

**LEASE AGREEMENT**

**CIDC ALBANY CENTER LLC  
LANDLORD**

and

**ALBANY CONVENTION CENTER AUTHORITY  
TENANT**

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**For a portion of the premises located at  
126 State Street, City and County of Albany, State of New York**

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#### BASIC LEASE INFORMATION

The Basic Lease Information outlines some of the material business terms of the Lease, however it is qualified in all respects by the applicable provisions of the Lease, and if there is a conflict between the Basic Lease Information and the provisions of the Lease, the Lease shall control.

Date of Lease: \_\_\_\_\_, 2025

Landlord: CIDC ALBANY CENTER, LLC

Tenant: ALBANY CONVENTION CENTER AUTHORITY

Building Address: 126 State Street, City of Albany, County of Albany, State of New York

Leased Premises: an approximate 0.84 acre parcel of land along with an approximately 100,650 square foot building

Term: Thirty (30) year term

Rent

Commencement: March 1, 2027

Initial Annual Rent:

Initial Monthly Rent:

Service of Notices: By registered or certified mail, or express mail as set forth in Article 22 of the Lease

State: New York

## LEASE AGREEMENT

### PARTIES

THIS LEASE, made as of the \_\_\_\_ day of \_\_\_\_\_, 2025, by and between **CIDC Albany Center, LLC**, having its principal office at 15375 Blue Fish Circle, Lakewood Ranch, Florida 34202 ("Landlord") and **ALBANY CONVENTION CENTER AUTHORITY**, a New York public benefit corporation having its principal office 55 Eagle Street, Albany, New York 12207 ("Tenant").

### ARTICLE 1 LEASE OF PREMISES

Section 1.01. **Lease of Premises** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the covenants, agreements, provisions and conditions of this Lease, the land consisting of approximately 0.84 acres located at 120 and 126 State Street, Albany, New York ("Land") and an approximately 100,650 square foot building (the "Building") as more particularly described on Schedule \_\_\_\_, attached hereto.

Section 1.02. **Leased Premises.** The "Leased Premises" or "Premises" shall mean the Land and the Building.

### ARTICLE 2 TERM

Section 2.01. **Term.** Tenant shall lease the Leased Premises for a thirty (30) year term to commence on the Term Commencement Date, as hereinafter defined. The Term shall expire on 30<sup>th</sup> year anniversary of the Term Commencement Date. Within ten (10) days after the Term Commencement Date, the parties shall enter into an Agreement of Lease Commencement, in the form marked Exhibit B, setting forth the commencement, rent commencement and expiration dates of the Lease. In no event may Tenant terminate this Lease during any period of time that the Landlord's financing of the construction of the Building through bonds issued by the Albany County Capital Resource Corporation, including but not limited to tax exempt bonds, (the "Financing") are outstanding.

Section 2.02. **Term of this Lease** The word "term" and the words "term of this Lease" shall mean the term of the Lease which may become effective.

**ARTICLE 3**  
**RENT, ADDITIONAL RENT**

Section 3.01. **Annual Rent.** Commencing on the Rent Commencement Date (defined herein) and subject to the provisions of this Lease, Tenant shall pay the Annual Rent as set forth on **Exhibit C** attached hereto and made a part hereof. The parties agree the annual rent shall be adjusted prior to the Financing of the project based on the then current scope of work and market conditions. The Exhibit shall be replaced in the Lease upon the determination of the final Annual Rent amount. The Annual Rent is a triple net figure and in addition to the Annual Rent Tenant shall be responsible to pay taxes, utilities, insurance and maintenance and repairs all as set forth in this Lease. All rent in addition to Annual Rent shall be deemed Additional Rent to be paid by Tenant pursuant to the terms and conditions of this Lease.

Annual Rent shall be due on the first day of each calendar month during the Term. Rent for any period of less than one month shall be apportioned based on the number of days in that month. Tenant will pay the Annual Rent and Additional Rent to the Landlord at 15375 Blue Fish Circle, Lakewood Ranch, Florida 34202 or to such other person or at such other place as Landlord may designate in writing. Tenant shall pay the Annual Rent and Additional Rent promptly as and when the same shall become due and payable, without demand therefor and without abatement, deduction or setoff except as expressly provided in this Lease. In the event that Landlord shall not receive the Annual Rent and all Additional Rent due hereunder within ten (10) days after its due date, Tenant shall pay to Landlord a late charge at a rate of one percent (1.0%) per month for each dollar overdue. Such late charge shall be deemed Additional Rent for all purposes under this Lease. No monthly invoice shall be provided and Landlord may direct rent payments directly to its lender or bond trustee.

The obligation of the Tenant to pay Annual Rent and to pay all other amounts provided for in this Lease and to perform its obligations thereunder are absolute and unconditional, and such Annual Rent and other amounts are payable without any rights of set-off, recoupment or counterclaim it might have against the Landlord, any Financing bond trustee or any other person and whether or not any or all of the Premises is used or occupied or available or suitable for use or occupancy and whether or not the Lease is in effect. If the Tenant has paid all amounts required under the Agreement and continues to pay the same when due, it will not be precluded from bringing any action it may otherwise have against the Landlord, provided, however that the Tenant will not as a result of the Tenant's failure to pay any administrative expenses or annual administrative fee be precluded from bringing any such action if the amount thereof is disputed or is being contested by the Tenant in good faith.

The Lease will be included in the Tenant's capital budget which is approved annually by the Tenant board.

The "Rent Commencement Date" shall be the same date as the Term Commencement Date (defined in Section 4.02 of the Lease).

Tenant has or will pay to the Landlord (or its designated architect as determined by Landlord) prepaid rent in the amount of \$4,600,000 ("Initial Prepaid Rent"). Landlord and Tenant entered into that certain Option to Lease Agreement dated September 4, 2024 ("Option to Lease"). The Option to Lease requires Tenant to make a payment of Two Million Four Hundred Thousand Dollars and 00/100 (\$2,400,000) the Payment [defined in the Option to Lease] (the "Option Payment"). The full amount of the Option Payment plus an additional \$2,200,000.00 shall be paid by Tenant no later than fifteen days prior to the closing of the Landlord's Financing for the construction of the Building. The funds shall be paid directly to the Landlord or to such other party as Landlord may direct in writing. Landlord will only use the Initial Prepaid Rent in connection with the Land and the construction of the Building (the "Project"). In the event the Lease is terminated prior to Financing as permitted by the express terms of this Lease, any remaining Initial Prepaid Rent unused by Landlord in connection with the Project will be returned by Landlord to Tenant.

If Tenant fails to timely deliver the Initial Prepaid Rent, Landlord shall have the right to terminate this Lease and receive from Tenant payment for all costs and expenses paid by Landlord up to the Date of Termination, including due diligence, plans and specifications, permits and approvals, Financing fees, attorneys' fees, developer fees, construction costs, third party fees paid in connection with the Financing and the Project. This provision shall survive the termination of the Lease.

Section 3.02. **Additional Rent.** In addition to Annual Rent, Tenant shall pay "Additional Rent" which shall mean all sums of money payable by Tenant under this Lease other than Annual Rent. The Annual Rent and the Additional Rent are hereafter collectively referred to as the "Rent".

Section 3.04. **Real Estate Taxes.** Commencing on the Term Commencement Date, Tenant shall pay when due all real estate and school taxes and special assessments, business improvement district taxes, payment in lieu of taxes, and all other taxes, duties, charges, fees and payments imposed, assessed or levied upon, or arising in connection with the ownership, use, occupancy or possession of the Leased Premises and the Building and Land during the term of the Lease (Taxes), if any. In the event Taxes are imposed, Tenant shall pay 100% of the Taxes with respect to its Building and Land prior to the date such Taxes are due. Such payment shall be made directly to the appropriate taxing authorities unless Landlord directs otherwise. Tenant shall provide evidence of payment prior to the date such Taxes are due so there are no late fees or penalties. In the event there are any late fees or penalties they shall be paid by Tenant as Additional Rent.

Section 3.05. **Utility Charges.** From and after the Term Commencement Date and throughout the term of this Lease, Tenant shall be solely responsible for and shall promptly pay all charges for Tenant's use and consumption of sewer, water, gas, electricity, telecommunications, and other utility services directly to the utility provider. All such fees and charges shall be paid timely before the imposition of any late fees or penalties. Landlord shall not be liable for any interruption in the supply of utilities, nor shall Landlord be liable under any circumstances for loss of or injury to property, however occurring, through or in connection with or incidental to any of the forgoing, nor shall any such failure relieve Tenant from the duty to pay the full amount of Rent herein reserved, or constitute or be construed as a constructive or other eviction of Tenant. Any special heating and cooling equipment which may be required by Tenant, including, but not limited to installation of wiring, gas piping, water and separate metering shall be at Tenant's own expense. Tenant will not install any equipment, which will exceed or overload the capacity of any utility facility. In addition, Tenant is responsible for its own phone and fiber service.

Section 3.06. **Financial Statements.** Tenant shall provide Landlord, upon Landlord's request, with copies of its annual financial statements along with any additional or further information as may be reasonably required by the Landlord's Financing lender or bond trustee.

Section 3.07. **Additional Prepaid Rent.** Tenant has applied for and anticipates receiving a grant (the "Grant") in the amount of Ten Million Dollars and 00/100 (\$10,000,000.00) ("Additional Prepaid Rent"). In addition to the Option Payment, Tenant shall pay to the Landlord [or such other party as the Landlord directs] the Additional Prepaid Rent as additional prepaid rent under the Lease.

Therefore, prior to the Landlord's closing of its initial financing of the project ("Closing"), Tenant shall either (i) pay Landlord [or such party designated by Landlord] the Prepaid Rent or (ii) provide a bank or grant financing commitment in an amount equal to the Additional Prepaid Rent in such form and substance acceptable to the Landlord (the "Commitment"). If Tenant does not provide either (i) or (ii) above prior to the Closing, either Landlord or Tenant shall have the right to terminate this Lease upon written notice to the other party. If Tenant obtains a satisfactory commitment letter pursuant to subsection (ii) herein, Tenant shall pay the Additional Prepaid Rent to Landlord within 12 months from the date of Closing.

To the extent permissible under such Grant or Commitment and in an amount of the Additional Prepaid Rent, Tenant hereby pledges and assigns over to the Landlord any and all Grant funds and/or bank financing proceeds it receives.

**Commented [1]:** Can we insert some language that allows for assignment to be in compliance with grant regulations? Or something to that effect?

#### ARTICLE 4 PREPARATION FOR OCCUPANCY

Section 4.01. **Construction.** Landlord shall promptly commence and shall pursue with due diligence until completion, the construction of the Building in accordance with the plans and specifications annexed to this Lease as **Exhibit D** (the "Base Build"). Landlord shall retain and pay BBL Construction Services, LLC ("BBL") to provide design services for the design of the Premises. The construction and completion of the Building and the work to be performed in accordance with the Base Build constitutes "Landlord's Work". Landlord intends to substantially complete Landlord's Work on or about March 1 2027 (the "Scheduled Completion Date"), but this date may be extended by written agreement of the parties or for Excusable Delays and Tenant Delays (hereinafter defined). Landlord agrees that it shall obtain a completion guaranty from BBL in favor of its mortgage lender or bond trustee in connection with the Landlord's Work which shall include, but not be limited to assurances that the Landlord's Work will be completed in accordance with the agreed-upon specifications, plans and timelines, and shall provide a copy to the Tenant upon Tenant request. Landlord shall pay for all of the cost of the Landlord's Work as it relates only to the Premises, but not Tenant's Work as it relates to the Premises.

