

GROUND LEASE

for

APPROXIMATELY 2.1 ACRE PARCEL OF LAND AND IMPROVEMENTS
THEREON

80 DANIEL STREET, PORTSMOUTH, NEW HAMPSHIRE

between

CITY OF PORTSMOUTH, NEW HAMPSHIRE

as Landlord

and

SOBOW SQUARE, LLC

as Tenant

Dated as of _____, 2019

GROUND LEASE
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GROUND LEASE

This **GROUND LEASE** (this "**Lease**") is entered into as of this _____ day of _____, 2019 (the "**Effective Date**"), by and between the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter, with its successors and assigns, the "**City**" or the "**Landlord**") and **SOBOW SQUARE, LLC**, a _____ limited liability company with a principal place of business at _____ (the "**Tenant**"). The City and Tenant shall hereinafter be referred to individually as a "**Party**" or collectively as the "**Parties**".

INTRODUCTION

This Agreement relates to the redevelopment and leasing of certain real estate known as the "McIntyre Property" located at 80 Daniel Street, Portsmouth, New Hampshire (the "Property").

Reference is made to the following facts.

- I. The Property was formerly owned by the United States of America.
- II. The City was invited to submit an "Application for Obtaining Real Property for Historic Monument Purposes" (the "Application") to the National Parks Service of the Department of the Interior ("NPS") to acquire the Property from the General Services Administration ("GSA") under the Federal Historic Monument Program (Title 40 U.S.C. 550 (h)) pursuant to which the Property would be conveyed to the City for no cash consideration but with a deed restriction/preservation covenant requiring that the Property be preserved and used as a Historic Monument.
- III. In August of 2017, the City issued a Request for Proposals (the "RFP") seeking a private real estate developer to enter into a public private partnership with the City pursuant to which the City would acquire the Property from the GSA under the Federal Historic Monument Program and then lease the Property to a private developer pursuant to a long-term ground lease. Under the ground lease the developer would be obligated to redevelop, reuse and operate the Property as a Historic Monument as generally described and detailed in the RFP.
- IV. On or about November 6, 2017, in response to the RFP, several real estate developers, including Tenant, submitted proposals to ground lease and redevelop the Property. In its response to the RFP, Tenant proposed to redevelop the Property as a mixed-use project with office, retail, and residential uses and related parking, amenities, infrastructure and public

spaces (collectively, the "Project").

- V. On January 16, 2018, the Portsmouth City Council voted to select Tenant as its potential development partner.
- VI. On _____, 2019, City and Tenant entered into a Development Agreement and Agreement to Lease ("Development Agreement") with respect to the Project.
- VII. On _____, 2019, the City and Tenant submitted an "Application for Obtaining Real Property for Historic Monument Services" (the Application") to the NPS for the acquisition of the Property at no cost pursuant to the Federal Historic Monument Program. The Application, among other things, included a proposed "Preservation Plan, a proposed "Use Plan" and a proposed "Financial Plan."
- VIII. On _____, 2019, the NPS recommended approval of the Application [subject to certain modifications thereto].
- IX. On _____, 2019, the GSA accepted and concurred with the recommendation of the NPS.
- X. By deed dated _____, 20__ and recorded in the Rockingham County Registry of Deeds at Book __, Page __ (the "Deed"), the GSA conveyed the Property to the City for no cost.
- XI. The Deed contains certain restrictions and covenants requiring the Property to be rehabilitated, preserved and operated as a Historic Monument ("Preservation Covenants") under the Federal Historic Monument Program.
- XII. In furtherance of the above, the City will ground lease the Property to Tenant and the Tenant will rehabilitate, use, operate, and maintain the Property in accordance with the Deed, the Preservation Covenants, the approved Application (including, without limitation, the approved Preservation Plan, Use Plan and Financial Plan) and all other applicable requirements under the Federal Historic Monument Program (all of the above requirements and obligations are collectively referred to as the "Historic Monument Program Requirements").

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the City and Tenant agree as follows:

ARTICLE 1

DEFINITIONS

1.1 **Definitions.** In addition to other capitalized terms defined elsewhere in this Lease, the following capitalized terms used in this Lease shall have the meaning set forth or referenced in this Section:

"Additional Rent" shall have the meaning set forth therefor in **Section 5.4**.

"Affiliate" shall mean, with respect to any Person, (i) in the case of any such Person which is an Entity, any partner, shareholder, member or other owner of such Entity, provided that such partner, shareholder, member or other owner owns more than fifty percent (50%) of the Equity Interests of such Entity, and (ii) any other Person which is a Parent, a Subsidiary, or a Subsidiary of a Parent with respect to such Person or with respect to one or more of the Persons referred to in the preceding clause (i).

"Alterations" shall have the meaning set forth therefor in **Section 7.4**.

"Application Approval" shall mean the approval of the Application by the National Parks Service and the GSA.

"Approved Application" shall mean the application for obtaining real property for Historic Monument purposes submitted by the City and Tenant to the National Parks Service with respect to the Project and approved by the National Parks Service and the GSA.

"Approvals" shall mean, collectively, all environmental, land use, building, construction, curb cut, parking, occupancy and related permits, and any other permits, licenses and approvals necessary to enable Tenant to construct and use Tenant's Improvements or any portion thereof or to perform any Alterations. A list of all required approvals is attached hereto as **Exhibit E**.

"Approved Debt" shall mean, at any time, either (i) the initial construction financing for the construction of Tenant's Improvements, which amount shall not be more than sixty-five percent (65%) of the Approved Development Costs, (ii) the initial permanent financing following the construction of Tenant's Improvements, which amount shall not be more than sixty-five percent (65%) of the fair market value of Tenant's Leasehold Interest at the time of such financing, or (iii) the amount of any other debt secured by Permitted Leasehold Mortgage(s), the original principal amount of which other financing(s), in the aggregate, shall total no more than seventy-five percent (75%) of the fair market value of Tenant's Leasehold Interest at the time of such financing(s) as determined by such Permitted Leasehold Mortgagee.

"Approved Development Plan" shall mean, collectively, the development plan and related plans and descriptive materials for the construction of Tenant's Improvements, including such information as to the size, location and use of all such proposed Tenant's Improvements, and all modifications thereto or substitutions therefor, initially as approved by the City and attached hereto as **Exhibit C**, and thereafter as modified from time to time subject to approval by: (a) the City, which approval shall not be unreasonably withheld, conditioned or delayed pursuant to **Section 4.24**, and (b) the National Parks Service to the extent required under the Federal Historic Monument Program.

"Approved Development Costs" shall mean the total cost of the development of Tenant's Improvements as reasonably estimated by Tenant, including, without limitation, construction costs, permitting and development costs, architectural and engineering fees, legal fees, Rent and other payments due or expenses to be incurred pursuant to this Lease, the Approvals or the Historic Monument Program Requirements, or financing fees, and interest expenses, all as evidenced by a certificate of Tenant supported by appropriate documentation (including, without limitation, Tenant's final itemized budget for Tenant's Improvements and the guaranteed maximum price or stipulated sum Construction Contract entered into by Tenant and its Contractor for Tenant's Improvements), and as

set forth in the Project Budget, as the same may be updated by Tenant and reasonably approved by the City from time to time.

"Appurtenant Rights" shall have the meaning set forth therefor in **Section 2.1**.

"Architect/Engineer" shall mean each architect or engineer engaged by or on behalf of Tenant to design any portion of Tenant's Improvements or a Major Alteration. Tenant's initial Architect/Engineer is _____.

"Architect/Engineer's Contracts" shall mean all agreements between Tenant and an Architect/Engineer with respect to Tenant's Improvements or a Major Alteration or any portion thereof.

"Assignment of Development Documents" shall have the meaning set forth therefor in **Section 4.3(h)**.

"Award" shall have the meaning set forth therefor in **Section 12.1**.

"Base Rent" shall have the meaning set forth therefor in **Section 5.1**.

"Books and Records" shall have the meaning set forth therefor in **Section 5.7.1(a)**.

"Building" shall have the meaning set forth therefor in **Section 4.1(b)**.

"Business Day" shall mean any Monday through Friday, inclusive, other than a day on which the offices of The State of New Hampshire are closed for the conduct of normal business.

"Calendar Year" shall mean the period from January 1st to December 31st during each year of the Term of this Lease.

"Casualty" shall mean any damage to or destruction of Tenant's Improvements or any part thereof or other property installed or used in, on, or about Tenant's Improvements or any part thereof or any other improvements or any portion thereof on the Premises by fire or otherwise.

"City" shall have the meaning set forth therefor in the Preamble to this Lease.

"City's Construction Representative" shall have the meaning set forth therefor in **Section 4.10**.

"Commercial Subtenant" shall have the meaning set forth therefor in **Section 8.5**.

"Completion Guaranty" shall have the meaning set forth therefor in **Section 4.13(b)**.

"Construction Commencement Date" shall have the meaning set forth therefor in **Section 4.1**.

"Construction Contract" shall mean all agreements between Tenant and a Contractor with respect to construction of Tenant's Improvements or any Major Alteration or any portion thereof.

"Construction Financing" shall mean that certain financing for the construction of Tenant's

Improvements comprised of a first priority leasehold construction loan, Tenant's equity investment, and, if applicable, historic tax credits.

"Construction Management Plan" shall mean the plan developed by Tenant and approved by the City of Portsmouth concerning the delivery of materials, staging and laydown areas, parking, proposed flow of vehicular traffic to and from the Premises during the construction of any portion of Tenant's Improvements or any Major Alteration, and measures to be taken to mitigate the effects of construction on land, buildings, businesses and roadways in the vicinity of the Premises.

"Contractor" shall mean Tenant's general contractor or construction manager for the construction of Tenant's Improvements or any Major Alteration or any portion thereof. Tenant's initial Contractor is _____.

"Deed" shall mean the deed of the Property from the GSA to the City dated _____ and recorded in the Rockingham County Registry of Deeds at Book _____, Page _____.

"Default Rate" shall mean a rate of interest equal to eighteen percent (18%) per annum (but in no event higher than the maximum rate of interest permitted by applicable law) payable by Tenant in the event of Tenant's default in the due and punctual payment of Rent or other sums due and payable under this Lease.

"Development Documents" shall mean, collectively, all Construction Contracts, Architect/Engineer's Contracts, and other agreements related to the design, development or construction of Tenant's Improvements or any Major Alteration, which have been executed by Tenant, including all amendments and modifications thereto.

"Development Schedule" shall have the meaning set forth therefor in **Section 4.5**.

"Effective Date" shall have the meaning set forth therefor in the Preamble to this Lease.

"Entity" shall mean any general partnership, limited partnership, limited liability company, limited liability partnership, corporation, joint venture, trust, business trust, cooperative or association.

"Environmental Indemnification Agreement" shall mean a written agreement by and between the Indemnitor and the City pursuant to which the Indemnitor indemnifies the City with respect to the matters set forth in **Section 10.5** below, the form of which is attached hereto as **Exhibit K**.

"Environmental Laws" shall mean, collectively, all applicable federal, state or local statutes, laws, rules, regulations, codes, ordinances, directives, orders or decrees (whether now existing or hereafter enacted, promulgated or issued), respecting the existence, assessment, remediation, removal or disposal of Hazardous Materials including, without limitation, those identified in the definition of "Hazardous Materials," and the regulations promulgated under each of such statutes or laws, all as amended from time to time.

"Equity Interest" shall mean with respect to any Entity, (i) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such Entity if such Entity is a

business corporation, a real estate investment trust or a similar entity, (ii) the legal (other than as a nominee) or beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (iii) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such Entity is a trust and (iv) any other voting or nonvoting interest that is the functional equivalent of any of the foregoing.

"Events of Default" shall have the meaning set forth therefor in **Section 15.2**.

"Excess Income" shall mean all cash Income otherwise actually available for distribution to owners and investors by the Tenant exceeding Tenant's actual costs to lease, occupy, repair, rehabilitate, restore, manage and maintain the Premises including without limitation contributions to reserves, debt service and other debt and equity financing costs and a "reasonable profit" as defined and calculated in the final Approved Application. By way of more specific example of Excess Income and the "reasonable profit" approved pursuant to the final Approved Application, see Schedule 1 attached hereto. [NOTE: TO BE MADE CONSISTENT WITH FINAL APPLICATION]

"FAA" shall mean the Federal Aviation Administration, or any agency, City, board, or other governmental authority that hereafter succeeds to the jurisdiction of the FAA with respect to regulating heights of buildings or structures in the vicinity of an airport.

"Field Changes" shall mean changes in the following categories: (a) up to \$100,000 for any individual change necessary to correct minor or technical mistakes or inconsistencies in the Final Plans and Specifications; (b) to the extent necessary to respond to an emergency or to correct building code violations; or (c) to the extent necessary to respond to other governmental orders or directives concerning the Project which unless otherwise promptly addressed would result in a default under the Lease or Approvals.

"Final Completion" shall have the meaning set forth therefor in **Section 4.1**.

"Final Completion Date" shall mean the date upon which Final Completion of Tenant's Improvements occurs.

"Final Plans and Specifications" shall mean the final plans and specifications for the construction of Tenant's Improvements which have been reviewed and approved by the City, a description of which are attached hereto as **Exhibit C**.

"Final Restoration Plans" shall mean the final construction plans and specifications for the restoration of Tenant's Improvements in the event of a Casualty, as approved by the City.

"Financial Plan" shall mean the Tenant's plan for financing the repair, rehabilitation, restoration and maintenance of the Premises as approved by the NPS, the GSA and the City.

"First Permitted Leasehold Mortgage" shall mean a Permitted Leasehold Mortgage which, at the time in question, is a first lien on Tenant's Leasehold Interest.

"First Permitted Leasehold Mortgagee" shall mean a Permitted Leasehold Mortgagee holding

a First Permitted Leasehold Mortgage.

"Force Majeure Event" shall have the meaning set forth therefor in **Section 4.16**.

"GAAP" shall mean generally accepted accounting principles.

"Governmental Agency" shall mean each board, bureau, commission, department, or other branch or office of any municipal, county, state, federal or other governmental body now or hereafter having or acquiring jurisdiction over the Land or any improvements thereon, Tenant's Improvements, the Premises and/or the development, construction, or use thereof.

"Guarantors" shall mean the [Kane Company and Redgate Holdings, LLC] [insert names of guarantors determined in accordance with the Development Agreement] and substitutes therefore as approved by the City in accordance with the provisions of **Section 4.13(b)**.

"Guaranties" shall mean the guaranty of Section 18.31 of this Lease, the Environmental Indemnification Agreement and the Completion Guaranty given by the Guarantors.

"Hazardous Materials" shall mean, collectively, all substances defined or classified as a "hazardous substance," "hazardous material," "hazardous waste," "pollutant," or otherwise denominated as a regulated or hazardous substance, waste or material, toxic or pollutant in any of the following: (i) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) the federal Hazardous Materials Transportation Uniform Safety Act of 1990; (iii) the federal Toxic Substances Control Act; (iv) the federal Resource Conservation and Recovery Act; (v) New Hampshire General Laws, Chapter 21D; (vi) New Hampshire General Laws, Chapter 21E; (vii) New Hampshire General Laws, Chapter 21C; (viii) New Hampshire General Laws, Chapter 21I; (ix) any other federal, state or local law addressing itself to environmental contamination, waste or health and safety; or (x) any regulations promulgated under any of the foregoing; as any of the foregoing may be promulgated or amended from time to time. "Hazardous Materials" shall specifically include, but not be limited to, oil, asbestos, explosives, polychlorinated biphenyls, petroleum and petroleum-based derivatives, and urea formaldehyde.

"Impositions" shall have the meaning set forth therefor in **Section 6.1**.

"Income" shall mean, with respect to any Rent Year, without duplication, an amount equal to all gross income and revenue in cash actually received by Tenant from or with respect to the Premises and all facilities operated in connection therewith, all determined on a cash basis, including, without limitation, any rental, lease or other income received by Tenant with respect to Subleases, sub-subleases, concessions, licenses or any other occupancy agreements, as well as any receipts paid with respect to such items on account of business or rental interruption insurance maintained by Tenant. Income shall not include brokerage and management fees and commissions, or other compensation derived by Tenant or an Affiliate of Tenant under any leasing agreement, brokerage agreement, or similar agreement regarding the leasing or management of the residential units located on the Premises. Income shall not include (a) security deposits or last month's rent paid in advance to Tenant by Subtenants, or other amounts subject to refund, unless and until they are applied to rental or other charges owed to Tenant; (b) amounts paid by Subtenants to Tenant on account of pass-throughs to Subtenants of costs incurred and paid by Tenant, such as Impositions, operating expenses or common

area maintenance charges; (c) proceeds of casualty insurance (other than business or rental interruption insurance) or eminent domain awards; (d) free, abated or discounted rent, (e) withdrawals from the Reserve Fund or any other reserve accounts, and (f) Sale Proceeds or Refinancing Proceeds.

"Incurable Lease Defaults" shall have the meaning set forth therefor in **Section 14.2(c)**.

"Indemnitor" shall mean, as of the Effective Date, _____, and, thereafter, any Person executing and delivering the Environmental Indemnification Agreement to the City in accordance with the provisions of **Section 10.5**.

"Index" shall mean the Consumer Price Index for all Urban Consumers, U.S. City Average (CPI-U), All Items (1982 - 1984 = 100), published by the Bureau of Labor Statistics, U.S. Department of Labor. If the Bureau of Labor Statistics should cease to publish the Index in its present form and calculated on the present basis, a comparable index or an index reflecting changes in prices determined in a similar manner shall reasonably be designated by the City in substitution therefor. The Index for any month relevant to the application of this definition shall be that published by the Bureau of Labor Statistics for such month if computed for such month, or otherwise for the most recent month immediately preceding the month as of which the application is to be made. Since an Index relevant to the application of this definition may not be available as of the date on which a determination of the applicability is to be made, necessary adjustments between the City and Tenant shall be made retroactively, within a reasonable time after required computations can readily be completed.

"Institutional Lender" shall have the meaning set forth therefor in the definition of Permitted Leasehold Mortgagee.

"Insurance Trustee" shall have the meaning set forth therefor in **Section 8.10(a)**.

"Investor Member" shall mean _____, LLC, a Delaware limited liability company, and its successors and assigns, upon the admittance of such member to Borrower.

"IRC" shall have the meaning set forth therefor in **Section 2.1**.

"Lease Year" shall mean a twelve (12) month period during the Term of this Lease except that the first "Lease Year" shall commence on the Effective Date and shall include the first twelve (12) full calendar months after the Effective Date, and each successive Lease Year shall be comprised of succeeding periods of twelve (12) calendar months.

"Legal Requirements" shall have the meaning set forth therefor in **Section 9.4**.

"**Major Alteration**" shall mean any Alteration which either (i) results in the creation of a new building or structure on the Premises with a footprint greater than 1,000 square feet, or (ii) involves the addition to a building or structure on the Land of more than 5,000 square feet of gross floor area, or (iii) is reasonably anticipated to cost more than \$2,500,000.00 to design and construct (either as an individual Alteration or a series of related Alterations), or (iv) is otherwise inconsistent with the Final Approvals, the Development Plan or the Final Plans and Specifications except to the extent modifications to the Final Approvals, the Development Plan or the Final Plans and Specifications have been previously approved.

“**Material Change Order**” shall have the meaning set forth therefor in **Section 14.4**.

“National Historic Monument Program” (a/k/a the Historic Surplus Property Program) shall mean 40 U.S.C. 550 (h) and all applicable regulations issued thereunder including, without limitation, the Secretary of the Interior’s Standards for Rehabilitation.

"Net Award" shall have the meaning set forth therefor in **Section 12.1**.

"Non-Disturbance Agreement" shall have the meaning set forth therefor in **Section 13.4**.

"Off-Site Improvements" shall have the meaning set forth therefor in **Section 4.1(b)**.

"Operating Agreement" shall mean that certain Amended and Restated Operating Agreement of Tenant dated on or about the Effective Date, as the same may be amended or modified from time to time.

"Outside Completion Date" shall have the meaning set forth therefor in **Section 4.1**.

"Parent" shall mean, with respect to any Subsidiary, any Person which owns directly or indirectly through one or more Subsidiaries the entire Equity Interest in such Subsidiary.

"Party" shall have the meaning set forth therefor in the Preamble to this Lease.

"Payment and Performance Bonds" shall have the meaning set forth therefor in **Section 4.13(a)**.

“Percentage Rent” shall have the meaning set forth in **Section 5.6**.

"Permitted Leasehold Mortgage" shall mean, collectively, a mortgage (or conditional assignment or other security interest) on Tenant's Leasehold Interest now or hereafter securing Approved Debt and, where the context permits, the obligations secured thereby, and meeting all of the following requirements:

- (i) A copy of such mortgage has been delivered to the City, accompanied by appropriate recording data and the name and address of the holder thereof (a "**Permitted Leasehold Mortgage**" and, together with all other Permitted Leasehold Mortgages, collectively referred to as the "**Permitted Leasehold Mortgages**"), which holder shall be a bank, trust company, savings and loan association, real estate investment trust, lender acting as an originator with respect to a conduit type securitized loan (including a real estate mortgage investment conduit or a financial asset securitization investment trust), an employee benefit pension or retirement plan or fund endowment or insurance company or a governmental authority empowered to make loans or issue bonds, a commercial credit corporation, investment bank or any other institutional lender engaged in the making of loans or equity investments, or any combination of the foregoing acting as a trustee in connection with the issuance of any bonds or other debt instrument financing, provided that in any case such entity (A) is not an Affiliate of Tenant and which has, together with its Affiliates in the aggregate,

not less than One Hundred Million Dollars (\$100,000,000) in assets, or (B) has been otherwise approved by the City in writing in advance, which approval shall not be unreasonably withheld, conditioned or delayed (an "**Institutional Lender**"). Any assignee of the Permitted Leasehold Mortgage must be an Institutional Lender. For purposes hereof, the word "assignee" shall be deemed to include any person or entity which succeeds to the rights of a Permitted Leasehold Mortgagee in the Permitted Leasehold Mortgage, whether by voluntary assignment involuntary assignment, merger, consolidation, or otherwise [NOTE: City to review and approve initial construction financing pursuant to Section 2.1.11 of Development Agreement];

(ii) Unless the City shall otherwise have consented, such mortgage, at the time in question, is a first lien on Tenant's Leasehold Interest;

(iii) Such mortgage secures an original principal amount of debt which, when added to the then principal balance of all other debts secured by mortgages on Tenant's Leasehold Interest or any portion thereof does not exceed (a) with respect to the initial construction financing for the construction of Tenant's Improvements, sixty-five percent (65%) of the Approved Development Costs, (b) with respect to the initial permanent financing following the construction of Tenant's Improvements, which amount shall not be more than sixty-five percent (65%) of the fair market value of Tenant's Leasehold Interest at the time of such financing, and (c) with respect to any other debt secured by a Permitted Leasehold Mortgage(s), seventy-five percent (75%) of the fair market value of Tenant's Leasehold Interest as of the date of the financing;

(iv) Such mortgage is held by a holder who has delivered to the City a recordable written undertaking to be bound by and comply with the provisions of Section 14.3, and has not failed to comply with such undertaking;

(v) Such mortgage becomes due prior to the expiration of the Term, and does not contain or secure obligations unrelated to the Premises;

(vi) Such mortgage does not require any so-called "equity participation" or "kicker" payment, unless approved by the City;

(vii) Such mortgage is not a so-called "blanket mortgage" ("blanket mortgage" meaning a mortgage which covers more than Tenant's Leasehold Interest or debt which is not Approved Debt);

(viii) Such mortgage permits the disbursement of casualty insurance proceeds and payments made in connection with partial eminent domain takings, or conveyances under threat thereof, on the terms and conditions set forth in this Lease or any Recognition Agreement entered into between the City and such Permitted Leasehold Mortgagee;

(ix) For the initial construction financing, such mortgage is pursuant to documentation reviewed and approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed, and which review shall be limited to confirming consistency with the terms of this Ground Lease and the financing terms previously approved by Landlord; and

(x) The City agrees to provide Tenant within thirty (30) days of Tenant's request a written confirmation that a leasehold mortgagee or prospective leasehold mortgage qualifies as a Permitted Leasehold Mortgage hereunder.

"Permitted Leasehold Mortgagee" shall have the meaning set forth therefor in the definition of Permitted Leasehold Mortgage.

"Permitted Property Manager" shall have the meaning set forth therefor in **Section 9.2(c)**.

"Permitted Uses" shall have the meaning set forth therefor in **Section 9.1(a)**.

"Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

"Program of Preservation and Utilization" shall mean the Program of Preservation and Utilization included in the Application and approved by the NPS and the GSA including, without limitation, the preservation plan, the use plan and the financial plan.

"Prohibited Uses" shall have the meaning set forth therefor in **Section 9.1(b)(i)**.

"Project Budget" shall mean the budget for the Project, initially as approved by the City and attached hereto as **Exhibit D**.

"Personal Property" shall have the meaning set forth therefor in **Section 2.1**.

"Premises" shall have the meaning set forth therefor in **Section 2.1**. The Premises shall be deemed to include all Tenant's Improvements for all purposes of this Lease unless otherwise expressly provided herein.

"Preservation Covenants" shall mean the covenants and restrictions contained in the Deed.

"Property Management Agreement" shall have the meaning set forth therefor in **Section 9.2(c)**.

"Reasonable Profit" shall mean the phrase "reasonable profit" as used in the National Historic Monument Program and as further described for purposes of this Lease in Schedule 1 attached hereto.

"Refinancing Proceeds" shall mean the gross proceeds of a Refinancing Transaction, regardless of the time at which the same are disbursed to or on behalf of Tenant.

