

of this Lease, or (b) a date following such completion of construction that all office, retail and residential space is 90% leased and occupied.

The Redeveloper agrees not to enter into any leases of the Property or portions thereof for the uses described on **Exhibit G** hereto, unless otherwise agreed upon in advance by the City Manager.

In the absence of a written agreement by the City to the contrary, no such transfer or approval by the City of any transfer shall be deemed to relieve the Lessee, or any other party bound in any way by this Lease or otherwise with respect to the construction of the Project, or the making of Service Payments hereunder, from any of its obligations with respect thereto. If Lessee sells, assigns or otherwise transfers its leasehold interest in the Property, the City agrees that Lessee shall thereafter have no liability to it under this Lease or any modification or amendment thereof or renewal thereof, except for such liability as may have accrued prior to the date of such assignment, sale and/or transfer, so long as such assignment is approved by the City by a written agreement and so long as that transferee has assumed the obligations of the Lessee under this Lease in writing.

Section 8. Prohibition Against Transfer of Interests in the Lessee.

The Lessee acknowledges that the identity of the principals who have membership interests in and control the Lessee are important considerations to the City in entering into this Lease with the Lessee. Each of the Managing Members has a twenty percent (20%) or greater membership interest in the Lessee.

The Lessee represents and agrees for itself, its members, and any successor in interest to itself and its members, respectively, that (i) for the period commencing on the date of this Lease and ending the earlier of (a) three years following the completion of construction of the Project, as determined in Section 2B and 2D of this Lease, or (b) a date following such completion of construction that all office, retail and residential space is 90% leased and occupied, (ii) without the prior written approval of the City, (iii) except for proper estate planning purposes, there shall be no voluntary transfer by any managing member having a twenty percent (20%) or more membership interest in the Lessee, nor shall any such member suffer or permit such transfer to be made, or be suffered to be made by the Lessee or by any managing member having a twenty percent (20%) membership interest therein, any other similarly significant change in the membership interests or the relative distribution thereof, or with respect to the identity of the managing members in control of the Lessee or the degree thereof, by any other method or means.

Section 9. Permitted Mortgages.

A. **No Mortgage on Fee Interest.** Neither the Lessee nor any successor shall engage in any financing or any other transaction creating any mortgage or other lien or encumbrance upon the City's fee interest in the Site or any part thereof.

B. **Permitted Leasehold Mortgagee Protection.**

1. The City understands and acknowledges that the Lessee will enter into one or more leasehold mortgage (collectively, "Mortgage") with an institutional lender to finance or refinance the construction costs of the Project on the Site, and that such Mortgage will be recorded against

Lessee's leasehold interest in the Site (but not against City's fee simple title therein) in the real property records of Portage County, Ohio. Prior to recordation of such Mortgage, Lessee shall provide City with a true and accurate copies of such Mortgage and all of the loan documents which it secures. No terms of such Mortgage may modify or conflict with the terms of this Lease. Such Mortgage, and any refinancing thereof, shall be referred to herein as the "Permitted Leasehold Mortgage" and each holder thereof shall be referred to herein as the Permitted Leasehold Mortgagee". The outstanding principal balance of the Permitted Leasehold Mortgage or of any refinancing thereof may exceed the total construction costs of the Project.

2. The City and Lessee agree that so long as the Permitted Leasehold Mortgage, or any refinancing thereof, is a lien on Lessee's estate in the Property, the Permitted Leasehold Mortgagee shall have all of the rights set forth below:

(i) If the City shall give any notice, demand, election, or other communication (hereafter referred to as "Messages") to Lessee hereunder, the City shall use its best efforts to deliver a copy of each such Message to the Permitted Leasehold Mortgagee at the address theretofore designated by the Permitted Leasehold Mortgagee. Such copies of Messages shall be sent by registered or certified mail, return receipt requested, and shall be deemed given three (3) days after a copy is deposited in a United States Post Office with postage charges prepaid, enclosed in a securely sealed envelope addressed to the Permitted Leasehold Mortgagee. No Message given by the City to Lessee shall be binding upon or affect said Permitted Leasehold Mortgagee unless a copy of said Message shall be given to the Permitted Leasehold Mortgagee pursuant to this subparagraph (i). In the case of an assignment of said mortgage or change in address of the Permitted Leasehold Mortgagee, such assignee or Permitted Leasehold Mortgagee, by written notice to the City, may change the address to which such copies of Messages are to be sent. The City shall not be bound to recognize any assignment of said mortgage unless and until the City shall be given written notice of such assignment and the name and address of the assignee, and thereafter such assignee shall be deemed to be the Permitted Leasehold Mortgagee under this Section. If said Permitted Leasehold Mortgage is held by more than one person, corporation, or other entity, the Permitted Leasehold Mortgagee shall designate in writing one (1) of their number to receive all such Messages and copies of Messages and shall have given to the City an original executed counterpart of such designation in form proper for recording.

