

14010406 B: 11369 P: 7232 Total Pages: 115
09/02/2022 11:49 AM By: ctafoya Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: FIRST AMERICAN TITLE INSURANCE COMPANY - NCS DE
1380 17TH STDENVER, CO 802021508

**THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED, RETURN
TO:**

Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attention: Seth W. Eaton, Esq

GROUND SUBLEASE ESTOPPEL CERTIFICATE

August 30, 2022

ACORE CAPITAL MORTGAGE, LP,
80 E. Sir Francis Drake Blvd., Suite 2A
Larkspur, California 94939
Attention: General Counsel
Email: notices@acorecapital.com

Re: (i) Ground Lease (the "Sublease") more particularly described on Exhibit A-1, currently by and between INDUSTRY GARAGE SLC, LLC, a Delaware limited liability company, as the tenant thereunder ("Sublessee"), and INDUSTRY SLC NEIGHBORHOOD FOUNDERS, LLC a Colorado limited liability company, as landlord thereunder ("Sublessor"), demising certain real property located in Salt Lake County, Utah and more particularly described on Exhibit A-2 (the "Sublease Property")

**First American Title Insurance
National Commercial Services
NCS-1117242-CO**

Ladies and Gentlemen:

You have advised us that ACORE Capital Mortgage LP, a Delaware limited partnership, in its capacity as Administrative Agent to the Lenders from time to time party to the Mortgage Loan Agreement (defined below) (together with its successors and assigns including any subsequent holders of the Mortgage Loan, "Mortgage Loan Administrative Agent") and such Lenders have proposed to make a loan (the "Mortgage Loan") to Sublessee and Industry Office SLC, LLC, a Delaware limited liability company ("Office Parcel Owner" and, together with Sublessee, the "Mortgage Loan Borrower Parties"). Such Mortgage Loan is evidenced by that certain Loan Agreement among Mortgage Loan Administrative Agent, the Lenders from time to time party thereto, and the Mortgage Loan Borrower Parties (the "Mortgage Loan Agreement"). The Mortgage Loan will be secured by, among other things, a certain first priority Fee and Leasehold Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement executed by the Mortgage Loan Borrower Parties, as grantors, for the benefit of Mortgage Loan Administrative Agent (the "Security Instrument"), which Security Instrument will encumber, among other things, the sub-leasehold estate of Sublessee created by the Sublease in the Sublease Property and the improvements now or hereafter located thereon (the "Sub-leasehold Estate").

You have further advised us that ACORE Capital Mortgage LP, a Delaware limited partnership, in its capacity as Administrative Agent to the Lenders from time to time party to the Mezzanine Loan Agreement (defined below) (together with its successors and assigns including any subsequent holders of the Mezzanine Loan, "Mezzanine Loan Administrative Agent" and, collectively with Mortgage Loan Administrative Agent, "Administrative Agent") and such Lenders have proposed to make a loan (the "Mezzanine Loan" and, collectively with the Mortgage Loan, the "Loan") to the sole equity owners of Sublessee and Office Parcel Owner (the "Mezzanine Loan Borrower Parties" and, together with the Mortgage Loan Borrower Parties, the "Borrower Parties"). Such Mezzanine Loan is evidenced by that certain Mezzanine Loan Agreement among Mezzanine Loan Administrative Agent, the Lenders from time to time party thereto, and the Mezzanine Loan Borrower Parties (the "Mezzanine Loan Agreement"). The Mezzanine Loan will be secured by, among other things, a first priority Mezzanine Pledge and Security Agreement executed by the Mezzanine Loan Borrower Parties in favor of Mezzanine Loan Administrative Agent (the "Mezzanine Pledge and Security Agreement"), which Mezzanine Pledge and Security Agreement will create a security interest in and pledge of all direct equity ownership interests in the Mortgage Borrower Parties.

For the purpose of providing information to Administrative Agent and its successors and assigns, with the understanding that they will rely upon the information provided herein, effective as of the date first above written, the undersigned Ground Lessor and Ground Lessee each certifies, covenants, and agrees as follows:

1. Sublessor is the leasehold interest owner of the Sublease Property and is the landlord under the Sublease, and there is no mortgage or deed of trust or other liens or encumbrances encumbering the leasehold title to the Sublease Property.
2. A true and complete copy of the Sublease and of all amendments, modifications, assignments, and non-disturbance agreements related thereto are attached hereto collectively as

Exhibit B-1, and, except as reflected on Exhibit B-1, the Sublease has not been modified or amended in any other respect. For purposes of recording this Ground Lease Estoppel Certificate (this "Agreement"), only the description of the Sublease will be attached as Exhibit B-1 to the recorded counterpart of this Agreement. To the best knowledge of Sublessor, no portion of the Sublease Property has been subleased except as set forth in the Sublease.

3. The Sublease is in full force and effect, there is no existing default under the Sublease, and there are no events which, with notice or the passage of time or both, would constitute a default under the Sublease.

4. There is no defense, offset, claim or counterclaim by or in favor of either party under the Sublease.

5. There is no suit, action, proceeding or audit pending or, to the best knowledge of Sublessor or Sublessee, threatened against or affecting either party or the Sublease Property at law or in equity or before or by any court, administrative agency, or other governmental authority which challenges or brings into question the validity of the Sublease.

6. The only real property presently demised under the Sublease is the Sublease Property, and the only person or entity presently having an interest in the Sublease Property as tenant under the Ground Lease is Sublessee.

7. The term of the Sublease commenced on August 26, 2022 and will expire pursuant to its terms on April 30, 2060. The Sublease contains the option to extend the term of the Sublease for one additional twenty (20) year period.

8. Sublessee has paid all rent and charges arising and due and payable under the Sublease through the date hereof, and the next rent payment is due upon the City of Salt Lake City's issuance of a TCO (or equivalent other evidence of substantial completion) for the principal improvements in the amount of \$29,228.70.

9. To the best actual knowledge of Ground Lessor and Ground Lessee, (a) any public interest in the "Street" and the "Alley" (as such terms are used and defined in Section 1.03 of the Sublease) have been abandoned and/or vacated and title thereto has vested in Ground Lessor and become subject to the Ground Lease as contemplated by Section 1.03 of the Sublease, and (b) no additional undertakings or actions are required or contemplated with respect thereto.

10. The "Parcel Adjustment" (as such term is used and defined in Section 1.04 of the Sublease) has been completed and approved by Ground Lessor as contemplated by Section 1.04 of the Sublease. No additional undertakings or actions are required or contemplated with respect thereto.

11. The consolidation of the parcels comprising the "Site" (as such term is defined in the Sublease) and the subdivision of the Site into the "Projects" (as such term is defined in the Ground Lease) as contemplated by Section 1.05 of the Sublease has been completed.

12. The "Preliminary Site Plan" (as such term is used in Section 1.06 of the Sublease) has been revised and appended to the Sublease, and no further revisions to the Preliminary Site Plan are contemplated.

13. The "Ownership Consolidation" (as such term is used and defined in Section 1.07 of the Sublease) has been completed, and except as expressly set forth on the final ALTA Commitment for Title Insurance provided to Mortgage Loan Administrative Agent by First American Title Insurance Company all "Unpermitted Title Exception" (as such term is used and defined in Section 1.07 of the Sublease) have been resolved, terminated, and extinguished of record. No additional undertakings or actions are contemplated or required with respect thereto, and any right of Sublessee to terminate the Sublease pursuant to Section 1.07 has been terminated or irrevocably waived by Sublessee.

14. Sublessor has approved the "Design Plans" (as such term is used and defined in Section 6.04(b) of the Sublease) for the "Project" (as such term is used in Section 6.04(b) of the Sublease) consisting of the parking facilities to be constructed on the portion of the Sublease Property consisting of the Sublease Parcel.

15. That certain Completion Guaranty and Mezzanine Completion Guaranty, each dated on or about the date hereof, executed by Henry Jason Winkler and Ellen Winkler, each an individual, in favor of Administrative Agent, are sufficient to satisfy (and do satisfy) the requirements of Section 6.04(d)(i) of the Sublease.

16. Neither the execution and delivery of the Security Instrument, the execution and delivery of the Mezzanine Pledge and Security Agreement, nor any modification thereof or assignment of the beneficial interests thereunder, will be a default under the Sublease.

17. Sublessor hereby irrevocably constitutes and appoints Administrative Agent as Sublessor's true and lawful attorney-in-fact, coupled with an interest and with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every Discretionary Action (as hereafter defined) of Sublessor with respect to the Ground Lease (as hereafter defined) (including the exercise of any and all rights granted to Administrative Agent in Section 19(i) of the Ground Lease Estoppel Certificate dated as of the date hereof, by and between AAM INVESTMENTS LTD., a Utah limited partnership ("Master Lessor"), and Sublessor, for the benefit of Administrative Agent), and do in the name, place and stead of Sublessor, all such acts, things and deeds for and on behalf of and in the name of Sublessor, or which Administrative Agent may deem necessary or desirable to more fully protect Administrative Agent's interest in the Sub-leasehold Estate. In addition, for so long as the Debt (as such term is used in the Mortgage Loan Agreement and the Mezzanine Loan Agreement) remains outstanding, immediately upon a Foreclosure (as such term is used in Section 13.03(d) of the Sublease) or any exercise by Administrative Agent of any rights or remedies available under the Mezzanine Pledge and Security Agreement:

(a) Effective as of the date of such Foreclosure or the exercise of any rights by Administrative Agent under the Mezzanine Pledge and Security Agreement, Sublessor

grants to Administrative Agent an irrevocable power of attorney, coupled with an interest, to take any and all Discretionary Actions on behalf of Sublessor; and

(b) Effective as of the date of such Foreclosure or the exercise of any rights by Administrative Agent under the Mezzanine Pledge and Security Agreement, Sublessor shall not take, or attempt to take, any Discretionary Action without the prior written consent of Administrative Agent to the same (which consent may be granted, conditioned or withheld in Administrative Agent's sole and absolute discretion). Any such action without such consent shall not be binding on Mortgage Loan Administrative Agent or Mezzanine Loan Administrative Agent, or their respective successors or assigns.

As used in this Section 17, "Discretionary Action" shall mean, individually and collectively as the context requires, any action, right, power, remedy, option, privilege or entitlement available to Sublessor to be taken (including without limitation the exercise of any right to approve or disapprove, or to make any election, waiver, or request, or to make any determination, or find that any arrangement or term is to be satisfactory to Sublessor) (a) pursuant to the Ground Lease in Sublessor's capacity as lessee thereunder, or (b) pursuant to the Sublease in Sublessor's capacity as lessor thereunder.

As used in this Section 17, "Ground Lease" means that certain Ground Lease dated April 1, 2020, by and between Master Lessor, as landlord, Sublessee, as tenant, and Q FACTOR LLC, a Colorado limited liability company, as guarantor, as amended by that certain First Amendment to Ground Lease, effective April 1, 2021, as further amended by that certain Second Amendment to Ground Lease dated May 16, 2022, and as further amended by the Ground Lease Estoppel Certificate.

18. Ground Lessor has approved the Sublease (to the extent that such approval is required under the Ground Lease), and the Sublease is an approved "Transfer" and an approved "sublease" as contemplated by Section 13.01 of the Ground Lease.

19. This Agreement may not be changed, waived or discharged orally, but only by an agreement in writing, is in supplementation to the provisions of the Sublease, and in no event will be construed as reducing the rights to which Sublessee, any "Leasehold Mortgagee" (as defined in the Sublease), or any other lender secured by an interest in the Sublease, or the Sublease Property would otherwise be entitled under the Sublease.


20. This Agreement shall inure to the benefit of Administrative Agent, and its participants, and their respective successors and assigns, and all parties claiming by, through or under them, including any successor holder of the Loan now or hereafter held by Administrative Agent encumbering the Sub-leasehold Estate, and a copy of this Agreement may be delivered to any such party.

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Dated to be effective as of the date set forth in the first paragraph hereof.

"SUBLESSOR":

**INDUSTRY SLC NEIGHBORHOOD
FOUNDERS, LLC,**
a Colorado limited liability company


By: 
Name: Henry Jason Winkler
Title: Manager

STATE OF UTAH

COUNTY OF SALT LAKE

I, the undersigned Notary Public of the aforesaid County and State, certify that Henry Jason Winkler personally came before me this day and acknowledged that he is the Manager of INDUSTRY SLC NEIGHBORHOOD FOUNDERS, LLC, a Colorado limited liability company, and that he as Manager, being authorized to do so, executed the foregoing on behalf of the limited liability company.

Witness my hand and official seal on June 24, 2022.

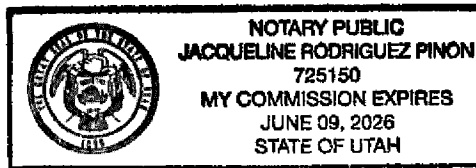


Notary Public

My Commission Expires:

June 9 2026


[NOTARIAL SEAL]



[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
TENANT'S SIGNATURE ON FOLLOWING PAGE]

"GROUND LESSEE":

INDUSTRY GARAGE SLC, LLC,
a Delaware limited liability company,

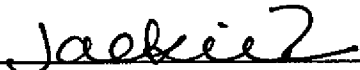
By: 
Name: Henry Jason Winkler
Title: Manager

STATE OF UTAH

COUNTY OF SALT LAKE

I, the undersigned Notary Public of the aforesaid County and State, certify that Henry Jason Winkler personally came before me this day and acknowledged that he is the Manager of INDUSTRY GARAGE SLC, LLC, a Delaware limited liability company, and that he as Manager, being authorized to do so, executed the foregoing on behalf of the limited liability company.

Witness my hand and official seal on June 24, 2022.



Notary Public

My Commission Expires:

June 9 2026

[NOTARIAL SEAL]

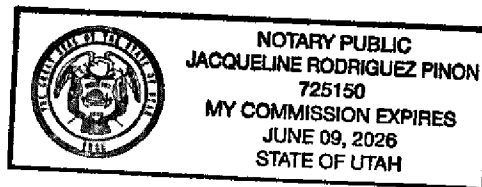


EXHIBIT A-1

DESCRIPTION OF SUBLEASE DOCUMENTS

Effective August 26, 2022, Landlord and Tenant executed the “Sub Ground Lease” (the “*Sublease*”) covering certain Premises (the “*Premises*”) consisting of approximately 1.602 acres of real property that is located within the area bounded by 400 West, 600 South, 500 West and 700 South streets in Salt Lake City, Utah.

EXHIBIT A-2

DESCRIPTION OF SUBLEASE PROPERTY

PARCEL 2 (Project 1):

A PARCEL OF GROUND LOCATED IN LOTS 2, 3, 6 AND 7 OF BLOCK 26, PLAT "A", SALT LAKE CITY SURVEY, SAID PARCEL BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT SOUTH 89°57'35" WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 82.77 FEET AND NORTH 0°01'01" WEST 92.00 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 2, AND RUNNING THENCE SOUTH 89°57'35" WEST 158.00 FEET; THENCE NORTH 0°01'01" WEST 24.56 FEET; THENCE NORTH 89°58'59" EAST 0.57 FEET; THENCE NORTH 0°01'01" WEST 82.88 FEET; THENCE NORTH 10°01'01" WEST 293.50 FEET; THENCE NORTH 89°59'07" EAST 208.39 FEET; THENCE SOUTH 0°01'01" EAST 396.41 FEET TO THE POINT OF BEGINNING.

Tax Parcel No.'s: 15-01-379-007, 15-01-379-008, 15-01-379-009, 15-12-127-003, and a portion of 15-01-379-004, 15-01-379-005, 15-12-127-001, 15-12-127-004, 15-12-127-005, 15-12-127-006

PARCEL 3 (Elder Court Access Drive):

BEGINNING AT A POINT ON THE SOUTH LINE OF BLOCK 26, PLAT "A", SALT LAKE CITY SURVEY, SAID POINT BEING SOUTH 89°57'35" WEST ALONG SAID SOUTH LINE 241.26 FEET FROM THE SOUTHEAST CORNER OF LOT 2 OF SAID BLOCK 26, AND RUNNING THENCE SOUTH 89°57'35" WEST ALONG SAID SOUTH LINE 42.51 FEET; THENCE NORTH 0°01'01" WEST 198.95 FEET; THENCE NORTH 10°01'01" WEST 334.46 FEET; THENCE SOUTH 89°57'29" WEST 3.42 FEET; THENCE NORTH 0°01'01" WEST 132.00 FEET TO A POINT ON THE NORTH LINE OF SAID BLOCK 26; THENCE NORTH 89°57'29" EAST ALONG SAID NORTH LINE 44.00 FEET; THENCE SOUTH 114.33 FEET; THENCE SOUTH 10°01'01" EAST 351.90 FEET; THENCE SOUTH 0°17'19" WEST 199.45 FEET TO THE POINT OF BEGINNING.

Tax Parcel No.'s: a portion of 15-12-126-008, 15-12-126-005, 15-12-126-004, 15-12-126-003, 15-12-126-002, 15-01-379-006, 15-01-379-005, 15-01-379-004

EXHIBIT B-1

COPY OF SUBLEASE

(see attached)

Ground Sublease (Parcel B Parking Structure)

THIS GROUND SUBLEASE (this "*Lease*") is made and entered into effective August 30th, 2022 (the "*Effective Date*"), by and between **INDUSTRY SLC NEIGHBORHOOD FOUNDERS, LLC**, a Colorado limited liability company whose address is 537 West 600 South, Suite 400, Salt Lake City, UT 84101 ("*Landlord*") and **INDUSTRY SLC GARAGE, LLC**, a Delaware limited liability company whose address is 450 West 600 South, Salt Lake City, UT 84101 ("*Tenant*"). In this Lease, Landlord and Tenant are each a "*Party*" and collectively are the "*Parties.*"

RECITALS:

A. Effective April 1, 2020 **AAM Investments, Ltd.**, a Utah limited partnership ("*Master Landlord*"), as landlord, and Landlord, as tenant, entered into that certain Ground Lease (the "*Ground Lease*"), as amended by that certain First Amendment to Ground Lease dated April 1, 2021 (the "*First Amendment*") and as further amended by that certain Second Amendment to Ground Lease dated May 16, 2022 (the "*Second Amendment*") (the First Amendment and the Second Amendment, together with the Ground Lease, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, collectively, the "*Master Lease*") whereunder Master Landlord leased to Landlord approximately 3.98 acres of unimproved ground (the "*Master Parcel*") for development as part of a future mixed-use project containing approximately 5.255 acres (the "*Project*"). Landlord heretofore has provided a copy of the Master Lease to Tenant, the same being attached hereto as Exhibit "A."

B. Pursuant to the terms of the Master Lease, Q Factor LLC, a Colorado limited liability company ("*Q Factor*") and Master Landlord entered into that certain Guaranty Agreement, dated April 1, 2020, whereby Q Factor guaranteed Landlord's complete and prompt payment and proper performance of all obligations due to Master Landlord under the Master Lease.

C. The Master Parcel being comprised of two recorded lots referred to as "Parcel A" ("*Parcel A*") and "Parcel B" ("*Parcel B*"), a site plan of the Master Parcel (the "*Site Plan*") is attached as Exhibit "B" for reference. The scope of this Lease refers exclusively to the portion of the Master Parcel consisting of a portion of Parcel B. As agreed to in the Master Lease, the Landlord further delineated boundary lines to allocate land to several future development sites referred to as "Project 1", "Project 2", "Project 3", and a private road named "Elder Court" ("*Elder Court*").

D. In furtherance of development of the Project, Landlord desires to sublease to Tenant, and Tenant desires to sublease from Landlord, the portion of Parcel B of the Master Parcel that is designated as "Project 1" on attached Exhibit "C" (the "*Land*") and is more particularly described as follows:

SUBLEASE PREMISES: PROJECT 1 "GARAGE"

A PARCEL OF GROUND LOCATED IN LOTS 2, 3, 6 AND 7 OF BLOCK 26, PLAT "A", SALT LAKE CITY SURVEY, SAID PARCEL BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT SOUTH 89°57'35" WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 82.77 FEET AND NORTH 0°01'01" WEST 92.00 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 2, AND RUNNING THENCE SOUTH 89°57'35" WEST 158.00 FEET; THENCE NORTH 0°01'01" WEST 24.56 FEET; THENCE NORTH 89°58'59" EAST 0.57 FEET; THENCE NORTH 0°01'01" WEST 82.88 FEET; THENCE NORTH 10°01'01" WEST 293.50 FEET; THENCE NORTH 89°59'07" EAST 208.39 FEET; THENCE SOUTH 0°01'01" EAST 396.41 FEET TO THE POINT OF BEGINNING.

Together with the non-exclusive right to use Elder Court for vehicular, pedestrian and utilities access purposes concerning the Premises, with Elder Court being shown as PROJECT 4: "ELDER COURT" on attached Exhibit "C" and being particularly described as follows:

BEGINNING AT A POINT ON THE SOUTH LINE OF BLOCK 26, PLAT "A", SALT LAKE CITY SURVEY, SAID POINT BEING SOUTH 89°57'35" WEST ALONG SAID SOUTH LINE 241.26 FEET FROM THE SOUTHEAST CORNER OF LOT 2 OF SAID BLOCK 26, AND RUNNING THENCE SOUTH 89°57'35" WEST ALONG SAID SOUTH LINE 42.51 FEET; THENCE NORTH 0°01'01" WEST 198.95 FEET; THENCE NORTH 10°01'01" WEST 334.46 FEET; THENCE SOUTH 89°57'29" WEST 3.42 FEET; THENCE NORTH 0°01'01" WEST 132.00 FEET TO A POINT ON THE NORTH LINE OF SAID BLOCK 26; THENCE NORTH 89°57'29" EAST ALONG SAID NORTH LINE 44.00 FEET; THENCE SOUTH 114.33 FEET; THENCE SOUTH 10°01'01" EAST 351.90 FEET; THENCE SOUTH 0°17'19" WEST 199.45 FEET TO THE POINT OF BEGINNING.

E. The Parties intend to set forth in this Lease their entire agreement concerning Landlord's sublease of the Land to Tenant.

A G R E E M E N T:

NOW THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the Parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I **DEMISE OF PREMISES**

Section 1.01 **Demise**. Landlord hereby subleases to Tenant, and Tenant hereby subleases from Landlord, the Land, including the non-exclusive right to use all of Elder Court located on the Master Parcel and all surface easements, rights, titles, and privileges of Landlord now or hereafter existing in and to adjacent streets, sidewalks and alleys for the Term, at the rental, and upon all of the covenants and conditions set forth herein. On August 26, 2022 (the "*Commencement Date*") Landlord shall deliver possession of the Land to Tenant, subject to the following matters to the extent that they affect the Land:

- (a) The effect of all present building restrictions and regulations and present

and future zoning laws, ordinances, resolutions, and regulations of Salt Lake City (the “City”) which are of general application in the City and all present ordinances, regulations and orders of all boards, bureaus, commissions and bodies of Salt Lake County (the “County”) and any state or federal agency now having or hereafter acquiring jurisdiction of the Land and the use and improvement thereof;

(b) The condition and state of repair of the Land on the Commencement Date, including any utility easements or other encumbrances burdening the Land on the Commencement Date, whether or not matters of record; provided, however, that Landlord represents that Landlord is not aware of any utility easements or other encumbrances affecting the Land that are not described in attached Exhibit “D” (the “Permitted Title Exceptions”); and

(c) Landlord’s reservation of a non-exclusive, irrevocable license and easement to use those portions of Elder Court located on the Land to provide vehicular, pedestrian and utilities access to the balance of the Master Parcel (the “Master Parcel Balance”) and the Project for Landlord, any other owners or occupants of any of the Project (including, without limitation, Industry Office SLC, LLC, a Delaware limited liability company (“Industry”)), and their respective employees, agents, contractors, tenants, and invitees during the Term.

The Land, together with or subject to (as applicable) the foregoing items, is referred to in this Lease as the “Premises.”

Section 1.02 **Memorandum of Lease**. This Lease shall not be recorded. Prior to recording of any Permitted Mortgage (defined below), Landlord and Tenant shall execute and record in the official records of the County’s recorder (the “Recorder”) a memorandum of this Lease (the “Memorandum of Lease”) setting forth the relevant terms of this Lease, including the Option to Purchase under Article V and that Tenant shall own all Improvements (defined below) constructed or installed by Tenant during the Term.

Notwithstanding anything in this Lease to the contrary, in no event shall (i) Landlord encumber its interest under this Lease, the Premises, or Landlord’s ownership of any of the Improvements thereon; (ii) Landlord encumber Tenant’s leasehold estate hereunder or Tenant’s ownership of any of the Improvements thereon; or (iii) Tenant encumber its leasehold estate under this Lease, the Premises, or Tenant’s ownership of any Improvements thereon, except as permitted pursuant to that certain (A) Loan Agreement dated as of August 26, 2022 (the “Mortgage Loan Agreement”) among Tenant, Industry (Tenant and Industry are collectively referred to herein as “Borrower”), Delphi CRE Funding LLC, a Delaware limited liability company (together with the Lenders from time to time party thereto, the “Mortgage Lender”) and ACORE Capital Mortgage LP, a Delaware limited partnership, in its capacity as Administrative Agent for the Mortgage Lender (“Mortgage Loan Administrative Agent”) pursuant to which Mortgage Lender made a mortgage loan to Borrower (the “Mortgage Loan”), and (B) Mezzanine Loan Agreement dated as of August 30, 2022 (the “Mezzanine Loan Agreement”) among Big Ass Garage Holdings LLC, a Delaware limited liability company (“BAG”), Industry Office SLC Holdings, LLC, a Delaware limited liability company (“Office” and together with BAG, collectively, “Mezzanine Borrower”), Delphi CRE Funding LLC, a Delaware limited liability company (together with the Lenders from time to time party thereto, the “Mezzanine Lender” and together with the Mortgage Lender, collectively, “Lender”) and ACORE Capital Mortgage LP, a Delaware limited partnership, in its capacity as Administrative Agent for the Mezzanine Lender (the “Mezzanine Loan Administrative Agent” and together with the Mortgage Loan Administrative Agent, collectively, the

“*Administrative Agent*”) pursuant to which the Mezzanine Lender made a loan to Mezzanine Borrower (the “*Mezzanine Loan*”).

Section 1.03 **Intentionally Deleted.**

Section 1.04 **Licenses and Easements for Use of Access Roads.** Landlord grants to Tenant such non-exclusive, irrevocable licenses and easements as shall be necessary for use of those portions of Elder Court and any other access roads (collectively, the “*Access Roads*”) located on the Master Parcel Balance to provide vehicular and pedestrian access to the Premises for Tenant and its employees, agents, contractors, tenants, and invitees, which licenses and easements shall remain in effect throughout the Term of this Lease. The Memorandum of Lease shall reflect the grant of same and shall also provide notice of Landlord’s reservation of a non-exclusive, irrevocable license and easement to use those portions of the Access Roads located on the Premises to provide vehicular and pedestrian access to the Master Parcel Balance and Parcel C for Landlord, Industry and their respective affiliates, employees, agents, contractors, tenants, and invitees during the Term. Notwithstanding any licenses and easements so granted, Landlord reserves the rights to (a) dedicate all or any portion of the Access Roads to the City; and join with Industry, Granary Campus, LLC, a Washington limited liability company (“*Granary*”), and/or their respective successor-in-interest in a mutually-agreeable, recorded reciprocal cross-access easement agreement (or similar) to, *inter alia*, memorialize Elder Court’s status as a private roadway providing access to Parcels A-D. To the extent permitted under the Master Lease, Landlord agrees to grant to Tenant easement rights over the Master Parcel Balance for purposes of installing, maintaining, repairing, and removing such utility lines as may be reasonably necessary for Tenant’s use and operation of the Premises, and to reasonably cooperate with Tenant in obtaining Master Landlord’s consent to same, provided that Tenant shall conducted related activities in such a manner as to reasonably minimize disruption of use of the remainder of the Master Parcel Balance.

Section 1.05 **Closing.** Upon the full execution and delivery of this Lease, the Parties shall have a closing (“*Closing*”) as reasonably specified (as to date, time and place in Salt Lake County, Utah) by Tenant, when (a) the Parties shall mutually execute and deliver all ancillary documents which specifically are so required by the terms of this Lease; (b) Tenant shall pay to Landlord all Rent (defined below) due for the first month of this Lease; and (c) Tenant may obtain a leasehold owner policy of title insurance (the “*Title Policy*”) in such amount as Tenant reasonably deems appropriate from First American Title Insurance Company or another qualified title insurance company reasonably selected by Tenant (“*Title Company*”), insuring Tenant’s leasehold estates under this Lease subject only to the Master Lease and the other Permitted Title Exceptions. Tenant shall pay the premiums for the Title Policy and any endorsements requested by Tenant, to the extent Title Company agrees to issue the same.

Section 1.06 **Cooperation.** Throughout the Term of this Lease Tenant shall not oppose, and shall cooperate in all reasonable ways (but without material unreimbursed cost or expense to Tenant and only to the extent same does not unreasonably interfere with Tenant’s use of the Land and/or Premises) with, (a) any future consolidation, subdivision or other adjustment of the Master Parcel Balance or Parcel C by Landlord or Industry into any configuration(s) now or hereafter reasonably desired by Landlord or Industry, respectively, and (b) any zoning, use or other applications or development activities by Landlord or Industry concerning the Master Parcel Balance or Parcel C, including without limitation the improvement of Elder Court and the construction of a multi-family housing project on the remaining portion of Parcel B of the Project

immediately to the North of the Land. The out-of-pocket costs reasonably incurred in connection with any such subdivision(s), applications and the like (such as for surveys and filing fees) shall be paid by Landlord.

Section 1.07 **Revisions to Site Plan**. The attached Site Plan may be modified by Landlord and re-appended to this Lease from time to time upon notice to Tenant to reflect the results of any consolidation, subdivision or other re-configuration under Section 1.06 affecting the Project. Notwithstanding the foregoing, no such modification or alteration of the Site Plan shall adversely affect access to the Land from public rights of way or the use of the Land and Premises by Tenant and its agents, invitees, or customers in any way.

ARTICLE II **TERM OF LEASE**

The term of this Lease (the "*Term*") shall commence on the Commencement Date and shall expire, unless sooner terminated under the terms and conditions contained in this Lease, at 11:59 p.m. (Utah time) on the last day of the term of the Master Lease, which is April 30, 2060 unless, subject to the following paragraph, Landlord timely exercises its renewal option under Section 2.02 of the Master Lease (the "*Extension Option*"), in which case the last day of the term of the Master Lease (and therefore the last day of the Term of this Lease) will be extended for an additional 20 years (the "*Extension Term*") and expire on April 30, 2080. In no event shall the Term of this Lease extend beyond the term of the Master Lease.

Notwithstanding any other provision in this Lease, unless Tenant and Landlord both agree that if the Extension Option will not be exercised by Landlord, Tenant shall have the right to obligate Landlord to exercise same. In the event that Landlord elects to exercise the Extension Option, or is directed to do so by Tenant in accordance with the forgoing sentence, Landlord shall do so in a timely manner and in conformance with the requirements of the Master Lease. If Tenant does not elect to extend the Term, then, regardless whether Landlord elects to exercise the Extension Option, the Term shall expire and this Lease shall terminate as of April 30, 2060. Tenant shall notify Landlord whether Tenant elects to exercise the Extension Option no later than the date that is one (1) year and thirty (30) days prior to then then-scheduled expiration of the Initial Term of the Master Lease (as such term is defined therein). In the event that Landlord fails to exercise the Extension Option as agreed upon with Tenant, or as directed by Tenant, as the case may be, within ten (10) days after receipt of written notice from Tenant indicating its election, Landlord hereby makes, constitutes, and irrevocably separately appoints each of Tenant and Leasehold Mortgagee as Landlord's attorney in fact such that either may exercise the Extension Option in Landlord's name.

ARTICLE III **RENT**

Section 3.01 **Amount**. The rent ("*Rent*") to be paid by Tenant under this Lease shall be \$3.60 PSF calculated on the mutually accepted 97,429 SF of total land shown on Exhibit "C" as Project 1 and Project 4 (which includes the Premises and the Elder Court parcel). The Rent shall commence upon substantial completion for the principal improvements. Further, the Rent shall be increased at the annualized rate of three percent (3%) from and after the first anniversary of the effective date.

Section 3.02 **Payment**. Rent shall be paid to Landlord on or before the first calendar day of each month during the Term at Landlord's address specified above or to such other address as Landlord hereafter may specify in writing to Tenant. Rent for partial months during which this Lease commences or terminates shall be prorated. All Rent shall be absolutely net to Landlord so that this Lease shall yield to Landlord the full amount of the Rent throughout the Term without deduction or offset. The Rent shall continue at the rates specified above during the entire Term.

Unless otherwise directed by Landlord, Tenant shall make all payments due here under via ACH, electronic withdrawal. Tenant shall pay to Landlord all Rent payments via ACH withdrawal, as due when due and without notice or demand, or as otherwise directed in writing by Landlord. Prior to execution of this Lease, Landlord shall provide Tenant with the necessary ACH authorization form and Tenant shall execute such form and provide any other information reasonably necessary to allow Landlord to set up and arrange the ACH withdrawals. **TENANT SHALL NOT ABATE, SET OFF OR DEDUCT ANY AMOUNT OR DAMAGES FROM OR REDUCE ANY RENT OR OTHER PAYMENT DUE FOR ANY REASON, EXCEPT AS EXPRESSLY AUTHORIZED IN THIS LEASE. TENANT SHALL NOT REVERSE, RETURN AS UNAUTHORIZED, OR IN ANY OTHER WAY DISRUPT OR INTERFERE WITH ANY PREVIOUSLY AUTHORIZED ACH PAYMENT. EXCEPT AS MAY OTHERWISE SPECIFICALLY BE PROVIDED IN THIS LEASE, THIS LEASE IS NON-CANCELABLE FOR THE ENTIRE TERM OF THIS LEASE.**

ARTICLE IV **TAXES, ASSESSMENTS AND CHARGES**

Section 4.01 **Taxes and Assessments**. Subject to the provisions of Article XIV hereof (concerning Permitted Contests), Tenant shall discharge and pay (before the same become delinquent and before any fine, penalty, or interest may be added for nonpayment) any and all taxes, assessments, license or permit fees, special district or community improvement district assessments, excises, imposts and charges of every nature and classification (all or any one of which are hereinafter referred to as "*Taxes*") that at any time during the Term are levied, assessed, charged or imposed upon Master Landlord's fee simple and/or reversionary interest in the Premises, the leasehold estate of Landlord under the Master Lease, and the leasehold estate of Tenant created under this Lease; *provided, however*, (a) Tenant shall not be obligated to pay any income tax imposed on Master Landlord or Landlord (collectively, "*Landlords*") (whether municipal, state or federal income taxes), (b) Tenant shall not be obligated to pay any amounts levied upon Landlords as a franchise, estate, gift, inheritance, succession or capital levy tax, and (c) Tenant shall not be obligated to pay any Taxes attributable to the period of time prior to the Effective Date or following expiration or earlier termination of the Term under this Lease. Each Party shall provide copies of all Taxes invoices received by the Party to the other Party within ten business days after their receipt from the taxing authority, and Tenant shall provide proof of timely payment of such Taxes to Landlord within seven business days after their respective due date(s).

If a lender of Tenant is not already requiring Tenant to make periodic payments into an impound account (or similar) of the property taxes assessed against the Premises and any Improvements, then Landlord may at its option require Tenant to make monthly payments of property taxes into an escrow account (the "*Tax Escrow*") as described below in this Section 4.01. If Landlord notifies Tenant in writing of its decision to require a Tax Escrow, then the Parties shall promptly cooperate to establish the Tax Escrow within one (1) month thereafter. The escrow agent ("*Escrow Agent*") holding the Tax Escrow shall be a bank trust department, a title company, or another legally

qualified, independent, financially capable escrow agent that is reasonably proposed by Tenant and reasonably acceptable to Landlord to receive and disburse all property tax payments from Tenant. Upon selection of Escrow Agent, the Parties shall promptly cooperate to issue binding escrow instructions to Escrow Agent which are reasonably proposed by Tenant and reasonably acceptable to Landlord and Escrow Agent.

After Landlord's notice of its intent to require the Tax Escrow and until creation of the Tax Escrow, Tenant shall pay to Landlord, with each monthly rental payment, one-twelfth (1/12) of the estimated property taxes to be assessed against the Premises and any Improvements. From and after commencement of the Tax Escrow, (w) Landlord promptly shall pay over to Escrow Agent all property taxes previously paid by Tenant which have not yet been paid over to the Salt Lake County Treasurer (the "*Treasurer*"), (x) Tenant thereafter shall pay (or cause to be paid) to Escrow Agent, during each calendar month of the remaining Term, one-twelfth (1/12) of the estimated property taxes to be assessed against the Premises and any Improvements; (y) Escrow Agent shall by November 30th of each tax year pay to the Treasurer all monies in the Tax Escrow; and (z) Tenant shall by November 30th of each tax year pay to the Treasurer any and all additional property taxes for the Premises and any Improvements due for such tax year.

Within ten (10) days after receipt, each Party shall provide copies of all pertinent tax notices and invoices it receives from the Salt Lake County Assessor (the "*Assessor*"). Each Party also shall provide proof of tax payments to the Treasurer promptly following written request by the other Party, and shall pay to the Treasurer when due any and all interest, fines, fees, etc. arising from that Party's failure to timely make any tax payment(s) due to the Treasurer as provided in this Section 4.01. At any time during a tax year the estimated monthly pro rata payment of property taxes may be modified as requested by Landlord in writing if Landlord reasonably believes, based on current assessment information from the Assessor's records, that the property taxes for the Premises and any Improvements have changed.

