

# UNOFFICIAL COPY

This instrument was prepared by and after recording,  
this instrument should be returned to:

William G. Skalitzky  
Applegate & Thorne-Thomsen, P.C.  
626 W. Jackson Boulevard, Suite 400  
Chicago, Illinois 60661

40017064.1

1 of 2



Doc#: 1503619169 Fee: \$174.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 02/05/2015 03:42 PM Pg: 1 of 69

## AMENDED AND RESTATED GROUND LEASE

### (65<sup>TH</sup> Infantry Regiment Veterans Housing)

This Amended and Restated Ground Lease (this "Lease") is made as of the 4th day of February, 2015 (the "Effective Date"), by and between the Norwegian American Hospital, Inc., an Illinois not for profit corporation ("Landlord"), having an office at 1044 North Francisco, Chicago, Illinois 60622, and Hispanic Housing Development Corporation, an Illinois not for profit corporation having an office at 325 N. Wells Street, 8<sup>th</sup> Floor, Chicago, Illinois (together with any permitted successors and/or permitted assigns, the "Initial Tenant"). This Lease amends and restates in its entirety the Ground Lease dated March 14, 2014 between the Landlord and Tenant.

### RECITALS:

- A. Landlord operates a hospital and ancillary facilities located at and around 1044 North Francisco Avenue, Chicago, Illinois (the "Hospital").
- B. Landlord is the owner of fee simple title to certain real property thereon commonly known as 1045 North Sacramento Avenue, Chicago, Illinois (the "Real Estate"), which is legally described on Exhibit A attached hereto and incorporated herein by reference. The Real Estate is presently improved with surface parking spaces, sidewalks and landscaping (collectively, the "Parking Improvements") and measures approximately 41,050 square feet.
- C. Tenant intends to remove the Parking Improvements and cause to be constructed on the leasehold estate created by this Lease a four-story, forty-nine (49) unit residential apartment building containing twenty-four (24) one-bedroom units, twelve (12) two-bedroom units, twelve (12) three-bedroom units and one (1) manager's unit. Tenant intends to lease forty-eight (48) units to homeless Veterans of the United States Armed Forces (this housing project is referred to herein as the "Development").

REAL ESTATE TRANSFER TAX 05-Feb-2015



COUNTY:	0.00
ILLINOIS:	0.00
TOTAL:	0.00

REAL ESTATE TRANSFER TAX 05-Feb-2015



CHICAGO:	0.00
CTA:	0.00
TOTAL:	0.00

# UNOFFICIAL COPY

D. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord the Property (as hereafter defined) on the terms and conditions set forth in this Lease in order to facilitate the financing, construction and operation of the Development.

## AGREEMENT:

### ARTICLE 1

#### Lease of the Real Estate/Term of Lease

Landlord, for and in consideration of the rents to be paid and of the covenants and agreements hereinafter contained to be kept and performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, the Real Estate;

Together with all right, title and interest of Landlord, if any, in and to any Existing Improvements (as that term is defined in Article 2 hereafter) now existing on the Real Estate; and

Together with all right, title and interest of Landlord, if any, in, to and under all agreements, easements, encumbrances and appurtenances whatsoever in any way belonging, relating or appertaining to the Real Estate or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Landlord; subject, however, to all agreements, easements, encumbrances and other matters affecting the Real Estate listed on Exhibit B attached hereto (the "Permitted Exceptions") and subject to the provisions of this Lease.

TO HAVE AND TO HOLD the same, subject to the Permitted Exceptions, for a Term of Ninety-Nine (99) years (the "Term") commencing on the Effective Date and ending on January 31, 2114 (the "Expiration Date"), unless this Lease shall sooner be terminated as hereinafter provided, upon and subject to the covenants, agreements, terms, provisions, conditions and limitations hereinafter set forth, all of which Tenant covenants and agrees to perform, observe and be bound by.

### ARTICLE 2

#### Definitions

**2.01** The terms defined in this Section shall, for all purposes of this Lease, have the following meanings:

(a) "Affiliate" shall mean, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by or under common control with such person or entity. A person or entity shall be deemed to control another person or entity if such person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, general partnership or limited liability company interests, by contract or otherwise and shall include, with respect to any so-called "Illinois land trustee" that is at any time the landlord or tenant under this Lease, such land trustee's beneficiary and all persons or entities

# UNOFFICIAL COPY

having the power of direction under such land trust, but shall not include any Leasehold Mortgagee.

(b) “Building” shall mean the four-story, forty-nine (49) unit residential apartment building to be constructed on the Leasehold Estate in accordance with the Plans and Specifications.

(c) “City” shall mean the City of Chicago.

(d) “Code” shall mean the Internal Revenue Code of 1986, as amended, and any successor thereto.

(e) “Construction Completion Deadline” shall mean December 31, 2016.

(f) “Deductible” shall have the meaning given in Section 8.01.

(g) “Default” shall mean any condition or event that constitutes or would, after notice or lapse of time, or both, constitute an Event of Default.

(h) “Development” shall have the meaning given in Recital C.

(i) “Effective Date” has the meaning set forth in Article 1.

(j) “Environmental Laws” shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §601 et seq., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended; the Clean Air Act, 42 U.S.C. 7401 et seq., as amended; the Clean Water Act 33 U.S.C. 1251 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. 655 et seq. and any other federal, state, local or municipal laws, statutes, regulations, rules or ordinances imposing liability or establishing standards of conduct for protection of the environment.

(k) “Environmental Reports” shall mean, collectively, the (1) Phase I Environmental Site Assessment for 1045 North Sacramento Avenue, Chicago, Illinois dated February 2014 by GSG Consultants, Inc. for GSG Project No. 14-1013; (2) the Electromagnetic Survey Report dated March 15, 2013 prepared by GSG Consultants, Inc.; (3) the Phase II Environmental Site Assessment Report for 1045 North Sacramento Avenue, Chicago, Illinois dated October 2014 by GSG Consultants, Inc. for GSG Project No. 14-1065; and (4) the Comprehensive Site Investigation Report, Remedial Objectives Report and Remedial Action Plan dated January, 2015 prepared by GSG Consultants, Inc. for 1045 North Sacramento Avenue, Chicago, Illinois, for GSG Project No. 14-1079.

(l) “Event of Default” shall have the meaning provided in Section 10.01.

(m) “Excluded Environmental Condition” shall mean (i) any migration of Hazardous Materials to the Real Estate from another site or location not within the Real Estate first occurring after the Effective Date of this Lease, and (ii) any environmental condition caused by the Landlord or its agents or contractors after the Effective Date of this Lease.

# UNOFFICIAL COPY

(n) “Existing Improvements” shall mean the Parking Improvements (as defined in Recital B) and any and all Utilities, structures and other improvements, including equipment, fixtures, furnishings and appurtenances, that are located on the Real Estate on the Effective Date.

(o) “Expiration Date” has the meaning set forth in Article 1.

(p) “Fifth Leasehold Mortgage” shall mean the leasehold mortgage of the Fifth Leasehold Mortgagee granting the Fifth Leasehold Mortgagee a fifth priority mortgage lien on the Tenant Property.

(q) “Fifth Leasehold Mortgagee” shall mean the Leasehold Mortgagee whose Leasehold Mortgage is fifth most senior in priority of lien, as identified on Exhibit C attached hereto.

(r) “Final Completion” shall have the meaning provided in Section 5.01(d).

(s) “First Leasehold Mortgage” shall mean the leasehold mortgage of the First Leasehold Mortgagee granting the First Leasehold Mortgagee a first priority mortgage lien on the Tenant Property.

(t) “First Leasehold Mortgagee” shall mean the Leasehold Mortgagee whose Leasehold Mortgage is most senior in priority of lien, as identified on Exhibit C attached hereto.

(u) “Fourth Leasehold Mortgage” shall mean the leasehold mortgage of the Fourth Leasehold Mortgagee granting the Fourth Leasehold Mortgagee a fourth priority mortgage lien on the Tenant Property.

(v) “Fourth Leasehold Mortgagee” shall mean the Leasehold Mortgagee whose Leasehold Mortgage is the fourth most senior mortgage in priority of lien, as identified on Exhibit C attached hereto.

(w) “Full Insurable Value” shall mean the replacement cost (excluding, as to the insurance required pursuant to Section 7.01, foundation and excavation costs) of the Tenant Improvements, as determined, at the request of Landlord (not more frequently than at three-year intervals), at Tenant’s expense, by an architect, engineer, contractor, appraiser, appraisal company, or insurance company, selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

(x) “Full Restoration” shall have the meaning given in Section 8.01.

(y) “General Partner” shall mean Sacramento and Thomas Corporation, an Illinois corporation, the general partner of the Partnership, and any permitted successor.

(z) “Governmental Authority” or “Governmental Authorities” shall mean any one or more of the federal, state and local governmental or quasi-governmental body or bodies having jurisdiction at any time or from time to time during the Term over the Real Estate or the Property, or any part thereof, or the construction, repair, maintenance, operation or use thereof.

# UNOFFICIAL COPY

(aa) "Hazardous Condition" shall mean a failure of the Property to comply with Environmental Laws.

(bb) "HUD" means the United States Department of Housing and Urban Development, or any successor thereto.

(cc) "Impositions" shall mean all taxes, assessments, special assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed upon or become payable out of or become a lien on the Property or Tenant Property, or any part thereof, or any appurtenances thereto; provided, however, that if at any time during the Term the present method of taxation or assessment shall be so changed that there shall be substituted in whole or in part for the types of taxes, assessments, levies, assessed or imposed on real estate and the improvements thereon a capital levy or other tax levied, assessed or imposed on the rents received by Landlord from said real estate or the rents reserved herein or any part thereof, then any such capital levy or other tax shall, to the extent that it is so substituted, be deemed to be included within the term "Impositions." Impositions affecting the Property shall be those attributable to the Real Estate, any Existing Improvements and the Tenant Improvements during the Term, but shall not include any mortgage liens or other encumbrances on the Real Estate or Existing Improvements made by or incurred as a result of the actions of Landlord. Impositions affecting the Tenant Property shall be those attributable to the Tenant Improvements, the Leasehold Estate and the rents received by Tenant therefrom.

(dd) "Incurable Tenant Default" shall have the meaning set forth in Section 9.03(b)

(ee) "Investor" shall mean the limited partner of the Partnership.

(ff) "Landlord" shall mean Norwegian American Hospital, Inc., and its successors and assigns.

(gg) "Lease Interest Rate" shall mean a floating interest rate equal to five percent (5%) in excess of (i) the rate announced from time to time by JPMorgan Chase Bank, N.A. (or any successor thereto), as its "corporate base rate," "prime rate," "reference rate" or other similar rate and in effect on the date interest first begins to accrue with respect to any sum that becomes payable pursuant to any provision or provisions of this Lease, or (ii) in the event such bank has ceased announcing any such rate, then such rate as may be announced by the Chicago branch of such other national bank as Landlord shall reasonably designate as its "prime rate" "reference rate" or other similar rate, provided, however that if the Lease Interest Rate as so determined shall exceed the maximum rate allowed by law, then the "Lease Interest Rate" shall mean the maximum contract rate permitted by law at such time. The Lease Interest Rate shall change concurrently with each announced change in such "corporate base rate," "prime rate," "reference rate" or other similar rate.

(hh) "Lease Year" shall mean a calendar year. The first full Lease Year during the Term shall commence on the Effective Date, or if the Effective Date is not the first day of a calendar

# UNOFFICIAL COPY

year, on the first day of the calendar year next following the Effective Date. Each succeeding Lease Year shall commence on the January 1 immediately following the December 31 of the preceding Lease Year. If the Effective Date is not January 1, that portion of the Term that is prior to beginning of the first full Lease Year shall be a partial Lease Year. If the Expiration Date is not December 31, that portion of the Term that is after the end of the last full Lease Year shall be a partial Lease Year.

(ii) "Leasehold Donation" has the meaning set forth in Article 21.

(jj) "Leasehold Estate" shall mean the leasehold estate of Tenant in the Property created by this Lease.

(kk) "Leasehold Mortgage" shall mean any or all of the First Leasehold Mortgage, Second Leasehold Mortgage, Third Leasehold Mortgage or Fourth Leasehold Mortgage, as the context may require, together with any replacement leasehold mortgage granted in connection with a Permitted Refinancing.

(ll) "Leasehold Mortgagee" shall mean any or all of the First Leasehold Mortgagee, Second Leasehold Mortgagee, Third Leasehold Mortgagee, Fourth Leasehold Mortgagee or Fifth Leasehold Mortgagee, as the context may require, together with each such leasehold mortgagee's successors and assigns, as permitted under this Lease.

(mm) "Lender" shall mean (i) the Leasehold Mortgagees, (ii) any commercial real estate lender, state or national bank, commercial or savings bank, pension fund, real estate investment trust, or governmental agency or instrumentality (iii) any HUD-approved mortgagee, or (iv) any Affiliate of the foregoing that is authorized to make loans secured by real property located in the State of Illinois.

(nn) "Net Insurance Proceeds" shall have the meaning given in Section 8.02.

(oo) "Organizational Documents" shall mean: (i) with respect to a corporation, its articles of incorporation and by-laws; (ii) with respect to a general partnership, its partnership agreement; (iii) with respect to a limited partnership, its certificate of limited partnership and limited partnership agreement; and (iv) with respect to a limited liability company, its articles of organization and operating agreement; in each case as amended prior to such entity becoming Tenant under this Lease and as amended from time to time thereafter; provided, however, that no amendment to any Organizational Document that materially adversely affects the rights of Landlord may be made after such entity becomes Tenant hereunder except (x) as required by law, (y) upon Landlord's written consent, or (z) in connection with a Permitted Transfer.

(pp) "Other Land" shall have the meaning given in Section 4.06.

(qq) "Partnership" means Sacramento and Thomas Limited Partnership, an Illinois limited partnership.

# UNOFFICIAL COPY

(rr) "Permitted Assignment" shall mean the assignment of the Leasehold Estate by the Initial Tenant to the Partnership occurring subsequent to the full execution and delivery of this Lease by the Landlord and the Initial Tenant.

(ss) "Permitted Exceptions" shall have the meaning given in Article 1. "Permitted Exceptions" shall also include the easements and licenses, if any, hereafter granted or consented to by Landlord in accordance with Section 9.01(d).

(tt) "Permitted Refinancing" shall mean (a) with respect to any loan secured by a Leasehold Mortgage, any refinancing of such loan, and (b) any additional loan secured by a Leasehold Mortgage that is either expressly permitted under the terms of this Lease or consented to in writing by Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

(uu) "Permitted Transfer" shall mean: (a) the Permitted Assignment; (b) after the completion of the construction of the Development, a sale or transfer of the Tenant Property or any portion thereof to a person reasonably acceptable to Landlord; (c) if the Tenant is a limited partnership, any amendment to the Tenant's Organizational Document that is necessary to effectuate the withdrawal, replacement and/or addition of a limited partner, or the withdrawal, replacement or addition of any such limited partner's general partners (or any other ownership interests in and to said limited partner(s)), (e) the transfer of the Tenant Property, or any portion thereof or any interest in Tenant, to a Leasehold Mortgagee (or any nominee of such Leasehold Mortgagee) by foreclosure or deed in lieu of foreclosure or to a third party purchaser at a foreclosure sale in accordance with Section 9.03(a); or (f) any other transfer consented to by Landlord in writing.

(vv) "Person" shall mean any person, corporation, partnership, limited liability company or other legal entity.

(ww) "Plans and Specifications" shall mean the plans and specifications for the construction of the Development prepared by Papageorge Haymes, Ltd. dated January 19, 2015, which are identified on Exhibit G attached hereto, as such plans and specifications are amended hereafter from time to time. The Landlord's prior written approval for changes to the plans and specifications made after the Effective Date shall not be required except for (i) changes that will increase or decrease the number of stories or units in the Building, or (ii) that will materially change the Building's aesthetics.

(xx) "Pre-Existing Environmental Conditions" shall mean (i) the underground storage tank (if it exists), and (ii) certain contaminated soils identified as "recognized environmental conditions" in the Environmental Reports and existing on the Effective Date.

(yy) "Proceeds" shall mean, in the case of damage to or destruction of the Tenant Improvements, the sum of the Net Insurance Proceeds plus the Deductible and the Restoration Deficiency (if any), and, in the case of a condemnation or other taking (or conveyance in lieu thereof), the awards (or compensation paid) therefor.

# UNOFFICIAL COPY

(zz) "Property" shall mean the Real Estate and the Existing Improvements, if any; provided, however, that "Property" shall not be construed to include the medical gas storage plant located adjacent to the Real Estate.

(aaa) "Protected Persons" shall mean Landlord or Tenant, as the context so requires, and such party's respective members, managers, partners, officers, directors, agents, employees, advisors, attorneys, consultants and Affiliates, and, in the case of Landlord, shall include its officers and members of its Board of Directors.

(bbb) "Real Estate" shall have the meaning given in Recital A.

(ccc) "Remediation" shall mean the cleanup activity or other remedial action required by any Environmental Law or any applicable Governmental Authorities under any Environmental Law.

(ddd) "Removal Right" shall mean the right, if any, given in Tenant's Organizational Documents, to remove an officer, director, general partner, manager or managing member of Tenant, and designate a substitute.

(eee) "Rent" shall have the meaning given in Section 3.01.

(fff) "Replacement Parking Lot" shall mean parking lot that the Landlord shall construct and build at its own expense on property owned by Landlord and not subject to this Lease. Construction of the Replacement Parking Lot is expected to be completed on or before May 15, 2015. Construction will be considered complete on the day on which the Landlord receives a license or other authorization or approval issued by the City of Chicago to use and operate the parking lot for its intended purpose.

(ggg) "Requirements" shall mean any and all present and future laws, statutes, ordinances, codes, rules, regulations, orders or other requirements of any Governmental Authority and of any applicable fire rating bureau or other body exercising similar functions, applicable to or affecting the Property or Tenant Property, or any part thereof, including without limiting the generality of the foregoing, Environmental Laws and the Municipal Code of the City.

(hhh) "Restoration" shall have the meaning given in Section 8.01.

(iii) "Second Leasehold Mortgage" shall mean the leasehold mortgage of the Second Leasehold Mortgagee granting the Second Leasehold Mortgagee a second priority mortgage lien on the Tenant Property.

