

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, REGARDING THE APPROVAL OF A PARKING STRUCTURE LEASE AND THE APPROPRIATION OF AVAILABLE LOCAL INCOME TAX REVENUES TO PAYRENTS DUE PURSUANT TO A PARKING STRUCTURE LEASE WITH REGARD TO AN ECONOMIC DEVELOPMENT PROJECT FOR A NEW MIXED-USE PROJECT TO BE UNDERTAKEN BY THE LOFTS AT HEADWATERS PARK, LLC AND FORT WAYNE GARAGE ASSOCIATES, ONE, LLC (THE LOFTS AT HEADWATERS PARK PROJECT)

WHEREAS, the Fort Wayne Redevelopment Commission (the “Commission”), governing body of the City of Fort Wayne, Indiana, Department of Redevelopment (the “Department”) and the Redevelopment District of the City of Fort Wayne, Indiana, exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, which has been codified in Indiana Code 36-7-14 et seq., as amended from time to time (the “Act”); and

WHEREAS, the Commission has previously designated and declared in accordance with the Act an area in the City of Fort Wayne, Indiana (the “City”), known as the Civic Center Urban Renewal Area, to be a redevelopment area and an allocation area (the “Area”), adopted a Redevelopment Plan, and established an allocation fund for said Area; and

WHEREAS, the Commission has entered into an Economic Development Agreement (“EDA”) with The Lofts at Headwaters Park, LLC and Fort Wayne Garage Associates One, LLC (the “Developers”), wherein the Developers agreed to develop and construct a mixed-use building consisting of a multi-family component, a ground floor commercial component and a parking structure, constituting an aggregate investment of

1 approximately Sixty-Seven Million Seven Hundred Fifty Thousand and No/100 Dollars
2 (\$67,750,000.00), to be located within the Area at the northeast corner of Clinton Street
3 and Superior Street in downtown Fort Wayne (the "Project"), and the Commission
4 agreed to provide certain economic development incentives; and
5

6 WHEREAS, the Commission has determined that the completion of the
7 Project is in the best interests of the citizens and taxpayers of the City and, to stimulate
8 and induce the completion of the development of the Project, the Commission agreed in
9 the EDA, subject to further proceedings as required by law, to provide certain economic
10 development incentives in exchange for the development of the Project; and
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12 WHEREAS, the Commission agreed to provide support to the Project
13 pursuant to the EDA in substantially the form of the Parking Structure Lease attached
14 hereto as Exhibit A and incorporated herein by reference ("Lease"), wherein the
15 Commission shall lease, operate and manage the parking structure for a period of twenty-
16 five (25) years in exchange for its payment of Basic Rent and Additional Rent (as each is
17 defined in the Lease) as and when the same are due and payable pursuant to the Lease;
18 and
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20 WHEREAS, the Commission has held a public hearing on the Lease and
21 thereafter determined that the service to be provided throughout the term of the Lease
22 will serve the public purpose of the City and that the execution of the Lease is in the best
23 interest of its residents pursuant to Indiana Code 36-7-14-25.2(c).

24 WHEREAS the annual amounts of Basic Rent are shown on Exhibit C
25 attached to the Lease; and
26

27 WHEREAS, the Commission shall pledge the tax increment revenues
28 generated by the Project ("TIF Revenue") and the net operating revenue generated by the
29
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Commission's operation of the parking structure pursuant to the Lease ("Operating Revenue") to the payment of the amount due pursuant to the Lease; and

WHEREAS, the Commission has requested, for so long as the Lease remains in effect, the appropriation of local income tax revenues legally available to the City and allocated to economic development pursuant to Indiana Code 6-3.6 ("LIT Revenues") in an amount that, for any given year, shall equal (but in no event exceed) the full amount of the Basic Rent and Additional Rent payable during such year ("Annual Rent Amount"); and

WHEREAS, the City has previously pledged the LIT Revenues to certain outstanding bonds, leases and other obligations, including (a) the City of Fort Wayne, Indiana, Local Income Tax Refunding Revenue Bonds, Series 2019A and Series 2019B, in the combined aggregate principal amount of \$20,715,000 (the "2019 Bonds"), which 2019 Bonds were issued pursuant to Ordinance No. S-74-18, adopted by the Common Council on July 24, 2018 (the "2019 Bond Ordinance"), and (b) various other Prior Obligations (as such term is defined in the 2019 Bond Ordinance) (the Prior Obligations and the 2019 Bonds, collectively, the "Outstanding LIT Obligations"); and

WHEREAS, pursuant to the ordinances, resolutions and other instruments authorizing the Outstanding LIT Obligations (including, without limitation, the 2019 Bond Ordinance), the City has reserved the right to authorize and issue additional bonds or other obligations payable out of the LIT Revenues, ranking on a parity with the pledge of the LIT Revenues to the Outstanding LIT Obligations (collectively, the "Parity Obligations"), provided that certain conditions are met; and

WHEREAS, the Common Council has determined that the completion of the Project is in the best interests of the citizens and taxpayers of the City and desires to

1 provide for the stimulation and inducement of the Project, approve the Lease and
2 appropriate the LIT Revenues as provided in this Resolution;

3 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
4 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:
5

6 The Common Council finds, determines, ratifies and confirms that the
7 Project is in the best interests of the citizens and taxpayers of the City of Fort Wayne and
8 will support the redevelopment goals of the City of Fort Wayne in the Area.

9 The Common Council hereby finds and determines that the Lease is in the
10 best interests of the citizens and taxpayers of the City of Fort Wayne and the Lease is
11 approved in substantially the form attached to this Resolution as Exhibit A. As set forth
12 in the Lease, the maximum term of the Lease shall be twenty-five (25) years and the
13 maximum annual amount of Basic Rent shall be Two Million Six Hundred Ninety-Four
14 Thousand One Hundred Thirty-Two and No/100 Dollars (\$2,694,132.00), pursuant to
15 Indiana Code 36-7-14-25.2(c).
16

17 Pursuant to and in accordance with Indiana Code 5-1-14-4 and 6-3.6-10-6,
18 the Common Council does hereby appropriate and pledge the LIT Revenues to the
19 payment of Basic Rent and Additional Rent for so long as the Lease remains in effect;
20 provided that the LIT Revenues: (a) available to pay Basic Rent and Additional Rent in
21 any given year shall equal (but in no event exceed) the Annual Rent Amount for such
22 year; and (b) shall be made available: (i) as and when each payment of Basic Rent and/or
23 Additional Rent is due and payable; and (ii) to the extent necessary for such Basic Rent
24 and/or Additional Rent to be paid in full (it being understood that the Commission shall
25 utilize Operating Revenue and TIF Revenue to pay Basic Rent and/or Additional Rent
26 prior to utilizing LIT Revenues for such purposes).
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1 The pledge of the LIT Revenues to the payment of Basic Rent shall rank
2 on a parity with the pledge of the LIT Revenues to the payment of the Outstanding LIT
3 Obligations and, accordingly, shall constitute a Parity Obligation. The pledge of the LIT
4 Revenues to the payment of Additional Rent shall be subordinate to the pledge of the LIT
5 Revenues to the payment of the Basic Rent and the Outstanding LIT Obligations.
6

7 The City reserves the right to authorize and issue additional Parity
8 Obligations for any legally authorized purpose, provided that the authorization and
9 issuance of Parity Obligations shall be subject to the conditions precedent set forth in
10 Section 20 of the 2019 Bond Ordinance, which Section 20 is incorporated in this
11 Resolution by reference, including, without limitation, the condition that, following the
12 issuance of additional Parity Obligations, the debt service coverage ratio will remain at
13 least 1.35:1.0, as determined pursuant to the 2019 Bond Ordinance.
14

15 This Resolution, and the pledge of LIT Revenues set forth herein, shall be
16 binding and in full force and effect from and after the time it has been adopted by
17 Common Council, approved by the Mayor and otherwise executed and delivered in
18 accordance with any and all laws appertaining thereto.
19
20

21 _____
Council Member

22 APPROVED AS TO FORM AND LEGALITY:
23
24

25 _____
Carol Helton, City Attorney
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RESOLUTION 2020-06
FORT WAYNE REDEVELOPMENT COMMISSION

AUTHORIZING THE EXECUTION OF A LEASE OF CERTAIN LAND
AND IMPROVEMENTS IN THE CITY OF FORT WAYNE, INDIANA, WITH
RESPECT TO A NEW ECONOMIC DEVELOPMENT PROJECT IN THE CITY
TO BE UNDERTAKEN BY THE LOFTS AT HEADWATERS PARK, LLC
AND FORT WAYNE GARAGE ASSOCIATES, ONE, LLC
(THE LOFTS AT HEADWATERS PARK PROJECT)

WHEREAS, the Fort Wayne Redevelopment Commission (the "Commission"), governing body of the City of Fort Wayne, Indiana, Department of Redevelopment (the "Department") and the Redevelopment District of the City of Fort Wayne, Indiana, exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953 which has been codified in Indiana Code 36-7-14 et seq., as amended from time to time (the "Act"); and

WHEREAS, the Commission has previously designated and declared in accordance with the Act an area in the City of Fort Wayne, Indiana (the "City"), known as the Civic Center Urban Renewal Area, to be a redevelopment area and an allocation area (the "Area"), adopted a redevelopment plan for the Area, and established an allocation fund for the Area; and

WHEREAS, The Lofts at Headwaters Park, LLC, an Indiana limited liability company, and Fort Wayne Garage Associates, One, LLC, an Indiana limited liability company (collectively, the "Developer"), have proposed the development of a mixed-use building including residential and retail uses with a parking garage, as more particularly described on Exhibit A attached hereto (the "Project"), on real estate located generally on the northeast corner of Clinton and Superior Streets in Fort Wayne, Indiana, legally described on Exhibit B attached hereto (the "Project Real Estate"); and

WHEREAS, the Commission has determined that the completion of the Project is in the best interests of the citizens of the City and, to stimulate and induce the completion of the development of the Project, the Commission entered into that certain Economic Development Agreement pursuant to Resolution 2020-05 approved by the Commission on February 10, 2020 ("EDA") with Developer and Summit Development Corp. ("Summit"); and

WHEREAS, Developer, Summit and Commission have agreed upon a Parking Structure Lease ("Lease") in substantially the form attached hereto as Exhibit C pursuant to the EDA; and

WHEREAS, a notice of public hearing on the Lease was published on January 31, 2020, pursuant to and in accordance with Indiana Code 5-3-1; and

WHEREAS, on this date such public hearing has been held and all interested parties have been provided the opportunity to be heard at the hearing; and

WHEREAS, the Commission, after conducting a public hearing in accordance with Indiana Code 36-7-14-25.2(c), has determined that (a) the terms of the Lease are based upon the value of the facilities leased and (b) the service to be provided throughout the term of the Lease will serve the public purpose of the City and is in the best interest of its residents; and

WHEREAS, the Commission intends to pay rent to the Lessor (the "Rental Payments"), pursuant to the terms of the Lease, at a rate not to exceed Two Million Six Hundred Ninety-Four Thousand One Hundred Thirty-Two and No/100 Dollars (\$2,694,132.00) per year for a period not to exceed twenty-five (25) years, as provided in the Lease; and

WHEREAS, the Commission anticipates that it will pay the Rental Payments from revenues pledged by the Commission, revenues pledged by the Allen County-Fort Wayne Capital Improvement Board of Managers and revenues pledged by the City for the purpose of paying such Rental Payments (the "Pledged Revenues");

NOW, THEREFORE, BE IT RESOLVED by the Fort Wayne Redevelopment Commission that:

1. The Rental Payments to be paid by the Commission, pursuant to the terms of the Lease, at a rate not to exceed Two Million Six Hundred Ninety-Four Thousand One Hundred Thirty-Two and No/100 Dollars (\$2,694,132.00) per year for a period not to exceed twenty-five (25) years, as provided in the Lease, are fair and reasonable, and the service to be provided throughout the term of the Lease will serve the public purpose of the City and is in the best interests of its residents.
2. The President and the Secretary of the Commission are hereby authorized and directed, on behalf of the Commission, to execute and attest, respectively, and to deliver the Lease in substantially the form presented at this meeting with such changes in form or substance as the President and Executive Director of the Commission shall approve, such approval to be conclusively evidenced by the execution thereof, following the approval of the Lease by the Common Council of the City (the "Common Council").
3. The Secretary of the Commission is hereby directed to transmit to the Common Council a copy of this Resolution, and the Commission hereby approves and ratifies action taken by the Secretary of the Commission to file with the Common Council a resolution approving the Lease.
4. The Commission hereby ratifies any and all actions taken by Commission officers and staff to cause publication of the notice of public hearing on the Lease.
5. The obligation of the Commission to make rental payments under the Lease is limited to Pledged Revenues and shall not be considered a debt of the City or the Redevelopment District of the City for purposes of the Constitution or laws of the State of Indiana.
6. The President, the Vice President and the Secretary of the Commission are, and each of them is, hereby authorized and directed to take all such further actions and to execute all such agreements, instruments or documents as are desirable to carry out the transactions contemplated by this Resolution, in such form as the President, the Vice President and the Secretary of the Commission executing the same shall deem proper, to be evidenced by the execution thereof.
7. This Resolution shall be in full force and effect after its adoption by the Commission.

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FORT WAYNE REDEVELOPMENT COMMISSION

Christopher Guerin, President

ADOPTED: 10 February 2020

Mark D. Becker, Secretary

EXHIBIT A

Description of Project

Lofts at Headwaters – Project Description:

- Located on existing Headwaters Parking Lot, at northeast corner of Superior and Clinton.
- Six-story mixed-use building.
- Estimated cost of approximately \$67,750,000.
- Approximately 15 townhomes along Clinton Street and Barr Street.
- Approximately 217 apartments on upper floors.
- Approximately 12,000 square feet of leasable commercial space along Superior Street.
- Approximately 651-space parking garage:
 - The parking garage will have one level underground and two levels above-ground.
 - In addition to the aforementioned spaces, each townhome will have a private 2-car garage accessed through the parking garage.
 - Virtually no portion of the parking garage will be visible from public rights-of-way.
- An indoor/outdoor amenities area for apartment residents will be located on top of the parking garage, overlooking Headwaters Park.
- Club Soda will not be touched. A public plaza with outdoor restaurant seating will be created between the project and Club Soda, and the Superior Street façade of the new building will be scaled to reflect the height and massing of Club Soda.
- Duck Street (the street that provides access to the lot off of Clinton) will remain in the same location and will be accessible to the public. However, the building will span over the top of Duck Street, essentially turning it into a tunnel. The northern wall of the new building will be located approximately at the southern extent of the existing Headwaters Pavilion parking lot.

EXHIBIT B

Legal Description of Project Real Estate

PARCEL I:

Lots Number Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7) in the Original Plat to the Town, (now the City) of Fort Wayne, together with Lots Numbered Five Hundred Eight Four (584), Five Hundred Eight Five (585), Five Hundred Eighty Six (586), Five Hundred Eighty Seven (587), Five Hundred Eighty Eight (588) and Five Hundred Eight Nine (589) in Hanna's Addition to the City of Fort Wayne and ½ vacated alley for all parcels; and also excepting the west ten (10) feet of Lot Five Hundred Eighty Nine (589) in Hanna's Addition.

PARCEL II:

VACATED DUCK STREET BETWEEN CLINTON STREET AND BARR STREET

Beginning at the northeasterly corner of Lot Numbered 584 in Hanna's Addition, as recorded in the plat thereof in the Office of the Recorder of Allen County, Indianan; thence southwesterly, along the southerly right-of-way line of Duck Street, to the easterly right-of-way line of Clinton Street; thence northwesterly, along the easterly right-of-way line of Clinton Street, to the northerly right-of-way line of Duck Street; thence southeasterly and northeasterly, along the northerly right-of-way line of Duck Street, to the westerly right-of-way line of Barr Street; thence southeasterly, along the westerly right-of-way line of Barr Street, to the point of beginning of this description. Excepting the South 32 feet thereof.

