

Exhibit B-2 to the Development Agreement

Form of Armory Lease

CITY OF RICHMOND, VIRGINIA

NAVY HILL REDEVELOPMENT PROJECT

DEED OF GROUND LEASE (ARMORY)

by and between

**ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, as
Landlord**

and

**THE NH DISTRICT CORPORATION, as
Tenant**

Dated, [], 2019

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(NAVY HILL DEED OF GROUND LEASE)

THIS DEED OF GROUND LEASE (this “**Lease**” or this “**Agreement**”) is made as of this _____ day of _____, 2019, by and between the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (“**Landlord**”), and The NH District Corporation, a Virginia corporation (“**Tenant**”). Landlord and Tenant are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

- A. The City seeks to revitalize the downtown community through the development of an identified project area that is currently not utilized to its full market potential, and that results in additional taxable value in both the Project area and in surrounding properties;
- B. In addition to replacing the existing Richmond Coliseum with a new state-of-the-art Arena, the City seeks to redevelop and restore the Blues Armory, a signature historic building located in downtown, in accordance with the Benchmark Requirements (the “**Project**”);
- C. The City memorialized the above intent on November 9, 2017, by issuing a Request for Proposals for the “North of Broad/Downtown Neighborhood Redevelopment Project” seeking proposals for the redevelopment of an area generally bounded on the west by North 5th Street, on the north by East Leigh Street, on the east by North 10th Street, and on the south by East Marshall Street, which area includes the site of the Armory;
- D. The City and Tenant entered into that certain Navy Hill Redevelopment Project Development Agreement (the “**Development Agreement**”) dated [____], 2019 to establish each Party’s obligations, rights and limitations with respect to delivering, among other things, the Project;
- E. In accordance with the Development Agreement, Landlord and Tenant now desire to enter into this Agreement, which Landlord and Tenant acknowledge and agree shall constitute the Armory Lease pursuant to the Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Landlord and Tenant agree as follows:

Article 1 Definitions.

Defined Terms in Lease. For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section.

“**AAA**” has the meaning set forth in Section 38.3.2 (*Mediation*).

“**Acceptable Guarantor**” means [*Construction Contractor Guarantor to be inserted prior to execution, if required*], [*OM&C Contractor Guarantor to be inserted prior to execution, if*

required], as the Initial Guarantors (each an “**Initial Guarantor**”), or other replacement guarantor entity approved by Landlord as set forth below. Provided that no Tenant Event of Default or Unmatured Tenant Event of Default then exists, Tenant may request Landlord’s approval of one or more Acceptable Guarantors in the replacement of either or both of the Initial Guarantors (each, a “**Guarantor Request**”) during the Term. Each such replacement Guarantor Request shall be in writing and shall (i) identify the Person or Persons that Tenant proposes to provide the Design & Construction Guaranty hereunder (each a “**Proposed Guarantor**”); (ii) confirm that each Proposed Guarantor is authorized and registered to transact business in the Commonwealth of Virginia; and (iii) include reasonable and customary written evidence from one or more bona fide financial institutions, substantiating that each Proposed Guarantor has sufficient cash or cash equivalent assets (the “**Guarantor Approved Cash Level**”) to be able to perform the applicable Work and satisfy the applicable financial obligations. Provided that no Tenant Event of Default or Unmatured Tenant Event of Default then exists, Landlord shall not unreasonably withhold, delay, or condition its approval of any Proposed Guarantor that meets the Guarantor Approved Cash Level. Landlord shall provide Tenant with written notice of Landlord’s approval or disapproval of the Proposed Guarantor within 15 Days after receipt of the Guarantor Request. Any disapproval by Landlord shall state with specificity the reasons for such disapproval. In the event of such disapproval, Tenant shall have the right to submit a supplement to the Guarantor Request, or a new Guarantor Request, responding to Landlord’s reasons for disapproval.

“**Additional Construction**” means the construction, installation, reconstruction, replacement, addition, expansion, Restoration, alteration or modification of any Additional Improvements.

“**Additional Improvements**” means any and all buildings, structures, fixtures, and other improvements constructed, installed, erected, built, placed or performed (or to be so done) upon or within the Premises at any time during the Term by or on behalf of Tenant in accordance with this Lease, excluding Improvements constructed under Schedule C (*Armory Use and Development Criteria*).

“**Additional Rent**” means any and all sums, other than Base Rent, that may become due or be payable by Tenant at any time pursuant to this Lease.

“**Affiliate**” means any Person directly or indirectly Controlling, Controlled by, or under Common Control with another Person.

“**Agent**,” when used with reference to either Landlord or Tenant, means the members, officers, directors, commissioners, employees, agents, and contractors or subcontractors of such Party and their respective heirs, legal representatives, successors, and assigns, each of which when acting in a capacity for the Landlord or the Tenant.

“**Agreement**” means this Deed of Ground Lease (Armory) and its Exhibits, as it may be amended from time to time in accordance herewith.

“Agreement Date” means the date written on the cover page of this Lease, which date will be the date on which the parties have executed and delivered this Lease.

“Archaeological Remains” means any antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites, paleontological and human remains and other similar remains of archaeological or paleontological interest discovered in any part of the Premises.

“Arena” and **“Arena Project”** means the arena to be designed, constructed, financed, operated, and maintained in accordance with the Arena Lease and Development Agreement, to be located on the real property that consists of the portion of the block bounded by East Leigh Street on the north, North 7th Street on the east, the to-be-reopened East Clay Street on the south, and North 5th Street on the west depicted in Attachment A to the Arena Lease.

“Arena Lease” means the Deed of Ground Lease of even date herewith between the Landlord and the Tenant relating to the construction and occupancy of the Arena.

“Armory” means the building listed on the Virginia Landmarks Register as of December 16, 1975, and on the National Register of Historic Places as of May 17, 1976 and identified by the Virginia Department of Historic Resources with the number 1270278 and by the United States National Park Service with the property number 76002229.

“Armory Mortgage” means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument or assignment of Tenant’s leasehold interest in the Armory under this Lease that is recorded in the Official Records.

“Armory Mortgagee” means the holder or holders of an Armory Mortgage and, if the Armory Mortgage is held by or for the benefit of a trustee, agent, or representative of one or more financial institutions, the financial institutions on whose behalf the Armory Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Armory Mortgage shall be deemed a single Armory Mortgagee for purposes of this Lease.

“Armory Use and Development Criteria” means the use and development criteria for the Armory as set forth on Exhibit C (Armory Use and Development Criteria).

“Attorneys’ Fees and Costs” means reasonable attorneys’ fees (including fees for attorneys in the City’s Office of the City Attorney), costs, expenses, and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative, or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

“Base Rent” has the meaning set forth in Section 3.3.1 (Amount).

“Benchmark Requirements” means, (i) after it has been finalized, the Concept Plan, (ii) the Master Plan, (iii) after it has been Verified, the 100% Design Documents, (iv) after they have been obtained, any Regulatory Approvals, and (v) Exhibit C (Armory Use and Development Criteria).

“Bona Fide Institutional Lender” means any one or more of the following, which is not an Affiliate of Tenant: a savings bank, a savings and loan association, a commercial bank or a trust company, or a branch thereof, with assets of at least \$500,000,000 in the aggregate (or the equivalent in foreign currency), as Indexed.

“Business Day” means any day that is neither a Saturday, a Sunday, nor a day observed as a legal holiday by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

“Casualty Date” has the meaning set forth in Section 10.1.1 (Casualty Date).

“Casualty Event” has the meaning set forth in Section 10.1.2 (Casualty Event).

“Casualty Restoration Cost” has the meaning set forth in Section 10.1.3 (Casualty Restoration Cost).

“Casualty Restoration Funds” has the meaning set forth in Section 10.4.4 (Deposit of Casualty Restoration Funds in Certain Circumstances).

“CCP” Capital City Partners, LLC, a Virginia limited liability company.

“Certificate of Final Completion” means the certificate issued by Landlord indicating that Tenant has achieved Final Completion.

“Certificate of Substantial Completion” means the certificate issued by Landlord indicating that Tenant has achieved Substantial Completion.

“Change in Law” means (a) any enactment, amendment or repeal (in whole or in part) of any applicable Law by a governmental entity after the Agreement Date or (b) any governmental entity’s written change in interpretation or application of, any applicable Law following the Agreement Date, in each case that is materially inconsistent with any existing applicable Law or any existing interpretation or application of, any such applicable Law on or prior to the Agreement Date; excluding, any repeal of, or amendment or modification to, or written change in interpretation or application of, or the adoption or enactment of, (i) tax laws of general application, (ii) labor laws, (iii) the exercise by any governmental entity of its police powers and (iv) any Law that was enacted, but was not yet effective as of the Agreement Date;

“Chief Administrative Officer” means the Chief Administrative Officer of the City of Richmond, Virginia.

“**City**” means the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia, acting by and through the City’s Chief Administrative Officer.

“**City Permits**” means any building or construction permits required for the Project that would be issued by the City.

“**Commenced Construction**,” “**Commence**,” “**Commenced**,” or “**Commencement**” means with respect to any portion of the Work, the physical commencement of Construction Work requiring a permit from the City or any other governmental entity on the premises, including demolition, foundation work and such Construction Work is active and ongoing.

“**Common Control**” means that two Persons are both Controlled by the same other Person.

“**Commonwealth**” means the Commonwealth of Virginia.

“**Completion**” means, with respect to any and all Improvements or Restoration on all or any portion of the Premises, the completion of construction and installation of such Improvements or Restoration in accordance with the terms of this Lease. The fact of such Completion shall be conclusively evidenced by the issuance by City of either a temporary or permanent certificate of occupancy with respect to such Improvements or Restoration (provided, however, if a temporary Certificate of Occupancy is issued, any conditions identified by the City that must be satisfied in order for a permanent Certificate of Occupancy to be issued shall be promptly satisfied by Tenant or any Subtenant). “**Complete**,” “**Completed**,” and “**Completed Construction**” have correlative meanings.

“**Concept Plans**” means conceptual drawings and design plans for the Armory, prepared in accordance with the Master Plan.

“**Condemnation**” has the meaning set forth in Section 11.1.1 (Condemnation).

“**Condemnation Award**” has the meaning set forth in Section 11.1.2 (Condemnation Award).

“**Condemnation Date**” has the meaning set forth in Section 11.1.3 (Condemnation Date).

“**Condemnation Restoration Allocation**” has the meaning set forth in Section 11.1.4 (Condemnation Restoration Allocation).

“**Condemnation Restoration Cost**” has the meaning set forth in Section 11.1.5 (Condemnation Restoration Cost).

“**Condemnation Restoration Funds**” has the meaning set forth in Section 11.1.6 (Deposit of Condemnation Restoration Funds in Certain Circumstances).

“Condemned Land Value” has the meaning set forth Section 11.1.7 (*Condemnation Land Value*).

“Condemning Authority” has the meaning set forth in Section 11.1.8 (*Condemnation Authority*).

“Construction Contract” means Tenant’s construction contract(s), approved by the City, which provide for the D&C Work to be performed by a Construction Contractor.

“Construction Contract Price” means the guaranteed maximum contract price as defined in the relevant Construction Contract, as the same may be adjusted pursuant to the terms thereof.

“Construction Contractor” means each of Tenant’s design, engineering, demolition and construction contracting firms that will perform the D&C Work under each Construction Contract.

“Construction Documents” means the plans, sections, elevations, details, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of the Project included in the Work, in accordance with this Lease.

“Construction Performance Security” means any of the Performance Bond, Payment Bond and the Design & Construction Guaranty.

“Construction Work” means all Work related to the demolition, Premises preparation and construction of the Project.

“Contract Documents” means this Lease and the Development Agreement.

“Contractor or Contractors” means the Construction Contractor or Contractors.

“Control” means (i) the ownership, direct or indirect, by one Person of more than 50 percent of the profits, capital or equity interest of another Person or (ii) the power to direct the affairs or management of another Person, whether by contract, other governing documents, or by operation of law.

“Cooperation Agreement” means the fully executed Navy Hill Cooperation Agreement between Landlord and the City, as may be amended from time to time in accordance with the provisions thereof.

“CPI” means the Consumer Price Index for All Urban Consumers, all Items for the Richmond, Virginia MSA published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised CPI which would produce results equivalent, as nearly as possible, to those which would be obtained hereunder if the CPI were not so revised. If the CPI becomes unavailable to the public because publication is discontinued, or

otherwise, Landlord shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by a governmental agency, major bank, other financial institution, university, or recognized financial publisher.

“**Days**” means a calendar day; provided that, if any period of Days referred to in this Lease shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

“**D&C Work**” the Design Work and the Construction Work.

“**Default Rate**” has the meaning set forth in Section 3.5 (Interest on Delinquent Rent).

“**Delay Event**” means any of the following:

- (a) any Change in Law;
- (b) any Legal Challenge;
- (c) any Force Majeure event;
- (d) any Non-Appropriation that exceeds more than ninety (90) days beyond the expected date for such appropriation;
- (e) any failure to obtain, or delay in obtaining, any of the City Permits within 35 Days of the time period afforded for the City’s approval in the Project Schedule following Tenant’s submittal of a complete and compliant permit application therefore;
- (f) any failure to obtain, or delay in obtaining, any of the Non-City Permits within 60 Days of the latest review time for the City of any Construction Work permit under the Project Schedule, from submission of complete and compliant application therefore;
- (g) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the Premises, the Design Work, or the Construction Work;
- (h) an unreasonable delay or failure by Landlord in performing any of its material obligations under this Lease;
- (i) any Release that requires Remediation and is not a Tenant Release as set forth in Section 16.4 (Remediation Procedures);
- (j) material loss, interruption or damage to the Premises or the Improvements caused by a Landlord Event of Default;

(k) any Unknown Site Condition;

(l) the attachment of a lien causing a material adverse effect on Tenant's ability to perform the Work and created by or on behalf of Landlord during the Term, as further described in Section 12.1 (*Liens*);

provided that the Delay Events do not include any delay that:

- a) could have been reasonably avoided by a Tenant Party;
- b) is caused by the negligence or misconduct of a Tenant Party; or
- c) is caused by any act or omission by a Tenant Party in breach of the provisions of this Lease or any Tenant Party's applicable agreement with Tenant.

"Delay Event Notice" has the meaning ascribed thereto in Section 17.1 (*Delay Events*).

"Depository" means a savings bank, a savings and loan association, or a commercial bank or trust company, which would qualify as a Bona Fide Institutional Lender, designated by Tenant and approved by Landlord to serve as depository pursuant to this Lease, provided that such Depository shall have an office, branch, agency, or representative located in the Commonwealth of Virginia.

"Design Documents" means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations, electronic files, records and submittals usual and customary in accordance with Good Industry Practice for delivering the D&C Work.

"Design & Construction Guaranty" means the guarantee in substantially the form attached as *Exhibit G (Form of Parent Guaranty)* provided by an Acceptable Guarantor, guaranteeing the applicable Construction Contractor's performance and payment under the applicable Construction Contract.

"Design Work" means all Work related to the design, redesign, engineering or architecture for the Project.

"Development Agreement" means the fully executed Navy Hill Redevelopment Project Development Agreement between the City and the Tenant, as may be amended from time to time in accordance with the provisions thereof.

"Disabled Access Laws" means all Laws related to access for persons with disabilities, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and disabled access laws under the Virginia Uniform Statewide Building Code.

“Dispute” means any claim, dispute, disagreement or controversy between Landlord or the City and Tenant concerning their respective rights and obligations under this Lease, including concerning any alleged breach or failure to perform and remedy under this Agreement.

“Eligible Security Provider” means any Person which has a credit rating for long-term, unsecured debt of not less than “A/A3” from one of the major rating agencies, and has an office in Richmond, Virginia or in New York, New York at which the security can be presented for payment by facsimile or by electronic means.

“Emergency” means any unplanned event within the Premises that:

(a) presents an immediate or imminent threat to the long-term integrity of any part of the infrastructure of the Project, to the environment, to property adjacent to the Project or to the safety of the public;

(b) has jeopardized the safety of the public; or

(c) is a declared state of emergency pursuant to laws of the City of Richmond, Virginia, law of the Commonwealth or Federal law.

“Encumbrance” means any mortgage, deed of trust, claim, levy, lien, judgment, execution, pledge, charge, security interest, restriction, covenant, condition, reservation, rights of way, encumbrances, certificate of pending litigation, or certificate of any court, and other matters of any nature whatsoever, whether arising by operation of Law or otherwise created, affecting the Premises.

“Endangered Species” means any animal or plant wildlife listed as threatened, sensitive or endangered in accordance with any applicable Law.

“Exhibit” has the meaning set forth in Section 37.5.2 (*Exhibits*).

“Existing Improvements” mean any and all grading, infrastructure and other improvements existing upon the Property as of the Agreement Date.

“Final Completion” means the issuance by Landlord of a Certificate of Substantial Completion and satisfaction of all the conditions with respect to the final completion of the Project as set forth in Section 7.23 (*Final Completion Process*).

“Final Completion Date” means the date on which Final Completion is achieved for the Project.

“Final Construction Documents” means the final Construction Documents and Design Documents sufficient for the approval of an application for a building permit in accordance with applicable Laws.

“Financial Close” means the issuance of the Bonds and funding with the Bond proceeds of a project account to be available for the D&C Work under this Lease, to occur upon satisfaction of the conditions to Financial Close under the Development Agreement.

“Financial Close Date” means the date upon which Financial Close occurred.

“Financing Documents” means all documentation necessary and relevant to evidencing the tax increment financing for the Project and achieving Financial Close.

“Force Majeure” means an event which results in delays in a Party’s performance of its obligations hereunder due to causes beyond such Party’s reasonable control, including and which are similar to, but not restricted to, acts of nature or of the public enemy, a taking by eminent domain or other damage, destruction or material physical impediment caused by a governmental entity (other than the City), fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes and unusually severe weather, and, in the case of Tenant, any delay resulting from a defect in Landlord’s title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds.

“Foreclosure” means a foreclosure of an Armory Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to a court order or pursuant to a power of sale contained in the Armory Mortgage), deed, or voluntary assignment or other conveyance in lieu thereof.

“Foreclosure Period” has the meaning set forth in Section 33.9.2 (*Foreclosure*).

“GAAP” means generally accepted accounting principles consistently applied.

“Geotechnical Reports” The geotechnical reports in Tenant’s possession or made available to the Tenant by the Landlord of the Premises as of the Agreement Date.

“Good Faith Efforts” has the meaning set forth in Section 37.1.1.3.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent developers, contractors and/or operators of other comparable facilities, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

“Gross Building Area” means the total floor areas of the buildings on the Premises, including basements, mezzanines and penthouses included within the principal outside faces of the exterior walls and excluding architectural setbacks or projections and unenclosed areas.

“Hazardous Environmental Condition” means the presence of any Hazardous Materials on, in, under or about the Premises at concentrations or in quantities that are required to be removed

or remediated by any applicable Law or in accordance with the requirements of this Lease or any governmental entity.

“Hazardous Material” has the meaning set forth in Section 16.1.1 (Hazardous Material).

“Hazardous Material Laws” has the meaning set forth in Section 16.1.2 (Hazardous Material Laws).

“Health and Safety Plan” means the health, safety and security plan developed by the Construction Contractor, which includes Tenant’s and Construction Contractor’s commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections, and shall (i) designate an appropriately certified safety professional with a minimum of five years of construction safety experience who is to develop and sign the Health and Safety Plan, including all safety rules on the Premises, (ii) designate a qualified safety professional stationed full-time at the Premises during onsite construction activities whose primary/only duty shall be the implementation of safety rules at the Premises, the prevention of fires and accidents, monitoring compliance with the Health and Safety Plan, and the coordination of such activities as shall be necessary with Landlord, the City and all governmental bodies having jurisdiction, (iii) require the Construction Contractors and all Subcontractors to work and implement the Health and Safety Plan and (iv) comply with each Construction Contractor’s onsite safety requirements.

“Imposition” means any taxes, assessments, liens, levies, charges, fees or expenses of every description, levied, assessed, confirmed or imposed on or with respect to the Premises, any of the Improvements or Personal Property located on or within the Premises, this Lease, the Leasehold Estate, any Sublease, any sublease-hold estate, any Transfer or any use or occupancy of the Premises hereunder. Impositions include all such taxes, assessments (including, but not limited to, any taxes or assessments for any special service and assessment district encompassing all or any portion of the Premises), liens, levies, charges, fees, or expenses, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied, assessed, confirmed or imposed in lieu of or in substitution of any of the foregoing of every character.

“Improvements” means any and all site and vertical improvements, including the systems, cables, materials, equipment, property, buildings, structures, appurtenances, subsystem or other improvement any of which comprises the Project on or within the Premises.

“Indemnified Party” or “Indemnified Parties” means each of individually, and collectively, Landlord, the City, their Agents and all of their respective heirs, legal representatives, successors and assigns, and each of them.

“Indemnify” means defend, indemnify, protect and hold harmless.

“Indexed” means the product of the number to be Indexed multiplied by the percentage increase, if any, in the CPI from the first Day of the month in which the Rent Commencement

Date, or such other date specified in this Lease as the start of a particular period, occurred to the first Day of the most recent month for which the CPI is available at any given time.

“Insolvency Event” means in respect of any Person: (a) any involuntary bankruptcy, insolvency, liquidation, company reorganization, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution, or petition for winding up or similar proceeding, under any applicable Law, in any jurisdiction, except to the extent that the same has been dismissed within 60 Days, (b) any voluntary bankruptcy, insolvency, liquidation, company reorganization, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution, or petition for winding up or similar proceeding, under any applicable Law, in any jurisdiction or (c) any general inability on the part of that Person to pay its debts as they fall due.

“Invitees,” when used with respect to Tenant, means the customers, patrons, invitees, guests, members, licensees, assignees, and Subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees, and Subtenants of Subtenants.

“ISO” has the meaning set forth in Section 15.1.2 (ISO).

“Known Hazardous Environmental Condition” means any Hazardous Environmental Condition identified in that Exhibit D (Known Site Conditions) and any Hazardous Environmental Condition that are not Unknown Hazardous Environmental Conditions or that should have been reasonably identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Good Industry Practice. With respect to asbestos-containing materials and lead-based paint, Known Hazardous Environmental Conditions shall include any materials assumed or presumed to be asbestos-containing materials or lead-based paint in the available documents identified in Exhibit D (Known Site Conditions), as well as any similar or related materials or paint observable upon inspection.

“Known Site Conditions” means any condition on or within the Premises (including, geotechnical, subsurface, physical or otherwise and any Known Hazardous Environmental Condition), that should have been reasonably identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Good Industry Practice in the same or equivalent circumstances. Known Site Conditions, excludes any Unknown Site Conditions.

“Landlord” means the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia.

“Landlord Additional Insureds” has the meaning set forth in Section 15.1.3 (Insurance; Definitions).

“Landlord’s Chairman” means the Chairman of Landlord duly elected and serving as provided in Landlord’s bylaws.

“Landlord Event of Default” has the meaning set forth in Section 19.2 (Events of Default).

“Landlord Remedial Plan” has the meaning set forth in Section 20.2 (Tenant’s Remedies Generally).

“Landlord’s General Counsel” means the General Counsel of Landlord duly elected and serving as provided in Landlord’s bylaws.

“Landlord’s Treasurer” means the Treasurer of Landlord duly elected and serving as provided in Landlord’s bylaws.

“Late Charge” has the meaning set forth in Section 3.6 (Late Charges).

“Late-Term Casualty” has the meaning set forth in Section 10.1.5 (Late-Term Casualty).

“Law” or **“Laws”** means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties, Tenant Parties, the Improvements or to the Premises or any portion thereof, including, without limitation, Hazardous Material Laws, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and improvements thereon.

“Lead Developer Party” means the Developer, any Affiliate of Developer and CCP; provided, that CCP shall only be a Lead Developer Party up and until 2-years after Substantial Completion.

“Leasable Area” means those portions of the Premises designed for occupancy and exclusive use of Tenant and Subtenants, including storage areas, that produces rental income, expressly excluding stairs, escalators, elevator shafts, flues, pipe shafts, vertical ducts, balconies, mechanical rooms, public access areas, and other areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

“Lease” means this Deed of Ground Lease and its Exhibits, as it may be amended from time to time in accordance herewith.

“Lease Year” means a period of 12 consecutive months during the Term, commencing on the Substantial Completion Date and continuing for each 12 consecutive calendar months thereafter.

“Leasehold Estate” means Tenant’s leasehold estate created by this Lease.

“Legal Challenge” means any action or proceeding before any court, tribunal, arbitration panel, or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to a Tenant Party, which (i) seeks to challenge the validity of any action taken by Landlord in connection with the Project, including Landlord’s or Tenant’s approval, execution and delivery of this Lease, and its performance of any action required or permitted to be performed by City hereunder or any findings upon which any of the foregoing are predicated or (ii) seeks to challenge the validity of any Regulatory Approval.

“Lien” means any lien, pledge, mechanic’s lien, security interest, mortgage, lease, hypothecation, right of retention, assessment, levy, charge, encumbrance or other restriction on title or property interest, regardless of whether valid or enforceable.

“Long Stop Substantial Completion Date” means the date that is one (1) year after the Substantial Completion Deadline, as such date may be extended in accordance with this Lease.

“Loss” or **“Losses”** when used with reference to any indemnity means, with respect to any Person, any and all claims, demands, losses, liabilities, damages, liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys’ Fees and Costs and reasonable consultants’ fees and costs) that may be directly incurred by such Person.

“Major Damage or Destruction” has the meaning set forth in Section 10.1.7 (Major Damage or Destruction).

“Major Submittal” means one hundred percent (100%) complete Schematic Design Documents based on the Concept Plans; and one hundred percent (100%) complete Design Documents based on the Concept Plans.

“Master Plan” has the meaning given to such term in the Development Agreement.

“Material Change” means any change from the Benchmark Requirements: (i) resulting in a five percent (5%) or greater reduction in the Gross Building Area, (ii) resulting in a [Capital Investment] in an amount less than the [Minimum Capital Investment] designated in the Master Plan, and (iii) any other material change in the functional use, purpose or operation of the Armory from those shown and specified in the Benchmark Requirements.

“Mediation” has the meaning set forth in Section 38.3.1 (Mediation).

“Memorandum of Deed of Ground Lease” means the Memorandum of this Lease, to be entered into between Landlord and Tenant, and recorded in the Official Records in accordance with 33.4.1.12 (*Limitations*).

“Net Condemnation Award” has the meaning set forth in Section 11.1.9 (*Net Condemnation Award*).

“New Armory Lease” has the meaning set forth in Section 33.9.4 (*New Armory Lease*).

“Non-Affiliate” means any Person who is not an Affiliate of another Person.

“Non-Affiliate Transferee” means any transferee of a Transfer that is not (i) an Affiliate of Lead Development Party, (ii) a Partner in Lead Development Party or (iii) an Affiliate of a Partner in a Lead Development Party.

“Non-Appropriation” means and shall be deemed to have occurred with respect to any payment obligation or other monetary obligation of Landlord or the City under the Grant Agreement, the Cooperation Agreement or this Lease if the Council of the City fails to timely appropriate monies sufficient in amount to meet Landlord’s or the City’s obligations under either or both of the Grant Agreement and this Lease.

“Non-City Permits” means any building or construction permits required for the Project that would be issued by any governmental entity that is not the City.

“NTP” has the meaning set forth in Section 7.11 (*Conditions to Commencement of Construction and NTP*).

“NTP Date” means the date on which Landlord has issued NTP.

“NTP Long Stop Date” means the date identified as the NTP Long Stop Date in the Project Schedule.

“Official Records,” with respect to the recordation of Armory Mortgages and documents and instruments, means those records recorded in the Circuit Court of the City of Richmond, Virginia.

““OM&C Contract” means each of Tenant’s or OM&C Contractor’s operations, maintenance and concessions contracts which provide for the OM&C Work to be performed by an OM&C Contractor.

“OM&C Contractor” means each of Tenant’s or OM&C Contractor’s Contractors that will perform the OM&C Work under each OM&C Contract.

“OM&C Period” means the period between Substantial Completion and the earlier of (i) expiration of this Lease or (ii) early termination of this Lease.

“OM&C Work” means all Routine Maintenance, commercializing of the Armory and performance of any other OM&C Contractor obligations under this Agreement all in accordance with Good Industry Practice.

“Partial Condemnation” has the meaning set forth in Section 11.1.10 (Partial Condemnation).

“Partial Transfer” has the meaning set forth in Section 13.1.13 (Partial Transfers).

“Partner in Tenant” means (i) if Tenant is a limited liability company, any member in such limited liability company; (ii) if Tenant is a partnership, any partner in such partnership; (iii) if Tenant is a corporation, any shareholder in such corporation; and (iv) if Tenant is any other entity, any Person holding any equity or voting interest in such other entity.

“Party” or **“Parties”** has the meaning set forth in the first paragraph of this Lease.

“Payment Bond” has the meaning set forth in Section 7.12.1 (P&P Bond).

“Performance Bond” has the meaning set forth in Section 7.12.1 (P&P Bond).

“Performance Security” means any of the Performance Bond, Payment Bond and the Design & Construction Guaranty.

“Permitted Transfer” has the meaning set forth in Section 13.3 (Permitted Transfers without Landlord Consent).

“Permitted Uses” has the meaning set forth in Section 4.1.1 (Generally).

“Person” means any individual, corporation, partnership, association, cooperative, limited liability company, trust, business trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

“Personal Property” means all furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development, or operation of the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant or Subtenant or in which Tenant or Subtenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

“Premises” has the meaning set forth in Section 2.1.1 (Lease of Premises).

“Project” means all Work required to redevelop, restore and operate the Armory in accordance with this Lease.

“Project Schedule” means the schedule attached to the Development Agreement as Exhibit J (Project Schedule) to the extent it applies to the Project, as shall be updated due to Delay Events.

“Property” has the meaning set forth in Section 2.1.2 (Description).

“Proposed Transfer” has the meaning set forth in Section 13.1.1 (Consent of Landlord).

“Proposed Transfer Request” has the meaning set forth in Section 13.1.9 (Determination of Whether Consent Is Required).

“Proposed Transfer Response” has the meaning set forth in Section 13.1.9 (Determination of Whether Consent Is Required).

“Punch List” is an itemized list of Work that remains to be completed, corrected, adjusted, or modified, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Project.

“Purchaser” has the meaning set forth in Section 37.1.1.7.

“Regulatory Approval” means any authorization, approval or permit required or granted by any governmental organization having jurisdiction over the Premises, the Project or the Work including, but not limited to, the City and the Commonwealth of Virginia.

“Release” has the meaning set forth in Section 16.1.3 (Release).

“Remedial Plan” has the meaning set forth in Section 20.1.1 (Landlord’s Remedies Generally).

“Remediate” and **“Remediation”** have the meaning set forth in Section 16.1.4 (Remediate and Remediation).

“Rent” means, collectively, Base Rent and Additional Rent.

“Rent Commencement Date” has the meaning set forth in Section 3.2.2 (Time and Duration of Payment).

“Required Action” has the meaning set forth in Section 18.1 (Landlord May Perform in Emergency or Interruption in Service).

“Required Action Party” has the meaning set forth in Section 18.1 (Landlord May Perform in Emergency or Interruption in Service).

“Required Insureds” has the meaning set forth in Section 15.1.4 (Required Insureds).

“**Restoration**” means the restoration, repair, replacement, rebuilding or alteration of the Improvements (or the relevant portion thereof), in accordance with all Laws then applicable, necessitated by any Casualty Event or Condemnation, including, without limitation all required code upgrades and all razing and removal of damaged or destroyed Improvements necessary to conduct such restoration, replacement, rebuilding or alteration; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the need for the Restoration so long as the Improvements, as Restored, constitute a Project equivalent in scale and quality to the original Project, subject to the provisions of Section 7 (Landlord’s Right to Approve Additional Construction) regarding Additional Construction. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured or otherwise modified, provided that the Project as so redesigned constitutes a Project equivalent in scale and quality to the original Project, subject to the provisions of Section 7.14 (Landlord’s Right to Approve Additional Construction) regarding Additional Construction. “**Restore**” and “**Restored**” have correlative meanings.

“**Routine Maintenance**” means Work to preserve the current condition of Improvements, including any inspection, that is routine in nature and includes matters that are typically included as an annual or biannual recurring cost for maintenance of comparable assets to those forming part of the Project.

“**Schedule of Submittals**” has the meaning set forth in Section 7.3 (Submittal Schedule).

“**Schematic Design Documents**” means the plans, sections, elevations, details, specifications and other submittals usual and customary in accordance with Good Industry Practice to the schematic design phase of design and construction work.

“**Senior Representative Negotiations**” has the meaning set forth in Section 38.2 (Senior Representative Negotiations).

“**Significant Change**” means (i) any dissolution, reorganization, merger, succession, consolidation or otherwise, or any issuance or transfer of beneficial interests in, any Lead Developer Party, directly or indirectly, in one or more transactions, that results in a change in the identity of the Persons Controlling any Lead Developer Party or (ii) the sale, transfer, conveyance, assignment, or other disposition of 50 percent or more of any Lead Developer Party’s assets, capital, or profits, or the assets, capital, or profits of any Person Controlling any Lead Developer Party other than a sale to an Affiliate.

“**Site Conditions**” includes any (i) known physical, geotechnical, subsurface, or environmental condition of the Premises, including, without limitation, any Hazardous Material in, on, under, or above, or about the Premises, or (ii) any Utility present on or within the Premises, (iii) any Endangered Species discovered on or at the Premises, and (iv) any Archaeological Remains discovered on or at the Premises.

“Subcontract” means any contract or subcontract at any tier entered into by Tenant or Tenant’s Contractors to perform the Work.

“Subcontractor” has the meaning set forth in Section 15.1.5 (Subcontractor).

“Subdivision” means any subdivision of the Property or the Premises as such word “subdivision” is defined in, subject to, and in accordance with the provisions of Chapter 25 of the Code of the City of Richmond and applicable state Law, or any successor thereto.

“Sublease” means any lease, sublease, license, concession or other agreement by which Tenant or a Subtenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

“Substantial Completion” means the issuance by Landlord of a Certificate of Substantial Completion and either a temporary or permanent Certificate of Occupancy (provided, however, if a temporary Certificate of Occupancy is issued, any conditions identified by Landlord that must be satisfied in order for a permanent Certificate of Occupancy to be issued shall be promptly satisfied by Tenant or any Subtenant).

“Substantial Completion Conditions” has the meaning set forth in Section 7.20 (Conditions to Substantial Completion).

“Substantial Completion Deadline” means the date specified as such in the Project Schedule, as may be adjusted from time to time in accordance with this Lease by reason of the occurrence of any Delay Event by which Substantial Completion must occur.

“Substantial Completion Date” means the date upon which Tenant achieves Substantial Completion.

“Substantial Condemnation” has the meaning set forth in Section 11.1.11 (Substantial Condemnation).

“Submittal” means any document, design, drawing, or other written material submitted by any Tenant Party to Landlord for Landlord’s or the City’s review, response and/or, if required, authorization to commence and complete any portion of the Work specified in such request.

“Subtenant” means any Person leasing, occupying, or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

“Temporary Condemnation” has the meaning set forth in Section 11.1.12 (Temporary Condemnation).

“Tenant” has the meaning set forth in first paragraph of this Lease, and its permitted successors and assigns under this Lease.

“Tenant Agreement” means an agreement entered into by Tenant.

“Tenant Event of Default” has the meaning set forth in Section 19.1 (Events of Default).

“Tenant Party” means Tenant, any Armory Mortgagee, any Affiliate of Tenant, a Subtenant, CCP, each Construction Contractor, each OM&C Contractor, any Contractor, concessionaire, commercial licensee, advisor or agent of Tenant and their successors and permitted assigns.

“Tenant’s Books and Records” means all of any Tenant Party’s books, records, and accounting reports or statements relating to the performance of obligations under this Lease, the construction of any Improvements, and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises.

“Tenant Release” means any Release introduced or brought onto the Premises by a Tenant Party.

“Tenant’s Termination Notice” has the meaning set forth in Section 11.1.13 (Tenant Right to Terminate).

“Term” has the meaning set forth in Section 2.2 (Term of Lease).

“Termination Date” means either (i) the date on which the Lease expires according to its terms, (ii) the earlier date upon which this Lease is terminated according to its terms, or (iii) such later date to which the Lease is extended pursuant to the subsequent mutual written agreement of Landlord and Tenant in accordance with Article 39.2 (Modification).

“Third Party Release” means any Release introduced or brought onto the Premises by a Person other than a Tenant Party or an Indemnified Party.

“Total Condemnation” has the meaning set forth in Section 11.1.14.

“Total Transfer” has the meaning set forth in Section 13.1.2 (Total Transfer).

“Transfer” has the meaning set forth in Section 13.1.1 (Consent of Landlord).

“Uninsured Casualty” has the meaning set forth in Section 10.1.7.

“Unknown Archaeological Remains” means any Archaeological Remains discovered at the Premises that, as of the Agreement Date, were neither:

- (a) known to any Tenant Party; nor

- (b) identified in Exhibit D (Known Site Conditions).

“**Unknown Endangered Species**” means any Endangered Species discovered at the Premises, the temporary, continual or habitual presence of which, as of the Agreement Date, were not:

- (a) known to any Tenant Party; or
- (b) identified in Exhibit D (Known Site Conditions).

“**Unknown Geotechnical Condition**” means any geotechnical, subsurface or physical condition (excluding Hazardous Environmental Condition) that materially differs from the conditions identified in Exhibit D (Known Site Conditions), excluding any condition that should have been reasonably identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Good Industry Practice in the same or equivalent circumstances.

“**Unknown Hazardous Environmental Condition**” means any Hazardous Environmental Condition that existed in, on or under a portion of the Premises prior to the date on which Tenant gains vacant possession of a relevant portion of the Premises that is not a Known Hazardous Environmental Condition and that represents a materially different condition to that identified in Exhibit D (Known Site Conditions), excluding any (a) Tenant Release or (b) Hazardous Environmental Condition that should have been reasonably identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Good Industry Practice in the same or equivalent circumstances.

“**Unknown Site Conditions**” means any Unknown Archaeological Remains, Unknown Endangered Species, Unknown Utility, Unknown Hazardous Environmental Condition or Unknown Geotechnical Condition.

“**Unknown Utility**” means any Utility present on the Premises that was not identified or was materially incorrectly shown, identified or described in Exhibit D (Known Site Conditions), excluding any Utility that:

- (a) was installed on a part of the Premises after right of entry was granted to Tenant in relation to the relevant part of the Premises in accordance with the terms of this Lease; or
- (b) that should have been reasonably identified or discovered by an appropriately qualified and experienced contractor, engineer or expert in the field exercising due care and skill and Good Industry Practice.

“**Unmatured Tenant Event of Default**” means a circumstance which, with notice or the passage of time, would constitute a Tenant Event of Default.

“**Utility**” means a privately, publicly, or cooperatively owned line, facility, or system for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with the highway drainage, or other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. The necessary appurtenances to each Utility facility will be considered part of that Utility.

“**Verification**” means confirmation that a Major Submittal or other relevant document does not materially deviate from the Benchmark Requirements. “**Verify**” or “**Verified**” means to confirm or to be confirmed that a Major Submittal or other relevant document does not materially deviate from the Benchmark Requirements.

“**Work**” means collectively, the development, planning, design, demolition, acquisition, installation, construction, completion, management, equipment, operation, repair and maintenance and any other services identified in this Lease to be performed by Tenant in connection with, the Project, the D&C Work and the OM&C Work.

Article 2 Premises and Term.

2.1 Premises.

2.1.1 Lease of Premises. For the rent and subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, pursuant to this Lease in accordance with Section 55-2 of the Code of Virginia, the real property described in Section 2.1.2 (*Description*). The Property includes the land and all Existing Improvements, together with all rights, privileges and easements appurtenant to the Property and owned by Landlord. The Property, all Existing Improvements, and any and all other Improvements hereafter located on the Property at any time during the Term are collectively referred to in this Lease as the “**Premises.**” Notwithstanding any provision herein to the contrary, the Property and the Premises do not include any dedicated public rights-of-way (or rights-of-way offered for public dedication).