If Tenant fails or refuses to pay when due any Taxes, and Tenant is not contesting such Taxes in accordance with the provisions of this Lease, and such failure or refusal continues without correction for a period of 30 consecutive calendar days from and after notice thereof from Landlord to Tenant, Landlord shall have the right but not the obligation to pay such unpaid overdue Taxes, and Tenant as to the portion of the Premises constituting the applicable governmental tax parcel identified in the unpaid governmental bill for Taxes, shall reimburse Landlord for the Taxes (including penalties and interest, together with reasonable out of pocket costs incurred by Landlord in connection therewith) so paid by Landlord as to such portion of the Premises within 30 days after written notice from Landlord to Tenant demanding payment (including reasonably detailed supporting information regarding the amounts owed).

Section 4.02 **Charges**. Subject to the provisions of Article XIV hereof (concerning Permitted Contests), Tenant covenants and agrees that it shall pay when due all charges, deposits, access fees, tap-in and hook-up fees, and the similar fees regarding the installment of utilities or related to the construction or alteration of the Improvements for all public or private utility services including, but not limited to, water, sewer, gas, light, heat and air conditioning, telephone, electricity, cable television, trash removal, power and other utility and communications services (all or any one of which hereinafter referred to as "*Charges*") that are rendered or become due and payable with respect to the Premises at any time during the Term and during any period prior to the commencement of the Term after Tenant takes possession of the Premises for the construction of or alterations to the Improvements.

Section 4.03 **General**. Tenant shall prepare and file all reports and returns required by law and governmental regulations with respect to any Taxes and, upon Landlord's request, shall furnish copies thereof to Landlord. Upon written request from Landlord, Tenant shall forward to Landlord copies of any bill or assessment respecting any Taxes upon Tenant's receipt thereof from the taxing authority. Likewise, Landlord shall promptly furnish to Tenant copies of any bill or assessment respecting any Taxes upon Landlord's receipt thereof from the taxing authority. Upon written request from Landlord, Tenant shall furnish and deliver to Landlord receipts evidencing the payment of any Taxes and/or Charges payable by Tenant as provided in Section 4.01 and Section 4.02 hereof. If Taxes include any special assessments for improvements which may be paid in installments, Tenant shall be obligated to pay only such installments as they become due and shall be obligated to pay only such installments which are to become due and payable prior to the expiration of the Term. Any Taxes for the year in which Tenant's obligation to pay Taxes commences and terminates or expires shall be prorated on a daily basis between Landlord and Tenant.

If Tenant fails to pay any Taxes and/or Charges (or any installment thereof) when due, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, pay any such Taxes and/or Charges (or any installment thereof) and any amount so paid by Landlord, together with all costs and expenses incurred by Landlord in connection therewith, shall be paid by Tenant to Landlord within 30 days after written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed) with Interest thereon in the manner provided in the following paragraph. Tenant's obligation to pay Taxes and Charges which accrue during the Term shall survive any termination of this Lease.

In those circumstances where Tenant fails or refuses to pay any amounts owed under this Lease and Landlord elects to pay such amounts as provided in this Lease, such amounts incurred by Landlord shall accrue interest at the Default Rate (herein referred to as "*Interest*") from the due date through the date paid or, if demand is required therefor by the terms of this Lease, from the date which is 30 days after the date of written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed) through the date paid. Additionally, except for the first delinquent payment in any given consecutive 12-month period, Landlord may charge Tenant a fee equal to five percent (5%) of the delinquent payment (herein referred to as a "*Late Fee*") to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. In no event, however, shall the charges permitted under this Section 4.03 or elsewhere in this Lease, to the extent they are considered to be interest under law, exceed the maximum lawful rate of interest. As used herein, the term "*Default Rate*" shall mean an annual rate of interest equal to the greater of (a) ten percent (10%) plus the Prime Rate, or (b) eighteen percent (18%). As used herein, the term "*Prime Rate*" shall mean the rate of interest per annum announced from time to time by JP Morgan Chase Bank, or its successor organization, as its prime commercial lending rate.

Section 4.04 **Impact Fees**. Tenant shall be solely responsible for and shall timely pay any charges in the nature of building permit fees, impact fees and other similar fees and charges attributable to the construction of Improvements on the Premises.

ARTICLE V **OPTION TO PURCHASE**

Section 5.01 **Grant of Option**. If Landlord exercises its purchase option under Article V of the Master Lease and thereby acquires from Master Landlord unencumbered fee simple title to the Master Parcel pursuant to the terms of Article V of the Master Lease, then Landlord hereby grants to Tenant an exclusive option (the "*Purchase Option*") to purchase unencumbered fee simple title to the Premises on the terms and conditions that are specified in this Article V.

Notwithstanding any other provision in this Lease, unless Tenant and Landlord both agree that the Purchase Option will not be exercised by Landlord, Tenant shall have the right to obligate Landlord to exercise same. In the event that Landlord elects to exercise the Purchase Option, or is directed to do so by Tenant in accordance with the forgoing sentence, Landlord shall do so in a timely manner and in conformance with the requirements of the Master Lease. Tenant shall notify Landlord whether Tenant elects to exercise the Purchase Option no later than the date that is one (1) year and thirty (30) days prior to then then-scheduled expiration of the Extension Term of the Master Lease (as such term is defined therein). In the event that Landlord fails to exercise the Purchase Option as agreed upon with Tenant, or as directed by Tenant, as the case may be, within ten (10) days after receipt of written notice from Tenant indicating its election, Landlord hereby makes, constitutes, and irrevocably separately appoints each of Tenant and Leasehold Mortgagee as Landlord's attorney in fact such that either may exercise the Purchase Option in Landlord's name.

Section 5.02 **Option Price**. The purchase price (the "*Option Price*") for the Premises shall be Landlord's proportionate cost to acquire the Premises, calculated by multiplying Landlord's cost to acquire the Master Parcel by a fraction, the numerator of which is the square footage of the Premises and the denominator of which is the square footage of the Master Parcel.

Section 5.03 **Term of Purchase Option**. Tenant's right to exercise the Purchase Option shall be available for one (1) year after Landlord notifies Tenant in writing that Landlord has acquired fee simple title to the Master Parcel pursuant to Landlord's exercise of its purchase option under Article V of the Master Lease. The Parties acknowledge that Landlord's option to purchase the Master Parcel will be in effect only during the Extension Term, if any, under the Master Lease and shall terminate on the date that is one (1) year before the termination of such Extension Term. If and when Landlord so acquires the Master Parcel, then Landlord shall notify Tenant in writing that Tenant's Purchase Option is effective, and Tenant's Purchase Option shall remain in effect for one (1) year after such notice is given (the "*Option Termination Date*"). If Tenant does not exercise the Purchase Option on or before the Option Termination Date, then the Purchase Option shall expire and shall not be available to Tenant following the Option Termination Date. Tenant may exercise the Purchase Option only if this Lease is then in effect.

Section 5.04 **Method of Exercising Purchase Option**. Tenant shall exercise the Purchase Option, if at all, by delivering to Landlord a written notice of exercise of the Option (the "*Notice of Exercise*") during the time period specified in Section 5.03 above and on or before the Option Termination Date. The Notice of Exercise shall inform Landlord of Tenant's exercise of the Purchase Option and shall specify the date of Closing (defined below) of such purchase (the "*Closing Date*"), which shall be at least three months, but not more than six months, after the date of the Notice of Exercise; provided that the actual Closing Date may be delayed as reasonably necessary to accomplish valuation of the Premises under the appraisal approach described in Section 5.02(b) above. Tenant shall pay all Rents and any other payments required due under this Lease until the Closing Date, even if the Closing Date extends beyond the end of the Extension Term.

Section 5.05 **Failure to Exercise Option**. If Tenant does not exercise its Purchase Option during the time period specified in Section 5.03 above and on or before the Option Termination Date as provided herein, then the Purchase Option shall automatically and irrevocably terminate and the Parties shall lose all their respective rights, and shall be discharged from all of their respective obligations, regarding the Purchase Option.

Section 5.06 **Closing**. The closing (“*Closing*”) of Tenant’s purchase of the Premises pursuant to an exercise of the Purchase Option shall occur on the date specified in the Notice of Exercise (or such other date as shall be mutually agreeable to the Parties), at such time and place in Salt Lake County, Utah, as Tenant reasonably may designate. At Closing, Landlord shall convey to Tenant by special warranty deed (in form reasonably specified by Tenant) unencumbered fee simple title to the Premises and Tenant shall pay to Landlord the Option Price. Taxes, assessments and other expenses against the Premises shall be prorated as of the Closing Date unless they are required to be paid by Tenant under this Lease, in which case they shall be paid by Tenant. Any escrow and closing fees charged by a title company or other escrow agent with respect to Closing shall be equally shared by the Parties. At Closing, Landlord shall provide to Tenant, at Landlord’s expense, a standard coverage owner’s policy of title insurance covering the Premises in the amount of the Option Price, issued by a licensed title insurer reasonably designated by Tenant; *provided, however*, that Landlord shall not be obligated to remove as exceptions to title to the Premises any of the Permitted Title Exceptions or any encumbrances created by or arising by, through or under any original or successor Tenant under this Lease. All other aspects of Closing shall conform to typical procedures and customs for similar real estate transactions in Salt Lake County, Utah.

Section 5.07 **Subdivision**. If any subdivision involving the Premises is advisable or legally required as a prerequisite to Closing, the Parties shall jointly, expeditiously pursue all necessary approvals by governmental entities of such subdivision, and the Closing shall be extended to the extent reasonably necessary to accommodate such subdivision. The out-of-pocket costs reasonably incurred in connection with such subdivision (such as for surveys and filing fees) shall be paid by Tenant.

ARTICLE VI

USE AND CONDITION OF THE PREMISES; CONSTRUCTION OF IMPROVEMENTS

Section 6.01 **Use of the Premises**. Tenant and its permitted successors, assigns, subtenants, etc. may use and occupy the Premises for (a) parking purposes serving the Project, including a parking structure and surface parking stalls as deemed appropriate by Tenant, (b) minor office uses ancillary to such parking uses, and (c) commercial retail uses to the extent the same do not interfere with the primary use of the Premises for parking purposes and do not require any material alterations to the parking garage as initially constructed (all uses permitted hereunder are the “*Permitted Uses*”), and for no other purpose without Landlord’s prior written approval.

Section 6.02 **Condition of the Premises**. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, TENANT IS LEASING THE PREMISES IN AN “AS IS” CONDITION, “WITH ALL FAULTS” AND TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM LANDLORD, ANY LANDLORD RELATED PARTIES, OR THEIR AGENTS, OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF LANDLORD, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING

WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION AND ASPECTS OF THE PREMISES, (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND ANY GROUNDWATER ON THE PREMISES, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PREMISES, (D) THE DEVELOPMENT POTENTIAL OF THE PREMISES, AND THE PREMISES' USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PREMISES FOR ANY PARTICULAR PURPOSE (E) THE ZONING OR OTHER LEGAL STATUS OF THE PREMISES OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON USE OF THE PREMISES, (F) THE PRESENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PREMISES OR THE ADJOINING OR NEIGHBORING PROPERTY, (G) THE QUALITY OF ANY LABOR AND MATERIALS USED IN ANY IMPROVEMENTS ON THE PREMISES, (H) THE CONDITION OF TITLE TO THE PREMISES, (I) THE VALUE, ECONOMICS OF THE OPERATION OR INCOME POTENTIAL OF THE PREMISES, OR (J) THE PHYSICAL CONDITION, VALUE, ECONOMICS OF OPERATION OR INCOME POTENTIAL OF THE PREMISES. THE PROVISIONS OF THIS SECTION 6.02 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

Section 6.03 **Construction of the Improvements.**

(a) *Project Schedule.* Tenant plans to improve the Premises by constructing Improvements (“*Improvements*”). Tenant shall use its diligent, commercially reasonable efforts to assure that platting of such project, securing of construction financing, and all necessary zoning and use approvals from the City, are completed/obtained by the fourth anniversary of the Effective Date (the “*Entitlement Date*”).

If, despite such efforts by Tenant, those necessary pre-construction tasks are not completed within that initial four years term, then within 30 days after the Entitlement Date Landlord may, at its option and upon written notice to Tenant, either (i) terminate this Lease, provided that following such notice Tenant shall have six months’ opportunity to cure (by completing securing such approvals, etc.), in which event such termination by Landlord shall be ineffectual, or (ii) extend the Entitlement Date (and Tenant’s time to secure such approvals, etc.) to the seventh anniversary of the Effective Date.

If Landlord so extends the Entitlement Date but construction of the Improvements has not commenced by that extended Entitlement Date (i.e., by the seventh anniversary of the Effective Date), then Landlord may terminate this Lease upon at least 180 days’ prior written notice and opportunity to cure to Tenant.

The project schedule, the Entitlement Date, and any extension of the Entitlement Date shall not affect, delay or excuse Tenant from Tenant’s obligation to pay the Rent as provided in Article III above.

(b) *Plans.* As Tenant completes the schematic design and design development phases of its proposed Improvements, Tenant will provide the final results of such design phases (“*Design Plans*”) to Landlord for Landlord’s review and reasonable approval. Landlord shall, within 15 days after submittal of the Design Plans, either (i) provide written approval of the Design Plans to Tenant, or (ii) meet with Tenant to discuss any portion of the Design Plans that are

reasonably unacceptable to Landlord. Tenant and Landlord shall expeditiously work together in good faith to resolve any unacceptable aspects of the Design Plans. Tenant hereby covenants and agrees that construction of the Improvements comprising any Project shall commence only after Tenant has received Landlord's approval of the underlying Design Plans pursuant to the foregoing process. In all events, Landlord's approval shall not be unreasonably withheld, conditioned or delayed.

Tenant further acknowledges Master Landlord's right to approve or disapprove the Design Plans under Section 6.03 of the Master Lease. Landlord will coordinate such matters directly with Master Landlord, and the times for submissions and responses under this subsection shall be reasonably extended to provide adequate time for Master Landlord's involvement in reviewing and approving the Design Plans. Landlord shall use reasonable good faith efforts to assist Tenant in obtaining such Master Landlord approval.

(c) Construction Standards. The Improvements constructed by Tenant shall be installed (i) in a good and workmanlike manner in accordance with sound design and building practices for the commercial real estate industry in Salt Lake County for similar projects, and (ii) in compliance with all federal, state, county, municipal and other governmental codes, laws, statutes, orders, decrees, restrictions, ordinances and regulations, now or hereafter enacted prior to the commencement of construction of the Improvements, which are applicable to or affect the Premises, including, without limitation, obtaining all applicable permits, inspections and approvals of all governmental authorities, fire underwriters or other entities having jurisdiction (collectively, the "Laws").

(d) Construction Assurance. Prior to commencement of construction of any Improvements:

(i) Contractor Bond. Tenant shall provide to Landlord a copy of the payment and performance bond (or similar instrument as required per the terms of the Master Lease) from Tenant's general contractor for the full contract value of the construction of the Improvements, with Landlord and Master Landlord named as additional obligees thereon.

(ii) Completion Assurance. Tenant shall provide to Landlord reasonably acceptable proof of adequate funding to complete such Improvements, with a reasonable excess for contingencies, whether through Tenant's own equity and funds or through loaned funds. In connection with the closing of any construction loan for such Improvements, Tenant shall provide either to its construction lender or to Landlord a completion guaranty (the "Completion Guaranty") in such commercially reasonable form as such lender or Landlord (as applicable) may require, as a condition precedent to the closing of the construction loan. Tenant shall promptly provide to Landlord a copy of any Completion Guaranty provided to Tenant's lender. The Completion Guaranty shall require the guarantor thereunder (the "Completion Guarantor") to guaranty the prompt commencement of construction of the subject Improvements following Tenant's receipt of all necessary approvals and diligently pursue construction of the Improvements through completion.

(e) Construction Filings; Notice of Completion. Tenant shall:

(i) Permits. Obtain at Tenant's cost all necessary building permits, licenses, or other governmental permits necessary to construct the Improvements, with Landlord

cooperating as reasonably necessary with such permitting processes; and

(ii) Construction and Completion Notices. File all pre-construction or construction notices or other filings of any kind required by applicable law. Upon completion of any work or improvement upon the Premises, Tenant timely shall file or cause to be filed, if required by applicable law, a valid notice of completion. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims arising out of or resulting from Tenant's failure to obtain any necessary permits or licenses, or to file any construction notices or other legally required documentation; or for any mechanic's or materialman's liens.

(f) Liens. In the event of attachment to the Premises of any tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Tenant or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises, then, subject to Tenant's right to contest as set forth below, Tenant shall bond against or discharge the same within 30 days after Landlord's written request. Notwithstanding the foregoing, Tenant may contest any such lien so long as (i) provision is made to the satisfaction of Landlord for eventual payment thereof in the event that it is found that the contested lien secures a valid obligation of Tenant, and (ii) such lien is released and discharged prior to any sale of any of the Premises that would result from nonpayment. Tenant shall notify Landlord, in writing, within three days after Tenant shall have received notice, whether actual or constructive, of any liens or anticipated liens on all or any part of the Premises.

(g) Construction Insurance. At all times during construction of any Improvements, Tenant's contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under the construction contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work by the contractor, its agents, representatives, employees or subcontractors.

ARTICLE VII

COMPLIANCE WITH LAWS; LIENS AND ENCUMBRANCES

Section 7.01 **Compliance with Laws**. Subject to the provisions of Section 7.04 hereof (concerning Hazardous Substances) and Article XIV hereof (concerning Permitted Contests), Tenant, at its sole cost and expense, shall comply with and cause the Premises and any and all Improvements located thereon, to comply with (a) all Laws affecting the Premises or any part thereof, or the use thereof, including, without limitation, those which require Required Repairs (as defined in Section 8.01 hereof), or any structural changes in the Improvements whether or not any such Laws involve a change of policy on the part of the governmental body enacting the same, and (b) the requirements of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Premises (all or any one of the items enumerated in this Section 7.01 is hereinafter referred to as a "*Regulation*").

Section 7.02 **Tenant's Agreement Relating to Hazardous Substances**. Tenant hereby covenants that Tenant and its agents, employees and contractors will not (and Tenant shall not permit or suffer any third party to) during the Term generate, store, use, treat or dispose of any Hazardous Substances (as hereinafter defined) in, on or at the Premises or any part of the Improvements, except for Hazardous Substances as are commonly legally used or stored (and in

such amounts as are commonly legally used or stored) as a consequence of using the Premises for the Permitted Uses, but only so long as the quantities thereof are inconsequential and do not pose a threat to public health or to the environment and do not necessitate a “response action”, as that term is defined in CERCLA (as hereinafter defined), and so long as Tenant strictly complies or causes compliance with all Laws concerning the use or storage by Tenant of such Hazardous Substances. Tenant further covenants that neither the Premises nor any part of the Improvements shall ever be used by Tenant or its agents, contractors, employees, or subtenants as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances during the Term.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys’ fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release on or from, the Premises or the Improvements of any Hazardous Substance (including, without limitation, any losses, liabilities, including without limitation strict liability, damages, injuries, expenses, including without limitation reasonable attorneys’ fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), any so called federal, state or local “Superfund” or “Superlien” laws, or any other Laws regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance), to the extent that such escape, seepage, etc. of Hazardous Substances occurs during the Term or is otherwise exacerbated by Tenant during the Term.

For purposes of this Lease, “*Hazardous Substances*” shall mean and include those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the “EPA”) or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by CERCLA or any Superfund law or any Superlien law or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

Landlord shall have the right but not the obligation, and without limitation of Landlord’s rights under this Lease, to enter onto the Premises or to take such other actions as it reasonably deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance following receipt of any notice from any person or entity (including without limitation the EPA) asserting the existence of any Hazardous Substance in, on or at the Premises or any part thereof which, if true, could result in an order, suit or other action against Tenant and/or Landlord; *provided, however*, Landlord agrees that, except in the case of an emergency, Landlord will take such action only after written notice to Tenant of the alleged existence of Hazardous Substances and the failure by Tenant within a reasonable period of time following receipt of such notice to commence (but in no event more than 30 days without Landlord’s written consent), or the failure by Tenant to thereafter diligently pursue to completion, the appropriate action to clean-up, remove, resolve or minimize the impact of such Hazardous Substances. All reasonable costs and expenses (including, without limitation, penalties, fees, interest, reasonable and actual attorneys’ fees and court costs) incurred by Landlord in the exercise of any such rights, which costs and expenses result from the violation of the covenants and

agreements of Tenant contained in the first paragraph of this Section 7.02, shall be payable by Tenant within ten days after the date of written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed).

This Section 7.02 shall survive cancellation, termination or expiration of this Lease.

Section 7.03 **Liens and Encumbrances**. Tenant may encumber its leasehold interest in the Premises under this Lease in connection with loan transactions arising in the context of Tenant's development and future operation of the Premises. Subject to the provisions of Article XIV hereof (concerning Permitted Contests), however, Tenant shall not create or permit to be created or to remain, and shall promptly discharge or bond over at Tenant's sole cost and expense, any lien, encumbrance or charge (all or any one of which hereinafter referred to as "Lien") upon Landlord's interest in the Premises ("Landlord's Interest"), including any such lien on Landlord's Interest that arises from the use or occupancy of the Premises by Tenant or by reason of any labor, service (including, without limitation, real estate brokerage, leasing or management services) or material furnished or claimed to have been furnished to or for the benefit of Tenant or by reason of any construction, repairs or demolition by or at the direction of Tenant of all or any part of the Improvements, or by reason of any Permitted Contest under Article XIV hereof. The Parties acknowledge and agree that if as a result of the posting of a bond the Lien is removed, such Lien shall cease to be a Lien even though the obligations theretofore secured by such Lien continue. The term "Lien" does not include any lien of or for Taxes.

Notice is hereby given that Landlord shall not be liable for the cost and expense of any labor, services (including, without limitation, real estate brokerage, leasing or management services) or materials furnished or to be furnished with respect to the Premises at or by the direction of Tenant or anyone holding the Premises or any part thereof by, through or under Tenant and that no laborer's, mechanic's or materialman's or other lien (including, without limitation, any real estate broker or service provider lien) for any such labor, service or materials shall attach to or affect the interest of Landlord in and to the Premises. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any improvements or repairs to or of the Premises or any part thereof, nor as giving Tenant any right, power or authority on behalf of Landlord to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any Lien against Landlord's Interest in the Premises or any part thereof.

Any and all Liens created by Tenant shall attach to Tenant's leasehold interest in the Premises only. Landlord shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from Liens. In case of any Lien attaching or notice of any Lien attaching to Landlord's Interest that arises from the use or occupancy of the Premises by Tenant or by reason of any labor, service (including, without limitation, real estate brokerage, leasing or management services) or material furnished or claimed to have been furnished to or for the benefit of Tenant or by reason of any construction, repairs or demolition by or at the direction of Tenant of all or any part of the Improvements, Tenant shall indemnify, defend, protect, and hold harmless Landlord from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any such Lien or the threat of any such Lien. The provisions of this Section 7.03 shall survive the expiration or earlier termination of this Lease.

If Tenant fails to discharge or bond over any Lien created or established in violation of Tenant's covenant herein and such failure continues for a period of 15 days after receipt by Tenant of written notice from Landlord of the existence of the Lien, or if Tenant fails to comply with any Regulation as required in Section 7.01, and such failure continues for a period of 30 days after receipt by Tenant of written notice from Landlord of noncompliance with any Regulation (provided that if Tenant in good faith commences to cure such failure to perform such Regulation within said 30 day period, said 30 day period will be extended for such time as Tenant is continuously and diligently pursuing the cure of such failure), and provided such Lien or Regulation is not being actively contested by Tenant pursuant to Article XIV hereof or at any time a Lien or Tenant's failure to comply with a Regulation poses an imminent threat to Landlord's title to the Premises, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, discharge or pay such Lien (either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings) or cause compliance with such Regulation, and any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith shall be paid immediately by Tenant to Landlord within 30 days after written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed), with Interest thereon from the date of such written demand by Landlord.

Section 7.04 **Landlord's Agreement Relating to Hazardous Substances**. Landlord hereby represents to Tenant that to Landlord's actual knowledge as of the Effective Date, Landlord has received no notice of violation, administrative complaint or judicial complaint alleging that conditions on the Premises are in violation of any environmental laws, regulations, ordinances or rules. For purposes of this Section 7.04, "*Landlord's actual knowledge*" shall mean the actual (and not implied) knowledge of H. Jason Winkler (the "*Representing Individual*"). Landlord represents and warrants that the Representing Individual is the person within Landlord's organization responsible for information about Hazardous Substances on the Premises. Landlord shall indemnify and hold Tenant harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, attorneys' fees, and consultant and expert fees) arising during or after the Term as a result of the breach by Landlord of the representation made in the preceding sentence; provided, however, the foregoing indemnity, representation and warranty excludes matters caused by Tenant, or its agents, employees or contractors, and does not extend to Hazardous Substances first introduced in, on or to the Premises after the Effective Date, except as introduced by Landlord or Master Landlord or their agents, employees, or invitees. The obligations of Landlord under this Section 7.04 shall not be affected by the expiration or termination of the Term.

ARTICLE VIII **REPAIRS AND ALTERATIONS**

Section 8.01 **Maintenance and Repairs**. Throughout the Term, Tenant shall repair and maintain the Improvements on the Premises in good order and repair, comparable with other commercial developments in Salt Lake City, UT of comparable age, quality and construction, reasonable wear and tear excepted, and in accordance with all applicable Laws. Notwithstanding the foregoing to the contrary, during the last one (1) year of the Term, except for Required Repairs (as hereinafter defined), Tenant will have no obligation to make any repair or replacement that would be classified as a "capital expense" under generally accepted accounting principles. "*Required Repairs*" means:

(a) Legally-Required Repairs. Those repairs required to be made to the Premises pursuant to all applicable Laws, taking into account any applicable “grandfathering” of the Premises as a legal non-conforming use with respect to the same (i.e., Required Repairs do not include repairs or replacements which would be required to bring the Premises into compliance with Laws applicable to new construction except to the extent that the Premises is not exempt from such compliance or grandfathered as a legal nonconforming use);

(b) Habitability Repairs. Those repairs and replacements required to keep the Premises in a safe and tenantable condition, such as, without limitation, patching holes or leaks in the roof, repairs and replacements of mechanical equipment; and

(c) Insurance-Required Repairs. Any repairs that are required by insurance policies and agreements to which Tenant is a party or by which it is bound, then in effect, with respect to the Premises.

At the expiration or termination of the Term, Landlord shall accept the Premises and all Improvements “**as-is where-is**” (except for Tenant’s maintenance and repair obligations set forth herein and liability with respect to third party claims brought against Landlord relating to Tenant’s failure to repair or restore the Premises). Landlord is not required to make any repairs or replacements to the Premises whatsoever (including, without limitation, the roofs, foundations, all interior and exterior walls, and all structural and non-structural portions of the buildings and other improvements), structural or otherwise, ordinary or extraordinary, foreseen and unforeseen, including but not limited to the exterior and interior windows, doors and entrances, signs, floor coverings, columns and partitions; and lighting, heating, plumbing and sewerage facilities, and air conditioning equipment, and during the Term of this Lease, Landlord shall have no liability whatsoever with respect to any faulty repair or failure to repair the Premises. Notwithstanding the foregoing, if Tenant fails to make timely repairs to the Premises as required hereunder, Landlord, at Landlord’s sole option, may conduct such repairs on behalf of Tenant and Tenant shall reimburse Landlord within 30 days after written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed), with Interest thereon from the date of such written demand by Landlord.

Section 8.02 Alterations. From time to time during the Term, Tenant may at its sole cost and expense make additions or improvements to, or alterations of, the Improvements provided that (a) the Design Plan therefor is approved by Landlord as provided in Section 6.03(b) above; (b) any such action shall be expeditiously completed in a good and workmanlike manner in compliance with the terms and condition of this Lease and all applicable Laws, insurance policies and agreements to which Tenant is a party or by which it is bound, then in effect, and (c) Tenant shall have procured and paid for all permits, licenses and other third-party approvals required in connection therewith. Landlord shall reasonably cooperate with Tenant for the purposes of securing necessary permits for any additions, improvements or alterations permitted under this Section 8.02, provided that Landlord shall not be required to incur any liability or unreimbursed material expense with respect to the same.

Notwithstanding anything to the contrary set forth above or elsewhere in this Lease, without obtaining Landlord’s approval of any plans therefor, Tenant shall be permitted to make additions, improvements and alterations which (j) do not cause any material change in the outside appearance of the Improvements; (k) are made with due diligence, in a good and workmanlike manner, and in compliance with all Laws, and in compliance with insurance policies with respect to the Premises

and agreements to which Tenant is a party or by which it is bound, then in effect, with respect to the Premises; and (l) are promptly and fully paid for by Tenant.

In no event shall Landlord have the right to review and/or approve any signage installed within the Premises or the content (i.e. tenant identification signage) of any such signs as long as signage, both exterior and interior, complies with all applicable Laws and Regulations. Tenant shall have the right to add, remove and modify any such signage from time to time, in its sole discretion; *provided, however*, that Landlord shall have the right to review and approve major exterior signage installed upon the Improvements to the extent such signage (x) contains any lewd or vulgar message; (y) may constitute a nuisance by emitting an unreasonable amount of light; or (z) obstruct views from any nearby realty owned or controlled by Landlord in an unreasonable manner.

ARTICLE IX

DAMAGE AND DESTRUCTION

Section 9.01 **Notice**. In the event of any material damage to or destruction of all or any part of the Improvements, Tenant will promptly give written notice thereof to Landlord, which notice shall generally describe the nature and extent of such damage or destruction. There shall be no abatement of or adjustment to any other payments or obligations of Tenant under this Lease as a result of any damage or destruction.

Section 9.02 **Optional Restoration**. In the event of any damage to or destruction of all or any part of the Improvements and whether or not the insurance proceeds on account of such damage or destruction shall be sufficient for the purpose, Tenant, at its sole cost and expense, may promptly commence (and, if commenced, shall thereafter diligently and continuously prosecute to completion) the restoration, replacement or rebuilding of the Improvements (such restoration, replacement or rebuilding, together with any temporary repairs and property protection, are herein collectively referred to as "*Restoration*"). Tenant may commence and complete the Restoration without obtaining any consent or approval of or from Landlord so long as the Improvements following the completion of the Restoration are substantially similar to the Improvements prior to the damage or destruction, and in compliance with (a) all Laws, (b) Design Plans previously approved by Landlord for the damaged Improvements; (c) insurance policies with respect to the Premises, and (d) agreements to which Tenant is a party or by which it is bound, then in effect, with such changes as are necessary to comply with then applicable Regulations.

Section 9.03 **Optional Termination**. If damage to or destruction of a substantial portion of the Improvements occurs within the last five years of the Term (i.e., after year 35 of the initial 40 years Term [the "*Initial Term*"] or after year 15 of any Extension Term) such that at least 60% of the Improvements are unusable for the Permitted Uses, Tenant also shall have the right, at its sole election and in lieu of any obligation to restore the Improvements, to terminate this Lease upon 30 days' prior written notice to Landlord, which notice shall be delivered to Landlord on or before the date that is 90 days after such event of damage or destruction. Any such termination shall be conditioned on Tenant also simultaneously paying or offering to pay to Landlord a sum equal to any outstanding charges or amounts due from Tenant to Landlord as of such termination date, and by surrendering, or offering to surrender, the Premises to Landlord on or before the effective date of such termination, in a clean, sightly and safe condition, free of all debris and damaged Improvements. In connection with any such termination, to the extent any undamaged portion of the Improvements is unusable for the Permitted Uses, such Improvements shall be demolished by Tenant as soon as practicable and in compliance with Laws. All insurance proceeds

due on account of such damage or destruction shall be equitably allocated between Landlord and Tenant, with (a) Tenant's portion limited to damages for Tenant's loss of the Improvements and Tenant's leasehold for the remainder of the Term (including the Extension Term) subsequent to such damage or destruction, and (b) the remainder of the proceeds being allocated to Landlord for Landlord's damages for loss of the Rent for the remainder of the Term (including the Extension Term) subsequent to such damage or destruction and loss of the use of the Improvements after expiration of the Extension Term.

Section 9.04 **Application of Proceeds**. Except as otherwise provided in Sections 9.02 and 9.03 above, insurance proceeds received on account of any damage to or destruction of the Improvements or any part thereof shall be applied to pay for the cost of Restoration. To the extent any such proceeds exceed the costs of Restoration, Tenant shall retain such excess for Tenant's account.

ARTICLE X **INSURANCE**

Section 10.01 **Classes of Insurance**. Commencing on the date of this Lease (with regard to the insurance required by subsection (b) below) and on the date Tenant commences construction of any alterations or other Improvements on the Premises (with regard to the insurance required by subsections (a) and (b) below), and at all times thereafter throughout the entire Term, Tenant shall keep the Premises insured, or shall cause the Premises to be kept insured, against the risks and hazards and with coverage in amounts not less than those specified as follows:

(a) **Casualty Insurance**. Insurance against the risks customarily included under "all-risks" policies with respect to improved properties similar to the Premises in an amount equal to the "full insurable value" (which as used herein shall mean the full replacement value, including the costs of debris removal, which amount shall be determined not less often than every five years) of the Improvements. Tenant shall be entitled to carry a deductible of up to \$50,000.00 in Constant Dollars in connection with said coverage provided Tenant self-insures for the amount of the deductible. Tenant hereby further agrees that to the extent available, Tenant will obtain an "agreed amount" endorsement with respect to such insurance so as to prevent either Landlord or Tenant from becoming a co-insurer of any loss.

(b) **Liability Insurance**. Commercial general liability and property damage insurance (including, but not limited to, coverage for any construction, reconstruction or alteration by or at the instance of Tenant on or about the Premises) covering the legal liability of Landlord and Tenant against all claims for any bodily injury or death of persons and for damage to or destruction of property occurring on, in or about the Premises and the adjoining streets, sidewalks, passageways, and parking areas utilized by Tenant or any users or occupants of the Premises in combined single limits for both property damage and bodily injury and in the minimum amount of Five Million and No/100 Dollars (\$5,000,000.00) in Constant Dollars in connection with any single occurrence (or such other amount as required pursuant to the terms of the Master Lease). Tenant shall be entitled to carry a deductible of up to \$50,000.00 in Constant Dollars in connection with the said coverage provided Tenant self-insures for the amount of the deductible.

"Constant Dollars" means and refers to the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the fourth calendar year following the Effective Date of this Lease, and thereafter at five-year intervals. Constant Dollars will be determined by

multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “*Base Index Number*” will be the level of the Index for the month during which the Effective Date occurs; the “*Current Index Number*” will be the level of the Index for the month of October of the year preceding the adjustment year.

“*Index*” means and refers to the Consumer Price Index for All Urban Consumers (U.S. City Average), published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84 = 100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Tenant shall substitute for the Index comparable statistics as compiled by an agency of the United States Government or, if none is available, by a substantial and responsible periodical or publication of nationally recognized authority most closely approximating the result which would have been achieved by the Index.

In addition, commencing on the date of this Lease and at all times thereafter throughout the entire Term, Landlord shall carry the insurance required under Article X of the Master Lease.

Section 10.02 **Requirements**. All insurance required under Section 10.01 above shall be written by companies of recognized financial standing (with a rating of at least A VIII in Best’s Key Rating Guide or otherwise meets a similar standard from a successor rating organization if Best’s Key Rating Guide is unavailable in the future) which are authorized to do insurance business in the State of Utah and shall expressly provide: (a) with respect to the insurance required by subsection (a) of Section 10.01 above, an effective waiver by the insurer of all rights of subrogation against any additional insured and against such additional insured’s interest in the Premises and against any income derived therefrom; (b) that no cancellation, reduction in amount or material change in coverage thereof shall be effective until the insurer has endeavored to give at least 30 days written notice thereof to Landlord; and (c) that during construction, reconstruction, alteration or material remodeling of any Improvements on the Premises such policies shall be in “builder’s risk” form if there would be an exclusion of coverage under Tenant’s all-risks policy as a result of such construction, reconstruction, alteration or material remodeling. Landlord shall also be designated as an additional insured under Tenant’s commercial general liability policy.

Notwithstanding the foregoing, Tenant’s obligation to provide the insurance required under this Lease shall be conditioned upon the commercial availability of such insurance (i.e. if such insurance is unavailable in the insurance market and all similarly situated properties in the place where the Premises is located do not have such policies in place, then Tenant will not be obligated to provide the insurance required under this Lease). A certificate of insurance in force, in form reasonably acceptable to Landlord, (and, if requested by Landlord, a copy of each policy) issued by the insurer as provided in Section 10.01 hereof, shall be delivered to Landlord on or before the date Tenant is required to obtain the applicable insurance, and with respect to renewal or replacement policies, as soon thereafter as such certificate of insurance is available to Tenant after such policy has been renewed or replaced.

Tenant may obtain the insurance required hereunder by endorsement on its blanket insurance policies, provided that: (x) said policies fulfill the requirements of this Section 10.02; (y) said policies reference the Premises; and (z) Landlord receives the certificate of insurance in force with respect thereto as provided above. Tenant shall permit Landlord to examine all policies evidencing the insurance required to be maintained by Tenant under this Lease. Nothing contained in this

Lease shall be construed to require Landlord to prosecute any claim against any insurer or to contest any settlement proposed by any insurer. Landlord and Tenant shall each have included in all policies of fire, extended coverage, workers compensation, business interruption, liability, and loss of rents insurance respectively obtained by them covering the Premises or the Improvements or the contents thereof, a waiver by the insurer of all right of subrogation against the other in connection with any loss or damage thereby insured against. Any additional premium for such waiver shall be paid by the primary insured.