(jjj) "Second Leasehold Mortgagee" shall mean the Leasehold Mortgagee whose Leasehold Mortgage is the second most senior in priority of lien, as identified on Exhibit C attached hereto.

(kkk) "Tenant" shall mean the party named as Initial Tenant herein; provided, however, that whenever this Lease and the Leasehold Estate shall be assigned or transferred in the manner specifically permitted herein, including through the Permitted Assignment, then from



# UNOFFICIAL COPY

and after such assignment or transfer and until the next such assignment or transfer, the term "Tenant" shall mean the permitted assignee or transferee named therein, as if such transferee or assignee had been named herein as Tenant.

(lll) "Tenant Improvements" shall mean the Building, any Utilities constructed or renovated after the Effective Date and any other buildings, structures and improvements, including equipment, fixtures, furnishings and appurtenances, at any time erected or located on the Real Estate after the Effective Date.

(mmm) "Tenant Property" shall mean the Leasehold Estate and Tenant Improvements.

(nnn) "Term" shall mean the term of this Lease described in Article 1.

(ooo) "Third Leasehold Mortgage" shall mean the leasehold mortgage of the Third Leasehold Mortgagee granting the Third Leasehold Mortgagee a third priority mortgage lien on the Tenant Property.

(ppp) "Third Leasehold Mortgagee" shall mean the Leasehold Mortgagee whose Leasehold Mortgage is the third most senior in priority of lien, as identified on Exhibit C attached hereto.

(qqq) "Unavoidable Delay" shall mean a delay beyond the reasonable control of Tenant and without the fault or negligence of Tenant, including, but not limited to: an act of God; fire; flood; epidemic; quarantine restriction; civil disorder; enemy action; strike, lockout or other labor dispute; unavailability of labor or materials; freight embargo; war; terrorism; unforeseen soil conditions, such as underground storage tanks and building foundations; and unusually severe weather.

(rrr) "Utilities" shall mean the water, sewer, natural gas, electric, cable, telephone, and all other utilities and equipment now existing or hereafter constructed on the Real Estate for the benefit of the Existing Improvements or the Tenant Improvements, as applicable.

**2.02** "The words "herein," "hereof" or "hereunder" and words of similar import refer to provisions contained in this Lease as a whole and not to any particular section or subdivision thereof. All exhibits and riders referred to in the text of this Lease and attached hereto are incorporated into this Lease.

## ARTICLE 3

### Rent

**3.01** Rent. From and after the Effective Date through the Term, Tenant shall pay to Landlord at the place for which notices to Landlord are to be sent in accordance with Article 16, or to such other Person and/or at such other place as shall be designated from time to time by written notice from Landlord to Tenant, fixed rent at the rate of One Dollar (\$1.00) for each Lease Year during the Term ("Rent"). Landlord acknowledges that such Rent, in the aggregate amount of Ninety-Nine and No/100 Dollars (\$99.00), has been prepaid in full concurrently with the execution of this Lease.

# UNOFFICIAL COPY

**3.02 No Partnership.** Landlord and Tenant agree that they are not partners or joint venturers and that, except in respect to the proceeds of insurance and condemnation awards under the provisions of Articles 8 and 12, they do not stand in any fiduciary relationship to each other.

**3.03 Payment of Rent.** All payments of Rent made to Landlord hereunder shall be made in lawful money of the United States of America.

**3.04 Net Lease.** Tenant shall pay to Landlord throughout the Term all Rent, free of any charges, assessments, Impositions or deductions of any kind and without abatement, deduction or set-off. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever hereunder or be under any other obligation or liability hereunder except as otherwise expressly set forth herein.

**3.05 No Abatement.** No event or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay the full Rent, or relieve Tenant from any of its other obligations under this Lease. Tenant waives any rights now or hereafter conferred upon it by statute, proclamation, decree, or otherwise, or to claim any abatement, diminution, reduction or suspension of the Rent or such obligations on account of any such event or situation.

**3.06 Reimbursements to Landlord; Arrearages.** Tenant shall reimburse Landlord for all expenditures, costs, expenses and fees including reasonable attorneys' fees, made or incurred by Landlord in curing any Event of Default of Tenant. Such amounts shall become due upon delivery by Landlord of written notice stating the amount of such expenditures, costs, expenses and fees by Landlord. Tenant shall also pay to Landlord upon delivery of notice by Landlord, all amounts payable to Landlord as reimbursements or indemnities pursuant to Sections 6.03 and 6.05.

**3.07 Interest on Overdue Amounts.** All Rent and other amounts due to Landlord hereunder that are not paid when due, shall bear interest at the Lease Interest Rate from the due date to the date received by Landlord. Such interest shall be payable by Tenant to Landlord upon demand. The collection of such interest by Landlord shall not limit or modify any other right or remedy of Landlord under this Lease or otherwise available to Landlord by reason of Tenant's failure to pay such amount when due or by reason of any other Event of Default.

## ARTICLE 4

### Impositions

**4.01 Payment.** Throughout the Term Tenant shall pay or cause to be paid, as and when the same become due, all Impositions, except that:

(a) All Impositions attributable on the accrual basis to a calendar year or other period for which this Lease is in effect for less than the entire calendar year or other period shall be equitably apportioned (taking into account that Landlord may be entitled to exemptions or

# UNOFFICIAL COPY

abatements) consistent with the time a party hereto held its respective interests in the Real Estate and Existing Improvements;

(b) Where any Imposition is permitted by law to be paid in installments, Tenant may pay such Imposition in installments, as and when each such installment becomes due; and

(c) Where any Imposition is entitled to an abatement, refund, exemption or other diminution or reduction under law, whether available to Landlord or Tenant, the parties shall use their best efforts, at Tenant's sole expense, to cause such benefits to be afforded to Tenant under this Lease.

## **4.02 Deposit of Impositions.**

(a) Tenant shall timely pay, as additional rent, all Impositions, and all premiums on insurance required to be carried under Article 7, as and when the same are ascertainable, billed, and due and payable without interest, penalty or fine. Within thirty (30) days after Landlord's written request, Tenant shall deliver reasonable proof of such payment to Landlord.

(b) During the continuance of any Event of Default, Tenant agrees to deposit with Landlord on the first day of each and every month thereafter during the Term one-twelfth (1/12) of (a) all Impositions due and payable from Tenant during the next succeeding 12-month period, based on the most recent ascertainable Impositions, plus (b) annual premiums on insurance policies required to be carried by Tenant under Article 7. Further, upon the occurrence of any Event of Default, Tenant shall deposit, at least thirty (30) days prior to the due date of any Imposition, such additional amount as may be necessary to provide Landlord with sufficient funds in such deposit account to pay each such Imposition and annual insurance premium at least thirty (30) days in advance of the due date thereof. The rights granted hereunder to Landlord shall not be exclusive to Landlord's rights and remedies following an Event of Default by Tenant. Landlord shall have no obligation to pay interest to Tenant on any amounts deposited by Tenant. Landlord shall apply any such deposits for the purpose held not later than the last day on which any such charges may be paid without interest or penalty. If, at any time, the amount of any Imposition or insurance premium is increased or Landlord receives reliable information from a Governmental Authority or insurer, as applicable, that an Imposition or insurance premium will be increased, and if the monthly deposits then being made by Tenant for such item (if continued) would not produce a fund sufficient to pay such item thirty (30) days prior to its due date, such monthly deposits shall thereupon be increased and Tenant shall deposit with Landlord, on demand by Landlord, additional sums in an amount which, when added to the monies then on hand for the payment of said item plus the increased one-twelfth (1/12) payments, shall be sufficient to pay such item at least thirty (30) days before the same becomes due and payable. Tenant shall not be required to make any specific deposit required under this Section if a deposit for the same purpose is made by Tenant to an escrow or otherwise to persons pursuant to a requirement by any Leasehold Mortgagee. This Section 4.02(b) shall not apply to any Leasehold Mortgagee (or any nominee of a Leasehold Mortgagee) that becomes Tenant hereunder through foreclosure or transfer by deed in lieu of foreclosure unless: (i) the Event of Default arises after such Leasehold Mortgagee becomes Tenant hereunder; or (ii) the Event of Default arises prior to such Leasehold Mortgagee becoming Tenant hereunder and such Event of Default is not an Incurable Default and is an

# UNOFFICIAL COPY

Event of Default that such Leasehold Mortgagee is obligated to cure under the provisions of this Lease, and such Leasehold Mortgagee fails to commence or cure such Event of Default within the time and in the manner required by this Lease.

**4.03 Contest of Impositions.** Tenant may, if it desires, contest the validity or amount of any Imposition, in whole or in part, by an appropriate proceeding diligently conducted in good faith. Tenant may conduct such a contest only after payment of the challenged Imposition or Tenant shall, at least fifteen (15) days prior to the date such Imposition is due: (i) have deposited with the First Leasehold Mortgagee or an escrow agent acceptable to Landlord an amount sufficient to pay such contested Imposition, together with interest and penalties thereon, which amount shall be applied to the payment of such Imposition, interest and penalties when the amount thereof shall be finally fixed and determined; or (ii) have provided to the First Leasehold Mortgagee or to Landlord a bond, letter of credit or other security reasonably acceptable to Landlord. Nothing herein contained, however, shall be construed as to allow such Imposition to remain unpaid for such length of time as shall permit the Property or Tenant Property (as applicable) or any part thereof, or the lien thereon created by such Imposition, to be sold or forfeited for the nonpayment of the same. If the amount so deposited as aforesaid shall exceed the amount of such Imposition, interest and penalties when finally fixed and determined, the excess (or the entire amount if no such payment is required) shall be released from the escrow to Tenant, or in case there shall be a deficiency, the amount of such deficiency shall be forthwith paid by Tenant.

**4.04 Reduction of Impositions.** Tenant, at its expense, may, if it shall so desire, endeavor at any time or times, upon prior written notice to Landlord, to obtain a lowering of the assessed valuation upon the Property (the assessed value of which may include the Tenant Property) for the purpose of reducing taxes thereon. In this regard, Tenant may pursue or obtain, among other alternatives, (a) a charitable property tax exemption under 35 ILCS Section 200/15-65, (b) a Class 9 assessment per Cook County Ordinance Section 74-63, and/or (c) participate in the Cook County Assessor's Affordable Housing Initiative program. In the event that Tenant elects to pursue any of the foregoing alternatives, Landlord will offer no objection and, at the request of Tenant, will cooperate with Tenant in the preparation and filing of the necessary applications and certifications, but without expense to Landlord. Tenant shall pay directly or reimburse Landlord for all reasonable legal fees and expenses incurred by Landlord in connection with such efforts to reduce or eliminate the property tax liability. Tenant is authorized to collect any tax refund payable as a result of any proceeding instituted pursuant to this Section 4.04, and any such tax refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant, subject, however, to the apportionment provisions contained in Section 4.01(a) for any tax refund for 2015 property taxes, after deducting from such refund the costs and expenses, including legal fees, incurred in connection with obtaining such refund.

**4.05 Joinder of Landlord.** Landlord shall not be required to join in any action or proceeding referred to in Sections 4.03 or 4.04 hereof unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event, any such action or proceeding may be taken by Tenant in the name of, but without expense to, Landlord. Notwithstanding the foregoing, Landlord shall execute, when and as required and requested to do so by Tenant in writing, all applications, affidavits, certifications and other documents

# UNOFFICIAL COPY

required to obtain or maintain any tax abatement or exemption which may be available, including Class 9 designation. Landlord acknowledges that Tenant intends to pursue a charitable property tax exemption in accordance with 35 ILCS 200/15-65 and 86 Ill. Admin. Code Part 110.116. Tenant hereby agrees to indemnify, defend and hold Landlord's Protected Persons harmless from and against all costs, expenses, claims, loss or damage, including reasonable attorney's fees, by reason of, in connection with, on account of, growing out of, or resulting from, any such action or proceeding.

## **4.06 Notice to Assessor; Tax Divisions**

(a) Within thirty (30) days following the Effective Date, Tenant shall send notification to the Cook County Assessor's Office, Exemption Department, via certified mail, return receipt requested of the creation of the Leasehold Estate in accordance with 35 ILCS Sections 200/15-20, 200/9-185 and 200/9-265. Within this same time period, Landlord shall also send notification to the Cook County Assessor's Office, Exemption Department, via certified mail, return receipt requested (with a copy to the Tenant) of the creation of the Leasehold Estate.

(b) Within thirty (30) days after the Effective Date, Landlord shall file a "Petition for Division and/or Consolidation of Property for the Tax Year 2016" for PIN 16-01-305-010 ("PIN-010"), which currently applies to a portion of the Real Estate and certain other land not subject to this Lease owned by the Landlord upon which certain above-ground oxygen tanks are located (the "Other Land"). The petition, which shall be prepared by Tenant and subject to Landlord's approval, shall seek the creation of separate property tax identification numbers for the portion of the Real Estate located within the existing PIN-010 and for the Other Land located within PIN-010. Until such tax parcel redesignation occurs, Tenant agrees to pay or cause to be paid, when due (or, if paid by Landlord, to reimburse Landlord upon demand for) any property taxes attributable to the Real Estate located on PIN-010, and Landlord shall be solely responsible for any property taxes attributable to the Other Land. Landlord or Tenant may, if either shall so desire, contest the validity or amount of any such taxes, in whole or in part, by an appropriate proceeding diligently conducted in good faith. Any such contest by Tenant shall be in accordance with Section 4.03.

(c) Should a change in law occur so as to allow the Cook County Assessor to assign a property identification number to the Leasehold Estate that is separate from the property identification numbers for the Real Estate, then Tenant shall, with the cooperation of Landlord, file or cause to be filed a petition for a real estate tax division segregating the Landlord's fee interest in the Real Estate from Tenant's Leasehold Estate and Tenant's interest in the Tenant Improvements, such that new, separate property identification numbers are assigned to the Real Estate (a "Fee PIN") and to the Tenant Property (a "Leasehold PIN"). Notwithstanding that a separate Fee PIN and Leasehold PIN may be created, Tenant shall remain obligated to pay all Impositions assessed against the Property, and all parts thereof, with respect to the entire Term of this Lease, and all parts thereof, as provided in Section 4.01, and Tenant agrees to pay or cause to be paid, when due (or, if paid by Landlord, to reimburse Landlord upon demand for) any property taxes attributable to the Real Estate, or any portion thereof, and any Existing Improvements, including Tenant Improvements, thereon. If a Fee PIN should be established, Landlord will file a complaint to secure a property tax exemption, if available under the Property Tax Code, for any property taxes assessed against the Real Property subject to the Fee PIN.

# UNOFFICIAL COPY

## ARTICLE 5

### Tenant Improvements

#### 5.01 Tenant Improvements.

(a) Landlord consents to the Tenant's demolition and removal of the Parking Improvements in accordance with the Plans and Specifications.

(b) Tenant shall be permitted to commence only certain construction activities consisting of the Site Remediation Activities (defined below) on or before February 4, 2015, in accordance with the requirements of HUD Notice PIH 2014-03 (HA). Accordingly, Tenant hereby covenants and agrees that it shall initiate site preparation work and commence Remediation of the Pre-Existing Conditions in accordance with Section 5.05 hereof on or before February 4, 2015 (the "Site Remediation Activities"). Following removal of the underground storage tank and any associated soil testing and remediation, Tenant shall suspend further construction activities until the date ("Construction Resumption Date") that is the later to occur of (1) the date upon which the Construction Requirements (defined below) have been satisfied, and (2) the earlier of (A) the first business day following the day Landlord has completed construction of the Replacement Parking Lot, and (B) May 15, 2015. Tenant shall cause its General Contractor (as defined in Section 5.01(c) below) to mobilize and re-commence construction on the within five (5) business days after the Construction Resumption Date. Notwithstanding the foregoing, if HUD requires the Tenant to proceed with construction beyond the Site Remediation Activities prior to the Construction Resumption Date in order to preserve the project-based Section 8 HUD-VASH vouchers awarded under HUD Notice PIH 2014-03 (HA) for the Building, then Tenant shall cause its General Contractor to mobilize and proceed with demolition of the Parking Improvements. In such a situation, Landlord and Tenant will work in good faith with the General Contractor to stage the demolition of the Parking Improvements in such a manner as to preserve in whole or part and to the maximum extent possible under the prevailing circumstances, the temporary parking easement provided in Section 9.04 hereof.

(c) Once construction has re-commenced (which will be evidenced by the erection of a construction work-site fence and the start of demolition of the Parking Improvements), Tenant shall cause the Building and other improvements constituting the Development to be diligently and continuously prosecuted such that substantial completion of all Tenant Improvements occurs, subject to Unavoidable Delays, by Friday, May 13, 2016, and such that in all events Final Completion occurs no later than the Construction Completion Date. Tenant covenants to Landlord that the Development shall be constructed in a good and workmanlike manner, in substantial accordance with the Plans and Specifications, and in conformance with all applicable laws, codes and regulations of all Governmental Authorities. All of the foregoing construction activities shall be undertaken at the sole cost and expense of Tenant. Tenant further covenants that the construction of the Development shall be fully paid for by Tenant and shall be completed free and clear of any and all mechanics or materialmens liens, and Tenant shall defend, indemnify and hold Landlord free and harmless from any claims for such lien made by General Contractor or any other contractors engaged by Tenant and/or by any subcontractor of any tier or any supplier of any contractor or subcontractors in connection with such construction activities.

# UNOFFICIAL COPY

It is acknowledged and agreed by Initial Tenant that the Permitted Assignment of this Lease to the Partnership shall not serve to release the Initial Tenant from the obligations and liabilities arising under Sections 5.01, 5.05 and 5.06 of this Lease, but rather upon such Permitted Assignment, the Initial Tenant and Partnership shall be jointly and severally liable for all such obligations and liabilities under Sections 5.01, 5.05 and 5.06 of this Lease. Initial Tenant's obligations and liabilities under Sections 5.01, 5.05 and 5.06 of this Lease shall cease and terminate upon Final Completion of the Development.

As used herein, the "Construction Requirements" shall be satisfied by Tenant's delivery to the Landlord of the following documents and information: (1) a copy of a general contract ("Construction Contract") with Tropic Construction Corp. ("General Contractor") pursuant to which the General Contractor agrees to construct the Tenant Improvements in accordance with the Plans and Specifications for a guaranteed maximum price stated therein; (2) a budget ("Project Cost Budget") identifying all hard and soft costs estimated to be incurred by Tenant to achieve Final Completion of the Tenant Improvements, (3) evidence, reasonably acceptable to Landlord, of Lessee's financial ability to pay the hard and soft costs of the construction of the Development identified in the Project Cost Budget, including evidence of the closing of leasehold mortgage loan financings, evidence of binding equity commitments and evidence of binding commitments for grants and/or other sources of funding in an aggregate amount sufficient to pay such costs; (4) certificates of insurance evidencing the satisfaction of all applicable insurance requirements under this Lease; and (5) a copy of the building permit permitting such construction to commence.