Substantial Completion and Liquidated Damages. "Substantially Completed" shall mean the date when Landlord has obtained a certificate of occupancy or comparable municipal authorization [temporary or permanent] permitting Tenant's use of the Premises for the purposes authorized by the provisions of this Lease. Landlord anticipates Substantial Completion by March 1, 2027. Notwithstanding the foregoing, if the Substantial Completion does not occur until after March 1, 2027 for reasons other than force majeure or a Tenant Delay, Landlord will pay to Tenant Five Percent (5%) for every \$1.00 Tenant would have paid in Base Rent from March 1, 2027 to the Substantial Completion as liquidated damages.

If the net cost and expense of construction of the Premises is increased beyond the Landlord's Work as described above as a result of any Change Order (defined below) requested by Tenant, then Tenant shall pay to Landlord the amount by which the net cost and expense was increased by such Change Order, which payment shall be made the earlier of (i) within 30 days from the date the work is completed and invoiced to the Tenant or (ii) the Term Commencement Date. If the net cost and expense of construction of the Premises is decreased below the cost of the Landlord's Work as a result of any Change Order (defined below) requested by Tenant, then Landlord shall credit the amount of such decrease to the Tenant's Base Rent if such change occurs at least 30 days prior to the Landlord's initial Financing. If such change occurs within 30 days of Landlord's Financing the Change Order shall be paid by Tenant upon demand.. Landlord shall obtain or cause to be obtained all building permits, licenses and other governmental approvals which may be required to permit the construction of the Landlord's Work. Promptly thereafter, Landlord shall commence and proceed with due diligence and without delay, to construct the Landlord's Work in a good and workmanlike manner. The term "Change Order" shall mean the total costs incurred by the Landlord in connection with any change to the Base Build, including without limitation, construction costs and architectural and engineering fees solely and directly associated with reviewing and revising the approved plans and specifications, the increased costs of various trade contractors due solely and directly to delay, if any, in completing the Landlord's Work caused by the implementation of the Change Order and, if

applicable, costs associated with cancellation of materials already ordered, all as clearly described and represented on any Change Order. All Change Orders must be in writing signed by Tenant and Landlord.

Tenant will give full cooperation in having available those persons who are necessary to settle problems arising out of job conditions. Tenant shall designate in writing one or more representatives who shall have authority to bind Tenant as to all construction-related matters including, without limitation, ordering changes in the Landlord's Work, provided that any Change Order shall be countersigned by a representative of Tenant; it is understood and agreed that the Tenant's Executive Director and Chairperson shall each have the authority to bind the Tenant to Change Orders resulting in any changes to the Base Build.

If the date of Substantial Completion of the Landlord's Work shall be delayed due to any Tenant Delay (hereinafter defined), the period of time of the delay shall be added to the time in which the Landlord may perform its obligations. Notwithstanding, however, if the Tenant Delay results in additional cost or expense to the Landlord, the Tenant shall pay all such costs and expenses associated with the delay within 30 days from the date an invoice is issued to Tenant detailing such additional costs and expenses. The term "Tenant Delay" shall include, without limitation, any of the following which delays the completion of the Landlord's Work:

(1) Delay in submission of plans or specifications caused by Tenant or delay in Tenant giving approvals required for the preparation for, or execution of the Landlord's Work;

(2) Delays due to –

(a) Changes made by or on behalf of Tenant to the plans or in Landlord's Work;

(b) Postponement of Landlord's Work at Tenant's request or because of any Tenant's Work required to be performed in advance of items of Landlord's Work so postponed, provided Landlord shall have provided Tenant a reasonable time to perform such work;

(c) Delays resulting from material interference with Landlord's Work in the Premises or relating to the Building by Tenant, its agents, servants or employees;

(d) Commercial unavailability of any materials necessary to complete a Change Order; or

(e) Any other failure of Tenant to comply with any of its obligations under this Lease, which would have reasonably caused such Delay; or

(f) Failure to timely pay the Additional Prepaid Rent.

Upon receipt by the Tenant of written notice of the occurrence of a Tenant Delay under item (2)(d) above, Tenant shall have the right within ten (10) business days after receipt of such notice to take such actions as are necessary, including, without limitation, substitute available

materials in order to avoid a Tenant Delay, provided the Tenant pays to the Landlord the net increase in cost caused by such substitution in accordance with Section 1.3.2 and 1.3.3 above, if any.

Any work required by Tenant for the use and operation of the Premises and which is not included in the Landlord's Work shall be deemed to be Tenant's Work, which shall be completed at Tenant's sole cost and expense. Tenant shall have access to the Premises one hundred twenty (120) days prior to the Substantial Completion Date for the installation of Tenant's Work provided such access will not interfere with the performance by Landlord of Landlord's Work. Tenant agrees it shall not interfere with or delay Landlord's Work. Tenant shall proceed with due diligence toward the completion of Tenant's Work. Landlord and Tenant shall cooperate and work together in connection with allowing Tenant access to the Building for the purpose of performing Tenant's Work.

All of Tenant's alterations shall remain property of the Tenant provided they are not permanent in nature. Tenant may remove such non-permanent alterations, additions and improvements at the end of the Term of the Lease or, so long as Tenant is not in default of this Lease, upon the earlier termination hereof. Provided Tenant does not exercise its option to Purchase, (i) at Tenant's sole expense, Tenant must repair any damage to the Premises occasioned by such removal and (ii) at the end of the Term, Tenant, at its sole expense, shall remove all of its furniture and equipment and any improvements made by it to the Premises beyond the Base Build (and to the extent required by Section 7.1 hereof) and repair any damage to the Premises occasioned by such removal.

In the event Tenant intends to contract for any Tenant Work and/ or future Work (as defined below) to be conducted by Tenant at the Premises, Tenant shall, not less than sixty (60) days prior to construction, provide plans and specifications to Landlord for Landlord's approval in its sole discretion. Tenant shall perform all Work in compliance with the provisions of this Lease, including in particular Article 7 hereof. Tenant shall coordinate all Tenant construction and fit-up with Landlord and its agents, builders and contractors. All construction work done by Tenant within the Premises shall be performed in accordance with industry standards, in compliance with all governmental requirements, and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Building. Tenant agrees to indemnify Landlord and hold Landlord harmless against any loss, liability or damage resulting from such Tenant Work or from any violation of any state or federal laws including the New York state laws set forth herein, and Tenant shall, if requested by Landlord, furnish insurance, bonds or other securities satisfactory to Landlord against any such loss, liability or damage.

#### Section 4.02. *Term Commencement Date.*

The words "Term Commencement Date" shall mean March 1, 2027. In no event shall the Term Commencement Date occur after March 1, 2027.

If the occurrence of conditions set forth above are delayed due to any act or omission of Tenant, its agents or employees, including without limitation any failure to plan or to execute Tenant's Work, then the Leased Premises shall be deemed ready for occupancy on the date when it would have been ready, but for such Tenant Delay.

#### Section 4.03. ***Punch List Items***

(A) Within ten (10) days after the date the Landlord's Work is Substantially Completed in accordance with Section 4.02, the Landlord's architect shall deliver to Tenant for Tenant's approval a current list ("Punch List") of Punch List Items (as hereinafter defined) for the Landlord's Work that Landlord is obligated by the provisions of this Lease to complete. Tenant shall return the Punch List to Landlord within ten (10) days after receipt thereof with any additions thereto noted by Tenant. The Landlord shall promptly commence, and with due diligence shall proceed to do the work set forth on said Punch List. If Landlord has obtained a temporary certificate of occupancy, Landlord shall, with due diligence, complete the remaining items of Landlord's Work required to obtain and shall thereupon obtain, a permanent certificate of occupancy for the Leased Premises as required by applicable statutes, laws, ordinances, regulations and orders of governmental authority having jurisdiction thereof ("Laws").

(B) The term "Punch List Items" shall mean details of construction, work awaiting seasonal opportunity, decoration and mechanical and electrical adjustments which, in the aggregate, are minor in character and do not materially or unreasonably interfere with Tenant's use or enjoyment of the Leased Premises in accordance with the provisions of this Lease.

#### Section 4.04. ***Tenant's Rights of Access.***

(A) During the course of the Landlord's Work, the Tenant, its agents, employees and contractors, may enter upon the Leased Premises at all reasonable times for the purposes of inspection and, as soon as possible after the Landlord's Work is Substantially Completed, for the purpose of installing Tenant improvements, fixtures and other equipment without being deemed thereby to have taken possession. Tenant agrees that during said period (a) Landlord shall have no liability to Tenant for damage to any property of Tenant stored on the Leased Premises except for damages caused by negligent acts or omissions of Landlord or its employees or agents, (b) Tenant shall not unreasonably interfere with the Landlord's Work, and (c) Tenant shall indemnify Landlord and hold Landlord harmless from and against any claims, losses, damages and expenses arising out of the negligent acts or omissions of Tenant or its employees or agents in the Project. Any such prior entry to the Leased Premises shall be at the Tenant's sole risk.

(B) Tenant's activity within the Leased Premises prior to the Term Commencement Date or Tenant's acceptance of possession of the Leased Premises shall not be deemed a waiver of

any of the obligations under this Article to be performed by Landlord, including the completion of Punch List Items. However, after entering into possession of any part of the Leased Premises, Tenant shall promptly bring to Landlord's attention by delivery of written notice identifying any defects in construction which come to Tenant's attention within the first six (6) months following Tenant's occupancy and Landlord shall promptly correct the same at Landlord's expense.

Section 4.05. **Condition of Construction.** All construction work required or permitted by this Lease, whether by Landlord or Tenant, shall be done in a good and workmanlike manner using new, first class materials and shall be in compliance with all applicable Laws. Landlord shall also obtain all licenses (except all licenses and approvals required by the Tenant to operate its business from the Leased Premises), temporary and permanent certificates of occupancy and other governmental approvals required to permit the use of the Leased Premises in accordance with this Lease. Notwithstanding, a permanent certificate of occupancy shall not be required if it cannot be obtained until Tenant's Work is completed.

## **ARTICLE 5 OPTIONS TO PURCHASE**

5.1 Purchase Options. Tenant shall have the following purchase options:

(A) Expiration of Lease. Provided no Event of Default has occurred and be then continuing, Tenant shall have the option, at the expiration of the Term to purchase all of Landlord's right, title, and interest in and to the Leased Premises for the Purchase Option Price.

(B) Early Buyout. Provided no Event of Default has occurred and be then continuing, Tenant shall have the option to purchase all of Landlord's right, title, and interest in and to the Leased Premises for the Purchase Option Price

5.2 Exercise of Purchase Option. For Tenant to exercise the Purchase Option, Tenant must notify Landlord in writing of its desire to exercise such option at least ninety (90) days prior to Lease expiration or the Early Buyout date.

5.3 Purchase Option Price. The Option Purchase Price means an amount equal to the greater of (a) Ten Dollars (\$10.00), or (b) the principal balance outstanding on the Tax-Exempt Lease Revenue Bonds (CIDC Albany Center, LLC Project), Series 2025 issued by Albany County Capital Resource Corporation, all prepayment penalties and fees early breakage fees, redemption fees, transfer tax in connection with the purchase, reasonable Landlord attorney fees, any and all closing costs, recording fees, and other or additional mortgage debt outstanding.

## **ARTICLE 6 USE AND CARE OF PREMISES**

6.1 The Leased Premises may be used only for the purpose or purposes specified in Article

8 hereof, and for no other purposes without the prior written consent of Landlord.

6.2 Tenant shall not, without the Landlord's prior written consent, keep anything within the Leased Premises or use the Leased Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Leased Premises or other parts of the Building.