Section 10.03 **Subtenant Requirements**. Tenant shall cause all subtenants in the Premises to maintain Commercial General Liability Insurance covering against claims of bodily injury, personal injury and property damage arising out of the respective subtenants' operations, assumed liabilities or use of the Premises, including a Broad Form Commercial General Liability endorsement, for limits of liability not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 annual aggregate in Constant Dollars. All insurance required by subtenants pursuant to this Section 10.03 shall be written by companies of recognized financial standing which are authorized to do insurance business in the Utah and shall expressly provide (if commercially available) that no cancellation, reduction in amount or material change in coverage thereof shall be effective until the insurer has endeavored to give at least 30 days written notice thereof to Tenant. Tenant shall permit Landlord to examine all policies evidencing the insurance required to be maintained by subtenants pursuant to this Section 10.03.

Section 10.04 **Certificates**. Within 15 days after receipt of written request from Landlord (but in no event more often than twice annually), Tenant shall execute and deliver to Landlord a certificate addressed to Landlord that is dated within 30 days prior to the delivery thereof and which lists the insurers and policy numbers evidencing all the other insurance then required to be maintained by Tenant hereunder.

If Tenant fails to obtain, maintain or renew any insurance provided for in this Article X or to pay the premiums therefor, or to deliver to Landlord any of such certificates, Landlord may, but shall not be obligated to, procure such insurance, pay the premiums therefor or obtain such certificates, and any costs or expenses incurred by Landlord for such purposes shall be immediately paid by Tenant to Landlord upon demand by Landlord, with Interest thereon from the date of demand by Landlord.

ARTICLE XI **INDEMNIFICATION**

Without limiting or modifying any other provision in this Lease, Tenant covenants and agrees to pay, defend, indemnify and save harmless Landlord from and against any and all liability, loss, damage, cost, expense (including without limitation reasonable and actual attorneys' fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever resulting from the negligence or willful misconduct or omission of Tenant or its agents, contractors or employees during the Term of this Lease. If any action or proceeding should be brought against Landlord based upon any such claim and if Tenant causes such action or proceeding to be defended at Tenant's expense, without any disclaimer of liability by the Tenant in connection with such claim, then Tenant shall not be required to indemnify Landlord for additional attorneys' fees in connection with such action or proceeding.

Without limiting or modifying any other provision in this Lease, Landlord covenants and

agrees to pay, defend, indemnify and save harmless Tenant from and against any and all liability, loss, damage, cost, expense (including without limitation reasonable and actual attorneys' fees and expenses of Tenant), causes of action, suits, claims, demands or judgments of any nature whatsoever resulting from the negligence or willful misconduct or omission of Landlord or its agents, contractors or employees during the Term of this Lease. If any action or proceeding should be brought against Tenant based upon any such claim and if Landlord causes such action or proceeding to be defended at Landlord's expense, without any disclaimer of liability by the Landlord in connection with such claim, then Landlord shall not be required to indemnify Tenant for additional attorneys' fees in connection with such action or proceeding. This Article XI shall survive the expiration or termination of this Lease.

In addition, without limiting or modifying any other provision in this Lease, Landlord covenants and agrees to pay, defend, indemnify and save harmless Tenant from and against any and all liability, loss, damage, cost, expense (including without limitation reasonable and actual attorneys' fees and expenses of Tenant) that is over and above the obligations of Tenant as Tenant hereunder and which result from Tenant's cure of any default by Landlord under the Master Lease or any other fulfillment or satisfaction by Tenant, pursuant to its obligations under the Mortgage Loan and/or Mezzanine Loan, of Landlord's obligations under the Master Lease. Tenant shall have the right, at Tenant's sole discretion, to offset any such costs or expenses so incurred by Tenant against Tenant's next payment obligations coming due hereunder, including but not limited to Tenant's Rent obligations.

ARTICLE XII

OWNERSHIP OF IMPROVEMENTS

Section 12.01 **Title to Improvements.** Title to the Improvements constructed by Tenant shall, during the Term, be in Tenant; *provided, however*, that notwithstanding such title, the terms and conditions of this Lease shall govern the construction, use, and operation of the Improvements and the exercise of Tenant's rights with respect thereto and that the fee simple title to the Premises shall at all times remain with Master Landlord subject to Landlord's Interest. Upon the termination or expiration of this Lease, title to all Improvements (other than trade fixtures), if any, then located on the Premises shall vest in and become the full and absolute property of Landlord without need of any further action being taken by Tenant or Landlord, and Tenant shall immediately surrender possession of the Improvements, if any, then located on the Premises upon such termination or expiration as provided in Section 12.02 hereof. The value or cost of the Improvements constructed by Tenant shall not in any way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay other payments or obligations of Tenant under this Lease.

Notwithstanding the foregoing, upon the expiration or earlier termination of this Lease, Tenant shall execute and deliver to Landlord: (a) such instrument(s) reasonably required by Landlord evidencing the transfer of all right, title and interest of Tenant in and to all Improvements to Landlord; (b) a bill of sale transferring all right, title and interest of Tenant in and to all personal property located upon and/or related to the Premises and/or the Improvements that is not owned by subtenants of the Premises; and (iii) an assignment of all of Tenant's right, title and interest, if any, in and to any intangible property related to the Premises and/or the Improvements including, but not limited to, trademarks and trade names used exclusively in connection with the Premises.

Without limiting the foregoing, until such time as Landlord becomes the owner of the Improvements, Tenant and its successors and assigns successors shall be entitled to all of the tax

attributes of ownership of the Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim federal tax credits associated with such Improvements pursuant to the Internal Revenue Code, and the right to amortize all capital costs, and to claim any and all other federal or state tax benefits attributable to such Improvements.

Section 12.02 **Surrender**. Upon the expiration or any termination of this Lease, (a) Tenant shall peaceably quit and surrender the Premises and all Improvements to Landlord; (b) Landlord shall accept the Premises and all Improvements “**as-is where-is**”; and (c) other than Tenant’s obligation to make any Required Repairs, Tenant will have no obligation to repair or restore the Premises or Improvements, nor any liability for failure to repair or restore the Premises or Improvements (except for liability with respect to any third party claims brought against Landlord relating to Tenant’s failure to repair or restore the Premises).

Tenant shall have the right within ten business days after termination or expiration of this Lease to remove from the Premises all furniture, inventory, trade fixtures, signs, sign panels (but not any pylon or monument) or other personal property of Tenant (collectively, “*Tenant’s Property*”); *provided, however*, that if Tenant fails to remove all or any portion of Tenant’s Property from the Premises within ten business days after the termination or expiration of this Lease, Tenant’s Property shall automatically become the sole and exclusive property of Landlord (notwithstanding any rights or security interests of any Leasehold Mortgagee, which shall automatically be subordinate to Landlord’s rights under this Section 12.02), and Landlord may sell, dispose of, use, or keep such Tenant’s Property as Landlord shall choose. In no event shall any built-in or attached machinery and equipment (other than trade fixtures) used in and necessary to the operation of the Improvements be removed by Tenant at the expiration of the Term.

Section 12.03 **Waiver of Landlord’s Lien**. Tenant shall have the right, without Landlord’s consent, to finance the furniture, inventory, trade fixtures and personal property of Tenant at the Premises and grant liens and security interest in such items. Subject to Landlord’s rights under Section 12.02 of this Lease, and provided Tenant is not in default under any provisions of this Lease, Landlord waives and releases any and all statutory landlord’s liens with respect to Tenant’s furniture, inventory, trade fixtures or other personal property of Tenant Landlord agrees to execute and deliver to Tenant within 15 days after written request therefor, a written confirmation in favor of Tenant’s lender or the waiver set forth in this Section 12.03, in form reasonably acceptable to Tenant’s lender and Landlord.

ARTICLE XIII **TRANSFERS; NONSUBORDINATION** **TO LEASEHOLD MORTGAGES**

Section 13.01 **Transfers—Overview**. In connection with the future development and operation of the Premises during the Term, Tenant may, upon approval by Landlord, which approval shall not be unreasonably withheld or delayed as described below, sell, assign, lease, or otherwise transfer (each, a “*Transfer*”) Improvements (and sub-sublease the Premises) to one or more qualified third parties reasonably selected by Tenant; provided, however, that notwithstanding any Transfer (other than a Transfer with Landlord’s consent under Section 13.02[d]) Tenant shall remain obligated under this Lease unless Landlord affirmatively agrees in a separate signed writing to release Tenant from all or a specified portion of its obligations under this Lease in connection with that Transfer. For example, following construction of the Improvements on the Premises, Tenant may elect to Transfer the Premises (including all

Improvements thereon), subject to this Lease, to a qualified third party selected by Tenant. Any such Transfer shall be subject to the terms and conditions of this Lease; i.e., although a Transfer likely will include a sub-sublease by Tenant to the transferee of the Premises, no Transfer shall modify or extinguish Tenant's duty to fully and timely pay and perform all of Tenant's obligations to Landlord under this Lease. Promptly following consummation of a Transfer, Tenant shall provide written notice to Landlord of the occurrence of that Transfer.

If this Lease requires that Landlord's consent to a Transfer be obtained before such Transfer may occur, then the Parties shall proceed as described in this paragraph. Tenant shall provide to Landlord (subject to such written confidentiality covenants from Landlord as either Tenant or the proposed transferee reasonably may require) the pertinent information concerning the Transfer, including the nature of the Transfer; the timing of the Transfer; the identity of the proposed transferee; and information concerning the transferee's financial capacity and operational experience (the "*Transaction Information*"). Within ten (10) business days after its receipt of the Transaction Information, Landlord shall either (a) provide written approval of the Transfer to Tenant, or (b) meet with Tenant to discuss any aspect of the proposed Transfer that is reasonably unacceptable to Landlord, in which case the Parties shall expeditiously work together in good faith to resolve any unacceptable aspects of the proposed Transfer. If Landlord fails to so act, then the Transfer shall be deemed approved. Further, the Parties agree that Landlord's consent to a proposed Transfer may not reasonably be withheld if the proposed transferee's net worth and operational experience are at least equal to those of Tenant.

Section 13.02 **Certain Specific Transfers**. Provided Tenant is not in default under this Lease, and in accordance with the provisions of Section 13.01, above, Tenant may, from time to time throughout the Term:

(a) *Mortgages*. Mortgage, pledge or hypothecate its rights under this Lease, specifically, the interest of Tenant in this Lease, and Tenant's ownership interest in the Improvements, or in Tenant's leasehold interest in the Premises, or any part thereof, as security for any bona fide indebtedness that Tenant may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument; *provided, however* that such mortgage, pledge or hypothecation shall be subject and subordinate to Master Lessor's and Landlord's interests in the Premises and Landlord's rights to collect any sums due hereunder and otherwise made in accordance with Section 13.03 below and the other terms and conditions of this Lease.

(b) *Institutional Investor*. Assign Tenant's interest in this Lease to any Institutional Investor (as hereinafter defined) or to any entity controlled by an Institutional Investor (as "*control*" is defined in Section 13.02(d) of this Lease). "*Institutional Investor*" means any of the following persons or entities:

(i) Any savings bank, savings and loan association, commercial bank, or trust company having shareholder equity (as determined in accordance with GAAP accounting) of at least \$50,000,000 in Constant Dollars;

(ii) Any fund, credit union, trust or insurance company having assets of at least \$50,000,000 in Constant Dollars;

(iii) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 in Constant Dollars or more; or

(iv) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000 in Constant Dollars.

(c) *Subtenants*. Sublet all or any portion of the Premises to Tenant's tenants, subtenants, renters, etc. of the Premises ("*Subtenants*") through the execution of sub-subleases or the like having terms that are less than the balance of the Term ("*Subleases*"). All Subleases shall be subject to and subordinate to this Lease. Unless Landlord otherwise expressly agrees in writing, the Sublease of a portion of the Premises shall not effect a release of Tenant from any of Tenant's obligations contained herein.

(d) *Reorganization, Etc.* Assign this Lease to (i) any successor to Tenant in connection with a bona fide material reorganization, recapitalization, consolidation, share exchange, acquisition or merger of Tenant; (ii) any entity that acquires all or substantially all of the assets of Tenant; and (iii) any parent corporation of which Tenant is a direct or indirect wholly-owned subsidiary, to any direct or indirect wholly-owned subsidiary of Tenant, to any wholly-owned subsidiary of any Parent Entity of which Tenant is a direct or indirect wholly-owned subsidiary, or to any other entity which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with Tenant, *provided, however*, that Landlord shall have the right to review such proposed Transfer as provided in this subsection to determine the creditworthiness of the new transferee and determine if such transferee has the experience, expertise and ability to perform under this Lease in a manner equal to or better than the Tenant. Tenant shall provide all relevant information reasonably requested by Landlord related to the new transferee so Landlord can conduct its review of the new transferee. If Landlord determines in its reasonable discretion that such new transferee under this subsection is not equal to or better than Tenant in its ability to perform under this Lease, then Landlord may withhold its consent to such assignment. "*Control*" as used in this paragraph means, with respect to a corporation, the right to exercise more than 50% of the voting rights attributable to the shares of the controlled corporation and, with respect to an entity that is not a corporation, the ownership, directly or indirectly, of more than 50% of the controlled entity or the possession of the power to direct or cause the direction of the management and policies of the controlled entity.

Further, notwithstanding anything in this Lease to the contrary, any sale, assignment or transfer of Tenant's interest in this Lease in any proceeding for the foreclosure of any Leasehold Mortgage (as defined in Section 13.03 below), or the assignment or transfer of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of or exercise of power of private sale under, any Leasehold Mortgage (collectively, a "*Foreclosure*"), shall be deemed to be a permitted Transfer of Tenant's interest in this Lease. If any Institutional Investor lender acquires Tenant's interest in this Lease through Foreclosure, such lender shall have the right to sell, transfer, convey or assign its interest in this Lease subject to Landlord's consent requirements set forth in this Article XIII.

Section 13.03 **Leasehold Mortgaging**.

(a) *No Subordination*. Landlord's right, title and interest under this Lease and in the Premises are not subordinate to the lien, priority and security title of any encumbrance of Tenant's right, title and interest in the Improvements and/or under this Lease as security for any indebtedness Tenant may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument (all or any one of which are "*Leasehold Mortgage*," and the owner(s) or

holder(s) of all or any of which are a “*Leasehold Mortgagee*”). For purposes of this Lease, Landlord and Tenant acknowledge that Lender is a Leasehold Mortgagee, and shall be entitled to all of the rights and remedies of a Leasehold Mortgagee hereunder (in addition to all other rights and remedies afforded to Lender hereunder and pursuant to the terms of the Loan Documents (as defined in the Loan Agreement), including but not limited to the rights and remedies afforded pursuant to Section 13.03(i). Without limiting the foregoing, Landlord’s right to receive any Rent or other amounts due from Tenant to Landlord hereunder shall have priority over any rights of any Leasehold Mortgagee under a Leasehold Mortgage.

(b) *Tenant’s Right of Encumbrance*. Subject to the requirements of this Section 13.03, Tenant shall have the right without Landlord’s consent to create and convey a Leasehold Mortgage as security for any bona fide indebtedness that Tenant may incur. Landlord shall not be deemed to have notice of any Leasehold Mortgage unless and until written notice of such Leasehold Mortgage shall have first been delivered to Landlord, notwithstanding any other form of notice to Landlord, actual or constructive. Upon written request, Landlord shall enter into a non-disturbance and attornment agreement (or a commercially reasonable substitute document) with any Leasehold Mortgagee, and Tenant shall use its good faith efforts to cause such Leasehold Mortgagee to enter into a subordination agreement with Landlord. The final form of such agreements is subject to the approval of all Parties thereto, which shall not be unreasonably, withheld, conditioned or delayed.

(c) *Leasehold Mortgagee’s Cure Rights*. If Landlord receives from Tenant or from a Leasehold Mortgagee written notice as provided in Section 18.13 hereof specifying the name and address of such Leasehold Mortgagee and requesting that Landlord give to such Leasehold Mortgagee a copy of each notice of default by Tenant at the same time as and whenever any such notice of default shall thereafter be given by Landlord to Tenant, then:

(i) Landlord shall comply with such request by giving such notice, addressed to such Leasehold Mortgagee at the address last furnished to Landlord, with respect to each default by Tenant occurring on or after the date of Landlord’s receipt of such notice; and

(ii)

(A) If such default is a default in the payment of any sum due hereunder, such Leasehold Mortgagee will have the right to cure such default for the longer of the time period afforded to Tenant under this Lease or 30 days after receipt by such Leasehold Mortgagee of such notice;

(B) If such default is a default in observing or performing any other covenant or condition to be observed or performed by Tenant hereunder, and such default can be cured by such Leasehold Mortgagee without obtaining possession of the Premises, such Leasehold Mortgagee will have the right to cure such default for the longer of the time period afforded to Tenant under this Lease or 60 days after receipt of such notice (*provided, however*, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such 60 days, such Leasehold Mortgagee shall have such additional period as may be necessary to cure such default with diligence and continuity); or

(C) If such default is a default that can only be cured by such Leasehold Mortgagee upon obtaining possession of the Premises, the time period afforded to such

Leasehold Mortgagee to cure such default will include the time necessary to obtain such possession with diligence and continuity, through a receiver or otherwise, and an additional 60 days after obtaining such possession (*provided, however*, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such period of 60 days, such Leasehold Mortgagee shall have such additional period as may be necessary to cure such default with diligence and continuity).

Landlord shall accept performance by any Leasehold Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, if, at the time of such performance (or prior thereto), Landlord shall be (or shall have been) furnished with evidence reasonably satisfactory to Landlord of the interest in this Lease claimed by the Leasehold Mortgagee tendering such performance.

(d) *Acquisition by Leasehold Mortgagee Via Foreclosure*. If any Leasehold Mortgagee (or its affiliate) acquires title to Tenant's interest in this Lease by any sale, assignment or transfer of Tenant's interest in this Lease in any proceeding for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of, or exercise of power of private sale under, any Leasehold Mortgage (collectively, "*Foreclosure*"), such transfer via Foreclosure shall be permitted to be a permitted transfer of Tenant's interest under this Lease. If any Leasehold Mortgagee (or its affiliate) acquires title to Tenant's interest in this Lease by Foreclosure, or enters into a new lease with Landlord as provided in Section 13.03(f) hereof, such Leasehold Mortgagee may assign this Lease (or such new lease) subject to and in accordance with the provisions and conditions of this Section 13.03, and such Leasehold Mortgagee shall thereupon be released from any further liability for performance or observance by Tenant of this Lease (or by the tenant of such new lease) after the date of such assignment, but not with respect to the period of time in which Leasehold Mortgagee held title to such interest, for which Leasehold Mortgagee shall remain liable.

(e) *Acquisition by Foreclosure Purchaser*. In the event of a Foreclosure, the purchaser at any Foreclosure sale of Tenant's interest in this Lease shall be deemed to be a permitted assignee or transferee of this Lease. Any Leasehold Mortgagee or other acquirer of Tenant's interest in this Lease pursuant to Foreclosure, or who becomes the tenant under a new lease, and each subsequent acquirer of Tenant's interest in this Lease or of the tenant's interest in the new lease (collectively, the "*Successor*") shall become personally liable for the performance or observation of any covenants or conditions to be performed or observed by Tenant to the extent that such Successor becomes the owner of all or a portion of Tenant's interest hereunder. Any Successor shall also be liable for (i) the performance and observance of such covenants and conditions only so long as such Successor owns such interest of Tenant under this Lease or the interest of the tenant under such new lease, and (ii) any defaults by such Successor occurring during the period it is the owner of such interest of Tenant under this Lease or the interest of the tenant under such new lease (collectively, the "*Successor Liabilities*"). Each Successor, upon acquiring Tenant's interest in this Lease or tenant's interest in the new lease, may only sell, transfer, mortgage, encumber, convey or assign Tenant's interest in this Lease or tenant's interest in the new lease in accordance with the terms and conditions of Section 13.01 of this Lease, and thereafter be relieved of all obligations under this Lease or the new lease to be performed from and after the date of such assignment, but not relieved of the Successor Liabilities.

(f) *Possible New Lease*. If this Lease is terminated by Landlord or any court (including without limitation a bankruptcy court), or is rejected or disaffirmed in any proceeding

in any such court, any Leasehold Mortgagee or a person designated by such Leasehold Mortgagee shall have the right, exercisable by written notice to Landlord (a “*New Lease Notice*”) within 15 days after the effective date of such termination, rejection or disaffirmance, to enter into a New Lease (as hereinafter defined) of the Premises with Landlord on equivalent terms and conditions as this Lease. Upon Landlord’s receipt of the New Lease Notice, Landlord will promptly prepare the New Lease and deliver same to Leasehold Mortgagee. Following Leasehold Mortgagee’s timely delivery of the New Lease Notice and provided the parties have satisfied all the terms and conditions of this Article 13, Landlord and Leasehold Mortgagee (or its designee) shall enter into the New Lease within a reasonable time after Leasehold Mortgagee’s delivery of the New Lease Notice; *provided, however*, such New Lease shall be deemed to be automatically effective as of the termination date of this Lease.

As used herein, the term “*New Lease*” shall mean a new lease of the Premises, effective as of the termination date of this Lease, for the remainder of the Term of this Lease considered as if this Lease had not been terminated, with Leasehold Mortgagee (or its designee), on all the same terms and provisions of this Lease, and in the same form as this Lease, but shall not include any initial construction requirements that have already been performed.

As a condition to Leasehold Mortgagee’s ability to enter into a New Lease hereunder and Landlord’s obligation to enter into any such New Lease, (i) Leasehold Mortgagee shall have cured all defaults on the part of Tenant hereunder that are susceptible of being cured by the payment of money (including without limitation any Interest or Late Fees due) contemporaneously with the delivery of the New Lease Notice; and (ii) Leasehold Mortgagee shall have agreed to cure with reasonable diligence all then-uncured non-monetary defaults (except for Tenant-specific defaults), within a reasonable period after the delivery of the New Lease Notice. The New Lease shall also require the tenant thereunder to indemnify, hold harmless, and defend Landlord from and against any and all claims of the original Tenant under this Lease as a result of any actions brought by the original Tenant under the Leasehold Mortgage including, without limitation, any New Lease granted hereunder. This Section 13.03(f) shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this provision were a separate and independent contract among Landlord, Tenant and each Leasehold Mortgagee.

(g) *Receiver*. As a condition to the rights granted to any Leasehold Mortgagee hereunder, such Leasehold Mortgagee shall covenant that, upon the occurrence of an Event of Default that continues beyond all notice and cure periods afforded to Tenant hereunder (exclusive of any Leasehold Mortgagee notice and cure periods), Leasehold Mortgagee shall promptly, following receipt of notice of any such Event of Default that continues beyond all notice and cure periods afforded to Tenant hereunder (exclusive of any Leasehold Mortgagee notice and cure periods), apply to a court of competent jurisdiction for the immediate *ex parte* appointment of a receiver for the Premises. Tenant hereby consents to such appointment.

Such receiver shall operate and manage the Premises for the mutual benefit of Tenant, Leasehold Mortgagee and Landlord pursuant to the terms and conditions of this Lease until Leasehold Mortgagee or a Successor (but not prior to the delivery of a New Lease Notice), or Landlord, as the case may be, gains possession of the Premises. Any receiver’s failure to abide by the terms and conditions of this Lease, including, without limitation, the payment of all amounts owed hereunder as and when due shall constitute an Event of Default hereunder. This Section 13.03(g) shall survive the termination of this Lease and shall continue in full force and effect thereafter to

the same extent as if this provision were a separate and independent contract among Landlord, Tenant and each Leasehold Mortgagee.

(h) Tenant Liability. Tenant shall covenant and agree to pay, defend, indemnify and save harmless Landlord from and against any and all liability, loss, damage, cost, expense (including without limitation reasonable and actual attorneys' fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever resulting from the actions or omissions of Leasehold Mortgagee relative to the Leasehold Mortgage. If any action or proceeding is brought against Landlord based upon any such claim, then Tenant, upon notice from Landlord, shall cause such action or proceeding to be defended at Tenant's expense and without any disclaimer of liability by Tenant in connection with such claim. This Section 13.03(h) shall survive the expiration or termination of this Lease.

(i) ACORE Provisions. Notwithstanding anything to the contrary contained in this Lease, as long as Administrative Agent holds any mortgage or deed of trust on, or security interest in, the Premises or Tenant's leasehold interest in or to the Premises:

(A) This Lease may not be amended, modified, canceled or terminated without the prior written consent of Mortgage Loan Administrative Agent and Mezzanine Loan Administrative Agent (except pursuant to and in accordance with the term and conditions of the Loan Documents). Any such action without such consent shall not be binding on Mortgage Loan Administrative Agent or Mezzanine Loan Administrative Agent, or their respective successors or assigns.

(B) If Administrative Agent or any other party succeeds to the interest of Tenant as a result of foreclosure proceedings, the granting of a deed in lieu of foreclosure, or through any other means as a result of Lender's or Administrative Agent's exercise of any of its rights or remedies under the Loan Documents, Administrative Agent or any such other party ("*Successor Sublessee*"), and any transferee of Administrative Agent or such other party, shall not require the consent or approval of or notice to Landlord to become a substituted tenant under this Lease. Successor Sublessee shall have the right to sell and assign the leasehold estate or any portion thereof, without necessity of any consent of, approval by, or notification to Landlord. Upon and after such acquisition, this Lease shall continue in full force and effect (except as set forth in clause (D) below), and such acquisition shall not be a default under this Lease.

(C) If Administrative Agent or any other party forecloses upon the equity interests in Tenant or otherwise exercises any rights or remedies available under the Security Instrument (as defined in the Mezzanine Loan Agreement) or otherwise available to Administrative Agent at law or in equity in connection with the Mezzanine Loan, the exercise of such rights or remedies and/or the transfer of or foreclosure upon the equity interests in Tenant or the assignment in lieu thereof shall not require the consent or approval of or notice to Landlord, nor shall the same constitute a "Transfer" under this Lease. Upon occurrence of the same, this Lease shall continue in full force and effect, and such acquisition shall not be a default under this Lease.

(D) Intentionally Omitted.

(E) Landlord and Tenant will deliver to Administrative Agent copies of any notice sent by either party to the other simultaneously with transmittal of same. All notices to

Administrative Agent shall be sent to the following address or to such other address as Administrative Agent may hereafter specify by written notice:

Administrative Agent: ACORE CAPITAL MORTGAGE, LP,
80 E. Sir Francis Drake Blvd., Suite 2A
Larkspur, California 94939
Attention: General Counsel
Email: notices@acorecapital.com

With a copy to: ACORE Capital Mortgage, LP
Sterling Plaza
5949 Sherry Lane, St. 1255
Dallas, Texas 75225
Attention: Head of Asset Management
Email: dhomsher@acorecapital.com

(F) Any notices to be delivered by Administrative Agent to Landlord or Tenant hereunder shall be delivered as set forth in Section 18.13.

(G) Administrative Agent may, but will not be obligated to, cure any default by Tenant within the time periods afforded to a “Leasehold Mortgage” set forth in this Lease.

(H) Administrative Agent may exercise any and all rights of Tenant under this Lease, including without limitation any renewal option or any purchase option to which Tenant is now or hereafter becomes entitled under this Lease.

(I) Landlord will not terminate this Lease without first giving Administrative Agent (i) written notice of its intent to terminate this Lease and (ii) a reasonable period after such notice in which to obtain possession of the real property subject to the leasehold estate created herein or to effect foreclosure or otherwise acquire the leasehold estate from Tenant and, within a reasonable time thereafter, to cure any default which is capable of being cured by Administrative Agent without Administrative Agent obtaining possession of the Premises. If Administrative Agent cures those defaults which reasonably can be cured by Administrative Agent without Administrative Agent obtaining possession of the Premises, then Landlord will not terminate this Lease.

(J) Landlord acknowledges that, in the event of damage to the Improvements due to casualty or condemnation, the casualty insurance proceeds or condemnation proceeds, as the case may be, may be required by Administrative Agent to be applied to reduce the then balance of the Loan (as defined in the Loan Agreement) or may be required by Administrative Agent to be used for, and used by Tenant for, restoration of the improvements on the Premises. Any related insurance proceeds, or portion of the condemnation award allocable to Tenant’s interest in respect of a total or substantially total loss or taking of the Premises to the extent not applied to restoration, will be applied first to the payment of the outstanding principal balance of the Mortgage Loan and the outstanding principal balance of the Mezzanine Loan, together with any accrued interest. In the event of any conflict between the provisions of this Lease and the provisions of the Security Instrument (as defined in the Loan Agreement) or related Loan Documents with respect to application of casualty and condemnation proceeds, the provisions of

the Security Instrument and/or related Loan Documents shall control.

(K) Notwithstanding the provisions of this Lease, in the event of a taking by condemnation, or transfer in lieu thereof, of all or any portion of the Premises, or any interest therein, as between Landlord and Administrative Agent, on a total or partial taking Landlord shall be entitled to that portion of the award made for or on account of the taking of or injury to the Premises, and the reversionary interest of Tenant, exclusive of improvements constructed or caused to be constructed thereon by Tenant or any other sublessees.

(L) In addition to the rights of Lender or a "Leasehold Mortgagee" set forth in this Lease, if this Lease (or the portion thereof applicable to the Premises) is terminated for any reason prior to the expiration of the term thereof, as the same may be renewed or extended, or to the extent this Lease is rejected in bankruptcy, Landlord will enter into a new direct ground sublease with Administrative Agent for the portion of the Master Parcel consisting of the Premises for remainder of the term which was theretofore terminated or rejected at the same rent applicable to the portion of the Premises and otherwise having the same provisions as this Lease. Such right may be exercised (whether under the provisions of this paragraph or under the provisions of this Lease) by written notice from Administrative Agent to Landlord on or before the expiration of thirty (30) days after the receipt by Administrative Agent of written notice from Landlord of such termination or rejection of this Lease, with any notice from Landlord advising Administrative Agent of such termination or rejection and expressly refer to the new lease rights of Administrative Agent under the provisions of this Lease.

(M) Notwithstanding any provisions of this Lease to the contrary, no default or event of default under the Security Instrument or any other loan document or instrument evidencing or securing the Loan will, in and of itself, constitute a default or event of default under this Lease.

(N) If Landlord becomes the subject of a case under the U.S. Bankruptcy Code (or any other or successor law providing similar relief), and Landlord or any trustee of Landlord rejects or seeks authority to reject this Lease under 11 U.S.C. Section 365 (or any other or successor provision permitting any similar relief), (i) Landlord shall elect, and hereby does elect, without further act, unless Administrative Agent consents in writing to any other election, to remain in possession for the balance of the term of this Lease and any renewal or extension thereof, pursuant to 11 U.S.C. Section 365(h) (and any other successor provision permitting a similar election), (ii) any purported election by Tenant to treat this Lease as terminated shall be void and of no effect, unless Administrative Agent consents in writing thereto, and (iii) the lien of the Security Instrument shall not be impaired by such rejection.

(O) If Tenant becomes the subject of a case under the U.S. Bankruptcy Code (or any other law providing similar relief), Landlord shall give prompt notice to Administrative Agent of any notice it receives of a request by Tenant or any trustee of Tenant for authority to reject this Lease. Landlord acknowledges and agrees that any such rejection of this Lease shall have no effect upon the continued existence and validity of the leasehold estate or the Security Instrument.

(P) Landlord acknowledges and agrees that Administrative Agent's interest in the leasehold interest in the Premises shall be superior to both: (i) Landlord's interest hereunder, and (ii) the interest of any person or entity holding a mortgage or security interest in,

on or to (yy) the leasehold interest of Landlord in the Land created pursuant to the Master Lease, and (zz) conditioned on Master Landlord's written consent or agreement to the same, any mortgage, deed of trust or other encumbrance on the fee interest of Master Landlord in the Land.

(Q) Notwithstanding anything to the contrary set forth herein, all rights and remedies granted to Leasehold Mortgagee, Successor Sublessee, or Mortgage Loan Administrative Agent under this Lease shall also be available to (and exercisable by) Mezzanine Loan Administrative Agent and Mezzanine Lender to the fullest extent as if Mezzanine Loan Administrative Agent and Mezzanine Lender were specifically listed in each instance where Leasehold Mortgagee, Successor Sublessee and Mortgage Loan Administrative Agent is listed in this Lease.

ARTICLE XIV **RIGHT TO CONTEST**

Tenant, at its sole cost and expense, may contest by appropriate legal proceedings conducted in good faith and with due diligence (a "*Permitted Contest*") the amount, validity or application, in whole or in part, of any Taxes or Charges referred to in Section 4.01 and Section 4.02 hereof, any Regulation referred to in Section 7.01 hereof or any Lien referred to in Section 7.03 hereof; *provided, however*, that: (a) Tenant shall give Landlord prior written notice of each such contest; (b) Tenant shall first make all contested payments (under protest if it desires) unless such proceeding shall suspend the collection thereof from Landlord or from the Premises; (c) no part of the Premises or any interest therein under this Lease shall be subjected thereby to sale, forfeiture, foreclosure or interference; (d) Landlord shall not be exposed thereby to any civil or criminal liability for failure to comply with any Regulation and the Premises shall not be subject to the imposition of any Lien as a result of such failure; and (e) Tenant shall have furnished any security required in such proceeding or under this Lease to ensure payment of any Taxes, Charges, Lien or compliance with any Regulation.

Tenant shall pay and save Landlord harmless from and against any and all losses, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any Permitted Contest. Within 30 days (or earlier if required by the final determination) after the final determination of every Permitted Contest, Tenant shall fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein, together with all penalties, fines, interest, costs and expenses resulting therefrom, and further shall promptly comply with any Regulation under which compliance is required therein.

ARTICLE XV **DEFAULT**

Section 15.01 **Events of Default**. The occurrence of any of the following acts, events or conditions shall constitute an "*Event of Default*" under this Lease, notwithstanding the pendency of any proceeding which has or might have the effect of preventing Tenant from complying with the terms, conditions or covenants of this Lease:

(a) Any Rent payment or other sum of money due under this Lease is not paid within ten (10) days after its due date and such failure continues for ten (10) additional days after written notice from Landlord (a "*Monetary Default Notice*") describing such failed payment (a "*Monetary Default*") and specifying the payment amount needed to cure the Monetary Default.

The amount described in a Monetary Default Notice which is needed to cure such Monetary Default shall specify and include a late fee (the “*Late Fee*”) that is equal to ten percent (10%) of the first \$5,000 of any missed payment plus five percent (5%) of the amount of such missed payment in excess of \$5,000. Tenant also shall pay any and all actual and reasonable costs (including legal fees and costs) that Landlord incurs in collecting an uncured Monetary Default and Late Fee;

(b) Any attempt by Tenant to make any sale, assignment or other transfer of this Lease or any interest of Tenant hereunder or in the Premises or to sublet the Premises without full compliance with any and all requirements therefor set forth in Article XIII of this Lease;

(c) If Tenant becomes subject to any voluntary or involuntary proceeding under Title 11, United States Code, or any other or successor state or federal statute on assignment for the benefit of creditors, appointment of a receiver (excluding a receiver appointed at the request of a Leasehold Mortgagee) or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters (except an involuntary proceeding that is contested with diligence and continuity and is vacated and discharged within 180 days after commencement), or a custodian, receiver (except one appointed at the request of a Leasehold Mortgagee for a Leasehold Mortgage foreclosure), or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made for, substantially all of Tenant’s assets or Tenant’s interest in this Lease (unless that appointment, attachment, execution or other seizure was involuntary and is contested with diligence and continuity and is vacated and discharged within 180 days);

(d) The failure or refusal of Tenant, at any time during the Term, to fulfill or perform any other covenant, agreement or obligation of Tenant hereunder, except a Monetary Default, if such failure or refusal shall continue without correction for a period of thirty (30) consecutive calendar days from and after notice thereof to Tenant; *provided, however*, that if such covenant, agreement or obligation is of such nature that it could not be reasonably fulfilled or performed within thirty (30) days, then an Event of Default shall not be deemed to have occurred if Tenant in good faith commences to fulfill or perform same within said thirty (30) day period and thereafter continuously and diligently proceed therewith until completion; or

(e) Any action or failure to act by Tenant which constitutes a breach or violation of any terms, covenants, conditions or provisions of the Master Lease.

Section 15.02 **Remedies**. Upon the occurrence and during the continuation of an Event of Default, Landlord’s sole and exclusive remedies, to the exclusion of all other rights and remedies at law, will be to pursue one or more of the following:

(a) Exercise self-help to cure the Event of Default, whereupon notwithstanding anything in this Lease to the contrary, Landlord, and its agents, employees, representatives, and contractors, may enter the Premises upon at least ten days’ prior written notice (except in the case of emergency in which case only reasonable notice under the circumstances shall be required) and pursue such cure, and Tenant shall reimburse Landlord the reasonable and actual costs to cure such Event of Default within 30 days after receipt of invoice and reasonable supporting documentation;

(b) Subject to Landlord’s duty to mitigate its damages, declare due and payable all amounts due as they become due hereunder for the remainder of the Term of this Lease (if such

default occurs during the Initial Term, then the measure of damages shall be the remainder of the Initial Term and if such a default occurs during any Extended Term, the measure of damages shall be the remainder of the Extended Term);

(c) Seek any available equitable remedies, including without limitation, injunctive relief and specific performance;

(d) Sue Tenant for collection of past due sums, any Interest owed by Tenant to Landlord hereunder, and all amounts for the remainder of the Term as they become due, subject to the Landlord's duty to mitigate its damages; and/or

(e) Upon at least sixty (60) days' additional prior written notice from Landlord to Tenant specifying the Event of Default and the actions which Tenant must take to cure the same, Landlord may terminate this Lease and thereafter enter upon and take possession of the Premises if (i) Tenant fails to cure a Monetary Default within ten (10) business days after written notice from Landlord specifying such Monetary Default, or (ii) Tenant fails to commence to any other Event of Default within thirty (30) days after written notice from Landlord specifying such default and thereafter diligently pursue fulfillment of such curative action.

