meaning provided in **Section 6.1(d)**.

**“Parties”** means Owner and Tenant, and **“Party”** is a reference to either Owner or Tenant, as the context may indicate or require.

**“Partner”** means a Person who owns an Equity Interest in a partnership.

**“Partnership Interest(s)”** means the Equity Interest of a Partner.

**“Permitted Buyer”** has the meaning provided in **Section 10.3(c)**.

**“Permitted Sale”** has the meaning provided in **Section 10.3(c)**.

**“Permitted Transfer”** has the meaning provided in **Section 10.4(a)**.

**“Permitted Transfer Date”** means the earlier of (a) the date which is twelve (12) months following Substantial Completion of the Project; and (b) the Stabilization Date.

**“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.

**“Plans and Specifications”** means the final plans and specifications for the Project, including, foundation, structural, electrical, plumbing and HVAC plans, the finish schedule, the Project program, in each case, substantially conforming to the approved Project Concept Plan (unless otherwise expressly approved in writing by Owner in accordance with the Development Agreement) and such other plans and specifications customarily required to obtain a full building permit in the City of Miami Beach, Florida, each as established in accordance with the Development Agreement, as the same may be modified from time to time in accordance with the Development Agreement.

**“Possession Conditions”** has the meaning provided in **Section 2.1(d)**.

**“Possession Date”** means the date Owner delivers possession of the Land to Tenant according to this Lease, as designated by Owner to Tenant in writing, by which date Tenant must have satisfied the Possession Conditions.

**“Premises”** means, collectively, the Land and all portions of the Improvements; provided, however, from and after Substantial Completion of the Project, the Premises shall exclude the Public Parking Replacement Component, which shall be owned by, and to the extent necessary conveyed by Tenant to, Owner.

**“Prohibited Person”** shall mean any of the following Persons: (i) [intentionally omitted]; or (ii) 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 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.

**“Prohibited Uses”** has the meaning provided in **Section 6.2(a)**.

**“Project”** means the design, management, construction, development and ownership of the Improvements and their subsequent use and completion of the Work relating to the Improvements substantially in accordance with the Plans and Specifications therefor approved by Owner, including (1) all associated infrastructure (including all on-site parking and supporting facilities and amenities) and (2) the installation of other improvements and appurtenances of every kind and description (including any and all landscaping, planting and other improvements of any type) now located or hereafter erected, constructed or placed upon the Land .

**“Project Books and Records”** has the meaning provided in **Section 28.1(a)**.

**“Project Revenue(s)”** has the meaning provided in **Section 3.3(c)**.

**“Property Manager”** means a commercial real estate property manager licensed to do business in the State of Florida and the City of Miami Beach, Florida.

**“Public Records Act”** has the meaning provided in **Section 31.2**.

**“Public Successor”** has the meaning provided in **Section 10.2(h)**.

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

**“Recognized Accounting Firm”** means Deloitte, PricewaterhouseCoopers, Ernst & Young, KPMG, McGladrey, Grant Thornton, CBIZ/Mayer Hoffman McCann, BDO, Crowe Horwath LLP or CliftonLarsonAllen; or any successor entity of any of the foregoing or any other certified public accountants mutually acceptable to Tenant and Owner and in each case licensed to do business in the State of Florida.

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

**“Recognized Mortgage”** has the meaning provided in **Section 11.2(c)**.

**“Recognized Mortgagee”** means the Institutional Lender that is the holder of the Recognized Mortgage; provided, however, that the Recognized Mortgagee may not be an Affiliate of Tenant (except if Tenant is an Affiliate of the 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).

**“Reimbursement Agreement”** means that certain Reimbursement Agreement by and between Owner and Tenant dated as of March 18, 2022.

**“Reinstatement Date”** has the meaning provided in **Section 11.5(a)**.

**“Release”** has the meaning provided in **Section 35.1(g)**.

**“Replacement Value”** has the meaning provided in **Section 7.12(a)**.

**“Rent”** means all rent, Lump Sum Payments, Construction Rent, Base Rent, Percentage Rent, Transaction Rent, fines due pursuant to **Section 25.2(f)** and adjustments and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any provisions of this Lease, to pay and/or deposit.

**“Request for Proposals”** or **“RFP”** has the meaning set forth in the recitals to this Lease.

**“Required Deposit Threshold”** means, for purposes of Net Insurance Proceeds and Net Condemnation Award, as applicable, the greater of (i) One Million Dollars (\$1,000,000), adjusted for inflation, or (ii) the amount established by the Recognized Mortgagee in the Recognized Mortgage as the applicable threshold under which Tenant may retain any Net Insurance Proceeds and/or Net Condemnation Award, as applicable.

**“Required Reserves”** has the meaning provided in **Section 16.1(a)**.

**“Requirements”** has the meaning provided in **Section 15.2**.

**“Reserve Account”** has the meaning provided in **Section 16.1(a)**.

**“Restoration”** means either a Casualty Restoration or a Condemnation Restoration, or both.

**“Sale of the Project”** has the meaning provided in **Section 10.2(i)**.

**“SCG”** has the meaning provided in **Section 10.2(j)**.

**“Second Extension Term”** has the meaning provided in **Section 2.1(b)**.

**“Significant Alteration”** has the meaning provided in **Section 14.5(a)(i)**.

**“Specified Country”** means any of the member countries of the European Union or the Gulf Cooperation Council (each as existing as of the Effective Date), United Kingdom, Norway, Switzerland, Canada, Mexico, countries located in South America (excluding Venezuela), Japan, South Korea, Singapore and Australia or any person or entity controlled by any of the foregoing countries.

**“Stabilization Date”** means the date on which Tenant has leased at least eighty-five percent (85%) of the net leasable square footage of the Project.

**“Starwood Entity”** has the meaning provided in **Section 10.2(k)**.

**“Starwood Parent”** has the meaning provided in **Section 10.2(l)**.



**“Stay”** has the meaning provided in **Section 25.3(b)**.

**“Substantial Casualty”** means a fire or other casualty affecting the Improvements for which the estimated cost of repair and restoration exceeds an amount equal to twenty-five percent (25%) of the then-current replacement cost of all Improvements (as determined by an appraisal secured by Tenant and/or Owner).

**“Substantial Completion”** or **“Substantially Complete”** or **“Substantially Completed”** means, with respect to the Project, that (1) it shall have been substantially completed in accordance with the Plans and Specifications and all conditions of permits and regulatory agencies to obtain a Temporary Certificate of Occupancy or Temporary Certificate of Completion for the Project have been satisfied, (2) all of the Improvements therein (inclusive of all common spaces within the Office Component and Retail Component, all of which must be completed with all utilities, facilities (including finished restrooms) and finishes allowing beneficial use and occupancy thereof for their intended purposes) shall have been issued Temporary Certificates of Occupancy or Temporary Certificates of Completion, excluding, however, any specific tenant improvements within the Office Component and/or Retail Component to be constructed in accordance with the lease agreements for interior tenant spaces within the Project during the Buildout Stage, which tenant spaces shall be in Cold Grey Shell condition, and (3) except to the extent relating to the Parking Component, the certificate of the Architect described in Section 2.10(b)(i) of the Development Agreement shall have been obtained.

**“Substantial Condemnation”** means a condemnation or taking (a) of more than twenty-five percent (25%) of the Premises or (b) of any portion of the Premises that substantially impedes legal and/or physical access to the Premises without reasonable alternative access.

**“Substantial Interest Transfer”** has the meaning provided in **Section 10.2(m)**.

**“Tenant”** means Lincoln Road Property Owner II, L.P., a Delaware limited partnership, and any assignee or transferee (other than a Master Subtenant) of the entire Tenant’s Interest in the Premises that is permitted under this Lease from and after the date of the permitted assignment or transfer pursuant to which the entire Tenant’s Interest in the Premises was assigned or transferred to such assignee or transferee.

**“Tenant Document”** has the meaning provided in **Section 27.1(b)**.

**“Tenant’s Interest in the Premises”** means Tenant’s leasehold interest in this Lease and Tenant’s ownership of the Improvements as provided in **Section 29.3**.

**“Term”** shall have the meaning provided in **Section 2.1(a)**.

**“Termination Fee”** has the meaning provided in the Development Agreement.

**“Threat of Release”** has the meaning provided in **Section 35.1(h)**.

**“Transaction Rent”** has the meaning provided in **Section 3.4**.

**“Transaction Rent Sale”** has the meaning provided in **Section 3.4**.

**“Transfer”** has the meaning provided in **Section 10.2(n)**.

**“Transferee”** has the meaning provided in **Section 10.2(o)**.

**“UCC”** means the Uniform Commercial Code (or any successor statute), as adopted and in effect in Florida, or when the laws of another state govern the method or manner of enforcement of the pledge of direct or indirect Equity Interests in Tenant, the Uniform Commercial Code (or any successor statute) of such state.

**“Unanticipated Site Conditions”** means (a) concealed or subsurface conditions within or proximate to the Premises that could not have been reasonably anticipated by Tenant or reasonably discoverable and/or is not actually discovered by Tenant through customary diligence during the Due Diligence Period, including, for example, unmapped utilities or any unknown Environmental Condition, geothermal system, geotechnical condition, or similar concealed condition not reasonably discoverable prior to the commencement of Construction Work; and (b) encumbrances on the Premises that are either unrecorded or revealed by any title update obtained by Tenant following the Effective Date (and were not disclosed in any prior title report or commitment or otherwise contemplated by the Development Agreement and/or this Lease), which materially and adversely impact the development of the Project.

**“Unavoidable Delays”** means a delay arising out of (a) a Force Majeure Event, (b) Unanticipated Site Conditions, (c) a Project Approvals Delay, and/or (d) a Lawsuit, in each case, which actually prevents or delays performance and that (i) is beyond the reasonable control of such Party incurring the delay, (ii) is not due to the negligent or intentional act, error or omission of such Party and (iii) if occurring after the commencement of any Construction Work, directly impacts the progress of such Construction Work. **“Unavoidable Delay”** shall not include technological interruption or malfunction, failure of equipment supplied by Tenant or any Contractor, receipt of and incorporation of defective materials into the Work, shortage of funds, failure of suppliers to deliver equipment and materials except where such failure is itself the result of an Unavoidable Delay, or failure of Tenant or any Contractor to secure the required permits for prosecution of the Work (except to the extent caused or contributed to by a City Delay or a Project Approvals Delay); provided that the Party claiming such Unavoidable Delay delivers written notice to the other Party of such Unavoidable Delay within ten (10) Business Days after first becoming aware of the occurrence thereof, which notice shall describe in reasonable detail the events giving rise to the Unavoidable Delay, and such Party shall diligently attempt to remove, resolve or otherwise seek to mitigate such delay and keep the other Party advised with respect thereto. Time is of the essence with respect to this provision, and any failure by a Party to timely deliver such notice of an Unavoidable Delay shall be deemed a waiver of such Party’s right to delay performance as a result of such Unavoidable Delay. Notwithstanding the provisions of **Section 26.1**, for purposes hereof, notice by Tenant shall be deemed sufficiently given to Owner if transmitted via electronic transmission to the City Manager and City Attorney; provided that as

soon as reasonably practicable thereafter a copy of such notice is delivered pursuant to the terms of **Section 26.1** hereof. The times for performance set forth in this Lease (other than for monetary obligations of a Party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Lease. If two or more separate events of Unavoidable Delay are concurrent with each other, the Parties shall only be entitled to an extension of time for each day of concurrent critical path delay, and the Parties shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Unavoidable Delay are concurrent for two days, the Parties shall only receive an extension of time, if at all, of a total of two days, and not four days. In no event shall (i) any Party's financial condition or inability to fund or obtain funding or financing constitute an Unavoidable Delay with respect to such Party, or (ii) any delay arising from a Party's default under this Lease, the Development Agreement, the General Construction Contract or any other Construction Agreements, constitute an Unavoidable Delay with respect to such Party's obligations hereunder.

**"U.S. Government"** means the federal government or any state or local government of the United States of America, including all agencies and departments thereof.

## **Article 2 - Demise of Land and Term of Lease**

### **Section 2.1 Demise of Land for Term.**

(a) **Lease Grant; Initial Term.** From and after the Commencement Date, Owner does hereby demise and lease to Tenant, and Tenant does hereby lease and take from Owner, the Premises, together with all the appurtenances, rights, privileges and hereditaments thereto, in "AS IS" "WHERE IS" and "WITH ALL FAULTS" condition subject to (i) the Lincoln Lane Reservation and (ii) all title matters, to have and to hold unto Tenant, its successors and permitted assigns for the period commencing on the Commencement Date, and, unless earlier terminated or otherwise extended pursuant to the terms hereof, ending on the last day of the Lease Year prior to the fifty-first (51<sup>st</sup>) anniversary of the Commencement Date (the **"Initial Term"**, and together with any duly exercised Extension Terms (if any and as hereinafter defined), as the context so requires, collectively the **"Term"**).

(b) **Extension Term(s).** Unless (A) this Lease has been previously terminated in accordance with the provisions hereof, or (B) there exists an uncured Event of Default of Tenant, or an event, which with the giving of notice or passage of time would constitute an Event of Default hereunder, on the date the current Term is scheduled to end or on the date the Extension Notice (as hereinafter defined) is delivered to the Owner, Tenant shall have the option to extend the Initial Term for two (2) additional and consecutive terms of twenty-four (24) years each (each, an **"Extension Term"**). Tenant must exercise each such Extension Term by giving Owner written notice (the **"Extension Notice"**) not earlier than twenty-four (24) months and not later than twelve (12) months prior to the expiration of the then-current Term, time being of the essence. If timely and validly exercised in accordance herewith, the first Extension Term (**"First Extension Term"**) shall commence upon the expiration of the Initial Term, and the second Extension Term (**"Second Extension Term"**) shall commence upon the expiration of the First Extension Term. Upon the timely giving of each such Extension Notice, the Term shall be deemed extended upon all of the

terms and conditions of this Lease, except that Rent payable during the Extension Terms shall be calculated in accordance with **Section 3.2**.

(c) **Pre-Possession Termination Right**. Notwithstanding anything to the contrary contained herein, Tenant shall have the right to terminate this Lease and the Development Agreement pursuant to and in accordance with Sections 1.3 and 2.12 of the Development Agreement and thereafter, be released from its liability and obligations under this Lease and the Development Agreement, except those obligations that survive termination of this Lease and the Development Agreement. In the event of such termination of this Lease pursuant to Sections 1.3 and 2.12 of the Development Agreement, Owner agrees to return to Tenant any and all Rent paid by Tenant to Owner under this Lease prior to the date of termination other than the applicable Termination Fee as set forth in the Development Agreement.

(d) **Possession Date; Conditions Precedent to Possession**. The Parties recognize that as of the Effective Date there remain various items and matters to be satisfied, obtained and approved in order that the Project may proceed as intended by the Parties. Subject to (1) Tenant's right to perform due diligence in accordance with Section 1.3 of the Development Agreement, (2) the terms of the Development Agreement permitting certain Early Work to be commenced by Tenant in accordance with the terms thereof, and (3) the terms of **Sections 2.1(e)** and **2.1(f)** below, Owner shall not be obligated to deliver possession of the Premises and Tenant's rights to exclusive possession of the Premises shall not become effective until each of the events described in this **Section 2.1(d)** irrevocably shall have occurred, at which time, the Owner shall deliver exclusive possession of the Premises to Tenant and Tenant shall take possession thereof. The conditions precedent to possession (collectively, the "**Possession Conditions**") are as follows:

- (i) There exists no uncured Event of Default;
- (ii) Tenant shall have provided to Owner, and City Manager shall have approved the Plans and Specifications in accordance with the Development Agreement;
- (iii) all final, non-appealable Project Approvals shall have been issued;
- (iv) Tenant shall have entered into, and delivered to the Owner a duly executed copy of, the General Construction Contract (and all then existing change orders thereto), in form and substance and with the General Contractor approved by the City Manager pursuant to the Development Agreement reflecting a guaranteed maximum price for completion of the Improvements that does not exceed the Project Construction Costs allocated to the Improvements;
- (v) Tenant shall have provided to Owner (x) the Development Budget (as that term is defined in the Development Agreement) and any material modifications thereto and (y) evidence of the existence and availability of (A) liquid assets to fund the Tenant's Funded Equity (as that term is defined in the Development Agreement), and (B) a loan commitment from the Construction Lender and, if applicable, loan commitments from the Recognized Mezzanine Lender and the Institutional Lender providing C-PACE financing, all of which shall together demonstrate that the Project is In Balance, or as an alternative to (y) above, Owner may, in its sole

discretion, accept a certificate from the chief financial officer of Starwood Parent certifying to Owner that the Project is In Balance;

(vi) Tenant shall have obtained, and shall have delivered to Owner a copy of, all Permits and Approvals necessary for: Commencement of Construction, including the Building Permit (as that term is defined in the Development Agreement); the demolition of all improvements currently located on the Land; and Tenant's parking and transportation plan for off-site parking and transportation;

(vii) Tenant shall have delivered to Owner the Payment and Performance Bond (as that term is defined in the Development Agreement) in accordance with the Development Agreement.

(viii) Tenant shall have delivered to Owner the CPM Schedule (as that term is defined in the Development Agreement), in accordance with the Development Agreement;

(ix) Tenant shall have delivered to Owner certificates of insurance evidencing that all insurance coverages required under this Lease and the Development Agreement are in place, which obligation Tenant also shall satisfy prior to commencement of any Early Work or other Work permitted to be performed prior to satisfaction of all of the Possession Conditions, in each case, in accordance with the Development Agreement;

(x) Tenant shall have delivered to the City Manager reasonable evidence that the Plans and Specifications have been approved by the Recognized Mortgagee and if applicable, the Recognized Mezzanine Lender and the Institutional Lender providing any C-PACE financing;

(xi) Tenant shall have delivered to the Owner, a duly executed assignment of Plans and Specifications, and a duly executed assignment of General Construction Contract and assignment of Construction Agreements, subject only to the rights of the Recognized Mortgagee and, if applicable, Recognized Mezzanine Lender, pursuant to which Owner shall have the right, without assuming Tenant's obligations, to enforce the Architect's and General Contractor's, as applicable, full and prompt performance under their respective agreements, subject only to payment by Owner, which assignment of Construction Agreements shall be substantially in the form attached hereto as **Exhibit H**;

(xii) Tenant has provided to the Owner reasonable evidence that the closing of the Construction Loan shall have occurred and, if applicable, and to the extent required for the Project to be In Balance, the closing of the loans from the Recognized Mezzanine Lender and the Institutional Lender providing C-PACE financing have occurred;

(xiii) The representations and warranties made by Tenant pursuant to Section 2.13 of the Development Agreement and **Sections 10.4, 35.2 and 37.16** of this Lease are true and correct on and as of the date of Commencement of Construction;

(xiv) no Lawsuit shall be pending, which prevents or restricts Tenant from taking possession of the Premises and/or the Commencement of Construction or Owner from performing its obligations under the Development Agreement and/or Ground Lease; and

(xv) Tenant shall have delivered a duly executed written notice by Tenant to Owner certifying that all Possession Conditions have been satisfied substantially in the form attached hereto as **Exhibit J**, which notice shall be acknowledged and countersigned by Owner.

(e) **Temporary Replacement Parking.** Notwithstanding the Possession Conditions set forth in **Section 2.1(d)** above, Owner shall deliver possession of the Premises to Tenant and Tenant may proceed with the Work to develop and construct the Temporary Replacement Parking in accordance with the Development Agreement provided Tenant shall have satisfied the P26 Temporary Use Conditions set forth in Section 2.4(g) of the Development Agreement.

(f) **Staging of Construction.** Notwithstanding the Possession Conditions set forth in **Section 2.1(d)** above, Owner shall deliver possession of the Premises to Tenant and Tenant may proceed with the Commencement of Construction of the Foundation Stage of the Project prior to obtaining the Full Building Permit and prior to satisfying all Possession Conditions provided Tenant shall have satisfied the Foundation Stage Possession Conditions set forth in Section 2.4(a) of the Development Agreement. Tenant shall satisfy all Possession Conditions set forth in **Section 2.1(d)** above prior to Commencement of Construction of the Core and Shell Stage.

(g) **Pre-Possession Period.** From and after the Effective Date, Tenant shall proceed with diligence to take such actions as are necessary to satisfy the Possession Conditions by or before the Outside P26 Commencement Date. Upon the occurrence of the Possession Date, Owner shall execute and deliver the Unity of Title for the Project, which Tenant, at Tenant's sole cost and expense, shall cause to be recorded prior to Commencement of Construction and as a condition thereto.

(h) **Indemnification.** Whether or not the Possession Date occurs, Tenant shall indemnify, defend and hold Owner and its respective officers, employees, agents, representatives, consultants, counsel and contractors (of any tier) harmless from and against all claims, actions, suits, charges, complaints, orders, liability, damages, loss, costs and expenses (including any attorneys' fees and costs of litigation) related to, arising from or in connection with the acts or omissions of Tenant, its agents, representatives, contractors, invitees or employees, including injury or death to persons or damage to their property, while exercising Tenant's right to access the Premises and performance of such inspections, tests or studies pursuant hereto, except to the extent resulting from the gross negligence or willful misconduct of Owner or its officers, employees, agents, representatives, consultants, counsel and contractors, and except as limited in paragraph (g) above. The indemnification obligations of Tenant set forth in this paragraph shall expressly survive the expiration or termination of this Lease and notwithstanding any provision of this Lease to the contrary, Owner shall have all rights and remedies available at law or in equity in the enforcement of such indemnification obligations of Tenant or arising from Tenant's failure to perform such indemnification obligations.

(i) **Failure to Satisfy Conditions.** Notwithstanding anything contained in this Lease to the contrary, if: (i) any of the Possession Conditions have not occurred by the Outside P26 Commencement Date; or (ii) Substantial Completion does not occur by the Outside P26 Completion Date, then notwithstanding anything to the contrary set forth in this Lease or the Development Agreement and not in limitation of any of the Owner's remedies set forth in this Lease or the Development Agreement, Tenant hereby waives any further right to cure, and the Owner shall be entitled to immediately exercise its rights pursuant to the assignment of Plans and Specifications, the assignment of General Construction Contract and the assignment of Construction Agreements.

(j) **Confirmation of Dates.** Upon notice from either Tenant or Owner that any Unavoidable Delay, City Delay and/or Economic Force Majeure has occurred in accordance with the Development Agreement, in the event the other Party does not dispute the existence of such Unavoidable Delay, City Delay and/or Economic Force Majeure, or such Unavoidable Delay, City Delay and/or Economic Force Majeure has been finally determined to exist following resolution of a Development Dispute in accordance with the Development Agreement, Tenant and Owner shall promptly update the Confirmation of Dates Certificate to reflect any extension(s) of the Target Dates, Outside Dates, Stabilization Date and/or Permitted Transfer Date as a result of such Unavoidable Delay, City Delay and/or Economic Force Majeure, as applicable.

(k) **Lincoln Lane Reservation.** Owner hereby reserves a non-exclusive easement along, across, over and upon the area legal described in **Exhibit L** (the "**Lincoln Lane Easement Area**") for the purposes of (a) constructing, installing, operating, using, maintaining, repairing and replacing street lighting, traffic or directional signage, underground utilities, drainage, and related infrastructure with respect to each of the foregoing (the "**Lincoln Lane Improvements**") within the Lincoln Lane Easement Area, (b) granting to any parties providing utilities services the right to use and occupy the Lincoln Lane Easement Area for and in connection with the providing of any such utilities, (c) subject to such reasonable rules and closures as the Owner and Tenant shall mutually agree, unrestricted ingress and egress by the general public for pedestrian travel over and across the Lincoln Lane Easement Area and (d) subject to such reasonable rules and closures as the Owner and Tenant shall mutually agree, unrestricted ingress and egress by the general public for vehicular travel over and across the Lincoln Lane Easement Area solely between the hours of 10:00 p.m. and 10:00 a.m. The term "utilities" shall mean water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable. If the Owner elects to construct and/or install any Lincoln Lane Improvements within the Lincoln Lane Easement Area, the Owner hereby acknowledges and agrees that: (x) all fees, costs and expenses associated with the Lincoln Lane Improvements (including, without limitation, the design, permitting, construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the Owner; (y) the design and construction of all Lincoln Lane Improvements shall be performed and completed by the Owner (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (z) upon final completion of the Lincoln Lane Improvements, the Owner shall (i) remove all debris, equipment and materials from the Lincoln Lane Easement Area, (ii) fill, compact, grade

and otherwise restore the Lincoln Lane Easement Area to substantially the same condition as existed prior to commencement of the Lincoln Lane Improvements, including harmonizing the soil levels within the Lincoln Lane Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Lincoln Lane Improvements (and all parts and components thereof) in good condition, repair and working order at all times. For the avoidance of doubt, the Tenant shall be solely responsible for maintaining the Lincoln Lane Easement Area in accordance with any applicable provisions of the Development Agreement and/or this Lease. The Owner shall not have any obligation to maintain the Lincoln Lane Easement Area except, upon Tenant's request, Owner shall maintain and make necessary repairs to any Lincoln Lane Improvements made by Owner. Notwithstanding the foregoing, Tenant may temporarily restrict access to the Lincoln Lane Easement Area for such duration as is reasonably necessary in the event of emergencies and/or to make any necessary repairs, perform maintenance, for the protection and/or safety of pedestrians, and during permitted hours of construction in the course of construction. Owner and Tenant may, from time to time, modify, upon mutual agreement, the terms and provisions of this reservation with respect to the operation and maintenance of the Lincoln Lane Easement Area, and the City Manager shall have the delegated authority to approve such modifications on behalf of Owner. The reservation described in this Section is referred to herein as the "**Lincoln Lane Reservation.**"

### **Section 2.2 No Encumbrances.**

Owner will not permit or suffer any encumbrance, mortgage, pledge or hypothecation of Owner's Interest in the Premises except with respect to those matters (such as utility easements and nonmonetary reciprocal easement agreements) reasonably approved by Owner and Tenant in writing and which do not adversely affect the operation or development of the Project or the priority of Recognized Mortgagee's lien and security interest. At Tenant's request, Owner shall join in any utility easements and other easements necessary for the Project. Tenant shall pay all of Owner's reasonable attorneys' fees and actual out of pocket costs associated therewith, except to the extent caused by Owner's the gross negligence or willful misconduct, and shall indemnify and hold harmless Owner from any and all liability and expenses associated therewith. Notwithstanding the foregoing, Owner shall have the absolute right to pledge its interest in the Rent and/or Impositions payable hereunder so long as such pledge does not include a pledge of Owner's Interest in the Premises (other than the Rent and/or Impositions payable hereunder), and the pledgee shall have no rights under this Lease other than the right to receive payments of Rent and/or Impositions. Any pledge of Rent and/or Impositions permitted hereunder shall not create any rights in the pledgee thereunder to enforce any of the provisions of this Lease. Owner shall deliver to Tenant and the Recognized Mortgagee, within fifteen (15) days after the effective date thereof, a true and correct copy of any pledge instrument permitted hereunder.

### **Section 2.3 Sale of Entire Interest.**

Owner shall not sell, transfer, convey or assign Owner's Interest in the Premises, except for a sale, transfer, conveyance or assignment of the entire Owner's Interest in the Premises; provided, however, for the avoidance of doubt, Owner shall have the right to sell, transfer, convey or assign the Public Parking Replacement Component without restriction. Notwithstanding the foregoing, Owner will deliver notice to Tenant if Owner issues a solicitation for offers to purchase



or receives an unsolicited offer to purchase Owner's Interest from any Person other than a Governmental Authority.

### Article 3 - Rent

#### Section 3.1 Method and Place of Payment.

Except as otherwise specifically provided herein, all Rent and/or Impositions shall be paid without notice or demand. Unless otherwise specified by Owner's designee in writing, all Rent and/or Impositions payable to Owner (except Impositions, if the Requirements governing such payments are to the contrary) shall be paid by wire transfer of immediately available funds or ACH transfer drawn on a United States or state chartered bank, in currency of the United States of America and shall be payable according to written wire transfer instructions provided by Owner and verified with Owner by Tenant, as may be amended by Owner in writing from time to time. Impositions that are not payable directly to Owner shall be payable in the form and at the location provided by Requirements governing the payment of such.

#### Section 3.2 Rent.

(a) **Lump Sum Payments.** Tenant shall pay Owner the following lump sum payments (each, a "**Lump Sum Payment**" and collectively, the "**Lump Sum Payments**") during the Term:

(i) Within ten (10) Business Days after the NTP Date, Tenant shall pay Owner a lump sum payment of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00); and

(ii) Within ten (10) Business Days after the date on which the earlier of the Temporary Certificate of Occupancy or Certificate of Completion for the Project is issued, Tenant shall pay Owner a lump sum payment of Five Hundred Thousand and No/100 Dollars (\$500,000.00).

(b) **Construction Rent.** Commencing on the Construction Rent Commencement Date and expiring on the day prior to the Base Rent Commencement Date, Tenant shall pay to Owner the annual rent in the amounts set forth in **Exhibit C** attached hereto ("**Construction Rent**"). Construction Rent for any Lease Year of less than twelve (12) months shall be prorated according to the actual number of months, or if less than one month, days, in such Lease Year.

(c) **Base Rent.** Commencing on the Base Rent Commencement Date and continuing throughout the Term, Tenant shall pay Owner annual rent for each Lease Year, including any adjustments thereto (the "**Base Rent**"). The initial Base Rent shall be Four Hundred Twenty-One Thousand Two Hundred Seventy-Five and No/100 Dollars (\$421,275.00), and shall

be increased as described in **Sections 3.2(d), 3.2(e) and 3.2(f)** hereof, until the Expiration of the Term. Base Rent for any Lease Year of less than twelve (12) months shall be prorated according to the actual number of months, or if less than one month, days, in such Lease Year. In no event shall Base Rent during an adjustment period be less than the Base Rent during any prior period.