PARCEL III:

VACATED DUCK STREET BETWEEN CLINTON STREET AND BARR STREET

LESS AND EXCEPTING that portion conveyed to the Fort Wayne Board of Park Commissioners by Quit Claim Deed recorded December 29, 1999 as Instrument No. 990094251 and described as follows:

Beginning at the northeasterly corner of Lot Numbered 584 in Hanna's Addition, as recorded in the plat thereof in the Office of the Recorder of Allen County, Indianan; thence southwesterly, along the southerly right-of-way line of Duck Street, to the easterly right-of-way line of Clinton Street; thence northwesterly, along the easterly right-of-way line of Clinton Street, to the northerly right-of-way line of Duck Street; thence southeasterly and northeasterly, along the northerly right-of-way line of Duck Street, to the westerly right-of-way line of Barr Street; thence southeasterly, along the westerly right-of-way line of Barr Street, to the point of beginning of this description. Excepting the South 32 feet thereof.

EXHIBIT C

Parking Structure Lease

(see attached)

Exhibit C

**PARKING STRUCTURE
LEASE AGREEMENT**

THIS PARKING STRUCTURE LEASE AGREEMENT (the "Lease") made as of the _____ day of _____, 2020 (the "Effective Date"), by and between FORT WAYNE GARAGE ASSOCIATES, ONE, LLC, an Indiana limited liability company (the "Landlord"), SUMMIT DEVELOPMENT CORP., an Indiana nonprofit corporation ("Tenant"), and THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT, acting by and through the FORT WAYNE REDEVELOPMENT COMMISSION, a municipal corporation organized and existing under the laws of the State of Indiana (the "Subtenant") and is based on the following premises:

WHEREAS, Tenant and Subtenant desire that Landlord construct the Garage Improvements, hereinafter defined, to be leased to Tenant and in turn subleased by Tenant to Subtenant for Subtenant's use as hereinafter provided;

WHEREAS, it is the intent of Landlord, Tenant and Subtenant that Landlord be entitled to enforce directly against Subtenant all of Subtenant's obligations under this Lease, that Subtenant shall be obligated directly to Landlord to perform Subtenant's obligations under the Lease and that the satisfaction of Subtenant's obligations under this Lease shall be deemed to satisfy any obligation of Tenant under this Lease.

FOR AND IN CONSIDERATION OF the premises and the rents and provisions herein stipulated to be paid and performed, Landlord, Tenant and Subtenant, intending to be legally bound, hereby covenant and agree as follows:

1. Demise of Premises.

(a) This Lease is drafted with the intent that it will conform to and comply with Indiana law and in all instances be construed and enforced in such a way as to give the fullest effect of such intent. This Lease is entered into by Tenant and Subtenant pursuant to the authority set forth in Indiana Code 36-7-14-25.2, and it is the intent of all parties that this Lease be construed to comply with said statute.

(b) Landlord hereby leases, demises and lets the Leased Premises to Tenant, and Tenant hereby takes and leases the Leased Premises from Landlord, and Tenant hereby subleases, demises and lets the Leased Premises to Subtenant, and Subtenant hereby takes and subleases the Leased Premises from Tenant, all for the Term and upon the provisions hereinafter specified. The easements, rights and appurtenances to which the Leased Premises are entitled and is subject include, but are not limited to, the Easement Agreement and the ERC. The Garage Improvements are being constructed in conjunction with the Mixed-Use Improvements. From and after the Commencement Date, Landlord shall provide the Leased Premises to Tenant and Tenant shall provide the Leased Premises to Subtenant in accordance with and subject to the terms and conditions of this Lease, including, but not limited to, the terms and conditions of Section 11 hereof.

2. Certain Definitions.

“Additional Rent” shall mean all amounts, costs, expenses, liabilities and obligations that Tenant is required to pay pursuant to the terms of this Lease other than Basic Rent including amounts, costs, expenses, liabilities and obligations due to or incurred by Landlord or Lender as a result of or in connection with the exercise of any right of Landlord or Lender under this Lease or Tenant’s failure to perform any obligation hereunder.

“Adjoining Property” shall mean all streets and public roadways, sidewalks, curbs, gores and vault spaces adjoining any of the Leased Premises but expressly excluding the Mixed-Use Premises.

“Alteration” or “Alterations” shall mean any or all changes, additions (whether or not adjacent to or abutting any then-existing buildings), expansions (whether or not adjacent to or abutting any then-existing buildings), improvements, reconstructions, removals or replacements of any of the Improvements, both interior or exterior, and ordinary and extraordinary.

“Basic Rent” shall mean the basic semi-annual rent payable for the Leased Premises, as set forth in Exhibit C attached hereto and incorporated herein by this reference.

“Basic Rent Payment Dates” shall mean the Basic Rent Payment Dates as defined in Section 6.

“Commencement Date” shall mean the date on which Landlord delivers to Tenant notice that Substantial Completion has occurred.

“Condemnation” shall mean a Taking and/or a Requisition.

“Default Rate” shall mean an annual rate of interest equal to (i) the highest rate of interest that may be lawfully charged on amounts past due with respect to the Loan or (ii), if no Loan is then in effect, fifteen percent (15%); provided, that in no event shall the Default Rate exceed the highest lawful rate of interest that may be charged on past due Rent under this Lease.

“Design-Build Contractor” shall mean Dale Dillon Construction, Inc., or an affiliated entity.

“Designated Spaces” shall have the meaning ascribed to such term in Subsection 17(a).

“Easement Agreement” shall mean that certain Declaration (Garage and Mixed-Use Properties) of even date herewith executed among Landlord, the Mixed-Use Owner, Tenant, and Subtenant.

“ERC” shall mean that certain Environmental Restrictive Covenant anticipated to be executed prior to the Commencement Date and recorded in the Office of the Allen County Recorder.

“Event of Default” shall mean an Event of Default as defined in Subsection 19(a).

“Garage Improvements” shall mean a parking structure providing for approximately 650 vehicle parking spaces, as generally depicted and/or described in Exhibit B. The Garage Improvements: (a) are being constructed in conjunction with the Mixed-Use Improvements; and (b) are part of the Leased Premises. For purposes of clarity, the private garages constructed in connection with the townhomes being constructed as part of the Mixed-Use Improvements are not part of the Garage Improvements; instead, they are included within the Mixed-Use Improvements and are accessed through the entrances and driveways of the Garage Improvements.

“Garage Operating Agreement” shall mean that certain Garage Operating Agreement executed contemporaneously herewith by Landlord, Mixed-Use Owner, and Subtenant.

“Governmental Authority” shall mean the City of Fort Wayne, Indiana, and/or its fiscal body under Indiana law; provided that, if any governmental entity, instrumentality, board, council, and/or agency other than the foregoing: (a) is the party that receives the LIT Revenue and/or that pledges the LIT Revenue to the payment of Basic Rent and Additional Rent; and/or (b) is a party that must undertake some action, or participate in some activity, in connection with the adoption of the LIT Resolution and/or the pledge of the LIT Revenue to the payment of Basic Rent and Additional Rent; then such governmental entity, instrumentality, board, council, and/or agency shall constitute a Governmental Authority.

“Indemnified Liabilities” shall have the meaning ascribed to such term in Subsection 10(a).

“Impositions” shall mean the Impositions as defined in Section 8.

“Insurance Requirement” or “Insurance Requirements” shall mean, as the case may be, any one or more of the terms of each insurance policy required to be carried by Subtenant under this Lease and the requirements of the issuer of such policy, and whenever Subtenant shall be engaged in making any Alteration or Alterations, repairs or construction work of any kind (collectively, “Work”), the term “Insurance Requirement” or “Insurance Requirements” shall be deemed to include a requirement that Subtenant obtain or cause its contractor to obtain completed value builder’s risk insurance when the estimated cost of the Work in any one instance exceeds the sum of Fifty Thousand and No/100 Dollars (\$50,000.00), and that Subtenant or its contractor shall obtain worker’s compensation insurance or other adequate insurance coverage covering all persons employed in connection with the Work, whether by Subtenant, its contractors or subcontractors and with respect to whom death or bodily injury claims could be asserted against Subtenant or Landlord.

“Land” shall mean the real estate more particularly described in Exhibit A, together with the Garage Improvements.

“Law” shall mean any constitution, statute, code, ordinance, regulation, judicial or administrative decision or other rule of law.

“Leased Premises” shall mean, collectively, the Land and the Garage Improvements.

"Legal Requirement" or "Legal Requirements" shall mean, as the case may be, any one or more of all present and future Laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those that, by their terms, are not applicable to and do not impose any obligation on Subtenant, Landlord or the Leased Premises), the ERC, and all covenants, restrictions and conditions now of record that may be applicable to Subtenant, Landlord (with respect to the Leased Premises) or to all or any part of or interest in Leased Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Leased Premises, even if compliance therewith (i) necessitates structural changes or improvements (including changes required to comply with the "Americans with Disabilities Act") or results in interference with the use or enjoyment of the Leased Premises or (ii) requires Subtenant to carry insurance other than as required by the provisions of this Lease.

"Lender" shall mean any entity that makes a Loan to Landlord, secured by a Mortgage and evidenced by a Note or Notes or that is the holder of the Mortgage and Note or Notes as a result of an assignment or purchase thereof.

"LIT Resolution" shall mean Resolution No. _____, A Resolution of the Common Council of the City of Fort Wayne, Indiana, Regarding the Approval of a Parking Structure Lease and the Appropriation of Available Local Income Tax Revenues to Pay Rents Due Pursuant to a Parking Structure Lease with Regard to an Economic Development Project for a New Mixed-Use Project to be Undertaken by the Lofts at Headwaters Park, LLC, and Fort Wayne Garage Associates, One, LLC, adopted by the Governmental Authority on _____.

"LIT Revenue" shall mean the local income tax revenues of the Governmental Authority and allocated to economic development under Indiana Code § 6-3.6.

"Loan" shall mean a loan made by a Lender to Landlord secured by a Mortgage and evidenced by one or more Notes.

"Mixed-Use Improvements" shall mean the mixed-use improvements to be constructed by the Mixed-Use Owner, to which the Garage Improvements will be attached. The Mixed-Use Improvements (as opposed to the Garage Improvements) include the private garages constructed in connection with the townhomes.

"Mixed-Use Owner" shall mean The Lofts at Headwaters Park, LLC.

"Mortgage" shall mean any mortgage from Landlord to a Lender hereafter executed covering the Leased Premises.

"Net Award" shall mean the entire award payable to Landlord by reason of a Condemnation, less any reasonable expenses incurred by Landlord in collecting such award.

"Net Garage Revenue" shall mean an amount equal to: (a) the gross receipts received by Tenant and/or Subtenant, or to which either or both is entitled, in connection with the Leased

Premises; minus (b) the reasonable, actual, out-of-pocket costs and expenses incurred in connection with the operation of the Leased Premises.

"Net Proceeds" shall mean the entire proceeds of any insurance required under Subsections 14(a)(i), (a)(iv), or (a)(v), less any actual and reasonable expenses incurred by Landlord in collecting such proceeds.

"Note" or "Notes" shall mean a Promissory Note or Notes executed by Landlord and payable to Lender, which Note or Notes will be secured by a Mortgage and an assignment of leases and rents.

"Permitted Encumbrances" shall mean the Impositions, Legal Requirements, any matters consented to by Tenant or Subtenant, those covenants, restrictions, reservations, liens, conditions, encroachments, easements, encumbrances and other matters of title that affect the Leased Premises as of the Effective Date, or that arise from documents, instruments or agreements executed to be effective on or about the Effective Date and related to Landlord's acquisition of the Leased Premises and/or leasing of the Leased Premises to Tenant and Tenant's leasing of the Leased Premises to Subtenant, or which arise due to the acts or omissions of Tenant or Subtenant, or that arise due to the acts or omissions of Landlord with Tenant's or Subtenant's written consent after the Effective Date. Without limitation of the foregoing, the Permitted Encumbrances include all matters specified on Schedule 2-P to this Lease.

"Pledged Revenue" shall mean, collectively, the LIT Revenue, the Project Increment, and the Net Garage Revenue.

"Project Increment" shall mean the allocated property tax proceeds that are: (a) generated from ad valorem real property taxes levied or imposed on or against the Leased Premises and the Mixed-Use Improvements, together with the land on which the Mixed-Use Improvements are constructed; and (b) attributable to the assessment of the foregoing above a base assessed value ("increment"), including such taxes attributable to an increased assessed value resulting from the construction of the Garage Improvements and the Mixed-Use Improvements; which allocated property tax proceeds (increment) are to be on deposit in an allocation fund pursuant to IC §36-7-14-39(b).

"Replaced Equipment" or "Replacement Equipment" shall mean the Replaced Equipment and Replacement Equipment, respectively, as defined in Subsection 11(d).

"Requisition" shall mean any temporary condemnation or confiscation of the use or occupancy of the Leased Premises by any governmental authority, civil or military, whether pursuant to an agreement with such governmental authority in settlement of or under threat of any such requisition or confiscation, or otherwise.

"Resolution" shall mean that certain: (a) Resolution No. _____, which is entitled Resolution Of The Fort Wayne Redevelopment Commission Approving And Authorizing The Execution Of An Economic Development Agreement With Respect To A New Economic Development Project In The City To Be Undertaken By The Lofts At Headwaters Park, LLC, And Fort Wayne Garage Associates, One, LLC; and (b) Resolution No. _____, which is entitled Resolution Of The Fort Wayne Redevelopment Commission Establishing Certain Funds

And Accounts And Pledging Certain Net Operating Revenues and Certain Tax Increment Revenues To The Payment Of Rent Pursuant To A Parking Structure Lease To Be Executed With Respect To A New Economic Development Project In The City To Be Undertaken By The Lofts At Headwaters Park, LLC, And Fort Wayne Garage Associates, One, LLC; adopted by Subtenant on January ____, 2020.

“Restoration” shall mean the restoration of the Leased Premises after any Taking or damage by fire or other casualty, as nearly as possible to their value, condition and character prior to such Taking or damage and in accordance with the repair and maintenance standards and obligations of this Lease.

“State” shall mean the State of Indiana.

“Sub-sublease Rents” shall mean all rents and other sums of money payable to Subtenant under a sub-sublease of any of the Leased Premises.

“Substantial Completion” shall mean that Landlord has delivered to Tenant and Subtenant a valid certificate of occupancy issued by the Allen County Building Department and has received from its architect a certificate of substantial completion stating that the Garage Improvements have been completed, subject only to identified “punch-list” items that will not have a material effect on the use and operation of the Garage Improvements for their intended purpose.

“Subtenant Insurance Payment” shall have the meaning ascribed to such term in Subsection 14(f).

“Taking” shall mean any taking of the Leased Premises in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceedings or by any other means, or any *de facto* condemnation.

“Term” shall have the meaning ascribed to such term in Subsection 5(a).

“Termination Date” shall mean the date on which this Lease terminates, in the case of a termination of this Lease in accordance with the terms and conditions of Section 13 or Subsection 19(a).

“Termination Fee” shall mean the amount of all prepayment premiums, yield maintenance payments, charges and penalties, and all other charges, costs and expenses that Landlord is required to pay to Lender as a result of a prepayment of the Loan

“Trade Fixtures” shall mean all fixtures, equipment and other items of personal property (whether or not attached to the Garage Improvements) that are owned by Subtenant and used in the operation of the business conducted by Subtenant on the Leased Premises.

“Warranties” shall mean all: (a) warranties, guaranties, and indemnities, whether express or implied, with respect to the Leased Premises provided by any manufacturer, engineer, contractor, architect, or builder to Landlord or any Landlord-affiliated entity; and (b) rights of a

nature similar to the foregoing in favor of Landlord or any Landlord-affiliated entity, whether created by contract or existing pursuant to the Uniform Commercial Code.