"Refinancing Transaction" shall mean any direct or indirect debt or equity, financing, refinancing or recapitalization of Tenant's Leasehold Interest or other interest in the Premises, or any portion thereof (including, without limitation, any mortgage financing or refinancing, sale-leaseback, or other transaction of a similar nature), with the exception of the initial financing for construction of Tenant's Improvements entered into on or about the Effective Date and the initial permanent debt financing replacing such initial financing for construction of Tenant's Improvements. Notwithstanding the foregoing, the transfer of any membership interests within Tenant or Investor Member (following Investor Member's admittance to Tenant as Tenant's investor member) that are permitted under the

Operating Agreement shall not be considered a "Refinancing Transaction" for the purposes of this Lease. In addition, notwithstanding the foregoing, any exercise of rights by a Permitted Leasehold Mortgagee, including without limitation, foreclosure or deed or assignment in lieu thereof, including without limitation a purchase of Tenant's interest in a foreclosure sale or the first sale or refinancing to occur after a Permitted Leasehold Mortgagee exercises any such rights, shall not be considered a "Refinancing Transaction" for the purposes of this Lease.

"Remedial Work" shall mean investigations, assessments, containment monitoring, response actions, removal actions, remedial actions or interim cleanup actions relating to known or suspected Hazardous Materials and any ongoing operations as required by applicable Environmental Laws.

"Rent" shall mean, collectively, Base Rent, Additional Rent, Percentage Rent and all other amounts due and payable under this Lease to the City or otherwise designated as Additional Rent.

"Rent Year" shall mean the twelve (12) month period commencing on January 1st of each year and each succeeding 12-month period (or portion thereof) commencing on an anniversary of such date and included within the Term; provided, however, that the initial Rent Year shall commence on the Base Rent Commencement Date and expire on December 31st of such year.

"Reserved Rights" shall have the meaning set forth therefor in **Section 2.1**.

"Reserve Fund" shall mean the Capital Expenditures and Maintenance Reserve Fund required by and described under **Section 7.9**.

"Revenue Producing Activities" shall mean "revenue producing activities" as used in the Federal Historic Monument Program including all actions, uses, services, amenities, and contracts with respect to the Property which produce income for the benefit of the Tenant or all Affiliates.

"Sale Proceeds" shall mean the gross proceeds of any sale or assignment of Tenant's Leasehold Interest or other interest in the Premises, or any portion thereof.

"Sign" shall have the meaning set forth therefor in **Section 7.6**.

"Standards for Rehabilitation" shall mean the Secretary of the Interior's Standards for the Treatment of Historic Property, as the same may be amended from time to time.

"Sublease" shall mean, collectively, all subleases, tenancies at will, concessions, licenses, operating agreements, or other occupancy arrangements of any nature whatsoever (whether written or oral) between Tenant and a Subtenant providing for the use, occupancy or operation of any portion of the Premises.

"Subsidiary" shall mean, with respect to any Parent, any Entity in which a Person owns, directly or indirectly through one or more Subsidiaries, the entire Equity Interest in such Subsidiary.

"Substantial Completion" shall mean substantial completion of the Project (excluding subtenant improvements), in accordance with the Final Plans and Specifications and the provisions of this Lease, as evidenced by delivery of a certificate by the architect of record for the Project.

"Subtenant" shall mean each party to a Sublease with Tenant.

"Taking" shall have the meaning set forth therefor in **Section 12.1**.

"Tenant's Construction Representative" shall have the meaning set forth therefor in **Section 4.10**.

"Tenant's Improvements" shall have the meaning set forth therefor in **Section 4.1**.

"Tenant's Leasehold Interest" shall mean Tenant's interest under this Lease for the Term in (i) Tenant's Improvements and the rents, issues and profits therefrom and (ii) the Premises.

"Term" shall have the meaning set forth therefor in **Section 3.1**.

"Threshold Amount" shall have the meaning set forth therefor in **Section 8.8**.

"Unaffiliated Person" shall mean, with respect to any Person, a Person who is not an Affiliate as to such Person.

ARTICLE 2

PREMISES

2.1. Lease of Premises. The City, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases to Tenant, and Tenant hereby leases from the City, for the Term, upon the terms and conditions set forth herein, the following described premises (hereinafter called the "Premises"):

The Premises shall consist of the Land in Portsmouth, NH, as more particularly described and shown in **Exhibit A** attached hereto, together with the improvements located thereon and thereunder as of the Effective Date and certain improvements to be constructed on and under the Premises by Tenant (as described in **Article 4**). The Premises are leased together with the benefits of the appurtenant rights and easements (sometimes referred to herein as the "**Appurtenant Rights**") set forth in **Exhibit A** and all matters of record to the extent in force and applicable. The Premises are leased subject to: (a) any facts that an accurate survey or personal inspection of the Premises would show; (b) easements, covenants and restrictions of record including without limitation those set forth in the Deed and in **Exhibit B** hereto; (c) the exclusions, encumbrances and rights reserved by the City as set forth in **Exhibit B** (the "**Reserved Rights**") and non-record matters identified in **Exhibit B**; (d) any applicable Legal Requirements; (e) violations of Legal Requirements, whether or not recorded or noted, against or affecting the Premises as the same may exist on the Effective Date; (f) all taxes, duties, assessments, special assessments, water charges and sewer rents and any other impositions by a Governmental Agency, fixed or not fixed, accruing from and after the Effective Date; and (g) the condition and state of repair of the Premises as the same may be on the Effective Date.

Notwithstanding anything to the contrary set forth in this Lease, during the Term of this Lease, (A) Tenant is and shall be deemed to be the sole owner of (i) Tenant's Improvements; and (ii) all

attachments, appliances, equipment, machinery and other articles used in connection with the Premises or Tenant's Improvements (the "**Personal Property**"); and (B) Tenant shall be the sole party entitled to all of the tax attributes of ownership of Tenant's Improvements and Personal Property including, without limitation, the right to claim deductions for depreciation or cost of recovery thereof and the right to claim any federal historic tax credits described in Section 47 of the U.S. Internal Revenue Code, as amended (the "**IRC**"), and the right to claim any state historic tax credits under New Hampshire General Laws c. 62, § 6J and c. 63, § 38R, and the right to amortize capital costs and to claim any other federal and state tax benefits attributed to Tenant's Improvements and the Premises.

For the avoidance of doubt, this Lease is intended to convey to Tenant all the benefits and burdens of ownership of the Premises and to cause Tenant to be treated as the owner of the Premises for federal income tax purposes. The parties agree to treat this Lease in a manner consistent with this intention, including filing all federal income tax returns and other reports consistently with such treatment. Landlord will not claim tax credits, depreciation or any other federal or state income tax benefits with respect to the Premises, or take any action which is inconsistent with this provision. Any and all depreciation, amortization and tax credits for federal, state or local tax purposes relating to the Premises and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively by Tenant during the Term and for the tax years during the Term. Any building and improvements that are on or part of the Premises and all alterations, additions, equipment and fixtures built, made or installed by the Tenant in, on, under or to the Premises shall be the sole property of the Tenant until the expiration of the Term or other termination of this Lease.

2.2 Condition of the Premises. Tenant acknowledges that Tenant has leased the Premises and has agreed to construct Tenant's Improvements, after a full and complete examination of the Premises, in their present "AS IS" "WHERE IS" condition, including, without limitation, subsurface conditions, existing improvements thereon, the presence of any Hazardous Materials located on the Premises or within such improvements, legal title, their present uses and non-uses, and Legal Requirements affecting the same, and accepts the Premises in the same condition in which they or any part thereof now are, and to have assumed all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of the City, and without recourse to the City. Tenant acknowledges and accepts the Premises subject to the Historic Monument Requirements. Tenant agrees to assume full responsibility for the Historic Monument Requirements during the term of this Lease.

2.3 Title. Tenant acknowledges that it has obtained a commitment for a leasehold owner's title insurance policy with respect to the Premises and that Tenant is solely responsible for curing any title defects identified by such title insurance commitment which may be necessary for the financing, development, completion, use or occupancy of the Premises by Tenant.

ARTICLE 3

TERM

3.1 Term. The term of this Lease (the "Term") shall begin on the Effective Date and end at 11:59 p.m. on the day before the seventy-fifth (75th) anniversary of the Effective Date, subject to all of the terms and conditions of this Lease, unless earlier terminated as provided herein.

3.2 Construction as a Lease. The City and Tenant do not intend this Lease or any related agreements to be construed as a sale. In the event that it should be determined by a final adjudication of a court of competent jurisdiction, or otherwise, in a binding manner on the Parties hereto, that this Lease is to be construed as a sale, the Parties agree that the provisions of **Section 3.1** shall be null and void and of no further effect without affecting the validity and enforceability of any other provisions in this Lease; *provided, however*, that a substitute Term shall be deemed, without further action by the City and Tenant, to have been immediately substituted by amendment to this **Article 3**, providing Tenant with the maximum Term consistent with any such judicial determination, up to the maximum Term contemplated by this **Article 3**. The length of such a substitute Term shall be determined by the City and, subject to the rights of any First Permitted Leasehold Mortgagee, Tenant in their reasonable judgment exercised in the light of such judicial determination.

ARTICLE 4

TENANT'S IMPROVEMENTS

4.1 Tenant's Improvements. Tenant shall, at its sole cost and expense, perform the following:

- (a) the construction of any related improvements and site work on the Premises described in the Final Plans and Specifications, including, without limitation, utility lines; access ways and driveways; sidewalks; stormwater management systems; loading facilities and site lighting.
- (b) the construction of related improvements located wholly or partially outside of the Premises, if any, including, without limitation, a stormwater management system; roadway connections; utility lines and utility connections; and all other infrastructure improvements, repairs, relocations and upgrades as necessary to develop the Premises for the Permitted Uses to the extent shown on the Final Plans and Specifications (collectively, the "**Off-Site Improvements**"); and
- (c) the performance of all mitigation measures, including without limitation any off-site mitigation measures required by any Governmental Agency issuing any Approvals or any other permits or approvals required in conjunction with the construction of Tenant's Improvements.

For the purposes of this Lease, the term "**Tenant's Improvements**" shall mean and include (i) the buildings and improvements described in clauses (a) - (c) of this **Section 4.1**, (ii) all buildings or structures hereafter erected on the Premises from time to time, and (iii) all expansions, alterations, additions, improvements and other modifications to any Tenant's Improvements.

Subject to delays due to Force Majeure Events to the extent provided in **Section 4.16** below, Tenant shall commence construction of Tenant's Improvements on or before the date that is ninety (90) days from and after the Effective Date, and shall diligently and continuously prosecute such improvements to Final Completion. Tenant shall achieve Substantial Completion of Tenant's Improvements substantially in accordance with the Final Plans and Specifications in no event occur later than _____ (___) months after the estimated date of Substantial Completion set forth in the Construction Schedule, which date shall be extend for delays due to Force Majeure and/or caused by the City, its employees or agents (the "**Outside Completion Date**").

For the purposes of this Lease, construction of Tenant's Improvements shall be deemed to have "commenced" upon the commencement of actual physical work (including, without limitation, demolition or site work) on the Premises or any portion thereof pursuant to a building permit (which may be a demolition, foundation or partial building permit) for the construction of Tenant's Improvements, and the date on which such commencement occurs shall be referred to herein as the "**Construction Commencement Date.**" For the purposes of this Lease, "**Final Completion**" of all Tenant's Improvements will be deemed to have occurred upon the date of final completion, as determined by the City in its reasonable discretion, of Tenant's Improvements in accordance with the Final Plans and Specifications, and shall require the issuance of a permanent Certificate(s) of Occupancy for _____.

Tenant's Improvements (except for the Off-Site Improvements) shall be constructed wholly within the lot lines of the Premises or within appurtenant easements. Tenant's Improvements shall be constructed in accordance with this **Article 4**, the Approved Development Plan, and the Final Plans and Specifications (it being agreed by Tenant that any Material Change Orders to the Final Plans and Specifications other than Field Changes and changes required by applicable Legal Requirements must be approved by the City to the extent provided under this Article 4 and, to the extent required by Historic Monument Requirements, NPS in advance), in a good, first class and workmanlike manner and in compliance with all Legal Requirements, all Historic Monument Requirements. Tenant shall comply with, and shall use commercially reasonable efforts to cause all of its contractors and suppliers of every tier to comply with, the provisions of the Construction Management Plan at all times.

All provisions of this **Article 4** shall apply to the permitting, financing, design and construction of all Tenant's Improvements (including, without limitation, Major Alterations) unless otherwise expressly provided in this **Article 4**.

4.2 LEED Certifiability. It is the mutual intention of the City and Tenant that any and all building(s) on the Premises initially constructed pursuant to the Final Plans and Specifications shall, to the extent practicable (including under Legal Requirements including such requirements relating to historic rehabilitation), be certifiable in the appropriate building category under the Leadership in Energy and Environmental Design (LEED) program in accordance with the land use regulations of the City of Portsmouth as applicable and then in effect as set forth in the Approvals for the initial development of the Premises.

4.3 Conditions Precedent to Commencement of Construction. Landlord and Tenant agree that each of the following conditions precedent has been satisfied:

(a) Approved Development Plan and Final Plans and Specifications. The City has approved Tenant's Development Plan and the Final Plans and Specifications with respect to Tenant's Improvements, which are attached hereto as **Exhibit C**;

(b) Approved Construction Schedule. The City has approved a final Construction Schedule prepared and submitted by Tenant, which is attached hereto as **Exhibit E**;

(c) Status of Tenant. As of the Effective Date, Tenant has provided to the City evidence reasonably satisfactory to the City to demonstrate that Tenant is a single purpose, single-asset

entity. Tenant's provision of copies of the Certificate of Formation filed with the New Hampshire Secretary of State and its Operating Agreement evidencing the same shall be deemed reasonable evidence thereof;

(d) Financing and Equity Contributions. As of the Effective Date, Tenant has delivered to the City evidence acceptable to the City, in the City's sole but reasonable discretion, that Tenant has sufficient funds, in financing commitments and/or commitments for equity investment, to complete construction of Tenant's improvements, in accordance with the Final Plans and Specifications therefor, and to cover all other project costs (including, without limitation, Approved Development Costs) relating thereto;

(e) Approvals. Tenant has obtained and submitted to the City copies of all Approvals required by applicable Legal Requirements for the construction of Tenant's Improvements (including, without limitation, a building permit), in each case with all appeal periods with respect to such Approvals having expired without an appeal being entered (or, if any appeal has been entered, such appeal having been dismissed with prejudice or denied by a final and non-appealable judgment), other than those that are customarily obtained after, or not required for, commencement of construction and are expected to be obtained in the ordinary course of business;

(f) Construction Security. Tenant has delivered to the City (i) (A) the Payment and Performance Bonds, subcontractor default insurance [TO BE REVIEWED ONCE TENANT'S CONSTRUCTION LENDER IS KNOWN] and/or such other security in accordance with the provisions of **Section 4.13** below, and (B) the Completion Guaranty in accordance with the provisions of **Section 4.13(b)**, together with (1) evidence reasonably acceptable to the City of (x) the legal existence and good standing of the Guarantor issued by the Guarantor's jurisdiction of formation and, if Guarantor is not formed in New Hampshire, a certificate of foreign registration and good standing from the Secretary of the State of New Hampshire, and (y) the authorization, due execution and enforceability of the Completion Guaranty with respect to the Guarantor, and (2) copies of current certified financial statements of the Guarantor [CONFIDENTIALITY PROTECTIONS TO BE DISCUSSED]; or (ii) other security for the full and timely payment and performance by Tenant of all obligations with respect to the construction of such Tenant's Improvements in form, amount and substance reasonably satisfactory to the City;

(g) Construction Contracts; Architect/Engineer's Contracts. Tenant has delivered to the City the fully-executed Construction Contracts and Architect/Engineer's Contracts, in form and content approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed;

(h) Assignment of Development Documents. Tenant has delivered to the City a fully executed conditional assignment of the Development Documents (the "**Assignment of Development Documents**"), in form and substance reasonably satisfactory to the City, executed by Tenant and consented to in writing by the other signatory to each such Development Document. Such Assignment of Development Documents shall, at the option of the City, be effective upon Tenant's Event of Default hereunder beyond applicable notice and cure period(s), *provided that* Tenant shall remain liable for the reasonable costs of all services performed (as well as the cost of all services requested but not yet performed) under the Development Documents prior to the date on which the City notifies the other party to such Development Document that such Assignment of Development

Documents is now effective. The City agrees that its rights under the Assignment of Development Documents shall be subject and subordinate to the rights of the First Permitted Leasehold Mortgagee(s) under any collateral assignments of the Development Documents;

(i) Agreement Regarding Use of Plans. Tenant has delivered to the City an agreement or agreements from Tenant's Architect/Engineer concerning the use by the City of all Final Plans and Specifications by the City in compliance with **Section 4.9** below;

(j) Construction Management Plan. The City has approved Tenant's Construction Management Plan, which is attached hereto as **Exhibit J**;

(k) Certificate of Approved Development Costs. As of the Effective Date, Tenant shall have delivered an updated certificate of the amount of Approved Development Costs, together with appropriate supporting documentation, and the City shall have approved the same, which approval shall not be unreasonably withheld, conditioned or delayed; and

(l) No Material Adverse Change. The City shall have received a certificate, dated within ten (10) days of the Construction Commencement Date and signed by a duly authorized officer of each of Tenant and the Guarantor (if any), confirming that no material adverse change has occurred with respect to (i) the financial condition of Tenant or the Guarantor as of the date of such certificate, or (ii) any of the reports, documents, plans or instruments delivered by Tenant or the Guarantor in accordance with the provisions of this Lease.

All submissions to be made by Tenant to the City pursuant to this **Section 4.3** shall be made sufficiently in advance of the scheduled Construction Commencement Date so as to allow the City a reasonable period to review and approve, disapprove or comment thereon prior to the scheduled commencement of construction. In no event shall any such material submission first be submitted less than thirty (30) days in advance of the scheduled Construction Commencement Date.

Notwithstanding the preceding provisions of this **Section 4.3**, in the event that any condition set forth in this **Section 4.3** has not been fulfilled on or before the Construction Commencement Date, the City, in its sole discretion, may elect to waive such condition. The City shall have no obligation to waive any such condition, it being understood that the preceding sentence is solely for the benefit of the City.

4.4 Approved Construction Schedule. Tenant's Approved Construction Schedule is attached hereto as **Exhibit C**.

4.5 Development Schedule: Diligent Efforts. The anticipated schedule (the "**Construction Schedule**") for the development of Tenant's Improvements, including, without limitation, the projected Construction Commencement Date and the Final Completion Date, is attached hereto as **Exhibit E**. Both Tenant and the City acknowledge that the Construction Schedule is of critical importance and agree to use reasonable efforts to cooperate with each other in order to maintain this schedule to the greatest extent possible.

Tenant shall keep the City's Construction Representative informed on a periodic (but not less than once every other week) basis, unless circumstances dictate the need to do so more frequently, as

to actual progress made on the construction of Tenant's Improvements. Tenant shall inform the City's Construction Representative of any deviation from the Construction Schedule which, in Tenant's good faith determination, is likely to cause a material delay in the Final Completion (as shown on the current Construction Schedule), reasonably promptly after such deviation becomes apparent.

Tenant agrees that it shall use commercially reasonable and diligent efforts to meet all of the Construction Milestone Dates set forth in the Construction Schedule. If Tenant fails to meet any such Construction Milestone Dates, it shall promptly notify Landlord and describe any impact on the Construction Schedule resulting therefrom. The parties shall discuss reasonable measures to expedite construction progress in such event.

4.6 City's Right to Review. The City shall have the right to review all aspects of any work being performed on the Premises by Tenant or its employees, agents and contractors to the extent reasonably required by the City to ensure that such work is being performed in a manner consistent with the rights and obligations of Tenant hereunder; provided, however, that, in connection with such review, the City shall not unreasonably interfere with the contractors and employees hired by Tenant to complete Tenant's Improvements.

4.7 No Obligation of the City. The City shall in no event be required to complete construction of all or any part of Tenant's Improvements or any other improvements on the Premises or elsewhere, if Tenant should fail to complete the same for any reason. The City shall in no event be required to maintain or repair or to make any alterations, rebuildings, replacements, changes, additions or improvements on or off the Premises during the Term of this Lease. Without limitation of the foregoing, the City shall not be liable for any loss, damage or injury of whatever kind caused by, resulting from, or in connection with (i) the supply or interruption of water, gas, electric current, oil, telephone service or any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or surface or subsurface area or from any part of the Premises, (iii) other leakage from pipes, appliances, sewer or plumbing works therein or from any other place, or (iv) for interference with air, light or other similar interests by anybody or caused by any public or quasi-public work, except to the extent that any of the foregoing is caused by the negligence or willful misconduct of the City, its employees or agents.

4.8 Final Plans and Specifications. Tenant acknowledges and agrees that all plans and specifications prepared or developed by or on behalf of Tenant in connection with Tenant's design, development, permitting and construction of all or any portion of Tenant's Improvements shall be subject to the review and approval of the City, not to be unreasonably withheld, conditioned or delayed. Tenant shall reimburse the City for all reasonable third party fees in connection with such review, which amount shall be payable as Additional Rent within ten (10) days after written demand therefor accompanied by reasonable supporting documentation. The final construction plans and specifications for Tenant's Improvements shall be developed by Tenant in accordance with the City's design review process shall, upon the approval thereof by the City, constitute the "**Final Plans and Specifications.**" If Tenant desires thereafter to modify any portion of the Final Plans and Specifications in any material respect, Tenant shall submit any such proposed modifications to the City for the City's approval. Within thirty (30) days of its receipt of the proposed modifications, the City shall notify Tenant in writing with reasonable specificity of any material inconsistencies to which the City reasonably objects between such modification and the Final Plans and Specifications previously approved by the City. Any written request to approve proposed modifications to the Final Plans and Specifications shall not be deemed

to have been received by the City unless it is sent to the attention of the City's Construction Representative in addition to those employees of the City identified in **Section 18.3** below. If the City has objected in writing to Tenant's requested modifications, Tenant shall submit to the City revised modifications to the Final Plans and Specifications to meet the City's reasonable objections (which revised modifications to the Final Plans and Specifications shall be reviewed as hereinabove provided, except that the City agrees to respond to Tenant approving or objecting with reasonable specificity within ten (10) days of Tenant's submission). Review and approval of any changes to Final Plans and Specifications shall also be subject to the review and approval of the NPS to the extent required by the Historic Monument Requirements.

4.9 The City's Right to Use Final Plans and Specifications. Prior to the Construction Commencement Date, Tenant shall deliver to the City an agreement or agreements in form and substance reasonably satisfactory to the City, executed by the Architect/Engineer(s) of record for Final Plans and Specifications, permitting the City or any party designated by the City, without additional payment (beyond that specified to be paid by Tenant in the applicable contract between Tenant and each such Architect/Engineer) to use the Final Plans and Specifications and any other plans and specifications delivered to Tenant to complete Tenant's Improvements if Tenant should fail to do so, and such failure constitutes an Event of Default beyond all applicable grace, notice and cure periods resulting in the City's termination of this Lease in accordance with **Section 15.2**. If, at any other time during the Term, Tenant engages any additional or replacement Architect/Engineer in connection with Tenant's Improvements, Tenant shall notify the City and, if the City so requests, Tenant shall furnish a similar agreement to the City prior to commencement of work by such Architect/Engineer. The City hereby agrees, for the benefit of such Architect/Engineer, by accepting such plans, that the City will use them only for completion of Tenant's Improvements. All agreements delivered by Tenant pursuant to this **Section 4.9** shall be expressly subject and subordinate to any assignments of such plans to the First Permitted Leasehold Mortgagee.

4.10 Construction Representatives. The City and Tenant shall each designate, by written notice from time to time to the other, a construction representative or representatives for the construction of Tenant's Improvements and, after notice thereof to the other and until such designation is changed or withdrawn, such construction representative shall deliver and receive all notices, approvals, communications, plans, specifications or other materials required or permitted to be delivered or received under this **Article 4**. As of the Effective Date, the construction representative designated by the City is _____, of _____ (the "**City's Construction Representative**"), and the construction representative designated by Tenant is _____, of _____ (the "**Tenant's Construction Representative**").

4.11 Required Approvals. The City and Tenant acknowledge and agree that as of the date of this Lease, all Required Approvals [except _____] have been obtained. A list of the Required Approvals is attached hereto as **Exhibit E**.

4.12 Reserved.

4.13 Construction Period Security. Tenant shall provide to the City, in form and substance satisfactory to the City, the following:

- (a) Payment and performance bond(s), including, without limitation, a blanket lien

bond ("**Payment and Performance Bonds**") of a surety company licensed to do business in New Hampshire, having an AM Best rating of A or better, and reasonably acceptable to the City, naming the City, Tenant, any First Permitted Leasehold Mortgagee, as obligees, as their respective interests may appear, in the aggregate amount of the stipulated sum(s) set forth in the applicable Construction Contract(s); provided that Tenant shall have the right to provide subcontractor default insurance for subcontractors in lieu of Payment and Performance Bonds [SUBJECT TO REVIEW ONCE TENANT'S CONSTRUCTION LENDER IS KNOWN];

(b) A completion guaranty substantially in the form attached hereto as **Exhibit G** (the "**Completion Guaranty**"), executed by the Guarantors, guaranteeing that Tenant's Improvements shall be completed in accordance with the terms of this Lease. If there is any change thereafter in the Guarantor of the First Permitted Leasehold Mortgage, Tenant shall furnish a Completion Guaranty from such replacement Guarantor.