2.1.2 Description. The “**Property**” consists of the parcels of real estate owned by Landlord within the City of Richmond, Virginia, listed on Exhibit A (Project Site) and more particularly described in Exhibit B (Legal Descriptions of Parcels Constituting the Property) (“**Deeds Conveying Parcels to Landlord**”), which Landlord or City shall create by boundary line adjustment or lot split prior to the NTP Date.

2.1.3 Title. The leasehold interest granted by Landlord to Tenant pursuant to Section 2.1.1 (*Lease of Premises*) is subject to (i) all liens, encumbrances, easements, rights-of-way, covenants, conditions, restrictions, obligations and liabilities as may appear of record as of the Agreement Date or as are made of

record hereafter in accordance with the terms of this Lease; (ii) all matters which would be revealed or disclosed in an accurate survey or physical inspection of the Premises; (iii) any deed restrictions required by the Development Agreement or applicable Law to be recorded against the Property, if any; (iv) the effect of all current building restrictions and regulations, and current and future applicable laws; (v) all taxes, duties, assessments, special assessments, water charges and sewer rents, and any other Impositions, accrued or unaccrued, fixed or not fixed first becoming due from and after the Agreement Date; (vi) any Regulatory Approvals required by Law to be recorded against the Property as a result of the development and activities permitted by the Development Agreement and this Lease; (vii) rights retained by Landlord pursuant to Section 2.4.2 (Reserved Easements) and those certain rights or privileges that Landlord may grant to third parties pursuant to Section 2.4 (Easements); and (viii) other matters as Tenant shall cause or suffer to arise subject to the terms and conditions of this Lease.

2.1.4 “As Is” and “With All Faults.”

2.1.4.1 Except as provided in Article 16 (Hazardous Materials and Unknown Site Conditions), Tenant agrees that the Premises are being leased by Landlord, and are hereby accepted by Tenant, in their existing state and condition, “as is, with all faults.” Tenant acknowledges and agrees that neither Landlord, the City, nor any of the other Indemnified Parties, nor any Agent of any of them, has made, and there is hereby disclaimed, any representation or warranty, express or implied, of any kind, with respect to the condition of the Premises, the suitability or fitness of the Premises or any appurtenances thereto for the development, use or operation of the Project, the compliance of the Premises or the Project with any Laws, any matter affecting the use, value, occupancy or enjoyment of the Premises, or, except as otherwise expressly provided in this Lease, with respect to any other matter pertaining to the Premises or the Project.

2.1.5 No Subdivision of Property. Except as otherwise expressly provided in Section 13.1.4.10, Tenant shall have no right to subdivide the Property or the Premises without Landlord’s prior written consent in Landlord’s sole and absolute discretion.

2.2 Term of Lease. Subject to the execution by Landlord and Tenant of this Lease, this Lease shall become effective upon the Agreement Date. Landlord shall deliver possession of the Premises on the date of the NTP. Unless terminated earlier by subsequent mutual written agreement of Landlord and Tenant or otherwise in accordance with this Lease, this Lease shall expire on the date that is the 65th anniversary of the Agreement Date. The period from the Agreement Date until the expiration, or earlier termination, of this Lease is referred to herein as the “**Term.**”

2.3 Relationship of Lease to Development Agreement & Order of Precedence.

This Lease establishes the rights and obligations of Tenant and Landlord hereunder during the Term, but does not serve to relieve or release Landlord or Tenant from any of their respective rights, obligations and liabilities under the Development Agreement and arising at any time under the Development Agreement.

2.3.1 Except as otherwise expressly provided in this Section 2.3 (*Relationship of Lease to Development Agreement & Order of Precedence*), if there is any conflict, ambiguity or inconsistency between the provisions of this Lease, the Development Agreement and any City ordinances, the order of precedence will be as follows, from highest to lowest:

2.3.1.1 the City ordinances adopted by the City Council on [*insert date and identifying information*] approving the execution and delivery of the Contract Documents;

2.3.1.2 any change order or any other amendment to this Lease;

2.3.1.3 the provisions of the main body of this Lease;

2.3.1.4 the Exhibits to this Lease;

2.3.1.5 any amendments to the Development Agreement;

2.3.1.6 the main body of the Development Agreement; and

2.3.1.7 the Exhibits to the Development Agreement.

2.3.2 If any of the Contract Documents contain differing provisions or requirements with respect to the same subject matter, the provisions that establish the higher quality manner or method of performing the Work, or that establish more stringent standards, will prevail.

2.3.3 Where the Contract Documents contain a more stringent standard than the Law, the Contract Documents will prevail, to the extent that those more stringent Contract Document standards do not violate applicable Law.

2.3.4 The Parties acknowledge and agree that to the extent is any conflict, ambiguity or inconsistency between the provisions of this Lease and the Grant Agreement pertaining to matters concerning the City's or Landlord's financial obligations with respect to the Project, that the Grant Agreement, as applicable, shall prevail over the terms in this Agreement.

2.4 Easements.

2.4.1 Easements for Improvements. Landlord hereby grants to Tenant a nonexclusive easement during the Term in Landlord's property located underneath all portions of the Premises for the purpose of installation, repair and maintenance of foundation systems, elevator pits, sump pits, utilities, sub-base materials, pavement and other materials or structures which are part of or reasonably required by Tenant in order to complete and service the Improvements to be constructed by Tenant on the Premises and otherwise reasonably necessary for Tenant to comply with its obligations under this Lease. Such easement shall be appurtenant to and run with the Premises and this Lease, and shall terminate upon expiration or earlier termination of this Lease. In addition, Landlord hereby agrees from time to time upon request by Tenant to timely grant to any utility providers such nonexclusive temporary and permanent easements over and across the Premises as may be required by such utility providers in order to provide utility services to the Improvements to be constructed by Tenant on the Premises, provided Landlord, Tenant and the applicable utility providers mutually agree upon the location of any such easements, the nature of any such easements, the form of any such easements and, in the case of any temporary easements, the duration of any such easements.

2.4.2 Reserved Easements and Other Post-Agreement Date Matters.

2.4.2.1 Landlord reserves to itself during the Term the following rights (which shall not be deemed obligations):

2.4.2.1.1 The right to grant to others easements, licenses and permits for construction, maintenance, repair, replacement, relocation and reconstruction, and related temporary access easements, and other easements, in each case, necessary for any utility facilities over, under, through, across, or on the Premises.

2.4.2.1.2 The right to construct, install, operate, maintain, repair and replace any drainage facilities and any other infrastructure improvements and facilities located within or serving the Project.

2.4.2.1.3 The right, including the right to grant to others, to enter upon the Premises and perform such work as may reasonably be necessary to operate, maintain, repair, improve or access any of the reserved easement areas, to exercise any of Landlord's other rights under this Lease, or in the event of an Emergency or to exercise Landlord's Required Action as otherwise provided in this Lease.

2.4.2.2 Except with respect to Landlord exercising its Required Action, notwithstanding anything contained in this Section 2.4.2 (*Reserved Easements and Other Post-Agreement Date Matters*) to the contrary, Landlord may not grant to others any easements, licenses or permits pursuant to Section 2.4.2.1 if such easements, licenses or permits would interfere in any manner with Tenant's Permitted Uses of the Premises. In addition, prior to exercising any of its rights under Section 2.4.2.1, Landlord shall give reasonable notice thereof to Tenant (except in the event of an Emergency in the reasonable opinion of Landlord), and Landlord shall exercise such rights (or, to the extent it has granted any such rights to a third party, cause such third party to exercise such rights) in a manner that shall not interfere with Tenant's Permitted Uses of the Premises.

2.5 City as Agent of Landlord. Each of Tenant and Landlord acknowledge and agree that the City and its employees, contractors, agents and designees shall be responsible for performing all functions of Landlord under this Lease and shall have the power to exercise all of the rights of Landlord under this Lease. The Parties acknowledge and agree that the City is a third-party beneficiary of this Lease. The Chief Administrative Officer will be the primary officer for the City responsible for administering this Lease for the City.

Article 3 Rent.

3.1 Tenant's Covenant to Pay Rent. During the Term of this Lease, Tenant shall pay Rent for the Premises to Landlord in the amounts, at the times, and in the manner provided in this Article 3 (*Rent*) and elsewhere in this Lease.

3.2 Base Rent.

3.2.1 Amount. The annual rent (referred to in this Lease as the "**Base Rent**") for the Armory shall be fifty-five thousand dollars (\$55,000).

3.2.2 Time and Duration of Payment. Tenant shall commence payment of the Base Rent on the Rent Commencement Date and shall continue paying Base Rent, as escalated pursuant to Section 3.2.3 (*Escalation*), throughout the remainder of the Term. "**Rent Commencement Date**" means the date on which the first Certificate of Occupancy is issued under the Virginia Uniform Statewide Building Code for any portion of the Premises. Base Rent shall be paid annually and in advance. The first installment of Base Rent shall be due not later than the first Day of the first calendar month following the Rent Commencement Date. Each installment of Base Rent thereafter shall be due annually on the anniversary of the date that corresponds with the first installment of Base Rent.

3.2.3 Escalation. On every tenth anniversary of the Rent Commencement Date, the Base Rent calculated pursuant to Section 3.2.1 (*Amount*) shall increase by ten percent.

3.3 Manner of Payment. Tenant shall pay all Rent to Landlord, in lawful money of the United States of America, to Landlord's Treasurer or the designee thereof as provided herein at the address for notices to Landlord specified in this Lease, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant; provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due 30 Days following the giving by Landlord of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable. Rent shall be payable at the times specified in this Lease without prior notice or demand. If this Lease terminates as a result of Tenant Event of Default, including Tenant's insolvency, any Rent or other amounts then due hereunder shall be immediately due and payable upon termination.

3.4 No Abatement or Setoff. Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim, except as otherwise expressly provided in this Lease.

3.5 Interest on Delinquent Rent. If any Base Rent is not paid within ten Days following the date it is due, or if any Additional Rent is not paid within 30 Days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "**Default Rate**") equal to five percent (5%) in excess of the rate the Federal Reserve Bank of Richmond charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13A of the Federal Reserve Act or any successor or replacement statutes thereto. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

3.6 Late Charges. Tenant acknowledges and agrees that late payment by Tenant to Landlord of Rent will cause Landlord increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Landlord's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Tenant shall pay a late charge (the "**Late Charge**") equal to one and one-half percent of all Rent or any portion thereof which remains unpaid more than ten Days after Landlord's notice to Tenant of such failure to pay Rent when due; provided, however, that if Tenant fails to pay Rent when due on more than two occurrences in any Lease Year, the Late Charge will be assessed as to any subsequent payments in such Lease Year remaining unpaid more than ten Days after they are due, without the requirement that Landlord give any notice of such payment failure. Tenant shall also pay Attorneys' Fees and Costs incurred by Landlord by reason of Tenant's failure to pay any Rent within the time periods described above. Landlord and Tenant agree that such Late Charge

represents a fair and reasonable estimate of the cost which Landlord will incur by reason of a late payment by Tenant.

3.7 Additional Rent. Except as otherwise expressly provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and Tenant's obligations of every kind and nature relating to the Premises that may arise or become due under this Lease, whether foreseen or unforeseen, which are payable by Tenant to Landlord pursuant to this Lease, shall be deemed Additional Rent, whether or not specifically identified in this Lease as "**Additional Rent.**" Landlord shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of nonpayment of Additional Rent as in the case of nonpayment of Base Rent.

3.8 Net Lease. It is the purpose of this Lease and the intent of Landlord and Tenant that all Rent shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent at all times during the Term, without deduction, abatement, or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of Landlord and Tenant, except as may be otherwise expressly provided in this Lease, Landlord shall not be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any improvements. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Landlord would otherwise be or become liable by reason of Landlord's estate or interests in the Premises and any improvements, any rights or interests of Landlord in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. Except as otherwise expressly provided in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part.

Article 4 Uses.

4.1 Permitted Uses of Premises.

4.1.1 Generally. Tenant shall use the Premises solely to construct, maintain, and operate the Project in accordance with Exhibit C (*Armory Uses and Development Criteria*) and all other provisions of this Lease and all applicable Laws (hereinafter, the "**Permitted Uses**").

4.1.2 Advertising and Signs. Tenant shall have the right to install or display signs and advertising that do not fall within one or more categories described in Exhibit E (*Morals Clause*) and are consistent with the standards established in applicable Laws, including, without limitation, the zoning laws and regulations of the City and the master plan of the City or that are located within the interior of any

buildings located on the Premises. It shall be reasonable for Landlord to prohibit any signs that would violate Tenant's limitations on use as set forth in Section 4.2 (*Limitations on Use by Tenant*) hereof and Exhibit E (*Morals Clause*). All signs shall comply with applicable Laws regulating signs and advertising. Landlord agrees to provide reasonable cooperation with any applications for additional approvals (including any special use permit) needed to install signs and advertising.

4.2 Limitations on Use by Tenant.

4.2.1 Generally. Tenant shall not make any use of the Premises other than the Permitted Uses without the prior execution by Tenant and Landlord, in Landlord's sole and absolute discretion, of a written amendment to this Lease in form and substance satisfactory to Landlord.

4.2.2 Prohibited Activities. Tenant shall not conduct or permit on the Premises any one or more of the following activities:

4.2.2.1 any activity that creates waste of the Premises or a public or private nuisance, but without limitation on any right given to Tenant to make use of the Premises in accordance with the Permitted Uses and this Lease;

4.2.2.2 any activity that is not within the Permitted Uses or is otherwise in contravention of this Lease or any other Contract Document, the Grant Agreement or Financing Documents;

4.2.2.3 any activity that constitutes waste, interruption, damage, disruption, delay or nuisance to Landlord, Landlord's contractors, or owners or occupants of adjacent properties or the general public. If a prohibited activity is necessary and integral to the delivery of the Project, then Tenant may perform such activity upon receipt of Landlord's approval. Additional prohibited activities include, without limitation, adult entertainment on a commercial basis, medical cannabis, illegal drug distribution, the preparation, manufacture or mixing of anything that might emit any objectionable odors other than ordinary cooking odors;

4.2.2.4 any activity that will in any way unlawfully injure, obstruct or interfere with the rights of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress;

4.2.2.5 any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Landlord; and

4.2.2.6 any activity that creates, permits, or allows to exist on or with respect to the Premises any condition whereby the Property or the Premises will become less valuable or marketable because of such condition.

The nuisance provisions of 4.2.2.1 and 4.2.2.3 shall be assessed in the context of the nature of the uses included within the Permitted Uses.

4.2.3 Land Use Restrictions. Except for any nonexclusive temporary and permanent easement permitted by Section 2.4.1 (*Easements for Improvements*), Tenant may not enter into agreements granting licenses, easements, or access rights over the Premises if the same would be binding on Landlord's reversionary interest in the Premises or will impede Landlord's rights under this Lease or obtain changes in applicable land use Laws, authorizations, or other permits for any uses not provided for hereunder, in each instance without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

4.3 Premises Must Be Used. Subject to Tenant's obligations to construct the Improvements pursuant to Article 7 (*Design & Construction*) and excluding those portions of the Premises that are not by their nature intended to be used and occupied on a continuous basis during the Term, Tenant shall use all portions of the Premises containing completed Improvements continuously during the Term in accordance with this Lease and any Regulatory Approvals, and shall not allow any such portions of the Premises or any part thereof to remain unoccupied or unused (subject to the provisions of Section 7.1 (*The Project*) and customary vacancies, re-tenanting, and periodic repairs and maintenance, casualty damage or condemnation) without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Notwithstanding the foregoing, Tenant will not be in violation of this Section 4.3 (*Premises Must Be Used*) (i) so long as Tenant is using commercially reasonable efforts to lease, at then-current market rental rates, vacant space in all portions of the Premises containing completed Improvements; (ii) if a Subtenant has vacated a portion of the Premises but the Sublease remains in effect, so long as Tenant is diligently pursuing legal remedies Tenant has under such Sublease; or (iii) if a Subtenant that is continuing to pay rent ceases operations in the Premises with the right to do so under its Sublease.

Article 5 Taxes and Other Impositions.

5.1 Payment of Possessory Interest Taxes and Other Impositions.

5.1.1 Possessory Interest Taxes.

5.1.1.1 Tenant shall pay or cause to be paid, prior to delinquency, all Impositions comprised of possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or Tenant's leasehold estate

(but excluding any such taxes separately assessed, levied or imposed on any Subtenant), to the full extent of installments or amounts payable or arising during the Term. Subject to the provisions of Section 5.3 (Right of Tenant to Contest Impositions and Liens), all such taxes shall be paid directly to the City or other taxing authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 5.3 (Right of Tenant to Contest Impositions and Liens).

5.1.1.2 Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the applicable governmental assessor.

5.1.2 Other Impositions. Without limiting the provisions of Section 5.1.1 (Possessory Interest Taxes), Tenant shall pay or cause to be paid all other Impositions, to the full extent of installments or amounts payable or arising during the Term, which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby or any sub-leasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of Article 6 (Compliance with Laws), Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. Tenant shall have the right to contest the validity, applicability or amount of any Imposition in accordance with Section 5.3 (Right of Tenant to Contest Impositions and Liens).

5.1.3 Proof of Compliance. Within a reasonable time following Landlord's written request, which Landlord may give at any time and give from time to time, Tenant shall deliver to Landlord copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Landlord, evidencing the timely payment of such Impositions.

5.2 Landlord's Right to Pay. Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 5.3 (*Right of Tenant to Contest Impositions and Liens*), if Tenant fails to pay and discharge any Impositions (including, without limitation, fines, penalties and interest) prior to delinquency, Landlord, at its sole and absolute option may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Landlord shall give Tenant written notice specifying a date at least ten Business Days following the date such notice is given after which Landlord intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Landlord that it is contesting such Imposition pursuant to Section 5.3 (*Right of Tenant to Contest Impositions and Liens*), then Landlord may thereafter pay such Imposition, and the amount so paid by Landlord (including any interest and penalties thereon paid by Landlord), together with interest at the Default Rate computed from the date Landlord makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Landlord within ten Business Days following demand.

5.3 Right of Tenant to Contest Impositions and Liens. Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Tenant shall give notice to Landlord within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition or satisfy any other lien as long as it contests the validity, applicability or amount of such Imposition or other lien in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition or such other lien to be forfeited to the entity levying such Imposition or claiming such other lien as a result of the nonpayment of such Imposition or the failure to satisfy such other lien. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Landlord in any instance where Landlord's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Landlord is a necessary party with respect to any such contest or if any Law requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at no cost to Landlord, with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole and absolute option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises. Except as provided in the

preceding sentence, Landlord shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Article 14 (*Identification of Landlord*) hereof, Tenant shall Indemnify Landlord for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Landlord may be legally obligated to pay.

5.4 Landlord's Right to Contest Impositions. At its own cost and after notice to Tenant of its intention to do so, Landlord may, but in no event shall be obligated to, contest the validity, applicability or the amount of any Impositions by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Landlord to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Landlord shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

Article 6 Compliance with Laws.

6.1 Compliance with Laws and Other Requirements. During the Term, Tenant and its use and operation of the Premises shall comply, at no cost to Landlord, (i) with all applicable Laws (including Regulatory Approvals) and (ii) with the requirements of all policies of insurance required to be maintained pursuant to Article 15 (*Insurance*) of this Lease. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises. This Section 6.1 (*Compliance with Laws and Other Requirements*) shall not apply to compliance with Laws (including Regulatory Approvals) which relate to Hazardous Materials, such compliance being governed exclusively by Article 16 (*"Hazardous Materials and Unknown Site Conditions"*) or to contests of any Imposition or other lien, such contests being exclusively governed by Section 5.3 (*Right of Tenant to Contest Impositions and Liens*) hereof. Notwithstanding anything to the contrary herein, Tenant shall not be in default hereunder for failure to comply with any Laws or insurance requirements if Tenant is contesting the applicability of such Laws (including Regulatory Approvals) to Tenant or this Lease or requirements of any such insurance with diligence and in good faith by appropriate proceedings and at no cost to Landlord. No such contest or contests shall relieve or release Tenant from its obligation to pay all or any portion of Rent hereunder, or from Tenant's obligation to Indemnify the Indemnified Parties against or from any Losses resulting from such contest or contests. No such contest or contests shall result in interruption to Tenant's performance of the Work and delivery of the OM&C Work (other than as provided in Article 17 (*Delay Event Relief*) or the loss or suspension of the insurance coverage required to be maintained by Tenant hereunder; moreover, Tenant shall not have the right to delay or forebear any action required to comply with any Law if the absence of such action could reasonably be expected to result in or prolong an Emergency, hinder the ability of the City to maintain or restore good order, or adversely affect the public welfare. If Landlord is a necessary party with respect to any such contest or if any Law now or hereafter in effect requires that such

proceedings be brought by or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at no cost to Landlord, with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord and Tenant acknowledge and agree that Tenant's obligation under this Section 6.1 (*Compliance with Laws and Other Requirements*) to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease.

6.2 Proof of Compliance. Upon request by Landlord, Tenant shall promptly provide Landlord with evidence of its compliance with any of the obligations required under this Section 6.1 (*Compliance with Laws and Other Requirements*).

6.3 Regulatory Approvals.

6.3.1 City Approvals. Tenant acknowledges and agrees that the status, rights and obligations of Landlord, in such proprietary capacity, are separate and independent from the status, functions, powers, rights and obligations of the City and that nothing in this Lease shall be deemed to limit, influence or restrict the City in the exercise of its governmental regulatory powers and authority with respect to Tenant, the Premises or otherwise, or to render Landlord obligated or liable under this Lease for any acts of omissions of the City in connection with the exercise of its independent governmental regulatory powers and authority. Without limiting the preceding sentence, Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain all Regulatory Approvals (and pay all related processing and development fees and satisfy all related conditions of approval) for such uses, including, but not limited to, zoning and building code permits and regulations. Tenant understands that the entry by Landlord into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises or from Landlord itself. By entering into this Lease, Landlord is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein. Subject to the preceding provisions of this Section 6.3 (*Regulatory Approvals*), nothing herein shall be deemed to limit the rights and obligations of Tenant, Landlord or the City under any Law or the Development Agreement as they pertain to the Permitted Uses.

6.3.2 Approval of Other Agencies; Conditions. Landlord and Tenant acknowledge that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any construction or alterations of Improvements, may require that Regulatory Approvals be obtained from governmental agencies with jurisdiction over the Premises or the Project. Tenant shall be solely responsible for obtaining all such Regulatory Approvals as further provided in this Section. In any instance where Landlord will be required to act as a co-permittee, and in instances where modifications are sought from any other governmental agencies in connection with Tenant's obligations regarding any

Release, or where Tenant proposes the construction of any Improvements which requires Landlord's approval, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of Landlord, which approval (except as otherwise expressly provided herein) will not be unreasonably withheld, conditioned or delayed. Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval from any regulatory agency, if Landlord is required to be a co-permittee under such Regulatory Approval or the conditions or restrictions could create any obligations on the part of Landlord whether on or off the Premises, or require the imposition of any recorded use restrictions upon the Premises or could result in any restrictions on the use or occupancy of the Premises that could materially affect revenues or expenses associated with the Premises, unless in each instance Landlord has previously approved such conditions in writing in Landlord's sole and absolute discretion. Except as otherwise expressly set forth in Article 16, no such approval by Landlord shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. With the consent of Landlord (which shall not be unreasonably withheld, conditioned, or delayed), Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed upon any Person or the Premises as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval, and Landlord shall have no liability for such fines and penalties. Subject to, and without limiting the indemnification provisions of Article 14, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines, penalties and corrective action, together with Attorneys' Fees and Costs, for which Landlord may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

6.3.3 Cooperation. Without limiting the requirements set forth in Section 6.3.1 (*City Approvals*), Landlord and Tenant agree to communicate regularly and to cooperate in good faith regarding Tenant's efforts to obtain Regulatory Approvals for the Project from any regulatory agency. The Parties' obligation to cooperate in good faith shall include, but not be limited to, meeting and conferring as necessary, joint invitations to and attendance at meetings, with any regulatory agency, providing copies of correspondence received from or provided to any regulatory agency, and execution of mutually acceptable applications as owner and applicant where necessary and appropriate to implement the Project and this Lease; provided, however, that Landlord shall have no obligation to make any expenditures or incur any expenses in connection therewith other than reasonable administrative expenses.

Article 7 Design & Construction.

7.1 The Project.

7.1.1 General Covenants. Tenant will furnish all Work, including other services, provide all materials, equipment and labor reasonably inferable from this Lease necessary to deliver the Project in accordance with the Project Schedule and perform such Work in accordance with (i) Good Industry Practice, (ii) all applicable Laws, (iii) the requirements of all Regulatory Approvals, (iv) the Benchmark Requirements, (v) the Final Construction Documents and (vii) any other requirements in this Lease.

7.1.2 Scope and Timing of Improvements. Landlord and Tenant acknowledge and agree that it is essential to the viability of the Master Plan and repayment of the Bonds that the Project is constructed in accordance with the deadlines in the Project Schedule. Tenant must commence abatement and demolition Work and achieve Substantial Completion in accordance with the Project Schedule, *provided that* a failure to maintain the schedule shall not be a default except as provided in Section 19.1.6 (*Failure to Commence Work or Abandonment*), Section 19.1.7 (*Failure to Achieve NTP*) and Section 19.1.8 (*Failure to Achieve Substantial Completion*).

7.1.3 Required Schedule. All the dates and time periods included in the Project Schedule are subject to extension if entitled to delay as a Delay Event, including without limitation dates to commence Construction Work and the Substantial Completion Deadlines.

7.2 Landlord's Verification Rights Generally. Provided the Tenant is in compliance with its obligation to develop the Armory in accordance with this Agreement, the Landlord acknowledges and agrees that it shall have no right to review and approve the plans for development of the Armory by the Tenant beyond (i) the Verification rights set out in Section 7.4 (*Schedule of Submittals*), (ii) with respect to any Material Changes described in Section 7.7 (*Changes in the Benchmark Requirements*) and (iii) the normal and customary review and approval of plans undertaken by the Landlord or the City, acting in their governmental and/or regulatory capacity under Applicable Law, in connection with the issuance by the City of any required zoning and land use approvals and building permits.

7.3 Schedule of Submittals. As a condition to NTP the Tenant shall deliver (i) the Concept Plans for the Armory and (ii) a draft Schedule of Submittals that includes dates for submission of the following Major Submittals:

7.3.1 one hundred percent (100%) complete Schematic Plans based on the Concept Plans; and

7.3.2 one hundred percent (100%) complete Design Documents based on the Concept Plans.

7.4 Submittals.

7.4.1 The Tenant must not Commence or permit the Commencement of any Work under this Agreement that is the subject of, governed by, or dependent upon, a Major Submittal until it has submitted the relevant Major Submittal to the Landlord and either (i) the Landlord has provided confirmation that the Major Submittal is not a Material Change from the Benchmark Requirements or (ii) the Landlord is deemed to have provided such confirmation in accordance with Section 7.6 (*Deemed Confirmation*).

7.4.2 Except as otherwise set forth herein, the Tenant's submittal of any Major Submittal to the Landlord will be deemed complete at 5:30 p.m. Eastern time on the seventh Day following its receipt by the Landlord unless, the Landlord notifies Tenant in writing prior to 5:30 p.m. Eastern time on such seventh Day that such Major Submittal is incomplete or insufficient and sets forth in reasonable detail the incomplete elements of such Major Submittal.

7.4.3 In any case in which a Major Submittal is or has been deemed to be complete, the Landlord will review and respond to such Major Submittal as promptly as reasonably possible, and no later than the later of (i) the date in the Schedule of Submittals for the Landlord's response to such Major Submittal or (ii) twenty (20) Business Days after the date on which Tenant has delivered such Major Submittal to the Landlord. The Landlord will respond within such time period by (A) verifying that the Major Submittal is not a Material Change from the Benchmark Requirements or (B) providing a reasonably detailed notice to the Tenant advising why a Major Submittal is a Material Change from the Benchmark Requirements and why the Tenant needs to amend such Major Submittal prior to proceeding to the next phase of Work. If the Landlord comments on any Major Submittal in accordance with clause (B) of the preceding sentence, Tenant will resubmit the Major Submittal as promptly as reasonably possible, and the Landlord will resume its review and respond to such Major Submittal by verifying or commenting on the Major Submittal (provided that such Major Submittal is complete or has been deemed to be complete within eight (8) Days following its receipt of a resubmittal or request). The Landlord's review of a resubmittal will be limited to the issue, condition or deficiency which gave rise to the Landlord's comments and will not extend to other aspects for which a notice of disapproval was not previously provided to Tenant unless the issue, condition or deficiency which gave rise to the Landlord's comments reasonably relates to the Landlord's disapproval for which notice was previously provided.

7.4.4 Disputes and Reasonableness. Either Party will be entitled to resolve any Dispute regarding any Major Submittal in accordance with the dispute resolution procedures set forth in Article 38 (*Dispute Resolution Provisions*). In all cases where responses are required to be provided, such responses will not be

withheld or delayed unreasonably, and such determinations will be made reasonably except in cases where a different standard is specified. The Landlord will provide within ten (10) days after a request by Tenant its rationale, in reasonable detail, for any non-verification of any matter.

7.5 No Waiver. Notwithstanding any provision herein to the contrary, the review or verification by or on behalf of the Landlord of any Major Submittal hereunder shall not constitute any representation, warranty, or agreement by the Landlord, express or implied, with respect to the adequacy, sufficiency, completeness, utility, safety, or functionality of the Major Submittal or the subject improvements.

7.6 Deemed Confirmation. In the event the Landlord fails within twenty (20) Business Days of receipt of a complete or deemed complete Major Submittal, to respond to the Tenant by either verifying that such Major Submittal is not a Material Change from the Master Plan Requirements or providing reasonably detailed notice to the Tenant advising why a Major Submittal is a Material Change from the Benchmark Requirements, the Landlord shall be deemed to have verified that such Major Submittal is not a Material Change from the Benchmark Requirements.

7.7 Changes in Benchmark Requirements. Tenant may make changes to the Benchmark Requirements without the Landlord's prior approval, provided such changes (i) are consistent with Laws and (ii) are not Material Changes. If Tenant desires to make any Material Changes to the Benchmark Requirements, the Tenant shall submit such proposed Material Changes to the Landlord for approval. The Landlord agrees that it shall respond (acting reasonably) to any such request within a reasonable period of time, not to exceed thirty (30) days. If the Landlord fails to respond to such request within thirty (30) days of its receipt of such request, the Landlord shall be deemed to have approved such Material Changes.

7.8 Progress Meetings/Consultation. During the performance of the Work, the Landlord and the Tenant shall, on a quarterly basis, hold progress meetings to discuss the progress, status, challenges and schedule with respect to the Armory. To the extent that any challenges are identified with respect to the Armory that the Parties determine the Landlord can be of assistance with resolving, the Landlord commits, in its reasonable discretion, to work with the Tenant to attempt to resolve such challenges. In addition to the quarterly progress meetings provided for in this Section 7.8, the Parties shall communicate and consult informally as frequently as is necessary to ensure the efficient delivery of the Armory.

7.9 Progress Meetings; Coordination. From time to time at the request of the City, Landlord or Tenant during the preparation of Construction Documents and throughout the performance of Construction Work, the City, Landlord and Tenant shall hold progress meetings to discuss the Project's progress, status, challenges or schedule. Landlord and Tenant shall communicate and consult informally as frequently as is necessary to ensure the efficient delivery of the Project.

7.10 Landlord Project Monitor Access. Tenant grants the Landlord the right to enter the Premises during the performance of Construction Work to reasonably inspect the progress and implementation of the Construction Work, including those activities that will expedite the delivery of the Project, provided that, at any time, the Landlord Project Monitor complies with the Tenant's site access requirements and Health and Safety Plan and does not interrupt Tenant's performance of the Work.

7.11 Commencement of Construction. Notwithstanding any provision herein to the contrary, Tenant shall not commence Construction Work on any portion of the Project until Landlord has issued a notice to proceed "NTP" for the Project or portion of the Project in which Tenant seeks to commence Construction Work, in its discretion, once Tenant notifies Landlord that the following conditions and requirements have been satisfied by Tenant or waived by Landlord, which waiver shall be in Landlord's sole and absolute discretion:

7.11.1 Landlord has Verified the Major Submittals;

7.11.2 Landlord has confirmed the Construction Contract has been executed and satisfies the requirements in Section 7.18.3 (Construction Contract Requirement) and this Lease;

7.11.3 Landlord has received copies of the Project Management and Execution Plan and the Health and Safety Plan;

7.11.4 Tenant shall have obtained all Regulatory Approvals necessary to commence and complete the applicable portion of the Construction Work;

7.11.5 all insurance required to perform the applicable D&C Work is in place and in full force and effect;

7.11.6 Financial Close as set forth in the Development Agreement has occurred; and

7.11.7 all other conditions precedent in this Lease to commencement of Construction Work have been satisfied.

7.12 Construction Performance Security.

7.12.1 P&P Bond. Tenant will furnish or require the Construction Contractor to furnish an alternative dispute resolution performance bond (the "**Performance Bond**") in the amount of 100% of the Construction Contract Price and a payment bond (the "**Payment Bond**") in the amount of 100% of the Construction Contract Price.

7.12.2 Performance Security General Provisions.

7.12.2.1 The Design & Construction Guaranty will provide that it may be transferred by Tenant to Landlord, as beneficiary, with rights to draw upon or exercise other remedies thereunder if Landlord, succeeds to the position of Tenant under the Construction Contract. The Performance Bond and Payment Bond must be issued by an Eligible Security Provider and name the Landlord as an additional obligee pursuant to a multiple obligee rider.

7.12.2.2 Landlord may draw on any form of Performance Security either individually or simultaneously, and unless otherwise specified in this Lease, a draw on any form of Performance Security will not be conditioned on prior resort to any other security or each other form of Performance Security. If Landlord receives proceeds of a draw on any Performance Security in excess of the relevant obligation, Landlord will promptly refund the excess to Tenant (or to its designee) after all relevant obligations are satisfied in full.

7.12.2.3 The Tenant or its Construction Contractors will obtain and furnish all Construction Performance Security and replacements thereof at its sole cost and expense and will pay all charges imposed in connection with Landlord's presentment of sight drafts and drawing against any Construction Performance Security or replacements thereof (to the extent made in accordance with the terms hereof).

7.12.2.4 In the event Landlord makes a permitted assignment of its rights and interests under this Lease, Tenant will cooperate so that concurrently with the effectiveness of such assignment, either replacement Performance Security for, or appropriate amendments to, the outstanding Construction Performance Security will be delivered to the assignee naming the assignee as replacement beneficiary, at no cost to Tenant.

7.13 Construction Obligations.

7.13.1 Construction Standards. All D&C Work shall be accomplished in accordance with the Benchmark Requirements, Good Industry Practices and applicable Laws.

7.13.2 Safety Matters. Tenant shall undertake measures in accordance with Good Industry Practice to minimize the risk of injury, damage, disruption, or inconvenience to the Premises, the Improvements, and surrounding property, and the risk of injury to members of the public, caused by or resulting from any of its performance under this Lease. Tenant shall make adequate provision for the security of the Premises and the safety and convenience of all persons affected by such construction, including erecting construction barricades substantially enclosing the area of such construction and maintaining them until construction has

achieved Substantial Completion, to the extent reasonably necessary to minimize the risk of hazardous construction conditions. Without limiting the foregoing, Tenant shall:

7.13.2.1 take all necessary precautions for the safety and security of the Construction Work and provide all necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course related to the Construction Work for: (i) workers at the Premises and all other persons who may be involved with deliveries or inspections, (ii) visitors to the Premises, (iii) passersby, neighbors and adjacent properties, (iv) materials and equipment under the care, custody or control of Tenant or subcontractors on the Premises, and (v) any other City or Landlord property;

7.13.2.2 establish and enforce all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;

7.13.2.3 implement a comprehensive safety program in accordance with applicable Law;

7.13.2.4 give all notices and comply with all applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;

7.13.2.5 operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;

7.13.2.6 provide for safe and orderly vehicular movements; and

7.13.2.7 compliance with the Health and Safety Plan.

7.13.3 Costs of Construction. All D&C Work will be performed under one or more guaranteed maximum price Construction Contract. Except as provided herein, as between Landlord and Tenant, Tenant shall bear and pay all costs and expenses of all D&C Work performed under this Lease, whether onsite or offsite, including, without limitation, the cost of connections to existing utility lines in adjacent rights-of-way, and any and all cost overrun. Tenant shall be responsible for performing all site preparation work necessary for construction of the Improvements. Such preparation shall include, without limitation, all excavation, demolition and removal or Remediation of Hazardous Materials (subject to Article 16 (*Hazardous Materials and Unknown Site Conditions*)), disabled access, demolition of existing structures, grading and all structure and substructure work, public access improvements and tenant improvements.

7.13.4 Rights of Access. During any period prior to Final Completion, Landlord and its Agents shall have the right to enter areas in which D&C Work is being performed, on reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the Work. Such inspections shall be subject to such supervision and guidance by Tenant and the Construction Contractor as necessary to ensure that such inspections do not interfere with the Construction Work itself. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct such inspections or any liability in connection therewith. During any such inspections by Landlord and its Agents, Landlord and its Agents shall comply with any and all reasonable safety and security procedures and guidelines that Tenant or any applicable Subtenant may then have in effect at the Premises.

7.13.5 As-Built Plans and Specifications. Tenant shall furnish to Landlord one set of as-built plans and specifications with respect to all Improvements within 120 Days following completion of those Improvements. If Tenant fails to provide such as-built plans and specifications to Landlord within the time period specified herein, and such failure continues for an additional 30 Days following written request from Landlord, Landlord will thereafter have the right to cause an architect or surveyor selected by Landlord to prepare as-built plans and specifications showing the Improvements, and Tenant shall reimburse Landlord for the reasonable cost of preparing such plans and specifications as Additional Rent.

7.14 Landlord's Right to Approve Additional Construction.

7.14.1 Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Additional Construction in accordance with the provisions of this Section 7.14 (*Landlord's Right to Approve Additional Construction*), provided that Tenant shall not, without Landlord's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned, do any of the following:

7.14.1.1 modify the Final Construction Documents or as-built drawings for the Project in a manner that does not comply with the Benchmark Requirements;

7.14.1.2 construct additional buildings or other additional structures, other than to replace or restore those previously existing;

7.14.1.3 increase the bulk or height of any Improvements beyond the bulk or height approved for the then-existing Improvement, other than changes in the bulk or height of equipment penthouses;

7.14.1.4 alter the exterior architectural design of any Improvements;

7.14.1.5 materially deviate from the Benchmark Requirements;

7.14.1.6 decrease by more than five percent the Gross Building Area or the Leasable Area of the Premises after Substantial Completion of the Improvements;

7.14.1.7 increase by 10 percent or more the Gross Building Area of any building on the Premises after Substantial Completion; or

7.14.1.8 perform Additional Construction involving replacement or reconstruction that materially alters the exterior architectural design of any Improvements for any replacement construction. In connection with any replacement or restoration, Tenant shall use materials of at least equal quality, durability and appearance to the materials originally installed, as reasonably determined by Landlord.

7.14.1.9 The parties acknowledge that, without limiting what constitutes Landlord's reasonable approval under this 7.14.1 (*Construction Requiring Approval*), it shall be reasonable for Landlord to withhold its consent under this 7.14.1 (*Construction Requiring Approval*) if the proposed Additional Construction would (i) violate any Regulatory Approvals or applicable Laws or (ii) upon completion of the Additional Construction, result in a change of use of Project which would materially adversely impact the Project or the payment to Landlord or the City of any amounts hereunder or constitutes a material deviation from the Benchmark Requirements.

7.14.2 Notice by Tenant. At least 30 Days before commencing any Additional Construction, Tenant shall notify Landlord of such proposed Additional Construction. Such notice shall be accompanied by Final Construction Documents for such Additional Construction. Within 20 Days after receipt of such notice from Tenant, Landlord shall have the right to object to any such Additional Construction, to the extent that such Additional Construction requires Landlord's approval, pursuant to 7.14.1 (*Construction Requiring Approval*).