(d) **Adjustments to Base Rent.** The Base Rent shall be increased annually after the Base Rent Commencement Date by the greater of two percent (2%) or the increase in CPI over the previous one (1) year period (with CPI capped at three percent (3%)) for each Lease Year thereafter during the remainder of the Initial Term.

(e) **Adjustments to Base Rent for Extension Term(s).** Upon the commencement of each Extension Term, the Base Rent shall be increased to an amount equal to the amount that Base Rent would have been if the increases in Base Rent had been equal to the greater of two percent (2%) or CPI without any cap on CPI. For purposes of calculating Base Rent for the first Lease Year of the First Extension Term, the Parties shall calculate what Base Rent would have been, commencing on the Base Rent Commencement Date and increasing the Base Rent annually by the greater of two percent (2%) or CPI, without any cap on CPI. The resulting amount as of the first month of the fifty-second (52<sup>nd</sup>) Lease Year shall be the Base Rent for the first Lease Year of the First Extension Term. During the First Extension Term, Base Rent shall be increased annually by the greater of two percent (2%) or CPI (capped at three percent (3%)). For purposes of calculating Base Rent for the first Lease Year of the Second Extension Term, the Parties shall calculate what Base Rent would have been, commencing with the first month of the First Extension Term and increasing the Base Rent annually by the greater of two percent (2%) or CPI, without any cap on CPI. The resulting amount as of the first month of the seventy-fifth (75<sup>th</sup>) Lease Year shall be the Base Rent for the first Lease Year of the First Extension Term. During the Second Extension Term, Base Rent shall increase annually by the greater of two percent (2%) or CPI (capped at three percent (3%)).

(f) **Additional Adjustment to Base Rent.** It is the intention of Owner, and Tenant acknowledges, that the City will derive an additional benefit from the Premises being placed on the tax roll. Therefore, as a condition to Owner's agreement to enter into this Lease and subject to the provisions of **Section 3.5(h)** hereof, Tenant agrees that the Premises shall be subject to real estate taxes which Tenant is required to pay hereunder and Tenant shall not seek, based on immunity from taxation, exemption from taxation, classified use, restrictive covenant, applicable judicial limitation, local or state land use regulation, historic preservation ordinance, moratorium or other limitation, to reduce or eliminate the assessed value of the Premises nor reduce, eliminate, abate or defer the real estate taxes thereon except as otherwise contemplated by the proviso in the immediately following sentence. If after the CO Date, the Premises are not subject to real estate taxes or if the real estate taxes are reduced, waived, abated, deferred or exempted due to legislation, judicial action or otherwise, Tenant shall, for each applicable year during the remaining Term of this Lease and any extensions thereof, make payments to the City in lieu of real estate taxes, in an amount equal to the City's portion for every year as if they had been imposed; provided, however, if such real estate taxes are reduced pursuant to a contest by Tenant based on reduced Project Revenues, and as a result thereof, the assessed value of the Premises is correspondingly reduced,

then Tenant shall have no obligation to make additional payments to the City in the amount of such reduction. Payment in lieu of real estate taxes will be added to Base Rent under this Lease. For the purposes of this **Section 3.2(f)**, the amount of the payment in lieu of real estate taxes for any calendar year shall be equal to the sum of the assessed value (in use) of the Land, plus an amount equal to the value of the Improvements determined in accordance with the assessment methodology used for other comparable non-exempt, non-classified commercial properties in the area multiplied by the then applicable millage rate for that calendar year.

(g) **Payment of Construction Rent and Base Rent.** On and after the Construction Rent Commencement Date and Base Rent Commencement Date, as applicable, Construction Rent and Base Rent, respectively, shall be paid in monthly installments equal to one-twelfth of the then applicable annual Construction Rent and Base Rent and shall be paid in advance, as applicable, on the first day of each and every calendar month during the Term. To the extent any Construction Rent or Base Rent is due for any period of less than a full month or a full calendar year, such Rent shall be appropriately apportioned based on the actual number of days for which it is due. For the avoidance of doubt, Tenant's satisfaction of the Possession Conditions shall not be a condition to the occurrence of the Construction Rent Commencement Date or the Base Rent Commencement Date.

### **Section 3.3 Percentage Rent.**

(a) **Percentage Rent.** "Percentage Rent" means, for each Lease Year commencing on the Base Rent Commencement Date, an amount equal to the amount by which five percent (5%) of the amount of Project Revenues for each Lease Year exceeds the Base Rent for such Lease Year. For example, if Base Rent for a Lease Year is \$500,000 and five percent (5%) of Project Revenues for such Lease Year is \$750,000, Percentage Rent for such Lease Year shall be the difference between \$750,000 and \$500,000 (or \$250,000).

(b) **Payment of Percentage Rent.** Tenant shall pay the full amount of Percentage Rent due in annual installments, in arrears, within one hundred five (105) days after the end of each Lease Year for the preceding Lease Year. The obligation to pay Percentage Rent shall survive Expiration of the Term as to Percentage Rent which accrued prior to the Expiration of the Term, subject to **Article 28**.

(c) **Definitions.**

"Project Revenue" means (without duplication):

(i) all gross revenues, payments, income received, escalation adjustments, rental and operating cost reimbursements received under any lease, sublease, concession, license, or other arrangement from the operation of the Project (including any reimbursements for operating expenses and common area maintenance) and paid to Tenant for the use or occupancy of any portion of the Project; provided, however, that for purposes of calculating Project Revenue (i) if any space in the Project, other than the Project management office (which shall be limited to a maximum of one thousand (1,000) square feet) and the Community Benefit

Suite, is leased to, or used by, Tenant, any Affiliate of Tenant, subtenant, or any other Person at a rental which is less than fair market rental value of such space (determined as of the date such lease is signed), the rent shall be increased by an amount equal to the difference between the rent being paid and the fair market rental value; and (ii) if any space in the Project is leased to, or used by Tenant, any Affiliate of Tenant, subtenant, or any other Person on a basis whereby the Tenant pays real estate taxes, common area maintenance charges or operating costs other than utilities directly to the taxing authority or service provider rather than to Tenant, the rent under such leases shall be increased by the amount of such taxes; common area maintenance charges and/or operating costs (other than utilities) paid directly to the taxing authority or service provider by the Tenant; and

(ii) Proceeds of rental loss insurance to the extent that such proceeds replace items of revenue referenced in (i) above.

If Tenant shall enter into a Master Sublease of all or substantially all of the Project, then "Project Revenue" with respect to the space included in the Master Sublease shall be equal to the greater of (A) the gross revenues received by the Master Subtenant or (B) the rental payments made by the Master Subtenant to Tenant. For the avoidance of doubt, "Project Revenue" includes any additional consideration or compensation (e.g., so-called "key money") paid by a Master Subtenant in connection with a Master Sublease.

Project Revenue shall be computed on a cash basis in accordance with the Accounting Principles.

The following shall, however, be excluded from Project Revenue:

(1) Federal, state and municipal excise, sales, resort, use, and other taxes or fees collected from patrons or guests as a part of or based upon the sales price of any goods or services, including with limitation, gross receipts, admission, or similar taxes to the extent such taxes are actually remitted to the relevant taxing authorities;

(2) Any gratuities collected and not retained by Tenant for its own account;

(3) Allowances, rebates and refunds not included in Project Revenue in accordance with the Accounting Principles;

(4) The proceeds of any financing or refinancing;

(5) Interest on funds in the Reserve Account;

(6) Proceeds from the Sale of the Project or a Controlling Interest Transfer, which shall instead be subject to Transaction Rent as provided herein;

(7) Real estate commissions and management fees, provided, if paid to Affiliates of Tenant, then only to the extent such commissions and management fees reflect the then existing market rates; and

(8) Payments to the Reserve Account.

### **Section 3.4 Transaction Rent.**

Tenant covenants and agrees to pay Owner, within sixty (60) days after the closing of each sale of the entire Tenant's Interest in the Premises and/or a Controlling Interest Transfer (whether in one or a series of related transactions) (each, a "**Transaction Rent Sale**") to any Person (in each case, other than (a) a Foreclosure Transfer or the first Transfer by the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, (or its Designee) following a Foreclosure Transfer, or (b) a sale to an Affiliate of the entire Tenant's Interest in the Premises and/or a Controlling Interest Transfer to an Affiliate, in each case, that is for less than fair market value), an amount equal to the lesser of (x) \$1,625,000 (adjusted for inflation) (or a prorated portion if such Transfer is of less than 100% of the Equity Interests of Tenant) and (y) one and one-half percent (1.5%) of the gross sales price in connection with such Transaction Rent Sale (each "**Transaction Rent**"); provided, however, Lincoln Road Property Owner II, L.P. (or its Affiliate formed prior to Commencement of Construction for purposes of Lincoln Road Property Owner II, L.P.'s financing of construction of the Project) is exempt from Transaction Rent for the first such Transaction Rent Sale that occurs prior to the fifth (5<sup>th</sup>) anniversary of the Permitted Transfer Date.

### **Section 3.5 Impositions.**

(a) **Obligation to Pay Impositions.** In addition to the payment of Rent, from and after the Possession Date, Tenant shall pay or cause to be paid, in the manner provided in this **Section 3.5**, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Owner or Tenant with respect to (i) the Premises, or (ii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Premises, or (iii) any other appurtenances of the Premises, or (iv) any personal property, Building Equipment or other facility used in the operation thereof, or (v) any document to which Tenant is a party creating or transferring an interest or estate in the Premises of, by or to Tenant, or (vi) the use and occupancy of the Premises, or (vii) this transaction.

(b) **Definition.**

"**Imposition**" or "**Impositions**" means the following imposed by a Governmental Authority:

(i) real property taxes and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district);

(ii) personal property taxes;

- (iii) sales and/or use taxes on Rent;
- (iv) water, water meter and sewer rents, rates and charges;
- (v) excises;
- (vi) levies;
- (vii) license and permit fees;

(viii) any other governmental levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever;

(ix) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; and

(x) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

(c) **Payment of Impositions.** Subject to the provisions of **Section 32.2** hereof, from and after the Possession Date, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency). However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

(d) **Evidence of Payment.** Tenant shall furnish to Owner, within thirty (30) days after the date of Owner's request therefor, an official receipt of the appropriate taxing authority or other proof reasonably satisfactory to Owner, evidencing the payment thereof.

(e) **Evidence of Non-Payment.** Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, promptly upon receipt of any such certificate, advice or bill, deliver a copy of the same to Owner.

(f) **Apportionment of Imposition.** Any Imposition relating to a fiscal period of the taxing authority, a part of which occurs after the Possession Date and a part of which occurs before the Possession Date or after the Expiration of the Term, shall be apportioned pro rata between Owner and Tenant.

(g) **Exclusions from Impositions.** Except as expressly set forth above, nothing contained herein shall be construed to require Tenant to pay or to be charged for any portion of (i)

municipal, state or federal income or gross receipts taxes assessed against Owner (other than sales or use taxes imposed on Rent, notwithstanding that Owner may be primarily liable by law for the payment thereof); (ii) municipal, state or federal capital levy, estate, succession, inheritance, transfer or gains taxes, of Owner; (iii) corporation or franchise taxes imposed on Owner or any corporate owner of the fee of the Land; or (iv) any penalties or late charges assessed against Owner (unless the same result from Tenant's failure to timely pay Impositions).

(h) **Tax Abatements and Reductions.** Subject to the provisions of **Section 3.2(f)** which shall control over this **Section 3.5(h)** when in conflict, Tenant shall be entitled to the benefit of any tax abatements and reductions as are, or may be, available under applicable law as if Tenant were the fee owner of the Premises. Owner shall not be required to join in any action or proceeding in connection with such abatement or reduction unless the provisions of any Requirement at the time in effect require that such action or proceeding be brought by and/or in the name of Owner. If so required, Owner shall join and cooperate in such proceedings or permit them to be brought by Tenant in Owner's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Owner in connection therewith.

### **Section 3.6 Net Lease.**

It is the intention of Owner and Tenant that (a) Rent be absolutely net to Owner without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, except to the extent expressly set forth in this Lease, and (b) Tenant pay all costs, expenses and charges of every kind or nature (except as expressly provided for herein to the contrary) relating or allocable to the Premises that may arise or become due or payable during or after (but attributable to a period falling within) the Term, except to the extent expressly set forth in this Lease.

## **Article 4 - Late Charges**

### **Section 4.1 Late Charges.**

If Tenant shall fail to make any payment of Base Rent, Percentage Rent, or other Rent within thirty (30) days after the same shall be due, the late payment shall bear interest from the date due until the date paid at a rate (the "**Late Charge Rate**") equal to the lesser of (a) five percent (5%) per annum above the highest annual prime rate (or base rate) published from time to time in The Wall Street Journal under the heading "Money Rates" or any successor heading as being the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) or if such rate is no longer published, then the highest annual rate charged from time to time at a large U.S. money center commercial bank, selected by the City, on short term, unsecured loans to its most creditworthy large corporate borrowers; or (b) the maximum interest rate permitted by law. Notwithstanding the foregoing, Owner agrees to waive interest at the Late Charge Rate for the first late payment made in any calendar year provided such payment is made within forty-five (45) days of the due date thereof. All interest payable under this **Section 4.1** shall be deemed Rent (but shall not be compounded) and shall be due and payable by Tenant on fifteen (15) days demand. The collection by Owner of

any interest under this **Section 4.1** shall not be construed as a waiver of Tenant's Default or of Tenant's obligation to perform any term, covenant or condition of this Lease nor shall it affect any other right or remedy of Owner under this Lease.

## **Article 5 - Inflation Adjustment**

### **Section 5.1 Inflation Adjustment.**

Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as "**adjusted for inflation**" or "**subject to adjustment for inflation**" (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI for the calendar year immediately preceding the date of such adjustment, and the denominator of which shall be the CPI (a) for the calendar year during which the Effective Date occurred, or (b) solely with respect to the adjustments for inflation for Base Rent, for the calendar year during which the Base Rent Commencement Date occurred. All amounts subject to adjustment hereunder shall be adjusted effective as of January 1 of each year pursuant to the formula described above. If the CPI ceases to be published or the basis of calculating CPI is materially changed, and there is no successor thereto, such other reasonably similar index most closely approximating the result that would have been achieved by CPI as Owner and Tenant mutually designate shall be substituted for the CPI. No such adjustment shall result in Base Rent being an amount that is less than the Base Rent prior to the adjustment.

## **Article 6 - Use**

### **Section 6.1 Use.**

(a) **Continuous Legal Use.** Tenant shall use and operate the Premises throughout the Term only as permitted by this Lease. In any event, the Premises shall be used only in accordance with the final Certificate of Occupancy therefor which from time to time exist (or Temporary Certificate(s) of Occupancy, Temporary Certificate(s) of Completion or Certificate(s) of Completion, to the extent that the final Certificate of Occupancy has not been issued for the Project).

(b) **Scope of Use.** In accordance with Tenant's obligations to meet and comply with the maintenance and operating standards set forth in **Article 14** and other provisions of this Lease, Tenant shall, from and after the date of Substantial Completion of the Project, operate the Premises and the Office Component, Retail Component and Additional Parking Component, collectively, as a mixed-use project with Class A office space, retail space (including restaurant, personal service and similar active uses), and a non-public parking garage component containing not less than the number of parking spaces required by all applicable Requirements, and other ancillary uses. Notwithstanding anything to the contrary set forth in this Lease or the Development Agreement, at all times during the Term of this Lease and the term of the P25 Ground Lease (subject only to reasonable vacancies between leases to different Community Benefit Organizations), Tenant or P25 Tenant, as applicable shall lease not less than one thousand (1,000) square feet of space to a Community Benefit Organization within either the Office Component or



Retail Component of the Project or the Office Component or Retail Component of the P25 Project (the “**Community Benefit Suite**”). Without limiting the foregoing, at such time that Tenant and P25 Tenant determines whether the Community Benefit Suite will be located in the Project or the P25 Project, the Community Benefit Suite shall remain in the designated project for the remainder of the term of such ground lease and the Parties shall execute and record a memorandum or amended memorandum of each of this Lease and the P25 Ground Lease confirming in which of the Project or the P25 Project the Community Benefits Suite will be located. The Community Benefit Suite shall be used for cultural and/or educational purposes or such other purposes as may be mutually approved by Owner and Tenant, each acting reasonably and in good faith, on the following principal terms: Tenant, at Tenant’s sole cost and expense, shall provide a one-time tenant improvement allowance of not less than \$100.00 per square foot (not exceeding \$100,000.00, as adjusted for inflation) towards the completion of the build-out of the Community Benefit Suite for the Community Benefit Organization; and the Community Benefit Organization shall not be responsible for any rent, or alternatively, if the square footage of Community Benefit Suite exceeds one thousand (1,000) square feet, the Community Benefit Organization shall receive a rent credit in an amount equal to the equivalent of then-current fair market rent per square foot for 1,000 square feet (based on the then-current fair market rent per square foot for which Tenant is currently marketing similar space within the Component within which the Community Benefit Suite is located), and except with respect to any balance in excess of the foregoing rent credit, if applicable, the Community Benefit Organization shall not be responsible for any rent other than its pro rata share of property taxes, insurance and common area charges for the Component within which the Community Benefit Space is located. No other uses or purposes shall be permitted, except as may be approved in writing by Owner in its reasonable discretion. Tenant reserves the right to close or restrict access to any portion of the Premises in connection with Alterations undertaken in accordance with the provisions of this Lease or to such extent as may, in its reasonable opinion, be legally necessary to prevent a dedication thereof or the accrual of prescriptive rights to any Person.

(c) **Additional Parking Component.** Tenant shall design the Project in a manner that allows the Additional Parking Component to be made available to the general public. From and after Substantial Completion of the Project, Tenant shall use diligent, good faith efforts to make any excess parking spaces in the Additional Parking Component, which have not been reserved for tenants, guests, invitees, licensees or other occupants of the Retail Component or Office Component, available to the general public during non-business hours (including weekends) on commercially reasonable terms and conditions as Tenant shall determine in its reasonable discretion.

(d) **Ownership and Operation of Public Parking Replacement Component.** Upon Substantial Completion of the Project, the Premises shall be subdivided by the Declaration or otherwise in a manner reasonably satisfactory to Owner and Tenant, and Owner shall retain fee ownership of the Public Parking Replacement Component and Tenant shall convey all of its right, title and interest in and to the Public Parking Replacement Component, to Owner. Owner shall have the right, in its sole discretion, to cause Tenant to operate the Public Parking Replacement Component by written notice to Tenant by or before the date that is sixty (60) days from the NTP

Date. In the event Owner requires Tenant to operate the Public Parking Replacement Component, Tenant and Owner, each acting reasonably and in good faith, shall enter into a mutually agreed operating agreement with respect thereto (the “**Parking Operating Agreement**”). If Owner elects to operate the Public Parking Replacement Component, Owner shall be entitled to receive and retain all gross revenues from the operation of the Public Parking Replacement Component (subject to any cost-sharing set forth in the Declaration), or if Owner elects to cause Tenant to operate the Public Parking Replacement Component, Owner shall be entitled to receive all net revenues therefrom, to be further defined and described in the Parking Operating Agreement. Owner and Tenant acknowledge and agree that the Parking Operating Agreement shall contain indemnities from Tenant in favor of Owner relating to the operation and use of the Parking Replacement Component.

(e) **Character and Operation of the Premises.** The Parties recognize and acknowledge that the manner in which the Premises are developed, operated and maintained are matters of critical concern to the City, and Tenant hereby agrees to develop, operate and maintain the Premises and all other property and equipment located thereon which are owned, leased or maintained by Tenant in a manner consistent with other comparable first class projects of similar age and in good order, condition, repair and appearance, and in compliance with **Article 14**. To accomplish this result, Tenant shall establish such reasonable rules and regulations governing the use and operation of the Premises by subtenants as Tenant shall deem necessary or desirable in order to comply with **Article 14** and assure the level of quality and character of operation of the Premises required herein, and it will use all reasonable efforts to enforce such rules and regulations.

## **Section 6.2 Prohibited Uses.**

(a) Without limiting the provisions of **Section 6.1**, Tenant shall not use or occupy the Premises or any part of the Premises, and neither permit nor suffer the Premises to be used or occupied, for any of the following (“**Prohibited Uses**”) without the prior written consent of City Manager, in his or her sole discretion: (1) the sale, as its principal business purpose, of any merchandise which such Person, in the course of its normal business practice, purchases at manufacturers’ clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise; (2) the sale of insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire; (3) a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale; (4) the sale of medical marijuana or paraphernalia incidental thereto; (5) any business in which Tenant is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (6) coin box entertainment (pinball, video games, moving pictures operated by coins); (7) casino gambling or games of chance or reward; (8) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including “adult entertainment establishments” and “adult” bookstores) or extra-hazardous, or in such manner as to constitute (as determined by any Governmental Authority, including the City acting in its regulatory capacity) a nuisance of any kind (public or private); (9) medical facilities and medical offices other than: (A) medical support service offices; (B) concierge medical offices; and (C) personal care offices providing physical therapy, med spas services (consisting of cosmetic

Botox®, fillers and similar services), laser hair removal, and reputable regional and/or national massage studios (unless, for the avoidance of doubt, such use otherwise constitutes a Prohibited Use hereunder); (D) optometry offices; and (E) cryotherapy offices; but in each case excluding any medical facilities or medical offices in which emergency, urgent care and similar services are provided or in which surgical procedures are performed; (10) check cashing facilities; (11) pawn shops; (12) the sale of firearms; (13) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (14) the sale of religious artifacts and religious books; (15) places of worship; (16) political offices; (17) military recruiting; (18) consular, legation or any other offices of foreign governments; (19) tire sales; (20) the sale of animals or birds of any kind; (21) offices for the practice of veterinary medicine other than appointment-only concierge veterinary offices on the ground floor level of the Retail Component; (22) the sale of major appliances as a primary business; (23) housing or sleeping quarters; (24) convenience stores or grocery stores other than in-store purveyors of fine, specialty and/or gourmet foods and beverages; (25) occult science establishments; (26) pharmacy stores; (27) souvenir and t-shirt shops; (28) retail establishments larger than 45,000 square feet (except as otherwise provided in Sections 142-332 and 142-333 of the City Code (and the Parties acknowledge and agree no variances shall be granted from the regulations set forth in Section 142-335(b)(9) of the Code)); (29) unless otherwise approved by the City Manager in his or her reasonable discretion, any formula retail or chain stores which then have any locations within a one-half (1/2) mile radius of the Premises; provided, however, the foregoing restriction in this clause (29) shall not restrict (A) any such formula retail or chain stores which have existing leases that are expiring and are relocating to the Premises or (B) businesses based in Miami-Dade, Broward and/or Palm Beach counties, fitness businesses and/or food and beverage businesses, in each case, not including “fast food” (defined as mass-produced food designed for resale with a strong priority placed on speed of service); or (30) any mural, digital or other exterior advertising on the Premises (other than advertising the availability of parking and space available for lease within the Premises to the extent permitted by and in accordance with City Code and other applicable Requirements); or (31) in any manner that will violate any conditional use approval, Certificate of Occupancy or certificate of use for the Premises (or other similar approvals of applicable Governmental Authorities), or which will violate any laws, ordinances, or other rules or regulations applicable to the Premises.

(b) Promptly upon its discovery of any Prohibited Use, Tenant shall take all commercially reasonable necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any subtenants, licensees, invitees or concessionaires, subject to applicable Requirements.

## **Article 7 - Insurance**

### **Section 7.1 Insurance Requirements.**

(a) **Commercial General Liability Insurance.** At all times during the Term, Tenant, at its sole cost and expense, shall carry or cause to be carried commercial general liability insurance on a comprehensive basis, including contractual liability, to cover the Premises and the Tenant’s operations and indemnity obligations to the extent the same is available related thereto, whether conducted on or off the Premises, in an amount of not less than Ten Million Dollars

(\$10,000,000) per occurrence for bodily injury and property damage, subject to adjustment for inflation, such limits can be obtained through a combination of primary and umbrella/excess policies, and designating Tenant as a named insured, and Owner and, if required by the Recognized Mortgage, the Recognized Mortgagee as additional insureds. Such insurance shall meet all of the standards, limits, minimums and requirements described in **Section 7.7**.

(b) **Property Insurance.** At all times during the Term, Tenant, at its sole cost and expense, shall carry or cause to be carried “**All Risk**” (or its equivalent) property damage insurance protecting Tenant, Owner and the Recognized Mortgagee as their interests may appear against loss to the Premises and Improvements and meeting all of the standards, limits, minimums and requirements described in **Section 7.8**.

(c) **Other Insurance.** At all times during the Term, Tenant shall procure and carry insurance meeting all of the standards, limits, minimums, and requirements described in **Section 7.9**.

(d) **Construction Insurance.** Prior to the commencement of any Construction Work, and only if the Property and Liability coverage above does not otherwise apply Tenant shall procure or cause to be procured, and after such dates shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance described in **Section 7.10**.

## **Section 7.2 Treatment of Proceeds.**

(a) **Proceeds of Casualty Insurance in General.** Insurance proceeds payable with respect to a property loss shall be payable to Owner and/or the Recognized Mortgagee or other Institutional Lender (as further described herein) pursuant to a mutually acceptable insurance trust agreement, either of which shall hold such proceeds in trust for the purpose of paying the cost of the Casualty Restoration, or shall be payable to Tenant with respect to insurance proceeds not exceeding Five Hundred Thousand Dollars (\$500,000) per occurrence, adjusted for inflation, or such lesser amount as may be required by the Recognized Mortgagee, and such proceeds shall be applied to the payment in full of the cost of such Casualty Restoration in accordance with the provisions of **Article 8**.

(b) **Proceeds of Rent Insurance.** Rent Insurance referred to in **Section 7.9** shall be carried in the name of Tenant as named insured and shall be payable to Owner and Tenant to be applied to Rent and/or Impositions for the period from the occurrence of the damage or destruction until completion of the Restoration as determined in accordance with the provisions of **Article 8**. Without limiting the foregoing provisions of this **Section 7.2(b)**, if required by the Recognized Mortgage, such amounts shall be paid to the Recognized Mortgagee so long as all Rent and/or Impositions are first paid to Owner subject to the provisions of **Section 12.1** herein.

(c) **Cooperation in Collection of Proceeds.** Tenant, Owner and the Recognized Mortgagee shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss, and Tenant, Owner and the Recognized Mortgagee shall as

soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant, Owner or the Recognized Mortgagee, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

(d) **Adjustments for Claims.** All property insurance policies required by this **Article 7** shall provide that all adjustments for claims with the insurers involving a loss in excess of Five Hundred Thousand Dollars (\$500,000) per occurrence, adjusted for inflation, or such lesser amount as may be required by the Recognized Mortgagee be made jointly with Tenant, Owner and the Recognized Mortgagee.

### **Section 7.3 General Provisions Applicable to All Policies.**

(a) **Insurance Companies.** All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of Florida that have a rating in the latest edition of “**Best’s Key Rating Guide** of “**A:VII**” or better or another comparable rating reasonably acceptable to Owner, considering market conditions.

(b) **Required Forms.** All references to forms and coverages in this **Article 7** shall be those used by the Insurance Services Organization (ISO) or equivalent forms reasonably satisfactory to Owner in all material respects.

(c) **Required Certificates.** Certificates of insurance evidencing the issuance of all insurance required by this **Article 7** to the extent then required, describing the coverage and providing for thirty (30) days prior notice to Owner by the insurance company of cancellation or non-renewal (except as otherwise set forth in Section 7.3(e) below), shall have been delivered to Owner by the Possession Date or, if earlier, the date on which Tenant commences any Early Work or other Work permitted to be performed on the Premises prior to satisfaction of the Possession Conditions pursuant to the Development Agreement, and a renewal policy replacing any policies expiring during the Term of the Development Agreement or this Lease, or a certificate thereof, together with evidence that the full premiums have been paid, shall be delivered to Owner prior to the date of expiration of any insurance policy. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance, or its duly authorized agent, shall also deliver to Owner proof reasonably satisfactory to Owner that the premiums for at least the first year of the term of each policy (or installment payments to the insurance carrier then required to have been paid on account of such premiums) have been paid. During the performance of any Construction Work, Tenant shall deliver to Owner an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy. At all other times, Tenant shall deliver to Owner an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy (which may be redacted with respect to premium amounts or, if the policy covers other properties owned by Tenant’s Affiliates, redacted with respect to information relating to such other properties) within a reasonable period of time after Owner’s request therefor. Tenant shall notify Owner of any material changes in the coverage provided under any policy promptly after requesting an insurance company to make such change or receiving any notice from an insurance company advising Tenant of any such change;

provided, however, that no such change may reduce or otherwise modify the insurance coverage required under this Lease.

(d) **Compliance with Policy Requirements.** Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article, and Tenant shall perform, satisfy and comply with, or cause to be performed, satisfied and complied with, all conditions, provisions and requirements of all insurance policies.