4.14 Tenant's Contractor and Architect/Engineer. Tenant's Contractor and Architect/Engineer for the design and construction of Tenant's Improvements, as well as the Construction Contract and the Architect/Engineer's Contract, shall be subject to review and reasonable approval by the City prior to the Construction Commencement Date, such review and approval with respect to the contracts to be solely for assuring that the Architect/Engineer's Contract and Construction Contract are consistent with the requirements of, and Tenant's obligations under, this Lease (including, without limitation, Tenant's obligation to build Tenant's Improvements in accordance with such approved Final Plans and Specifications). The Construction Contract shall include a stipulated sum or guaranteed, maximum price. The Construction Contract and any contracts with subcontractors shall also include provisions with respect to insurance and suretyship reasonably satisfactory to the City for the protection of the City, laborers, suppliers, subcontractors and the public, consistent with the terms and conditions of this Lease. The City shall have the right to review and approve any proposed amendments or change orders that are inconsistent with the Approvals (a "**Material Change Order**"). The City acknowledges that change orders are customarily proposed in the middle of an active construction project, and that Tenant shall be permitted to make change orders without the City's consent (and such change order shall not be considered Material Change Orders) to comply with applicable Legal Requirements or the requirements of any Governmental Authority (including without limitation the Historic Monument Program Requirements) and to make Field Changes so long as such modifications are consistent with all applicable Legal Requirements and the requirements of any applicable Governmental Authority and do not involve both a substantial downgrade in the Tenant's Improvements and modifications to any Approvals, and the City agrees to use all reasonable efforts to review any proposed Material Change Orders promptly to enable Tenant to proceed with construction in a continuous manner. The City shall be given an opportunity to review and reasonably approve any proposed material amendment to, or any new or substituted agreement of, the Construction Contract or the Architect/Engineer's Contract. Any such review and approval by the City shall be solely for assuring that any such amendment to or new or substituted form of Construction Contract or Architect/Engineer's Contract are consistent with the requirements of, and Tenant's obligations under this Lease. Any written request to approve an amendment to or a new or substituted Construction Contract or Architect/Engineer's Contract shall not be deemed to have been received by the City unless it is sent to the attention of the City's Construction Representative in addition to those employees of the City identified in **Section 18.3** below. The City shall respond to Tenant's request for approval to such material amendment or substituted form of Construction Contract or Architect/Engineer's Contract within ten (10) business days of Tenant's submission. If Tenant desires to engage another Contractor or Architect/Engineer for Tenant's

Improvements, the same shall be subject to the City's prior written reasonable approval in accordance with the terms of this **Section 4.14**. [City approval rights with respect to Change Orders and Field Changes to be appropriately expanded once final Plans and Specifications are prepared.]

4.15 Ownership. During the Term, title to Tenant's Improvements shall be vested in Tenant, and Tenant shall be entitled to any depreciation deductions and investment tax credits thereon for federal and state income tax purposes. Subject to **Section 14.2(e)**, in the event of the expiration or earlier termination of this Lease, title to Tenant's Improvements shall immediately vest in the City and shall be surrendered at that time in accordance with **Section 15.1**.

4.16 Force Majeure. A delay in or a failure of performance by the City or Tenant in the performance of their respective obligations under this **Article 4** or under any other provision of this Lease which specifically refers to a Force Majeure Event, shall not constitute a default under this Lease to the extent that such delay or failure of performance (i) could not be prevented by such Party's exercise of reasonable diligence and (ii) results from either (a) the other Party's failure to perform its obligations under this Lease, or the gross negligence or willful misconduct of the other Party or of its employees, agents, or others for whom such other Party is legally responsible; or (b) acts of God, or of the public enemy, fire, flood or other casualty, epidemic, quarantine restrictions, war, unexpected market conditions, public disturbance and/or strikes or other labor disturbances, litigation, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during construction by Tenant (such as shortage of materials, fuel or labor; the bankruptcy or financial failure of a contractor, subcontractor or supplier), or delays of contractors or subcontractors due to such causes, or delays in obtaining any Approvals; or (c) other causes beyond such Party's reasonable control (a "**Force Majeure Event**"). The following shall, in no event, be deemed to be Force Majeure Events: inability to obtain financing; Tenant's financial condition; delays due to soil conditions which are known or foreseeable with the exercise of reasonable diligence; or delays of, or changes in, or cancellation of construction of roadways, transportation infrastructure and related improvements. Tenant agrees to use commercially reasonable efforts to minimize the delay and other adverse effects of any Force Majeure Event.

4.17 Notice of Force Majeure Event. Tenant and the City shall each provide the other with written notice in accordance with the provisions of **Section 18.3 as soon as reasonably practicable** of any Force Majeure Event excusing its delay or non-performance. Each Party shall keep the other Party reasonably informed of any development pertaining to such Force Majeure Event.

4.18 Extension of Outside Completion Date. Tenant shall be entitled to an extension of the Outside Completion Date to the extent that a Force Majeure Event causes a delay in the performance of Tenant's obligations under this **Article 4**; provided, however, except as set forth in the remainder of this **Section 4.18**, in no event shall the Outside Completion Date be extended more than one hundred eighty (180) days in the aggregate unless Tenant is using diligent good faith efforts to overcome the Force Majeure Event. If at the end of said 180-day period Tenant has not overcome the Force Majeure Event despite using diligent good faith efforts, Tenant may extend the Outside Completion Date by up to one additional 150 day period. [TO BE DISCUSSED ONCE FINAL CONSTRUCTION AGREEMENT IS PREPARED]

4.19 Electronic Drawings. After the Final Completion of any Tenant Improvements, within ninety (90) days after the City's written request therefor, Tenant shall prepare (or cause to be prepared)

at its expense and deliver to the City two (2) half-size paper sets and one (1) set in digital format of each of the following: (i) as-built plans showing such Tenant Improvements, and (ii) an ALTA/ACSM Survey by a State of New Hampshire registered land surveyor showing the location of such Tenant Improvements on the Premises, all in accordance with the reasonable requirements of the City for such materials as in effect from time to time.

4.20 Tenant's Responsibility to Discharge Liens. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or any Tenant's Improvements, the underlying fee, or any part thereof with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming by, for or under Tenant, Tenant, within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy the City may have, if such lien shall continue for fifteen (15) days after notice from the City to Tenant, the City may (subject to the rights of Permitted Leasehold Mortgagees), but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding or otherwise, and in any such event the City shall be entitled, if the City so elects upon another fifteen (15) days' notice from the City to Tenant, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by the City and all reasonable third party costs and expenses incurred by the City in connection therewith, together with interest at the Default Rate from the respective dates of the City's making of the payment or incurring of the cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to the City within thirty (30) days following the City's written demand therefor accompanied by reasonable supporting documentation.

Notwithstanding the foregoing, Tenant may contest, in good faith by appropriate proceedings, at Tenant's sole expense, the amount or validity in whole or in part of any mechanic's, laborer's or materialman's lien, and may defer the discharge of record thereof, provided that:

(a) Tenant shall provide the City with security reasonably satisfactory to the City to assure payment of contested items, provided, however, that any security that is approved by the First Permitted Leasehold Mortgagee shall be deemed approved by the City, if requested by the City;

(b) Tenant shall immediately pay such contested item or items if the protection of the Premises or the City's interest therein, from any lien or claim shall, in the reasonable judgment of the City, require such payment;

(c) The City shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of the City. The City shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless the City from any such costs and expenses; and

(d) Notwithstanding the provisions of subparagraph (c) above, the City shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the City of Portsmouth or the State of New Hampshire, or the United States of America, or any

agency, City, branch, commission, division, office or subdivision of or for the City of Portsmouth or the State of New Hampshire, or the United States of America, nor shall the City be required in connection with any such proceeding or otherwise to oppose in any way any policy established by the City nor to take any position inconsistent with a position taken and made public by the City.

Subject to the foregoing, and without cost to it, the City shall execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any such lien and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

4.21 No Consent. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of the City, 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 specific improvement, alteration to, or repair of the Premises or any part thereof.

4.22 City's Right to Notice, Access and Review. Tenant agrees that the City, and its authorized representatives, shall have such rights of notice, access and review with respect to the Premises, Tenant's Improvements and the Construction Contract as is reasonably necessary to ensure compliance with the provisions of this **Section 4.22**, including, without limitation, the following (provided, however, that, in connection with the exercise by the City of its rights hereunder, the City shall not unreasonably interfere with Tenant and the contractors and subcontractors constructing Tenant's Improvements or with any Subtenant):

(a) the opportunity to observe the construction of Tenant's Improvements on the Premises upon reasonable prior notice to Tenant provided that the City's representatives shall not interfere with any work being performed at the Premises and shall comply with all safety standards and other job-site rules and regulations of Tenant and Tenant's contractors;

(b) the delivery by Tenant to the City's Construction Representative of one (1) copy of the items in clauses (ii), (iv), and (ix) below; *provided, however*, that, if an uncured Event of Default by Tenant is continuing, the City may request and Tenant shall deliver to the City copies of all other items:

(i) all agreements with contractors, subcontractors, suppliers, vendors and other persons supplying materials or services in connection with the construction of Tenant's Improvements;

(ii) all insurance certificates required by **Article 8** of this Lease (including those of Tenant, Contractor, Architect/Engineer and all contractors and subcontractors);

(iii) all contractors' and subcontractors' requisitions for payment and the Contractor's schedule of values;

(iv) monthly updates to the applicable Construction Schedule (as defined below), which updates shall show all material variances;

(v) all minutes of weekly on-site construction meetings;

(vi) any claims of any sort or nature whatsoever with respect to the applicable Construction Contract;

(vii) any claims of any sort or nature whatsoever related to Tenant's Improvements (other than those claims set forth in clause (vi) above);

(viii) any accident reports or reports related to safety incidents at the Premises during the construction of Tenant's Improvements; and

(ix) updates on the status of any ground/building settlement monitoring required by the Approvals.

4.23 Construction Management Plan. Tenant has provided to the City, and the City has approved as of the Effective Date, a Construction Management Plan for the construction of Tenant's improvements. A copy of the approved Construction Management Plan is attached hereto as **Exhibit J**. Tenant shall comply with, and shall use commercially reasonable efforts to cause all of its contractors and suppliers of every tier to comply with, the provisions of the approved Construction Management Plan at all times.

4.24 Deemed Approval. The City shall grant or withhold approval of any request by Tenant under this Article 4 within the time frames applicable to such request. The City's approval of any such request for approval shall be deemed granted as requested by Tenant if (i) Tenant's request for such consent specifically references this Section and contains in a conspicuous type on the top of the first page of such request the following language in bold and prominent print: "YOU SHALL BE DEEMED TO HAVE GRANTED TO TENANT THE APPROVAL REQUESTED HEREIN IF YOU FAIL TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN ____ AFTER YOUR RECEIPT OF THIS REQUEST", with the blank space in the foregoing language completed with the applicable timeframe under this Article 4, and (ii) Landlord fails to respond within such time frame. [NEED TO DISCUSS CONSENT/APPROVAL PROCESS]

ARTICLE 5

RENT

5.1 Base Rent.

Commencing on the date that is eighteen (18) months after the date of issuance of the first building permit for the full Project (the "**Base Rent Commencement Date**"), and continuing on the first day of each and every month thereafter during the Term, Tenant shall pay the City annual base rent (the "**Base Rent**"), paid in equal monthly installments in advance without notice, demand, setoff, reduction or recoupment. The Base Rent for the first Rent Year shall be \$100,000.00, except that for the initial and last Rent Years, such Base Rent shall be apportioned for such partial period on a 365 day per year per diem basis. Base Rent shall increase by 2.5% every Rent Year throughout the Lease Term commencing on the first anniversary of the Base Rent Commencement Date and on each subsequent anniversary of the Base Rent Commencement Date.

5.2 Distribution of Refinancing Proceeds. Refinancing Proceeds shall be distributed in the following amounts and in the following priority, any such amounts to be paid simultaneously with the payment to Tenant of the applicable Refinancing Transaction:

(a) First, to Tenant up to an amount equal to all of the reasonable and actual third-party costs and other customary costs and fees paid by Tenant with respect to such Refinancing Transaction;

(b) Second, to the First Permitted Leasehold Mortgagee until all amounts of Approved Debt, if any, due and owing the First Permitted Leasehold Mortgagee under the First Permitted Leasehold Mortgage is paid to the First Permitted Leasehold Mortgagee;

(c) Third, to any other Permitted Leasehold Mortgagee until the balance of Approved Debt secured by such Permitted Leasehold Mortgage, including accrued and unpaid interest thereon, and all other amounts, if any, then due and owing such Permitted Leasehold Mortgagee under its Permitted Leasehold Mortgage at the time of such Refinancing, is paid to such Permitted Leasehold Mortgagee;

(d) Fourth, to the City 7.5% of all Net Refinancing Proceeds for the first Refinancing Transaction and 10% of all Net Refinancing Proceeds for all Refinancing Transactions thereafter (for purposes of this Section, "Net Refinancing Proceeds" shall mean gross proceeds of the Refinancing Transaction less any lender required reserves funded by Tenant at the closing of such Refinancing Transaction and less the amounts of sub-clauses (a), (b) and (c) above); and

(e) Fifth, to the Tenant the remaining balance.

5.3 Distribution of Sales Proceeds. Sales Proceeds shall be distributed in the following amounts and in the following priority, any such amounts to be paid simultaneously with the payment to Tenant of the applicable Sales Transaction:

(a) First, to Tenant up to an amount equal to all of the reasonable and actual third-party costs and other customary costs and fees paid by Tenant with respect to such Sales Transaction;

(b) Second, to the First Permitted Leasehold Mortgagee until all amounts of Approved Debt, if any, due and owing the First Permitted Leasehold Mortgagee under the First Permitted Leasehold Mortgage is paid to the First Permitted Leasehold Mortgagee;

(c) Third, to any other Permitted Leasehold Mortgagee until the balance of Approved Debt secured by such Permitted Leasehold Mortgage, including accrued and unpaid interest thereon, and all other amounts, if any, then due and owing such Permitted Leasehold Mortgagee under its Permitted Leasehold Mortgage at the time of such Sales Transaction, is paid to such Permitted Leasehold Mortgagee;

(d) Fourth, to the City 20% of Project Profit in excess of an 18% internal rate of return (calculated in accordance with Schedule 1), if any; and

(e) Fifth, to the Tenant the remaining balance.

5.4 Additional Rent. From and after the Effective Date, Tenant shall also pay, as additional rent, all sums, Impositions, costs, expenses, late charges, and payments of every kind and nature (including, without limitation, Percentage Rent) which Tenant in any of the provisions of this Lease assumes or agrees to pay, whether payable initially to the City or a third party pursuant to the terms of this Lease (collectively, "**Additional Rent**"), and, in the event of any non-payment thereof, the City shall have (in addition to all other rights and remedies) all of the rights and remedies provided for herein or by law in the case of non-payment of all other types of Rent. [NOTE: Payment of Excess Income to the City to be addressed consistent with final approved Application.]

5.5 Occupancy By Tenant or Affiliates. For purposes of computing Income for the determination of Excess Income from time to time due and payable by Tenant hereunder, any space in the Tenant's Improvements which is occupied by Tenant or any Affiliate of Tenant shall be deemed to generate rent received by Tenant on account thereof at a rate equal to the Fair Market Rent thereof, as reasonably determined by the City. Tenant shall specifically identify with each payment of Excess Income made to the City pursuant to **Section 5.5** the floor area and location of all space occupied by Tenant or any Affiliate of Tenant during the period with respect to which such Excess Income was calculated.

5.6 Percentage Rent. Beginning in the eleventh (11th) Rent Year following the Base Rent Commencement Date, in addition to Base Rent, Tenant shall pay to the City 1% of all Income from the Premises. Such amounts are sometimes referred to herein as "Percentage Rent". Percentage Rent shall be paid to the City by Tenant annually within 120 days after the end of every Rent Year. All Percentage Rent received by the City shall be used by the City for purposes authorized under the Federal Historic Monument Program.

5.7 Books and Records; Audit Rights; Statements.

5.7.1 Books and Records; Audit Rights.

(a) At all times during the Term of this Lease, Tenant shall keep and maintain accurate and complete books and records pertaining to the Premises and to the calculation of Rent, Income and Excess Income and any other amounts coming due under this Lease (such books and records being herein the "**Books and Records**"). [DISCUSS APPROPRIATE CONFIDENTIALITY PROTECTION FOR FINANCIALLY SENSITIVE DATA AND PROPRIETARY INFO.]

(b) The Books and Records and each budget, report, financial statement or other item of financial information delivered to the City shall be maintained and presented in accordance with GAAP and with generally accepted auditing standards. Tenant (and any Permitted Property Manager) shall make such Books and Records available on the Premises, at another location within the City of Portsmouth selected by Tenant, or at another mutually agreed upon location at reasonable times during Tenant's regular business hours upon reasonable notice to Tenant; provided, however, that the City shall not examine such Books and Records more than once in any 24 month period except during the continuation of a monetary Event of Default by Tenant under this Lease. Such Books and Records shall be segregated from other records of Tenant and the Permitted Property Manager relating to matters outside the scope of this Lease. In the event of a conflict between the defined terms in this

Lease and GAAP, the Lease definitions shall control.

(c) For purposes of this Lease, the Books and Records shall include, without limitation, the gross income, with respect to each Rent Year and all pertinent records that would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Income and Excess Income.

The City, its agents and accountants, shall have the right, upon reasonable prior notice, to make any examination or audit of the Books and Records that the City may desire at any time during Tenant's regular business hours at the City's cost except as set forth below in this paragraph provided, however, that the City shall not examine such Books and Records more than once in any 12 month period except during the continuation of a monetary Event of Default by Tenant under this Lease. Such right of inspection and audit may be exercised at any time within three (3) years after receipt by the City of the Tenant's financial statements for the Rent Year to which such Books and Records relate, and Tenant and any Permitted Property Manager shall maintain all such Books and Records for at least such period of time and, if any dispute between the Parties has arisen and remains unresolved at the expiration of such period of time, for such further period of time until resolution of such dispute. Tenant will make such Books and Records available to the City within seven (7) Business Days of the City's request. If such audit discloses an underpayment by Tenant of Base Rent in any Rent Year, or any underpayment by Tenant of any Percentage Rent, Tenant shall promptly pay such liability, together with interest thereon at the Default Rate from the time such payment should have been made. If such audit shows Tenant overpaid any Base Rent or any Percentage Rent, the City shall promptly pay such liability, together with interest thereon at the Default Rate from the time such overpayment was made. In the case of any underpayment of Percentage Rent and Base Rent by more than five percent (5%) for such Rent Year, Tenant shall, in addition, promptly pay the reasonable third party cost of the City's audit not to exceed \$10,000.

5.7.2 Annual Statements. For each Rent Year (or portion thereof) included in the Term, Tenant shall deliver to the City without notice or demand and within 120 days after the end of each Rent Year a statement confirming all items necessary to calculate all categories of Rent due from Tenant to the City with respect to the preceding Rent Year, and setting forth the calculations of the total amount of Rent to be paid for such Rent Year in accordance with this Lease, with such annual statement to be prepared consistent with Tenant's record keeping practices and certified by an officer of tenant as correct ("**Annual Statement**"). Each Annual Statement shall include an itemization of the following:

5.7.2.1 all Income from the Premises broken down by each other source of Income, together with an itemization of amounts deducted by Tenant from gross revenue in calculating Excess Income as shown on such statement;

5.7.2.2 Rent paid or due from Tenant to the City, including separate statements of Base Rent, Percentage Rent and Additional Rent;

5.7.2.3 The amount of Refinancing Proceeds and/or Sales Proceeds (on both a gross and net basis) generated during such Lease Year and calculation of amounts owed to the City therefrom;

5.7.2.4 The then-current outstanding principal balance of Approved Debt;

5.7.2.5 The then-current amount of capital or equity invested in Tenant or in the Premises; and

5.7.2.6 The amount then on account in the Reserve Fund.

5.7.3 Year End Adjustments. Any adjustments with respect to the amount of Rent actually paid or due and owing during such prior Rent Year shall be made with respect to each Rent Year (or portion thereof) thereafter included in the Term, at the time Tenant delivers the Annual Audit to the City. Any Rent due and owing from Tenant to the City on account of such prior Rent Year as disclosed by such Annual Audit shall be delivered to the City with such Annual Audit. Any overpayment of Rent made by Tenant to the City which is disclosed by such Annual Audit shall be credited against Base Rent payable in succeeding Rent Years, commencing with the first monthly payment of Base Rent due thereafter, or if a credit against Base Rent would not fully reimburse the Tenant then the City shall refund such overpayment to Tenant within thirty (30) days of the delivery of such Annual Audit.

5.7.4 Refinancing or Sales Proceeds. In connection with any Refinancing Transaction or Sales Transaction, Tenant shall provide to City a detailed calculation of the Net Refinancing Proceeds of such Refinancing Transaction or Sales Transaction, together with a copy of the settlement statement for such Refinancing Transaction or Sales Transaction. Tenant shall also provide to the City copies of any appraisals and/or environmental reports prepared for Tenant in connection with any Refinancing Transaction or Sales Transaction during the term of the Lease simultaneously with the closing of any such transactions.

5.7.5 Tenant Financial Information. [Further appropriate disclosures to be discussed.]

5.7.6 Special Requirements for Revenue-Producing Activities. In addition to and not in substitute of the foregoing financial reporting requirements, the parties recognize that the Preservation Restriction and the Deed to the City contain a requirement that, if the Property is used for income-producing or revenue-producing activities, certain auditing and reporting requirements apply with respect to the Tenant's use of the Property. The Parties acknowledge that these auditing and reporting requirements are binding on the City, and that Tenant, its successors and assigns, during the Term of this Lease will comply with such requirements to the extent applicable to Tenant. Where applicable laws and regulations require the City to fulfill said auditing and reporting requirements, Tenant agrees to use commercially reasonable efforts to assist the City in so doing. Tenant agrees to make the Books and Records available for inspection by the City from time to time pursuant to **Section 5.7.1** as may be necessary to ensure compliance with the financial aspects of the Preservation Restriction.

5.7.7 Warranty of Information. Each delivery of monthly or annual reports or statements under this Section or financial information in regard to the Premises under this Lease shall constitute a representation and warranty by Tenant to its knowledge that such report, statement or other information is presented in compliance with this Section in all material respects.

5.8 The City's Right To Perform Tenant's Covenants.

(a) Performance by the City. If Tenant shall, at any time beyond the expiration of any applicable notice and grace period provided in this Lease, fail to pay any Imposition in accordance with the provisions of **Article 6** hereof, or to take out, pay for, maintain or deliver any of the insurance policies or certificates provided for in **Article 8** hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed, then the City may, but shall be under no obligation to:

- (i) pay any Imposition payable by Tenant pursuant to the provisions of **Article 6** hereof, or
- (ii) take out, pay for and maintain any of the insurance policies provided for in **Article 8** hereof, or
- (iii) make any other payment or perform any other act on Tenant's part to be made or performed as provided herein.

In addition, the City may, subject to the terms of the Subleases and rights of Subtenants, after reasonable prior written notice to Tenant, enter upon the Premises during the continuation of an Event of Default of Tenant under this Lease and take all such actions thereon, as may be necessary to perform any such other act on Tenant's part to be performed that is the reason for the Event of Default.

(b) Reimbursement. All sums properly paid by the City under **Section 5.8(a)(i) through (iii)** and all reasonable third party costs and expenses incurred by the City, including reasonable attorneys' fees and expenses, in connection with the performance pursuant to the last sentence of **Section 5.8(a)** of any such other act together with interest at the Default Rate from the date of demand for payment by the City of such cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to the City within thirty (30) days after written demand by the City accompanied by reasonable supporting documentation. If the City shall exercise its rights under **Section 5.8(a)** to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and the City shall be entitled to exercise any remedy it may have, contained in this Lease or otherwise, if Tenant shall fail to pay such Additional Rent to the City within five (5) days after written notice from the City that Tenant has failed to pay such amounts when due. All costs incurred by the City hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

(c) Entry. During the progress of any work on the Premises which may, under the provisions of this **Section 5.8**, be performed by the City, the City may keep and store in the areas in which such work is being conducted all necessary materials, tools, supplies and equipment. The City shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant or any contractor, subcontractor, Subtenant, guest, licensee or operator by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, except to the extent caused by the negligence or willful misconduct of the City, its employees or agents, and the obligations of Tenant under this Lease shall not be affected thereby.

5.9 Net Lease. It is the purpose and intent of the City and Tenant that this is a net lease and that all Rent shall, except as herein otherwise explicitly provided, be absolutely net to the City. Tenant agrees that, except as herein otherwise expressly provided, Tenant shall pay all costs, charges and expenses of every kind and nature whatsoever against or in connection with the construction, development, use and operation of the Premises as if Tenant were the owner of the Premises which may arise or become due during the Term.

5.10 Payments; Late Charges. Until Tenant shall have been given notice otherwise by the City, Tenant shall pay all Rent to the City at the following address:

City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801
Attention: Nancy Colbert Puff

Except as otherwise expressly provided in this Lease, all Rent shall be paid by Tenant to the City without notice, demand, abatement, deduction or offset under any circumstances, or for any cause or reason. Tenant's default in the due and punctual payment of Rent or other sums due and payable under this Lease, when and as the same shall become due and payable, shall obligate Tenant, upon the City's demand, to pay interest on such amounts at the Default Rate from the date such payment was due and payable.