7.14.3 Permits. Tenant acknowledges that Landlord's approval of Additional Construction (or the fact that Tenant is not required to obtain Landlord's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by any applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from Landlord or the City in its governmental capacity, including, without limitation, building permits, as provided in Article 6 (*Compliance with Laws*) and this Article 7 (*Design & Construction*).

7.14.4 Other Requirements. The requirements set forth in this Lease for the performance of any D&C Work also shall apply to any and all Additional Construction requiring Landlord's approval, subject to the following modifications:

7.14.4.1 Construction Schedule. All Additional Construction shall be accomplished expeditiously and diligently, subject to Delay Events;

7.14.4.2 Conditions to Commencement of Construction. Tenant shall have submitted to Landlord in writing its good faith estimate of the anticipated total construction costs of the Additional Construction. If such good faith estimate exceeds \$1,000,000, Tenant shall also submit evidence reasonably satisfactory to Landlord of Tenant's ability to pay such costs as and when due; and

7.14.4.3 As-Built Plans and Specifications. Tenant shall be required to furnish to Landlord as-built plans and specifications with respect to all Additional Construction.

7.15 Minor Alterations. Without limiting, but subject to, the provisions of Section 7.14.1 (*Construction Requiring Approval*), Landlord's approval hereunder shall not be required for the following, provided it does not materially deviate with the Benchmark Requirements (a) the installation, repair or replacement of such improvements to the interior of any building commonly encompassed, and generally commercially understood to be included, within "tenant improvements," furnishings, fixtures, equipment or decorative Improvements, or repair or replacement of worn out or obsolete components of the Improvements that do not materially affect the structural integrity of the Improvements unless otherwise required under 7.14.1.1 through 7.14.1.8, (b) recarpeting, repainting the interior or exterior (except for exterior color changes) of the Premises, grounds keeping, or similar alterations, or (c) any other Additional Construction which does not require a building permit.

7.16 Tenant Improvements. Landlord's approval hereunder shall not be required for the installation of Tenant improvements and finishes (excluding retail storefronts or facades) to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals.

7.17 Title to Improvements. Landlord shall own all improvements, appurtenant fixtures, machinery and equipment installed upon the Premises on, or prior to NTP (the "**Public Assets**"). Public Assets exclude any Personal Property of the Tenant. Following NTP, upon installation or construction of any Work on the Premises or within the Public Assets, by Tenant or any Tenant Party, legal title of such portion of such Public Asset will automatically vest in Tenant.

At the expiration or earlier termination of this Lease, title to the Project and all Improvements not already transferred to Landlord, including appurtenant fixtures (but excluding Personal Property), will vest in Landlord without further action of either Landlord or Tenant and without compensation

or payment to Tenant. Tenant and its Subtenants shall have the right (unless otherwise purchased at fair market value by the Landlord) at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Landlord.

7.18 Construction Contractor.

7.18.1 Subcontracting D&C Work. As of the Agreement Date, the Landlord hereby approves the Tenant's selection of the Construction Contractor. Each Construction Contractor will be subject at all times to the direction and control of Tenant, and any delegation to a Construction Contractor does not relieve Tenant of any of its obligations, duties or liability pursuant to this Lease. Any agreement between Tenant and any Construction Contractor will by its terms terminate, without penalty, at the election of Landlord upon five (5) Days' notice to such Construction Contractor upon the termination of this Lease. The Construction Contractor will have no interest in or rights pursuant to this Lease or the Project.

Each Construction Contractor and its Construction Contract will comply with this Lease and the material terms of each proposed Construction Contract must be consistent with the corresponding duties and obligations of Tenant pursuant to this Lease and the other Contract Documents, as applicable.

7.18.2 Tenant Performance Obligations. If Tenant has entered into a Construction Contract, notwithstanding its use of a Construction Contractor, Tenant remains responsible for the Construction Work in accordance with this Lease. Tenant will immediately notify Landlord upon the termination, replacement or removal of any Construction Contractor

7.18.3 Parent Guaranty. If and only if required by parties providing financing to the Project, then Tenant must require the Construction Contractor to provide a Design & Construction Guaranty in substantially the form attached as Exhibit G (*Form of Parent Guaranty*). Such Design & Construction Guaranty must be assignable to the Landlord in the event the Developer is terminated under the Construction Contract.

7.19 Construction Contract Requirement.

Each Construction Contract must, except as waived by Landlord:

7.19.1 have a guaranteed maximum price for the performance of all D&C Work;

7.19.2 have a committed date for achieving Substantial Completion no later than the Substantial Completion Deadline;

7.19.3 accept the requirements applicable to the scope of work of such Construction Contractor under this Lease on a back-to-back basis and require such Construction Contractor to provide the equivalent indemnity under Article 14 (*Indemnification of Landlord*) for the benefit of the Indemnified Parties and make the Indemnified Parties third-party beneficiaries thereof;

7.19.4 be assignable to Landlord and the City through a direct agreement in the form attached as Exhibit F (*Form of Subcontractor Direct Agreement*);

7.19.5 require the Construction Contractor to carry out its scope of work in accordance with Law, the Benchmark Requirements, all Regulatory Approvals, Good Industry Practice and the terms, conditions and standards set forth in this Lease;

7.19.6 be fully assignable to the City or Landlord upon termination of this Lease or notice of termination to Tenant under such Construction Contract, such assignability to include the benefit of allowing the City or Landlord to step-in and assume the benefit and obligations of Tenant's contract rights and the work performed thereunder, with liability only for those remaining obligations accruing after the date of assumption but excluding any monetary claims or obligations that Tenant may have against such Construction Contractor that existed prior to Landlord's or the City's assumption of such Construction Contract;

7.19.7 include express requirements that if Landlord or the City succeeds to Tenant's rights under the subject Construction Contract (by assignment or otherwise), then the relevant Construction Contractor agrees that it will (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged in respect of the Project (e.g., constructor, equipment supplier, designer, service provider) and (B) permit audit thereof by the City or Landlord and provide progress reports to the City or Landlord appropriate for the type of Construction Contract;

7.19.8 not be assignable by the Construction Contractor without the City's and Tenant's prior written consent; provided, that the foregoing will not limit permitted subcontracting of the Work;

7.19.9 expressly provide that subject to there being no breach of a contractual obligation to make payments to the Construction Contractor by the Tenant, all Liens and claims of any Contractors at any time will not attach to any interest of the City or Landlord in the Project or the Premises; and

7.19.10 be consistent in all other material respects with the terms and conditions of this Lease to the extent such terms and conditions are applicable to the scope of work of such Construction Contractor.

7.20 Conditions to Substantial Completion.

Substantial Completion for the Project will occur upon Landlord's or Landlord's certification that all of the following conditions (the "**Substantial Completion Conditions**") have been satisfied (or waived by Landlord in its sole discretion):

7.20.1 all of the Work (other than Punch List items) has been completed in accordance with the requirements of the Contract Documents, such that Tenant and any required third parties are able to use the Project in accordance with the Benchmark Requirements and this Agreement;

7.20.2 Tenant has certified, substantially in the form agreed between the parties, that all D&C Work (other than Punch List items) has been completed in accordance with the requirements of this Lease;

7.20.3 the engineer of record or the architect of record has inspected and certified, substantially in the form agreed between the parties, that all Work (other than Punch List items) has been completed in accordance with the requirements of the Contract Documents;

7.20.4 all required certifications for the Final Construction Documents and for all mechanical, electrical, electronics and other systems have been received;

7.20.5 Tenant has prepared, and received approval from Landlord of, the Punch List for the Project, as applicable;

7.20.6 all required Regulatory Approvals needed for occupancy of the Project have been obtained and copies have been provided to the City and Landlord;

7.20.7 Landlord has satisfied all other obligations for the Project under this Lease;

7.20.8 Tenant has complied with all other requirements of this Lease that are required for the general public, the OM&C Contractor, Tenant and Landlord to use the Project, as applicable; and

7.20.9 all other Major Submittals required prior to or on Substantial Completion have been submitted and, where required, Verified against the Benchmark Requirements by Landlord.

7.21 Substantial Completion Process.

7.21.1 Tenant must provide written notice to Landlord of the anticipated date for satisfying all Substantial Completion Conditions no later than ninety (90) Days prior to the anticipated date. The notice must include a list of all Substantial Completion Conditions that will be satisfied to allow Landlord to issue the Certificate of Substantial Completion. No later than sixty (60) Days prior to satisfying all of the Substantial Completion Conditions, Tenant must meet and confer with Landlord to confirm that the list of requirements provided above is in accordance with this Lease.

7.21.2 Following the initial meeting, Tenant and Landlord will meet, confer and exchange information on a regular basis to allow Landlord to orderly and timely inspect the Project, review the Final Construction Documents for the Project, and determine whether Tenant has satisfied all of the Substantial Completion Conditions.

7.21.3 Tenant must provide written notice to Landlord promptly after it has satisfied all of the Substantial Completion Conditions, together with all supporting documents for the Project. Within thirty (30) Days of receiving Tenant's notice, the Landlord must:

7.21.3.1 inspect the Project, review the Final Construction Documents and conduct any other investigation as may be necessary to evaluate whether the Substantial Completion Conditions have been satisfied; and

7.21.3.2 following the inspection referred to above, either:

7.21.3.2.1 if the Landlord determines that all of the Substantial Completion Conditions have been satisfied, issue the Certificate of Substantial Completion; or

7.21.3.2.2 if the Landlord determines that any Substantial Completion Condition has not been satisfied, notify Tenant in writing of those Substantial Completion Conditions that have not been satisfied.

7.21.4 Tenant must notify Landlord if it disputes the Landlord's determination within five (5) Days of receiving such determination. If Tenant does not notify Landlord of a dispute within that five-Day period, Tenant will be deemed to have accepted the Landlord's determination.

7.21.5 If Tenant accepts or is deemed to have accepted the Landlord's determination, Tenant may resubmit a notice once all Substantial Completion Conditions have been satisfied.

7.21.6 If Tenant issues a notice disputing the Landlord's decision and the Parties are unable to resolve the dispute within a further fourteen (14) Days of that notice, the matter will be resolved in accordance with Article 38 (*Dispute Resolution Provisions*).

7.21.7 In connection with Landlord's issuance of the Certificate of Substantial Completion, Landlord, may in its discretion add or remove items to or from the Punch List.

7.22 Effect of Certificates of Substantial Completion.

7.22.1 Issuance of any Certificate of Substantial Completion will not:

7.22.1.1 relieve Tenant of its obligation to complete the remaining Work;

7.22.1.2 be construed to constitute an extension of Tenant's time to complete the remaining Work;

7.22.1.3 release Tenant from any obligations under this Lease (including its obligations with respect to insurance coverage).

7.23 Final Completion Process.

7.23.1 Tenant must provide written notice to Landlord of the anticipated date for Final Completion no later than 20 Days prior to the anticipated date for satisfying all of the Final Completion Conditions. The notice must include a list of all Final Completion Conditions that will be satisfied to allow Landlord to issue the Certificate of Final Completion.

7.23.2 No later than ten Days prior to satisfying all Final Completion Conditions, Tenant must meet and confer with Landlord to confirm that the list of requirements is in accordance with this Lease. Following the initial meeting, Tenant and Landlord will meet, confer and exchange information on a regular basis to allow the Landlord to orderly and timely inspect the Project and determine whether Tenant has satisfied all of the Final Completion Conditions.

7.23.3 Tenant must provide written notice to Landlord promptly after it has satisfied all of the Final Completion Conditions, together with all supporting documents.

7.23.4 Within twenty (20) Days of receiving Tenant's such written notice:

7.23.4.1 the Landlord must inspect the items on the Punch List, review the as-built drawings and carry out any other investigation as may be necessary to evaluate whether Final Completion has been achieved; and

7.23.4.2 following the inspection referred to above, must either:

7.23.4.2.1 if the Landlord determines that all of the Final Completion Conditions have been satisfied, issue the Certificate of Final Completion; or

7.23.4.2.2 if the Landlord determines that any Final Completion Condition has not been satisfied, notify Tenant in writing of those Final Completion Conditions that have not been satisfied.

7.23.4.3 Tenant must notify Landlord if it disputes the Landlord's determination within five Days of receiving the Landlord's determination. If Tenant does not notify Landlord of a dispute within that five-Day period, Tenant will be deemed to have accepted the Landlord's determination.

7.23.4.4 If Tenant accepts or is deemed to have accepted Landlord's determination, Tenant may resubmit a notice once all Final Completion Conditions have been satisfied.

7.23.4.5 If Tenant issues a notice and the Parties fail to resolve the dispute within an additional 14 Days of that notice, the matter will be resolved in accordance with Article 38 (*Dispute Resolution Provisions*).

Article 8 Operations and Maintenance.

8.1 Management and Operating Covenants. Following Substantial Completion, Tenant shall perform all Routine Maintenance at no cost to Landlord as required under this Lease, in a manner consistent with this Lease, Good Industry Practice, the Benchmark Requirements, all Regulatory Approvals and applicable Law.

8.2 Tenant's Duty to Maintain. Subject to the terms of Article 10 (*Damage or Destruction*) and Article 11 (*Condemnation*) below, and, to the extent required in Section 8.1 (*Management and Operating Covenants*), throughout the Term of this Lease, Tenant shall maintain the Premises, in good condition and repair, ordinary wear and tear excepted, and otherwise in compliance with all Laws (subject to Tenant's contest rights set forth in Section 6.1 (*Compliance with Laws and Other Requirements*)) and the requirements of this Lease. To the extent required in Section 8.1 (*Management and Operating Covenants*), Tenant shall promptly make (or cause others to make) all necessary repairs, renewals and replacements, whether structural or nonstructural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant shall make such repairs with materials, apparatus and facilities as originally installed, or, if not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the

Improvements, as of Substantial Completion. Except as otherwise provided in any Law or the Development Agreement or elsewhere in this Lease, and subject to the provisions of Article 5 (*Taxes and Other Impositions*), Tenant shall not be obligated to maintain any public utilities or public infrastructure located in any dedicated public rights of way.

8.3 Responsibility for Cost of Repair.

8.3.1 No Obligation of Landlord; Waiver of Rights. As between Landlord and Tenant, and except as otherwise expressly provided in Article 15 (*Insurance*), to the extent required in Section 8.1 (*Management and Operating Covenants*): (i) Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Improvements, from and after the Financial Close; (ii) Landlord shall have no obligation to make repairs or replacements of any kind or maintain the Premises, any Improvements or any portion thereof; and (iii) Tenant waives the benefit of any Law that would permit Tenant to make repairs or replacements at Landlord's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Landlord's expense.

8.3.2 Notice. Tenant shall deliver to Landlord, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority having responsibility for the enforcement of any Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 15 (*Insurance*), asserting that the requirements of such insurance policy or policies are not being met. If Landlord shall receive any notice of the type described in clause (i), Landlord shall deliver to Tenant, promptly after receipt, a copy of such notice.

8.4 Landlord Right to Enter. Landlord shall have the right of access, for itself and its authorized representatives, to the Premises and the Armory and any portion thereof, without charges or fees, at all reasonable times during the Term during business hours, upon not less than 48 hours' advance notice for the purposes of (i) inspection (during business hours only), (ii) exhibition of the Premises to others during the last 36 months of the Term (during business hours only) or (iii) determining compliance by Tenant and the Premises with the terms and conditions of this Lease; provided, however, that (A) such entry and Landlord's activities shall be conducted subject to Tenant's then applicable security requirements, so long as those requirements are reasonably consistent with security requirements in other similarly situated arenas and do not materially impair Landlord's ability to access the Premises for the purposes provided in this Section, only after Landlord has been given notice of the security requirements; (B) such entry and Landlord's activities shall be conducted in such a manner as to minimize interference with Tenant's use and operation of the Premises then being conducted in the Premises pursuant to the

terms of this Lease and (C) nothing in this provision shall be intended to require Landlord to deliver any additional notice to Tenant or to only enter during any specific period of time, in connection with a Tenant Event of Default or Landlord's exercise of its right to take any Required Action.

8.5 Security; Policy and Law Enforcement.

8.5.1 Security. At all times during the Term and on a twenty-four (24) hour basis, Tenant shall provide, at its sole cost and expense, security and security personnel at, and outside of, the Premises and the Armory necessary to satisfy applicable Law. Notwithstanding anything to the contrary set forth herein, however, Tenant hereby acknowledges and agrees that Landlord does not make, and Tenant hereby waives, any guaranty or warranty, expressed or implied, with respect to any security at the Premises or that any security measures will be taken by Landlord or the City or will prevent occurrences or consequences of criminal activity, it being hereby acknowledged and agreed by Tenant that the Landlord and the City have not agreed to provide any security services or measures at or for the Premises, and that neither Landlord nor the City nor any of their related parties shall be liable Tenant in any event for, and Tenant hereby releases the City and Landlord and their related parties from any responsibility for, losses due to theft or burglary, vandalism or for damage or injury done by unauthorized persons at the premises, or in connection with any such security matters (including any damage or injury resulting from a criminal or terrorist attack on or off the premises), except to the extent resulting from the gross negligence or willful misconduct of Landlord or any related party of Landlord.

8.5.2 Vandalism. Tenant will promptly repair or remedy any vandalism on or within the Premises and undertake such additional modifications or adjustments to the Project and to the performance of the OM&C Work as are necessary to maximize the Project's sustainability and resistance to further or future vandalism, provided that any modifications or adjustments will be subject to compliance with the Benchmark Requirements and applicable Law. Where Landlord or Tenant determine, acting reasonably, that the continuing existence of the vandalism poses a material risk to human safety or to Project security, Tenant will, without any further direction from the Landlord, commence taking such reasonable steps as are necessary in the circumstances to eliminate the risk to human safety and ensure the security of the Project.

8.5.3 Incident Response and Emergency Services. Where required by applicable Law or deemed appropriate or necessary, Tenant will coordinate with the City's police department and fire department to provide basic policing, incident response services and emergency services (fire and rescue). Landlord and the City will not have any responsibility or liability to Tenant resulting from or otherwise relating to the failure of the City's police department or any other public agencies

to provide policing or first responder services contemplated by this Section or any of the acts or omissions of the City's police department or fire department or such agencies with respect to such services.

8.5.4 Traffic Management. The Tenant or the OM&C Contractor shall arrange for all traffic control and enforcement or management services associated with the Project, during events and otherwise.

Article 9 Utility Services. Landlord, as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant and its Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services as may be necessary and appropriate to the uses to which the Premises are put. Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by the City, that no act or omission of the City in its capacity as a provider of public utility services shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Landlord under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, other than claims arising from Delay Events that Tenant is entitled to assert under this Lease, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or crossclaim in any litigation or arbitration between Tenant and Landlord relating to this Lease, any Losses arising from or in connection with the City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

Article 10 Damage or Destruction.

10.1 Definitions. As used in this Article 10 (*Damage or Destruction*), the following capitalized terms shall have the meanings set forth below. Other capitalized terms used in this Article 10 (*Damage or Destruction*) shall have the meanings set forth elsewhere in this Article 10 (*Damage or Destruction*) or in this Lease.

10.1.1 "Casualty Date" means the date of a Casualty Event.

10.1.2 "Casualty Event" means any damage to or destruction of the Premises or of the Improvements thereon or any part thereof by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen.

10.1.3 “Casualty Restoration Cost” means the reasonably estimated or actual hard costs of Restoration of all or any portion of the Premises or Improvements damaged or destroyed by a Casualty Event.

10.1.4 “Casualty Restoration Funds” is defined in Section 10.4.4 (Deposit of Casualty Restoration Funds in Certain Circumstances).

10.1.5 “Late-Term Casualty” means any Casualty Event at any time during the last five Lease Years of the Term for the portion of the Premises on which the Casualty Event occurs.

10.1.6 “Major Damage or Destruction” means, with respect to any Improvements on the Premises comprised of a completed building, damage to or destruction of such Improvements to the extent that the reasonably estimated or actual hard costs of Restoration will exceed 50 percent of the hard costs to replace such Improvements in their entirety (excluding therefrom any such costs attributable to Restoration of any foundation, footings, pilings and excavation). The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws (including but not limited to code upgrades) in effect as of the date of the event causing such Major Damage or Destruction.

10.1.7 “Uninsured Casualty” means a Casualty Event for which the Casualty Restoration Cost exceeds \$1,000,000, as Indexed, and for which insurance coverage is not provided under the policies of insurance that Tenant is required to carry under Article 15 (Insurance) hereof.

10.2 General; Notice; Waiver.

10.2.1 General. If at any time during the Term any damage or destruction occurs to all of the Premises or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Article 10 (Damage or Destruction).

10.2.2 Notice. In the event of a Casualty Event that (i) could materially impair use or operation of any material portion of the Improvements for their intended purposes for a period of 30 consecutive Days or longer, or (ii) results in damage such that the Casualty Restoration Cost exceeds \$250,000, then Tenant shall promptly, but not more than ten Days after the occurrence of the Casualty Event, give written notice thereof to Landlord describing with as much specificity as is reasonable, given the ten-Day time constraint, the nature and extent of such damage or destruction; provided, however, that Tenant shall provide Landlord with a supplemental and more detailed written report describing such matters with specificity within 90 Days after the occurrence of a Casualty Event.

10.2.3 Waiver. Landlord and Tenant intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises.

10.3 Rent after Damage or Destruction. If there is any damage to or destruction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise expressly provided in this Article 10 (Damage or Destruction). In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Landlord all Rent at the times and in the manner described in this Lease.

10.4 Tenant's Obligation to Restore.

10.4.1 Generally. Except as otherwise expressly provided in this Article 10 (Damage or Destruction), if all or any portion of the Improvements are damaged or destroyed, then Tenant shall, within a reasonable period of time following the Casualty Event (allowing for time for securing necessary Regulatory Approvals and for reaching a settlement with Tenant's insurance carrier), commence and diligently (subject to Delay Events) Restore the Improvements to the greatest feasible extent to the condition they were in immediately before such damage or destruction, in accordance with then applicable Laws (including, but not limited to, any required code upgrades); however, in completing such Restoration, (except where such damage has been caused in whole or in part by any Tenant Parties' negligent or willful act or omission *or* by any OM&C Contractor, Construction Contractor or any Contractor act or omission) Tenant shall not be required to expend an amount in excess of the sum of available insurance proceeds as a result of such Casualty Event, plus the amount of any applicable policy deductible. For purposes of this Article 10 (Damage or Destruction), proceeds of insurance shall not be deemed "available" hereunder to the extent that an Armory Mortgagee, pursuant to the terms of its Armory Mortgage permitted in accordance with Article 33 (Armory Mortgages), retains or requires the application of such proceeds for purposes other than Restoration. All Restoration to be performed by or on behalf of Tenant shall be subject to Landlord's prior approval rights set forth in Section 7.14 (Landlord's Right to Approve Additional Construction) with respect to Additional Construction and shall otherwise be performed in accordance with the procedures regarding Additional Construction set forth in Section 7.14 (Landlord's Right to Approve Additional Construction). In the event of any Uninsured Casualty, then at the time Tenant provides Landlord with the 90 Day report described in Section 10.2.2 (Notice), Tenant shall also provide Landlord with written notice (the "Casualty Notice") either (1) electing to commence and complete Restoration of the Improvements, or (2) electing to terminate this Lease. If Tenant elects to Restore the Improvements, such Restoration shall be completed in accordance with Section 10.4 (Tenant's Obligation to Restore)

10.4.2 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Casualty Event, including, without limitation, an expedited review and response to all documents and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration.

10.4.3 Insurance Proceeds. Except as otherwise expressly provided in this Article 10 (*Damage or Destruction*), in the event of a Casualty Event other than an Uninsured Casualty, all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds, if any (other than business or rental interruption insurance), paid to Landlord or Tenant under any policy of insurance carried by Tenant hereunder, by reason of damage to or destruction of any Improvements, shall be used by Tenant for the repair or rebuilding of such Improvements, subject to the rights of any Armory Mortgagee under any Armory Mortgage permitted in accordance with Article 33 (*Armory Mortgages*) (as and to the extent provided in such Armory Mortgage). Subject to the preceding sentence, in the event of a Casualty Event that does not constitute Major Damage or Destruction and for which the Casualty Restoration Cost does not exceed \$1,000,000, as Indexed, Tenant shall have the sole and exclusive right to negotiate an insurance settlement with its insurer for claims made under its insurance as a result of such Casualty Event; provided, however, that any such negotiations or settlement shall not relieve or release Tenant from any of its Rent or Restoration obligations or other obligations under this Lease.

10.4.4 Deposit of Casualty Restoration Funds in Certain Circumstances. In the case of any Casualty Event (i) that constitutes Major Damage or Destruction or (ii) for which the Casualty Restoration Cost equals or exceeds \$1,000,000, as Indexed, Tenant shall deposit all insurance proceeds received by Tenant in connection with such Casualty Event, plus the amount of any applicable policy deductible, with a Depositary to Restore the Premises (the "**Casualty Restoration Funds**"), which Depositary shall be authorized to make disbursement therefrom in accordance with Section 10.4.5 (*Release of Casualty Restoration Funds*).

10.4.5 Release of Casualty Restoration Funds.

10.4.5.1 Use by Tenant. Subject to this Section 10.4.5 (*Release of Casualty Restoration Funds*) and the satisfaction by Tenant of all of the terms and conditions of this Article 10 (*Damage or Destruction*), the Depositary shall pay to Tenant from time-to-time any Casualty Restoration Funds it holds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, to be

utilized by Tenant solely for the Restoration, such payments to be made as follows:

10.4.5.1.1 prior to commencing any Restoration, Tenant shall have provided, and Landlord shall have approved all items required pursuant to Section 10.4.1 (*Generally*);

10.4.5.1.2 the Casualty Restoration Funds held by the Depositary shall be paid to Tenant in installments as the Restoration progresses, subject to 10.4.5.1.3 and 10.4.5.2, based upon requisitions to be submitted by Tenant to the Depositary and Landlord in compliance with 10.4.5.1.3, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with this Lease; provided further that notwithstanding the foregoing, but subject to the provisions of 10.4.5.1.3 and 10.4.5.2, the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Casualty Restoration Funds held by the Depositary so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depositary a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and provides Landlord with any security reasonably required by Landlord;

10.4.5.1.3 the amount of each installment to be paid to Tenant shall be the aggregate amount of Casualty Restoration Costs incurred therefor by Tenant minus the aggregate amount of Casualty Restoration Funds paid therefor to Tenant in connection therewith; provided, however, that (i) all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, (ii) disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry, and (iii) the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

10.4.5.1.4 upon completion of and payment for the Restoration by Tenant, subject to the rights of any Armory Mortgagee, the

Depository shall pay the balance of the Casualty Restoration Funds it holds, if any, to Tenant, unless such funds were derived from Landlord's insurance policies, in which case such distributions will be paid proportionally based to Tenant and Landlord. In this scenario where there are insufficient proceeds to pay for the Restoration, (or if there shall be no insurance proceeds), neither party shall be obligated to fund the shortfall; however, Landlord and Tenant shall consult to determine if it is reasonably feasible to complete and finance the Restoration.

10.4.5.2 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 10.4.5.1:

10.4.5.2.1 Tenant shall have provided, and Landlord shall have approved all items required pursuant to Section 10.4.1 (*Generally*);

10.4.5.2.2 at the time of making such payment, no Tenant Event of Default exists; and

10.4.5.2.3 the Restoration shall be carried out in accordance with this Article 10 (*Damage or Destruction*), and there shall be submitted to the Depository and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 10.4.5.1.3), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition, provided that a release of such Encumbrance is delivered to the Depository in accordance with Section 10.4.5.1.2, or (B) Tenant in good faith contests the Encumbrance and has provided to Landlord any security reasonably required by Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work, giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the

withdrawal of Casualty Restoration Funds or has been made out of the Casualty Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Casualty Restoration Funds held by the Depositary or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

10.4.6 Razing Damaged Improvements. Without limiting any of Tenant's obligations under this Article 10 (*Damage or Destruction*), and notwithstanding any provision herein to the contrary, in the event of any Casualty Event for which a Restoration will not be, or is not, completed pursuant to this Article 10 (*Damage or Destruction*), Tenant shall (i) promptly raze or remove, to the greatest feasible extent, any and all damaged or destroyed Improvements and remediate and restore such portion of the Premises as may be designated by Landlord, (ii) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken; (iii) immediately pay over or cause the Depositary to pay over to Landlord the remainder, if any, of the Casualty Restoration Funds received by Tenant or held by the Depositary prior to such Termination or cancellation; (iv) pay over or cause the Depositary to pay over to Landlord, within seven Days after receipt thereof, any Casualty Restoration Funds received by Tenant or the Depositary subsequent to such termination or cancellation; and (v) immediately pay to Landlord all accrued and unpaid Rent through the date of such expiration or termination; provided that any amounts paid to Landlord pursuant to preceding clauses (iii) or (iv) are subject to the rights in any such sums of any Armory Mortgagee under an Armory Mortgage permitted in accordance with Article 33 (*Armory Mortgages*)) (as and to the extent provided in such Armory Mortgage); provided, however, in undertaking any such razing or removal, except as agreed by the Parties or where such damage has been caused in whole or in part by any Tenant Parties' negligent or willful act or omission *or* by Tenant or any OM&C Contractor, Construction Contractor or any Contractor act or omission, Tenant shall not be required to expend, and shall not be liable for, any amount in excess of the sum of available insurance proceeds plus the amount of any applicable insurance deductible.

10.5 Rights of Landlord. In addition to the other rights and remedies available to Landlord that are set forth elsewhere in this Lease, the following rights and remedies shall be available to Landlord in the event of a Casualty Event:

10.5.1 Expiration or Termination of Lease Prior to Completion of Restoration. In any case where this Lease expires or is terminated with respect to all or any portion of the Premises prior to the completion of any Restoration thereon required under this Lease, Tenant shall (unless otherwise directed by the Landlord): (i) promptly raze or remove any and all damaged or destroyed Improvements as may be designated by Landlord; (ii) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken; (iii) immediately pay over or cause the Depositary to pay over to Landlord the remainder, if any, of the Casualty Restoration Funds received by Tenant or held by the Depositary prior to such Termination or cancellation; (iv) pay over or cause the Depositary to pay over to Landlord, within seven Days after receipt thereof, any Casualty Restoration Funds received by Tenant or the Depositary subsequent to such termination or cancellation; and (v) immediately pay to Landlord all accrued and unpaid Rent through the date of such expiration or termination; provided that any amounts paid to Landlord pursuant to preceding clauses (iii) or (iv) are subject to the rights in any such sums of any Armory Mortgagee under an Armory Mortgage permitted in accordance with Article 33 (*Armory Mortgages*)) (as and to the extent provided in such Armory Mortgage) and provided further that, except where such damage has been caused (in whole or in part) by any Tenant Parties' act or omission, Tenant shall not be required to expend, and shall not be liable for, any amount in excess of available insurance proceeds plus the amount of any applicable insurance deductible. Upon completion of and payment for the Restoration and any accrued and unpaid Rent, Landlord shall return to Tenant any unused portion of the Casualty Restoration Funds.

10.5.2 Failure to Restore Following a Casualty Event.

10.5.2.1 If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed as required hereunder, or (B) having so commenced such Restoration, Tenant fails to diligently complete the same in accordance with the terms of this Lease, then Landlord may, by giving 60 Days' prior notice to Tenant, subject to the rights of the Armory Mortgagee pursuant to Article 33 (*Armory Mortgages*) and the provisions set forth in Article 30 (*Hold Over*), terminate this Lease (unless Tenant subsequently commences such Restoration or resumes the diligent prosecution of such Restoration within such 60 Day period and completes such Restoration, to the satisfaction of Landlord, within 60 Days of commencement). Upon such termination, this Lease shall cease, and the Term shall immediately become forfeited and void.

10.5.2.2 If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion

thereof so damaged or destroyed as required hereunder, (B) having so commenced such Restoration, Tenant fails to diligently complete the same in accordance with the terms of this Lease, or (C) prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated in accordance with the terms of this Lease and Landlord may exercise its applicable rights for Tenant Event of Default under Section 20.1 (Landlord's Remedies Generally), then Landlord may, but shall not be required to, complete such Restoration, at Tenant's expense and shall be entitled to be paid out of the Casualty Restoration Funds for the relevant Restoration costs incurred by Landlord. Upon completion of and payment for the Restoration, any unused portion of the Casualty Restoration Funds shall be applied to repayment of the Bonds. Landlord's rights and Tenant's obligations under this Section 10.5 (Rights of Landlord) shall survive the expiration or termination of this Lease.

10.6 No Release of Tenant's Obligations. No Casualty Event shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

10.7 Benefit of Landlord. Except as otherwise expressly provided herein, the requirements of this Article 10 ("Damage or Destruction") are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord to actually undertake or complete any Restoration as provided in this Article 10 (Damage or Destruction) or to obtain the evidence, certifications and other documentation provided for herein.

Article 11 Condemnation.

11.1 Definitions. As used in this Article 11 (Condemnation), the following capitalized terms shall have the meanings set forth below. Other capitalized Terms used in this Article 11 (Condemnation) shall have the meanings set forth elsewhere in this Article 11 (Condemnation).

11.1.1 "Condemnation" means the taking or damaging of all or any portion of the Premises, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the Law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of the Premises to the Condemning Authority (or to a designee of the Condemning Authority), provided that the Premises or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

11.1.2 “Condemnation Award” means all amounts, compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

11.1.3 “Condemnation Date” means the earlier of: (a) the date when possession of the Premises or the part thereof condemned is taken by the Condemning Authority; or (b) the date when title to the Premises or the part thereof condemned vests in the Condemning Authority.

11.1.4 “Condemnation Restoration Allocation” has the meaning set forth in Section 11.7.2.

11.1.5 “Condemnation Restoration Cost” means the reasonably estimated or actual cost of any Restoration of the Premises attributable to a Condemnation of the Premises.

11.1.6 “Condemnation Restoration Funds” has the meaning set forth in Section 11.8.3 (*Deposit of Condemnation Restoration Funds in Certain Circumstances*).

11.1.7 “Condemned Land Value” has the meaning set forth in Section 11.7.3.

11.1.8 “Condemning Authority” means the governmental authority, or other entity possessing the power of eminent domain, effectuating a Condemnation.

11.1.9 “Net Condemnation Award” has the meaning set forth in Section 11.7 (*Allocation of Condemnation Award*).

11.1.10 “Partial Condemnation” means any Condemnation other than a Total Condemnation or a Substantial Condemnation.

11.1.11 “Substantial Condemnation” means a Condemnation of less than the entire Premises, or of less than Tenant’s entire leasehold estate therein, where such Condemnation results in any of the following:

11.1.11.1 the part of the Premises that is taken is at least (A) 50 percent of the total square footage of the Property, or (B) 50 percent of the Gross Building Area on the Premises, or (C) both;

11.1.11.2 substantially and materially impairs access to the entire Premises and no reasonably acceptable alternative access can be constructed or made available; or

11.1.11.3 in the reasonable mutual determination of Landlord and Tenant (or, in the event Landlord and Tenant cannot reach such mutual

determination, in the good faith opinion of a third-party expert reasonably satisfactory to Landlord and Tenant), renders the entire Premises untenable, unsuitable, or economically infeasible for the Permitted Uses.

11.1.12 “Temporary Condemnation” means any Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in connection with a Substantial Condemnation or a Partial Condemnation for the remainder of the Term.

11.1.13 “Tenant’s Termination Notice” has the meaning set forth in Section 11.5.1 (*Tenant Right to Terminate*).

11.1.14 “Total Condemnation” means a Condemnation of the entire Premises or Tenant’s entire leasehold estate therein.

11.2 General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Article 11 (*Condemnation*). Notwithstanding anything herein to the contrary, Tenant shall not receive any portion of any Condemnation Award unless Tenant has become entitled to such as required or permitted by Law.

11.3 Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe, with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be, and shall include a copy of any notice received from the Condemning Authority.

11.4 Total Condemnation. In the event of a Total Condemnation, this Lease and all of Tenant’s right, title, interest and future obligations thereunder, and any and all Subleases, shall terminate on the Condemnation Date; provided, however, that such Termination shall not terminate any of Tenant’s obligations or liabilities under this Lease that are expressly stated herein to survive the Termination of this Lease, so long as the Condemning Authority is not the City or a City Affiliate.

11.5 Substantial Condemnation.

11.5.1 Tenant Right to Terminate. In the event of a Substantial Condemnation, Tenant shall have the right, subject to the rights of any Armory Mortgagee pursuant to Article 33 (*Armory Mortgages*), to elect to terminate this Lease by delivery to Landlord of written notice of such election (“**Tenant’s Termination Notice**”) within 90 Days after the Condemnation Date. Upon such election by Tenant, this Lease and all of Tenant’s right, title, interest and future

obligations thereunder, and any and all Subleases, shall terminate on the Condemnation Date; provided, however, that such termination shall not terminate any of Tenant's obligations or liabilities under this Lease that are expressly stated herein to survive the termination of this Lease, so long as the Condemning Authority is not the City or City Affiliate. In the event Tenant shall not provide Tenant's Termination Notice within such 90 Day period, Tenant shall be deemed to have elected not to terminate this Lease, in which event this Lease shall continue in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Substantial Condemnation and Tenant shall proceed promptly to Restore the Premises pursuant to Section 11.8 (*Condemnation Restoration*).

11.6 Partial Condemnation. In the event of a Partial Condemnation:

11.6.1 this Lease and all of Tenant's right, title and interest thereunder, and any and all Subleases, shall terminate on the Condemnation Date only with respect to the portion of the Premises so taken; provided, however, that such termination shall not terminate any of Tenant's obligations or liabilities under this Lease that are expressly stated herein to survive the termination of this Lease, so long as the Condemning Authority is not the City or a City Affiliate;

11.6.2 this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Partial Condemnation;

11.6.3 Tenant shall proceed promptly to Restore the Premises pursuant to Section 11.8 (*Condemnation Restoration*); and

11.6.4 the Base Rent due hereunder from Tenant to Landlord for the remainder of the Term shall be equitably reduced by mutual agreement of the Parties from and after such Condemnation Date to the extent Tenant does not have full use of the Premises as a result of such Condemnation (which equitable reduction may, at the Parties' election, be based proportionately upon the relative square footages of the Premises affected by such Partial Condemnation and the total square footage of the Premises prior to such Partial Condemnation).

11.7 Allocation of Condemnation Award. Except as provided in 11.9 (*Temporary Condemnation*) and 11.10 (*Relocation Benefits, Personal Property*), all Condemnation Awards to either Landlord or Tenant on account of a Condemnation, net of (less) reasonable costs, fees and expenses incurred by either Landlord or Tenant as applicable (including, without limitation, Attorneys' Fees and Costs) in the collection thereof ("**Net Condemnation Award**"), shall be allocated between Landlord and Tenant as follows, and subject to the rights of any Armory Mortgagee of an Armory Mortgage permitted in accordance with Article 33 (*Armory Mortgages*) (as and to the extent provided in such Armory Mortgage):

11.7.1 First, to Landlord for the payment of all accrued and unpaid Rent (i.e. Rent payable on any date occurring on or before the Condemnation Date).

11.7.2 Second, in the event of a Partial Condemnation, or in the event of a Substantial Condemnation for which Tenant does not elect to terminate this Lease pursuant to Section 11.5 (*Substantial Condemnation*), Tenant shall furnish to Landlord evidence satisfactory to Landlord of the total Condemnation Restoration Cost of the Restoration required by Section 11.8 (*Condemnation Restoration*). Upon Landlord's written approval of such Condemnation Restoration Cost, which approval shall not be unreasonably withheld, conditioned or delayed, the portion of the Net Condemnation Award allocable to such Restoration (the "**Condemnation Restoration Allocation**") shall be deposited with the Depositary to be held and applied to pay the Condemnation Restoration Cost pursuant to Section 11.8 (*Condemnation Restoration*) or, in the event that such Restoration has already been Completed, shall be payable to Tenant.

11.7.3 Third, to Landlord for the value of the condemned land (comprising the Property) only, considered as unimproved by the Improvements and encumbered by this Lease and subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of, Landlord's reversionary interest in the value of the Improvements (the "**Condemned Land Value**").