3. Title and Condition.

(a) The Leased Premises are demised, let and sublet subject to (i) the Permitted Encumbrances, (ii) all Legal Requirements and Insurance Requirements, including any existing violation of any thereof, and (iii) the condition of the Leased Premises as of the commencement of the Term; in each case without representation or warranty by Landlord, except as otherwise specifically provided herein; it being understood and agreed, however, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any thereof that, for any reason, may have expired.

(b) Subject to the terms and conditions of this Lease, Landlord hereby assigns the Warranties to Subtenant, which assignment shall remain in effect until the expiration of the Term or the earlier termination of this Lease; provided that: (i) Landlord makes no warranties with respect to the Warranties; (ii) Subtenant shall have no recourse against Landlord should the Warranties by their terms prove to be unenforceable; and (iii) Landlord shall have the right to enforce any of the Warranties in the name of Subtenant, without by implication creating any duty to enforce such Warranties. Neither Landlord nor Subtenant shall be obligated to enforce any Warranties, and the fact that a party does not enforce a Warranty shall not, in and of itself, constitute an Event of Default; accordingly, neither Landlord nor Subtenant shall be entitled to sue, or pursue any claim against, the other for non-enforcement of any Warranty. The parties acknowledge that additional information with respect to the Warranties is set forth in the Garage Operating Agreement.

Notwithstanding anything to the contrary contained in this Lease, each of Tenant and Subtenant retains a separate and independent right to sue Landlord, or to seek equitable remedies against Landlord, with respect to any claim that Tenant or Subtenant may have against Landlord; provided that no judgment, order or injunction or equitable relief granted in favor of Tenant or Subtenant shall: (i) abate, be set-off against, reduce or otherwise affect Tenant's obligation to pay Basic Rent or Additional Rent; (ii) terminate or suspend this Lease; or (iii) reduce, defer, or otherwise affect any obligations of Tenant or Subtenant hereunder.

Except as otherwise specifically set forth herein, Landlord leases to Tenant and Subtenant, and Tenant and Subtenant accept and lease from Landlord, the Leased Premises "AS IS", and Tenant and Subtenant acknowledge that Landlord (whether acting as Landlord hereunder or in any other capacity) has not made (and shall not be deemed to have made), and shall not make (or be deemed to make), any warranty or representation, express or implied, with respect to any portion of the Leased Premises, including any warranty or representation as to: (i) its fitness for use; (ii) its purpose; (iii) its design or condition for any particular use or purpose; (iv) the quality of the material or workmanship therein, latent or patent; (v) Landlord's title thereto; or (vi) its value, compliance with specifications, location, use, condition, merchantability, quality, description, durability, or operation; it being agreed that all risks incident thereto are to be

borne by Subtenant (in connection with which Subtenant may, but is not obligated to enforce any applicable Warranties and/or contractual obligations of any party). If there is any defect or deficiency of any nature in any portion of the Leased Premises, whether patent or latent, then neither party shall have any responsibility or liability: (i) to the other party with respect thereto; or (ii) for any incidental or consequential damages (including strict liability in tort). The foregoing provisions of this Subsection have been negotiated, and are intended to be a complete exclusion and negation of any warranties by Landlord, express or implied, with respect to any portion of the Leased Premises, including those arising pursuant to the Uniform Commercial Code or any other Law now or hereafter in effect.

(c) Tenant and Subtenant acknowledge and agree that Tenant and Subtenant have examined the title to the Leased Premises as of the Effective Date and have found such title to be satisfactory for the purposes contemplated by this Lease.

(d) Tenant and Subtenant agree that Subtenant is obligated to and shall perform all obligations of the owner of the Leased Premises under, and pay all expenses that the owner of the Leased Premises may be required to pay in accordance with, the Easement Agreement, and any other declaration, reciprocal easement agreement, easement agreement, license or other agreement or document of record affecting the Leased Premises as of the date of the Acquisition Closing. With respect to any declaration, reciprocal easement agreement, easement agreement, license, or other agreement or document executed after the Effective Date, the foregoing payment obligation shall apply only if the REA: (i) is required by Law; (ii) is contemplated by this Agreement to be executed; (iii) is contemplated to be executed by any other agreement to which Developer and Summit and/or FWRC are parties; or (iv) otherwise is approved and/or executed by Summit or FWRC; provided that FWRC acknowledges and agrees that the ERC falls within the foregoing category and, as such, will constitute an REA. All of the foregoing, collectively, are the "REA". Subtenant shall comply with all of the terms and conditions of the REA during the Term of this Lease. Subtenant further covenants and agrees to indemnify, defend and hold harmless Landlord and Lender against any claim, loss or damage suffered by Landlord or Lender by reason of Subtenant's failure to perform any obligations or pay any expenses as required under any REA or comply with the terms and conditions of any REA as hereinabove provided during the Term of this Lease. Landlord, Tenant and Subtenant shall not amend or consent to the amendment of any REA without Lender's, Landlord's, and Subtenant's prior approval provided, however, that no such amendment to any REA shall result in any diminution in the value or utility of the Leased Premises for use as a vehicle parking garage, and further provided that no such amendment to the Easement Agreement shall render the use of the Leased Premises dependent upon any other property or condition and further provided no such amendment to the Easement Agreement shall result in any diminution in Lender's rights under the Mortgage, each of which Subtenant shall certify to Landlord and to Lender in writing delivered with Subtenant's request with respect to any such amendment to the Easement Agreement.

4. Use of Leased Premises; Quiet Enjoyment.

(a) Subtenant shall use the Leased Premises as a parking garage for motor vehicles, including any ancillary uses incidental thereto. Subtenant agrees that with respect to the Permitted Encumbrances, Subtenant shall observe, perform and comply with and carry out the provisions thereof required therein to be observed and performed by Landlord.

(b) Subject to Subtenant's rights under Section 18 hereof, Subtenant shall not permit any unlawful occupation, business or trade to be conducted on the Leased Premises or any use to be made thereof contrary to applicable Legal Requirements or Insurance Requirements. Subject to Subtenant's rights under Section 18, Subtenant shall not use, occupy or permit any of the Leased Premises to be used or occupied, nor do or permit anything to be done in or on any of the Leased Premises, in a manner that would (i) make void or voidable any insurance that Subtenant is required hereunder to maintain then in force with respect to any of the Leased Premises, (ii) affect the ability of Subtenant to obtain any insurance that Subtenant is required to furnish hereunder, or (iii) cause any injury or damage to any of the Garage Improvements unless pursuant to Alterations permitted under Section 12 hereof.

(c) Subject to all of the provisions of this Lease, so long as no Event of Default exists hereunder, Landlord covenants to do no act to disturb the peaceful and quiet occupation and enjoyment of the Leased Premises by Subtenant, provided that Landlord and Lender may enter upon and examine Leased Premises at reasonable times after reasonable notice and during business hours and exercise any rights and privileges granted to Landlord under the provisions of this Lease; except that neither Landlord nor Lender shall be required to give any notice prior to entering upon the Leased Premises in the event of an emergency or at any time while an Event of Default has occurred and is continuing.

5. Term.

(a) Subject to the provisions hereof Subtenant shall have and hold the Leased Premises for the period: (a) commencing on the Commencement Date; and (b) ending on the date that is 25 years thereafter (the "Term"). Subtenant acknowledges that: (i) following Substantial Completion, it may be necessary for the Mixed-Use Owner to use limited portions of the Garage Improvements for construction staging and related purposes in connection with the construction of the Mixed-Use Improvements; and, notwithstanding anything to the contrary set forth herein, (ii) such use shall not: (A) constitute a violation of this Lease; or (B) trigger any obligation on the part of Landlord to abate any Basic Rent or to pay any amounts to Subtenant.

(b) Landlord agrees that, in advance of the date of Substantial Completion (and, accordingly, prior to the Commencement Date), Subtenant may elect to enter into a license agreement with Landlord under which Subtenant may take possession of those portions of the Garage Improvements identified by Landlord from time-to-time as: (i) being substantially complete and available for use; and (ii) not needed for construction

staging and other purposes relating to the construction of the Garage Improvements and/or the Mixed-Use Improvements; which license agreement shall be on the same terms and conditions as are set forth in this Lease; provided that, instead of Basic Rent, Subtenant shall pay, in the same manner in which Basic Rent will be payable, a license fee in an amount equal to the Basic Rent that will be payable on the Commencement Date, prorated based upon the ratio of: (i) the number of parking spaces in the portions of the Garage Improvements with respect to which Subtenant has elected to take possession; to (ii) the total number of parking spaces that will be in the Garage Improvements upon Substantial Completion.

6. Rent.

(a) Commencing on the Commencement Date, and continuing throughout the Term, Subtenant shall pay the Basic Rent. Basic Rent shall be due and payable in advance on the first day of each June 1 and December 1 and continuing on the first day of each June and December thereafter during the Term (the said days being called the "Basic Rent Payment Dates"), and Subtenant shall pay the same at Landlord's address set forth in Section 21, or at such other place as Landlord from time to time may designate to Subtenant in writing, in funds that, at the time of such payment, are legal tender for the payment of public or private debts in the United States of America and if required by Lender by wire transfer in immediately available federal funds to such account in such bank as Lender shall designate, from time to time. If the Commencement Date does not occur on the first day of a month, Basic Rent shall be prorated for the period from and including the Commencement Date through and including the last day of the month immediately prior to the date on which the next semi-annual period begins, and shall be paid on the Commencement Date.

(b) Subtenant shall pay and discharge before the imposition of any fine, lien, interest or penalty may be added thereto for late payment thereof, as Additional Rent, all other amounts and obligations that Subtenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost that may be added by the party to whom such payment is due for nonpayment or late payment thereof. In the event of any failure by Subtenant to pay or discharge any of the foregoing, Landlord shall have all rights, powers and remedies provided herein, by Law or otherwise, in the event of nonpayment of Basic Rent. Upon the expiration of the Term or the earlier termination of this Lease, Subtenant shall pay any accrued but unpaid Additional Rent, prorated as of the expiration date or the Termination Date, respectively.

(c) If any installment of Basic Rent is not paid within five (5) days after the same is due, Subtenant shall pay to Landlord, on demand, as Additional Rent, a late charge equal to five percent (5%) on such overdue installment of Basic Rent.

(d) Landlord and Subtenant stipulate and agree that this Lease is a true lease under which each of Landlord, Tenant, and Subtenant is receiving fair value for what it is providing; accordingly, it does not represent a financing arrangement. Each party shall maintain its books, records, and prepare its reports and filings (including income tax

filings), in such a manner as to reflect that this Lease is a true lease, and not a financing arrangement.

(e) Pledged Revenues

(i) With respect to the Pledged Revenue: (A) the Governmental Authority, pursuant to the LIT Resolution (and, accordingly, Indiana Code § 6-3.6), has pledged the LIT Revenue to the payment of Basic Rent and Additional Rent; and (B) Subtenant, pursuant to the Resolution (and, accordingly, Indiana Code § 36-7-14), has pledged each of the Project Increment and the Net Garage Revenue to the payment of Basic Rent and Additional Rent. Basic Rent and Additional Rent shall be payable out of the Pledged Revenue, and, though Subtenant may elect to do so, Subtenant has no obligation to use funds other than the Pledged Revenue to pay Basic Rent or Additional Rent. The parties hereto acknowledge that, pursuant to the LIT Resolution: (A) the pledge of LIT Revenue to the payment of Basic Rent is on parity with the pledge of LIT Revenue to the payment of certain Outstanding LIT Obligations (as defined in the LIT Resolution); (B) the pledge of LIT Revenues to the payment of Additional Rent is subordinate to the pledge of LIT Revenue to the payment of Basic Rent and the Outstanding Obligations; and (C) and subject to certain conditions, the Governmental Authority has reserved the right to pledge LIT Revenue in the future on a parity basis with the pledge of LIT Revenue to the Basic Rent and the Outstanding LIT Obligations, including, without limitation, the condition that, following the issuance of additional parity obligations, the debt service coverage ratio will remain at least 1.35:1.0, as provided in the LIT Resolution.

(ii) Subtenant shall deposit, and/or cause to be deposited, all Pledged Revenue into a special fund account: (A) designated solely for the receipt of the Pledged Revenue; and (B) withdrawals from which may be made only for the payment of Basic Rent and Additional Rent; with the LIT Revenue and the Net Garage Revenue being deposited monthly, and the Project Increment being deposited semi-annually.

(iii) Landlord acknowledges that the City of Fort Wayne, Indiana is not the "Tenant" or the "Subtenant" under this Lease, and neither Basic Rent nor Additional Rent shall be deemed an indebtedness of the City of Fort Wayne, Indiana.

7. Net Lease; Non-Terminability.

(a) This is a net lease and Basic Rent, Additional Rent and all other sums payable hereunder by Subtenant shall be paid without notice, demand, setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense.

(b) This Lease shall not terminate (except as otherwise expressly provided in Section 13 and Subsection 19(b) of this Lease), and Subtenant shall not have any right to

terminate this Lease (except as expressly provided in Section 13), during the Term. Except as specifically provided in Subsection 15(i), Subtenant shall not be entitled to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense of or to Basic Rent, Additional Rent or any other sums payable under this Lease, and the obligations of Subtenant under this Lease shall not be affected by any interference with Subtenant's use of any of the Leased Premises for any reason, including but not limited to the following: (i) any damage to or destruction of any of the Leased Premises by any cause whatsoever (except as provided specifically to the contrary in Subsection 15(i)), (ii) any Condemnation (except as provided specifically to the contrary in Subsection 15(i)), (iii) the prohibition, limitation or restriction of Subtenant's use of any of the Leased Premises, (iv) any eviction by paramount title or otherwise, (v) Subtenant's acquisition of ownership of any of the Leased Premises other than pursuant to an express provision of this Lease, (vi) any default on the part of Landlord under this Lease or under any other agreement, (vii) any latent or other defect in, or any theft or loss of any of the Leased Premises, (viii) the breach of any guaranties of any seller or manufacturer of any equipment, (ix) any violation of Subsection 4(c) by Landlord, or (x) any other cause, whether similar or dissimilar to the foregoing, any present or future Law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Subtenant under this Lease shall be separate and independent covenants and agreements, and that Basic Rent, Additional Rent and all other sums payable by Subtenant hereunder shall continue to be payable in all events (or, in lieu thereof, Subtenant shall pay amounts equal thereto), and that the obligations of Subtenant under this Lease shall continue unaffected: (i) unless this Lease shall have been terminated pursuant to Section 13 or Subsection 19(b); or (ii) except to the extent that payments of Basic Rent have been abated pursuant to Subsection 15(i). Tenant retains a separate and independent right to sue, or seek equitable remedies against, Landlord in connection with a claim by Tenant against Landlord; provided that no judgment, order, injunction, or other equitable relief granted in favor of Tenant shall abate, defer, be set-off against, reduce, or otherwise affect: (i) the length of the Term; or (ii) any obligations of Tenant or Subtenant hereunder, including, without limitation, the obligation to pay Basic Rent and Additional Rent in a timely manner.

(c) Except as otherwise provided in this Lease, Subtenant agrees that it shall remain obligated under this Lease in accordance with its provisions and that it shall not take any action to terminate, rescind or avoid this Lease, notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Landlord, (ii) the exercise of any remedy, including foreclosure, under the Mortgage, or (iii) any action with respect to this Lease (including the disaffirmance hereof) that may be taken by Landlord under the Federal Bankruptcy Code or by any trustee, receiver or liquidator of Landlord or by any court under the Federal Bankruptcy Code or otherwise.

(d) Except as otherwise provided in this Lease, this Lease is the absolute and unconditional obligation of Subtenant. Subtenant waives all rights that are not expressly stated in this Lease but may now or hereafter otherwise be conferred by Law (i) to quit, terminate or surrender this Lease or any of the Leased Premises, (ii) to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction,

reduction or defense of or to Basic Rent, Additional Rent or any other sums payable under this Lease, and (iii) for any statutory lien or offset right against Landlord or its property.

