

LEASE OF LAND FOR PRIVATE REDEVELOPMENT

This LEASE FOR LAND FOR PRIVATE REDEVELOPMENT (including all Exhibits appended hereto, the "Lease") made and entered into as of this ____ day of _____, ____ by and between the CITY OF KENT, OHIO, a municipal corporation duly organized and existing under and by virtue of the constitution and laws of the State of Ohio (hereinafter referred to as the "City"), and PF DOWNTOWN KENT LLC, an Ohio limited liability company, organized and existing under the laws of the State of Ohio, with a mailing address of 5301 Grant Avenue, Suite 100, Cleveland, Ohio 44125 (hereinafter referred to as the "Lessee").

WITNESSETH:

WHEREAS, the City has undertaken a program for the clearance and redevelopment of blighted areas in the City, and the City, under its home rule powers, and acting through its City Council, has heretofore approved the Downtown Urban Renewal Plan dated December 2005, which Urban Renewal Plan, together with all amendments thereto, is on file in the office of the Clerk of the Council of the City and is hereinafter called "Urban Renewal Plan"; and which Urban Renewal Plan provides for various public actions to provide for the elimination of conditions of blight within the boundaries of said Urban Renewal Plan, and for redevelopment in accordance with the requirements of the Urban Renewal Plan in order to prevent the recurrence or spread of conditions of blight; and

WHEREAS, for the purpose of carrying out the Urban Renewal Plan, the City has acquired certain real property located in the Urban Renewal Plan area, including the property that is described on **Exhibit A** hereto (the "Site"); and

WHEREAS, for the purpose of carrying out the Urban Renewal Plan, to provide for the productive development and reuse of property, to create jobs and employment opportunities and improve the economic and general welfare of the people, the City and Lessee entered into a Development Agreement dated as of _____, 2010 (the "Development Agreement") related to activities occurring prior to this Lease and in contemplation of the lease of the Site to the Lessee, and the Lessee's development of the Site by constructing commercial office and retail and residential facilities, all as more specifically described in **Exhibit B** hereto (hereinafter referred to as the "Project"); the Site together with the Project is sometimes referred to herein as the "Property"); and

WHEREAS, the City believes that the redevelopment of the Site with the **Private Improvements Project** pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and are necessary to eliminate blighted conditions and prevent the recurrence thereof to provide for the productive development and reuse of property, to provide for the creation of jobs and employment opportunities, and to improve the economic and general welfare of the people of the City; and

WHEREAS, the Lessee is an Ohio limited liability company, the managing members of which are Premier Development Partners LLC and Fairmount Properties, LLC (the "Managing Members"); and

WHEREAS, the City has determined that it is necessary and in its best interest to provide for the making of service payments in lieu of taxes by the Lessee and any successors in interest with respect to the Site (the "Service Payments") pursuant to and in accordance with Ohio Revised Code Sections 5709.40 (in particular, Section 5709.40(B)), 5709.42 and 5709.43 (the "Act"); and the City has passed an ordinance pursuant to the Act (the "TIF Ordinance") declaring up to 100% of the increase in assessed value of certain property, including the Site and any individual parcels thereof, that will result from the improvement of that property to be a public purpose and exempt from real property taxation until the date on which the Improvements, as defined in Revised Code Section 5709.40, have been exempted for a period of up to 30 years; and

WHEREAS, to enhance the flow of vehicular and pedestrian traffic in and around the Kent Downtown area and to provide adequate public utility service to that area, the City has agreed to construct certain public improvements described on **Exhibit C** hereto (the "Public Improvements") as provided herein, and intends to issue notes or bonds of the City to fund those Public Improvements, the debt service on which is expected to be paid from Service Payments (the "City Bonds"); and

WHEREAS, the parties hereto have determined it to be in their mutual best interest that the City lease the entire Site to the Lessee and the Lessee construct the Project and that title to the Project shall be in the Lessee;

NOW THEREFORE, in consideration of the promises and covenants contained in this Lease, the parties agree as follows:

Section 1. Ground Lease of the Site; Title; Term.