In connection with Landlord's exercise of any or all of the above-listed remedies, Landlord shall be entitled to recover all costs and expenses incurred by Landlord in the repossession, recovery, storage, repair, maintenance, sale, re-lease or other disposition of the Premises or Improvements, including without limitation, reasonable attorney fees and costs incurred in connection therewith or otherwise resulting or arising from Tenant's default, and any indemnity if then determinable, plus Interest on all of the above until paid (both before and after judgment). In the event of involuntary repossession by Landlord through judicial proceedings, or through a foreclosure sale or other disposition, Tenant hereby waives any requirement that Landlord post a bond.

Landlord hereby waives its right to seek any other remedy as a result of any ongoing Event of Default.

Section 15.03 **General**. No course of dealing between Landlord and Tenant or any failure or delay on the part of Landlord in exercising any rights of Landlord under Section 15.02 hereof or under any other provisions of this Lease shall operate as a waiver of any rights of Landlord under this Lease, nor shall any waiver of an Event of Default on one occasion operate as a waiver of any subsequent or other Event of Default. No express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated. The exercise by Landlord of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Landlord of any one or more of the other rights and remedies herein provided.

Section 15.04 **Landlord's Default**. Landlord shall be in default under this Lease if Landlord fails to timely perform any of Landlord's obligations under this Lease and such failure continues for at least thirty (30) days after Tenant provides a written notice specifying such default to Landlord. If Landlord fails to timely cure such default, Tenant may pursue any and all remedies that are available to Tenant in law or equity, including, without limitation, termination of this Lease. If this Lease is terminated due to Landlord's default, then the Improvements will remain owned by Tenant.

Section 15.05 **Non-Curable Defaults**. Notwithstanding anything to the contrary herein, any default which is personal to the then Tenant and does not relate to the condition of or use or occupancy of the Premises or that by its nature is impossible for the Leasehold Mortgagee to cure despite gaining possession of the Premises shall be deemed to have been waived by Landlord upon completion of foreclosure proceedings of the Leasehold Mortgagee or upon the acquisition of Tenant's interest in this Lease by Leasehold Mortgagee.

ARTICLE XVI **CONDEMNATION**

Section 16.01 **Total Condemnation**. If, during the Term, all or such portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto, or is transferred to the United States or such entity in lieu thereof, such that the remaining portion of the Premises has substantially no commercial value for the conduct of the Permitted Uses (as reasonably determined by Tenant), this Lease shall terminate as of the date that title to the Premises or portion thereof vests in such condemning authority; *provided, however*, that such termination shall not benefit the condemning authority and shall be without prejudice to the rights of either Landlord or Tenant to recover just and adequate compensation from the condemning authority. Tenant shall not be entitled to an abatement of any other payments or amounts due to Landlord under this Lease in the event of such total condemnation or taking.

Section 16.02 **Partial Condemnation**. If, during the Term, any portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto, or is transferred to the United States or such entity in lieu thereof, and the remaining portion of the Premises is of some commercial value for the conduct of the Permitted Uses, then: (a) this Lease shall terminate as to the portion of the Premises so condemned or taken as of the date that title to such portion of the Premises vests in such condemning authority (*provided, however*, that such termination shall not benefit such condemning authority and shall be without prejudice to the rights of either Landlord or Tenant to recover just and adequate compensation from the condemning authority); and (b) Tenant promptly shall cause the Improvements to be restored, at Tenant's sole cost and expense, to as nearly the same architectural condition and character as that which existed prior to such taking.

Tenant shall commence such restoration promptly following the taking and shall thereafter diligently and continuously prosecute same to completion. Tenant shall not be entitled to an abatement of any other payments or amounts due to Landlord under this Lease during any such period of restoration, except to the extent such restoration renders the Premises unfit for Tenant's use. If such partial condemnation occurs within the last five years of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 16.02, to terminate this Lease by providing at least 30 days' prior written notice of such termination to Landlord. Any such notice of termination shall be given to Landlord within 90 days after such partial condemnation is finalized, and such termination shall be conditioned on Tenant: (x) paying to Landlord, on the effective date of such termination, a sum equal to all amounts and payments due from Tenant under this Lease through such termination date; (y) releasing to Landlord all of Tenant's right and interest in and to any condemnation award made in connection with such condemnation proceeding; and (z) surrendering the Premises to Landlord as of the effective date of such termination.

Section 16.03 **Awards**.

(a) *Lease Terminated*. If this Lease is terminated in its entirety pursuant to Section 16.01 or Section 16.02 on account of any condemnation: (i) the Parties jointly shall petition the condemning authority or the court in such condemnation proceeding to make separate awards to Landlord and Tenant, if said separate awards are not prohibited by law, in accordance with the principles of division set forth in Section 16.03(b) hereof; and (ii) if the condemning authority or the court in such condemnation proceeding is prohibited by law from making separate awards to Landlord and Tenant or declines to do so, the award shall be divided between Landlord and Tenant in accordance with the principles of division set forth in Section 16.03(b) hereof.

(b) *Division if Lease is Terminated*. The following principles of division are applicable if this Lease is terminated in its entirety pursuant to Sections 16.01 or 16.02: (i) Landlord shall receive an amount equal to the then present value of Landlord's reversionary interest in the Premises and the present value of the Rent payments due hereunder for the remainder of the Term calculated as if the Premises had not been condemned and this Lease had not been terminated on account of such condemnation; (ii) Tenant shall receive an amount equal to the value of Tenant's leasehold estate hereunder, including the right to use and occupy the Premises for the remainder of the Term, calculated as if the Premises had not been condemned and this Lease had not been terminated on account of such condemnation, including the value of the Improvements; and (iii) to the extent any portion of the award remains after the application of (i) and (ii) above, the remainder of the award shall be divided between Landlord and Tenant in proportion to the awards given in (i) and (ii) above.

(c) *Lease Not Terminated*. If this Lease is not terminated in its entirety pursuant to Sections 16.01 or 16.02: (i) the Parties shall jointly petition the condemning authority or the court in such condemnation proceeding to make separate awards to Landlord and Tenant, if said separate awards are not prohibited by law, in accordance with the principles of division set forth in Section 16.03(d) hereof; and (ii) if the court in such condemnation proceeding is prohibited by law from making separate awards to Landlord and Tenant or declines to do, the award shall be divided between Landlord and Tenant in accordance with the principles of division set forth in Section 16.03(d) hereof.

(d) *Division if Lease is Not Terminated*. The following principles of division are applicable if this Lease is not terminated in its entirety pursuant to Sections 16.01 or 16.02: (i) Landlord shall receive an amount equal to the then present value of Landlord's reversionary interest of the portion of the Premises condemned, calculated as if the Premises had not been condemned and this Lease had not been terminated with respect to such portion of the Premises on account of such condemnation; (ii) Tenant shall receive an amount equal to the value of Tenant's leasehold estate with respect to such portion of the Premises condemned, including the right to use and occupy such portion of the Premises for the remainder of the Term, calculated as if such portion of the Premises had not been condemned and this Lease had not been terminated on account of such condemnation, including the then current value of the Improvements condemned; and (iii) to the extent any portion of the award remains after the application of (i) and (ii) above, the remainder of the award shall be divided between Landlord and Tenant in proportion to the awards given in (i) and (ii) above.

Section 16.04 **General**. Neither Landlord nor Tenant shall be prohibited from introducing into any condemnation proceeding(s) with respect to the Premises such appraisals or other

estimates of value, loss and/or damage as each may in its discretion determine. Tenant shall be entitled to claim in any condemnation proceedings such award as may be allowed for relocation costs or other consequential damages, but only to the extent that the same shall not reduce, and shall be in addition to, the award for the Land and the Improvements.

Section 16.05 **Taking for Temporary Use**. In this Section 16.05, a “*temporary taking*” is a taking for a period of less than six months occurring during the last two years of the Term, or a taking for a period of over six but less than 18 months during any other portion of the Term. If there is a temporary taking of all or any portion of the Improvements or a material portion of the unimproved portion of the Premises, Tenant shall give prompt notice thereof to Landlord, and the Term shall not be reduced or affected in any way. In such case, Tenant shall (a) continue to pay any sums and charges provided to be paid by Tenant hereunder, but (b) Tenant shall be entitled to the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of the Term, in which case the award made for such taking shall be apportioned between Landlord and Tenant as of the date of such expiration.

In any proceeding for such temporary taking, Landlord shall have the right to intervene and participate, but no award or settlement shall be made without Tenant’s written approval; provided that if such intervention shall not be permitted, Tenant shall, at Tenant’s expense, consult with Landlord, its attorneys and experts, and shall cooperate with Landlord in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Premises, Tenant will, at its sole cost, repair and restore the Improvements then upon the Premises to the condition, as nearly as may be reasonably possible, in which such Improvements were at the time of such taking. Tenant shall not be required to make such repairs and restoration if the Term shall expire prior to the date of termination of the temporary taking, and in any such event, Landlord shall be entitled to recover all damages and awards arising out of the failure of the condemning authority to repair and restore the Improvements at the expiration of such temporary taking. Any recovery or sum received by Tenant as an award or compensation for physical damage to the Premises caused by and during the temporary taking shall be used to the extent necessary for the purpose of repairing or restoring such damage as required hereinabove.

ARTICLE XVII **BROKERAGE PROVISIONS**

Each Party represents and warrants to the other that it has not engaged any broker, commission agent, real estate agent or salesman to assist in the negotiation of this Lease, its procurement or in the procurement of Landlord or Tenant. No person, firm, corporation or other entity is or shall be entitled to the payment of any fee, commission, compensation or other form of remuneration in connection herewith in any manner. Landlord shall and does hereby indemnify and agree to hold Tenant harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of Landlord’s dealings, negotiations or communications in connection with this Lease or the demise of the Premises. Likewise, Tenant shall and does hereby indemnify and agree to hold Landlord harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of Tenant’s dealings, negotiations or communications in connection with this Lease or the demise of the Premises or the management, subleasing, or development of the Premises during the Term of this Agreement (including, without limitation, any brokers, agents,

or intermediaries alleging a commission, fee or other payment arising from representation of prospective or actual subtenants, assignees, licensees, users, or occupants of the Premises). The terms of this Article XVII shall survive any termination of this Lease.

ARTICLE XVIII
MISCELLANEOUS

Section 18.01 **Right of Tenant to Grant Easements; Joinder by Landlord**. Subject to Section 18.26 below, Tenant shall not be entitled to grant easements with respect to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Landlord hereby acknowledges and agrees that as part of the development of the Premises, certain easements may be necessary and Landlord agrees to cooperate in good faith with Tenant with respect to any such easements and execute any such easements which are necessary for the development of the Premises and are in accordance with the Design Plans. If Tenant is required by the applicable governmental authority to dedicate any portion of the Premises for use as right-of-way in connection with the development of the Premises, Landlord agrees to cooperate with Tenant in good faith with respect to such dedication; *provided, however*, that Landlord shall have the right to participate in the negotiations with such governmental authority regarding such dedication and the timing thereof.

Section 18.02 **No Waiver**. Failure of either Party to insist upon the strict performance by the other Party of any term, condition or covenant on such other Party's part to be performed pursuant to the terms of this Lease or to exercise any option, right, power, or remedy contained in this Lease shall not be or be deemed to be a waiver of such performance or relinquishment of such right now or at any time subsequent hereto. The receipt by Landlord of any sums required to be paid by Tenant hereunder with knowledge of any Event of Default by Tenant shall not be or be deemed to be a waiver of such Event of Default. No waiver by Landlord or Tenant of any provision of this Lease shall be or be deemed to have been made unless expressed in writing and signed by Landlord or Tenant, as the case may be.

Section 18.03 **Each Party to Bear Own Costs**. Each of the parties shall bear its own legal, accounting and other fees and costs incurred in connection with the negotiation and documentation of this Lease.

Section 18.04 **Estoppel Certificates**. Within 15 days after receipt of Landlord's written request from time to time, Tenant shall execute, acknowledge and deliver to Landlord and to any mortgagee of or prospective purchaser from Landlord, a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications); (b) that no notice has been received by Tenant of and Tenant has no knowledge of any default or Event of Default by Tenant hereunder or any default by Landlord hereunder which has not been cured, except as to any default or Event of Default specified in said certificate (or stating any defaults or Events of Default); and (c) any other matters or state of facts regarding this Lease which are reasonably requested by Landlord.

Similarly, within 15 days after receipt of Tenant's written request from time to time, Landlord shall execute, acknowledge and deliver to Tenant and any party designated by Tenant a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the

modifications); (b) whether or not, to the knowledge of Landlord, a default or Event of Default by Tenant has occurred under this Lease which has not been cured (and if so, specifying the same); and (c) any other matters or state of facts regarding this Lease which are reasonably requested by Tenant.

Section 18.05 **No Merger of Title**. No merger of the leasehold estate created by this Lease with Landlord's Interest shall occur notwithstanding the fact that the same person may own or hold both the leasehold estate created by this Lease or any interest therein and Landlord's Interest in the Premises. No such merger shall occur unless and until all persons or entities (including any mortgagee with respect to Landlord's Interest) having any interest in the leasehold estate created by this Lease or otherwise in the Premises shall join in a written instrument effecting such merger and shall duly record the same or the same person or entity owns and holds all interests in the fee estate of the Premises and the leasehold estates created by this Lease.

Section 18.06 **Quiet Enjoyment; Zoning Compliance**. If and so long as Tenant shall pay, when due, all sums reserved or payable under this Lease and shall comply with all terms, conditions and covenants and other obligations required to be observed by Tenant under this Lease, Landlord covenants that Tenant will have peaceful and quiet occupation and enjoyment of the Premises; *provided, however*, that this Section 18.06 shall not abrogate or diminish, in any way, the approval and inspection rights or other rights or benefits granted to Landlord under this Lease. With respect to any property of Landlord other than the Premises which is subject to the same site-specific zoning conditions applicable to the Premises, Landlord agrees to comply with such zoning conditions, as from time to time modified or amended (provided any such modification is approved by Landlord in accordance with Section 6.02 above). Without Tenant's prior written consent, which shall not be unreasonably withheld, Landlord shall not initiate, join in or consent to any change in such zoning conditions which affect Tenant's ability to operate the Premises for the Permitted Uses. Additionally, Landlord shall have the right to rezone, modify or amend any existing zoning applicable to any other property of Landlord provided such rezone or modification does not materially and adversely affect the zoning or zoning conditions applicable to the Premises.

Section 18.07 **Transfer by Tenant**. If Tenant transfers, assigns or otherwise disposes of all of its interest in the Premises or in this Lease in accordance with the terms and conditions of this Lease, other than pursuant to a Foreclosure, Tenant shall thereupon be released and discharged from any and all liabilities and obligations under this Lease (except those accruing prior to such transfer, assignment or other disposition) with respect to the interest transferred, assigned or otherwise disposed of, and such liabilities and obligations thereafter accruing shall be binding upon the assignee of Tenant's interest under this Lease with respect to the interest transferred, assigned or otherwise disposed of.

Section 18.08 **Transfer by Landlord**. If Landlord transfers, assigns or otherwise disposes of all or any portion of its interest in the Premises or in this Lease, then Landlord promptly shall notify Tenant in writing of (a) such transfer, assignment or disposition, and (b) the identity and contact information for such transferee, assignee, etc.

Section 18.09 **Landlord's Liability**. If Landlord is in default with respect to its obligations under this Lease, Tenant shall look solely to the equity of Landlord in and to the Premises for satisfaction of Tenant's remedies, if any. It is expressly understood and agreed that Landlord's liability under the terms of this Lease shall in no event exceed the amount of its interest

in and to the Premises. To that end, in no event shall any partner of Landlord nor any joint venturer in Landlord, nor any manager, officer, member, employee, agent, representative director or shareholder of Landlord or of any such partner or joint venturer of Landlord be personally liable with respect to any of the provisions of this Lease.

Section 18.10 **Fee Mortgages.** This Lease and Tenant's leasehold estate shall be prior and superior to all Fee Mortgages and the rights of all Fee Mortgagees. Any inconsistency between any Fee Mortgage and this Lease shall be resolved in favor of this Lease. Notwithstanding the foregoing, Tenant shall attorn to any party succeeding Landlord's Interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, or otherwise and, upon such party's request, and shall execute such agreements recognizing such Fee Mortgage and confirming such attornment as such party may reasonably request. Such attornment agreement shall include, but not be limited to, the following terms and conditions: (a) provided that Landlord delivers notice of Fee Mortgagee's address, Tenant shall provide Fee Mortgagee with a copy of any notice of any alleged default under this Lease by Landlord and Fee Mortgagee shall be given the opportunity, without undertaking Landlord's obligations, to cure such default or cause it to be cured for a period of 30 days after receipt of such notice; (b) if the Fee Mortgagee succeeds Landlord due to a foreclosure sale or deed in lieu of foreclosure, Tenant will attorn to the foreclosure successor so that this Lease and the relationship of Landlord and Tenant shall exist between such foreclosure successor and Tenant; and (c) such foreclosure successor shall be bound to the terms of this Lease and perform the obligations of Landlord hereunder; *provided, however*, that such foreclosure successor or its successors or assigns shall not be: (k) liable for any act or omission of any prior landlord; or (l) subject to any offsets or defenses Tenant might have against any prior landlord unless Landlord has delivered to Tenant Fee Mortgagee's address as provided above and Fee Mortgagee was given notice of and an opportunity to cure any such acts or omissions of the prior landlord prior to the transfer of title.

Landlord represents that as of the Commencement Date, to the best of Landlord's actual knowledge, there is not a Fee Mortgage or Leasehold Mortgage encumbering Landlord's interest in the Land or the Premises. Any mortgage or deed of trust, or renewals, modifications, consolidations, replacements and extensions thereof encumbering Landlord's interest in the Land shall be expressly subject and subordinate to this Lease and all of the rights and interest of Tenant under this Lease and to the rights of any Leasehold Mortgagee. In no event shall any Leasehold Mortgage encumbering Landlord's interests in the Land provide any lien, security interest or other interest in the Premises or the rights of Tenant associated therewith. To the extent provided in the Master Lease, the leasehold interest created by this Lease shall at all times be superior to a Fee Mortgage, without the need for any action to be taken or documents executed by Landlord or Tenant or any other Person.

As used herein, the term "*Fee Mortgage*" means any deed of trust or mortgage: (x) that encumbers all or part of the Premises; (y) a copy of which (recorded or unrecorded) is promptly after execution delivered to Tenant and all Leasehold Mortgagee(s) with a certification by Fee Mortgagee that the copy is accurate and stating Fee Mortgagee's name and Notice address; and (z) that is held by a Fee Mortgagee that is an Institutional Lender. As used herein, the term "*Fee Mortgagee*" means any mortgagee holding a Fee Mortgage; *provided, however*, that any participant or partial assignee holding any direct or indirect interest in a Fee Mortgage shall not be deemed a Fee Mortgagee or affect Tenant in any way. For the avoidance of doubt, nothing herein shall be construed in any way to adversely affect Landlord's, and any successor landlord's (whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, or otherwise), fee

simple or other interest in Premises, subject to the terms and conditions of this Lease.

Section 18.12 **Severability**. Each and every covenant and agreement contained in this Lease shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by Landlord shall not discharge or relieve Tenant from its obligation to perform each and every covenant and agreement to be performed by Tenant under this Lease. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate applicable law and shall be limited to the extent necessary to render this Lease valid and enforceable. If any term, provision or covenant of this Lease or the application thereof to any person or circumstance shall be held to be invalid, illegal or unenforceable, by a court of last resort having jurisdiction in the Premises, the validity of the remainder of this Lease shall not be affected, this Lease shall not terminate, and there shall be substituted for such illegal, invalid or unenforceable provision a like provision which is legal, valid and enforceable within the limits established by such court's final opinion and which most nearly accomplishes and reflects the original intention of the Parties.

Section 18.13 **Notices, Demands and Other Instruments**. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if personally delivered (including delivery by courier or by Federal Express or similar overnight delivery service) or sent, postage prepaid, by first class registered or certified United States mail, return receipt requested, addressed to each Party hereto at the following address (or as to Guarantor, to its address specified above):

Landlord: INDUSTRY SLC NEIGHBORHOOD FOUNDERS, LLC
537 West 600 South
Salt Lake City, UT 84101

with a copy to: Wm. Shane Topham
TOPHAM LEGAL
4930 Fairview Drive
Holladay, UT 84117

Tenant: INDUSTRY SLC GARAGE, LLC
450 West 600 South
Salt Lake City, UT 84101

with a copy to: HOFFMAN NIES DAVE & MEYER LLP
5350 S. Roslyn St., Suite 100
Greenwood Village, CO 80111
Attention: Nicole Nies, Esq.
Email: nnies@hn-colaw.com

or at such other address in the United States as Landlord or Tenant may from time to time designate by like notice. Any such notice, demand, request or other communication shall be considered given upon personal delivery; the next business day after it is deposited in with an overnight courier service for next business day delivery; or three days after it is deposited in the U.S. Mail with first-class postage prepaid. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given will not affect the date upon which a notice, demand, request

or other communication is deemed given, delivered and received. Either Party may change its notice address herein provided by delivering to the other Party written notice of such changed address.

Section 18.14 **Successors and Assigns**. Each and every covenant, term, condition and obligation contained in this Lease shall apply to and be binding upon and inure to the benefit or detriment of the respective legal representatives, heirs, successors and permitted assigns of the Parties. Whenever reference to a Party is made in this Lease, such reference shall be deemed to include the legal representatives, successors, heirs and permitted assigns of said Party the same as if in each case expressed. The term “*person*” when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, government or governmental organization or any other entity.

Section 18.15 **Headings**. The heading to the various Articles and Sections of this Lease have been inserted for purposes of reference only and shall not limit or define or otherwise affect the express terms and provisions of this Lease.

Section 18.16 **Counterparts**. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument.

Section 18.17 **Applicable Law**. This Lease shall be construed under and enforced in accordance with the laws of the State of Utah. Venue of any judicial proceeding concerning this Lease shall be in the Third District Court of Salt Lake County, Utah.

Section 18.18 **Entire Agreement; Amendments**. This Lease sets forth the Parties’ entire understanding and agreement concerning the subject matter of this Lease, and all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are superseded by and merged into this Lease. No modification or amendment of this Lease shall be binding upon either Party unless in writing and fully executed by both Parties. Landlord shall reasonably cooperate with Tenant in good faith to make any amendments to this Lease that are required by Tenant’s lender(s); *provided, however*, that Landlord shall not be required to assume any liability or incur any expense with regard to the same.

Section 18.19 **All Genders and Numbers Included**. Whenever the singular or plural number, or masculine, feminine, or neuter gender, is used in this Lease, it shall equally apply to, extend to, and include the other.

Section 18.20 **Relationship of the Parties**. Nothing contained herein shall be deemed or construed by the Parties hereto, or any third party, as creating the relationship of principal and agent or a partnership or joint venture between the Parties, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the Parties hereto, shall be deemed to create any relationship between the Parties hereto other than the relationship of landlord and tenant. Notwithstanding anything to the contrary contained herein, both of Lender and Administrative Agent shall be third-party beneficiaries under this Lease.

Section 18.21 **Force Majeure; Time is of Essence**. Whenever a period of time is prescribed in this Lease for action (other than the payment of money) to be taken by a Party, then

that Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays which, despite the use of good faith and diligent efforts, such Party is unable to overcome, consisting solely of strikes, riots, sabotage, blockage, embargo, earthquake, or other natural disaster or adverse weather conditions which the Party can demonstrate to the other Party's reasonable satisfaction exceed climatic norms using 100-year return intervals. Rain, snow or other adverse weather condition of typical duration, frequency and amount shall not constitute Force Majeure. Except as provided in this Section 18.21, time is declared to be of the essence of this Lease.

Section 18.22 **Inspection Rights**. Landlord has the right, but not the duty, at all times and from time to time, to enter upon the Premises and any portion thereof to determine to Landlord's satisfaction whether the terms, covenants and conditions of this Lease, including Tenant's performance obligations, are being kept and observed; *provided, however*, that Landlord agrees (a) to give reasonable prior written notice to Tenant specifying the portions of the Premises Landlord desires to enter and the reasons for such entry, except in the event of an emergency, (b) to conduct such visits in a manner which does not unreasonably interfere with the occupants of the Premises or violate any subleases in effect with respect to any such occupants, (c) to conduct such visits in a manner which does not unreasonably interfere with any ongoing construction activity that is then being conducted on the Premises or violate any construction contracts in effect with respect to any such ongoing construction activity, and (d) to permit a representative of Tenant to accompany Landlord on such visits.

Section 18.23 **Holding Over; No Extension; Tenancy at Sufferance**. If Tenant shall hold the Premises after the expiration of the Term without Landlord's express written consent, such holding over shall be deemed to have created a tenancy at sufferance with respect to the portion of the Premises affected, which shall be immediately terminable by Landlord. If Landlord elects to accept any rental or other payment from Tenant during such holdover, Tenant shall pay to Landlord as Rent, in addition to any amounts otherwise due and owing from Tenant under this Lease and without waiving any of Landlord's other available rights or remedies, monthly Rent equal to 150% of the Rent payable under this Lease for the affected portion of the Premises for the last year of the Term, divided by 12. Any such holdover otherwise shall be subject to all terms and provisions of this Lease, except as contemplated to the contrary in this Section 18.24.

Section 18.24 **Exhibits**. Exhibits "A" "B," "C" and "D" attached hereto are hereby incorporated by reference and made a part of this Lease.

Section 18.25 **Cooperation**. The Parties agree to reasonably cooperate in good faith with respect to the Premises and this Lease. If either Party (or its affiliate) reasonably needs to (a) obtain any permit, approval or other development related item related to the Improvements that requires the execution by the other Party of any application or other documentation, (b) record any easement, declaration, or restriction to accommodate construction of the Improvements or construction on any nearby realty owned or controlled by Landlord ("*Landlord's Adjacent Realty*"), or (c) obtain any other future easement or encumbrance on the condition that such easement or encumbrance does not materially adversely affect Tenant's use and enjoyment of the Premises or Landlord's Adjacent Realty, as the case may be, then the recipient of such request shall not unreasonably refuse to join in any such application, documentation and/or construction easement, provided that: (x) the recipient reasonably approves its form and substance; (y) the recipient's project is not impaired thereby in any material respect; and (z) it is in ordinary and customary form and does not expose the recipient to any material risks or liabilities or impairs in

any material respect the use, utility, or value of the recipient's project (but the mere existence of such application, documentation and/or construction easement shall not be deemed to impair the use, utility or value of the recipient's project solely because it encumbers the recipient's project). To the extent that this Lease requires a Party to join in any construction easement, each Party shall use commercially reasonable efforts to cause its mortgagee to consent or subordinate its lien to such construction easement.

Section 18.27 **Effect of Master Lease; No Privity; Etc.** This Lease is subject to the Master Lease. Tenant acknowledges that, in addition to the various consents and approvals of Landlord that are required by this Lease, various similar consents and approvals of the Master Landlord are required by the Master Lease and that all of such consents and approvals (whether from Landlord or Master Landlord) must be obtained even if this Lease only addresses the consents and approvals required of Landlord. Any provision in this Lease requiring Landlord's approval or consent does not abrogate or diminish the necessity of obtaining any related approval or consent of Master Landlord under the Master Lease. Consequently, the times for submissions and responses under this Lease concerning any required consent or approval of Landlord shall be reasonably extended to provide adequate time for Master Landlord's involvement in such approval process.

Notwithstanding the foregoing, however, nothing in this Lease shall be construed to create privity of estate or contract between Tenant and Master Landlord. Tenant shall not do or permit to be done, or fail to take, any action or thing which will constitute a breach or violation of any terms, covenants, conditions or provisions of the Master Lease. Landlord shall have no liability to Tenant for any matter whatsoever for which Landlord does not have at least co-extensive rights as tenant against Master Landlord under the Master Lease.

Notwithstanding the forgoing, Landlord shall satisfy and fulfill all Landlord's obligations under and/or pursuant to the Master Lease and Landlord agrees that it shall not, without Tenant's prior written consent, at Tenant's reasonable discretion, agree or consent to a material modification, waiver, release, amendment, or surrender of the Master Lease, or any rights or obligations thereunder, to the extent the same will materially and adversely affect Tenant's operations at the Premises or rights and interest hereunder. Landlord additionally agrees to cooperate in good faith in seeking consents and approvals from Master Landlord to the extent same are needed to effect any of the provisions, rights, and/or obligations contained herein.

[Signature page follows]

DATED as of the Effective Date specified above.

LANDLORD:

**INDUSTRY SLC NEIGHBORHOOD FOUNDERS,
LLC**, a Colorado limited liability company

By: 

H. Jason Winkler, Manager

TENANT:

INDUSTRY SLC GARAGE, LLC,
a Delaware limited liability company

By: 

H. Jason Winkler, Manager

EXHIBIT “A” TO LEASE

(Attach Copy of Master Lease)

Ground Lease

THIS GROUND LEASE (this "*Lease*") is made and entered into effective 1 April 2020 (the "*Effective Date*"), by and between **AAM INVESTMENTS, LTD.**, a Utah limited partnership whose address is 700 Northcrest Drive, Salt Lake City, UT 84103 ("*Landlord*"); **INDUSTRY SLC NEIGHBORHOOD FOUNDERS LLC**, a Utah limited liability company whose address is 537 West 600 South, Salt Lake City, UT 84101 ("*Tenant*"); and, solely for the guaranty purposes specified in Section 18.27 below, by **Q FACTOR LLC**, a Colorado limited liability company whose address is 3001 Brighton Blvd., Ste. 449, Denver, CO 80216 ("*Guarantor*"). In this Lease, Landlord and Tenant are each a "*Party*" and collectively are the "*Parties*."

ARTICLE I **DEMISE OF PREMISES**

Section 1.01 **Demise**. For and in consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration (including the rents, terms, covenants and agreements hereinafter set forth on the part of Tenant to be paid, kept, observed and performed), Landlord does hereby demise and lease to Tenant, and Tenant does hereby lease, take and hire from Landlord, upon and subject to the terms and conditions contained herein, that certain tract of unimproved ground that is particularly described on Exhibit "A" annexed hereto, together with any contiguous alleys or other public rights of way hereafter vacated pursuant to UTAH CODE ANN. 10-9a-609.5 to the extent such vacated land is relinquished to become part of the ground described in Exhibit "A" as provided in UTAH CODE ANN. 10-9a-609.5(6) (collectively, the "*Site*"), and further together with:

(a) An accompanying non-exclusive leasehold interest in all rights, titles, privileges, easements and appurtenances that belong and appertain to the Site (the "*Appurtenances*"), subject to the terms and conditions set forth therein; and

(b) All Old Improvements (as hereinafter defined) now located thereon and all appurtenances thereunto belonging (said Site, Old Improvements and Appurtenances are hereinafter collectively referred to as "*Premises*"),

for the Term, at the rental, and upon all of the covenants and conditions set forth in this Lease, subject only to title matters expressly approved in writing by Tenant and the encumbrances set forth on Exhibit "B" attached hereto and by reference incorporated herein (hereinafter collectively referred to as the "*Permitted Title Exceptions*").

A preliminary site plan of the Site is attached hereto as Exhibit "C" and by reference incorporated herein (the "*Preliminary Site Plan*"). The Preliminary Site Plan, which is hereby approved by the Parties subject to possible future revision as explained below, divides the Site (and certain contiguous realty owned or controlled by Tenant) into five numbered "Projects" ("*Projects*"), of which three (numbered as Projects 1-3) are located on the Site. The specific sizes and configurations of the five Projects as shown on the Preliminary Site Plan and the attached exhibits are subject to adjustment and final determination by Tenant following the Effective Date.

The term "*Old Improvements*" as used in this Lease shall mean any and all structures and appurtenances thereto of every type and kind currently located on, at or under the Site, including, but not limited to, buildings, outbuildings, garages, sheds, patios, patio covers, awnings, additions, walkways, sprinkler systems or pipes, garages, roads, curbing, paving, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping hedges, windbreaks,

poles, signs, exterior tanks, solar panels and equipment, exterior evaporative coolers, air conditioning and water softener fixtures, exterior antennae, aerials and other equipment for the reception or transmission of radio, television, microwave, electromagnetic, or other similar or dissimilar communication systems, and anything or any device that alters the natural flow of water from any property adjoining the Premises.

Section 1.02 **Context of Lease; Closing**. The Parties acknowledge that Tenant is leasing the Premises for the purposes of redeveloping the Premises along with certain adjacent property that is owned, leased or otherwise controlled by Tenant (which, with the Premises, is collectively referred to as the "*Master Project*"). Upon the full execution and delivery of this Lease, the Parties shall have a closing ("*Closing*") as reasonably specified (as to date, time and place in Salt Lake County, Utah) by Tenant, when (a) the Parties shall mutually execute and deliver all ancillary documents which specifically are so required by the terms of this Lease; (b) Tenant shall pay to Landlord all Rent due for the first month of this Lease; and (c) Tenant may obtain a leasehold owner policy of title insurance (the "*Title Policy*") in such amount as Tenant reasonably deems appropriate from First American Title Insurance Company or another qualified title insurance company reasonably selected by Tenant ("*Title Company*"), insuring Tenant's leasehold estates under this Lease subject only to the Permitted Title Exceptions identified on Exhibit "B" attached hereto. Tenant shall pay the premiums for the Title Policy and any endorsements requested by Tenant, to the extent Title Company agrees to issue the same.

Section 1.03 **Abandonment of Public Ways**. 500 West Street (the "*Street*") abuts a portion of the West boundary of the Site, and an alley containing approximately 4,426 sq. feet that is commonly known as "Elder Court" (the "*Alley*") is located on or within the Southerly portion of the Site, all as shown on the Preliminary Site Plan. Tenant may at its sole risk, cost and expense seek approval (and/or, in the case of the Alley, confirmation) of the public vacation by Salt Lake City (the "*City*") of the Street and/or the Alley. Landlord shall cooperate as reasonably necessary (without liability or unreimbursed material cost) with any and all of Tenant's efforts to achieve (or, in the case of the Alley, confirm) either or both of such vacations. If approved by the City, and either the Street and/or the Alley is vacated by the City, then title to the portions of the Street and/or Alley shall vest with Landlord to the extent that they are not already vested with Landlord. Any of the Alley and/or the Street which ultimately is vacated by the City (or, as to the Alley, whose prior vacation by the City is confirmed) shall become part of the Premises as of the effective date(s) of such vacation(s), but shall not be included as part of the Premises for purposes of calculating either the Rent for the Premises or the Purchase Price to be paid by Tenant pursuant to the Purchase Option (as hereinafter defined and described).

Section 1.04 **Lot Line Adjustments and Replat**. International Way LLC, or a related entity ("*International Way*"), owns fee title to a parcel of realty located to the South of the Site (the "*International Way Parcel*"), which includes a peninsula of ground containing approximately 15,675 sq. feet located between the two Southernmost arms of the Site and abutting Elder Court, as shown on the Preliminary Site Plan. The Parties desire for that portion of the Site to be reconfigured to result in a more logical division between the Site and International Way's abutting realty, through combining the peninsula realty and the two Southernmost arms of the Site into one parcel, altering or correcting the boundary between the adjoining parcels, and/or reconfiguring the shape of the parcels (collectively, the "*Parcel Adjustment*").

Tenant shall work in good faith with International Way to formulate a mutually-acceptable Parcel Adjustment and submit the same for Landlord's reasonable approval and action (including conveyances to International Way of any boundary adjustment parcels that currently are contained

in the Site, as well as reciprocal conveyances to Landlord of any boundary adjustment parcels that currently are contained in the International Way Parcel), which shall not be unreasonably conditioned or delayed. Any such Parcel Adjustment shall (a) occur on the basis of a land-for-land exchange, such that the ultimate acreage and utility of the Site as so adjusted is consistent with the Site's current acreage and utility; (b) assure that existing access to the Site from 600 South, 700 South and 500 West is acceptably maintained, as reasonably agreed by Landlord; (c) include Tenant's commercially reasonable efforts to identify and appropriately resolve any current material title issues involving the legal descriptions; and (d) be documented and memorialized in a commercially reasonable manner, including such surveys and replatting as Tenant or its advisors reasonably may propose. The Site, as so amended pursuant to the Parcel Adjustment, shall thereafter be the revised Site for purposes of this Lease, subject to any limitations specified in this Lease.

Section 1.05. **Consolidation; Subdivision**. From time to time throughout the term of this Lease (the "*Term*"), Landlord shall cooperate in all reasonable ways (but without material unreimbursed cost or expense to Landlord) with (a) any consolidation into a smaller number of parcels of some or all of the 16 parcels currently comprising the Site, and (b) any future subdivision of the Site by Tenant into Projects 1-3 or any other configuration(s) now or hereafter reasonably desired by Tenant. The out-of-pocket costs reasonably incurred in connection with any such subdivision(s) (such as for surveys and filing fees) shall be paid by Tenant.

Section 1.06. **Revisions to Preliminary Site Plan**. The attached Preliminary Site Plan shall be updated, revised and, once approved by Landlord, re-appended to this Lease from time to time to reflect the results of the Parcel Adjustment and any consolidation or subdivision affecting the Site under Sections 1.04 and 1.05.