5.11 No Partnership or Joint Venture. Nothing contained in this Lease shall be construed to create a partnership or joint venture between the City and Tenant or to make the City an associate in any way of Tenant in the conduct of Tenant's business, nor shall the City be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the Parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

ARTICLE 6

IMPOSITIONS AND UTILITIES

6.1 Impositions. Tenant shall pay or cause to be paid as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, payments in lieu of taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien upon, the Premises, Tenant's Improvements, or the leasehold, or any part thereof or any appurtenance thereto, whether such charges are made directly to Tenant or through or in the name of the City (all such taxes, payments in lieu of taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges being hereafter referred to as "**Impositions**"). Tenant shall pay real estate taxes for the Premises, Tenant's Improvements, the leasehold and any appurtenance thereto to the extent required by applicable law (including RSA Chapter 72:23, I) as if the Tenant were the owner of fee simple title to the Premises. Pursuant to RSA

72:23, I (b), failure of Tenant to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by Landlord. In no event shall any such real estate taxes or payments be deducted from Base Rent payable to Landlord; *provided, however*, that

(a) If, by law, any Imposition may at the option of the taxpayer be paid in installments, Tenant may pay the same in such installments over such period as the law allows; and

(b) All Impositions for the fiscal years in which the Term of this Lease shall begin and end shall be apportioned so that Tenant shall pay only those portions thereof which correspond with the portion of said year as is within the Term hereby demised.

If, and to the extent to which, the Premises or any portion thereof constitute a separate tax parcel as to which the City, acting in its capacity as the taxing authority, is permitted to bill Tenant directly for the payment of any Impositions, Tenant shall make arrangements with the City, acting in its capacity as taxing authority, to receive such bill and shall pay all amounts due thereunder directly to City, acting in its capacity as taxing authority, before any fine, penalty, interest or cost may be added thereto for nonpayment. For purposes of this Lease the term "Additional Rent" shall include all such Impositions.

6.2 Receipts. Tenant, upon request of the City, shall furnish to the City prior to the date when any Imposition would become delinquent, official receipts of the appropriate taxing City, or other evidence reasonably satisfactory to the City, evidencing the payment thereof.

Tenant may seek a reduction in the valuation of the Premises or Tenant's Leasehold Interest assessed for tax purposes, and may contest in good faith by appropriate proceedings, at Tenant's expense, the amount or validity in whole or in part of any Imposition, and may defer payment thereof if allowed by law, provided that:

(a) Tenant shall provide the City with security reasonably satisfactory to the City to assure payment of contested items (if not advanced prior to such contest);

(b) Tenant shall immediately pay such contested item or items if the protection of the Premises or of the City's interest therein from any lien or claim shall, in the reasonable judgment of the City, require such payment; and

(c) The City shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of the City. The City shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless the City from any such costs and expenses; and

(d) Notwithstanding the provisions of subparagraph (c) above, the City shall not be required to join in or become a party, nominal or otherwise, to any proceeding (although it may elect to do so in its sole and absolute discretion) in which it will oppose the City of Portsmouth or the State of New Hampshire, or the United States of America, or any agency, authority, branch, commission, division, office or subdivision of or for the City of Portsmouth or the State of New Hampshire, or the United States of America, nor shall the City be required in connection with any such

proceeding or otherwise to oppose in any way any policy established by the City nor to take any position inconsistent with a position taken and made public by the City.

Subject to the foregoing, and without cost to it, the City shall execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any valuation or Imposition and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

6.3 Utilities.

(a) Tenant shall pay (or cause its subtenants to pay), as Additional Rent, directly to the utility provider, all charges by any public authority (including the City, as the case may be) or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, and service inspections made therefor, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of the public authority.

(b) Tenant, at its sole cost and expense, shall install and maintain all utility infrastructure constructed by Tenant on the Premises, including, without limitation, connections and services as may be required for the operation of the Tenant's Improvements.

6.4 No Liability of the City. The City in its capacity as Landlord under this Lease shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam, heat, gas, hot water, electricity, light and power. Pursuant to this Lease, the City is granting Tenant the right and easement to tie into the existing sources of such facilities and services in their existing locations to the extent located in adjacent streets and ways owned or controlled by the City and to the extent necessary to operate Tenant's Improvements, it being understood, however, that the City makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply Tenant's Improvements.

In the event that Tenant determines that the enlargement, improvement or expansion of existing sources of supply, distribution points or utilities is necessary to supply Tenant's Improvements, such enlargement, improvement or expansion shall be the obligation, and the expense, of Tenant and shall be undertaken in accordance with plans and specifications approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, it being understood that (x) the City shall cooperate with Tenant in obtaining such utilities for Tenant's Improvements as Tenant may from time to time reasonably request (which cooperation shall include, without limitation, the granting, without further expense, of easements over the City's adjoining streets in locations reasonably approved by the City, to the extent of, and as limited by, the City's interest (if any) in such streets or ways), and (y) the City shall not unreasonably withhold, delay or condition its approval of the plans and specifications for any such utilities or, provided that the location of the same will not materially and adversely impact the planned development of the Premises or any of the City's adjacent property, any easement over the City's streets required in connection therewith. The City agrees to respond to Tenant's requests for approval under this Section 6.4 within ten (10) Business Days after Tenant's request.

ARTICLE 7
MAINTENANCE AND ALTERATIONS

7.1 Repair and Maintenance. Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises, including, without limitation, all improvements now or hereafter erected thereon, (including, without limitation, all Tenant's Improvements, sidewalks, paved areas, exterior lighting, street fixtures, utility lines and facilities, drainage lines and facilities, and all other equipment and appurtenances used in the functioning of the Premises or any portion thereof) and all sidewalks, street fixtures, lights and furniture, curbs and entrance ways adjoining the same, and shall keep the same in good order, condition and repair, except for (i) reasonable wear and tear, (ii) damage from a Taking or a Casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder, and (iii) damage caused by the City or its employees or contractors, and Tenant shall make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. All repairs made by Tenant shall be performed in accordance with the construction standards and requirements set forth in **Article 4**, including, without limitation, delays due to Force Majeure Events as provided in **Section 4.16**, and shall be substantially equal or better in quality and class to the then-existing quality of Tenant's Improvements being repaired and shall be made in compliance with applicable Legal Requirements.

Tenant shall cause Tenant's Improvements to be inspected no less frequently than once every ten (10) years during the Term by a qualified professional engineer registered in the State of New Hampshire and approved by the City in its reasonable discretion, who shall deliver a detailed report to both Tenant and the City not later than each tenth (10th) anniversary of the Effective Date, which report shall describe in reasonable detail the condition of Tenant's Improvements and any maintenance, repairs or replacements recommended to be made thereto or performed thereon in order to maintain the same in good order, condition and repair (the "**Physical Conditions Report**"). The Physical Conditions Report shall be signed and certified by the engineer performing the inspection. If Tenant fails to obtain an inspection report when required to do so by this Section, the City may obtain such a report, at Tenant's cost. Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Premises.

7.2 Cleaning: Landscaping: Snow Removal. Tenant shall put, keep and maintain all portions of the Premises, including interior parking and driving surfaces and entrance and exit ramps, and the sidewalks and curbs and landscaped areas (including, without limitation, the irrigation system therefor) adjoining the same in a clean, well-maintained, and orderly condition, reasonably free of dirt, mud, standing water, rubbish, snow, ice, obstructions and physical encumbrances, and shall properly dispose of all such dirt, rubbish, snow and ice.

7.3 Excavation and Shoring. If any excavation shall be made or contemplated to be made by any third party upon property or streets adjacent to or near the Premises, Tenant shall either (a) afford the Person causing or authorized to cause such excavation the right to enter upon the Premises for the purpose of doing such work to preserve any of the walls or structures of Tenant's Improvements from injury or damage and to support the same by proper foundations, provided that such work shall be carried out at such Person's sole cost and expense and shall be completed in accordance with plans and specifications approved by Tenant, such approval not to be unreasonably withheld, conditioned or

delayed, or (b) at such third party's sole cost and expense, do or cause to be done all such work as may be necessary to preserve any of the walls or structures of the improvements on the Premises from injury or damage and to support the same by proper foundations, provided, however, that such party (i) provides plans and specifications to Tenant for approval in connection with such excavation, which approval shall not be unreasonably withheld, conditioned or delayed, (ii) agrees to indemnify Tenant from any loss, cost, or expense suffered by Tenant in connection with such excavation (but excluding therefrom any such loss, cost or expense arising from Tenant's own gross negligence or willful misconduct), and (iii) obtains commercially reasonable liability insurance naming Tenant as an additional insured thereon. Tenant shall not, by reason of any such excavation or work, have any claim against the City for damages or indemnity or for suspension, diminution, abatement or reduction of Rent under this Lease. For purposes of this Section 7.3, Tenant shall be reasonable in withholding its approval of any plans and specifications in connection with any such excavation and shoring if Tenant reasonably determines that such plans and specifications materially and negatively impact the state or federal historic tax credits allocated to Tenant.

7.4 Alterations.

(a) Following approval by the City of the Final Plans and Specifications for Tenant's Improvements, Tenant may not undertake any interior street-level work (to the extent visible from the exterior) and/or any exterior work, without the City's prior written approval ("**Alterations**"), provided that the City's prior written approval shall not be required for any Alteration that (i) does not affect the appearance of the exterior of the Tenant's Improvements in any material respects, (ii) is not located on the street level and visible from the exterior of the Tenant's Improvements, (iii) for which the total design and construction costs are less than \$1,000,000, adjusted for inflation by any increase in the Index, in the aggregate, or (iv) does not require any material modification to the Approvals and complies with the Historic Monument Program Requirements, provided further that all other requirements with respect to any such Alteration set forth in this Lease, including, without limitation, this **Section 7.4**, shall apply thereto. Tenant acknowledges and agrees any Alterations that require the City's prior written approval shall be given under the City's "Tenant Alteration Application" process (as in effect from time to time) and/or the City's Land Use Ordinances and Regulations (as in effect from time to time), as applicable. To the extent that any Alteration requires the City's prior written approval, any such Alteration shall (i) not adversely affect the roof, structural elements, or building systems of the Tenant's Improvements; (ii) not involve the construction of any new buildings; (iii) not lessen the fair market value of the Tenant's Improvements or the Premises; (iii) not materially adversely impair the use of the Tenant's Improvements for the Permitted Uses, as set forth in **Section 9.1**; (iv) not affect in any material adverse way the exterior appearance of the Tenant's Improvements, including changes in massing, materials, locations and size of windows, exterior lighting, canopies and other architectural features; (v) not materially change the locations or functionality of public entrances and exits and access to and from the Tenant's Improvements; (vi) not materially adversely change the appearance, function or quality of any exterior site improvements or any exterior public or common area space, including lighting, paving, landscaping, seating, fencing or works of art; (vii) not change the number of residential units or parking spaces located on the Premises; and (xi) be constructed in a first class and good and workmanlike manner.

(b) Tenant shall submit detailed plans and specifications showing any proposed Alterations requiring City approval under Section 7.4(a) to the City prior to commencing such Alterations. Any written request to approve proposed Alterations shall not be deemed to have been

received by the City unless it is sent to the attention of the City's Construction Representative in addition to those employees of the City identified in **Section 18.3** below. The City shall approve or object to such plans and specifications within such fifteen (15) day period, and if it objects, the City shall specify its objections to the same and Tenant shall revise such plans and specifications to address the City's objections and shall resubmit the same to the City for approval. The City shall have an additional ten (10) days to review and approve, or object to, such revised plans and specifications. If the City objects to such revised plans and specifications within such ten (10) day period, the City shall specify its objections to the same and Tenant shall revise such plans and specifications to address the City's objections and shall resubmit such the same to the City for approval, and the Parties shall continue in this fashion until the City approves such plans and specifications in accordance with this **Section 7.4**. If the City shall fail to respond to Tenant's request for approval within such 15 day (for initial plans and specifications) or 10 day (for revised plans and specification) period then Tenant shall send a follow up written notice to the City (which notice specifically references this Section and contains in a conspicuous type both on the top of the first page of such request, the following language in bold and prominent print: "**YOU SHALL BE DEEMED TO HAVE GRANTED TO TENANT THE APPROVAL REQUESTED IN THIS LETTER IF YOU FAIL TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN FIFTEEN (15) DAYS [TEN (10) DAYS FOR REVISED PLANS AND SPECIFICATIONS] AFTER YOUR RECEIPT OF THIS LETTER**"), and the City fails to respond within such 15-day (for initial plans and specifications) or 10-day (for revised plans and specifications) period after receiving the notice then such request shall be deemed approved.

(c) Upon completion of any Alterations under **Section 7.4**, Tenant shall provide the City with as-built information for such Alterations in accordance with the provisions of **Section 4.20** above.

(d) Tenant shall reimburse the City for all reasonable actual out-of-pocket architectural and engineering expenses for architectural and engineering review reasonably incurred by the City in connection with its review of a proposed Alteration within thirty (30) days after receipt of the City's written demand therefor accompanied by reasonable supporting documentation. Any such Alteration which the City has approved shall be performed substantially in accordance with the approved plans and specifications, and no material amendments or material additions to such plans and specifications shall be made without the prior reasonable consent of the City in accordance with the terms hereof. Such reimbursement as is required pursuant to this **Section 7.4(d)** shall be considered Additional Rent for purposes of this Lease.

(e) Tenant, at its expense, shall obtain all necessary Approvals from Governmental Authorities for the commencement and prosecution of any Alterations and, if required, Tenant shall obtain final approval from Governmental Authorities upon completion of such Alterations. Tenant shall promptly deliver copies of all Approvals for Alterations requiring City approval under this **Section 7.4** to the City.

(f) All costs associated with all Alterations shall be borne by Tenant.

(g) With respect to any Alterations, Tenant shall comply with all applicable requirements of this Lease, including, without limitation, the provisions of **Article 4**, this **Article 7**, and to the extent applicable, **Article 8** and **Article 9**. In addition, Tenant shall cause the Alterations to be performed in compliance with all applicable Legal Requirements, the requirements of any Permitted

Leasehold Mortgage and the requirements of any insurers of the Premises, or any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions. All such Alterations shall be performed in a good and workmanlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Premises.

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

7.6 Signs. Tenant may erect any sign, decoration, lettering, advertising matter or any other similar display at the Premises (collectively referred to herein as a "**Sign**") provided Tenant shall first obtain all required City of Portsmouth permits and approvals therefor.

7.7 Lighting and Other Fixtures. Tenant shall provide and maintain adequate lighting within and around the Premises as shown on the Final Plans and Specifications. Tenant shall take all commercially reasonable measures to ensure that lighting shall operate within all common areas and corridors of the Building as are consistent with generally accepted safety practices for the applicable use of each common area and corridor. Tenant shall install and maintain security lighting within and around the Premises as shown on the Final Plans and Specifications. Tenant shall also install any fire hydrants required from time to time by Governmental Authorities having jurisdiction over the Premises, but shall turn over the same upon completion to the City of Portsmouth for ongoing maintenance, repairs and replacements.

7.8 Noise Mitigation. Tenant shall not make, or permit to be made, any unseemly or disturbing noises that unreasonably disturb or interfere with operation of neighboring buildings or premises or those having business with them to the extent such noises exceed limits imposed by applicable Legal Requirements. Also, Tenant will not commit or suffer to be committed any noise which constitutes a public or private nuisance which may be reasonably expected to disturb the quiet enjoyment of neighboring buildings or premises or those having business with them.

7.9 Capital Expenditures and Maintenance Reserve Fund. Commencing on the thirtieth (30th) month following the issuance of the first building permit for the Project, Tenant shall pay \$25,000 per year during each of the next five (5) years of the Term and \$75,000 per year during the subsequent five (5) years of the Term into a Capital Expenditures Maintenance Reserve Fund (the "**Reserve Fund**"), which shall be held by the [Tenant/Landlord] (except following and during the continuance of any default by Tenant under this Lease, in which case the Reserve Fund shall be held by the City until such default is cured by Tenant), or with the First Permitted Leasehold Mortgagee if it so requests, in an interest bearing escrow account in Tenant's name, until \$500,000 has been contributed (the "**Reserve Cap**"). Tenant will maintain the Reserve Cap in the Reserve Fund until a capital event related to the improvements to be located on the Premises including, without limitation, any major infrastructure repairs or capital improvements necessitated by maintenance, change of law and/or change of policy, takes place that requires the fund to be drawn down. Tenant may withdraw funds from the Reserve Fund in its reasonable discretion to pay for any such matters, in accordance with the procedures set forth in Schedule 2 attached hereto. In the event the Reserve Fund falls below the Reserve Cap due to work being performed on the property, Tenant shall deposit sufficient funds up to \$50,000 per year in order to reach the Reserve Cap. Any accrued interest or other income, which causes the balance of the Reserve Fund to exceed the Reserve Cap, shall be the sole property of the Tenant to be used in its sole discretion.

ARTICLE 8

INSURANCE [*Subject to Insurance Advisor Review*] AND INDEMNITY

8.1 Casualty Insurance.

(a) All Risk. Tenant, at its sole cost and expense, shall keep in full force and effect property insurance on the Premises and all Tenant's Improvements, including, but not limited to, machinery and boilers and other equipment and property installed or used in, on or about the Premises, naming the City and Tenant as their respective interests may appear, in amounts sufficient at all times to prevent the City or Tenant from becoming a co-insurer under the provisions of applicable policies of insurance but, in any event, at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the definition of an "All Risk" or "Broad Form" property insurance policy and extended to include coverage against earthquake, earth movement, flood (including back-up of sewers and drains), sprinkler leakage, breakdown of boilers, machinery and electrical equipment, war risk, nuclear reaction, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, demolition and such other risks as the City may reasonably designate. The insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount provision. The replacement cost of all Tenant's Improvements, and of any other property installed or used in, on or about the Premises, shall be determined at least once every thirty-six (36) months by the City.

(b) Loss of Income. Tenant, at its sole cost and expense, shall keep in full force and effect loss of rent insurance, with loss payable to the City, for an amount equal to the then current amount of Base Rent and Additional Rent to be paid by Tenant under this Lease for a period of eighteen (18) months.

(c) Flood Insurance. Flood insurance (i) if any portion of Tenant's Improvements is currently or at any time in the future located in an area identified by the Secretary of Housing and Urban Development, or any successor, as an area having special flood, mudslide or flood-related erosion hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended from time to time, and (ii) if the broad form flood coverage required by subsection (a) above is not available, for the lesser of the replacement value of Tenant's Improvements or the maximum amount available under the National Flood Insurance Program.

(d) Construction Insurance. Prior to the commencement of construction of Tenant's Improvements or any other construction work permitted under this Lease, including without limitation, any Alterations, Tenant shall procure or cause to be procured, and after such dates shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b) and (c), the insurance described in **Section 8.3.**

8.2 Liability Insurance. Tenant shall maintain or, in the case of clause (c) below, cause the Contractor to maintain:

(a) for the mutual benefit of the City and Tenant, and, if and to the extent required under any Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee under such mortgage, and identifying the City as an additional insured, commercial general liability insurance (including garage liability with auto liability, pollution liability, and premises liability (with coverage for property in the care, custody or control of the insured), if not covered elsewhere) against claims for personal injury, death, and property damage occurring upon, in or about the Premises, any off-site Tenant's Improvements, and on, in or about the adjoining sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof), including claims arising from the use of all equipment at the Premises or in connection with hauling of materials or debris therefrom, with limits deemed reasonably adequate by the City to protect against judgments being awarded in New Hampshire for injury, death and property damage. As of the date hereof, a combined single limit policy in the amount of Three Million Dollars (\$3,000,000) for bodily injury and death and for property damage shall be deemed adequate. This insurance shall be primary over any other policy of insurance owned by the City;

(b) boiler insurance, including pressure vessels and pipes, if there be any such vessel or pipes on the Premises, in a reasonable amount, elevator insurance and such other insurance against other hazards as may, from time to time, be reasonably required by the City;

(c) a pollution legal liability insurance policy covering first and third party claims for clean-up costs, personal injury and property damage on an on-site and off-site basis, with a single claim and aggregate claim amount up to the statutory limit;

(d) worker's compensation insurance as required by law, and employers' liability insurance with a limit up to the statutory limit; and

(e) umbrella and excess liability insurance with a minimum limit of Seven Million Dollars (\$7,000,000).

The minimum coverages stated herein shall be reviewed every fifth (5th) year of the Term by the City and Tenant and shall be increased at such intervals if such increases are reasonably necessary to reflect inflation or changes in the nature or degree of risks insured or to protect against judgments from time to time being awarded in New Hampshire for injury, death and property damage, in all cases consistent with such limits as are from time to time customarily carried with respect to similar office properties in the City of Portsmouth. The City reserves the right, at its sole discretion, to amend the insurance requirements prior to Lease execution. The City shall be named as additionally insured party in all insurance coverage.

8.3 **Construction Insurance Requirements.** The insurance required by **Section 8.1(d)** shall consist at least of the following:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage, including collapse) in an amount not less than one hundred percent (100%) of the projected completed value of Tenant's Improvements with "increased cost of construction" endorsement, and insuring against the perils of fire and extended coverage and physical loss or damage, including without duplication,

coverages with respect to casualties arising due to subsurface work, shoring, blasting, pile driving, caisson work and the like, loss or damage to the equipment, supplies and materials furnished and stored, and owned and non-owned vehicle liability insurance with respect to all vehicles and registered mobile equipment and with respect to any unlicensed mobile equipment, written on a completed value, non-reporting form, with a deductible determined by Tenant of not more than One Hundred Thousand Dollars (\$100,000.00) subject to adjustment for inflation (except as to flood and windstorm), to include rental payment coverage from the date of projected completion and extending for at least eighteen (18) months following such date of projected completion;

(b) Comprehensive automobile liability insurance covering all owned, hired and non-owned automobiles or other motor vehicle used in connection with work being performed on or for the Premises, and naming the City as an additional insured, for bodily injury and property damage in a combined single limit which shall not be less than One Million Dollars (\$1,000,000.00) per occurrence, with a deductible determined by Tenant of not more than Twenty-five Thousand Dollars (\$25,000.00), subject to adjustment for inflation; and

(c) The insurance required pursuant to **Section 8.2.**

8.4 **Supplemental Insurance.** Tenant shall also maintain such other insurance, including without limitation, terrorism insurance (but only if customarily carried by owners of similar properties and available at commercially reasonable rates), in such amounts as may from time to time be reasonably required by the City, against other insurable hazards which at the time are customarily insured against in the case of comparable properties in the City of Portsmouth. Without limiting the foregoing, the City may require Tenant to maintain terrorism insurance coverage for the Premises if such insurance is available at commercially reasonable rates. To the extent that Tenant elects to maintain any policy of terrorism insurance for the Premises, whether or not such policy is required by the City, Tenant agrees to name the City as an additional insured and to provide evidence thereof to the City in accordance with the requirements of **Section 8.6.**

8.5 **Commercial Subtenant Insurance.** If at any time there are Subtenants occupying all or any portion of the Premises for commercial uses (each a "**Commercial Subtenant**"), then Tenant shall require each such Commercial Subtenant to maintain and provide evidence of insurance coverages in types and amounts required from time to time by reasonably prudent owners of properties similar to the Premises in the Portsmouth metropolitan area, with coverages to be in full force and effect for the term of the respective Subtenants' occupancy. Further, it will be the responsibility of Tenant to maintain a file of the Commercial Subtenants' certificates of insurance and ascertain that it is current. The City reserves the right to review Tenant's Commercial Subtenant insurance file at any time during Tenant's normal business hours upon reasonable prior notice to Tenant; provided that the City shall not review such file more than once in any 12 month period except during the continuation of an Event of Default.

8.6 **Insurance Carriers, Policies.** All insurance required to be carried by Tenant in this Article 8 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in New Hampshire and having a so-called Best's Rating of "A:VIII" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the City and shall name the City as an Additional Insured. To the extent commercially available in accordance with industry standards, the

commercial general liability policy shall be endorsed specifically to recognize and insure the indemnification provision appearing in **Section 8.12** of this Lease. Such policies shall be primary over and above any policies held by the City. Upon the execution of this Lease, and thereafter at least annually and not less than thirty (30) days prior to the expiration dates from time to time of the policies required pursuant to this **Article 8**, certificates of such insurance or, upon request of the City, duplicate originals of the policies, in either case bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to the City of such payment shall be delivered by Tenant to the City.

Nothing in this **Article 8** shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Article under a blanket insurance policy or policies covering other properties as well as the Premises; *provided, however*, that any such policy or policies of blanket insurance (i) shall specify therein, or in a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by **Sections 8.1, 8.2, 8.3 and 8.4** hereof, and (ii) such amounts so specified shall be sufficient to prevent any of the insureds from becoming a co-insurer within the terms of the applicable policy or policies; *and provided further*, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to endorsements and coverage with the provisions of this **Article 8**.

8.7 No Separate Insurance. Neither the City nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this **Article 8.7** to be furnished by, or which may reasonably be required to be furnished by, Tenant unless the City, Tenant and, if and to the extent required by any Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee under such mortgage, are included therein as the insureds, with loss payable as in this Lease provided. Each Party shall immediately notify the other of the placing of any such separate insurance and shall cause the same to be delivered as required in **Section 8.6**.

8.8 Adjustment. All policies of insurance provided for in **Section 8.1** hereof shall name the City, Tenant and any applicable Permitted Leasehold Mortgagee as the insureds as their respective interests may appear and shall further provide that any loss payable to a Permitted Leasehold Mortgagee or the City shall be payable notwithstanding any act or omission of Tenant which might otherwise invalidate such policy. The loss, if any, under such policies shall be adjusted as follows: In case of any particular casualty resulting in damage or destruction not exceeding \$1,500,000.00 in the aggregate, adjusted for inflation by any increase in the Index, the loss under such policies shall be adjusted with the insurance companies by Tenant and any applicable Permitted Leasehold Mortgagee, and shall be payable to Tenant and such Permitted Leasehold Mortgagee. In the case of such damage or destruction in excess of \$1,500,000.00 in the aggregate, adjusted for inflation by any increase in the Index (the "**Threshold Amount**"), the loss shall be adjusted with the insurance companies by the City and Tenant and any applicable Permitted Leasehold Mortgagee, and the proceeds of any such insurance, as so adjusted, shall be payable to the Insurance Trustee acting hereunder pursuant to the provisions of **Section 11.2** hereof.