8. Payment of Impositions; Compliance with Legal Requirements and Insurance Requirements.

(a) Impositions.

(i) Subject to the provisions of Section 18 hereof relating to contests, Tenant shall, before interest or penalties are due thereon, pay and discharge (all of the following being herein collectively called the "Impositions"): all taxes of every kind and nature (including real, *ad valorem*, personal property, gross income, franchise, withholding, profits and gross receipts taxes) on or with respect to the Leased Premises (including, without limitation, any Impositions assessed against any real property other than the Leased Premises that is included within the same tax parcel as the Leased Premises); all charges and/or taxes for any easement or agreement maintained for the benefit of the Leased Premises; all general and special assessments, levies, permits, inspection and license fees on or with respect to the Leased Premises; all water, sewer, utility and environmental rents and other charges on or with respect to the Leased Premises; all ground rents on or with respect to the Leased Premises; and all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed, assessed upon or with respect to the Leased Premises or becoming a lien, prior to or during the Term, against Landlord, Subtenant or any of the Leased Premises as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair or possession thereof, or any activity conducted on the Leased Premises, or the Basic Rent or Additional Rent, including without limitation, any gross income tax, sales tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Basic Rent or Additional Rent. If received by Landlord, Landlord shall promptly deliver to Subtenant any bill or invoice with respect to any Imposition. Without limitation of any other provisions of this Section 8, Subtenant agrees to pay all Impositions that accrue or become due with respect to any period prior to or during the Term.

(ii) Nothing herein shall obligate Subtenant to pay, and the term "Impositions" shall exclude, federal, state or local (A) transfer taxes as the result of a conveyance by (or suffered by) Landlord, (B) franchise, capital stock or similar taxes if any, of Landlord, (C) income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its net income, or (D) any estate, inheritance, succession, gift, capital levy or similar taxes, unless the taxes referred to in clauses (B) and (C) above are in lieu of or a substitute for any other tax or assessment upon or with respect to any of the Leased Premises that, if such other tax or assessment were in effect at the commencement of the Term, would be payable by Subtenant. In the event that any assessment against any of the Leased Premises may be paid in installments, Subtenant shall have the option to pay such assessment in installments; and in such event, Subtenant shall be liable

only for those installments that become due and payable during the Term. Subtenant shall prepare and file all tax reports required by governmental authorities that relate to the Impositions. Subtenant shall deliver to Landlord, within twenty (20) days after Landlord's written request therefor, copies of all settlements and notices pertaining to the Impositions that have been issued by any governmental authority, and receipts for payments of all Impositions made during each calendar year of the Term, within thirty (30) days after payment.

(b) Subject to the provisions of Section 18 hereof, Subtenant shall promptly comply with and conform to all of the Legal Requirements and Insurance Requirements.

9. Liens; Recording and Title.

(a) Subject to the provisions of Section 18 hereof, Subtenant shall not, directly or indirectly, create or permit to be created or to remain, and shall promptly discharge, any lien on the Leased Premises, on the Basic Rent, Additional Rent or on any other sums payable by Subtenant under this Lease, other than the Mortgage, the Permitted Encumbrances and any mortgage, lien, encumbrance or other charge created by or resulting from any act or omission by Landlord or those claiming by, through or under Landlord (except Subtenant). Notice is hereby given that Landlord shall not be liable for any labor, services or materials furnished or to be furnished to Subtenant, or to anyone holding any of the Leased Premises through or under Subtenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to any of the Leased Premises.

(b) Landlord, Tenant and Subtenant shall execute, acknowledge and deliver a written Memorandum of this Lease to be recorded in the appropriate land records of the jurisdiction in which the Leased Premises are located, in order to give public notice and protect the validity of this Lease. In the event of any discrepancy between the provisions of said recorded Memorandum of this Lease and the provisions of this Lease, the provisions of this Lease shall prevail.

(c) Nothing in this Lease and no action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant or Subtenant any right, power or permission to do any act or to make any agreement that may create, give rise to, or be the foundation for, any right, title, interest or lien in or upon the estate of Landlord in any of the Leased Premises.

10. Indemnification.

(a) From and after the date on which Subtenant first takes possession of all or any portion of the Leased Premises, and except as specifically set forth herein, Subtenant agrees to defend, pay, protect, indemnify, save, and hold harmless Landlord, Tenant and Lender from and against any and all liabilities, losses, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, arising or alleged to arise from the Leased Premises or the ownership, use, non-use, occupancy, condition,

maintenance, repair or rebuilding of the Leased Premises, any breach of this Lease or Landlord's enforcement of the provisions of this Lease, and any injury to or death of any person or persons or any loss of or damage to any property, real or personal, in any manner arising therefrom, connected therewith or occurring thereon, and any claims, demands, causes of action, suits or judgments by third parties resulting from violations or alleged violations by Subtenant or any subtenant of any provision of this Lease, any legal requirement, any other contract agreement to which Subtenant or any subtenant is a party, whether or not Landlord or Lender has or should have knowledge or notice of the defect or conditions, if any, causing or contributing to said injury, death, loss, damage, liability, penalty, cost, expenses, cause of action, suit, demand, judgment or other claim; except to the extent that any such liability, loss, damage, penalty, cost, expense, cause of action, suit, claim, demand or judgment is the result of the gross negligence of Landlord or the intentional wrongful misconduct of Landlord (collectively, the "Indemnified Liabilities"). In case any action or proceeding is brought against Landlord or Lender by reason of any Indemnified Liabilities, Subtenant covenants upon notice from Landlord, Tenant or Lender to resist such action or proceeding and defend Landlord and Lender in such action or proceeding, with the expenses of such defense paid by Subtenant, and Tenant and Landlord will cooperate and assist in the defense of such action or proceeding if reasonably requested so to do by Subtenant.

(b) The obligations under this Section 10 shall survive the expiration of the Term or the earlier termination of this Lease.

(c) Without limiting any indemnification or other provisions set forth in this Lease, it specifically is agreed that any obligations of Tenant or Subtenant hereunder to defend, pay, protect, indemnify, save, and/or hold harmless Landlord, Lender, or any other person or entity for, from, and/or against the Indemnified Liabilities: (i) requires Tenant to defend, pay, protect, indemnify, save, and/or hold harmless Landlord, Lender, and/or such other person or entity against any and all Indemnified Liabilities arising due to the negligence (but not gross negligence or any intentional wrongful act) of Landlord, Lender, and/or such other person or entity. The indemnity obligations of Tenant and Subtenant hereunder shall be paid and performed without right of deduction or offset; and (ii) accrues to the benefit of the partners, affiliates, officers, directors, shareholders, trustees, beneficial owners, members, managers, agents, employees, and representatives of Landlord, Lender, and such other person or entity.

11. Maintenance and Repair.

(a) Subtenant shall at all times, put, keep and maintain the Leased Premises in accordance with: (i) the terms and conditions of the Easement Agreement; and (ii) the standards of maintenance, repair and restoration that are common to owners and managers of the best comparable vehicle parking garages in the Fort Wayne, Indiana metropolitan area; including but not limited to: (A) environmental monitoring that is required by law or the terms of any agreement with respect thereto executed by the parties; and (B) the maintenance standards set forth in the Easement Agreement and the Garage Operating Agreement. The Subtenant shall promptly make all repairs and replacements of every kind and nature, whether foreseen or unforeseen, that may be

required to be made upon or in connection with the Leased Premises in order to keep and maintain the Leased Premises in the order and condition required by this Subsection 11(a). Landlord shall not be required to make any repair, whether foreseen or unforeseen, or to maintain any of the Leased Premises or Adjoining Property in any way, and Subtenant hereby expressly waives the right to make repairs at the expense of the Landlord, which right may be provided for in any Law now or hereafter in effect. Nothing in the preceding sentence shall be deemed to preclude Subtenant from being entitled to insurance proceeds or condemnation awards for Restoration pursuant to Subsections 13(c) and 14(g) of this Lease. Subtenant shall, in all events, make all repairs for which it is responsible hereunder promptly, and all repairs shall be in a good, proper and workmanlike manner.

(b) In the event that: (i) any portion of the Garage Improvements violate any Legal Requirements or Insurance Requirements; and (ii) as a result of such violation, enforcement action is threatened or commenced against Landlord or Subtenant or with respect to the Leased Premises; then Subtenant, at the request of Landlord, shall either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such violation, whether the same shall affect Landlord, Subtenant or both, or (ii) take such action as shall be necessary to remove such violation, including, if necessary, any Alteration. Any such repair or Alteration shall be made in conformity with the provisions of Section 12.

(c) If Subtenant shall be in default under any of the provisions of this Section 11 or Section 26, Landlord may after thirty (30) days written notice given to Subtenant and failure of Subtenant to cure during said period, but without notice in the event of an emergency or during the continuance of an Event of Default, and even though the existence of such default or the nature thereof is denied or contested by any person, do whatever is necessary to cure such default as may be appropriate under the circumstances for the account of and at the expense of Subtenant. In the event of an emergency, Landlord shall make reasonable efforts to notify Subtenant of the situation by phone or other available communication before taking any action to cure such default. All reasonable sums so paid by Landlord and all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurring the expense, shall constitute Additional Rent payable by Subtenant under this Lease and shall be paid by Subtenant to Landlord on demand.

(d) Subtenant shall from time to time replace with other operational equipment or parts (the "Replacement Equipment") any equipment included in the Leased Premises (the "Replaced Equipment") that has become worn out or unusable for the purpose for which it is intended, been taken by a Condemnation as provided in Section 13, or been lost, stolen, damaged or destroyed as provided in Section 14. Subtenant shall repair at its sole cost and expense all damage to the Leased Premises caused by the removal of equipment or Replaced Equipment or other personal property of Subtenant or the installation of Replacement Equipment. All Replacement Equipment shall become the property of Landlord, shall be free and clear of all liens and rights of others and shall become a part of the Equipment as if originally demised herein.

(e) Subtenant shall at its own expense provide Landlord and Lender with certificates once each fiscal quarter every year during the Term of this Lease (except the last year of the Term, during which year the Subtenant shall provide such certificate each fiscal quarter of Subtenant) certifying that the Leased Premises (i) are in good and safe condition and repair and (ii) are and have been maintained in good order, repair and condition (including all structural and non-structural elements) consistent with maintenance procedures and standards that would generally be applied by commercially reasonable and responsible operators of properties located in the State where the Leased Premises are located that are of similar use and construction, taking into account the age of the Garage Improvements and ordinary wear and tear.

12. Alterations.

(a) Without Landlord's prior written consent, Subtenant may make non-structural Alterations to the interior of the Garage Improvements provided that they will not (after the completion thereof) lessen the fair market value of the Leased Premises, or lessen the useful life of the Leased Premises or be prohibited by the Easement Agreement and that such Alterations comply with all of the provisions of Subsection 12(b) hereof.

(b) In the event that Landlord gives its prior written consent to any Alterations, or if such consent is not required, Subtenant agrees that in connection with any Alteration: (i) the structural integrity of the Leased Premises shall not be impaired; (ii) the Alteration and any Alteration theretofore made or thereafter to be made shall not in the aggregate reduce the gross floor area of the Garage Improvements; (iii) all such Alterations shall be performed in a good and workmanlike manner, and shall be expeditiously completed in compliance with all Legal Requirements; (iv) all work done in connection with any such Alteration shall comply with all Insurance Requirements; (v) Subtenant shall promptly pay all costs and expenses of any such Alteration, and shall (subject to the provisions of Section 18 hereof) discharge all liens filed against any of the Leased Premises arising out of the same; (vi) Subtenant shall procure and pay for all permits and licenses required in connection with any such Alteration; (vii) all such Alterations shall be the property of Landlord and shall be subject to this Lease; and (viii) all Alterations shall be made under the supervision of an architect or engineer and, in accordance with plans and specifications that have been submitted to Landlord (for informational purposes only) prior to the commencement of the Alterations.

13. Condemnation.

(a) Tenant and Subtenant, promptly upon obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Landlord thereof and Landlord shall be entitled to participate in any Condemnation proceeding. Landlord, promptly upon obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Tenant and Subtenant thereof and Tenant and Subtenant shall have the right to participate in such proceedings. Subject to the provisions of this Section 13 and Section 15, Tenant and Subtenant hereby irrevocably assigns to Lender or to Landlord, in that order, any award or payment in respect of any Condemnation of

Landlord's interest in the Leased Premises, except that (except as hereinafter provided) nothing in this Lease shall be deemed to assign to Landlord or Lender any award or payment on account of the Trade Fixtures, moving expenses and out-of-pocket expenses incidental to the move, if available, to the extent Subtenant shall have a right to make a separate claim therefor against the condemnor, it being agreed, however, that neither Tenant nor Subtenant shall in event be entitled to any payment that reduces the award to which Landlord is or would be entitled for the condemnation of Landlord's interest in the Leased Premises.

(b) If at least fifty percent (50%) of the Garage Improvements, or the primary means of access to the Garage Improvements shall be subject of a Taking by a duly constituted authority or agency having jurisdiction and the loss of which even after Restoration would, in Subtenant's reasonable business judgment, be substantially and materially adverse to the business operations of Subtenant at the Leased Premises, then Subtenant may, not later than ninety (90) days after a Taking has occurred, serve notice ("Subtenant's Termination Notice") upon Landlord and Tenant of Subtenant's intention to terminate this Lease on any Basic Rent Payment Date specified in such Subtenant's Termination Notice, which Termination Date shall be no sooner than the first Basic Rent Payment Date occurring at least thirty (30) days after the date of such Subtenant's Termination Notice.

(c) No Termination.

(i) In the event of a Condemnation of any part of the Leased Premises that does not result in a termination of this Lease, subject to the requirements of Section 15, the Net Award of such Condemnation shall be retained by Landlord; and promptly after such Condemnation, Subtenant shall commence and diligently continue to the Restoration of the Leased Premises in accordance with the provisions of this Lease, including but not limited to the provisions of Subsection 11(a) and Sections 12 and 15.

(ii) Upon the payment to Landlord of the Net Award of a Taking that falls within the provisions of this Subsection, Landlord and Lender shall, to the extent received, make that portion of the Net Award equal to the cost of Restoration (the "Restoration Award") available to Subtenant for Restoration, in accordance with the provisions of Section 15, and promptly after completion of the Restoration, the balance of the Net Award shall be paid to Subtenant and all Basic Rent, Additional Rent and other sums payable hereunder shall continue unabated and unreduced, except as otherwise provided specifically to the contrary in Subsection 15(i).

(iii) In the event of a Requisition of the Leased Premises, Landlord shall apply the Net Award of such Requisition, to the extent available, to the installments of Basic Rent, Additional Rent or other sums payable by Subtenant hereunder thereafter and Subtenant shall pay any balance remaining thereafter. Upon the expiration of the Term, any portion of such Net Award that has not been

previously credited to Subtenant on account of the Basic Rent and Additional Rent shall be retained by Landlord.

(d) Except with respect to an award or payment to which Subtenant is entitled pursuant to the provisions of Subsections 13(a), 13(b) and 13(c), no agreement with any condemnor in settlement of or under threat of any Condemnation shall be made by either Landlord or Subtenant without the written consent of the other, and of Lender, if the Leased Premises are then subject to a Mortgage, which consent shall not be unreasonably withheld or delayed.

14. Insurance.

(a) Subtenant shall maintain at its sole cost and expense the following insurance on the Leased Premises:

(i) Insurance against loss or damage to the Garage Improvements and Equipment under a fire and broad form of all risk extended coverage insurance policy (which shall include flood insurance if the Leased Premises are located within a flood hazard area and which shall include earthquake insurance and business interruption coverage). Such insurance shall be in amounts sufficient to prevent Landlord or Subtenant from becoming a co-insurer under the applicable policies, and in any event in amounts not less than the actual replacement cost of the Garage Improvements and Equipment (excluding footings and foundations and other parts of the Garage Improvements that are not insurable) as determined from time to time at Lender's request but not more frequently than once in any 12-month period, by agreement of Landlord, Lender and Subtenant, or if not so agreed, at Subtenant's expense, by the insurer or insurers or by an appraiser approved by Landlord. Such insurance policies may contain reasonable exclusions and deductible amounts.