(e) **Required Insurance Policy Clauses.** Each policy of insurance required to be carried pursuant to the provisions of this Article and each certificate issued by or on behalf of the insurer shall contain (i) a provision stating substantially that no act or omission of Tenant (or any other Person) or any use or occupation of the Premises for purposes more hazardous than are permitted by the policy shall invalidate the policy as to Owner or affect or limit the obligation of the insurance company to pay to Owner the amount of any loss sustained and that no act or omission of Owner shall invalidate the policy as to Tenant or affect or limit the obligation of the insurance company to pay to Tenant the amount of any loss; (ii) a written waiver of the right of subrogation against all of the named insureds and additional insureds, including Owner in its capacity as owner of the Land and the Recognized Mortgagee named in such policy, with respect to losses payable under such policy; (iii) a clause designating Owner, and the Recognized Mortgagee as loss payee or additional insured, as their interests may appear for losses in excess of Five Hundred Thousand Dollars (\$500,000) per occurrence, adjusted for inflation, or such lesser amount as may be required by the Recognized Mortgagee; and (iv) an agreement by the insurer that such policy shall not be canceled, materially modified (except with respect to premium amounts), or denied renewal without at least thirty (30) days prior written notice to Owner, Owner's Risk Management Division and the holder of the Recognized Mortgage named under a standard New York form of mortgagee endorsement or its equivalent, specifically covering, without limitation, cancellation or non-renewal, except that ten (10) days' notice or statutory notice, whichever is greater, shall be given with respect to cancellation or non-renewal for any non-payment of premium.

(f) **Separate Insurance.** Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Owner and the Recognized Mortgagee are included therein as additional insureds with respect to liability or loss payee with respect to property, as their interests may appear, with loss payable as in this Lease provided. Tenant shall immediately notify Owner of the carrying of any such separate insurance and shall cause the same to be delivered as in this Lease hereinbefore required.

(g) **Duration of Policies.** Tenant shall procure policies for all insurance required by any provision of this Lease for periods of not less than one (1) year or the remainder of the policy term if insured under an existing blanket policy and shall procure renewals thereof from time to time to ensure continuous coverage, except that Builders' Risk Insurance shall only be renewed for the term of any construction period.

#### **Section 7.4 Additional Coverage.**

(a) **Other Insurance.** Tenant shall maintain such other insurance, in such amounts as from time to time reasonably may be required by Owner, against such other insurable hazards as at the time are commonly insured against in the case of projects in South Florida of a size, nature and character similar to the size, nature and character of the Project.

(b) **Adjustment of Limits.** All of the limits of insurance required pursuant to this **Article 7** shall be subject to review by Owner and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as Owner may reasonably require from time to time, but Owner may not impose such new limits any more frequently than once in every three (3) year period from the CO Date (including but not limited to deductibles, limits, coverages and endorsements). Tenant agrees that Owner may, if it so elects, at Owner's expense, have the Premises appraised for purposes of requiring Tenant to obtain the proper amount of insurance hereunder. Any request by Owner that Tenant carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of similar projects in South Florida of a size, nature and character similar to the size, nature and character of the Project; provided, however, that the provisions of this subsection (b) shall not relieve Tenant of its obligation to carry or to cause to be carried All Risk insurance in an amount not less than the Replacement Value as provided in **Section 7.12(a)**. Tenant shall be responsible for all deductibles.

#### **Section 7.5 No Representation as to Adequacy of Coverage.**

The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder, and any review thereof by Owner, shall not constitute a representation or warranty by Owner that such insurance is in any respect adequate.

#### **Section 7.6 Blanket or Umbrella Policies.**

The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's election, be effected by blanket, wrap-up and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Owner, upon Owner's request, certificates of insurance and copies (certified by Tenant to be true, complete and correct, which may also be redacted with respect to premium amounts or, if the policy covers other properties owned by Tenant's Affiliates, redacted with respect to information relating to such other properties) of such policies as provided in **Section 7.3(c)**, together with schedules annexed thereto setting forth the amount of insurance applicable to the Premises.

### **Section 7.7 Liability Insurance Requirements.**

The insurance required by **Section 7.1(a)** shall consist of commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury. Such insurance shall (within the limits of the insurance required by **Section 7.1(a)**):

- (a) contain blanket contractual liability insurance covering written and oral contractual liability;
- (b) contain contractual liability insurance specifically covering Tenant's indemnification obligations under **Article 20**, to the extent such indemnification obligation is for an insurable risk;
- (c) contain independent contractors coverage;
- (d) contain a notice of occurrence clause;
- (e) contain a knowledge of occurrence clause;
- (f) contain an unintentional errors and omissions clause;
- (g) contain coverage for suits arising from the use of reasonable force to protect persons and property;
- (h) contain an endorsement providing that excavation and foundation work are covered and the "XCU" exclusions have been deleted;
- (i) contain a waiver of completion and occupancy condition;
- (j) contain no exclusions unless specifically approved in each instance by Owner, other than the industry standard exclusions for projects of similar size and location;
- (k) contain Products Liability/Completed Operations coverage; and
- (l) provide for a deductible determined by Tenant, but not more than One Hundred Thousand Dollars (\$100,000) per loss, subject to adjustment for inflation.

### **Section 7.8 Property Insurance Requirements.**

The insurance required by **Section 7.1(b)** shall consist at least of property damage insurance under an "**All Risk**" policy or its equivalent covering the Premises and all Improvements with replacement cost valuation and an "agreed amount endorsement" (to be effective not later than promptly following the CO Date) in an amount not less than the full Replacement Value (determined in accordance with **Section 7.12**) such Named Windstorm shall have a limit equal to the RMS modeling 475 year return period negating any coinsurance clauses and including the following coverages or clauses:



- (a) coverage for physical loss or damage to the Improvements;
- (b) a replacement cost valuation without depreciation or obsolescence clause;
- (c) debris removal coverage;
- (d) provision for a deductible determined by Tenant, but not more than Three Hundred Seventy Five Thousand Dollars (\$375,000) per loss (for other than flood or windstorm, with regard to which the deductible shall be a commercially reasonable amount), subject to adjustment for inflation;
- (e) contingent liability from operation of building laws;
- (f) demolition cost for undamaged portion coverage;
- (g) increased cost of construction coverage;
- (h) flood coverage (to the extent available at commercially reasonable rates, limits and deductibles);
- (i) windstorm coverage (to the extent available at commercially reasonable rates, limits and deductibles);
- (j) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by Owner);
- (k) business interruption coverage in accordance with **Section 7.9**;
- (l) a clause designating Owner and the Recognized Mortgagee as additional insureds, as their interests may appear; and
- (m) contain no exclusions unless approved in writing by Owner, other than the industry standard exclusions for projects of similar size and location.

Tenant shall be named insured, and Owner and the Recognized Mortgagee shall be additional insureds, as their interests may appear. The Recognized Mortgagee and Owner shall be designated loss payee, as their interests may appear, on such “**All Risk**” policy for the benefit of Owner, Tenant and the Recognized Mortgagee. If not included within the “**All Risk**” coverage above, Tenant shall also carry or cause to be carried coverage against damage due to (i) water and sprinkler leakage and collapse, which shall be written with limits of coverage of not less than the full Replacement Value per occurrence, with a deductible of not more than Three Hundred Seventy Five Thousand Dollars (\$375,000), subject to adjustment for inflation and (ii) flood, to the extent available at commercially reasonable rates, limits and deductibles.

If Tenant elects to insure Tenant's personal property used in connection with the Premises, the replacement value of such personal property shall be added to the amount of insurance required by this Section.

For the purposes of this **Section 7.8**, any rate, limit or deductible shall be "commercially reasonable" if such rate, limit or deductible is comparable to the rates, limits or deductibles in the insurance carried by similar projects in South Florida of a size, nature and character similar to the size, nature and character of the Project.

### **Section 7.9 Other Insurance Requirements.**

The insurance required by **Section 7.1(c)** shall consist at least of the following:

(a) Business Interruption Insurance to include Rent Insurance on an "**All Risk**" basis in an amount equal to (i) prior to the CO Date: not less than the annual Construction Rent from the Construction Rent Commencement Date through the Base Rent Commencement Date; and not less than the annual Base Rent from the Base Rent Commencement Date through the CO Date, and (ii) following the CO Date, not less than the aggregate amount of annual Rent and/or Impositions. The insurance specified in this subsection shall:

(i) provide coverage against all reasonably insurable risks of physical loss or damage to the Improvements;

(ii) Extra Expense coverage, with a limit of at least One Million Dollars (\$1,000,000), adjusted for inflation, to cover overtime and other extra costs incurred to expedite repairing or rebuilding the damaged portion of the Premises;

(iii) provide for coverage through the attainment of pre-existing business levels;

(iv) contain flood and windstorm coverage to the extent available at commercially reasonable rates, limits and deductibles;

(v) contain explosion caused by steam pressure fired vessels coverage (which coverage may be provided under a separate policy reasonably approved by Owner);

(vi) provide for a deductible determined by Tenant, but for not more than Three Hundred Seventy Five Thousand Dollars (\$375,000), and thirty (30) days wait period for Builders risk policy per loss (other than for flood or windstorm, with regard to which the deductible shall be a commercially reasonable amount), subject to adjustment for inflation;

(vii) designate Owner, Tenant and the Recognized Mortgagee as loss payee but shall be payable only to Tenant with respect to Business Interruption proceeds not exceeding One Hundred Thousand Dollars (\$100,000), subject to adjustment for inflation, per occurrence; and

(viii) contain no exclusions, unless approved by Owner, other than industry standard exclusions for projects of similar size and location.

(b) Statutory Workers' Compensation with limits sufficient to respond to Chapter 440, Florida Statutes and any other insurance required by law covering all employees of Tenant or any entity performing work on or for the Premises or the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount not less than (i) One Million Dollars (\$1,000,000) Bodily Injury by Accident, (ii) One Million Dollars (\$1,000,000) Bodily Injury by Disease and (iii) One Million Dollars (\$1,000,000) Bodily Injury by Disease, each employee, all subject to adjustment for inflation.

(c) After CO Date, Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air conditioning systems, located on any portion of the Premises and other machinery located on any portion of the Premises, which shall designate Tenant as named insured and loss payee and designate Owner and the Recognized Mortgagee as additional insureds.

(d) Automobile liability insurance covering any owned, non-owned and hired automobile or other motor vehicle used in connection with the Project in an amount not less than Twenty-Five Million Dollars (\$25,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Tenant of not more than Ten Thousand Dollars (\$10,000) per loss, subject to adjustment for inflation.

(e) Tenant shall cause any architects or engineers to maintain architects and engineers errors and omissions liability insurance specific to the activities or scope of work such consultants will perform. If coverage is provided on a "claims made" basis, the policy shall provide for the reporting of claims for a period of five (5) years following the completion of all construction activities. The minimum limits acceptable shall be One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate.

#### **Section 7.10 Construction Insurance Requirements.**

The insurance required by **Section 7.1(d)** shall consist at least of the following:

(a) Builder's Risk Insurance (standard "**All Risk**" or equivalent coverage) in an amount not less than 100% of the insurable value of the Project completed structure(s), covering perils on an "All Risk" basis, including flood, earthquake, and windstorm, written on a completed value basis or a reporting basis, for property damage protecting Tenant, Owner, the general contractor performing such Construction Work, and the Recognized Mortgagee, with a deductible payable at the sole responsibility of Tenant of not more than Fifty Thousand Dollars (\$50,000), subject to adjustment for inflation (except as to flood and windstorm, with regard to which the deductible shall be a commercially reasonable amount), to include rental payment coverage from the date of projected completion and extending for at least twelve (12) months following such date

of projected completion. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered.

(b) Automobile liability insurance covering any automobile or other motor vehicle used in connection with work being performed on or for the Premises in an amount not less than Five Million Dollars (\$5,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Tenant of not more than Ten Thousand Dollars (\$10,000), subject to adjustment for inflation.

(c) The insurance required pursuant to **Section 7.7**.

#### **Section 7.11 Annual Aggregates.**

Excluding Umbrella/Excess Liability Insurance, if there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

#### **Section 7.12 Determination of Replacement Value.**

(a) **Definition.** The current replacement value of the Improvements (the “**Replacement Value**”) shall be the full cost of replacing the Improvements according to Requirements in effect at that time, including, without limitation, all hard costs of construction as well as the costs of post-casualty debris removal, and soft costs, including without limitation, architects’, engineers’, surveyors’, assessors’ and other professional fees and development fees. On the CO Date, Replacement Value of the Improvements shall be deemed to be an amount equal to the actual costs incurred or expended in connection with the construction of the Premises as certified by the architect upon completion of the Premises, other than foundations and financing and other soft costs not applicable to replacement, adjusted for each year after completion of the Premises in accordance with the percentage change in the Building Index. If the insurance required by **Section 7.8** above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such adjustment, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

(b) **Building Index.** As used herein, the “**Building Index**” shall mean the Marshall and Swift Cost Index or such other published index of construction costs which shall be selected from time to time by Owner and reasonably agreed to by Tenant, provided that such index shall be a measure of construction costs widely recognized in the insurance industry and appropriate to the type and location of the Improvements.

### **Section 7.13 Master Subleases.**

All Master Subleases shall require the Master Subtenant to comply with all insurance requirements in this **Article 7** and name Tenant, Owner and the Recognized Mortgagee as additional insureds on all such policies of insurance.

### **Section 7.14 Additional Interests.**

All insurance policies in this **Article 7** shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to Owner, as its interests may appear. Any holder of the Recognized Mortgage which, pursuant to the Recognized Mortgage, is required to be named under any of the insurance carried hereunder shall be named under a standard New York form of mortgagee endorsement or its equivalent.

## **Article 8 - Damage, Destruction and Restoration**

### **Section 8.1 Notice to Owner.**

If the Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify Owner of same as soon as reasonably possible after Tenant's discovery of same.

### **Section 8.2 Casualty Restoration.**

(a) **Obligation to Restore.** If all or any portion of the Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, whether prior to or after completion of the initial construction of the Project, Tenant shall, in accordance with the provisions of this **Article 8** and **Articles 2, 4 and 6** of the Development Agreement (a copy of which is attached hereto as **Exhibit E** (provided, however, to the extent of any inconsistency between **Exhibit E** and Articles 2, 4 and 6 of the Development Agreement, Articles 2, 4 and 6 of the Development Agreement shall control); the provisions of which shall be deemed to apply to all Construction Work necessary to complete the Casualty Restoration, to the extent the same are not inconsistent with the terms hereof) restore the Premises to the condition thereof as it existed immediately before such casualty ("**Casualty Restoration**"), regardless of whether the Net Insurance Proceeds shall be sufficient therefor. "**Net Insurance Proceeds**" shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

(b) **Commencement of Construction Work.** Subject to Unavoidable Delays and/or City Delays, if applicable, and each in accordance with this Lease, Tenant shall promptly apply for and diligently pursue all application Permits and Approvals for Construction Work in connection with a Casualty Restoration and shall commence such Construction Work promptly after (i) obtaining such Permits and Approvals and (ii) receipt of the Net Insurance Proceeds from the Recognized Mortgagee or Owner arising from the damage or destruction which caused the need for such Casualty Restoration and thereafter, shall diligently pursue the completion of such Casualty Restoration.

(c) **Pay Down of Mortgages Prohibited.** No lender (whether a Recognized Mortgagee, Recognized Mezzanine Lender, Institutional Lender providing C-PACE financing or otherwise) shall have the right to apply any insurance proceeds paid in connection with any casualty toward payment of any debt owed to such lender to the extent that this Lease requires that Tenant effect a Casualty Restoration with such proceeds.

### **Section 8.3 Restoration Funds.**

(a) If in connection with a casualty the Net Insurance Proceeds are in excess of the Required Deposit Threshold, then all Net Insurance Proceeds shall be deposited with the Recognized Mortgagee, or, if none, with another Institutional Lender pursuant to a trust agreement mutually acceptable to Owner, Tenant and such Institutional Lender. Except as may be otherwise required by the Recognized Mortgagee, if Net Insurance Proceeds are less than the Required Deposit Threshold, then such Net Insurance Proceeds shall be paid to Tenant and applied as provided herein. Provided Tenant is conducting the Casualty Restoration in accordance with this Lease, the Net Insurance Proceeds shall be paid out from time to time as the Casualty Restoration progresses, upon the written request of Tenant, which request shall be accompanied by the following:

(i) A certificate signed by Tenant and the architect or engineer in charge of the Casualty Restoration, reasonably satisfactory to Owner, dated not more than thirty (30) days prior to such request, setting forth:

(1) that the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the work specified, and stating that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of the Net Insurance Proceeds;

(2) a brief description of the services and materials;

(3) that, except for the amount described in **Section 8.3(a)(i)(1)**, there is no outstanding indebtedness actually known to the persons signing such certificate, after due inquiry, which is then due for labor, materials, or services in connection with the Casualty Restoration;

(4) that the cost, as estimated by the persons signing such certificate, of the work required to complete the Casualty Restoration does not exceed the amount of the remaining Net Insurance Proceeds, plus any amount deposited by Tenant to defray the expenses of the Casualty Restoration; and

(5) that the work described has been completed in accordance with the plans and specifications applicable thereto, in a good and workmanlike manner and in accordance with all Requirements.

(ii) Lien waivers, title insurance company reports or such other evidence, reasonably satisfactory to Owner, to the effect that there has not been filed with respect to the Premises, any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested; and

(iii) Such other documentation regarding the Casualty Restoration as Owner or the Recognized Mortgagee shall reasonably require.

(b) Tenant shall, prior to the commencement of the Casualty Restoration, furnish to Owner an estimate of the total cost of the Casualty Restoration certified by the architect or engineer in charge of the Casualty Restoration. If such cost estimate or any subsequent estimate provided pursuant to **Section 8.3(a)** shall show that the cost of completing the Casualty Restoration is in excess of the amount of the Net Insurance Proceeds then available, Tenant shall promptly deposit with the holder of the Net Insurance Proceeds an amount equal to such excess or provide evidence reasonably acceptable to Owner that Tenant can fund the balance of the cost of completing such Casualty Restoration. The amount so deposited shall be included in the Net Insurance Proceeds for all purposes of this **Article 8**.

(c) Upon compliance by Tenant with the foregoing provisions of this **Article 8**, the holder of the Net Insurance Proceeds shall pay, to Tenant or the persons named in the certificate referred to in **Section 8.3(a)**, from the Net Insurance Proceeds, an amount equal to ninety percent (90%) of the cost of the Casualty Restoration which is evidenced by the request. At the completion of each contract or subcontract in connection with the Casualty Restoration, the balance of the Net Insurance Proceeds relating to that portion of the work, to the extent of and as required to complete the payment of Casualty Restoration costs relating to that portion of the work, shall be paid to Tenant and Tenant shall provide to Owner reasonable evidence that the Casualty Restoration relating to that portion of the work has been paid for in full, including final lien waivers in form and substance reasonably satisfactory to Owner from each contractor, subcontractor, supplier or materialman at every tier retained by or on behalf of Tenant in connection with such work.

(d) If the amount of any Net Insurance Proceeds, excluding deposits made by Tenant pursuant to **Section 8.3(b)** above, shall exceed the entire cost of the Casualty Restoration, such excess, upon completion of the Casualty Restoration, shall, if Tenant is not in Default, be disbursed to Tenant, or if Tenant is in Default or there are any amounts due or owed to Owner (whether or not this Lease is then in effect), such excess shall be paid to and retained by Owner and shall be credited against any amounts due hereunder which are in Default, and if any balance remains then, in that event, said remaining balance to Tenant as Project Revenue. Any amounts deposited by Tenant pursuant to **Section 8.3(b)** hereof shall be returned to Tenant to the extent the same are not necessary to fund the cost of the Casualty Restoration.

#### **Section 8.4 Effect of Casualty on this Lease.**

This Lease shall not terminate, be forfeited or be affected in any manner, and there shall be no reduction or abatement of Rent (except to the extent Owner receives the net proceeds of the

insurance described in **Section 7.8**), by reason of damage to, or total or partial destruction of, or untenantability of, the Premises or any part thereof resulting from such damage or destruction. Tenant's Rent obligations hereunder shall continue as though the Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever. Subject to Unavoidable Delays in accordance with this Lease and taking into account Tenant's Casualty Restoration obligations (including the effect of the casualty and the Casualty Restoration on the Tenant's ability to comply with the maintenance obligations under **Article 14** hereof), Tenant's non-Rent obligations hereunder shall continue as though the Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

### **Section 8.5 Collection of Proceeds.**

Each of the Parties shall execute such documents as may be reasonably required to facilitate collection of any insurance proceeds paid or payable in connection with any casualty affecting the Premises.

### **Section 8.6 Termination of Lease for Substantial Casualty Occurring During the Last Ten Years of the Second Extension Term.**

Notwithstanding anything to the contrary contained herein, in the event that the Premises or any part thereof shall be damaged or destroyed by a Substantial Casualty during the last ten (10) years of the Second Extension Term of this Lease, then Tenant or Owner shall have the right to terminate this Lease, provided that either Party elects to terminate this Lease by written notice to the other Party within six (6) months after the date of such Substantial Casualty, and there are no subleases that would remain in effect following such termination. In such event, (a) this Lease shall terminate fifteen (15) days after the receiving Party's receipt of such notice of termination, (b) the obligations of Tenant to pay Base Rent, Percentage Rent and Transaction Rent under this Lease shall cease as of the date of termination and (c) at Owner's request, Tenant, at its sole cost and expense, shall promptly demolish the damaged Improvements, remove all debris and restore the Premises to the same condition existing on the Effective Date as a surface parking lot (using any available insurance proceeds for such purpose). Any demolition of the Improvements shall be performed in a good and workmanlike manner and in compliance with all applicable Requirements. In the event of any termination under this Section 8.6, the Net Insurance Proceeds for the damaged Improvements shall be paid as follows: (i) first, to demolish the Improvements, clear the site of all Improvements and debris to the Owner's reasonable satisfaction, and restore the Premises to its existing condition as of the Effective Date as a surface parking lot, (ii) second, subject to the requirements and rights of any Recognized Mortgagee, to reimburse Tenant for the fair market value of the Improvements as of the date prior to such Casualty and (iii) third, the balance, if any, to the Owner. If neither the Tenant or Owner timely elect to terminate this Lease in accordance with this **Section 8.6**, Tenant shall restore the Premises in accordance with **Section 8.2** hereof.



## Article 9 - Condemnation

### Section 9.1 Taking of All or Substantially All of the Premises.

(a) **Termination of Lease for Substantial Taking.** If all or Substantially All of the Premises are taken (excluding a taking of the fee interest in the Premises if, after such taking, Tenant's rights under this Lease are not affected and no rights of the Recognized Mortgagee are affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Tenant, Recognized Mortgagee and those authorized to exercise such right, this Lease shall terminate on the Date of Taking and the Rent and/or Impositions payable by Tenant hereunder shall be apportioned and paid to the Date of Taking.

(b) **Disbursement of Award.** If all or Substantially All of the Premises are taken or condemned as provided in **Section 9.1(a)**, the Net Condemnation Award paid or payable to Owner, Tenant or any lender or mortgagee claiming through either of them in connection with such taking or condemnation shall be paid as follows: (1) there shall first be paid to Owner an amount equal to the Net Condemnation Award multiplied by a fraction, the numerator of which is the appraised value of the Land immediately prior to such condemnation, and the denominator of which is the appraised value of the Premises immediately prior to such condemnation; (2) there shall next be paid to the Recognized Mortgagee so much of the Net Condemnation Award as shall equal the unpaid principal indebtedness secured by the Recognized Mortgage with interest thereon at the rate specified therein to the date of payment (including any prepayment fees thereon and any so-called "yield maintenance" or "make-whole" amounts or other sums intended to assure to the Recognized Mortgagee a certain rate of return under the loan secured by the Recognized Mortgage, if any, as well as any costs payable by Tenant in connection with such Recognized Mortgage pursuant to any "swap" or other interest rate protection or hedging mechanism) or as otherwise set forth in the Recognized Mortgage and related Mortgage Loan Documents; and (3) the remaining Net Condemnation Award shall be disbursed to Tenant. The appraised values referred to in **Section 9.1(b)(1)** shall be determined using the appraisal process outlined in **Exhibit F** attached hereto and incorporated herein by this reference.

(c) **Definitions.**

(i) **"Date of Taking"** means the earlier of (1) the date on which actual possession of all or Substantially All of the Premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable law or (2) the date on which title to all or Substantially All of the Premises, or any part thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable law.

(ii) **"Substantially All of the Premises"** means such portion of the Premises as, when so taken, would leave, in Tenant's good faith determination, a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, physical constraints, zoning laws, building regulations and other Requirements then existing, readily accommodate a new or

reconstructed building or buildings and other improvements of a type fully comparable to the Improvements existing at the Date of Taking. Tenant shall notify Owner, on or about the Date of Taking, in writing of its determination as to whether or not Substantially All of the Premises has been taken. If Tenant does not determine that Substantially All of the Premises has been taken, then this Lease shall not terminate and expire but shall continue in force and effect, subject to the other provisions of this **Article 9**. If Tenant determines that Substantially All of the Premises has been taken, then this Lease shall terminate and expire on the Date of Taking pursuant to **Section 9.1(a)**.

(iii) **“Net Condemnation Award”** shall mean the actual amount of the award paid in connection with or arising from the acquisition or other taking of all or Substantially All of the Premises or any portion of the Premises by any authority, less all reasonable out-of-pocket expenses incurred by Owner, Tenant or Recognized Mortgagee in connection with obtaining such award, including, without limitation, all reasonable attorneys’ fees and disbursements incurred in connection therewith.

### **Section 9.2 Less Than Substantial Taking.**

(a) **Taking of Less than Substantially All of the Premises.** If less than Substantially All of the Premises are taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Tenant, the Recognized Mortgagee and the entity authorized to exercise such right, whether prior to or after the completion of the initial construction of the Project, this Lease shall continue for the remainder of the Term (subject to paragraph (b) below) without diminution of any of Tenant’s obligations hereunder, but with a fair and equitable abatement of Rent and, in the event Tenant is then making payments to Owner pursuant to **Section 3.2(f)**, such payments, taking into account, amongst other things, that the Net Condemnation Award (if not sufficient for the Condemnation Restoration) is insufficient to complete the Condemnation Restoration.

(b) **Obligation to Restore the Premises.** If less than Substantially All of the Premises are taken as provided in **Section 9.2(a)**, whether prior to or after the completion of the initial construction of the Project, Tenant shall, in accordance with the provisions of this **Article 9** and **Articles 2, 4 and 6** of the Development Agreement (a copy of which is attached hereto as **Exhibit E** and the provisions of which shall be deemed to apply to all Construction Work necessary to complete the Condemnation Restoration, to the extent the same are not inconsistent with the terms hereof), restore the remaining portion of the Premises, to the extent feasible, to the condition thereof as it existed immediately before such taking (a **“Condemnation Restoration”**), regardless of whether the Net Condemnation Award shall be sufficient therefor.

(c) **Disbursement.** If less than Substantially All of the Premises are taken as provided in **Section 9.2(a)**, the Net Condemnation Award payable to Owner, Tenant and any lender or mortgagee claiming through either of them shall be paid as follows: (1) first to the cost of the Condemnation Restoration; (2) second to Owner for payment of any amounts due and payable hereunder which are in Default; (3) third to the Recognized Mortgagee for any amounts due and payable under the Recognized Mortgage which are in default; (4) fourth to the Recognized

Mortgagee to the extent required by the Recognized Mortgage as a result of the less than Substantial Taking; and (5) fifth pursuant to **Section 9.1(b)(1)**.

(d) **Commencement of Construction Work.** Subject to Unavoidable Delays and/or City Delays, as applicable, and each in accordance with this Lease, Tenant shall commence the Construction Work in connection with a Condemnation Restoration within ninety (90) days after receipt of the Net Condemnation Award arising from the taking which caused the need for such Condemnation Restoration and shall diligently pursue the completion of such Condemnation Restoration.

(e) **Pay Down of Mortgages Prohibited.** No lender (whether a Recognized Mortgagee, Recognized Mezzanine Lender, Institutional Lender providing C-PACE financing or otherwise) shall have the right to apply any award proceeds paid in connection with any taking toward payment of any debt owed to such lender to the extent that this Lease requires that Tenant effect a Condemnation Restoration with such proceeds.

### **Section 9.3 Restoration Funds.**

(a) If in connection with a taking the Net Condemnation Funds are in excess of the Required Deposit Threshold, then the entire Net Condemnation Award shall be deposited with the Recognized Mortgagee, or, if none, with another Institutional Lender pursuant to a trust agreement mutually acceptable to Owner, Tenant and such Institutional Lender. Except as may otherwise be required by the Recognized Mortgagee, if the Net Condemnation Funds are less than the Required Deposit Threshold, then such Net Condemnation Funds shall be paid to Tenant to be applied as provided herein. Provided Tenant is conducting the Condemnation Restoration in accordance with this Lease, the Net Condemnation Award shall be paid out from time to time as the Condemnation Restoration progresses, upon the written request of Tenant, which request shall be accompanied by the following:

(i) A certificate signed by Tenant and the architect or engineer in charge of the Condemnation Restoration, reasonably satisfactory to Owner, dated not more than thirty (30) days prior to such request, setting forth:

(1) that the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the work specified, and stating that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of the Net Condemnation Award;

(2) a brief description of the services and materials;

(3) that, except for the amount described in **Section 9.3(a)(i)(1)**, there is no outstanding indebtedness actually known to the persons signing such certificate, after due inquiry, which is then due for labor, materials, or services in connection with the Condemnation Restoration;

(4) that the cost, as estimated by the persons signing such certificate, of the work required to complete the Condemnation Restoration does not exceed the amount of the remaining Net Condemnation Award, plus any amount deposited by Tenant to defray the expenses of the Condemnation Restoration; and

(5) that the work described has been completed in accordance with the plans and specifications applicable thereto, in a good and workmanlike manner and in accordance with all Requirements;

(ii) Lien waivers, title company reports or such other evidence, reasonably satisfactory to Owner, to the effect that there has not been filed with respect to the Premises, any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested; and

(iii) Such other documentation regarding the Condemnation Restoration as Owner or the Recognized Mortgagee shall reasonably require.