11.7.4 Fourth, to any Armory Mortgagee pursuant to an Armory Mortgage permitted under Article 33 (*Armory Mortgages*), as and to the extent provided in such Armory Mortgage, for payment of all sums secured by its Armory Mortgage that remain outstanding, together with its reasonable out-of-pocket expenses and charges in collecting such portion of the Condemnation Award, including without limitation its Attorneys' Fees and Costs incurred in such collection.

11.7.5 Fifth, Tenant shall receive an amount equal to the value of Tenant's leasehold interest in this Lease, not including the value of the Improvements on the Premises, for the remaining unexpired portion of the Term to the original scheduled Termination Date, and

11.7.6 Sixth, the balance of the Net Condemnation Award shall be divided proportionately between Landlord, for the value of Landlord's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of its leasehold interest and the Improvements (excluding Public Asset) for the remaining unexpired portion of the Term to the original scheduled Termination Date set forth in the Project Schedule, less any proceeds distributed in repayment of any Armory Mortgages pursuant to Section 11.7.4.

Notwithstanding anything to the contrary set forth above, any portion of the Net Condemnation Award which has been specifically designated by the Condemning Authority or in the judgment of any court to be payable to Landlord or Tenant on account of any interest in the Premises or the Improvements separate and apart from Condemned Land Value, the value of Landlord's reversionary interest in the Improvements, Tenant's leasehold interest in this Lease, and/or the value of the Improvements on the Premises for the remaining unexpired portion of the Term of this Lease, shall be paid to Landlord or Tenant, as applicable, as so designated by the Condemning Authority or judgment. Notwithstanding Sections 11.7.5 and 11.7.6, in the event of a Partial Condemnation or Substantial Condemnation, and this Lease is terminated as to all or any portion of the Premises, (i) the fair market value of the remaining Premises and Improvements thereon which become the property of Landlord upon such termination shall be treated for purposes of this Section 11.7 as received by Landlord on account of its share of the Condemnation Award; and (ii) any Net Condemnation Award payable to Landlord shall be reduced by a like amount and instead paid to Tenant; and (iii) any portion of the Net Condemnation Award that is payable to Tenant shall instead be paid to Landlord to the extent Tenant owes such amount to Landlord in satisfaction of accrued and unpaid Rent owed by Tenant to Landlord under this Lease for any period prior to the Condemnation Date.

11.8 Condemnation Restoration.

11.8.1 General. In the event of a Partial Condemnation, or in the event of a Substantial Condemnation for which Tenant does not elect to terminate this Lease pursuant to Section 11.5 (*Substantial Condemnation*), Tenant shall, within a reasonable period of time (allowing for securing necessary Regulatory Approvals and for obtaining the Condemnation Award from the Condemning Authority), commence and diligently, subject to Delay Events, proceed in accordance with this Article 11 (*Condemnation*) to Restore the portions of the Premises that were not subject to such Condemnation to the greatest feasible extent to the condition they were in immediately before such Condemnation; however, in completing such Restoration, Tenant shall not be required to expend an amount in excess of the Condemnation Restoration Allocation. All Restoration to be performed by or on behalf of Tenant shall be in accordance with and subject to Landlord's prior approval rights set forth in Section 7.14 (*Landlord's Right to Approve Additional Construction*) with respect to Additional Construction and shall otherwise be performed in accordance with the procedures regarding Additional Construction set forth in Section 7.14 (*Landlord's Right to Approve Additional Construction*).

11.8.2 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Condemnation, including, without limitation, an expedited review and response to all documents and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so

as to minimize any interference or delay with respect to Tenant's Restoration and any restoration that may be occurring in other Landlord areas.

11.8.3 Deposit of Condemnation Restoration Funds in Certain Circumstances. Upon the allocation or payment to Tenant of any Condemnation Restoration Allocation at any time that Restoration is not Complete, Tenant shall deposit or cause to be deposited with a Depositary all or such portion of the Condemnation Restoration Allocation necessary for payment in full of the then remaining unpaid Condemnation Restoration Cost to complete such Restoration (the "**Condemnation Restoration Funds**"), such deposit to be used solely for payment of such Condemnation Restoration Cost.

11.8.4 Release of Condemnation Restoration Funds.

11.8.4.1 Use by Tenant. Subject to this Section 11.8.4 (*Release of Condemnation Restoration Funds*) and the satisfaction by Tenant of all of the terms and conditions of this Article 11 (*Condemnation*), the Depositary shall pay to Tenant from time-to-time any Condemnation Restoration Funds, but not more than the amount actually collected by the Depositary upon the Condemnation, together with any interest earned thereon, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

11.8.4.1.1 prior to commencing any Restoration, Tenant shall have provided, and Landlord shall have approved all items required pursuant to Section 11.8.1 (*General*);

11.8.4.1.2 the Condemnation Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, subject to 11.8.4.1.3 and 11.8.4.2, based upon requisitions to be submitted by Tenant to the Depositary and Landlord in compliance with Section 11.8.4.1.3, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with this Lease; provided further that notwithstanding the foregoing, but subject to the provisions of 11.8.4.1.3 and 11.8.4.1, the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Condemnation Restoration Funds held by the Depositary so long as (i) such Encumbrance will be discharged with funds from such installment and at the time

Tenant receives such installment Tenant delivers to Landlord and the Depositary a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and provides Landlord with any security reasonably required by Landlord;

11.8.4.1.3 the amount of each installment to be paid to Tenant shall be the aggregate amount of costs constituting Condemnation Restoration Cost incurred therefor by Tenant minus the aggregate amount of Condemnation Restoration Funds paid therefor to Tenant in connection therewith; provided, however, that (i) all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, (ii) disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry, and (iii) the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

11.8.4.1.4 upon completion of and payment for the Restoration by Tenant, subject to the rights of any Armory Mortgagee, the Depositary shall pay the balance of the Condemnation Restoration Funds, if any, to Tenant.

11.8.4.2 Conditions Precedent. The following shall be conditions precedent to each payment made to Tenant as provided in Section 11.8.4.1:

11.8.4.2.1 Tenant shall have provided, and Landlord shall have approved all items required pursuant to Section 11.8.4.1 (*General*);

11.8.4.2.2 at the time of making such payment, no Tenant Event of Default exists; and

11.8.4.2.3 the Restoration shall be carried out in accordance with Article 11 (*Condemnation*), and there shall be submitted to the Depositary and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 11.8.4.1.3), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition, provided that a release of such

Encumbrance is delivered to the Depositary in accordance with Section 11.8.4.1.2, or (B) Tenant in good faith contests the Encumbrance and has provided to Landlord any security reasonably required by Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work, giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Condemnation Restoration Funds or has been made out of the Condemnation Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Condemnation Restoration Funds held by the Depositary or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

11.8.4.3 In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depositary to pay over to Landlord the remainder, if any, of the Condemnation Restoration Funds received by Tenant or held by the Depositary prior to such termination or cancellation, and (iii) pay over or cause the Depositary to pay over to Landlord, within seven Days after receipt thereof, any Condemnation Restoration Funds received by Tenant or the Depositary subsequent to such termination or cancellation. Landlord's rights under this Section 11.8.4.3 shall survive the expiration or termination of the Lease.

11.9 Temporary Condemnation. In the event of a Temporary Condemnation, this Lease shall remain in full force and effect without any reduction or abatement of Rent. In such event, any Condemnation Award shall be payable to Tenant; provided, however, if the Condemnation Award covers any period beyond the expiration of the Term, Landlord shall be entitled to make claim for and participate proportionally in the Condemnation Award, and provided, further, that the portion of any such Condemnation Award allocated or intended to cover

the cost of any Restoration shall be used by Tenant for such Restoration in accordance with this Article 11 (Condemnation).

11.10 Relocation Benefits, Personal Property. Landlord shall not be entitled to any portion of any Net Condemnation Award payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants or in connection with Tenant's or any of its Subtenants' moving and/or relocation expenses.

11.11 Benefit of Landlord. Except as otherwise expressly provided herein, the requirement of this Article 11 (Condemnation) are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord to actually undertake or complete any Restoration as provided in this Article 11 (Condemnation) or to obtain the evidence, certifications and other documentation provided for herein.

Article 12 Liens.

12.1 Liens. Tenant shall not create or permit the attachment of, and shall promptly, following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Landlord, any lien, security interest, or encumbrance on the Premises or Tenant's Leasehold Estate, other than (i) this Lease and permitted Subleases, (ii) liens for nondelinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Article 5 (Taxes and Other Impositions), (iii) Armory Mortgages permitted under Article 33 (Armory Mortgages), (iv) Armory Mortgages encumbering the sub-leasehold interests of Subtenants, provided no such Armory Mortgage encumbers Tenant's leasehold estate unless such Armory Mortgage is permitted under Article 33 (Armory Mortgages), (v) liens caused by any of Landlord's actions or created by or on behalf of Landlord during the Term, and (vi) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 5. The provisions of this Section do not apply to liens created by Tenant on its Personal Property. Notwithstanding anything in this Section 12.1 (Liens), the attachment of a lien causing a material adverse effect on Tenant's ability to perform the Work and created by or on behalf of Landlord during the Term shall constitute a Delay Event.

12.2 Mechanics' Liens. Nothing in this Lease shall be deemed or construed in any way as constituting the request of Landlord, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Premises, Tenant's leasehold interest, or Landlord's fee interest in the Premises for or on the account of labor, services or materials furnished to Tenant, or at Tenant's request. Tenant shall provide such advance written notice of any Additional Construction such as shall allow Landlord from time to time to post a notice of non-responsibility on the Premises. If Tenant does not, within 60 Days following the imposition of any such lien,

cause the same to be released of record, it shall be a material default under this Lease, and Landlord shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose and all reasonable expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant within 30 Days following written demand by Landlord. Notwithstanding the foregoing, Tenant shall have the right to contest any such lien in good faith, if, within 60 Days following the imposition of such lien, Tenant, at no cost to Landlord, posts a bond in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to Landlord.

Article 13 Assignment and Subletting.

13.1 Assignment and Transfer.

13.1.1 Consent of Landlord.

13.1.1.1 Change in Control. Except as otherwise expressly permitted in this Article 13 (*Assignment and Subletting*) or in conjunction with the entry into any OM&C Contract or associated leases, subleases, or subcontracts, any Lead Developer Party, or their successors, and assigns, shall not (i) suffer or permit any Significant Change to occur or (ii) or with respect to Tenant assign, sell, lien, encumber, sublease, grant any security interests or otherwise transfer all or any part of Tenant's interest in and to this Lease or the Leasehold Estate either voluntarily or by operation of law (either or both of (i) and (ii) being referred to in this Lease as a "**Transfer.**" "Transfer" shall not include the entry into any Construction Contract, OM&C Contract or associated leases, subleases, or subcontracts where Tenant remains responsible for its obligations under this Lease to Landlord. Any Transfer requires Landlord's prior written consent as set forth herein and the satisfaction, or written waiver thereof by Landlord (which waiver shall be in Landlord's sole and absolute discretion), of all conditions precedent set forth in this Article 13 (*Assignment and Subletting*). In order to effectuate the intent of this Section 13.1.1.1, "Lead Developer Party" shall be interchangeable with the term "Tenant" where the context requires solely in this Article 13.

13.1.1.2 Transfer of Lease. Without limiting the preceding provisions of this Section 13.1.1 (*Consent of Landlord*), it shall in any instance be reasonable for Landlord to withhold its consent to any Transfer proposed by Tenant (each, a "**Proposed Transfer**") to the extent that any such Proposed Transfer would serve to so deprive or limit Landlord with respect to its rights under this Lease.

13.1.2 Total Transfer. Except as otherwise expressly permitted in Section 13.1.7.2.3 or Section 13.3 (*Permitted Transfers without Landlord Consent*), Tenant shall not cause or permit any Transfer of the entire Lease or Leasehold Estate (each such Transfer a “**Total Transfer**”), including any Total Transfer by means of a Significant Change, without Landlord’s prior written consent, which may be withheld, delayed, or conditioned in Landlord’s sole and absolute discretion.

13.1.3 Partial Transfers. Except as otherwise expressly permitted in Section 13.3 (*Permitted Transfers without Landlord Consent*), Tenant shall not cause or permit any Transfer of less than the entire Lease or Leasehold Estate (each such Transfer a “**Partial Transfer**”), including any Partial Transfer by means of a Significant Change, without Landlord’s prior written consent, which shall not be unreasonably withheld, delayed or conditioned by Landlord if all conditions precedent set forth in Section 13.1.4 (*Conditions*) are satisfied or waived in writing by Landlord, which waiver shall be in Landlord’s sole and absolute discretion).

13.1.4 Conditions. Notwithstanding any provision herein to the contrary (excepting Section 13.1.10 (*Scope of Prohibitions on Assignment*)), any Transfer is subject to the satisfaction in full, or the written waiver thereof by Landlord, which waiver shall be in Landlord’s sole and absolute discretion, of all of the following conditions precedent and covenants of Tenant, all of which are hereby agreed to be reasonable as of the Agreement Date and the date of any Proposed Transfer:

13.1.4.1 Tenant provides Landlord with at least 30 Days prior written notice of the Proposed Transfer;

13.1.4.2 Landlord determines, in its reasonable judgment, that the proposed transferee (A) has the financial capacity to perform the Work and satisfy Tenant’s obligations under and in accordance with this Lease that are applicable to the interest in this Lease or Leasehold Estate that is subsumed within the Transfer and (B) either (i) has itself sufficient experience and reputation in the design, construction, operation, commercialization, use, and maintenance of projects of a type and size comparable to the Project or (ii) direct or indirect beneficial owners, proposed managers, operating partners with the financial strength, technical capability and integrity to perform the Work and satisfy Tenant’s obligations under and in accordance with this Lease that are applicable to the interest in this Lease or Leasehold Estate that is subsumed within the Transfer. No proposed transferee may have any criminal, civil, administrative or regulatory claims, judgements or actions implicating such proposed transferee’s technical or financial capabilities of performing the Work. The quality of any proposed transferee’s past or present performance on other projects may be considered as part of Landlord’s review and

determination on the proposed transferee's capability to perform the obligations under this Lease.

13.1.4.3 in the case of a Partial Transfer, such qualifications of the proposed transferee shall be assessed with respect the portion of the Premises and applicable obligations under this Lease subsumed within the proposed Partial Transfer;

13.1.4.4 any proposed transferee, by instrument in writing (which may, at the election of Landlord in its sole and absolute discretion, constitute or include a new lease agreement directly between Landlord and such proposed transferee), for itself and its successors and assigns, and expressly for the benefit of Landlord, expressly assumes all of the obligations of Tenant under this Lease and any other agreements or documents entered into by and between Landlord and Tenant relating to the Project, or the portion of the Premises that will be subsumed within the Proposed Transfer, and agrees to be subject to all of the covenants, conditions and restrictions to which Tenant is subject under such documents with respect to the Premises, or the portion thereof that will be subsumed within the Proposed Transfer;

13.1.4.5 Tenant has submitted to Landlord for review all instruments and other legal documents involved in effecting the Transfer, including the agreement and instruments of sale, assignment, transfer or equivalent, and any required Regulatory Approvals, and Landlord has approved such documents, which approval shall not be unreasonably withheld, delayed, or conditioned;

13.1.4.6 Tenant shall comply with the provisions of Section 13.1.5 (*Delivery of Executed Assignment*) and, to the extent applicable in the event of a Partial Transfer to a Non-Affiliate Transferee or a Total Transfer to a Non-Affiliate Transferee, Section 13.1.7.1.1 (*Partial Transfer to Non-Affiliate*) or Section 13.1.7.2 (*Total Transfer to Non-Affiliate*), as applicable;

13.1.4.7 there is no uncured Tenant Event of Default or Tenant Unmatured Event of Default on the part of Tenant under this Lease or obligations to be assigned to the proposed transferee, or if uncured, either Tenant or the proposed transferee has made provisions to cure Tenant Event of Default, which provisions are satisfactory to Landlord in its sole and absolute discretion;

13.1.4.8 the proposed transferee has demonstrated to Landlord's reasonable satisfaction that the proposed transferee is subject to the jurisdiction of the state courts of the Commonwealth of Virginia;

13.1.4.9 the Proposed Transfer is not in connection with any transaction for purposes of syndicating this Lease, such as a security, bond, or certificates of participation financing, as determined by Landlord in its sole and absolute discretion;

13.1.4.10 in the event of a Proposed Transfer that is proposed by Tenant to include any Subdivision of the Property or the Premises, with respect to such portion of the Premises subsumed within such Partial Transfer, such Subdivision complies with the provisions of Section 13.4 (*Subletting by Tenant*); and

13.1.4.11 Tenant has delivered to Landlord such other information and documents relating to the proposed transferee's business, experience, and finances as Landlord may reasonably request.

13.1.5 Delivery of Executed Assignment. No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to Landlord, within 30 Days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on Tenant's part to be performed under this Lease and the other assigned documents to and including the end of the Term, provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit Landlord's rights or remedies under this Lease or under any applicable Law. The form of such instrument of assignment shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed, or conditioned.

13.1.6 No Release of Tenant's Liability or Waiver by Virtue of Consent. The consent by Landlord to any Transfer and any Transfer hereunder shall not, nor shall such consent or Transfer in any way be construed to, (i) relieve or release Tenant from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by Tenant at any time hereunder (except as set forth in Section 13.1.7 (*Release of Tenant under Certain Circumstances*)) or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further Transfer.

13.1.7 Release of Tenant under Certain Circumstances.

13.1.7.1 Partial Transfer to Non-Affiliate. In the event of a voluntary Partial Transfer of Tenant's interest in and to this Lease or the Leasehold Estate (excluding any Partial Transfer by means of a Significant Change) to a Non-Affiliate Transferee, Tenant, upon (and only upon) written request to Landlord, shall be released from any obligation under this Lease first accruing after the date of Landlord's approval of such Partial Transfer, subject to the prior satisfaction in full or the written waiver thereof by Landlord, which waiver shall be in Landlord's sole and absolute discretion, of all of the following additional conditions precedent and covenants of Tenant:

13.1.7.1.1 The construction of all Improvements on the portion of the Premises to be subsumed within such Partial Transfer have been Completed in accordance with Article 7 (Design & Construction);

13.1.7.1.2 Such Partial Transfer has satisfied all conditions precedent set forth in Section 13.1.4 (Conditions); and

13.1.7.1.3 Such Partial Transfer has been approved by Landlord pursuant to Section 13.1.3 (Partial Transfers).

13.1.7.2 Total Transfer to Non-Affiliate. In the event of a voluntary Total Transfer of Tenant's interest in and to this Lease or the Leasehold Estate (excluding any Total Transfer by means of a Significant Change) to a Non-Affiliate Transferee, Tenant, upon (and only upon) written request to Landlord, shall be released from any obligation under this Lease first accruing after the date of Landlord's approval of such Transfer, subject to the prior satisfaction in full or the written waiver thereof by Landlord, which waiver shall be in Landlord's sole and absolute discretion, of all of the following additional conditions precedent and covenants of Tenant:

13.1.7.2.1 The construction of all Improvements on the Premises have been Completed in accordance with Article 7 (Design & Construction);

13.1.7.2.2 Such Total Transfer has satisfied all conditions precedent set forth in Section 13.1.4 (Conditions); and

13.1.7.2.3 Such Total Transfer has been approved by Landlord, which approval shall not be unreasonably withheld, delayed, or conditioned provided all other conditions precedent set forth in this Section 13.1.7.2 (Total Transfer to Non-Affiliate) have been

satisfied or waived by Landlord, which waiver shall be in Landlord's sole and absolute discretion; and

13.1.8 Notice of Significant Changes; Reports to Landlord. Tenant promptly shall notify Landlord of any and all Significant Changes. At such time or times as Landlord may reasonably request, Tenant shall furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective interests in Tenant, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

13.1.9 Determination of Whether Consent Is Required. At any time during the Term, Tenant may submit a request to Landlord for (1) a decision by Landlord as to whether in its opinion a Proposed Transfer requires Landlord consent under the provisions of this Article 13 (*Assignment and Subletting*) or (2) the approval of the terms of a proposed Transfer (each, a “**Proposed Transfer Request**”). Within 30 Days after (A) Tenant has made a Proposed Transfer Request; and (B) Tenant has furnished to Landlord all documents and instruments with respect thereto as required under this Article 13 (*Assignment and Subletting*) as a condition precedent to Landlord's approval of such Proposed Transfer or as shall otherwise be reasonably requested by Landlord, as applicable, Landlord shall notify Tenant in writing of one or more of the following, as applicable (each, a “**Proposed Transfer Response**”):

13.1.9.1 Landlord's determination that the Proposed Transfer does not require Landlord's consent;

13.1.9.2 Landlord's determination that the Proposed Transfer requires the consent of Landlord hereunder, in which event Landlord shall specify in writing in reasonable detail the reason that such consent is required;

13.1.9.3 Landlord's approval or disapproval of the Proposed Transfer, if Landlord determines that its consent to the Proposed Transfer is required hereunder; and

13.1.9.4 The specification in writing in reasonable detail the grounds for its disapproval, if Landlord disapproves the Proposed Transfer, in which event Tenant shall have the right to resubmit the Proposed Transfer for Landlord's approval in accordance with the foregoing procedure, provided Tenant addresses such grounds for disapproval.

Notwithstanding the provisions of this Section 13.1 (*Assignment and Transfer*), in no event shall Landlord's failure to provide a Proposed Transfer Response within the above time period, or at all,

be deemed to constitute any determination, consent or approval by Landlord with respect to any Proposed Transfer.

13.1.10 Scope of Prohibitions on Assignment. The prohibitions provided in this Section 13.1 (*Assignment and Transfer*) shall not be deemed to prevent (i) the granting of Subleases, (ii) the granting of any Armory Mortgage expressly permitted by this Lease, subject to compliance with Article 33 (*Armory Mortgages*) and other applicable terms of this Lease, or (iii) any agreements granting licenses, easements, or access rights over the Premises during the Term (subject to the limitations set forth in Section 4.2.3 (*Land Use Restrictions*)), or any Permitted Transfer. Further, the conditions set forth in 13.1.4 (*Conditions*) and 13.1.5 (*Delivery of Executed Assignment*) shall not apply to the Transfers specified in clauses (i) through (ii) in the preceding sentence.

13.1.11 Prohibition on Involuntary Transfers. Neither this Lease nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against Tenant, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of Law, and possession of the whole or any part of the Premises shall not be divested from Tenant in such proceedings or by any process of Law, without the prior written consent of Landlord, which may be granted, withheld or conditioned in Landlord's sole and absolute discretion.

Tenant hereby expressly agrees that the validity of Tenant's liabilities as a principal hereunder shall not be terminated, affected, diminished, or impaired by reason of the assertion or the failure to assert by Landlord against any transferee of any of the rights or remedies reserved to Landlord pursuant to this Lease or by relief of any transferee from any of the transferee's obligations under this Lease or otherwise by (a) the release or discharge of any transferee in any creditors' proceedings, receivership, bankruptcy, or other proceedings; (b) the impairment, limitation, or modification of the liability of any transferee, or the estate of any transferee, in bankruptcy, or of any remedy for the enforcement of any assignee's liability under this Lease, resulting from the operation of any applicable Law or from the decision in any court; or (c) the rejection or disaffirmance of this Lease in any such proceedings.

13.1.12 Effect of Prohibited Transfer. Any Transfer made in violation of the provisions of this Article 13 (*Assignment and Subletting*) shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Transfer requiring Landlord's consent hereunder occurs without Landlord's consent, Landlord may collect from such assignee, Subtenant, occupant, or reconstituted Tenant, any Rent under this Lease and apply the amount collected to the Rent, but such collection by Landlord shall not be deemed a waiver of the

provisions of this Lease or an acceptance of such assignee, Subtenant, occupant, or reconstituted Tenant as Tenant of the Premises.

13.1.13 Tenant as Party is Material Consideration to Lease. Tenant and Landlord acknowledge and agree that the rights retained by and granted to Landlord pursuant to this Article 13 (*Assignment and Subletting*) constitute a material part of the consideration for entering into this Lease and constitute a material and substantial inducement to Landlord to enter into this Lease at the Rent, for the Terms, and upon the other covenants and conditions contained in this Lease, and that the acceptability of Tenant, and of any transferee of any right or interest in this Lease, involves the exercise of broad discretion by Landlord in promoting the development, leasing, occupancy, and operation of the Premises and other purposes of this Lease. Therefore, Tenant agrees that, subject to and without limiting the other provisions of this Article 13 (*Assignment and Subletting*), all conditions set forth herein to Landlord's consent, if required hereunder, to a Proposed Transfer are reasonable to protect the rights and interest of Landlord hereunder and to assure promotion of the purposes of this Lease. Tenant agrees that its, or its Contractor's, personal business skills, experience, financial capability, track record, approach to delivering the Project and philosophy were an important inducement to Landlord for entering into this Lease and that, (i) subject to and without limiting the other provisions of this Article 13 (*Assignment and Subletting*), if Landlord's consent to a Proposed Transfer is required hereunder, Landlord may object to the Transfer to a proposed transferee, as applicable, whose proposed use, while permitted under Article 4 (*Uses*), would involve a different quality, manner, or type than that of Tenant, and (ii) Landlord may, under any circumstances, object to the Transfer to a proposed transferee, as applicable, whose proposed use, while permitted under Article 4 (*Uses*), would violate the purpose of this Lease or result in the imposition upon Landlord of any new or additional requirements under the provisions of any Law.

13.2 Assignment of Sublease Rents. Tenant hereby assigns to Landlord all rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligation to pay Rent or any other amounts due and payable by Tenant hereunder. Notwithstanding such assignment, Tenant will be entitled to collect such rents until the occurrence of any Tenant Event of Default; provided, however, that the right of Tenant to collect such rents shall be reinstated upon Tenant's cure of such Tenant Event of Default. Landlord shall apply any amount collected by Landlord from such Subtenants (less Landlord's costs of such collection) to the payment of Rent and any other amounts due and payable under this Lease.

13.3 Permitted Transfers Without Landlord Consent. Notwithstanding the preceding provisions of this Article 13 (*Assignment and Subletting*) or any other provision to the contrary in this Lease, and provided that the Transfer is done for a legitimate business purpose and not to deprive or compromise any rights of Landlord under this Lease or will adversely impact

Tenant's ability to perform its obligations under this Lease, the following Transfers shall be permitted at any time hereunder without Landlord's consent (each such Transfer being referred to in this Lease as a "**Permitted Transfer**"):

13.3.1 Transfers of partnership or membership interests, if applicable, in Tenant between Partners in Tenant, provided that such Transfers do not result in a Significant Change;

13.3.2 A Transfer that is made to CCP and the Sublease to CCP is then in effect.

Notwithstanding the preceding provisions of this Section 13.1.3 (*Permitted Transfers without Landlord Consent*), any Permitted Transfer shall comply with and remain subject to the provisions and requirements of 13.1.4.1, 13.1.4.2, 13.1.4.4, 13.1.4.7, 13.1.4.8 and 13.1.5 (*Delivery of Executed Assignment*), 13.1.6 (*No Release of Tenant's Liability or Waiver by Virtue of Consent*) and 13.1.8 (*Notice of Significant Changes; Reports to Landlord*).

13.4 Subletting by Tenant.

13.4.1 Subject to this Section 13.4, Tenant has the right to sublet any portion of the Premises (but not all without Landlord's approval) to one or more Subtenants by written Subleases from time to time with. Any Sublease shall:

13.4.1.1 provide that it is subject to and subordinate in all respects to this Lease and the rights of Landlord hereunder and that Subtenant shall comply with and perform all obligations of Tenant under this Lease with respect to the Subleased Premises;

13.4.1.2 require Subtenant to use the portion of the Premises subject to the Sublease (the "**Subleased Premises**") only for the uses permitted under Article 4, this Agreement and the Benchmark Requirements;

13.4.1.3 include a term that does not extend beyond the Term of this Lease;

13.4.1.4 require Subtenant, to the maximum extent not prohibited by Law, to Indemnify the Indemnified Parties for any Loss arising from Subtenant's use or occupancy of the Subleased Premises, which indemnity shall be in form reasonably acceptable to Landlord;

13.4.1.5 require Subtenant to name the Indemnified Parties as an additional insured on any liability insurance required to be carried under the Sublease, which liability insurance shall be in an amount and otherwise in

accordance with the requirements for Subtenant insurance set forth in Article 15;

13.4.1.6 if requested by Landlord, include a provision satisfactory to Landlord requiring Subtenant, at Landlord's option, to attorn to Landlord if Tenant defaults under this Lease and if the Subtenant is notified of Tenant's default and instructed to make Subtenant's rental payments to Landlord.

13.4.2 Copies of Subleases. Tenant shall provide Landlord with complete copies of any and all Subleases within ten Days after execution or upon Landlord's request.

13.5 Transfers by Landlord. Landlord shall have a free right to transfer any or all of its interest in this Lease to any government entity or subdivision of the Commonwealth. Landlord, its successors, and its assigns, shall not assign, sell, lien, encumber, sublease, grant any security interests or otherwise transfer all or any part of Landlord's interest in and to this Lease to any Person other than a government entity or subdivision of the Commonwealth, without the prior written consent of Tenant.

Article 14 Indemnification of Landlord.

14.1 Indemnification of Landlord. Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Landlord's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by any Tenant Party or their Invitees, Subtenants or Agents (the "**Indemnifying Parties**"); (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof by any Indemnifying Party; (iv) any use, possession, occupation, operation, maintenance, management or condition of property immediately adjacent to the Premises by any Indemnifying Party, (iv) any latent, design, construction or structural defect relating to the Improvements located on the Premises and any Additional Improvements constructed by or on behalf of any Indemnifying Party, (v) any other matters relating to the condition of the Premises caused by any Indemnifying Party; (vi) any failure on the part of any Indemnifying Party to perform or comply with any of the provisions of this Lease (or any other Contract Document) or with applicable Laws (subject to the terms of Article 6 (*Compliance with Laws*)) or Regulatory Approval in connection with use or occupancy of the Premises and any fines or penalties, or both, that result from such violation; (viii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by any Indemnifying Party; (vii) any other legal actions or suits initiated by any Person using or occupying the Premises or any of their agents, Contractors, Affiliates, Subcontractors or suppliers, (viii) any claim or proceeding made or brought against the Indemnified Parties for any patent, trademark, or copyright infringement or other improper

appropriation or use by any Indemnifying Party, or (ix) any forfeiture of insurance coverage resulting from Tenant's error, omission, mis-description, incorrect declaration, failure to advise, misrepresentation or act, and for any expense the Indemnified Parties incurs as a result thereof.

If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will promptly notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party shall, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing. Notwithstanding the preceding provisions of this Section 14.1 (*Indemnification of Landlord*), Tenant shall not be obligated to Indemnify the Indemnified Parties to the extent that any of the matters described above, determined by a final non-appealable judgment of a court of competent jurisdiction, have arisen from any Indemnified Party's gross negligence or willful misconduct.

14.2 Immediate Obligation to Defend. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 14.1 (*Indemnification of Landlord*) or any other indemnification provision of this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter; provided further that, in the event it is later determined by a court of competent jurisdiction that the claim made falls outside the scope of the indemnification provisions in this Lease, Landlord shall promptly reimburse Tenant for Tenant's reasonable attorneys' fees and other costs incurred in defending such claim.

14.3 Indemnification Limitations. Notwithstanding the foregoing, Tenant's indemnification obligations (but not any of its Contractor's or any other Tenant Party's indemnification obligations which are for the benefit of the Indemnified Parties, under Section 14.1 (*Indemnification of Landlord*)) or any other indemnification provision in this Lease shall in all respects be limited to the sum of the proceeds of insurance required to be maintained under this Lease plus the amount of any applicable deductible, without regard to indemnities from Contractors or any other Tenant Party. This limitation does not apply to any Landlord Loss that arises due to the Tenant's gross negligence, willful misconduct, illegal act, fraud, or bad faith conduct.

14.4 No Director Liability. No director, officer, employee or agent of Landlord, Tenant or any subtenant shall be personally liable to another party hereto or any successor in interest, in the event of any default or breach under this Lease, or on any obligation incurred under the terms of this Lease, including but not limited to the indemnification provisions.

14.5 Survival. Tenant's obligations under this Article 14 (*Indemnification of Landlord*) and any other indemnification provision in this Lease shall survive the expiration or sooner

termination of this Lease as to events, circumstance, conditions or occurrences existing or arising prior to such termination.

14.6 Other Obligations. The agreements to Indemnify set forth in this Article 14 (*Indemnification of Landlord*) and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Landlord in this Lease, at common law or otherwise.

14.7 Defense. Tenant shall be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, Landlord shall be entitled to (i) approve counsel and (ii) participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in Landlord's reasonable judgment, within a reasonable time (but not less than 15 Days following notice from Landlord alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Landlord shall have the right promptly to use counsel of its selection, in its sole discretion and at Tenant's expense, to carry out such defense, compromise, or settlement, which reasonable expense shall be due and payable to Landlord ten Days after receipt by Tenant of an invoice therefor. The Indemnified Parties shall cooperate with Tenant in the defense of any matters for which Tenant is required to Indemnify the Indemnified Parties pursuant to this Article 14 (*Indemnification of Landlord*).

14.8 Release of Claims Against Landlord. Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Premises for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of Landlord or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of the Indemnified Parties and further excluding any claims with respect to Landlord's obligations under Article 16 (*Hazardous Materials and Unknown Site Conditions*).

Article 15 Insurance.¹

15.1 Definitions. As used in this Article 15 (*Insurance*), the following capitalized terms shall have the meanings set forth below.

15.1.1 "Contractor" means a Person contracted by Tenant or a Subtenant to perform any of the Work on the Premises or for the Project.

15.1.2 "ISO" means Insurance Services Office or any successor thereto.

¹Note to NHDC: Insurance amounts to be discussed.

15.1.3 “Landlord Additional Insureds” means Landlord, the City, and their respective Agents.

15.1.4 “Required Insureds” means each Tenant Party and its Subtenants, Contractors, and Subcontractors.

15.1.5 “Subcontractor” means a Person Subcontracted to perform a portion of a contract by a Contractor or another Subcontractor.

15.2 Terms, Conditions, and Endorsements.

15.2.1 Generally. Tenant shall provide and maintain throughout the life of this Lease insurance in the kinds and amounts specified in this Article 15 (*Insurance*) with one or more insurers (i) licensed to transact insurance business in the Commonwealth of Virginia and (ii) with a current Best Rating of A:VII or better or a comparable successor rating. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers. The carrying by Tenant of the insurance required shall not be interpreted as relieving Tenant of any obligations Tenant may have under this Lease.

15.2.2 Additional Insured Endorsements. For all policies of liability insurance, Required Insureds shall provide additional insured status using ISO endorsement CG 20 10 11/85 or its equivalent listing Landlord Additional Insureds as additional insureds. A statement of additional insured status on the Acord Insurance Certificate form is insufficient and will be rejected as proof of meeting this requirement.

15.2.3 Tenants’ Insurance, etc. Primary. All liability insurance required by this Article 15 (*Insurance*) shall be primary with respect to Landlord Additional Insureds. Any other insurance available to Landlord or any other additional insured under any other policies or self-insurance shall be excess over, and not contributing with, the insurance required by this Lease.

15.2.4 Certificates of Insurance.

15.2.4.1 Required Insureds shall provide a separate certificate of insurance for each project or scope of work with the name of the Project or scope of work stated thereon.

15.2.4.2 The words “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be lined out on the certificate of insurance, or Landlord shall be furnished with an endorsement to such policy that states that the policy may not be cancelled or terminated without at least 15

Days' prior notice for nonpayment of premiums, and 30 Days' prior notice for any other reason, to Landlord.

15.2.4.3 The certificate holder shall be the same entity or person, with the same address, as indicated in the "Notices" section of this Lease or other applicable agreement.

15.2.5 Insurance Interpretation. Unless otherwise consented to by Landlord, in its sole and absolute discretion, all terms in endorsements, certificates, forms, coverages, and limits of liability referred to herein shall have the meanings given to those terms by the ISO as of the date Landlord signs this Lease.

15.2.6 Proof of Insurance. Required Insureds shall provide Landlord proof of all insurance required for Work or operations to be performed prior the NTP Date or the applicable Sublease or other agreement, including copies of insurance policies if and when requested by Landlord. Notwithstanding the foregoing, where the Tenant will have Persons on the Premises performing any Feasibility Studies (defined in the Development Agreement) in accordance with Article 9 (*Site Investigation*) of the Development Agreement, Tenant agrees, for itself and all Required Insureds, that Tenant shall put in place any required insurances under Section 3.3 (*Insurance*) of Exhibit S (*Right of Entry Agreement*) to the Development Agreement, on prior to commencing such Feasibility Study and shall name the Landlord Additional Insureds as additional insureds. Tenant agrees, for itself and all Required Insureds, that Landlord or Landlord's designated insurance agent, manager, or administrator may audit Required Insureds' Books and Records, insurance coverages, insurance cost information, and any other information that Required Insureds provide to Landlord or Landlord's designated insurance agent, manager, or administrator to confirm the accuracy of such documents and matters.

15.2.7 Subcontractors. Required Insureds shall include all Subcontractors as insureds under their policies or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Except as otherwise set forth in this Article 15 (*Insurance*), all coverages for Subcontractors shall conform to all requirements set forth in this Article 15 (*Insurance*).

15.2.8 Waiver of Claims and Subrogation.

15.2.8.1 Tenant shall cause the Required Insureds to waive all rights against Landlord's Additional Insureds for recovery of damages arising out of or related to this Lease or the Premises to the extent these damages are covered by the forms of insurance coverage required of Required Insureds in this Article 15 (*Insurance*); provided, however, such waiver by Tenant shall not apply to the extent such damages incurred by Tenant are determined by a final non-appealable court of competent jurisdiction to

have arisen from Losses that are expressly excluded from the scope of Tenant's indemnity obligation pursuant to Section 14.1 (*Indemnification of Landlord*), provided, however, that nothing in this Article 15 (*Insurance*) shall be deemed to create any right of Tenant to claim any such Losses.

15.2.8.2 Tenant shall cause the Required Insureds to grant to Landlord Additional Insureds, on their own behalf and on behalf of their insurers, a waiver of subrogation that any insurer may acquire from Required Insureds against Landlord's Additional Insureds by virtue of the payment of any loss. Required Insureds agree to obtain any endorsement that may be necessary to further evidence of this waiver of subrogation, but this provision applies whether or not Landlord has received a waiver of subrogation endorsement from Required Insureds' insurer or insurers.

15.2.8.3 Without limiting the Required Insureds' obligations under Section 15.2.8.2 and without creating any obligation under this Article 15 (*Insurance*), the remainder of this Lease, or otherwise, on the part of Landlord's Additional Insureds to procure or maintain any policies of insurance, or self-insurance, with respect to the Premises, this Lease, or otherwise, if and to the extent Landlord elects, in its sole and absolute discretion, to procure and maintain any policy of insurance with respect to the Premises, Landlord agrees to use reasonable good faith efforts to obtain from such insurer a waiver of subrogation that such insurer may acquire from Landlord against any Required Insureds by virtue of the payment of any loss under such policy; provided, however, that Landlord's Additional Insureds shall not incur any liability whatsoever to Tenant or any other Person for any inability or failure of Landlord, for any reason whatsoever, to obtain any such waiver of subrogation at any time.

15.3 Policies and Coverages. Tenant shall procure, prior to the NTP Date, and shall cause its Subtenants, Contractors, and Subcontractors to procure, prior to the effective date of the applicable Sublease, contract, or subcontract for construction or other services, and thereafter maintain and keep in force for the Term of this Lease and, as applicable, the term of any Sublease, contract, or subcontract for construction or other services, at no cost or expense to Landlord, all policies of insurance set forth in this Article 15 (*Insurance*). The amounts and types of insurance set forth in this Section 15.3 (*Policies and Coverages*) are minimums required by Landlord and shall not substitute for an independent determination by Required Insureds of the amounts and types of insurance that Required Insureds shall determine to be reasonably necessary to protect themselves, their work, and their property. This Article 15 (*Insurance*) does not modify and is subject to all terms and conditions set forth elsewhere in this Lease.