(ii) Contractual and comprehensive general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises, which insurance shall be written on a so-called "Occurrence Basis," and shall provide minimum protection with a combined single limit in an amount not less than the greater of (x) One Million Dollars (\$1,000,000) (or in such increased limits from time to time to reflect declines in the purchasing power of the dollar as Landlord may reasonably request) or (y) the aggregate amount of such insurance customarily carried by Subtenant, for bodily injury, death and property damage in any one occurrence.

(iii) Worker's compensation insurance covering all persons employed by Subtenant, its property manager and any agent of Subtenant for the Leased Premises in connection with any work done on or about any of the Leased Premises for which claims for death or bodily injury could be asserted against Landlord, Subtenant or the Leased Premises.

(iv) Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus located in or about the Garage Improvements in an amount not less than the actual replacement cost of the Garage Improvements and Equipment (excluding footings and foundations and other parts of the Garage Improvements that are not insurable).

(v) Whenever Subtenant, whether as Landlord's construction agent or otherwise, shall be engaged in making any Alteration or Alterations, repairs or construction work of any kind ("Work"), Subtenant shall obtain or cause its contractor to obtain completed value builder's risk insurance when the estimated cost of the Work in any one instance exceeds the sum of Fifty Thousand Dollars (\$50,000) and Subtenant or its contractor shall obtain worker's compensation insurance or other adequate insurance coverage covering all persons employed in connection with the Work, whether by Subtenant, its contractors or subcontractors and with respect to whom death or bodily injury claims could be asserted against Subtenant or Landlord.

(vi) Business interruption insurance.

(vii) Such additional and/or other insurance with respect to the Garage Improvements of the type, and in the amounts, as at the time is customarily carried by prudent owners or tenants with respect to improvements similar in character, location and use and occupancy to the Garage Improvements.

(b) The insurance required by Subsection 14(a) shall be written by companies having a claims-paying ability rating by Standard & Poor's of not less than A-, and all such companies shall be domiciled in the United States of America and be authorized to do an insurance business in the State, or otherwise agreed to by Landlord and Lender. The insurance policies (i) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof, and (ii) shall (except for the worker's compensation insurance referred to in Subsection 14(a)(iii) hereof) name Landlord, Subtenant and any Lender as additional insured parties, as their respective interests may appear. If said insurance or any part thereof shall expire, be withdrawn, become void by breach of any condition thereof by Subtenant or become void or unsafe by reason of the failure or impairment of the capital of any insurer, Subtenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord and Lender.

(c) Each insurance policy referred to in Subsections 14(a)(i) and (a)(iv) (and (a)(v) if requested by Lender) shall: (i) contain standard non-contributory mortgagee clauses in favor of any Lender that holds a Mortgage on the Leased Premises; (ii) provide that it may not be canceled except after thirty (30) days' prior notice to Landlord and any Lender; and (iii) provide that any losses otherwise payable thereunder shall be payable to Lender notwithstanding: (A) any act or omission of Landlord or Subtenant that might, absent such provision, result in a forfeiture of all or a part of such insurance payment; or (B) the occupation or use of any of the Leased Premises for purposes more hazardous than permitted by the provisions of such policy.

(d) Subtenant shall pay as they become due all premiums for the insurance required by this Section, shall renew or replace each policy, and shall deliver to Landlord and Lender a certificate or other evidence (reasonably satisfactory to Lender and Landlord) of the existing policy and such renewal or replacement policy at least thirty (30) days prior to the Policy Expiration Date (as hereinafter defined) of each policy. Each such policy shall provide that it shall not expire until the Landlord and Lender shall receive a notice from the insurer to the effect that a policy will expire on a date (the "Policy Expiration Date") that shall be at least thirty (30) days following the date of the receipt by Landlord and Lender of such notice. In the event of Subtenant's failure to comply with any of the foregoing requirements of this Section within five (5) business days of the giving of written notice by Landlord to Subtenant, Landlord shall be entitled to procure such insurance. Any sums expended by Landlord in procuring such insurance shall be Additional Rent and shall be repaid by Subtenant, together with interest thereon at the Default Rate, from the time of payment by Landlord until fully paid by Subtenant immediately upon written demand therefor by Landlord.

(e) Anything in this Section 14 to the contrary notwithstanding, any insurance that Subtenant is required to obtain pursuant to Subsection 14(a) may be carried under a "blanket" policy or policies covering other properties or liabilities of Subtenant, provided that such "blanket" policy or policies otherwise comply with the provisions of this Section 14. In the event any such insurance is carried under a blanket policy, Subtenant shall deliver to Landlord and Lender evidence of the issuance and effectiveness of the policy, the amount and character of the coverage with respect to the Leased Premises and the presence in the policy of provisions of the character required in the above sections of this Section 14.

(f) In the event of any casualty loss, Subtenant shall give Landlord immediate notice thereof. Subtenant shall adjust, collect and compromise any and all claims, with the consent of Lender and Landlord, not to be unreasonably withheld or delayed, and Landlord and Lender shall have the right to join with Subtenant therein. If the estimated cost of Restoration or repair shall be Fifty Thousand Dollars (\$50,000) or less, the Restoration Award, or the proceeds of any insurance required under Subsections 14(a)(i) and (a)(iv) (and (a)(v) if requested by Lender) shall be payable to Subtenant, and in all other events, the Restoration Award and proceeds of insurance shall be payable to a Trustee that is a federally insured bank or other financial institution, selected by Landlord and Subtenant and reasonably satisfactory to Lender (the "Trustee").

If the Leased Premises are covered by a Mortgage, Lender, if it so desires, shall be the Trustee. Each insurer is hereby authorized and directed to make payment under said policies directly to such Trustee instead of to Landlord and Subtenant jointly; and Subtenant and Landlord each hereby appoints such Trustee as its attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease after approval by Subtenant of such Trustee, if Trustee is other than Lender. In the event of any casualty (whether or not insured against) resulting in damage to the Leased Premises or any part thereof, the Term shall nevertheless continue and, except as otherwise provided specifically to the contrary in Subsection 15(i), there shall be no abatement or reduction of Basic Rent, Additional Rent or any other sums payable by Subtenant hereunder.

The Net Proceeds of such insurance payment shall be retained by the Trustee and, promptly after such casualty, Subtenant, as required in Subsection 11(a) and Section 12, shall commence and diligently continue to perform the Restoration to the Leased Premises in accordance with the Easement Agreement. Upon payment to the Trustee of such Net Proceeds, the Trustee shall, to the extent available, make the Net Proceeds available to Subtenant for Restoration, in accordance with the provisions of Section 15. Subtenant shall, whether or not the Net Proceeds are sufficient for the purpose, promptly repair or replace the Garage Improvements and Equipment in accordance with the provisions of Subsection 11(a) and the Net Proceeds of such loss shall thereupon be payable to Subtenant, subject to the provisions of Section 15 hereof. In the event that any damage or destruction shall occur at such time as Subtenant shall not have maintained third-party insurance in accordance with Subsection 14(a)(i), (iv), or (v), Subtenant shall pay to the Trustee the amount of the proceeds that would have been payable had such insurance program been in effect (the "Subtenant Insurance Payment").

15. Restoration. If Net Proceeds, Restoration Award and Subtenant Insurance Payment (the aggregate of which being herein defined as the "Restoration Fund") are payable to the Trustee; they shall be disbursed by the Trustee in accordance with the Easement Agreement and the following conditions:

(a) Prior to commencement of the Restoration the architects, general contractor(s), and plans and specifications for the Restoration shall be approved by Landlord, which approval shall not be unreasonably withheld or delayed; and which approval shall be granted to the extent that the plans and specifications depict a Restoration that is substantially similar to the Garage Improvements and Equipment that existed prior to the occurrence of the Casualty or Taking, whichever is applicable.

(b) At the time of any disbursement, no Event of Default shall exist and no mechanics' or materialmen's liens shall have been filed and remain undischarged or unbonded except to the extent the disbursement would pay the sums with respect thereto so that no such lien would remain thereafter.

(c) Disbursements shall be made from time to time in an amount not exceeding the hard and soft cost of the work and costs incurred since the last disbursement upon receipt of (1) satisfactory evidence, including architects' certificates of the stage of completion, of the estimated cost of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (2) partial releases of liens, and (3) other reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed in place or delivered to the site and free and clear of mechanics' lien claims.

(d) Each request for disbursement shall be accompanied by a certificate of Subtenant describing the work, materials or other costs or expenses, for which payment is requested, stating the cost incurred in connection therewith and stating that Subtenant has not previously received payment for such work or expense and the certificate to be delivered by Subtenant upon completion of the work shall, in addition, state that the work

has been substantially completed and complies with the applicable requirements of this Lease.

(e) The Trustee may retain twenty percent (20%) of all draws submitted for payment from the Restoration Fund until the Restoration is at least fifty percent (50%) complete, and thereafter ten percent (10%) until the Restoration is complete.

(f) The Restoration Fund shall be kept in a separate interest-bearing federally insured account by the Trustee or by Lender.

(g) At all times the undisbursed balance of the Restoration Fund held by Trustee plus any funds contributed thereto by Subtenant, at its option, shall be not less than the cost of completing the Restoration, free and clear of all liens.

(h) In addition, prior to commencement of Restoration and at any time during Restoration, if the estimated cost of Restoration, as reasonably determined by Landlord, exceeds the amount of the Net Proceeds, the Restoration Award and Subtenant Insurance Payment available for such Restoration, the amount of such excess shall be paid by Subtenant to the Trustee to be added to the Restoration Fund or Subtenant shall fund at its own expense the costs of such Restoration until the remaining Restoration Fund is sufficient for the completion of the Restoration. Any sum in the Restoration Fund that remains in the Restoration Fund upon the completion of Restoration shall be paid to Subtenant. For purposes of determining the source of funds with respect to the disposition of funds remaining after the completion of Restoration, the Net Proceeds or the Restoration Award shall be deemed to be disbursed prior to any amount added by Subtenant.

(i) To the extent that portions of the Leased Premises are not usable by Subtenant during Restoration, Basic Rent will be abated proportionately based on the ratio of the parking spaces available for use in the Leased Premises to the total number of parking spaces in the Leased Premises. As Restoration progresses and parking spaces once again become usable, the Basic Rent shall adjust to reflect the addition of those parking spaces into the total number available for use by Subtenant. As reflected in Subsection 6(b) and Subsection 13(c)(ii), this is an exception to the rule that the Basic Rent will never abate.

16. Subordination to Financing.

(a) Subordination.

(i) Subject to the provisions of Section 16 (a)(ii), Tenant and Subtenant agrees that this Lease shall at all times be subject and subordinate to the lien of any Mortgage, and Tenant and Subtenant agrees, upon demand, without cost, to execute instruments as may be required to further effectuate or confirm such subordination, the terms and conditions of which instruments shall be consistent with the terms and conditions of this Section.

(ii) Except as expressly provided in this Lease by reason of the occurrence of an Event of Default, Tenant's and Subtenant's tenancy and Tenant's and Subtenant's rights under this Lease shall not be disturbed, terminated or otherwise adversely affected, nor shall this Lease be affected, by any default under any Mortgage, and in the event of a foreclosure or other enforcement of any Mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale shall be bound to Tenant and Subtenant for the Term of this Lease, the rights of Tenant and Subtenant under this Lease shall expressly survive, and this Lease shall in all respects continue in full force and effect so long as no Event of Default has occurred and is continuing. Tenant and Subtenant shall not be named as a party defendant in any such foreclosure suit, except as may be required by Law. Any Mortgage to which this Lease is now or hereafter subordinate shall provide, in effect, that during the time this Lease is in force insurance proceeds and Restoration Award shall be permitted to be used for Restoration in accordance with the provisions of this Lease.

(b) Notwithstanding the provisions of Subsection 16(a), the holder of any Mortgage to which this Lease is subject and subordinate shall have the right, at its sole option, at any time, to subordinate and subject the Mortgage, in whole or in part, to this Lease by recording a unilateral declaration to such effect.

(c) At any time prior to the expiration of the Term, Tenant and Subtenant agree, at the election and upon demand of any owner of the Leased Premises, or of a Lender who has granted non-disturbance to Tenant Subtenant pursuant to Subsection 16(a) above, to attorn, from time to time, to any such owner or Lender, upon the terms and conditions of this Lease, for the remainder of the Term. The provisions of this Subsection shall inure to the benefit of any such owner or Lender, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the foreclosure of the Mortgage, shall be self-operative upon any such demand, and no further instrument shall be required to give effect to said provisions.

(d) Each of Tenant and Subtenant, any owner and Lender, however, upon demand of the other, hereby agrees to execute, from time to time, instruments in confirmation of the foregoing provisions of Subsections 16(a) and 16(c), reasonably satisfactory to the requesting party acknowledging such subordination, non-disturbance and attornment as are provided in such subsections and setting forth the terms and conditions of its tenancy.

(e) Each of Tenant and Subtenant, Landlord and Lender agrees that, if requested by any of the others, each shall, without charge, enter into a Subordination, Non-Disturbance and Attornment Agreement reasonably requested by Lender, provided such agreement contains provisions relating to non-disturbance in accordance with the provisions of Subsection 16(a) and Subtenant hereby agrees for the benefit of Lender that Subtenant will not, (i) without in each case the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed, amend or modify this Lease (provided, however, Lender, in Lender's sole discretion may withhold or condition its consent to any amendment or modification that would or could (A) alter in any way the

amount or time for payment of any Basic Rent, Additional Rent or other sum payable hereunder, (B) alter in any way the nature of Subtenant's obligations hereunder or materially diminish any such obligations, (C) result in any termination hereof prior to the end of the Term, or (D) otherwise, in Lender's reasonable judgment, affect the rights or obligations of Landlord or Subtenant hereunder), or enter into any agreement with Landlord so to do, (ii) without the prior written consent of Lender, which may be withheld in Lender's sole discretion, cancel or surrender or seek to cancel or surrender the Term hereof, or enter into any agreement with Landlord to do so (the parties agreeing that the foregoing shall not be construed to affect the rights or obligations of Subtenant, Landlord or Lender with respect to any termination permitted under the express terms hereof in connection with an offer to purchase the Leased Premises following certain events of Condemnation as provided in Section 13 hereof), or (iii) pay any installment of Basic Rent more than one (1) month in advance of the due date thereof or otherwise than in the manner provided for in this Lease.

17. Assignment, Subleasing.

(a) Subtenant shall have the right to enter into a sub-sublease with the Mixed-Use Owner under which, for any given month during the term thereof, the Mixed-Use Owner may designate up to 326 parking spaces within areas of the Garage Improvements determined mutually by Subtenant and the Mixed-Use Owner, which parking spaces, when designated, shall be available for the exclusive use by tenants of the Mixed-Use Improvements twenty-four (24) hours per day, seven (7) days per week. The actual number of parking spaces designated by the Mixed-Use Owner for any given month shall be the "Designated Spaces." The sublease shall provide that the Mixed-Use Owner: (i) initially shall specify the number of Designated Spaces; (ii) from time-to-time may change the number of Designated Spaces by delivery of written notice to Subtenant at least five days in advance of the date on which the change will become effective; (iii) shall pay to Subtenant monthly rent for each Designated Space, which rent: (A) initially shall be in the amount \$65.00 per Designated Space; and (B) shall increase annually at the rate of 2%. Notwithstanding that the monthly rent is based upon the number of Designated Spaces for a given month, from and after the date on which the Mixed-Use Improvements reach stabilization, the Mixed-Use Owner shall pay monthly rent for a minimum of 100 Designated Spaces, regardless of whether there actually are fewer than 100 Designated Spaces in any given month. For purposes of the foregoing, "stabilization" shall be deemed to have been reached when the Mixed-Use Improvements have at least ninety percent (90%) of the residential dwelling units under lease and occupied by tenants. In any given month, all parking spaces that are not Designated Spaces may be used by Subtenant. For purposes of clarity: (i) the other terms and conditions set forth in this Section shall apply with respect to the sublease to the Mixed-Use Owner; and (ii) to the extent that the terms of the foregoing sublease, when executed, differ from the specifics set forth above, the terms of the executed sublease shall control.