(b) Tenant shall, prior to the commencement of the Condemnation Restoration, furnish to Owner an estimate of the total cost of the Condemnation Restoration certified by the architect or engineer in charge of the Condemnation Restoration. If such cost estimate or any subsequent estimate provided pursuant to **Section 9.3(a)(i)(4)** shall show that the cost of completing the Condemnation Restoration is in excess of the amount of the Net Condemnation Award then available, Tenant shall promptly deposit with the holder of the Net Condemnation Award an amount equal to such excess. The amount so deposited shall be included in the Net Condemnation Award for all purposes of this **Article 9**.

(c) Upon compliance by Tenant with the foregoing provisions of this Article, the holder of the Net Condemnation Award shall pay, to Tenant or the persons named in the certificate referred to in **Section 9.3(a)(i)**, from the Net Condemnation Award, an amount equal to ninety percent (90%) of the cost of the Condemnation Restoration which is evidenced by the request. At the completion of each contract or subcontract in connection with the Condemnation Restoration, the balance of the Net Condemnation Award relating to that portion of the work, to the extent of and as required to complete the payment of Condemnation Restoration costs relating to that portion of the work, shall be paid to Tenant and Tenant shall provide to Owner reasonable evidence that the Condemnation Restoration relating to that portion of the work has been paid for in full, including final lien waivers in form and substance reasonably satisfactory to Owner from each contractor, subcontractor, supplier or materialman at every tier retained by or on behalf of Tenant in connection with such work.

(d) If the amount of any Net Condemnation Award, excluding deposits made by Tenant pursuant to **Section 9.3(b)** above, shall exceed the entire cost of the Condemnation Restoration, such excess, upon completion of the Condemnation Restoration, shall, if this Lease shall be in full force and effect, be disbursed to Tenant or if this Lease shall not be in full force and effect, such excess shall be paid to and retained by Owner and shall be deemed to be Percentage

Rent to the extent that Percentage Rent was reduced during Condemnation Restoration and not reimbursed from insurance proceeds and if any balance remains then, in that event, said remaining balance to Tenant as Project Revenue hereunder. Any amounts deposited by Tenant pursuant to **Section 9.3(b)** above shall be returned to Tenant to the extent the same are not necessary to fund the cost of the Condemnation Restoration.

#### **Section 9.4 Temporary Taking.**

(a) **Notice of Temporary Taking.** If the temporary use of the whole or any portion of the Premises is taken for a public or quasi-public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give Owner notice within five (5) Business Days after Tenant receives notice thereof. The Term shall not be reduced or affected in any way by reason of such temporary taking and Tenant shall continue to pay to Owner the Rent and/or Impositions without reduction or abatement; provided, however, if such temporary taking is for a period in excess of three hundred sixty-five (365) days, then such taking shall be deemed a permanent taking and the provisions of **Sections 9.1** and **9.2**, as applicable, shall apply.

(b) **Temporary Taking Not Extending Beyond the Term.** If the temporary taking is for a period not extending beyond the Term (including a taking restricted entirely to Tenant's Interest in the Premises and not affecting Owner's interest in any way), Tenant shall apply the award it receives in compensation therefor toward a Condemnation Restoration in accordance with **Section 9.3**, and Tenant shall, subject to the rights of the Recognized Mortgagee, be entitled to retain any remaining amount of such award.

(c) **Temporary Taking Extending Beyond the Expiration of the Term.** If the temporary taking is for a period extending beyond the Expiration of the Term, the award or payment shall first be disbursed pursuant to **Section 9.3** to be applied toward such restoration of the Improvements as may have been necessitated by such taking, and the remainder shall be equitably apportioned between Owner and Tenant as of the Expiration of the Term.

#### **Section 9.5 Governmental Action Not Resulting in a Taking.**

In case of any governmental action not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, then this Lease shall continue in full force and effect without reduction or abatement of Rent and/or Impositions. Any award payable thereunder shall be applied (i) first to reimburse Tenant for any Construction Work performed by Tenant resulting from such governmental action and for attorneys' fees and costs related thereto as well as to Owner for its attorneys' fees and costs related thereto; provided, however, that Owner was not acting in its governmental capacity, (ii) second, any remaining amount shall be used to cure any monetary Defaults under this Lease, and (iii) the remainder shall be paid to Tenant.

**Section 9.6 Collection of Awards.**

Each of the Parties shall execute such documents as may be reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this **Article 9**.

**Section 9.7 Negotiated Sale.**

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

**Section 9.8 Intention of Parties.**

The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any condemnation or taking of less than Substantially All of the Premises.

**Section 9.9 No Waiver.**

Notwithstanding anything to the contrary contained herein, the City, acting in its governmental capacity, does not waive, and hereby reserves, its right to consent or withhold consent to any acquisition of property owned by or belonging to the City, including the Premises.

**Section 9.10 Effect of Taking on This Lease.**

Except as provided in **Section 9.1**, this Lease shall not terminate, be forfeited or be affected in any manner, and there shall be no reduction or abatement of Rent and/or Impositions, by reason of any taking of the Premises or any part thereof. Except as provided in **Section 9.2(a)**, Tenant's Rent and/or Imposition obligations hereunder shall continue as though the Premises had not been taken and shall continue without abatement, suspension, diminution or reduction whatsoever. Subject to Unavoidable Delays in accordance with this Lease and taking into account Tenant's Condemnation Restoration obligations, Tenant's non-Rent obligations hereunder shall continue as though the Premises had not been taken and shall continue without abatement, suspension, diminution or reduction whatsoever.

**Section 9.11 Termination of Lease for Substantial Condemnation Occurring During the Last Ten Years of the Second Extension Term.**

Notwithstanding anything to the contrary contained herein, in the event that a Substantial Condemnation occurs during the last ten (10) years of the Second Extension Term of this Lease, then Tenant or Owner shall have the right to terminate this Lease, provided that either Party elects to terminate this Lease by written notice to the other Party within six (6) months after such Substantial Condemnation, and there are no subleases that would remain in effect following such termination. In such event, (a) this Lease shall terminate fifteen (15) days after the receiving Party's receipt of such notice of termination, (b) the obligations of Tenant to pay Base Rent,

Percentage Rent and Transaction Rent under this Lease shall cease as of the date of termination and (c) at Owner's request, Tenant, at its sole cost and expense, shall promptly demolish the remaining Improvements, remove all debris, and restore the remainder of the Premises to the same condition existing as of the Effective Date as a surface parking lot (using any available condemnation award or proceeds for such purpose). Any demolition of the Improvements shall be performed in a good and workmanlike manner and in compliance with the Requirements. In the event of any termination under this **Section 9.11**, the condemnation award shall be payable as follows: (i) first, to demolish the Improvements, clear the site of all Improvements and debris to the Owner's reasonable satisfaction, and restore the Premises to its pre-existing condition as a surface parking lot, (ii) second, subject to the requirements of any Recognized Mortgagee, to reimburse Tenant for the fair market value of the Improvements as of the date prior to such Substantial Condemnation and (iii) third, the balance, if any, to the Owner. If neither the Tenant nor Owner timely elect to terminate this Lease in accordance with this **Section 9.11**, Tenant shall restore the Premises in accordance with **Section 9.2** hereof.

## **Article 10 - Sale of the Project, Transfer and Subletting**

### **Section 10.1 Purpose of Restrictions on Transfer.**

Subject to the provisions of this **Article 10**, this Lease is granted to Tenant solely for the purpose of development of the Land and its subsequent use in accordance with the terms hereof, and not for speculation in landholding. Tenant recognizes that, in view of the importance of the development of the Land to the general welfare of the community, the qualifications and identity of Tenant are of particular concern to the community and Owner. Tenant further recognizes that it is because of such qualifications and identity that Owner is entering into this Lease with Tenant and, in so doing, is further willing to accept and rely on the obligations of Tenant for the faithful performance of all undertakings and covenants by it to be performed.

### **Section 10.2 Definitions.**

(a) **"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 and granting of the Recognized Mortgage to the Recognized Mortgagee and/or the creation and pledge of the Mezzanine Loan Documents to the Recognized Mezzanine Lender shall not constitute an Assignment or a Transfer.

(b) **"Assignee"** means a purchaser, assignee, transferee, or other Person which acquires all or any portion of Tenant's Interest in the Premises by means of an Assignment.

(c) **"Back Rent"** means the amount of unpaid Rent (including all Percentage Rent) as of the Reinstatement Date, including accrued simple interest on the unpaid Rent from the date due at the default rate specified in the Recognized Mortgage, as well as reasonable attorneys' fees and costs at the trial court and all appellate levels and other expenses incurred by Owner in connection with enforcing this Lease.

(d) **“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.

(e) **“Equity Interest”** means, with respect to any entity, (1) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (2) the legal (other than as a nominee) or beneficial ownership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (3) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust and (4) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

(f) **“Exempt Transfer”** means (i) any direct or indirect Transfer by any investor or limited partner in any investment partnership or investment fund holding a direct or indirect Equity Interest in Tenant that is not a Controlling Equity Interest, (ii) any Transfer of less than fifty percent (50%) of the indirect Equity Interests in Tenant so long as Tenant remains a Starwood Entity, (iii) any Transfer by any Person of its stock or other ownership interests in a Publicly Traded U.S. Company that holds an indirect Equity Interest in Tenant that is not a Controlling Equity Interest, (iv) 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 (an **“Exempt Pledge”**) and (v) Tenant or any of its direct or indirect constituent partners, shareholders or investors (including SCG) from becoming, merging into, consolidating with or being acquired by any Public Successor.

(g) **“Master Sublease(s)”** means any sublease (including a sub-sublease or any further level of subletting) of all or any portion of the Premises, but does not include subleases serving the functional equivalent of the Recognized Mortgage or subleases to actual space users or other subleases entered into in the ordinary course of business for parking, retail, office or other space at the Premises; provided, however, that the Office Component and Additional Parking Component shall be subject only to one Master Sublease and shall not be subleased separate and apart from each other.

(h) **“Master Subtenant”** means any party granted rights by Tenant under a Master Sublease or by any other Master Subtenant (immediate or remote) under a Master Sublease.

(i) **“Public Successor”** means any Publicly Traded U.S. Company (i) of which Barry S. Sternlicht is (upon such entity becoming, or immediately following such entity becoming, a publicly traded entity) the chief executive officer and/or chairperson and (ii) that (A) directly or indirectly manages or Controls SCG or any investment vehicle or investment fund that is directly or indirectly Controlled by, or under common Control with, SCG or (B) succeeds, by merger or other transaction, to direct or indirect ownership of all or a substantial portion of the assets directly or indirectly owned by SCG prior to such merger or other transaction.



(j) **“Sale of the Project”** means any Assignment or Master Sublease by Tenant of fifty percent (50%) or more of Tenant’s Interest in the Premises or of any entire Component of the Project.

(k) **“SCG”** means Starwood Capital Group Holdings, L.P., a Delaware limited partnership, together with any successor thereto by merger or successor owner of all or substantially all of the assets thereof, of which Barry S. Sternlicht is the chief executive officer and/or chairperson.

(l) **“Starwood Entity”** means any entity that is directly or indirectly Controlled by, or under common Control with Starwood Parent.

(m) **“Starwood Parent”** means SCG or any Public Successor.

(n) **“Substantial Interest Transfer”** means any Transfer (including any Exempt Transfer) to any proposed Transferee that will own, in the aggregate (whether in one transaction or a series of transactions), twenty percent (20%) or more of the direct or indirect Equity Interests in Tenant (and did not own twenty percent (20%) or more of the direct or indirect ownership interests in Tenant immediately prior to such Transfer or series of Transfers) or will acquire Control of Tenant.

(o) **“Transfer”** means (i) any change, by operation of law or otherwise, in the direct or indirect ownership of an Equity Interest in Tenant, or (ii) any transaction or series of transactions, by operation of law or otherwise, resulting in a direct or indirect change in the beneficial ownership or Control of Tenant, including, without limitation, the issuance of additional Equity Interests in Tenant or any Person holding a direct or indirect Equity Interests in Tenant.

(p) **“Transferee”** means a Person to which a Transfer is made.

### **Section 10.3 Restrictions on Sale of the Project or Transfer.**

(a) **No Sale of the Project or Transfer Prior to Permitted Transfer Date.** There shall not be any Sale of the Project or Transfer prior to the Permitted Transfer Date other than as permitted by the provisions in **Section 10.4** and other than a Foreclosure Transfer.

(b) **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 Owner that, to Tenant's knowledge, there is no Foreign Instrumentality having an indirect interest in Tenant as permitted by this Lease that is a Foreign Instrumentality. 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.

(c) **Restriction on Sale of the Project.** Subject to the provisions of **Section 10.3(a)** and **(b)** herein, Tenant may not effect a Sale of the Project except to a permitted buyer (the "**Permitted Buyer**" and such Sale of the Project to a Permitted Buyer, a "**Permitted Sale**"). A Permitted Buyer shall mean any real estate investor, developer, operator, owner, owner occupant, insurance company, pension fund, pension fund advisor, investment manager or investment advisor, private equity fund, hedge fund, opportunity fund, real estate investment trust or other real estate investment entity; provided that such Permitted Buyer must in fact meet or exceed, and certify to Tenant and Owner that it meets or exceeds, the following criteria:

(A) The Permitted Buyer, together, with the Permitted Buyer's parent company(ies), must have equity ownership in real estate (in name, in a fiduciary capacity or under management) plus cash and/or cash equivalent of at least Thirty-Five Million Dollars (\$35,000,000), adjusted for inflation, of which not less than Seventeen Million Five Hundred Thousand Dollars (\$17,500,000), adjusted for inflation, must be equity ownership in real estate (in name in a fiduciary capacity or under management), as set forth in the most recent year-end financial statements of the persons or entities used to arrive at said Thirty-Five Million Dollars (\$35,000,000), adjusted for inflation. Said financial statements must be examined by an independent certified public accounting firm and must be accompanied by such independent certified public accounting firm's "examined special report," in accordance with attestation standards established by the American Institute of Certified Public Accountants, (or, if such examined financial statements are not available, such equity must alternatively be established by evidence reasonably satisfactory to Owner's independent certified public accounting firm, however, such alternative evidence must be submitted to Owner and approved by Owner's independent certified public accounting firm prior to any Sale of the Project or Transfer being effective. Such approval shall be deemed given if the alternative evidence has not been

disapproved in writing, with reasons given for disapproval, within forty-five (45) days of all such evidence being submitted to Owner);

(B) The Permitted Buyer must be an Acceptable Owner and satisfy the Acceptable Owner Criteria set forth on **Exhibit B** attached hereto.

(C) The Permitted Buyer shall not be a Prohibited Person or be Controlled by a Prohibited Person.

(D) The Permitted Buyer or its parent company(ies) described in clause (A) above must have not less than seven (7) years' experience operating first-class projects similar to the Project or must have engaged an Acceptable Operator to manage the Premises, or if applicable, such Component, pursuant to a duly executed Management Agreement.

For purposes of a Permitted Sale under this **Section 10.3(c)**, Owner shall rely solely on Permitted Buyer's certification that the Permitted Buyer meets the foregoing criteria, together with the financial statements described in subsection (A) above. In any Permitted Sale under this **Section 10.3(c)**, Tenant agrees to provide Owner, at least thirty (30) days in advance of the actual Sale of the Project, with the certifications of the Permitted Buyer referred to above and on **Exhibit B** attached hereto, together with the financial statements described in subsection (A) above, and if the Permitted Buyer is a real estate investment trust that is not publicly held, the identity of the principal owners of such trust and the proposed documentation required by **Section 10.5** below; provided, however, such delivery shall be for informational purposes only and shall not require any consent or other action by Owner (other than the approval of Owner of the form of assumption document as contemplated by **Section 10.6** below which approval shall be deemed given unless Owner responds in writing within thirty (30) days of receipt specifying changes to such document). At any time within the thirty (30) day period described above, Owner shall be entitled to engage an independent accounting firm to review the books, records and other information upon which the certifications and financial statements described in subsection (A) above were based for the purpose of determining whether such certifications and/or financial statements are accurate and complete.

(d) **Owner's Consent.** Any consent to a Sale of the Project or Transfer shall not waive any of Owner's rights to consent to a subsequent Sale of the Project or Transfer. Any Sale of the Project or Transfer made in violation of the terms hereof shall be null and void and of no force and effect *ab initio*.

(e) **Foreclosure Transfer.** A Foreclosure Transfer pursuant to the provisions of **Section 11.11** shall not require the consent of Owner.

#### **Section 10.4 Transfers.**

(a) Tenant represents and warrants that Tenant has not made, created or suffered any Sale of the Project or Transfer as of the Effective Date and that the entities and individuals who or which have a direct or indirect Equity Interest in Tenant on the Effective Date are listed,

together with their percentage and character of ownership, in **Exhibit G** attached hereto and incorporated by reference herein (provided that **Exhibit G** shall not be required to include any information regarding limited partners and other holders of non-Controlling Equity Interests in any Domestically Controlled Fund). Except as expressly permitted pursuant to **Sections 10.4(a)-(c)** herein, no Transfer (including, as applicable, a Permitted Transfer) may or shall be made, suffered or created by Tenant, its successors, assigns or transferees without complying with the terms of **Sections 10.5** and **10.6** and other sections herein, to the extent applicable thereto. Provided that the proposed Transferee satisfies the Acceptable Owner Criteria in accordance with **Exhibit B**, the following Transfers shall be permitted hereunder without the consent of Owner (each, a “**Permitted Transfer**”):

(i) Prior to the Permitted Transfer Date, any Transfer of a Partner’s Partnership Interests (including non-voting interests) in Tenant, provided, in each case, that Tenant continues to be a Starwood Entity after such Transfer. For the avoidance of doubt, Tenant will be deemed to be a Starwood Entity so long as Starwood Parent directly or indirectly maintains Control of Tenant;

(ii) After the Permitted Transfer Date, any Transfer of a direct or indirect Equity Interest in any Partner of Tenant, or the admission of additional Partners to Tenant, provided, in each case, after all such Transfers, such Transfer is not a Controlling Interest Transfer (subject, however, to any Management Agreement made with an Acceptable Operator);

(iii) After the Permitted Transfer Date, any Sale of the Project or any Controlling Interest Transfer in Tenant to a Person that is a Permitted Buyer as defined, and which satisfies all the criteria set forth, in **Section 10.3(c)** above and provides the certification set forth therein;

(iv) Any Transfer by a Person who is a Partner of Tenant of his or her Partnership Interest in Tenant for estate planning purposes or as a result of the death of such Person provided that such Person (or the applicable heir) retains control over the transferred Partnership Interest; and

(v) Any Exempt Transfer.

(b) If, at the time of a proposed Transfer under **Section 10.4(a)** above, Tenant is a limited liability company, corporation or other type of entity, then the references to partnership and limited partnership shall be changed to the type entity in question and the Partnership Interest being transferred shall be changed to the appropriate ownership interest.

### **Section 10.5 Required Notices.**

(a) Tenant shall give notice to Owner of every proposed Transfer and/or Sale of the Project (other than an Exempt Transfer that is not a Substantial Interest Transfer), which notice shall contain the following information: (i) the name and address of proposed Transferee, Assignee or Master Subtenant, as applicable; (ii) the name and address of proposed transferor; (iii) the nature

of the transaction; (iv) the percentage interest conveyed; and (v) such other additional information as Owner shall reasonably request in connection with the proposed Transfer and/or proposed Sale of the Project; provided, however, Owner shall make such request within ten (10) Business Days after receipt of Tenant's information. In addition, with respect to any proposed Transfer other than a Permitted Transfer and with respect to any Sale of the Project other than to a Permitted Buyer, Tenant shall give or cause to be given to Owner written notice requesting approval of the proposed Transfer and/or proposed Sale of the Project, which approval shall not be unreasonably withheld if the proposed transferee complies with the Acceptable Owner Criteria and is not a Prohibited Person but otherwise may be granted or withheld in the Owner's sole and absolute discretion; and submit certified financial statements for such proposed Transferee or purchaser, evidence of such Person's and, if applicable, its Acceptable Operator's, experience operating projects similar to the Project and all other information as Owner may reasonably request in order for Owner to make an evaluation of the proposed Transferees and/or proposed purchaser of Tenant's Interest in the Premises and the proposed Transfer and/or Sale of the Project and to obtain Owner's consent to same. With respect to any Transfer or Sale of the Project requiring Owner's consent hereunder, Owner shall, within sixty (60) days of its receipt of such information, advise Tenant if it shall consent to same. If Owner shall fail to respond during such sixty (60) days, it shall be deemed to have consented to the proposed Transfer and/or proposed Sale of the Project in question, unless the proposed Transferee, Assignee or Master Subtenant thereunder does not satisfy the Acceptable Owner Criteria, in which case, Owner's failure to respond shall be deemed conclusive disapproval of the proposed Transfer or Sale of the Project, as applicable. If Owner shall not consent to a proposed Transfer and/or proposed Sale of the Project, Owner shall state all of its reasons for such disapproval in its notice to Tenant withholding its consent.

(b) In addition to all other obligations imposed upon Tenant hereunder, Tenant shall reimburse Owner, upon demand, for any reasonable costs incurred by Owner in connection with any such Transfer and/or Sale of the Project and/or Master Sublease, including without limitation, the out-of-pocket cost of making inquiries and investigations into the acceptability of the proposed Transferee and/or purchaser of a Controlling Equity Interest in Tenant and/or Master Subtenant, and the reasonable legal costs incurred, if any, in connection therewith.

#### **Section 10.6 Effectuation of Transfers and Sales of the Project.**

No Sale of the Project or Transfer of the nature described in **Sections 10.3 and 10.4** (other than an Exempt Transfer that is not a Substantial Interest Transfer) shall be effective unless and until:

(a) executed copies of the documents and other agreements between the Parties to effectuate the Sale of the Project and/or Transfer are delivered to Owner; and

(b) in the case of a Sale of the Project, the entity to which a Sale of the Project is made, by instrument in writing and in form and substance satisfactory to Owner and in form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of Owner, expressly assume all of the obligations of Tenant under this Lease and agree to be liable and subject to all conditions and restrictions to which Tenant is subject; provided,

however, that the Recognized Mortgagee or Recognized Mezzanine Lender, as applicable, shall not be liable under this Lease with respect to any matter arising prior to its actual ownership of the Project, except unpaid Rent and/or Impositions, other monetary obligations of Tenant under this Lease, including Defaults which can be cured solely by the payment of money and are in a liquidated amount, and non-monetary Defaults which the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable, can cure or remedy without title and possession:

The Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable, shall not be liable under this Lease with respect to any matter arising subsequent to the period of its actual ownership of the Project; provided however, that the fact that Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable, has no liability for matters arising subsequent to the period of its actual ownership shall not relieve or except any subsequent transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit Owner of or with respect to any rights, remedies or controls with respect to the Project or the construction of the Improvements.

### **Section 10.7 Office and Retail Master Subleases.**

Subject to the terms and conditions of this Lease, Tenant shall have the right to enter into individual commercial office and retail subleases at any time and from time to time during the Term of this Lease with such subtenants, but only for uses that are not prohibited under **Article 6**, and upon such commercially reasonable terms and conditions as Tenant shall, in its sole discretion, deem fit and proper. At Owner's request, Tenant shall allow Owner to review and inspect any and all subleases for individual office and retail spaces in the Project. Upon receipt of a written request from Tenant or any subtenant under an office or retail sublease, Owner shall enter into attornment and non-disturbance agreements with subtenants in the office and retail spaces of the Premises. Such attornment and non-disturbance agreements shall be entered into upon such terms and conditions as are customary for such agreements and reasonably acceptable to Owner. Tenant acknowledges and agrees that the City has a compelling interest in the development of the Project in order to advance and promote the City's objective of developing additional Class A office space to diversify its economy to include a greater mix of businesses, including technology and financial firms. In furtherance of the foregoing, Tenant intends to market the Office Component for leasing to tenants in the financial and professional services and technology industries and such other industries as may be targeted from time to time for promotion by the City and/or by Miami-Dade County, Florida; provided that the foregoing shall not require Tenant to enter into any lease with any prospective tenant or prohibit Tenant from entering into any lease with any prospective tenant.

## **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 consummate a Construction Loan to finance the Project and, in conjunction with and to secure that such Construction Loan, may enter into the Recognized Mortgage in favor of the Recognized Mortgagee in accordance with this **Article 11**, which Recognized Mortgage shall not be recorded until such time as the Possession Conditions are satisfied. Following completion of construction of the Project, the Public Parking Replacement Component shall be released from the lien of the Recognized Mortgage and shall be conveyed to Owner subject to no liens or encumbrances, other than those encumbrances (i) existing as of the Effective Date, (ii) easements and encumbrances as are reasonably necessary for the installation, use and maintenance of utility lines and infrastructure serving the Premises and/or necessary for the development or beneficial to the operation of the Public Parking Replacement Component that do not impose any obligations on Owner or conflict with or adversely affect the rights granted pursuant to the Lincoln Lane Reservation or (iii) as otherwise approved by Owner, which approval shall not be unreasonably withheld, conditioned or delayed (unless such easements or encumbrances impose any obligations on Owner or conflict with or adversely affect the rights granted pursuant to the Lincoln Lane Reservation). For the avoidance of doubt, Developer shall not enter into any easements or encumbrances affecting the Premises (including for purposes hereof, the Public Parking Replacement Component), except in accordance with the Development Agreement and to the extent Owner's joinder or consent is not required, Tenant shall deliver prior written notice of same to Owner. Thereafter, Tenant shall have the right to refinance the Construction Loan, and in conjunction with that financing, may enter into a new Recognized Mortgage in favor of the new Recognized Mortgagee in accordance with this **Article 11**, without Owner's approval. Tenant acknowledges and agrees that each of the Construction Loan and any refinancing thereof must be a single asset borrowing, must be for Debt exclusively related to the Premises and secured solely by the Premises and must not be cross-collateralized or cross-defaulted with any loan other than the construction loan for the P25 Project; provided, however, during construction of the Project and the P25 Project, the Construction Loan secured by Recognized Mortgage may be cross-defaulted and/or cross-collateralized with the "Construction Loan" (as defined in the P25 Ground Lease) secured by the "Recognized Mortgage" (as defined in the P25 Ground Lease), provided that (i) the maximum amount secured by the Recognized Mortgage shall not exceed the amount of Construction Loan proceeds actually used to construct the Project and such amount, together with the amount of the Mezzanine Loan, shall not exceed ninety (90%) of the Project Construction Costs for the Project and (ii) the maximum amount secured by the "Recognized Mortgage" (as defined in the P25 Ground Lease) shall not exceed the amount of "Construction Loan" (as defined in the P25 Ground Lease) proceeds actually used to construct the P25 Project and such amount, together with the amount of the "Mezzanine Loan" (as defined in the P25 Ground Lease), shall not exceed ninety (90%) of the Project Construction Costs for the P25 Project).

(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, the 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 and any refinancing thereof must be a single asset borrowing, must be for Debt exclusively related to the Premises and secured solely by a pledge of the direct and/or indirect Equity Interests of Tenant and must not be cross-collateralized or cross-defaulted with any loan other than the loan secured by the Recognized Mortgage; provided, however, during construction of the Project and the P25 Project, the Mezzanine Loan may also be cross-defaulted with the “Mezzanine Loan” (as defined in the P25 Ground Lease) and the “Construction Loan” (as defined in the P25 Ground Lease) so long as (i) the maximum amount secured by the Mezzanine Loan Documents shall not exceed the amount of Mezzanine Loan proceeds actually used to construct the Project and such amount, together with the amount of the Construction Loan, shall not exceed ninety (90%) of the Project Construction Costs for the Project and (ii) the maximum amount secured by the “Mezzanine Loan Documents” (as defined in the P25 Ground Lease) shall not exceed the amount of “Mezzanine Loan” (as defined in the P25 Ground Lease) proceeds actually used to construct the P25 Project and such amount, together with the amount of the “Construction Loan” (as defined in the P25 Ground Lease), shall not exceed ninety (90%) of the Project Construction Costs for the P25 Project. Notwithstanding anything to the contrary contained herein, the Mezzanine Loan may be cross-defaulted with the Construction Loan or any loan evidenced by a Recognized Mortgage.

(d) To the extent permitted and adopted by the City, in its governmental capacity, Tenant shall have the right to secure Commercial Property Assessed Clean Energy (“C-PACE”) financing from an Institutional Lender; provided that the Tenant deposits with Owner, to be held in trust and as security for Tenant’s obligations to comply with the terms of such financing, an amount equal to one hundred fifty percent (150%) of the first year’s debt service payments under such C-PACE financing.

### **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 and/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) **“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.

(c) **“Recognized Mortgage”** means the single Mortgage (i) that, except as expressly permitted pursuant to and in accordance with **Section 11.1(b)**, 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 subordinate to Owner’s Interest in the Premises (including Owner’s interest in this 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 writing 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 cause 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 Mortgagee of whether the Recognized Mezzanine Lender 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 Rent 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;

(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 Rent 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 such 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 Rent and Impositions), are being performed. 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), (k), (m), and (n)**);

(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 Rent 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, (A) 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 (B) thereafter diligently prosecute to completion all such steps necessary to remedy the same, it being acknowledged by Owner that, if title to the direct and/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 and/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 Rent (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 its 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), (k), (m), and (n)**)

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 Rent 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 the 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 Rent 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 Mortgage Loan Documents of the 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 Mortgage 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 and/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 Rent 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 and/or indirect Equity Interests in Tenant (the “**Reinstatement Date**”);

(b) comply with all the covenants and conditions of this Lease, including the payment of Rent and/or Impositions;

(c) pay all Back Rent and/or Impositions as of the Reinstatement Date .