(d) Upon completion of construction, Tenant covenants and agrees that it shall obtain certificates of occupancy for all Tenant Improvements from the City. Landlord agrees that it will cooperate with Tenant, upon receipt of written request from Tenant or a Leasehold Mortgagee, in applications for permits, licenses or other authorizations required for such Tenant Improvements; provided, however, that all expenses in connection therewith shall be borne by the Tenant. Tenant shall be responsible for achieving "Final Completion" of the Building, which shall be documented through delivery by Tenant to Landlord of a final unconditional certificate of occupancy from the City for the Building. Tenant shall achieve Final Completion of the Building on or before the Construction Completion Deadline.

**5.02 Other Capital Improvements.** With respect to any Major Capital Improvement other than the Tenant Improvements that Tenant desires to undertake with respect to the Property, Tenant shall not commence construction unless Landlord shall have specifically approved such Major Capital Improvement and Tenant has complied with Section 5.03, provided that Landlord's approval shall not be unreasonably withheld or delayed. A "Major Capital Improvement" is a capital improvement involving an estimated cost of more than \$100,000.00, and shall include additional buildings and additions, alterations, renovations, restorations, replacements or rebuildings, whether or not required to be made in compliance with Tenant's obligations under this Article, or in connection with a Restoration made under Article 8 as a result of damage or destruction, or under Article 12 as a result of any taking pursuant to eminent domain. Notwithstanding the foregoing, Landlord's consent under this Article 5 shall not be required in connection with: (i) a Restoration of the Tenant Improvements under Article 8 or Article 12 to the condition that existed immediately prior to

# UNOFFICIAL COPY

the casualty or condemnation; or (ii) a capital improvement that is required pursuant to Requirements.

**5.03 Major Capital Improvements Requirements.** Prior to the commencement of any Major Capital Improvement, the following shall be submitted to Landlord:

(a) complete plans and specifications for the Major Capital Improvement prepared by a licensed architect which plans shall also include landscaping plans and specifications;

(b) copies of all permits and licenses for the construction of the Major Capital Improvement issued by the appropriate Governmental Authority;

(c) a signed construction contract or contracts for all of the work, material and equipment comprising the Major Capital Improvement in accordance with the plans and specifications delivered pursuant to Section 5.03(a), together with appropriate property and liability insurance policies; and

(d) a copy of one or more commitments from a Lender or Lenders for loans to be made available to Tenant, on both a construction loan and long-term take-out loan basis, in an amount that, together with equity that is available and specifically allocated thereto, is sufficient to pay the budgeted costs of construction of the Major Capital Improvement.

**5.04 Demolition.** Except in connection with a Restoration under Articles 8 or 12, Tenant shall not demolish the Tenant Improvements, including any Major Capital Improvements permitted under Section 5.02, without the prior written consent of Landlord.

**5.05 Remediation of Pre-Existing Environmental Conditions.** Tenant shall, at its sole cost, cause the Remediation of the Pre-Existing Environmental Conditions to occur prior to completion of construction of the Building. Upon Tenant's request and at its expense, Landlord shall execute the "Site Remediation Program (SRP) Application and Services Agreement (DRM-1) Form" or other appropriate form(s) necessary to enroll the Real Estate in the Illinois Environmental Protection Agency's Site Remediation Program (the "SR Program") in connection with the Remediation of the Pre-Existing Environmental Conditions. Upon successful completion of the SR Program, Tenant shall receive a No Further Remediation Letter from the Illinois Environmental Protection Agency (the "NFRL"), and shall cause the NFRL to be recorded in the Cook County Recorder of Deed's Office as an encumbrance against the Property and Tenant Property. A recorded NFRL shall evidence Tenant's satisfaction of its Remediation obligations arising under this Section 5.05.

If, in connection with the Remediation of the Pre-Existing Environmental Conditions, the Tenant is required by an applicable Environmental Law to provide notice to the City of Chicago of any environmental contamination that may have migrated from the Property and under a City public right of way, and if the City, in response to such notice, requires the execution of an agreement relating to the subsequent disclosure of such migration to any persons (e.g. construction workers) who may work in the affected area under the public right of way, then Tenant (and not the Landlord) shall enter into such agreement with the City and shall bear the costs associated with same.



# UNOFFICIAL COPY

**5.06 Uniform Relocation Act.** Tenant represents, warrants and covenants to Landlord that Tenant shall be solely responsible for payment of any monies due to any Persons under the Uniform Relocation Assistance and Real Property Acquisition Policies Act and its implementing regulations arising out of or in connection with the execution of this Lease.

## ARTICLE 6

### Use, Maintenance, Alterations, Repairs, Etc.

**6.01 Condition of Real Estate and Property.** Tenant has leased the Real Estate and Existing Improvements after a full and complete examination thereof, the Landlord's title thereto and its present uses and restrictions, and, Tenant accepts the same, including without limitation, all Pre-Existing Environmental Conditions and all other environmental conditions, whether known or unknown, existing on the Effective Date, all without any representation or warranty, express or implied, in fact or by law, by Landlord and without recourse to Landlord as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Property or any part thereof may be put; provided, however, that upon the commencement of this Lease, title to the Real Estate shall be subject only to the Permitted Exceptions. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Property, throughout the Term. Tenant hereby assumes the full and sole responsibility for the remediation of the Pre-Existing Environmental Conditions in Section 5.05 hereof and the operation, repair, replacement, maintenance and management of the Real Estate and Existing Improvements. Notwithstanding the foregoing, Tenant (a) does not accept, and shall not be deemed to have accepted, any obligations or liabilities for Excluded Environmental Conditions, and hereby expressly reserves all rights and remedies available to it at law or in equity against any Person, including, to the extent applicable, Landlord, related to any Excluded Environmental Conditions which may hereafter affect the Property, and (b) does not have an obligation to remediate any environmental condition(s) existing on the Effective Date of this Lease that is/are not a Pre-Existing Environmental Condition (the "Other Environmental Conditions"). However, if Tenant should learn of an Other Environmental Condition after the Effective Date that is required to be remediated under the Environmental Laws in order to obtain the NFRL, and if such Other Environmental Condition requires remediation or abatement beyond the scope of the remedial action plan that will be implemented by Tenant through the SR Program, then Tenant shall either (a) proceed with such additional remediation at its own cost, or (b) deliver a written notice of termination of the Lease to the Landlord. In the event Tenant delivers a notice of termination under clause (b) above, Tenant shall be obligated, at its sole cost and expense, to restore the Real Estate and the Existing Improvements to the same condition as existed on the Effective Date and return possession thereof to Landlord. Upon such restoration being completed and possession tendered to Landlord, this Lease shall terminate and the parties shall have no further obligations to each other hereunder.

**6.02 Utilities.** Tenant shall pay when due all charges for water, gas, electricity, light, heat, and telephone or other communication service, and all other Utility services used in or supplied to the Real Estate and the Tenant Property.

# UNOFFICIAL COPY

**6.03 Use of Tenant Property.** The Tenant Property shall be used and occupied only for multi-family housing for low-income and extremely low-income homeless veterans of the United States Armed Forces, and for uses incidental thereto and for no other purpose, unless Landlord has consented in writing to such other use, which consent may be granted, withheld or granted with such conditions as Landlord may require, in Landlord's sole and absolute discretion. Notwithstanding anything to the contrary contained in this Lease, Landlord may not terminate this Lease by reason of an act or omission of an occupant of one of the affordable units in the Building, unless such act or omission results in a condition or circumstance that also constitutes an Event of Default under this Lease. Tenant shall promptly and diligently take all reasonable steps, in accordance with the provisions of such sub-tenant's lease and applicable Requirements, to evict a sub-tenant who materially violates any material provision of his or her lease.

**6.04 Prohibited Use.** Tenant shall not use or occupy the Property or permit the same to be used or occupied, in a manner that would (a) materially violate any construction permit or certificate of occupancy affecting the Property or any Requirement, (b) make void or voidable any insurance then in force, or make it impossible to obtain fire or other insurance required to be furnished by Tenant hereunder, (c) cause or be apt to cause structural injury to the Property, or any part thereof, or (d) materially violate any material provision of this Lease.

**6.05 Maintenance of Tenant Property.** Subject to Section 8.01, Tenant shall make all necessary repairs to and replacements of the Tenant Improvements, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, and foreseen or unforeseen, and shall maintain and keep the Tenant Improvements in good and safe order, repair and condition and in compliance with all applicable provisions of the Municipal Code of the City, including but not limited to those provisions in Title 13 ("Building and Construction"), Title 14 ("Electrical Equipment and Installation"), Title 15 ("Fire Prevention") and all applicable landscape ordinances. Tenant covenants and agrees that throughout the Term all building systems, facilities and equipment, including HVAC systems, common area lighting and the like, shall be maintained in good operating order and repair. Tenant shall indemnify, defend and hold Landlord's Protected Persons harmless from and against any and all claims and demands arising from the failure of Tenant to perform the covenants contained herein or arising from any accident, injury or damage to any person or property that shall or may happen in or upon the Property or Tenant Property, or any part thereof, however caused, other than if caused by Landlord's negligence or intentional acts or arising from any Excluded Environmental Condition, and shall keep the Property and Tenant Property free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Property and Tenant Property subject to the provisions in Sections 9.02 and 4.03 providing for contest of such liens.

**6.06 Waste.** Tenant shall not do, permit or suffer any waste, damage, disfigurement or injury to or upon the Property or Tenant Property, or any part thereof, without repairing the same within a reasonable period of time. Tenant shall have the right at any time and from time to time to sell or dispose of any equipment or fixtures subject to this Lease that may have become obsolete or unfit for use or that is no longer useful, necessary or profitable in the conduct of Tenant's business; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property or Tenant Property other

# UNOFFICIAL COPY

equipment or fixtures at least of equal quality and utility in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion set forth in written notice to Landlord, the property so removed was performing an obsolete function and replacement thereof is not necessary or appropriate to maintain the operation or character of the Property or Tenant Property, or the use and occupancy by residents and licensees of the Tenant Property or its overall value without impairment.

**6.07 Compliance with Requirements.** Tenant shall comply, at its own expense, with all Requirements during the Term and with the reasonable requests of any insurance company having a policy outstanding with respect to the Property or Tenant Property, or any part thereof, whether or not such Requirements or requests require the making of structural alterations or the use or application of portions of the Property or Tenant Property, for compliance therewith, or interfere with the use and enjoyment of the Property or Tenant Property, and shall indemnify, defend and hold harmless Landlord's Protected Persons from and against all fines, penalties, and claims for damages of every kind and nature arising out of any failure to comply with any such Requirement or request. It is the intention of the parties that Tenant during the Term shall discharge and perform all obligations of Landlord, as well as all obligations of Tenant arising as aforesaid, and hold harmless Landlord's Protected Persons therefrom (subject, if applicable, to any claim may have Tenant against Landlord with respect to any Excluded Environmental Conditions), so that at all times the Rent shall be net to Landlord without deductions or expenses on account of any such Requirement or request, whatever it may be. Tenant may, in good faith upon prior written notice to Landlord (and wherever necessary, in the name of, but without expense to, Landlord) and receipt of Landlord's written consent, which shall be in Landlord's sole discretion, and after having secured Landlord to its reasonable satisfaction against loss or damage, by cash or by a letter of credit or surety bond in an amount, with an issuer or surety, and in form and substance reasonably satisfactory to Landlord, contest the validity of any such Requirement and, pending the determination of such contest, may postpone compliance therewith, provided that in no event shall such contest or postponement: (i) subject Landlord, the Property or the Tenant Property to any fine or penalty or to prosecution for a crime; (ii) cause the Property and Tenant Property, or any part thereof, to be condemned or to be vacated; or (iii) cause any material interference with the operation of the Property or Tenant Property for the purposes set forth in Section 6.03 or the occupancy, use, benefit and enjoyment thereof by any sub-tenant of the Development. Notwithstanding anything to the contrary in this Section 6.07, Tenant has no compliance responsibility or liability for matters existing prior to the commencement of the Term except as provided in Section 5.05 hereof.

**6.08 Exculpation of Landlord.** Except as otherwise set forth in the Lease Landlord shall not be responsible or liable for any destruction, damage or injury to any property or to any person or persons at any time on the Property or Tenant Property resulting from any casualty, occurrence or condition occurring or existing during the Term of this Lease; provided the foregoing shall not serve to prohibit Tenant from asserting claims Tenant may have against Landlord with respect to Excluded Environmental Conditions. Notwithstanding the foregoing, Landlord shall be responsible and liable for all destruction, physical damage or injury to persons resulting from (a) its negligence, and/or (b) its use and operation of certain above ground storage tanks on property adjacent to the Real Estate. Tenant shall indemnify, defend and hold Landlord's Protected Persons harmless from and against any and all claims, liability, penalties, damages, expenses and judgments arising from injury to persons or property of any

# UNOFFICIAL COPY

nature and also for any matter or thing arising out of or resulting as a direct or indirect consequence from the use or occupancy of the Property or Tenant Property; provided, however, that the foregoing indemnity shall not extend to any claims arising as a result of Landlord's negligence and intentional acts.

**6.09 Exculpation of Leasehold Mortgagee.** Until the earlier of such time as Leasehold Mortgagee becomes a mortgagee in possession or takes title to the Leasehold Estate, whether by foreclosure sale or assignment of this Lease in lieu of foreclosure, no Leasehold Mortgagee shall, except to the extent of the gross negligence or willful misconduct of such Leasehold Mortgagee, its agents and employees, be responsible or liable for any destruction, damage or injury to any property or to any person or persons at any time on the Property or Tenant Property resulting from any casualty, occurrence or condition occurring or existing during the Term of this Lease.

**6.10 Landlord's Right of Entry.** Landlord shall have the right, upon reasonable advance notice to Tenant and sub-tenants, when appropriate, on any business day, to enter upon the Property or Tenant Property, for the purpose of ascertaining the condition thereof, or whether Tenant is observing and performing the obligations assumed by it under this Lease, or to make any repairs or perform any work, all without hindrance or molestation from Tenant, or anyone claiming by, through or under Tenant, whether as subtenant or otherwise. The above mentioned rights of entry shall be exercisable at reasonable times, at reasonable hours and on reasonable advance notice; provided, however, that entry may be made at any time without notice in the event of an emergency (although Landlord shall endeavor to give Tenant prior notice thereof). Nothing contained herein, however, shall impose or imply any duty on the part of Landlord to make any such repairs or perform any such work.

**6.11 No Liens.** Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanics' or other lien for any such labor or material shall attach to or affect the estate or interest of Landlord in and to the Property, the Tenant Property (as applicable) or any part thereof.

**6.12 Snow Removal.** Following completion of the Tenant Improvements, Tenant shall provide and pay for prompt removal of snow and ice from the 38-stall parking lots constructed on the Property, and the sidewalks adjacent to the Property and Tenant Property, and shall assume total responsibility for failure to do so. Tenant acknowledges that Landlord shall have no snow or ice removal duties with respect to such parking lots or sidewalks for the Development, but Landlord shall be responsible for removal of snow and ice from the Other Land (as defined in Section 4.06) during the Term of the Lease.

**6.13 No Other Rights.** This Lease does not give Tenant any other right with respect to other property owned by the Landlord, including, without limitation, the Other Land. Any rights not specifically granted to Tenant by and through this Lease are reserved exclusively to Landlord. Execution of this Lease does not obligate Landlord to perform any additional duties or services except as expressly set forth in this document.

# UNOFFICIAL COPY

**6.14 Permits.** For any activity which Tenant desires to conduct on the Real Estate in which a license or permit is required, said license or permit must be obtained by Tenant prior to using the Property or Tenant Property for such activity.

**6.15 Security.** Tenant acknowledges that Landlord shall have no security obligations relative to Tenant's use of the Property or Tenant Property. Tenant shall assume responsibility for properly securing the Property or Tenant Property.

**6.16 Repairs for Tenant Negligence, Vandalism, or Misuse.** Tenant shall assume all responsibility for any repairs to any portion of the Property, Tenant Property or Development necessitated by the negligence, vandalism, misuse, or other acts of Tenant, or Tenant's contractors, licensees, invitees, or agents, or third parties.

## ARTICLE 7

### Insurance

**7.01 Maintenance of Insurance.** During the Term, Tenant shall, at its sole expense, obtain and maintain, or cause to be obtained and maintained policies of insurance satisfying the requirements set forth on Exhibit D ("Required Insurance").

**7.02 Form of Policies.** Any policies of fire and casualty insurance covering the Development (whether during construction or following Final Completion), shall expressly provide that any losses thereunder shall be adjusted with Tenant and all Leasehold Mortgagees as their interests may appear (or, absent any Leasehold Mortgagees, with Landlord). All such insurance shall be carried in the name of Tenant and loss thereunder shall be payable to Tenant and the Leasehold Mortgagees, if any, and Landlord, as their respective interests may appear.

**7.03 Evidence of Insurance and Payment.** Upon the execution and delivery of this Lease, and thereafter not later than fifteen (15) days prior to the expiration date of an expiring policy theretofore furnished pursuant to this Article, certificates of insurance evidencing the Required Insurance coverages, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord. Upon request from Landlord, Tenant shall deliver to Landlord duplicate originals or certified copies of the policies required by this Article 7.

**7.04 Separate Insurance.** Tenant shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required in this Article to be furnished by or that may reasonably be required to be furnished by Tenant unless Landlord is included therein as an additional insured, with loss payable as required in this Lease. Tenant shall immediately notify Landlord of it obtaining any such separate insurance and shall deliver duplicate originals or certified copies of the policy or policies so obtained as provided in Section 7.03.

**7.05 Cancellation.** Each policy of insurance delivered hereunder shall contain an agreement by the insurer that such policy shall not be cancelled or materially altered without at least thirty (30) days' prior written notice given to Landlord and to each Leasehold Mortgagee named in such policy.