(b) In addition to the provisions of Subsection 17(a), the Leased Premises may be sub-sublet in whole or in part by Subtenant without the consent of Landlord; provided, that: (i) no such sub-sublease shall release Subtenant from any of its obligations or liabilities under this Lease; (ii) no such sublease may be entered into if an Event of

Default has occurred and is continuing; (iii) the subtenant under any sublease shall not be party to any bankruptcy, insolvency or similar proceeding at the inception of the sublease; (iv) the subtenant under any sublease shall be permitted to use the Leased Premises only for the purposes permitted under this Lease; and (v) no such sublease shall be for a term that extends beyond the Term.

(c) Except as provided in Subsections 17(a) and 17(b) above, neither Tenant nor Subtenant may assign this Lease, either directly or indirectly, without Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion. If Landlord consents to an assignment: (i) no such assignment shall release Tenant or Subtenant from any of its obligations or liabilities under this Lease; (ii) no such assignment may be entered into if an Event of Default has occurred and is continuing; (iii) the assignee under any assignment shall not be party to any bankruptcy, insolvency or similar proceeding at the inception of the assignment; and (iv) the assignee under any assignment shall be permitted to use the Leased Premises only for the purposes permitted under this Lease. If, at the time of a proposed assignment, the Leased Premises are subject to a Mortgage, then neither Tenant nor Subtenant shall assign this Lease without first delivering to Landlord the written consent of Lender to the assignment, which consent shall be in form and substance reasonably satisfactory to Landlord.

(d) Each sub-sublease of the Leased Premises or any part thereof shall be subject and subordinate to the provisions of this Lease. No assignment or sub-sublease shall affect or reduce any of the obligations of Subtenant hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made. Notwithstanding any assignment or subletting Tenant and Subtenant shall continue to remain liable and responsible for the payment of the Basic Rent and Additional Rent, and for the performance of all its other obligations under this Lease. No assignment or sublease shall impose any obligations on Landlord under this Lease except as otherwise provided in this Lease. Further, each sub-sublease must provide that any rent and other amounts payable thereunder may not be paid more than one (1) month in advance and shall include all provisions required by applicable Legal Requirements. To the extent required by applicable Legal Requirements, all security deposits and other deposits delivered under any sub-sublease shall be held in separate interest-bearing accounts and, in any event, shall be held and disposed of as required by applicable Legal Requirements. Tenant and Subtenant agree that in the case of an assignment of this Lease approved by Landlord, Tenant and Subtenant shall, within fifteen (15) days after the execution and delivery of any such assignment, deliver to Landlord: (i) a duplicate original of such assignment in recordable form; and (ii) an agreement executed and acknowledged by the assignee in recordable form wherein the assignee shall agree to assume and agree to observe and perform all of the terms and provisions of this Lease on the part of the Tenant and Subtenant to be observed and performed from and after the date of such assignment. In the case of all subleases, Tenant and Subtenant shall, immediately upon request of Landlord, deliver to Landlord and Lender a duplicate original or certified copy of all such subleases.

(e) Subtenant hereby irrevocably and unconditionally assigns the Sub-sublease Rents to Landlord. Subtenant shall have a revocable license to collect, enjoy, retain, and use the Sub-sublease Rents. Such license may be revoked by Landlord, without notice to Subtenant, upon the occurrence of an Event of Default under this Lease. Unless and until such license is revoked, Subtenant agrees to apply the Sub-sublease Rents received by it to the payment of Basic Rent, Additional Rent, and the operation and maintenance charges relating to the Leased Premises that are due and payable at the time that such Sub-sublease Rents are collected; provided that, if any amount of the Sublease Rents remain after payment of the foregoing, then Subtenant may use such excess for any purpose. Landlord agrees to re-assign to Subtenant all of Landlord's right, title and interest in and to the Sub-sublease Rents upon any acquisition of the Leased Premises by Subtenant (including pursuant to Section 13 hereof).

18. Permitted Contests. After prior written notice to Landlord, Tenant and Subtenant shall not be required to (i) pay any Imposition, (ii) comply with any Legal Requirement, (iii) discharge or remove any lien referred to in Sections 9 or 12, or (iv) take any action with respect to any violation referred to in Subsection 11(b) so long as Tenant and Subtenant shall contest, in good faith and at its expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its or Landlord's liability therefor, by appropriate proceedings that shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon, the Imposition or lien so contested, (B) the sale, forfeiture or loss of any of the Leased Premises, any Basic Rent or any Additional Rent to satisfy the same or to pay any damages caused by the violation of any such Legal Requirement or by any such violation, (C) any interference with the use or occupancy of any of the Leased Premises, (D) any interference with the payment of any Basic Rent or any Additional Rent, and (E) the cancellation of any fire or other insurance policy.

In no event shall Tenant or Subtenant pursue any contest with respect to any Imposition, Legal Requirement, lien, or violation, referred to above in such manner that exposes Landlord or Lender to (i) criminal liability, penalty or sanction, (ii) any civil liability, penalty or sanction for which Tenant and Subtenant have not made provisions reasonably acceptable to Landlord and Lender or (iii) defeasance of its interest the Leased Premises.

Tenant or Subtenant agree that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant or Subtenant shall have the right to attempt to settle or compromise such contest through negotiations. Subtenant shall pay and save Lender and Landlord harmless against any and all losses, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts that are levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts, the performance of which is ordered or decreed as a result thereof.

19. Conditional Limitations; Default Provisions.

(a) The occurrence of any one or more of the following events (any such event being specified herein as a "failure" or "default") shall constitute an Event of

Default under this Lease: (i) a failure by Subtenant to make (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal that had or might have the effect of preventing Subtenant from complying with the provisions of this Lease), any payment of Basic Rent, Net Award (to the extent received by Subtenant) or Purchase Price that continues unremedied for a period of five (5) days, or any payment of Additional Rent or other sum herein required to be paid by Subtenant that continues unremedied for a period of fifteen (15) days with regard to all other payments, after written notice given to Subtenant by Landlord or Lender or Lender's designee ("Nonpayment Notice") thereof is given to Subtenant by Landlord or Lender or Lender's designee; (ii) the failure by Subtenant to maintain insurance as and to the extent required by Section 14 of this Lease; (iii) the failure by Subtenant to perform and observe, or a violation or breach of, any other provision in this Lease and such default shall continue for a period of thirty (30) days after written notice thereof is given by Landlord or Lender or Lender's designee to Subtenant or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) days, such period shall be extended for such longer time as is reasonably necessary (but in any event not to exceed the earlier of (A) a total of ninety (90) days or (B) the last day of the Term) provided that Subtenant has commenced to cure such default within said period of thirty (30) days, and is actively, diligently and in good faith proceeding with continuity to remedy such default and provided that any delay in curing such default shall not result in a material adverse effect on the value of the Leased Premises; (iv) Subtenant or any guarantor of Subtenant's obligations hereunder shall (A) voluntarily be adjudicated a bankrupt or insolvent, (B) or voluntarily consent to the appointment of a receiver or trustee for itself or for any of the Leased Premises, (C) voluntarily file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, or (D) voluntarily file a general assignment for the benefit of creditors; (v) a court shall enter an order, judgment or decree appointing, with the voluntary consent of Subtenant or any guarantor of Subtenant's obligations hereunder, a receiver or trustee for Subtenant or any guarantor of Subtenant's obligations hereunder or for the Leased Premises or approving a petition filed against Subtenant or any guarantor of Subtenant's obligations hereunder that seeks relief under the bankruptcy or other similar laws of the United States or any state, and such order, judgment or decree shall remain in force, undischarged or unstayed, ninety (90) days after it is entered; (vi) Subtenant or any guarantor of Subtenant's obligations hereunder shall in any insolvency proceedings be liquidated or dissolved or shall voluntarily commence proceedings towards its liquidation or dissolution; or (vii) the estate or interest of Subtenant in the Leased Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within ninety (90) days after such levy or attachment.

(b) Remedies.

(i) If any Event of Default shall have occurred, Landlord shall have the right at its option, then or at any time thereafter, to do any one or more of the following without demand upon or notice to Tenant or Subtenant:

(A) Landlord may give Tenant or Subtenant notice of Landlord's intention to terminate this Lease on a date specified in such notice (which date shall be no sooner than the earliest date for termination of a lease permitted under the applicable Laws of the State). Upon the date therein specified, unless the Event of Default for which the termination is effected has been cured by Tenant or Subtenant, the Term and the estate hereby granted and all rights of Tenant or Subtenant hereunder shall expire and terminate as if such date were the date hereinabove fixed for the expiration of the Term, but Tenant or Subtenant shall remain liable for all its obligations hereunder through the date hereinabove fixed for the expiration of the Term, including its liability for Basic Rent and Additional Rent as hereinafter provided.

(B) Landlord may, whether or not the Term of this Lease shall have been terminated pursuant to clause (A), above, give Tenant or Subtenant notice to surrender the Leased Premises to Landlord on a date specified in such notice, on which date Tenant or Subtenant shall surrender and deliver possession of the Leased Premises to Landlord unless the Event of Default for which the surrender is required has been cured by Tenant or Subtenant. Upon or at any time after taking possession of the Leased Premises, Landlord may remove any Persons or property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. No such entry or repossession shall be construed as an election by Landlord to terminate this Lease unless Landlord gives a written notice of such intention to Tenant or Subtenant pursuant to clause (A), above.

(C) After repossession of any of the Leased Premises pursuant to clause (B), above, whether or not this Lease shall have been terminated pursuant to clause (A), above, Landlord may relet the Leased Premises or any part thereof to such tenant or tenants for such term or terms (which may be greater or less than the period that would otherwise have constituted the balance of the Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied: (1) first to the reasonable and actual expenses of such reletting and collection, including without limitation necessary renovation and alterations of the Leased Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid; and (2) thereafter toward payment of all sums due or to become due Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Tenant and Subtenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise. Landlord shall not, in any event, be required to pay Tenant or Subtenant any sums received by Landlord on a reletting of the Leased Premises in

excess of the Rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant and Subtenant hereunder. Landlord's re-entry and reletting of the Leased Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth above. Landlord may make such Alterations as Landlord in its reasonable discretion may deem advisable. Tenant and Subtenant agree to pay Landlord, as Additional Rent, immediately upon demand, all reasonable expenses incurred by Landlord in obtaining possession, in performing Alterations and in reletting any of the Leased Premises, including fees and commissions of attorneys, architects, agents and brokers.

(D) Landlord may exercise any other right or remedy now or hereafter existing by law or in equity.

(ii) In addition to all other rights and remedies available to Landlord under this Lease, at Law or in equity:

(A) If Subtenant is delinquent in its payment of any amount of Basic Rent or Additional Rent, then interest shall accrue on such delinquent amount at the Default Rate, computed from the date on which such amount was due through and including the date on which such amount is paid.

(B) if an Event of Default shall have occurred, Tenant and Subtenant shall pay to Landlord, upon demand and as Additional Rent, an amount equal to the Termination Fee payable in connection with prepayment of the Loan as a result of an Event of Default under the Note, Mortgage, or any documents, instruments or agreements related to the Loan.

(c) In the event of any termination of this Lease or repossession of any of the Leased Premises by reason of the occurrence of an Event of Default, Tenant and Subtenant shall pay to Landlord Basic Rent, Additional Rent and all other sums required to be paid by Tenant and Subtenant to and including the date of such termination or repossession and, thereafter, Tenant and Subtenant shall, until the end of what would have been the Term in the absence of such termination or repossession, and whether or not any of the Leased Premises shall have been relet, be liable to Landlord for and shall pay to Landlord as liquidated and agreed current damages: (i) Basic Rent, Additional Rent and all other sums that would be payable under this Lease by Tenant and Subtenant in the absence of such termination or repossession, less (ii) the net proceeds, if any, of any reletting pursuant to Subsection 19(b)(i)(C), after deducting from such proceeds all of Landlord's reasonable expenses in connection with such reletting (including all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, employees' expenses, costs of Alteration and expenses of preparation for reletting). Tenant and Subtenant hereby agree to be and remain liable for all sums aforesaid and Landlord may recover such damages from Tenant and Subtenant and institute and maintain successive actions or legal proceedings against Tenant and Subtenant for the

recovery of such damages. Nothing herein contained shall be deemed to require Landlord to wait to begin such action or other legal proceedings until the date when the Term would have expired by limitation had there been no such Event of Default.

(d) At any time after such termination of this Lease pursuant to Section 19 or pursuant to Law or if Landlord shall have reentered the Leased Premises, as the case may be, whether or not Landlord shall have recovered any amounts under Subsections 19(b)(i)(C) or 19(c), Landlord shall be entitled to recover from Tenant and Subtenant and Tenant and Subtenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for the default, (i) the amount by which the Basic Rent, and all Additional Rent reserved hereunder for the unexpired portion of the Term demised herein as if the Lease had not expired or been terminated exceeds the then fair and reasonable rental value of the Leased Premises for the same period, discounted to present worth at an annual rate equal to the applicable yield for Treasury Securities maturing at the expiration of the Term minus any such monthly deficiencies previously recovered from Tenant and Subtenant for such unexpired portion of the Term demised herein under Subsection 19(b)(i)(C), plus (ii) all reasonable legal fees and other costs and expenses incurred by Landlord and Lender as a result of any default under this Lease and the exercise of any rights and remedies hereunder.

(e) If any statute or rule of law governing a proceeding in which such liquidated final damages provided for in Subsection 19(d) are to be proved shall validly limit the amount thereof to an amount less than the amount above agreed upon, Landlord shall be entitled to the maximum amount allowable under such statute or rule of law.

20. Additional Rights of Landlord and Subtenant.

(a) No right or remedy conferred upon or reserved to Landlord in this Lease is intended to be exclusive of any other right or remedy; and each and every right and remedy shall be cumulative and in addition to any other right or remedy contained in this Lease. No delay or failure by Landlord or Subtenant to enforce its rights under this Lease shall be construed as a waiver, modification or relinquishment thereof. In addition to the other remedies provided in this Lease, Landlord and Subtenant shall be entitled, to the extent permitted by applicable Law, to injunctive relief in case of the violation or attempted or threatened violation of any of the provisions of this Lease, or to specific performance of any of the provisions of this Lease.

(b) Tenant and Subtenant hereby waive and surrender for themselves and all those claiming under them, including creditors of all kinds, any right and privilege that it or any of them may have under any present or future law to redeem any of the Leased Premises or to have a continuance of this Lease after termination of this Lease or of Subtenant's right of occupancy or possession pursuant to any court order or any provision hereof.

(c) Landlord hereby waives any Landlord's lien or similar lien upon Trade Fixtures and any other property of Subtenant located at the Leased Premises regardless of whether such lien is created by statute or otherwise. Landlord agrees at the request of

Subtenant, to execute a waiver of any landlord's or similar lien for the benefit of any present or future holder of a security interest in or lessor of any of Trade Fixtures or any other personal property of Subtenant located at the Leased Premises, so long as such holder waives in writing any claim against or interest in the Leased Premises, this Lease and the Rent payable hereunder.