15.3.1 Commercial General Liability Insurance.

15.3.1.1 Limits. Commercial General Liability insurance, written on an “occurrence” basis and covering Bodily Injury, Property Damage, and Personal Injury for Premises Operations, Products and Completed Operations, Broad Form Property Damage, Independent Contractors, and Contractual Liability, with coverage at least as broad as ISO Commercial General Liability coverage (occurrence Form CG 00 01), is required with the following limits:

15.3.1.1.1 During construction of Improvements or Restoration \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate, with Umbrella or Excess Liability Insurance with a combined limit of not less than \$14,000,000 per occurrence.

15.3.1.1.2 At all other times, \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate, with Umbrella or Excess Liability Insurance with a combined limit of not less than \$7,000,000 per occurrence.

15.3.1.2 Cross Liability / Separation of Insureds Clause. The Commercial General Liability insurance policy shall contain cross-liability coverage as provided under standard ISO forms’ separation of insureds clause, such that in the event one of the insureds incurs liability to any other of the insureds, the policy will cover the insured against whom the claim is or may be made in the same manner as if separate policies had been issued to each insured. Nothing contained in this Section 15.3.1.2 (Cross Liability / Separation of Insureds Clause) shall be deemed to increase the insurer’s limit of liability.

15.3.2 Automobile Liability Insurance. To the extent applicable, each of Required Insureds shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of \$[●] each accident. Such insurance shall cover liability arising out of any automobile, including owned, hired, and non-owned automobiles. The coverage shall be at least as broad as ISO Form Number CA 00 01.

15.3.3 Workers’ Compensation Insurance. Required Insureds shall maintain Statutory Workers’ Compensation and Employers’ Liability Insurance with the Alternate Employer Endorsement WC 000301 in compliance with the laws of the Commonwealth of Virginia. The Workers’ Compensation insurance policy shall be endorsed with a waiver of subrogation in favor of Landlord for all work and operations performed by Required Insureds and their respective Agents.

15.3.4 Builder's Risk or Course of Construction Insurance.

15.3.4.1 During construction of Improvements or Restoration, Required Insureds shall maintain a Builder's Risk Insurance policy written on Form CP 10 30 or an equivalent form that covers all risk of loss on a completed value form with no coinsurance penalty provisions and in an amount equal to 100 percent of the Contract Price, subject to subsequent modification of the Contract Price. The insurance shall apply on a replacement cost basis.

15.3.4.2 The policy shall name Landlord Additional Insureds and all Contractors and Subcontractors involved in the work as either insureds or loss payees, as their interests may appear, as applicable. The insurance shall cover the entire Work at the Premises identified in the applicable scope of work, including reasonable compensation for the services of architects and engineers and expenses made necessary by an insured loss. The insured property shall include portions of the Work located away from the Premises but intended for use at the site and shall also cover portions of the Work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any Law. The insurance shall be maintained in effect until Final Completion. The policy must provide that the insurer shall waive all rights of subrogation against Landlord Additional Insureds. The coverage shall be provided on a Special Form Cause of Loss. The policy deductible shall not exceed \$100,000, as Indexed.

15.3.4.3 Required Insureds may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage.

15.3.4.4 If the particular Work does not involve new construction or major reconstruction, at the option of Landlord, in Landlord's sole and absolute discretion, Landlord may accept a Property Insurance Floater instead of Builder's Risk insurance. For such work, a Property Insurance Floater must be obtained that provides for the improvement, remodel, modification, alteration, conversion, or adjustment of existing buildings, structures, processes, machinery, and equipment. The Property Insurance Floater shall provide property damage coverage for any building, structure, machinery, or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit and installation and testing at the Premises.

15.3.5 Property Insurance.

15.3.5.1 Upon Completion of any Improvements, Substantial Completion and upon Completion of any Additional Improvements, Tenant and Subtenants shall maintain property insurance policies with coverage at least as broad as ISO Form CP 10 30 06 95 or its replacement in an amount not less than 100 percent of the then-current full replacement cost of the Improvements (including building code upgrade coverage) on the Premises, with any deductible not to exceed \$100,000, as Indexed. Tenant's property insurance shall cover Core and Shell, but this requirement may be satisfied by Subtenants.

15.3.5.2 Upon Landlord's request, but not more frequently than once every ten years, Tenant, at its sole cost, shall provide Landlord with an insurance appraisal, prepared in accordance with industry custom and practice, or other information acceptable to Landlord in its sole discretion, substantiating the then-current full replacement cost of the Improvements.

15.3.5.3 Notwithstanding the foregoing, Tenant and its Subtenants shall not be required to carry mold insurance. In addition to the foregoing, Tenant and its Subtenants may insure their Personal Property in such amounts as they deem appropriate; Landlord shall have no interest in the proceeds of such Personal Property insurance; and the proceeds of such Personal Property insurance shall not be subject to the provisions of Article 10 (*Damage or Destruction*) of this Lease.

15.3.6 Boiler and Machinery Insurance. Tenant or its Subtenants, but not both, shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that are used by Tenant or its Subtenants for heating, ventilating, air-conditioning, power generation, and similar purposes in an amount not less than 100 percent of the actual replacement value of such machinery and equipment or such other coverage for such risks as Landlord may approve, which approval shall not unreasonably be withheld.

15.3.7 Business Interruption and Rental Loss Insurance. From and following the Completion of the Improvements, Tenant and its Subtenants shall maintain business interruption or rental value insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Section 15.3.5 (*Property Insurance*) and Section 15.3.6 (*Boiler and Machinery Insurance*). Such insurance shall be written on an Actual Loss Sustained Basis for a period of not less than one year and shall include a 365-Day extended period of indemnity beyond such initial period. The amount of such insurance shall be

calculated from the date of Substantial Completion and shall be adjusted from time to time thereafter.

15.3.8 Professional Liability or Errors and Omissions Insurance. Required Insureds shall, where applicable given the nature of the services or work to be performed by such Required Insureds, provide either (a) for professional services, Professional Liability Insurance with limits of not less than \$1,000,000 per claim, or (b) for nonprofessional services, Errors and Omissions Insurance with limits of not less than \$1,000,000 per occurrence.

15.3.9 Pollution Legal Liability Insurance.

15.3.9.1 Prior to the commencement of and at all times during any subterranean Work or other Work or operations that, in accordance with industry and custom, ordinarily would warrant such coverage, Required Insureds shall procure and maintain Pollution Legal Liability insurance with limits of \$[●] per occurrence, \$[●] aggregate separate to project.

15.3.9.2 Any insurance deductibles greater than \$25,000, as Indexed, must be declared on the certificate of insurance and shall be subject to Landlord's prior written approval.

15.3.9.3 The Pollution Legal Liability policy shall contain, or be endorsed to contain, the following provisions:

15.3.9.3.1 Landlord Additional Insureds shall be covered as additional insureds with respect to liability arising out of Work or operations performed by or on behalf of Required Insureds.

15.3.9.3.2 For any claims related to the work, Required Insureds' insurance coverage shall be primary with respect to Landlord and each other additional insured. Any insurance or self-insurance maintained by Landlord or any other additional insured shall be in excess of Required Insureds' insurance and not contributing with it.

15.3.9.4 If the Pollution Legal Liability policy is written on a claims-made form, the following provisions apply:

15.3.9.4.1 The retroactive date shall be shown on the certificate of insurance and must be prior to, as applicable, the NTP Date or the commencement date of the Sublease, the date of the other applicable contract, or the commencement of the work.

15.3.9.4.2 The insurance must be maintained, and evidence of insurance must be provided for, at least five years after the completion of the work.

15.3.9.4.3 If coverage is cancelled or nonrenewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement date of the terminating policy, Required Insureds must purchase “extended reporting” coverage for a minimum of five years for the terminating policy.

15.3.9.4.4 A copy of the claims reporting requirements must be submitted to Landlord for review and approval.

15.4 Landlord’s Rights.

15.4.1 Deductibles and Self-Insurance Retentions. Except for limits expressly specified in this Article 15 (*Insurance*), any deductible or self-insurance retention must be declared to and approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed with respect to any insurance that otherwise meets all requirements of this Lease.

15.4.2 Evaluation of Adequacy of Insurance. Tenant shall review on a periodic basis the sufficiency of the insurance policies required hereby and shall maintain such insurance policies on an ongoing basis, consistent with market norms, based upon industry custom and practice that are applicable to projects or activities similar to the Project or activities contemplated by this Lease. However, in no circumstance will Tenant be permitted to reduce the requirements or limits provided in this Lease without the Landlord’s express written consent.

15.4.3 Landlord Placement of Coverages. In the instance of a Tenant Event of Default with respect to any of the insurance provisions of this Article 15 (*Insurance*), Landlord may, at its option and without limiting other remedies of Landlord under the Lease, take out and maintain, at the expense of Tenant, such insurance in the name of Required Insureds as is required pursuant to this Article 15 (*Insurance*).

15.4.4 Higher Limits of Insurance. If Required Insureds maintain higher limits than the required minimum limits specified in this Article 15 (*Insurance*), Landlord Additional Insureds shall be entitled to coverage for the higher limits maintained by Required Insureds.

15.4.5 Blanket Insurance Policies. Insurance requirements under this Article 15 (*Insurance*) may be satisfied by maintaining either (i) individual policies covering individual Improvements at the Premises, (ii) blanket insurance policies

covering multiple Improvements at the Premises, or (iii) blanket insurance policies covering multiple Improvements at the Premises and improvements at other locations, on condition that such blanket insurance policies shall otherwise provide in all respects the same protections as would a separate policy insuring only the individual Improvements at the Premises in compliance with the provisions of this Article 15 (*Insurance*).

Article 16 Hazardous Materials and Unknown Site Conditions.

16.1 Definitions. As used in this Article 16 (*Hazardous Materials and Unknown Site Conditions*), the following capitalized terms shall have the meanings set forth below in this Section 16.1 (*Definitions*).

16.1.1 “Hazardous Material” means any material that is regulated under Hazardous Materials Laws, because of its quantity, concentration, or physical or chemical characteristics, is defined or included within the definition of a “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic chemical,” “toxic substance,” “hazardous chemical,” “extremely hazardous substance,” “pollutant,” “contaminant,” “solid waste” or any other words of similar meaning or significance within the context used under any applicable Hazardous Material Laws. “Hazardous Material” includes, without limitation, any material or substance defined as a “hazardous substance” or a “pollutant or contaminant” under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., including asbestos-containing materials and lead-based paint, as well as petroleum, including crude oil or any fraction thereof.

16.1.2 “Hazardous Material Laws” means all present or future federal, state, or local Laws relating to pollution, protection of the environment or natural resources or to human health and safety as it is affected by environmental conditions in, on, under, or about the Premises, including, without limitation, soil, air, air quality, water, water quality, and groundwater conditions.

16.1.3 “Release,” or “Released” whether used as a noun or a verb, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Material into, onto, or inside the Premises during the Term of this Lease, including any disturbance of a Known Hazardous Environmental Condition existing as of the Agreement Date that causes a release into the environment or increased exposure to any Hazardous Material other than in compliance with Law and this Agreement

16.1.4 “Remediate” and “Remediation” mean any activities required by this Lease or applicable Law which are required to be undertaken to investigate, characterize, clean up, remove, transport, dispose of, contain, treat, stabilize, monitor, or otherwise control any Hazardous Environmental Condition located in,

on, under, or about the Premises or Hazardous Materials which have been, are being, or threaten to be Released into the environment in, on, under or about the Premises.

16.2 Unknown Site Conditions.

16.2.1 Generally. Tenant represents and warrants that as of the Agreement Date and based on its site investigations and diligence prior to the Agreement Date and all the available documents and a visual inspection of the Premises, its improvements and surrounding locations, Tenant has ascertained the nature and location of the Work, the character and accessibility of the Premises and its improvements, the existence of obstacles, delays or impediments to construction and demolition, the availability of facilities and utilities, and other general and local conditions (including equipment and labor) that might affect its timely performance of the Work or the cost of performing the Work. Tenant represents and warrants that it has evaluated the Known Site Conditions and has incorporated or will incorporate into the Work and the applicable Construction Contract Prices the costs of any actions Tenant must take to evaluate, manage, handle, dispose of or otherwise address any Known Site Conditions in accordance with applicable Law and this Agreement.

16.2.2 Not Remediation Work. The actions required by this Section are part of the Construction Work and do not constitute “Remediation” for any purpose under this Agreement. Tenant shall conduct all testing, analysis and evaluation necessary to ensure compliance with Laws applicable to waste disposal and handling. Reuse of any waste debris as fill on the Premises is subject to prior written approval by Landlord. Tenant shall record, monitor and document actions taken pursuant to this Section to provide reasonable confirmation, upon request, that the requirements of this Section have been satisfied.

16.3 Investigation and Remediation of Potential Releases.

16.3.1 If Tenant identifies a potential Hazardous Environmental Condition that is not a Known Site Condition identified in Exhibit D (*Known Site Conditions*), including a Release, then except as permitted by any Law to respond to an Emergency, Tenant shall (i) immediately suspend work in the area of the potential Hazardous Environmental Condition, (ii) secure the site of the potential Hazardous Environmental Condition, (iii) contact Landlord as soon as practicable, but in no case more than five (5) Days, following Tenant’s confirmation of the Release, (iv) conduct appropriate soil and groundwater evaluation consistent with applicable Hazardous Material Laws, and (v) promptly provide copies of all testing results to Landlord. After reviewing the test results, Tenant shall notify Landlord whether contamination was detected at the site of the potential Release in excess of the applicable standards under applicable Hazardous Material Laws. If no further

Remediation is required by Hazardous Material Law or this Lease, and Landlord either consents or fails to object within five (5) Business Days of Tenant's notification of Landlord, then Tenant may resume Work in the affected area. If Tenant's investigation reveals Hazardous Environmental Condition requiring Remediation under Hazardous Materials Laws, then Tenant shall not resume Work, other than investigative, site stabilization or Remediation work in the area of the Release until Tenant fully Remediates the condition created by the Release, unless Landlord consents, in Landlord's sole and absolute discretion. Tenant shall notify Landlord and the City in writing at least two (2) Days in advance of Tenant's planned subsurface activities so that Landlord and the City, if it chooses, may send a representative to observe such work at Landlord or City's sole cost and expense, as applicable.

16.3.2 Sudden Release Risk Allocation. Without prejudice to Tenant's rights under Section **Error! Reference source not found.** (*Unknown Hazardous Material Termination Right*), Tenant shall be responsible for performing or causing to be performed, and paying for the cost of performing, Remediation in connection with any Release of Hazardous Environmental Condition, whether Released by Tenant, Landlord or any Third Party Release as follows:

16.3.2.1 for any Hazardous Environmental Condition Released by Tenant, Tenant must promptly perform Remediation Work required under applicable Law and in accordance with this Agreement at its sole cost and expense and without relief under this Agreement;

16.3.2.2 For any Third Party Release, Tenant shall still be required to perform the required Remediation and must claim reimbursement for any costs incurred through (i) Tenant's insurance and (ii) against such third-party that caused the Third Party Release and their insurance, and then upon exhausting all such claims and remedies, Tenant shall take such steps and actions as may reasonably require in order to protect and preserve any potential claims of contribution and indemnity, statutorily or otherwise against potentially responsible parties, provided that any such requested steps and actions are not inconsistent with applicable Law, the requirements of this Lease and any Regulatory Approvals.

16.3.3 Application to Tenant's Subtenants, Contractors, Subcontractors, and Invitees. Tenant, throughout the Term, at its sole expense, in its performance of the Work and possession of the Premises, shall not, either with or without negligence, knowingly cause or permit, the use, storage or generation of Hazardous Materials on the Premises except in accordance with all Hazardous Materials Laws. Tenant shall comply with, and cause its agents and all Subtenants, Invitees, and their agents to comply with, all Hazardous Material Laws to which the Project, the Work or Tenant is subject, during its development, construction, possession, use

and operation of the Premises. In performing any Remediation activities, without limiting the generality of any other requirement of this Agreement, Tenant shall require its Contractors and Subcontractors to comply with and maintain compliance with all applicable Hazardous Material Laws and insurance requirements.

16.4 Remediation Procedures. All Remediation of Hazardous Materials or Unknown Site Conditions shall be performed in accordance with the following procedures:

16.4.1 Any Remediation shall be performed in accordance with a work plan prepared by Tenant in accordance with and, as necessary, approved by each governmental regulatory authority with jurisdiction. At least five Business Days prior to either submitting such a work plan to a governmental regulatory authority or commencing Work under such a work plan, whichever occurs first, Tenant shall submit a copy of the work plan to Landlord. Neither Landlord's receipt of the work plan nor any decision by Landlord not to provide comments on such work plan shall be deemed an endorsement or approval of the methods or activities proposed by Tenant in its work plan.

16.4.2 Both Parties shall provide the other with copies of all correspondence, including all electronic correspondence, documents, notices, plans, and reports, including all drafts, directed to or received from any governmental regulatory authority relating to any Remediation on the Premises. Both Parties shall provide the other party with at least ten (10) Days advance written notice of any meeting with a governmental regulatory authority relating to any Remediation on the Premises so that either Party, in its sole discretion, may attend such meeting. Upon advance written request by Landlord, Tenant shall provide reasonable access to the Premises to Landlord and its Agents so that Landlord or its Agents, or both, may observe the Remediation. Tenant shall provide reasonable access to the Premises to all governmental regulatory authorities as required by applicable Hazardous Material Laws.

16.4.3 Upon the request of Tenant, Landlord shall promptly provide Tenant with any documents, reports, environmental assessments or other information in the possession of Landlord that is reasonably relevant to Tenant's preparation of a Remediation work plan or that Tenant specifically identifies.

16.5 Tolling Due to Remediation. The Tenant's entitlement for a Delay Event for any Remediation of an Unknown Site Condition will begin on discovery of the condition through and including the date on which the last Regulatory Approval gives its approval or certification that any Remediation required by Hazardous Materials Law is complete.

16.6 Disposal. All Hazardous Materials produced at or from the Premises, including construction or operational wastes shall be disposed of appropriately by Tenant based on its waste

classification. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility.

16.7 Generator Status. As between Tenant and Landlord, so long as Tenant conforms to the requirements of this Lease and applicable Law, and disposes of any waste materials, including waste debris and Hazardous Materials using licensed transporters at licensed landfills or other facilities licensed to receive and dispose of such materials and approved by Landlord:

16.7.1 Landlord will be deemed the sole generator and arranger under 40 C.F.R. Part 262 with respect to (i) any Hazardous Materials existing on the Premises on or prior to the Agreement Date or (ii) to the extent any Hazardous Materials are brought onto or Released onto the Premises by the City or Landlord or any Agent, licensee or invitee (excluding any Tenant Party) of the City or Landlord. Landlord agrees to be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any governmental entity; and

16.7.2 Tenant will be deemed the sole generator and arranger under 40 C.F.R., Part 262 with respect to any Hazardous Materials brought onto or Released onto the Premises by any Tenant Party (including any Tenant agent, licensee or invitee) or disposed of by any Tenant Party. Tenant agrees to be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any governmental entity.

16.8 Site Investigation.²

16.8.1 Condition of the Property. Except as otherwise expressly provided in this Agreement, the Landlord makes no representation, warranty or covenant, express, implied or statutory, of any kind whatsoever with respect to the Property or the Premises, including, without limitation, any representation, warranty or covenant as to title, survey conditions, use of the Property or Premises for the Tenant's intended use, the physical condition of the Property or Premises or any improvements thereon or any repairs required thereto, past or present use, development, investment potential, tax ramifications or consequences, compliance with law, present or future zoning, the presence or absence of hazardous substances or other environmental conditions (including, without limitation, with regard to any underground or above-ground storage tanks on or about the Property or Premises), the availability of utilities, access to public roads, habitability, merchantability,

² **NTD:** These provisions are derived from Section 6 and 7 of the PSA. This approach to walk-away is more appropriate for the nature of the Armory project vs. the provisions included under the Arena Lease which involve using debt proceeds for a contingency.

fitness or suitability for any purpose, or any other matter with respect to the Property (collectively, the “**Condition of the Property**”)

16.8.2 Investigation. The Tenant shall independently confirm to its satisfaction all information that it considers material to its entering into this Lease. The Tenant acknowledges and agrees that, it has had and will continue to have the opportunity to inspect and investigate, utilizing experts as Tenant deems necessary in its sole discretion, each and every aspect of the Property and the Premises, including without limitation the Condition of the Property.

16.8.3 The Tenant's Environmental Investigation. During the first 180 days following the Agreement Date (such time period subject to extension by mutual written agreement of the Parties) (the “**Investigation Period**”), the Tenant, at its option and sole cost and expense, may conduct “Phase “I” (as such term is commonly used in the industry) environmental testing of the Property or any portion thereof; provided, however, that in no event shall the Tenant engage, with respect to any environmental testing of the Property, Premises or any portion thereof, any of the environmental consultants that the Landlord has previously used with respect to Existing Environmental Reports (as defined below). Any “Phase II” (as such term is commonly used in the industry), or other materially invasive testing shall require the prior written consent of the Landlord, which consent may be granted or withheld in the Landlord’s sole but reasonable discretion.

16.8.4 The Tenant's Reports. The Tenant shall, within five (5) business days of the Tenant's receipt of the same, deliver to the Landlord copies of any reports or other results of the Tenant’s experts’ environmental investigation of the Property or any portion thereof (collectively, “**Tenant's Environmental Report(s)**”). The Tenant shall have no responsibility or liability with respect to the results or any inaccuracies in any of the Tenant’s Environmental Reports.

16.8.5 Unknown Hazardous Environmental Condition. The Tenant may terminate this Lease (without recourse, fault or liability to the Landlord) where it discovers the existence of an Unknown Hazardous Environmental Condition during the Investigation Period that (i) will cause the Tenant to not be able to develop and operate the Property and the Premises for the purpose described in this Agreement and the Master Plan and (ii) the cost of Remediation exceeds at least [●]% of the portion of the Project's capital costs (a “**No-Fault Termination**”). Where the Tenant has exercised its No-Fault Termination right, and there is no outstanding good faith Landlord dispute regarding such No-Fault Termination, then the Tenant or the Landlord may terminate this Lease without claim or liability to the other Party.

Article 17 Delay Event Relief.

17.1 Delay Events. For all purposes of this Lease, where Tenant's performance of its obligations hereunder is hindered or affected by events constituting Delay Events, whether such Delay Event is continuous or intermittent, Tenant shall not be considered in breach of or in default of its obligations under this Lease to the extent of any delay or interruption resulting from such Delay Event. Tenant shall promptly give notice to Landlord describing with reasonable particularity (to the extent known) the facts and circumstances constituting a Delay Event (a) within a reasonable time (but not more than thirty (30) Days) after the date that Tenant first becomes aware (or should have become aware, using all reasonable diligence) that an event has occurred and that it is or will become a Delay Event or (b) promptly after Landlord's demand for performance (provided, that in the case of the same Delay Event being a continuing cause of delay, only one notice will be necessary) (a "**Delay Event Notice**").

17.1.1 Delay Event Notice. The Delay Event Notice will include and must provide sufficient evidence demonstrating the following:

17.1.1.1 a detailed description of the Delay Event and the circumstances from which the Delay Event arises;

17.1.1.2 for any Delay Event caused directly and substantially by Landlord's breach of this Lease, a ("**Landlord Caused Delay Event**"), a reasonable estimate of Tenant's expected losses, costs, expenses and damages incurred in connection with such Landlord Caused Delay Event;

17.1.1.3 sufficient evidence of, or certification by Tenant that the Delay Event (i) had not been known to any Tenant Party on or prior to the Agreement Date and was otherwise unavoidable and incapable of being predicted as of the Agreement Date, and (ii) could not be reasonably mitigated by any Tenant Party using Good Industry Practice to mitigate the effects of such Delay Event and (iii) is not caused by any Tenant Party's Contractor or agent; and

17.1.1.4 an estimate of the duration of the delay in the performance of the Tenant's obligations pursuant to this Lease attributable to such Delay Event and information in support thereof, if known at that time,

provided that in the event such information is not known at the time of the Delay Event Notice, such notice will be resubmitted within twenty-one (21) Days of the original Delay Event Notice to include such information. Tenant will also provide such further information relating to the Delay Event as Landlord may reasonably require. Tenant will bear the burden of proving the occurrence of a Delay Event and the resulting impacts.

17.1.2 Waiver of Claims. If for any reason Tenant fails to deliver a Delay Event Notice within such thirty (30) Day period (unless Landlord's rights are not

prejudiced by such delinquent notice or the ability to rectify, remedy or materially mitigate such Delay Event was not impaired), Tenant will be deemed to have irrevocably and forever waived and released any claim or right to time extensions or any other relief with respect to such Delay Event pursuant to this Lease or any related agreement.

17.1.3 Mitigation. Upon the occurrence of any Delay Event, Tenant will promptly undertake efforts to mitigate the effects of such Delay Event, including all steps that would generally be taken in accordance with Good Industry Practice. Tenant will promptly deliver to Landlord an explanation of the measures being undertaken to mitigate the delay and other consequences of the Delay Event. Tenant will notify Landlord within 30 Days following the date on which it first became aware (or should have become aware, using all reasonable due diligence) that such a Delay Event has ceased.

17.1.4 Performance during a Delay Event. Notwithstanding the occurrence of a Delay Event, the Parties will continue their performance and observance pursuant to this Lease of all their obligations and covenants to be performed to the extent that they are reasonably able to do so and Tenant will use all reasonable efforts to minimize the effect and duration of the Delay Event. Without limiting the foregoing, the occurrence of a Delay Event will not excuse either Party from timely payment of monetary obligations pursuant to this Lease, from compliance with Law, or from compliance with the terms of this Agreement, except as a direct result of the Delay Event.

17.1.5 Relief. Subject to Tenant giving the notice required in Section 17.1 (*Delay Event*), a Delay Event will excuse Tenant from the performance of any of its obligations that are prevented or delayed in any material respect directly by the Delay Event referred to in such notice to the extent set forth in Section 17.1.6 (*Delay Events Prior to Substantial Completion*) and Section 17.1.7 (*Delay Events Following Substantial Completion*). Tenant will not be entitled to relief from a Delay Event if such events (i) are within any Tenant Party's control, (ii) are caused by any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law by any Tenant Party or (iii) (or the effects of such events) could have been avoided by the exercise of caution or due diligence in accordance with Good Industry Practice by any Tenant Party.

17.1.6 Delay Events Prior to Substantial Completion. A Delay Event occurring prior to the Project's Substantial Completion will excuse Tenant, with respect to the Project, from performance of its obligations pursuant to this Lease but only to the extent that such obligations are directly affected by such Delay Event. In addition, prior to Substantial Completion, extensions of milestones and/or activities identified on the Project Schedule for Delay Events affecting the Work will be made based on schedule impact analysis, using the then current

Project Schedule and taking into account impacts of the Delay Events on critical path items and will extend, as applicable, milestone completion dates and the Substantial Completion Date. If the parties cannot agree upon the extension, then either party will be entitled to refer the matter to the dispute resolution procedures in Article 38 (*Dispute Resolution Provisions*).

17.1.7 Delay Events Following Substantial Completion. A Delay Event occurring after Substantial Completion will only excuse Tenant, with respect to OM&C Work, from performance of its obligations to perform OM&C Work pursuant to this Lease directly affected by such Delay Event.

17.2 Force Majeure Events Affecting Landlord. For all purposes of this Lease, where Landlord's performance of its obligations hereunder is hindered or affected by a Delay Event, Landlord shall not be considered in breach of or in default of its obligations hereunder to the extent of any delay resulting from such Delay Event. If Landlord is affected by Delay Event, and is seeking an extension of time, Landlord's request shall be subject to the same conditions, requirements and procedures as a Tenant request following a Delay Event as set forth in this Section 17.1 (*Delay Events*).

17.3 Landlord Caused Delay Event.

17.3.1 If Tenant is affected by a Landlord Caused Delay Event, Tenant shall give written notice to Landlord within thirty (30) Days following the date on which Tenant first became aware (or should have become aware, using all reasonable due diligence) that an event has occurred and that it is, or will become, a Landlord Caused Delay Event, and the amount of Tenant's Losses incurred directly as a result of each day such Landlord Caused Delay Event caused Losses to the Tenant. Upon receiving such notice described in this Section **Error! Reference source not found.** (*Landlord Caused Delay Events*), Landlord will review such claim and determine whether Tenant is entitled under applicable Law to such requested and relief, and based on such determination may choose, in its sole discretion, to either (i) pay the amounts claimed following the receipt of such notice, or (ii) refer the matter to dispute resolution in accordance with Article 38 (*Dispute Resolution Provisions*). When calculating the Tenant's Losses, the parties shall calculate an amount equal to that which would result in the Tenant, when taken as a whole, is left in a no better and no worse position notwithstanding the occurrence of such Landlord Caused Delay Event.

17.3.2 For any Landlord Caused Delay Event that is (i) not disputed by Landlord, or (ii) is determined to be a Landlord Caused Delay event in accordance with **Error! Reference source not found.** (*Dispute Resolution Provisions*), Landlord shall, within sixty (60) days of either approving Tenant's claim or within sixty (60) days of the dispute being resolved in Tenant's favor under **Error! Reference source not found.** (*Dispute Resolution Provisions*), make the applicable

required payment (if any), either (i) prior to Substantial Completion only, by a cash payment to Tenant in the amount claimed or determined in accordance with **Error! Reference source not found.** (*Dispute Resolution Provisions*) to be due and payable to Tenant, or (ii) during the OM&C Period only, by an extension of the Term equal to the duration of the portion of the Landlord Caused Delay Event which caused Losses to the Tenant or the OM&C Contractor solely in connection with the performance of OM&C Work. During the OM&C Period only, in the event that Tenant is entitled to relief, Landlord, in its sole discretion, shall have the right to elect which of the above remedies it will provide.

Article 18 Landlord's Right to Perform Tenant's Covenants.

18.1 Landlord May Perform in Emergency or Interruption in Service. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if Tenant fails to perform any obligation required to be performed by Tenant under this Lease, which failure gives rise, or is objectively certain to give rise to (i) an Emergency, (ii) material interruption or disruption to the City, Landlord, the public or the City's or Landlord's Agents or Contractors, (iii) failure to comply with any Remedial Plan or Site Condition Remedial Plan, (iv) a substantial degradation of the Premises or Improvements has occurred for a period of forty-five (45) or more Days, (v) a material or recurrent violation of any Health and Safety Plan required for the Project or any specific safety condition affecting the Project, which Landlord has determined to exist by investigation or analysis or (vi) Landlord reasonably considers that the foregoing has occurred or is objectively certain to imminently occur, all as reasonably determined by Landlord, then the Landlord or Landlord's designee (the "**Required Action Party**") may at Landlord's sole and absolute option, but shall not be obligated to, perform such obligation, for and on behalf of Tenant under this Lease or any other Tenant Agreement ("**Required Action**"), provided that, if there is time, Landlord first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section 18.1 (*Landlord May Perform in Emergency or Interruption in Service*) shall be deemed to waive any claim on the part of Tenant that any such action on the part of Landlord constitutes an impairment of Tenant's contract with Landlord including Tenant's right to dispute Landlord's action in accordance with the provisions of Article 39 (*Dispute Resolution Procedures*).

18.2 Landlord May Perform Following Tenant's Failure to Perform. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Landlord (other than any Imposition, with respect to which the provisions of Section 5.3 (*Right of Tenant to Contest Impositions and Liens*) shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure for a period of forty-five (45) Days following written notice from Landlord (or for such shorter cure period specified in any particular provision of this Lease) and is not the subject of a contest under

Section 5.3 (*Right of Tenant to Contest Impositions and Liens*), then Landlord may, at its sole and absolute option, but shall not be obligated to, take Required Action, including pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Landlord that such failure is due to delay caused by a Delay Event and Tenant is entitled to relief for such Delay Event under Section 17.1.1 (*Delay Event*), that such failure is the subject of a contest under Section 5.3 (*Right of Tenant to Contest Impositions and Liens*), or that cure of such failure cannot reasonably be completed within such period, then Landlord will not pay such sum or perform such obligation during the continuation of such contest or such Delay Event or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently in accordance with Good Industry Practice to prosecute such contest or cure or seek the resolution of such Delay Event, but not to exceed a period of time agreed between the parties for a complete remedy of such event.

18.3 Required Action Rights. In the event of a Required Action, the Required Action Party is hereby irrevocably authorized to exercise every right, power and authority of Tenant over the Project, and under any Tenant Agreement, as fully as Tenant could itself and Tenant shall:

18.3.1 as soon as practicable, suspend the performance of the applicable affected portion of the Project,

18.3.2 immediately make available to the Required Action Party, and ensure that the Required Action Party has access to, and use of, all of the Project, including Tenant's resources, infrastructure, facilities, systems, personnel and Subcontractors, and all Tenant Agreements required for the proper performance of the Work or otherwise as the Required Action Party may require, including access to and use of the Improvement's systems and controls, and Tenant's offices,

18.3.3 promptly comply with, and ensure that any Subcontractors of Tenant comply with, any directions given by the Required Action Party,

18.3.4 if required by the Required Action Party, immediately provide such technical work, assistance and cooperation as to and with respect to any Improvement or its systems equipment, to the extent required for the Required Action Party to perform the Work and to resolve any outstanding issues;

18.3.5 promptly execute and deliver all documents necessary or convenient in order to evidence the rights of the Required Action Party as contemplated in this Section; and

18.3.6 immediately provide to the Required Action Party such other assistance and cooperation as is required by the Required Action Party.

18.4 Tenant's Obligation to Reimburse Landlord. If, pursuant to the provisions of Section 18.2 (*Landlord May Perform Following Tenant's Failure to Perform*), Landlord takes any

Required Action, Tenant shall reimburse Landlord within ten (10) Business Days following Landlord's demand, as Additional Rent, the sum so paid or the reasonable expense so incurred by Landlord in performing such Required Action, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Landlord's demand until payment is made. Landlord's rights under this Article 18 (Landlord's Right to Perform Tenant's Covenants) shall survive the expiration or termination of this Lease and shall be in addition to its rights under any other provision of this Lease or under applicable Laws. To the extent Tenant fails to pay Landlord within 30 Days of receipt of an invoice from Landlord for such costs, Landlord may draw on any Performance Security available under this Lease that is relevant to the applicable breach or default.

Article 19 Events of Default; Cure.

19.1 Tenant Events of Default. The occurrence of any one or more of the following shall constitute a “**Tenant Event of Default**” under this Lease:

19.1.1 Tenant fails to pay to Landlord when due any Rent or other amount due and payable hereunder when such failure continues for more than five (5) Days following written notice from Landlord. Tenant agrees that notice by Landlord in accordance with this Section 19.1.1 also constitutes the notice required under Section 55-225 of the Code of Virginia or its successor and shall satisfy the requirement that notice be given pursuant to Section 55-225 of the Code of Virginia or its successor.

19.1.2 Any court of competent jurisdiction enters an order, judgment, or decree approving a petition seeking reorganization of the Tenant or all or a substantial part of the assets of Tenant or any partner or guarantor of the Tenant or appointing a receiver, sequestrator, trustee, or liquidator of the Tenant, any partner or guarantor of the Tenant, or any of its property, and such order, judgment, or decree continues un-stayed and in effect for at least sixty (60) Days.

19.1.3 The Tenant (i) makes a general assignment for the benefit of creditors, (ii) is adjudicated as either bankrupt or insolvent, (iii) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, (iv) either (a) takes advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution, or liquidation Law or (b) admits the material allegations of a petition filed against the Tenant in any proceedings under such a Law, or (v) any partner or guarantor of the Tenant takes action for the purposes of effecting any item identified in item (iv).

19.1.4 Tenant breaches, or fails to strictly comply with, any provision of Article 15 (Insurance) and such breach or failure continues for more than five (5) Days after written notice thereof from Landlord.

19.1.5 A writ of execution is levied on the Leasehold Estate that is not released within sixty (60) Days, or a receiver, trustee, or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within sixty (60) Days.

19.1.6 Subject to the terms of Section **Error! Reference source not found.** (*Delay Event*), construction of the Improvements on the Premises has not commenced within the time period required by the Project Schedule, (ii) subject to the terms of Section **Error! Reference source not found.** (*Delay Event*), construction of the Improvements has ceased for a period of more than forty-five (45) consecutive Days, or (iii) Tenant has abandoned, or apparently abandoned, or has stated it will abandon the Premises for a period of more than forty-five (45) consecutive Days.

19.1.7 Tenant fails to achieve NTP by the NTP Long Stop Date, as set forth in the Project Schedule and this Lease.

19.1.8 Tenant fails to achieve the Substantial Completion Date by the Long Stop Substantial Completion Date.

19.1.9 Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease, or sublets all or any portion of the Premises or Improvements in violation of this Lease.

19.1.10 Tenant fails to maintain, or to cause to be maintained, in effect the insurance, guarantees, letters of credit or other Performance Security as and when required pursuant to this Lease for the benefit of relevant parties, or fails to comply with any requirement of this Lease pertaining to the amount, terms or coverage of the same and such failure continues without cure for a period of ten Business Days following the date Landlord delivers to Tenant written notice thereof.

19.1.11 After exhaustion of all rights of appeal, (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of any Tenant Party or Tenant Party Affiliate by any governmental entity or (ii) any Tenant Party who has ongoing Work, or any of their respective officers, directors, or administering employees have been convicted of, or plead guilty or nolo contendere to, a violation of Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the Commonwealth, and such failure continues without cure for a period of 90 Days following the date Landlord delivers to Tenant written notice thereof (giving particulars of the failure in reasonable detail). If the offending Person is an officer, director or administering employee, cure will be regarded as

complete when Tenant proves that such Person has been removed from any position or ability to manage, direct or control the decisions of the applicable Tenant Party or to perform Work; and if the Person debarred or suspended or subject to an agreement for voluntary exclusion is an Affiliate of any Tenant Party, cure will be regarded as complete when Tenant replaces such Person in accordance with this Lease.

19.1.12 Any Insolvency Event arises with respect to CCP, any Construction Contractor or any guarantor of the Construction Contractor, unless Tenant enters into a replacement Construction Contract, guarantee (as relevant) with a counterparty reasonably acceptable to Landlord in accordance with the terms of this Lease within ninety (90) Days of the relevant Insolvency Event.

19.1.13 Any Construction Contract or guaranty thereof is terminated (other than nondefault termination on its scheduled termination date) and Tenant has not entered into a replacement Construction Contract or guaranty (as relevant) with a counterparty reasonably acceptable to Landlord in accordance with the terms of this Lease within ninety (90) Days of the termination of the relevant Construction Contract or guaranty.

19.1.14 A levy under execution or attachment has been made against all or any part of the Project or any interest therein as a result of any lien (other than a lien relating to permitted Tenant debt) created, incurred, assumed or suffered to exist by Tenant or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of sixty (60) Days; and

19.1.15 Tenant fails to perform any other material covenant, condition, or obligation under this Lease within sixty (60) Days after Landlord provides written notice thereof to Tenant, provided that, if such failure cannot be cured within such sixty (60) Day period and Tenant is diligently and in good faith pursuing a cure, Tenant shall have such additional time as may be necessary to complete the cure, not to exceed 180 Days.

19.2 Landlord Events of Default. The occurrence of any one or more of the following shall constitute a “**Landlord Event of Default**” under this Lease:

19.2.1 Excluding any failure to appropriate funds under Section 37.2 (*Availability of Funds for Landlord's Performance*), any failure of Landlord to satisfy any of its monetary obligations under this Lease or the City to satisfy its payment obligations under the Grant Agreement with appropriated funds, in each case when due and payable, if such failure continues for sixty (60) Days after Tenant gives written notice to Landlord that such amount was not paid when due;

19.2.2 Landlord fails to perform any material covenant, condition, or obligation under this Lease, and such breach causes material interruption, delay or Losses to Tenant and is not remedied within sixty (60) Days after Tenant provides written notice thereof to Landlord, provided that, if such failure cannot be cured within such sixty (60) Day period and Landlord is diligently and in good faith pursuing a cure, Landlord shall have such additional time as may be necessary to complete the cure, not to exceed 180 Days;

19.2.3 Landlord's default of the covenant of quiet enjoyment as stated in Article 28 (*Quiet Enjoyment*) causes a material interruption, delay or Loss to Tenant, and such default is not remedied within sixty (60) Days after Tenant provides written notice thereof to Landlord, provided that, if such failure cannot be cured within such sixty (60) Day period and Landlord is diligently and in good faith pursuing a cure, Landlord shall have such additional time as may be necessary to complete the cure, not to exceed 180 Days; and

19.2.4 Landlord's assignment of its interests under this Lease in breach of Section 13.5 (*Transfers by Landlord*).

19.3 Special Provisions Concerning Armory Mortgagees and Events of Default. Notwithstanding anything in this Lease to the contrary, the exercise by an Armory Mortgagee of any of its remedies under its Armory Mortgage shall not, in and of itself, constitute a default or Tenant Event of Default under this Lease.