6.3 If, because of anything done, caused, or permitted to be done, permitted, or omitted by Tenant, the rate of liability, fire, boiler, sprinkler, water damage or other insurance (with all extended coverage) on the Building or on the property and equipment of Landlord or Tenant is higher than it otherwise would be, Tenant shall reimburse Landlord for the additional insurance premiums caused by such actions thereafter paid by any of them, which shall be included in Additional Rent. Tenant shall make the reimbursement on the first day of the month following the payment by Landlord. In any action or proceeding in which Landlord and Tenant are parties, a schedule or "make up" of any insurance rate for the Building or Premises issued by the New York Fire Insurance Exchange, or other body establishing fire insurance rates for the Building, shall be conclusive evidence of the facts therein stated and of the several items and charges in the insurance rates then applicable to the Building or Leased Premises.

6.4 All property kept, stored or maintained within the Leased Premises by Tenant shall be at Tenant's sole risk. Landlord shall not be liable for any loss or damage to any such Tenant property unless such loss or damage is caused by Landlord's negligence or willful misconduct.

6.5 Tenant shall take good care of the Leased Premises and keep the same free from waste at all times. Tenant shall keep the Premises, clean and free from dirt or rubbish at all times. Tenant shall keep and maintain landscaping, parking areas, drive aisles and ensure snow removal as necessary. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Building. Tenant shall be responsible for disposing of all recyclable waste, hazardous waste and general trash at its sole cost and expense. Tenant shall maintain all display windows in a neat, attractive condition and shall not display any objectionable materials.

6.6 Tenant shall procure at its sole expense any permits and licenses required for the transaction of business in the Leased Premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

6.7 Tenant shall provide housekeeping and janitorial services to include without limitation restroom cleaning, trash removal and vacuuming throughout the Leased Premises ("Janitorial Services Requirements").

**ARTICLE 7**  
**NET LEASE**

Section 7.01. The rent paid by Tenant to Landlord under Article 3 of this Lease is net to Landlord and to that end, all costs, expenses and obligations of every kind and nature whatsoever relating to the Leased Premises which may arise or become due during the Lease Term, such as insurance, taxes, levies and assessments, fees and use charges, charges for public utilities, excises, licenses and permit fees, taxes and assessments specified in Article 3, intangible and other personal property tax, business and occupation taxes, gross sales taxes, occupational license taxes, and all other governmental impositions and charges of every kind and nature, repairs, maintenance and replacements of the Building whatsoever, whether or not now customary or within the contemplation of the parties hereto shall be paid by Tenant, except that Tenant shall not be responsible for the Federal and State income, gift and estate taxes of the Landlord.

**ARTICLE 8**  
**USE OF LEASED PREMISES**

Section 8.01. **General Uses.** Tenant shall have the right to use the Leased Premises for convention center, and all other uses incidental and related thereto; and for no other use without the prior written consent of the Landlord in the exercise of Landlord's sole and absolute discretion which shall not be unreasonably withheld. If any government license or permit shall be required for the proper and lawful conduct of Tenant's business or other activity carried on in the Leased Premises, and if the failure to secure such license or permit, might or would, in any way effect Landlord, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain such license or permit and comply with the requirements of each such license or permit.

**ARTICLE 9**  
**REPAIRS AND MAINTENANCE**

Section 9.01 RESERVED.

9.02 Tenant shall keep the Premises in good, clean, habitable condition. Tenant shall make all needed repairs and replacements, of the Premises including but not limited to the interior of the Building and the exterior, exterior entrance doors, exterior entrance door closure devices, window and window frames, roof, all mechanicals including but not limited to plumbing and heating, ventilation and air conditioning, parking areas and access drives and signage, structural and non structural. Tenant's responsibilities include any damage caused by them, wherever located, necessitating any repair and replacement of all glass, lighting, plumbing and other electrical mechanical and electromotive installation, equipment and fixtures and also include all utility repairs in ducts, conduits, pipes and wiring, in any sewage stoppage located in, under and above the Premises. If any repairs required to be made by Tenant hereunder are not made

within ninety (90) days (or if of a nature which cannot reasonably be cured in that time at ordinary expense, Tenant must commence such repair in that time and thereafter diligently prosecute such repair to completion) after written notice delivered to Tenant by Landlord, Landlord may at its option make such repairs; and Tenant shall pay to Landlord upon demand as Additional Rent hereunder, the costs of such repairs. If Tenant fails to make such payment to Landlord within 30 days from the date of such demand, the amounts owed shall bear interest at the Lease Interest Rate commencing on the 31<sup>st</sup> day. "Lease Interest Rate" shall be an annual rate equal to the lesser of ten percent (10%) or the maximum rate allowed by law. Tenant at its sole cost and expense shall keep the Premises free of insects, rodents, vermin and other pests in accordance with applicable regulations and requirements and shall pay to Landlord any cost incurred by Landlord as a result of a pest infestation at the building or in the Premises, which amount shall be Additional Rent. Provided Tenant does not exercise its Option to Purchase, at the expiration of the Lease, Tenant shall surrender the Premises in good condition, excepting reasonable wear and tear.

9.03 Notwithstanding anything contained in the Lease to the contrary, with respect to the heating ventilating and air conditioning ("HVAC"), at all times during the term of this Lease and any extensions thereof, Tenant shall be responsible for the repair and maintenance of the HVAC system. Tenant shall maintain a service agreement with a reputable HVAC contractor which shall provide for service a minimum of twice a year. Each year during the term, Tenant shall provide Landlord with a current copy of said contract. If Tenant fails to maintain such contract, Landlord may obtain a contract and the cost of same shall be considered additional rent, payable by Tenant upon receipt of an invoice.

9.04 Tenant is responsible for the over-all supervision of the Leased Premises for the overhead and general administrative costs of the Tenant incurred because of the Leased Premises and for the integration of the operation of the Leased Premises.

## **ARTICLE 10 FIRE AND OTHER CASUALTY-INSURANCE**

### **Section 10.01. *Damage or Destruction.***

(A) Tenant agrees to notify Landlord and its lender or trustee immediately in the case of damage to or destruction of the Leased Premises or any portion thereof in an amount exceeding \$50,000 resulting from fire or other casualty. The Landlord agrees that the net proceeds of any insurance relating to such damage or destruction not exceeding \$50,000 may be paid directly to Tenant for Tenant to use to restore the Leased Premises.

(B) In the event the Leased Premises or any portion thereof is damaged or destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$50,000 the net proceeds

of any insurance will be initially paid directly to the Landlord for deposit as directed by Landlord's lender or trustee. The Tenant will within one hundred eighty (180) days after such damage or destruction determine whether to repair, reconstruct, restore or improve the Leased Premises and give written notice of such determination to the Landlord. If the Tenant elects to repair, reconstruct, restore or improve the Leased Premises it will proceed forthwith to repair, reconstruct, restore or improve the Leased Premises to substantially the same condition as it existed prior to the event causing such damage or destruction. So long as the Tenant is not in default under the Lease any net proceeds of insurance relating to such damage or destruction received by the Landlord will be deposited to the credit of the lender or such bond fund created for such funds and applied to the payment of the costs of such repairs, reconstruction, restoration or improvement in the same manner and upon the same conditions as set forth in the applicable loan or bond documents for advances during construction.

(C) It is further understood and agreed that in the event Tenant will elect to repair, reconstruct, restore or improve the Leased Premises, the Tenant will complete the repairs, reconstruction, restoration or improvement of the Leased Premises.

(D) In the event Tenant elects not to repair, reconstruct, restore or improve the Leased Premises, the net proceeds of any insurance will be paid to the Landlord as a prepayment of rent under the Lease for deposit to the trustee or lender and application to the redemption of any outstanding mortgage loan or bonds.

## **ARTICLE 11 INSURANCE**

Section 11.02. ***Insurance.***

Tenant shall indemnify, hold harmless and defend Landlord and its respective officers, directors, managers, members, employees, agents, advisors, and assigns (collectively, together with the Landlord, the "Indemnified Parties") from and against all losses, liabilities, damages, claims, suits, actions, penalties, costs, and charges and expenses of every kind or nature, including, without limitation, fees of attorneys and other professionals and witnesses and their disbursements and charges, (collectively the "Losses"), which may be imposed on, incurred by, or asserted against one or more of the Indemnified Parties arising out of or related to any one or more of the following, except to the extent that a final judgment determines that such Losses were caused by the negligence or willful act of one or more of the Indemnified Parties, in which case the indemnity shall not apply to the extent of such final judgment to the one or more Indemnified Parties which was or were determined by final judgment to be responsible for the negligence or willful act that caused such Losses: (a) any failure by Tenant to perform any of Tenant's agreements, terms, or conditions under this Lease; (b) any wrongful act or negligent act or omission by one or more of Tenant, its employees, agents, visitors, or any person entering the Premises under the express or implied invitation of Tenant; and (c) any injury to any person or any damage to property on or about the Premises, resulting from or related to the use of, or conduct of business in, the Premises by Tenant, its employees, agents, visitors, or any person entering the Premises or Building under the express or implied invitation of Tenant.

11.02 Landlord shall indemnify, hold harmless and defend Tenant and its respective officers, directors, managers, members, employees, agents, advisors and assigns from and against all losses whether for personal injury or property damages caused by Landlord, its employees, agents or contractors.

11.03 Landlord shall purchase and maintain at a minimum, a policy or policies containing the following types and limits of insurance coverages throughout the Term of this Lease: (a) ISO causes of special form insurance for all buildings, improvements and building equipment at the Property, including alterations, additions and improvements (except for interior alterations and improvements for which Tenant shall maintain insurance coverage) covering, at minimum, fire, wind, flood, hurricane, tornado, hail, vandalism, riot, malicious mischief and terrorism as well as loss or damage due to war, if such coverage is available, in an amount equal to full replacement cost of the buildings, improvements and equipment at the property with a commercially reasonable deductible (b) Commercial General Liability with limits of insurance not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury and property damage; (c) Commercial Excess/Umbrella Liability with limits of insurance not less than \$15,000,000; (d) Automobile Liability with limits of insurance for bodily injury and property damage of not less than \$1,000,000 each accident and covering all Tenant owned, non-owned, and hired vehicles; and (e) Property Insurance with limits of insurance not less than the full value of all materials, equipment and personal property owned by Landlord and to be kept on the Premises if any and (f) such insurance required by Landlord's mortgagee or bond trustee and (g) loss of rents for a minimum of 2 years. All such policies shall be written by an insurance company authorized by

the State of New York. Tenant shall be named as an additional insured on all forementioned insurance policies carried by Landlord. Tenant shall pay, as additional rent, Landlord's premiums and any deductibles incurred by Landlord during the term for claims made. Such monies owed hereunder shall be paid upon 15 days written notice from Landlord regarding amounts due.

11.04 Tenant agrees to carry general commercial liability insurance on the Premises as of the date of commencement of this Lease Agreement, and throughout any lawful extensions thereof, covering Tenant as named insured and Landlord, as additional insured, excluding any gross negligence or willful misconduct of Landlord, on a primary and non-contributory basis (Additional Insured – Managers or Lessors of Premises CG 2032 or its equivalent), providing single limit insurance of Two Million Dollars (\$2,000,000.00) [which may be satisfied by a combination of general liability and excess (umbrella) liability], and contractual liability coverage recognizing this Lease, and providing that Landlord and Tenant shall be given a minimum of ten (10) days written notice by the insurance company prior to cancellation, termination or change in such insurance. Tenant also agrees to carry insurance against fire and such other risks as are from time to time included in standard business coverage insurance, eighty percent (80%) replacement cost, covering all of Tenant's leasehold improvements, and personal property of Tenant located on or within the Premises. Prior to commencement of term, Tenant shall provide Landlord with copies of the policies or certificates evidencing that such insurance is in full force and effect and stating the terms thereof. Tenant shall obtain all insurance required to be maintained hereunder from solvent and responsible companies authorized and licensed to do business in New York. The minimum limits of the comprehensive general commercial liability insurance and the Tenant's fire insurance policy shall in no way limit or diminish Tenant's liability hereof and shall be subject to increase at any time, and from time to time, if Landlord in the exercise of its reasonable judgment shall deem same necessary for adequate protection. Within thirty (30) days after demand therefor by Landlord, Tenant shall furnish Landlord with evidence that such demand has been complied with. Tenant shall also obtain workers' compensation insurance, if required by applicable law.