For the avoidance of doubt and notwithstanding anything to the contrary set forth herein or in the Development Agreement, Owner shall at all times have a first priority right of payment of any and all Rent (including Percentage Rent) due pursuant to this Lease and in no event is Rent (including Percentage Rent) and/or any Imposition subordinated, forgiven, abated, waived or deferred with respect to, or otherwise not due and payable by, any Person exercising its rights pursuant to this Lease, including the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable; provided, however, the Parties acknowledge and agree that the Recognized Mortgagee and Recognized Mezzanine Lender (or its Designee) shall not be obligated to pay Transaction Rent in connection with any sale or Transfer by such Person to the extent expressly set forth in **Section 3.4** hereof.

**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 Rent and/or Impositions 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 Rent 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 Person.

(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 Rent and/or Impositions due under this Lease 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, 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.

(f) 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 Mortgage 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 or other 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 no loan documents are permitted to encumber the direct and/or indirect Equity Interests in Tenant other than the Mezzanine Loan Documents and the Exempt Pledge 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 and/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 and/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, so long as the City is Owner, to 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 (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 in **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. 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 and/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 Equity Interests of Tenant hereunder, as applicable, and then only for so long as it remains Tenant or such owner hereunder.

(c) **Definitions:**

(i) **“First Transferee”** means the Person that acquires Tenant’s Interest in the Premises 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)**.

(ii) **“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 and/or indirect Equity Interests in Tenant, or any sale of all of the direct and/or indirect Equity Interests in Tenant, or any other transfer or assignment of all of the direct and/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 and/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;

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

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

(v) **“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.

#### **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, the Recognized Mezzanine Lender and/or the Institutional Lender providing C-PACE financing 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, Recognized Mezzanine Lender and Institutional Lender providing C-PACE financing to contain a provision requiring the Recognized Mortgagee, Recognized Mezzanine Lender and Institutional Lender providing C-PACE financing, 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, Recognized Mezzanine Lender and Institutional Lender providing C-PACE financing 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, Recognized Mezzanine Lender and Institutional Lender providing C-PACE financing.

### **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. 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.

## **Article 12 - Subordination**

### **Section 12.1 No Subordination of Owner’s Proprietary Interest in Land.**

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, and all Rent (including Percentage Rent) shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant’s Interest in the Premises or the direct or indirect Equity Interests in Tenant, or (c) any Master Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Master Subtenant’s interest in the Premises.

### **Section 12.2 Tenant’s Interest in the Premises Subject to All Title Matters.**

Tenant’s Interest in the Premises, including, without limitation, this Lease and the leasehold estate of Tenant hereby created and all rights of Tenant hereunder are and shall be subject to all title matters.

## **Article 13 - Project Construction**

### **Section 13.1 Tenant’s Obligation to Construct Project**

The Parties acknowledge that Tenant shall construct the Project substantially in accordance with the Plans and Specifications approved by Owner and in accordance with the terms of the Development Agreement and the terms hereof. If, with respect to a matter relating to the Construction Work for the initial construction of the Project, a conflict arises between the terms of the Development Agreement and the terms of this Lease, the terms of the Development Agreement shall govern until the date of issuance of the final Certificate of Occupancy or final Certificate of Completion, as applicable, for all portions of the Project, and thereafter the terms of this Lease shall govern.

### **Section 13.2 Description of the Project.**

The Project shall be a mixed-use project with Class A office space, retail space (including restaurant, personal service and similar active uses) and parking garage at substantially the same or better quality as the quality set forth in the Plans and Specifications approved by the Owner in accordance with the Development Agreement and must include the Mandatory Project Elements as further described in **Exhibit D** attached hereto (except as expressly provided in the Development Agreement); provided, however, that in no event shall the Project exceed the floor area ratio permitted under applicable Requirements.

### **Article 14 - Maintenance, Repair and Alterations**

#### **Section 14.1 Maintenance Standards.**

(a) Following Substantial Completion of the Project and continuing throughout the Term of this Lease, Tenant shall be an Acceptable Operator or shall enter into one (1) or more Management Agreement(s) with an Acceptable Operator, and shall prudently manage and operate, or cause to be prudently managed and operated, the Premises pursuant to and in accordance with this Lease.

(b) Tenant, at Tenant's sole cost and expense, shall take good care of, and keep and maintain, the Premises (including, for the avoidance of doubt, the landscaping) and all Improvements thereon in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in good and safe order and first-class condition, comparable to other first-class projects of similar age, use and design (reasonable wear and tear excepted). Further, Tenant shall maintain and operate the Premises and all Improvements thereon in accordance with the minimum maintenance and operating standards set forth on **Exhibit I** attached hereto, as the same may be revised from time to time by mutual consent of Owner and Tenant, each acting reasonably and in good faith, and in the event that Tenant is required by Owner to operate the Public Parking Replacement Component pursuant to the terms of **Exhibit D**, Tenant shall maintain the Public Parking Replacement Component in accordance with, among other things, the maintenance standards established by mutual consent of Owner and Tenant, each acting reasonably and in good faith, and incorporated into the parking operating agreement;

(c) Tenant shall not commit, and shall use all reasonable efforts to prevent, physical waste, damage or injury to the Premises (reasonable wear and tear and damage by Casualty excepted).

(d) All repairs, replacements and renovations made by Tenant shall be substantially equal in quality and class to the original quality of the Improvements being repaired and shall be made in substantial compliance with the Requirements.

(e) Tenant shall keep all areas of the Premises clean and free from vandalism (including graffiti), waste materials, debris, standing water, rubbish, obstructions and physical encumbrances.

#### **Section 14.2 Removal of Building Equipment.**

Tenant shall not, without the consent of Owner, remove or dispose of any Building Equipment from the Premises unless such Building Equipment (i) is promptly replaced by Building Equipment of at least equal utility and quality, or (ii) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Building Equipment with reasonable diligence; except, however, Tenant shall not be required to replace any Building Equipment that performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises in accordance with the terms of this Lease.

#### **Section 14.3 No Obligation to Repair or to Supply Utilities.**

Owner (in its proprietary capacity only) shall not be required to supply any facilities, services or utilities whatsoever to the Premises. Owner shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair with respect to the Premises.

#### **Section 14.4 Waste Disposal.**

Tenant shall dispose of waste from all areas of the Premises in accordance with Requirements and in a prompt and sanitary manner.

#### **Section 14.5 Alterations.**

(a) Subject to the terms and conditions of this **Article 14** and the other applicable provisions of this Lease, after Substantial Completion of the Project, Tenant may, at any time and from time to time, at its sole cost and expense, make alterations, additional installations, substitutions, improvements, renovations or betterments (collectively, “**Alterations**”) in and to the Premises or any portion thereof provided that:

(i) Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authorities for the commencement and prosecution of any Alterations and final approval from Governmental Authorities upon completion, promptly deliver copies of the same to Owner and cause the Alterations to be performed in substantial compliance with all applicable Requirements and requirements of the Recognized Mortgagee and Recognized Mezzanine Lender and insurers of the Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workman like manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Premises that are being replaced.

(ii) the Alterations shall be performed by duly licensed and insured contractors in a good and workmanlike manner;

(iii) the Alterations will not result in a violation of any Requirement or change the use permitted in **Section 6.1** or violate any other provision of this Lease in any material respect;

(iv) the outside appearance (other than landscaping), character or permitted use of the Premises shall not be materially adversely affected unless approved pursuant to the provisions of **Section 14.5(c)**, and the Alterations shall not materially (1) weaken or impair the structure, (2) reduce the size or (3) lessen the value of, the Premises; and

(v) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Premises shall not be materially adversely affected following the completion of such Alterations.

(b) **Costs of Alterations.** The costs of all Alterations shall be borne by Tenant.

(c) **Submission and Review of Major Alterations.** Any Alterations that require the approval of the Design Review Board (as defined in the Development Agreement) (or any successor thereto) and/or modify the Mandatory Project Elements or the Community Benefit Suite and/or are reasonably expected to reduce Project Revenues after completion thereof (each, a “**Major Alteration**” and collectively, “**Major Alterations**”) shall require Owner’s prior written consent. Tenant shall submit to Owner the proposed Major Alterations Plans and Specifications showing in reasonable detail such proposed Major Alterations. Owner shall review the proposed Major Alteration Plans and Specifications and shall approve the same provided that the proposed Major Alteration will not:

(i) impair the structural integrity of the Premises or the Public Parking Replacement Component; or

(ii) be reasonably expected to reduce Project Revenues after completion of the Major Alterations (except to the extent that the Major Alterations are (A) required by Requirements identified by Tenant in its request for approval of the Major Alterations, or (B) are reasonably required to maintain, or are reasonably expected to improve the overall Project Revenues due to market trends or projections identified by Tenant in its request for approval of the Major Alterations); or

(iii) reduce floor area of any individual Component of the Project; or

(iv) reduce the number of parking spaces within the Premises or the Additional Parking Component or the Public Parking Replacement Component or otherwise alter the Public Parking Replacement Component; or

(v) change any exterior façade of the Improvements or exterior feature of the Premises (other than landscaping); or

(vi) deviate from any approved uses of the Premises or any of the Mandatory Project Elements.

Within thirty (30) days after Owner's receipt of the proposed Major Alteration Plans and Specifications, the City Manager of Owner shall notify Tenant of its approval or disapproval thereof and, in the event of the Owner's disapproval, the reasons therefor. If Tenant desires to modify in any material respect previously approved Major Alteration Plans and Specifications (as such may have been modified by approved Major Alteration Plans and Specifications), Tenant shall submit any such proposed modifications to Owner for Owner's approval. Within fifteen (15) Business Days of its receipt of the proposed modifications, Owner shall notify Tenant in writing with specificity of any material inconsistencies of which Owner disapproves between the Major Alterations Plans and Specifications as modified and the Major Alterations Plans and Specifications previously approved by Owner. Tenant shall, at its election, have the option of (x) submitting Owner's disapproval to arbitration as to the (i) materiality of the inconsistency and/or (ii) reasonableness of disapproval or (y) submitting revised modifications to the Major Alterations Plans and Specifications to meet Owner's objections (which revised Major Alterations Plans and Specifications shall be reviewed as herein above provided).

(d) **Reimbursement of Owner's Expenses.** Tenant shall reimburse Owner for all actual out-of-pocket architectural and engineering expenses for architectural and engineering review reasonably incurred by Owner in connection with its decision to grant or withhold consent to a proposed Major Alteration and inspecting the Major Alteration to determine whether the same is being or has been performed in accordance with the terms of this Lease, including only the actual reasonable fees and expenses of any architect or engineer employed for such purposes. Any Major Alteration for which consent has been received shall be performed substantially in accordance with Major Alteration Plans and Specifications approved by Owner in accordance herewith, and no material amendments or material additions to the Owner-approved Major Alteration Plans and Specifications shall be made without the prior consent of Owner in accordance with the terms hereof.

(e) **Prevailing Wages.** All Persons employed by Tenant with respect to Alterations of the Project shall be paid, without subsequent deduction or rebate unless expressly authorized by Requirements, not less than the relevant prevailing wage as prescribed by the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31-27, as amended and as further described in the Development Agreement

(f) **Local Workforce Participation.** Tenant shall cause its general contractor to comply with Section 31-40 of the City Code which provides, in pertinent part, that the contractor in any construction contract valued in excess of \$1,500,000 for the construction of buildings or improvements on City-owned land shall make of reasonable efforts to promote employment opportunities for local Miami-Dade County residents and seek to achieve a project goal of having



thirty percent (30%) of all construction labor hours performed by Miami-Dade County and City of Miami Beach residents and as further described in the Development Agreement.

## **Article 15 - Requirements**

### **Section 15.1 Tenant's Obligation to Comply With Requirements.**

In connection with any Construction Work, and with the maintenance, management, use, construction and operation of the Premises and Tenant's performance of its obligations hereunder, Tenant shall comply promptly in all material respects with all applicable Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but Tenant may seek to obtain an easement in order to cure an encroachment, if permitted by any applicable Requirements), or affecting the maintenance, management, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put. No consent to, approval of or acquiescence in any plans or actions of Tenant by Owner, in its proprietary capacity as landlord under this Lease, or Owner's designee shall be relied upon or construed as being a determination that such are in compliance with applicable Requirements, or, in the case of construction plans, are structurally sufficient, prudent or in compliance with the Requirements. Failure of this Lease to address a particular permit, condition, term or restriction shall not relieve Tenant of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.

### **Section 15.2 Definition.**

**"Requirements"** means:

(a) any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Premises or any street, road, avenue or sidewalk comprising a part of, or lying in front of or adjacent to, the Premises or any vault in, or under the Premises (including, without limitation, any of the foregoing relating to handicapped access or parking, the Florida Building Code and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions, the Americans with Disabilities Act, Title VII of the Civil Rights Act, the EEOC Uniform Guidelines and all EEO regulations and guidelines);

(b) conditions set forth in any Permits and Approvals;

(c) the temporary and/or permanent certificate or certificates of occupancy issued for the Premises as then in force;

(d) the requirements of the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31-27;

(e) the requirements of the City of Miami Beach Workforce Participation Program, Miami Beach City Code, Section 31-40; and

(f) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease.

### **Section 15.3 Owner's Obligation to Comply With Requirements.**

In connection with the performance of Owner's obligations hereunder, Owner shall comply promptly with all Requirements.

## **Article 16 - Reserves**

### **Section 16.1 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, or shall cause the Acceptable Operator to deposit, within thirty (30) days after the end of each month during the Term of this Lease from and after the CO Date, the lesser of (i) one-twelfth of the sum of the following amounts (A) \$0.30 (adjusted for inflation) per square foot of the Office Component and the Retail Component per year and (B) \$0.15 (adjusted for inflation) per square foot of the Additional Parking Component per year or (ii) the monthly 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 16.1(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, when Tenant commences paying Percentage Rent hereunder and delivers an accounting thereof to Owner in accordance with this Lease, Tenant may, at its option, certify the amounts of Required Reserves to Owner and deliver such certification 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 16.1**, 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 (1) 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 14.1**); 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 16.1**.

(e) Notwithstanding anything to the contrary herein contained, to the extent 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 16.1**, the provisions of this **Section 16.1** 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.

## **Article 17 - Discharge of Liens**

### **Section 17.1 Creation of Liens.**

(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, to the extent permitted by this Lease, Tenant shall have the right to execute the loan documents in favor of the Institutional Lender providing C-PACE financing for the Project, subleases and other instruments (including, without limitation, equipment leases) as provided by, and in accordance with, the provisions of this Lease.

(b) Owner 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 (except as otherwise permitted in **Article 2**) 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, Tenant, or (iii) any other matter or thing whereby the estate, rights or interest of Tenant in and to the Premises or any part thereof or appurtenance thereto might be materially impaired.

#### **Section 17.2 Discharge of Liens.**

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease) is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Tenant or Owner, Tenant shall, within thirty (30) days after Tenant receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, subject to Tenant's right to contest any such lien in accordance with **Article 32**, cause it to be discharged of record by payment, deposit, transfer to bond in accordance with Chapter 713, Florida Statutes, order of a court of competent jurisdiction or otherwise. Notwithstanding anything to the contrary contained in this **Section 17.2(a)**, in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Tenant shall be required only to pay, on a timely basis, all installments prior to delinquency.

(b) Notwithstanding anything to the contrary contained in **Section 17.2**, if any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Owner by law or by a provision of this Lease) is filed against the Premises or any part thereof or Tenant's interest therein as a result of any action of Owner, its officers, employees, representatives or agents, Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

### **Section 17.3 No Authority to Contract in Name of Owner.**

Nothing contained in this Article shall be deemed or construed to constitute the consent or request of Owner, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Owner's interest in the Land or any part thereof or against assets of Owner, or Owner's interest in any Rent and/or Impositions. Pursuant to Section 713.10, Florida Statutes, notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that Owner shall not be liable for any work performed or to be performed at the Premises or any part thereof for Tenant or any Master Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect Owner's Interest in the Premises or any part thereof or any assets of Owner, or Owner's interest in any Rent and/or Impositions. Owner shall have the right to record, or to include in any memorandum of this Lease, a notice of no liens pursuant to Section 713.10, Florida Statutes. The foregoing shall not require Tenant to request advance waivers of lien from contractors or subcontractors.

## **Article 18 - Representations**

### **Section 18.1 Organization, Power and Authority.**

Tenant represents and warrants that Tenant is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, is duly qualified and in active status under the laws of the State of Florida and has full power and authority to execute, deliver and perform this Lease and the Development Agreement. This Lease, the Development Agreement and all other instruments and agreements required to be delivered by Tenant pursuant to this Lease and the Development Agreement are, or will when executed and delivered, be duly authorized, executed and delivered by Tenant and constitute the legal, valid and binding obligations of Tenant enforceable in accordance with their respective 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). None of the execution, delivery or performance of this Lease or the Development Agreement, or any instrument or agreement required to be delivered by Tenant pursuant hereto or thereto, nor the consummation of the transactions contemplated hereby or thereby, is prohibited by, or requires Tenant to obtain the consent, approval or authorization of, or notice to or filing or registration with, any Person having jurisdiction over Tenant other than those which have been obtained prior to the date hereof. The execution and delivery by Tenant of this Lease and the Development Agreement and the performance by Tenant of its obligations hereunder and thereunder do not and will not conflict with, or result in a breach of or a default or violation under any provision of any governing document of Tenant, any material contract or agreement to

which Tenant is a party or any applicable Requirement or decree, judgment, regulation, order or rule of any Governmental Authority having jurisdiction over Tenant or the Premises.

### **Section 18.2 No Brokers.**

Each of Owner and Tenant represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby, and each Party shall indemnify the other against any claim for brokerage commissions, fees or other compensation by any Person alleging to have acted for or dealt with the indemnifying Party in connection with this Lease or the transactions contemplated hereby.

### **Section 18.3 No Other Representations.**

Tenant acknowledges, represents and confirms that it or its authorized representatives have visited the Premises and are fully familiar therewith, the physical condition thereof (including but not limited to subsurface conditions) and all title matters affecting the Premises. Tenant accepts the Premises in existing condition and state of repair and Tenant confirms that: except for the representation contained in **Section 18.2**, (i) no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Owner with respect to the Premises or the transactions contemplated by this Lease, the status of title thereto, the physical condition thereof, the zoning, wetlands or other laws, regulations, rules and orders applicable thereto or the use that may be made of the Premises, or the presence or absence of **“hazardous substances”** (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA § 9601 et seq.) on or under the Premises, (ii) Tenant has relied on no such representations, statements or warranties, and (iii) Owner shall not be liable to Tenant, in any event whatsoever, to correct any latent or patent defects in the Premises.

## **Article 19 - No Liability for Injury or Damage**

### **Section 19.1 Liability of Owner.**

(a) **Owner Not Liable for Injury or Damage, Etc.** The Owner Indemnified Parties shall not be liable to Tenant for, and Tenant shall indemnify and hold Owner Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys’ fees and disbursements), penalty or fine incurred in connection with or arising from any injury (whether physical (including, without limitation, death), economic or otherwise) to Tenant or to any other Person in, about or concerning the Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant’s property or of the property of any other Person in, about or concerning the Premises, irrespective of the cause of injury, damage or loss (including, without limitation, the acts or negligence of any tenant or occupant of the Premises or of any owners or occupants of adjacent or neighboring property or caused by any Construction Work or by operations in construction of any private, public or quasi-public work) or any latent or patent defects in the Premises, except to the extent any of the foregoing is due to the gross negligence or willful misconduct of any Owner Indemnified Party. The Owner Indemnified Parties shall not be liable, to the extent of insurance proceeds paid by insurance

carriers under Tenant's insurance policies, for any loss or damage to any Person or property even if due to the gross negligence or willful misconduct of any Owner Indemnified Party and, to that extent, Tenant relieves Owner Indemnified Parties from such liability. Without limiting the generality of the foregoing, except to the extent caused by the gross negligence or willful misconduct of any of Owner Indemnified Parties (and then only in such Owner Indemnified Party's proprietary capacity as opposed to its governmental capacity), Owner Indemnified Parties shall not be liable for (i) any failure of water supply, gas or electric current, (ii) any injury or damage to person or property resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, act of God, act of war, enemy action, flood, wind or similar storms or disturbances, water, rain or ice, (iii) leakage of gasoline or oil from pipes, appliances, sewer or plumbing works, or (iv) any fire or breakage, or by the use, misuse or abuse of any of the Improvements (including any of the common areas within the buildings, equipment, elevators, hatches, openings, installations, stairways, hallways or other common facilities or the improvements to the land described in this Lease), or which may arise from any other cause whatsoever.

(b) **Zoning Changes.** Except when Owner (if Owner, at the time of application is the City), acting in its proprietary capacity, is the applicant, Owner hereby assigns to Tenant any and all rights of Owner, as owner of the Land, under Requirements to execute objections or waivers of objections to applications for variances or other exceptions or exemptions from zoning or other Requirements by the owner of any property with respect to which, under applicable Requirements, the owner of the Land would have the right to object or consent to variances or other exceptions or exemptions from zoning or other Requirements. Such assignment shall in no way limit or otherwise restrict any other rights of the City, any instrumentalities of the City, or any elected or appointed officials or employees of the City, in its respective regulatory or governmental capacities, from taking or refraining from taking any action or expressing any views and opinions in connection with such application. If Owner is required to join in such application by Requirements, Owner shall do so provided Tenant pays all costs, including reasonable attorneys' fees, for same.

### **Section 19.2 Owner's Exculpation.**

(a) Except as such liability may be eliminated or reduced by any constitutional, statutory, common law or other protections afforded to public bodies or governments (for such time as Owner is a Governmental Authority), including, but not limited to, sovereign immunity statutes, the liability of Owner (including, without limitation, with respect to any gross negligence or willful misconduct), or of any other Person who has at any time acted as Owner (for such time as Owner is a Governmental Authority) hereunder, for damages or otherwise, arising out of or in connection with any breach of this Lease or any injury (whether physical (including death) economic or otherwise) incurred in connection with this Lease or the Premises, shall be limited to One Million Dollars (\$1,000,000) under this Lease, in the aggregate. As used in the preceding sentence, the terms "**breach**" and "**injury**" shall include all breaches and injuries arising out of the facts and circumstances resulting in such breach or injury.

(b) Except for conversion, fraud or willful misconduct (and then only to the extent such Party acted in its proprietary capacity as opposed to its governmental capacity), none

of the Owner Indemnified Parties (except Owner as provided in **Section 19.2(a)**) shall have any liability (personal or otherwise) hereunder, and except for Owner's Interest in the Premises and any profits and proceeds therefrom (to the extent permitted by applicable Requirements), no property or assets of the Owner Indemnified Parties shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or any other liability of the Owner Indemnified Parties arising from or in connection with this Lease or the Premises. Nothing contained herein shall be deemed a waiver of any equitable remedies available to Tenant.

(c) Nothing contained in this **Section 19.2** or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon Owner's liability as set forth in § 768.28, Fla. Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments and Owner expressly does not waive any of its right and immunities thereunder.

### **Section 19.3 Notice of Injury or Damage.**

Tenant shall notify Owner within thirty (30) days of becoming aware of any incident involving property damage or bodily injury at the Public Parking Replacement Component or any public rights of way or easements within the Premises that Tenant believes could give right to a claim of Two Hundred Thousand Dollars (\$200,000), adjusted for inflation, or more, whether or not any claim has been made, complaint filed or suit commenced; however, Tenant's failure to so notify Owner shall not constitute or result in a breach or Default of any of the terms or conditions of this Lease or result in a loss of any benefit or right granted to Tenant under this Lease.

### **Section 19.4 Tenant's Exculpation.**

Except for (a) Tenant's liability for conversion, willful misconduct or fraud, (b) liabilities of Tenant arising under applicable Requirements when Owner is acting in or pursuant to its governmental capacity, (c) matters for which Tenant maintains or is required to maintain insurance hereunder, (d) Tenant's indemnity obligations hereunder and under the Development Agreement, and (e) liability with respect to Tenant's obligation to pay Rent and/or Impositions that is past due but not yet paid, and except with respect to any rights or remedies for non-monetary relief (including, without limitation, equitable relief), the liability of Tenant under this Lease and with respect to the Premises for damages or other monetary amounts shall be limited to Ten Million Dollars (\$10,000,000) adjusted for inflation, under this Lease and the Development Agreement, in the aggregate. Notwithstanding anything to the contrary in this Lease, Owner's right to terminate this Lease and force Tenant to surrender title to and possession of the Improvements to Owner shall not be subject to the limitation of liability contained in this **Section 19.4**. Nothing contained herein shall be deemed a waiver of any equitable remedies available to Owner.

### **Section 19.5 No Punitive Damages.**

Neither Owner nor Tenant shall be liable to the other for any consequential, special or punitive damages in connection with this Lease and Owner and Tenant agree not to seek



consequential, special or punitive damages from each other in connection with any lawsuit or other claim relating to this Lease.

### **Section 19.6 Survival.**

The provisions of this **Article 19** shall survive the Expiration of the Term.

## **Article 20 - Indemnification**

### **Section 20.1 Indemnification of Owner.**

(a) Tenant shall indemnify and hold Owner Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against an Owner Indemnified Party arising from (i) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any Person claiming through or under Tenant, or (ii) any acts, omissions or negligence of Tenant or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Premises during the Term, including, without limitation, any acts, omissions or negligence in connection with any Construction Work or in the making or performing of any repairs, restoration, alterations or improvements, except to the extent any of the foregoing is caused by the gross negligence or willful misconduct of any of the Owner Indemnified Parties and (iii) any Lawsuit brought by a third party, Developer or any Person related to Developer. In the event of any Lawsuit, Tenant shall defend any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to Owner.

(b) In the event that any suit, action or proceeding is brought against Owner to compel disclosure of any document described in **Article 27** or **Article 28**, whether such suit, action or proceeding is brought under Chapter 119, Florida Statutes or any other provision of law, Tenant agrees to defend, indemnify and hold the Owner Indemnified Parties harmless from and against any loss, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements, including both in-house and outside counsel, and also including any attorneys' fees and disbursements which any court of competent jurisdiction may award to the plaintiff in such suit, action or proceeding, in all cases including any appeals thereof or post-judgment proceedings relating thereto), penalty or fine incurred in connection with or arising from such suit, action or proceeding. Owner shall notify Tenant of any such public records request but failure to give such notice shall not impose any liability on Owner. Notwithstanding the foregoing, in the event that Owner receives a proper notice under Chapter 119, Florida Statutes, as amended, to produce a document, and Owner has such document in its possession and Owner fails to produce such document due to Owner's own negligence, malfeasance or misfeasance, Tenant shall not be liable for any loss, claim, damage, penalty or fine as aforesaid.

## **Section 20.2 Contractual Liability.**

(a) The obligations of Tenant under this **Article 20** or **Article 19** shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises; provided, however, that if Owner actually receives any proceeds of Tenant's insurance with respect to an obligation of Tenant under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Tenant with respect to such obligation.

(b) The obligations of Owner under **Article 19** shall not be affected in any way by the absence or presence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises; provided, however, that if Tenant actually receives any proceeds of Owner's insurance with respect to an obligation of Owner under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Owner with respect to such obligation.

## **Section 20.3 Defense of Claim, Etc.**

(a) If any claim, action or proceeding is made or brought against any Owner Indemnified Party by reason of any event to which reference is made in **Section 20.1** or **Article 19**, then, upon demand by Owner or such Owner Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Owner Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as Owner shall reasonably approve. The foregoing notwithstanding, such Owner Indemnified Party may at its own expense engage its own attorneys to defend such Owner Indemnified Party, or to assist such Owner Indemnified Party in such Owner Indemnified Party's defense of such claim, action or proceeding, as the case may be.

## **Section 20.4 Notification and Payment.**

Each Owner Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against such Owner Indemnified Party of any cost or expense as to which Tenant has agreed to indemnify such Owner Indemnified Party pursuant to the provisions of this **Article 20**. Tenant agrees to pay such Owner Indemnified Party, as Rent hereunder, all amounts due under this **Article 20** within sixty (60) days after receipt of the notice from such Owner Indemnified Party.

## **Section 20.5 Governs Lease.**

The provisions of this **Article 20** shall govern every other provision of this Lease. The absence of explicit reference to this **Article 20** in any particular provision of this Lease shall not be construed to diminish the application of this **Article 20** to such provision.

## **Section 20.6 Survival.**

The provisions of this **Article 20** shall survive the Expiration of the Term.

## **Article 21 - Covenant Against Waste and Inspection**

### **Section 21.1 Waste.**

Except as otherwise permitted by this Lease, Tenant covenants not to do or suffer any demolition, physical waste or damage, disfigurement or injury to the Premises or any part of it (reasonable wear and tear and damage by Casualty excepted). The provisions of this **Section 21.1** shall not apply to any demolition or disfigurement involved with repairs, renovations, upgrading or new construction.

### **Section 21.2 Inspection of Premises.**

Owner, its agents, employees and authorized representatives may enter the Premises at any time in response to an emergency, and at reasonable times upon twenty-four (24) hours' prior notice to Tenant, incident to, or connected with the performance of Owner duties and obligations hereunder or in the exercise of its rights and functions, provided that Tenant has the right to make a representative of Tenant available to accompany Owner (in areas of the Project other than areas readily available to the general public), and provided further that such entry shall not unreasonably interfere with the operation of the Premises.