A. **Ground Lease of the Site.** The conditions of this Lease as set forth in the Development Agreement having been satisfied, the City does hereby lease to the Lessee, and the Lessee does hereby lease from the City, the Site, upon and subject to the terms, conditions and covenants contained in this Lease. THE LESSEE ACKNOWLEDGES AND AGREES THAT THE LESSEE WILL BE LEASING THE SITE "AS IS", "WHERE IS," BASED SOLELY AND EXCLUSIVELY IN RELIANCE ON THE LESSEE'S OWN INVESTIGATIONS, TESTING AND DUE DILIGENCE, ALL OF WHICH THE LESSEE AGREES AS OF THE DATE OF THIS LEASE, THE LESSEE HAS CONCLUDED TO ITS COMPLETE SATISFACTION. THE LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THE RENT AND OTHER PROVISIONS OF THIS LEASE REFLECT THE FACT THAT EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE OR IN THE DEVELOPMENT AGREEMENT, THE CITY IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE OR THE CONDITION OF THE SITE, INCLUDING COMPLIANCE OR NON-COMPLIANCE WITH ZONING OR OTHER LAWS OR THE ENVIRONMENTAL CONDITION OF THE SITE. THE LESSEE, ON ITS OWN BEHALF, AND ON BEHALF OF ANY SUBSEQUENT TENANTS, SUBTENANTS, OWNERS OR OCCUPANTS OF THE SITE, THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY RELEASES AND DISCHARGES THE CITY FROM ANY AND ALL LIABILITIES OR OBLIGATIONS WITH RESPECT TO THE SITE OR CONDITION OF THE SITE, INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL MATTERS PERTAINING TO OR AFFECTING THE SITE, AND THE LESSEE FURTHER COVENANTS

AND AGREES, ON ITS BEHALF AND ON BEHALF OF ANY SUBSEQUENT PURCHASERS OF THE SITE, ITS SUCCESSORS AND ASSIGNS, NOT TO SUE THE CITY RELATING TO ANY CONDITION OF THE SITE, INCLUDING BUT NOT LIMITED TO ANYTHING RELATED TO THE ENVIRONMENTAL CONDITION OF THE SITE.

B. **Rent.** The consideration for this Lease shall be the payment of annual rent to the City Director of Budget and Finance at the Lease Term Commencement Date (as hereinafter defined) in the amount of \$1 per year, plus the amount in the following paragraph, and in addition thereto the covenants of the Lessee contained in this Lease. The Lessee may pre-pay the rent due for the initial term of the Lease. As described in to Section 5 of the Development Agreement, the Lessee has deposited \$150,000.00 with the City, \$75,000 of which was returned to the Lessee as of the date of signing the Development Agreement (the "Deposit"). As used herein, "rent" means the annual fixed rent stated above and in the following paragraph, together with any and all other charges and amounts which Lessee is obligated to pay to the City under this Lease from time to time. The City and the Lessee acknowledge and agree that both parties intend that this Lease shall be and constitute what is generally referred to in the real estate industry as a "triple net" or "absolute net" lease, such that the Lessee shall be obligated hereunder to pay all costs and expenses incurred with respect to, and associated with, the Site and all buildings, improvements, and personal property situated thereon from time to time during the term hereof, including, without limitation, all taxes, payments in lieu of taxes (including Service Payments) and special and general assessments, utility charges, insurance costs, maintenance costs and repair, replacement and restoration expenses (in accordance with and subject to the terms and conditions more particularly herein provided), together with any and all other assessments, charges, costs and expenses of any kind or nature whatsoever related to, or associated with, the Property and the use, development, redevelopment, occupation or operation thereof (hereinafter sometimes, together with rent, collectively referred to as "Monetary Obligations"). Except to the extent otherwise expressly provided in this Lease, it is agreed and intended that rent payable hereunder by the Lessee shall be paid without notice, demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Except as specifically set forth in this Lease, under no circumstances or conditions shall the City be expected or required to make any payment of any kind hereunder or have any obligations with respect to the use, possession, control, maintenance, alteration, rebuilding, replacing, repair, restoration or operation of all or any part of the Site or any buildings or improvements or personal property situated thereon, from time to time, so long as the Site or any part thereof is subject to this Lease, and, except as specifically set forth in this Lease and the Development Agreement, the Lessee expressly waives the right to perform any such action at the expense of the City.

Lessee also shall pay, as rent and a Monetary Obligation hereunder, to help with maintenance costs of the Surface Parking Lot described in Section 6 hereof, the amount of \$30,000 per year, payable in equal monthly installments of \$2,500.00 on the first day of each month, for a period of 15 years beginning with the first day of the month following completion and opening for use of the Surface Parking Lot. Such rent shall be paid to the City of Kent by check delivered to the City's Director of Budget and Finance.