Section 1.07. **Resolution of Title Issues**. The Parties acknowledge that certain title issues currently affect the Site, including:

(a) The fact that fee ownership of the Site has not yet been consolidated of record in Landlord as required by Tenant (the "*Ownership Consolidation*"), but instead, the former owners, who are currently shown as the vested owners (the "*Vested Owners*") in commitment for title insurance no. NCS-991857-CO dated effective 8 December 2019, as amended, issued by First American Title Company; and

(b) The existence of certain encumbrances on title to the Site that are objectionable to Tenant as described on attached Exhibit "B" (the "*Unpermitted Title Exceptions*").

Promptly following Closing, Tenant shall at its own cost diligently endeavor to accomplish the Ownership Consolidation and diligently endeavor to resolve, terminate and extinguish of record the Unpermitted Title Exceptions as provided in this section. Landlord timely shall cooperate with such work by Tenant in all reasonable ways, including by executing, delivering and causing to be recorded such curative deeds and the like as the Title Company reasonably shall suggest, facilitating the interface between Tenant and any of the Vested Owners owned or controlled by Landlord, assisting Tenant to accomplish such specific related projects as the Parties mutually shall agree upon, and similar joint efforts targeted at accomplishing the Ownership Consolidation and resolution of the Unpermitted Title Exceptions.

In furtherance of the foregoing, Tenant shall be deemed to be an “interested party” as to the Site and, as such, to have an interest in the Site sufficient for Tenant to bring an action in its own right (and/or, if desired by Tenant in its sole and unfettered discretion, on behalf of Landlord and/or any of the Vested Owners owned or controlled, legally or practically, by Tenant) to quiet title in the Site pursuant to UTAH CODE ANN. 78B-6-1301 et seq. and other applicable law (a “*Quiet Title Action*”) in order to achieve the Ownership Consolidation and/or resolve any unresolved Unpermitted Title Exceptions.

Notwithstanding anything in this Lease to the contrary, Tenant freely may terminate this Lease upon written notice to Landlord if the Ownership Consolidation does not occur, and/or the Unpermitted Title Exceptions are not resolved, to Tenant’s reasonable satisfaction. Any such notice of termination shall be given, if at all, before commencement of construction of any of the New Improvements (defined below). For avoidance of uncertainty, “commencement of construction” shall mean physical excavation and building activities on the Site, but shall not include preliminary work such as planning, applying for or obtaining zoning or use approvals or building permits, or scraping or otherwise clearing the Site to ready it for actual construction of the New Improvements.

ARTICLE II **TERM OF LEASE**

Section 2.01 **Term of Lease**. The initial term (the “*Initial Term*”) of this Lease shall commence on the Effective Date and shall expire, unless sooner terminated under the terms and conditions contained herein, at 11:59 p.m. (Utah time) on the last day of the calendar month in which the fortieth (40th) anniversary of the Effective Date occurs.

Section 2.02 **Renewal Option**. Landlord hereby grants Tenant the option (the “*Renewal Option*”) to extend the term of this Lease for one successive period of 20 years (the “*Extension Term*”) (the Initial Term and the Extension Term, if any, are collectively referred to herein as the “*Term*” unless otherwise specifically noted). Tenant may exercise the Renewal Option by delivering written notice of its election at least one (1) year before the then-scheduled expiration of the Initial Term. If the Renewal Option is exercised, this Lease shall continue pursuant to its terms and conditions for the Extension Term, and the Term of this Lease shall be deemed to include both the Initial Term and the Extension Term. If the Renewal Option is not exercised, then this Lease shall terminate as of the end of the original 40-year Initial Term.

ARTICLE III **RENT**

Section 3.01 **Overview**. The rent (“*Rent*”) to be paid by Tenant under this Lease initially shall consist of base rental (“*Base Rent*”), which shall be succeeded by enhanced rental (“*Enhanced Rent*”) on a staged basis according to various temporal or development milestone triggers, as described below.

Section 3.02 **Base Rent**. The Base Rent for the unimproved Premises initially shall be \$5,000.00 per month. While Base Rent is in effect, the then applicable amount of the Base Rent shall increase at the rate of two percent (2%) per year.

Section 3.03 **Enhanced Rent**. Enhanced Rent shall replace Base Rent for each of the three Projects in the Site in the series of three successive “steps” described below. Enhanced Rent shall

be computed on the annualized basis of six percent (6%) of \$60 for each square foot of ground in the subject Project area (i.e., \$60 per square foot is the mutually-agreed current fair market value of the Site). Further, the Enhanced Rent shall be increased at the annualized rate of two percent (2%) from and after the first anniversary of the date that the Enhanced Rent becomes effective for a subject Project. The location, configuration and size (in square feet) of each Project shall be determined and mutually agreed to by the Parties as of the first to occur of Tenant's submission of the Design Plans (defined below) for that Project or the date that Enhanced Rent on the Project commences, at which time the balance of the Site, if any, that still will be subject to Base Rent also shall be ascertained.

Enhanced Rent shall be substituted for Base Rent as to the three Projects in the Site according to the following schedule:

(a) Project 1 Enhanced Rent. Enhanced Rent on Project 1 shall commence on the first anniversary of the first day of the first calendar month after the Effective Date or upon the City's issuance of a temporary certificate of occupancy (a "TCO") (or equivalent other evidence of substantial completion) for the principal improvements constructed on Project 1, whichever occurs first. Upon commencement of Enhanced Rent on Project 1, the Base Rent shall be proportionately reduced based on the relative square footage of Project 1 compared to the balance of the Site still subject to Base Rent.

(b) Project 2 Enhanced Rent. Enhanced Rent on Project 2 shall commence on the second anniversary of the first day of the first calendar month after the Effective Date or upon the City's issuance of a TCO (or equivalent other evidence of substantial completion) for the principal improvements constructed on Project 2, whichever occurs first. Upon commencement of Enhanced Rent on Project 2, the Base Rent shall be proportionately reduced based on the relative square footage of Project 2 compared to the balance of the Site still subject to Base Rent.

(c) Project 3 Enhanced Rent. Enhanced Rent on Project 3 shall commence on the third anniversary of the first day of the first calendar month after the Effective Date or upon the City's issuance of a TCO (or equivalent other evidence of substantial completion) for the principal improvements constructed on Project 3, whichever occurs first. Upon commencement of Enhanced Rent on Project 3, all of the Site will then be subject to Enhanced Rent.

A rent schedule incorporating the foregoing is attached hereto as Exhibit "D."

Section 3.04 **Rent--General.** Rent shall be paid to Landlord on or before the first calendar day of each month at Landlord's address specified above or to such other address as Landlord hereafter may specify in writing to Tenant. Rent for partial months during which this Lease commences or terminates shall be prorated. All Rent shall be absolutely net to Landlord so that this Lease shall yield to Landlord the full amount of the Rent throughout the Term without deduction or offset. The Rent shall continue at the rates specified above during the entire Term.

Unless otherwise directed by Landlord, Tenant shall make all payments due here under via ACH, electronic withdrawal. Tenant shall pay to Landlord all Rent payments via ACH withdrawal, as due when due and without notice or demand, or as otherwise directed in writing by Landlord. Prior to execution of this Lease, Landlord shall provide Tenant with the necessary ACH authorization form and Tenant shall execute such form and provide any other information reasonably necessary to allow Landlord to set up and arrange the ACH withdrawals. **TENANT SHALL NOT ABATE, SET OFF OR DEDUCT ANY AMOUNT OR DAMAGES FROM OR REDUCE ANY RENT**

OR OTHER PAYMENT DUE FOR ANY REASON, EXCEPT AS EXPRESSLY AUTHORIZED IN THIS LEASE. TENANT SHALL NOT REVERSE, RETURN AS UNAUTHORIZED, OR IN ANY OTHER WAY DISRUPT OR INTERFERE WITH ANY PREVIOUSLY AUTHORIZED ACH PAYMENT. EXCEPT AS MAY OTHERWISE SPECIFICALLY BE PROVIDED IN THIS LEASE, THIS LEASE IS NON-CANCELABLE FOR THE ENTIRE TERM OF THE LEASE.

ARTICLE IV
TAXES, ASSESSMENTS AND CHARGES

Section 4.01 **Taxes and Assessments**. Subject to the provisions of Article XIV hereof (concerning Permitted Contests), Tenant shall discharge and pay (before the same become delinquent and before any fine, penalty, or interest may be added for nonpayment) any and all taxes, assessments, license or permit fees, special district or community improvement district assessments, excises, imposts and charges of every nature and classification (all or any one of which are hereinafter referred to as "*Taxes*") that at any time during the Term are levied, assessed, charged or imposed upon Landlord's fee simple and/or reversionary interest in the Premises and the leasehold estate of Tenant created hereby; *provided, however*, (a) Tenant shall not be obligated to pay any income tax imposed on Landlord (whether municipal, state or federal income taxes), (b) Tenant shall not be obligated to pay any amounts levied upon Landlord as a franchise, estate, gift, inheritance, succession or capital levy tax, and (c) Tenant shall not be obligated to pay any Taxes attributable to the period of time prior to the Effective Date or following expiration or earlier termination of the Term under this Lease. Each Party shall provide copies of all Taxes invoices received by the Party to the other Party within ten business days after their receipt from the taxing authority, and Tenant shall provide proof of timely payment of such Taxes to Landlord within ten business days after their respective due date(s).

If a lender of Tenant is not already requiring Tenant to make periodic payments into an impound account (or similar) of the property taxes assessed against the Premises and any New Improvements, then Landlord may at its option require Tenant to make monthly payments of property taxes into an escrow account (the "*Tax Escrow*") as described below in this Section 4.01. If Landlord notifies Tenant in writing of its decision to require a Tax Escrow, then the Parties shall promptly cooperate to establish the Tax Escrow within one (1) month thereafter. The escrow agent ("*Escrow Agent*") holding the Tax Escrow shall be a bank trust department, a title company, or another legally qualified, independent, financially capable escrow agent that is reasonably proposed by Tenant and reasonably acceptable to Landlord to receive and disburse all property tax payments from Tenant. Upon selection of Escrow Agent, the Parties shall promptly cooperate to issue binding escrow instructions to Escrow Agent which are reasonably proposed by Tenant and reasonably acceptable to Landlord and Escrow Agent.

After Landlord's notice of its intent to require the Tax Escrow and until creation of the Tax Escrow, Tenant shall pay to Landlord, with each monthly rental payment, one-twelfth (1/12) of the estimated property taxes to be assessed against the Premises and any New Improvements. From and after commencement of the Tax Escrow, (w) Landlord promptly shall pay over to Escrow Agent all property taxes previously paid by Tenant which have not yet been paid over to the Salt Lake County Treasurer (the "*Treasurer*"), (x) Tenant thereafter shall pay (or cause to be paid) to Escrow Agent, during each calendar month of the remaining Term, one-twelfth (1/12) of the estimated property taxes to be assessed against the Premises and any New Improvements; (y) Escrow Agent shall by November 30th of each tax year pay to the Treasurer all monies in the Tax

Escrow; and (z) Tenant shall by November 30th of each tax year pay to the Treasurer any and all additional property taxes for the Premises and any New Improvements due for such tax year.

Within ten (10) days after receipt, each Party shall provide copies of all pertinent tax notices and invoices it receives from the Salt Lake County Assessor (the "Assessor"). Each Party also shall provide proof of tax payments to the Treasurer promptly following written request by the other Party, and shall pay to the Treasurer when due any and all interest, fines, fees, etc. arising from that Party's failure to timely make any tax payment(s) due to the Treasurer as provided in this Section 4.01. At any time during a tax year the estimated monthly pro rata payment of property taxes may be modified as requested by Landlord in writing if Landlord reasonably believes, based on current assessment information from the Assessor's records, that the property taxes for the Premises and any New Improvements have changed.

If Tenant fails or refuses to pay when due any Taxes, and Tenant is not contesting such Taxes in accordance with the provisions of this Lease, and such failure or refusal continues without correction for a period of 30 consecutive calendar days from and after notice thereof from Landlord to Tenant, Landlord shall have the right but not the obligation to pay such unpaid overdue Taxes, and Tenant as to the portion of the Premises constituting the applicable governmental tax parcel identified in the unpaid governmental bill for Taxes, shall reimburse Landlord for the Taxes (including penalties and interest, together with reasonable out of pocket costs incurred by Landlord in connection therewith) so paid by Landlord as to such portion of the Premises within 30 days after written notice from Landlord to Tenant demanding payment (including reasonably detailed supporting information regarding the amounts owed).

Section 4.02 **Charges**. Subject to the provisions of Article XIV hereof (concerning Permitted Contests), Tenant covenants and agrees that it shall pay when due all charges, deposits, access fees, tap-in and hook-up fees, and the similar fees regarding the installment of utilities or related to the construction or alteration of the Improvements for all public or private utility services including, but not limited to, water, sewer, gas, light, heat and air conditioning, telephone, electricity, cable television, trash removal, power and other utility and communications services (all or any one of which hereinafter referred to as "Charges") that are rendered or become due and payable with respect to the Premises at any time during the Term and during any period prior to the commencement of the Term after Tenant takes possession of the Premises for the construction of or alterations to the Improvements.

Section 4.03 **General**. Tenant shall prepare and file all reports and returns required by law and governmental regulations with respect to any Taxes and, upon Landlord's request, shall furnish copies thereof to Landlord. Upon written request from Landlord, Tenant shall forward to Landlord copies of any bill or assessment respecting any Taxes upon Tenant's receipt thereof from the taxing authority. Likewise, Landlord shall promptly furnish to Tenant copies of any bill or assessment respecting any Taxes upon Landlord's receipt thereof from the taxing authority. Upon written request from Landlord, Tenant shall furnish and deliver to Landlord receipts evidencing the payment of any Taxes and/or Charges payable by Tenant as provided in Section 4.01 and Section 4.02 hereof. If Taxes include any special assessments for improvements which may be paid in installments, Tenant shall be obligated to pay only such installments as they become due and shall be obligated to pay only such installments which are to become due and payable prior to the expiration of the Term. Any Taxes for the year in which Tenant's obligation to pay Taxes commences and terminates or expires shall be prorated on a daily basis between Landlord and Tenant.

If Tenant fails to pay any Taxes and/or Charges (or any installment thereof) when due, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, pay any such Taxes and/or Charges (or any installment thereof) and any amount so paid by Landlord, together with all costs and expenses incurred by Landlord in connection therewith, shall be paid by Tenant to Landlord within 30 days after written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed) with Interest thereon in the manner provided in the following paragraph. Tenant's obligation to pay Taxes and Charges which accrue during the Term shall survive any termination of this Lease.

In those circumstances where Tenant fails or refuses to pay any amounts owed under this Lease and Landlord elects to pay such amounts as provided in this Lease, such amounts incurred by Landlord shall accrue interest at the Default Rate (herein referred to as "Interest") from the due date through the date paid or, if demand is required therefor by the terms of this Lease, from the date which is 30 days after the date of written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed) through the date paid. Additionally, except for the first delinquent payment in any given consecutive 12-month period, Landlord may charge Tenant a fee equal to five percent (5%) of the delinquent payment (herein referred to as a "Late Fee") to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. In no event, however, shall the charges permitted under this Section 4.03 or elsewhere in this Lease, to the extent they are considered to be interest under law, exceed the maximum lawful rate of interest. As used herein, the term "Default Rate" shall mean an annual rate of interest equal to the greater of (a) ten percent (10%) plus the Prime Rate, or (ii) eighteen percent (18%). As used herein, the term "Prime Rate" shall mean the rate of interest per annum announced from time to time by JP Morgan Chase Bank, or its successor organization, as its prime commercial lending rate.

Section 4.04 **Impact Fees.** Tenant shall be solely responsible for and shall timely pay any charges in the nature of building permit fees, impact fees and other similar fees and charges attributable to the construction of Improvements on the Site.

ARTICLE V

OPTION TO PURCHASE

Section 5.01 **Grant of Option.** Landlord hereby grants to Tenant an exclusive option (the "Purchase Option") to purchase unencumbered fee simple title to the Premises on the terms and conditions that are specified in this Article V.

Section 5.02 **Option Price.** The purchase price (the "Option Price") for the Premises shall be the greater of the following two alternatives:

(a) **Lease-Based Value.** The then value of the Land (i.e., the unimproved ground comprising the Site, excluding any and all buildings and improvements), determined by multiplying the square footage of the Land (excluding any vacated public rights of way as discussed in Section 1.03 above) by \$60, increased on a compounded interest basis at an annualized rate of two percent (2%) for the time period between the Effective Date and the date the Purchase Option is exercised. For example, assuming that the Premises contains 168,948 sq. feet, on the 40th anniversary of the Effective Date the Option Price would be \$22,545,022.99. Or

(b) Appraisal. The then appraised value of the Land (excluding all improvements) as determined by an M.A.I. appraisal conducted by a qualified appraiser who is mutually, reasonably selected by Landlord and Tenant, with the cost thereof shared equally by the Parties. If the Parties are unable to agree on an appraiser, or if a Party disagrees with the resulting appraisal, then each Party shall select an M.A.I. appraiser to conduct an appraisal of the Land at such Party's own cost and the Option Price shall be the average of these two appraisals. All appraisals shall present an analysis of the then-current fair market value of the Land as well as that of the land portion (excluding any improvements) of the comparable parcels.

Section 5.03 Term of Purchase Option. Tenant's right to exercise the Purchase Option shall be in effect only during the Extension Term, if any, of this Lease, and shall terminate on the date that is one (1) year before the termination of the Extension Term (the "*Option Termination Date*"). If Tenant does not exercise the Purchase Option on or before the Option Termination Date, then the Purchase Option shall expire and no shall be longer available to Tenant following the Option Termination Date.

Section 5.04 Method of Exercising Purchase Option. Tenant shall exercise the Purchase Option, if at all, by delivering to Landlord a written notice of exercise of the Option (the "*Notice of Exercise*") during the time period specified in Section 5.03 above and on or before the Option Termination Date. The Notice of Exercise shall inform Landlord of Tenant's exercise of the Purchase Option and shall specify the date of Closing (defined below) of such purchase (the "*Closing Date*"), which shall be at least three months, but not more than six months, after the date of the Notice of Exercise; provided that the actual Closing Date may be delayed as reasonably necessary to accomplish valuation of the Land under the appraisal approach described in Section 5.02(b) above. Tenant shall pay all Rents and any other payments required due under the Lease until the Closing Date, even if the Closing Date extends beyond the end of the Extension Term.

Section 5.05 Failure to Exercise Option. If Tenant does not exercise its Purchase Option during the time period specified in Section 5.03 above and on or before the Option Termination Date as provided herein, then the Purchase Option shall automatically and irrevocably terminate and the Parties shall lose all their respective rights, and shall be discharged from all of their respective obligations, regarding the Purchase Option.

Section 5.06 Closing. The closing ("*Closing*") of Tenant's purchase of the Premises pursuant to an exercise of the Purchase Option shall occur on the date specified in the Notice of Exercise (or such other date as shall be mutually agreeable to the Parties), at such time and place in Salt Lake County, Utah, as Tenant reasonably may designate. At Closing, Landlord shall convey to Tenant by general warranty deed (in form reasonably specified by Tenant) unencumbered fee simple title to the Premises and Tenant shall pay to Landlord the Option Price. Taxes, assessments and other expenses against the Premises shall be prorated as of the Closing Date unless they are required to be paid by Tenant under this Lease, in which case they shall be paid by Tenant. Any escrow and closing fees charged by a title company or other escrow agent with respect to Closing shall be equally shared by the Parties. At Closing, Landlord shall provide to Tenant, at Landlord's expense, a standard coverage owner's policy of title insurance covering the Premises in the amount of the Option Price, issued by a licensed title insurer reasonably designated by Tenant; *provided, however*, that Landlord shall not be obligated to remove as exceptions to title to the Premises any encumbrances created by or arising by, through or under any original or successor Tenant under this Lease. All other aspects of Closing shall conform to typical procedures and customs for similar real estate transactions in Salt Lake County, Utah.

Section 5.07 **Subdivision**. If any subdivision involving the Premises is advisable or legally required as a prerequisite to Closing, the Parties shall jointly, expeditiously pursue all necessary approvals by governmental entities of such subdivision. The out-of-pocket costs reasonably incurred in connection with such subdivision (such as for surveys and filing fees) shall be paid by Tenant.

ARTICLE VI

USE AND CONDITION OF THE PREMISES; CONSTRUCTION OF IMPROVEMENTS

Section 6.01 **Use of the Premises**. Tenant and its permitted successors, assigns, subtenants, etc. may use and occupy the Premises for all uses which are permitted under the laws (including, without limitation, zoning ordinances) now or hereafter applicable to the Site and which are not prohibited under this Lease (all uses permitted hereunder are the “*Permitted Uses*”). Tenant discloses that it currently intends to redevelop the Site to include a parking structure, residential apartments, commercial retail, landscaping improvements, and other legal uses. Landlord agrees not to unreasonably withhold, condition or delay Landlord’s consent to any reasonable change requested by Tenant in the zoning ordinance and regulations applicable to the Site, and, in the event of such consent, to reasonably cooperate with Tenant, including joining in the request for such change if the Landlord’s joinder is required for the re-zoning application; *provided, however*, that (a) such proposed change is consistent with the Plans approved by Landlord and with this Lease, (b) Tenant shall be solely responsible for all expenses and fees associated with any such requested zoning change and Landlord shall not incur or be responsible for any liabilities or expenses related to a requested zoning change, and (c) Landlord is not required to consent or join any requested change which would adversely or materially affect other nearby real property owned by Landlord. Tenant freely may modify, demolish, remove and/or dispose of any or all of the Old Improvements as desired by Tenant in order to use the Premises for a Permitted Use.

Section 6.02 **Condition of the Premises**. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, TENANT IS LEASING THE PREMISES IN AN “AS IS” CONDITION, “WITH ALL FAULTS” AND TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM LANDLORD, ANY LANDLORD RELATED PARTIES, OR THEIR AGENTS, OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF LANDLORD, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION AND ASPECTS OF THE PREMISES, (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND ANY GROUNDWATER ON THE PREMISES, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PREMISES, (D) THE DEVELOPMENT POTENTIAL OF THE PREMISES, AND THE PREMISES’ USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PREMISES FOR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PREMISES OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON USE OF THE PREMISES, (F) THE PRESENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PREMISES OR THE ADJOINING OR NEIGHBORING PROPERTY, (G) THE QUALITY OF ANY LABOR AND MATERIALS USED IN ANY IMPROVEMENTS ON THE PREMISES, (H) THE CONDITION OF TITLE TO

THE PREMISES, (I) THE VALUE, ECONOMICS OF THE OPERATION OR INCOME POTENTIAL OF THE PREMISES, OR (J) THE PHYSICAL CONDITION, VALUE, ECONOMICS OF OPERATION OR INCOME POTENTIAL OF THE PREMISES. THE PROVISIONS OF THIS SECTION 6.02 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

Section 6.04 **Construction of the New Improvements.**

(a) *Project Schedule.* Tenant plans to improve the Premises by constructing new improvements (“*New Improvements*”) to the three Projects contained in the Premises. Tenant shall use its diligent, commercially reasonable efforts to assure that platting of the Projects, securing of construction financing, and all necessary zoning and use approvals from the City, are completed/obtained by the seventh anniversary of the Effective Date (the “*Entitlement Date*”).

If, despite such efforts by Tenant, those necessary pre-construction tasks are not completed within that initial seven years term, then within 30 days after the Entitlement Date Landlord may, at its option and upon written notice to Tenant, either (i) terminate this Lease, provided that following such notice Tenant shall have six months’ opportunity to cure (by completing securing such approvals, etc.), in which event such termination by Landlord shall be ineffectual, or (ii) extend the Entitlement Date (and Tenant’s time to secure such approvals, etc.) to the tenth anniversary of the Effective Date.

If Landlord so extends the Entitlement Date but construction of the New Improvements has not commenced by that extended Entitlement Date (i.e., by the tenth anniversary of the Effective Date), then Landlord may terminate this Lease (as to any of the three Project Areas of the Site on which construction of New Improvements has not commenced) upon at least 180 days’ prior written notice and opportunity to cure to Tenant.

The Project schedule, the Entitlement Date, and any extension of the Entitlement Date shall not affect, delay or excuse Tenant from Tenant’s obligation to pay the Enhanced Rent as provided in Section 3.03 above.

(b) *Plans.* As Tenant completes the schematic design and design development phases of its proposed New Improvements comprising a Project, Tenant will provide the final results of such design phases (“*Design Plans*”) to Landlord for Landlord’s review and reasonable approval. Landlord shall, within 15 days after submittal of the Design Plans, either (i) provide written approval of the Design Plans to Tenant, or (ii) meet with Tenant to discuss any portion of the Design Plans that are reasonably unacceptable to Landlord. Tenant and Landlord shall expeditiously work together in good faith to resolve any unacceptable aspects of the Design Plans. Tenant hereby covenants and agrees that construction the New Improvements comprising any Project shall commence only after Tenant has received Landlord’s approval of the underlying Design Plans pursuant to the foregoing process. In all events, Landlord’s approval shall not be unreasonably withheld, conditioned or delayed.

(c) *Construction Standards.* The New Improvements constructed by Tenant shall be installed (i) in a good and workmanlike manner in accordance with sound design and building practices for the commercial real estate industry in Salt Lake County for similar projects, and (ii) in compliance with all federal, state, county, municipal and other governmental codes, laws, statutes, orders, decrees, restrictions, ordinances and regulations, now or hereafter enacted prior to the commencement of construction of the New Improvements, which are applicable to or

affect the Premises, including, without limitation, obtaining all applicable permits, inspections and approvals of all governmental authorities, fire underwriters or other entities having jurisdiction (collectively, the “Laws”).

(d) Construction Assurance. Prior to commencement of construction of any New Improvements:

(i) Contractor Bond. Tenant shall provide to Landlord a copy of the payment and performance bond from Tenant’s general contractor for the full contract value of the construction of those New Improvements with Landlord named as an additional obligee thereon.

(ii) Completion Assurance. Tenant shall provide to Landlord reasonably acceptable proof of adequate funding to complete such New Improvements, with a reasonable excess for contingencies, whether through Tenant’s own equity and funds or through loaned funds. In connection with the closing of any construction loan for such New Improvements, Tenant shall provide either to its construction lender or to Landlord a completion guaranty (the “*Completion Guaranty*”) in such commercially reasonable form as such lender or Landlord (as applicable) may require, as a condition precedent to the closing of the construction loan. Tenant shall promptly provide to Landlord a copy of any Completion Guaranty provided to Tenant’s lender. The Completion Guaranty shall require the guarantor thereunder (the “*Completion Guarantor*”) to guaranty the prompt commencement of construction of the subject New Improvements following Tenant’s receipt of all necessary approvals and diligently pursue construction of the New Improvements through completion.

(e) Construction Filings; Notice of Completion. Tenant shall:

(i) Permits. Obtain at Tenant’s cost all necessary building permits, licenses, or other governmental permits necessary to construct the New Improvements, with Landlord cooperating as reasonably necessary with such permitting processes; and

(ii) Construction and Completion Notices. File any and all pre-construction or construction notices or other filings of any kind required by applicable law. Upon completion of any work or improvement upon the Premises, Tenant timely shall file or cause to be filed, if required by applicable law, a valid notice of completion. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims arising out of or resulting from Tenant’s failure to obtain any necessary permits or licenses, or to file any construction notices or other legally required documentation; or for any mechanics’ or materialmans’ liens.

(f) Liens. In the event of attachment to the Premises of any tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Tenant or any of its contractors or subcontractors upon the Site or arising out of or because of the performance of any work or labor to it or them at the Site or the furnishing of any materials to it or them for use at the Site, then, subject to Tenant’s right to contest as set forth below, Tenant shall bond against or discharge the same within 30 days after Landlord’s written request. Notwithstanding the foregoing, Tenant may contest any such lien so long as (i) provision is made to the satisfaction of Landlord for eventual payment thereof in the event that it is found that the contested lien secures a valid obligation of Tenant, and (ii) such lien is released and discharged prior to any sale of any of the Site that would result from nonpayment. Tenant shall notify Landlord, in writing, within three days after Tenant shall have received notice, whether actual or constructive, of any liens or anticipated liens on all or any part of the Premises.

(g) *Construction Insurance.* At all times during construction of any New Improvements, Tenant's contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under the construction contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work by the contractor, its agents, representatives, employees or subcontractors.

ARTICLE VII

COMPLIANCE WITH LAWS; LIENS AND ENCUMBRANCES

Section 7.01 *Compliance with Laws.* Subject to the provisions of Section 7.04 hereof (concerning Hazardous Substances) and Article XIV hereof (concerning Permitted Contests), Tenant, at its sole cost and expense, shall comply with and cause the Premises and any and all New Improvements located thereon, to comply with (a) all Laws affecting the Premises or any part thereof, or the use thereof, including, without limitation, those which require Required Repairs (as defined in Section 8.01 hereof), or any structural changes in the New Improvements whether or not any such Laws involve a change of policy on the part of the governmental body enacting the same, and (b) the requirements of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Premises (all or any one of the items enumerated in this Section 7.01 is hereinafter referred to as a "Regulation").

Section 7.02 *Tenant's Agreement Relating to Hazardous Substances.* Tenant hereby covenants that Tenant and its agents, employees and contractors will not (and Tenant shall not permit or suffer any third party to) during the Term generate, store, use, treat or dispose of any Hazardous Substances (as hereinafter defined) in, on or at the Premises or any part of the New Improvements, except for Hazardous Substances as are commonly legally used or stored (and in such amounts as are commonly legally used or stored) as a consequence of using the Premises for the Permitted Uses, but only so long as the quantities thereof are inconsequential and do not pose a threat to public health or to the environment and do not necessitate a "response action", as that term is defined in CERCLA (as hereinafter defined), and so long as Tenant strictly complies or causes compliance with all Laws concerning the use or storage by Tenant of such Hazardous Substances. Tenant further covenants that neither the Premises nor any part of the New Improvements shall ever be used by Tenant or its agents, contractors, employees, or subtenants as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances during the Term.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release on or from, the Premises or the New Improvements of any Hazardous Substance (including, without limitation, any losses, liabilities, including without limitation strict liability, damages, injuries, expenses, including without limitation reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), any so called federal, state or local "Superfund" or "Superlien" laws, or any other Laws regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance), to the extent that such escape, seepage, etc. of

Hazardous Substances occurs during the Term or is otherwise exacerbated by Tenant during the Term.

For purposes of this Lease, "*Hazardous Substances*" shall mean and include those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the "*EPA*") or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by CERCLA or any Superfund law or any Superlien law or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

Landlord shall have the right but not the obligation, and without limitation of Landlord's rights under this Lease, to enter onto the Premises or to take such other actions as it reasonably deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance following receipt of any notice from any person or entity (including without limitation the EPA) asserting the existence of any Hazardous Substance in, on or at the Premises or any part thereof which, if true, could result in an order, suit or other action against Tenant and/or Landlord; *provided, however*, Landlord agrees that, except in the case of an emergency, Landlord will take such action only after written notice to Tenant of the alleged existence of Hazardous Substances and the failure by Tenant within a reasonable period of time following receipt of such notice to commence (but in no event more than 30 days without Landlord's written consent), or the failure by Tenant to thereafter diligently pursue to completion, the appropriate action to clean-up, remove, resolve or minimize the impact of such Hazardous Substances. All reasonable costs and expenses (including, without limitation, penalties, fees, interest, reasonable and actual attorneys' fees and court costs) incurred by Landlord in the exercise of any such rights, which costs and expenses result from the violation of the covenants and agreements of Tenant contained in the first paragraph of this Section 7.02, shall be payable by Tenant within ten days after the date of written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed).

This Section 7.02 shall survive cancellation, termination or expiration of this Lease.

Section 7.03 *Liens and Encumbrances*. Tenant may encumber its leasehold interest in the Premises under this Lease in connection with loan transactions arising in the context of Tenant's redevelopment and future operation of the Premises. Subject to the provisions of Article XIV hereof (concerning Permitted Contests), however, Tenant shall not create or permit to be created or to remain, and shall promptly discharge or bond over at Tenant's sole cost and expense, any lien, encumbrance or charge (all or any one of which hereinafter referred to as "*Lien*") upon Landlord's fee simple interest in the Premises ("*Landlord's Interest*"), including any such lien on Landlord's Interest that arises from the use or occupancy of the Premises by Tenant or by reason of any labor, service (including, without limitation, real estate brokerage, leasing or management services) or material furnished or claimed to have been furnished to or for the benefit of Tenant or by reason of any construction, repairs or demolition by or at the direction of Tenant of all or any part of the New Improvements, or by reason of any Permitted Contest under Article XIV hereof. The Parties acknowledge and agree that if as a result of the posting of a bond the Lien is removed, such Lien shall cease to be a Lien even though the obligations theretofore secured by such Lien continue. The term "*Lien*" does not include any lien of or for Taxes.

Notice is hereby given that Landlord shall not be liable for the cost and expense of any labor, services (including, without limitation, real estate brokerage, leasing or management services) or materials furnished or to be furnished with respect to the Premises at or by the direction of Tenant or anyone holding the Premises or any part thereof by, through or under Tenant and that no laborer's, mechanic's or materialman's or other lien (including, without limitation, any real estate broker or service provider lien) for any such labor, service or materials shall attach to or affect the interest of Landlord in and to the Premises. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any improvements or repairs to or of the Premises or any part thereof, nor as giving Tenant any right, power or authority on behalf of Landlord to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any Lien against Landlord's Interest in the Premises or any part thereof.

Any and all Liens created by Tenant shall attach to Tenant's leasehold interest in the Premises only. Landlord shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from Liens. In case of any Lien attaching or notice of any Lien attaching to Landlord's Interest, Tenant shall indemnify, defend, protect, and hold harmless Landlord from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any such Lien or the threat of any such Lien. The provisions of this Section 7.03 shall survive the expiration or earlier termination of this Lease.

If Tenant fails to discharge or bond over any Lien created or established in violation of Tenant's covenant herein and such failure continues for a period of 15 days after receipt by Tenant of written notice from Landlord of the existence of the Lien, or if Tenant fails to comply with any Regulation as required in Section 7.01, and such failure continues for a period of 30 days after receipt by Tenant of written notice from Landlord of noncompliance with any Regulation (provided that if Tenant in good faith commences to cure such failure to perform such Regulation within said 30 day period, said 30 day period will be extended for such time as Tenant is continuously and diligently pursuing the cure of such failure), and provided such Lien or Regulation is not being actively contested by Tenant pursuant to Article XIV hereof or at any time a Lien or Tenant's failure to comply with a Regulation poses an imminent threat to Landlord's title to the Premises, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, discharge or pay such Lien (either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings) or cause compliance with such Regulation, and any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith shall be paid immediately by Tenant to Landlord within 30 days after written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed), with Interest thereon from the date of such written demand by Landlord.

Section 7.04 Landlord's Agreement Relating to Hazardous Substances. Landlord hereby represents to Tenant that to Landlord's actual knowledge as of the Effective Date, Landlord has received no notice of violation, administrative complaint or judicial complaint alleging that conditions on the Site are in violation of any environmental laws, regulations, ordinances or rules. For purposes of this Section 7.04, "Landlord's knowledge" shall mean the actual (and not implied) knowledge of Bruce Markosian (the "Representing Individual"). Landlord represents and warrants that the Representing Individual is the person within Landlord's organization responsible for

information about Hazardous Substances on the Premises. Landlord shall indemnify and hold Tenant harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, attorneys' fees, and consultant and expert fees) arising during or after the Term as a result of the breach by Landlord of the representation made in the preceding sentence; *provided, however*, the foregoing indemnity, representation and warranty excludes matters caused by Tenant, or its agents, employees or contractors, and does not extend to Hazardous Substances first introduced in, on or to the Site after the Effective Date. The obligations of Landlord under this Section 7.04 shall not be affected by the expiration or termination of the Term.

ARTICLE VIII **REPAIRS AND ALTERATIONS**

Section 8.01 **Maintenance and Repairs**. Throughout the Term, Tenant shall repair and maintain the New Improvements on the Premises in good order and repair, comparable with other commercial developments in Salt Lake City, UT of comparable age, quality and construction, reasonable wear and tear excepted, and in accordance with all applicable Laws. Notwithstanding the foregoing to the contrary, during the last one (1) year of the Term, except for Required Repairs (as hereinafter defined), Tenant will have no obligation to make any repair or replacement that would be classified as a "capital expense" under generally accepted accounting principles. "*Required Repairs*" means:

(a) *Legally-Required Repairs*. Those repairs required to be made to the Premises pursuant to all applicable Laws, taking into account any applicable "grandfathering" of the Premises as a legal non-conforming use with respect to the same (i.e., Required Repairs do not include repairs or replacements which would be required to bring the Premises into compliance with Laws applicable to new construction except to the extent that the Premises is not exempt from such compliance or grandfathered as a legal nonconforming use);

(b) *Habitability Repairs*. Those repairs and replacements required to keep the Premises in a safe and tenantable condition, such as, without limitation, patching holes or leaks in the roof, repairs and replacements of mechanical equipment; and

(c) *Insurance-Required Repairs*. Any repairs that are required by insurance policies and agreements to which Tenant is a party or by which it is bound, then in effect, with respect to the Premises.