11.05 During any Tenant work or subsequent alterations or modification of the Premises by the Tenant, Tenant shall ensure its contractors obtain liability insurance in accordance with the coverage limits set forth in this paragraph and name Landlord and Tenant as an additional named insured. No work shall be commenced without evidence of insurance provided to and approved by Landlord.

11.06 The indemnifications set forth in this section and otherwise in this Lease shall remain operative and in full force and shall survive the termination or expiration or assignment of this Lease.

## **ARTICLE 12 CONDEMNATION**

Section 12.01. The Lease and the interest of the Tenant will terminate as to the Leased Premises or portion thereof on the Leased premises appertaining thereto condemned or taken by eminent domain when title thereto vests in the party condemning or taking the same (herein referred to as the "termination date"). The Tenant irrevocably assigns to the Landlord all right, title and interest of the Tenant in and to any net proceeds of any award, compensation or damages (hereinafter referred to as an "award"), payable in connection with any such condemnation or taking during the term of the Lease. Such net proceeds will be initially paid by the Landlord for deposit and application as hereinafter provided.

12.02 In the event any such condemnation or taking, the Tenant will within ninety (90) days after the termination date therefor determine whether or not to repair, reconstruct, restore or improve the Leased Premises and give written notice of such determination to the Landlord. If Tenant elects to repair, reconstruct, restore or improve the Leased Premises so long as Tenant is not in default under the Lease any such net proceeds received by the Landlord will be deposited with Landlord's mortgagee or trustee and applied to finance the costs of such repairs, reconstruction, restoration or improvements.

12.03 In the event the Tenant elects not to repair, reconstruct, restore or improve the Leased Premises the award will be paid to the Landlord, as a prepayment of the rent under this Lease for deposit with the Landlord's mortgagee or trustee to be held in trust for payment of the outstanding loan or bonds.

12.04 The Landlord will cooperate fully with Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the project on the Leased Premises or any part thereof, and will, to the extent it may lawfully do so, permit Tenant to litigate in any such proceeding the name and on behalf of the Landlord. In no event will the Landlord voluntarily settle or consent to the settlement of, any prospective or pending condemnation proceedings with respect the Leased Premises or any part thereof without the written consent of the Tenant.

Section 12.05. **Definitions.** Taking by condemnation or eminent domain hereunder shall include the exercise of any similar governmental power and any sale, transfer or other disposition of the Building or Land in lieu or under condemnation.

### **ARTICLE 13 ALTERATIONS AND IMPROVEMENTS**

#### **Section 13.01. *Tenant's Changes - - No Approval***

Tenant may place and replace Tenant's Personal Property in the Leased Premises as it may desire at its own expense without Landlord's consent. Tenant shall not alter, improve, replace or change the Building or the Leased Premises, except in accordance with Section 13.02.

Section 13.02. ***Tenant's Changes -- Landlord's Approval.***

(A) Except with respect to non structural cosmetic changes (ie, carpeting and painting) which cost under \$100,000 in the annual aggregate which shall be permitted upon notice to Landlord but without Landlord's consent. Tenant shall not make any (1) structural alterations or (2) nonstructural alterations, installations, changes, replacements, additions or improvements (structural or otherwise) which costs in excess of \$100,000 in the annual aggregate, in or to the Leased Premises or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Maintenance and repair of equipment such as special lights, fixtures, kitchen fixtures, auxiliary heating, ventilation, or air-conditioning equipment, private bathroom fixtures and any other type of special equipment together with related plumbing or electrical services, or Tenant's rugs, carpeting and drapes within the Leased Premises, installed by Tenant or such other maintenance or repair caused directly or indirectly by the acts or omissions of Tenant and its agents, patients, employees, licensees or invitees, shall be the sole responsibility of Tenant, and Landlord shall have no obligation in connection therewith. Landlord may condition its consent in this subparagraph (A) on all or any part of the following:

(i) ;

Commented [2]: Is there something here?

(i) Tenant shall submit to Landlord plans and specifications for each proposed alteration and shall not commence any such alteration without first obtaining Landlord's written approval of such plans and specifications, and such approval shall not be unreasonably withheld or delayed by Landlord;

(ii) Tenant shall obtain all necessary legal permits, licenses and approvals for Tenant's alterations; and

(iii) Alterations shall be in accordance with all applicable laws.

(B) All alterations made under this Section 13.02 shall be at the sole cost and expense of Tenant. All alterations, additions and improvements made or caused to be made by Tenant shall be in a good and workmanlike manner. Such alterations, additions, or improvements shall become the absolute property of Landlord at the expiration or sooner termination of this Lease without the payment of any consideration therefor, unless (i) removed by Tenant (and any damage to the Building is repaired by Tenant contemporaneous with said removal) prior to the expiration or sooner termination of this Lease or (ii) , except in the event Tenant exercised its Option to Purchase as set forth in Article 5 herein.

(C) During the course of making any alterations or improvements approved by Landlord, Tenant shall maintain or cause to be maintained adequate worker's compensation insurance covering all persons employed in connection with the work.

(D) Tenant shall not permit any mechanic's lien or other similar lien to be filed against the Project or against Landlord's interest in the same by reason of any work, labor, services or materials supplied for any alteration or improvement or other work performed by or on behalf of Tenant. If any such lien shall at any time be filed against the Project, Tenant shall, within thirty (30) days after written notice from Landlord (or such shorter period as Landlord's lender shall require), cause such lien to be discharged of record, by payment, bond, or court order. If Tenant fails to discharge such lien within such period referenced above, then, in addition to (and not in lieu of) any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge such lien. In such event, Landlord shall be entitled to be reimbursed by Tenant for any payment of Landlord's costs and expenses in discharging such lien, (including without limitation, legal fees and disbursements) together with interest thereon at a fluctuating rate per annum equal to the prime rate of interest in effect from time to time as announced by the Wall Street Journal (or any successor thereto) plus three (3%) percent, computed as to each item from the date of payment by Landlord until paid in full (the "Lease Interest Rate"). All such sums shall be deemed to be Additional Rent and due contemporaneously with the payment of the next succeeding installment of Annual Rent. At the request of Landlord from time to time, Tenant shall deliver to Landlord written waivers of lien by the architect, contractor, materialman, laborer and any other person supplying materials or labor in connection with the improvement, addition or alteration whereby such person waives any lien upon or against the Project, and the interest of the Landlord therein.

(E) Notwithstanding the provisions hereof, in the event that during the course of any alterations or improvements by Tenant approved by Landlord, repairs to the Project become immediately necessary to avoid possible injury or damage to persons or property, Landlord may, but shall not be obligated to, make such repairs at Tenant's expense after providing written notice thereof and 48 hours except in an emergency where no notice required for Tenant to make such repair. Within ten (10) days after Landlord renders a bill for the cost of said repairs, Tenant shall reimburse Landlord. If the Tenant shall fail to so reimburse Landlord, interest on the amount so billed shall accrue from the date of the billing until payment in full, at a rate per annum at all times equal to the prime rate of interest in effect from time to time as announced by The Wall Street Journal, (or any successor thereto), plus three percent (3%) or the Lease Interest Rate. All amounts payable under this subsection (E) shall be deemed Additional Rent.

Section 13.03. ***Tenant's Owned Property.*** All of Tenant's leasehold improvements, inventory, furniture, chattels, signs, contents, fixtures (including trade fixtures), or personal property of Tenant located on, in, under, above or which serve the Leased Premises installed by Tenant after the Term Commencement Date ("Tenant's Personal Property") and all non-structural alterations, improvements, replacements and changes made prior to or during the term, paid in full by Tenant, shall be owned by and remain the property of Tenant notwithstanding Landlord's obligations to insure any part of the same under Section 10.02(A). Tenant's Personal Property and all such non-structural alterations, improvements, replacements and changes, collectively constitute "Tenant's Owned Property".

Section 13.04. ***Removal of Tenant's Owned Property.*** Tenant may remove all or any of Tenant's Owned Property at any time during the Term. At the expiration or termination of this Lease, the Tenant shall remove all of the Tenant's Owned Property and shall restore the Leased Premises to Landlord's reasonable satisfaction, ordinary wear and tear excepted, except in the event Tenant exercised its Option to Purchase as set forth in Article 5 herein. If after default in payment of rent or violation of any other provision of this Lease, or upon the expiration of this Lease, the Tenant moves out or is dispossessed and fails to remove any of Tenant's Owned Property prior to such expiration of this Lease, termination, move out or dispossession, then and in that event, Landlord shall have the option to either (a) deem such Tenant's Owned Property abandoned by the said Tenant and shall become the property of the Landlord, or (b) Landlord may remove and store said property at the expense of Tenant and hold Tenant responsible for all expenses incurred thereby. Tenant's obligations as set forth in this paragraph shall survive the end of this Lease.

Section 13.05. This section of the Lease shall apply to the performance of Tenant's Work.

#### **ARTICLE 14 LANDLORD'S ACCESS**

Section 14.01. ***Landlord's Access.*** Landlord shall, upon at least 24 hours advance written notice to Tenant's designated agent with Tenant's designated agent being present (Tenant hereby agrees to have a designated agent "on-call" at all times for the purposes of providing Landlord with prompt access to the Leased Premises), have the right (i) at all reasonable times to inspect the Leased Premises and to show the same to prospective mortgagees and purchasers; (ii) during the last nine (9) months of the term, to show the same to prospective tenants and place to let or for sale signs upon the Leased Premises which Tenant shall permit to remain; and (iii) at all times to make repairs or replacements as required by this Lease or as may be necessary; provided, however, that Landlord shall use all reasonable efforts to minimize interference with Tenant's use and occupancy of the Leased Premises.

(B) Notwithstanding the foregoing, Landlord shall have the right to enter the Leased Premises at any time by master key or by the use of force without rendering Landlord liable therefore (except to repair damage to the entry caused by forcible entry) in the event of an emergency provided it gives Tenant notification within an hour of such entry.

#### **ARTICLE 15 COMPLIANCE WITH LAWS**

Section 15.01. ***Tenant's Compliance with Laws.*** Tenant shall comply with all present and future Laws which are applicable to the Leased Premises and the cleanliness, safety, use and occupation thereof, including without limitation the Americans with Disabilities Action of 1990, as the same may be amended from time to time.

**ARTICLE 16**  
**SURRENDER OF POSSESSION**

Section 16.01. ***Surrender of Possession.*** At the expiration or earlier termination of the term, Tenant will peaceably yield up the Leased Premises to Landlord in its original condition, ordinary wear and tear excepted, except in the event Tenant exercised its Option to Purchase as set forth in Article 5 herein.

**ARTICLE 17**  
**SIGNS**

Section 17.01. ***Tenant's Signs.*** Tenant shall, prior to the Term Commencement Date, provide Landlord with the specifications for, and a drawing of a sign to be installed at the Premises, which shall fully comply with applicable municipal laws, rules, regulations and ordinances. Tenant shall make such changes to said sign as shall be required by the applicable municipality, any existing easements and restrictions affecting the Premises and promptly fabricate and install the sign at the Tenant's sole expense.