(ii) Upon any default by Lessee under the provisions of this Lease, the Permitted Leasehold Mortgagee will have the same concurrent grace periods as are given Lessee for remedying such default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days of grace after the City has served a notice or a copy of a notice of such default upon the Permitted Leasehold Mortgagee. The City shall not take any action or institute any process to evict Lessee or to terminate this Lease for such default until expiration of the additional period of thirty (30) days of grace accorded to the Permitted Leasehold Mortgagee under this subparagraph (ii).

(iii) Upon any default by Lessee under any of the provisions of this Lease, the Permitted Leasehold Mortgagee, without prejudice to its rights against Lessee, shall have the right to make good such default within the applicable grace periods provided for in the preceding subparagraph of this Section whether the same consists of the failure to pay rent or Monetary Obligations or the failure to perform any other matter or thing which Lessee is hereby required to do or perform, and

the City shall accept such performance on the part of the Permitted Leasehold Mortgagee as though the same had been done or performed by Lessee. For such purpose, the City and Lessee hereby authorize the Permitted Leasehold Mortgagee to enter upon the Site and to exercise any of the Lessee's rights and powers under this Lease, and subject to the provisions of this Lease, under the Permitted Leasehold Mortgage.

(iv) Lessee may delegate irrevocably to said Permitted Leasehold Mortgagee the authority to exercise any or all of Lessee's rights hereunder, but no such delegation shall be binding upon the City unless and until either Lessee or said Permitted Leasehold Mortgagee shall give to the City a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Leasehold Mortgage itself, in which case the service upon the City of an executed counterpart or certified copy of the Permitted Leasehold Mortgage, in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to said Permitted Leasehold Mortgagee, shall be sufficient to give the City notice of such delegation.

(v) The term "Incurable Default" as used herein means any non-monetary Event of Default which cannot be reasonably cured by the Permitted Leasehold Mortgagee. The term "Curable Default" means any default under this Lease which can be cured by the payment of money or can otherwise be reasonably cured by the Permitted Leasehold Mortgagee. In the event of any monetary Curable Default under this Lease, if prior to the expiration of the applicable grace period specified in this Article, the Permitted Leasehold Mortgagee shall pay the delinquent amount within the applicable grace period, then the City will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of, or re-let the Site or similarly enforce performance of this Lease on the basis of such default by Lessee. In the event of any non-monetary Curable Default under this Lease, if prior to the expiration of the applicable grace period specified in this Section, the Permitted Leasehold Mortgagee gives the City written notice that it intends to undertake the curing of such non-monetary default, or to cause the same to be cured, then the City will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of, or re-let the Site or similarly enforce performance of this Lease, so long as the Permitted Leasehold Mortgagee is, with all due diligence and in good faith, engaged in the curing of such non-monetary default, or effecting such foreclosure; provided, however, that the Permitted Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if such default shall be cured.

(vi) In the event that this Lease is terminated by the City on account of any Incurable Default, or in the event Lessee's interest under this Lease shall be sold, assigned, or transferred pursuant to the exercise of any remedy of the Permitted Leasehold Mortgagee, or pursuant to any realization on the Permitted Leasehold Mortgage under non-judicial or judicial proceedings, or in the event that this Lease is terminated by the rejection thereof in a bankruptcy of Lessee, then the City, within 30 days after receiving from the Permitted Leasehold Mortgagee a written request therefor, which notice shall be given within 30 days after such termination or transfer, and upon payment to the City of all of its expenses relating to the transfer or termination, including attorney's fees incident thereto, and upon payment of all unpaid Monetary Obligations, including Service Payments, that would have been payable by Lessee under the Lease but for its termination or transfer, will execute and deliver a new lease of the Site to the Permitted Leasehold Mortgagee or its nominee or to the purchaser, assignee, or transferee, as the case may be, for the remainder of

the original term of this Lease ~~Term~~, containing the same covenants, agreements, terms, provisions, and limitations as are contained herein, provided, however, that any nominee or purchaser, assignee, or transferee of the Permitted Leasehold Mortgagee shall provide to the City reasonable evidence of their financial responsibility. Upon the execution and delivery of such new lease, the lessee, in its own name or in the name of the City, may take all appropriate steps as shall be necessary to remove Lessee from the Site. The provisions of this subparagraph (vi) shall survive the termination of this Lease.