(d) Each of Subtenant and Landlord (herein called "Paying Party") agrees to pay to the other party (herein called "Demanding Party") any and all reasonable costs and expenses incurred by the Demanding Party in connection with any litigation or other action instituted by the Demanding Party to enforce the obligations of the Paying Party under this Lease, to the extent that the Demanding Party has prevailed in any such litigation or other action. Further, Subtenant agrees to pay or reimburse Landlord on demand for any costs or expenses (including reasonable attorneys' fees) incurred by Landlord in connection with enforcing the terms of this Lease in the event of any default by Subtenant or any subtenant in complying with the terms and conditions of this Lease. Any amount payable by Subtenant to Landlord pursuant to this Subsection shall be due and payable by Subtenant to Landlord as Additional Rent. No sum payable by Landlord to Subtenant under this Subsection will be payable or recoverable from any sums pledged or assigned (or intended to have been pledged or assigned) by Landlord to Lender, Subtenant's right to recover such sums from Landlord being subordinate to the rights of Lender, and such sums only being recoverable after payment to Lender in full of the Loan.

21. Notices. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given pursuant to the provisions of this Lease (collectively "Notice" or "Notices") shall be in writing and shall be deemed to have been given for all purposes on the earlier of receipt or (i) three (3) business days after having been sent by United States mail, by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address as stated below, or (ii) one (1) business day after having been sent by Federal Express or other nationally recognized air courier service.

To the Addresses stated below:

If to Landlord:

Barrett & Stokely, Inc.
Attn: Rex Barrett
3755 E. 82nd Street, Suite 300
Indianapolis, Indiana 46240
Email: rmb@barrettandstokely.com

With a copy to:

Thomas B. Trent
Rothberg Logan Warsco LLP
505 East Washington Boulevard
P.O. Box 11647
Fort Wayne, Indiana 46859
Telephone: (260) 422-9454
Facsimile: (260) 422-1622
Email: ttrent@rlwlawfirm.com

And with a copy to:

Thomas W. Dinwiddie
Wooden & McLaughlin LLP
One Indiana Square, Suite 1800
Indianapolis, Indiana 46204
Telephone: (317) 860-5323
Facsimile: (317) 639-6444
Email: tom.dinwiddie@woodenlawyers.com

If to Tenant:

Summit Development Corp.
Attn: Karl Bandemer
200 East Berry Street, 4th Floor
Fort Wayne, IN 46818
Email: karl.bandemer@cityoffortwayne.org

If to Subtenant:

The City of Fort Wayne, Indiana
Department of Redevelopment
Attention: Executive Director
Citizen's Square
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
Telephone: 260-427-2323
Facsimile: 260-427-1375

With a copy to:

The City of Fort Wayne, Indiana
Attention: Lawrence E. Shine
Citizen's Square
200 East Berry Street, Suite 430
Fort Wayne, IN 46802
Telephone: 260-427-1190
Facsimile: 260-427-5678

And with a copy to:

Jon A. Bomberger
Faegre Baker Daniels LLP
110 W. Berry Street, Suite 2400
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700
Email: jon.bomberger@faegrebd.com

If any Lender shall have advised Subtenant by Notice in the manner aforesaid that it is the holder of a Mortgage and states in said Notice its address for the receipt of Notices, then simultaneously with the giving of any Notice by Tenant or Subtenant to Landlord, Tenant and Subtenant shall send a copy of such Notice to Lender in the manner aforesaid. For the purposes of this Section, any party may substitute its address by giving fifteen (15) days' notice to the other party in the manner provided above. Any Notice may be given on behalf of any party by its counsel.

22. Estoppel Certificates. Landlord, Tenant and Subtenant shall at any time and from time to time, upon not less than twenty (20) days' prior written request by the other, execute, acknowledge and deliver to the other a statement in writing, certifying (i) that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, setting forth such modifications), (ii) the dates to which Basic Rent payable hereunder has been paid, (iii) that to the knowledge of the signer of such certificate no default by Landlord, Tenant or Subtenant exists hereunder or specifying each such default of which the signer may have knowledge, (iv) the remaining Term hereof, (v) with respect to a certificate signed on behalf of Tenant or Subtenant, (A) that to the knowledge of the signer of such certificate, there are no proceedings pending or threatened against Tenant or Subtenant before or by any court or administrative agency which, if adversely decided, would materially and adversely affect the financial condition and operations of Tenant or Subtenant or if any such proceedings are pending or threatened to said signer's knowledge, specifying and describing the same, and (B) that neither the Tenant nor Subtenant has any claim of offset, abatement or deduction of Basic Rent, Additional Rent or other amounts payable hereunder, and (vi) such other matters as may reasonably be requested by the party requesting the certificate. It is intended that any such statements may be relied upon by Lender, the recipient of such statements or their assignees or by any prospective purchaser, assignee or subtenant of the Leased Premises.

23. Surrender and Holding Over.

(a) Upon the expiration of the Term or the earlier termination of this Lease, Tenant and Subtenant shall peaceably leave and surrender the Leased Premises (except as to any portion thereof with respect to which this Lease has previously terminated) to Landlord in the same condition as when originally delivered to Subtenant except for reasonable wear and tear and any Alteration to which Landlord has consented excepted. Subtenant shall remove from the Leased Premises on or prior to the expiration of the Term or the Termination Date, as applicable, the Trade Fixtures and personal property that is owned by Subtenant or third parties other than Landlord, and Subtenant at its expense shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Trade Fixtures and personal property not so removed at the end of the Term or within thirty (30) days after the earlier termination of this Lease for any reason whatsoever shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Leased Premises. The cost of removing and disposing of such property and repairing any damage to any of the Leased Premises caused by such removal shall be borne by Subtenant. Landlord shall not in any manner or to any extent be obligated to reimburse Subtenant for any property that becomes the property of Landlord as a result of such expiration or earlier termination.

(b) Any holding over by Tenant or Subtenant of the Leased Premises after the expiration of the Term or the earlier termination of this Lease or any extensions thereof, with the consent of Landlord, shall operate and be construed as a tenancy from month-to-month only on the same terms and conditions as those contained in this Lease; provided that: (i) the Basic Rent payable shall be 150% of the Basic Rent payable at the time of the expiration of the Term or the earlier termination of this Lease; and (ii) neither Tenant nor Subtenant shall have any right to renew or extend the Term of this Lease. If Tenant or Subtenant holds over without Landlord's consent, then, in addition to collecting Basic

Rent at a rate of 150% of that payable at the time of the expiration of the Term or the earlier termination of this Lease, Landlord may exercise all rights and remedies provided by law or in equity, including the remedies of Subsection 19(b).

(c) The provisions of this Section 23 shall survive the expiration of the Term or the earlier termination of this Lease.

24. No Merger of Title. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Leased Premises by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate and (b) the fee estate or ownership of any of the Leased Premises or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease and (ii) the fee estate in or ownership of the Leased Premises or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

25. Definition of Landlord.

(a) Anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Landlord's interest in the Leased Premises and shall not be enforced against the Landlord individually or personally.

(b) The term "Landlord" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners of the Leased Premises and in the event of any transfer or transfers of the title of the Leased Premises, the Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, provided the transferee shall agree in writing to uphold the obligations of Landlord pursuant to this Lease.

26. Hazardous Substances.

(a) For the purposes hereof, the term "Hazardous Materials" shall include, without limitation, any material, waste or substance that is (i) included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in or pursuant to any Laws, or subject to regulation under any Law; (ii) listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. Section 172.101, as enacted as of the date hereof or as hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as enacted as of the date hereof or as hereafter amended; or (iii) explosive, radioactive, asbestos, a polychlorinated biphenyl, petroleum or a petroleum product or waste oil. The term

“Environmental Laws” shall include all Laws pertaining to health, industrial hygiene, Hazardous Materials or the environment, including, but not limited to each of the following, as enacted as of the date hereof or as hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Hazardous Materials Transportation Act of 1994, 49 U.S.C. §5101 et seq.

(b) Tenant and Subtenant covenant they (i) will comply, and will cause the Leased Premises to comply, with all Environmental Laws applicable to the Leased Premises, (ii) will not use, and shall prohibit the use of the Leased Premises for the generation, manufacture, storage, handling, transfer, treatment, recycling, transportation, processing, production, refinement or disposal of any Hazardous Materials (each, a “Regulated Activity”) or for the storage, handling or disposal of Hazardous Materials (other than in connection with the operation and maintenance of the Leased Premises and in commercially reasonable quantities as a consumer thereof, subject to compliance with applicable Laws), (iii) (A) Subtenant will not install or permit the installation on the Leased Premises of any underground storage tanks or surface impoundments and shall not permit there to exist any petroleum contamination in violation of any applicable Environmental Laws originating on the Leased Premises, and (B) with respect to any petroleum contamination on the Leased Premises that originates from a source off the Leased Premises, Subtenant shall notify all responsible third parties and appropriate government agencies (collectively, “Third Parties”) and shall prosecute the cleanup of the Leased Premises by such Third Parties, including, without limitation, undertaking legal action, if necessary, to enforce the cleanup obligations of such Third Parties, and, to the extent not done so by such Third Parties and to the extent technically feasible and commercially practicable, Subtenant shall remediate such petroleum contamination, and (iv) Subtenant shall cause any Alterations of the Leased Premises to be done in a way that complies with applicable Laws relating to exposure of persons working on or visiting the Leased Premises to Hazardous Materials and, in connection with any such Alterations, shall remove any Hazardous Materials present upon the Leased Premises that are not in compliance with applicable Environmental Laws or that present a danger to persons working on or visiting the Leased Premises. Additionally, Landlord agrees that Subtenant may use household and commercial cleaners and chemicals to maintain the Leased Premises, provided that such use is in compliance with all Environmental Laws. Landlord and Subtenant acknowledge that any or all of the cleaners and chemicals described in this Section may constitute Hazardous Materials. However, Subtenant may use, store and dispose of same as herein set forth, provided, that in doing so Subtenant complies with all Laws. For the purposes of Subsections 26(c) and (f), the term “Hazardous Materials” shall exclude the Hazardous Materials permitted in this Subsection so long as the use and storage of such Hazardous Materials is in accordance with the provisions and requirements of this Subsection.

(c) The “Remediation and Indemnification Agreement” executed contemporaneously with this Lease shall govern any Hazardous Materials identified

therein or in that certain [REDACTED] (the "Environmental Report"). If, at any time during the Term, Hazardous Materials not already identified in the Remediation and Indemnification Agreement or Environmental Report shall be found in or on the Leased Premises, then Subtenant shall (at Subtenant's sole expense), promptly commence and diligently prosecute to completion all investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (collectively, "Remedial Work") to the extent required by Environmental Laws, and in compliance with Environmental Laws, and at Subtenant's sole cost; provided, that Landlord shall not be required to accept any institutional control (such as a deed restriction) that restricts the permitted use of the Leased Premises or any real property as a condition to any remedial plan approved by any governmental agency in connection with such Remedial Work.

(d) To the extent that Tenant or Subtenant has knowledge thereof, Tenant or Subtenant shall promptly provide notice to Landlord and Lender of any of the following matters:

(i) any proceeding or investigation commenced or threatened by any governmental authority with respect to the presence of any Hazardous Material affecting the Leased Premises;

(ii) any proceeding or investigation commenced or threatened by any governmental authority, against Tenant, Subtenant or Landlord, with respect to the presence, suspected presence, release or threatened release of Hazardous Materials from any property owned by Landlord;

(iii) all written notices of any pending or threatened investigation or claims made or any lawsuit or other legal action or proceeding brought by any person against (A) Tenant, Subtenant or Landlord or the Leased Premises, or (B) any other party occupying the Leased Premises or any portion thereof, in any such case relating to any loss or injury allegedly resulting from any Hazardous Material or relating to any violation or alleged violation of Environmental Laws;

(iv) the discovery of any occurrence or condition on the Leased Premises, or written notice received by Subtenant of an occurrence or condition on any real property adjoining or in the vicinity of the Leased Premises, that reasonably could be expected to lead to the Leased Premises or any portion thereof being in violation of any Environmental Laws or subject to any restriction on ownership, occupancy, transferability or use under any Environmental Laws or that might subject Landlord or Lender to any Environmental Claim. "Environmental Claim" means any claim, action, investigation or written notice by any person alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based on or resulting from (A) the presence, or release into the environment, of any Hazardous Materials at the Leased Premises, or (B) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law; and

(v) the commencement and completion of any Remedial Work.

(e) Tenant and Subtenant shall be solely responsible for, and shall defend, reimburse, indemnify, and hold Landlord and Lender harmless from and against all demands, claims, actions, causes of action, assessments, losses, damages, liabilities, investigations, or written notices, including costs and expenses of any kind (including, without limitation, diminution in property value and reasonable expenses of investigation by engineers, environmental consultants, and similar technical personnel and reasonable fees and disbursements of counsel), arising out of, in respect of, or in connection with: (i) Subtenant's breach of its representations, warranties, covenants or obligations in this Section 26 of this Lease; (ii) the occurrence of any regulated activity at, on, or under the Leased Premises at any time during or prior to the Term of this Lease (iii) any environmental claim with respect to the Leased Premises against any indemnified party or any person whose liability for such environmental claim Landlord, Tenant, or Subtenant has or may have assumed or retained either contractually or by operation of law (provided that, after the Commencement Date Landlord shall not contractually assume liability for an environmental liability that Landlord would not otherwise have by operation of law without the consent of Subtenant); (iv) the release, threatened release, or presence of any Hazardous Materials at, on, or under the Leased Premises, regardless of how discovered by Tenant or Subtenant, Landlord, or any third party, except to the extent that Subtenant can demonstrate that such release, threatened release, or presence occurred solely subsequent to the Term of this Lease; (v) any remedial work required to be performed pursuant to any Environmental Law or the terms hereof with respect to matters arising or occurring prior to or during the term; or (vi) any matters arising under or relating to any Environmental Law and relating to the Subtenant or the Leased Premises.

(f) Upon Landlord's request, at any time after the occurrence and during the continuation of an Event of Default hereunder or at such other time as Landlord has reasonable grounds to believe that Hazardous Materials (except to the extent those substances are permitted to be used by Tenant and Subtenant under Subsection 26(b) in the ordinary course of its business and in compliance with all Environmental Laws) are or have been released, stored or disposed of or on or around the Leased Premises or that the Leased Premises may be in violation of the Environmental Laws, Tenant and Subtenant shall provide, at their sole cost and expense, an inspection or audit of the Leased Premises prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Landlord and Lender indicating the presence or absence of the reasonably suspected Hazardous Materials on the Leased Premises or an inspection or audit of the Leased Premises prepared by an engineering or consulting firm approved by Landlord and Lender indicating the presence or absence of friable asbestos or substances containing asbestos on the Leased Premises. If Tenant and Subtenant fail to provide such inspection or audit within thirty (30) days after such request, Landlord may order the same, and Tenant and Subtenant hereby grant to Landlord and Lender and their respective employees and agents access to the Leased Premises upon reasonable notice and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Rate from the date incurred by Landlord until actually paid by Tenant and Subtenant, shall be immediately paid by Tenant and Subtenant on demand.

(g) Subtenant shall establish and comply with a commercially reasonable operations and maintenance program relative to the Leased Premises, in form and substance acceptable to Landlord and Lender, prepared by an environmental consultant reasonably acceptable to Landlord and Lender, which program shall address any Hazardous Materials that may be detected on the Leased Premises. Without limiting the generality of the preceding sentence, Landlord may require at Subtenant's sole cost (i) periodic inspections and assessments of the Leased Premises by consultants reasonably acceptable to Landlord at such intervals as Landlord may specify, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) access to the Leased Premises upon reasonable notice, by Landlord or Lender, and their respective agents or servicer, to review and assess the environmental condition of the Leased Premises and Subtenant's compliance with any operations and maintenance program, and (iv) variation of the operation and maintenance program in response to the reports provided by any such consultants.

(h) The indemnity obligations of the Subtenant and the rights and remedies of the Landlord under this Section 26 shall survive the expiration of the Term or the earlier termination of this Lease.