All such policies shall provide that the loss; if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of Tenant or any sublessee, guest, licensee, operator, or other occupant shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

8.9 Non-cancellation. Each policy or certificate issued by an insurer shall, to the extent obtainable and consistent with applicable law, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to the City and to any mortgagee named therein, except in the case of any non-payment of premium, in which event the insurer shall give at least ten (10) days' prior written notice.

8.10 Insurance Trustee. The following provisions shall apply from and after the time that there shall be (i) any insured damage in excess of \$2,000,000.00 to the Premises, adjusted for inflation by any increase in the Index, or (ii) a Taking (other than either a Taking in response to which this Lease is terminated in accordance with **Article 12** or a deemed temporary Taking in the event of a reduction of the Term as set forth in **Section 3.2**) of all or a portion thereof:

(a) A bank or trust company which is among the three largest in terms of its net assets among those bank and trust companies with an office in the City of Portsmouth, and having net assets in excess of One Hundred Million Dollars (\$100,000,000.00), designated by Tenant (subject to the City's reasonable approval), shall act as trustee (the "**Insurance Trustee**") to receive and disburse insurance proceeds and taking awards in accordance with **Article 11** and **Article 12** hereof, and the City and Tenant shall enter into an agreement with said bank or trust company appropriately covering assumption of the duties of the Insurance Trustee hereunder and containing such provisions as may be reasonably required by said bank or trust company, provided that the City shall not be required thereby to assume any obligations or liabilities other than as provided in this Lease. The foregoing notwithstanding, the First Permitted Leasehold Mortgagee may at its written request be designated Insurance Trustee provided that such First Permitted Leasehold Mortgagee (i) shall have consented, for the purpose of performing its duties as Insurance Trustee, to the jurisdiction of the courts of the State of New Hampshire; and (iii) shall have otherwise agreed to be subject to and to comply with the terms and conditions of this **Section 8.10**.

(b) In the event of the refusal to act or the resignation of said bank, trust company, or First Permitted Leasehold Mortgagee, or of any successor or substituted bank, trust company, or First Permitted Leasehold Mortgagee designated to act or acting as Insurance Trustee hereunder, then, in lieu of such bank, trust company, or First Permitted Leasehold Mortgagee, Tenant shall have the right (subject to the City's reasonable approval) to designate any other bank or trust company which satisfies the requirements of subparagraph (a) above to act as Insurance Trustee.

(c) Each such designation or substitution of any such entity to act as Insurance Trustee hereunder shall be effected by Tenant and any applicable Permitted Leasehold Mortgagee giving to the City written notice of such designation or substitution, as the case may be, and as soon thereafter as may be practicable after the giving of such notice (i) the City and Tenant shall enter into an agreement with the entity so designated or so being substituted appropriately covering the assumption by it of the duties of the Insurance Trustee hereunder and containing such provisions as may reasonably be required by such entity, provided that the City is not required thereby to assume any obligations or liabilities other than as provided in this Lease, and (ii) the entity which shall have resigned as Insurance Trustee or for which another entity shall have been so substituted as Insurance Trustee shall turn over to the new Insurance Trustee all insurance proceeds or taking awards remaining on hand with it.

(d) The fees and charges of every entity acting as Insurance Trustee hereunder shall constitute an expense of maintenance and disposition of the proceeds deposited with such Insurance Trustee and shall be paid periodically from such proceeds in such manner as may be agreed upon by the City, Tenant, any applicable Permitted Leasehold Mortgagee and such Insurance Trustee.

(e) Anything contained in this Section to the contrary notwithstanding, any agreement which the City and Tenant shall enter into with any entity acting as Insurance Trustee hereunder shall include as a party thereto any applicable Permitted Leasehold Mortgagee, in its capacity as such, when requested by either party or such Permitted Leasehold Mortgagee, provided that the applicable mortgage shall provide, or the holder thereof shall agree in writing, that all proceeds are to be applied in the same manner as provided in this Lease as affected by any Recognition Agreement entered into between the City and First Permitted Leasehold Mortgagee.

8.11 Waiver of Subrogation. If, and only if, permitted by the policies of insurance relating to the Premises maintained by the City and Tenant, the City and Tenant hereby each waive all rights of recovery against the other or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving Party or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policies which either may have in force at the time of such loss or damage. Each Party shall, upon obtaining policies of insurance relating to the Premises, or portions thereof, which permit the aforesaid waiver, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease, and each Party shall endeavor to cause each such insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either the City or Tenant in connection with any damage covered by any such policy, at the sole cost of the Party for whose benefit such waiver is sought.

8.12 Indemnification. Tenant shall indemnify and save the City harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects', attorneys' and other consultants' fees, which may be imposed upon or incurred by or asserted against the City by reason of any of the following occurrences during the Term of this Lease:

(a) any work done in or on the Premises or any part thereof, any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, except to the extent resulting from the (i) negligence or (ii) wrongful act or omission, of the City, its employees, contractors, agents, servants, or licensees;

(b) any negligence on the part of Tenant or any party for whom Tenant is legally liable or on the part of any Subtenant; and

(c) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against the City by reason of any claim arising out

of any of the occurrences which Tenant is required, pursuant to the preceding paragraph, to indemnify and save the City harmless against and from, the City shall give prompt notice thereof to Tenant and shall cooperate with Tenant in the defense thereof; and Tenant upon written notice from the City shall at Tenant's expense defend such action or proceeding using legal counsel selected by Tenant in its reasonable business judgment.

The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which would exist at common law or under any other provision of this Lease, and the extent of the obligation of indemnification shall not be limited (subject to **Section 8.11**) by any provision of insurance undertaken in accordance with this **Article 8**. The provisions of this **Section 8.12** shall survive termination or expiration of this Lease.

8.13 The City's Insurance. Tenant acknowledges that the City is not required to procure or maintain insurance of any kind on or with respect to the Premises or the Tenant Improvements under this Lease.

ARTICLE 9 USE OF PREMISES

9.1 Use.

(a) Permitted Use. Subject to the restrictions and conditions stated in this Lease, Tenant shall develop the Premises into [DESCRIBE CONTEMPLATED USES]. The uses of the Premises allowed by the City shall include all uses permitted under applicable zoning laws and regulations that are consistent with the Approvals and the Historic Monument Program requirements (the "**Permitted Uses**"), and Tenant shall not use all or any portion of the Premises for any other use or uses without the City's prior written approval, not to be unreasonably withheld, conditioned or delayed.

(b) *Prohibited Uses.*

(i) Prohibited Uses. Tenant shall not use the Premises for any use other than the Permitted Uses without the prior written approval of the City. Without limiting the provisions of **Section 9.1**, in no event shall any portion of the Premises be used for the following (collectively, the "**Prohibited Uses**"):

- Any junkyard, open-air material processing/ recycling (except snow collected on-site) and open-air materials storage.
- any casino, sports or game betting facility or off-track betting club or other establishment which is primarily devoted to gambling activities;
- any adult entertainment purposes or for the sale, rental or display of so-called "adult" or pornographic materials;

- the sale or display of any firearm;
- any services involving potential fire hazards or the use of Hazardous Materials (other than ordinary cleaning supplies, ordinary office supplies and the like);
- any illegal use or purpose;
- any use which is a public nuisance; or
- any use that would make void or voidable any insurance then in force with respect to the Premises.

(ii) Standard of Use. Tenant's use of the Premises shall be consistent with the operation of a high quality mixed use residential, office and/or retail project in accordance with this Lease, including without limitation **Section 9.2** and Tenant shall be bound by and comply with this Lease with respect to the entire Premises.

(iii) Curative Actions. Promptly following its discovery of any Prohibited Use, Tenant shall take all necessary steps, legal and equitable, to cause or compel discontinuance of such business or use, including, if necessary and warranted under the circumstances, the termination of any Sublease and the eviction of any such Subtenant in accordance with applicable law, and the removal from the Premises of any such Subtenants, subtenants, licensees, invitees or concessionaires.

9.2 Operation of the Premises.

(a) Tenant agrees to operate the Premises in a safe, orderly and clean manner. Tenant shall not conduct operations on or about the Premises in a manner that hinders police, fire fighting or other emergency personnel in the discharge of their duties; or would reasonably be expected to constitute a hazardous condition at the Premises. Tenant shall insert appropriate provisions in the Subleases to require compliance of the Subtenants with the requirements of this **Section 9.2**, and shall use reasonable efforts to enforce such requirements.

(b) Tenant shall use commercially reasonable efforts to enforce the terms and conditions of the Subleases in a commercially reasonable manner with regard to collection of all rent and other amounts due from Subtenants and performance of all obligations of the Subtenants under their respective Subleases.

(c) Tenant may delegate the marketing and leasing of the Building and the management of the Building to a professional management company which (i) is routinely engaged in the operation, marketing, leasing and management of similar properties, and (ii) has had substantial experience, for at least five (5) years prior to the date of the initial delegation by Tenant, in the marketing, leasing and management of commercial properties similar to the Property (a "**Permitted Property Manager**"). The engagement of a Permitted Property Manager shall not require the

approval of the City. The City further acknowledges that to the extent that Tenant causes the Permitted Property Manager to perform any of Tenant's obligations or covenants under this Lease, such obligations or covenants shall be deemed to have been performed by Tenant. A Permitted Property Manager may be engaged by Tenant only under a written form of management or delegation agreement, including any amendments thereto, subject to reasonable review by the City (the "**Property Management Agreement**"), such review to be limited in order to confirm that the Permitted Property Manager and the terms of such Property Management Agreement comply with the requirements of this Lease and such Property Management Agreement specifically recognizes the acceptance by the Permitted Property Manager of the provisions of this Lease [*Discuss timeline for City review and approval*]. The Property Management Agreement shall (i) be expressly subject and subordinate to the rights of the City hereunder; (ii) be subject to termination by the City in the event of the termination of this Lease; (iii) be on an arms-length basis with fees and other terms established on a commercially reasonable basis; and (iv) include provisions requiring the Permitted Property Manager to comply with the City's non-discrimination requirements as set forth in this Lease. Any terms, agreements, modifications or waivers of agreements purported to exist in breach of this subsection shall be void and unenforceable against any Person. The provisions of this subsection shall not apply to the direct operation and management of the Premises by Tenant (without the involvement of a Permitted Property Manager).

9.3 No Waste. Tenant shall not injure, overload, deface or strip, or intentionally cause waste or damage to, the Premises or Tenant's Improvements constructed thereon or the underlying fee or any part thereof, nor commit any nuisance or unlawful conduct; nor permit any fireworks displays; nor make any use of the Premises or Tenant's Improvements which is illegal; nor permit or suffer any Subtenant, guest, licensee, operator, occupant, contractor, subcontractor, invitee or others to do any of the foregoing.

9.4 Legal Requirements. Throughout the Term of this Lease Tenant, at its expense, shall promptly comply with, and shall use commercially reasonable efforts to cause the Permitted Property Manager and all Subtenants, and their respective agents, contractors, subcontractors, servants, employees, licensees, operators, and invitees to promptly comply with, all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises, Tenant's Improvements, or the development, construction, operation or maintenance thereof, or to the use or manner of use of the same or the owners, tenants, licensees, operators, or occupants thereof, including without limitation, all applicable accessibility laws, ordinances and rules, and non-discrimination and equal opportunity laws, regulations and executive orders whether or not such law, ordinance, rule, regulation or requirement is specifically applicable or related to the conduct of the Permitted Uses, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises by Tenant or any Subtenant, provided any such interference with any Subtenant or occupant of any portion of the Premises is in accordance with applicable law (collectively, the "**Legal Requirements**"). In the event of any violation or any attempted violation of this Section by Tenant, the Permitted Property Manager or any Subtenant, or any of their respective agents, contractors, subcontractors, servants, employees, licensees, operators, or invitees, Tenant shall take commercially reasonable steps, reasonably promptly upon knowledge of such violation, as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may be. It is intended that, as between Tenant and the City, Tenant shall bear the sole risk of all present and future Legal Requirements affecting the Premises, Tenant's

Improvements and the Permitted Uses, and the City shall not be liable for (nor suffer any abatement or reduction in any Rent on account of) the enactment or enforcement of any Legal Requirement.

9.5 Omitted.

9.6 Liens. Tenant shall not directly or indirectly create or permit to be created or to remain, and shall discharge or bond over, any lien or encumbrance with respect to, Tenant's Leasehold Interest in the Premises, Tenant's Improvements, the underlying fee or any part thereof or the Rent or any payment thereof, other than (a) this Lease and liens and encumbrances expressly permitted under the terms of this Lease, (b) Permitted Leasehold Mortgage(s) as provided in **Section 14.1**, (c) liens for Impositions not yet payable, or being contested as permitted by **Section 6.3**, (d) the title exceptions listed on **Exhibit B**, (e) liens of mechanics, materialmen, suppliers or vendors, or rights thereto, placed on Tenant's Leasehold Interest (and not, under any circumstances, the City's fee estate) in the ordinary course of business or in the ordinary course of construction, alteration, addition, improvement, or restoration of Tenant's Improvements or any part thereof, for sums which are being contested in accordance with the provisions of **Section 4.21** or **Section 9.7**, and (f) liens and encumbrances approved by the City, not to be unreasonably withheld, conditioned or delayed.

9.7 Contests. Tenant shall have the right, after ten (10) days' prior written notice to the City, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to the City, the validity or application of any Legal Requirement referred to in **Section 9.6** hereof, subject to the following:

(a) If, by the terms of any such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrance of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or the City to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject the City to criminal liability or fine, and provided that Tenant (i) furnishes to the City security, reasonably satisfactory to the City, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence; and

(c) The City, without cost to it, shall execute and deliver any appropriate papers which may be necessary to obtain or maintain any such proceeding and shall further cooperate with and support Tenant in any such contest (including without limitation in appearances before government bodies), as Tenant may from time to time reasonably request, provided that the City shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the City of Portsmouth or the State of New Hampshire or the United States of America, any agency, City, branch, commission, division, office or subdivision of or for the City of Portsmouth or the State of New Hampshire or the United States of America, nor shall the City be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the City nor to take a position inconsistent with a position previously taken and made public by the City.

9.8 Compliance with Insurance Requirements. Throughout the Term of this Lease, Tenant,

at its sole expense, shall observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises, and Tenant shall, without limiting any other requirements of this Lease, in the event of any violation or any attempted violation of the provisions of this Section by any Subtenant, or by any contractor, subcontractor, agent, servant, employee, licensee, operator or guest of Tenant or any Subtenant, take all reasonable steps, reasonably promptly upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

9.9 Historic Monument Requirements. Throughout the term of this Lease, Tenant, at its sole cost and expense, shall observe and comply with all applicable Historic Monument Requirements, the terms and conditions of the approved application and all Preservation Covenants.

9.10 Public Use and Amenities. [TO BE MADE CONSISTENT WITH FINAL APPLICATION AND DEVELOPMENT AGREEMENT]

ARTICLE 10 ENVIRONMENTAL MATTERS

10.1 Tenant's Initial Obligations. Prior to the Effective Date, Tenant shall perform an environmental inspection of the existing baseline environmental conditions at each building on the Premises, including at a minimum a Phase I Environmental Site Assessment, and shall submit a detailed report to the City setting forth the findings thereof.

10.2 Compliance with Environmental Laws.

(a) Hazardous Materials Remedial Work: Premises. Subject to Tenant's right to pursue claims against any and all potentially responsible parties, Tenant shall be solely responsible (at its cost and expense) for performing all Remedial Work required by applicable Environmental Laws with respect to any reportable concentrations of Hazardous Materials in violation of applicable Environmental Laws that are identified or discovered on the Premises at any time (including, without limitation, prior to or during demolition or construction of Tenant's Improvements or any Alteration), regardless of whether such Hazardous Materials were first released upon or otherwise first became present upon or beneath the surface of the Premises or in any of the existing improvements located thereon before or after the Effective Date, except to the extent caused by the acts or omissions of the City, its employees or agents.

(b) Manner of Remediation. All Remedial Work required to be performed by Tenant hereunder shall be performed in a manner which is approved in advance by the City, which approval shall not be unreasonably withheld, conditioned, or delayed, is consistent with the City's soils management plan and in accordance with all applicable Environmental Laws, and may include reuse of excavated soils on site and (subject to the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed) the placement of appropriate so-called activity and use limitations on the Premises.

(c) Compliance by Tenant. Tenant shall, and shall use commercially reasonable efforts to cause all Subtenants and their respective agents, contractors, subcontractors, servants,

employees, guests, licensees, operators, and invitees to, comply with all applicable Environmental Laws with respect to any release of Hazardous Materials caused by them or relating to the Premises on or after the Effective Date of this Lease.

10.3 Environmental Covenants, Representations and Warranties. Tenant hereby covenants with, and represents and warrants to, the City as follows, from and after the Effective Date:

(a) Except to the extent it may be permitted by or arise out of a Permitted Use under **Section 9.1** of this Lease and as may be permitted by and only in compliance with all applicable Environmental Laws, Tenant and all Subtenants shall not allow any Hazardous Materials to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises, including without limitation those laws regarding the generation, storage, disposal, release and discharge of Hazardous Materials. Without limiting the generality of the foregoing, Tenant and Subtenants have not been and shall not become involved in operations at the Premises involving Hazardous Materials, except for Remedial Work required or allowed by this Lease and as expressly permitted by and only in compliance with all applicable Environmental Laws. Tenant expressly warrants, represents and covenants that Tenant and all Subtenants shall strictly comply with the requirements of all Environmental Laws affecting the Premises and shall promptly notify the City after obtaining knowledge of any release or threat of release of Hazardous Materials at, upon, under or within the Premises.

(b) No activity on the Premises shall be undertaken by or allowed by Tenant which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws, (ii) a release or threat of release of Hazardous Materials at, on, under or from the Premises in violation of applicable Environmental Laws, including without limitation into any watercourse, surface or subsurface water or wetlands, or (iii) the discharge into the environment of any Hazardous Materials in violation of applicable Environmental Laws.

(c) Tenant shall promptly notify the City in writing after obtaining knowledge of (i) any release or threat of release of Hazardous Materials in violation of Environmental Laws or the occurrence of any other environmental problem or liability with respect to the Premises which could subject Tenant or the Premises to a claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws, (ii) any lien filed, action taken or notice given of the nature described below in this **Section 10.3 or Section 10.4**, below, (iii) any notice given to Tenant from any Subtenant or other occupant of the Premises or any notice from any Governmental Agency with respect to any release or threat of release of Hazardous Materials, or (iv) the commencement of any litigation or any threat of litigation relating to any alleged release or threat of release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

(d) Tenant shall, with all due diligence, and at its sole cost and expense (except as otherwise expressly set forth herein), take all actions and perform all Remedial Work (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises in violation of applicable Environmental Laws, including the removal, containment and remedial actions in accordance with this **Article 10** and all applicable Environmental Laws (and in all events in a manner reasonably satisfactory to the City), and shall further pay or cause to be paid at no expense to the City all clean up, administrative and

enforcement costs of applicable government agencies, or the parties protected by such Environmental Laws, which may be asserted against the Premises, except to the extent arising from the City's acts or omissions occurring after the Effective Date. All costs, including without limitation, those costs set forth above, damages, liabilities, losses, claims, expenses (including reasonable attorneys' fees and disbursements) which are incurred by the City in connection with any of Tenant's obligations or warranties and representations, without the requirement that the City wait for the ultimate outcome of any litigation, claim or proceeding, shall be paid as Additional Rent, by Tenant to the City, within thirty (30) days after notice to Tenant from the City itemizing the amounts incurred, with interest on the unpaid amount at the rate of one and one-half percent (1½%) per month or the highest rate permitted by law, whichever is less, from the thirty-first (31st) day after the effective date of such notice to the date of a payment to the City.

(e) Tenant shall observe, obey, and shall cause all Subtenants and the agents, contractors, subcontractors, servants, employees, guests, licensees, operators and invitees of Tenant or any Subtenant, to observe and obey, all Environmental Laws.

(f) In the event that at any time Tenant becomes aware that notification to any Governmental Agency of a condition at, on or under the Premises is required by any applicable Environmental Law, Tenant shall promptly notify the City. All such notifications to a Governmental Agency shall be prepared by and given by Tenant's Licensed Site Professional and shall be subject to review and comment by the City prior to the giving of such notification to the Governmental Agency (except in situations in which any applicable Environmental Law requires such notification to be given within three (3) or fewer Business Days after the discovery of a condition or the occurrence of an event, in which case Tenant's Licensed Site Professional shall make such notification and shall provide a copy thereof to the City simultaneously with giving such notification to the Governmental Agency). If the City fails to respond to any such request for review and comment within ten (10) business days, that the City shall be deemed to have given its approval therefor.

10.4 Environmental Notices. Tenant shall provide the City with copies of any notices of releases of Hazardous Materials or other filings by or on behalf of Tenant or, to the knowledge of Tenant, any Subtenants to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to the City concurrently with their being mailed or delivered to the governmental agencies or authorities. Tenant also shall provide the City with copies of any notices of responsibility or any other notices received by or on behalf of Tenant or, to the knowledge of Tenant, any Subtenants from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials located on or about the Premises.

10.5 Environmental Indemnity. Tenant shall unconditionally, irrevocably and absolutely indemnify, defend with counsel reasonably acceptable to the City, and save harmless the City for, from and against any and all damages, losses, liabilities, obligations, claims, litigation, demands, defenses, judgments, suits proceedings, fines, penalties, costs, disbursements and expenses (including without limitation, penalties and fines within the meaning of any Environmental Law), of any kind or nature whatsoever, which may at any time be imposed upon, incurred by, or asserted or awarded against the City and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described in this **Article 10** at the Premises in violation of Tenant's obligations under this Lease, including, without limitation, matters arising out of any breach

of Tenant's covenants, representations and warranties contained in this **Article 10**. The City shall not assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by the City on the Premises or otherwise. Notwithstanding the foregoing, the indemnity obligation of Tenant shall not apply to any damages, obligations, liability, loss, claim, or expenses to the extent arising out of the negligence or willful misconduct of the City, its employees or agents or any act or omission of the City, its employees or agents occurring after the Effective Date. All warranties, representations and obligations set forth in **Section 10.2** and **Section 10.3** herein shall be deemed to be continuing and shall survive the expiration or termination of this Lease. Tenant shall give the City prompt written notice of any claims threatened or made or suit instituted against it which could result in a claim of indemnification hereunder. In no event shall Tenant be liable under this Article 10 for loss of business, lost profits, or any indirect, incidental, special, consequential or exemplary damages. The indemnity obligations of Tenant under this **Section 10.5** shall be separately indemnified by the Indemnitor, for the benefit of the City, pursuant to the Environmental Indemnification Agreement attached hereto as **Exhibit K**.

10.6 The City's Right to Inspect. To the extent required by any Governmental Agency or by any applicable Environmental Laws, or to the extent Tenant is not complying with the terms and conditions of this **Article 10**, after the applicable notice and opportunity to cure, or to the extent the City seeks for good cause to ensure that Tenant is in compliance with this **Article 10**, the City and its officers, employees, contractors or agents shall have the right, but not the duty or obligation, to enter upon the Premises from time to time upon the provision of reasonable prior advance notice to Tenant for the purposes of inspections, investigations, remediation if required by applicable Environmental Law and all other actions required in order to comply with applicable Environmental Laws and the terms and conditions of this **Article 10**, provided that the City shall use diligent efforts to avoid materially disturbing Tenants or Subtenants. The City shall not be liable to Tenant in any manner for any expense, loss or damage occurring by reason of the aforesaid entries, unless the same is caused by the City's negligence or willful misconduct, nor shall the exercise of any such right be deemed an eviction or disturbance of Tenant's use or possession. The provisions of this **Article 10** shall survive the termination or earlier expiration of this Lease.

ARTICLE 11

DAMAGE OR DESTRUCTION

11.1 Casualty: Restoration Required.

(a) In case of a Casualty that exceeds the Threshold Amount, Tenant shall promptly give written notice thereof to the City, and Tenant shall, at Tenant's sole cost and expense, promptly take all necessary action to secure the Premises against unauthorized entry and shall continue such actions until the completion of restoration and rebuilding of Tenant's Improvements or the completion of the obligation to demolish and make safe as set forth below and the earlier termination of this Lease. Except as otherwise expressly provided in Section 11.1(b) below, Tenant shall, at its sole cost and expense, and without regard to the coverage, amount or availability of proceeds of any insurance, restore, repair, replace, rebuild or alter the same as nearly as possible to its condition immediately prior to such Casualty, all in conformity with and subject to the construction conditions of **Article 4** hereof and the requirements of the National Historic Monument Program. For clarity, the Guaranty of Section

18.31 shall not include any obligations on Tenant under this Article 11. Such restorations, repairs, replacements, rebuildings or alterations shall be commenced as soon as practicable following the occurrence of such Casualty and shall thereafter be prosecuted continuously to completion with diligence.