At the expiration or termination of the Term, Landlord shall accept the Premises and all New Improvements "**as-is where-is**" (except for Tenant's maintenance and repair obligations set forth herein and liability with respect to third party claims brought against Landlord relating to Tenant's failure to repair or restore the Premises). Landlord is not required to make any repairs or replacements to the Premises whatsoever (including, without limitation, the roofs, foundations, all interior and exterior walls, and all structural and non-structural portions of the buildings and other improvements), structural or otherwise, ordinary or extraordinary, foreseen and unforeseen, including but not limited to the exterior and interior windows, doors and entrances, signs, floor coverings, columns and partitions; and lighting, heating, plumbing and sewerage facilities, and air conditioning equipment, and during the Term of this Lease, Landlord shall have no liability whatsoever with respect to any faulty repair or failure to repair the Premises. Notwithstanding the foregoing, if Tenant fails to make timely repairs to the Premises as required hereunder, Landlord, at Landlord's sole option, may conduct such repairs on behalf of Tenant and Tenant shall reimburse

Landlord within 30 days after written notice from Landlord demanding payment (including reasonably detailed supporting information regarding the amounts owed), with Interest thereon from the date of such written demand by Landlord.

Section 8.02 **Alterations**. From time to time during the Term, Tenant may at its sole cost and expense make additions or improvements to, or alterations of, the New Improvements provided that (a) the Design Plan therefor is approved by Landlord as provided in Section 6.03(b) above; (b) any such action shall be expeditiously completed in a good and workmanlike manner in compliance with the terms and condition of this Lease and all applicable Laws, insurance policies and agreements to which Tenant is a party or by which it is bound, then in effect, and (c) Tenant shall have procured and paid for all permits, licenses and other third-party approvals required in connection therewith. Landlord shall reasonably cooperate with Tenant for the purposes of securing necessary permits for any additions, improvements or alterations permitted under this Section 8.02, provided that Landlord shall not be required to incur any liability or unreimbursed material expense with respect to the same.

Notwithstanding anything to the contrary set forth above or elsewhere in this Lease, without obtaining Landlord's approval of any plans therefor, Tenant shall be permitted to make additions, improvements and alterations which (j) do not cause any change in the outside appearance of the New Improvements; (k) are made with due diligence, in a good and workmanlike manner, and in compliance with all Laws, and in compliance with insurance policies with respect to the Premises and agreements to which Tenant is a party or by which it is bound, then in effect, with respect to the Premises; and (l) are promptly and fully paid for by Tenant.

In no event shall Landlord have the right to review and/or approve any signage installed within the Premises or the content (i.e. tenant identification signage) of any such signs as long as signage, both exterior and interior, complies with all applicable Laws and Regulations. Tenant shall have the right to add, remove and modify any such signage from time to time, in its sole discretion; *provided, however*, that Landlord shall have the right to review and approve major exterior signage installed upon the New Improvements to the extent such signage (x) contains any lewd or vulgar message; (y) may constitute a nuisance by emitting an unreasonable amount of light; or (z) obstruct views from any nearby realty owned by Landlord in an unreasonable manner.

ARTICLE IX **DAMAGE AND DESTRUCTION**

Section 9.01 **Notice**. In the event of any material damage to or destruction of all or any part of the New Improvements, Tenant will promptly give written notice thereof to Landlord, which notice shall generally describe the nature and extent of such damage or destruction. There shall be no abatement of or adjustment to any other payments or obligations of Tenant under this Lease as a result of any damage or destruction.

Section 9.02 **Optional Restoration**. In the event of any damage to or destruction of all or any part of the New Improvements and whether or not the insurance proceeds on account of such damage or destruction shall be sufficient for the purpose, Tenant, at its sole cost and expense, may promptly commence (and, if commenced, shall thereafter diligently and continuously prosecute to completion the restoration, replacement or rebuilding of the New Improvements (such restoration, replacement or rebuilding, together with any temporary repairs and property protection, are herein collectively referred to as "*Restoration*"). Tenant may commence and complete the Restoration without obtaining any consent or approval of or from Landlord so long

as the New Improvements following the completion of the Restoration are substantially similar to the New Improvements prior to the damage or destruction, and in compliance with (a) all Laws, (b) Design Plans previously approved by Landlord for the damaged New Improvements; (c) insurance policies with respect to the Premises, and (d) agreements to which Tenant is a party or by which it is bound, then in effect, with such changes as are necessary to comply with then applicable Regulations.

Section 9.03 **Optional Termination**. If damage to or destruction of a substantial portion of the New Improvements occurs within the last five years of the Term (i.e., after year 35 of the Initial Term or after the 15th year of the Extension Term, if any) such that at least 60% of the New Improvements are unusable for the Permitted Uses, Tenant also shall have the right, at its sole election and in lieu of any obligation to restore the New Improvements, to terminate this Lease upon 30 days' prior written notice to Landlord, which notice shall be delivered to Landlord on or before the date that is 90 days after such event of damage or destruction. Any such termination shall be conditioned on Tenant also simultaneously paying or offering to pay to Landlord a sum equal to any outstanding charges or amounts due from Tenant to Landlord as of such termination date, and by surrendering, or offering to surrender, the Premises to Landlord on or before the effective date of such termination, in a clean, sightly and safe condition, free of all debris and damaged New Improvements. In connection with any such termination, to the extent any undamaged portion of the New Improvements is unusable for the Permitted Uses, such New Improvements shall be demolished by Tenant as soon as practicable and in compliance with Laws. All insurance proceeds due on account of such damage or destruction shall be equitably allocated between Landlord and Tenant, with (a) Tenant's portion limited to damages for Tenant's loss of the New Improvements and Tenant's leasehold for the remainder of the Term (including the Extension Term) subsequent to such damage or destruction, and (b) the remainder of the proceeds being allocated to Landlord for Landlord's damages for loss of the Rent for the remainder of the Term (including the Extension Term) subsequent to such damage or destruction and loss of the use of the New Improvements after expiration of the Extension Term.

Section 9.04 **Application of Proceeds**. Except as otherwise provided in Section 9.02 above, insurance proceeds received on account of any damage to or destruction of the New Improvements or any part thereof shall be applied to pay for the cost of Restoration. To the extent any such proceeds exceed the costs of Restoration, Tenant shall retain such excess for Tenant's account.

ARTICLE X **INSURANCE**

Section 10.01 **Classes of Insurance**. Commencing on the date of this Lease (with regard to the insurance required by subsection (b) below) and on the date Tenant commences construction of any alterations or other New Improvements on the Site (with regard to the insurance required by subsections (a) and (b) below), and at all times thereafter throughout the entire Term, Tenant shall keep the Premises insured, or shall cause the Premises to be kept insured, against the risks and hazards and with coverage in amounts not less than those specified as follows:

(a) **Casualty Insurance**. Insurance against the risks customarily included under "all-risks" policies with respect to improved properties similar to the Premises in an amount equal to the "full insurable value" (which as used herein shall mean the full replacement value, including the costs of debris removal, which amount shall be determined not less often than every five years) of the New Improvements. Tenant shall be entitled to carry a deductible of up to \$50,000.00 in

Constant Dollars in connection with said coverage provided Tenant self-insures for the amount of the deductible. Tenant hereby further agrees that to the extent available, Tenant will obtain an "agreed amount" endorsement with respect to such insurance so as to prevent either Landlord or Tenant from becoming a co-insurer of any loss.

(b) *Liability Insurance.* Commercial general liability and property damage insurance (including, but not limited to, coverage for any construction, reconstruction or alteration by or at the instance of Tenant on or about the Premises) covering the legal liability of Landlord and Tenant against all claims for any bodily injury or death of persons and for damage to or destruction of property occurring on, in or about the Premises and the adjoining streets, sidewalks, passageways, and parking areas utilized by Tenant or any users or occupants of the Premises in combined single limits for both property damage and bodily injury and in the minimum amount of Five Million and No/100 Dollars (\$5,000,000.00) in Constant Dollars in connection with any single occurrence. Tenant shall be entitled to carry a deductible of up to \$50,000.00 in Constant Dollars in connection with the said coverage provided Tenant self-insures for the amount of the deductible.

"Constant Dollars" means and refers to the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth calendar year following the Effective Date of this Lease, and thereafter at five-year intervals. Constant Dollars will be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "*Base Index Number*" will be the level of the Index for the month during which the Effective Date occurs; the "*Current Index Number*" will be the level of the Index for the month of October of the year preceding the adjustment year.

"Index" means and refers to the Consumer Price Index for All Urban Consumers (U.S. City Average), published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84 = 100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Tenant shall substitute for the Index comparable statistics as compiled by an agency of the United States Government or, if none is available, by a substantial and responsible periodical or publication of nationally recognized authority most closely approximating the result which would have been achieved by the Index.

Section 10.02 **Requirements.** All insurance required under Section 10.01 above shall be written by companies of recognized financial standing (with a rating of at least A VIII in Best's Key Rating Guide or otherwise meets a similar standard from a successor rating organization if Best's Key Rating Guide is unavailable in the future) which are authorized to do insurance business in the State of Utah and shall expressly provide: (a) with respect to the insurance required by subsection (a) of Section 10.01 above, an effective waiver by the insurer of all rights of subrogation against any additional insured and against such additional insured's interest in the Premises and against any income derived therefrom; (b) that no cancellation, reduction in amount or material change in coverage thereof shall be effective until the insurer has endeavored to give at least 30 days written notice thereof to Landlord; and (c) that during construction, reconstruction, alteration or material remodeling of any New Improvements on the Premises such policies shall be in "builder's risk" form if there would be an exclusion of coverage under Tenant's all-risks policy as a result of such construction, reconstruction, alteration or material remodeling. Landlord shall also be designated as an additional insured under Tenant's commercial general liability policy.

Notwithstanding the foregoing, Tenant's obligation to provide the insurance required under this Lease shall be conditioned upon the commercial availability of such insurance (i.e. if such insurance is unavailable in the insurance market and all similarly situated properties in the place where the Premises is located do not have such policies in place, then Tenant will not be obligated to provide the insurance required under this Lease). A certificate of insurance in force, in form reasonably acceptable to Landlord, (and, if requested by Landlord, a copy of each policy) issued by the insurer as provided in Section 10.01 hereof, shall be delivered to Landlord on or before the date Tenant is required to obtain the applicable insurance, and with respect to renewal or replacement policies, as soon thereafter as such certificate of insurance is available to Tenant after such policy has been renewed or replaced.

Tenant may obtain the insurance required hereunder by endorsement on its blanket insurance policies, provided that: (x) said policies fulfill the requirements of this Section 10.02; (y) said policies reference the Premises; and (z) Landlord receives the certificate of insurance in force with respect thereto as provided above. Tenant shall permit Landlord to examine all policies evidencing the insurance required to be maintained by Tenant under this Lease. Nothing contained in this Lease shall be construed to require Landlord to prosecute any claim against any insurer or to contest any settlement proposed by any insurer. Landlord and Tenant shall each have included in all policies of fire, extended coverage, workers compensation, business interruption and loss of rents insurance respectively obtained by them covering the Premises or the New Improvements or the contents thereof, a waiver by the insurer of all right of subrogation against the other in connection with any loss or damage thereby insured against. Any additional premium for such waiver shall be paid by the primary insured.

Section 10.03 **Subtenant Requirements.** Tenant shall cause all subtenants in the Premises to maintain Commercial General Liability Insurance covering against claims of bodily injury, personal injury and property damage arising out of the respective subtenants' operations, assumed liabilities or use of the Premises, including a Broad Form Commercial General Liability endorsement, for limits of liability not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 annual aggregate in Constant Dollars. All insurance required by subtenants pursuant to this Section 10.03 shall be written by companies of recognized financial standing which are authorized to do insurance business in the Utah and shall expressly provide (if commercially available) that no cancellation, reduction in amount or material change in coverage thereof shall be effective until the insurer has endeavored to give at least 30 days written notice thereof to Tenant. Tenant shall permit Landlord to examine all policies evidencing the insurance required to be maintained by subtenants pursuant to this Section 10.03.

Section 10.04 **Certificates.** Within 15 days after receipt of written request from Landlord (but in no event more often than twice annually), Tenant shall execute and deliver to Landlord a certificate addressed to Landlord that is dated within 30 days prior to the delivery thereof and which lists the insurers and policy numbers evidencing all the other insurance then required to be maintained by Tenant hereunder.

If Tenant fails to obtain, maintain or renew any insurance provided for in this Article X or to pay the premiums therefor, or to deliver to Landlord any of such certificates, Landlord may, but shall not be obligated to, procure such insurance, pay the premiums therefor or obtain such certificates, and any costs or expenses incurred by Landlord for such purposes shall be immediately paid by Tenant to Landlord upon demand by Landlord, with Interest thereon from the date of demand by Landlord.

ARTICLE XI
INDEMNIFICATION

Without limiting or modifying any other provision in this Lease, Tenant covenants and agrees to pay, defend, indemnify and save harmless Landlord from and against any and all liability, loss, damage, cost, expense (including without limitation reasonable and actual attorneys' fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever resulting from the negligence or willful misconduct or omission of Tenant or its agents, contractors or employees during the Term of this Lease. If any action or proceeding should be brought against Landlord based upon any such claim and if Tenant causes such action or proceeding to be defended at Tenant's expense, without any disclaimer of liability by the Tenant in connection with such claim, then Tenant shall not be required to indemnify Landlord for additional attorneys' fees in connection with such action or proceeding. This Article XI shall survive the expiration or termination of this Lease.

ARTICLE XII
OWNERSHIP OF NEW IMPROVEMENTS

Section 12.01 **Title to New Improvements**. Title to the New Improvements constructed by Tenant shall, during the Term, be in Tenant; *provided, however*, that notwithstanding such title, the terms and conditions of this Lease shall govern the construction, use, and operation of the New Improvements and the exercise of Tenant's rights with respect thereto and that the fee simple title to the Land shall at all times remain with Landlord. Upon the termination or expiration of this Lease, title to all New Improvements (other than trade fixtures), if any, then located on the Premises shall vest in and become the full and absolute property of Landlord without need of any further action being taken by Tenant or Landlord, and Tenant shall immediately surrender possession of the New Improvements, if any, then located on the Premises upon such termination or expiration as provided in Section 12.02 hereof. The value or cost of the New Improvements constructed by Tenant shall not in any way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay other payments or obligations of Tenant under this Lease.

Notwithstanding the foregoing, upon the expiration or earlier termination of this Lease, Tenant shall execute and deliver to Landlord: (a) such instrument(s) reasonably required by Landlord evidencing the transfer of all right, title and interest of Tenant in and to all New Improvements to Landlord; (b) a bill of sale transferring all right, title and interest of Tenant in and to all personal property located upon and/or related to the Premises and/or the New Improvements that is not owned by subtenants of the Premises; and (iii) an assignment of all of Tenant's right, title and interest, if any, in and to any intangible property related to the Premises and/or the New Improvements including, but not limited to, trademarks and trade names used exclusively in connection with the Premises.

Without limiting the foregoing, until such time as Landlord becomes the owner of the New Improvements, Tenant and its successors and assigns successors shall be entitled to all of the tax attributes of ownership of the New Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim federal tax credits associated with such New Improvements pursuant to the Internal Revenue Code, and the right to amortize all capital costs, and to claim any and all other federal or state tax benefits attributable to such New Improvements.

Section 12.02 **Surrender**. Upon the expiration or any termination of this Lease, (a) Tenant shall peaceably quit and surrender the Premises and all New Improvements to Landlord; (b) Landlord shall accept the Premises and all New Improvements “**as-is where-is**”; and (c) other than Tenant’s obligation to make any Required Repairs, Tenant will have no obligation to repair or restore the Premises or New Improvements, nor any liability for failure to repair or restore the Premises or New Improvements (except for liability with respect to any third party claims brought against Landlord relating to Tenant’s failure to repair or restore the Premises).

Tenant shall have the right within ten business days after termination or expiration of this Lease to remove from the Premises all furniture, inventory, trade fixtures, signs, sign panels (but not any pylon or monument) or other personal property of Tenant (collectively, “*Tenant’s Property*”); *provided, however*, that if Tenant fails to remove all or any portion of Tenant’s Property from the Premises within ten business days after the termination or expiration of this Lease, Tenant’s Property shall automatically become the sole and exclusive property of Landlord (notwithstanding any rights or security interests of any Leasehold Mortgagee, which shall automatically be subordinate to Landlord’s rights under this Section 12.02), and Landlord may sell, dispose of, use, or keep such Tenant’s Property as Landlord shall choose. In no event shall any built-in or attached machinery and equipment (other than trade fixtures) used in and necessary to the operation of the New Improvements be removed by Tenant at the expiration of the Term.

Section 12.03 **Waiver of Landlord’s Lien**. Tenant shall have the right, without Landlord’s consent, to finance the furniture, inventory, trade fixtures and personal property of Tenant at the Premises and grant liens and security interest in such items. Subject to Landlord’s rights under Section 12.02 of this Lease, and provided Tenant is not in default under any provisions of this Lease, Landlord waives and releases any and all statutory landlord’s liens with respect to Tenant’s furniture, inventory, trade fixtures or other personal property of Tenant Landlord agrees to execute and deliver to Tenant within 15 days after written request therefor, a written confirmation in favor of Tenant’s lender or the waiver set forth in this Section 12.03, in form reasonably acceptable to Tenant’s lender and Landlord.

ARTICLE XIII
TRANSFERS; NONSUBORDINATION
TO LEASEHOLD MORTGAGES

Section 13.01 **Transfers—Overview**. In connection with the future redevelopment and operation of the Premises during the Term, Tenant may, upon approval by Landlord, which approval shall not be unreasonably withheld or delayed as described below, sell, assign, lease, or otherwise transfer (each, a “*Transfer*”) New Improvements (and sublease a proportionate interest of the Premises under this Lease) to one or more qualified third parties reasonably selected by Tenant; provided, however, that notwithstanding any Transfer (other than a Transfer with Landlord’s consent under Section 13.02[d]) Tenant shall remain obligated under this Lease unless Landlord affirmatively agrees in a separate signed writing to release Tenant from all or a specified portion of its obligations under this Lease in connection with that Transfer. For example, following construction of the New Improvements on a particular Project, Tenant may elect to Transfer that Project (including all New Improvements thereon), subject to this Lease, to a qualified third party selected by Tenant. Any such Transfer shall be subject to the terms and conditions of this Lease; i.e., although a Transfer likely will include a sublease by Tenant to the transferee of a proportionate interest in the Premises under this Lease, no Transfer shall modify or extinguish Tenant’s duty to fully and timely pay and perform all of Tenant’s obligations to Landlord under this Lease.

Promptly following consummation of a Transfer, Tenant shall provide written notice to Landlord of the occurrence of that Transfer.

If this Lease requires that Landlord's consent to a Transfer be obtained before such Transfer may occur, then the Parties shall proceed as described in this paragraph. Tenant shall provide to Landlord (subject to such written confidentiality covenants from Landlord as either Tenant or the proposed transferee reasonably may require) the pertinent information concerning the Transfer, including the nature of the Transfer; the timing of the Transfer; the identity of the proposed transferee; and information concerning the transferee's financial capacity and operational experience (the "*Transaction Information*"). Within ten (10) business days after its receipt of the Transaction Information, Landlord shall either (a) provide written approval of the Transfer to Tenant, or (b) meet with Tenant to discuss any aspect of the proposed Transfer that is reasonably unacceptable to Landlord, in which case the Parties shall expeditiously work together in good faith to resolve any unacceptable aspects of the proposed Transfer. If Landlord fails to so act, then the Transfer shall be deemed approved. Further, the Parties agree that Landlord's consent to a proposed Transfer may not reasonably be withheld if the proposed transferee's net worth and operational experience are at least equal to those of Tenant.

Section 13.02 **Certain Specific Transfers**. Provided Tenant is not in default under any provision of this Lease, and in accordance with the provisions of Section 13.01, above, Tenant may, from time to time throughout the Term:

(a) **Mortgages**. Mortgage, pledge or hypothecate its rights under this Lease, specifically, the interest of Tenant in this Lease, and Tenant's ownership interest in the New Improvements, or in Tenant's leasehold interest in the Premises, or any part thereof, as security for any bona fide indebtedness that Tenant may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument; *provided, however* that such mortgage, pledge or hypothecation shall be subject and subordinate to Landlord's fee simple interest in the Site and Landlord's rights to collect any sums due hereunder and otherwise made in accordance with Section 13.03 below and the other terms and conditions of this Lease.

(b) **Institutional Investor**. Assign Tenant's interest in this Lease to any Institutional Investor (as hereinafter defined) or to any entity controlled by an Institutional Investor (as "*control*" is defined in Section 13.02(d) of this Lease). "**Institutional Investor**" means any of the following persons or entities:

(i) Any savings bank, savings and loan association, commercial bank, or trust company having shareholder equity (as determined in accordance with GAAP accounting) of at least \$50,000,000 in Constant Dollars;

(ii) Any fund, credit union, trust or insurance company having assets of at least \$50,000,000 in Constant Dollars;

(iii) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 in Constant Dollars or more; or

(iv) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000 in Constant Dollars.

(c) Subtenants. Sublet all or any portion of the Premises to Tenant's tenants, subtenants, renters, etc. of the Premises ("Subtenants") through the execution of leases, subleases or the like having terms that are less than the balance of the Term ("Subleases"). All Subleases shall be subject to and subordinate to this Lease. Unless Landlord otherwise expressly agrees in writing, the Sublease of a portion of the Premises shall not effect a release of Tenant from any of Tenant's obligations contained herein.

(d) Reorganization. Etc. Assign this Lease to (i) any successor to Tenant in connection with a bona fide material reorganization, recapitalization, consolidation, share exchange, acquisition or merger of Tenant; (ii) any entity that acquires all or substantially all of the assets of Tenant; and (iii) any parent corporation of which Tenant is a direct or indirect wholly-owned subsidiary, to any direct or indirect wholly-owned subsidiary of Tenant, to any wholly-owned subsidiary of any Parent Entity of which Tenant is a direct or indirect wholly-owned subsidiary, or to any other entity which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with Tenant, *provided, however*, that Landlord shall have the right to review such proposed Transfer as provided in this subsection to determine the creditworthiness of the new transferee and determine if such transferee has the experience, expertise and ability to perform under the Lease in a manner equal to or better than the Tenant. Tenant shall provide all relevant information reasonably requested by Landlord related to the new transferee so Landlord can conduct its review of the new transferee. If Landlord determines in its reasonable discretion that such new transferee under this subsection is not equal to or better than Tenant in its ability to perform under the Lease, then Landlord may withhold its consent to such assignment. "Control" as used in this paragraph means, with respect to a corporation, the right to exercise more than 50% of the voting rights attributable to the shares of the controlled corporation and, with respect to an entity that is not a corporation, the ownership, directly or indirectly, of more than 50% of the controlled entity or the possession of the power to direct or cause the direction of the management and policies of the controlled entity.

Further, notwithstanding anything in this Lease to the contrary, any sale, assignment or transfer of Tenant's interest in this Lease in any proceeding for the foreclosure of any Leasehold Mortgage (as defined in Section 13.03 below), or the assignment or transfer of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of or exercise of power of private sale under, any Leasehold Mortgage (collectively, a "Foreclosure"), shall be deemed to be a permitted Transfer of Tenant's interest in this Lease. If any Institutional Investor lender acquires Tenant's interest in this Lease through Foreclosure, such lender shall have the right to sell, transfer, convey or assign its interest in this Lease subject to Landlord's consent requirements set forth in this Article XIII.

Section 13.03 Leasehold Mortgaging.

(a) No Subordination. Landlord's right, title and interest under this Lease and in the Premises are not subordinate to the lien, priority and security title of any encumbrance of Tenant's right, title and interest in the New Improvements and/or under this Lease as security for any indebtedness Tenant may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument (all or any one of which are "Leasehold Mortgage," and the owner(s) or holder(s) of all or any of which are a "Leasehold Mortgagee"). Without limiting the foregoing, Landlord's right to receive any Rent or other amounts due from Tenant to Landlord hereunder shall have priority over any rights of any Leasehold Mortgagee under a Leasehold Mortgage.

(b) Tenant's Right of Encumbrance. Subject to the requirements of this Section 13.03, Tenant shall have the right without Landlord's consent to create and convey a Leasehold Mortgage as security for any bona fide indebtedness that Tenant may incur. Landlord shall not be deemed to have notice of any Leasehold Mortgage unless and until written notice of such Leasehold Mortgage shall have first been delivered to Landlord, notwithstanding any other form of notice to Landlord, actual or constructive. Upon written request, Landlord shall enter into a non-disturbance and attornment agreement (or a commercially reasonable substitute document) with any Leasehold Mortgagee, and Tenant shall use its good faith efforts to cause such Leasehold Mortgagee to enter into a subordination agreement with Landlord. The final form of such agreements is subject to the approval of all Parties thereto, which shall not to be unreasonably, withheld, conditioned or delayed.

(c) Leasehold Mortgagee's Cure Rights. If Landlord receives from Tenant or from a Leasehold Mortgagee written notice as provided in Section 18.13 hereof specifying the name and address of such Leasehold Mortgagee and requesting that Landlord give to such Leasehold Mortgagee a copy of each notice of default by Tenant at the same time as and whenever any such notice of default shall thereafter be given by Landlord to Tenant, then:

(i) Landlord shall comply with such request by giving such notice, addressed to such Leasehold Mortgagee at the address last furnished to Landlord, with respect to each default by Tenant occurring on or after the date of Landlord's receipt of such notice; and

(ii)

(A) If such default is a default in the payment of any sum due hereunder, such Leasehold Mortgagee will have the right to cure such default for the longer of the time period afforded to Tenant under this Lease or 30 days after receipt by such Leasehold Mortgagee of such notice;

(B) If such default is a default in observing or performing any other covenant or condition to be observed or performed by Tenant hereunder, and such default can be cured by such Leasehold Mortgagee without obtaining possession of the Premises, such Leasehold Mortgagee will have the right to cure such default for the longer of the time period afforded to Tenant under this Lease or 60 days after receipt of such notice (*provided, however*, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such 60 days, such Leasehold Mortgagee shall have such additional period as may be necessary to cure such default with diligence and continuity); or

(C) If such default is a default that can only be cured by such Leasehold Mortgagee upon obtaining possession of the Premises, the time period afforded to such Leasehold Mortgagee to cure such default will include the time necessary to obtain such possession with diligence and continuity, through a receiver or otherwise, and an additional 60 days after obtaining such possession (*provided, however*, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such period of 60 days, such Leasehold Mortgagee shall have such additional period as may be necessary to cure such default with diligence and continuity).

Landlord shall accept performance by any Leasehold Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, if, at the time of such performance (or prior thereto), Landlord shall be (or

shall have been) furnished with evidence reasonably satisfactory to Landlord of the interest in this Lease claimed by the Leasehold Mortgagee tendering such performance.

(d) Acquisition by Leasehold Mortgagee Via Foreclosure. If any Leasehold Mortgagee (or its affiliate) acquires title to Tenant's interest in this Lease by any sale, assignment or transfer of Tenant's interest in this Lease in any proceeding for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of, or exercise of power of private sale under, any Leasehold Mortgage (collectively, "*Foreclosure*"), such transfer via Foreclosure shall be permitted to be a permitted transfer of Tenant's interest under this Lease. If any Leasehold Mortgagee (or its affiliate) acquires title to Tenant's interest in this Lease by Foreclosure, or enters into a new lease with Landlord as provided in Section 13.03(f) hereof, such Leasehold Mortgagee may assign this Lease (or such new lease) subject to and in accordance with the provisions and conditions of this Section 13.03, and such Leasehold Mortgagee shall thereupon be released from any further liability for performance or observance by Tenant of this Lease (or by the tenant of such new lease) after the date of such assignment, but not with respect to the period of time in which Leasehold Mortgagee held title to such interest, for which Leasehold Mortgagee shall remain liable.

(e) Acquisition by Foreclosure Purchaser. In the event of a Foreclosure, the purchaser at any Foreclosure sale of Tenant's interest in this Lease shall be deemed to be a permitted assignee or transferee of this Lease. Any Leasehold Mortgagee or other acquirer of Tenant's interest in this Lease pursuant to Foreclosure, or who becomes the tenant under a new lease, and each subsequent acquirer of Tenant's interest in this Lease or of the tenant's interest in the new lease (collectively, the "*Successor*") shall become personally liable for the performance or observation of any covenants or conditions to be performed or observed by Tenant to the extent that such Successor becomes the owner of all or a portion of Tenant's interest hereunder. Any Successor shall also be liable for (i) the performance and observance of such covenants and conditions only so long as such Successor owns such interest of Tenant under this Lease or the interest of the tenant under such new lease, and (ii) any defaults by such Successor occurring during the period it is the owner of such interest of Tenant under this Lease or the interest of the tenant under such new lease (collectively, the "*Successor Liabilities*"). Each Successor, upon acquiring Tenant's interest in this Lease or tenant's interest in the new lease, may only sell, transfer, mortgage, encumber, convey or assign Tenant's interest in this Lease or tenant's interest in the new lease in accordance with the terms and conditions of Section 13.01 of this Lease, and thereafter be relieved of all obligations under this Lease or the new lease to be performed from and after the date of such assignment, but not relieved of the Successor Liabilities.

(f) Possible New Lease. If this Lease is terminated by Landlord or any court (including without limitation a bankruptcy court), or is rejected or disaffirmed in any proceeding in any such court, any Leasehold Mortgagee or a person designated by such Leasehold Mortgagee shall have the right, exercisable by written notice to Landlord (a "*New Lease Notice*") within 15 days after the effective date of such termination, rejection or disaffirmance, to enter into a New Lease (as hereinafter defined) of the Premises with Landlord on equivalent terms and conditions as this Lease. Upon Landlord's receipt of the New Lease Notice, Landlord will promptly prepare the New Lease and deliver same to Leasehold Mortgagee. Following Leasehold Mortgagee's timely delivery of the New Lease Notice and provided the parties have satisfied all the terms and conditions of this Article 13, Landlord and Leasehold Mortgagee (or its designee) shall enter into the New Lease within a reasonable time after Leasehold Mortgagee's delivery of the New Lease Notice; *provided, however*, such New Lease shall be deemed to be automatically effective as of the termination date of this Lease.

As used herein, the term “*New Lease*” shall mean a new lease of the Premises, effective as of the termination date of this Lease, for the remainder of the Term of this Lease considered as if this Lease had not been terminated, with Leasehold Mortgagee (or its designee), on all the same terms and provisions of this Lease, and in the same form as this Lease, but shall not include any initial construction requirements that have already been performed.

As a condition to Leasehold Mortgagee’s ability to enter into a New Lease hereunder and Landlord’s obligation to enter into any such New Lease, (i) Leasehold Mortgagee shall have cured all defaults on the part of Tenant hereunder that are susceptible of being cured by the payment of money (including without limitation any Interest or Late Fees due) contemporaneously with the delivery of the New Lease Notice; and (ii) Leasehold Mortgagee shall have agreed to cure with reasonable diligence all then-uncured non-monetary defaults (except for Tenant-specific defaults), within a reasonable period after the delivery of the New Lease Notice. The New Lease shall also require the tenant thereunder to indemnify, hold harmless, and defend Landlord from and against any and all claims of the original Tenant under this Lease as a result of any actions brought by the original Tenant under the Leasehold Mortgage including, without limitation, any New Lease granted hereunder. This Section 13.03(f) shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this provision were a separate and independent contract among Landlord, Tenant and each Leasehold Mortgagee.

(g) Receiver. As a condition to the rights granted to any Leasehold Mortgagee hereunder, such Leasehold Mortgagee shall covenant that, upon the occurrence of an Event of Default that continues beyond all notice and cure periods afforded to Tenant hereunder (exclusive of any Leasehold Mortgagee notice and cure periods), Leasehold Mortgagee shall promptly, following receipt of notice of any such Event of Default that continues beyond all notice and cure periods afforded to Tenant hereunder (exclusive of any Leasehold Mortgagee notice and cure periods), apply to a court of competent jurisdiction for the immediate *ex parte* appointment of a receiver for the Premises. Tenant hereby consents to such appointment.

Such receiver shall operate and manage the Premises for the mutual benefit of Tenant, Leasehold Mortgagee and Landlord pursuant to the terms and conditions of this Lease until Leasehold Mortgagee or a Successor (but not prior to the delivery of a New Lease Notice), or Landlord, as the case may be, gains possession of the Premises. Any receiver’s failure to abide by the terms and conditions of this Lease, including, without limitation, the payment of all amounts owed hereunder as and when due shall constitute an Event of Default hereunder. This Section 13.03(g) shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this provision were a separate and independent contract among Landlord, Tenant and each Leasehold Mortgagee.

(h) Tenant Liability. Tenant shall covenant and agree to pay, defend, indemnify and save harmless Landlord from and against any and all liability, loss, damage, cost, expense (including without limitation reasonable and actual attorneys’ fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever resulting from the actions or omissions of Leasehold Mortgagee relative to the Leasehold Mortgage. If any action or proceeding is brought against Landlord based upon any such claim, then Tenant, upon notice from Landlord, shall cause such action or proceeding to be defended at Tenant’s expense and without any disclaimer of liability by Tenant in connection with such claim. This Section 13.03(h) shall survive the expiration or termination of this Lease.

ARTICLE XIV
RIGHT TO CONTEST

Tenant, at its sole cost and expense, may contest by appropriate legal proceedings conducted in good faith and with due diligence (a "*Permitted Contest*") the amount, validity or application, in whole or in part, of any Taxes or Charges referred to in Section 4.01 and Section 4.02 hereof, any Regulation referred to in Section 7.01 hereof or any Lien referred to in Section 7.03 hereof; *provided, however*, that: (a) Tenant shall give Landlord prior written notice of each such contest; (b) Tenant shall first make all contested payments (under protest if it desires) unless such proceeding shall suspend the collection thereof from Landlord or from the Premises; (c) no part of the Premises or any interest therein under this Lease shall be subjected thereby to sale, forfeiture, foreclosure or interference; (d) Landlord shall not be exposed thereby to any civil or criminal liability for failure to comply with any Regulation and the Premises shall not be subject to the imposition of any Lien as a result of such failure; and (e) Tenant shall have furnished any security required in such proceeding or under this Lease to ensure payment of any Taxes, Charges, Lien or compliance with any Regulation.

Tenant shall pay and save Landlord harmless from and against any and all losses, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any Permitted Contest. Within 30 days (or earlier if required by the final determination) after the final determination of every Permitted Contest, Tenant shall fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein, together with all penalties, fines, interest, costs and expenses resulting therefrom, and further shall promptly comply with any Regulation under which compliance is required therein.

ARTICLE XV
DEFAULT

Section 15.01 **Events of Default**. The occurrence of any of the following acts, events or conditions shall constitute an "*Event of Default*" under this Lease, notwithstanding the pendency of any proceeding which has or might have the effect of preventing Tenant from complying with the terms, conditions or covenants of this Lease:

(a) Any Rent payment or other sum of money due under this Lease is not paid within ten (10) days after its due date and such failure continues for ten (10) additional days after written notice from Landlord (a "*Monetary Default Notice*") describing such failed payment (a "*Monetary Default*") and specifying the payment amount needed to cure the Monetary Default. The amount described in a Monetary Default Notice which is needed to cure such Monetary Default shall specify and include a late fee (the "*Late Fee*") that is equal to ten percent (10%) of the first \$5,000 of any missed payment plus five percent (5%) of the amount of such missed payment in excess of \$5,000. Tenant also shall pay any and all costs (including legal fees and costs) that Landlord incurs in collecting an uncured Monetary Default and Late Fee;

(b) Any attempt by Tenant to make any sale, assignment or other transfer of this Lease or any interest of Tenant hereunder or in the Premises or to sublet the Premises without full compliance with any and all requirements therefor set forth in Article XIII of this Lease;

(c) If Tenant becomes subject to any voluntary or involuntary proceeding under Title 11, United States Code, or any other or successor state or federal statute on assignment for the benefit of creditors, appointment of a receiver (excluding a receiver appointed at the request of

a Leasehold Mortgagee) or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters (except an involuntary proceeding that is contested with diligence and continuity and is vacated and discharged within 180 days after commencement), or a custodian, receiver (except one appointed at the request of a Leasehold Mortgagee for a Leasehold Mortgage foreclosure), or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made for, substantially all of Tenant's assets or Tenant's interest in this Lease (unless that appointment, attachment, execution or other seizure was involuntary and is contested with diligence and continuity and is vacated and discharged within 180 days); or

(d) The failure or refusal of Tenant, at any time during the Term, to fulfill or perform any other covenant, agreement or obligation of Tenant hereunder, except a Monetary Default, if such failure or refusal shall continue without correction for a period of thirty (30) consecutive calendar days from and after notice thereof to Tenant; *provided, however*, that if such covenant, agreement or obligation is of such nature that it could not be reasonably fulfilled or performed within thirty (30) days, then an Event of Default shall not be deemed to have occurred if Tenant in good faith commences to fulfill or perform same within said thirty (30) day period and thereafter continuously and diligently proceed therewith until completion.

Section 15.02 **Remedies**. Upon the occurrence and during the continuation of an Event of Default, Landlord's sole and exclusive remedies, to the exclusion of all other rights and remedies at law, will be to pursue one or more of the following:

(a) Exercise self-help to cure the Event of Default, whereupon notwithstanding anything in this Lease to the contrary, Landlord, and its agents, employees, representatives, and contractors, may enter the Premises upon at least ten days' prior written notice (except in the case of emergency in which case only reasonable notice under the circumstances shall be required) and pursue such cure, and Tenant shall reimburse Landlord the reasonable and actual costs to cure such Event of Default within 30 days after receipt of invoice and reasonable supporting documentation;

(b) Subject to Landlord's duty to mitigate its damages, declare immediately due and payable all amounts due or to become due hereunder for the remainder of the Term of the Lease (if such default occurs during the Initial Term, then the measure of damages shall be the remainder of the Initial Term and if such a default occurs during the Extended Term, the measure of damages shall be the remainder of the Extended Term);

(c) Seek any available equitable remedies, including without limitation, injunctive relief and specific performance;

(d) Sue Tenant for collection of past due sums, any Interest owed by Tenant to Landlord hereunder, and all accelerated amounts for the remainder of the Term, subject to the Landlord's duty to mitigate its damages; and/or

(e) Upon at least sixty (60) days' additional prior written notice from Landlord to Tenant specifying the Event of Default and the actions which Tenant must take to cure the same, Landlord may terminate the Lease and thereafter enter upon and take possession of the Premises if (i) Tenant fails to cure a Monetary Default within ten (10) business days after written notice from Landlord specifying such Monetary Default, or (ii) Tenant fails to commence to any other Event of Default within thirty (30) days after written notice from Landlord specifying such default and thereafter diligently pursue fulfillment of such curative action.