# UNOFFICIAL COPY

## ARTICLE 8

### Damage and Restoration

#### **8.01 Damage or Destruction.**

(a) In the event of any damage to or destruction of the Tenant Improvements during the Term, Tenant shall give Landlord immediate notice thereof and, Tenant shall promptly and diligently restore, replace, rebuild and repair the same as nearly as possible to the value, condition and character immediately prior to such damage or destruction as may be allowed by applicable laws at the time of the damage or destruction (“Restoration”), in accordance with the following provisions of this Article 8. The foregoing obligation to restore, replace, rebuild and repair the Tenant Improvements shall apply notwithstanding that Insurance Proceeds are applied by a Leasehold Mortgagee to reduce its debt in accordance with Section 8.05. Landlord shall have no duty to restore, replace, rebuild or repair the Tenant Property or any portion thereof, or to pay any of the costs or expenses thereof. All work in connection with such Restoration, replacement, rebuilding and repairing, including all temporary repairs to the Tenant Property or repairs made for the protection of the Tenant Property pending the completion of the permanent restoration, replacement, rebuilding and repairing, is hereinafter collectively referred to as “Full Restoration.” In the event of any damage to or destruction of the Tenant Improvements occurring during the Term, Tenant shall, upon demand, deposit with the First Leasehold Mortgagee (or, if none, with Landlord), or into the Restoration Escrow (as hereinafter defined), the amount of any applicable deductible or self-insurance (the “Deductible”). If the Net Insurance Proceeds (as that term is hereinafter defined) available for a particular Restoration (as hereinafter defined) plus the amount of the Deductible, are insufficient to accomplish the Full Restoration, or if the Net Insurance Proceeds are not made available by First Leasehold Mortgagee for a Full Restoration then Landlord may terminate this Lease by written notice to Tenant and all Leasehold Mortgagees, unless: (1) within ninety (90) days after the amount of Net Insurance Proceeds has been determined, Tenant deposits with the First Leasehold Mortgagee (or, if none or if the First Leasehold Mortgagee is to be repaid with the Net Insurance Proceeds, with Landlord) cash, a letter of credit and/or evidence satisfactory to the First Leasehold Mortgagee (or, if none or if the First Leasehold Mortgagee is to be repaid with the Net Insurance Proceeds, to Landlord) of the availability of funds (from a loan or otherwise) in an amount equal to the Restoration Deficiency (as hereinafter defined); or (2) within ninety (90) days after the expiration of said 90-day period, any one or more of the Leasehold Mortgagees and/or any other Person so deposits the Restoration Deficiency with the First Leasehold Mortgagee (or, if none or if the First Leasehold Mortgagee is to be repaid with the Net Insurance Proceeds, with Landlord) or into the Restoration Escrow; or (3) within one hundred eighty (180) days after the amount of Net Insurance Proceeds has been determined, the First Leasehold Mortgagee agrees to make the Net Insurance Proceeds available for such Full Restoration and Tenant and/or any one or more of the Leasehold Mortgagees and/or any other Person so deposits the Restoration Deficiency with the First Leasehold Mortgagee; The determination of whether the Net Insurance Proceeds are sufficient for a Full Restoration and that such Full Restoration is feasible, shall be made by the First Leasehold Mortgagee in accordance with the requirements of the First Leasehold Mortgagee (or, if there is no First Leasehold Mortgagee, by Landlord). The First Leasehold Mortgagee shall consult with the other Leasehold Mortgagees with respect to the application of the Net Insurance Proceeds;

# UNOFFICIAL COPY

provided however that in the event of any disagreement between the First Leasehold Mortgagee and the other Leasehold Mortgagees over the application of the Net Insurance Proceeds, the decision of the First Leasehold Mortgagee, in its sole discretion, shall prevail. The Second Leasehold Mortgagee, Third Leasehold Mortgagee, Fourth Leasehold Mortgagee and Fifth Leasehold Mortgagee shall be deemed to agree to the terms of this Article 8 upon the recording of their respective Leasehold Mortgages against the Tenant Property.

As used herein, the term "Restoration Deficiency" shall mean additional funds in an amount sufficient, when added to the Net Insurance Proceeds available for a Restoration plus the Deductible, to complete such Restoration. If this Lease is terminated pursuant to this Section 8.01(a), with respect to a portion of the Real Estate only then, at the option of Landlord, Tenant shall, at Tenant's sole expense, demolish and/or remove such of the Tenant Improvements on such portion of the Real Estate as are designated by Landlord, provided that, if the costs of such demolition and removal exceed the Deductible, sufficient Net Insurance Proceeds are made available to Tenant for that purpose.

(b) If there is to be a Restoration, all Proceeds shall be deposited in a construction disbursement escrow among the Lenders, Landlord and Tenant and a mutually acceptable title company (the "Restoration Escrow") (or, if there is no First Leasehold Mortgagee, with Landlord), and disbursed to pay the costs of such Restoration.

**8.02 Adjustment of Insurance Claims and Disbursements.** Adjustment of any insurance claim shall, subject to the terms of any Leasehold Mortgage, be negotiated by Tenant. All insurance proceeds shall be deposited with the First Leasehold Mortgagee (or, if none, with Landlord) or into a Restoration Escrow, and administered as set forth in this Lease. All insurance proceeds received by Landlord or Tenant on account of such damage or destruction, less the actual costs, expenses and fees, if any, incurred in connection with the adjustment of the loss (the "Net Insurance Proceeds"), shall be applied in accordance with the terms of this Article. Such Net Insurance Proceeds plus the Deductible shall be paid out from time to time as such Restoration progresses and is approved. All Proceeds held by the First Leasehold Mortgagee for purposes of Restoration shall be held in trust for the benefit of Tenant and the funding of such restoration work.

**8.03 Deficiencies.** If, at any time during the course of a Restoration, the projected Restoration Deficiency increases, Tenant shall either, before proceeding with the Restoration, deposit with the First Leasehold Mortgagee (or, if none, with Landlord) cash, a letter of credit and/or evidence satisfactory to Landlord of the availability of funds (from a loan or otherwise) in an amount equal to the increase in the Restoration Deficiency, or deliver to the First Leasehold Mortgagee (or, if none, to Landlord) a surety bond from a company and in form and substance satisfactory to the First Leasehold Mortgagee (or, if none, to Landlord), for such increase in the Restoration Deficiency, the premium for which shall have been paid by Tenant. Thereupon, Tenant may proceed with the Restoration.

**8.04 Landlord's Right to Complete.** If a Restoration is commenced or required to be commenced, and if Tenant fails to promptly and diligently commence and complete such Restoration, Landlord may complete the same and apply the Net Insurance Proceeds plus the Deductible and any additional funds provided by Tenant to the cost of Restoration. Landlord

# UNOFFICIAL COPY

shall not exercise its right to complete the Restoration without first (a) giving all Leasehold Mortgagees written notice of Landlord's intent to exercise its right to complete the Restoration, and (b) providing the opportunity to the Leasehold Mortgagees, within at least sixty (60) days from the date of the written notice, to commence such Restoration and to thereafter promptly and diligently complete such Restoration.

**8.05 Leasehold Mortgages.** Except as provided in Section 8.01: (1) all provisions of this Article 8 are subject to the rights of the First Leasehold Mortgagee and the provisions of the First Leasehold Mortgage regarding Restoration; (2) the provisions of the First Leasehold Mortgage shall govern in the event of any conflict or inconsistency between the provisions of this Article 8 and the provisions of the First Leasehold Mortgage; and (3) application of Net Insurance Proceeds shall be subject to the terms of the Leasehold Mortgages, and the respective priorities of such Leasehold Mortgagees thereunder, including the Leasehold Mortgagees' rights, if any, to apply proceeds of insurance to the payment of outstanding debt owed by Tenant to such Leasehold Mortgagees in lieu of Restoration. In such an event, Landlord and Tenant shall adjust any remaining balance of insurance proceeds as their respective interests may be affected by such damage or destruction, and this Lease shall terminate as to the affected portions of the Real Estate. No termination of this Lease shall occur under this Article 8 so long as at least one Leasehold Mortgagee is diligently proceeding to obtain such insurance proceeds and, if applicable, to exercise its rights with respect to the Restoration; provided, however, that the foregoing prohibition against termination shall no longer be applicable when the First Leasehold Mortgagee elects in writing to apply such insurance proceeds to repay outstanding debt in lieu of Restoration.

## ARTICLE 9

### Title and Ownership; Leasehold Mortgage

#### **9.01 Restrictions on Transfer.**

(a) Except for Permitted Transfers and Permitted Refinancings, Tenant shall not, directly or indirectly, at any time without the prior written consent of Landlord: (A) sell, assign, transfer, or convey (any, a "Transfer") all or any part of its interest under this Lease or (B) sell or permit the sale of any ownership interest in Tenant, or (C) Transfer all or any part of any structure or Tenant Improvement located on the Real Estate; or (D) sublet all or any part of the Tenant Property except for subletting of the dwelling units to subtenants pursuant to subleases with a term (including options to extend or renew) not in excess of one (1) year. Landlord's consent to any of the foregoing may be granted, withheld or granted with such conditions as Landlord shall require, in its sole and absolute discretion.

(b) If a Permitted Transfer consisting of a Transfer of the Leasehold Estate occurs, the transferee or assignee shall enter into an assumption agreement with Landlord by which it assumes all of Tenant's rights and obligations under this Lease. Thereafter, the transferee or assignee shall succeed to all rights and obligations of Tenant under this Lease, and shall be deemed a permitted assignee of Tenant, and Tenant making such Transfer shall be and hereby is relieved of any continuing obligations hereunder arising thereafter and such permitted



# UNOFFICIAL COPY

assignee, by accepting such assignment, shall be deemed to have assumed all obligations hereunder arising after such assignment.

(c) Landlord shall not, without the prior written consent of Tenant and all Leasehold Mortgagees, mortgage or create a lien upon (i) all or any part of the Real Estate, or (ii) all or any part of its interest in this Lease or any Existing Improvement or Tenant Improvement. Landlord represents and warrants to Tenant and all Leasehold Mortgagees that the Real Estate is not subject to any lien, mortgage lien or encumbrance effective as of the Effective Date.

(d) The parties acknowledge that it may become necessary to grant easements and/or licenses over, under, upon and across the Real Estate for the provision of gas, electricity, telephone service, cable television, Internet access, water, sewer, and other utilities to serve the Tenant Improvements. All such easements and licenses shall be subject to the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. If required, Landlord shall grant or join with Tenant in the grant of such easements and licenses, so as to subject Landlord's interest in the Real Estate to such easements and licenses. All costs in connection with such easements and licenses shall be borne by Tenant.

**9.02 Liens.** Other than the Permitted Exceptions, any Permitted Refinancing and the Leasehold Mortgages permitted in Section 9.03, Tenant shall not create or permit to be created or to remain, and shall promptly discharge, any lien (including but not limited to any mechanic's, contractor's, subcontractor's or materialman's lien or any lien, encumbrance or charge arising out of any Imposition, conditional sale, title retention agreement, chattel mortgage, security agreement, financing statement or otherwise) upon the Property or Tenant Property, as applicable, or any part thereof, or the income therefrom, and Tenant shall not suffer any matter or thing whereby the estate, rights and interests of Landlord in the Property or Tenant Property, or any part thereof, will be impaired (excluding any impairment, lien or encumbrance arising by action of Landlord). Notwithstanding the foregoing prohibitions, Tenant shall have the right to contest any such lien upon compliance with the same conditions as are applicable to the contest of any Imposition under Section 4.03 or to provide title insurance over any such lien in a manner reasonably satisfactory to Landlord. If Tenant shall fail to cause any such matter to be discharged of record or contested in the foregoing manner, then Landlord may, but shall not be obligated to, in addition to any other right or remedy, discharge such lien at any time after delivery of notice to Tenant, either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bonding proceedings or otherwise, and in any such event Landlord shall be entitled, if it so elects, to compel the prosecution of an action for foreclosure of such lien by the lienholder and to pay the amount of judgment in favor of the lienholder with interest, costs and allowances. Any amount so paid by Landlord and all reasonable costs, expenses and fees incurred by Landlord in connection therewith shall be reimbursed by Tenant to Landlord upon demand. This Lease shall constitute notice that Landlord shall not be liable for any work performed or to be performed, or any materials furnished or to be furnished, at the Real Estate for Tenant or any subtenant upon credit, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Real Estate, unless such work or materials is specifically ordered by Landlord in writing.

# UNOFFICIAL COPY

## 9.03 Leasehold Mortgage.

(a) In order to enable Tenant to finance a portion of the cost of construction of the Development, Tenant shall have the right, at or prior to commencement of construction of the Tenant Improvements required under Section 5.01, to grant and record the First Leasehold Mortgage, Second Leasehold Mortgage, Third Leasehold Mortgage, Fourth Leasehold Mortgage and Fifth Leasehold Mortgage against the Tenant Property. The aggregate amounts financed by Tenant through the Leasehold Mortgages shall at no time not exceed the aggregate of the hard and soft costs estimated to be incurred by Tenant to achieve Final Completion of the Tenant Improvements as identified in the Project Cost Budget delivered to Landlord as a part of the Construction Requirements, or such other greater amount, if any, as is approved by Landlord in its sole discretion. **LANDLORD'S INTEREST IN THE PROPERTY, TENANT PROPERTY (AS APPLICABLE) OR THIS LEASE SHALL AT NO TIME BE ENCUMBERED BY AND SHALL AT NO TIME BE SUBJECT OR SUBORDINATE TO ANY LEASEHOLD MORTGAGE (I.E. THE FORECLOSURE OF ANY SUCH LEASEHOLD MORTGAGE SHALL NOT DIVEST LANDLORD OF ITS FEE SIMPLE TITLE OR REVERSIONARY INTEREST).** For purposes of this Article 9, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. A Leasehold Mortgagee may become the holder of the Leasehold Estate and succeed to Tenant's interest under this Lease by foreclosure of its Leasehold Mortgage (either in its own name or in the name of its nominee) or as a result of the assignment of the Tenant's interest under this Lease in lieu of foreclosure, and any purchaser at any sale of Tenant's interest under this Lease in any proceeding for the foreclosure of any Leasehold Mortgage or the assignee or transferee of Tenant's interest under this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee approved by Landlord and shall be deemed to have agreed to perform all of the obligations of Tenant from and after the date of such assignment, but only for so long as such purchaser, assignee or transferee is the owner of the Leasehold Estate.

(b) If an Event of Default by Tenant occurs, Landlord agrees that it will not terminate this Lease or take possession of the Tenant Property until Landlord delivers a written notice to each of the Leasehold Mortgagees stating that an Event of Default exists under this Lease and reasonably describing the Event of Default ("Notice of Tenant Default") and thereafter: (i) any Leasehold Mortgagee shall cure the default within 180 days after expiration of the time for Tenant to cure said default, or if such default cannot reasonably be cured within said 180-day period, and any Leasehold Mortgagee in good faith commences within said 180-day period and thereafter diligently prosecutes all actions required to cure such default, such longer period as may be reasonably necessary; or (ii) within 180 days after notice of such default by Landlord to a Leasehold Mortgagee, such Leasehold Mortgagee commences legal proceedings (herein called "foreclosure proceedings") to foreclose the lien of its Leasehold Mortgage and if such Leasehold Mortgagee diligently proceeds with its foreclosure proceedings or obtains a deed or assignment in lieu of foreclosure (including seeking to be put in possession as mortgagee-in-possession or seeking to obtain the appointment of a receiver in such foreclosure proceedings).

# UNOFFICIAL COPY

The foregoing 180 day periods shall be extended for so long as such Leasehold Mortgagee is enjoined or stayed in any bankruptcy or insolvency proceedings filed by or against Tenant. In addition, an Event of Default may be specific to Tenant's status, solvency or condition and therefore, cannot be cured by the payment of money or the taking of affirmative action by such Leasehold Mortgagee ("Incurable Tenant Default"). Nothing in this Article 9 shall require any Leasehold Mortgagee, as a condition to the exercise of rights provided under this Article 9, to cure any Incurable Tenant Default. Landlord shall not terminate the Lease or take possession of the Tenant Property solely upon the occurrence of an Incurable Tenant Default, until the cure period provided in (b)(ii) above has expired without any Leasehold Mortgagee having commenced foreclosure proceedings. The foregoing shall not be deemed to excuse a Leasehold Mortgagee from performing covenants relating to the construction or condition of the Tenant Improvements on the Leasehold Estate or other similar matters requiring access to and/or control of the Tenant Property from and after such time as such Leasehold Mortgagee acquires possession of the Tenant Property or Tenant's Leasehold Estate by receivership, foreclosure or otherwise, provided that the Construction Completion Deadline shall be extended accordingly during any such period given to initiate and complete any foreclosure proceeding. If no Leasehold Mortgagee commences and prosecutes either curative action or foreclosure proceedings within the time periods as provided above, Landlord may invoke any or all of its remedies under this Lease, including the remedy of termination. In the event the purchaser at the foreclosure sale or the assignee of such purchaser or the recipient of any deed or assignment in lieu of foreclosure acquires the Leasehold Estate and Tenant's interest in the Tenant Improvements, such purchaser or assignee shall thereupon become Tenant under this Lease and shall be conclusively deemed to have assumed, and hereby agrees to assume and perform each and all of Tenant's obligations and covenants hereunder from and after the date that such purchaser or assignee acquires the Leasehold Estate and Tenant's interest in the Tenant Improvements. Such obligations shall include the correction or cure of any waste committed by Tenant with respect to the Property or Tenant Property.

(c) In the event there is a First Leasehold Mortgage, Landlord agrees that it will not accept a surrender of the Tenant Property or a cancellation of this Lease from Tenant prior to the expiration of the Term of this Lease and will not amend this Lease without in each case obtaining the prior written consent of the First Leasehold Mortgagee.