(b) Notwithstanding the foregoing, in the case of a Casualty occurring during the last thirty (30) years of the Term which either (i) destroys twenty percent (20%) or more of the floor area of the Building then situated on the Premises, or (ii) if at the time of the occurrence of a Casualty, all of the Permitted Uses are prohibited by applicable law, rule, regulation, code or ordinance then in effect and cannot be continued at the Premises after the restoration or rebuilding thereof through either (A) the application of any so-called "grandfathering" or non-conformity provisions of such law, rule, regulation, code or ordinance (as demonstrated by an opinion of counsel reasonably acceptable to the Authority), or (B) by means of a variance or waiver of such law, rule, regulation, code or ordinance obtained by Tenant, then Tenant may terminate this Lease by written notice given to the City within one hundred and eight (180) days after the Casualty. No such notice of termination shall be effective to terminate this Lease until Tenant, as directed by the City, either (x) secures the remaining portion of the Improvements and the Premises against damage by the elements and unauthorized entry, or (y) demolishes all remaining portions of the Improvements, removes and properly disposes of all debris associated therewith, and restores the surface of the Land to a safe condition free of debris ("**Demolish And/Or Make Safe**"). No such termination shall release Tenant from any obligation hereunder for the Rent and Additional Rent accrued or payable during any period prior to the effective date of such termination. All insurance proceeds payable in connection with a Casualty with respect to which Tenant has terminated this Lease in accordance with the provisions of this Section 11.1 shall be the sole property of Tenant.

11.2 Restoration Procedures. In the event of a Casualty, the Parties shall cooperate to recover the proceeds of insurance in accordance with the provisions of **Section 8.8** above. All insurance money paid on account of a Casualty, whether paid to Tenant or to a Permitted Leasehold Mortgagee or to the Insurance Trustee in accordance with the provisions of **Section 8.8** above, less the reasonable cost, if any, incurred in connection with adjustment of the loss and the collection thereof, shall be applied to (x) if and to the extent directed by the Permitted Leasehold Mortgagees to the repayment of their respective Approved Debt pursuant to the terms of their loan documents and in accordance with any Recognition Agreement with Landlord, or to the extent not so applied, and (y) to the payment of the cost of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacement, rebuilding or alterations are hereinafter collectively referred to as the "restoration"). With respect to insurance proceeds payable to the Insurance Trustee pursuant to **Section 8.10** above, the Insurance Trustee shall, subject to the terms and conditions of the Permitted Leasehold Mortgage loan documents (including without limitation the right of the Permitted Leasehold Mortgage to receive and apply such proceeds in reduction of the outstanding principal balance of the Approved Debt in accordance with any Recognition Agreement with Landlord), pay the same to Tenant, or at the direction of Tenant, from time to time, as such restoration progresses, upon compliance by Tenant with all conditions precedent to disbursement which are usual in construction loan agreements of major national banks for construction of the size and complexity of the restoration. If the Insurance Trustee is customarily engaged in the business of construction lending, its regular conditions precedent to disbursement of the proceeds of such loans shall be presumed to be reasonable,

absent a showing by the City or Tenant that such conditions are not generally consistent with the lending requirements then customarily employed by major Portsmouth banks in similar loans. There shall be withheld from payments on account of work completed and materials furnished such amounts as are then customarily being withheld by major Portsmouth banks in connection with construction of the size and complexity of the restoration. If the insurance proceeds with respect to such Casualty are not more than the Threshold Amount, such proceeds shall be paid to Tenant and shall be used by Tenant for restoration purposes. All payments shall be received by Tenant for the purposes of paying the cost of such restoration upon receipt by the Insurance Trustee of the written request of Tenant accompanied by suitable documentation including the following:

(a) Satisfactory evidence that the insurance proceeds remaining to be disbursed are sufficient to pay all anticipated costs of completing the restoration (which shall be determined by the First Permitted Leasehold Mortgagee, if any). (If at any time prior to or during the course of restoration the insurance proceeds remaining to be disbursed are not sufficient to pay the entire cost of completing the restoration, Tenant shall pay the deficiency to the Insurance Trustee before requesting the disbursement of additional proceeds from the Insurance Trustee);

(b) Bills from contractors and subcontractors for work and materials in place, describing in reasonable detail such work and materials, and bills for the reasonable fees of any attorney, architect or engineer for services relating to the restoration;

(c) A certificate signed by Tenant stating that the amount of each such bill does not exceed the cost of such work, materials, or services described on such bill, and that no part of such cost has previously been made the basis of the withdrawal of insurance proceeds;

(d) A certificate of the architect or engineer in charge of the restoration, or of a third party not in the regular employ of any of the Parties hereto, which architect, engineer or third party is reasonably satisfactory to the City and the Insurance Trustee, stating that (i) the work, materials or services described in the bills were necessary or appropriate and are in place or have been performed, (ii) the amount specified in the bills does not exceed the reasonable cost of such work, materials, or services, (iii) the work or materials described in each bill, to the knowledge of such architect, engineer or third party, has been supplied by the contractor or subcontractor submitting such bill or by a person who has supplied materials to such contractor or subcontractor, and (iv) to the knowledge of such architect, engineer or third party, the additional amount, if any, required to complete the restoration;

(e) A title search by a title company or licensed abstractor or other evidence satisfactory to the Insurance Trustee that there has not been filed with respect to Tenant's Improvements or the Premises any mechanic's or other lien or instrument for the retention of title with respect to any part of the work performed which has not been discharged of record, except liens which will be discharged by payment of the amount then requested or liens with respect to which Tenant has furnished the City with a satisfactory bond, or such other security as may be provided for herein; and

(f) For any payment after the restoration has been substantially completed, a copy of any certificate required by law to render occupancy and use of Tenant's Improvements legal.

Prior to any disbursement of insurance proceeds or the Award, Tenant shall have delivered and the City (and, to the extent required by applicable regulations, the National Parks Service) shall have

(x) approved the Final Restoration Plans (which plans shall be prepared, reviewed and approved in the manner provided in **Section 4.8** above with respect to the Final Plans and Specifications), and (y) received copies of all Approvals necessary for the entire restoration as set forth in the Final Restoration Plans.

If this Lease is terminated by the City by reason of Tenant's failure to repair or restore as provided in this Lease continuing beyond all applicable grace, notice and cure periods, any remaining insurance proceeds (together with all interest earned thereon) at the time held by such Insurance Trustee shall be paid to the City, subject, however, to the rights of a First Permitted Leasehold Mortgagee that elects to enter into a new lease in accordance with **Section 14.2(e)**. In the event Tenant completes the restoration pursuant to the terms and conditions of this **Article 11**, then provided that (1) Tenant has complied with the terms and provisions of **Article 8** hereof, (2) there is no current default under this Lease, and (3) Tenant has submitted to the Insurance Trustee satisfactory evidence that the restoration has been paid for in full and that there are no liens of the character referred to above, any remaining insurance proceeds held by such Insurance Trustee shall be disbursed to Tenant.

11.3 No Surrender or Abatement. No destruction of or damage to the Premises or Tenant's Improvements or any part thereof, nor any damage to any equipment or other property installed or used in, on or about Tenant's Improvements, by fire or any other Casualty, whether or not insured, shall permit Tenant to surrender this Lease or shall relieve Tenant from its liability to pay the full Rent and other charges payable under this Lease or from any of its other obligations under this Lease, and Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Premises, or any part thereof, or to any suspension, diminution, abatement or reduction of Base Rent, Percentage Rent, Additional Rent, or other charges payable under this Lease on account of any such destruction or damage.

11.4 Insufficiency of Insurance Proceeds. If Tenant is required to restore Tenant's Improvements upon the occurrence of a Casualty as provided in this Lease and the insurance proceeds received on account of such Casualty are not sufficient to pay the entire cost of such restoration as reasonably estimated by the City, Tenant shall supply the amount of any such deficiency and shall first apply the same to the payment of the cost of such restoration before calling upon the Insurance Trustee for the disbursement of the insurance proceeds held by the Insurance Trustee.

11.5 Failure to Commence Repairs. If Tenant shall not have Demolished and/or Made Safe to the City's satisfaction within one hundred eighty (180) days of the date of such Casualty, or if Tenant is required to restore Tenant's Improvements under **Section 11.1** hereof and (a) has not commenced reasonably diligent efforts to obtain all necessary permits to restore Tenant's Improvements as provided herein, or (b) if after such permits have been obtained, Tenant has not commenced the performance of such restoration within eighteen (18) months of the date of such Casualty or such longer period as may be required for settlement of insurance claims and construction, or (c) if Tenant thereafter fails to prosecute the restoration of Tenant's Improvements in accordance with the Final Restoration Plans expeditiously and continuously, in each case subject to delays due to Force Majeure or the acts or omissions of the City, the City may, subject to the rights of Permitted Leasehold Mortgagees, terminate this Lease in accordance with Section ___ by written notice given to Tenant.

ARTICLE 12

TAKING

12.1 Award. With respect to any exercise of the power of eminent domain or any agreement in lieu of condemnation (hereinafter referred to in this **Article 12** as a "**Taking**") between the City, the Tenant and those authorized or purporting to be authorized to exercise the power of eminent domain, for a conveyance of the Premises to a condemning City (such conveyance being hereafter in this **Article 12** referred to as "**conveyed**" or as a "**conveyance**"), the Tenant and the Leasehold Mortgagee, in cooperation with the City, shall have the right to participate in negotiations or any Taking leading to an Award (as hereinafter defined) to protect their respective interests hereunder. The total Net Award made or the consideration paid or payable pursuant to such Taking (hereinafter collectively or separately referred to as the "**Award**"), shall be paid by whomever received to the Insurance Trustee, which shall apply the same as herein provided. The term "**Net Award**" shall mean the total Award, less all costs, expenses and attorneys' fees incurred in the collection thereof.

12.2 Termination. If, during the Term of this Lease, all or substantially all of the Premises shall be taken as a result of a Taking, this Lease and all right, title and interest of the Tenant hereunder shall terminate and come to an end on the date title shall vest in the condemning authority pursuant to such Taking, but shall not terminate as to the Award. For purposes of this **Article 12**, "**substantially all of the Premises**" shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the restoration of the Premises so as to allow the economic and feasible operation thereof by Tenant as reasonably determined by the Tenant. In that event, the Rent, Additional Rent, Impositions and all other charges herein provided to be paid by Tenant shall be apportioned to the date title shall vest in the condemning authority pursuant to such Taking and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by the City to Tenant. As to any such taking, the Net Award shall be deemed and distributed as Sales Proceeds under Section 5.3 hereof.

The provisions of **Sections 12.1 and 12.2** shall survive termination of this Lease under this **Section 12.2**.

12.3 Intentionally omitted.

12.4 Partial Taking.

(a) If, during the Term of this Lease, a portion of the Premises shall be taken or conveyed, this Lease shall terminate and come to an end as to the part of the Property which is taken, upon the date title is vested in the condemning authority as a result of such Taking, but shall not terminate as to the Award for the part of the Premises which is taken, and otherwise this Lease shall continue in full force and effect as to the remainder of the Premises, subject to the provisions of Section 12.4(b) hereof.

If there is a Taking of the type provided for in this Section **12.4**, then, as to the part of the Premises not so taken, the Tenant covenants and agrees, for itself and its successors in interest, that the Tenant shall, at its sole cost and expense (subject to reimbursement to the extent hereinafter provided), promptly restore that portion of the Premises not so taken to a complete architectural unit for the use

and occupancy of the Tenant (and those claiming under Tenant) as expressed in this Lease. The provisions and conditions in **Article 11** hereof applicable shall apply to the work required to be done under this **Section 12.4**. As to any such Taking, the Net Award shall be distributed as follows:

(i) First to the Tenant, to the extent of and as a first charge against the Net Award, an amount not exceeding the actual cost reasonably incurred by the Tenant of performing its obligations under this Lease imposed upon Tenant as the result of the Taking.

(ii) Second, to Permitted Leasehold Mortgagees to the extent required under their respective loan documents.

(iii) The balance of the Net Award, if any, shall be apportioned between the City and the Tenant in the same manner as the balance of a Net Award apportioned under **Subsection 12.2(b)(iv) and (v)**.

(b) In the event a Taking provided for in this Section 12.4 so diminishes or impairs the use of the Tenant's Improvements that, notwithstanding restoration, the Tenant would be unable to make economic use of the remainder thereof for the purposes permitted by this Lease, the Tenant, at its option exercisable by notice to the City given not later than one hundred and eighty (180) days after title is vested in the condemning authority pursuant to such Taking, may terminate this Lease as of such date. The Base Rent, Additional Rent, Impositions and/or other charges herein provided to be paid by the Tenant shall be apportioned to said date and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by the City to the Tenant. In the event Tenant elects to so terminate this Lease, the Net Award shall be allocated and distributed in the manner provided in Section 12.2, except that the value of the City's Interest in the Net Award determined under Subsection 12.2(a)(i) shall be reduced by the value of the portion of the Premises and the Tenant's Improvements not taken and the amount to be paid to the City under Subsection 12.2(b) shall be reduced by the discounted fair rental value of the portion of the Premises not taken for the unexpired portion of the Term of this Lease.

12.5 Temporary Taking.

(a) If the use of the Premises or the Tenant's Improvements, or any part thereof, shall be taken by pursuant to a Taking for a period of time, definite or indefinite, whether or not for the entire unexpired portion of the Term of this Lease or for a period greater than the same, this Lease shall, nevertheless, continue in full force and effect and the Tenant shall have the right (except as hereinafter provided) to receive the entire Award (which Award, in the case provided for by this Section 12.5, is called the "Use Award") which is allocable to that part of the unexpired portion of the Term of this Lease to which the Use Award relates. Notwithstanding the foregoing, the Tenant and the First Permitted Leasehold Mortgagee, in cooperation with the City, shall have the right to participate in negotiations relative to any such Taking or the Use Award in order to be certain that their respective interests thereunder are protected, with all cost and expense thereof to be a first charge against the Use Award.

The Use Award shall be paid, however, by to the Insurance Trustee for application as hereinafter set forth, after deduction therefrom of all cost and expense reasonably incurred incident to

obtaining such Use Award.

The Use Award shall be held and disbursed as follows: (a) If the same is payable in monthly or other periodic installments, such installments shall, as received by the Insurance Trustee, be applied on account of, and to the extent of, Tenant's restoration obligations and Tenant's obligations on account of Base Rent, Additional Rent, Impositions and other charges under this Lease payable by the Tenant on account of such period; and the dollar value of obligations to be performed by the Tenant shall, on a proportionate basis, also be satisfied from such periodic installments.

Any balance of such periodic installments remaining shall be applied to or for the account of the Tenant, except that, if such taking shall be for a period extending beyond the expiration of the Term of this Lease, the City shall be entitled to the entire Use Award attributable to the period after such expiration.

(b) Where the Use Award is in a lump sum or payable in installments less frequently than quarterly, the lump sum or other installments, together with investment earnings thereon, if any, shall be divided by the number of months included in the period for which such Award has been made and the quotient thereof shall be applied monthly, in accordance with subparagraph (a), above; and

(c) To the extent a Use Award is allocable to the cost of repairs and restoration following the termination of a temporary taking, the same shall be treated as insurance proceeds and applied consistent with the provisions of **Article 11**.

12.6 The City's Power of Eminent Domain. Nothing in this Lease shall limit the eminent domain power of the City; *provided, however*, that Tenant shall retain any and all of its rights to object to any eminent domain proceeding or taking (except that Tenant shall not object to such proceeding or taking on the grounds that the City has in any way contractually limited or waived its eminent domain powers in this Lease), and to pursue any and all remedies with respect thereto.

12.7 Certain Takings to Have No Effect on Tenant's Leasehold. If there shall be a Taking of any vault or other space not included within the Premises as defined in this Lease, or a Taking which shall result in the removal of projecting portions of any Tenant's Improvements upon any street for which the Tenant is not entitled to compensation as a matter of law, or a Taking of an underground right-of-way for a subway, conduit or other purpose not necessitating the demolition or substantial alteration of any portion of any of the Tenant's Improvements, and not affecting the operations of Tenant's Improvements or the quiet enjoyment of Subtenants, any such Taking shall not be treated as a Taking of any part of the Premises for the purposes of this **Article 12**, this Lease shall not be affected by any such Taking of the nature in this **Section 12.7** referred to, any alteration required because of such Taking of the nature in this **Section 12.7** provided, shall be done by the Tenant, and the provisions and conditions of **Article 11** shall apply to any alteration required to be done under this **Section 12.7**.

ARTICLE 13

TRANSFERS OF TENANT'S INTEREST

13.1 Transfers Generally.

(a) Except as otherwise expressly provided in this Lease, Tenant shall not, directly or indirectly, assign, mortgage, pledge, or otherwise transfer this Lease, or all or any portion of Tenant's legal or beneficial interest in this Lease, or enter into a Sublease with respect to the whole or any part of the Premises (excluding Allowed Subleases) (collectively, a "**Transfer**"), prior to the date of Final Completion of Tenant's Improvements without the City's prior written approval, which may be withheld or granted in the City's sole discretion. From and after such date, except as otherwise expressly provided in this Lease, no Transfer shall be permitted without Landlord's prior written approval in each instance, which approval shall not be unreasonably withheld, conditioned or delayed. In furtherance but not in limitation of the foregoing, the City may withhold its consent to any Transfer for which the City's approval is required hereunder (and, where in this **Section 13.1** the City has agreed not to unreasonably withhold its consent to a Transfer, shall not be deemed unreasonable for doing so) because of the City's special concerns as a public entity regarding any proposed Transferee's character or reputation in the community, whether or not such concerns would be important to a commercial enterprise, or if there exists an uncured Event of Default under this Lease after the expiration of applicable grace, notice and cure periods. At the City's option, any attempted Transfer without said prior written approval or otherwise in violation of any provision of this **Article 13** shall be void, *ab initio*, shall be of no force and effect, and shall confer no rights on or in favor of third parties, provided that the City may, at its option, collect rent from any such Transferee and apply the net amount collected to the Rent due from Tenant hereunder, but no such collection shall be deemed a waiver of such violation, or the acceptance of such Transferee as a tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant set forth in this Lease.

[Parties to discuss structuring to allow assignments of separate portions of the Project to distinct ownership entities following Final Completion.]

(b) If City approval is required under this Lease, Tenant shall request the City's consent to a Transfer in writing and shall provide the following information and documentation to the City at least thirty (30) days prior to the effective date of any such proposed Transfer:

(i) the name of the proposed Transferee and a copy of the proposed Sublease or assignment of lease Transfer (with a duly executed copy of such Sublease or assignment of lease to promptly follow upon execution thereof);

(ii) the nature of the proposed Transferee's business, their proposed use of the Premises, their business experience in the Permitted Uses thereof, and their financial qualifications and ability to perform all obligations under this Lease;

(iii) certificates of good standing (or certificates of qualification to do business in the State if such proposed Transferee is a foreign entity) of the proposed Transferee issued by the New Hampshire Secretary of State;

(iv) Omitted.

(v) a statement from Tenant certifying that, to the best of Tenant's knowledge, neither the proposed Transferee, nor its respective constituent partners, investors, beneficiaries or Affiliates, are in violation of any law, rule,

regulation, order or decree relating to terrorism or money laundering, or is otherwise a Person described in **Section 13.6** below. Tenant shall, from time to time (but no more frequently than once in any 12 month period), within thirty (30) days after request by the City, deliver to the City any certification or other reasonable evidence requested from time to time by the City in its reasonable discretion, confirming its compliance with these provisions;

(vi) in the case of a Sublease of the entire Premises, or assignment of this Lease, a written agreement executed by the Transferee in which the Transferee assumes and agrees, for the benefit of the City, to observe and perform all the covenants, conditions and agreements in this Lease on the part of Tenant to be observed or performed after the date of the Transfer with respect to the Premises (or, in the case of a Sublease, that portion of the Premises which is subject to such Sublease); and

(vii) any other information reasonably requested by the City.

(c) Tenant shall reimburse the City within 30 days of written demand, as Additional Rent, for all reasonable out-of-pocket fees, costs and expenses incurred by the City (including, without limitation, the City's reasonable attorneys' fees at usual rates and disbursements and the reasonable costs of making investigations as to the acceptability of the proposed Transferee) in connection with (x) any request by Tenant for the City's consent to a proposed Transfer, or (y) the review by the City of plans and specifications for any Alterations proposed to be made to the Premises in connection with a proposed Transfer (in each case without regard to whether or not the City issues such consent or approval). Such payment shall be due and payable to the City within thirty (30) days after it submits an invoice therefor to Tenant accompanied by reasonably detailed documentation relating to such costs and expenses.

(d) For the purposes of this Lease, the sale or other transfer (which term shall include, without limitation, the exchange, issuance and/or redemption) of fifty-one percent (51%) or more, or such smaller percentage as would result in a change in the voting control, of the immediate or remote beneficial interests of the members of Tenant, the voting stock of any immediate or remote corporate member or guarantor or indemnitor of Tenant, or the voting stock of any immediate or remote controlling corporation of Tenant (whether such sale or transfer occurs at one time or at intervals so that, in the aggregate, over the Term of this Lease, such transfer shall have occurred), or any other transaction(s) overall having the effect of a change in voting control or substantially the same effect if the entity in question is not a corporation (such as, without limitation, a change in the number or the identity of the members of a limited liability company, the partners of a partnership or of the beneficiaries of a trust), shall be treated as if such sale or transfer or transaction(s) were, for all purposes, an assignment of this Lease and shall be governed by the provisions of this **Article 13**. The foregoing provision shall apply to voluntary and involuntary assignments and transfers, and to assignments and transfers by operation of law, the sale of all or substantially all of Tenant's assets, and shall include transfer, merger or consolidation of the stock or partnership or member's or other beneficial interests of Tenant or any beneficiary or member of Tenant, except as otherwise permitted hereunder.

(e) Notwithstanding the provisions contained in the first paragraph of this **Section**

13.1, Tenant shall not be required to obtain the consent of the City to an assignment in connection with (i) any exercise of rights by a Permitted Leasehold Mortgagee under its loan documents, including, without limitation, foreclosure by a Permitted Leasehold Mortgagee (or deed or assignment in lieu thereof), including, without limitation, a purchase of Tenant's interest in a foreclosure sale from a foreclosing Permitted Leasehold Mortgagee; (ii) a transfer by reason of death or incapacity of an individual holding an Equity Interest in Tenant; (iii) estate planning transfers to family members or trusts for the benefit of family members of an individual holding an Equity Interest in Tenant; (iv) transfers of the publicly traded stock in Tenant or in any entity holding an Equity Interest in Tenant; (v) the exercise by any holder of an Equity Interest in Tenant of its right to purchase the Equity Interest of any other holder of an Equity Interest in Tenant; (vi) the transfer, sale, conveyance, or pledge of Investor Member interests in Tenant, or transfers of membership interests within Investor Member that are permitted under the Operating Agreement; (vii) any Allowed Subleases; (viii) any grant of easements or licenses or the like under Section __; (ix) and liens being contested by Tenant in good faith; (x) a transfer of such interest among the individuals or entities comprising the members of the Tenant as of the date of this Lease, (xi) a transfer of such interests to the Completion Guarantor or to any direct or indirect owner of Completion Guarantor (collectively, "**Permitted Transfers**"). Tenant shall provide written notice to the City of any and all changes or transfers in the holders of Equity Interests in Tenant within thirty (30) days of such change or transfer, regardless of whether the City's consent is required under this **Section 13.1**.

(f) Upon the execution and delivery of an Assignment and Assumption Agreement transferring this Lease in accordance with and subject to the provisions of this **Section 13.1**, the assignor shall be relieved from all further liabilities and obligations hereunder, but until such time, and in respect of all liabilities arising prior to such time, the assignor shall remain fully and directly liable on all Tenant obligations hereunder.

(g) Tenant promptly shall provide the City with a copy of each executed Sublease or assignment of lease, and all material modifications or amendments thereof, upon written request of the City.

13.2 Subleases. Except for Subleases to individual residential Subtenants made in the ordinary course of business, and except for non-residential subleases made in the ordinary course of business on a commercially reasonable standard form of lease approved in advance by the City (with commercially reasonable changes thereto), the approval of which form shall not be unreasonably withheld, conditioned, or delayed, and for which the term does not extend beyond the term of this Lease (collectively, the "**Allowed Subleases**"), all Subleases shall be subject to the prior written approval and consent of the City. Allowed Sublease and all other subleases approved by the City are referred to herein as "**Approved Subleases**". The following additional provisions shall apply to all Allowed Subleases and other Subleases:

(a) Tenant, and Tenant's successors and assigns, shall not permit the use, occupancy or operation of the Premises or any portion thereof by any Person, unless:

(i) such use, occupancy or operation is under a written Sublease, and for a term which does not extend beyond the Term of this Lease;

(ii) such Sublease is with a Subtenant on commercially reasonable terms

and without any offsets other than those which are commercially reasonable;

(iii) such Sublease includes provisions acknowledging that said Sublease shall be subject and subordinate to this Lease;

(iv) such Sublease requires the proposed Subtenant to use the Premises only for the Permitted Uses herein defined;

(v) such Sublease contains provisions requiring all alterations, additions, changes or improvements to the Premises to be performed in accordance with the requirements of this Lease relating to alterations, additions, changes or improvements, including without limitation, Tenant's Improvements; and

(vi) such Sublease shall be otherwise in compliance with this **Section 13.2**.

(b) All Subleases shall provide that: (i) the Subtenant agree in writing that the Subtenant will not breach, or cause Tenant to breach, any of the provisions of this Lease; (ii) any violation of any provision of this Lease, whether by act or omission by any Subtenant, shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the Parties that Tenant shall assume and be liable to the City for any and all acts and omissions of any and all Subtenants with respect to this Lease, provided that this Lease shall not be terminated due to default of any Subtenant so long as such default does not constitute or result in an Event of Default under this Lease; (iii) each Sublease shall provide that in the event this Lease is terminated prior to the expiration of such Sublease, then, subject to the provisions of any non-disturbance and attornment agreement executed by the subtenant and the City pursuant to **Section 13.4**, at the City's option, the Subtenant thereunder will either attorn to the City and waive any right the Subtenant may have to terminate the Sublease, or surrender possession thereunder as a result of the termination of this Lease, and the Sublease shall terminate simultaneously with the termination or expiration of this Lease; and (iv) each Sublease shall provide that in the event the Subtenant receives a written notice from the City stating that an Event of Default has occurred under this Lease, the Subtenant shall thereafter be obligated to pay all rentals accruing under such Sublease directly to the City or as the City may direct.