(vii) In the event a default under the Permitted Leasehold Mortgage shall have occurred, the Permitted Leasehold Mortgagee may exercise, with respect to Lessee's leasehold estate under the Site, any right, power, or remedy under the Permitted Leasehold Mortgage, which is not inconsistent with this Lease.

(viii) This Lease may be assigned, with the consent of the City, which will not be unreasonably withheld, to or by the Permitted Leasehold Mortgagee or its nominee, purchaser, assignee, or transferee, as the case may be, pursuant to foreclosure or similar proceedings, or the sale, assignment, or other transfer of Lessee's leasehold estate under this Lease in lieu of foreclosure. The Permitted Leasehold Mortgagee shall be liable to perform the obligations herein imposed on Lessee only during the period it is in possession or ownership of the Leasehold Estate created hereby, but any nominee, purchaser, assignee, or transferee shall have rights under this Lease following such foreclosure or similar proceedings only upon executing and delivering to the City an assumption of Lessee's obligations hereunder and providing the City with reasonable evidence of their financial responsibility.

(ix) No surrender (except a surrender upon the expiration of the term of this Lease or upon termination by the City pursuant and subject to the provisions of this Lease) by Lessee to the City of this Lease, or of the Site, or any part thereof, or of any interest therein, and no termination of this Lease by Lessee, shall be valid or effective, and no material terms hereof may be amended, modified, changed, or canceled without prior written consent of the Permitted Leasehold Mortgagee.

(x) If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified in this Section for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that the Permitted Leasehold Mortgagee shall have fully cured any event of default in the payment of any Monetary Obligations of Lessee under this Lease and shall continue to pay currently those Monetary Obligations as and when the same fall due.

(xi) The City agrees that the name of the Permitted Leasehold Mortgagee shall be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under this Lease. The proceeds from any insurance policies or from any award arising from a condemnation shall be paid to and held by the Permitted Leasehold Mortgagee and distributed pursuant to the provisions of this Lease, except that, as to any portion of such proceeds which is allocable to buildings rather than land, such Permitted Leasehold Mortgagee may reserve the right to apply such portion to the debt secured by its Permitted Leasehold Mortgage. Nothing

in this subparagraph (xi) shall relieve the Lessee of any obligation under the further provisions of this Lease to rebuild or restore buildings located on the Site following a condemnation or casualty.

(xii) Nothing herein contained shall require any Permitted Leasehold Mortgagee to enter into a new lease pursuant to this Section or to cure any default by Lessee referred to above.

(xiii) The provisions of this Section 9B are for the benefit of, and are to be enforceable, by, the Permitted Leasehold Mortgagee and its successors or assigns.

(xiv) No Mortgage now or hereafter a lien upon Lessee's leasehold estate under this Lease shall extend to or affect the reversionary interest and fee simple estate of the City in and to the Site or in any manner attach to or affect the Site from and after any expiration or termination of this Lease. The City shall have no personal liability or obligation for the repayment of any loan secured by any Mortgage arising by, through or under Lessee, or for the performance of any obligations under such Mortgage, or any of the other documents or instruments which evidence, govern or secure such loan. In no event shall the City have any obligation to execute any Mortgage arising by, through or under Lessee. In addition, the City shall have no obligation to guarantee any of Lessee's indebtedness or other obligations under such loan.

C. **Liens**. Except for the Permitted Leasehold Mortgage or any refinancing thereof and except as approved by the City in writing in advance, Lessee shall not grant, place or suffer, or permit to be granted, placed or suffered, against all or any part of Lessee's leasehold estate created hereby, any Mortgage, lien, security interest, pledge, conditional sale contract, claim, charge or encumbrance (whether statutory, contractual or otherwise) and if any of the aforesaid does arise or is asserted, Lessee shall promptly notify the City and shall promptly upon demand by the City and at Lessee's expense, cause same to be bonded over or otherwise released.