(d) Each Leasehold Mortgagee, by accepting its Leasehold Mortgage, agrees for the benefit of Landlord:

(i) that such Leasehold Mortgagee will use reasonable efforts to give to Landlord notice of all events of default declared by such Leasehold Mortgagee with respect to its Leasehold Mortgage Loan that give such Leasehold Mortgagee the right of acceleration, concurrently with or promptly after notice thereof is given to Tenant; and Landlord shall have the right, but shall not be obligated, to cure any such defaults on the part of Tenant within the time period, if any, allowed by the Leasehold Mortgage; and

(ii) prior to commencing foreclosure proceedings or accepting a deed or assignment in lieu of foreclosure, such Leasehold Mortgagee shall give Landlord a written notice describing the action proposed to be taken by such Leasehold Mortgagee and stating the aggregate amount of the indebtedness then due and secured by the Leasehold Mortgage, and

# UNOFFICIAL COPY

setting forth in reasonable detail the respective portions of said indebtedness attributable to principal, interest, attorneys' fees and expenses and other costs, fees and expenses. Landlord shall have a period of thirty (30) days after Landlord receives such notice from such Leasehold Mortgagee within which Landlord, at its election, may purchase (but shall have absolutely no obligation to purchase) from such Leasehold Mortgagee, without representation, warranty or recourse (other than as to Leasehold Mortgagee's ownership of the Leasehold Mortgage and the purchase price), the Leasehold Mortgage, the indebtedness secured thereby, and any other security held by such Leasehold Mortgagee for such indebtedness, for a purchase price equal to the amounts due such Leasehold Mortgagee under the Leasehold Mortgage.

(e) So long as the First Leasehold Mortgage is in existence, unless the First Leasehold Mortgagee shall otherwise expressly consent in writing, the fee title to the Real Estate and the Leasehold Estate shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of said fee title and Leasehold Estate by the Landlord, other than by termination of this Lease by Landlord in compliance with the provisions of this Article 9.

(f) Notwithstanding any provisions to the contrary in Sections 6.05, 6.07, 6.08, 9.03(b), 11.02 or 20.03, Landlord agrees (without waiving any rights that Landlord may have against any former Tenant) that: (a) the First Leasehold Mortgagee or purchaser at a foreclosure sale or assignee or transferee in lieu of foreclosure of a First Leasehold Mortgage that succeeds to the Leasehold Estate and becomes a successor Tenant hereunder (a "Successor") shall not be responsible for any then existing indemnification of the former Tenant except to the extent the indemnification obligation relates to an act, omission or condition that continues after such Successor's succession to Tenant's possessory or leasehold interest and gives rise to additional damages or claims after such succession; (b) such Successor shall not be required to cure an Incurable Tenant Default; and (c) failure by such Successor to cure an Incurable Tenant Default or to assume such existing indemnification obligations of the former Tenant shall not constitute a basis for not recognizing such Successor as the successor Tenant or for terminating this Lease.

## **9.04 Temporary Parking Easement**

Tenant hereby grants, gives and conveys to Landlord and its employees and invitees (the "Permitted Users") a temporary, non-exclusive easement for (1) vehicular access and parking for automobiles (excluding delivery trucks, semi-trailer trucks and other commercial transportation vehicles) in the "temporary parking areas" shown on Exhibit E, and (2) pedestrian ingress and egress over and through the "pedestrian areas" shown on Exhibit E (the "Temporary Easements"). The Temporary Easements provided in this Section 9.04 shall terminate on the earlier of (1) one business day after the Landlord has completed construction of the Replacement Parking Lot, and (2) May 15, 2015. Landlord shall be responsible for communicating the termination of the easement to the Permitted Users, and for the prompt removal of any parked vehicles that may impede installation of a construction fence around the Property following such termination. Upon one business day's written notice to Landlord, Tenant may change the size, scope and location of the Temporary Easements if necessary in order to avoid any interference with the construction work site associated with the Remediation of the Pre-Existing Conditions. Any such modifications made by Tenant shall not be more

# UNOFFICIAL COPY

extensive than necessary to provide a safe work site and allow for the completion of the Remediation.

Landlord shall be solely responsible, at its own cost and expense, for repairing and maintaining the “temporary parking areas” and “pedestrian areas” during the term of the Temporary Easements in a safe and useable condition for its intended purpose. To that end, Landlord shall be responsible for snow and ice removal and repairing any damage to the temporary parking areas and pedestrian areas caused by the Permitted Users to the extent such damage renders the same unsafe for the applicable uses. With regard to the foregoing, Landlord shall comply with any and all applicable federal, state and municipal ordinances, statutes, guidelines, requirements and regulations.

## ARTICLE 10

### Tenant Default: Rights and Remedies of Landlord

**10.01 Tenant’s Event of Default.** Each of the following events shall be an “Event of Default” by Tenant under this Lease:

(a) Tenant’s failure to pay, when due, any installment of Rent or any other amount to be paid by Tenant to Landlord under this Lease, and such failure shall continue for a period of thirty (30) days after written notice from Landlord specifying such failure;

(b) Tenant’s failure to pay, when due, any Impositions or installments thereof, and such failure shall continue for a period of thirty (30) days thereafter;

(c) The lapse or cancellation of any Required Insurance.

(d) Tenant shall be in default under Section 9.01(a);

(e) Tenant shall fail to perform or observe any other material obligation, term or provision under this Lease and such failure continues beyond sixty (60) days after written notice from Landlord to Tenant specifying such Event of Default; provided, however, that if Tenant in good faith commences within said 60-day period and thereafter diligently prosecutes all actions required to cure such default, Tenant shall be allowed a reasonable additional period to effect such cure;

(f) a petition in bankruptcy is filed by or against Tenant, or if Tenant makes a general assignment for the benefit of creditors or is adjudged insolvent by any state or federal court, and in the case of any such involuntary petition, action or proceeding not initiated by Tenant such petition, action or proceeding is not dismissed or stayed within ninety (90) days after the commencement of such petition, action or proceeding; and

(g) Tenant shall fail to commence construction of the Development in accordance with the Plans and Specifications prior to ninety (90) days following the closing of the First Leasehold Mortgage or Tenant shall fail to complete the construction of the Development in accordance with the Plans and Specifications prior to the Construction Completion Deadline,

# UNOFFICIAL COPY

and such failure continues for a period of sixty (60) days after written notice from Landlord specifying such failure.

**10.02 Termination.** If an Event of Default shall occur, Landlord may not terminate this Lease for so long as the provisions of Sections 9.03 or 21.01 preclude such termination. Otherwise Landlord, at its option, at any time thereafter during the continuance of such Event of Default, may give to Tenant and all Leasehold Mortgagees a notice of termination of this Lease, and, upon the giving of such notice this Lease and all of Tenant's rights under this Lease shall expire and terminate as if that date were the date herein originally fixed for the expiration of the Term of this Lease, and Tenant shall vacate and surrender the Property and Tenant Improvements to Landlord.

**10.03 Transfer of Deposits, etc.** If this Lease terminates under Section 10.02, all unearned insurance premiums, all deposits theretofore made by Tenant with utility companies, any claims for refund of any Imposition, any pending claims for insurance proceeds or condemnation awards, and all fuel and supplies on the Property or Tenant Improvements owned by Tenant shall be deemed to be and are hereby assigned to and transferred to Landlord to be applied in payment of Tenant's liability under this Lease.

**10.04 Re-entry.** If this Lease terminates under Section 10.02 or by operation of law or otherwise, Landlord may without further notice re-enter and repossess the Property and Tenant Improvements.

**10.05 Injunctive Relief.** In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled, after expiration of any applicable notice and cure period, to injunctive relief against such breach or threatened breach, and shall have the right to invoke any right or remedy available at law or in equity or by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Lease.

**10.06 Re-letting by Landlord.** If Landlord terminates this Lease under Section 10.02, Landlord may re-let the Property and Tenant Improvements or any part thereof and receive the rent therefor, whether such rent is in the aggregate greater than or less than the Rent payable hereunder. Landlord shall not be responsible or liable in any way for failure to re-let the Property or Tenant Improvements or any part thereof or for failure to collect any rent due on such re-letting, except as required by law to mitigate Landlord's damages.

**10.07 Receipt of Monies: No Waiver.** No receipt of money by Landlord from Tenant after termination of this Lease shall reinstate, continue or extend the term of this Lease or of any notice of termination theretofore given to Tenant, or operate as a waiver of Landlord's right to enforce the payment of Rent and any other payments or charges herein reserved or agreed to be paid by Tenant, then or thereafter falling due, or operate as a waiver of Landlord's right to recover possession of the Property or Tenant Improvements by proper remedy, it being agreed that after service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after final order for the possession of the Property or Tenant Improvements, Landlord may demand and collect any monies due or thereafter falling due in any manner without affecting such notice, proceeding, order, suit or judgment, and all such

# UNOFFICIAL COPY

monies collected shall be deemed paid on account of the use and occupancy of the Tenant Property or, at Landlord's election, on account of Tenant's liability hereunder.

**10.08 No Implied Waivers.** Landlord's granting of a consent under this Lease, or Landlord's failure to object to an action taken by Tenant without Landlord's consent under this Lease, shall not be deemed a waiver by Landlord of its right to require such consent for any further similar act of Tenant. No waiver by Landlord of any breach of any of the conditions, covenants or agreements of this Lease shall be construed, taken or held to be a waiver of any other breach or be a waiver, acquiescence in or consent to any further or succeeding breach of the same term, condition, covenant or agreement. None of Tenant's covenants, agreements, obligations or undertakings under this Lease, and no breach thereof, may be waived, altered or modified except by a written instrument executed by Landlord.

**10.09 Remedies Not Exclusive.** Subject to provisions of Article 18 and other provisions of this Lease restricting Landlord's right to terminate this Lease, no right, power or remedy conferred upon or reserved to Landlord under this Lease or under law shall be considered exclusive of any other right, power or remedy, but shall be cumulative and shall be in addition to those existing at law or in equity, or by statute or otherwise, and may be exercised from time to time, without precluding Landlord's simultaneous or later exercise of any or all other rights, powers or remedies. No delay or omission of Landlord in exercising any right, power or remedy arising from any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default.

**10.10 Waiver of Notice.** Tenant expressly agrees that any notice of intention to re-enter provided in any statute or to initiate legal proceedings to that end shall run concurrently with any applicable notice period provided hereby so that any required notice period shall not be longer than the longer of such statutory notice or notice required under this Lease. Tenant waives, for and on behalf of itself and all persons and parties claiming through or under it (other than any Leasehold Mortgagee), any and all right of redemption provided by any law or now in force or hereafter enacted or otherwise, for re-entry or repossession, or to restore the operation of this Lease, in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge, or in case of re-entry or repossession by Landlord, or in case of any expiration or termination of this Lease.

**10.11 Suits for Damages.** Suits for damages or deficiencies, or for a sum equal to any installments of Rent, Impositions and other charges and payments hereunder shall be subject to the provisions of Article 18.

**10.12 Bankruptcy.** Nothing in this Article contained shall limit or prejudice the right of Landlord to prove and obtain as damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to any of the preceding Sections.

# UNOFFICIAL COPY

**10.13 Leasehold Mortgagee's Rights.** It is acknowledged and agreed by Landlord that the exercise of the remedy of termination of the Lease under this Article 10 is subject to the Leasehold Mortgagee's rights granted in Section 9.03 hereof.

**10.14 Investor's Rights in the Event of Tenant Default.** The following provisions shall apply for so long as Investor is a partner of Tenant:

(a) From and after the time Tenant has delivered to Landlord a written notice identifying the name and notice address of the Investor, Landlord shall give Investor a duplicate copy of all notices of default that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Lease. Absent a written notice from Tenant as to the Identity of the Investor, Landlord shall have no duty to inquire as to the Investor's identity or to provide any notice to such Investor. Once Tenant has delivered such a notice of the Investor's identity, Landlord shall only be obligated to provide copies of default notices to the Investor (and at the address) so identified in Tenant's notice to Landlord, unless Landlord receives a subsequent notice wherein Tenant identifies a replacement Investor and/or a new address for the Investor. No notice by Landlord to Tenant under this Lease shall be effective unless or until a copy of such notice has been provided to Investor.

(b) Investor may, at its option and during the time specified for Tenant to cure any default hereunder, either pay any amount or do any act or thing required of Tenant by the terms of this Lease. All payments made and all acts performed by Investor during the cure period shall be effective to prevent a termination of this Lease to the same extent as if they had been performed by Tenant. Tenant hereby authorizes Investor to take any such action at the Investor's option and does hereby authorize entry upon the Property by Investor for such purpose.

(c) In addition to all other rights of Investor hereunder, Investor's commencement of proceedings to exercise its Removal Right shall be deemed initiation of a cure for purposes of Sections 10.01 and 10.14 provided that each of the following conditions is satisfied:

- (i) the default is one which cannot be cured only by payment of money;
- (ii) in the reasonable opinion of Investor, removal of the General Partner is necessary;
- (iii) Investor notifies Landlord within 30 days following receipt of Landlord's default notice of Investor's intention to exercise the Removal Right and does in fact perform all required activity pursuant thereto; and
- (iv) Investor is performing all other good faith commercially reasonable activity necessary to cure the default.

Notwithstanding the foregoing, the Investor shall complete the exercise of its Removal Right no later than thirty (30) days from the date the notice provided by Investor to Landlord under subsection 10.14(c)(iii) above in order to effectuate the cure.



# UNOFFICIAL COPY

## ARTICLE 11

### Additional Rights and Remedies of Landlord

**11.01 Performance by Landlord.** If an Event of Default shall occur and provided that neither a Leasehold Mortgagee nor Investor has cured such failure within the time period provided herein for such cure (provided that any notice of default required by the terms of this Lease pursuant to Section 10.2 to be given to the Leasehold Mortgagees by Landlord or pursuant to Section 10.14 to be given the Investor by Landlord has, in fact, been given), Landlord may, at its option (but shall not be required to), make any such payment or perform any such act, and for such purpose Landlord may enter upon the Property or Tenant Property, as applicable, and take all actions thereon as may be deemed by Landlord necessary or desirable therefor. Any amount paid or incurred by Landlord in effecting or attempting to cure such failure shall be additional rent due from Tenant to Landlord, and shall be payable by Tenant upon demand.

**11.02 Tenant to Provide Indemnification.**

(a) Unless arising from Landlord's negligence, willful and wanton misconduct or a breach of Landlord's obligations arising under this Lease, or until Landlord shall have re-entered the Property or Tenant Improvements upon expiration or termination of this Lease, (and, then, only with respect to acts or omissions by Landlord after such re-entry), Tenant agrees to indemnify, defend and save Landlord's Protected Persons harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, charges, costs, expenses and fees (including reasonable attorney's fees) which may be imposed upon, incurred by or asserted against Landlord's Protected Persons by reason of any of the following occurring during the portion of the Term during which such indemnitor was Tenant hereunder:

(i) any use, non-use, possession, occupation, condition (other than Excluded Environmental Conditions), operation, repair, maintenance or management of the Property, or any part thereof, or any occurrence of any of the same;

(ii) any act or omission on the part of Tenant or any subtenant, licensee or invitee, or any of its or their agents, contractors, servants, employees, licensees or invitees relating to the Property or this Lease;

(iii) any accident, injury (including death) or damage, regardless of the cause thereof, to any person or property occurring in, on or about the Property or any part thereof;

(iv) any contest permitted pursuant to the provisions of Section 4.03 or 6.07;

(v) any litigation or proceeding related to the Property or this Lease to which Landlord becomes or is made a party without fault on its part, whether commenced by or against Tenant; and

(vi) any costs which may be incurred by Landlord in enforcing any of the covenants, agreements, terms and conditions of this Lease (provided Landlord prevails in the enforcement proceeding).

# UNOFFICIAL COPY

Landlord shall not have first paid any such claim in order to exercise its rights to defense and indemnity.

## ARTICLE 12

### Eminent Domain

**12.01 Total Taking.** If, during the Term of this Lease, the entire Property, Tenant Property, or such substantial portion thereof of either shall be taken by the exercise of the power of eminent domain, and as a result thereof, the Tenant, exercising reasonable good faith judgment, determines it is economically infeasible to continue to operate the remaining portion of the Property or Tenant Property for the purposes herein stated, this Lease shall terminate on the date of vesting of title in the condemnor under such eminent domain proceedings, and all Rent and other sums payable by Tenant hereunder shall be prorated to the date of such vesting, and thereafter Tenant shall be relieved of all obligations to pay the Rent and to otherwise perform its agreements, obligations and undertakings under this Lease except those that expressly survive the termination of this Lease. Tenant shall be entitled to an award equal to the fair market value of the Leasehold Estate in the Property as to the time of the taking, and Landlord shall be entitled to an award equal to the value of the Landlord's reversionary interest in the Property at the time of the taking. The awards granted with respect to such eminent domain proceedings shall be separately determined and computed by the court having jurisdiction of such proceedings, and separate awards to Landlord and Tenant shall be made and entered, and said awards shall be paid to Landlord and, subject to Section 12.04 below, to Tenant, respectively. If this Lease is terminated under this Section, then Tenant shall, if so directed by Landlord, demolish and/or remove any damaged Existing Improvements or Tenant Improvements on any remaining Property or Tenant Property, as applicable, at the sole cost and expense of Tenant. The obligation under this Lease to demolish and/or remove the Tenant Improvements under the foregoing sentence shall not apply to any Leasehold Mortgagee (or nominee of a Leasehold Mortgagee) that succeeds to Tenant's interest under this Lease through foreclosure of its Leasehold Mortgage or deed in lieu thereof.

### **12.02 Partial Taking.**

(a) If, during the Term, less than the entire Property or Tenant Property shall be taken by the exercise of the power of eminent domain, and, in the reasonable judgment of the First Leasehold Mortgagee, condemnation proceeds attributable to Tenant's interest in the Property or Tenant Property, as applicable, are sufficient to restore the remaining portion of the Property or Tenant Property, as applicable, so as to be not materially different from the prior value, condition and character of the Property or Tenant Property, as applicable, this Lease shall not terminate but shall continue for the remainder of the Term, subject to the provisions of this Section 12.02. The amount of damages resulting to Landlord and Tenant, respectively, and to their respective interests in the Property and Tenant Property and in, to and under this Lease, by reason of such exercise and partial taking under such eminent domain proceedings shall be separately determined and computed by the court having jurisdiction of such proceedings, and separate awards and judgments with respect to such damages to Landlord and Tenant shall be made and entered, and said awards shall be paid to Landlord and Tenant, respectively, in accordance therewith; provided, however, that Landlord shall receive that portion of the award

# UNOFFICIAL COPY

made as consequential damages to the Existing Improvements and Tenant shall receive that portion of the award made as consequential damages to the Tenant Improvements, in either case where such improvements are located on the remaining portion of the Property. Thereafter, Tenant, at its expense, shall forthwith restore the remaining portion of the Property or Tenant Property, as applicable, to substantially the same value, condition and character as existed prior to such taking. If Tenant is obligated to restore the Property or Tenant Property, the proceeds of the award shall be deposited in the Restoration Escrow and disbursed to pay the costs of such restoration. If the sum of such awards is not sufficient, Tenant shall have the right, but not the obligation, to provide the additional funds required. Landlord shall have no obligation to provide any additional funds.