Article 20 Remedies.

20.1 Landlord's Remedies Generally.

20.1.1 If a Tenant Event of Default occurs and it has not been cured within any relevant cure period set out in Section 19.1 (*Tenant Events of Default*), Landlord may, without prejudice to any other right or remedy available to it, require Tenant to prepare and submit, within thirty (30) Days of being notified, a remedial plan ("**Remedial Plan**").

20.1.2 A Remedial Plan must set out specific actions and an associated schedule to be followed by Tenant to cure the relevant Tenant Event of Default and reduce the likelihood of such defaults occurring in the future. Such actions may include:

- 20.1.2.1** changes in organizational and management structure;
- 20.1.2.2** revising and restating management plans and procedures;
- 20.1.2.3** improvements to quality control practices;
- 20.1.2.4** increased monitoring and inspections;

20.1.2.5 changes in key personnel and other important personnel; and

20.1.2.6 replacement of Contractors.

Within thirty (30) Days of receiving a Remedial Plan, Landlord shall notify Tenant whether such Remedial Plan is acceptable (in Landlord's sole discretion). If Landlord notifies Tenant that its Remedial Plan is acceptable, Tenant shall implement such Remedial Plan in accordance with its terms.

20.1.3 Upon the occurrence and during the continuance of a Tenant Event of Default under this Lease, but without obligation on the part of Landlord following the occurrence of a Tenant Event of Default to accept a cure of such Tenant Event of Default other than as required by any Law or the terms of this Lease, Landlord shall have all rights and remedies provided in this Lease or available at Law or equity, including (i) requiring Tenant to deliver a Remedial Plan or (ii) terminating this Lease in its entirety. All of Landlord's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others. To the extent that Landlord accepts Tenant's Remedial Plan, Landlord may only terminate Tenant for such applicable Tenant Event of Default if Tenant breaches its applicable Remedial Plan.

20.2 Tenant's Remedies Generally.

20.2.1 Landlord Event of Default. Upon the occurrence and during the continuance of a Landlord Event of Default under this Lease, Tenant must notify Landlord of the occurrence of a Landlord Event of Default. Upon receipt of such notification, Landlord will have thirty (30) Days to agree on a reasonable and feasible remedial plan (a "**Landlord Remedial Plan**") with Tenant, granting Landlord at least an additional ninety (90) Days to cure any Landlord Event of Default. Any delay caused by the negotiation and implementation of a Landlord Remedial Plan shall constitute a Delay Event. Tenant will accept any Landlord Remedial Plan if it is deemed objectively reasonable and feasible. Following expiration or breach of any Landlord Remedial Plan, to the extent any Landlord Event of Default has not been cured, Tenant shall have all rights and remedies provided in this Lease or available at law or equity, including terminating this Lease in its entirety. All of Tenant's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

20.2.2 Non-Appropriation. In the event of a Delay Event for Non-Appropriation that materially impairs any Tenant Party's ability to perform the Work, and where the City fails to remedy such Non-Appropriation within 180

Days, Tenant shall have the right to terminate this Lease at no cost, claim or fault to either Party.

20.3 Right to Keep Lease in Effect.

20.3.1 Continuation of Lease. Upon the occurrence of a Tenant Event of Default or a Landlord Event of Default hereunder, the non-defaulting party may continue this Lease in full force and effect. In the event the non-defaulting party elects this remedy, the non-defaulting party shall have the right to enforce by suit or otherwise in accordance with the dispute resolution procedures under this Lease, all covenants and conditions hereof to be performed or complied with by the defaulting party and exercise all of the non-defaulting party's rights.

20.3.2 Abandonment of Premises by Tenant. If Tenant abandons the Premises in violation of this Lease or upon serving any termination notice to Tenant for an uncured Tenant Event of Default, Landlord may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law; (ii) alter, install or modify the Improvements or any portion thereof and/or (iii) accede to Tenant's interests and rights under any Tenant Party agreement, including the Construction Contract, OM&C Contract or any Sublease or Subcontract. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, Attorneys' Fees and Costs, reasonable brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises or re-procuring Contractors to perform any of the Work, or any portion thereof, and altering, installing, modifying, and constructing tenant improvements required for a new tenant, and the costs of Restoration (subject to the terms of Article 10 (*Damage or Destruction*) and Article 11 (*Condemnation*)) and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter, or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term.

20.3.3 No Termination. So long as the Landlord is the non-defaulting party, no act by Landlord allowed by this Section 20.3, no act of mitigation, maintenance, or preservation, and no withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease unless and until Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

20.3.4 Application of Proceeds of Reletting. In the event of a Tenant Event of Default, if Landlord elects to relet the Premises as provided hereinabove in

Section 20.3.2 (*Abandonment of Premises by Tenant*), the rent that Landlord receives from reletting shall be applied to the payment of:

20.3.4.1 First, all costs incurred by Landlord in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, Attorneys' Fees and Costs, reasonable brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

20.3.4.2 Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Landlord, in addition to or other than Rent due from Tenant;

20.3.4.3 Third, Rent, including any and all Additional Rent, due and unpaid under this Lease; and

20.3.4.4 After deducting the payments referred to in this Section 20.3.4 (*Application of Proceeds of Reletting*), any sum remaining from the rent Landlord receives from reletting shall be held and retained by Landlord. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on a date Rent or another amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Landlord incurred in reletting, remain after applying the rent received from the reletting as provided in Section 20.4.2 (*Damages*), Tenant shall pay to Landlord, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

20.3.5 Payment of Rent.

20.3.5.1 Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less any rent Landlord has received from any reletting which exceeds all costs and expenses of Landlord incurred in connection with the applicable Tenant Event of Default and the reletting of all or any portion of the Premises.

20.4 Right to Terminate Lease.

20.4.1 Termination. In accordance with Section **Error! Reference source not found.** (*Landlord's Remedies Generally*) and Section **Error! Reference source**

not found. (*Tenant's Remedies Generally*), as applicable, the non-defaulting party may terminate this Lease at any time after the occurrence (and during the continuation) of a Landlord Event of Default, a Tenant Event of a Default, or after Tenant has failed to comply with the terms of any Remedial Plan or Landlord has failed to comply with the terms of any Landlord Remedial Plan, by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. No act by a non-defaulting party, other than giving notice of termination to the defaulting party in writing, shall terminate this Lease.

20.4.2 Damages.

20.4.2.1 Termination for Tenant Event of Default. On termination of this Lease for a Tenant Event of Default, Landlord and the City shall be entitled to pursue any and all legal and equitable remedies or claims and exercise such other rights, powers and remedies as may be available to Landlord or the City, as applicable, under any applicable Law. In pursuing such legal and equitable remedies, Landlord and the City will be entitled to claim their respective damages incurred due to, and in connection with, such Tenant Event of Default and early termination of this Lease against Tenant and any Tenant Party that caused such Tenant Event of Default, jointly and severally with Tenant. Any claims for Landlord's losses, costs, damages and expenses incurred as a result of terminating this Lease due to a Tenant Event of Default must be resolved pursuant to Article 38 (*Dispute Resolution Provisions*). Tenant acknowledges that Landlord's losses, costs, expenses and damages shall include those described in this Article 20 (*Remedies*), including, without limitation, all costs and damages described in Section 20.3.1 (*Continuation of Lease*), 20.3.4.1, 20.3.4.3, and 20.3.4.4.

20.4.2.2 Termination for Landlord Event of Default. On termination of this Lease for Landlord Event of Default, the Tenant, subject to the provisions of Article 37 (*Dispute Resolution Provisions*), shall have the right to recover from Landlord:

20.4.2.2.1 the direct, out-of-pocket costs reasonably incurred by Tenant or its Contractors in withdrawing its equipment and personnel from the Project and in otherwise demobilizing;

20.4.2.2.2 the direct, out-of-pocket costs reasonably incurred by Tenant or its Contractors in terminating contracts with Subcontractors; and

20.4.2.2.3 all direct damages suffered or incurred by Tenant or its Contractors due to such termination.

20.4.3 Waiver of Rights to Recover Possession. In the event Landlord terminates Tenant's right to possession of the Premises pursuant to this Section 20.4.1 (*Right to Terminate Lease*), Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law.

20.4.4 No Rights to Assign or Sublet. Upon the occurrence of a Tenant Event of Default, notwithstanding Article 13 (*Assignment and Subletting*), Tenant shall have no right to sublet or assign all or any part of its interest in the Premises or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and absolute discretion, subject to the rights of Armory Mortgagees as set forth in Article 33 (*Armory Mortgages*).

20.4.5 Continuation of Subleases and Other Agreements. Landlord shall have the right, at its sole and absolute option, to assume any and all Subleases, Subcontracts and agreements by Tenant for the Construction Work, OM&C Work, concessions or retail operations on the Premises. Tenant hereby further covenants that, upon request of Landlord following a Tenant Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge, and deliver to Landlord such further instruments as may be reasonably necessary or desirable to vest or confirm or ratify vesting in Landlord the then existing Subleases, Subcontracts and other agreements then in force, as above specified.

Article 21 Equitable Relief.

21.1 Landlord's Equitable Relief. In addition to the other remedies provided in this Lease, Landlord shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of a Tenant Event of Default, Landlord shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Tenant Event of Default.

Article 22 No Waiver.

22.1 No Waiver by Landlord or Tenant. No failure by Landlord or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which the waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

22.2 No Accord or Satisfaction. No submission by Tenant or acceptance by Landlord of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its

obligations hereunder shall waive any of Landlord's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Landlord had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Landlord. Landlord may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Landlord to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

Article 23 Tenant's Recourse Against Landlord.

23.1 Liability Cap. Without prejudice to Section 37.2 (*Availability of Funds*), Tenant's recourse against Landlord and Landlord's liability with respect to any monetary obligation of Landlord under or in connection with this Lease, or any monetary claim based upon this Lease, shall not exceed an amount equal to the Tenant's potential liability for ordinary damages under this Lease (excluding scenarios where Tenant has unlimited liability, including for Tenant's willful misconduct, fraud, illegal acts).

23.2 No Recourse against Specified Persons. No officer or employee of Landlord or the City will be personally liable to Tenant, or any successor in interest, for any Landlord Event of Default, and Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

Article 24 Limitations on Liability.

24.1 Consequential Loss Waiver. As a material part of the consideration for this Lease, and notwithstanding any provision herein to the contrary, neither Landlord nor Tenant shall be liable for, and each Party hereby waives any claims against the other for, any consequential damages incurred by either Party and arising out of any default by the other Party hereunder.

24.2 Exceptions to Waiver. The foregoing limitation will not, however, in any manner:

24.2.1 any Losses of Tenant arising under its subcontracts or other agreements as originally executed (or as amended in accordance with the terms of this Lease);

24.2.2 prejudice Landlord's right to recover any or all of liquidated damages under this Lease;

24.2.3 limit Tenant's liability for any type of damage arising out of Tenant's obligation to indemnify, protect, defend and hold each Indemnified Parties harmless under this Lease;

24.2.4 Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the relevant Party

24.2.5 limit Tenant's liability for any type of damage to the extent covered by the proceeds of insurance required hereunder; or

24.2.6 limit the amounts expressly provided to be payable by the parties pursuant to this Lease.

24.3 Assignment. In the event of any assignment or other transfer of Landlord's interest in and to the Premises, Landlord (and in case of any subsequent transfers thereof, the then-transferor), subject to the provisions hereof, automatically shall be relieved and released, from and after the date of such assignment or transfer, of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Landlord (or such transferor, as the case may be), but not from liability incurred by Landlord (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord (or such transferor, as the case may be) hereunder before the date of such assignment or transfer; provided, however, that Landlord (or such subsequent transferor) also automatically shall be relieved and released from liability on account of covenants and obligations to be performed hereunder before the date of such assignment or transfer if and to the extent Landlord (or such subsequent transferor) has transferred to the transferee any funds in Landlord's possession (or in the possession of such subsequent transferor) in which Landlord (or such subsequent transferor) has an interest, in trust, for application to such liability, and such transferee has assumed all liability for all such funds so received by such transferee from Landlord (or such subsequent transferor).

24.4 No Recourse against Specified Persons. No shareholder, board member, officer, employee, limited partner or member of Tenant or of any partner or member of Tenant will be personally liable to Landlord or any successor in interest of Landlord for any Tenant Event of Default, and Landlord agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due to Landlord or any successor or for any obligation or claim based upon this Lease, against any such Person.

24.5 No Landlord Liability. Except to the extent of the negligence or willful misconduct of Landlord and subject to Tenant's indemnification obligations, Landlord shall not be liable or responsible in any way for:

24.5.1.1 Any loss or damage whatsoever to any property belonging to Tenant or to its representatives or to any other person who may be in or upon the Premises; or

24.5.1.2 Any loss, damage or injury, whether direct or indirect, to persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Premises under any of the provisions of this Lease or otherwise.

Article 25 Estoppel Certificates.

25.1 Estoppel Certificates by Tenant. Tenant shall execute, acknowledge and deliver to Landlord, within 15 Business Days after a request, a certificate stating to the best of Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Landlord. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by any Landlord or any successor of the Premises or any part of Landlord's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section 25.1 (*Estoppel Certificates by Tenant*) into each retail Sublease) to cause retail Subtenants under retail Subleases to execute, acknowledge and deliver to Landlord, within ten Business Days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) with respect to such retail Sublease.

25.2 Estoppel Certificates by Landlord. Landlord shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, or other prospective transferee of Tenant's interest under this Lease), within 15 Business Days after a request, a certificate stating to the best of Landlord's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Landlord, there are then existing any defaults under this Lease (and if so, specifying the same), and (d) any other matter actually known to Landlord, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Landlord shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Landlord that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant, any successor, and any Subtenant, prospective Subtenant, transferee or prospective transferee of Tenant's interest in this Lease.

Article 26 Approvals by Landlord. Landlord represents to Tenant that Landlord's Chairman is authorized to execute on behalf of Landlord any closing or similar documents and any contracts,

agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Landlord hereunder, if Landlord's Chairman determines, after consultation with, and approval as to form and legality by, Landlord's General Counsel, that the document is necessary or proper and in Landlord's best interests. Landlord's Chairman's signature of any such documents shall conclusively evidence such a determination by Landlord's Chairman. Wherever this Lease requires or permits the giving by Landlord of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Landlord, Landlord's Chairman shall be authorized to execute such instrument on behalf of Landlord, except as otherwise provided by applicable Law or the express language of this Lease, and Tenant or any Subtenant shall be entitled to rely on the fact that such instrument is valid and binding upon Landlord if executed by Landlord's Chairman.

Article 27 No Merger of Title.

27.1 No Merger of Title. There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

Article 28 Quiet Enjoyment.

28.1 Quiet Enjoyment. Subject to the terms and conditions of this Lease and applicable Laws, Landlord agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Landlord.

Article 29 Surrender of Premises & Handback Requirements.

29.1 Handback Standards.

29.1.1 Without expanding Tenant's obligations under Section 8.1 (*Managements and Operating Covenants*), upon the expiration or earlier termination of this Lease, the Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 29.2.5 (*Personal Property*) and in compliance with this Section 29.1 (*Handback Standards*). Tenant hereby agrees to execute all documents as Landlord may deem reasonably necessary to evidence or confirm the expiration or earlier termination of this Lease.

29.1.2 Upon expiration or early termination of this Lease, subject to Article 8 (*Operations and Maintenance*) (including the limitations set forth in Section 8.1

(*Management and Operating Covenants*)), Article 10 (*Damage or Destruction*) and Article 11 (*Condemnation*), Tenant shall surrender the Premises in compliance with all Laws and free of all Encumbrances created, incurred, assumed or suffered to exist by Tenant or any Person claiming through Tenant (including any Subtenant) other than Encumbrances approved by Landlord in writing, and will handback the Improvements within and on the Premises and the Premises will be in good order and condition, reasonable wear and tear excepted.

29.2 End of Lease Term.

29.2.1 Handback Information Protocols. Landlord may at any time during the final 3 years of the Term give Tenant a written request to provide to Landlord and / or any new operator, provider or proposed tenderer (to be engaged following the expiration date of the Term), within 30 Days, any of the following:

29.2.2 (i) quality manuals; (ii) test certificates and calculations; (iii) maintenance manuals describing the Improvements and maintenance regime in sufficient detail to enable a third party to take over planned preventative maintenance; (iv) historical records of inspection, replacement and refurbishment; (v) the future planned preventative maintenance regime and any other details reasonably requested by Landlord; (vi) planned inspections of buildings and other physical assets; (vii) record drawings; (viii) schedules of spare parts held in storage; (ix) asset management records (including any condition surveys and historical inspection, testing, maintenance, replacement and refurbishment records and any records of faults and failures and actions applied to remedy these); (x) property register; (xi) estate management records, including details of rents and service charges payable, historic records of these and details of the current occupancy of the estate and leases, licenses and other interests granted or enjoyed by third parties; (xii) any operating or training manuals; (xiii) details relating to Tenant's Contractors, Subcontractors, tenants, licensees and subconsultants engaged in relation to the Project (including company name, contact details, contracts, agreements or licenses and the nature of the services provided by such third-party; (xiv) health and safety records; (xv) help desk records and procedures including details of any outstanding calls and actions taken or in progress; (xvi) network passwords and access rights for operational systems and technology and the status of any network or systems modification initiatives or custom software development Tenant is currently developing; and (xvii) documentation describing the information technology, wireless and fiber optic systems, system architecture (hardware and software) and operating protocols, operating manuals, cabling diagrams, disaster recovery plans and other supporting information such that Landlord or the incoming Contractor can plan how they will continue to operate the Project at handback.

29.2.3 Meetings and Cooperation.

29.2.3.1 Tenant shall throughout the period of 120 Business Days before the expiry date of this Lease and for 120 Business Days after such expiry meet and cooperate with Landlord and any new operator, service provider or proposed tenderer expressly notified to Tenant by Landlord in relation to: (i) the phasing out of Tenant or its Subcontractors as the operators of the Premises; and (ii) the phasing in of the services for which the new operator or service provider has been engaged by Landlord.

29.2.3.2 Tenant shall provide (and shall require its Subtenants to provide) to Landlord, such new operator, service provider or proposed tenderer such reasonable assistance as Landlord may require.

29.2.4 Subleases. Upon any termination of this Lease, Landlord shall have the right to terminate all Subleases hereunder.

29.2.5 Personal Property. Upon expiration or termination of this Lease, Tenant and all Subtenants shall have the right to submit a list of items which it considers to be Personal Property that pertain solely to Tenant's and each Subtenant's business and is not necessary or required for Landlord's continued performance of the Work on the Armory. Upon Landlord's approval of such list of Personal Property, Tenant or its Subtenants may remove the approved Personal Property from the Premises. At Landlord's request, Tenant or any Subtenant shall remove, at no cost to Landlord, any Personal Property belonging to Tenant or Subtenant which then remains on the Premises (excluding any Personal Property owned by Subtenants or other Persons). If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Landlord.

29.2.6 Quitclaim of Regulatory Approvals. Upon the expiration or termination of this Lease, Tenant shall quitclaim and assign to Landlord or Landlord's designee, or take such actions as a Governmental Entity may allow or require to transfer to Landlord, in such form and substance reasonably satisfactory to Landlord, all of Tenant's rights, title and interest in and to the Regulatory Approvals and all applications and supporting materials relating to such Regulatory Approvals, to the extent the same are assignable or transferable with the consent of a Governmental Authority, as applicable, subject to any rights, title and interest therein of third parties that are Non-Affiliates of Tenant.

Article 30 Hold over.

30.1 No Right to Hold Over. Tenant shall have no right to remain in possession of all or any part of the Premises after the Termination Date. Tenant shall have no right to hold over, and no tenancy shall be created by implication or law. However, if Tenant fails to vacate and surrender possession of the Premises on or prior to the Termination Date, Tenant shall pay

Landlord the higher of (i) 200 percent of monthly Rent immediately theretofore payable plus other rents prevailing at the date of such holding over for each month after the Termination Date or (ii) 200 percent of then comparable monthly rents for similar projects from the date of holdover. Landlord's receipt and acceptance of such monthly Rent as adjusted in this Section 30.1 (*No Right to Hold Over*) shall not be construed as Landlord's consent to any holding over by Tenant. Tenant hereby agrees to indemnify and hold harmless Landlord from and against any and all claims incurred by Landlord as a result of Tenant remaining in possession of all or any part of the Premises after the Termination Date. Tenant shall not interpose any counterclaim in any summary or other proceeding based on holding over by Tenant. Except as provided in this Section 30.1 (*No Right to Hold Over*), all other terms and conditions of this Lease shall apply during any period of holding over by Tenant without Landlord's express written consent, in its sole and absolute discretion.

Article 31 Notices.

31.1 Notices. All notices, consents, demands, offers, and other communications required or permitted to be given pursuant to this Lease shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified United States mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

To Landlord: Chairman
Economic Development Authority of the City of
Richmond, Virginia
2401 West Leigh Street
Richmond, Virginia 23230

with a copy to: General Counsel
Economic Development Authority of the City of
Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

with a copy to: Chief Administrative Officer
The City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

Orrick, Herrington & Sutcliffe LLP
1152 15th Street N.W.
Washington, D.C. 20011
Attention: Darrin L. Glymph, Esquire

To Tenant: The NH District Corporation
P.O. Box 280

Richmond, Virginia 23218
Attention: President

With copies to: Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, Virginia 23219
Attention: John O'Neill, Esquire

Capital City Development LLC
c/o Concord Eastridge
2710 Prosperity Avenue
Fairfax, Virginia 22031
Attention: Susan H. Eastridge

McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Attention: George Keith Martin, Esquire

Either Party may change its address for notices by giving written notice to the other Party in the manner set forth above.

31.2 Form and Effect of Notice. Every notice given to a Party or other Person under this Article must state (or must be accompanied by a cover letter that states):

31.2.1 the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

31.2.2 if applicable, the period of time within which the recipient of the notice must respond thereto; and

31.2.3 if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by such recipient's failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 31.2 (*Form and Effect of Notice*).

Article 32 Inspection of Premises by Landlord During Term.

32.1 Entry. Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents during the Term to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for any and all of the following purposes: (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Landlord may have a right to perform under Article 18 (*Landlord's Right to Perform Tenant's Covenants*), and (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Landlord reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of Landlord to perform any work that under any provision of this Lease Tenant may be required to perform, and nothing herein shall place upon Landlord any obligation, or liability, for the care, supervision or repair of the Premises; provided, however, Landlord shall use reasonable efforts to minimize interference with the activities and tenancies of Tenant, Subtenants and their respective Invitees. During any such entry upon the Premises by Landlord and its Agents, Landlord and its Agents shall comply with any and all reasonable safety and security procedures and guidelines that Tenant or any applicable Subtenant may then have in effect at the Premises. If Landlord elects to perform work on the Premises pursuant to Article 18 (*Landlord's Right to Perform Tenant's Covenants*) or Article 20 (*Remedies*), Landlord shall not be liable for inconvenience, loss of business or other damage to Tenant (i) by reason of the performance of such work on the Premises or (ii) on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except to the extent caused solely by the gross negligence or willful misconduct of Landlord or its Agents, provided Landlord uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees, or where Landlord's actions are disputed by Tenant and Tenant prevails in dispute resolution pursued in accordance with Article 38.1 (*Dispute Resolution Procedures*).

32.2 Transition. Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during the last five (5) Lease Years of the Term during regular business hours upon reasonable prior notice for purposes of planning the transition of the Premises upon the Termination Date.

32.3 Notice; Right to Accompany. Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises, and to comply with reasonable safety and security procedures. Such notice shall be not less than 24 hours' oral notice. Tenant shall have the right to have a representative of Tenant accompany Landlord or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for Landlord's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Sections 32.1 (*Entry*) and 32.2 (*Transition*).

32.4 Rights of Subtenants. Tenant shall include in each Sublease, and require the inclusion in each subletting under that Sublease of, a provision requiring each Subtenant to permit

Landlord to enter its premises for the purposes specified in this Article 32 (Inspection of Premises by Landlord).

Article 33 Armory Mortgages.

33.1 No Mortgage Except as Set Forth Herein.

33.1.1 Restrictions on Financing. Except as permitted in this Article 33 (Armory Mortgages), Tenant shall not:

33.1.1.1 engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon (i) Tenant's Leasehold Estate in the Premises or Tenant's or Landlord's interest in the Improvements under this Lease or (ii) the Improvements or the Premises generally; or

33.1.1.2 place or suffer to be placed upon (i) Tenant's Leasehold Estate in the Premises or interest in the Improvements hereunder or (ii) the Improvements or the Premises generally, any lien or other encumbrances other than as expressly permitted by Article 5 (Taxes and Other Impositions).

33.1.2 No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Armory or its right to receive Rent to any Armory Mortgagee of Tenant.

33.1.3 Violation of Covenant. Any mortgage, deed of trust, encumbrance, or lien not permitted by this Article 33 (Armory Mortgages) shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

33.2 Leasehold Liens.

Tenant's Right to Armory Mortgage Leasehold in Armory. Subject to the terms and conditions of this Article 33 (Armory Mortgages), and provided that no Tenant Event of Default or Unmatured Tenant Event of Default then exists, Tenant shall have the right during the Term to assign, mortgage, or encumber Tenant's Leasehold Estate in the Armory created by this Lease by way of leasehold mortgages, deeds of trust, or other security instruments of any kind to the extent permitted hereby to any Armory Mortgagee that is (i) not prohibited by Applicable Law from providing financing to a property or building owned by a governmental agency or authority, (ii) does not have any criminal, civil, administrative or

regulatory claims, judgements or actions implicating such proposed transferee's compliance with the terms of this Agreement and Applicable Law, (iii) does not have, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies, or (iv) (1) is debarred, suspended, or otherwise disqualified from federal, State or City contracting for any services similar in nature to the Contract Services or any portion thereof.

33.2.1 Leasehold Armory Mortgages Subject to This Lease. With the exception of the rights expressly granted to Armory Mortgagees in this Lease, the execution and delivery of an Armory Mortgage shall not give or be deemed to give an Armory Mortgagee any greater rights than those granted to Tenant hereunder.

33.2.2 Limitation of Number of Leasehold Armory Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Armory Mortgagees (other than notice rights, which shall apply to all Armory Mortgagees that have given Landlord the notice required under Section 33.8.2 (*Notice from Armory Mortgagee to Landlord*)) shall only apply to the most senior Armory Mortgagee with respect to any particular portion of the Armory, unless such Armory Mortgagee elects not to exercise its rights thereunder in which event such rights will apply to the next most senior Armory Mortgagee.

33.3 Notice of Liens. Tenant shall notify Landlord promptly of any lien or encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's Leasehold Estate in the Armory hereunder whether by act of Tenant or otherwise.

33.4 Limitation of Armory Mortgages. In addition to the limitations set forth elsewhere in this Article 33 (*Armory Mortgages*), the limitations set forth in this Section 33.4 (*Limitation of Armory Mortgages*) shall apply to all Armory Mortgages.

33.4.1 Limitations. An Armory Mortgage may be made only for the purpose of financing the construction of the Armory Improvements, refinancing completed Armory Improvements, financing the construction of Additional Improvements, refinancing completed Additional Improvements, any permanent takeout financing (subject to the limitations herein with respect to construction financing for the Armory Improvements), acquisition financing by a transferee of Tenant's interest in this Lease (subject to the provisions of Article 13 (*Assignment and Subletting*)), and the refinancing of permitted Armory Mortgages. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would create an obligation or security of Landlord. In addition, Tenant's right to enter into an Armory Mortgage shall be subject to the following limitations:

33.4.1.1 the total amount of the debt encumbering Tenant's interest with respect to any financing for the construction of the Armory Improvements or the construction of Additional Improvements shall not exceed the actual costs (both hard and soft costs) of such construction;

33.4.1.2 the total amount of the debt encumbering Tenant's leasehold shall not exceed [90 percent] of the sum of the appraised value of such leasehold plus the value of any additional security, guaranty, or credit enhancement provided by Tenant, as determined by the proposed Armory Mortgagee;

33.4.1.3 the interest rate under such Armory Mortgage shall not exceed the then-prevailing market rate for similar mortgages;

33.4.1.4 with respect to any financing for the construction of the Armory Improvements or the construction of Additional Improvements, such financing shall not permit Tenant to draw or receive any advances or proceeds of such financing for any purpose other than payment of legitimate third party costs for such construction (including design costs and development impact fees), closing costs and fees, interest and reserves, property taxes or assessments, and operating and leasing expenses (the aggregate amount of which is subject to the limitation set forth in Section 33.4.1.2 (*Limitations*)), and Tenant shall not use any such advances or proceeds for any other purpose whatsoever;

33.4.1.5 no Armory Mortgage or other instrument purporting to mortgage, pledge, encumber, or create an Encumbrance on or against any or all of the interest of Tenant shall extend to or affect the fee simple interest in the Armory, Landlord's interest hereunder, or Landlord's reversionary interest and estate in and to the Armory or any part thereof, or adversely affect the rights or increase the liabilities or obligations of Landlord except to the extent set forth in this Lease;

33.4.1.6 Landlord shall have no liability whatsoever for payment of the principal sum secured by any Armory Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;

33.4.1.7 Landlord shall have no obligation to any Armory Mortgagee except as expressly as set forth in this Lease and only with respect to such Armory Mortgagee that has provided Landlord with written notice of its Armory Mortgage;

33.4.1.8 each Armory Mortgage shall provide that if an event of default under the Armory Mortgage has occurred and is continuing and the

Armory Mortgagee gives notice of such event of default to Tenant, then the Armory Mortgagee shall give concurrent notice of such default to Landlord;

33.4.1.9 subject to the terms of this Lease and except as specified herein, all rights acquired by an Armory Mortgagee under any Armory Mortgage shall be subject and subordinate to all of the provisions of this Lease and to all of the rights of Landlord hereunder;

33.4.1.10 notwithstanding any enforcement of the security of any Armory Mortgage, Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease;

33.4.1.11 an Armory Mortgagee shall not, by virtue of its Armory Mortgage, acquire any greater rights or interest in or to the Armory than Tenant has at any applicable time under this Lease, other than such rights or interest as may be granted or acquired in accordance with this Article 33 (*Armory Mortgages*); and

33.4.1.12 Prior to the effective date of an Armory Mortgage, each Armory Mortgagee, Landlord and Tenant shall enter into a consent agreement in a form acceptable and agreed by all parties if required by the Armory Mortgagee, whereby all parties consent to the assignment of such Armory Mortgage by the Armory Mortgagees to an agent for the Armory Mortgagees in connection with the financing of the Armory Mortgage; provided that such consent agreement shall be in a customary form, include the exact rights and protections provided to the Armory Mortgagees in this Lease, acknowledge that Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease, and provide that the Armory Mortgagees shall promptly cause to be recorded in the Official Records a reconveyance and release of the Armory Mortgage upon the end of its term.

33.4.2 Statement. Landlord agrees within 30 calendar days after request by Tenant to give to any holder or proposed holder of an Armory Mortgage a statement in recordable form as to whether such Armory Mortgage is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting, against either Tenant or such Armory Mortgagee or prospective Armory Mortgagee, that such Armory Mortgage or proposed Armory Mortgage (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Landlord, and shall conclusively establish that such Armory Mortgage is permitted hereunder and does not constitute a default by

Tenant. In making a request for such statement, Tenant shall furnish Landlord true, accurate and complete copies of such of the financing documents as are required reasonably by Landlord to permit Landlord to make the determination whether such Armory Mortgage or proposed Armory Mortgage is permitted hereby. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Armory Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which is secured by an Armory Mortgage, be deemed to invalidate the lien of an Armory Mortgage.

33.5 Interest Covered by Armory Mortgage. An Armory Mortgage may attach to any or all of the following interests in the Armory: (i) Tenant's leasehold interest in the Armory created hereby and Tenant's interest, as to the Armory, in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) rents, products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under this Lease. As provided in Section 33.1.2 (*No Subordination of Fee Interest or Rent*) no Armory Mortgage may encumber Landlord's interest in or under this Lease, Landlord's fee simple interest in the Property, or Landlord's fee interest in the existing Armory (excluding the Improvements) and personal and other property in, on or around the Property.

33.6 Rights Subject to Lease.

33.6.1 Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by an Armory Mortgagee under any Armory Mortgage shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease, and to all rights of Landlord hereunder. None of such covenants, conditions, and restrictions is or shall be waived by Landlord by reason of the giving of such Armory Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing.

33.6.2 Construction and Restoration Obligations. Notwithstanding any provision of this Lease to the contrary, no Armory Mortgagee (including any such Armory Mortgagee who obtains title to the leasehold or any part thereof as a result of Foreclosure proceedings or action in lieu thereof) shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements unless the Armory Mortgagee expressly assumes the obligations of the Tenant under this Lease. Any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Armory Mortgagee, or any other purchaser at Foreclosure sale (other than an Armory Mortgagee) (a "*Purchaser*"), shall be required to Restore in accordance with the requirements of this Lease. Whether or not an Armory Mortgagee elects to Restore, nothing in this Lease shall be construed to permit any such Armory Mortgagee to devote the Armory or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized herein. If the Armory Mortgagee

obtains title to a leasehold interest in this Lease and chooses not to complete or Restore the Improvements, it shall so notify Landlord in writing of its election within 90 calendar days following its acquisition of such leasehold interest in this Lease and shall use commercially reasonable efforts to sell its leasehold interest to a purchaser that shall be obligated to Restore the Improvements to the extent this Lease obligates Tenant to so Restore. The Armory Mortgagee shall use good faith efforts to cause such sale to occur within six months following the Armory Mortgagee's written notice to Landlord of its election not to Restore, provided that any such purchaser shall be subject to Landlord's reasonable prior written approval, which approval shall not be unreasonably withheld so long as such purchaser provides evidence satisfactory to Landlord in Landlord's reasonable discretion showing that such purchaser possesses the qualifications, experience and financial capacity to Restore in accordance with the requirements of this Lease. In the event the Armory Mortgagee agrees to Restore the Improvements, all such work shall be performed in accordance with all requirements set forth in this Lease, and the Armory Mortgagee must submit evidence reasonably satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligations.

33.7 Required Provisions of any Armory Mortgage. Tenant agrees to cause any Armory Mortgage to provide: (a) that the Armory Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default as defined under the Armory Mortgage; (b) that Landlord shall be given notice at the time any Armory Mortgagee initiates any Foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be consistent with the provisions of this Lease, unless Landlord may agree otherwise in its sole and absolute discretion.

33.8 Notices to Armory Mortgagee.

33.8.1 Copies of Notices. Landlord shall give a copy of each notice Landlord gives to Tenant from time to time of the occurrence of a Tenant Event of Default, or of Landlord's consent to an assignment of any interest in this Lease or to a Significant Change, to any Armory Mortgagee that has given to Landlord written notice substantially in the form provided in Section 33.8.2 (*Notice from Armory Mortgagee to Landlord*). Landlord shall give copies of such notices to Armory Mortgagees at the same time as Landlord gives such notices to Tenant, addressed to such Armory Mortgagee at the address last furnished to Landlord. Landlord shall acknowledge in writing its receipt of the name and address of an Armory Mortgagee so delivered to Landlord. Landlord's failure to give such notice to an Armory Mortgagee shall not be deemed to constitute a default by Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to the Armory Mortgagee. Any

such notices to an Armory Mortgagee shall be given in the same manner as provided in Section 31.1 (*Notices*).

33.8.2 Notice from Armory Mortgagee to Landlord. The Armory Mortgagee under any Armory Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Section 33.8.1 (*Copies of Notices*), provided such Armory Mortgagee shall have delivered a notice to Landlord in substantially the following form:

The undersigned does hereby certify that it is an Armory Mortgagee, as such Term is defined in that certain Lease entered into by and between the Economic Development Authority of the City of Richmond, Virginia, as Landlord, and The NH District Corporation, as Tenant (the “**Lease**”), of Tenant’s interest in the Lease demising the parcels, a legal description of which is attached hereto as Attachment [B1] to Exhibit [I] and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Landlord be sent to the undersigned at the following address: _____.”

33.9 Armory Mortgagee’s Right to Cure. If Tenant, or Tenant’s successors or assigns, mortgages this Lease or any part thereof in compliance with the provisions of this Article 33 (*Armory Mortgages*), then, so long as any such Armory Mortgage shall remain unsatisfied of record, the following provisions shall apply:

33.9.1 Cure Periods. Each Armory Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions hereof to prevent termination of this Lease; provided, however, that no such action shall constitute an assumption by such Armory Mortgagee of the obligations of Tenant under this Lease. Each Armory Mortgagee and its agents and contractors shall have full access to the Armory for purposes of accomplishing any of the foregoing and to the extent such Armory Mortgagee or its agents take physical action on the Premises or with respect to the Improvements, then the Armory Mortgagee and its agents shall be liable and responsible for any such action it takes under or in accordance with and subject to the limitations of this Lease as it applies to the Tenant. Any of the foregoing done by any Armory Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant. In the case of any notice of default given by Landlord to Tenant, the Armory Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of 30 calendar days (or,

except for a default relating to the payment of money, such longer period as reasonably necessary so long as the Armory Mortgagee commences cure within such 30 calendar day period and diligently proceeds to completion, which period shall not exceed 365 days), and Landlord shall accept such performance by or at the instance of the Armory Mortgagee as if the same had been made by Tenant.

33.9.2 Foreclosure. Anything contained in this Lease to the contrary notwithstanding, upon the occurrence of a Tenant Event of Default, other than a Tenant Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to the Armory Mortgagee obtaining possession, Landlord shall take no action to effect a termination of this Lease thereof if, within 30 Days after notice of such Tenant Event of Default is given to each Armory Mortgagee, an Armory Mortgagee shall have (i) obtained possession of the Armory (including possession by a receiver if the Armory Mortgagee deems it advisable) or (ii) notified Landlord of its intention to institute Foreclosure proceedings (or to commence actions to obtain possession of the Armory through appointment of a receiver or otherwise) or otherwise acquire Tenant's interest relating to the Armory under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings (for a period of time not to exceed 365 days). The period from the date an Armory Mortgagee so notifies Landlord until that Armory Mortgagee acquires and succeeds to the interest of Tenant related to the Armory under this Lease or some other party acquires such interest through Foreclosure is herein called the "**Foreclosure Period.**" An Armory Mortgagee, upon acquiring all or any part of Tenant's interest in the Armory under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Armory Mortgagee to the extent not cured prior to Foreclosure. The foregoing provisions of this Section 33.9.2 (*Foreclosure*) are subject to the following: (i) no Armory Mortgagee shall be obligated to continue possession or to continue Foreclosure after the defaults or Tenant Events of Default hereunder referred to have been cured (and Landlord has accepted such cure or performance of such obligation by any party, including Tenant); (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Article 33 (*Armory Mortgages*), from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Tenant Event of Default during the pendency of such Foreclosure proceedings, including taking any Required Action under this Lease; and (iii) such Armory Mortgagee shall agree with Landlord in writing to comply during the Foreclosure Period with such of the terms, conditions, and covenants of this Lease as are reasonably susceptible of being complied with by such Armory Mortgagee (except to the extent related to Hazardous Materials or Restoration), including but not limited to the payment of

all sums due and owing hereunder (except for monetary obligations related to Hazardous Materials or Restoration) and the use restrictions set forth in Article 4 (*Uses*). Notwithstanding anything to the contrary, including an agreement by the Armory Mortgagee given under clause (iii) of the preceding sentence, the Armory Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Armory or that it will not institute Foreclosure or, if such Foreclosure has commenced, that it has discontinued them. In such event, the Armory Mortgagee, if it is no longer acting in the capacity of the Tenant, shall have no further liability under such agreement from and after the date it delivers such notice to Landlord. Thereupon, Landlord shall be entitled to seek the termination of this Lease or any other available remedy, or both, as provided in this Lease unless such Tenant Event of Default has been cured. Upon any such termination, the provisions of this Section 33.9.2 (*Foreclosure*) shall apply. If the Armory Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting Foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such Foreclosure or other proceedings shall be extended for the period of such prohibition, provided that the Armory Mortgagee shall (i) have fully cured any Tenant Event of Default due to a default in the payment of money, except for monetary obligations related to Restoration or Hazardous Materials, (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are susceptible of being performed by the Armory Mortgagee (in no event shall such cure period exceed 180 Days).