In connection with Landlord's exercise of any or all of the above-listed remedies, Landlord shall be entitled to recover all costs and expenses incurred by Landlord in the repossession, recovery, storage, repair, maintenance, sale, re-lease or other disposition of the Premises or New Improvements, including without limitation, reasonable attorney fees and costs incurred in connection therewith or otherwise resulting or arising from Tenant's default, and any indemnity if then determinable, plus Interest on all of the above until paid (both before and after judgment). In the event of involuntary repossession by Landlord through judicial proceedings, or through a foreclosure sale or other disposition, Tenant hereby waives any requirement that Landlord post a bond.

Landlord hereby waives its right to seek any other remedy as a result of any ongoing Event of Default.

Section 15.03 **General**. No course of dealing between Landlord and Tenant or any failure or delay on the part of Landlord in exercising any rights of Landlord under Section 15.02 hereof or under any other provisions of this Lease shall operate as a waiver of any rights of Landlord under this Lease, nor shall any waiver of an Event of Default on one occasion operate as a waiver of any subsequent or other Event of Default. No express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated. The exercise by Landlord of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Landlord of any one or more of the other rights and remedies herein provided.

Section 15.04 **Landlord's Default**. Landlord shall be in default under this Lease if Landlord fails to timely perform any of Landlord's obligations under this Lease and such failure continues for at least thirty (30) days after Tenant provides a written notice specifying such default to Landlord. If Landlord fails to timely cure such default, Tenant may pursue any and all remedies that are available to Tenant in law or equity, including, without limitation, termination of this Lease. If this Lease is terminated due to Landlord's default, then the New Improvements will remain owned by Tenant.

ARTICLE XVI **CONDEMNATION**

Section 16.01 **Total Condemnation**. If, during the Term, all or such portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto, or is transferred to the United States or such entity in lieu thereof, such that the remaining portion of the Premises has substantially no commercial value for the conduct of the Permitted Uses (as reasonably determined by Tenant), this Lease shall terminate as of the date that title to the Premises or portion thereof vests in such condemning authority; *provided, however*, that such termination shall not benefit the condemning authority and shall be without prejudice to the rights of either Landlord or Tenant to recover just and adequate compensation from the condemning authority. Tenant shall not be entitled to an abatement of any other payments or amounts due to Landlord under this Lease in the event of such total condemnation or taking.

Section 16.02 **Partial Condemnation**. If, during the Term, any portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto, or is transferred to the United States or such entity in lieu thereof, and the remaining portion of the Premises is of some commercial value for the conduct of the Permitted

Uses, then: (a) this Lease shall terminate as to the portion of the Premises so condemned or taken as of the date that title to such portion of the Premises vests in such condemning authority (*provided, however*, that such termination shall not benefit such condemning authority and shall be without prejudice to the rights of either Landlord or Tenant to recover just and adequate compensation from the condemning authority); and (b) Tenant promptly shall cause the New Improvements to be restored, at Tenant's sole cost and expense, to as nearly the same architectural condition and character as that which existed prior to such taking.

Tenant shall commence such restoration promptly following the taking and shall thereafter diligently and continuously prosecute same to completion. Tenant shall not be entitled to an abatement of any other payments or amounts due to Landlord under this Lease during any such period of restoration. If such partial condemnation occurs within the last five years of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 16.02, to terminate this Lease by providing at least 30 days' prior written notice of such termination to Landlord. Any such notice of termination shall be given to Landlord within 90 days after such partial condemnation is finalized, and such termination shall be conditioned on Tenant: (x) paying to Landlord, on the effective date of such termination, a sum equal to all amounts and payments due from Tenant under this Lease through such termination date; (y) releasing to Landlord all of Tenant's right and interest in and to any condemnation award made in connection with such condemnation proceeding; and (z) surrendering the Premises to Landlord as of the effective date of such termination.

Section 16.03 Awards.

(a) Lease Terminated. If this Lease is terminated in its entirety pursuant to Section 16.01 or Section 16.02 on account of any condemnation: (i) the Parties jointly shall petition the condemning authority or the court in such condemnation proceeding to make separate awards to Landlord and Tenant, if said separate awards are not prohibited by law, in accordance with the principles of division set forth in Section 16.03(b) hereof; and (ii) if the condemning authority or the court in such condemnation proceeding is prohibited by law from making separate awards to Landlord and Tenant or declines to do so, the award shall be divided between Landlord and Tenant in accordance with the principles of division set forth in Section 16.03(b) hereof.

(b) Division if Lease is Terminated. The following principles of division are applicable if this Lease is terminated in its entirety pursuant to Sections 16.01 or 16.02: (i) Landlord shall receive an amount equal to the then present value of Landlord's reversionary interest in the Premises and the present value of the Rent payments due hereunder for the remainder of the Term calculated as if the Premises had not been condemned and this Lease had not been terminated on account of such condemnation; (ii) Tenant shall receive an amount equal to the value of Tenant's leasehold estate hereunder, including the right to use and occupy the Premises for the remainder of the Term, calculated as if the Premises had not been condemned and this Lease had not been terminated on account of such condemnation, including the value of the New Improvements; and (iii) to the extent any portion of the award remains after the application of (i) and (ii) above, the remainder of the award shall be divided between Landlord and Tenant in proportion to the awards given in (i) and (ii) above.

(c) Lease Not Terminated. If this Lease is not terminated in its entirety pursuant to Sections 16.01 or 16.02: (i) the Parties shall jointly petition the condemning authority or the court in such condemnation proceeding to make separate awards to Landlord and Tenant, if said separate awards are not prohibited by law, in accordance with the principles of division set forth

in Section 16.03(d) hereof; and (ii) if the court in such condemnation proceeding is prohibited by law from making separate awards to Landlord and Tenant or declines to do, the award shall be divided between Landlord and Tenant in accordance with the principles of division set forth in Section 16.03(d) hereof.

(d) Division if Lease is Not Terminated. The following principles of division are applicable if this Lease is not terminated in its entirety pursuant to Sections 16.01 or 16.02: (i) Landlord shall receive an amount equal to the then present value of Landlord's reversionary interest of the portion of the Premises condemned, calculated as if the Premises had not been condemned and this Lease had not been terminated with respect to such portion of the Premises on account of such condemnation; (ii) Tenant shall receive an amount equal to the value of Tenant's leasehold estate with respect to such portion of the Premises condemned, including the right to use and occupy such portion of the Premises for the remainder of the Term, calculated as if such portion of the Premises had not been condemned and this Lease had not been terminated on account of such condemnation, including the then current value of the New Improvements condemned; and (iii) to the extent any portion of the award remains after the application of (i) and (ii) above, the remainder of the award shall be divided between Landlord and Tenant in proportion to the awards given in (i) and (ii) above.

Section 16.04 General. Notwithstanding anything contained in this Lease to the contrary, neither Landlord nor Tenant shall be prohibited from introducing into any condemnation proceeding(s) with respect to the Premises such appraisals or other estimates of value, loss and/or damage as each may in its discretion determine. Tenant shall be entitled to claim in any condemnation proceedings such award as may be allowed for relocation costs or other consequential damages, but only to the extent that the same shall not reduce, and shall be in addition to, the award for the Land and the New Improvements.

Section 16.05 Taking for Temporary Use. In this Section 16.05, a "temporary taking" is a taking for a period of less than six months occurring during the last two years of the Term, or a taking for a period of over six but less than 18 months during any other portion of the Term. If there is a temporary taking of all or any portion of the New Improvements or a material portion of the unimproved portion of the Premises, Tenant shall give prompt notice thereof to Landlord, and the Term shall not be reduced or affected in any way. In such case, Tenant shall (a) continue to pay any sums and charges provided to be paid by Tenant hereunder, but (b) Tenant shall be entitled to the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of the Term, in which case the award made for such taking shall be apportioned between Landlord and Tenant as of the date of such expiration.

In any proceeding for such temporary taking, Landlord shall have the right to intervene and participate, but no award or settlement shall be made without Tenant's written approval; provided that if such intervention shall not be permitted, Tenant shall, at Tenant's expense, consult with Landlord, its attorneys and experts, and shall cooperate with Landlord in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Premises, Tenant will, at its sole cost, repair and restore the New Improvements then upon the Premises to the condition, as nearly as may be reasonably possible, in which such New Improvements were at the time of such taking. Tenant shall not be required to make such repairs and restoration if the Term shall expire prior to the date of termination of the temporary taking, and in any such event, Landlord shall be entitled to recover all damages and awards arising out of the failure of the condemning authority to repair and restore the New Improvements at the expiration of such temporary taking.

Any recovery or sum received by Tenant as an award or compensation for physical damage to the Premises caused by and during the temporary taking shall be used to the extent necessary for the purpose of repairing or restoring such damage as required hereinabove.

ARTICLE XVII
BROKERAGE PROVISIONS

Each Party represents and warrants to the other that it has not engaged any broker, commission agent, real estate agent or salesman to assist in the negotiation of this Lease, its procurement or in the procurement of Landlord or Tenant. No person, firm, corporation or other entity is or shall be entitled to the payment of any fee, commission, compensation or other form of remuneration in connection herewith in any manner. Landlord shall and does hereby indemnify and agree to hold Tenant harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of Landlord's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. Likewise, Tenant shall and does hereby indemnify and agree to hold Landlord harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of Tenant's dealings, negotiations or communications in connection with this Lease or the demise of the Premises or the management, subleasing, or development of the Premises during the Term of this Agreement (including, without limitation, any brokers, agents, or intermediaries alleging a commission, fee or other payment arising from representation of prospective or actual subtenants, assignees, licensees, users, or occupants of the Premises). The terms of this Article XVII shall survive any termination of this Lease.

ARTICLE XVIII
MISCELLANEOUS

Section 18.01 **Right of Tenant to Grant Easements; Joinder by Landlord**. Subject to Section 18.26 below, Tenant shall not be entitled to grant easements with respect to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld. Landlord hereby acknowledges and agrees that as part of the development of the Premises, certain easements will be necessary and Landlord agrees to cooperate in good faith with Tenant with respect to any such easements and execute any such easements which are necessary for the development of the Premises and are in accordance with the Design Plans. If Tenant is required by the applicable governmental authority to dedicate any portion of the Premises for use as right-of-way in connection with the development of the Premises, Landlord agrees to cooperate with Tenant in good faith with respect to such dedication; *provided, however*, that Landlord shall have the right to participate in the negotiations with such governmental authority regarding such dedication and the timing thereof.

Section 18.02 **No Waiver**. Failure of either Party to insist upon the strict performance by the other Party of any term, condition or covenant on such other Party's part to be performed pursuant to the terms of this Lease or to exercise any option, right, power, or remedy contained in this Lease shall not be or be deemed to be a waiver of such performance or relinquishment of such right now or at any time subsequent hereto. The receipt by Landlord of any sums required to be paid by Tenant hereunder with knowledge of any Event of Default by Tenant shall not be or be deemed to be a waiver of such Event of Default. No waiver by Landlord or Tenant of any provision of this Lease shall be or be deemed to have been made unless expressed in writing and signed by Landlord or Tenant, as the case may be.

Section 18.03 **Each Party to Bear Own Costs**. Each of the parties shall bear its own legal, accounting and other fees and costs incurred in connection with the negotiation and documentation of this Lease.

Section 18.04 **Estoppel Certificates**. Within 15 days after receipt of Landlord's written request from time to time, Tenant shall execute, acknowledge and deliver to Landlord and to any mortgagee of or prospective purchaser from Landlord, a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications); (b) that no notice has been received by Tenant of and Tenant has no knowledge of any default or Event of Default by Tenant hereunder or any default by Landlord hereunder which has not been cured, except as to any default or Event of Default specified in said certificate (or stating any defaults or Events of Default); and (c) any other matters or state of facts regarding the Lease which are reasonably requested by Landlord.

Similarly, within 15 days after receipt of Tenant's written request from time to time, Landlord shall execute, acknowledge and deliver to Tenant and any party designated by Tenant a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications); (b) whether or not, to the knowledge of Landlord, a default or Event of Default by Tenant has occurred under this Lease which has not been cured (and if so, specifying the same); and (c) any other matters or state of facts regarding the Lease which are reasonably requested by Tenant.

Section 18.05 **No Merger of Title**. No merger of the leasehold estate created by this Lease with the fee estate of Landlord shall occur notwithstanding the fact that the same person may own or hold both the leasehold estate created by this Lease or any interest therein and the fee estate in the Premises or any interest therein. No such merger shall occur unless and until all persons or entities (including any mortgagee with respect to the fee estate of Landlord) having any interest in the leasehold estate created by this Lease or the fee estate in the Premises shall join in a written instrument effecting such merger and shall duly record the same or the same person or entity owns and holds all interests in the fee estate of the Premises and the leasehold estates created by this Lease.

Section 18.06 **Quiet Enjoyment; Zoning Compliance**. If and so long as Tenant shall pay, when due, all sums reserved or payable under this Lease and shall comply with all terms, conditions and covenants and other obligations required to be observed by Tenant under this Lease, Landlord covenants that Tenant will have peaceful and quiet occupation and enjoyment of the Premises; *provided, however*, that this Section 18.06 shall not abrogate or diminish, in any way, the approval and inspection rights or other rights or benefits granted to Landlord under this Lease. With respect to any property of Landlord other than the Site which is subject to the same site-specific zoning conditions applicable to the Site, Landlord agrees to comply with such zoning conditions, as from time to time modified or amended (provided any such modification is approved by Landlord in accordance with Section 6.02 above). Without Tenant's prior written consent, which shall not be unreasonably withheld, Landlord shall not initiate, join in or consent to any change in such zoning conditions which affect Tenant's ability to operate the Premises for the Permitted Uses. Additionally, Landlord shall have the right to rezone, modify or amend any existing zoning applicable to any other property of Landlord provided such rezone or modification does not materially and adversely affect the zoning or zoning conditions applicable to the Premises.

Section 18.07 **Transfer by Tenant**. If Tenant transfers, assigns or otherwise disposes of all or any portion of its interest in the Premises or in this Lease in accordance with the terms and conditions of this Lease, other than pursuant to a Foreclosure, Tenant shall thereupon be released and discharged from any and all liabilities and obligations under this Lease (except those accruing prior to such transfer, assignment or other disposition) with respect to the portion or interest transferred, assigned or otherwise disposed of, and such liabilities and obligations thereafter accruing shall be binding upon the assignee of Tenant's interest under this Lease with respect to the portion or interest transferred, assigned or otherwise disposed of.

Section 18.08 **Transfer by Landlord**. If Landlord transfers, assigns or otherwise disposes of all or any portion of its interest in the Premises or in this Lease, then Landlord promptly shall notify Tenant in writing of (a) such transfer, assignment or disposition, and (b) the identity and contact information for such transferee, assignee, etc.

Section 18.09 **Landlord's Liability**. Landlord shall have no personal liability with respect to any of the provisions of this Lease. If Landlord is in default with respect to its obligations under this Lease, Tenant shall look solely to the equity of Landlord in and to the Premises for satisfaction of Tenant's remedies, if any. It is expressly understood and agreed that Landlord's liability under the terms of this Lease shall in no event exceed the amount of its interest in and to the Premises. To that end, in no event shall any partner of Landlord nor any joint venturer in Landlord, nor any manager, officer, member, employee, agent, representative director or shareholder of Landlord or of any such partner or joint venturer of Landlord be personally liable with respect to any of the provisions of this Lease.

Section 18.10 **Fee Mortgages**. This Lease and Tenant's leasehold estate shall be prior and superior to all Fee Mortgages and the rights of all Fee Mortgagees. Any inconsistency between any Fee Mortgage and this Lease shall be resolved in favor of this Lease. Notwithstanding the foregoing, Tenant shall attorn to any party succeeding Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, or otherwise and, upon such party's request, and shall execute such agreements recognizing such Fee Mortgage and confirming such attornment as such party may reasonably request. Such attornment agreement shall include, but not be limited to, the following terms and conditions: (a) provided that Landlord delivers notice of Fee Mortgagee's address, Tenant shall provide Fee Mortgagee with a copy of any notice of any alleged default under this Lease by Landlord and Fee Mortgagee shall be given the opportunity, without undertaking Landlord's obligations, to cure such default or cause it to be cured for a period of 30 days after receipt of such notice; (b) if the Fee Mortgagee succeeds Landlord due to a foreclosure sale or deed in lieu of foreclosure, Tenant will attorn to the foreclosure successor so that this Lease and the relationship of Landlord and Tenant shall exist between such foreclosure successor and Tenant; and (c) such foreclosure successor shall be bound to the terms of this Lease and perform the obligations of Landlord hereunder; *provided, however*, that such foreclosure successor or its successors or assigns shall not be: (k) liable for any act or omission of any prior landlord; or (l) subject to any offsets or defenses Tenant might have against any prior landlord unless Landlord has delivered to Tenant Fee Mortgagee's address as provided above and Fee Mortgagee was given notice of and an opportunity to cure any such acts or omissions of the prior landlord prior to the transfer of title.

As used herein, the term "**Fee Mortgage**" means any deed of trust or mortgage: (x) that encumbers all or part of the Site; (y) a copy of which (recorded or unrecorded) is promptly after execution delivered to Tenant and all Leasehold Mortgagee(s) with a certification by Fee Mortgagee that the copy is accurate and stating Fee Mortgagee's name and Notice address; and (z) that is held by a

Fee Mortgagee that is an Institutional Lender. As used herein, the term "**Fee Mortgagee**" means any mortgagee holding a Fee Mortgage; *provided, however*, that any participant or partial assignee holding any direct or indirect interest in a Fee Mortgage shall not be deemed a Fee Mortgagee or affect Tenant in any way. For the avoidance of doubt, nothing herein shall be construed in any way to adversely affect Landlord's, and any successor landlord's (whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, or otherwise), fee simple interest in Premises, subject to the terms and conditions of this Lease.

Section 18.12 **Severability**. Each and every covenant and agreement contained in this Lease shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by Landlord shall not discharge or relieve Tenant from its obligation to perform each and every covenant and agreement to be performed by Tenant under this Lease. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate applicable law and shall be limited to the extent necessary to render this Lease valid and enforceable. If any term, provision or covenant of this Lease or the application thereof to any person or circumstance shall be held to be invalid, illegal or unenforceable, by a court of last resort having jurisdiction in the Premises, the validity of the remainder of this Lease shall not be affected, this Lease shall not terminate, and there shall be substituted for such illegal, invalid or unenforceable provision a like provision which is legal, valid and enforceable within the limits established by such court's final opinion and which most nearly accomplishes and reflects the original intention of the Parties.

Section 18.13 **Notices, Demands and Other Instruments**. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if personally delivered (including delivery by courier or by Federal Express or similar overnight delivery service) or sent, postage prepaid, by first class registered or certified United States mail, return receipt requested, addressed to each Party hereto at the following address (or as to Guarantor, to its address specified above):

Landlord: AAM INVESTMENTS, LTD.
700 Northcrest Drive
Salt Lake City, UT 84103

with a copy to: Scott Finlinson
5701 S. 675 E.
Murray, UT 84107

Tenant: INDUSTRY SLC NEIGHBORHOOD FOUNDERS LLC
537 West 600 South
Salt Lake City, UT 84101

with a copy to: Wm. Shane Topham
JONES WALDO
170 South Main Street, 15th Floor
Salt Lake City, UT 84101

or at such other address in the United States as Landlord or Tenant may from time to time designate by like notice. Any such notice, demand, request or other communication shall be considered given upon personal delivery; the next business day after it is deposited in with an overnight courier

service for next business day delivery; or three days after it is deposited in the U.S. Mail with first-class postage prepaid. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given will not affect the date upon which a notice, demand, request or other communication is deemed given, delivered and received. Either Party may change its notice address herein provided by delivering to the other Party written notice of such changed address.

Section 18.14 **Successors and Assigns**. Each and every covenant, term, condition and obligation contained in this Lease shall apply to and be binding upon and inure to the benefit or detriment of the respective legal representatives, heirs, successors and permitted assigns of the Parties. Whenever reference to a Party is made in this Lease, such reference shall be deemed to include the legal representatives, successors, heirs and permitted assigns of said Party the same as if in each case expressed. The term "*person*" when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, government or governmental organization or any other entity.

Section 18.15 **Headings**. The heading to the various Articles and Sections of this Lease have been inserted for purposes of reference only and shall not limit or define or otherwise affect the express terms and provisions of this Lease.

Section 18.16 **Counterparts**. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument.

Section 18.17 **Applicable Law**. This Lease shall be construed under and enforced in accordance with the laws of the State of Utah. Venue of any judicial proceeding concerning this Lease shall be in the Third District Court of Salt Lake County, Utah.

Section 18.18 **Entire Agreement; Amendments**. This Lease sets forth the Parties' entire understanding and agreement concerning the subject matter of this Lease, and all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are superseded by and merged into this Lease. No modification or amendment of this Lease shall be binding upon either Party unless in writing and fully executed by both Parties. Any such amendment shall be effective upon recording a memorandum of such amendment in the real property records of the Salt Lake County Recorder. Landlord shall reasonably cooperate with Tenant in good faith to make any amendments to this Lease that are required by Tenant's lender(s); *provided, however*, that Landlord shall not be required to assume any liability or incur any expense with regard to the same.

Section 18.19 **All Genders and Numbers Included**. Whenever the singular or plural number, or masculine, feminine, or neuter gender, is used in this Lease, it shall equally apply to, extend to, and include the other.

Section 18.20 **Relationship of the Parties**. Nothing contained herein shall be deemed or construed by the Parties hereto, or any third party, as creating the relationship of principal and agent or a partnership or joint venture between the Parties, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the Parties hereto, shall be deemed to create any relationship between the Parties hereto other than the relationship of landlord and tenant.

Section 18.21 **Force Majeure; Time is of Essence.** Whenever a period of time is prescribed in this Lease for action (other than the payment of money) to be taken by a Party, then that Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays which, despite the use of good faith and diligent efforts, such Party is unable to overcome, consisting solely of strikes, riots, sabotage, blockage, embargo, earthquake, or other natural disaster or adverse weather conditions which the Party can demonstrate to the other Party's reasonable satisfaction exceed climatic norms using 100-year return intervals. Rain, snow or other adverse weather condition of typical duration, frequency and amount shall not constitute Force Majeure. Except as provided in this Section 18.20, time is declared to be of the essence of this Lease.

Section 18.22 **Recording of a Memorandum of Lease.** At any time during the Term, either Party at its cost record a memorandum of this Lease and/or of Tenant's Purchase Option hereunder (a "*Memorandum of Lease*") in the public records of the Salt Lake County Recorder.

Section 18.23 **Inspection Rights.** Landlord has the right, but not the duty, at all times and from time to time, to enter upon the Premises and any portion thereof to determine to Landlord's satisfaction whether the terms, covenants and conditions of this Lease, including Tenant's performance obligations, are being kept and observed; *provided, however*, that Landlord agrees (a) to give reasonable prior written notice to Tenant specifying the portions of the Premises Landlord desires to enter and the reasons for such entry, except in the event of an emergency, (b) to conduct such visits in a manner which does not unreasonably interfere with the occupants of the Premises or violate any subleases in effect with respect to any such occupants, (c) to conduct such visits in a manner which does not unreasonably interfere with any ongoing construction activity that is then being conducted on the Premises or violate any construction contracts in effect with respect to any such ongoing construction activity, and (d) to permit a representative of Tenant to accompany Landlord on such visits.

Section 18.24 **Holding Over; No Extension; Tenancy at Sufferance.** If Tenant shall hold the Premises after the expiration of the Term without Landlord's express written consent, such holding over shall be deemed to have created a tenancy at sufferance with respect to the portion of the Premises affected, which shall be immediately terminable by Landlord. If Landlord elects to accept any rental or other payment from Tenant during such holdover, Tenant shall pay to Landlord as Rent, in addition to any amounts otherwise due and owing from Tenant under this Lease and without waiving any of Landlord's other available rights or remedies, monthly Rent equal to 150% of the Rent payable under this Lease for the affected portion of the Premises for the last year of the Term, divided by 12. Any such holdover otherwise shall be subject to all terms and provisions of this Lease, except as contemplated to the contrary in this Section 18.24.

Section 18.25 **Exhibits.** Exhibits "A" "B", "C", "D" and "E" attached hereto are hereby incorporated by reference and made a part of this Lease.

Section 18.26 **Cooperation.** The Parties agree to reasonably cooperate in good faith with respect to the Premises and this Lease. If either Party (or its affiliate) reasonably needs to (a) obtain any permit, approval or other development related item related to the New Improvements that requires the execution by the other Party of any application or other documentation, (b) record any easement, declaration, or restriction to accommodate construction of the New Improvements or construction on any nearby realty owned by Landlord ("*Landlord's Adjacent Tract*"), or (c) obtain any other future easement or encumbrance on the condition that such easement or encumbrance does not materially adversely affect Tenant's use and enjoyment of the Premises or

Landlord's Adjacent Tract, as the case may be, then the recipient of such request shall not unreasonably refuse to join in any such application, documentation and/or construction easement, provided that: (x) the recipient reasonably approves its form and substance; (y) the recipient's project is not impaired thereby in any material respect; and (z) it is in ordinary and customary form and does not expose the recipient to any material risks or liabilities or impairs in any material respect the use, utility, or value of the recipient's project (but the mere existence of such application, documentation and/or construction easement shall not be deemed to impair the use, utility or value of the recipient's project solely because it encumbers the recipient's project). To the extent that this Lease requires a Party to join in any construction easement, each Party shall use commercially reasonable efforts to cause its mortgagee to consent or subordinate its lien to such construction easement.

Section 18.27 **Guaranty**. Guarantor shall guaranty the full and timely payment and performance of all of Tenant's obligations under this Lease by executing and delivering a guaranty agreement to Landlord in the form attached hereto as Exhibit "E" simultaneously with full execution and delivery of this Lease.

DATED as of the Effective Date specified above.

LANDLORD:

AAM INVESTMENTS, LTD.
a Utah limited partnership

By: 

Bruce A. Markosian, General Partner

TENANT:

**INDUSTRY SLC NEIGHBORHOOD FOUNDERS
LLC, a Utah limited liability company**

By: 

H. Jason Winkler, Manager

GUARANTOR:

Q FACTOR LLC, a Colorado limited liability company

By: 

H. Jason Winkler, Manager

EXHIBIT "A" TO GROUND LEASE

The Site consists of approximately 3.84 acres on Block 26, Salt Lake City, UT, comprised of the following parcels:

15013790040000 (i.e., "Parcel 1" on the Exhibit "B" Title Commitment)

15013790030000 (i.e., "Parcel 2" on the Exhibit "B" Title Commitment)

15121260070000 (i.e., "Parcel 4" on the Exhibit "B" Title Commitment)

15121260080000 (i.e., "Parcel 5" on the Exhibit "B" Title Commitment)

15121260050000 (i.e., "Parcel 6" on the Exhibit "B" Title Commitment)

15121260040000 (i.e., "Parcel 7" on the Exhibit "B" Title Commitment)

15121260030000 (i.e., "Parcel 8" on the Exhibit "B" Title Commitment)

15121260020000 (i.e., "Parcel 9" on the Exhibit "B" Title Commitment)

15013790060000 (i.e., "Parcel 10" on the Exhibit "B" Title Commitment)

15013790050000 (i.e., "Parcel 11" on the Exhibit "B" Title Commitment)

15013790070000 (i.e., "Parcel 12" on the Exhibit "B" Title Commitment)

15013790080000 (i.e., "Parcel 13" on the Exhibit "B" Title Commitment)

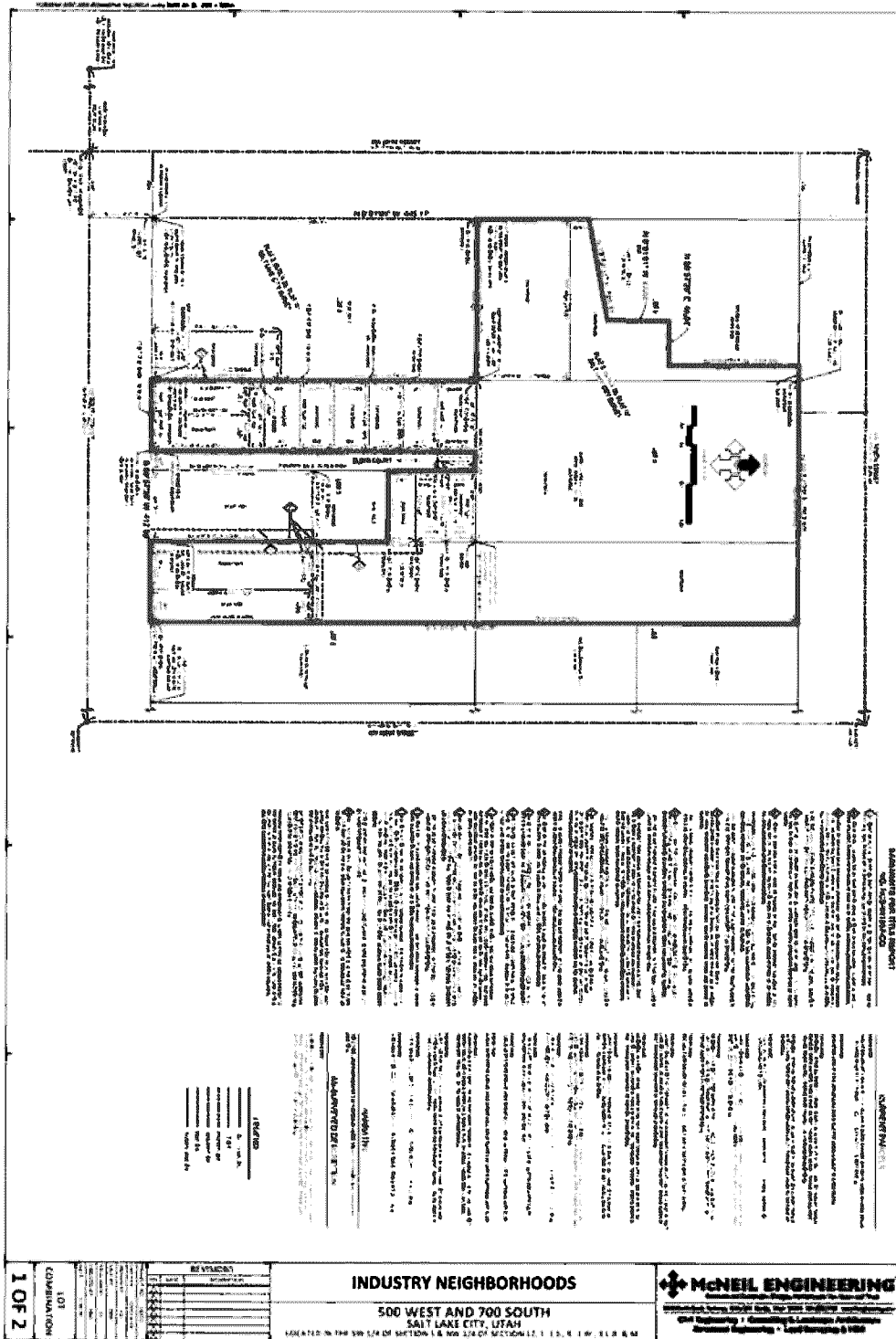
15013790090000 (i.e., "Parcel 14" on the Exhibit "B" Title Commitment)

15121270010000 (i.e., "Parcel 15" on the Exhibit "B" Title Commitment)

15121270060000 (i.e., "Parcel 19" on the Exhibit "B" Title Commitment)

15121270050000 (i.e., "Parcel 20" on the Exhibit "B" Title Commitment)

A survey drawing of the Site is also included as part of this Exhibit "A." The area marked in red is the Site.



CONSTRUCTION NOTES:

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE 2015 UTAH BUILDING CODE.
2. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS.
3. ALL FOUNDATION WORK SHALL BE DONE BY A LICENSED PROFESSIONAL ENGINEER.
4. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF EXISTING UTILITIES PRIOR TO CONSTRUCTION.
5. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE LOCAL BUILDING DEPARTMENT.
6. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
7. ALL EXTERIOR FINISHES SHALL BE AS SHOWN ON THE ARCHITECTURAL DRAWINGS.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
9. ALL ELECTRICAL AND MECHANICAL WORK SHALL BE DONE BY LICENSED PROFESSIONALS.
10. THE CONTRACTOR SHALL MAINTAIN A NEAT AND SAFE WORK SITE AT ALL TIMES.

GENERAL NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE NOTED.
2. FINISHES ARE AS SHOWN ON THE ARCHITECTURAL DRAWINGS.
3. ALL MATERIALS SHALL BE OF THE BEST QUALITY AVAILABLE.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS.
5. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE 2015 UTAH BUILDING CODE.
6. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
7. ALL EXTERIOR FINISHES SHALL BE AS SHOWN ON THE ARCHITECTURAL DRAWINGS.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
9. ALL ELECTRICAL AND MECHANICAL WORK SHALL BE DONE BY LICENSED PROFESSIONALS.
10. THE CONTRACTOR SHALL MAINTAIN A NEAT AND SAFE WORK SITE AT ALL TIMES.

NO.	REVISIONS
1	ISSUED FOR PERMITTING
2	REVISED PER COMMENTS FROM PERMITTING
3	REVISED PER COMMENTS FROM PERMITTING
4	REVISED PER COMMENTS FROM PERMITTING
5	REVISED PER COMMENTS FROM PERMITTING
6	REVISED PER COMMENTS FROM PERMITTING
7	REVISED PER COMMENTS FROM PERMITTING
8	REVISED PER COMMENTS FROM PERMITTING
9	REVISED PER COMMENTS FROM PERMITTING
10	REVISED PER COMMENTS FROM PERMITTING

INDUSTRY NEIGHBORHOODS

500 WEST AND 700 SOUTH
SALT LAKE CITY, UTAH

LOCATED IN THE SW 1/4 OF SECTION 16, T15N, R10W, S10E, & M

McNEIL ENGINEERING

1000 SOUTH 2000 WEST, SUITE 100, SALT LAKE CITY, UTAH 84119
TEL: 313.722.2222 FAX: 313.722.2223
WWW.MCNEIL-ENGINEERING.COM

1 OF 2
INDUSTRY NEIGHBORHOODS
COMPLEX

BRK

EXHIBIT “B” TO GROUND LEASE

Appended to this Exhibit “B” is a commitment for title insurance by Title Company dated 8 December 2019, as amended (the “*Commitment*”). The Commitment covers the Site owned by Landlord and additional contiguous realty owned by others.

Permitted Title Exceptions:

The following exceptions described in Schedule B-II of the Commitment are the Permitted Title Exceptions under this Lease:

Any exception to title in the Commitment to the extent that it does not relate to the Site.

Exceptions 8-28, but limited to then-current tax year obligations only, which shall be prorated between Landlord and Tenant.

Exception 29, but limited to then current-year obligations only, which shall be prorated between Landlord and Tenant.

Exceptions 30-46 to the extent that they do not materially impair the utility of the Site for Tenant’s purposes or the developability of the Site into the mixed use commercial project contemplated by the Lease. Landlord shall promptly cooperate with Tenant’s efforts to extinguish, relocate or otherwise terminate or modify the easements, rights-of-way and other encumbrances on the Site described in these exceptions to title as reasonably requested by Tenant in Tenant’s efforts to enhance the utility and developability of the Site, with Landlord participating in the resulting cost to such extent as shall be reasonable under the circumstances.

Exceptions 54-55

Exceptions 62-63

Unpermitted Title Exceptions:

The following exceptions described in Schedule B-II of the Commitment are not Permitted Title Exceptions (i.e., and therefore are the Unpermitted Title Exceptions under the Lease) and shall be remedied, resolved and removed as encumbrances on title to the Site at Landlord’s cost (but with Tenant’s cooperation) as provided in Section 1.07 of the Lease:

Exceptions 47-53, 56-61, and 64-66

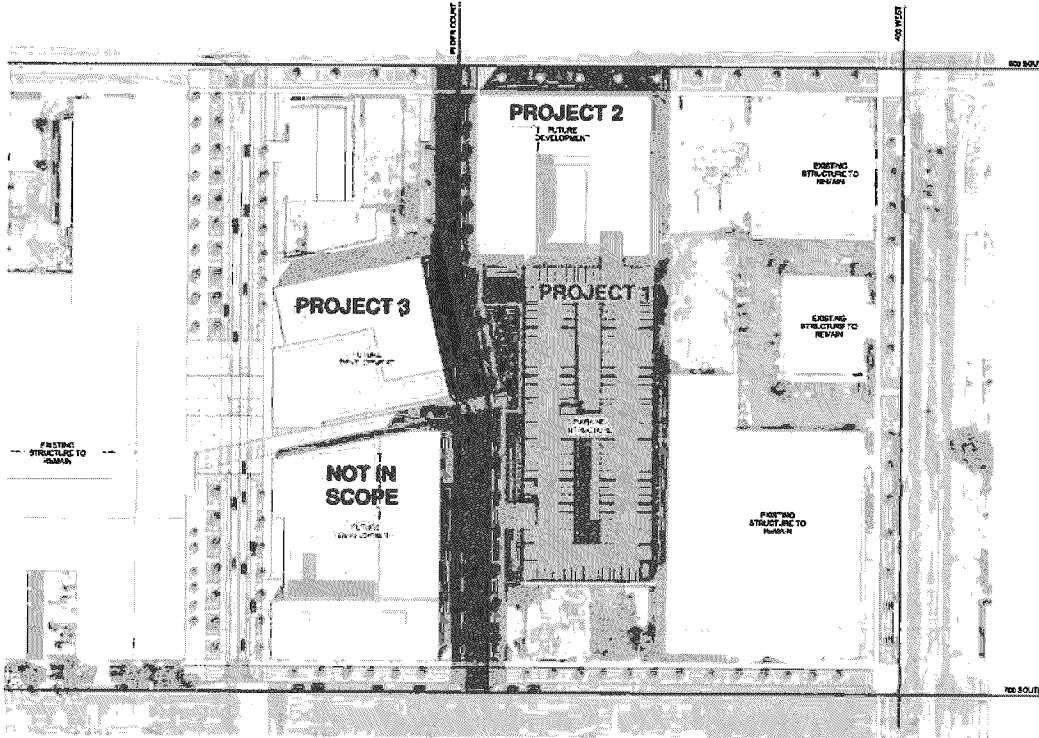
Any other exceptions described in Schedule B-II of the Commitment which are not specified above as Permitted Title Exceptions.