(b) If the First Leasehold Mortgagee reasonably determines that condemnation proceeds are insufficient to restore that portion of the Property or Tenant Property remaining after the taking so as to be not materially different than the value, condition and character of the Property or Tenant Property prior to such taking, and neither Tenant nor any Leasehold Mortgagee deposits into the Restoration Escrow the additional funds necessary to satisfy such deficiency within ninety (90) days after the condemnation award, then the condemnation proceeds shall be applied as set forth in Section 12.01 and the requirements of Section 8.05 shall apply.

**12.03 Temporary Taking.** In the event of a taking for a temporary use, this Lease and the Term shall continue and the Rent thereafter due and payable shall be equitably reduced or abated. Tenant shall continue to perform and observe all of the other covenants, agreements, terms and conditions of this Lease. The entire amount of any proceeds with respect to such temporary taking shall be paid to Tenant.

**12.04 Other Governmental Action.** In the case of any governmental action not resulting in the taking of any portion of the Property or Tenant Property but creating a right to compensation therefor, this Lease shall continue in full force and effect without reduction or abatement of any Rent thereafter due and payable. If such governmental action results in any damage to the Existing Improvements or Tenant Improvements, as applicable, Tenant shall be entitled to receive such portion of the proceeds (or all of the proceeds, if required for such purpose) estimated to be necessary to remedy any such damage, and Tenant shall proceed with reasonable diligence to make all repairs, replacements, restorations and improvements necessary so to remedy such damage to the extent economically feasible, and, if the amount of such proceeds is not sufficient, Tenant shall have the right, but not the obligation, to provide the additional funds required. Any balance remaining from such proceeds, or if no damage is involved then all of such proceeds, shall be divided between Landlord and Tenant as their respective interests may appear.

**12.05 Leasehold Mortgages.** Any award payable to Tenant under any condemnation proceeding shall be subject to the rights of all Leasehold Mortgages under all Leasehold Mortgages.

# UNOFFICIAL COPY

## ARTICLE 13

### Estoppel Certificates

**13.01 Estoppel Certificates.** Upon written request by either party, Investor or any Leasehold Mortgagee, the party to whom the request was made will promptly certify to the requesting Person, or to any proposed assignee or grantee or mortgagee or the proposed assignee of such mortgagee, whether or not this Lease is valid and subsisting, whether or not it has been modified (and if there are modifications, stating them) and whether or not the party executing the certificate has knowledge of any default or breach by the other party under any of the terms of this Lease (and if any exists, stating them). If the party to whom a written request is directed under the preceding sentence shall fail to furnish the requested certificate within twenty (20) days after the receipt of such request, then by such failure such party shall be deemed to have certified to the requesting Person and to any proposed assignee or grantee or mortgagee that this Lease is valid and subsisting, that there have been no modifications to this Lease, and that there are no known defaults or breaches by the other party under the terms of this Lease.

## ARTICLE 14

### Title to Tenant Improvements; Surrender at End of Term

**14.01 Title to Tenant Improvements.** Landlord acknowledges and agrees that throughout the Term and until expiration or earlier termination of this Lease (whereupon title to the Tenant Improvements shall immediately and without the necessity of any action or writing by any party, vest in Landlord) the Tenant shall own all of the Tenant Improvements in the Tenant's name and shall hold a Leasehold Estate in all other Existing Improvements. As such, Tenant has, and shall be entitled to, all rights and privileges of ownership of such Tenant Improvements, including without limitation: (a) the right to claim depreciation or cost recovery deductions; (b) the right to claim the low-income housing tax credit described in Section 42 of the Code; (c) the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Tenant Property; and (d) the right to transfer such Tenant Improvements in accordance with the terms of this Lease; provided, however that Tenant may not remove or substantially alter any of the Tenant Improvements (other than the disposition and replacement of equipment, appliances and other personal property in the ordinary course of business or in connection with the performance of its obligations under Section 6.05) without having first obtained the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

**14.02 Surrender at End of Term.** Upon the expiration of the Term or earlier termination of this Lease, title to all Existing Improvements (if any) and Tenant Improvements then on the Real Estate shall, together with all fixtures, used in connection with the operation of the Development, shall vest in Landlord and become the property of Landlord or revert to Landlord, as applicable, without any payment or allowance whatever by Landlord on account of or for such Existing Improvements, Tenant Improvements, and fixtures, whether or not the same or any part thereof shall have been constructed by, paid for, or purchased by Tenant. Tenant shall vacate and surrender possession of the Property to Landlord without delay, free

# UNOFFICIAL COPY

and clear of all lettings, occupancies, and licenses, and free and clear of all mortgages and other liens, claims, encumbrances and security interests, other than (i) the Permitted Exceptions, (ii) the rights of sub-tenants in possession under leases (which shall expire not later than one (1) year after the end of the Term), (iii) those, if any, created by Landlord, and (iv) those related to Excluded Environmental Conditions. Tenant agrees to execute and deliver to Landlord such quit claim deeds, bills of sale, assignments or other instruments of conveyance and release as Landlord may reasonably deem necessary to evidence such transfer of possession and title to Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Property and Tenant Property at any such termination date. All personal property of the Tenant shall remain Tenant's property, subject to security interests, and shall be removed on expiration or as soon as reasonably practical after termination of the Lease. Tenant shall not remove or substantially alter any of the Tenant Improvements (other than the disposition and replacement of equipment, appliances and other personal property in the ordinary course of business or in connection with the performance of its obligations under Section 6.05) without first having obtained the prior written consent of Landlord, which consent shall be exercised in the Landlord's sole and absolute discretion.

## ARTICLE 15

### Landlord Defaults

**15.01 Landlord's Default.** It shall be an event of default by Landlord under this Lease if Landlord fails to perform any term or provision to be performed by Landlord under this Lease, and such failure shall continue beyond sixty (60) days after written notice received by Landlord from Tenant specifying such event of default; provided, however, that if Landlord in good faith commences within said 60-day period and thereafter diligently prosecutes all actions required to cure such default, Landlord shall be allowed a reasonable period to effect such cure.

Upon an event of default by Landlord hereunder, Tenant shall have as its sole and exclusive remedies (a) the right to terminate this Lease, and (b) the right to injunctive relief or to specifically enforce Landlord's performance obligations, subject further to Section 18.01. In connection with this right to specific performance, the parties hereto agree that in certain circumstances of Landlord's event of default, Tenant's remedies at law may be inadequate to afford it the practical realization of the agreements herein made by the parties.

**15.02 Exercise of Remedies.** Tenant's exercise of its remedies under Section 15.01 may be exercised from time to time and as often as occasion may arise or may be deemed expedient, without precluding Tenant's simultaneous or later exercise of such remedy. No delay or omission of Tenant to exercise such remedy shall impair any such remedy or shall be construed to be a waiver of any such default or an acquiescence therein.

**15.03 Waivers in Writing.** None of Landlord's covenants, agreements, obligations or undertakings, and no events of default of Landlord may be waived, altered, or modified except by a written instrument executed by Tenant and all Leasehold Mortgagees.

# UNOFFICIAL COPY

**15.04 Landlord's Representations.** Landlord hereby represents and warrants to Tenant that:

(a) Landlord's execution of this Lease, and the performance by Landlord of all of the terms and conditions contained herein (i) have been duly authorized by all necessary corporate actions of the Landlord, and (ii) will not, or with the giving of notice or the passage of time, or both, would not violate or cause a breach or default under any other agreement relating to the Property to which Landlord is a party or by which it is bound;

(b) as of the Effective Date, there is no tenant or other occupant of the Real Estate having any right or claim to possession or use of the Real Estate other than parties having rights under the Permitted Exceptions, and public and private utilities and telecommunication providers; and

(c) as of the Effective Date, there are no special assessments of which Landlord has received notice for sewer, sidewalk, water, paving, gas electrical, or utility improvements or other capital expenditures, matured or unmatured, affecting the Real Estate.

## ARTICLE 16

### Notices

All notices or demands under this Lease shall be in writing and shall be served and given by personal delivery or by certified mail, return receipt requested, or by nationally-recognized overnight courier, addressed as follows:

To the Landlord:

Norwegian American Hospital  
1044 North Francisco Avenue  
Chicago, Illinois 60622  
Attention: President

If to Tenant:

Hispanic Housing Development Corporation  
325 N. Wells Street, Suite 800  
Chicago, Illinois 60654  
Attention: President

With a copy to:

Applegate & Thorne-Thomsen  
626 W. Jackson Boulevard, Suite 400  
Chicago, Illinois 60661  
Attention: Bill Skalitzky

# UNOFFICIAL COPY

By written notice served in the foregoing manner, any party entitled to receive notices shall have the right to designate another person and another address to which notices and demands shall thereafter be sent. Each such notice or demand shall be deemed served, given and received when received or, when given by mail, shall be deemed served, given and received on the third business day after the mailing thereof.

## ARTICLE 17

### Miscellaneous

**17.01 Covenants Running With Land.** All agreements, obligations and undertakings contained in this Lease shall, except as herein specifically limited or otherwise provided, extend and inure to be binding upon Landlord's successors and assigns and Tenant's permitted successors and permitted assigns, and shall be construed as covenants running with the land. Wherever reference is made in this Lease to either party, it shall be held to include and apply to such successors and assigns.

**17.02 Amendments in Writing.** From time to time, the parties hereto may amend this Lease with respect to any provisions reasonably related to Tenant's use of the Tenant Property and/or Landlord's administration of said Lease. Provided, however, that such amendment(s) shall not serve to extend the Term hereof nor serve to otherwise materially alter the essential provisions contained herein. Such amendment(s) shall be in writing, shall establish the factual background necessitating such alteration, shall set forth the terms and conditions of such modification, and shall be duly executed by both Landlord and Tenant and consented to in writing by any Leasehold Mortgagee.

**17.03 Quiet Possession.** Landlord agrees that during the Term and so long as no Event of Default exists and is continuing hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Property demised hereby, subject to the Permitted Exceptions, without molestation or disturbance by or from Landlord or any party claiming by, through or under Landlord, and free of any encumbrance created or suffered by Landlord except for the Permitted Exceptions expressly described herein to which this Lease is made subject and subordinate.

**17.04 Time of Essence.** Time is of the essence of this Lease and of the performance of the respective obligations, covenants and agreements of Landlord and Tenant hereunder. If the day for the performance of any obligation hereunder occurs on a calendar day other than a business day, the time for such performance shall be extended to the next business day.

**17.05 Approvals.** All approvals or consents required under the provisions hereof shall be in writing. Unless herein expressly otherwise provided, any approval or consent of Landlord shall be sufficiently given if signed by the President, Vice President, Chief Financial Officer, General Counsel or Comptroller.

# UNOFFICIAL COPY

**17.06 Condition of Property.** Landlord has made no warranties or representations whatever with respect to the Property and, Tenant accepts the Property "as is", with all existing faults, including, without limitation, all Pre-Existing Environmental Conditions; provided, however, that the foregoing shall not affect the obligations, if any, of Landlord under this Lease with respect to matters of title to the Real Estate and liens arising out of labor and/or materials furnished to the Real Estate, or any portion thereof, by or on behalf of Landlord.

**17.07 Captions.** The table of contents and captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

**17.08 Partial Invalidity.** If any term, provision or condition of this Lease or its application to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease and the application of such term, provision or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, provision and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**17.09 Applicable Law.** This Lease shall be construed and enforced in accordance with the law of the State of Illinois.

**17.10 Recording of Lease.** This Lease shall be recorded in its entirety with the Cook County Recorder of Deeds.

**17.11 Lease Not to be Construed Against Either Party.** The parties have each been represented by counsel in connection with the negotiation and drafting of this Lease. Accordingly, this Lease shall not be construed against or for either party.

**17.12 Cooperation.** Landlord and Tenant agree that they will reasonably cooperate with one another in all respects in furtherance of the Development. From time to time, Tenant may request minor modifications to this Lease to satisfy the reasonable requirements of financing sources, including without limitation, government agencies and private lenders and equity sources. Landlord will use commercially reasonable efforts to accommodate such requests and will not unreasonably withhold or delay its approval and execution of modifications to this Lease that do not materially and adversely alter the basic terms hereof or Landlord's rights and remedies hereunder or and do not impose obligations on Landlord not otherwise contained herein. Nothing herein shall impose upon Landlord any requirement to approve any modification or amendment to this Lease that would violate or contravene any applicable law or any contract or agreement to which Landlord is a party or which is binding on Landlord.

**17.13 Exhibits Incorporated As Part of Lease.** All exhibits attached hereto (i.e., Exhibit A through Exhibit G, inclusive) are incorporated herein by reference and constitute a material part of this Lease.



# UNOFFICIAL COPY

## ARTICLE 18

### Exculpatory Provisions

**18.01 Exculpatory Provision – Landlord.** It is expressly understood and agreed by Tenant, and any Person claiming by, through or under Tenant (including without limitation all Leasehold Mortgagees) that none of Landlord's covenants, undertakings or agreements herein set forth are made or intended as personal covenants, undertakings or agreements of Landlord, but are for the purpose of binding the premises demised hereby, and liability or damage for breach for nonperformance by Landlord shall be collectible only out of the Property demised hereby or available insurance proceeds, and no personal liability is assumed by nor at any time may be asserted or enforced against Landlord or any other Landlord's Protected Persons or any of its or their heirs, legal representatives, successors or assigns, all such personal liability, if any, being expressly waived and released by Tenant and each Person claiming by, through or under Tenant except for Landlord's liability for (i) fraudulent acts, and (ii) intentional or willful acts.

**18.02 Exculpatory Provision – Tenant.** Tenant, but not any partner (other than a general partner), officer, director, shareholder, member or manager of Tenant, nor any employee or agent of any of the foregoing, shall be personally liable for payment or performance under this Lease, it being acknowledged that Landlord's exclusive rights and remedies hereunder shall be limited to Tenant's interest in this Lease, the Existing Improvements, Tenant Improvements and any other asset of Tenant and, to the extent provided for in Section 10.2, for the termination of this Lease and re-entry and possession of the Property. No deficiency judgment shall be sought or obtained against any partner (other than a general partner) officer, director, shareholder, member or manager of Tenant, nor any employee or agent of any of the foregoing (collectively, "Exculpated Parties") for any amount due under this Lease; provided, however, that, except as hereinafter provided in this Section 18.02, nothing contained herein shall either relieve the Exculpated Parties from personal liability and responsibility, or limit Landlord's other rights and remedies against the Tenant hereunder, either at law or in equity: (i) for fraudulent acts; (ii) for the fair market value of any personal property or fixtures removed or disposed of from the Property or Tenant Property in violation of the terms of this Lease; (iii) for waste committed by Tenant with respect to the Property or Tenant Property; (iv) for insurance proceeds and condemnation awards received by Tenant and not turned over to the First Leasehold Mortgagee or Landlord (as applicable) or used by Tenant for restoration or repair of the Property or Tenant Property to the extent required under this Lease; and (v) for any rents or other income from the Tenant Property received by Tenant after an Event of Default under this Lease and not applied to the fixed and operating expenses of the Development. Notwithstanding the preceding sentence, if Tenant is a limited partnership, the liability of a limited partner of Tenant, including the Investor, shall be limited to the extent provided in the Illinois Uniform Limited Partnership Act (805 ILCS 210), or any successor thereto. Further, notwithstanding the foregoing, Initial Tenant shall be liable for the performance and completion, and all costs associated therewith, of the Tenant's obligations hereunder to construct and pay for all costs of construction of the Tenant Improvements incurred through Final Completion of same as more fully described in Section 5.01 hereof, and the Permitted Assignment shall not serve to release Initial Tenant from such liability but rather

# UNOFFICIAL COPY

upon such Permitted Assignment, the Initial Tenant and Partnership shall be jointly and severally liable for such obligations.

## ARTICLE 19

### Regulatory Agreements

**19.01 Regulatory Agreements.** Concurrently with, and as a condition to the Permitted Assignment, the Partnership, as Tenant under the Lease pursuant to a forthcoming Assignment and Assumption and Amendment of Lease among Landlord, Initial Tenant and the Partnership, shall enter into those agreements described in Exhibit F (collectively, the "Regulatory Agreements") relating to the construction and operation of the Development.

In connection therewith, Landlord acknowledges that Tenant may cause the Tenant Improvements, or a portion thereof, to qualify for federal low income housing tax credits (the "Tax Credits") pursuant to Section 42 of the Code. Tenant also may cause the Tenant Improvements to qualify for other state and/or federal assistance, including but not limited to project-based HUD/VASH section 8 vouchers. To the extent required by the Code as a condition for the allocation of the Tax Credits or as required by any other state, federal or private assistance, Tenant is authorized to enter into restrictive covenants encumbering the Tenant Property pertaining to the use of the Tenant Property. If required by IHDA as a condition of the Tax Credits, Landlord agrees to enter into a subordination agreement pursuant to which this Lease shall be subject and subordinate to the "extended low-income housing commitment" required under Code Section 42(h)(6) for the thirty (30) year term thereof.

## ARTICLE 20

### Hazardous Materials

**20.01 Definitions.** As used herein, the term "Hazardous Materials" shall mean and include any hazardous, toxic or dangerous waste, substance or material defined as such in or for purposes of any of the Environmental Laws.

**20.02 Prohibition Against Hazardous Materials.** Tenant shall not cause any Hazardous Material to be generated, released, stored, buried or deposited over, beneath, in or on (or used in the construction of) the Real Estate or the Development, or any part thereof, from any source whatsoever, other than in accordance with applicable Environmental Laws. Except for Excluded Environmental Conditions or in connection with the Remediation of the Pre-Existing Environmental Condition, Tenant shall not permit any Hazardous Material to be generated, released, stored, buried or deposited over, beneath, in or on (or used in the construction of) the Property or Tenant Property, or any part thereof, from any source whatsoever, other than in accordance with applicable Environmental Laws.

**20.03 Indemnity.** Tenant shall indemnify, defend and hold harmless Landlord's Protected Persons from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to a violation of

# UNOFFICIAL COPY

Section 20.02; notwithstanding the foregoing, this indemnity shall not extend to the negligence of Landlord or Landlord's Protected Persons or to any actions of Landlord occurring prior to the Effective Date of this Lease.