33.9.3 Construction.

33.9.3.1 Subject to Section 33.6.2 (*Construction and Restoration Obligations*), if a Tenant Event of Default occurs following any damage or destruction but prior to Restoration of the Improvements, the Armory Mortgagee, either before or after Foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Armory Mortgagee expressly assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to Restore, in the manner provided in this Lease, the part of Improvements on the Armory to which the lien or title of such Armory Mortgagee relates, and submits evidence reasonably satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligations.

33.9.3.2 Upon assuming Tenant's obligations to Restore in accordance with Section 33.9.3.1 (Construction), the Armory Mortgagee or any transferee of the Armory Mortgagee shall not be required to adhere to the existing construction schedule. Instead, all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date Tenant stopped work on the Restoration to the date of such assumption plus an additional 120 Days.

33.9.4 New Armory Lease. In the event of the termination of this Lease thereof before the expiration of the Term, including, without limitation, such termination by Landlord on account of the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant Insolvency Event, except (i) by Total Condemnation or Substantial Condemnation as provided in Article 11 (Condemnation) or (ii) as the result of damage or destruction as provided in Article 10 (Damage or Destruction), Landlord shall serve upon the Armory Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Armory Mortgagee shall thereupon have the option to obtain a new Lease with respect to the portion of the Armory subsumed within such termination (for purposes of this Section 33.9.4 (New Armory Lease), a "**New Armory Lease**") in accordance with and upon the following terms and conditions:

33.9.4.1 Upon the written request of the Armory Mortgagee, within 30 Days after service of such notice that this Lease thereof has been terminated, Landlord shall enter into a New Armory Lease with the most senior Armory Mortgagee giving notice within such period or its designee, provided that the Armory Mortgagee assumes Tenant's obligations under this Agreement and as sublessor under any Subleases then in effect to the extent such assumption is necessary in order to continue such Subleases in effect.

33.9.4.2 Such New Armory Lease shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants, and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). Such New Armory Lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge, or encumbrance on the title to the Armory. The provisions of this Section 33.9.4 shall survive any termination of this Lease, except as otherwise expressly set out in the first sentence of Section 33.9.4 (New Armory Lease), and shall constitute a separate

agreement by Landlord for the benefit of and enforceable by the Armory Mortgagee.

33.9.4.3 Simultaneously with the execution and delivery of the New Armory Lease, Landlord shall confirm and acknowledge that the Armory Mortgagee has title to the applicable Personal Property and Improvements which are not owned by the Landlord for the term of the New Armory Lease by such means as are customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate created by the New Armory Lease; provided, however, that Landlord shall have no responsibility for (A) matters described in Section 2.4.2 (Reserved Easement and Other Post-Agreement Date Matters), subject to Landlord's obligations under Section 2.4.2 (Reserved Easement and Other Post-Agreement Date Matters), or (B) any other exceptions to title or title defects that affected title to the Improvements on or after the Agreement Date except to the extent created by the actions of Landlord.

33.9.5 Nominee. Any rights of an Armory Mortgagee under this Section 33.9 (Armory Mortgagee's Right to Cure) may be exercised by or through any nominee or designee (other than Tenant) that is an Affiliate of Armory Mortgagee; provided, however, that an Armory Mortgagee may acquire title to this Lease through a wholly owned (directly or indirectly) subsidiary of Armory Mortgagee.

33.9.6 Subleases. Effective upon the commencement of the Term of any New Armory Lease executed pursuant to Section 33.9.4 (New Armory Lease), any Sublease then in effect shall be assigned and transferred without recourse by Landlord to Armory Mortgagee, and all monies collected by or for the benefit of Landlord from the Subtenants shall be paid to Armory Mortgagee, or at Armory Mortgagee's option, shall offset Rent. Between the date of termination of this Lease and commencement of the term of the New Armory Lease, Landlord shall not (unless otherwise agreed) to (1) enter into any new subleases, management agreements, or agreements for the maintenance of the Armory or the supplies therefor which would be binding upon Armory Mortgagee if Armory Mortgagee enters into a New Armory Lease, (2) cancel or materially modify any of the existing Subleases, management agreements, or agreements for the maintenance of the Armory or the supplies therefor or any other agreements affecting the Armory (unless commercially necessary for the operations of the Armory), or (3) accept any cancellation, termination, or surrender of any of the above without the written consent of Armory Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the New Armory Lease, Landlord shall also transfer to Armory Mortgagee or its designee or nominee (other than Tenant), without recourse, all Personal Property.

33.9.7 Consent of Armory Mortgagee. No material amendment, termination, or cancellation of this Lease that would have a material adverse effect on the Armory or the Armory Mortgagee shall be effective as against an Armory Mortgagee unless a copy of the same shall have been delivered to such Armory Mortgagee and such Armory Mortgagee shall have approved the material amendment, termination, or cancellation in writing. No merger of this Lease and the fee estate in the Armory shall occur on account of the acquisition by the same or related parties of the Leasehold Estate created by this Lease and the fee estate in the Armory without the prior written consent of Armory Mortgagee.

33.9.8 Limitation on Liability of Armory Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Armory Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the Leasehold Estate created hereby or upon Armory Mortgagee's performance of any of Tenant's obligations (excluding payment obligations) under this Lease, and then only for so long as it remains the owner of the Leasehold Estate and only with respect to the obligations of Armory Mortgagee, or its designee or nominee, arising during such period of ownership. In no event will Armory Mortgagee have personal liability under this Lease or a New Armory Lease under Section 33.9.4 (*New Armory Lease*) greater than Armory Mortgagee's interest in this Lease or such New Armory Lease under Section 33.9.4 (*New Armory Lease*), and Landlord will have no recourse against Armory Mortgagee's assets other than its interest herein or therein.

33.9.9 Assignment by Armory Mortgagee. Foreclosure of any Armory Mortgage, or any sale thereunder, whether by judicial proceedings, or any conveyance of the Leasehold Estate hereunder from Tenant to any Armory Mortgagee through, or in lieu of, Foreclosure or other appropriate proceedings in the nature thereof, or any Transfer of any interest in this Lease by Armory Mortgagee after acquisition of the Leasehold Estate through Foreclosure or deed in lieu thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such Foreclosure, sale, or conveyance, Landlord shall recognize the Armory Mortgagee or other transferee in connection therewith as Tenant hereunder. The right of the Armory Mortgagee thereafter to assign or transfer any interest in this Lease or such New Armory Lease shall be subject to the restrictions of Article 13 (*Assignment and Subletting*). Prior to acquisition of the Armory by Foreclosure or transfer in lieu of Foreclosure, all accrued and unpaid Rent shall be payable by such transferee as provided and subject to the limitations set forth in this Lease. In the event Armory Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by Foreclosure or deed in lieu of Foreclosure or subsequently assigns or transfers its interest under any New Armory Lease obtained pursuant to Section 33.9.4 (*New Armory Lease*) and in connection with any such assignment or

Transfer, the Armory Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to the Armory Mortgagee for such assignment of transfer, then such mortgage or deed of trust shall be considered a permitted Armory Mortgage, and the Armory Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article 33 (*Armory Mortgages*) and any other provisions of this Lease intended for the benefit of a permitted Armory Mortgagee who holds a permitted Armory Mortgage.

33.9.10 Transfer of Armory Mortgage. Landlord hereby consents to a transfer or encumbrance by Armory Mortgagee, absolutely or as collateral security for performance of its obligations, of its Armory Mortgage or any interest therein, provided such transfer satisfies the requirements of this Lease. In the event of any such transfer, the new holder or pledgee of the Armory Mortgage shall have all the rights of its predecessor Armory Mortgagee hereunder until such time as the Armory Mortgage is further transferred or released from the Leasehold Estate.

33.9.11 Appointment of Receiver. In the event of any default under an Armory Mortgage, the holder of the Armory Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Armory Mortgagee accelerates the maturity of all indebtedness secured by its Armory Mortgage.

Article 34 No Joint Venture.

34.1 No Joint Venture. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause Landlord to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

Article 35 Representations and Warranties.

35.1 Representations and Warranties of Tenant. As a material inducement to Landlord to enter into this Lease and the transactions and agreements contemplated hereby, Tenant represents and warrants to Landlord that, as of the date on which Tenant executes this Lease and the NTP Date:

35.1.1 Valid Existence and Good Standing. Tenant is a not-for-profit corporation duly organized and validly existing under the laws of the Commonwealth of Virginia and duly authorized and registered to transact business in the Commonwealth of Virginia. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the Commonwealth of Virginia. Tenant has, and will continue to have for the Term of this Agreement, a valid letter determination from the Internal

Revenue Service of the United States federal government, recognizing Tenant as a federally tax-exempt organization under Section 501(c) of Title 26 of the United States Code.

35.1.2 Authority to Execute and Perform Lease. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

35.1.3 No Limitation on Ability to Perform. Neither Tenant's articles of incorporation, bylaws, or other governing documents nor any applicable Law prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant, except for consents, authorizations and approvals which have already been obtained, notices which have already been given, and filings which have already been made. Except as may otherwise have been disclosed to Landlord in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator that might materially adversely affect the enforceability of this Lease or the business, operations, assets, or condition of Tenant.

35.1.4 Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Landlord and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

35.1.5 Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene, or conflict with, or constitute a default by Tenant under (A) any agreement, document, or instrument to which Tenant is a party or by which Tenant is bound, (B) any Law applicable to Tenant or its business, or (C) the articles of incorporation, bylaws, or other governing documents of Tenant; and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

35.1.6 Financial Matters. Except to the extent disclosed to Landlord in writing, to Tenant's knowledge, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the United States Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder or that has occurred that will constitute a Tenant Event of Default under this Lease, and (iv) no

involuntary petition naming Tenant as debtor has been filed under any chapter of the United States Bankruptcy Code.

The representations and warranties above shall survive the expiration or any earlier termination of this Lease.

35.2 Representations and Warranties of Landlord. As a material inducement to Tenant to enter into this Lease and the transactions and agreements contemplated hereby, Landlord represents and warrants to Tenant that, as of the date on which Landlord executes this Lease and as of the NTP Date:

35.2.1 Valid Existence. Landlord is a duly created and validly existing political subdivision of the Commonwealth of Virginia.

35.2.2 Authority to Execute and Perform Lease. Landlord has all requisite right, power, and authority to lease the Premises to Tenant pursuant to this Lease. Landlord has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Lease by Landlord. This Lease is a legal, valid and binding obligation of Landlord, enforceable against it in accordance with its terms.

35.2.3 Leases and Contracts. To the best of Landlord's knowledge, as of the Agreement Date, except as disclosed in writing by Landlord to Tenant on or before that Agreement Date, there are no sale, lease, management, maintenance, service, supply, insurance or other contracts (or any amendments thereto) with any third parties that affect any portion of the Premises or their operation and that will be binding upon Tenant or the Premises after the Agreement Date.

35.2.4 Litigation; Condemnation. To the best of Landlord's knowledge, on or before the Agreement Date, Landlord has received no written notice regarding any, and there are no, actions, proceedings, litigation, administrative challenges or governmental investigations or condemnation actions which are either pending or threatened against the Premises as of the Agreement Date.

35.2.5 Violations of Laws. To the best of Landlord's knowledge, on or before the Agreement Date, Landlord has received no written notice from any government authority regarding any, and there are no, violations with respect to any Laws, whether or not appearing in any public records, with respect to the Premises, which violations remain uncured as of the Agreement Date.

35.3 No Liability for Other Party's Action or Knowledge. Notwithstanding any provision of this Article 35 (*Representations and Warranties*) or any other provision of this Lease to the contrary, neither Party shall have any liability for a breach of the representations or

warranties set forth in this Article 35 (*Representations and Warranties*) caused by or resulting from (i) any act or omission of the other Party or (b) any fact, circumstance, or matter known by the other Party on or before the NTP Date. As used in this Section 35.3 (*No Liability for Other Party's Action or Knowledge*), "known by" means actual knowledge, and not imputed or constructive knowledge, without any requirement of inquiry or investigation by the Party to which such knowledge is attributed.

35.4 Additional Representation and Warranties.

35.4.1 Tenant represents and warrants to Landlord that:

35.4.1.1 Each of its Construction Contractors are sophisticated, qualified and experienced contractors capable of performing the Work and independently assessing all available documents and other information provided by the City and Landlord;

35.4.1.2 Tenant and each of its Construction Contractors have familiarized themselves with the Premises and the Site Conditions thereon, all available documents and information pertaining to the Premises and the Project, the requirements of this Lease and all applicable Laws, applicable standards and the conditions of the Regulatory Approvals in effect, and have no reason to believe that any Regulatory Approvals required to be obtained by Tenant will not be granted in due course and remain in effect to enable the Work to proceed in accordance with this Lease;

35.4.1.3 Tenant and each of its Construction Contractors has, in accordance with Good Industry Practice:

35.4.1.3.1 evaluated the required Work and the constraints affecting the Work, including the Premises and surrounding locations (based on the available documents and a visible inspection of the Premises and surrounding locations), the terms of this Lease, applicable Laws, applicable standards and the conditions of the Regulatory Approvals in effect;

35.4.1.3.2 investigated and reviewed the available documents, any other information provided by Landlord, and other available public and private records; and

35.4.1.3.3 familiarized itself with the premises and surrounding locations (based on the available documents and a visible inspection of the Premises and surrounding locations);

35.4.1.3.4 as a result of the evaluation, review, inspection, examination and other activities referred to above, Tenant:

35.4.1.3.4.1 is familiar with and accepts the constraints and physical requirements of the Work; and

35.4.1.3.4.2 has reasonable grounds for believing, and does believe, that the Work can be fully performed within the constraints; and

35.4.1.3.4.3 Tenant has received legal and other appropriate advice and understands and fully accepts all of the risks assumed by it under this Lease.

35.4.2 Tenant will, subject to the terms of this Lease, be deemed to have satisfied itself as to:

35.4.2.1 the nature and extent of the risks assumed by it under this Lease, including with respect to the Site Conditions, including:

35.4.2.1.1 subject to Unknown Site Conditions, the geotechnical, climatic, hydrological, ecological, environmental and general conditions of the Premises;

35.4.2.1.2 subject to Unknown Site Conditions, the ground and subsoil;

35.4.2.1.3 the form and nature of the Premises;

35.4.2.1.4 the risk of injury or damage to property near to or affecting each part of Premises and to occupiers of these properties;

35.4.2.1.5 the nature of the design, work, materials, facilities, machinery or equipment necessary to carry out its obligations under this Lease;

35.4.2.1.6 the access to and through each part of the Premises and the adequacy of the access with respect to the Premises for the purposes of carrying out its obligations under this Lease; and

35.4.2.1.7 the precautions, times and methods of working necessary to prevent or, if it is not possible to prevent, to mitigate or reduce any nuisance or interference, whether public or private, being caused to any third parties.

Article 36 Performance Targets. Tenant shall comply with its obligations under Article 10 (*Performance Target*) of the Development Agreement.

Article 37 Interpretation, Records, and Legal Proceedings.

37.1 Attorneys' Fees.

37.1.1 If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

37.1.2 For purposes of this Lease:

37.1.2.1 The reasonable fees of attorneys of the City's Office of City Attorney serving as Landlord's General Counsel or otherwise used by Landlord shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the city of Richmond, Virginia, in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

37.1.2.2 If Tenant utilizes services of inhouse counsel, the reasonable fees of such inhouse counsel shall be based on the fees regularly charged by private attorneys in full-service law firms with the equivalent number of years of experience in the subject matter area of the law for which the inhouse counsel services were rendered and who practice in the city of Richmond, Virginia.

37.2 Availability of Funds for Landlord's Performance. Landlord's and the City's payment of amounts due and owing by Landlord and the City pursuant to, or arising from, this Lease, shall be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose. The undertaking by the Landlord to make payments under this Lease. If applicable will not constitute a debt of the Landlord or the City within the meaning of any constitutional or statutory limitation nor a liability, or a lien or charge upon funds or property,

of the City or the Landlord beyond any fiscal year for which the City Council has appropriated moneys to make such payments for the Project. Without limitation to any rights under Section 20.2.1 (*Non-Appropriation*), any failure to appropriate by the City Council will not constitute a Landlord Event of Default under this Lease. The Parties acknowledge and agree that the City is not a party to this Agreement and shall have no legal, moral obligation or financial liability under this Lease to pay any amount due and payable by Landlord hereunder.

37.3 Public Disclosure. Tenant acknowledges that under the Virginia Freedom of Information Act, as it may be amended or modified, information and records provided to Landlord, including Tenant's Books and Records or the books and records of a Subtenant or Agent of Tenant, may be considered public records and, to the extent required by the Virginia Freedom of Information Act, will be made available to the public upon request. Landlord shall not in any way be liable or responsible for the disclosure of any such information or records, or portions thereof, if the disclosure is made pursuant to a request under the Virginia Freedom of Information Act. Without limiting the preceding provision of this Section 37.3 (*Public Disclosure*), upon Landlord's receipt of a written request from a third party pursuant to the Virginia Freedom of Information Act for such disclosure of financial information pertaining to any Sublease, Landlord shall endeavor to provide to Tenant notice of such request, and nothing herein shall be deemed to prohibit or restrict Tenant from seeking, at its sole cost, a protective order from any court of competent jurisdiction with respect to such information; provided, however, that Landlord shall have no liability whatsoever to Tenant for any failure to provide such notice to Tenant, and provided further that Tenant shall Indemnify Landlord for any costs and expenses, including Attorneys' Fees and Costs, incurred by Landlord in connection with any administrative or court proceedings related to the seeking, implementation or enforcement of any such protective order.

37.4 Commissions. Each Party hereto represents and warrants to the other that, in connection with the leasing of the Premises hereunder, the Party so representing and warranting has not dealt with any real estate agent, broker, or finder and that there is no charge, commission, fee, or other compensation due on account thereof. Landlord is not liable for any real estate commission, brokerage fee, or finder fee which may arise from this Lease, and Tenant shall Indemnify Landlord from any Losses arising out of any claim for such charge, commission, fee, or other compensation arising as a result of a breach by Tenant of the representation and warranty made by Tenant pursuant to this Section 37.4 (*Commissions*).

37.5 Construction and Interpretation.

37.5.1 Captions. This Lease includes the captions, headings, and titles appearing herein for convenience only, and such captions, headings, and titles shall not affect the construction, interpretation, or meaning of this Lease.

37.5.2 Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

37.5.3 Governing Law. All issues and questions concerning the construction, enforcement, interpretation and validity of this Lease, or the rights and obligations of Landlord and Tenant in connection with this Lease, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.

37.5.4 Lease References. Wherever reference is made to any provision, term, or matter as being “in this Lease,” “herein,” “hereof,” “hereto,” “hereunder,” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

37.5.5 Meaning of Certain Words. The use of the terms “including,” “such as,” or words of similar import, when following any general term, statement, or matter, shall not be construed to limit such term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term, or matter and shall be construed as though followed immediately by the phrase “but not limited to.” As used herein, (i) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (ii) “shall,” “will,” “must,” “agrees,” and “covenants,” are mandatory and “may” is permissive; and (iii) “or” is not exclusive, the term “including” means including, but not limited to.

37.5.6 No Presumption against Drafter. Each of the Parties has had the opportunity to have its legal counsel review this Lease on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Lease, this Lease will be construed as if drafted jointly by the Parties. Neither the form of this Lease, nor any language herein, shall be construed or interpreted in favor of or against any Party hereto as the sole drafter thereof.

37.6 Cooperation in the Event of Legal Challenge. In the event of any Legal Challenge, Landlord and Tenant and subject to Sections 14.1 (*Indemnification of Landlord*) and 35.2 (*Representations and Warranties of Landlord*), shall cooperate and coordinate with one another in the defense against such Legal Challenge.

37.7 Counterpart and Facsimiles. This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same

instrument. The Parties shall be entitled to rely upon facsimile copies or electronic copies of a Party's signature to this Lease and any instrument executed in connection therewith.

37.8 Entire Agreement. Except as otherwise expressly provided in this Lease, this Lease, including its Exhibits, contains the entire agreement between the Parties with respect to any matter mentioned in this Lease and supersedes all prior and contemporaneous agreements, negotiations, or understandings between the Parties with respect to all or any part of the subject matter mentioned herein or incidental hereto. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the provisions of this Lease.

37.9 Extensions by Landlord. Without limitation as to Tenant's rights following a Delay Event, upon the request of Tenant, Landlord may, by written instrument, extend the time for Tenant's performance of any term, covenant, or condition of this Lease or permit the curing of any default upon such terms, covenants, and conditions as Landlord determines appropriate, including but not limited to, the time within which Tenant must agree to such terms, covenants, or conditions; provided, however, that any such extension or permissive curing of any particular default will neither operate to release any of Tenant's obligations nor constitute a waiver of Landlord's rights with respect to any other term, covenant, or condition of this Lease or any other default in, or breach of, this Lease or otherwise will affect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

37.10 Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

Article 38 Dispute Resolution Provisions.

38.1 Generally.

38.1.1 All Disputes arising out of or relating to this Lease, that are not otherwise resolved by the Parties directly, must be resolved in accordance with this Article 38 (*Intellectual Property Rights*).

38.1.2 Upon the occurrence of any Dispute that is not otherwise resolved by the Parties directly:

38.1.2.1 the Parties must first use all reasonable efforts to resolve the Dispute through a Senior Representative Negotiation in accordance with Section 38.2 (*Senior Representative Negotiations*); and

38.1.2.2 if the Parties fail to achieve a resolution through a Senior Representative Negotiation, the Parties must resolve the Dispute by referring the matter to Mediation in accordance with Section 38.3 (*Mediation*).

38.2 Senior Representative Negotiations.

38.2.1 If either Party notifies the other Party of a Dispute, senior representatives of each Party (with authority to make decisions for their respective Parties) must meet and use all reasonable efforts to resolve the Dispute (“**Senior Representative Negotiations**”).

38.2.2 The Senior Representative Negotiation must commence within seven (7) Days of receipt of notification from a Party initiating a Dispute and will not exceed thirty (30) consecutive Days (or such longer period agreed by the Parties).

38.2.3 Statements, materials and information prepared for, made or presented at, or otherwise derived from a Senior Representative Negotiation (including any meeting of the senior representatives) are privileged and confidential and may not be used as evidence in any proceedings.

38.2.4 If the Senior Representative Negotiation resolves the Dispute, the Parties must record the resolution in writing.

38.3 Mediation.

38.3.1 If the parties are unable to come to a resolution through Senior Representative Negotiations, then either Party may submit such Dispute to mediation proceedings (a “**Mediation**”). Mediation is intended to assist the Parties in resolving disputes over the correct interpretation of this Lease.

38.3.2 The mediator for any Mediation shall be The McCammon Group, unless unavailable, in which case the mediator must be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven Business Days of submission of the Dispute to Mediation, the mediator must be selected by the American Arbitration Association (“**AAA**”) in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with either Party (or an Affiliate of any either Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator.

38.3.3 Each Mediation must:

38.3.3.1 be administered in accordance with the AAA’s Commercial Industry Mediation Rules and Procedures then in effect;

38.3.3.2 be held in Richmond, Virginia, unless the parties mutually agree, in writing, to the Mediation being held in a different location;

38.3.3.3 be concluded within thirty (30) Days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably having regard to the nature of the Dispute).

38.3.4 The Parties shall share the mediator's fee and any filing or administrative fees equally.

38.3.5 No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.

38.4 Forum and Venue. Any and all disputes, claims and causes of action arising out of or in connection with this Lease, or any performances made hereunder that are not otherwise resolved through Senior Representative Negotiations or Mediation, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Landlord and Tenant accept the personal jurisdiction of any court in which an action is brought pursuant to this Lease for purposes of that action or any arbitration enforcement action and waives all jurisdiction and venue-related defenses to the maintenance of such actions.

Article 39 Miscellaneous.

39.1 Intellectual Property Rights. No Party may use the intellectual property rights of the other Party without the written permission of the other Party.

39.2 Modification. This Lease may be amended, modified, or supplemented only by a written instrument signed by the representatives of Landlord and Tenant duly authorized to sign in the same manner as required for this Lease. Notwithstanding any other provision of this Lease to the contrary, the requirements of this Article 39.2 (*Modification*) that any amendment, modification, or supplement of this Lease be in writing and signed by both Landlord and Tenant may not be waived.

39.3 Recordation. Concurrently with the execution of this Lease, Landlord and Tenant shall sign a short form Memorandum of Deed of Ground Lease in a form mutually acceptable to the Parties. At the time Tenant signs the Memorandum of Deed of Ground Lease, Tenant shall deliver to Landlord a duly executed and acknowledged certificate, suitable for recordation in the Official Records and in form and content satisfactory to Landlord's General Counsel, for the purpose of evidencing in the Official Records the termination of Tenant's interest under this Lease, as the case may be. Landlord shall retain this certificate and shall be entitled, without the need for any approval or further act of Tenant, to record this certificate only upon the expiration or earlier termination of this Lease, as the case may be. After receiving this certificate from Tenant, Landlord shall record the signed Memorandum of Deed of Ground Lease in the Official Records.

39.4 Severability. If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court or administrative body, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such

provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable Law.

39.5 Survival. The following provisions will survive the expiration or early termination of this Lease: Article 14 (*Indemnification of Landlord*); Article 23 (*Tenant's Recourse Against Landlord*); Article 24 (*Limitation on Liability*); Article 29 (*Surrender of Premises & Handback Requirements*); Article 33 (*Armory Mortgages*); Article 38 (*Dispute Resolution Procedures*); the express obligations of the Parties following the termination date or expiration date and any obligations to pay amounts under this Lease; and all other provisions which by their inherent character should survive expiration or early termination of this Lease.

39.6 Successors and Assigns. This Lease is binding upon and will inure to the benefit of the successors and assigns of Landlord, Tenant, and subject to the terms and limitations in Article 33 (*Armory Mortgages*), any Armory Mortgagee. Where the terms "Landlord," "Tenant," or "Armory Mortgagee" are used in this Lease, they mean, subject to the limitations in this Agreement and include their respective successors and permitted assigns, including, as to any Armory Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Landlord as a Party or the holder of the right or obligation to give approvals or consents, if Landlord or a comparable public body which has succeeded to Landlord's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Landlord for purposes of this Lease.

39.7 Third-Party Beneficiaries. Notwithstanding any other provision of this Lease, Landlord and Tenant hereby agree that, except for the City which is a third-party beneficiary of this Lease and to the extent provided in Article 33 (*Armory Mortgages*) with regard to Armory Mortgagees: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Lease; (ii) the provisions of this Lease are not intended to be for the benefit of any individual or entity other than Landlord and Tenant; (iii) no individual or entity shall obtain any right to make any claim against Landlord or Tenant under the provisions of this Lease; and (iv) no provision of this Lease shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, Contractors, Subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Lease.

39.8 Time of Performance.

39.8.1 When Dates Expire. All performance dates, including cure dates, expire at 5:00 p.m. Eastern Time on the performance date.

39.8.2 Weekend or Holiday. When any provision of this Lease requires, either by specification of a date or by a prescribed period of time, that an act be performed

on a Saturday, Sunday, or legal holiday observed by the Commonwealth of Virginia, that act may be performed on the next Business Day that is not a Saturday, Sunday, or legal holiday observed by the Commonwealth of Virginia.

39.8.3 Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the payment of Rent and any other sums due hereunder, subject (except for provisions for the payment of Rent and any other sums due hereunder) to the provisions of Section 17.1.1 (*Delay Event*).

39.9 Transfers of Fee or Fee Armory Mortgages by Landlord. At no time during the Term of this Lease shall Landlord either (i) transfer Landlord's fee title in and to the Premises or any portion thereof to any third Person other than a government entity or (ii) grant any mortgages on Landlord's fee title in and to the Premises or any portion thereof.

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IN WITNESS WHEREOF, the Parties hereto have executed this Lease effective as of the date first above written.

LANDLORD:

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF RICHMOND, a political subdivision
of the Commonwealth of Virginia

By: _____

Name: _____

Title: _____

TENANT:

THE NH DISTRICT CORPORATION,
a Virginia corporation

By: _____

Name: _____

Title: _____

Exhibit A to Amory Lease

List of Parcels Constituting the Property

EXHIBIT A

List of Parcels Constituting the Property

A portion of tax parcel number N0000006025B

Exhibit B to Amory Lease

Legal Descriptions of Parcels Constituting the Property

EXHIBIT B

Legal Descriptions of Parcels Constituting the Property

All that certain lot, piece or parcel of land, lying and being in the City of Richmond, Virginia designated as “F-2” as depicted on that certain sheet 7 of 11 of the drawing entitled “North of Broad Redevelopment Parcel Boundary Exhibit” prepared the Department of Public Works, designated as DPW Drawing No. N-28853, dated January 5, 2019, attached to this Exhibit B, a copy of which shall be recorded with the deed of consolidation prepared by the City to create the parcel.

DESCRIPTION PARCEL F2

ALL THAT LOT OR PARCEL BEING A PORTION OF GPIN: N0000006025B
LOCATED IN THE CITY OF RICHMOND, VIRGINIA AND BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LOCATED AT THE INTERSECTION OF THE EAST LINE OF 5TH STREET AND THE NORTH LINE OF MARSHALL STREET; THENCE CONTINUING ALONG THE NORTH RIGHT-OF-WAY LINE OF THE SAID MARSHALL STREET, S53°37'05"E FOR A DISTANCE OF 311.88 FEET TO A POINT, SAID POINT BEING THE TRUE POINT AND PLACE OF BEGINNING; THENCE LEAVING THE NORTH RIGHT-OF-WAY LINE OF THE SAID MARSHALL STREET, N36°22'13"E FOR A DISTANCE OF 153.30 FEET TO A POINT; THENCE S53°37'47"E FOR A DISTANCE OF 125.98 FEET TO A POINT; THENCE S36°20'17"W FOR A DISTANCE OF 153.32 FEET TO A POINT ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MARSHALL STREET; THENCE CONTINUING ALONG THE NORTH RIGHT-OF-WAY LINE OF THE SAID MARSHALL STREET N53°37'05"W FOR A DISTANCE OF 126.08 FEET TO THE POINT AND PLACE OF BEGINNING, CONTAINING 19,322 SQUARE FEET, MORE OR LESS.

Exhibit C to Amory Lease

Armory Use and Development Criteria

EXHIBIT C

Armory Use and Development Criteria

1. **Permitted Uses of Premises.** Tenant shall use the Premises to construct, maintain, and operate the Armory Improvements in accordance with this Exhibit and the Lease as follows:

1.1 **Market Level.** Tenant shall ensure the use of the Market Level as the Market, unless Landlord approves a different use in writing.

1.2 **Second Level.** Tenant shall ensure the use of the Second Level as meeting rooms and theater space in support of the new hotel located on the adjacent property identified as Block F1 on the Master Plan (the “Hotel”), unless Landlord approves a different use in writing.³

1.3 **Ballroom Level.** Tenant shall ensure the use the Ballroom Level as the ballroom in support of the Hotel, unless Landlord approves a different use in writing.

1.4 **Hyphen.** Tenant shall ensure the use of the Hyphen as a connection with the Hotel that provides publicly accessible stairs, elevators, and restrooms, among other functions that serve the Armory Improvements.

1.5 **Alternative Uses.** Landlord will not approve a different use than prescribed by sections 1.1, 1.2, and 1.3 unless Landlord, in its sole discretion, determines that such different use is consistent with the character-defining features described in Section 2.1.

2 **Armory Improvements Defined.** “Armory Improvements” mean all Improvements on the Schedule Premises designed and constructed by Tenant to result in the rehabilitation of the Armory and the construction of the Hyphen in accordance with this Section 2 and its subparts.

2.1 **Generally.** Tenant shall contract with an architect, licensed by the Commonwealth of Virginia as an architect, who, in the reasonable opinion of Landlord, specializes in historic preservation to serve as the architect overseeing the design and construction of the Armory Improvements. Tenant shall use its best efforts to rehabilitate the Armory in a manner that preserves the Armory’s character-defining features, i.e., the distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize the Armory, including, in particular, its exterior masonry and fenestration, the architectural embellishment on its west and south elevations, the first floor arcade, the vast open interior space of the third floor drill hall with its exposed steel roof trusses, and the west side spectator gallery.

³ NTD: Club level changed to Second level and changed from office to theater space. City to confirm.

2.2 **Exterior Features.** Tenant shall (i) demolish and remove the glass “crystal palace” and the ground level structure on the north elevation, (ii) restore, and make visible from the pedestrian plaza, the west elevation, (iii) restore the East Marshall Street wainscoting and exterior arcade, and (iv) rehabilitate the North 6th Street arcade by constructing a new wall aligned with the original arcade.

2.3 **Exterior Maintenance.** Tenant shall (i) repair all damaged brick, (ii) tuckpoint all brick where needed with appropriate mortar and matching mortar joints, (iii) replace missing or broken bricks with matching brick, (iv) ensure that brickwork remains unpainted, and (v) undertake surface cleaning of exterior masonry using the gentlest effective means.

2.4 **Windows.** Tenant shall (i) repair or replace damaged windows to match original windows and trim and (ii) restore windows to areas where they have been removed and filled in with masonry.

2.5 **Ballroom Level Work.** Tenant shall (i) repair and restore exposed steel trusses, (ii) maintain the expansive open quality of the Ballroom Level, including the open mezzanine on the west side, (iii) preserve the existing murals in place behind a protective partition, curtain, or screen, and (iv) review the feasibility of installing, and, if feasible, install, wood floors consistent with the original floor.

2.6 **Accessibility and Building Systems.** Tenant shall (i) install new vertical circulation (i.e., stairs and elevators) to meet current accessibility standards under Laws, (ii) preserve and reuse (a) the historic stairs linking the Second Level and the Ballroom Level and (b) the windows that light these stairs, including the windows in the turrets, and (iii) upgrade mechanical, electrical, and plumbing systems to comply with Laws and current standards and expectations.

2.7 **Historical Markers, Plaques, or Signs.** Tenant shall provide space for one or more markers, plaques, or signs in a highly visible public area or areas in order to inform the public about the Armory’s significance and the history of the Richmond Light Infantry Blues.

2.8 **Connection to Hotel.**

2.8.1 **Hyphen.** Tenant shall construct a two-story Hyphen connecting the Armory Improvements to the Hotel that meets all requirements of this Section 2.8. Tenant shall ensure that [(i) the Hyphen is constructed in a visually compatible manner but with materials or manner which differentiate it from the Armory,]⁴ (ii) the Hyphen spans over a driveway, or another unenclosed ground level space, situated between the Armory Improvements and the Hotel, (iii) the sides of the Hyphen are set back a minimum of 30 feet from the northwest corner of the Armory Improvements and a minimum of ten feet from the northeast corner of the

⁴ NTD: Language is new from the prior draft of the Armory schedule.

Armory, (iv) the Hyphen allows covered passage between the Armory Improvements and the Hotel, (v) the Hyphen creates a buffer between the Armory Improvements and the Hotel's tower [and (vi) the Hyphen contains appropriate corridors, stairs, and elevators, as well as public toilets and other service functions]⁵.

2.8.2 **Setback from Hotel.** Tenant shall ensure that the Hotel's tower is set back from the Armory Improvements a minimum of 80 feet and that the Hotel's three-story base will be set back from the Armory Improvements a minimum of 30 feet in a manner that provides a clear separation of old and new building forms.

⁵ **NTD:** Struck from NHDC draft.

Exhibit D to Amory Lease

Known Site Conditions

Exhibit E to Amory Lease

Morals Clause

EXHIBIT E

Morals Clause

Any advertising, signage or promotional material affixed or attached to the Premises or the Improvements on or within the Project shall not fall within any one or more of the following categories:

1. Is false, misleading, or deceptive.
2. Promotes unlawful or illegal goods, services, or activities, or involves other unlawful conduct.
3. Falsely implies or declares an endorsement by the City or Landlord of any service, product, or point of view.
4. Encourages or depicts illegal or unsafe behavior.
5. Depicts or describes in a patently offensive manner sexual or excretory activity so as to satisfy the definition of obscene material under applicable Law.
6. Contains an image of a person who appears to be a minor in sexually suggestive dress, pose, or context.
7. Contains material the display of which Landlord reasonably foresees would imminently incite or provoke violence or other immediate breach of the peace, and so harm, disrupt, or interfere with safe, efficient, and orderly operations of the Armory or the City.
8. Contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, Landlord will determine whether a reasonably prudent person, knowledgeable of Richmond, VA and using prevailing community standards, would believe that the advertisement contains material that is abusive to, or debases the dignity of, an individual or group of individuals.
9. Contains sexually explicit material that appeals to the prurient interest in sex or is so violent, frightening, or otherwise disturbing as to reasonably be deemed harmful to minors.
10. Promotes an escort service or sexually oriented business.

Exhibit F to Amory Lease

Form of Subcontractor Direct Agreement

EXHIBIT F

Form of Subcontractor Direct Agreement

THIS DIRECT AGREEMENT (this “**Agreement**”) is made on [•], 20[•]:

BETWEEN:

- (1) [•] [a [•]/an [unincorporated joint venture/other] (the “**Construction Contractor**”), [between [•] and [•] (each a “**Construction Contractor Member**”)]¹;
- (2) [•], a [•] (the “**Tenant**”),
- (3) The **ECONOMIC DEVELOPMENT LANDLORD OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (the “**Landlord**”); [and
- (4) [•] an [•] corporation (the “**Acceptable Guarantor[s]**”²);]

collectively, the “**Parties**”.

RECITALS:

- (A) By the Deed of Ground Lease (Arena) relating to the Navy Hill Redevelopment Project, dated [•], between the Landlord and the Tenant (the “**Ground Lease**”), the Landlord has appointed the **Alternative Uses**. Tenant to carry out the Work.
- (B) By a [sublease/construction/operations, maintenance and concessions] contract between the Tenant and the Construction Contractor dated [•] (the “**Construction Contract**”), the Tenant has appointed the Construction Contractor to carry out the Construction Contractor Work in relation to the Project.
- (C) It is a condition precedent to the effectiveness of the Ground Lease that this Agreement be executed.
- [(D) Each of the Acceptable Guarantor[s] has guaranteed the obligations of the Construction Contractor under the Construction Contract pursuant to guarantees in favor of the Tenant dated [•] (the “**Construction Parent Guarantee**”).]

THE PARTIES AGREE as follows:

¹ For inclusion if the Subtenant/Construction Contractor/OM&C Contractor is a joint venture. All instances of language relating to “[Subtenant/Construction Contractor/OM&C Contractor] Member” in brackets should be deleted if the Subtenant/Construction Contractor/OM&C Contractor is not a joint venture.

² For inclusion if there are multiple Acceptable Guarantors. All instances of such bracketed language should be conformed to match the number of Acceptable Guarantors.

1. **INTERPRETATION**

1.1 **Terms defined in the Ground Lease**

Unless expressly defined otherwise in this Agreement, any defined term in this Agreement will have the same meaning given to such term in the Construction Contract.³ In addition: “**Construction Work**” means all Construction Work and other obligations to be performed by the Construction Contractor under the Construction Contract.

1.2 **Interpretation**

The rules of interpretation set out in Section 37.5 (*Construction and Interpretation*) of the Ground Lease will apply to this Agreement.