## **Article 22 - Owner's Security Interest in Building Equipment**

### **Section 22.1 Grant of Security Interest.**

Solely for the purpose of securing Tenant's obligations to deliver to Owner the Improvements upon Expiration of the Term, Tenant hereby grants to Owner a security interest in all of the Building Equipment now or hereafter located on the Premises and owned by Tenant, and in all products and proceeds thereof; provided, however, that Owner's security interest shall be automatically fully subordinate and subject to any purchase money financing permitted hereunder and the Recognized Mortgagee's security interest in the Building Equipment and any rights of the Recognized Mezzanine Lender in the Building Equipment. Upon the Expiration of the Term, Owner shall be entitled to all of the rights, remedies, powers and privileges available to a secured party under (and subject to the provisions of) the Uniform Commercial Code enacted by the State of Florida. Tenant shall execute and deliver all such instruments and take all such action as Owner, from time to time, may reasonably request in order to obtain the full benefits of the security interest described in this **Section 22.1** and of the rights and powers herein created and to maintain and perfect the security interest granted above. To the extent permitted by Requirements, Tenant irrevocably authorizes Owner to file financing statements and continuation statements with respect to the foregoing collateral without the signature of Tenant. Owner shall execute and deliver all such instruments as the Recognized Mortgagee, Recognized Mezzanine Lender or permitted purchase money lender shall reasonably require in order to confirm Owner's subordination of its

security interest as aforesaid. Subject to **Section 14.2**, Tenant may, during the Term, remove, replace and otherwise deal with the Building Equipment.

### **Article 23 - Naming Rights**

Naming rights for all or any portion of the Premises shall require the approval of the City Commission, which approval shall be in the City Commission's sole discretion; provided, however, the City will not unreasonably withhold its approval of a request by Tenant for naming rights in favor of the lead commercial tenant for the Project.

### **Article 24 - Owner's Right to Perform Tenant's Obligations.**

#### **Section 24.1 Owner's Right to Perform Tenant's Obligations.**

If an Event of Default shall occur and be continuing, Owner may, 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 any of its obligations contained herein, provided that Owner shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days' notice, and Tenant hereby grants Owner access to the Premises in order to perform any such obligation.

#### **Section 24.2 Discharge of Liens.**

(a) If Tenant fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Tenant by law or by a provision of this Lease) to be discharged of record in accordance with the provisions of **Article 17**, Owner may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Owner's title is threatened or a material interest of Owner is impaired, Owner may also, if Tenant has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

(b) If Owner fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Owner by law or by a provision of this Lease) to be discharged of record in accordance with the provisions of **Article 17**, Tenant may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Tenant's leasehold interest in the Premises (or any portion thereof) is threatened or a material interest of Tenant is impaired, Tenant may also, if Owner has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

### **Section 24.3 Reimbursement for Amounts Paid Pursuant to this Article.**

(a) Any amount paid by Owner in performing Tenant's obligations as provided in this **Article 24**, including all costs and expenses incurred by Owner in connection therewith, shall constitute Rent hereunder and shall be reimbursed to Owner within thirty (30) days of Owner's demand, 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.

(b) Any amount paid by Tenant in performing Owner's obligations as provided in **Section 24.2**, including all costs and expenses incurred by Tenant in connection therewith, shall be reimbursed to Tenant within thirty (30) days of Tenant's demand, together with a late charge on amounts actually paid by Tenant, calculated at the Late Charge Rate from the date of notice of any such payment by Tenant to the date on which payment of such amounts is received by Tenant.

### **Section 24.4 Waiver, Release and Assumption of Obligations.**

(a) Owner's payment or performance pursuant to the provisions of this **Article 24** shall not be, nor be deemed to constitute, Owner's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

(b) Tenant's payment or performance pursuant to the provisions of this **Article 24** shall not be, nor be deemed to constitute, Tenant's assumption of Owner's obligations to pay or perform any of Owner's past, present or future obligations hereunder.

## **Article 25 - Events of Default, Conditional Limitations, Remedies, Etc.**

### **Section 25.1 Definition.**

Each of the following events shall be an "**Event of Default**" hereunder:

(a) if Tenant fails to make any payment (or any part thereof) of Rent and/or Impositions due hereunder and such failure continues for a period of thirty (30) days after notice is given by Owner that the same is past due;

(b) if Tenant shall default in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the covenants for the payment of Rent and/or Impositions or as expressly set forth above and other Events of Default expressly set forth in this **Section 25.1**) and Tenant shall fail to remedy such Default within thirty (30) days after notice by Owner of such default (the "**Default Notice**"), or if such an Event of Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Tenant fails to (i) within thirty (30) days after the giving of such Default Notice, commence such cure and notify Owner in writing of Tenant's intention to institute all steps (and from time to time, as reasonably requested by Owner, Tenant 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 and continuously prosecute to completion all such steps necessary to remedy the same within an additional ninety (90) days;

(c) if an Event of Default (as defined in the Development Agreement) under the Development Agreement shall have occurred and be continuing beyond any applicable cure period, including any cure period applicable to the Recognized Mortgagee or the Recognized Mezzanine Lender, as applicable, except to the extent such cross-default has been released by Owner pursuant to and in accordance with the Development Agreement;

(d) if an Event of Default (as defined in the P25 Ground Lease) under the P25 Ground Lease shall have occurred and be continuing beyond any applicable cure period, including any cure period applicable to the Recognized Mortgagee or the Recognized Mezzanine Lender (each, as defined in the P25 Ground Lease), as applicable, except to the extent such cross-default has been released by Owner pursuant to and in accordance with the Development Agreement;

(e) if Tenant fails to satisfy the Possession Conditions and commence Construction of the Project on or before the Outside Commencement Date (and in the event Tenant commences Construction prior to satisfaction of the Possession Conditions, Owner has the right to institute a “stop work” order for all construction on the Land until such time as all Possession Conditions are satisfied).

(f) if Tenant admits, in writing, that it is generally unable to pay its debts as such become due;

(g) if Tenant makes an assignment for the benefit of creditors;

(h) if Tenant files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Tenant files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of all or any part of Tenant’s Interest in the Premises, and the foregoing are not stayed or dismissed within one hundred and fifty (150) days after such filing or other action;

(i) if, within one hundred and fifty (150) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred and eighty (180) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of all or any part of Tenant’s Interest in the Premises, such appointment has

not been vacated or stayed on appeal or otherwise, or if, within one hundred and eighty (180) days after the expiration of any such stay, such appointment has not been vacated;

(j) if a levy under execution or attachment in an aggregate amount of One Hundred Seventy-Five Thousand Dollars (\$175,000), adjusted for inflation, at any one time, is made against the Premises or any part thereof or rights appertaining thereto (except for a levy made in connection with actions taken by Owner (other than solely as holder of Owner's Interest in the Premises)), the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days after Tenant becomes aware of such levy or attachment, subject to Unavoidable Delays;

(k) if any of the representations made by Tenant herein is proved to be or becomes false or incorrect in any material respect and the circumstances are not cured or modified so as to eliminate such material incorrectness within thirty (30) days after notice; provided, however, no cure period shall apply for any breach of Tenant's representations set forth in the first sentence of **Section 10.4(a)**, or **Section 36.16**;

(l) any event described in **Section 35.8** which is not cured by Tenant as provided in **Section 35.8**; or

(m) if any Sale of the Project or Transfer occurs in violation of **Article 10**;

(n) if Tenant or any Person with an Equity Interest in Tenant violates the Acceptable Owner Criteria specified in subparagraph A.3 of **Exhibit B** of this Agreement (other than any such violation by any Persons that have ownership interests in Tenant through any Publicly Traded U.S. Company), or is a Prohibited Person (other than Persons that have ownership interests in Tenant through any Publicly Traded U.S. Company); provided, however, in the case of such violation by any Person with an Equity Interest in Tenant, Tenant shall have six (6) months to cure such violation after Tenant first becomes aware of such violation;

In the event of a Default which with the giving of notice to Tenant and the passage of time would constitute an Event of Default, Owner's notice of such Default to Tenant shall state with specificity the provision of this Lease under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured, and that the failure of Tenant to cure such Default by the date set forth in such notice will result in Owner having the right to terminate this Lease.

## **Section 25.2 Enforcement of Performance; Damages and Termination.**

If an Event of Default occurs and is continuing beyond any applicable notice and grace period, Owner shall have and may, at its option, without any demand or notice whatsoever (except as expressly required in this **Section 25.2**) exercise any one or more of the following rights and remedies:

(a) Terminate this Lease and in accordance with applicable Requirements, enter upon and take possession and control of the Premises, demand, collect and retain all rents due from any subtenants occupying the Premises, and otherwise treat and occupy the Premises as if this Lease had expired pursuant to the terms hereof;

(b) enforce performance or observance by Tenant of the applicable provisions of this Lease;

(c) If such Event of Default occurs prior to completion of construction of the Project, exercise and enforce Owner's rights pursuant to the assignment of Plans and Specifications, assignment of General Construction Contract and assignment of Construction Agreements delivered to Owner pursuant to this Lease, subject to the rights of the Recognized Mortgagee or Recognized Mezzanine Lender;

(d) recover damages for breach of this Lease; provided, however, nothing herein shall be deemed to permit Owner to pursue an action or recover from Tenant any amounts attributable to an acceleration of Rent or other amounts due hereunder following the termination of this Lease by Owner pursuant to Section 25.2(a);

(e) with respect to any failure by Tenant to comply with its obligations pursuant to **Section 14.1** within thirty (30) days after written notice thereof from Owner, Owner shall have the right to levy fines in an amount equal to Five Hundred and No/100 Dollars (\$500.00) (adjusted for inflation) per day for each day until Tenant until the date on which such failure is remedied. Any and all such fines shall constitute "Rent" hereunder;

(f) by written notice thereof to Tenant, terminate Tenant's option to renew this Lease for either or both of the Extension Terms; and

(g) exercise any other remedy available at law or in equity.

Owner's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect Owner's right to elect any of the remedies available to Owner hereunder with respect to any other Event of Default.

### **Section 25.3 Expiration and Termination of Lease.**

(a) If any termination by Owner is stayed by order of any court having jurisdiction over any case described in **Sections 25.1(g)** or **25.1(h)**, or by federal or state statute, then, following the expiration of any such stay, Owner shall have the right, at its election, to terminate this Lease on five (5) days' written notice to Tenant, Tenant as debtor-in-possession or if a trustee has been appointed, to such trustee. Upon the expiration of the five (5) day period, this Lease shall expire and terminate and Tenant, Tenant as debtor-in-possession and/or if applicable, the trustee immediately shall quit and peaceably surrender Tenant's Interest in the Premises and possession thereof forthwith.



(b) 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.

(c) 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**.

(d) If this Lease is terminated as provided in **Section 25.2(a)**, Owner may, without notice, re-enter and repossess Tenant's Interest in the Premises (which may include, but not be limited to, re-entering and repossessing the Premises) and may dispossess Tenant by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to applicable Requirements.

(e) If this Lease is terminated as provided in **Section 25.2(a)**:

(i) Tenant shall pay to Owner all Rent and/or Impositions payable under this Lease by Tenant to Owner to the date upon which the Term shall have expired and come to an end and Tenant shall quit and peaceably surrender to Owner Tenant's Interest in the Premises (and possession thereof) in the condition required by this Lease, and both Parties shall be relieved of all further obligations hereunder, except to the extent this Lease expressly provides that an obligation hereunder shall survive the Expiration of the Term; and

(ii) In no event shall Tenant be entitled to receive any credit or payment with respect to the value of the Land and Improvements, title to which shall automatically vest in Owner upon such termination.

#### **Section 25.4 Waiver of Rights of Tenant and Owner.**

To the extent not prohibited by law, Owner and Tenant hereby waive and release all rights now or hereafter conferred by statute or otherwise that would have the effect of limiting or modifying any of the provisions of this Article. Notwithstanding the foregoing, Owner shall not be deemed to have waived or released any rights conferred by any sovereign immunity conferred by statute or otherwise, as provided in **Section 19.2(c)** hereof.

#### **Section 25.5 Receipt of Moneys After Notice or Termination.**

No receipt of money by Owner from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Owner to recover Tenant's Interest in the Premises (which may include, but not be limited to, recovering possession of the Premises) by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of Tenant's Interest in the Premises (which may include, but not be limited to, a judgment for possession of the Premises), Owner may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of Tenant's Interest in the Premises (including, without limitation, the use and occupation of the Premises) or, at the election of Owner, on account of Tenant's liability hereunder.

#### **Section 25.6 No Waiver.**

No failure by Owner or Tenant to insist upon strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to such Party by reason of the other Party's default or an Event of Default, and no payment or acceptance of full or partial Rent and/or Impositions during the continuance (or with Owner's knowledge of the occurrence) of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. Subject to **Section 11.11**, no covenant, agreement, term or condition of this Lease to be performed or complied with by either Party, and no default by either Party, shall be waived, altered or modified except by a written instrument executed by the other Party. No waiver of any Default or Event of Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default. Payment by Tenant to Owner of any Rent and/or Impositions shall be without prejudice to, and shall not constitute a waiver of, any rights of Tenant against Owner provided for under this Lease or at law or in equity. Tenant's compliance with any request or demand made by Owner shall not be deemed a waiver of Tenant's right to contest the validity of such request or demand.

### **Section 25.7 Right to Enjoin Defaults.**

In the event of Tenant's Default or Event of Default, Owner shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner's remedies are expressly limited by the terms hereof. In the event of any default by Owner of any term, covenant or condition under this Lease, Tenant shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Tenant's remedies are expressly limited by the terms hereof. Provided however, in the event of any such default, Tenant shall be required to give Owner notice of such default and Owner shall have thirty (30) days from receipt of such notice to effect a cure of such default or if such default is not reasonably susceptible of being cured within such thirty (30) day period, Owner shall have a reasonable time to effect a cure of such default so long as Owner is diligently prosecuting such cure. Each right and remedy of Owner and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise except to the extent Owner's remedies and Tenant's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by Owner or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Owner or Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner's remedies and Tenant's remedies are expressly limited by the terms hereof.

### **Section 25.8 Remedies Under Bankruptcy and Insolvency Codes.**

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's Interest in the Premises or Owner or Owner's Interest in the Premises as applicable, in any proceeding which is commenced by or against Tenant or Owner, as applicable, under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant or Owner, as applicable, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Owner or Tenant, as applicable, shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Owner's or Tenant's, as applicable, right, title and interest in and to the Premises or this Lease or any part thereof and adequately assure the complete and continuous future performance of the other Party's obligations under this Lease. Owner or Tenant, as applicable, may petition the Bankruptcy Court to determine that adequate protection of Owner's or Tenant's, as applicable, right, title and interest in and to the Premises or this Lease, and adequate assurance of the complete and continuous future performance of the other Party's obligations under this Lease, shall include, without limitation, all of the following requirements:

- (a) that the other Party shall comply with all of its obligations under this Lease;

(b) in the case of a proceeding concerning Tenant:

(i) that Tenant shall continue to use the Premises in the manner required by this Lease;

(ii) that Owner shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(iii) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(iv) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Owner that sufficient funds will be available to fulfill the obligations of Tenant under this Lease; and

(v) that Owner shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease, subject to the rights of the Recognized Mortgagee under the Recognized Mortgage.

#### **Section 25.9 Funds Held By Tenant.**

From and after the date, if any, on which an Event of Default (including, without limitation, any Event of Default that occurs during the course of the Construction Work for the initial construction of the Project) has been deemed to have occurred and while such Event of Default shall be continuing, Tenant shall not pay, disburse or distribute any rents, issues or profits of the Premises, or portion thereof, the proceeds of any insurance policies covering or relating to the Premises or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to **Article 8** or **9**) or any undistributed proceeds from any sale or financing except to (i) creditors which are not Affiliates, in payment of amounts then due and owing by Tenant to such creditors with respect to work at the Premises, (ii) Affiliates, in payment of amounts then due and owing by Tenant to such Affiliates for items and services provided to Tenant in connection with its operations conducted at the Premises or any portion thereof, only to the extent such amounts do not exceed that which is customarily and reasonably paid in arms-length transactions to Persons who are not Affiliates for comparable items and services, and (iii) the holder of the Recognized Mortgage, in payment of the principal amount of, and all unpaid and accrued interest then outstanding under, such Recognized Mortgage and any other amounts payable pursuant to such Recognized Mortgage and any instruments and documents related thereto.

#### **Section 25.10 Inspection.**

Owner and its representatives shall have the right, at reasonable hours upon twenty-four (24) hours prior notice to Tenant, to enter upon the Premises (a) to inspect the operation, sanitation, safety, maintenance and use of the same (but Owner shall not thereby assume any responsibility

or liability for the performance of Tenant's obligations hereunder, nor any liability arising from the improper performance thereof) and (b) to conduct inspections for the purpose of determining whether an Event of Default has occurred, provided that Owner shall be accompanied by a representative of Tenant (in areas of the Project other than areas readily available to the general public), and provided further that such entry shall not unreasonably interfere with the operation of the Premises. Tenant agrees to make a representative of Tenant available to accompany Owner on any such inspection.

## **Article 26 - Notices, Consents and Approvals**

### **Section 26.1 Service of Notices and Other Communications.**

(a) **In Writing.** Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the Parties by the other (or by or from the Recognized Mortgagee or the Recognized Mezzanine Lender), or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication (referred to in this **Section 26.1** as a "**Notice**") shall be in writing (whether or not so indicated elsewhere in this Lease) and shall be effective for any purpose only if given or served by certified or registered U.S. Mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or a recognized national courier service, addressed as follows:

if to Tenant:                    Lincoln Road Property Owner II, L.P.  
    2340 Collins Avenue, Suite 100  
    Miami Beach, FL 33139  
    Attention: Andrew Coren

with a copy to:                Rinaldi, Finkelstein & Franklin, LLC  
    591 West Putnam Avenue  
    Greenwich, CT 06830  
    Attention: Eric Franklin

if to Owner:                    City of Miami Beach  
    City Manager  
    1700 Convention Center Drive  
    Miami Beach, Florida 33139

with copies to:                City of Miami Beach  
    City Attorney  
    1700 Convention Center Drive  
    Miami Beach, Florida 33139

and:                                Grady Hunt PLLC  
    2525 Ponce de Leon Blvd.

Suite 300  
Coral Gables, FL 33134  
Attention: Lauren Hunt, Esq.

Any such Notice may be given, in the manner provided in this **Section 26.1**, (x) on either Party's behalf by its attorneys designated by such Party by notice hereunder, and (y) at Tenant's request, on its behalf by the Recognized Mortgagee designated in such request.

(b) **Effectiveness.** Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

(c) **References.** All references in this Lease to the date of Notice shall mean the effective date, as provided in the preceding **Section 26.1(b)**.

## **Section 26.2 Consents and Approvals.**

(a) **Effect of Granting or Failure to Grant Approvals or Consents.** All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Lease, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any other act.

(b) **Standard.** Except in instances where a "sole discretion" standard applies to a consent or approval by Owner, all consents and approvals which may be given by a Party under this Lease shall not (whether or not so indicated elsewhere in this Lease) be unreasonably withheld, conditioned or delayed by such Party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. In furtherance of the foregoing, in determining whether Owner has acted reasonably in not giving its consent or approval, the trier of fact shall take into consideration (for so long as Owner is the City or any Governmental Authority) that Owner is a political body governed by elected officials or persons that are appointed, directly or indirectly, by elected officials. Upon disapproval of any request for a consent or approval, the disapproving Party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

### **(c) Deemed Approval.**

(i) If a Party entitled to grant or deny its consent or approval (the "**Consenting Party**") within the specified time period shall fail to do so, then, except as otherwise provided in **Section 26.2(c)(ii)** and **(iii)**, and provided that the request for consent or approval (and the envelope in which such request is transmitted to the extent permitted by the carrier shall be marked "**PRIORITY**") bears the legend set forth below at the top of the first page thereof in

capital letters and in a type size not less than that provided below (14 point) and within the applicable time period specified, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

**FAILURE TO RESPOND TO THIS REQUEST WITHIN [\_\_\_] DAYS FROM THE DATE OF THIS NOTICE (WHICH CONSTITUTES THE TIME PERIOD PROVIDED IN THE AGREEMENT OF GROUND LEASE BETWEEN CITY OF MIAMI BEACH, FLORIDA AND \_\_\_\_\_ [NAME OF CURRENT TENANT]) SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION [\_\_\_\_\_] [FILL IN APPLICABLE SECTION] OF SUCH LEASE AGREEMENT.**

(ii) If the matter to which consent or approval is requested pertains to **Article 10** then such matter shall not be deemed consented to or approved unless (i) the Consenting Party fails to timely respond to the other Party's (the "Requesting Party") initial request, which request (and the envelope in which such request is transmitted to the extent permitted by the carrier shall be marked "**PRIORITY**") shall bear the legend set forth above and (ii) the Requesting Party shall thereafter send a second request to the Consenting Party which request (and the envelope in which such request is transmitted to the extent permitted by the carrier shall be marked "**PRIORITY**") conspicuously bears the legend set forth above, and Owner shall fail to timely respond to such second request. For the avoidance of doubt, Tenant also shall comply with the Acceptable Owner Criteria and related requirements set forth on **Exhibit B** attached hereto.

(iii) Notwithstanding anything to the contrary contained in this Lease, including, without limitation, **Sections 26.2(c)(i)** and **26.2(c)(ii)** above, if the City or any instrumentality of the City shall be the "**Owner**" hereunder and the matter to be consented to or approved requires the consideration of the City Commission and/or the governing body of such instrumentality of the City as applicable (whether pursuant to Requirements or the written opinion of the City Attorney, or the chief legal officer of such other instrumentality of the City) then, provided Owner gives Tenant notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless Owner shall fail to respond to Tenant's request (or second request if the provisions of **Section 26.2(c)(ii)** are applicable) by the date which is fifteen (15) calendar days after the first regular meeting of the City Commission (and/or such other instrumentality's governing body, as applicable) which occurs no earlier than thirty (30) days following the receipt of such request (or second request, as applicable); but in any event not later than ninety (90) days following such request (or second request), as applicable.

(iv) Owner hereby agrees, for so long as the City or any other Governmental Authority shall be the "**Owner**" hereunder, that, subject to compliance with any applicable Requirements, the City Manager or the chief operating officer of such other Governmental Authority, as applicable, shall be authorized to grant consents or approvals on behalf of the City and/or other Governmental Authority as applicable, with respect to (A) the following Sections of this Lease: **Article 7** and **Sections 8.3, 9.3, 10.7** (for execution of

instruments), **14.2, 14.5, 20.3, 27.2** (for execution of such certificate), **32.2(b), 32.3** and (B) such other matters as the City Commission may from time to time delegate to the City Manager.

(v) The foregoing provisions of this **Section 26.2(c)** shall not be construed to modify or otherwise affect a Party's right to litigate the failure of a Party to act reasonably in granting or denying a request for consent or to timely respond to a request for a consent, but such right to litigate shall not serve to delay the time period within which a grant or denial of such request is required hereunder.

(d) **No Fees, etc.** Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either Party hereto as a condition of the grant of any consent or approval which may be required under this Lease, provided that the foregoing shall not be deemed in any way (i) to limit Owner acting in its governmental or regulatory, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis or (ii) to limit Owner acting in its proprietary capacity to require modifications of financial terms in consideration of amending the terms of this Lease, including without limitation the granting of extensions of time.

(e) **Governmental Capacity.** Notwithstanding anything to the contrary contained in this **Section 26.2**, the City shall not be required by this Lease to give its consent to any matter arising from or in connection with this Lease when the City is acting in its governmental or regulatory capacity.

## **Article 27 - Certificates By Owner and Tenant**

### **Section 27.1 Certificate of Tenant.**

(a) Tenant shall, within fifteen (15) days after notice by Owner, execute, acknowledge and deliver to Owner, or any other Person specified by Owner, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Lease is a true, correct and complete copy of this Lease), and (ii) the date to which each item of Rent and/or Impositions payable by Tenant hereunder has been paid, and (b) stating (i) whether Tenant has given Owner written notice of any default, or any event that, with the giving of notice or the passage of time, or both, would constitute a default, by Owner in the performance of any covenant, agreement, obligation or condition contained in this Lease, which default or event has not been cured, and (ii) whether, to the actual knowledge of Tenant (but without independent inquiry), Owner is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default.

(b) Tenant shall file with Owner at least annually, a sworn affidavit, signed by an authorized officer of Tenant, to the effect that since the date of the last such affidavit (or in the case of the first such affidavit, since the Effective Date) (1) no changes have been made to the operating agreement or other organizational document under which Tenant is organized (the



“**Tenant Document**”), or, if changes shall have been made to the Tenant Document, a statement as to the specific nature of the changes and a notification to Owner that the amended or modified Tenant Document is on file at the office of Tenant located in Miami-Dade County, Florida, and that it is available for inspection by Owner, (2) the full names and addresses of holders of direct Equity Interests in Tenant (who hold at least two percent (2%) interest in Tenant) are only those that are listed in such affidavit, and that the General Partner(s) confirms its continued ownership in Tenant (if Tenant is an entity different than a limited partnership, this provision shall apply to the nature of the appropriate ownership interests for the entity in question), and (3) the obligation of Tenant’s Partners to each other related thereto under the partnership agreement have not been amended or modified in any way that is materially adverse to Owner, and (4) if the General Partner of Tenant is a corporation, it remains a Florida corporation in good standing and the annual report of said corporation, required to be filed with the Department of State of the State of Florida pursuant to Chapter 607, Florida Statutes, as amended (the “**Annual Report**”), and any fees required for the filing thereof, are not delinquent; or, if not a Florida corporation, it is a corporation properly authorized to do business in the State of Florida, and a statement to the effect that the Controlling Equity Interest in said General Partner or any successor thereto has not changed. A copy of the latest Annual Report (or similar filing applicable to the jurisdiction of organization) of Tenant and the General Partner of Tenant shall be attached to the aforesaid certificate.

#### **Section 27.2 Certificate of Owner.**

Owner shall, within fifteen (15) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Lease is a true, correct and complete copy of this Lease), and (ii) the date to which each item of Rent and/or Impositions payable by Tenant hereunder has been paid, and (b) stating (i) whether an Event of Default has occurred or whether Owner has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, which Default or Event of Default has not been cured, and (ii) whether, to the actual knowledge of Owner (but without independent inquiry), Tenant is in Default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default.

### **Article 28 - Financial Reports and Records**

#### **Section 28.1 Books and Records; Audit Rights.**

(a) Tenant shall at all times during the Term of this Lease keep and maintain (separate from any of Tenant’s other books, records and accounts), accurate and complete records pertaining to the Premises related thereto, including, without limitation, books of account reflecting the Project Revenue and other financial information pertaining to the Project, including information related to the Reserve Account and such other matters referenced in this Lease, in accordance with the Accounting Principles with such exceptions as may be provided for in this

Lease (collectively, the “**Project Books and Records**”), and provided that Tenant may make such reasonable modifications in such Project Books and Records as are consistent with Tenant’s standard practice in accounting for its operations under management contracts generally. Owner and its representatives shall have, during normal business hours and upon reasonable advance notice, access to inspect the Project Books and Records, including books of account properly reflecting the operations of the Premises, which Project Books and Records shall be kept at the Premises. Owner shall have the right to cause an audit by Owner’s internal auditors (in accordance with the Accounting Principles) of the Project Books and Records to be made at any time (but not more frequently than one (1) time in any twelve (12) month period), at Owner’s expense (a copy of which shall be delivered to Tenant). Such right of inspection and audit may be exercised at any time within three (3) years after the end of the Lease Year to which such Project Books and Records relate, and Tenant shall maintain all such Project Books and Records for at least such period of time and, if any Dispute between the Parties has arisen and remains unresolved at the expiration of such period of time, for such further period of time until the resolution of such Dispute. Notwithstanding anything to the contrary contained herein, at Tenant’s or Owner’s option, the audit described in this **Section 28.1(a)** shall be performed by Owner’s external auditors (which shall be a Recognized Accounting Firm), in which case, if requested by Tenant or if such audit discloses that Tenant has understated Project Revenue by three percent (3%) or more for such Lease Year, Tenant shall pay the reasonable fees and expenses of said external auditors (in addition to any such deficiency in accordance with **Section 28.1(b)** below); and otherwise, Owner shall pay the fees and expenses of said external auditors.

(b) If, upon any audit by Owner as described above of the Project Books and Records, (i) an error (which shall mean a mistake in calculation of Project Revenue, an accounting error, but shall exclude any error based on assertions that Tenant acted imprudently or unwisely in connection with the collection of the Project Revenue) shall be revealed which results in there being due to Owner Percentage Rent for any Lease Year for which Annual Financial Statements are being audited pursuant to **Section 28.1(a)**, the amounts of any such underpayments of Percentage Rent which may be disclosed by such audit, together with interest accrued thereon at the Late Charge Rate from the date on which such underpayment was made until the date of payment of the correct amount, shall be paid by Tenant as additional Rent to Owner upon thirty (30) days demand or (ii) an error (as defined in clause (i) above) shall be revealed which resulted in an overpayment by Tenant to Owner of Percentage Rent, Owner shall remit the amount of such overpayment (less the cost of such audit) to Tenant within thirty (30) days after the completion of such audit. If Owner does not notify Tenant of any error in the calculation of Percentage Rent within three (3) years after the date on which Owner receives the accounting for Percentage Rent for any Lease Year, then Owner shall be deemed to have conclusively waived any and all objections with respect to any Percentage Rent payments with respect to such Lease Year.

(c) As soon as available, but in no event later than the date which is one hundred fifty (150) days after the end of each Lease Year, Tenant shall make available at the Premises for inspection and examination (or photocopying) by Owner or its representatives a copy of the annual financial statements (the “**Annual Financial Statements**”) for such Lease Year (which statements shall be audited by a Recognized Accounting Firm) accurately reflecting Project Revenue and

other financial information pertaining to the Project prepared and certified by Tenant and such independent certified public accountant in accordance with the Accounting Principles.

(d) As soon as available, but in no event later than thirty (30) days after the end of each month, Tenant shall make available at the Project for inspection and examination (or photocopying) by Owner or its representatives an unaudited statement of Project Revenue and other financial information pertaining to the Project for both the current month and Lease Year to date.