C. **Title.** The City leases the Site to the Lessee free and clear of all liens and encumbrances, except for the following:

1. Such easements not inconsistent with the Urban Renewal Plan as are needed for City public improvements or necessary public utility service, all of which easements shall either be set forth in **Exhibit D** attached hereto, or shall otherwise be such easements as are mutually acceptable to and agreed to in writing by the parties after the date of this Lease; at the City's option, the Lessee agrees that any such easements which must be newly created either have been created by reservation in this Lease or, subsequent to the entering into the Lease, will be created on or before the Lease Term Commencement Date by the Lessee's execution and delivery of easements to the City or by execution of a dedication plat, in form satisfactory to the Director of Law of the City; and any such easements for the benefit of the City shall be free and clear of all liens and encumbrances, except for such title exceptions as are approved by the Director of Law of the City, and the City shall be entitled to receive prior to the Lease Term Commencement Date hereunder such title insurance or other title evidence evidencing such priority of said easements as is satisfactory to the City;

2. the covenants contained herein which are by the terms of this Lease required to be covenants running with the land;

3. the restrictions of the Urban Renewal Plan;

4. unpaid taxes, payments in lieu of taxes and assessments not delinquent;

5. matters created, suffered or permitted by or through the Lessee;

6. roads, highways and other public rights of way and **Public Improvements**public improvements, whether now existing or hereafter created;

7. zoning, land use and other governmental laws, rules and regulations;

8. any matters that would be shown by an accurate survey and inspection of the Site;

9. easements, covenants, conditions and restrictions of record and environmental remediation easement rights, if any;

10. such of the Title Company's standard printed exceptions that have not been deleted pursuant to agreement with the Lessee;

11. any covenants, conditions and restrictions created or imposed with respect to the TIF Ordinance or Service Payments (as defined below); easements, covenants, conditions and restrictions of record;

12. easements, covenants, conditions and restrictions of record;

13. ~~12.~~ the Declaration of Restrictions referred to in Section 4B hereof; and

14. ~~13.~~ any other Permitted Encumbrances listed in **Exhibit D** attached hereto.

Concurrently with the execution and delivery of this Lease, Lessee has obtained a leasehold owner's policy of title insurance issued by First American Title Insurance Company, or such other title insurance company selected by Lessee and acceptable to the City (the "Title Company"), in its usual and customary form, insuring in the Lessee in the amount specified by the Lessee good leasehold title in the Site, subject to the foregoing exceptions, free and clear of all liens, encumbrances, restrictions, reservations, easements, agreements, limitations and conditions of record except those created or permitted by the Urban Renewal Plan or this Lease.

D. **Recordation of Memorandum of Lease.** The Lessee shall promptly file a mutually satisfactory Memorandum of Lease, substantially in the form attached hereto as **Exhibit E**, in the real estate records of the Office of the County Recorder of Portage County, Ohio. The Lessee shall pay all costs for so recording the Memorandum of Lease.

E. **Lease Term Commencement Date; Term.** The initial term of this Lease shall commence on the date this Lease has been fully signed by both parties hereto (hereinafter referred to as the "Lease Term Commencement Date" or "Commencement Date"). The Lessee shall have the right to possession and occupancy of the Site on the Lease Term Commencement Date. Unless earlier terminated in accordance with the applicable provisions of this Lease, the initial term of this Lease shall expire on midnight of that date occurring seventy-five (75) years from and after the Lease Term Commencement Date. Provided that no event of default, or condition, state of facts or circumstance which, with the giving of notice, passage of time or both would constitute an event of default, has occurred and is then continuing under this Lease, the Lessee may at its option extend the term of the Lease for one additional term of up to twenty-four (24) years upon all the same terms and conditions contained herein, or as hereafter amended, by giving the City written notice one hundred eighty (180) days prior to the expiration of the then current term.

F. **Apportionment of Taxes. Current Year.** The portion of the real estate taxes, payments in lieu of taxes and assessments, if any, for the tax year in which the term of this Lease Term commences shall be apportioned between the City and the Lessee on a calendar year basis as of the date hereof. If the amount of such taxes and payments is not ascertainable on such date, the apportionment between the City and the Lessee shall be on the basis of the total year's tax allocable to the Site determined by multiplying the valuation of the Site as it appears on the last available County Treasurer's tax duplicate by the most recent tax rate; provided, however, that such apportionment shall be subject to final adjustment within thirty (30) days after the date the actual amount of such taxes and payments is ascertained.

Prior Years. Outstanding real estate taxes, payments in lieu of taxes and assessments for the prior years, if any, shall be paid by the City.

Section 2. Project Plans; Construction of Project.

A. **Project Plans.** Prior to the date of this Lease and consistent with the Development Agreement, the Lessee submitted to the City improvement plans for the Project to be constructed on the Site (the "Project Plans"), and the City has approved those Plans.

Prior to commencement of construction of the Project, the Lessee shall obtain such building permits or other construction permits as are required for construction of the Project.

