

**BOND STREET PARKING STRUCTURE GROUND LEASE**

BY AND BETWEEN

**CITY OF LOS ANGELES, LANDLORD**

AND

**L.A. PARKING STRUCTURES, LLC, TENANT**

DATE: \_\_\_\_\_, 2013

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## *GROUND LEASE*

This **BOND STREET PARKING STRUCTURE GROUND LEASE** ("Lease") is dated for reference purposes only, as of \_\_\_\_\_, 2013 (the "Effective Date"), and entered into by and between **THE CITY OF LOS ANGELES**, a municipal corporation, ("Landlord"), and **L.A. PARKING STRUCTURES, LLC**, a Delaware limited liability company ("Tenant").

### *1. RECITALS.*

1.1 Landlord holds fee simple title to that certain real property located immediately south of Pico Boulevard and west of Cherry Street in the City of Los Angeles, California and adjacent to the LACC (as defined in Exhibit B), as more particularly described in Exhibit A, together with: (a) all buildings, structures and other improvements currently presently located on such land; and (b) the appurtenances of Landlord and all the estate and rights of Landlord in and to such land (all, collectively, "Premises").

1.2 Tenant desires to lease the Premises from Landlord, and Landlord desires to lease the Premises to Tenant, for the purpose of Tenant constructing, maintaining, and operating, all at Tenant's cost, an above-grade parking structure containing not less than 924 parking stalls (the "Parking Structure"), the ground floor of which Parking Structure shall be designed and constructed in such a manner as to be utilized from time to time as a truck/bus staging area ("Truck Staging Area"). The Parking Structure may be referred to herein as the "Project." Upon completion, the Parking Structure will provide parking for the "Event Center" (as defined in Recital 1.3 below) and "Staples Center Arena" (as defined in Exhibit B), and, subject to the terms and conditions set forth herein, the Los Angeles Convention Center ("LACC").

1.3 Tenant's affiliate(s) currently own the Staples Center Arena and desire to construct an event center, which will include a stadium sufficient to accommodate a National Football League team, concert and other sporting and recreational uses, and meeting and exhibit space ("Event Center"). Prior to such construction of the Event Center, Tenant's affiliate(s) will construct an exhibit hall, meeting rooms, and ancillary and supporting spaces ("New Hall"), to replace for the LACC the spaces, functions, and facilities provided by its existing West Hall. The parking stalls within the Parking Structure shall be used for the benefit of the Event Center, the Staples Center Arena and the LACC, all as more particularly set forth herein. Concurrently with the execution of this Lease, the parties are also entering into that certain Ground Lease ("L.A. Live Way Parking Structure Lease") pursuant to which Tenant shall construct, at Tenant's cost, an above-grade parking structure containing approximately 3,000 parking stalls ( "L.A. Live Way Parking Structure"), which shall also be used for the benefit of the Event Center, the Staples Center Arena and the LACC, all as more particularly set forth therein.

1.4 The parties desire to enter into this Lease to set forth their rights and obligations relating to the Premises and Parking Structure. The parties intend that this Lease shall be non-cancelable by Landlord or Tenant, except as specifically and expressly set forth herein.

1.5 In consideration of the covenants and agreements of the parties contained in this

Lease, and in consideration of the Recitals set forth in this Section 1, and other good and valuable consideration, the receipt and sufficiency of all of which are conclusively acknowledged by both parties, Landlord and Tenant agree as set forth below.

1.6 *Effective Date.* This Lease is one of several documents involving the transactions, described in Section 1.3, which will become effective on the date of closing of Escrow No. \_\_\_\_\_ (“Close of Escrow”) with the “Escrow Company” pursuant to that certain Implementation Agreement entered into by and among Landlord, Tenant, L.A. Arena Land Company, Inc., Event Center LLC and New Hall LLC (the “Implementation Agreement”). This Lease shall take effect upon the “Effective Date,” which phrase means the date of Close of Escrow.

1.7 *Parking Structure Owner.* During the Term of this Lease, Tenant shall be deemed the “Owner” of the “Bond Street Garage Parcel” (in accordance with the definition of the term “Owner” set forth in Section 1 of the Reciprocal Easement Agreement), and, therefore, among other things, shall be entitled to all of the rights and benefits granted to the “Bond Street Garage Parcel Owner” in the Reciprocal Easement Agreement.

## 2. *DEFINITIONS.*

Capitalized terms used herein, unless otherwise defined herein, shall have the respective meanings specified in the Glossary of Defined Terms attached hereto as Exhibit B, or if not defined in Exhibit B, then such capitalized terms shall have the meanings assigned thereto in the Implementation Agreement. Unless otherwise indicated, references in this Lease to articles, sections, paragraphs, clauses, exhibits and schedules are to the same contained in or attached to this Lease.

## 3. *DEMISING OF PREMISES.*

Landlord hereby leases the Premises to Tenant and Tenant hereby takes and hires the Premises from Landlord. The Premises are leased to Tenant for the Term defined in this Lease, upon all the terms and conditions of this Lease, subject to all covenants, conditions, restrictions, easements, rights-of-way, and other matters of record, including without limitation all of the Tenant-Approved Title Conditions.