(e) As soon as available, but in no event later than sixty (60) days prior to the commencement of each Lease Year, Tenant shall make available at the Project for inspection and examination (photocopying) by Owner or its representatives, or if requested by Owner, will furnish electronically, an informational copy of a projected income and expense statement reflecting the budget for the Project for such coming Lease Year (the “**Budget**”).

(f) Notwithstanding any of the foregoing provisions of this **Article 28**, so long as Owner is the City or any instrumentality of the City, the following provisions shall be applicable to the Project Books and Records, the Annual Financial Statements, the Budget and any other documents (collectively, the “**Project Documents**”) required to be delivered or made available to Owner under this **Article 28**:

(i) All Project Documents shall be maintained at the Premises.

(ii) All Project Documents shall be made available to Owner and its representatives as provided above.

(iii) If a copy of any Project Document is made by Owner or any of its representatives and delivered to Owner’s offices, there shall be attached to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

**THE ATTACHED DOCUMENT CONTAINS CONFIDENTIAL AND PROPRIETARY TRADE SECRETS RELATED TO THE BUSINESS AND FINANCIAL POSITION OF THE DISCLOSER. THE ATTACHED DOCUMENT IS TO BE KEPT SOLELY IN THE OFFICE OF THE CITY ATTORNEY OF THE CITY OF MIAMI BEACH, FLORIDA. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICE AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH APPLICABLE LAW.**

(g) Any third party representatives (including, without limitation, any Recognized Accounting Firm) of Owner that review any Project Documents shall execute a confidentiality agreement mutually acceptable to Owner and Tenant. If a copy of any Project Document is made by any such representative for use in the offices of such representative, there

shall be attached to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

**THE ATTACHED DOCUMENT CONTAINS CONFIDENTIAL AND PROPRIETARY TRADE SECRETS RELATED TO THE BUSINESS AND FINANCIAL POSITION OF THE DISCLOSER. THE ATTACHED DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT AND SHALL BE KEPT SOLELY IN THE OFFICES OF \_\_\_\_\_ [INSERT NAME OF REPRESENTATIVE]. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICES AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH SUCH CONFIDENTIALITY AGREEMENT AND APPLICABLE LAW.**

(h) Promptly following receipt of a request under any Requirement for the release of a copy of any Project Document, Owner shall send notify Tenant of such request, but neither Owner nor any Owner Indemnified Party shall incur any liability to Tenant if Owner fails to provide any such notice.

(i) Neither Owner nor any Owner Indemnified Party shall incur any liability to Tenant in the event any Project Document is stolen, misplaced or otherwise released in violation of the foregoing provisions of this **Section 28.1**.

(j) The obligations of Tenant and Owner under this **Article 28** shall survive the Expiration of the Term.

(k) Any third party representatives (including, without limitation, any Recognized Accounting Firm) of Owner that review any Project Documents shall execute a confidentiality agreement mutually acceptable to Owner and Tenant. If an extract of any Project Document is made by any such representative for use in the offices of such representative, there shall be attached by Owner or its representative to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

**THE ATTACHED DOCUMENT CONTAINS CONFIDENTIAL AND PROPRIETARY TRADE SECRETS RELATED TO THE BUSINESS AND FINANCIAL POSITION OF THE DISCLOSER. THE ATTACHED DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT AND SHALL BE KEPT SOLELY IN THE OFFICES OF \_\_\_\_\_ [INSERT NAME OF REPRESENTATIVE]. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICES AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH SUCH CONFIDENTIALITY AGREEMENT AND APPLICABLE LAW.**

## **Article 29 - Surrender at End of Term**

### **Section 29.1 Surrender of Premises.**

Upon the Expiration of the Term (or upon a termination of this Lease by Owner pursuant to **Article 25**), Tenant, without any payment or allowance whatsoever by Owner, shall surrender the Premises to Owner in good order, condition and repair, reasonable wear and tear excepted and (subject to the provisions of **Article 8**) damage from casualty excepted, free and clear of all Master Subleases (provided that Owner, in its discretion, may elect to maintain such Master Subleases in effect following a termination of this Lease by Owner), and free and clear of all liens and encumbrance other than as set forth below. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

### **Section 29.2 Delivery of Subleases, Etc.**

Upon the Expiration of the Term (or upon a termination of this Lease by Owner pursuant to **Article 25**), Tenant shall deliver to Owner the following (to the extent then in Tenant's possession or control): Tenant's original executed counterparts, if available (and if not available, true and correct copies thereof), of all subleases then in effect, any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy then in effect for the Premises, and all warranties and guarantees then in effect which Tenant has received in connection with any work, including Construction Work, or services performed or Building Equipment installed in the Premises (such to be delivered without representation or warranty by Tenant), together with a duly executed assignment thereof (without recourse) to Owner in form suitable for recording, and all financial reports required by **Article 28** and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Improvements.

### **Section 29.3 Title to Improvements.**

Owner recognizes and agrees that until Expiration of the Term, ownership of and title to the Improvements shall be in Tenant and that until such time, Tenant has, and shall be entitled to, all rights and privileges of ownership of such Improvements. Ownership of and to all Improvements shall automatically vest in Owner upon the Expiration of the Term, without the payment of consideration therefor, and without the necessity for the execution and delivery by Tenant of any instrument transferring title. Notwithstanding the foregoing, Tenant covenants and agrees that upon the Expiration of the Term, Tenant shall, upon Owner's request, execute and deliver to Owner any instrument or document reasonably requested by Owner to confirm title to said Improvements in Owner.

### **Section 29.4 Cash and Accounts Receivable.**

Tenant shall retain the right to all cash and accounts receivable on or in connection with the Premises existing as of the Expiration of the Term and Owner shall pay Tenant for all unopened

consumable supplies located at the Premises upon the Expiration of the Term (based on Tenant's actual cost therefor); provided, however that Tenant shall turn over to Owner all deposits, accounts receivables and other payments for periods after the Expiration of the Term. If, after the Expiration of the Term, Owner collects any accounts receivable to which Tenant is entitled, Owner shall promptly remit such amounts to Tenant, subject to the rights of the Recognized Mortgagee.

#### **Section 29.5 Personal Property.**

Any personal property of Tenant or of any Master Subtenant which remains on the Premises after the termination of this Lease or after the removal of Tenant or such Master Subtenant from the Premises, may, at the option of Owner, be deemed to have been abandoned by Tenant or such Master Subtenant, and either may be retained by Owner as its property or be disposed of, without accountability, in such manner as Owner may see fit, in its absolute and sole discretion, but in compliance with applicable Requirements. Owner shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Master Subtenant.

#### **Section 29.6 Survival Clause.**

The provisions of this **Article 29** shall survive the Expiration of the Term.

### **Article 30 - Quiet Enjoyment**

#### **Section 30.1 Quiet Enjoyment.**

Owner covenants that, as long as this Lease is in full force and effect without an Event of Default existing hereunder, Tenant shall and may (subject to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy Tenant's Interest in the Premises for the Term without molestation or disturbance by or from Owner (solely in its proprietary capacity) or any Person claiming by, under or through Owner (solely in its proprietary capacity).

### **Article 31 - Inspector General and Public Records Act**

#### **Section 31.1 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 and/or the Development Agreement, 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 and the Development Agreement, 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 or the Development Agreement 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 and/or the Development Agreement until such appeals, litigation, or claims are finally resolved.

(f) The provisions in this **Section 31.1** shall apply to Tenant, its officers, agents, employees, subcontractors and suppliers. Tenant shall incorporate the provisions in this **Section 31.1** in all contracts, subcontracts and all other agreements executed by Tenant in connection with the performance of this Lease and the Development Agreement.

(g) Nothing in this **Section 31.1** shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this **Section 31.1** are neither intended nor shall they be construed to impose any liability on the City by Tenant or third parties.

### **Section 31.2 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.

## **Article 32 - Administrative and Judicial Proceedings, Contests, Etc.**

### **Section 32.1 Tax Contest Proceedings.**

Tenant shall have the right (subject to the provisions of **Section 32.2**), at its sole cost and expense, to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith and in accordance with applicable Requirements.

### **Section 32.2 Imposition Contest Proceedings.**

Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, subject to Requirements, if, and only as long as:

(a) Neither the Premises nor any part thereof would, by reason of such postponement or deferment, be, in the reasonable judgment of Owner, in danger of being forfeited to a Governmental Authority and Owner is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in **Section 32.2(b)** by reason of nonpayment thereof; and

(b) Tenant has deposited with the Recognized Mortgagee, if any (or if not, with a third party escrow agent proposed by Tenant, subject to Owner’s consent, not to be unreasonably withheld (failure to respond within fifteen (15) days after notice being conclusively deemed approval)), cash in the amount so contested and unpaid or, alternatively, at Tenant’s option, a surety company bond or an irrevocable letter of credit issued by an Institutional Lender (in form reasonably satisfactory to Owner) or other security (for example, a personal guaranty) reasonably satisfactory to Owner, in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might, in Owner’s reasonable judgment, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings; provided, however, any amount



deposited with any governmental entity, the making of which deposit is required by law in order for Tenant to contest such matters, shall be considered part of the amount so required of Tenant by Owner (the intent being that Tenant shall not be required to make duplicitous deposits under this **Section 32.2(b)**). Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and, upon such payment, the Recognized Mortgagee or escrow agent holding any amount or other security deposited with it with respect to such Imposition shall (subject to the terms of any agreement between Tenant and the Recognized Mortgagee or escrow agent) return the same, together with the interest, if any, earned thereon. However, if such Recognized Mortgagee or escrow agent is so requested by Tenant, such Recognized Mortgagee or escrow agent shall disburse said moneys on deposit with it directly to the Person to whom or to which such Imposition is payable. If at any time during the continuance of such proceedings Owner, in its reasonable judgment, deems insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Owner's demand, shall make an additional deposit of such additional sums or other acceptable security as Owner may request, and upon failure of Tenant to so do, the amount theretofore deposited, together with the interest, if any, earned thereon, shall, upon demand by Owner, be applied by such Recognized Mortgagee or escrow agent to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Owner as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Owner or the Person entitled to receive it, within ten (10) days after Owner's demand.

### **Section 32.3 Requirement Contest.**

Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant provided that before instituting any such proceeding, Tenant shall furnish such Recognized Mortgagee, if any (or if not, with a third party escrow agent proposed by Tenant, subject to Owner's consent, not to be unreasonably withheld (failure to respond within fifteen (15) days after notice being conclusively deemed approval)), with a surety company bond or, alternatively at Tenant's option, a cash deposit, an irrevocable letter of credit issued by an Institutional Lender or other security (e.g., a personal guaranty), in form and amount reasonably satisfactory to Owner, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith; provided, however, any amount deposited with any governmental entity, the making of which deposit is required by law in order for Tenant to contest such matters, shall be considered part of the amount so required of Tenant by Owner (the intent being that Tenant shall not be required to make duplicitous deposits under this **Section 32.3**). Any such proceeding instituted by Tenant shall be commenced as soon as possible after the issuance of any such contested Requirement and shall be

prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of **Section 15.1** if, in Owner's reasonable judgment, (i) noncompliance therewith would create an emergency condition involving the health or safety of persons, (ii) the Premises, or any part thereof, are in material danger of being forfeited to an authority (other than Owner when the City or an instrumentality thereof is Owner) or (iii) Owner is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided by reason of noncompliance therewith, and any security posted by Tenant shall (subject to the terms of any agreement between Tenant and the Recognized Mortgagee or escrow agent) be returned to Tenant with any interest accrued thereon.

#### **Section 32.4 Owner's Participation in Contest Proceedings.**

Owner shall not be required to join in any action or proceeding referred to in this **Section 32.4** unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Owner. If so required, Owner shall join and cooperate in such proceedings or permit them to be brought by Tenant in Owner's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Owner in connection therewith. Notwithstanding the foregoing, Owner's joinder and cooperation shall be limited to actions necessary to enable Tenant to satisfy technical requirements of any such action or proceeding and in no event shall Owner be required to join in any such action or proceeding in any substantive capacity.

#### **Section 32.5 Nonapplicability of this Article 32.**

None of the rights granted to Tenant in this **Article 32** shall apply to any matters covered by **Section 3.2(f)**. The provisions of **Section 3.2(f)** shall govern and control over the provisions of this **Article 32** when in conflict.

### **Article 33 - Nondiscrimination**

#### **Section 33.1 Nondiscrimination.**

Tenant shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

## Article 34 - Indictment, Investigations, Etc.

### Section 34.1 Cooperation in Investigations.

To the extent required by Requirements, Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. In addition, Tenant shall promptly report in writing to the City Attorney of the City of Miami Beach, Florida any solicitation, of which Tenant's officers or directors have knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other Person relating to the procurement or obtaining of this Lease by Tenant or affecting the performance of this Lease.

## Article 35 - Environmental Matters

### Section 35.1 Definitions.

For the purposes of this Lease, the following terms shall have the following definitions:

(a) **"Hazardous Materials"** shall mean (i) petroleum and its constituents; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of **"hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes"** or words of similar import under any Requirement including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (iv) any other chemical, material, gas or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Premises or the operations thereon;

(b) **"Environmental Laws"** shall mean all Requirements relating to the protection of human health or the Environment, including:

(i) all Requirements relating to reporting, licensing, permitting, investigation and remediation of Releases or Threat of Release into the Environment, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials; and

(ii) all Requirements pertaining to the protection of the health and safety of employees or the public;

(c) **“Environment”** shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air;

(d) **“Environmental Condition”** shall mean any condition with respect to the Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of Tenant’s business or the operation of the business of any subtenant or occupant of the Premises or that of any other property owner or operator in the vicinity of the Premises or any activity or operation formerly conducted by any Person on or off the Premises;

(e) **“Environmental Damages”** shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the assessment, monitoring, remediation or mitigation of an Environmental Condition (and shall include any damages for the failure to do so), including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work;

(f) **“Environmental Permit”** shall mean any environmental permit, license, approval, consent or authorization issued by a federal, state or local governmental or quasi-governmental entity;

(g) **“Release”** shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of a Hazardous Material into the Environment;

(h) **“Threat of Release”** shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

### **Section 35.2 Representations and Warranties of Tenant.**

During the Due Diligence Period pursuant to and in accordance with the Development Agreement, Tenant shall make such physical inspection of the Land and inspect such records of the City, Miami-Dade County, Florida, the State of Florida, and the United States of America, as Tenant deems necessary to make an informed business decision that it would enter into this Lease with the knowledge that Tenant shall be solely responsible for the remediation and abatement of any Environmental Condition existing as of the Effective Date, including any Environmental

Condition caused by Owner or any prior owner of the Land, that must be remediated and/or abated pursuant to any Environmental Laws. Tenant agrees to expeditiously undertake such assessment, remediation, and monitoring of the soil and ground water as required under applicable Environmental Laws and to obtain and comply with any applicable Environmental Permit; and to take such action as necessary to obtain a No Further Action determination from DERM or DEP, if required under Environmental Laws as soon as may be practical after the Possession Date, and, in any event, prior to Commencement of Construction of the Project. Tenant agrees that in connection with any remediation or abatement pursuant to this **Section 35.2** it will provide to Owner all correspondence, reports, studies and other documents exchanged between Owner, its consultants, and DERM or DEP promptly after those documents are provided to or received from DERM or DEP.

### **Section 35.3 Use of Hazardous Materials.**

Tenant shall not cause or permit any Hazardous Material to be brought on, kept or used in or about the Premises except as necessary or useful to Tenant's business and in compliance with all Environmental Laws.

### **Section 35.4 Tenant Indemnification of Owner.**

Tenant hereby indemnifies and holds harmless the Owner Indemnified Parties from and against any and all Environmental Damages to the Premises during the term of this Lease except for Environmental Damages to the Premises caused by any of the Owner Indemnified Parties during the Term. Such obligation of Tenant shall include the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably satisfactory to Owner), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the Owner Indemnified Parties. Without limiting the foregoing, if the presence or Release on or from the Premises caused or permitted by Tenant results in contamination of the Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to remediate the Premises in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities and to obtain and comply with any applicable Environmental Permit; provided that Owner's approval of such actions shall first be obtained.

### **Section 35.5 Compliance.**

Tenant, at its sole cost and expense (except as otherwise provided in this Lease), shall comply and cause the Acceptable Operator, all Master Subtenants and all subtenants to comply with all Environmental Laws with respect to the use and operation of the Premises.

### **Section 35.6 Notices.**

If Tenant or Owner receives any notice of a Release, Threat of Release or Environmental Condition or a notice with regard to air emissions, water discharges, noise emissions, recycling,

violation of any Environmental Law or any other environmental, health or safety matter affecting Tenant or the Premises (an “**Environmental Complaint**”) independently or by notice from any Governmental Authority having jurisdiction over the Premises, including the EPA, or with respect to any litigation regarding Environmental Conditions at or about the Premises, then such Party shall give prompt oral and written notice of same to the other Party detailing all relevant facts and circumstances.

### **Section 35.7 Owner’s Remedies.**

Provided Tenant does not diligently commence to remediate the applicable Environmental Conditions promptly after becoming aware of the same and thereafter diligently pursue the completion thereof in a reasonable time (and in any event in accordance with Requirements), Owner shall have the right, but not the obligation, to enter onto the Premises and remediate the Premises in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities, at Tenant’s sole cost and expense, upon its obtaining knowledge of such matters independently or by receipt of any notice from any Person, including the EPA.

### **Section 35.8 Defaults.**

From and after the Possession Date or, if earlier, the date on which Tenant commences any Early Work or other Work on the Premises pursuant to the Development Agreement, the occurrence of any of the following events shall constitute an Event of Default under this Lease:

(a) if the EPA or any other federal, state or local body or agency creates a lien upon the Premises which is not discharged by payment or bonding within ninety (90) days except in the event said lien is the result of Environmental Damages caused by any of the Owner Indemnified Parties during the Term; or

(b) if the EPA or any other federal, state or local body or agency makes a claim (which shall mean, for the purposes of this **Section 35.8**, issuance of a warning notice, citation, notice of violation or administrative complaint) against Tenant (or any subtenant, licensee or other occupant of the Premises), the Premises or Owner, for damages or cleanup costs related to a Release or an Environmental Complaint on or pertaining to the Premises; provided however, such claim shall not constitute an Event of Default if, within thirty (30) days of the lien or claim:

(i) Tenant has commenced and is diligently pursuing either: (x) cure or correction of the event which constitutes the basis for the lien or claim and continues diligently to pursue the cure or correction to the satisfaction of the Governmental Authority that asserted the lien or claim and obtains the discharge of any lien, or (y) proceedings for an injunction, restraining order, administrative or other appropriate emergency relief contesting the validity of the claim and, if such relief is granted, the emergency relief is not thereafter dissolved or reversed on appeal; and

(ii) Tenant has posted a bond, letter of credit or other security satisfactory in form and substance to Owner to secure the proper and complete cure or correction

of the event which constitutes the basis of the claim. The amount of the bond, letter of credit or other security shall be determined in the following manner: (A) Owner, Tenant and their respective consultants shall use their best efforts to agree upon the most probable cost to cure or correct the event which constitutes the basis of the claim; (B) in the event Owner and Tenant are unable to agree despite their best efforts, Owner's consultant and Tenant's consultant shall select a third consultant who shall provide an estimate of the most probable cost of curing or correcting the event which constitutes the basis of the claim. Owner and Tenant shall each pay the cost of their own consultant under this **35.8(b)(ii)** and shall share evenly the cost of the third consultant should use of a third consultant become necessary.

### **Section 35.9 Owner Responsibility.**

Owner (in its proprietary capacity) is responsible for all Environmental Damages resulting from an Environmental Condition caused by any of the Owner Indemnified Parties during the Term.

### **Section 35.10 Survival.**

The provisions of this **Article 35** shall survive the Expiration of the Term.

## **Article 36 - Miscellaneous**

### **Section 36.1 Governing Law.**

This Lease shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Lease shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court.

### **Section 36.2 References and Interpretation of Lease.**

(a) **Captions.** The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease. All captions, when referring to Articles or Sections, refer to Articles or Sections in this Lease, unless specified otherwise.

(b) **Table of Contents.** The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

(c) **Reference to Owner and Tenant.** The use herein of the neuter pronoun in any reference to Owner or Tenant shall be deemed to include any individual Owner or Tenant, and the use herein of the words "**successors and assigns**" or "**successors or assigns**" of Owner or Tenant shall be deemed to include the heirs, legal representatives and permitted assigns of any individual Owner or Tenant.

(d) **City's Governmental Capacity.** Nothing in this Lease or in the Parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police, regulatory or governmental power.

(e) **Reference to "herein," "hereunder," etc.** All references in this Lease to the terms "herein," "hereunder" and words of similar import shall refer to this Lease, as distinguished from the paragraph, Section or Article within which such term is located.

(f) **Reference to "Approval" or "Consent," etc.** All references in this Lease to the terms "approval," "consent" and words of similar import shall mean reasonable written approval or reasonable written consent except where specifically provided otherwise.

(g) **Pronouns and Drafting.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as appropriate. This Lease will be interpreted without interpreting any provision in favor of or against either Party by reason of the drafting of such provision by such Party or such Party's counsel.

(h) **Reference to "include", "including", etc.** The terms "include" and "including" and words of similar import shall each be construed as if followed by the phrase "without limitation".

### **Section 36.3 Entire Agreement.**

This Lease, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between Owner and Tenant concerning the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments hereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the Parties hereto. Notwithstanding anything to the contrary set forth in this Lease, the terms of this Lease shall supersede the terms of the RFP and Tenant's response thereto.

### **Section 36.4 Counterparts.**

This Lease may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

### **Section 36.5 Waiver, Modification, Etc.**

No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Owner and Tenant. No waiver of any Default or default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease



shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

**Section 36.6 Effect of Other Transactions.**

No Master Sublease, Mortgage, loan document or other agreement of any kind, whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Owner, shall be deemed to modify this Lease in any respect, and in the event of an inconsistency or conflict between this Lease and any such instrument, this Lease shall control, except where specifically stated otherwise herein.

**Section 36.7 Severability.**

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

**Section 36.8 Merger.**

Unless Owner, Tenant and all Mortgagees execute and record an agreement to the contrary, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

**Section 36.9 Remedies Cumulative.**

Each right and remedy of either Party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Lease), and the exercise or beginning of the exercise by a Party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Lease, shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Lease.

**Section 36.10 Performance at Each Party's Sole Cost and Expense.**

Unless otherwise expressly provided in this Lease and/or the Reimbursement Agreement, when either Party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

### **Section 36.11 Recognized Mortgagee Charges and Fees.**

Tenant shall pay any and all fees, charges and expenses owing to the Recognized Mortgagee in connection with any services rendered by it as a depositary pursuant to the provisions of this Lease.

### **Section 36.12 Successors and Assigns.**

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Owner and Tenant and, except as otherwise provided herein, their respective permitted successors and permitted assigns and shall be construed as covenants running with the Land.

### **Section 36.13 Recording of Lease.**

Tenant shall cause this Lease and any amendments hereto to be recorded in the Public Records of Miami-Dade County, Florida promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

### **Section 36.14 Notice of Defaults.**

Notwithstanding anything to the contrary set forth in this Lease, under no circumstances shall any Party to this Lease lose any right or benefit granted under this Lease or suffer any harm as a result of the occurrence of any Default or default of such Party as to which Default or default such Party has not received notice thereof from the other Party.

### **Section 36.15 No Liability of Officials and Employees of Owner or Tenant.**

It is expressly understood that this Lease and obligations issued hereunder are solely corporate obligations, and, except as otherwise provided in **Article 19**, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, members, partners, holders of other ownership interests, directors, elected or appointed officials (including, without limitation, the Mayor and Commissioners of the City and the members of any other governing body of Owner) or employees, as such, of Owner or Tenant, or of any successor corporation or other successor entity, or any of them, under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom; and, except as otherwise provided in **Article 19**, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, member, partner, holder of other ownership interest, director, elected or appointed official (including, without limitation, the Mayor and Commissioners of the City and the members of any other governing body of Owner) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

### **Section 36.16 Conflict of Interest.**

Tenant represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Lease, nor has participated in any decision relating to this Lease that is prohibited by law. Tenant represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Lease, directly or indirectly, from Tenant. Tenant represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Tenant acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Lease and would not enter into this Lease absent the same.

### **Section 36.17 No Partnership or Joint Venture.**

The Parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease or the other documents executed by the Parties with respect to the Project, whether based on the calculation of Rent or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the Parties hereto. The provisions of this **Section 36.17** shall survive Expiration of the Term.

### **Section 36.18 Time Periods.**

Except where “calendar days” is expressly stated, any time periods in this Lease of less than thirty (30) days shall be deemed to be computed based on business days (regardless of whether any such time period is already designated as being computed based on business days). In addition, any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

### **Section 36.19 Time is of the Essence.**

Time is of the essence with respect to all matters in, and requirements of, this Lease as to both Owner and Tenant, including, but not limited to, the times within which Tenant must commence and complete construction of the Project.

### **Section 36.20 Radon Notice.**

Chapter 88-285, Laws of Florida, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a rental agreement for any building:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**Section 36.21 City Manager's Delegated Authority.**

Notwithstanding any provision to the contrary in this Agreement, nothing herein shall preclude the City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Agreement, including, without limitation, any Approval contemplated under this Agreement (within the timeframe specified therefor as if the Approval was being determined by the City Manager), any proposed amendment or modification to this Agreement or any separate agreement relating to the Project or otherwise referenced in this Agreement.

**Section 36.22 No Third Party Beneficiaries.**

Nothing in this Lease shall confer upon any Person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Lease; provided, however, that the Recognized Mortgagee or its Designee shall be an intended third party beneficiary hereunder to the extent the Recognized Mortgagee or such Designee is granted rights hereunder.

**Section 36.23 Waiver of Trial by Jury.**

EACH PARTY HEREBY IRREVOCABLY, UNCONDITIONALLY, KNOWINGLY, AND VOLUNTARILY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY A PARTY AGAINST ANOTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE.

[EXECUTION ON FOLLOWING PAGE]

**EXECUTION**

IN WITNESS WHEREOF, Owner and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

WITNESSES:

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation of the State of Florida

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Dan Gelber, Mayor

ATTEST:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Rafael E. Granado, City Clerk

[SEAL]

STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as Mayor, and \_\_\_\_\_, as City Clerk, of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_

**WITNESSES:**

**LINCOLN ROAD PROPERTY OWNER II,  
L.P.**

By: Lincoln Road Property Owner II GP, L.L.C.,  
a Delaware limited liability company, its  
general partner

\_\_\_\_\_  
Print Name \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

[SEAL]

STATE OF FLORIDA                    )  
  )ss:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Lincoln Road Property Owner II GP, L.L.C., a Delaware limited liability company, as general partner of Lincoln Road Property Owner II, L.P., a Delaware limited partnership on behalf of such limited liability company and limited partnership. He/she  is personally known to me or  produced \_\_\_\_\_ as identification.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_

## **List of Exhibits**

Exhibit A	Legal Description of the Land
Exhibit B	Acceptable Owner Criteria
Exhibit C	Construction Rent
Exhibit D	Mandatory Project Elements
Exhibit E	Articles 2, 4 and 6 of the Development Agreement
Exhibit F	Appraisal Process
Exhibit G	Ownership Interest in Tenant
Exhibit H	Form of Assignment of Construction Agreements and Consent
Exhibit I	Minimum Maintenance and Operating Standards
Exhibit J	Certificate of Completion of Possession Conditions

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lots 7, 8, 9, 18, 19, and 20, Block 38, Palm View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 29 of the Public Records of Miami-Dade County, Florida, together with the portion of a 20-foot alley, bounded on the East by the West right-of-way line of Michigan Avenue, and bounded on the West by the East right-of-way line of Lenox Avenue, as shown in Palm View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 29 of the Public Records of Miami-Dade County, Florida.

Folio Numbers:

02-3234-004-0710

02-3234-004-0720

02-3234-004-0730

02-3234-004-0820

02-3234-004-0830

02-3234-004-0840



## EXHIBIT B

### ACCEPTABLE OWNER CRITERIA

A. “Acceptable Owner” means any individual, corporation or other entity which has, at a minimum, the following qualifications:

1. The proposed transferee is not a Foreign Instrumentality (except with respect to indirect Equity Interests as expressly permitted by **Section 10.3(b)**).

2. The proposed transferee must not be owned or Controlled by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction; provided, however, the foregoing shall not apply to any individuals or entities owning less than twenty percent (20%) equity interest in the proposed transferee, other than officers, directors, managers or others who have the power to direct and Control the business and affairs of such proposed transferee.

3. The proposed transferee must not in its official website or official social media platforms or in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the partnership agreement and partnership certificate for any partnership, the articles of organization and limited liability company operating agreement for any limited liability company, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents unless contained in such website or social media platforms) expressly advocate or have as its stated purpose: (a) the violent overthrow of or armed resistance against, the U.S. Government; or (b) genocide or violence against any persons; or (c) discrimination, hatred or animosity toward persons based solely on their race, gender, color, national origin, religion, age, disability, marital status, familial status, or sexual orientation.

4. Neither the proposed transferee nor any other Person that directly or indirectly Controls the proposed transferee (or that will, following the proposed transfer, directly or indirectly Control the proposed transferee) will have violated any laws resulting in a forfeiture of such proposed transferee’s or other Person’s entire interest in real property owned or managed by such transferee or other Person.

5. The proposed transferee must not (nor any of the individuals or entities who own at least a twenty percent (20%) equity interest in such proposed transferee or are officers, directors, managers or otherwise have the power to direct and Control the business and affairs of such proposed transferee) have voluntarily filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings (which was not dismissed within 90 days after the filing thereof) within the past five (5) years (bankruptcy filings by Affiliates shall not disqualify a proposed transferee, unless such Affiliates are any of the individuals or entities described in the parenthetical immediately above).