**ARTICLE 18**  
**SUBORDINATION AND NON-DISTURBANCE**

Section 18.01. ***Subordination and Non-Disturbance.*** This Lease shall be subordinate and subject to any mortgages covering the fee of the Project, and to all renewals, consolidations, amendments, modifications or replacements thereof; provided, however, that with respect to any existing mortgage, no later than the date Tenant executes and delivers this Lease and, with respect to any future mortgage, on or before the effective date thereof, Landlord shall obtain from mortgagee, as the case may be, a written agreement with Tenant substantially in the form attached hereto and marked **Exhibit E**. The agreement shall be binding on their respective legal representatives, successors and assigns and provides, among other provisions, that so long as this Lease shall be in full force and effect and the Tenant is not in default hereunder Tenant's possession and use of the Project in accordance with the provisions of this Lease shall not be affected or disturbed by reason of the subordination to or any modification of or default under the mortgage. If the mortgagee or any successor in interest shall succeed to the rights of Landlord under this Lease, whether through possession, surrender, assignment, subletting, judicial or foreclosure action, or delivery of a deed or otherwise, Tenant will attorn to and recognize such successor-landlord as Tenant's landlord and the successor-landlord will accept such attornment and recognize Tenant's rights of possession and use of the Leased Premises in accordance with the provisions of this Lease. This clause shall be self-operative and no further instrument of attornment or recognition shall be required. Tenant further agrees not to modify or amend this Lease without the prior written consent of Landlord's lender.

## **ARTICLE 19 COVENANTS**

### **Section 19.01. *Environmental Representations, Covenants and Indemnities.***

(A) Tenant covenants and agrees that:

(i) Tenant shall not bring, keep, discharge or release or permit to be brought, kept, discharged or released, in or from the Leased Premises any Hazardous Materials except in the ordinary course of Tenant's business and in compliance with all applicable federal, state and local laws, regulations or ordinances. As used in this Lease, "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any other contaminant or pollutant which is or becomes regulated by any federal, state or local law, ordinance, rule or regulation and shall include asbestos and petroleum products and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensations and Liability Act, as amended, 42 U.S.C. ' 9601 et. seq. and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. ' 6901 et. seq. Any Hazardous Materials shall be used, kept, stored and disposed of in accordance with all applicable federal, state and local laws. Tenant shall comply with all federal, state and local reporting and disclosure requirements with respect to Hazardous Materials applicable in its business operations on the Leased Premises. Upon the written request of Landlord, Tenant shall provide periodic written reports of the type and quantities of any and all Hazardous Materials, waste and contaminants (whether or not believed by Tenant to be Hazardous Materials) used, stored or being disposed of by Tenant in or from the Leased Premises or the Project.

(ii) Should any governmental authority or any third party demand that a cleanup plan be prepared or that a clean-up or other remediation action be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Leased Premises and which arises from Tenant's use or occupancy of the Leased Premises, then Tenant shall, at Tenant's own expense, prepare and submit any required bonds and other financial assurances; and Tenant shall carry out all such required cleanup plans or other remediation action to Landlord's reasonable satisfaction.

(iii) Tenant shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Materials that is requested by Landlord. If Tenant fails to comply with any of its obligations under this Article 19 within a reasonable time, Landlord may do so; and in such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to comply with such obligations. No such action by Landlord and no attempt made by Landlord to mitigate damages under any applicable law shall constitute a waiver of any of Tenant's obligations under this Article 19.

(B) Anything in this Lease to the contrary notwithstanding, Tenant will indemnify, defend and hold Landlord, Landlord's lender, the manager of the Leased Premises and their respective constituent members, employees and agents harmless from and against any and all liabilities, claims, damages, penalties, expenditures, loss, demands, defenses, judgments, suits, actions, proceedings, or charges, including but not limited to, all reasonable costs of legal and expert fees and disbursements and of investigations, monitoring, legal representations, remedial response, removal, restoration or permit acquisitions, which may be required, undertaken, offered, paid, awarded or otherwise incurred as a result of any Hazardous Materials existing on, in or under the Leased Premises arising from the acts or omissions of the Tenant or any of its employees, agents, licensees, invitees or contractors activities on or about the Leased Premises during the Term.

(D) The obligations and liabilities under this Article 19 shall survive the expiration or termination of this Lease.

Section 19.02. **Negative Covenants.** (A) The Tenant will not nor will the Tenant permit any of its agents, employees, licensees, invitees, contractors or any other persons to do anything in the Leased Premises, or bring anything into said Leased Premises, or permit anything to be brought into the Leased Premises or to be kept therein, which will in any way increase the rate of fire insurance with respect to the Leased Premises, nor use the Leased Premises or any part thereof, nor suffer or permit their use for any business or purpose which would cause an increase in the rate of fire insurance on the Building, or conflict with the fire laws or regulations, or with any insurance policy upon the Building or any part thereof, or with any statutes, rules or regulations enacted or established by the appropriate governmental authority. Tenant agrees to pay on demand any increase in insurance premiums arising from its failure to observe the terms and provisions of this paragraph or resulting from Tenant's use and occupancy or from tenant's abandonment of the Leased Premises.

(B) Tenant will not suffer, permit, or commit any waste or nuisance within the Leased Premises or any part thereof.

## **ARTICLE 20 DEFAULT**

Section 20.01. **Default.** (A) If Tenant shall default in the payment of Annual Rent or Additional Rent when due, or if, without the consent of the Landlord, the Tenant shall sell, assign, or mortgage this Lease, or if Tenant shall abandon or vacate the Leased Premises, or if default be made in the performance of any of the other covenants and agreements in this Lease contained on the part of the Tenant to be kept and performed for thirty (30) days after notice, or if the Tenant shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Local Governments or of any and all their Departments and Bureaus, applicable to said Leased Premises, or if the Tenant shall file a petition in bankruptcy or arrangement, or

Tenant be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act or if there shall be filed against Tenant a petition in bankruptcy and such proceeding is not stayed or dismissed within thirty (30) days thereafter, the Landlord may (a) cure such default, and any costs and expenses incurred by Landlord therefor, together with interest thereon from date expended until payment in full at the Lease Interest Rate shall be deemed Additional Rent, or (b) if the Landlord so elects, at any time thereafter terminate this Lease and the Term hereof, on giving to the Tenant thirty (30) days notice in writing of the Landlord's intention so to do, and this Lease and the Term hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this Lease for the expiration hereof or (c) by force, summary proceedings or otherwise enter the Leased Premises and repossess the same as the former estate of Landlord and expel Tenant and those claiming under Tenant without being deemed guilty of any manner of trespass or liable to prosecution thereof and without prejudice to any other remedies which Landlord may have under this Lease including, without limitation claims for arrears of Annual Rent or Additional Rent then due and owing.

(B) In the event of (i) the re-entry of the Landlord under Section 20.01 of this Lease or (ii) the ejectment of the Tenant by force, summary proceedings or otherwise under Section 20.01 of this Lease or as otherwise provided by Law, or (iii) the abandonment of the Leased Premises by the Tenant, it is hereby agreed that the Tenant shall remain liable and shall pay in monthly payments the Rent which accrues subsequent to the re-entry by the Landlord, the ejectment of Tenant or abandonment of the Leased Premises by Tenant, as the case may be. In the event of termination of this Lease by Landlord pursuant to Section 21.01 hereof, the Tenant expressly agrees to pay as damages the difference between the Rent that would have been payable under this Lease and the rent collected and received, if any, by the Landlord during the remainder of Term, as the case may be, had this Lease not been terminated, such difference or deficiency between the Rent that would have been payable under this Lease and the rent collected if any, shall become due and payable in monthly payments during the remainder of the Term, as the case may be, had this Lease not been terminated, as the amounts of such difference or deficiency shall from time to time be ascertained. The Landlord may seek monetary damages in any reenter action or summary proceeding or commence a separate action or special proceeding against Tenant and any other responsible party, to recover monetary damages accruing by reason of any such default, together with interest, plus all reasonable attorneys fees, disbursements, court costs and other reasonable expenses incurred in connection therewith. Monetary damages shall include, without limitation, Annual Rent and all Additional Rent due at the time proceedings are commenced, rent shortages accruing after such default in connection with any re-letting attempts by Landlord, plus all costs associated with any reletting of the Leased Premises.

(C) If Landlord incurs any expense, including reasonable attorneys' fees, in instituting, prosecuting and/or defending any action or proceeding under this Lease, then Tenant shall promptly reimburse the Landlord in any such action or proceeding for such expenses incurred, together with interest accrued thereon at a per annum rate equal to the prime rate of interest in effect from time to time as announced by The Wall Street Journal (or any successor thereto) plus three percent (3%) ("Lease Interest Rate") from the date of the final judgment or final determination of such action or proceeding until payment in full.

(D) Tenant hereby waives any rights of redemption to which Tenant or any person under Tenant might be entitled by any law now or hereafter in force.

## **ARTICLE 21 HOLDOVER**

Section 21.01. **Holdover.** The parties recognize that the damage to Landlord resulting from any failure by Tenant to surrender possession of the Leased Premises upon the expiration or earlier termination of this Lease will be substantial, will exceed the amount of the monthly installments of the Annual Rent payable hereunder, and will be impossible to measure accurately. Tenant therefore agrees that if possession of the Premises is not surrendered to Landlord upon the expiration or earlier termination of the Lease, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall pay to Landlord, as liquidated damages and not as a penalty, for each month and for each portion of any month during which Tenant holds over in the Leased Premises for up to twelve (12) months after the expiration or earlier termination of this Lease, a sum equal to one hundred twenty percent (120%) of the aggregate of that portion of the Annual Rent and Additional Rent that was payable under this Lease during the last month of the Term. Landlord shall have the right to increase the amount of Holdover Rent and Additional Rent for any holdover beyond the initial twelve (12) months immediately following the end of the Lease Term. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Leased Premises after the expiration or earlier termination of the Lease. The provisions of this Article shall survive the expiration or earlier termination of this Lease. Tenant's occupancy subsequent to the expiration or earlier termination of this Lease, whether or not with the consent or acquiescence of Landlord, shall be deemed to be that of a tenancy-at-will and in no event from month-to-month or year-to-year and it shall be subject to all terms, covenants and conditions of this Lease applicable thereto, including, without limitation, those set forth in this Article. In the event the Tenant defaults or remains in possession of the Leased Premises or any part thereof after the expiration of the tenancy-at-will created hereby then the Tenant's occupancy shall be deemed a tenancy-at-sufferance and not a tenancy-at-will.

## **ARTICLE 22 NOTICES**

Section 22.01. **Notices.** All communications, notices and disclosures required or permitted by this Lease shall be in writing, by recognized overnight carrier and will be deemed to have been given the day of sending.