27. Entry by Landlord. Landlord and its authorized representatives shall have the right upon reasonable notice (which shall be not less than two (2) business days except in the case of emergency) to enter the Leased Premises at all reasonable business hours (and at all other times in the event of an emergency): (a) for the purpose of inspecting the same or for the purpose of doing any work under Subsection 11(c), and may take all such action thereon as may be necessary or appropriate for any such purpose (but nothing contained in this Lease or otherwise shall create or imply any duty upon the part of Landlord to make any such inspection or do any such work), and (b) for the purpose of showing the Leased Premises to prospective purchasers and mortgagees and, at any time within twelve (12) months prior to the expiration of the Term of this Lease for the purpose of showing the same to prospective tenants. No such entry shall constitute an eviction of Tenant or Subtenant, but any such entry shall be done by Landlord in such reasonable manner as to minimize any disruption of Subtenant's business operation.

28. Statements. Upon receipt of a written request of Landlord or Lender, Subtenant shall provide to Landlord copies of all financial information, reports, and statements submitted by Subtenant to the Indiana State Board of Accounts, to the extent that such reports and/or statements include information about the Pledged Revenue and/or the ability of Subtenant to pay Basic Rent and Additional Rent hereunder. Upon receipt of written request from Landlord, which notice shall be no more frequently than annually, each of Tenant and Subtenant shall provide to Landlord such financial information as Landlord reasonably may request, taking into account the purposes for which Landlord is requesting such information.

29. No Usury. The intention of the parties being to conform strictly to the applicable usury laws, whenever any provision herein provides for payment by Tenant or Subtenant to Landlord of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid shall be deemed reduced to such legal rate.

30. Separability. Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by Landlord shall not discharge or relieve Subtenant from its obligation to perform the same. If any term or provision of this Lease or the application thereof to any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

31. ERC-Notice. NOTICE: The interest conveyed pursuant to this Lease is subject to that certain Environmental Restrictive Covenant dated _____, and recorded in the Office of the Allen County Recorder as Instrument Number _____, which Environmental Restrictive Covenant is in favor of, and enforceable by, the Indiana Department of Environmental Management.

32. Miscellaneous.

(a) The section headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease.

(b) As used in this Lease the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, agreements, covenants and/or conditions"; (iii) "lien" shall mean "lien, charge, encumbrance, title retention agreement, pledge, security interest, mortgage and/or deed of trust"; and (iv) "obligation" shall mean "obligation, duty, agreement, liability, covenant or condition".

(c) Any act that Landlord is permitted to perform under this Lease may be performed at any time and from time to time by Landlord or any person or entity designated by Landlord. Any act that Tenant or Subtenant is required to perform under this Lease shall be performed at its sole cost and expense.

(d) This Lease may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

(e) The covenants of this Lease shall run with the Land and bind Tenant and Subtenant, the successors and assigns of Tenant and Subtenant and all present and subsequent encumbrancers and subtenants of any of the Leased Premises, and shall inure to the benefit of and bind Landlord, its successors and assigns.

(f) This Lease will be simultaneously executed in several counterparts, each of which when so executed and delivered shall constitute an original, fully enforceable counterpart for all purposes.

(g) This Lease shall be governed by and construed according to the Laws of the State in which the Leased Premises are located.

(h) Nothing contained herein shall be deemed to limit Landlord's right to sell, assign or otherwise transfer the Leased Premises and this Lease.

(i) All references to "business days" contained herein are references to normal working business days, i.e., Monday through Friday of each calendar week, exclusive of federal and national bank holidays. In the event that any event hereunder is to occur, or a time period is to expire, on a date that is not a business day, such event shall occur or such time period shall expire on the next succeeding business day.

(j) No provision of this Lease shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Lease; both parties, being represented by counsel and having fully participated in the negotiation of this instrument, hereby agree that this Lease shall not be subject to the principle that a contract would be construed against the party that drafted the same.

(k) Time is of the essence with respect to all matters under this Lease.

(l) In the event of any suit, action, or other proceeding at law or in equity (collectively, "action"), by either party hereto against the other, by reason of any matter arising out of or related to this Lease, the prevailing party shall recover, not only its legal costs, but also reasonable attorneys' fees for the maintenance or defense of said action, as the case may be.

(m) When the context in which words are used in this Lease indicates that such is the intent, words in the singular number shall include the plural and vice versa, and words in the masculine gender shall include the feminine and neuter genders and vice versa. Further, references to "person" or "persons" in this Lease shall mean and include any natural person and any corporation, partnership, joint venture, limited liability company, trust or other entity whatsoever.

(n) This Lease has been authorized by Tenant and Subtenant pursuant to Indiana Code 36-7-14-25.2.

[Remainder intentionally blank. Signature page follows.]

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

LANDLORD:

FORT WAYNE GARAGE ASSOCIATES, ONE, LLC,
an Indiana limited liability company

By: _____

Printed: _____

Its: _____

TENANT:

SUMMIT DEVELOPMENT CORP.

By: _____

Printed: _____

Title: _____

SUBTENANT:

THE CITY OF FORT WAYNE, INDIANA,
DEPARTMENT OF REDEVELOPMENT,
acting by and through the FORT WAYNE
REDEVELOPMENT COMMISSION

By: _____

Printed: _____

Title: _____

SCHEDULE 2-P

PERMITTED ENCUMBRANCES

To be attached prior to execution

[to include all matters shown on the Title Commitment and Survey for the Leased Premises, all documents executed at Closing that are to be filed of record, and all Loan Documents, to be filed of record]

EXHIBIT A

Legal Description

The legal description, which will be prepared following completion and approval of the plans and specifications for the Garage Improvements and attached hereto when prepared, will be a three-dimensional legal description of the space within which the Garage Improvements will be constructed.

EXHIBIT B

Garage Improvements

The Garage Improvements shall include approximately 650 (but may include up to 650) parking spaces housed on one underground and two above-ground levels. Because the majority of the Garage Improvements are wrapped/enclosed by the Mixed-Use Improvements, virtually no portion of the Garage Improvements will be visible from public rights-of-way (and, accordingly, other than the entrances thereto and the exits therefrom, cannot be seen in this depiction). There will be private garages constructed as part of the townhomes, which private garages are part of the Mixed-Use Improvements and not the Garage Improvements (and, accordingly, not part of the Leased Premises).

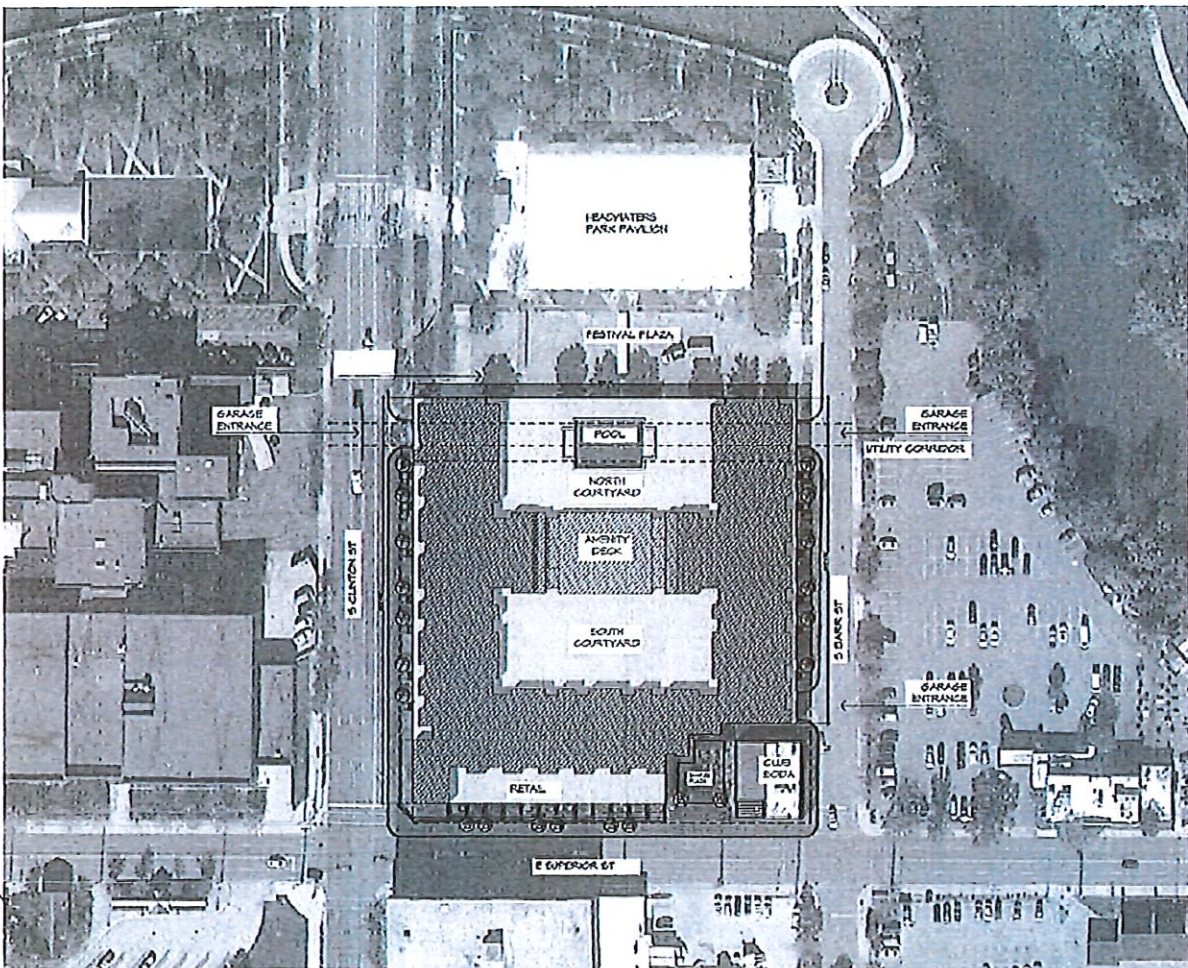


EXHIBIT C

BASIC RENT SCHEDULE

Year	Annual Rent	Semi-Annual Payment	
1	\$ 1,675,000	\$ 837,500	\$ 837,500
2	\$ 1,708,500	\$ 854,250	\$ 854,250
3	\$ 1,742,670	\$ 871,335	\$ 871,335
4	\$ 1,777,523	\$ 888,762	\$ 888,762
5	\$ 1,813,074	\$ 906,537	\$ 906,537
6	\$ 1,849,335	\$ 924,668	\$ 924,668
7	\$ 1,886,322	\$ 943,161	\$ 943,161
8	\$ 1,924,048	\$ 962,024	\$ 962,024
9	\$ 1,962,529	\$ 981,265	\$ 981,265
10	\$ 2,001,780	\$ 1,000,890	\$ 1,000,890
11	\$ 2,041,816	\$ 1,020,908	\$ 1,020,908
12	\$ 2,082,652	\$ 1,041,326	\$ 1,041,326
13	\$ 2,124,305	\$ 1,062,153	\$ 1,062,153
14	\$ 2,166,791	\$ 1,083,396	\$ 1,083,396
15	\$ 2,210,127	\$ 1,105,063	\$ 1,105,063
16	\$ 2,254,329	\$ 1,127,165	\$ 1,127,165
17	\$ 2,299,416	\$ 1,149,708	\$ 1,149,708
18	\$ 2,345,404	\$ 1,172,702	\$ 1,172,702
19	\$ 2,392,312	\$ 1,196,156	\$ 1,196,156
20	\$ 2,440,159	\$ 1,220,079	\$ 1,220,079
21	\$ 2,488,962	\$ 1,244,481	\$ 1,244,481
22	\$ 2,538,741	\$ 1,269,371	\$ 1,269,371
23	\$ 2,589,516	\$ 1,294,758	\$ 1,294,758
24	\$ 2,641,306	\$ 1,320,653	\$ 1,320,653
25	\$ 2,694,132	\$ 1,347,066	\$ 1,347,066

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, regarding the approval of a parking structure lease and appropriation of available local income tax revenues to pay rents pursuant to a parking structure lease, with regard to a new mixed-use economic development project to be undertaken by the Lofts at Headwaters Park, LLC and Fort Wayne Garage Associates, One, LLC (Lofts at Headwaters Park project)

DEPARTMENT REQUESTING RESOLUTION. Redevelopment Commission.

SYNOPSIS OF RESOLUTION. This resolution approves a 25-year parking structure lease for a 651-space parking structure that will be constructed as part of a new mixed-use building and appropriates local income tax ("LIT") revenues for rental payments pursuant to the lease. LIT will be used to make up any shortfalls in rent only after other funding sources have been exhausted, and will also be used as a backstop in order to secure project financing. The Redevelopment Commission will manage and operate the parking structure during the term of the lease.

EFFECT OF PASSAGE. The parking structure lease is the primary economic incentive for this public-private partnership, and a LIT pledge is necessary to secure project financing and cover any shortfalls in annual rental payments. As such, passage of this resolution is essential for the project to move forward.

Passage of the resolution and construction of the project would provide many benefits to the community, including (i) public parking in an area with an urgent need for additional parking spaces, (ii) substantial additions to the downtown housing and commercial market, which is an essential element of resident and business attraction, and (iii) annual property tax revenue generated by a type of development that typically has low per capita public service costs, plus potential sales tax, local income tax, and food and beverage tax generated by the commercial components of the building.

EFFECT OF NON-PASSAGE. This \$67.75 million investment will not move forward without passage, and the significant economic and community benefits, including much needed public parking, will be lost.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). Annual rent for the first year of the parking structure lease will be \$1,675,000, and will increase two percent (2%) annually. Rent will be paid from project-generated tax increment ("TIF") revenue, net operating revenue from the parking garage, and, if approved, annual pledges from the Capital Improvement Board. Any remaining shortfall will be covered with the LIT appropriation authorized through this resolution. Although LIT will account for only a portion of annual rental payments, LIT revenues equal to 135% of each year's rental payment must be reserved in order to secure project financing and meet parity obligations.

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT REDEVELOPMENT

Thomas C. Henry, Mayor

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
260-427-2150 fwcommunitydevelopment.org

February 20, 2020

MEMO

To: City of Fort Wayne Common Council

Copy: City of Fort Wayne Redevelopment Commission

From: Nancy Townsend, Executive Director, 427-2323

Re: **Resolution authorizing a parking structure lease and appropriating local income tax ("LIT") revenues for an economic development project called the Lofts at Headwaters Park**

This memo requests Common Council approval of one of five resolutions that must be considered to support an economic development project called the Lofts at Headwaters Park to be undertaken in downtown Fort Wayne. The project, located at the northeast corner of Superior Street and Clinton Street, will consist of approximately 232 dwelling units, 12,000 square feet of ground floor commercial space, and 651 parking spaces at an investment of approximately \$67,750,000.

Enclosed herewith, please find a digest sheet, a resolution authorizing a parking structure lease and appropriating LIT revenues for payment of rent pursuant to the lease, and the parking structure lease approved by the Redevelopment Commission.

As additional background, on February 10, 2020, the Commission approved an economic development agreement, a pledge of project-generated tax increment revenue and net parking revenue, a parking lease, and a remediation and indemnification agreement in furtherance of the project. The Common Council's approvals and appropriations are necessary due to the scope and complex nature of the project and site. The following resolutions encompass all anticipated Common Council actions that will be needed to support the project:

- Approval of a parking structure lease and appropriation of LIT revenues (the appropriation of LIT revenues is needed to cover shortfalls in annual rent)
- Appropriation of LIT revenues for construction of compensatory floodwater storage
- Appropriation of LIT revenues for soil remediation and removal
- Approval of a soil remediation and indemnification agreement
- Approval of an intergovernmental property transfer for Duck Street

With the exception of the resolution attached to this memo, the resolutions above will be delivered to the Council under separate cover.

Vibrant. Prosperous. Growing.