For purposes of this **Exhibit B**, references to “transfer” shall include any Sale of the Project and/or any Transfer, each as defined in this Lease, and references “transferee” shall include any Assignee and/or any Transferee, each as defined in this Lease.

B. “Acceptable Owner Criteria”: The foregoing categories of requirements set forth in Paragraph A above are collectively defined as the “Acceptable Owner Criteria.”

C. Evaluation of the Acceptable Owner Criteria:

Solely for the purpose of evaluating whether the proposed transferee has met the Acceptable Owner Criteria, the proposed transferee shall provide the following information to the Tenant and certify that the information provided by the proposed transferee is true and correct and that the proposed transferee meets or exceeds the Acceptable Owner Criteria:

1. information sufficient for Owner or any outside vendor engaged by Owner to perform a due diligence investigation pursuant to Paragraph D below, including copies of any applicable operating licenses;
2. identification and summary description of its principals and its major real estate or other investments;
3. a list of all bankruptcies filed by such proposed transferee or to which such proposed transferee was a party-bankrupt, if any; and
4. such other evidence as is commercially reasonably necessary, as determined by Tenant, to establish that the new entity proposed to be the Acceptable Owner meets the Acceptable Owner Criteria.

D. With respect to any proposed transfer to a proposed transferee, Owner may, at its sole discretion, engage an outside vendor to perform a due diligence investigation at the Tenant’s or such proposed transferee’s sole expense, which may include a search of civil, criminal, or bankruptcy proceedings in federal and state jurisdictions; regulatory filings; tax filings; lien, judgment and Uniform Commercial Code searches; business registrations, and the like; provided, however, that Owner’s right to conduct its own due diligence shall not expand or deemed to expand the Acceptable Owner Criteria or impose additional criteria with respect to whether a proposed transferee constitutes an Acceptable Owner. Owner shall be entitled to engage an independent accounting firm, the reasonable costs of which shall be borne by Tenant or such proposed transferee, to review the information upon which the proposed transferee’s certifications were based, for the purpose of determining whether the certifications and/or information provided to Owner is accurate and complete. Tenant shall, or shall cause such proposed transferee to, reimburse Owner, upon demand, for any reasonable out-of-pocket costs incurred by Owner in connection with such transfer or proposed transfer to a proposed transferee, including the reasonable out-of-pocket costs of making inquiries and investigations into the conformance with the Acceptable Owner Criteria of such proposed transferee and the reasonable legal costs incurred, if any, in connection therewith.

E. Confirmation/Approval Process for proposed transferees:

Regarding the City's confirmation that a proposed transferee is an Acceptable Owner, or Owner's approval of a transfer that is not a Permitted Transfer or a Permitted Sale, the Parties hereby agree that:

1. When reviewing a potential transfer for compliance with the Acceptable Owner criteria, the City Manager shall make a recommendation to the City Commission in reliance on the proposed transferee's certification that the proposed transferee meets the Acceptable Owner Criteria (if a Permitted Transfer or a Permitted Sale), along with the information provided by the proposed transferee and the results of any due diligence investigation performed by Owner. If the City Manager does not recommend that the proposed transferee meets the Acceptable Owner Criteria, the City Manager shall provide to Tenant, upon Tenant's written request, specific written, commercially reasonable reasons for such action.

2. The City Commission shall not unreasonably withhold the City's confirmation of a Permitted Transfer or a Permitted Sale if the proposed transferee complies with the Acceptable Owner Criteria.

3. The City Manager may, but shall not be obligated to, make any recommendation for the City's approval of a transfer that is not a Permitted Transfer or a proposed Sale of the Project that is not a Permitted Sale, and provided that any such transfer shall be subject to the prior written approval of the City Commission, which may be granted, conditioned, or withheld by the City Commission in its sole discretion; and

4. If a proposed transfer requires Owner's confirmation or approval, Tenant shall deliver written notice to Owner, which shall include (i) the name and address of the proposed transferee; (ii) the name and address of the proposed transferor; (iii) information describing the nature of the transaction; (iv) the percentage interest being conveyed; and (v) the materials described in Paragraph C above.

5. Owner shall have up to sixty (60) days after the delivery of such written notice and the information required under Paragraph C above, to determine whether, on a commercially reasonable basis, the proposed transferee meets the Acceptable Owner Criteria, and is a Permitted Transfer or a Permitted Sale. Owner shall have up to ninety (90) days after the delivery of such written notice and the information required under Paragraph C above whether to Approve in accordance herewith a transfer that is not a Permitted Transfer or a Permitted Sale.

6. Provided that no Event of Default is then continuing, Tenant's request for confirmation that the proposed transferee meets the Acceptable Owner Criteria shall be deemed confirmed if the first correspondence from Tenant to Owner requesting such confirmation is in an envelope marked "**PRIORITY**" and, to the extent permitted by the carrier, bears the following legend: "**FAILURE TO RESPOND TO THIS REQUEST WITHIN 60 DAYS FROM THE DATE OF THIS NOTICE WILL REQUEST IN THE REQUEST BEING DEEMED CONFIRMED**" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "**THIS IS A REQUEST FOR**

**CONFIRMATION OF A PERMITTED [TRANSFER] [SALE] UNDER SECTION [ ] OF THE AGREEMENT OF GROUND LEASE, DATED AS OF [ ], 2022, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN SIXTY (60) DAYS WILL RESULT IN THE REQUEST BEING DEEMED CONFIRMED**” and is accompanied by the information and documents required above and Owner fails to respond or to deny such request for confirmation in writing within such sixty (60) day period. Provided that no Event of Default is then continuing, Tenant’s request for approval of a transfer that is not a Permitted Transfer or a Permitted Sale shall be deemed approved (except if the request includes a Foreign Instrumentality as a transferee in violation of **Section 10.3(b)**) if the first correspondence from Tenant to the City requesting such approval is in an envelope marked “**PRIORITY**” and, to the extent permitted by the carrier, bears the following legend: “**FAILURE TO RESPOND TO THIS REQUEST WITHIN 90 DAYS FROM THE DATE OF THIS NOTICE WILL RESULT IN THE REQUEST BEING DEEMED CONFIRMED**” and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that “**THIS IS A REQUEST FOR APPROVAL OF A TRANSFER UNDER SECTION [ ] OF THE AGREEMENT OF GROUND LEASE, DATED AS OF [ ], 2022, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN NINETY (90) DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED, PROVIDED IF THE REQUEST INCLUDES A FOREIGN INSTRUMENTALITY AS A TRANSFEREE IN VIOLATION OF SECTION 10.3(b), THE CITY’S FAILURE TO RESPOND IN THE AFFIRMATIVE WITHIN NINETY (90) DAYS SHALL BE DEEMED A REJECTION OF THE REQUEST**” and is accompanied by the information and documents required above and Owner fails to respond or to deny such request for approval in writing within such ninety (90) day period. For the avoidance of doubt, if Owner has not notified Tenant, in writing, of the City Commission’s approval of a transfer that includes a Foreign Instrumentality as a transferee in violation of **Section 10.3(b)** within the ninety (90) day period specified above, then such request shall be deemed rejected.

7. If Owner notifies Tenant, in writing, within the first thirty (30) days of such sixty (60) or ninety (90) day period, as applicable, that the information submitted is, on a commercially reasonable basis, incomplete, or insufficient (and specifies in what ways it is incomplete or insufficient), then Tenant shall supplement such information, on a commercially reasonable basis, and Owner shall then have thirty (30) days or sixty (60) days, respectively, after such supplemental information is provided to make its determination whether the proposed transferee meets the Acceptable Owner Criteria or to approve a transfer that is not a Permitted Transfer or a Permitted Sale.

8. No confirmation by Owner of a proposed transferee as an Acceptable Owner or its meeting of the Acceptable Owner Criteria shall have the effect of waiving or estopping Owner from later claiming that said Acceptable Owner is no longer developing, operating or maintaining the Project according to the terms of this Lease.

F. Interpretation:

1. All acts and omissions as well as rights and duties shall be done in a commercially reasonable manner, unless the standard of “sole discretion” is used.

2. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

**EXHIBIT C**

**Construction Rent**

Period	Annual Construction Rent	Monthly Construction Rent
Year 2 (Months 13-24)	\$365,105.00	\$30,425.42
Year 3 (Months 25-36)	\$407,232.50	\$33,936.04
Year 4 (Months 37-48)	\$407,232.50	\$33,936.04
Year 5 (Months 49-60)	\$421,275.00	\$35,106.25

**\*Year 2 commences on the first anniversary of the Commencement Date.**

## EXHIBIT D

### MANDATORY PROJECT ELEMENTS

**Unless modified in accordance with the Development Agreement:**

(1) a Class A office component consisting of approximately 91,000 square feet (the “P26 Office Component” or “Office Component”) which shall in any event constitute approximately 65% (and notwithstanding anything to the contrary set forth herein, not less than 50%) of the available floor area ratio (FAR);

(2) a ground floor retail component consisting of approximately 12,000 square feet which shall in any event include a fully activated liner of retail, restaurant, personal service, cultural arts or similar active uses, with a minimum depth of 50 feet along the ground floor portions of the Project facing a street, sidewalk or Lincoln Lane North except for access points for vehicles and pedestrians and required service functions, such as FPL vault, fire or water installations (the “P26 Retail Component” or “Retail Component”);

(3) a public parking component to replace the existing public parking spaces on Lot P26 consisting of at least 106 public parking spaces and ancillary office and storage space reasonably necessary for maintenance and operations purposes consisting of approximately 350 square feet (the “P26 Public Parking Replacement Component” or “Public Parking Replacement Component”), all of which spaces shall be located on the lowest levels of the Project at or above ground level (and shall not be located on any below-grade levels) (for the avoidance of doubt, Owner shall own and shall operate the Public Parking Replacement Component and it shall be excluded from the Ground Lease Component (as defined below) pursuant to the Declaration (as defined in the Development Agreement), provided, Owner shall have the right, in its sole discretion, to cause Tenant to operate the P26 Public Parking Replacement Component by written notice to Tenant by or before the date that is sixty (60) days from the NTP Date). Developer shall provide reasonable access to bathroom facilities to employees of Owner or its agents operating the Public Parking Replacement Component. In the event Owner requires Tenant to operate the Public Parking Replacement Component, Tenant and Owner, each acting reasonably and in good faith, shall enter into a mutually agreed operating agreement with respect thereto;

(4) additional parking component consisting of all required parking in accordance with the City Land Development Regulations for use by the occupants of the P26 Office Component and the P26 Retail Component (the “P26 Additional Parking Component” or “Additional Parking Component”); and

(5) an approximately 0.11-acre pocket park located on the ground floor of the Project (the “Pocket Park” and together with the P26 Office Component, the P26 Retail Component, and the P26 Additional Parking Component, collectively the “P26 Ground Lease Component” or “Ground Lease Component”).

(6) The Project shall have a maximum of 8 stories and a maximum height of up to 100 feet, in accordance with the City Land Development Regulations.

**EXHIBIT E**

**CONSTRUCTION REQUIREMENTS**

*[to be inserted]*<sup>1</sup>

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<sup>1</sup> To be inserted based on the final Articles 2, 4 and 6 of Development Agreement once the Development Agreement is “form approved” by City Attorney



## EXHIBIT F

### APPRAISAL PROCESS

(a) Appraisals shall be made by three (3) real estate appraisers, each of which (i) shall be a member of the American Institute of Real Estate Appraisers, and (ii) shall have not less than ten (10) years' experience in managing and appraising real estate. One appraiser shall be selected and appointed by Owner (the "**Owner's Appraiser**"), and shall be paid by Owner, one shall be selected and appointed by Tenant (the "**Tenant's Appraiser**") and shall be paid by Tenant; and the third shall be selected and appointed by the first two (2) appraisers so appointed (the "**Third Appraiser**"). The cost of the Third Appraiser shall be evenly split between Tenant and Owner. In the event of a failure of Owner's Appraiser and Tenant's Appraiser to agree on the Third Appraiser within fifteen (15) days after their appointment, the Third Appraiser shall be appointed by the President of the American Institute of Real Estate Appraisers (or its successor) on the application of either appraiser appointed by Owner or Tenant on ten (10) days' notice to the other appraiser so appointed.

(b) In the event either Owner or Tenant shall fail to appoint an appraiser within fifteen (15) days after demand from the other to make the appointment, then the appraiser appointed by the Party not in default shall appoint the second appraiser, and the two (2) appraisers so appointed shall appoint the Third Appraiser. If the first two (2) appraisers so appointed shall fail to agree on such Third Appraiser within fifteen (15) days after their appointment, the Third Appraiser shall be appointed in the same manner provided in **Paragraph (a)** above.

(c) After appointment, the three (3) appraisers, after having been duly sworn to perform their duties with impartiality, shall proceed promptly to prepare an appraisal reflecting: (i) the appraised value of the Land immediately prior to the Date of Taking (the "**Appraised Land Value**"); and (ii) the appraised value of the Premises immediately prior to the Date of Taking (the "**Appraised Premises Value**"). The Appraised Land Value and Appraised Premises Value determined by the appraisers shall be binding and conclusive on Owner and Tenant. The appraisers shall have the right, by majority vote among them, to determine the procedure to be adopted in arriving at the Appraised Land Value and Appraised Premises Value, and may, in their discretion, dispense with formal hearings, it being agreed that their task will be solely that of appraisal.

**EXHIBIT G**

**OWNERSHIP INTEREST IN TENANT**

**[on file with the City Attorney's Office]**

## EXHIBIT H

### FORM OF ASSIGNMENT OF CONSTRUCTION AGREEMENTS AND CONSENT

#### ASSIGNMENT OF CONSTRUCTION AGREEMENTS

**FOR VALUE RECEIVED**, the undersigned **LINCOLN ROAD PROPERTY OWNER II, L.P.**, a Delaware limited partnership (“Developer”), as of this \_\_\_ day of \_\_\_\_\_, 202\_\_ (the “Effective Date”) assigns to **THE CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation duly organized and existing under the laws of the State of Florida (the “City”), pursuant to that certain Development Agreement by and between the City and Developer dated as of \_\_\_\_\_, 2022, which Development Agreement is recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ in and of the Public Records of Miami-Dade County, Florida (the “Development Agreement”) and that certain Agreement of Ground Lease by and between the City, as owner, and Developer, as tenant, dated as of \_\_\_\_\_, 2022, which Agreement of Ground Lease is recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ in and of the Public Records of Miami-Dade County, Florida (the “Ground Lease”), all of Developer’s right, title and interest under all existing and future general contractor’s agreements, architect’s agreements, plans and specifications, engineers’ agreements, and any other agreements for the provision of labor, materials, services or supplies, as amended, between Developer and any other person or entity (collectively, the “Construction Agreements”) relating to the construction of the Project, as defined and described in the Development Agreement and Ground Lease. The Construction Agreements include, but are not limited to, that certain [Construction Contract] between Developer and \_\_\_\_\_, a \_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 202\_\_, that certain [Architect Agreement] between Developer and \_\_\_\_\_, a \_\_\_\_\_ (“Architect”), dated \_\_\_\_\_, 202\_\_ and that certain [Engineering Agreement] between Developer and \_\_\_\_\_, a \_\_\_\_\_ (“Engineer”) dated \_\_\_\_\_, 202\_\_.

**THIS ASSIGNMENT OF CONSTRUCTION AGREEMENTS** (“Assignment”) constitutes a present and absolute assignment to the City as of the Effective Date; provided, however, that for so long as no Event of Default (as defined in the Development Agreement and/or the Ground Lease) has occurred or is continuing under the Development Agreement or the Ground Lease, as applicable, and until the earlier of (i) termination of the Development Agreement and the Ground Lease, (ii) City’s exercise of its remedy for an Event of Default as provided in the Development Agreement and the Ground Lease, as applicable, or (iii) completion of the Project in accordance with the Development Agreement (“Final Completion”), the City grants Developer a license to use all Construction Agreements for completion of the Project in accordance with the Development Agreement. Upon the occurrence of (a) an Event of Default under the Development Agreement or the Ground Lease, which continues beyond any applicable notice and cure period or (b) the termination of the Development Agreement and the Ground Lease, or (c) Final Completion, the City may, in the City’s sole discretion, give notice to any of Contractor, Architect, Engineer and/or any other party to a Construction Agreement of the City’s intent to enforce the rights of Developer under the applicable Construction Agreement and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Developer acknowledges that solely by accepting this Assignment, the City does not assume any of Developer’s obligations under the Construction Agreements.

Developer represents and warrants to the City, as of the Effective Date, that (a) all Construction Agreements entered into by Developer are in full force and effect and are enforceable in all material respects in accordance with their terms and to Developer's knowledge, no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to any of the Construction Agreements, (b) Developer has delivered copies of all Construction Agreements to the City and such copies are true, complete and correct in all material respects as of the date of this Assignment, and (c) Developer has not assigned any of Developer's rights under the Construction Agreements to any person or entity other than to \_\_\_\_\_, as Recognized Mortgagee (as defined in the Development Agreement and the Ground Lease). Developer shall deliver to the City true, complete and correct copies of all Construction Agreements entered into after the date hereof, promptly upon execution thereof.

Developer agrees (a) to pay and perform all obligations of Developer under the Construction Agreements, (b) to enforce in Developer's reasonable business judgement the full and prompt performance of all obligations of any other person or entity under the Construction Agreements, (c) [intentionally omitted], and (d) not to further assign, for security or any other purposes, Developer's rights under the Construction Agreements without the City's prior written consent other than to \_\_\_\_\_, as Recognized Mortgagee.

Unless otherwise defined herein, capitalized terms used in this Assignment shall have the meanings attributed to such terms in the Development Agreement. This Assignment shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, without regard to conflicts of laws. Except as otherwise expressly provided under the terms and conditions herein, the terms of this Assignment shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto. All exhibits, schedules, riders and other items attached hereto are incorporated into this Assignment by such attachment for all purposes.

To facilitate execution, this Assignment may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all parties required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. This Assignment may be transmitted and/or signed by facsimile or e-mail transmission (e.g., "pdf" or "tif"). The effectiveness of any such documents and signatures shall have the same force and effect as manually-signed originals and shall be binding on all parties to this Assignment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Developer intending to be legally bound has executed this Assignment as of the date first written above.

DEVELOPER:

**LINCOLN ROAD PROPERTY OWNER II, L.P.**,  
a Delaware limited partnership

By: Lincoln Road Property Owner II GP, L.L.C.,  
a Delaware limited liability company,  
its general partner

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

Name:

Title:

## CONSENT

**THIS CONSENT** (“Consent”) is made by \_\_\_\_\_, a \_\_\_\_\_ (“Contractor”), this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, to and for the benefit of THE CITY OF MIAMI BEACH, FLORIDA, a municipal corporation duly organized and existing under the laws of the State of Florida (the “City”), with agreement by **LINCOLN ROAD PROPERTY OWNER II, L.P.**, a Delaware limited partnership (“Developer”).

Contractor and Developer have entered into that certain \_\_\_\_\_ dated \_\_\_\_\_, 202\_\_ (the “Construction Agreement”), providing for [construction] [design] [engineering] of the Project, as defined in that certain to Development Agreement by and between the City and Developer dated as of \_\_\_\_\_, 202\_\_, which Development Agreement is recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ in and of the Public Records of Miami-Dade County, Florida (the “Development Agreement”).

Developer has assigned the Construction Agreement to the City pursuant to the Assignment of Construction Agreements (the “Assignment”) to which this Consent is attached.

The City has required, as a condition of the Development Agreement and the Ground Lease, that Contractor execute this Consent.

NOW THEREFORE, Contractor agrees as follows:

1. Contractor represents and warrants to the City, that the Construction Agreement is in full force and effect and is enforceable in all material respects in accordance with its terms and to Contractor’s knowledge, no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to the Construction Agreement.

2. Contractor agrees that if, at any time, the City elects to undertake or cause the completion of construction of the Project in accordance with the Construction Agreement and gives Contractor written notice of such election (an “Election Notice”), then, so long as the City assumes and performs the payment obligations of Developer under the Construction Agreement accruing from and after the date of the Election Notice, then Contractor shall continue to perform its obligations under the Construction Agreement in accordance with the terms thereof for the benefit and account of the City in the same manner as if performed for the benefit of account of Developer in the absence of the Assignment. Unless and until the City expressly assumes the obligations of Developer under the Construction Agreement (and then only to the extent the same arise from and after such assumption), the City shall not be a party to the Construction Agreement and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with the Construction Agreement.

3. Contractor further agrees that, in the event of a breach by Developer of the Construction Agreement, Contractor will give written notice to the City at the address shown below its signature of such breach. Unless and until the City expressly assumes the obligations of Developer under the Construction Agreement (and then only to the extent the same arise from and after such assumption), the City shall not be a party to the Construction Agreement and will in no

way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with the Construction Agreement.

4. Intentionally Omitted.

5.

a. Contractor agrees, notwithstanding anything to the contrary contained herein, that upon an event of default by Developer resulting in a termination of the Development Agreement, or City's exercise of its remedy for an Event of Default as provided in the Development Agreement, until and unless the City gives Contractor an Election Notice, the City, at its election, may terminate the Construction Agreement for any or no reason and the City shall not be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with the Construction Agreement.

b. [Additionally, if requested by the City in writing, Contractor will continue as the general contractor for construction of the Project for up to thirty (30) days after such termination or City's exercise of its remedy for an Event of Default under the Development Agreement (the "Transition Period") on the same terms and conditions as set forth in the Construction Agreement, provided that Contractor is paid by the City in accordance the Construction Agreement for all work, labor and materials rendered pursuant to the Construction Agreement performed during the Transition Period.] ***[APPLICABLE TO CONSTRUCTION CONTRACT]***

c. [Subject to Contractor's receipt of the payments prescribed by Section 5.b. above, Contractor will engage in reasonable, good faith efforts to cooperate with any other general contractor selected by the City in order to assure a smooth transition, including, without limitation, delivering to the City or its designee copies of all project records in Contractor's possession or control that Developer is entitled to obtain under the terms of the Construction Agreement.] ***[APPLICABLE TO CONSTRUCTION CONTRACT]***

6. Nothing in this Consent shall supersede or modify any provisions of the Construction Agreement as between Developer and Contractor. By its joinder in the execution of this Consent, Developer agrees that any action by Contractor in accordance with the terms hereof shall not constitute a violation by Contractor of any term of the Construction Agreement or of any obligation Contractor has or may have to Developer. For instance, in the event the City terminates the Construction Agreement as provided in Section 5 hereof, Developer shall remain liable for all amounts due Contractor in accordance with the applicable termination provisions of the Construction Agreement.

7. This Consent shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida.

**8. EACH OF THE UNDERSIGNED PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER OPPORTUNITY FOR CONSULTATION WITH INDEPENDENT COUNSEL, WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OR OBLIGATIONS UNDER OR ARISING IN CONNECTION WITH THIS**

## **CONSENT.**

9. Contractor warrants and represents that it has no knowledge of any prior assignment(s) of any interest in the Construction Agreement that remains in effect.

10. To facilitate execution, this Consent may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all parties required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. This Consent may be transmitted and/or signed by facsimile or e-mail transmission (e.g., "pdf" or "tif"). The effectiveness of any such documents and signatures shall have the same force and effect as manually-signed originals and shall be binding on all parties to this Consent.

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, Contractor intending to be legally bound has executed this Consent as of the date first written above.

CONTRACTOR:

\_\_\_\_\_,  
a \_\_\_\_\_

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

Name:

Title:

Contractor's Address:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

DEVELOPER:

**LINCOLN ROAD PROPERTY OWNER II, L.P.,**

a Delaware limited partnership

By: Lincoln Road Property Owner II GP, L.L.C.,  
a Delaware limited liability company,  
its general partner

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

Name:

Title:

Developer's Address:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

CITY:

CITY OF MIAMI BEACH  
a Florida municipal corporation

By: \_\_\_\_\_  
Dan Gelber, Mayor

ATTEST:

By: \_\_\_\_\_ [SEAL]  
City Clerk

APPROVED AS TO  
FORM & LANGUAGE

\_\_\_\_\_  
City Attorney                      Date

City's Address:  
City of Miami Beach, City Hall  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: City Manager

With a copy to:  
City of Miami Beach, City Hall  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: City Attorney

## EXHIBIT I

### MINIMUM OPERATING AND MAINTENANCE STANDARDS

The minimum operating and maintenance standards set forth below (“Minimum Standards”) are intended to be considered as a whole and to provide a minimum benchmark for the upkeep of the Premises. For the avoidance of doubt, Tenant shall be responsible for developing its own comprehensive maintenance standards and procedures to ensure the Premises are maintained in first class condition throughout the Term, and the requirement that Tenant comply with these Minimum Standards shall not be deemed to impose upon Owner any responsibility for advising Tenant as to necessary and appropriate maintenance for the Premises. In the event of a conflict between the terms or conditions of the Lease and the terms or conditions of this Exhibit, the terms and conditions of the Lease shall control.

#### PERSONNEL

1. Tenant shall have the sole responsibility to recruit and employ a full-time general manager and any necessary administrative and accounting personnel that are responsible for the overall management and operation of the Premises.
2. Tenant shall have the sole responsibility to recruit and employ sufficient personnel to maintain the following functions: general security; janitorial, housekeeping and cleaning; maintenance of electrical systems, plumbing; and air conditioner operation; painting and general overall maintenance of the Facility to ensure that the Facility is being maintained consistent with other similar first-class facilities.
3. Tenant shall have the sole responsibility to remit and employ personnel as it deems necessary.
4. Tenant shall maintain personnel policies that assure employment practices do not discriminate on the basis of race, color, religion, military status, marital status, physical or mental disability, national origin, age, gender, or sexual preference.

#### GENERAL SECURITY

1. Tenant shall provide for the overall security for the Premises.

#### EMERGENCY PROCEDURES

1. Tenant shall assign an employee and a backup employee to act as an emergency liaison (each, a “Liaison”) with the City. Upon City’s request, a Liaison will attend meetings held by the City in connection with emergency situations, such as extreme weather events, terrorist acts, etc. The Liaison will serve as the point of contact during any emergency crisis.

2. Tenant shall develop and implement a Hurricane Preparedness Procedure, a copy of which shall be provided to the City.

#### GENERAL MAINTENANCE

1. Tenant shall develop a preventive maintenance plan for the Premises and its major building systems and major equipment. This plan shall be provided to the City Manager annually or, if more frequently, when updated.
2. Tenant shall post and maintain, as required by any applicable Requirements, any and all required professional licenses, certifications, and/or permits.
3. Tenant shall maintain and inspect all building safety systems including but not limited to: smoke, fire, and carbon monoxide detector systems, backup generator operation, emergency battery backup functions, emergency lighting, emergency egress, special needs and blackout preparedness equipment. All building safety systems shall be tested on at least an annual basis or as required by applicable Requirements and maintained in good operating condition at all times.
4. Tenant shall develop and implement a system for regular inspections of elevator and escalator controls, motors, suspension systems, and related equipment, and shall maintain such systems substantially in accordance with manufacturer required standards.
5. Tenant shall develop and implement a plan for inspection and maintenance, including replacement if needed, for all HVAC systems serving the Premises. This shall include inspection of all HVAC controls on a quarterly basis to verify proper setting and operation as well as any adjustments and/or maintenance that may be appropriate, including, but not limited to filter replacement, blower and/or heat exchanger, proper operation of air intakes/vents, fan units, ducts, etc.
6. Tenant shall develop and implement a plan for inspection and maintenance of the building envelope and roof, including the roofing system, joints at roof penetrations, and exterior walls and penetrations.
7. Tenant has the sole responsibility of maintaining the paint on both the interior and exterior of the Premises.

**EXHIBIT J**

**CERTIFICATE OF COMPLETION OF POSSESSION CONDITIONS**

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

RE: Agreement of Ground Lease (the “Lease”) between City of Miami Beach, Florida (“Owner”) and Lincoln Road Property Owner II, L.P. (“Tenant”) dated as of \_\_\_\_\_, 2022 – Lincoln Lane P26 Project

In accordance with Lease:

(1) Tenant hereby certifies to Owner that the Possession Conditions outlined in Section 2.1(d) of the Lease have been satisfied.

(2) Based upon satisfaction of the Possession Conditions, Owner hereby delivers possession of the Premises to Tenant.

(3) The date of execution of this Certificate shall constitute the Possession Date under the Lease.

(4) Any capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Lease.

[EXECUTION ON FOLLOWING PAGE]

**WITNESSES:**

**LINCOLN ROAD PROPERTY OWNER II,  
L.P.**

By: Lincoln Road Property Owner II GP, L.L.C.,  
a Delaware limited liability company, its  
general partner

\_\_\_\_\_  
Print Name \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

[SEAL]

STATE OF FLORIDA                    )  
  )ss:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Lincoln Road Property Owner II GP, L.L.C., a Delaware limited liability company, as general partner of Lincoln Road Property Owner II, L.P., a Delaware limited partnership on behalf of such limited liability company and limited partnership. He/she [ ] is personally known to me or [ ] produced \_\_\_\_\_ as identification.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

Print Name: \_\_\_\_\_

ACKNOWLEDGED AND ACCEPTED BY:

WITNESSES:

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation of the State of Florida

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title: Dan Gelber, Mayor

STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. He or she is personally known to me or produced a valid Florida driver's licenses as identification.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

Print Name: \_\_\_\_\_

## **EXHIBIT L**

### LINCOLN LANE EASEMENT AREA

That portion of a 20-foot alley, bounded on the East by the West right-of-way line of Michigan Avenue, and bounded on the West by the East right-of-way line of Lenox Avenue, as shown in Palm View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 29 of the Public Records of Miami-Dade County, Florida.<sup>2</sup>

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<sup>2</sup> Legal description subject to confirmation by survey