D. **Bankruptcy**. If Lessee's leasehold estate under this Lease is assigned to any person or entity pursuant to the provisions of the "Revised Bankruptcy Act" (Title 11 of the United States Codes 11 U.S.C. §101 et seq.), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to the City, shall be and remain the exclusive property of the City, and shall not constitute property of Lessee or of the bankruptcy estate of Lessee within the meaning of the Bankruptcy Code as now or hereafter amended. Any and all monies or other considerations constituting the City's property under this Section not paid or delivered to the City shall be held in trust for the benefit of the City and shall be promptly paid or delivered to the City. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, as now or hereafter amended, shall be deemed without further act or deed to have assumed all of the obligations of Lessee arising under this Lease on and after the date of such assignment. This Section does not constitute the consent of the City to any such assignment.

Section 10. Insurance and Indemnification.

A. **Insurance**. Lessee shall maintain from Lease Term Commencement Date until the date of termination of this Lease the following minimum insurance coverages. Such insurance shall protect Lessee from claims which may arise out of or result from Lessee's activities under this Lease and for which Lessee may be legally liable, whether such operations be by Lessee or by

a contractor or by anyone employed directly or indirectly by any of them, or by anyone for whose acts any of them may be liable.

Lessee shall also be responsible for assuring that each of its contractors or subcontractors and anyone employed directly or indirectly by any contractor or subcontractor provide adequate insurance for the work performed or products supplied by it.

1. Insurance against loss or damage to the Project and the personal property of Lessee, if any (the "Lessee's Personal Property"), caused by fire and any of the risks covered by insurance of the type now known as "coverage against all risks of physical loss," in an amount equal to one hundred percent (100%) of the replacement cost of the Property and the Lessee's Personal Property, if any, and sufficient to prevent Lessee and the City from becoming co-insurers.

2. Comprehensive General Liability Insurance initially in the amount of \$10 million per occurrence and in the aggregate, such minimum amount to change over the terms of the Lease to be equal to an amount customary for facilities of that nature in that location at that time, such amounts to be subject to review as requested by the City. Said policy shall also include:

- (i) Premises/Operations coverage;
- (ii) Personal Injury coverage;
- (iii) Liability for independent contractors;
- (iv) Products/Completed Operations liability insurance: This insurance must be maintained for a period of not less than two years from the completion of the work;
- (v) Contractual liability coverage insuring the "hold harmless" provisions set forth in this Lease; and
- (vi) Liability for explosion, collapse and underground property damage.

Said policy shall be written on an "occurrence" basis. The City will accept any combination of primary Comprehensive General Liability Insurance and Excess or Umbrella policies to meet the minimum coverage requirements above.

3. Automobile Liability Insurance initially in the amount of \$1 million per occurrence, such minimum amount to change over the term of the Lease to be equal to an amount that would be customary in that location at the time, such amounts to be subject to review as requested by the City. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the activities of Lessee under this Lease.

4. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this Agreement and under the control of Lessee. Employers' Liability coverage initially in the amount of \$1 million will also be included, either under the Workers' Compensation policy or under the Comprehensive General Liability policy (Stop Gap) referenced under Subsection 1 above, such minimum amount to change over the term of the Lease to be equal to an amount that would be

customary in that location at the time, such amounts to be subject to review as requested by the City. The Lessee shall provide a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation (as applicable) for such payment of premiums to the state insurance fund for such statutory worker's compensation coverage.

5. During the course of any development or construction of the Project or any other buildings or improvements constructed by or on behalf of Lessee, from time to time, builder's risk insurance against "all risks of physical loss," including collapse and transit coverage, in the amounts set forth in Subsection 1. above. Such insurance may be provided by the policy required in Subsection 1. above.

6. If the Project or any other buildings or improvements constructed by or on behalf of Lessee are constructed and are located in a federally designated flood hazard area, flood hazard coverage, in the maximum amount available.

7. General Requirements: Lessee shall furnish evidence of such insurance in the form of a certificate (Acord or similar form). Lessee shall provide such proof and obtain approval from the City prior to the commencement date of this Lease. Except as otherwise permitted by the City, the certificate shall provide the following:

(i) In the event the insurance should be materially changed or canceled, Lessee will endeavor to provide (30) days' notice of cancellation or material change, but in any case Lessee will provide not less than ten (10) days' notice of cancellation or material change, to the City.