EXHIBIT "C" TO GROUND LEASE

(Attach Preliminary Site Plan)

INDUSTRY NEIGHBORHOOD PARKING STRUCTURE

461 W 600 S, SALT LAKE CITY, UT 84101



QFactor

PHASING LEGEND
EXISTING STRUCTURE TO REMAIN
FUTURE DEVELOPMENT

ISSUED: 2020.02.06
PHASING PLAN

12

INDUSTRY NEIGHBORHOOD PARKING STRUCTURE (SLC)

1311

EXHIBIT "D" TO GROUND LEASE

<u>YEAR</u>	<u>MONTHLY RENT CALCULATION</u>
1	\$5,000
2	S.F.Proj 1 x (\$60/sf x .02 x .06/12) + (S.F. Site – S.F. Proj. 1)/S.F. Site x \$5,000 x .02
3	S.F. Proj 1&2 (\$61.20 x.02 x .06/12) + (S.F. Site – S.F. Proj. 1)/S.F. Site x \$5,100 x .02
4	S.F. Proj 1,2&3 (\$62.42 x.02 x .06/12) Note: entire Site now subject to Enhanced Rent.
5	S.F. Site (\$63.67 x .02 x .06/12)
6	S.F. Site (\$64.94 x .02 x .06/12)

And so on thru Term of Lease.

EXHIBIT "E" TO GROUND LEASE

(Attach Form of Guaranty Agreement)

PK

First Amendment to Ground Lease

THIS FIRST AMENDMENT TO GROUND LEASE (this "*Amendment*") is made and entered into effective 1 April 2021 by and between **AAM INVESTMENTS, LTD.**, a Utah limited partnership whose address is 700 Northcrest Drive, Salt Lake City, UT 84103 ("*Landlord*"); **INDUSTRY SLC NEIGHBORHOOD FOUNDERS LLC**, a Utah limited liability company whose address is 537 West 600 South, Salt Lake City, UT 84101 ("*Tenant*"); and by **Q FACTOR LLC**, a Colorado limited liability company whose address is 3001 Brighton Blvd., Ste. 449, Denver, CO 80216, in its capacity as the guarantor under the Lease ("*Guarantor*"). In this Amendment, Landlord and Tenant are each a "*Party*" and collectively are the "*Parties*."

RECITALS:

A. Effective 1 April 2020, Landlord and Tenant entered into a "Ground Lease" (the "*Lease*") covering certain premises (the "*Premises*") consisting of approximately 3.88 acres of real property that is located within the area bounded by 400 West, 600 South, 500 West and 700 South streets in Salt Lake City, Utah. The legal description of the Premises is set forth in the Lease.

B. Unanticipated time delays in resolving the Unpermitted Title Exceptions as described in Section 1.07 of the Lease, coupled with construction delays attending the societal disruptions arising from the current Covid-19 pandemic, have caused the Parties to re-examine certain aspects of the Lease affected by such matters.

C. Consequently, the Parties now desire to amend the Lease for the purposes specified in this Amendment.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto acknowledge and agree as follows:

Section 1. **Incorporation of the Lease; Defined Terms.** The Lease is incorporated herein by this reference. Unless otherwise defined in this Amendment, all capitalized "terms of art" in this Amendment shall have the same meanings and definitions as in the Lease.

Section 2. **Amendments to Article 3; Treatment of Accrued Rent Payable.** The Parties have agreed to modify the escalation factor on Base Rent and to defer the timetable for payment of Enhanced Rent, provided that Tenant's obligation to pay the resulting differential in Rent payments attributable to this Amendment (called the "*Accrued Rent Payable*") shall only be delayed, rather than extinguished, all as specified below:

(a) **Section 3.02 Amendment.** The reference in Section 3.02 to "*two percent (2%) per year*" is hereby amended to "*five percent (5%) per year*."

(b) **Section 3.03(a) Amendment.** The reference in Section 3.03(a) to "*the first anniversary of the first day of the first calendar month after the Effective Date*" is hereby amended to "*the third anniversary of the first day of the first calendar month after the Effective Date*."

Handwritten:
M.A.-21

(c) Section 3.03(b) Amendment. The reference in Section 3.03(b) to “the second anniversary of the first day of the first calendar month after the Effective Date” is hereby amended to “the fourth anniversary of the first day of the first calendar month after the Effective Date.”

(d) Section 3.03(c) Amendment. The reference in Section 3.03(a) to “the third anniversary of the first day of the first calendar month after the Effective Date” is hereby amended to “the fifth anniversary of the first day of the first calendar month after the Effective Date.”

(e) Computation of Accrued Rent Payable. Accrued Rent Payable shall be computed in the manner shown in the following table. The Parties acknowledge, however, that the following table is only a hypothetical example which assumes that the Site will be developed in three Projects of equal size when, in fact, the size of Projects 1-3 will vary. Consequently, the actual Accrued Rent Payable shall be determined pursuant to a more accurate analysis prepared and approved by the Parties once the actual size of each of Projects 1-3 is determined.

Accrued Monthly Rent Payable--Hypothetical Analysis

<u>Year</u>	<u>Rent/Apr. 2020 Lease</u>		<u>Rent/revised Apr. 2021 Lease Amendment</u>		
	<u>Base Rent</u>	<u>Enhanced Rent</u>	<u>Base Rent</u>	<u>Enhanced Rent</u>	<u>Accrued Rent Payable</u>
2021	\$3,400	\$17,233	\$5,250		\$15,383
2022	\$1,736	\$35,152	\$5,513		\$31,375
2023		\$53,624	\$3,859	\$17,875	\$31,890
2024		\$54,696	\$2,006	\$36,465	\$16,225
2025		\$55,790		\$55,790	

(f) Payment of Accrued Rent Payable. The accrual of Accrued Rent Payable effected by this Amendment shall terminate on 31 March 2025. At that time, the total Accrued Rent Payable (under the above example, \$94,873 x 12 = \$1,138,476) will be converted to become the principal amount of a promissory note (the “ARP Note”) from Tenant to Landlord in such form as Landlord reasonably may propose and Tenant reasonably may approve, provided that the unpaid principal balance of the ARP Note will accrue interest at the rate of 2% per annum; will be payable over 432 months (i.e., 36 years, which then would be the balance of the initial 40-year term of the Lease) in consecutive, equal, amortized monthly installments; and will be subject to prepayment in whole or in part from time to time. If Tenant terminates the Lease, then the Accrued Rent Payable will be due and payable simultaneously with such termination, whether or not it is then evidenced by the ARP Note.

Under the foregoing example, beginning 1 April 2025 the monthly payment due to Landlord would include Enhanced Rent of \$55,790 under the Lease plus an additional \$3,700 under the ARP Note, for a total monthly payment of \$59,490.


Section 3. No Other Modifications. Except as specifically amended by this Amendment, the Lease is unmodified and remains in full force and effect between the parties.

*RJK
12-8-21*

DATED effective the date first-above written.


LANDLORD:

AAM INVESTMENTS, LTD.
a Utah limited partnership

By: 
Bruce A. Markosian, General Partner 3.4.21

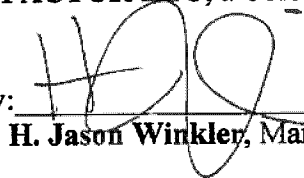
TENANT:

**INDUSTRY SLC NEIGHBORHOOD FOUNDERS
LLC**, a Utah limited liability company

By: 
H. Jason Winkler, Manager

GUARANTOR:

Q FACTOR LLC, a Colorado limited liability company

By: 
H. Jason Winkler, Manager

Second Amendment to Ground Lease

THIS SECOND AMENDMENT TO GROUND LEASE (this “*Amendment*”) is made and entered into effective 16 May 2022 by and between **AAM INVESTMENTS, LTD.**, a Utah limited partnership whose address is 700 Northcrest Drive, Salt Lake City, UT 84103 (“*Landlord*”); **INDUSTRY SLC NEIGHBORHOOD FOUNDERS LLC**, a Utah limited liability company whose address is 537 West 600 South, Salt Lake City, UT 84101 (“*Tenant*”); and by **Q FACTOR LLC**, a Colorado limited liability company whose address is 3001 Brighton Blvd., Ste. 449, Denver, CO 80216, in its capacity as the guarantor under the Lease (“*Guarantor*”). In this Amendment, Landlord and Tenant are each a “*Party*” and collectively are the “*Parties.*”

RECITALS:

A. Effective 1 April 2020, Landlord and Tenant entered into a “Ground Lease” (the “*Lease*”) covering certain Premises (the “*Premises*”) consisting of approximately 3.88 acres of real property that is located within the area bounded by 400 West, 600 South, 500 West and 700 South streets in Salt Lake City, Utah.

B. Effective 1 April 2021, Landlord and Tenant executed the “First Amendment to Ground Lease” (the “*First Amendment*”) covering certain Premises (the “*Premises*”) consisting of approximately 3.88 acres of real property that is located within the area bounded by 400 West, 600 South, 500 West and 700 South streets in Salt Lake City, Utah.

C. This agreement is set forth to: (1) facilitate the creation of a new consolidated plat to allow the development of four projects (2) facilitate “clean title” across the previous plat and have been materially solved by Lessee (3) update the respective sizes of the four Project boundaries and corresponding rent schedule (4) outline a clear path of leasehold in the long term.

AGREEMENT:

NOW, THEREFORE, in consideration of the Premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto acknowledge and agree as follows:

Section 1. **Amendment to Section 1.06 of Ground Lease.** As specified in the Lease, the specific sizes and configurations of the Projects as shown on the previous Preliminary Site Plan are subject to adjustment and final determination by Tenant to reflect the results of the Parcel Adjustment. As a result of the title work on behalf of the landowner, the Lease will be based on the Adjusted Plat Map as Exhibit A and the Consolidated Quit Claim Deed (the “*Consolidated QCD*”). The Premises shall be divided into 2 Development Parcels, consisting of .885 Acres and 3.005 Acres. For the sake of clarity, Lessor’s land is further divided into four project boundaries as shown in Exhibit B. Article III Enhanced Rent and all other requirements outlined in the Lease, shall be based on the adjusted square footage of each project described in Exhibit B.

Section 2. **Amendment to Exhibit “C” of Ground Lease.** Exhibit B below shall be incorporated and regarded as the most updated and accurate Site Plan for calculating Leasable SF.

*PK
0-10-22*

All items identified and outlined in the Lease, effective 1 April 2020, and the First Amendment to Ground Lease, effective 1 April 2021; shall be based on the square footage and boundary delineations outlined in this agreement alongside future amendments. The Site Plan, which is hereby approved by the Parties are subject to further adjustment and final determination by Tenant. For the Enhanced Rent calculations, Exhibit "B" will govern regardless of possible further adjustments. Project 4 shall be treated in the same manner and held to the same requirements outlined in the Lease as Project 1, Project 2, and Project 3.

Section 3. **Amendment to Article III Rent (d) Project 4 Enhanced Rent.** Enhanced Rent on Project 4 shall commence on the third anniversary of the first day of the first calendar month after the Effective Date or upon the City's issuance of a TCO (or equivalent other evidence of substantial completion) for the principal improvements constructed on Project 4, whichever occurs first. Upon commencement of Enhanced Rent on Project 4, the base Rent shall be proportionately reduced based on the relative square footage of Project 4 compared to the balance of the Site still subject to Base Rent.

Section 4. **Leasable Square Footage Calculations.**

<u>PROJECT</u>	<u>ACRES</u>	<u>SQUARE FOOTAGE</u>
Project 1: Garage	1.60 Acres	~ 69,790 SF (est.)
Project 2: Multi-Family	0.86 Acres	~ 37,272 SF (est.)
Project 3: Unknown ¹	0.80 Acres	~ 34,720 SF (est.)
+ <i>Title Resolution Shortfall</i>	<i>0.09 Acres</i>	<i>~3,953 SF (est.)</i>
Project 4: Elder Ct.	0.63 Acres	~ 27,639 SF (est.)
Total Leasable SF	3.98 Acres	~ 173,374 SF (est.)

Section 5. **Leasable vs. Square Footage Owned.** As specified in the First Amendment, the Premises consisted of approximately 3.88 Acres. Since the Effective date, further revisions to the Premises were incurred through resolutions of title issues. It is mutually accepted that Exhibit A is inclusive of the total Premises, or 3.89 Acres (~169,421 SF) owned by Landlord. For the exclusive purposes of calculating Leasable SF, the total premises shall be considered 3.98 Acres (~173,374 SF). Article V; calculating the Purchase Price to be paid by Tenant pursuant to the Purchase Option, the total Premises shall include 3.89 Acres (~169,421 SF).

Total Leasable SF	3.98 Acres	~ 173,374 SF (est.)
Total SF Consideration for Option / Future Purchase	3.89 Acres	~169,421 SF (est.)

Section 4. **No Other Modifications.** Except as specifically amended by this Amendment, the Lease is unmodified and remains in full force and effect between the parties.

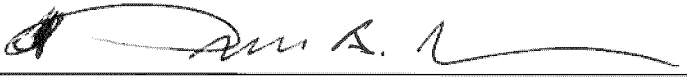
¹ "Project 3: Unknown" – Leasable SF includes the actual boundary line of .80 Acres (~34,720 SF) plus the shortfall of square footage from title work of .09 Acres (~3,953 SF), for a Leasable SF of 0.89 Acres (~38,673 SF).
[Calculation: 0.80 Acres + 0.09 Acres = 0.89 Acres (~38,673 SF)]

*PKC
6-23-22*

DATED effective the date first-above written.

LANDLORD:

AAM INVESTMENTS, LTD.
a Utah limited partnership

By: 
Bruce A. Markosian, General Partner
6-23-22


TENANT:

**INDUSTRY SLC NEIGHBORHOOD FOUNDERS
LLC, a Utah limited liability company**

By: 
H. Jason Winkler, Manager

GUARANTOR:

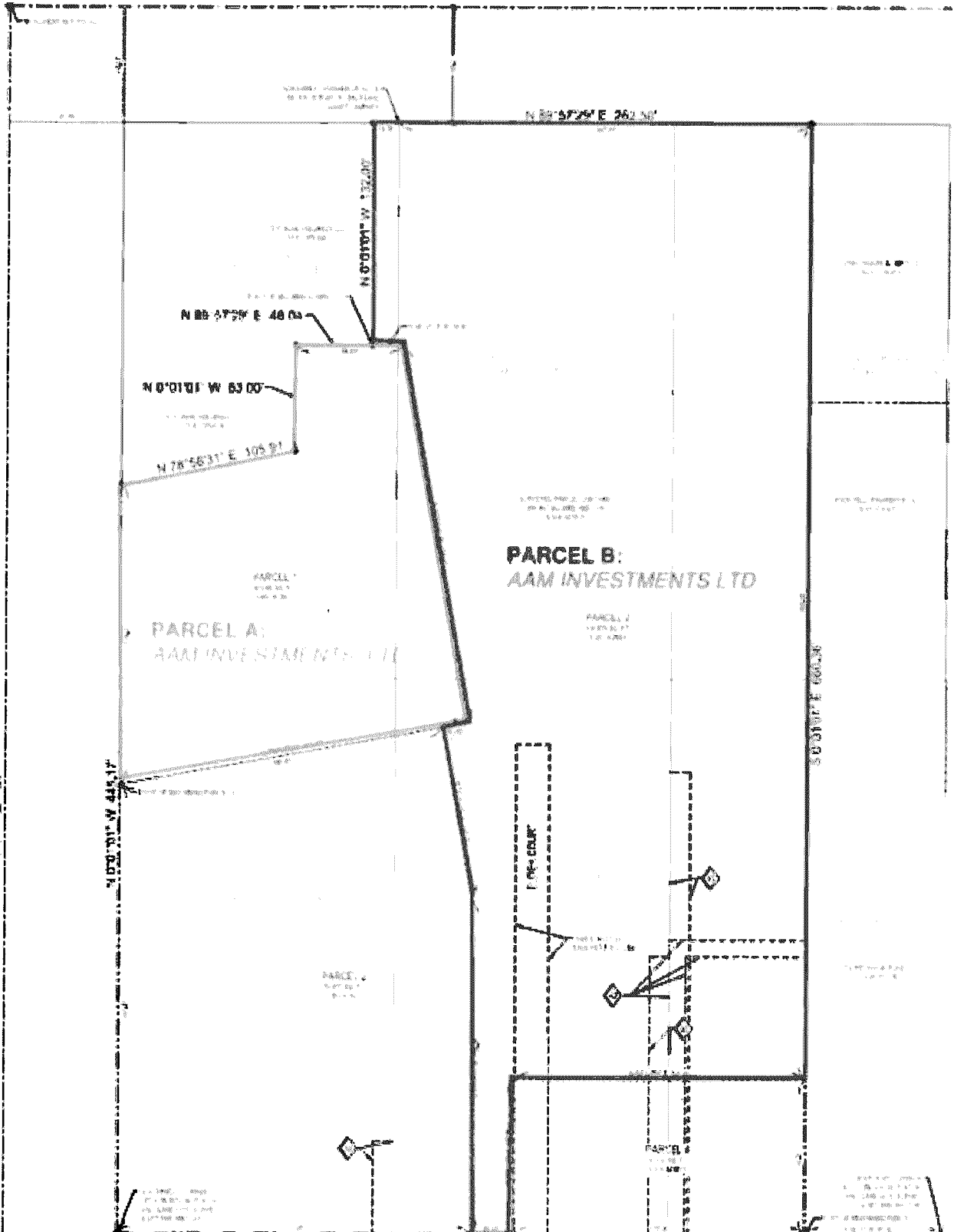
Q FACTOR LLC, a Colorado limited liability company

By: 
H. Jason Winkler, Manager

BKC
6-23-22

Exhibit A

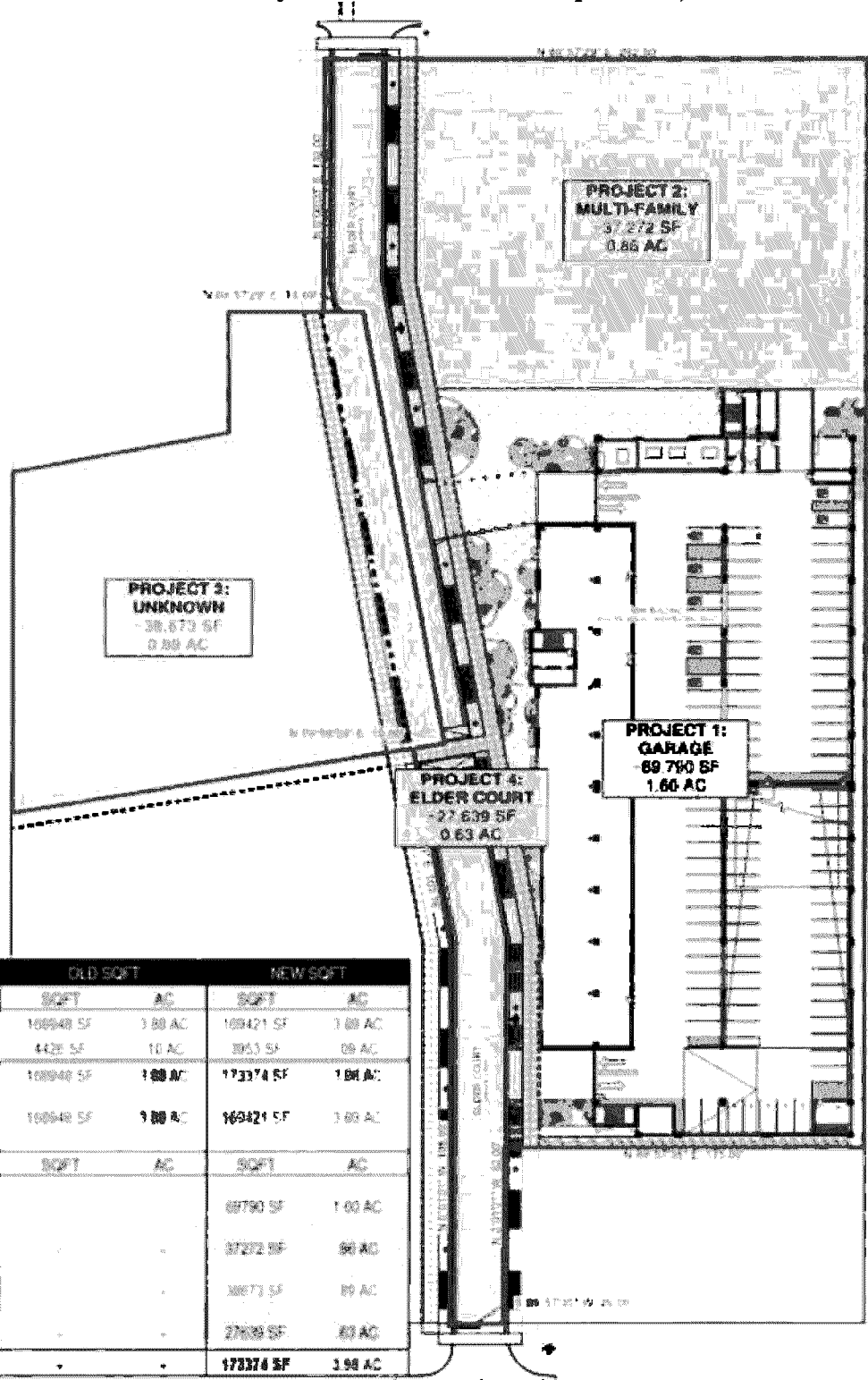
(Consolidated Plat Map of the Quitclaim Deed)



*PKK
6-03-22*

Exhibit B

(Amendment to Exhibit "C" of Ground Lease dated 1 April 2020)



SF SUMMARY LEASABLE	OLD SQFT		NEW SQFT	
	SQFT	AC	SQFT	AC
GROUND LEASE				
SQFT	168948 SF	3.88 AC	169421 SF	3.89 AC
Elder Ct (Leased Pt W)	4421 SF	10 AC	3953 SF	09 AC
AMM (Total to Rent)	168948 SF	3.88 AC	173374 SF	3.98 AC
AMM (SF to be used for other projects & improvements)	168948 SF	3.88 AC	169421 SF	3.89 AC
PROJECT TOTALS	SQFT	AC	SQFT	AC
PROJECT 1: Garage			89790 SF	1.60 AC
Est. TOD: Q3 2027				
PROJECT 2: Multi-Family			57272 SF	0.86 AC
Est. TOD: Q3 2024				
PROJECT 3: Unknown			38673 SF	0.89 AC
Est. TOD: TBA				
PROJECT 4: Elder Court			27639 SF	0.63 AC
Est. TOD: Q1 2023				
Total Leasable			173374 SF	3.98 AC

*PKC
6-23-22*

Exhibit C
(Parcel Legal Descriptions)

PARCEL A

BEGINNING AT A POINT ON THE WEST LINE OF BLOCK 26, PLAT "A", SALT LAKE CITY SURVEY, SAID POINT BEING NORTH 00°01'01" WEST ALONG SAID WEST LINE 267.10 FEET FROM THE SOUTHWEST CORNER OF SAID BLOCK 26, AND RUNNING NORTH 00°01'01" WEST ALONG SAID WEST LINE 178.07 FEET; THENCE NORTH 78°58'31" EAST 105.91 FEET; THENCE NORTH 00°01'01" WEST 63.00 FEET; THENCE NORTH 89°57'29" EAST 64.69 FEET; THENCE SOUTH 10°01'01" EAST 228.07 FEET; THENCE SOUTH 79°58'59" WEST 211.47 FEET TO THE POINT OF BEGINNING.

CONTAINS 38,546 SQ. FT. OR .885 ACRES

PARCEL B

BEGINNING AT A POINT NORTH 00°01'01" WEST ALONG THE WEST LINE OF BLOCK 26, PLAT "A", SALT LAKE CITY SURVEY 445.17 FEET AND NORTH 78°58'31" EAST 105.91 FEET AND NORTH 00°01'01" WEST 63.00 FEET AND NORTH 89°57'29" EAST 46.04 FEET FROM THE SOUTHWEST CORNER OF SAID BLOCK 26, AND RUNNING THENCE NORTH 00°01'01" WEST 132.00 FEET TO THE NORTH LINE OF SAID BLOCK 26; THENCE NORTH 89°57'29" EAST ALONG SAID NORTH LINE 262.50 FEET; THENCE SOUTH 00°01'01" EAST 568.36 FEET; THENCE SOUTH 89°57'35" WEST 175.00 FEET; THENCE SOUTH 00°01'01" EAST 92.00 FEET TO THE SOUTH LINE OF SAID BLOCK 26; THENCE SOUTH 89°57'35" WEST ALONG SAID SOUTH LINE 26.00 FEET; THENCE NORTH 00°01'01" WEST 198.95 FEET; THENCE NORTH 10°01'01" WEST 103.76 FEET; THENCE NORTH 79°58'59" EAST 15.00 FEET; THENCE NORTH 10°01'01" WEST 228.07 FEET; THENCE SOUTH 89°57'29" WEST 18.65 FEET TO THE POINT OF BEGINNING.

CONTAINS 130,875 SQ. FT. OR 3.005 ACRES

*TDK
6-22-22*

Exhibit D
(Project Metes and Bounds)

PROJECT 1: PARKING GARAGE

A PARCEL OF GROUND LOCATED IN LOTS 2, 6 AND 7 OF BLOCK 26, PLAT "A", SALT LAKE CITY SURVEY, SAID PARCEL BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT SOUTH 89°57'35" WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 82.77 FEET AND NORTH 0°01'01" WEST 92.00 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 2, AND RUNNING THENCE SOUTH 89°57'35" WEST 158.00 FEET; THENCE NORTH 0°01'01" WEST 24.56 FEET; THENCE NORTH 89°58'59" EAST 0.57 FEET; THENCE NORTH 0°01'01" WEST 82.88 FEET; THENCE NORTH 10°01'01" WEST 293.50 FEET; THENCE NORTH 89°59'07" EAST 208.39 FEET; THENCE SOUTH 0°01'01" EAST 396.41 FEET TO THE POINT OF BEGINNING.

CONTAINS: 69,790 SQ. FT. OR 1.602 ACRES

PROJECT 4: PROPOSED ELDER COURT ACCESS EASEMENT

BEGINNING AT A POINT ON THE SOUTH LINE OF BLOCK 26, PLAT "A", SALT LAKE CITY SURVEY, SAID POINT BEING SOUTH 89°57'35" WEST ALONG SAID SOUTH LINE 241.26 FEET FROM THE SOUTHEAST CORNER OF LOT 2 OF SAID BLOCK 26, AND RUNNING THENCE SOUTH 89°57'35" WEST ALONG SAID SOUTH LINE 42.51 FEET; THENCE NORTH 0°01'01" WEST 198.95 FEET; THENCE NORTH 10°01'01" WEST 334.46 FEET; THENCE SOUTH 89°57'29" WEST 3.42 FEET; THENCE NORTH 0°01'01" WEST 132.00 FEET TO A POINT ON THE NORTH LINE OF SAID BLOCK 26; THENCE NORTH 89°57'29" EAST ALONG SAID NORTH LINE 44.00 FEET; THENCE SOUTH 114.33 FEET; THENCE SOUTH 10°01'01" EAST 351.90 FEET; THENCE SOUTH 0°17'19" WEST 199.45 FEET TO THE POINT OF BEGINNING.

CONTAINS: 27,639 SQ. FT. OR .63 ACRES

BK
6-23-22

EXHIBIT "B" TO LEASE

(Master Parcel Site Plan)

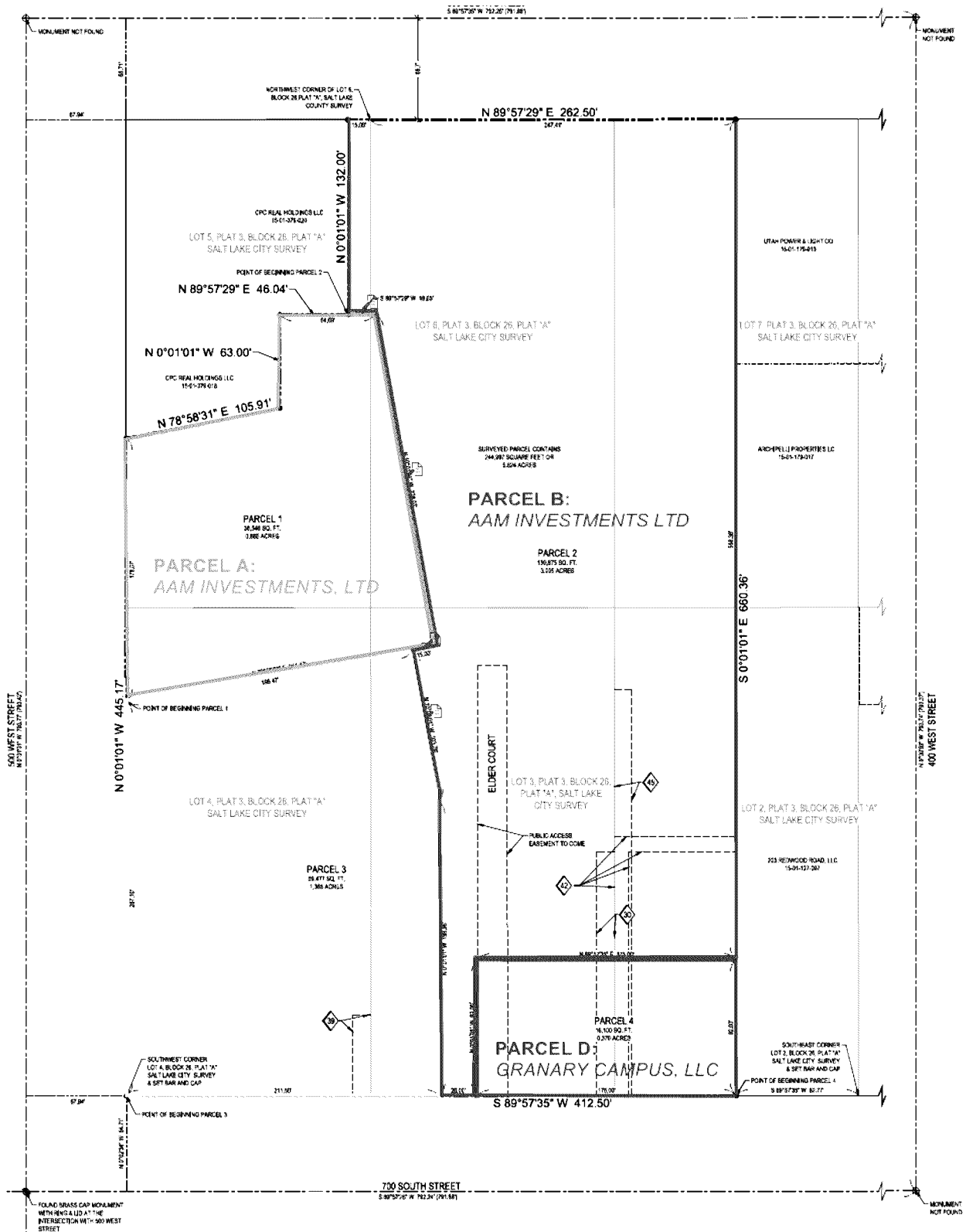


EXHIBIT "C" TO LEASE

(Plat of Premises and Elder Court parcel)

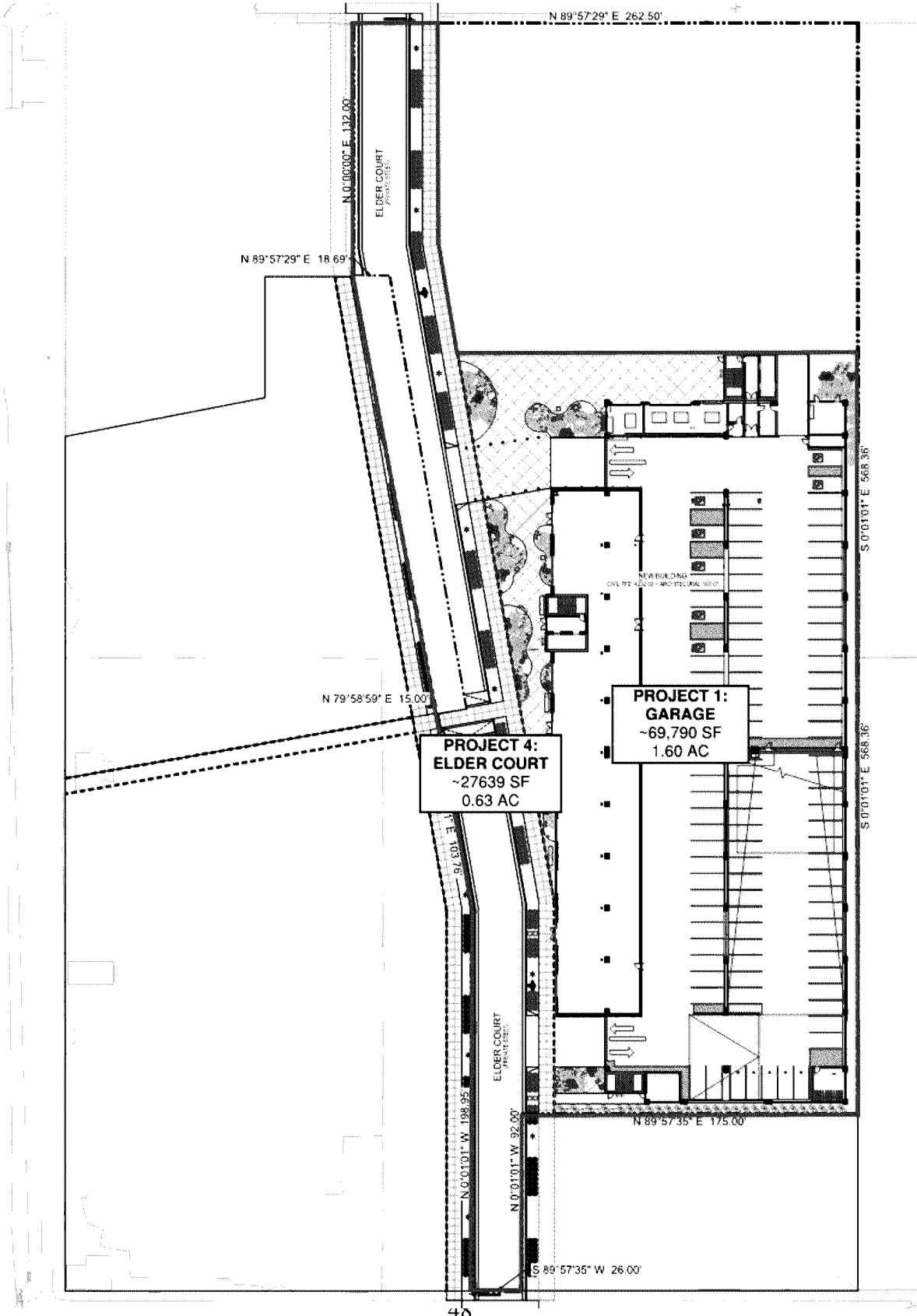


EXHIBIT “D” TO LEASE

Appended to this Exhibit “D” is a proforma policy for title insurance by Title Company covering the Premises dated August 25, 2022 (the “*Proforma Policy*”).

Permitted Title Exceptions:

The following exceptions described in Schedule B of the Proforma Policy are the Permitted Title Exceptions under this Lease:

Exception 8, but limited to then-current tax year obligations only, which shall be prorated between Landlord and Tenant.

Exception 11, but limited to then current-year obligations only, which shall be prorated between Landlord and Tenant.

Exceptions 14, 16, 20, 21, 31, 35, 36, 40, and 42 to the extent that they do not materially impair the utility of the Premises for Tenant’s purposes or the developability of the Premises as contemplated by this Lease. Landlord shall promptly cooperate with Tenant’s efforts to extinguish, relocate or otherwise terminate or modify the easements, rights-of-way and other encumbrances on the Premises described in these exceptions to title as reasonably requested by Tenant in Tenant’s efforts to enhance the utility and developability of the Premises, with Landlord participating in the resulting cost to such extent as shall be reasonable under the circumstances.

Exceptions 5, 6, 13, 23, 25, 46, 47, 48, 49, 50, and 51.