In the case of Tenant:

Albany Convention Center Authority  
55 Eagle Street

Albany, New York 12207  
Attention: Monica Kurzejeski, Executive Director  
P: (518) 487-2225  
MKurzejeski@accany.com

With a copy to: Harris Beach Murtha Cullina, PLLC  
677 Broadway, Suite 1100  
Albany, New York 12207  
Attention: Robert J. Ryan  
(518) 701-2715  
[rryan@harrisbeachmurtha.com](mailto:rryan@harrisbeachmurtha.com)

P:

In the case of Landlord: CIDC Albany Center, LLC,  
a New York limited liability company  
Attention: Fran Brandt  
15375 Blue Fish Circle  
Lakewood Ranch, FL 34202  
P: (941) 756-5700  
[CIDC\\_mal@live.com](mailto:CIDC_mal@live.com)

With a copy to: James Lawlor Esq.  
Reed Smith  
Three Logan Square  
Suite 3100  
1717 Arch Street  
Philadelphia, PA 19103

## **ARTICLE 23 ASSIGNMENT AND SUBLETTING**

Section 23.01. Tenant shall not assign or in any manner transfer all or any part of this Lease or any estate or interest therein, or sublet the Premises or any part thereof, or grant any license, concession or other right of occupancy of any portion of the Premises, except in the ordinary course of Tenant's business, without the prior written consent of Landlord. Landlord's consent cannot be unreasonably withheld, it being understood that the proposed assignee must be appropriate for the Building. Consent by Landlord to one or more assignments or subletting under this Section 23.01 shall not terminate, limit or otherwise operate as a waiver of Landlord's

rights as to any subsequent assignments and subletting. Any request by Tenant for assignment or subletting shall be accompanied by an opinion of bond counsel to the effect that such assignment or sublease will not adversely affect the exclusion of the interest on any of the bonds from gross income for federal income tax purposes.

23.02 Tenant consents to a pledge and assignment of this Lease by the Landlord to a lending institution or trustee in connection with the Financing of the Building.

23.03 Notwithstanding any assignment or subletting, Tenant shall at all times remain fully responsible and liable for the payment of the Rent herein specified and for compliance with all of its other obligations under this Lease.

23.04 Tenant shall not mortgage, pledge or otherwise encumber its interest in this Lease or in the Premises.

23.05 So long as Tenant's tenancy hereunder is non-disturbed, in the event of the transfer and assignment by Landlord of its interest in this Lease or in the Building(s) containing the Premises to a person expressly assuming Landlord's obligations under this Lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

Section 23.06. ***Liability of Tenant.*** If Tenant assigns or sublets hereunder, Tenant shall notify Landlord thereof and Tenant shall remain responsible for the faithful performance and observance of all of the covenants and obligations on Tenant's part to be performed in this Lease. In the event of any subletting of the Leased Premises or assignment of this Lease by Tenant, with or without Landlord's consent, Tenant shall remain liable to Landlord for payment of the Rent stipulated herein and all other covenants and conditions contained herein.

Section 23.07. ***Waiver of Claim.*** Any permitted sublease of all or any part of the Premises must contain a waiver of claims against Landlord by the subtenant and require the subtenant's insurer to issue waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises or the contents thereof. All waivers shall be in form and substance acceptable to Landlord.

## ARTICLE 24 LIMITATION OF LANDLORD'S LIABILITY

Section 24.01. **Limitation of Landlord's Liability.** Notwithstanding anything to the contrary provided in this Lease, Tenant agrees that it shall look solely to the estate and property of the Landlord in the Project , and subject to the prior rights of any mortgagee and underlying landlord in the Project (and not to the members of the Landlord ) for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord and no other assets of Landlord or its members shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies.

## ARTICLE 25 LANDLORD ASSIGNMENT

Section 25.01. **Landlord Assignment.** Landlord shall have the right to assign its interest in this Lease without recourse upon prior written notice to and approval by Tenant, such approval by Tenant shall not be unreasonably withheld or delayed. Provided, however, prior written notice to and approval by Tenant shall not be required for any party who has provided or is providing bond Financing to Landlord for the Project. The word "Landlord" as used herein, means only the owner for the time being of Landlord's interest in this Lease, and, in the event of any transfer of Landlord's interest in this Lease the transferor shall cease to be liable, and shall be released from all liability for the performance or observance of any agreements or conditions on the part of Landlord to be performed or observed provided that from and after said transfer, the transferee shall assume and be liable for the performance and observance of said agreements and conditions. In addition, the words "Landlord" and "Tenant" as used in this Lease shall mean every person or party named as Landlord and/or Tenant in this Lease. Any notice given as provided in the Lease shall bind all such parties and it shall have the same force as if given to all of them.

Commented [3]: So for example this would be Key?

## ARTICLE 26 QUIET ENJOYMENT

Section 26.01. **Quiet Enjoyment.** Provided Tenant performs the covenants and obligations in this Lease on Tenant's part to be performed in accordance with the terms of this Lease, subject to Article 18 hereof Landlord covenants and agrees to take all necessary steps to secure and to maintain for the benefit of Tenant the quiet and peaceful possession of the Leased Premises, , without hindrance, claim or molestation by Landlord or any other person.

## ARTICLE 27 WAIVER

Section 27.01. **Waiver.** The failure of the either party to insist upon a strict performance of any of the terms, conditions and covenants to be performed or observed by the other party herein, shall not be deemed a waiver of any rights or remedies that either party may have, and shall not be

deemed a waiver of any subsequent breach or default in the terms, conditions and covenants to be performed or observed by either party herein. The receipt by Landlord of Annual Rent, Additional Rent or other sums due hereunder with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No acceptance by Landlord of a lesser amount than the amount then due hereunder, nor any endorsement or statement on any check or any letter accompanying any check or payment as Annual Rent or Additional Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such sums due hereunder or pursue any other remedy in this Lease provided.

## **ARTICLE 28**

### **Regulations.**

28.1 Landlord and Tenant acknowledge that there are in effect federal, state, county and municipal laws, orders, rules, directives and regulations and that additional regulations may hereafter be enacted or go into effect, relating to or affecting the Premises, in concerning the impact on the environment of construction, land use, maintenance and operation of structures, and conduct of business. Subject to the express rights granted to Tenant under the terms of this Lease, Tenant will not cause, or permit to be caused, any act or practice, by negligence, omission, or otherwise, that would adversely affect the environment, or do anything to permit anything to be done that would violate any of the laws, regulations or guidelines. Moreover, Tenant shall have no claim against Landlord by reason of any changes Landlord may make in the Building or the Premises pursuant to said regulations or any changes imposed upon customers or other invitees pursuant to same.

28.2 Tenant shall not for any reason withhold or reduce Tenant's required payments of Rent and other charges provided in this Lease. The Parties agree in good faith and cooperatively to work towards resolving any issues in this regard to ensure that Tenant continues to pay rent and receives the Premises in good working condition as set forth in this Lease.

28.3 Tenant hereby covenants to Landlord, which covenants shall survive the termination of this Lease, that: (a) Tenant shall during the term of this Lease be in compliance in all respects with all applicable federal, state and local laws with respect to Tenant's use and occupancy of the Premises, including, without limitation, those relating to toxic and hazardous substances and other environmental matters; (b) If any environmental contamination (including the storage or disposal of petroleum based products) is found on the Premises (as result of Tenant's use and occupancy thereof) on the termination of this Lease for any reason or the expiration of the term hereof for which any removal or remedial action is required pursuant to law, ordinance, order, rule, regulation or governmental action, Tenant shall, at its sole cost and expense, take such removal or remedial action promptly to the satisfaction of the appropriate

governmental agency; and (c) Tenant agrees to defend, indemnify and hold harmless Landlord Parties from and against any claims, actions, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorney and consultant fees) arising out of or in any way related to (i) the present or future disposal, release or presence on the Premises (as a result of Tenant's use and occupancy thereof) of any hazardous or toxic substances (including, without limitation, any petroleum based products) caused by Tenant's occupation of the Premises, (ii) any personal injury or property damage arising out of or related to such hazardous or toxic substances, (iii) any lawsuit brought or threatened, settlement reached or government order given or related to such hazardous or toxic substances, and/or (iv) any violation of any law, order, regulation, requirement or demand of any governmental authority which is based upon or related to such hazardous or toxic substances. For purposes of this Article, "hazardous and toxic substances" shall include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, petroleum based products, hazardous or toxic substances or related materials described in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the New York Environmental Conservation Law, the Resource Conservation and Recovery Act, as amended, and the regulations adopted and publications promulgated pursuant thereto.

#### **ARTICLE 29 ESTOPPEL CERTIFICATES**

Section 29.01. ***Tenant's Estoppel Certificate.*** Tenant agrees, at any time and from time to time, upon not less than ten (10) Business Days' prior notice from Landlord, to execute, acknowledge and deliver to Landlord or a Person designated by Landlord, a statement in writing in the form attached and marked **Exhibit F**: (a) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications); (b) whether or not the Term has commenced and if it has commenced, stating the dates to which the Annual Rent and Additional Rent have been paid by Tenant; and (c) stating, to the best of Tenant's knowledge, whether or not Landlord or Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease, and if Tenant has knowledge of such a default, specifying each such default and such other information as may be reasonably requested.

#### **ARTICLE 30 BROKER**

The parties mutually represent and warrant to each other that neither party has dealt with any broker in connection with this transaction and that neither party knows of any other broker who has claimed or may have a right to claim a commission in connection with this transaction. Tenant shall defend, indemnify and save harmless Landlord from and against any claim which

may be asserted against Landlord by any broker if the claim (a) is made in connection with this transaction and (b) Tenant employed or made use of or was responsible for the claiming broker. Tenant shall reimburse Landlord for reasonable expenses, losses, costs and damages (including reasonable attorneys' fees and court costs if Tenant fails or refuses to defend as herein required) incurred by Landlord in connection with such claims. Landlord shall defend, indemnify and save harmless Tenant from and against any claim which may be asserted against Tenant by any broker if the claim (a) is made in connection with this transaction, and (b) arises out of conversations or dealings between Landlord and any claiming broker or (c) results from a fraud committed or misrepresentation made by Landlord or any broker employed by Landlord. Landlord shall reimburse Tenant for reasonable expenses, losses, costs and damages (including reasonable attorney's fees and court costs if Landlord fail or refused to defend as herein required) incurred by Tenant in connection with such claims. This Article shall survive the expiration or earlier termination of this Lease.

#### **ARTICLE 31 EXCUSABLE DELAY**

Whenever a party hereto is required by the provisions of this Lease to perform an obligation, except for the payment of Annual Rent or Additional Rent and the provision of insurance, and such party is prevented beyond its reasonable control from doing so by reason of an Excusable Delay, as defined in this Article 31, such party shall be temporarily relieved of its obligation to perform, provided it promptly notifies the other party of the specific delay and exercises due diligence to remove or overcome it. The words "Excusable Delay" shall mean any delay due to strikes, lockouts or other labor or industrial disturbance; civil disturbance; future order of any government, court or regulatory body claiming jurisdiction; act of the public enemy; war, riot, sabotage, blockage or embargo; inability to secure materials or their reasonable substitutes, supplies or their reasonable substitutes, or labor through ordinary sources by reason of shortages or priority or similar regulation or order of any government or regulatory body; lightning, earthquake, fire, storm, hurricane, tornado, flood, washout or explosion, or act or omission of one party hereto which prevents the party claiming delay from complying, or which materially and adversely interferes with the claiming party's ability to comply with an obligation under this Lease on its part to be performed. Any time limits required to be met by either party hereunder, whether specifically made subject to Excusable Delay or not, except those related to the payment of Annual Rent or Additional Rent and the provision of insurance, shall, unless specifically stated to the contrary elsewhere in this Lease, be automatically extended by the number of days by which any performance called for is delayed due to Excusable Delay.

#### **ARTICLE 32 MEMORANDUM OF LEASE**

This Lease shall not be recorded by either Landlord or Tenant. However, either party may request that a memorandum of this Lease be recorded in a form reasonably acceptable to both

parties. The requesting party shall pay all costs of preparing and recording such memorandum of this Lease, which shall not include attorneys fees as each party shall pay its own attorney fees. If a memorandum of this Lease is to be recorded, before Landlord will execute same, Tenant must first place in escrow with an attorney designated by Landlord a document in a form reasonably acceptable to both parties terminating of record the memorandum to be recorded, which termination may be released from escrow on the expiration or earlier termination of this Lease.