(ii) Name the City as an additional insured for coverage required under subsection 1 above, and under subsections 2 and 3 above for claims arising out of activities or operations in conjunction with this Lease and directly attributable to the negligent actions or negligent omissions of Lessee or its managers, members, officers or employees while acting within the scope of employment.

(iii) Contain a waiver of subrogation in favor of the City for claims directly attributable to the negligent actions or negligent omissions of Lessee or its managers, members, officers or employees while acting within the scope of employment.

(iv) Specific reference to this Lease.

(v) Specific reference to any deductibles.

(vi) Shall be primary and non-contributing to any insurance possessed or procured by the City and any self-insurance program maintained by the City for claims directly attributable to the negligent actions or negligent omissions of Lessee or its members, managers, officers or employees while acting within the scope of employment.

For insured coverages, an insurance company having less than an A- X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by the City. Such acceptance shall not unreasonably be withheld, delayed or conditioned.

8. Approval by the City: Approval of the insurance by the City shall not relieve or decrease the liability of Lessee hereunder. It is to be understood that the City does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect Lessee's interests or liabilities.

In the event Lessee neglects, refuses or fails to provide the insurance required under this Lease, or if such insurance is canceled for any reason, then, upon notice to Lessee and agreement from Lessee, the City shall have the right but not the duty to procure the same, and cost thereof may, at the option of the City, be deducted from moneys then due or thereafter to become due to Lessee.

Notwithstanding any provision of this Agreement to the contrary, neither the City nor the Lessee shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to property, or any resulting loss of income, even though such loss or damage may have been occasioned by the negligence of any such party, its agents or employees, if and to the extent any such loss or damage is covered or is required to be covered by insurance or self insurance benefitting the party suffering such loss or damage, and each party shall pay or cause to be paid any deductible amount or self insured retention with respect to any insurance or self insurance it is required to carry.

B. **Indemnification.** On and after the Lease Term Commencement Date, the Lessee shall not do or permit to be done any act or thing upon the Property which may subject the City to any liability by reason of any illegal business or conduct on the Property. The Lessee shall, notwithstanding any insurance obtained by the Lessee for protection of the City, indemnify and save the City harmless, and defend the City at Lessee's expense, from and against any and all liability, fines, suits, claims, demands, actions, costs and expenses of any kind or nature or by anyone whomsoever (including, without limitation, reasonable attorneys' and consultants' fees), attributable to any and all of the following:

1. Any personal injury or death or property damage caused by or resulting from, or which happened in or on the Property during, Lessee's use and occupancy of the Property under this Lease, or during any use or occupancy which the Lessee may permit or suffer to be made of the Property, including without limitation the construction, operation, maintenance, repair and replacement of any of the Project;

2. Any claims by contractors or their agents in connection with construction of the Project or any further improvements thereon; and

"Environmental Laws" means the Comprehensive Environmental Response, Liability and Compensation Act (42 U.S.C. Sections 8601 et seq.) any so called "superfund" or "superlien" law, or any other federal, state or local statute, law, regulation, code, ordinance or rule regulating, relating to or imposing liability for any Hazardous Material.

"Hazardous Material" means any hazardous, toxic or dangerous substance, waste or material (including, without limitation, storage or disposal in an underground tank) defined as such in, or for the purpose of, any Environmental Law.

The Lessee agrees to indemnify the City and hold the City harmless from and against any and all claims, demands, losses, cost, expenses, liabilities, suits or damages of whatsoever kind or nature, including interest, assessments and reasonable attorneys' fees, which arise, result from, or in any way relate to a release or a disposal of Hazardous Material at or on the Property in violation of any Environmental Law after the date hereof.

The Lessee further agrees to indemnify the City and hold the City harmless from and against any and all claims, demands, losses, cost, expenses, liabilities, suits or damages of whatsoever kind or nature, including interest, assessments and reasonable attorneys' fees, which arise, result from, or in any way relate to a breach or violation of any such Environmental Law by the Lessee or its employees, agents or any party acting at their direction in relation to the Property, or any failure of the Lessee or its employees, agents or any party acting at their direction, subsequent to the date hereof, to comply fully with any such Environmental Law in relation to the Property.