2. **THE CONSTRUCTION CONTRACTOR’S WARRANTY AND LIABILITY**

2.1 **Warranty**

The Construction Contractor warrants to the Landlord that:

- (a) it has carried out and performed and will continue to carry out and perform its obligations under the Construction Contract in accordance with the Construction Contract; and
- (b) it has exercised and will continue to exercise in the performance of those obligations the reasonable skill, care and diligence to be expected of a properly qualified member of its profession experienced in carrying out obligations such as its duties under the Construction Contract in relation to works of similar scope, nature and complexity to the Construction Work.

2.2 **Defense and Liability**

In any action or proceedings by the Landlord pursuant to Section 2.1 (*Warranty*):

- (a) the Construction Contractor may raise any defense (except for set off or counterclaim) as it would have against the Tenant under the Construction Contract; and
- (b) the Construction Contractor’s liability to the Landlord will be no greater or for longer duration than it would have been if the Landlord had been a party to the Construction Contract as joint employer.

³ Subject to review of the [Construction/OM&C] Contract.

3. **INTELLECTUAL PROPERTY AND DOCUMENTS**

- 3.1 To the extent that any data related to the Project (“**Project Data**”) is in the ownership or possession of the Construction Contractor or any intellectual property is owned or licensable by the Construction Contractor, the Construction Contractor undertakes (for the benefit of the Landlord) to comply with the terms of Article 38 (*Intellectual Property*) of the Ground Lease as if such terms were incorporated into this Agreement and the Construction Contractor was the Tenant.
- 3.2 The Construction Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Landlord or those authorized by it access to the Project Data relating to the Construction Work and to provide copies (including copy negatives and CAD disks) thereof at the Landlord’s expense.
- 3.3 The Construction Contractor warrants to the Landlord that it has used the standard of skill, care and diligence as set out in Section 2.1 (Warranty) to see that the Project Data relating to the Construction Work (save to the extent duly appointed subcontractors have been used to prepare the same) is its own original work and that in any event their use in connection with the Construction Work will not infringe the rights of any third party.

4. **CURE RIGHTS AND STEP-IN RIGHTS IN FAVOR OF THE LANDLORD**

4.1 **Notice of Termination and Cure Period**

Each of the Construction Contractor[and the Acceptable Guarantor[s]] shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated (as relevant) the Construction Contract and the Construction Parent Guarantee, or its engagement under the Construction Contract and the Construction Parent Guarantee, or discontinue or suspend the performance of any duties or obligations under the Construction Contract and the Construction Parent Guarantee (including the Construction Contractor’s obligations with respect to the Performance Security) without first giving to the Landlord not less than seventy (70) days’ prior written notice specifying the Construction Contractor’s[and the Acceptable Guarantor[’s/s’]] grounds for terminating or treating as terminated or repudiated (as relevant) the Construction Contract and the Construction Parent Guarantee, or its engagement under the Construction Contract and the Construction Parent Guarantee or discontinuing or suspending its performance and stating the amount (if any) of monies outstanding under the Construction Contract and the Construction Parent Guarantee.

4.2 **Cure Right**

- (a) Within the period of notice stated in Section 4.1 (Notice of Termination and Cure Period):

- (i) the Landlord may give written notice to the Construction Contractor[and Acceptable Guarantor[s]] that the Landlord will become the Tenant under the Construction Contract and the Construction Parent Guarantee to the exclusion of the Tenant and[each of the Acceptable Guarantor[s] and] the Construction Contractor will admit that the Landlord is Tenant under the Construction Contract[and the Construction Parent Guarantee, respectively,] and each of the Construction Contract[and the Construction Parent Guarantee] will be and remain in full force and effect despite any of the said grounds;
 - (ii) if the Landlord has given notice under Section 4.2(a)(i) or Section 4.2(c), the Landlord shall accept liability for the Tenant's obligations under the Construction Contract and will promptly remedy any outstanding breach by the Tenant which is capable of remedy by the Landlord; and
 - (iii) if the Landlord has given notice under Section 4.2(a)(i) or Section 4.2(c), the Landlord will from the service of such notice become responsible for all sums properly payable to the Construction Contractor under the Construction Contract accruing due before and after the service of such notice but the Landlord will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Tenant under the Construction Contract.
- (b) Despite anything contained in this Agreement and despite any payments which may be made by the Landlord to the Construction Contractor, the Landlord will not be under any obligation to the Construction Contractor[or the Acceptable Guarantor[s]] nor will the Construction Contractor[or the Acceptable Guarantor[s]] have any claim or cause of action against the Landlord unless and until the Landlord has given written notice to the Construction Contractor[and the Acceptable Guarantor[s]] pursuant to Section 4.2(a)(i) or Section 4.2(c).
- (c) [Each of the Acceptable Guarantor[s] and] [T/t]he Construction Contractor further covenants with the Landlord that if the Ground Lease is terminated by the Landlord, it will, if requested by the Landlord by notice in writing and subject to Section 4.2(a)(ii) and Section 4.2(a)(iii), accept the instructions of the Landlord to the exclusion of the Tenant with respect to its duties under the Construction Contract or the Construction Parent Guarantee, as the case may be, upon the terms and conditions of the Construction Contract or the Construction Parent Guarantee and will if so requested in writing enter into a novation agreement where the Landlord is substituted for the Tenant under the Construction Contract and the Construction Parent Guarantee.

- (d) The Tenant acknowledges that[each of the Acceptable Guarantor[s] and] the Construction Contractor will be entitled to rely on a notice given to it by the Landlord under Section 4.2(c) as conclusive evidence that the Ground Lease has been terminated by the Landlord.

5. **[LIABILITY OF CONSTRUCTION CONTRACTOR MEMBERS**

References in this Agreement to the “Construction Contractor” will be deemed to include reference to each present and future Construction Contractor Member, and the liability of each Construction Contractor Member under this Agreement will be deemed to be joint and several.]

6. **NOTICES**

6.1 **Notices under this Agreement will be in writing and:**

- (a) delivered personally;
- (b) sent by certified mail, return receipt requested;
- (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or
- (d) sent by e-mail communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such person):
 - (i) All notices, correspondence and other communications to Construction Contractor will be delivered to the following address:

[(*Construction/OM&C*) Contractor]

Address: [•]

Attention: [•]

Email: [•]

Telephone: [•]

- (ii) All notices, correspondence and other communications to the Tenant will be delivered to the following address or as otherwise directed by the Landlord (as defined in the Ground Lease):

[(*Construction/OM&C*) Contractor]

Address: [•]

Attention: [•]
Email: [•]
Telephone: [•]

- (iii) All notices, correspondence and other communications to the Landlord will be marked as regarding the Project and will be delivered to the following address or as otherwise directed by the Landlord (as defined in the Ground Lease):

Economic Development Authority
[•]
Richmond, VA [•]

Attention: [Name], [Title]
Email: [•]
Telephone: [•]

- (iv) [All notices, correspondence and other communications to Acceptable Guarantor[s] will be delivered to the following address:

[Acceptable Guarantor]
Address [•]

Attention: [•]
Email: [•]
Telephone: [•]

- (v) All notices, correspondence and other communications to Acceptable Guarantor[s] will be delivered to the following address:

[Acceptable Guarantor]
Address [•]
[•]

Attention: [•]
Email: [•]
Telephone: [•]

- 6.2 Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing notices received after 5:00 p.m. Eastern Time will be deemed received on the first business day following delivery.

7. **ASSIGNMENT**

No Party to this Agreement may assign or transfer any part of its rights or obligations this Agreement without the prior written consent of the other Parties.

8. **LANDLORD'S REMEDIES**

The rights and benefits conferred upon the Landlord by this Agreement are in addition to any other rights and remedies it may have against the Construction Contractor, including any remedies in negligence.

9. **INSPECTION OF DOCUMENTS**

[Each of the Acceptable Guarantor['s/s']] and] [T/t]he Construction Contractor's and liabilities under this Agreement will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Data or attendance at Project meetings or other enquiry or inspection which the Landlord may make or procure to be made for its benefit or on its behalf.

10. **GOVERNING LAW AND JURISDICTION**

10.1 **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of Virginia.

10.2 **Submission to Jurisdiction**

The Parties consent to the jurisdiction of any court of Virginia and any federal courts in Virginia, waiving any claim or defense that such forum is not convenient or proper. Each of the Tenant, [and] the Construction Contractor[and the Acceptable Guarantor[s]] agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by applicable Law.

10.3 **Waiver of Jury Trial**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, THE PROVISIONS OF THIS SECTION 10.3 SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

11. **GENERAL PROVISIONS**

11.1 Third Party Rights

This Agreement is only enforceable by the original parties to it and by their successors in title and permitted assignees.

11.2 Severability

If any term or provision of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby. In addition, the Parties shall endeavor in good-faith negotiations to replace any such invalid, illegal, or unenforceable provisions with valid, legal, and enforceable provisions with the same or comparable economic effect and benefit as such invalid, illegal, or unenforceable provisions.

11.3 Inconsistency with Other Documents

If this Agreement is inconsistent with the Construction Contract or Construction Parent Guarantee, this Agreement prevails.

11.4 Entire Agreement

This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

11.5 Amendments

This Agreement can only be amended or replaced by another document executed by the Parties.

11.6 Waivers

- (a) A waiver of any term, provision or condition of, or consent granted under, this Agreement will be effective only if given in writing and signed by the waiving or consenting Party and then only in the instance and for the purpose for which it is given.
- (b) No failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- (c) No breach of any provision of this Agreement will be waived or discharged except with the express written consent of the other Party.

11.7 Counterparts or Electronic Execution

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different Parties in separate counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Any copies of this Agreement or signatures on this Agreement delivered by email or other electronic means will, for all purposes, be deemed to be originals.

The parties are signing this Agreement on the date stated in the introductory clause.

[Signature Pages to Follow]

SIGNATORIES

Landlord

Signed by **ECONOMIC DEVELOPMENT**)
AUTHORITY OF THE CITY OF RICHMOND)
)
)

Construction Contractor

Signed by [•])
for and on behalf of [])
)
)

[Acceptable Guarantor[s]]

Signed by [•])
for and on behalf of [•]])
)
)

Tenant

Signed by [•])
for and on behalf of [•])
)
)

Exhibit G to Amory Lease

Form of Parent Guaranty

EXHIBIT G

Form of Parent Guaranty

This **GUARANTY** (this “Guaranty”) is made as of [●], by [●], a [●] (the “Guarantor”), to the NH District Corporation (the “Developer”), an agency of the Commonwealth of Virginia, with respect to the obligations of [*Name of Construction Contractor*], a [●] (the “[Construction/OM&C]¹ Contractor”), pursuant to that certain Ground Lease for the Navy Hill Redevelopment Project, dated as of [●], by and between the Developer and the Construction Contractor (as amended, altered, varied or supplemented, the “Ground Lease”). The Ground Lease is hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Ground Lease. The Guarantor is an Affiliate of the Construction Contractor. The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guaranty and that such benefits constitute adequate consideration therefor.

This Guaranty is provided pursuant to Section 7.6.2 of the Ground Lease.

1. GUARANTY

1.1. Guaranty. The Guarantor guarantees to the Developer, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Construction Contractor now or hereafter arising under the Ground Lease, including but not limited to all obligations and liabilities of the Construction Contractor under any and all representations and warranties made or given by the Construction Contractor under the Ground Lease, under any and all liquidated or stipulated damage provisions of the Construction Contractor and under any and all indemnities given by the Construction Contractor under the Ground Lease (collectively the “Guaranteed Obligations”) will be paid promptly and satisfied in full when due and without offset, and performed and completed when required. This is a continuing guaranty of payment and performance of the Guaranteed Obligations.

1.2. Obligations. Except as otherwise provided in Section 4.6, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the Guaranteed Obligations and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the Ground Lease.

¹ All instances of this term to be conformed to either the Construction Contract or OM&C Contractor, as applicable.
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1.3. No Exoneration. Except as otherwise provided in Section 4.6 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

1.3.1. any failure of the Construction Contractor to retain or preserve any rights against any person, except to the extent the Construction Contractor is required to do so under the terms of the Ground Lease and such failure prejudices Guarantor;

1.3.2. the lack of prior enforcement by the Construction Contractor of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Construction Contractor, except to the extent the Construction Contractor is required to do so under the terms of the Ground Lease and such failure prejudices Guarantor;

1.3.3. the lack of authority or standing of the Construction Contractor or the dissolution of the Guarantor or the Construction Contractor;

1.3.4. with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the Ground Lease, any rights or remedies of the Developer (including rights of offset) against the Construction Contractor, or any bond, letter of credit, other guaranty, instrument, document, collateral security or other property given or available to the Developer to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses relating to the Guaranteed Obligations that may be available to the Construction Contractor based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Developer, except defenses available to the Construction Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors and those expressly waived under this Guaranty;

1.3.5. the extension of the time for payment of any amount owing or payable under the Ground Lease or of the time for performance or completion of any Guaranteed Obligation; *provided, however*, that to the extent the Developer grants the Construction Contractor an extension of time under the Ground Lease for performance of any of the obligations of the Construction Contractor thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

1.3.6. the existence now or hereafter of any other guaranty or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

1.3.7. the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

1.3.8. the taking of any action or the failure to take any action simply because it would constitute a legal or equitable defense, release or discharge of a surety;

1.3.9. any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereafter initiated by or against the Construction Contractor[or any of its members];²

1.3.10. any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Construction Contractor[or any of its members or otherwise];

1.3.11. the rejection of the Ground Lease in connection with the insolvency, reorganization or bankruptcy of the Construction Contractor[or any of its members];

1.3.12. an impairment of or limitation on damages otherwise due from the Construction Contractor by operation of law as a result of any insolvency, reorganization or bankruptcy proceeding by or against the Construction Contractor or any of its members;

1.3.13. failure by the Developer to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of the Construction Contractor[, any of its members,] the Guarantor or any other guarantor;

1.3.14. any merger, consolidation or other reorganization to which the Construction Contractor or the Guarantor is a party;

1.3.15. any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Construction Contractor, or action by the Guarantor or its Affiliates which results in discontinuation or interruption in the business relations of the Construction Contractor with the Guarantor (unless another

² **Note to Draft:** To be included if the Construction Contractor is structured as a joint venture or partnership.
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entity acceptable to the Developer, in the Developer's sole discretion, assumes the Guarantor's liability hereunder); or

1.3.16. the failure of the Developer to assert any claim or demand, bring any action or exhaust its remedies against the Construction Contractor or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods.

1.4. Enforcement of the Ground Lease and Guaranteed Obligations.

1.4.1. Nothing contained herein shall prevent or limit the Developer from pursuing any of its rights and remedies under the Ground Lease. The Developer may apply any available moneys, property or security in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as it may elect, and may generally deal with the Construction Contractor, the Guaranteed Obligations, such security and property as the Developer may see fit. Notwithstanding the foregoing, the Guarantor shall remain bound by this Guaranty.

1.4.2. In the event that Construction Contractor defaults on any of the Guaranteed Obligations, the Guarantor shall be obligated to undertake all curative actions (which may include payments relating to the Guaranteed Obligations and/or performance of the Guaranteed Obligations) within fourteen (14) days (or immediately, in the case of emergency conditions) following notice under Section 4.6 below (to the extent not prohibited thereunder). Thereafter, the Guarantor shall use commercially reasonable efforts to effectuate such curative actions without further notice. If the Guarantor fails to undertake such curative actions in a timely manner, the Developer shall have the right to perform or have performed by third parties the necessary curative actions, and the costs thereof shall be borne by the Guarantor. Any payment by the Guarantor to the Developer shall be in U.S. dollars.

1.4.3. The Developer may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Construction Contractor and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit the Developer from exercising its rights against the Guarantor, the Construction Contractor, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment relating to or performance of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally. The Developer may proceed against the Guarantor from time to time as it sees fit in its sole and absolute discretion; *provided, however*, the Developer shall not be entitled to enforce its rights and claims under this Guaranty for a breach of the Guaranteed Obligations to the extent that it has already received

payment or discharge or has otherwise been compensated in respect of the same breach of Guaranteed Obligations, including through insurance proceeds or call of any other security that the Developer may hold under the Ground Lease.

2. REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties. The Guarantor hereby represents and warrants, which shall be continuing representations and warranties until the expiration of the Guarantor's obligations under this Guaranty, that:

2.1.1. Consents. Consent of the Construction Contractor to any modification or amendment of the Ground Lease to which it is a party constitutes knowledge thereof and consent thereto by the Guarantor;

2.1.2. Organization and Existence. The Construction Contractor is a [●] duly organized, validly existing and in good standing under the laws of its state of formation. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of [●];

2.1.3. Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guaranty, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

2.1.4. Authorization and Enforceability. This Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to the Guarantor, and to general principles of equity;

2.1.5. No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guaranty;

2.1.6. No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guaranty, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, regulations and ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws or equivalent governing documents, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties are bound, or any indenture, mortgage

or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

2.1.7. No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission, board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse effect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder;

2.1.8. Contract. The Guarantor is fully aware of and consents to the terms and conditions of the Ground Lease;

2.1.9. Financial Statements. All financial statements and data that have been given to the Developer by the Guarantor with respect to the Guarantor: (i) are complete and correct in all material respects as of the date given; (ii) accurately present in all material respects the financial condition of the Guarantor as of the date thereof; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby;

2.1.10. No Adverse Change. There has been no material adverse change in the financial condition of the Guarantor since the date of the most recent financial statements given to the Developer with respect to the Guarantor;

2.1.11. No Default. The Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which the Guarantor is a party, which default may materially and adversely affect the Guarantor's ability to fulfill its obligations hereunder;

2.1.12. Accuracy of Information. All other reports, papers and written data and information given to the Developer by the Guarantor with respect to the Guarantor are accurate and correct in all material respects and complete; and

2.1.13. Notice of Change. The Guarantor shall advise the Developer in writing of any material adverse change in the business or financial condition of the Guarantor and promptly furnish to the Developer such information about the financial condition of the Guarantor as the Developer shall reasonably request.

3. WAIVERS, SUBROGATION AND SUBORDINATION

3.1. Waivers.

3.1.1. The Guarantor hereby unconditionally waives:

- 3.1.1.1. notice of acceptance of this Guaranty or of the intention to act in reliance hereon and of reliance hereon;
- 3.1.1.2. notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation;
- 3.1.1.3. demand on the Guarantor in the event of default of the Construction Contractor under the Ground Lease (but not the giving of notice to the extent required in Section 4.6 below);
- 3.1.1.4. any invalidity of the Ground Lease due to lack of proper authorization of or a defect in execution thereof by the Construction Contractor, its purported representatives or agents;
- 3.1.1.5. demand for payment or performance, presentment, protest and notice of nonpayment or dishonor to the Guarantor respecting any Guaranteed Obligation;
- 3.1.1.6. any right of the Guarantor to receive notices to the Construction Contractor to which the Guarantor might otherwise be entitled except notice to the extent required in Section 4.6 below;
- 3.1.1.7. any demand for payment hereunder (but not the giving of notice to the extent required in Section 4.6 below); and
- 3.1.1.8. any duty on the part of the Developer to disclose to the Guarantor any facts the Developer may now or hereafter know with regard to the Construction Contractor.

3.1.2. The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.3.2 above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guaranty shall not in any way affect the liability of the Guarantor hereunder.

3.1.3. The Guarantor hereby waives, as against the Developer or any person claiming under the Developer, all rights and benefits which might accrue to the Guarantor by reason of any bankruptcy, arrangement, reorganization or similar

proceedings by or against the Construction Contractor and agrees that its obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Construction Contractor that may result from any such proceedings.

3.1.4. Until the Construction Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Construction Contractor.

3.2. Subrogation. Until the Construction Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not (absent the Developer's prior written consent) claim or enforce any right of subrogation, reimbursement or indemnity against the Construction Contractor, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guarantee.

3.3. Subordination.

3.3.1. All existing or future indebtedness of the Construction Contractor to the Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Construction Contractor shall be in default in the performance or payment of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by the Construction Contractor to the Guarantor without prior written notice to the Developer.

3.3.2. In the event that the Developer provides written consent pursuant to Section 3.2, the Guarantor shall file all claims against the Construction Contractor in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Construction Contractor to the Guarantor, and shall have assigned to the Developer all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, the Developer is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the discretion of the Developer, the Developer is authorized to assign the claim to, and cause proof of claim to be filed in the name of the Developer or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Developer or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the Developer all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations

covered hereby, the Developer shall pay the amount of the excess to the party determined by it to be entitled thereto.

4. MISCELLANEOUS

4.1. Enforcement of Guaranty.

4.1.1. The terms and provisions of this Guaranty shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia.

4.1.2. No supplement, amendment, modification, waiver or termination of this Guaranty shall be binding unless executed in writing and duly signed by the Guarantor and the Developer. No waiver of any of the provisions of this Guaranty shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Developer to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

4.1.3. All disputes between the Developer and the Guarantor arising under or relating to this Guaranty or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, and any appellate court from any thereof, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guaranty. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.2 below. Nothing in this section shall affect the right of the Developer or to serve legal process in any other manner permitted by law.

4.1.4. The rights of the Developer hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

4.1.5. The Developer acknowledges and agrees that this Guaranty does not and is not intended to impose, in the event the Guaranty is called upon, any greater obligations upon the Guarantor than are imposed upon the Construction Contractor under the Ground Lease, other than with respect to the Guarantor's

obligation hereunder to pay the Developer for its reasonable costs and expenses of enforcing this Guaranty.

4.1.6. The Guarantor shall pay to the Developer all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) it incurs by reason of any permitted enforcement of its rights hereunder, *provided* that it is the prevailing party with respect to a substantial portion of its claim.

4.1.7. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTY.

4.1.8. Notwithstanding anything to the contrary, if at any time payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned upon bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law, the Guarantor shall continue to remain liable therefor.

4.2. Notices. All notices, demands or other communications under this Guaranty shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guaranty), and shall be deemed to have been duly given when actually received by the addressee or when served:

4.2.1. personally;

4.2.2. by independent, reputable, overnight commercial courier; or

4.2.3. by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Authority:

Chairman
Economic Development Authority of the City of Richmond, Virginia
2401 West Leigh Street
Richmond, Virginia 23230

With a copy to:

Economic Development Authority of the City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219
General Counsel

With a copy to:

The City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219
Chief Administrative Officer

If to the Guarantor:

[•]

[•]

Attention: [•]

4.3. Severability. If any provision of this Guaranty shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guaranty shall be construed as if such invalid or unenforceable provision had never been contained herein.

4.4. Assignment. Neither this Guaranty nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of the Developer. The Developer may assign this Guaranty, with prior notice but without need for the consent of Guarantor, but only together with an assignment of the Ground Lease. This Guaranty and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of the Developer and its successors and assigns.

4.5. No Third Party Beneficiaries. Nothing in this Guaranty shall entitle any person other than the Developer and its successors and assigns to any claim, cause or action, remedy or right of any kind.

4.6. Certain Rights, Duties, Obligations and Defenses. Notwithstanding Sections 1. 1, 1. 2, 1. 3, 3. 1 and 4. 8 hereof, the Guarantor shall have all rights, duties, obligations and defenses available to the Construction Contractor under the Ground Lease relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Developer, failure to give notice of default to the Construction Contractor to the extent required by the Ground Lease (except to the extent the giving of notice is

precluded by bankruptcy or other applicable law), interpretation or performance of terms and conditions of the Ground Lease, or other defenses available to the Construction Contractor under the Ground Lease except those expressly waived (otherwise than in Section 1.2) in this Guaranty and defenses available to the Construction Contractor as a result of any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. The Guarantor's duties under Section 1.4 above shall be subject to no prior notice or demand except for fourteen (14) days' prior written notice to the Guarantor (except to the extent the giving of notice to the Guarantor is precluded by bankruptcy or other applicable law affecting the Guarantor) in the case of any demand relative to any Guaranteed Obligation not paid or performed when due under the Ground Lease setting forth the default of the Construction Contractor.

4.7. Mergers, etc. The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person(s) or group of affiliated persons, unless:

4.7.1. in case of a merger, the Guarantor shall be the continuing corporation; or

4.7.2. the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person(s) (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Developer.

Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

4.8. Survival. The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the Ground Lease or the Construction Contractor's rights thereunder due to default by the Construction Contractor thereunder; *provided, however*, that for the avoidance of doubt, such obligations and liabilities are only in respect of the Guaranteed Obligations.

4.9. Headings. The Article and Section headings in this Guaranty are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

4.10. Counterparts. This Guaranty may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

4.11. Entire Agreement. This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to the Developer such other and further instruments as may be reasonably required by the Developer to effectuate the intent and purpose hereof.

[signature page follows.]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed as of the day and year first above written by its duly authorized officer.

[●],
a [●]

By: _____
Name: _____
Title: _____

Receipt of this Guaranty is hereby acknowledged and accepted effective as of the [●].

**THE ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF RICHMOND,
VIRGINIA,**
a political subdivision of the Commonwealth of
Virginia

By: _____
[Name]
[Title]

Exhibit H to Amory Lease

Form of Performance Bond and **Payment Bond**

EXHIBIT H

Form of Performance Bond and Payment Bond

PERFORMANCE BOND

BOND NO. _____

PENAL SUM: \$[*Construction Contract Price*]

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the NH District Corporation ("Owner") has awarded to [●], a [●] duly organized and existing under the laws of the State of [●] ("Construction Contractor"), a Construction Contract ("Contract") for the Navy Hill Redevelopment Project ("Project") dated [●]; and

WHEREAS, one of the conditions of the Contract is that Construction Contractor provide this duly executed instrument ("Bond").

NOW THEREFORE, We, the undersigned Construction Contractor and [●], a corporation duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia ("Surety"), are held and firmly bound unto Owner, as obligee, and its successors and assigns in the sum of [*100 % of Construction Contract Price*] (\$●), lawful money of the United States of America, for the payment of which, well and truly be made to Owner, Construction Contractor and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. [Any reference to the "Surety" in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.]

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Construction Contractor shall at all times promptly, and faithfully perform the Contract and any alteration in or addition to the obligations of Construction Contractor arising thereunder in strict accordance with the terms and conditions of the Contract, including the matter or infringement, if any, of patents or other proprietary rights, and all guarantees and warranties, including the guarantee and warranty periods, established by the Contract, and comply with all of the covenants therein contained, in the manner and within the times provided in the Contract, and

shall fully indemnify and save harmless Owner from all costs and damages which it may suffer by reason or failure so to do, and shall fully reimburse and repay Owner all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then Surety's obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. This Bond shall cover the cost to perform all the obligations of Construction Contractor arising out of or required under the Contract, and the obligations covered by this Bond specifically include Construction Contractor's liability for liquidated damages as specified in the Contract.

4. Whenever Construction Contractor shall be, and is declared by Owner to be in default under the Contract, the Surety shall within thirty (30) days of receipt of a letter from Owner in the form set forth in Schedule G-1:

- (a) remedy such default; or
- (b) undertake completion of the Contract itself;
- (c) tender to Owner a proposed contract for completion of the Contract by a contractor acceptable to Owner, secured by performance and payment bonds issued by a qualified surety, combined with payment to Owner of the amount of damages in excess of the remaining Contract balance incurred by Owner as a result of the default, including costs of completion; or
- (d) waive the Surety's right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, make payment of the full penal sum of the bond to Owner.

5. In the event that Surety disputes its liability under this Bond, which includes any allegations of fraud, such dispute shall be determined in the first instance in accordance with the dispute resolution process ("DRP") attached hereto as Schedule G-2. If Surety fails to make an election within the thirty (30) days set forth in paragraph 4 of this Bond, then the claim shall be deemed to be in dispute for purposes of this paragraph. A Decision, as defined in Schedule G-2, shall be rendered within thirty (30) days of the Adjudication Commencement Date, or as otherwise extended pursuant to the DRP. The Decision shall be binding on the Surety, Construction Contractor, and Owner as to their respective rights and obligations under this Bond but subject to each party's right to commence a de novo appeal of the Decision to a court of competent jurisdiction at any time. The parties shall immediately begin to comply with the Decision and the terms of this Bond until the Final Completion Date under the Contract notwithstanding of, and during, any appeal de novo of the Decision and unless or until such time as a court of competent

jurisdiction issues a final order or ruling vacating or modifying the Decision, either in whole or in part, at the conclusion of any de novo appeal of the Decision (the “Obligation to Comply with the Decision”). Surety’s Obligation to Comply with the Decision is limited by the penal sum of the Bond.

6. The parties acknowledge that the Obligation to Comply with the Decision is of the essence of the Bond, and the parties agree that Surety’s failure to fulfill its Obligation to Comply with the Decision will cause irreparable harm to Owner and Construction Contractor. Accordingly, Surety waives and releases any right it may have to initiate any action in court seeking a stay of its obligations arising pursuant to the Decision or seeking a stay of enforcement of the Decision. Surety’s only recourse to court processes in connection with the Decision is to file for a de novo appeal of the Decision while continuing to fulfill its Obligation to Comply with the Decision. In any such de novo appeal or in any action seeking enforcement of the Decision, the Surety (a) waives any right to file for an interim stay of its obligations arising pursuant to the Decision or to seek a stay of enforcement of the Decision, (b) waives any right to object to or contest an action brought to enforce specific performance of Surety’s obligations arising pursuant to the Decision and waives all defenses in such an action, and (c) consents to an order or ruling directing and requiring Surety to perform its obligations arising pursuant to the Decision, and that an action for such an order or ruling may be sought on an expedited (emergency) basis under the rules of the court. The parties’ Obligation to Comply with the Decision does not alter any party’s right to pursue a de novo appeal of the Decision in a court of competent jurisdiction.

7. On the day following the Final Completion Date (“Step-Down Date”), the Penal Sum of [**100 % of Construction Contract Price**] (\$●) shall automatically be reduced to [●]¹ (\$●), with the understanding that such reduced Penal Sum shall only be applicable to any claims submitted, or suits, or actions brought, after the Step-Down Date. For the avoidance of doubt, the entire Penal Sum of [**100 % of Construction Contract Price**] (\$●) is subject to any claims submitted, or suits or actions brought, against the Bond prior to the Step-Down Date; *provided, however*, that notwithstanding anything to the contrary herein, Surety’s aggregate liability hereunder shall in no event exceed the Penal Sum of [**100 % of Construction Contract Price**] (\$●).

8. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Construction Contractor of the Contract, or this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

¹ **NTD:** Amount of post-Step-Down Date bond to be determined.

9. Correspondence or claims relating to this Bond shall be sent to Surety at the following address: [●]

10. Schedules G-1 and G-2 are an integral part of this Bond and are specifically incorporated herein as if set out in full in the body of this Bond.

11. If any provision of this Bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.

12. Any provision in this Bond which conflicts with applicable Laws, Regulations, and Ordinances, shall be deemed modified to conform to applicable Laws, Regulations, and Ordinances. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

13. ***[Note: Use in case of multiple sureties (“Co-Sureties”) or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single “Lead Surety” with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner to the Co-Sureties and all claims under this Bond shall be sent to the Lead Surety and shall be deemed served upon all Co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Owner designating a new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be [●].

[Signature Page Follows]

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this ____ day of _____ 20____.

CONSTRUCTION CONTRACTOR (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (*e.g.*, an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

**SCHEDULE H-1
FORM OF DEMAND**

Date

Re: Performance Bond No.: [] (the “Bond”)

Principal: [] (the “Principal”)

Obligees: The NH District Corporation (the “Obligee”)

Contract: The Construction Contract, dated [] between the Principal as Construction Contractor and the Oblige (the “Contract”)

Dear Sir:

Pursuant to the Bond, the Oblige hereby certifies that:

1. the Principal is and continues to be in default of the Principal’s obligations under the Contract;
2. the Oblige has issued a notice of default to the Principal in accordance with the provisions of the Contract; and
3. the Oblige, as applicable, has honored and will continue to honor and perform in all material respects its obligations under the Contract.

We hereby demand that the Surety honor its obligations under the Bond forthwith.

The Oblige acknowledges that if the Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP set forth in Schedule G-2.

Yours truly,

The NH District Corporation

By: _____

Name:

Title:

SCHEDULE H-2 DISPUTE RESOLUTION PROCESS

Given the on default nature of the Bond, the Principal, the Surety and the Obligee acknowledge that they may not agree whether the Surety is liable to make payment pursuant to the Bond. In order to ensure that such disputes are determined quickly so as to allow for the orderly and timely completion of the Contract, the Principal, the Surety and the Obligee agree to submit such disputes to the dispute resolution process set out below. Terms not defined herein shall have the meaning ascribed to them in the body of the Bond. The parties acknowledge that any decision rendered in the dispute resolution process (an “Award”) will be binding, but subject to appeal de novo by any party at any time to a court of competent jurisdiction.

1. “Dispute” means a disagreement as to the Surety’s liability pursuant to the Bond following an Obligee’s Demand.
2. Disputes arising out of or in connection with the Bond shall be submitted for binding resolution to adjudication (the “Adjudication”) administered by JAMS – The Resolution Experts! (“JAMS”) in accordance with the procedure set out below. The JAMS’ Dispute Resolution Rules for Surety Bond Disputes, effective as of the Agreement Date shall apply to the resolution of any Dispute unless modified by the provisions herein, in which case, the provisions of this Bond shall govern.
3. The Surety or the Obligee shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon the Principal and the Obligee, utilizing the electronic forms and filing directions provided by JAMS on its website at www.jamsadr.com. The Adjudication statement shall set forth in detail the factual and legal issues submitted for Adjudication and shall be sent no later than 10 days following the Obligee’s Demand.
4. Within three (3) Business Days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (the “Adjudicator”) who shall be a panelist on the JAMS Global Engineering & Construction Panel (“JAMS GEC Panel”) of dispute adjudicators. JAMS shall appoint an Adjudicator administratively from the JAMS GEC Panel if the parties fail to appoint an Adjudicator within the three day period. The Adjudicator shall be under a duty to act impartially and fairly and shall serve as an independent neutral.
5. The Adjudication shall commence on the date that JAMS receives the Adjudication statement and initial deposit of funds, and confirms the appointment of the Adjudicator (the “Adjudication Commencement Date”). Unless the Adjudicator decides otherwise, the Principal, the Surety and the Obligee shall pay the final fees and expenses of Adjudication in accordance with the provisions set forth in the Contract governing the payment of fees and

expenses of dispute resolution. In an Adjudication in which the Adjudicator determines that the Principal and Surety are aligned with the same commonality of interest against the Obligee, the Principal and Surety jointly shall be charged with one share and the Obligee will be charged with one share. Should any party fail to deposit funds as required by JAMS, any other party may advance the deposit, and the amount of that advance deposit will be taken into consideration in the Adjudicator's decision.

6. Upon commencement of the Adjudication, the Adjudicator is empowered to take the initiative in ascertaining the facts and the law, and to exercise sole discretion in managing the Adjudication process. Among other things, the Adjudicator may require the parties to make additional factual submissions such as sworn witness statements and business documents, may interview important witnesses after notice to the parties and affording opportunity to attend, may request and consider expert reports and may call for memoranda on legal issues. Notwithstanding the foregoing, the Adjudicator must decide the following questions:
 - a. Is the Principal in default of the Principal's obligations under the Contract?
 - b. Is the Surety liable to perform in accordance with Paragraph 4 and/or 5 of the Bond?
7. The Adjudicator shall issue a written decision (the "Decision") which shall be binding upon and enforceable by the parties through the completion of the Principal's obligations under the Contract, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. Any payment required in the Decision shall be made immediately. The Decision shall be issued through JAMS as soon as practicable but in no event later than thirty (30) calendar days of the Adjudication Commencement Date or within any later time agreed upon by the parties. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings between the parties.
8. This 30 calendar day period also may be extended by the Adjudicator in its sole discretion up to 14 days in the event that JAMS has requested any party to make an additional fee and expense deposit and such funds have not been deposited as requested or advanced by another party.
9. Any party may request clarification of the Decision within five (5) business days after issuance, and the Adjudicator shall endeavor to respond within an additional five (5) business days, and, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. any payment shall be made immediately thereafter. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings between the parties.

The parties shall comply with the Decision, unless and until subsequently vacated or modified, through the completion of the Principal's obligations under the Contract.

10. Upon any settlement by the parties of the Dispute prior to issuance of a Decision, the parties shall jointly terminate the Adjudication. Such removal or termination shall not affect the parties' continuing joint and several obligations for payment to JAMS of unpaid fees and expenses.

If the Decision is that the Surety is liable to perform in accordance with Paragraph 5 of the Bond, then notwithstanding the commencement of any appeal de novo of the Decision, the Surety shall perform in accordance with the Decision and with the terms of the Bond until the Principal's Obligations under the Contract are completed, but not to exceed the penal sum of the Bond.

PAYMENT BOND

BOND NO. _____

BOND AMOUNT: \$[●]

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the NH District Corporation ("Owner") has awarded to [●], a [●] duly organized and existing under the laws of the State of [●] ("Construction Contractor"), a Construction Contract ("Contract") for the Navy Hill Redevelopment Project ("Project") dated [●]; and

WHEREAS, one of the conditions of the Contract is that Construction Contractor provide this duly executed instrument ("Bond").

NOW THEREFORE, We, the undersigned Construction Contractor and [●], a corporation duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia ("Surety"), are held and firmly bound, jointly and severally, unto Owner, as obligee, and its successors and assigns, in the sum of [***100 % of Construction Contract Price***] (\$●), lawful money of the United States of America, for the payment of which, well and truly be made to Owner and Claimants, Construction Contractor and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Construction Contractor shall: (a) make payments of all sums due to all persons and entities having a direct contract with Construction Contractor, or a direct contract with a Subcontractor having a direct contract with Construction Contractor, for supplying labor, material, and/or supplies used directly or indirectly by Construction Contractor in the prosecution of the Work provided in the Contract (such persons and entities hereinafter referred to collectively as "Claimants"); and (b) shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of Construction Contractor's failure to fulfill its obligations to Claimants under clause (a) above, including but not limited to, fully reimbursing and repaying Owner reasonable counsel fees incurred as a result of any action arising out of or in connection with any such failure, then Surety's obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. All Claimants shall have a direct right of action only against Surety and Contractor under this Bond; *provided, however*, that no claim, suit or action shall be brought by any Claimant after the expiration of one (1) year following the date on which Claimant last performed labor or last furnished or supplied materials to the Project. Any suit or action must be brought in a state or federal court of competent jurisdiction located in the Commonwealth of Virginia.

4. Any Claimant who does not have a direct contractual relationship with Contractor shall, as a condition precedent to bringing such claim, suit or action, provide written notice thereof to Contractor, Surety, and Owner, no later than ninety (90) days from the date Claimant last supplied labor or materials, stating with substantial accuracy the amount claimed, the name of the person for whom the work was performed or to whom the material was furnished, and the dates on which such labor or materials were supplied.

5. Surety shall, after receipt of reasonable notice to Surety of any claim, demand, suit or action brought against Owner by a Claimant, defend, with counsel approved by Owner, indemnify and hold harmless Owner from any and all claims, demands, suits or actions brought by any Claimant. Owner shall have a direct right of action against Surety and Contractor for any breach by Surety of its obligation to defend, indemnify and hold harmless Owner.

6. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Contractor of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Claimants otherwise entitled to recover under this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

7. Surety acknowledges that the amounts owed to Contractor under the Contract shall first be available for the performance of the Contract, including Owner's superior right to use the funds due for the completion of the Work, and then may be available to satisfy claims arising under this Bond. Owner shall not be liable for the payment of any costs or expenses or claims of any Claimant under this Bond and shall have no obligation to make payments to, or give notice on behalf of, any Claimant.

8. Any provision in this Bond which conflicts with applicable Laws, Regulations and Ordinances shall be deemed modified to conform to applicable Laws, Regulations and Ordinances.

9. Contractor or Owner shall furnish a copy of this Bond or permit a copy to be made upon request by any person or entity who may be a Claimant as defined above.

10. ***[Note: Use in case of multiple sureties (“Co-Sureties”) or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single, “Lead Surety” with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner and Claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner and Claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated Lead Surety and service of such correspondence or notice upon the Lead Surety shall constitute service upon all co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Owner designating a single new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be [●].

11. Any provision in this Bond which conflicts with applicable Laws, Regulations, and Ordinances, shall be deemed modified to conform to applicable Laws, Regulations, and Ordinances. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

[Signature Page Follows]

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this ____ day of _____ 20____.

CONSTRUCTION CONTRACTOR (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (*e.g.*, an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]