### **ARTICLE 33 BINDING AGREEMENT**

This Lease shall bind and inure to the benefit of Landlord and Tenant and their respective executors, distributees, heirs, representatives, successors and, subject to the provisions hereof, permitted assigns.

### **ARTICLE 34 ENTIRE AGREEMENT**

This Lease, including all Exhibits and other attachments referred to herein, contains the entire agreement of Landlord and Tenant with respect to the matters stated herein, and may not be modified except by an instrument in writing which is signed by both parties and delivered by each to the other. Exhibits and such other attachments are incorporated herein as fully as if their contents were set out in full at each point of reference to them.

### **ARTICLE 35 MISCELLANEOUS**

Section 35.01. ***Partial Invalidity.*** If any covenant, condition or provision of this Lease, or the application thereof to any person or entity or circumstance, shall be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such covenant condition or provision to any other person or entity or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by applicable Laws.

Section 35.02. ***Governing Law.*** This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (excluding conflict of laws provisions).

Section 35.03. ***Grammatical Usage.*** In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form, and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

Section 35.04. **Terms Inclusive** . Subject to the provisions of Article 25 hereof the term "Landlord" and "Tenant" shall include the parties named in this Lease, their legal successors in interest, and all permitted subtenants or assigns.

Section 35.05. **Captions**. Captions are inserted in the Lease only as a matter of convenience and for reference and in no way define, limit or describe the scope of intent of this Lease or in any way affect this Lease.

Section 35.06. **Further Action**. The parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of this Lease.

Section 35.07. **Acceptance of Sums due hereunder**. Landlord is entitled to accept, receive and cash or deposit any payment made by Tenant on account of this Lease in any amount whatsoever and apply the same at Landlord's option to any obligation of Tenant under this Lease and the same shall not constitute payment of any amount owed except that to which Landlord has applied the same.

Section 35.08 **Trial by Jury**. It is mutually agreed between the Landlord and the Tenant that each of them shall, and hereby does, waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of, or in any way connected with, this Lease, the Tenant's use or occupancy of the Leased Premises, and any claim of injury or damage related to any of the same.

Section 35.09 **Amendment or Termination**. Except as otherwise provided herein, this Lease may be modified or amended only with the prior written approval of both parties, and it may not be discharged or terminated except in writing.

Section 35.10 **Authorizations and Representations**. Each party hereby severally represents that it has been duly authorized to execute, deliver and perform this Lease through its members, officers or agents signing on its behalf.

Section 35.11 **Rules of Interpretation**. This Lease shall be construed neither against Landlord nor Tenant; each provision hereof shall be deemed both a covenant and a condition running with the Land; except as otherwise expressly provided in this Lease and its Exhibits and other attachments, the singular includes the plural and the plural includes the singular; "or" is not exclusive; a reference to an agreement or other contract includes supplements and amendments thereto to the extent permitted by this Lease; a reference to the Laws includes any amendment or supplement to such Laws; a reference to a person or entity includes its permitted successors and assigns; accounting provisions have the meanings assigned to them by generally accepted accounting principles applied on a consistent basis; the words "such as," "include," "includes" and "including" are not limiting; except as specifically agreed upon in this Lease, any right may be exercised at any time and from time to time and all obligations are continuing obligations

throughout the Term of this Lease and in calculating any time period, the first day shall be excluded and the last day shall be included and all days are calendar days unless otherwise specified. If any deadline shall fall on a Saturday, Sunday or legal holiday, the deadline shall be extended to the next business day.

Section 35.12 **No Exclusive Remedies.** No remedy or election given by any provision in this Lease shall be deemed exclusive unless so indicated, but each shall, wherever possible, be cumulative in addition to all other remedies at law or in equity which either party may have arising out of a default of the other party in the observance or performance of its covenants or obligations under this Lease.

Section 35.13 **Exclusive Agreement.** This Lease Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining hereto. No covenant, representation or condition not expressed in this Lease shall affect, or be deemed to interpret, change or restrict the express provisions hereof.

Section 35.14 **Counterparts.** When several counterparts of this Lease have been executed, all counterparts shall constitute one and the same instrument.

Section 35.15 **Survival of Obligations.** The obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term.

## **ARTICLE 36 EXAMINATION OF LEASE**

The submission of this Lease for examination, negotiation and signature does not constitute an offer to lease, or a reservation of, or an option for the Leased Premises. This Lease shall not be binding and in effect until at least one counterpart, duly executed by both parties, has been delivered to Landlord and Tenant.

## **ARTICLE 37 CONTINGENCIES**

Section 37.01. **Landlord's Purchase of the Land.** This Lease shall be contingent upon Landlord obtaining title to the Land upon which the Leased Premises shall be located. If Landlord does not obtain title to the Land on or before December 31, 2025, Landlord party may terminate this Lease by providing written notice to the other party.

Section 37.02. **Landlord's Financing.** This Lease shall be contingent upon Landlord obtaining the Financing. If Landlord does not obtain the Financing prior to December 31, 2025,

either party may terminate this Lease by providing written notice to the other party.

**ARTICLE 38  
PLEDGE BY TENANT**

Section 38.01. Tenant assigns and pledges to the Landlord a sufficient portion of any New York State Hotel Tax apportioned or otherwise payable by the County and revenue from operations to Landlord to cover the payments required under this Lease and directs and acknowledges that such amounts will be paid directly to the applicable Financing trustee. Such assignment and pledge in an amount equal to the payments required under this Lease will be irrevocable and will continue until the date on which the liabilities of the Landlord and the project have been discharged and the bonds issued to acquire and construct the project have been paid or such bonds have otherwise been discharged.

The Tenant agrees that it will not create or suffer to be created any pledge or assignment of the New York State Hotel Tax mentioned in this Section to be apportioned or otherwise payable by the County [including pledges or assignments to secured subsequent series of bonds] unless such other pledge or assignment is subordinate to the pledge and assignment made to Landlord pursuant to this Section.

**ARTICLE 39  
COVENANT NOT TO AFFECT THE TAX EXEMPT STATUS OF THE BONDS**

Section 39.01 The Tenant, so long as it leases the Leased Premises under this Lease (i) will take no action, or permit any action to be taken, or omit to take any action, with respect to its status as a New York public benefit corporation and its statutorily permissible activities which will adversely affect the exclusion of interest on any tax exempt bond from gross income for purposes of federal income taxation, (ii)

**ARTICLE 40  
REQUIRED CERTIFICATES AND DOCUMENTATION**

Section 40.01. Landlord intends to fund the construction of the building by applying to the Albany County Capital Resource Commission to issue tax exempt bonds. In order to obtain the bonds, the trustee and underwriter will require certain documentation to be provided by Tenant in such form and substance acceptable to the bond trustee and underwriter as set forth below. Tenant agrees to provide such documentation and information to the Landlord upon request so the proposed building and project may be timely financed and the parties may stay on track for a timely delivery of the improvement to the Tenant.

1. [Continuing Disclosure Agreement]

2. [Auditor's Consent]
3. Tenant counsel opinion letter
4. Rent direction letter
- 5      Such other and additional information as may be required
- 6      Annual Reports

**IN WITNESS WHEREOF**, this Lease has been duly executed by the duly authorized representatives of Landlord and Tenant as of the date first above written.

LANDLORD

**CIDC Albany Center, LLC**

By: \_\_\_\_\_  
Name:  
Title:

TENANT

**ALBANY CONVENTION CENTER AUTHORITY**

By: \_\_\_\_\_  
Name: Monica Kurzejeski  
Title: Executive Director

**EXHIBIT A**

SITE PLAN OF THE LEASED PREMISES

## EXHIBIT B

### AGREEMENT OF LEASE COMMENCEMENT

THIS AGREEMENT, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, \_\_\_\_\_ (hereinafter called "Landlord"), and \_\_\_\_\_ (hereinafter called "Tenant").

#### WITNESSETH:

WHEREAS, by a certain lease (hereinafter called the "Lease") dated the \_\_\_\_\_ day of \_\_\_\_\_, Landlord leased to Tenant a portion of the real property described in Exhibit "A" annexed hereto and made a part hereof (hereinafter called the "Leased Premises"); and

WHEREAS, Tenant is now in possession of the Leased Premises under the Lease; and

WHEREAS, under the terms of the Lease, Landlord and Tenant agreed to execute, acknowledge and deliver to each other an agreement setting forth the Term Commencement Date (as defined in the Lease), the date of expiration of the Term of the Lease.

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. The Term Commencement Date is \_\_\_\_\_, 20\_\_\_\_.
2. The date of the expiration of the Term of the Lease shall be \_\_\_\_\_, 20\_\_\_\_.
3. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.
4. This Agreement and the Lease together contain the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

B-1

[https://acca2022.sharepoint.com/sites/Accashared/Shared Documents/Data/ACCA/1 ACCA General Files/4 ACCA Board Meetings/2025 Board Meetings/Special Board Meeting - June 2025/ACCA Lease with CIDC MK and HBM Comments 6.20.25 \(4899-5721-8383 1\).docx?e=1692414063&efeu=compare.doc](https://acca2022.sharepoint.com/sites/Accashared/Shared Documents/Data/ACCA/1 ACCA General Files/4 ACCA Board Meetings/2025 Board Meetings/Special Board Meeting - June 2025/ACCA Lease with CIDC MK and HBM Comments 6.20.25 (4899-5721-8383 1).docx?e=1692414063&efeu=compare.doc)

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed the day and year first above written.

(Landlord)

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Member

(Tenant)

By: \_\_\_\_\_  
Name:  
Title:

B-2

[https://acca2022.sharepoint.com/sites/Accashared/Shared Documents/Data/ACCA/1\\_ACCA General Files/4\\_ACCA Board Meetings/2025 Board Meetings/Special Board Meeting - June 2025/ACCA Lease with CIDC MK and HBM Comments 6.20.25 \(4899-5721-8383 1\).docx](https://acca2022.sharepoint.com/sites/Accashared/Shared Documents/Data/ACCA/1_ACCA General Files/4_ACCA Board Meetings/2025 Board Meetings/Special Board Meeting - June 2025/ACCA Lease with CIDC MK and HBM Comments 6.20.25 (4899-5721-8383 1).docx) [M:\1692\11063\sefu\compare.doc](#)

**EXHIBIT C**  
**RENT**

**EXHIBIT D-1**

**PRELIMINARY BASE BUILD**

-2

**EXHIBIT D**  
**FINAL DRAWINGS**

**TO BE PROVIDED AFTER LEASE EXECUTION**

**EXHIBIT E**  
**SUBORDINATION NON DISTURBANCE AGREEMENT**

Subordination Non Disturbance Agreement

("Mortgagee")

and

("Tenant")

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

Dated as of

This instrument affects real property situated, lying and being in the

**RECORD AND RETURN TO:**

**NO MORTGAGE RECORDING TAX IS  
PAYABLE WITH RESPECT TO THIS  
AGREEMENT. NOTHING IN THIS  
AGREEMENT IS INTENDED TO  
EVIDENCE OR SECURE ANY  
INDEBTEDNESS OR TO CREATE ANY  
LIEN.**

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

### THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

(this "Agreement") is entered into as of (the "Effective Date"), between

\_\_\_\_\_ ("Mortgagee"), and

\_\_\_\_\_ ("Tenant"), with reference to the following facts:

A. CIDC Albany Center, LLC LLC a New York limited liability company having an office at 15375 Blue Fish Circle, Lakewood Ranch, FL 34202 ("Landlord"), owns the fee interest in real property located at \_\_\_\_\_ (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord Premises"), as more particularly described in Schedule A.