The Lessee further agrees to indemnify the City and hold the City harmless from and against any and all claims, demands, losses, costs, expenses, liabilities, suits or damages of whatsoever kind or nature, including without limitation interest, assessments of reasonable attorney's fees, construction work stoppages and any cost increases related thereto, which arise out of or result from any violation of any applicable federal, state or local law or regulation relating to the protection and regulation of Wetlands, and including without limitation arising out of or resulting from any fill activities by any person or entity after the date of this Lease. The Lessee's obligation under this indemnification shall include, but not be limited to, indemnification of the City against all actions taken by federal, state or local courts, administrative agencies, and/or other governmental bodies, including any fines levied, and any and all costs associated with an order or directive from any federal, state or local courts, administrative agencies and/or other governmental bodies, requiring restoration, mitigation, or enhancement of any Wetlands or creation of new Wetlands. The foregoing indemnity to the City, and any other indemnity to the City contained in this Lease, shall include indemnification of the City, its officials, employees and contractors.

The Lessee's foregoing covenant to indemnify, save harmless and defend in this Section shall survive the termination of this Lease.

Section 11. Mechanics' and Other Liens.

The Lessee shall not suffer or permit any mechanics' or other liens to be filed or exist against the Property by reason of work, labor, services or materials supplied or claimed to have been supplied to, for, or in connection with the Property or to the Lessee or anyone using the Property or any part thereof through or under the Lessee; provided, however, that if any such liens shall at any time be filed, the Lessee shall, within ninety (90) days after notice of the filing thereof, but subject to the right to contest hereinafter set forth, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. The Lessee shall have the right, but at no cost and expense to the City, to contest, or permit a sublessee or other user of the Property to contest, the validity or the amount of any such lien by appropriate proceedings timely instituted, unless the City shall notify the Lessee that, in the reasonable opinion of counsel, because of nonpayment of any such items any part of the Property will be subject to imminent loss or forfeiture, in which event the Lessee shall promptly cause such lien to be discharged or bonded

off as aforesaid. The City will cooperate fully with the Lessee, but at no expense to the City, in any such contest (except as any such lien is asserted by the City in which event the Lessee shall have the right to contest such lien as if it were the owner of the Property). If the Lessee shall fail to cause such lien to be discharged, or to contest the validity or amount thereof, within the period aforesaid, then, in addition to any other right or remedy of the City, the City may, but shall not be obligated to, discharge the same by deposit or by bonding; Lessee shall within thirty (30) days of the City's written request therefor make payment to the City of such amount as is necessary to reimburse the City for its costs of discharging or bonding off said lien.

On at least a quarterly basis during construction of the **Private Improvements Project** and upon completion of construction, the Lessee shall provide the City with affidavits from each contractor prior to each payment under a contract certifying that all subcontractors have been paid for work performed to date.

Section 12. Sale of Site. If no default or condition, state of facts or circumstance which, with the giving of notice, passage of time or both would constitute a default, has occurred and is then continuing under this Lease, the City shall notify the Lessee in writing if the City has determined to sell the Site to other than another governmental entity or a nonprofit corporation at least thirty (30) days prior to engaging in discussions with potential purchasers of the Site. The City agrees to meet with the Lessee, if requested by the Lessee, during that thirty (30) day period to discuss the possible purchase of the Site by the Lessee. Nothing in this Section shall obligate the City to sell the Site to the Lessee nor shall obligate the Lessee to purchase the Site.

Section 13. Remedies.

A. **Generally.** Except as otherwise provided in this Lease, in the event of any default in or breach of this Lease, or any of its terms or conditions, by either party hereto, such party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after delivery of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations and, in the case of the City, the right in addition to any other remedies to apply the Deposit to and in payment of the damages suffered by it (in the form of loss of tax or payment in lieu of tax revenue from the Property or anticipated improvement thereon or otherwise) as a result of the default or breach.