**20.04 Survival.** Tenant's obligations under this Article 20 shall survive the expiration or termination of this Lease.

## ARTICLE 21

### Donation of Leasehold Estate

**21.01 Leasehold Donation.** Landlord and Tenant acknowledge that the annual Rent of \$1.00 paid by Tenant to Landlord is less than the fair market value of the Rent that Landlord could otherwise charge for the lease of the Real Property. Tenant acknowledges and agrees that the difference between the Rent paid and the fair market value of rent for the Leasehold Estate, as determined by an Illinois licensed appraiser, constitutes a donation from the Landlord to the Tenant (the "Leasehold Donation").

Landlord agrees to make the Leasehold Donation in accordance with the requirements for a charitable donation under the Illinois Housing Development Act, 20 ILCS Section 3895/7.28 and its implementing regulations set forth at 47 Ill. Admin. Code Part 355, as amended (the "Donation Rules"). Landlord acknowledges that (i) the Leasehold Donation may qualify for an allocation of Illinois Affordable Housing Tax Credits ("Donation Credits") from the Illinois Housing Development Authority ("IHDA"), and (ii) as part of any such allocation of Donation Credits, Tenant shall be required to execute and record against the Tenant Property a regulatory agreement in accordance with Section 355.207 of the Donation Rules (the "Donation Credit Regulatory Agreement"). If IHDA determines the Leasehold Donation qualifies for Donation Credits IHDA will allocate the Donation Credits to the donor (i.e., to the Landlord) in accordance with the Donation Rules, and Landlord shall be entitled to retain the Donation Credits for its own purposes. In such event, Landlord consents to the recording of the Donation Credit Regulatory Agreement against the Tenant Property for the minimum ten (10) year Compliance Period as defined in Section 355.103 of the Donation Rules. Per Section 355.210 of the Donation Rules, the Donation Credits are not subject to recapture except in the case of fraud committed by the donor.

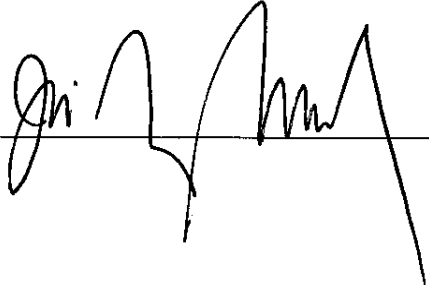
# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Amended and Restated Ground Lease is executed as of the date first written above by the duly authorized officers or representatives of the parties hereto.

**LANDLORD:**

**Norwegian American Hospital, Inc.,** an Illinois not for profit corporation

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



**TENANT:**

**Hispanic Housing Development Corporation,** an Illinois not for profit corporation

By: \_\_\_\_\_  
Hipolito Roldan, President

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Section 20.02; notwithstanding the foregoing, this indemnity shall not extend to the negligence of Landlord or Landlord's Protected Persons or to any actions of Landlord occurring prior to the Effective Date of this Lease.

**20.04 Survival.** Tenant's obligations under this Article 20 shall survive the expiration or termination of this Lease.

## ARTICLE 21

### Donation of Leasehold Estate

**21.01 Leasehold Donation.** Landlord and Tenant acknowledge that the annual Rent of \$1.00 paid by Tenant to Landlord is less than the fair market value of the Rent that Landlord could otherwise charge for the lease of the Real Property. Tenant acknowledges and agrees that the difference between the Rent paid and the fair market value of rent for the Leasehold Estate, as determined by an Illinois licensed appraiser, constitutes a donation from the Landlord to the Tenant (the "Leasehold Donation").

Landlord agrees to make the Leasehold Donation in accordance with the requirements for a charitable donation under the Illinois Housing Development Act, 20 ILCS Section 3895/7.28 and its implementing regulations set forth at 47 Ill. Admin. Code Part 355, as amended (the "Donation Rules"). Landlord acknowledges that (i) the Leasehold Donation may qualify for an allocation of Illinois Affordable Housing Tax Credits ("Donation Credits") from the Illinois Housing Development Authority ("IHDA"), and (ii) as part of any such allocation of Donation Credits, Tenant shall be required to execute and record against the Tenant Property a regulatory agreement in accordance with Section 355.207 of the Donation Rules (the "Donation Credit Regulatory Agreement"). If IHDA determines the Leasehold Donation qualifies for Donation Credits IHDA will allocate the Donation Credits to the donor (i.e., to the Landlord) in accordance with the Donation Rules, and Landlord shall be entitled to retain the Donation Credits for its own purposes. In such event, Landlord consents to the recording of the Donation Credit Regulatory Agreement against the Tenant Property for the minimum ten (10) year Compliance Period as defined in Section 355.103 of the Donation Rules. Per Section 355.210 of the Donation Rules, the Donation Credits are not subject to recapture except in the case of fraud committed by the donor.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Amended and Restated Ground Lease is executed as of the date first written above by the duly authorized officers or representatives of the parties hereto.

**LANDLORD:**

**Norwegian American Hospital, Inc., an Illinois not for profit corporation**

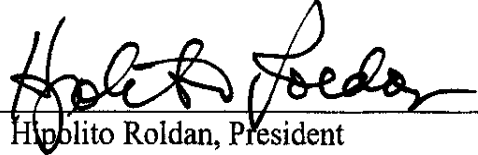
By: \_\_\_\_\_

Name:

Title:

**TENANT:**

**Hispanic Housing Development Corporation, an Illinois not for profit corporation**

By:   
Hipolito Roldan, President

Property of Cook County Clerk's Office

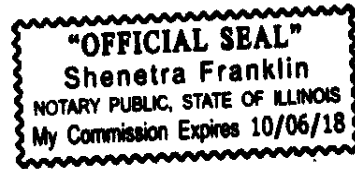
# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
   )  
 COUNTY OF COOK        )     SS.

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Jose Sanchez, personally known to me to be the CEO of Norwegian American Hospital, Inc. ("Landlord"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such officer of Landlord, he signed and delivered the said instrument pursuant to authority duly given and as his free and voluntary act, and as the free and voluntary act and deed of Landlord for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 5th day of February, 2015.

*Shenetra Franklin*  
 \_\_\_\_\_  
 Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                   )     SS.  
 COUNTY OF COOK        )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Hipolito Roldan, personally known to me to be the President of Hispanic Housing Development Corporation ("Tenant"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Tenant, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of February, 2015.

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

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
                                       )    SS.  
 COUNTY OF COOK         )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Hipolito Roldan, personally known to me to be the President of Hispanic Housing Development Corporation ("Tenant"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Tenant, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 4<sup>th</sup> day of February, 2015.

Peggy A. Mejias  
 Notary Public



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE REAL ESTATE

LOTS 1 THROUGH 6, BOTH INCLUSIVE, **EXCEPT** THE EAST 33.25 FEET OF SAID LOT 6; LOTS 7 THROUGH 12, BOTH INCLUSIVE, TOGETHER WITH THE NORTH/SOUTH 16 FOOT ALLEY, VACATED BY THE ORDINANCE RECORDED MARCH 1, 1995 AS DOCUMENT NO. 95143450, ALL IN BLOCK 5, IN CARTER'S RESUBDIVISION OF BLOCKS 1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15 AND LOTS 2, 4 AND 5 IN BLOCK 17 IN CARTER'S SUBDIVISION OF BLOCKS 1, 2, 3, 4 AND 7 IN CLIFFORD'S ADDITION TO CHICAGO, A SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 1045 N. Sacramento Boulevard, Chicago, Illinois

16-01-305-001  
16-01-305-002  
16-01-305-003  
16-01-305-004  
16-01-305-005  
16-01-305-006  
16-01-305-007  
16-01-305-008  
16-01-305-009  
16-01-305-010

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT B

### PERMITTED EXCEPTIONS

1. General Real Estate Taxes not yet due and payable.
2. Rights of Public and Quasi-Public utilities for maintenance of utility facilities.
3. Building set-back line established in the Plat of Carter's Resubdivision recorded June 29, 1885 as document no. 636177.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT C

### LEASEHOLD MORTGAGEES

None

Property of Cook County Clerk's Office

A large, thick, black scribble consisting of several overlapping, vertical, brush-like strokes that completely obscures the text of the exhibit. The scribble is centered on the page and overlaps with the diagonal watermark text.

# UNOFFICIAL COPY

## EXHIBIT D

### REQUIRED INSURANCE

The following constitute the minimum required types and coverage limits required to be kept and maintained by Tenant (or which Tenant shall cause to be maintained) during the Lease term. To the extent that any Leasehold Mortgagee shall require additional types of insurance, or coverages in amounts in excess of those prescribed below or more stringent requirements related to insurer ratings, deductible amounts or with respect the other terms set forth below, Tenant shall conform to such requirements by providing additional or increased coverages and/or shall confirm to such more stringent requirements in order to satisfy the requirements of all Leasehold Mortgages in effect from time to time. All insurance shall be provided by companies authorized to do business in Illinois.

(A) Commercial Property Insurance. From and after substantial completion of the construction thereof, Tenant at its sole cost and expense, shall purchase and at all times keep in force and effect commercial property insurance insuring the Building and other Tenant Improvements, including any alterations or additions thereto made by Tenant in an amount equal to one hundred percent (100%) of the full replacement cost of such items (which may exclude footings, foundations and any other below grade structural improvements), subject to a commercially reasonable deductible not to exceed \$50,000.00. Said commercial property insurance policy shall, at a minimum, cover the perils insured under an ISO special causes of loss form which provides "all risk" coverage and shall be provided under policies issued by insurers that are authorized to transact business in Illinois with a minimum A.M. Best rating of "A-" and a "financial size category" of at least "X," or an equivalent rating and financial size category of another rating agency or as may be in effect with respect to any rating agency from time to time. Such insurance shall provide that it is primary and noncontributory and shall contain a replacement cost endorsement and an endorsement pursuant to which the carriers waive all rights of subrogation and all rights of recovery with respect to losses payable under such policies against Landlord.

(B) Liability Insurance.

(i) Tenant shall, at Tenant's sole cost and expense, at all times during the Term of this Lease maintain commercial general liability insurance and umbrella coverage covering liability arising from premises operations, independent contractors, personal injury, advertising injury and liability assumed under an insured contract on an occurrence basis under policies issued by insurers that are licensed, or recognized as a surplus lines insurer, for the conduct of business in Illinois with a minimum A.M. Best rating of "A-" and a "financial size category" of at least "XII," or an equivalent rating and financial size category of another rating agency or as may be in effect with respect to any rating agency from time to time. Limits of insurance on the general liability insurance policy or policies shall be not less than \$1,000,000 combined single limit for personal injury, bodily injury, sickness and property damage for any one occurrence with \$2,000,000 aggregate coverage, and \$4,000,000 combined single limit for such injuries, sickness and damage for any one occurrence on the excess umbrella policy or policies.

# UNOFFICIAL COPY

Tenant's liability policies shall name Landlord, and its Protected Parties as additional insureds. Tenant's liability insurance shall also include contractual liability coverage and a waiver of subrogation and recovery in favor of Landlord.

(ii) Tenant shall also maintain workers' compensation insurance with limits in amounts not less than required by applicable Law and Employer's Liability insurance with limits of not less than \$1,000,000 per occurrence or such greater limits as are required by applicable Laws. The workers' compensation policy shall include a waiver of subrogation and recovery in favor of Landlord.

(iii) Business Automobile Liability Insurance, including the ownership, maintenance, and operation of any automotive equipment, owned, hired, or non-owned in an amount not less than a combined single limit of \$1,000,000 per occurrence. The automobile policy shall include a waiver of subrogation and recovery in favor of Landlord.

(C) Insurance during Construction. At all times during construction of the Building and other Tenant Improvements, and whenever Tenant performs any alteration work thereto, Tenant shall cause its contractors and their subcontractors to provide and maintain the following insurance coverages (provided Tenant may obtain the Builder's risk insurance described in clause (D) below in lieu of same being provide by the contractor):

(i) Workmen's Compensation in statutory amounts and Employer's Liability Insurance in an amount not less than \$1,000,000 per occurrence or such greater limit as required by Laws and shall include a waiver of subrogation and recovery in favor of Landlord (and Tenant, at its election).

(ii) Commercial General Liability Insurance/Umbrella Policies in an amount not less than \$1,000,000 per occurrence, whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof and with a minimum aggregate limit of \$2,000,000, together with umbrella coverage with limits of not less than \$4,000,000 in the case of subcontractors. Such insurance shall provide for explosion and collapse, and contractual liability coverage and shall insure against any and all claims for bodily injury, including death resulting therefrom and damage to the property of others and arising from its operations, whether such operations are performed by Tenant's Contractors, or by anyone directly or indirectly employed by any of them. The General Liability Policy shall provide a per project aggregate, and shall include a waiver of subrogation and recovery in favor of Landlord.

(iii) Business Automobile Liability Insurance, including the ownership, maintenance, and operation of any automotive equipment, owned, hired, or non-owned in an amount not less than a combined single limit of \$1,000,000 per occurrence. Tenant shall require that Tenant's Contractors provide and maintain comparable business automobile liability automobile insurance, insuring against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others arising from the Tenant's Contractor's

# UNOFFICIAL COPY

operations under the contracts, whether such operations are performed by Tenant's Contractors, or by anyone directly or indirectly employed by any of them. The Tenant's business automobile liability automobile insurance shall include a waiver of subrogation and recovery in favor of Landlord

(iv) "All-risk" builder's risk insurance upon the entire Tenant Improvements or other work being performed by such Tenant's Contractor, to the full insurance value thereof. Such insurance shall include the interest of Tenant, the Leasehold Mortgagee(s) and Landlord, as their interests may appear (and their respective contractors and subcontractors of any tier to the extent of any insurable interest therein) in such portion of the applicable work and shall insure against the perils of fire and extended coverage and shall include "all-risk" builder's risk insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If portions of the materials related to the covered work stored off the site of the Building or in transit to such site are not covered under such "all-risk" builder's risk insurance, then Tenant shall effect and maintain similar property insurance on such portions of the applicable work. The "all-risk" builder's risk insurance policy shall contain waivers of subrogation against Landlord and its Protected Parties.

(v). Professional Liability Coverage. Tenant's architects, engineers, interior space planner and other parties providing professional services must maintain Professional Liability Insurance in the amount of not less than \$1 Million for projects costing less than \$10 Million and \$2 Million for projects costing \$10 Million or more.

Landlord and Landlord's Protected Parties shall be named as additional insured parties under the policies described at clauses (ii) and (iii) above. Certificates of the foregoing insurance required of Tenant and/or Tenant's contractors under this section shall be delivered to Landlord prior to commencement of any applicable construction activities at the Property.

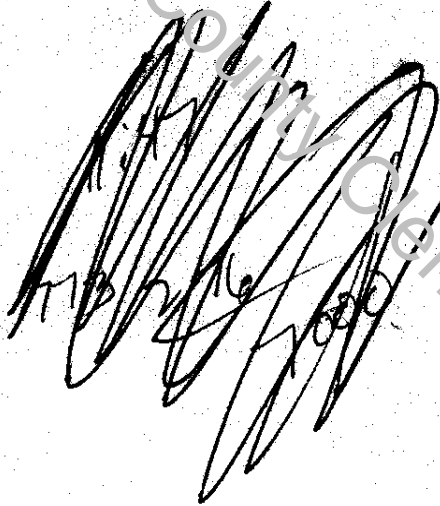
(D) Additional Coverages/Increases in limits of Liability Policies. From time to time during the Term and upon written notice given by Landlord to Tenant, Landlord may require Tenant to provide such additional coverages or increase the amount of the coverage limits for the Liability Policies required above consistent with the then existing insurance requirements ground lease developments in the Chicago metropolitan area, and Tenant agrees to provide and maintain all such additional or increased coverages as may be so required by Landlord.