B. Mortgagee is the trustee in connection with the issuance of those certain \$ \_\_\_\_\_ Albany County Capital Resource Corporation Tax-Exempt Lease Revenue Bonds (Capital Center Expansion Project), Series 2025 ("Bonds")

C. To secure the Bonds, Landlord has encumbered Landlord's Premises by entering into that certain Mortgage dated as of \_\_\_\_\_ in favor of Albany County Capital Resource Corporation ("CRC"). CRC assigned the Mortgage to Mortgagee (as said Mortgage is amended, increased, renewed, extended, spread, consolidated, restated, or otherwise changed from time to time, the "Mortgage") to be recorded in the Official Records of the County of Albany, State of New York (the "Land Records").

D. Pursuant to a Lease Agreement dated as of \_\_\_\_\_ as amended (the "Lease"), Landlord demised to Tenant the Premises ("Tenant's Premises").

E. A memorandum of the Lease may be recorded in the Land Records prior to the recording of this Agreement.

F. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

**NOW, THEREFORE**, for good and sufficient consideration, Tenant and Mortgagee agree:

#### 1. *Definitions.*

The following terms shall have the following meanings for purposes of this Agreement.

1.1 *Construction-Related Obligation.* A "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition or other improvements or work at Landlord's Premises, including Tenant's Premises. "Construction-Related Obligations" shall not include (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 *Foreclosure Event.* A "Foreclosure Event" means (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) pursuant to the Mortgage, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.3 *Former Landlord.* A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 *Offset Right.* An "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.5 *Rent.* The "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.6 *Successor Landlord.* A "Successor Landlord" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.7 *Termination Right.* A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

## 2. *Subordination.*

The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

## 3. *Non-disturbance, Recognition and Attornment.*

3.1 *No Exercise of Mortgage Remedies Against Tenant.* So long as the Lease has not been terminated on account of Tenant's default that has continued beyond applicable cure periods (an "Event of Default"), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 *Non-disturbance and Attornment.* If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease including, but not limited to any rights of first refusal and/or purchase options (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 *Further Documentation.* The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. *Protection of Successor Landlord.* Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable or bound by any of the following matters:

4.1 *Claims Against Former Landlord.* Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.)

4.3 *Payment: Security Deposit.* Any obligation (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a Construction-Related Obligation.

4.4 *Modification, Amendment or Waiver.* Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Mortgagee's written consent.

4.5 *Surrender, Etc.* Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.6 *Construction-Related Obligations.* Any Construction-Related Obligations of Former Landlord except as expressly provided for in Schedule B (if any) attached to this Agreement.

5. *Exculpation of Successor Landlord.*

Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assignment's) interest in Landlord's Premises from time to time, including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. *Mortgagee's Right to Cure.*

6.1 *Notice of Mortgagee.* Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right or Offset Right or cancellation right, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 *Mortgagee's Cure Period.* After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

6.3 *Extended Cure Period.* In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Mortgagee undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time (the "Extended Cure Period") as Mortgagee may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. *Confirmation of Facts.*

Tenant represents to Mortgagee and to any Successor Landlord, in each case as of the Effective Date:

7.1 *Effectiveness of Lease.* The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease.

7.2 *Rent.* Except as otherwise required or permitted under the Lease, Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

7.3 *No Landlord Default.* To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such breach or default.

7.4 *No Tenant Default.* Tenant is not in default under the Lease and has not received any uncured notice of any default to Tenant under the Lease.

7.5 *No Termination.* Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

7.6 *Commencement Date.* The "Commencement Date" of the Lease is June 30, 2026.

7.7 *reserved.*

7.8 *No Transfer.* Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein, other than sublease(s) made in compliance with the Lease.

7.9 *Due Authorization.* Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

8. *Miscellaneous.*

8.1 *Notices.* All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

8.2 *Successors and Assigns.* This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

8.3 *Entire Agreement.* This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

8.4 *Interaction with Lease and with Mortgage.* If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

8.5 *Mortgagee's Rights and Obligations.* Except as expressly provided for in this Agreement Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligation of Successor Landlord provided for in this Agreement.

8.6 *Interpretation; Governing Law.* The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York, excluding its principles of conflict of laws.

8.7 *Amendments.* This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

8.8 *Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8.9 *Mortgagee's Representation.* Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

***[Nothing Further Contained on this Page]***

**IN WITNESS WHEREOF**, this Agreement has been duly executed by Mortgagee and Tenant as of the Effective Date.

MORTGAGEE:

By: \_\_\_\_\_  
Name:  
Title:

TENANT:

By: \_\_\_\_\_  
Name:  
Title:

ACKNOWLEDGMENTS

STATE OF NEW YORK     )  
                                      )     ss.:  
COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 2025, before me the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

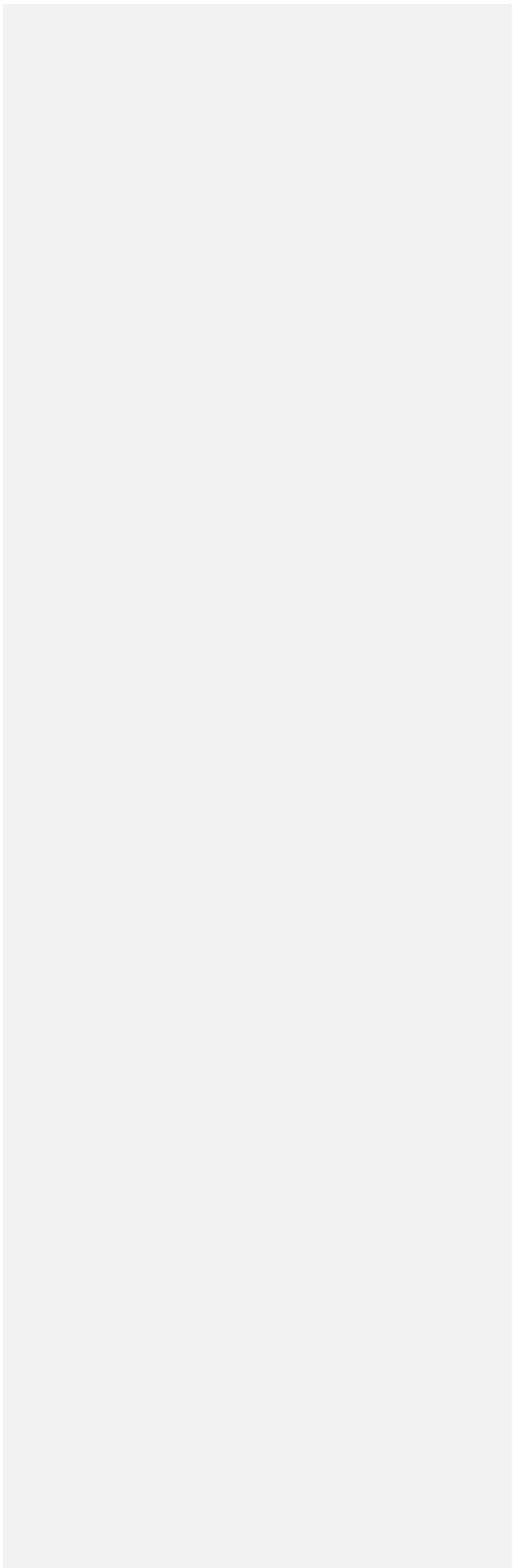
STATE OF NEW YORK     )  
                                      )     ss.:  
COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 2025, before me the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Schedule A

Description of Landlord's Premises



Schedule B

Construction-Related Obligations

- A. Construction-Related Obligations Remaining to be Performed as of Effective Date.
  
  
  
  
  
  
  
  
  
  
- B. Successor Landlord's Construction-Related Obligation After Attornment.

Schedule A  
Land Description

**EXHIBIT F**  
**ESTOPPEL CERTIFICATE**

TENANT ESTOPPEL CERTIFICATE

\_\_\_\_\_, 20\_\_\_\_

RE: Property located at: \_\_\_\_\_ ("Premises").

Gentlemen:

You have advised us that \_\_\_\_\_ (the "Bank") is planning to make a loan secured by a first mortgage on the above captioned property in which the undersigned presently occupies space under a lease dated \_\_\_\_\_ (the "Lease") between the undersigned (the "Tenant") and \_\_\_\_\_, a New York limited liability company (the "Landlord").

Incident to the Bank's loan and mortgage, and at your request, we hereby warrant, represent and certify to the Bank as follows:

1. The undersigned is, as of the date of this letter, the holder of the Tenant's interest under the Lease, and the Lease has not been modified, amended or supplemented in any manner except for:

\_\_\_\_\_  
\_\_\_\_\_.

The undersigned will not enter into any modification of the Lease without notifying the Bank in the manner set forth hereinbelow.

2. The term of the Lease is presently scheduled to expire on \_\_\_\_\_, \_\_\_\_.

3. The undersigned, as the holder of the Tenant's interest under the Lease, is in occupancy of all of the Premises covered by the Lease and is actively conducting its business therein, which business is the use stipulated as the use of the Premises demised by the Lease under the terms thereof and the Lease is in full force and effect. The Tenant has not sublet all or any portion of the Premises, or assigned or otherwise transferred its interest in the Lease or the Premises, except for: \_\_\_\_\_

\_\_\_\_\_.

4. The undersigned is current in the payment of all fixed rent and other charges due to be paid under the Lease, with minimum rent paid, in full, for the period ending \_\_\_\_\_, \_\_\_\_.

The monthly (i.e. fixed) rent is \$\_\_\_\_\_. No rent or other sum payable under the Lease is being paid in arrears. The undersigned has no defenses, counterclaims or rights of offset against any rents or other sums payable under the Lease.

No rent or other sum payable under the Lease has been paid in advance of the due date thereof, and we hereby agree with you that we shall not pay any minimum rent or other sum due to be paid under the Lease more than one (1) month in advance of the due date thereof.

5. All of the obligations on the part of the Landlord under the Lease for the performance of any work or installation of any equipment have been carried out, and the undersigned has no claim against the holder of the Landlord=s interest for the incomplete performance of any work or installation, or on account of any claimed defect therein.

As of the date of this letter, neither the undersigned nor the holder of the Landlord=s interest under the Lease has failed to make any payment or to perform any obligation which each has to the other.

6. If the undersigned should assert a claim that the holder of the Landlord=s interest under the Lease has (i) failed to perform an obligation to the undersigned under the terms of the Lease or otherwise, or (ii) is in default under the Lease in any respect, written notice thereof shall promptly be furnished to the Bank, by certified mail to the following address: \_\_\_\_\_,

\_\_\_\_\_, Attention:

\_\_\_\_\_, and the undersigned agrees that it will not exercise any rights which it might otherwise have on account of such failure or default until such notice has been given, and the Bank has had the same opportunity to cure any such failure as the holder of the Landlord=s interest under the Lease may have. The person signing this letter on behalf of the Tenant is a duly authorized representative and agent of the Tenant.

7. A security deposit of \$\_\_\_\_\_ has been paid in connection with the Lease. In the event the Bank succeeds to Landlord's interest under the Lease, Bank shall not be obligated to the undersigned for such security deposit unless such security deposit was actually received by the Bank.
8. Tenant has not filed and is not the subject of any filing for bankruptcy, arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar state or federal law.

The undersigned acknowledges that the Bank will be relying upon the undersigned=s representations contained in this letter in proceeding with the loan and mortgage as described above.

Very truly yours,

"TENANT"

By: \_\_\_\_\_  
Its: \_\_\_\_\_