(c) All Subleases and all of the terms, covenants and provisions thereof and all rights, remedies and options of the Subtenants thereunder are and shall at all times continue to be fully subject and subordinate in all respects to this Lease as the same may be renewed, amended, supplemented, extended or replaced. This provision shall be self-operative and no further instrument shall be required to confirm or perfect such subordination. However, at the request of the City, Tenant shall request Subtenants not parties to Allowed Residential Subleases to execute and deliver such other documents and take such other action as the City reasonably requests to perfect, confirm or effectuate such subordination. If, for any reason, this Lease is terminated by summary proceedings or for any other reason whatsoever, the Subleases shall automatically terminate, except as may be provided in any Non-Disturbance Agreement between the City and a Subtenant.

(d) Notwithstanding anything to the contrary contained in this Lease, a Sublease of all or substantially all (more than 55%) of the Premises (regardless of the term thereof) shall require the prior written consent of the City .

(e) Furthermore, to the extent required by applicable law, all subleases are subject to the review and approval of NPS.

13.3 No Advance Payments. Tenant shall not directly or indirectly collect or accept any payment of rent under any Sublease for any period in excess of thirty (30) days in advance (other than pursuant to individual residential Subleases), provided the foregoing shall not be interpreted in any way that limits Tenant's rights to collect or accept security deposits and other fees and deposits, and provided that Tenant shall not be prohibited from collecting first and last months' rent in advance from residential subtenants.

13.4 Non-Disturbance. If Tenant delivers a Sublease to the City and requests that the City enter into a non-disturbance and attornment agreement (a "**Non-Disturbance Agreement**") with the Subtenant thereunder, the City shall have no obligation to do so but may do so, in its sole and absolute discretion, and subject to such conditions and limitations as the City may require, in its sole and absolute discretion. In no event shall the foregoing be deemed to obligate the City to enter into a non-disturbance and attornment agreement with respect to any Subtenant. Notwithstanding the foregoing, the City shall, if so requested, enter into a Non-Disturbance Agreement with each non-residential subtenant for Subleases of at least _____ square feet of rentable floor area if such agreement is substantially in the form attached hereto as **Exhibit H**. If any Subtenant requires a Non-Disturbance Agreement in a form substantially different from the form attached hereto as **Exhibit H** and the City agrees to negotiate such a different form with such Subtenant and agrees not to unreasonably withhold, condition or delay its agreement to any other commercially reasonable form of Non-Disturbance Agreement and, then Tenant shall reimburse the City, as Additional Rent, for all attorneys' fees and expenses incurred by the City in connection with the preparation, review and negotiation of such a Non-Disturbance Agreement (up to a maximum amount of \$2,500.00 per Non-Disturbance Agreement), regardless of whether or not such a Non-Disturbance Agreement is finalized, which payment shall be due and payable to the City within thirty (30) days after it submits an invoice therefor to Tenant. The amount set forth in the preceding sentence shall be adjusted by the cumulative increase (but not decrease) in the Index every five (5) Lease Years.

13.5 Prohibited Transfers. Notwithstanding any other provision contained in this Lease to the contrary, Tenant shall not knowingly, after reasonable inquiry, transfer or permit the transfer of any legal or beneficial interest in Tenant to, or assign, Sublease or otherwise Transfer all or any portion of its interest under this Lease or in all or any portion of the Premises to, or enter into any Sublease to, any of the following:

(a) any Person (or any Person whose operations are directed or controlled by a Person) that is (or within the prior five years has been) in litigation with the City [due to a breach of duties or obligations contractually owed to the City by such Person], or has been convicted of or has pleaded guilty in a criminal proceeding to a felony, or that is an on-going target of a grand jury investigation convened pursuant to applicable statutes concerning organized crime;

(b) any Person organized in or controlled from a country, the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (1) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, *et seq.*, as amended; (2) the International Emergency Economic Powers Act of 1976, 50

U.S.C. §1701, *et seq.*, as amended; or (3) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. §2405W, as amended; or

(c) any Person with whom the City is restricted from doing business under either (1) Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001 (as amended or supplemented from time to time, the "**Executive Order**"), or (2) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 10756; as amended, from time to time, the "**Patriot Act**"), or (3) the regulations of the United States Department of the Treasury Office of Foreign Assets Control (including, without limitation, those Persons named on the list of "Specially Designated Nationals and Blocked Persons" as modified from time to time), or other governmental action; or

(d) any Person involved in litigation with the City [due to a breach of duties or obligations contractually owed to the City by such Person], which is ongoing at the time of the proposed Transfer or five (5) years prior; or

(e) any Affiliate of any of the Persons described in the preceding paragraphs (a), (b), (c) or (d).

Tenant shall, simultaneously with its execution and delivery of this Lease, deliver to the City a certification stating that, to the best of Tenant's knowledge, neither Tenant nor any of its constituent partners, investors, beneficiaries or Affiliates, are in violation of any Laws relating to terrorism or money laundering, including the Executive Order and the Patriot Act and that neither Tenant, nor its constituent partners, investors, beneficiaries or Affiliates, are listed on the United States Department of the Treasury Office of Foreign Assets Control list of "Specially Designated Nationals and Blocked Persons" as modified from time to time, and that none of them is otherwise subject to the provisions of the Executive Order or the Patriot Act, or any rules or regulations promulgated thereunder. Thereafter, Tenant shall from time to time, but no more frequently than once in any 12 month period, within ten (10) business days after request by the City, deliver to the City a certification stating that, to the best of Tenant's knowledge, neither Tenant nor any Transferee, nor any of their respective constituent partners, investors, beneficiaries or Affiliates, are in violation of any Laws relating to terrorism or money laundering, including the Executive Order and the Patriot Act and that neither Tenant nor any Transferee, nor any of their respective constituent partners, investors, beneficiaries or Affiliates, are listed on the United States Department of the Treasury Office of Foreign Assets Control list of "Specially Designated Nationals and Blocked Persons" as modified from time to time, and that none of them is otherwise subject to the provisions of the Executive Order or the Patriot Act, or any rules or regulations promulgated thereunder.

13.6 Further Consent. Consent by the City to any type of Transfer shall not in any way be construed to relieve Tenant from obtaining further written consent for any subsequent Transfer, nor shall any consent by the City to any Transfer be deemed to be consent to a further Transfer by the initial Transferee thereof. Notwithstanding anything to the contrary contained in this Lease, any subsequent Transfer by such Transferee shall require the prior written consent of the City, which consent may be withheld by the City to the extent required under this Article 13.

13.7 Deemed Approval. The City shall grant or withhold approval of any request by Tenant

to a Transfer to the extent such consent is required hereunder, within ten (10) Business Days after Landlord's receipt of such request. If the City shall fail to approve or disapprove Tenant's request within such ten business day period then Tenant shall send a follow up written notice to the City (which notice shall specifically reference this Section and contain in a conspicuous type on the top of the first page of such request the following language in bold and prominent print: "YOU SHALL BE DEEMED TO HAVE GRANTED TO TENANT THE APPROVAL REQUESTED HEREIN IF YOU FAIL TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS AFTER YOUR RECEIPT OF THIS REQUEST") and the City fails to respond within such 10-Business Day period after receiving the notice, then such request shall be deemed approved.

ARTICLE 14

PERMITTED LEASEHOLD MORTGAGEES

14.1 Permitted Leasehold Mortgage. Notwithstanding anything in the Lease to the contrary, **Tenant**, and its successors and assigns, shall have the right to mortgage, pledge or conditionally assign this Lease (including, without limitation, Tenant's leasehold interest in the Premises, Tenant's Improvements, and all appurtenant rights and easements for the benefit of Tenant under this Lease) to a Permitted Leasehold Mortgagee subject to the provisions of this **Article 14**. Any leasehold mortgage other than a Permitted Leasehold Mortgage shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. In no event shall the fee interest in the Premises, or the interest of the City in any Rent, be subordinate to any leasehold mortgage or other interest in the Premises. Tenant shall provide the City with written notice of any such proposed leasehold mortgage or any refinancing of the Premises at least thirty (30) days prior to the closing of any such transaction.

The making of a mortgage under the prior paragraph shall not be deemed to constitute an assignment or other Transfer, nor shall any mortgagee under such a mortgage not in possession of the Premises be deemed an assignee of the leasehold estate created hereby, so as to require such mortgagee to assume the obligations of Tenant hereunder, but a mortgagee in possession and the purchaser at any sale of the leasehold estate created hereby upon foreclosure of a mortgage given in accordance with the prior paragraph, or the assignee of Tenant's interest under this Lease pursuant to an assignment in lieu of such foreclosure, shall be deemed to be an assignee of Tenant (but no consent by the City to such assignment or transfer shall be required) and subject to the terms and conditions of **Article 14** hereof shall be deemed to have assumed the obligations of Tenant hereunder arising from and after the date of taking possession or of such purchase or assignment. Any such party shall have the right to assign or otherwise Transfer its interest in the leasehold estate created by this Lease, and no consent by the City for such assignment or Transfer shall be required. If a mortgagee who is deemed to have assumed the obligations of Tenant hereunder thereafter assigns its interests in this Lease to an assignee who assumes the obligations of Tenant hereunder, such mortgagee shall be relieved of the obligations of Tenant arising after such assignment and assumption. A conditional assignment of Tenant's interest in this Lease to a mortgagee as security for a mortgage granted in accordance with the prior paragraph shall not constitute an assumption of liability by the mortgagee of Tenant's obligations hereunder until the date of such mortgagee's taking of possession pursuant to the exercise of its rights under such conditional assignment.

Tenant covenants to pay all amounts when due, and perform all obligations, under any

mortgage made pursuant to this Section. Tenant shall reimburse the City within thirty (30) days following written demand, as Additional Rent, for all out-of-pocket costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by the City in connection with any mortgage, pledge, conditional assignment, or other security interest (or any refinancing thereof) proposed to be granted by Tenant with respect to all or any portion of its interest under this Lease, regardless of whether or not Tenant enters into such financing arrangement.

[City to provide right for Tenant to obtain mezzanine debt][to be discussed]. [OPEN]

14.2 Rights of Permitted and First Permitted Leasehold Mortgagees.

(a) Notices. Provided that the City shall have previously been provided by Tenant in writing with the name and address of each Permitted Leasehold Mortgagee, then simultaneously with the giving to Tenant of any process in any action or proceeding brought to terminate or otherwise in any way affect this Lease, or any notice of (i) default, (ii) a matter on which a default may be predicated or claimed, (iii) a termination hereof, or (iv) a condition which if continued may lead to a termination hereof, the City will give duplicate copies thereof to each Permitted Leasehold Mortgagee in the manner provided in **Section 18.3**, and no such notice to Tenant or process shall be effective unless a copy of the notice or process is so sent to each such Permitted Leasehold Mortgagee. The City acknowledges, for the benefit of the First Permitted Leasehold Mortgagee only, that no event or circumstance will constitute an Event of Default for which this Lease may be terminated by the City, unless the First Permitted Leasehold Mortgagee shall have been given notice thereof and an opportunity to cure as provided herein.

(b) Right to Cure. A Permitted Leasehold Mortgagee may elect, in its sole discretion, to cure any default under this Lease by Tenant. Any Permitted Leasehold Mortgagee shall have the same period after the sending of a notice to it for remedying the default as is given Tenant after notice to it under this Lease plus an additional thirty (30) days for a default referred to in **Section 15.2(a)** or in **Section 15.2(1)** below, and the City agrees to accept performance on the part of any such Permitted Leasehold Mortgagee as though it had been done or performed by Tenant. No payment made to the City by any Permitted Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease.

(c) Time to Obtain Possession. The City agrees that, only in the event of a non-monetary default which cannot be cured by a First Permitted Leasehold Mortgagee without obtaining possession of the Premises, the City will not terminate this Lease pursuant to **Section 15.2** without first giving to the First Permitted Leasehold Mortgagee only a reasonable time within which to obtain possession of the Premises, including possession by a receiver, or to institute and complete foreclosure proceedings or otherwise acquire Tenant's Leasehold Interest with diligence and without unreasonable delay; *provided, however*, that throughout such time such First Permitted Leasehold Mortgagee causes to be fully and timely performed all monetary obligations of Tenant under this Lease and all non-monetary obligations of Tenant that can be performed by such First Permitted Leasehold Mortgagee without first obtaining possession of the Premises. A reasonable time shall mean not in excess of three (3) months as to obtaining possession, whether or not foreclosure proceedings are commenced and prosecuted (or such longer period if and so long as such proceedings are enjoined or stayed). The City agrees that upon acquisition of Tenant's Leasehold Interest by a First Permitted Leasehold Mortgagee

and performance by such First Permitted Leasehold Mortgagee of all covenants and agreements of Tenant, except those which by their nature cannot be performed or cured by any Person other than the then Tenant which has defaulted, including without limitation Tenant's initiation of a voluntary proceeding under any bankruptcy or insolvency law ("**Incurable Lease Defaults**"), the City's right to terminate this Lease shall be waived with respect to the matters which have been cured by the First Permitted Leasehold Mortgagee and with respect to the Incurable Lease Defaults. Nothing herein shall preclude the City from exercising any rights or remedies under this Lease (other than the right to terminate this Lease), with respect to any default by Tenant hereunder continuing beyond applicable grace, notice and cure periods, prior to or during the pendency of such foreclosure proceedings subject, however, to the City's compliance with the provisions of this **Section 14.2** with respect to each such default.

(d) Amendment. Except as may be expressly otherwise provided herein, this Lease shall not be modified or surrendered to the City or canceled by Tenant, nor, except as provided in **Section 14.2(e)** below, shall the City accept a surrender of this Lease, without the prior written consent of the First Permitted Leasehold Mortgagee. The City agrees to make reasonable modifications to this Lease to accommodate the requirements of a prospective Permitted Leasehold Mortgagee, provided that the City shall not be required to enter into any amendment to this Lease which would (A) subordinate the City's fee interest in the Premises; (B) reduce, defer or subordinate the payment of Rent; (C) require the City to assume or join in any obligation, monetary or otherwise, which is an obligation of Tenant under this Lease; (D) relieve Tenant of any material obligation, monetary or otherwise, under this Lease; (E) materially impair the value of the City's reversionary interest under this Lease; (F) extend the Term of this Lease; (G) permit Tenant to construct improvements on the Premises other than those permitted under this Lease; or (H) otherwise materially adversely affect the City's rights under this Lease.

(e) New Lease. If this Lease is terminated for any reason, including without limitation, as a result of a default on the part of Tenant continuing beyond applicable grace, notice and cure periods, or a rejection of this Lease in any bankruptcy proceeding, the City shall, subject to the satisfaction of the conditions provided below, on written request of a First Permitted Leasehold Mortgagee made at any time within sixty (60) days after the City has given notice of such termination to such First Permitted Leasehold Mortgagee, enter into a new lease of the Premises with such First Permitted Leasehold Mortgagee within ninety (90) days after receipt of such request. If the First Permitted Leasehold Mortgagee has made an election pursuant to the previous sentence to enter into a new lease, the City shall not execute, amend or terminate any Subleases of the Premises during such ninety (90) day period without the prior written consent of the First Permitted Leasehold Mortgagee. Any such new lease for a First Permitted Leasehold Mortgagee shall be effective as of the date of termination of this Lease, and, except as provided below, shall be upon all the same terms and conditions of this Lease which would have been in effect had such First Permitted Leasehold Mortgagee taken an assignment of the leasehold estate under this Lease from Tenant. The term of any such lease shall be the remainder of the Term of this Lease. The City shall not be obligated to enter into such a new lease with a First Permitted Leasehold Mortgagee unless (i) such First Permitted Leasehold Mortgagee shall, contemporaneously with the delivery of such request for a new lease, pay to the City all Rent and other charges owed by Tenant to the City which then remain unpaid and the Rent and other charges for the period after termination of this Lease and until commencement of the new lease which would have become due under this Lease (less any Rent or other charges for such periods actually collected by the City from Subtenants of the Premises), together with all expenses,

including reasonable attorney's fees, incurred by the City in connection with the termination of this Lease and the execution and delivery of such new lease, and (ii) such First Permitted Leasehold Mortgagee shall have performed all unfulfilled covenants and agreements required as of that date to be performed by Tenant under this Lease (other than Incurable Lease Defaults). The City shall have no obligation to deliver physical possession of the Premises to any First Permitted Leasehold Mortgagee at the time of entering into such new lease unless the City, at time of execution and delivery of such new lease, shall have obtained physical possession of the Premises. In no event shall any new lease with a First Permitted Leasehold Mortgagee be for a longer term than the Term of this Lease. The provisions of this **Section 14.2(e)** shall survive the termination of this Lease.

14.3 Undertakings of Permitted Leasehold Mortgagee.

(a) Notices. Simultaneously with the giving to Tenant of any process in any action or proceeding brought for foreclosure of a Permitted Leasehold Mortgage or any notice of (i) default or acceleration under a Permitted Leasehold Mortgage, (ii) a matter on which such a default or acceleration may be predicated or claimed, (iii) a foreclosure of a Permitted Leasehold Mortgage, or (iv) a condition which if continued may lead to such foreclosure, the applicable Permitted Leasehold Mortgagee will give duplicate copies thereof to the City in the manner provided in **Section 18.3**, and no such notice to Tenant or process shall be effective unless a copy of such notice or process is so sent to the City.

(b) Right to Cure. The City shall have the same period after the sending of a notice to it for remedying the default as is given Tenant after notice to it. The applicable Permitted Leasehold Mortgagee agrees to accept performance on the part of the City as though it had been done or performed by Tenant. No payment made to any such Permitted Leasehold Mortgagee by the City shall constitute agreement that such payment was, in fact, due under the terms of the Permitted Leasehold Mortgage.

(c) Amendment. A Permitted Leasehold Mortgage shall not be amended in any manner that would cause it to no longer qualify as a Permitted Leasehold Mortgage without the prior written consent of the City, not to be unreasonably withheld, conditioned or delayed.

(d) Certificates. A Permitted Leasehold Mortgagee will, upon request from the City, but no more frequently than once in any 24 month period, deliver to the City a certificate that to the best knowledge of such Permitted Leasehold Mortgagee, Tenant is not in default under the applicable Permitted Leasehold Mortgage (or, if any defaults exist, specifying said defaults).

ARTICLE 15

TERMINATION AND DEFAULT

15.1 Surrender. Tenant shall on the last day of the Term, or upon any earlier termination of this Lease, quit and peacefully surrender and deliver up the Premises, including Tenant's Improvements and all other improvements to the Premises, to the possession and use of the City without delay and in good order, condition and repair (excepting only reasonable wear and tear; damage from a Taking or from a Casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to this Lease; and damage caused by the City or its employees or contractors; and obsolescence). The Premises shall at that time, unless otherwise approved or requested by the City in

writing (such written approval or request to include, without limitation, any Non-Disturbance Agreements executed by the City) be free and clear of all leases and occupancies. The Premises shall be surrendered free and clear of all liens and encumbrances (other than those existing at the Effective Date of this Lease, created or approved by the City or permitted under this Lease), and shall be surrendered without any payment by the City on account of Tenant's Improvements or any other improvements which may be on the Premises. Upon or at any time after the expiration or earlier termination of this Lease, subject to the rights of any Subtenant under a Non-Disturbance Agreement executed by the City and such Subtenant in accordance with **Section 13.5** above and the rights of any Permitted Leasehold Mortgagee, the City may, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises, and may have, hold and enjoy the Premises and the right to receive all income from the same.

15.2 Events of Default. If any one or more of the following events (herein called "**Events of Default**") shall happen:

(a) If default shall be made in the due and punctual payment of any Rent or other sums payable under this Lease or any part thereof when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days after written notice from the City to Tenant specifying the items in default; or *provided, however*, that the City shall not be required to give more than two (2) notices pursuant to this clause (a) within a 12-month period if Tenant fails to make any payment of Rent or other sum payable under this Lease within ten (10) days of the date the same is due under this Lease. If any installment of Rent due from Tenant to the City shall not be received by the City when due, then default interest on such late payment shall accrue from the date due until paid at the rate of ten percent (10%) per annum. The parties agree that such late charge represents a fair and reasonable estimate of the costs the City will incur by reason of late payment by Tenant. Acceptance of such late charge by the City shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent the City from exercising any of the other rights and remedies granted hereunder.

(b) If Tenant fails to comply with the provisions of **Section 4.5** and as a result thereof an Event of Default is deemed to occur beyond applicable grace, notice and cure periods as provided in **Section 4.5**; or

(c) If Tenant shall fail to maintain insurance as required by **Article 8** and such default shall continue for a period of twenty (20) days after written notice from the City to Tenant; or

(d) If Substantial Completion of Tenant's Improvements shall not have occurred on or before the Outside Completion Date, subject to delays due to Force Majeure Events or attributable to the City as set forth in **Section 4.20**, or as otherwise may be extended pursuant to the terms of this Lease; or

(e) [Reserved]; or

(f) If Tenant abandons, voluntarily, all or substantially all of the Premises for a period of one hundred and eighty (180) days for any reason other than the process of restoration following a Casualty or Taking (which restoration requires more than thirty (30) days to complete) or

due to Force Majeure; or

(g) If Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's Leasehold Interest for whatever reason, or Tenant shall make an assignment for the benefit of creditors or other conveyance or transfer of like nature, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Tenant any such proceedings which are not dismissed within ninety (90) days; or

(h) If the leasehold hereby created shall be taken on execution or by other process of law and shall not be revested in Tenant within sixty (60) days thereafter; or

(i) If a receiver, sequester, trustee or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or a substantial part of Tenant's property and such appointment shall not be vacated, revoked, terminated or stayed within sixty (60) days thereafter; or

(j) If Tenant shall assign, mortgage, pledge, encumber or otherwise Transfer (whether voluntarily or by operation of law) this Lease or the Premises, or any material portion thereof, in Tenant in violation of **Article 13** hereof; or

(k) If Tenant fails to comply with the terms and provisions of **Sections 16.1 or 16.2** hereof beyond the applicable notice and cure period set forth therein; or

(l) If default shall be made by Tenant in the performance of or compliance with any of the agreements, terms, covenants or conditions in this Lease, other than those referred to in paragraphs (a) - (k) of this Section, for a period of thirty (30) days after written notice from the City to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, Tenant fails to proceed within such thirty (30) day period to commence to cure the same and thereafter to prosecute the curing of such default with diligence to completion (it being intended in connection with a default not reasonably susceptible of being cured with due diligence within such thirty (30) day period that the time within which Tenant shall be required to cure the same shall be extended for such period as may be necessary to complete the same with due diligence); or

(m) With respect to the Completion Guaranty and any Guarantor thereunder, prior to Final Completion: (i) the termination of any Guarantor's liability thereunder other than through the Final Completion of construction of Tenant's Improvements by Tenant; or (ii) the occurrence with respect to any Guarantor of any of the events described in clauses (g), (h), or (i) above prior to the Final Completion of construction of Tenant's Improvements by Tenant; or (iii) any Guarantor's failure or refusal to honor the Completion Guaranty; or (iv) any Guarantor's breach of its Completion Guaranty, all beyond the applicable notice and cure period set forth therein, if any, provided that if any of the foregoing events of this **Section 15.2(m)** shall occur after the admittance of Investor Member as a member of Borrower, no Event of Default shall be deemed to have occurred if, within thirty (30) days following written notice from the City of the occurrence of such event, an Affiliate of Investor Member, or another replacement guarantor approved by the City (i) assumes the obligations of Guarantor under the Completion Guaranty and (ii) executes a new Completion Guaranty in substantially the same form as the Completion Guaranty; or

(n) With respect to the Environmental Indemnification Agreement, prior to Final Completion and any Indemnitor thereunder: (i) the termination of Tenant's or any Indemnitor's liability thereunder; or (ii) the occurrence with respect to Tenant or any Indemnitor of any of the events described in clauses (g) or (i) above; or (iii) Tenant's or any Indemnitor's failure or refusal to honor the Environmental Indemnification Agreement; or (iv) Tenant's or any Indemnitor's breach of the Environmental Indemnification Agreement, all beyond the applicable notice and cure period set forth therein, if any, provided that if any of the foregoing events of this **Section 15.2(n)** shall occur after the admittance of Investor Member as a member of Borrower, no Event of Default shall be deemed to have occurred if, within thirty (30) days following written notice from the City of the occurrence of such event, an Affiliate of Investor Member, or another replacement indemnitor approved by the City (i) assumes the obligations of Tenant or any under the Environmental Indemnification Agreement and (ii) executes a new Environmental Indemnification Agreement in substantially the same form as the Environmental Indemnification Agreement;

(o) then, subject to the rights of any Permitted Leasehold Mortgagee, and in any such event, the City at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least sixty (60) days after the giving of such notice, and upon the date specified in such notice this Lease and the Term thereby demised and all rights of Tenant under this Lease shall expire and terminate, unless prior to the date specified for termination the Event or Events of Default shall have been cured, and Tenant shall remain liable as hereinafter provided and Tenant's Improvements and all other improvements (including, without limitation, all buildings, structures, and Alterations) located on the Premises shall become the property of the City without the necessity of any deed or conveyance from Tenant to the City. Tenant agrees upon request of the City to immediately execute and deliver to the City any deeds, releases or other documents reasonably deemed necessary by the City to evidence the vesting in the City of all of Tenant's right, title and interest in and to all of Tenant's Improvements and all such other improvements.

15.3 Relet. At any time or from time to time after any such expiration or termination, the City may relet the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), on such conditions (which may include concessions or free rent and alterations of the Premises) and for such uses as the City, in its good faith discretion, may determine, and may collect and receive the rents therefor. The City shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any such reletting.