If the Lessee desires to make any material change in the content of the Project Plans after they are approved by the City, the Lessee shall submit the proposed change to the City for its review and approval pursuant to Section 3 of the Development Agreement. Any disapproval of such change by the City shall be made in writing (setting forth details) to the Lessee as provided in Section 3 of the Development Agreement. No material changes shall be made in the City-approved Project Plans without obtaining City review and approval.

B. **Commencement and Completion of the Project.** The Lessee shall construct the Project as described in **Exhibit B** hereto at its sole cost and expense. The Lessee agrees to construct and complete the Project in accordance with (i) the Lessee's Project Plans, previously or hereafter approved by the City, (ii) the requirements of the Urban Renewal Plan, (iii) the requirements of the Development Agreement and this Lease, and (iv) the requirements of all applicable federal, state and local laws and regulations. The Lessee shall commence construction of the Project within thirty (30) days following the signing by all parties of this Lease and shall diligently proceed to carry out and complete the Project, and Lessee shall have completed the Project, as described in paragraph D below by eighteen months from the date of commencement of construction; provided that, so long as the Lessee is diligently proceeding to complete the Project, said time for completion may be extended up to five (5) additional months. Completion of construction for this Section shall occur upon the obtaining of all certificates of occupancy for the core and shell of the buildings so that the Project is ready to be turned over to the tenants for tenant build outs.

C. **Construction Inspector; Progress Reports.** The Lessee shall, at its own expense, retain a construction inspector satisfactory to the City or its Project financing mortgagee(s) to serve as an independent construction inspector ("Construction Inspector") to inspect the construction of the Project, until the Project has been completed and the Certificate of Completion identified in paragraph (D) below has been executed.

Commencing one (1) month after execution of this Lease by both parties, and monthly thereafter until construction of the Project has been completed, the Lessee or the Construction Inspector shall make reports to the City, in such detail as may reasonably be requested by the City and in such form as is commonly used in the construction industry, as to the actual progress of the Lessee with respect to construction of the Project.

D. **Certificate of Completion.**

1. Promptly after completion of the Project, in accordance with this Lease, upon request of the Redeveloper, the City will furnish the Lessee with an appropriate instrument (substantially in the form of **Exhibit F** attached hereto) so certifying. The certification by the City shall be a conclusive determination of satisfaction and termination of those covenants in this Lease with respect to the obligations of the Lessee and its successors and assigns to construct the Project, and the dates for the beginning and completion thereof.

2. If the City shall refuse or fail to provide the certification in accordance with the provisions of this Section, the City shall, within fifteen (15) days after written request by the Lessee, provide the Lessee with a written statement, indicating in adequate detail in what respects the Lessee has failed to complete the Project in accordance with the provisions of this Lease, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the City, for the Lessee to take or perform in order to obtain such certification.

3. The certificate of completion provided for in this Section may be given on behalf of the City by the City Manager of the City.

E. **Return of Deposit** Upon the commencement of construction of the last building to be constructed as part of the Project, the City shall return to the Lessee all but \$10,000 of any remaining Deposit. Commencement of construction for this purpose means the pouring of the footers for the building. The remaining \$10,000 shall be retained by the City and not paid to the Lessee.

Section 3. Use of the Property; Operation, Maintenance, Replacement and Repair of Improvements.

A. **Urban Renewal Plan Restrictions.** The Lessee hereby agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Lessee and such successors and assigns, shall:

(1) use, develop and redevelop the Property in accordance with the Urban Renewal Plan; and

(2) not discriminate upon the basis of race, color, religion, sex, age, handicap or national origin in the lease or rental, or the use or occupancy, of the Property, or any part thereof.

It is intended and agreed that the covenants provided in this Section 3(A) shall be deemed to be covenants running with the land, and shall be included in any future deed by the Lessee should the Lessee hereafter acquire fee title to the Site and/or seek to convey title to the Property or a portion thereof, and that they shall in any event, and except only as otherwise specifically provided in this Lease and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against the Lessee, its successors and assigns to the Property, or any part of thereof, or any party in possession or occupancy of the Property, or any part of thereof, including without limitation any grantee in a conveyance of the Property, or any part of thereof or interest therein through judicial process, and whether or not this Lease remains in effect or whether or not such provision is included in any succeeding agreement with the Lessee or its successors or assigns. It is further intended and agreed that the covenant provided in this paragraph relating to compliance with the Urban Renewal Plan shall remain in effect until March 15, 2026, which is the period provided for pursuant to the Urban Renewal Plan, and that the non-discrimination covenant provided in this paragraph shall remain in effect without limitation as to time; provided that both such covenants shall be binding on the Lessee itself, or any