# UNOFFICIAL COPY

## EXHIBIT E

### DIAGRAM OF TEMPORARY EASEMENTS

Property of Cook County Clerk's Office



---



UNOFFICIAL COPY

Property of Cook County Clerk's Office

Perimeter Fencing

W Cortez Pl



# UNOFFICIAL COPY

## EXHIBIT F

### REGULATORY AGREEMENTS

None

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT G

### PLANS AND SPECIFICATIONS

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

Drawing Index

Page 1 of 4

**Architectural****General Project Information**

A001	Title Sheet
A002	General Notes
A003	General Notes
A004	Abbreviations / Symbols
A005	Code Information
A006	Population Schedule/Exit Analysis
A007	Fire Separation Diagrams
A008	Accessibility Matrix, Diagrams
A009	Accessibility Details
A010	Enterprise Green Communities Checklist
A011	Site Access Diagrams, Flood Ins. Map

**Landscape**

L101	Landscape Plan
L102	Green Roof Plan
L201	Notes and Details
L301	Irrigation Plan and Notes

**Civil**

C001	General Notes
C101	Demolition Plan
C201	Dimension Plan
C301	Grading Plan
C401	Utility Plan
C501	Site Details
C502	Site Details
C503	Site Details
C504	Utility Details
C505	Utility Details
C601	Erosion and Sedimentation Control Plan
C701	Operation and Maintenance Plan

**Architectural****Site**

A101	Site Plan
A102	Site Details, Boring Diagram

**Plans**

A201	First Floor Plan
A202	Typical Floor Plan (2nd-4th Floors)
A205	Roof Plan

# UNOFFICIAL COPY

Drawing Index

Page 2 of 4

**Reflected Ceiling Plans**

- A221 1st Floor RCP
- A222 Typical Floor RCP (2nd-4th Floors)

**Project Schedules**

- A301 Wall Types, Floor/Ceiling/Column Types
- A302 Door and Hardware Schedule
- A303 Finish Schedule
- A304 Window Schedule
- A305 Light & Vent Schedule/Diagrams

**Exterior Elevations**

- A401 North & West Elevations
- A402 South & East Elevations

**Sections**

- A501 Building Sections
- A505 Wall Sections
- A506 Wall Sections & Elevator Section
- A510 Stair Sections, Details

**Exterior Details**

- A601 Exterior Details - Walls
- A602 Exterior Details
- A603 Exterior details - Roof
- A604 Storefront, Window Details

**Interior Elevations**

- A701 Interior Corridor Elevations
- A705 Interior Elevations - Bathrooms
- A706 Interior Elevations - Kitchens

**Interior Details**

- A801 Stair, Trash Chute Details
- A802 Interior Details
- A803 Interior Details
- A804 Interior Door Details
- A805 Signage Details
- A806 Elevator Cab

**Interior Finishes**

- A810 Finish Specifications & Notes
- A811 1st Floor - Floor Finishes
- A812 1st Floor - Wall & Ceiling Finishes
- A813 2nd, 3rd & 4th - Floor Finishes
- A814 2nd, 3rd & 4th - Wall & Ceiling Finishes

**Specialties**

- A901 Lobby Plan, Elevation Details

# UNOFFICIAL COPY

Drawing Index

Page 3 of 4

**Structural**

- S101 Structural Notes
- S201 Foundation & First Floor Framing Plan
- S202 Second Floor Framing Plan
- S203 Third and Fourth Floor Framing Plan
- S204 Roof Framing Plan
- S301 Foundation Section & Details
- S302 Sections & Details
- S303 Sections & Details

**Mechanical**

- M001 Mechanical Symbols & General Notes
- M002 Mechanical Ventilation
- M110 First Floor Plan
- M120 2nd-4th Floor Plan
- M130 Roof Plan
- M200 Mechanical Riser Diagrams
- M300 Enlarged Typ. Tenant Plans
- M400 Mechanical Details

**Plumbing**

- P001 Plumbing Notes and Schedules
- P002 Plumbing Details
- P100 Underfloor Plumbing
- P110 First Floor Ceiling
- P120 2nd - 4th Floor San and Vent Plan
- P121 2nd-4th Floor Domestic Water Plan
- P130 Roof Plan
- P210 First Floor Natural Gas Plan
- P220 2nd through 4th Floor Plan Gas
- P301 Enlarged Typical Tenant Plans
- P400 Domestic Water Riser Diagram
- P401 Domestic Water Riser Diagram
- P402 Domestic Water Riser Diagram
- P403 Domestic Water Riser Diagram
- P404 Domestic Water Riser Diagram
- P405 Domestic Water Riser Diagram

**Electrical**

- E001 Electrical Symbols & General Notes
- E100 Site Lighting Plan

# UNOFFICIAL COPY

Drawing Index

Page 4 of 4

E110 First Floor Lighting Plan  
E111 First Floor LS Lighting Plan  
E120 2nd - 4th Floor Lighting Plan  
E121 2nd - 4th Floor LS Lighting Plan  
E200 Site Power Plan  
E210 First Floor Power/Systems  
E220 Second - Fourth Floor Power/Systems  
E230 Roof Power Plan  
E300 Enlarged Electrical Plans  
E301 Enlarged Electrical Plans  
E400 Electrical Schedules  
E401 Electrical Schedules  
E402 Electrical Schedules  
E500 Electrical Riser Diagrams  
E501 Electrical Riser Diagrams  
E502 Electrical Riser Diagrams  
E503 Electrical Riser Diagrams  
E504 Electrical Riser Diagrams  
E600 Electrical Details

**Fire Protection**

FP001 Fire Protection Symbols, Gen. Notes  
FP110 1st Floor Fire Protection Plan  
FP120 2nd-4th Floor Fire Protection Plan  
FP121 Roof Fire Protection Plan  
FP300 Enlarged Fire Protection Plans  
FP400 Fire Protection Schedules  
FP500 Fire Protection Diagrams  
FP600 Fire Protection Details

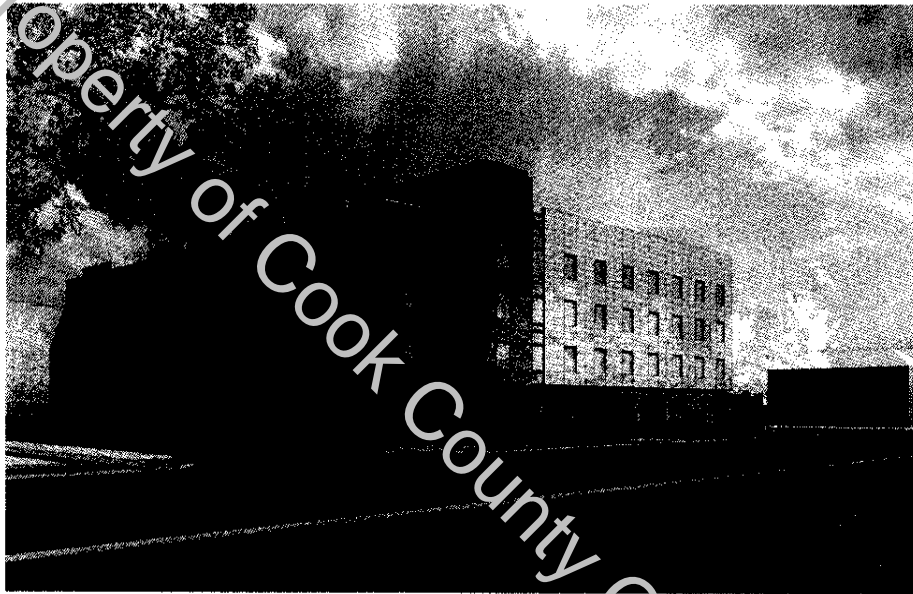
# UNOFFICIAL COPY

Project Specifications for

## 65th Infantry Regiment Borinqueneers Veteran's Housing

1045 N Sacramento Avenue  
Chicago, Illinois 60622

February 3rd, 2015



**Owners:**

Hispanic Housing Development Corporation

**Architect:**

Pappageorge Haymes Partners

**Contractor:**

Tropic Construction Corporation

**Civil Engineer:**

Terra Engineering

**Landscape Architect:**

Daniel Weinbach & Partners. Ltd.

**Structural Engineer:**

Stearn Joglekar

**MEP Engineer:**

RTM



# UNOFFICIAL COPY

Specification Index

Page 1 of 5

Table of Contents

## **Division 00 - Procurement and Contracting Requirements**

000101 - PROJECT TITLE PAGE  
 000102 - PROJECT INFORMATION  
 000110 - TABLE OF CONTENTS  
 000115 - LIST OF DRAWING SHEETS  
 007200 - GENERAL CONDITIONS  
 007300 - SUPPLEMENTARY CONDITIONS

## **Division 01 - General Requirements**

011000 - SUMMARY  
 012000 - PRICE AND PAYMENT PROCEDURES  
 013000 - ADMINISTRATIVE REQUIREMENTS  
 013114 - FACILITY SERVICES COORDINATION  
 013216 - CONSTRUCTION PROGRESS SCHEDULE  
 013553 - SECURITY PROCEDURES  
 014000 - QUALITY REQUIREMENTS  
 014100 - REGULATORY REQUIREMENTS  
 014216 - DEFINITIONS  
 015000 - TEMPORARY FACILITIES AND CONTROLS  
 015213 - FIELD OFFICES AND SHEDS  
 015500 - VEHICULAR ACCESS AND PARKING  
 015713 - TEMPORARY EROSION AND SEDIMENT CONTROL  
 015813 - TEMPORARY PROJECT SIGNAGE  
 016000 - PRODUCT REQUIREMENTS  
 016116 - VOLATILE ORGANIC COMPOUND (VOC) CONTENT RESTRICTIONS  
 017000 - EXECUTION AND CLOSEOUT REQUIREMENTS  
 017419 - CONSTRUCTION WASTE MANAGEMENT AND DISPOSAL  
 017800 - CLOSEOUT SUBMITTALS  
 017900 - DEMONSTRATION AND TRAINING  
 019113 - GENERAL COMMISSIONING REQUIREMENTS  
 019114 - COMMISSIONING AUTHORITY RESPONSIBILITIES

## **Division 02 - Existing Conditions**

### **Division 03 - Concrete**

030505 - UNDERSLAB VAPOR BARRIER  
 031000 - CONCRETE FORMING AND ACCESSORIES  
 032000 - CONCRETE REINFORCING  
 033000 - CAST-IN-PLACE CONCRETE  
 034500 - PRECAST ARCHITECTURAL CONCRETE  
 035400 - CAST UNDERLAYMENT

### **Division 04 - Masonry**

040511 - MASONRY MORTARING AND GROUTING  
 042000 - UNIT MASONRY

### **Division 05 - Metals**

051200 - STRUCTURAL STEEL FRAMING  
 053100 - STEEL DECKING  
 054000 - COLD-FORMED METAL FRAMING  
 055000 - METAL FABRICATIONS  
 055100 - METAL STAIRS

# UNOFFICIAL COPY

Specification Index

Page 2 of 5

055305 - METAL GRATINGS AND FLOOR PLATES  
 057300 - DECORATIVE METAL RAILINGS

**Division 06 - Wood, Plastics, and Composites**

060573 - WOOD TREATMENT  
 061000 - ROUGH CARPENTRY  
 062000 - FINISH CARPENTRY  
 064100 - ARCHITECTURAL WOOD CASEWORK

**Division 07 - Thermal and Moisture Protection**

071113 - BITUMINOUS DAMPPROOFING  
 072100 - THERMAL INSULATION  
 072119 - FOAMED-IN-PLACE INSULATION  
 072500 - WEATHER BARRIERS  
 074213 - METAL WALL PANELS  
 074646 - FIBER CEMENT SIDING  
 075050 - VEGETATED ROOF COMPONENTS  
 075200 - MODIFIED BITUMINOUS MEMBRANE ROOFING  
 076200 - SHEET METAL FLASHING AND TRIM  
 077123 - MANUFACTURED GUTTERS AND DOWNSPOUTS  
 078100 - APPLIED FIREPROOFING  
 078400 - FIRESTOPPING  
 079005 - JOINT SEALERS

**Division 08 - Openings**

081113 - HOLLOW METAL DOORS AND FRAMES  
 081416 - FLUSH WOOD DOORS  
 083100 - ACCESS DOORS AND PANELS  
 084013 - FIRE-RATED GLAZED WALLS  
 084313 - ALUMINUM-FRAMED STOREFRONTS  
 085113 - ALUMINUM WINDOWS  
 087100 - DOOR HARDWARE  
 088000 - GLAZING  
 088300 - MIRRORS  
 088717 - SAFETY AND SECURITY GLAZING FILMS  
 089100 - LOUVERS

**Division 09 - Finishes**

090561 - COMMON WORK RESULTS FOR FLOORING PREPARATION  
 092116 - GYPSUM BOARD ASSEMBLIES  
 092216 - NON-STRUCTURAL METAL FRAMING  
 093000 - TILING  
 095100 - ACOUSTICAL CEILINGS  
 096623 - RESINOUS MATRIX TERRAZZO FLOORING  
 098311 - ACOUSTICAL WALL SYSTEMS  
 099000 - PAINTING AND COATING

**Division 10 - Specialties**

101400 - SIGNAGE  
 102800 - TOILET, BATH, AND LAUDRY ACCESSORIES  
 103100 - MANUFACTURED FIREPLACES  
 104400 - FIRE PROTECTION SPECIALTIES  
 105100 - LOCKERS  
 105523 - MAIL BOXES

# UNOFFICIAL COPY

Specification Index

Page 3 of 5

105623 - WIRE STORAGE SHELVING

**Division 11 - Equipment**

113100 - RESIDENTIAL APPLIANCES

118227 - WASTE COMPACTORS

**Division 12 - Furnishings**

122113 - HORIZONTAL LOUVER BLINDS

123530 - RESIDENTIAL CASEWORK

123600 - COUNTERTOPS

124813 - ENTRANCE FLOOR MATS AND FRAMES

129313 - BICYCLE RACKS

**Division 13 - Special Construction****Division 14 - Conveying Equipment**

142010 - PASSENGER ELEVATORS

149100 - FACILITY CHUTES

**Division 21 - Fire Suppression**

210513 - COMMON MOTOR REQUIREMENTS FOR FIRE SUPPRESSION EQUIPMENT

210517 - SLEEVES AND SLEEVE SEALS FOR FIRE-SUPPRESSION PIPING

210518 - ESCUTCHEONS FOR FIRE-SUPPRESSION PIPING

210523 - GENERAL-DUTY VALVES FOR FIRE PROTECTION PIPING

210548 - VIBRATION AND SEISMIC CONTROLS FOR FIRE-SUPPRESSION PIPING AND EQUIPMENT

210553 - IDENTIFICATION FOR FIRE-SUPPRESSION PIPING AND EQUIPMENT

210700 - FIRE-SUPPRESSION SYSTEMS INSULATION

211119 - FIRE DEPARTMENT CONNECTIONS

211200 - FIRE-SUPPRESSION STANDPIPES

211213 - FIRE-SUPPRESSION HOSES AND NOZZLES

211313 - WET-PIPE SPRINKLER SYSTEMS

213213 - ELECTRIC-DRIVE, VERTICAL-TURBINE FIRE PUMPS

213400 - PRESSURE-MAINTENANCE PUMPS

213900 - CONTROLLERS FOR FIRE-PUMP DRIVERS

**Division 22 - Plumbing**

220513 - COMMON MOTOR REQUIREMENTS FOR PLUMBING EQUIPMENT

220516 - EXPANSION FITTINGS AND LOOPS FOR PLUMBING PIPING

220517 - SLEEVES AND SLEEVE SEALS FOR PLUMBING PIPING

220518 - ESCUTCHEONS FOR PLUMBING PIPING

220519 - METERS AND GAGES FOR PLUMBING PIPING

220523.12 - BALL VALVES FOR PLUMBING PIPING

220523.13 - BUTTERFLY VALVES FOR PLUMBING PIPING

220523.14 - CHECK VALVES FOR PLUMBING PIPING

220523.15 - GATE VALVES FOR PLUMBING PIPING

220529 - HANGERS AND SUPPORTS FOR PLUMBING PIPING AND EQUIPMENT

220548 - VIBRATION AND SEISMIC CONTROLS FOR PLUMBING PIPING AND EQUIPMENT

220553 - IDENTIFICATION FOR PLUMBING PIPING AND EQUIPMENT

220716 - PLUMBING EQUIPMENT INSULATION

220719 - PLUMBING PIPING INSULATION

221116 - DOMESTIC WATER PIPING

221119 - DOMESTIC WATER PIPING SPECIALTIES

221123 - DOMESTIC WATER PUMPS

221123.13 - DOMESTIC-WATER PACKAGED BOOSTER PUMPS

# UNOFFICIAL COPY

Specification Index

Page 4 of 5

221316 - SANITARY WASTE AND VENT PIPING  
 221319 - SANITARY WASTE PIPING SPECIALTIES  
 221323 - SANITARY WASTE INTERCEPTORS  
 221423 - STORM DRAINAGE PIPING SPECIALTIES  
 221429 - SUMP PUMPS  
 223400 - FUEL-FIRED, DOMESTIC-WATER HEATERS  
 224100 - RESIDENTIAL PLUMBING FIXTURES  
 224713 - DRINKING FOUNTAINS

## Division 23 - Heating, Ventilating, and Air-Conditioning (HVAC)

235113 - DRAFT CONTROL DEVICES  
 230513 - COMMON MOTOR REQUIREMENTS FOR HVAC EQUIPMENT  
 230517 - SLEEVES AND SLEEVE SEALS FOR HVAC PIPING  
 230529 - HANGERS AND SUPPORTS FOR HVAC PIPING AND EQUIPMENT  
 230553 - IDENTIFICATION FOR HVAC PIPING AND EQUIPMENT  
 230713 - DUCT INSULATION  
 230719 - HVAC PIPING INSULATION  
 230800 - COMMISSIONING OF HVAC  
 231123 - FACILITY NATURAL-GAS PIPING  
 232300 - REFRIGERANT PIPING  
 233113 - METAL DUCTS  
 233300 - AIR DUCT ACCESSORIES  
 233423 - HVAC POWER VENTILATORS  
 233713 - DIFFUSERS, REGISTERS, AND GRILLES  
 235400 - FURNACES  
 235533.16 - GAS-FIRED UNIT HEATERS  
 237413 - PACKAGED, OUTDOOR, CENTRAL-STATION AIR-HANDLING UNITS  
 237433 - DEDICATED OUTDOOR-AIR UNITS  
 238239.19 - WALL AND CEILING UNIT HEATERS

## Division 26 - Electrical

260500 - COMMON WORK RESULTS FOR ELECTRICAL  
 260519 - LOW-VOLTAGE ELECTRICAL POWER CONDUCTORS AND CABLES  
 260526 - GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS  
 260529 - HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS  
 260533 - RACEWAYS AND BOXES FOR ELECTRICAL SYSTEMS  
 260543 - UNDERGROUND DUCTS AND RACEWAYS FOR ELECTRICAL SYSTEMS  
 260544 - SLEEVES AND SLEEVE SEALS FOR ELECTRICAL RACEWAYS AND CABLING  
 260553 - IDENTIFICATION FOR ELECTRICAL SYSTEMS  
 260572 - OVERCURRENT PROTECTIVE DEVICE SHORT-CIRCUIT STUDY  
 260923 - LIGHTING CONTROL DEVICES  
 260943 - RELAY BASED LIGHTING CONTROLS  
 262200 - LOW VOLTAGE TRANSFORMERS  
 262413 - SWITCHBOARDS  
 262416 - PANELBOARDS  
 262726 - WIRING DEVICES  
 262813 - FUSES  
 262816 - ENCLOSED SWITCHES AND CIRCUIT BREAKERS  
 262913 - ENCLOSED CONTROLLERS  
 264313 - SURGE PROTECTION FOR LOW-VOLTAGE ELECTRICAL POWER CIRCUITS  
 265100 - INTERIOR LIGHTING  
 265600 - EXTERIOR LIGHTING

## Division 27 - Communications

# UNOFFICIAL COPY

Specification Index

Page 5 of 5

270503 - GENERAL REQUIREMENTS FOR COMMUNICATIONS

271500 - COMMUNICATIONS HORIZONTAL CABLING

**Division 28 - Electronic Safety and Security**

282300 - VIDEO SURVEILLANCE

283111 - DIGITAL, ADDRESSABLE FIRE-ALARM SYSTEM

**Division 31 - Earthwork**

311000 - SITE CLEARING

311100 - TREE PROTECTION

312000 - EARTH MOVING

**Division 32 - Exterior Improvements**

321443 - POROUS UNIT PAVING

323119 - ORNAMENTAL METAL FENCE

328400 - IRRIGATION

329200 - SEEDED LAWN

329205 - SODDED LAWN

329210 - NATURALIZED PLUGS

329300 - PLANTINGS

329500 - VEGETATED ROOF

**Division 33 - Utilities**

333100 - SANITARY UTILITY SEWERAGE PIPING

334100 - STORM UTILITY DRAINAGE PIPING