15.4 Remedies. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to the City the Rent and all other charges required to be paid by Tenant up to the time of such expiration or termination of this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to the City for, and shall pay to the City, as and for liquidated and agreed current damages for Tenant's default, the equivalent of the amount of the Rent and charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting after deducting all the City's expenses incurred in good faith in

connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

Tenant shall pay such current damages (hereinafter called "deficiency") to the City on the date(s) on which the Rent would have been payable under this Lease if this Lease were still in effect, and the City shall be entitled to recover from Tenant each deficiency as the same shall arise.

At any time after any such expiration or termination, in lieu of collecting any further deficiencies as aforesaid, the City shall be entitled to recover from Tenant and Tenant shall pay to the City, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the present value of the excess of the Rent reserved hereunder for the unexpired portion of the Term over the present value of the fair and reasonable rental value of the Premises for the same period, minus any such deficiencies for such period previously recovered from Tenant (for purposes of the foregoing lump sum calculation, the Federal Reserve discount rate, or a similar rate reasonably selected by the City, shall be used to calculate present values).

15.5 No Waiver. No failure by either the City or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the City or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other Party. No waiver by the City or Tenant of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

15.6 Injunctive Relief. In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, the City shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

15.7 Remedies Cumulative. Unless otherwise expressly stated in this Lease, each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the City or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

15.8 Termination Preserving Permitted Leasehold Mortgagee. Upon an Event of Default as provided in **Section 15.2**, the City may, by so stating in a written notice to the Permitted Leasehold Mortgagees, elect to terminate Tenant's rights under this Lease pursuant to this **Section 15.8** without terminating any Permitted Leasehold Mortgagee's lien on the leasehold estate created hereby, in which

event all right, title and interest in the leasehold estate of Tenant and, except as otherwise provided in a Non-Disturbance Agreement executed by the City and a Subtenant in accordance with **Section 13.5** and except for residential Subtenants, of all persons claiming through or under Tenant (including, without limitation, any Subtenant under any such Sublease except for residential Subtenants and Subtenants with whom the City has executed a Non-Disturbance Agreement), except for the Permitted Leasehold Mortgagees, shall terminate as provided in this **Section 15.8** and, as between the City and Tenant and any such Subtenant, the City shall have all the rights provided for in this **Section 15.8**, but as between the City and the Permitted Leasehold Mortgagees, this Lease shall remain in effect with the City holding the leasehold estate created hereby, subject to the Permitted Leasehold Mortgages. An election by the City to preserve the Permitted Leasehold Mortgages shall not prevent the City from thereafter electing, subject to the rights of any Subtenant under a Non-Disturbance Agreement executed by the City and such Subtenant in accordance with **Section 13.5**, to terminate such leasehold estate in a manner which does not preserve the Permitted Leasehold Mortgage, whether the leasehold estate is owned at the time by the City or another party.

15.9 No Termination on Dissolution of the City. The Term of this Lease shall not be affected by the dissolution of the City or transfer of its properties to the State of New Hampshire or any other entity but such Term and the leasehold estate created hereby shall continue in effect, notwithstanding such dissolution or transfer.

15.10 The City's Default. It is the intention of the Parties hereto that, except as otherwise expressly set forth in this Lease: (a) the obligation of Tenant hereunder to pay Base Rent, Percentage Rent, Additional Rent and all other sums payable by Tenant shall be a separate and independent covenant and agreement and such obligation shall not be affected by the City's failure to perform any of the City's obligations under this Lease; and (b) Tenant shall have no right to withhold or abate any payment of Rent, or to deduct from Rent any amount, or to offset or interpose any counterclaim for any amount in any action or proceeding commenced by the City with respect to this Lease or the tenancy created hereunder, or to terminate this Lease, because of any default or alleged default on the part of the City under this Lease, but Tenant shall have the right to commence and prosecute an independent action against the City to seek either damages or injunctive relief with respect to such default on the part of the City. Tenant hereby acknowledges that Tenant has been represented by counsel of its choice and has participated fully in the negotiation of this Lease, that Tenant understands that the remedies available to Tenant for a default on the part of the City may be more limited than those that would otherwise be available to Tenant under the common law in the absence of certain provisions of this Lease, and that the so-called "dependent covenants" rule as developed under the common law (including the statement of such rule as set forth in the Restatement (Second) of Property, Section 7.1) shall not apply to this Lease or to the relationship of landlord and tenant created hereunder.

ARTICLE 16

NONDISCRIMINATION AND EQUAL OPPORTUNITY COVENANTS

16.1 Nondiscrimination. With respect to its exercise of all rights and privileges granted herein, Tenant agrees that Tenant, its successors in interest, Subtenants, licensees, managers, operators and assigns shall:

- (a) Not discriminate against any person, employee, or applicant for employment

because of that person's membership in any legally protected class, including, but not limited to their race, color, gender, religion, creed, national origin, ancestry, age being greater than forty years, sex, sexual orientation, disability, genetic information, or Vietnam-era veteran status in the use of the Premises, including the hiring and discharging of employees, the provision or use of services, the selection of suppliers and contractors, in the subleasing or refusing to sublease any portion of the Premises or providing or refusing to provide any services or use of any facility on the Premises. In addition, Tenant, its successors in interest, Subtenants, licensees, managers, operators, and assigns shall not discriminate against any person, employee, or applicant for employment who is a member of, or applies to perform service in, or has an obligation to perform service in a uniformed military service of the United States, including the National Guard, on the basis of that membership, application or obligation.

(b) Conspicuously post notices to employees and prospective employees setting forth the Fair Employee Practices Law of the State of New Hampshire.

(c) Comply with all applicable federal, state and local laws, rules, regulations and orders and the City rules and orders (provided that, with respect to the City rules and orders, copies of such rules and orders have been provided to Tenant) pertaining to Civil Rights and Equal Opportunity, including but not limited to Executive Orders 11246 and 11478 as amended, unless otherwise exempt therefrom.

16.2 Noncompliance. Non-compliance by Tenant, any Subtenant, their respective successors in interest and assigns, or any of their respective agents, employees, licensees or operators, with this **Article 16** shall constitute an Event of Default, provided that the City has notified Tenant of such non-compliance in writing and Tenant has failed to cure such non-compliance within thirty (30) days after Tenant's receipt of the City's notice. Tenant shall indemnify and hold harmless the City from any claims and demands of third persons resulting from non-compliance with any of the provisions of this **Article 16**. This **Article 16** shall survive the expiration or earlier termination of this Lease.

16.3 Employment of Portsmouth Residents. **[TO BE DISCUSSED]**

ARTICLE 17

DETERMINATION OF FAIR MARKET RENT

17.1 Determination of Fair Market Rent. Whenever a determination of fair market rent is required by the terms of this Lease, the fair market rent for the Premises shall be as reasonably determined by the City by written notice to Tenant (the "Fair Market Rent"), which determination of Fair Market Rent shall be transmitted by the City as and when required by this Lease. If Tenant shall dispute the City's determination of Fair Market Rent in writing in within not less than thirty (30) days after the City's transmittal thereof, such determination shall be made in accordance with the following procedures:

(a) The City and Tenant shall each name one (1) impartial real estate appraiser with a third impartial real estate appraiser to be chosen, if necessary, as below provided. Tenant shall appoint its appraiser in its notice to the City commencing the determination procedure set forth in this Section, and the City shall appoint its appraiser by written notice within fifteen (15) days after receipt

by it of notice from Tenant. If the City fails to appoint an appraiser, the second appraiser shall be appointed by the one appraiser appointed by Tenant. Any and all such impartial appraisers (including the third appraiser, if it is necessary for a third appraiser to be chosen) shall be qualified, independent professionals licensed as appraisers in the State of New Hampshire having at least ten (10) years ownership, management or consulting experience in real estate transactions involving leasehold interests and comparable sales in similar multifamily residential and mixed use properties in the Greater Portsmouth metropolitan area, and shall be "Member, Appraisal Institute" or "Society of Real Estate Appraisers" appraisers (or appraisers certified by any successor entity to any such organization).

(b) The two impartial appraisers appointed, as set forth above, shall have thirty (30) days after appointment of the second appraiser to review all relevant documentation and to make their determination of Fair Market Rent, consistent with applicable provisions of this Lease, and to submit their determination in writing to the City and Tenant together with the relevant background documentation therefor.

(c) The unanimous written decision of the two first chosen appraisers, without selection and participation of a third appraiser, or otherwise the written decision of the three appraisers chosen as hereinafter provided, shall be conclusive and binding upon the City and Tenant. If such two appraisers shall not have reached a unanimous decision within thirty (30) days after the appointment of the second such appraiser as set forth above, they shall, within ten (10) days after expiration of such thirty (30) day period, select an impartial third appraiser, with the qualifications set forth in clause (a) hereof, to make such determination. Such third appraiser shall, within thirty (30) days following the date of appointment, select as Fair Market Rent the determination of one of the first two appraisers which is closest to the determination of Fair Market Rent made by such third appraiser, and the determination of Fair Market Rent so selected shall be Fair Market Rent. Promptly after such selection, the third appraiser shall notify the City and Tenant in writing of Fair Market Rent as so determined, and such determination by the third appraiser shall be final and binding upon the Parties. The City and Tenant shall each pay the fees and expenses of the appraiser appointed by or for them, and shall divide equally all fees and expenses of the third appraiser, if appointed.

ARTICLE 18 MISCELLANEOUS

18.1 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by anyone claiming by, through or under the City as such, subject, however, to the exceptions, reservations and conditions of this Lease. The foregoing shall not create any liability on the part of the City for any defects in or encumbrances on the City's title existing as of the date hereof or for any matters set forth in **Exhibit B** hereto.

18.2 Entry on Premises by the City. Tenant shall permit the City and its authorized representatives to enter the Premises at all reasonable times, upon reasonable advance notice to Tenant except in the case of emergency (in which case no notice shall be necessary), for the purpose of inspecting the same for compliance with the covenants and obligations of this Lease, provided that

such inspections shall be conducted so as to minimize to the extent practicable any interference with the conduct of business therein by Tenant or any Subtenant or use and enjoyment of residential units under Allowed Residential Subleases.

18.3 Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing (regardless of whether or not this Lease expressly so provides in the operative provision hereof, unless express provision is made in this Lease for verbal notice) and shall be delivered (a) by hand, (b) sent by overnight delivery service, such as Federal Express, with provision for receipt, or (c) by registered or certified mail, return receipt requested, addressed if to Tenant to:

Redgate
265 Franklin Street, 6th Floor
Boston, MA 02110
Attention: Steve Perdue

and:

The Kane Company, Inc.
210 Commerce Way, Suite 300
Portsmouth, NH 03801
Attention: Michael Kane

or to such other address as Tenant may from time to time designate by written notice to the City, or if to the City addressed to:

City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801
Attention: Nancy Colbert Puff

with a copy to:
City of Portsmouth – Legal Department
1 Junkins Avenue
Portsmouth, NH 03801
Attention: Robert P. Sullivan

with a copy to:

Hinckley Allen
650 Elm Street, Suite 500
Manchester, NH 03101
Attention: John H. Sokul, Esq.

or to such other address as the City may from time to time designate by written notice to Tenant,

or to such other agent or agents as may be designated in writing by either Party. The earlier of: (i) the date of delivery by hand or refusal of delivery, or (ii) the next Business Day after depositing such notice with a nationally-recognized overnight delivery service, or (iii) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

18.4 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.5 Estoppel Certificates. The City and Tenant shall, without charge, at any time and from time to time, within ten (10) Business Days after request by the other, certify by written instrument, duly executed, acknowledged and delivered to the party making such request, or any other person, firm or corporation specified by such party:

(a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

(b) whether or not, to the best knowledge of the person executing the certificate on behalf of the City or Tenant, there are then existing any claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications hereof upon the part of the other Party hereto to be performed or complied with, and, if so, specifying the same, paid;

(c) the dates, if any, to which the Rent and other charges hereunder have been

(d) the date of expiration of the current Term;

(e) the Rent then payable under this Lease;

(f) whether there are any defaults on the part of either Party; and

(g) other commercially reasonable statements of a purely factual nature, to the best knowledge of the person executing the certificate on behalf of the City or Tenant, required by a third party unaffiliated lender or purchaser.

Said certificate shall be substantially in the form of that attached hereto as **Exhibit I** and shall in no event serve or intend to modify, change or interpret the provisions of this Lease or otherwise impair the rights of the City or limit the obligations of Tenant hereunder.

18.6 Waiver. The Parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Lease or any of its provisions, any negotiations in connection therewith, or Tenant's use or occupation of the Premises. In the case the City shall commence summary proceedings or an action for non-payment of Rent or sums due hereunder against Tenant, Tenant shall not interpose any counterclaim of any nature

or description in any such proceeding or action, but such claim shall be relegated to an independent action at law, unless Tenant is required by the rules of civil procedure or applicable law in effect at the time of commencement of the summary proceedings or action to bring such counterclaim.

18.7 Waiver of Claims. Tenant acknowledges that prior to the expiration of the Term, the City, or its designees, may desire to negotiate with Tenant's Subtenants or other occupants of the Premises with respect to future occupancy or other rights in the Premises. Accordingly, during the period which is twenty-four (24) months prior to the expiration of the Term, the City, or its designees shall have access to Tenant's Subtenants or other occupants of the Premises at reasonable times after reasonable advance notice to Tenant; such access to include, without limitation, the right to contact such Subtenants and/or other occupants for the purposes of negotiations or discussions and the right to execute a written lease or other agreement for a term commencing on or after the expiration date of this Lease for the Premises or any other property owned or leased by the City. In furtherance of the foregoing, Tenant, on behalf of itself, its successors and assigns, hereby waives all claims it may at any time have against the City, its designee, and any Subtenant or other occupant of the Premises, in connection with the exercise of the City's rights under this **Section 18.7**.

18.8 No Brokers. The City and Tenant each represent to the other that they have dealt with no broker in connection with this Lease. Tenant covenants to pay and hold harmless against any and all loss, cost, expense, or liability incurred by the City for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or any extension thereof arising from Tenant's breach of the foregoing covenant. The City covenants to pay and hold harmless against any and all loss, cost, expense, or liability incurred by Tenant for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or any extension thereof arising from the City's breach of the foregoing covenant.

18.9 Legal Fees. In the event that the City incurs third party legal fees and costs in connection with a request by Tenant, a Permitted Leasehold Mortgagee, or any potential or then-current purchaser from, investor in, or lender to Tenant, for any modifications or amendments to this Lease or the execution by the City of any additional documentation in connection with any investment in or loan to Tenant (without hereby implying any obligation on the City to agree to execute any such documents), then Tenant shall reimburse the City for such fees and costs, not to exceed Two Thousand Five Hundred Dollars (\$2,500) for each such request (which amount shall be adjusted by the cumulative increase (but not decrease) in the Index every five (5) Lease Years). Tenant shall pay the City all amounts for reimbursement under this **Section 18.9** within thirty (30) days after written demand by the City with reasonable documentation relating to such amounts.

18.10 Consents. Unless otherwise expressly provided in this Lease, wherever this Lease requires the consent, approval or authorization of or from the City, the City shall have the unfettered right to grant or to withhold the same in its sole and absolute discretion. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no claim, and hereby waives the right to any claim, against the City for money damages by reason of any refusal, withholding, or delaying by the City of any consent, approval or statement of satisfaction, and, in such event, Tenant's only remedies therefor shall be an action for specific performance or injunction to enforce any such requirement.

18.11 Accord and Satisfaction. No acceptance by the City of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, nor shall

any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction, and the City may accept such check or payment without prejudice to the City's right to recover the balance of such installment or pursue any other remedies provided in this Lease.

18.12 Integration. All prior understandings and agreements between the Parties are merged within this Lease, which alone fully and completely sets forth the understanding of the Parties with respect to the subject matter contained herein; and this Lease may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the Party against whom enforcement of the change or termination is sought.

18.13 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of the City, its successors and assigns, and Tenant, its successors and assigns.

18.14 Notice of Lease. The City and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable and mutually acceptable form with respect to this Lease, which shall be recorded forthwith with the Rockingham County Registry of Deeds, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with said Registry of Deeds.

18.15 Limitation of Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the City's liability under this Lease shall be enforceable only out of the City's interest in the Premises, and the rents, issues and profits therefrom; and there shall be no other recourse against, or right to seek a deficiency judgment against, the City, nor shall there be any personal liability on the part of any member of its board of directors, or any officer, employee, agent or representative of the City, with respect to any obligations to be performed hereunder by the City. Anything contained in this Lease to the contrary notwithstanding, but without limitation of the City's equitable rights and remedies, except as otherwise provided in any guaranty, indemnification or other instrument executed and delivered to the City in connection with this Lease or the Premises, no member, manager, shareholder, director, officer, employee, agent or representative of Tenant shall have any personal liability with respect to any obligations to be performed hereunder by Tenant.

18.16 Authority of Tenant. Tenant warrants and represents that, as of the Effective Date of this Lease (a) it is a limited liability company duly organized under the laws of the State of New Hampshire; (b) it has the authority to enter into and has duly executed this Lease; (c) the execution, performance and delivery by Tenant of this Lease is within the powers of Tenant; (d) all information provided by Tenant to the authority in connection with this Lease is true and accurate in all material respects; (e) as of the execution of this Lease, Tenant has not transferred all or any portion of its interest under this Lease; (f) this Lease is the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, subject to bankruptcy, insolvency and other limitations on creditors' rights generally and to equitable principles; and (g) the person executing this Lease on behalf of Tenant is duly authorized to do so. The City warrants and represents that, as of the Effective Date of this Lease (a) it is a body corporate and public duly organized under the laws of the State of New Hampshire; (b) it has the authority to enter into and has duly executed this Lease; (c) the execution, performance and delivery by the City of this Lease is within the powers of the City; (d) this Lease is the legal, valid, and binding obligation of the City, enforceable against the City in accordance with its

terms, subject to bankruptcy, insolvency, and other limitations on creditors' rights generally and to equitable principles; and (e) the person executing this Lease on behalf of the City is duly authorized to do so.

18.17 No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the City may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless the City executes and records an instrument affirmatively electing otherwise.

18.18 Captions. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

18.19 Table of Contents. The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

18.20 New Hampshire Law Governs. This Lease shall be governed exclusively by, and construed in accordance with, the laws of the State of New Hampshire, without regard to conflicts of laws principles. The City and Tenant agree that any court action to be brought by either Party in connection with this Lease shall be brought in a court of competent jurisdiction located within the State of New Hampshire and each Party consents to the jurisdiction of such court and hereby waives any right to remove any such action to any other forum.

18.21 Time of the Essence. **TIME SHALL BE OF THE ESSENCE HEREOF.**

18.22 Holding Over. If Tenant occupies the Premises after the expiration or earlier termination hereof, Tenant shall be a tenant-at-sufferance subject to all of the terms and provisions of this Lease except that the Rent shall be one and one-half (1½) the Rent in effect immediately prior to the expiration or termination hereof. In addition, Tenant shall be liable for all damages incurred by the City as a result of such holding over. Such a holding over, even if with the consent of the City, shall not constitute an extension or renewal of this Lease.

18.23 Confidentiality. The Parties recognize that each will be required to deliver certain proprietary information to the other under the terms of this Lease. Each Party, upon receipt from the other Party of any document designated as "confidential" or "proprietary," or words to that effect, shall use its best efforts in accordance with applicable law, to hold such document and the information contained therein in strict confidence. Notwithstanding the foregoing, the Parties shall be entitled to disclose such information to their representatives, attorneys, employees, consultants, contractors, investors and lenders provided that they require such persons to maintain the confidentiality of such information. In all events, each Party shall be permitted to disclose such information as required by applicable Legal Requirements or court order. Nothing in this provision shall require the City to operate in any way in contravention to RSA 91-A, the so-called Right-to-Know law, as it may be amended from time to time.

18.24 City's Right of Self-Help. As an additional alternative remedy to the other remedies provided for in this Lease, and subject to the rights of any Permitted Leasehold Mortgagee, the City shall have the right (but not the obligation) to cure any Event of Default for and on behalf of Tenant

(a) relating to Tenant's obligations regarding insurance, maintenance, repair and use of the Premises; or (b) relating to the obligations of Tenant to comply with Legal Requirements, including, without limitation, Environmental Laws; or (c) relating to the obligations of Tenant to discharge liens (or bond off such liens or otherwise remove them of record), if such default, if not promptly cured, results, or can reasonably be anticipated to result, in a dangerous, unhealthy or unsafe condition at the Premises, or in a forfeiture, condemnation or loss of the interest of the City in the Premises (or a threat thereof) or in exposure of the City to liability; provided, however, that the City's right of self-help shall not be exercised by the City prior to providing Tenant with an additional notice of the City's intention to exercise its right of self-help and, so long as the City has determined that there is no imminent threat to public health or safety, providing Tenant with an additional cure period, not to exceed seven (7) days. Expenses of the City incurred in exercising its rights under this **Section 18.24**, shall be Additional Rent hereunder to be paid by Tenant. The City shall not incur any liability as a result of any exercise of the rights under this **Section 18.24**, and Tenant shall indemnify and hold the City harmless from all costs, claims, losses and liabilities in any way relating to the same, including all reasonable attorney's fees. Any amount payable by Tenant to the City pursuant to the provisions of this **Section 18.24** shall be paid within thirty (30) days after request by the City with reasonable documentation relating to such amounts.

18.25 No Advertisement. Tenant shall not, without the City's prior written approval, refer to the City in any advertising, letterheads, bills, invoices or in other printed matter.

18.26 When Lease Becomes Binding. Employees or agents of the City have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both the City and Tenant.

18.27 Limitations on Damages. The City shall never be liable to Tenant, and the Tenant shall never be liable to the City, for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits.

18.28 City Employees. Tenant shall not, during the Term of this Lease, hire or employ, on either a full-time or part-time basis, person or persons so long as Tenant knows or has reason to know that such person is employed by the City.

18.29 No Waiver of the City's Defenses. In the defense of any claim, demand, expense or liability on behalf of the City which is to be defended by Tenant as provided in this Lease (even if such claim, demand, expense or liability is groundless, false or fraudulent), Tenant agrees on its own behalf and on behalf of its successors and assigns, not to, and shall cause its insurers to agree not to, without obtaining express prior written permission from the General Counsel of the City, waive any defense involving in any way the jurisdiction of the tribunal over the person of the City, the immunity of the City, its members, officers, agents or employees, the governmental nature of the City or the provisions of any statutes respecting suits against the City.

18.30 Security Deposit. [intentionally deleted]

18.31 National Historic Monument Program. The Parties acknowledge and agree that the Property is being leased pursuant to and in accordance with the National Historic Monument Program. During the term of this Lease, all obligations and requirements of the City by virtue of the Deed and the Application with respect to the rehabilitation, operation, use and improvement of the Property shall be assumed by the Tenant and Tenant shall be primarily responsible therefore until the expiration or earlier termination of the Term of this Lease.

18.32 Transportation Demand Management (TDM) Plan. **TDM Plan Submission:** To improve public health and safety, reduce travel delay by reducing discretionary drive-alone trips, build upon the City's efforts to encourage sustainability, and improve community livability by reducing vehicle trips and providing attractive options to driving alone, Tenant shall provide the City with a TDM plan to encourage multi-modal access to and from the proposed development.

The plan shall identify evidence-based measures to reduce parking demand, including, but not limited to, provision of rideshare/microtransit services or bikeshare station(s) servicing the property, proximity to public transit, car/van-pool incentives, alternative transit subsidies, provisions for teleworking, and shared parking on a separate lot. Tenant shall submit an annual performance report in respect thereto. If the measures have not been implemented or the usage of the measures is not meeting performance targets, Tenant shall submit a revised plan to meet performance targets.

18.33 Historic Tax Credits. Tenant shall have the sole and exclusive right to apply for historic tax credits for the project, and the City hereby agrees to cooperate with Tenant in obtaining historic tax credits and maintaining compliance with requirements applicable to such tax credits. Any such historic tax credits obtained by Tenant shall be shared equally after deducting costs incurred by Tenant in applying for and administering such tax credits.

[THIS PAGE ENDS HERE. THE NEXT PAGE IS THE SIGNATURE PAGE.]

EXECUTED as of the Effective Date first set forth above.

CITY:

CITY OF PORTSMOUTH, N.H.,
a New Hampshire _____

By: _____

Name: John P. Bohenko
Title: City Manager

Authorized by vote of the Portsmouth City
Council on _____.

TENANT:

SOBOW SQUARE, LLC,
a _____ limited liability
company

By: _____

Name:
Title:

LIST OF EXHIBITS

Exhibit A – Premises Plan

Exhibit B – Reserved Rights

Exhibit C – Development Plan

Exhibit D – Project Budget

Exhibit E – Required Approvals

Exhibit F - Construction Schedule

Exhibit G – Completion Guaranty

Exhibit H – Non-Disturbance Agreement

Exhibit I – Estoppel Certificate Form

Exhibit J – Construction Management Plan

Exhibit K –Environmental Indemnification Agreement

Schedule 1 – Calculation of Revenue Sharing in the Event of a Sale of Tenant's Leasehold Interest in the Property

Schedule 2 – Reserve Fund Withdrawal Procedures

Addendum Per Sections 2.1.6 and 2.2.2 of the Development Agreement

SCHEDULE 1

Calculation of Revenue Sharing in the Event of a Sale of Tenant's Leasehold Interest in the Property.

Upon a sale of Tenant's Leasehold Interest in the Property the City will receive 20% of Project Profit in excess of an 18% internal rate of return.

"Project Profit" means –

"Internal Rate of Return" means -

SCHEDULE 2

Reserve Fund Withdrawal Procedures