B. **Default by the Lessee; Termination by the City.** In the event that:

- (1) The Lessee shall materially default in or violate its obligations with respect to the construction of the Project or the dates for the beginning and completion thereof, or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended or remedied within ninety (90) days after written demand by the City so to do; or

- (2) The Lessee shall place on the Property or any part thereof any encumbrance or lien not permitted by this Lease, or shall cause or permit any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach (but excluding any encumbrance or lien authorized or caused by the City), and such encumbrance or lien shall not have been removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within ninety (90) days after written demand by the City so to do; or
- (3) There is, in violation of this Lease, any transfer of the Property or any part thereof, or any assignment or transfer of this Lease, and such violation shall not be cured within ninety (90) days after written demand by the City; or
- (4) There is, in violation of this Lease, any violation of Lessee's environmental covenants under Section 3(D) hereof and such violation shall not be cured within ninety (90) days after written demand by the City; or
- (5) The Lessee seeks or becomes subject to the appointment of an administrator, liquidator, conservator, receiver, trustee, or custodian for all or substantially all its assets; or
- (6) The Property or the Lessee's rights or interests therein shall be levied upon or attached under process against the Lessee, and the same shall not be satisfied or dissolved within ninety (90) days after notice from the City to the Lessee to obtain satisfaction or dissolution thereof; or
- (7) The Lessee shall fail to timely pay any Monetary Obligation; or
- (8) There shall be any other substantial failure of Lessee to observe or perform any other terms, conditions or obligations under this Lease;

then the City shall have the right to terminate this Lease and/or to seek any and all remedies at law or in equity upon thirty (30) days' written notice to the Lessee. The City may cure any default of the Lessee, but shall be under no obligation to do so.

C. **Other Rights and Remedies of the City; No Waiver by Delay.** The City shall have the right, [subject to the Subordination, Recognition and Non-Disturbance Agreement between the City and the Banks dated as of even date herewith], to institute such other actions or proceedings as it may deem desirable for effectuating the purposes of this Section, including without limitation the right to execute and record or file among the public real estate records a written declaration of the termination of the Lease. Any delay by the City in asserting its rights under this Lease shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City shall not be constrained, so as to avoid the risk of being deprived or limited in the exercise of the remedy provided in this Lease because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Lessee under this Section shall be considered or treated as a waiver of the rights of the City with respect to any other defaults by the

Lessee under this Section, or with respect to the particular default except to the extent specifically waived in writing.

D. **Force Majeure.** Except as otherwise provided herein, neither the City nor the Lessee shall be considered in default in its obligations to be performed hereunder for other than Monetary Obligations, if delay in the performance of such obligations is due to causes beyond its control and without its fault or negligence, including but not limited to, acts of god or of the public enemy, acts of the Federal or state government, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the delay; provided, however, that the parties seeking the benefit of the provisions of this paragraph shall within thirty (30) days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof, or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other party in writing of the duration of the delay.

Section 14. Holding Over; Surrender.

A. There shall be no renewal whatsoever of the term of this Lease by operation of law (other than as permitted in Section 1E hereof) as a result of such holding over or continued use by the Lessee after the expiration or termination of this Lease. Any holding over, or continued use or occupancy by the Lessee after the expiration or earlier termination of this Lease, without the written consent and agreement of the City, shall not constitute Lessee a tenant-at-will, but the Lessee shall become a tenant-at-sufferance and liable for rent at the then current market rate together with all other expenses, obligations and payments.

B. Upon the expiration or the termination of the term of this Lease, as the same may be extended pursuant to Section 1E hereof, the Lessee shall quietly and peaceably surrender unto the City all of the Lessee's leasehold interest in and to the Property. Concurrently with such surrender, title to the Project or any other improvements not theretofore vested in the City shall automatically pass to and vest in the City, free of any right or claim of the Lessee. The Lessee shall, at the City's request, execute and deliver any and all deeds, releases, and other instruments which the City reasonably may require in order to establish or confirm such surrender or to ratify and confirm the Lessee's automatic release of all of its right, title, interest and estate in and to the Property. On or prior to such expiration or earlier termination, the Lessee may remove all personal property situated upon the Property. Personal property not removed by the Lessee within ninety (90) days following such expiration or earlier termination shall, at the City's option, become the property of the City.

Section 15. Condemnation.

(A) **Total or Substantial Condemnation.** In the event of a total condemnation of the Property, this Lease shall automatically terminate as of the date possession of the Property is taken. In the event of a partial or temporary condemnation which so substantially interferes with the use of the Property as to render the continued operation thereof economically unfeasible, as reasonably

ATTACHMENT I
THE PROPERTY