## 4. *TERM.*

4.1 *Term.* This Lease governs several successive periods of time, beginning with the “Non-Possessory Period”, followed by the “Construction Term”, and then the “Primary Term” (all of which are defined below; both the Construction Term and the Primary Term, but not the Non-Possessory Period, shall be collectively referred to herein as the “Term”):

4.1.1 *Non-Possessory Period.* The initial period of time covered under this Lease (“Non-Possessory Period”) shall commence upon the Effective Date and end upon the “Construction Term Commencement Date” (as defined in Section 5.1 below). During the Non-

Possessory Period, Tenant: (i) shall have no possessory interest in the Premises and (ii) shall have no right of access to or entry onto the Premises under this Lease, except that Tenant may enter onto the Premises for inspection purposes and to conduct necessary pre-construction testing, planning and other customary pre-development activities, subject to, and in accordance with, the terms and conditions of Section 29 hereof. The Non-Possessory Period shall not be part of the Term of this Lease. It is hereby acknowledged and agreed that Landlord shall continue to operate the existing improvements located in, on or about the Premises during the Non-Possessory Period, and except only as specifically set forth in Section 29 hereof, Tenant shall have no liability or obligation arising from or related to the Premises during the Non-Possessory Period.

4.1.2 *Construction Term.* The portion of the Term of this Lease immediately following the Non-Possessory Period shall be the "Construction Term". The Construction Term shall commence upon the Construction Term Commencement Date. The Construction Term shall end upon the Primary Term Commencement Date (as defined below). During the Construction Term, Tenant shall have possessory and all other leasehold interests in the Premises and shall use the Premises for demolition and construction purposes only.

4.1.3 *Primary Term.* The portion of the Term of this Lease immediately following the Construction Term shall be the "Primary Term". The Primary Term shall commence upon the "Primary Term Commencement Date", which shall be the date upon which the Parking Structure is Completed. The Primary Term, unless terminated sooner pursuant to the terms of this Lease, shall be co-terminus with the term of the "Event Center Ground Lease" (as defined in Exhibit B), as the same may be extended or renewed.

4.2 *Confirmation of Dates.* Promptly after the occurrence of any date relevant to the parties' rights or obligations under this Lease (including the date of Completion of Construction, the Construction Term Commencement Date, the Primary Term Commencement Date, and the Rent Commencement Date) the parties shall enter into a memorandum or amendment reasonably satisfactory to each of them (and in recordable form, if appropriate), memorializing such date. The failure of the parties to enter into any such memorandum or amendment shall not invalidate or in any way diminish the effectiveness of the actual date(s) to be set forth in the memorandum or amendment.

4.3 *Termination of Other Agreements.* Notwithstanding anything in this Lease to the contrary, Landlord may, at its sole discretion, terminate this Lease if any one or more of the Event Center Ground Lease, Implementation Agreement, New Hall Agreement, Gap Funding Agreement or Security Agreement (the "Other Agreements") is/are terminated as the result of one or more defaults by any of the parties other than Landlord under any of such Other Agreements which is/are not cured within applicable notice and cure periods under the applicable Other Agreement(s). In the event that Landlord elects to terminate this Lease pursuant to this Section 4.3, Landlord shall, within ninety (90) calendar days after the termination of the applicable Other Agreement, serve upon Tenant written notice of Landlord's intent to so terminate this Lease. Any termination of this Lease pursuant to this Section 4.3 shall take effect ninety (90) calendar days after Landlord has served written notice upon Tenant of Landlord's election to terminate this Lease pursuant to this Section 4.3.

## 5. *DEVELOPMENT AND CONSTRUCTION OF THE PROJECT.*

5.1 *Timing of Demolition Work; Tenant's Obligation to Construct the Project.* The "Construction Term Commencement Date" shall be the same date as the Construction Term Commencement Date of the L.A. Live Way Parking Structure Lease. Tenant shall not demolish any portion of the improvements on the Premises until Tenant has obtained all necessary demolition permits and has provided Landlord with written notice that Tenant intends to commence demolition (the "Demolition Commencement Notice"). Tenant shall have the right, without any further approval or authorization from Landlord, to commence demolition as of the date Tenant delivers the Demolition Commencement Notice to Landlord. Following the Construction Term Commencement Date and the delivery of the Demolition Commencement Notice and in accordance with this Lease, Tenant shall at its sole cost and expense (except as otherwise provided herein) develop and construct the Parking Structure on the Premises.

5.2 *Entry during the Construction Term for Staging, Demolition and Construction.* In no event shall Tenant enter onto the Premises to carry out any demolition or construction work during the Non-Possessory Period. During the Construction Term, Tenant shall have the right to enter onto the Premises to use the Premises as a construction staging area, and thereafter to demolish existing structures and to construct the Parking Structure and all related improvements in accordance with the terms of this Lease and the Implementation Agreement. Prior to the Construction Term, Tenant's insurance as required by Section 15 of this Lease must be in place. During the Construction Term, Landlord shall not be responsible for any loss, including theft, damage or destruction at the Premises or for any injury to Tenant, or Tenant's employees, representatives, contractors, or subcontractors except to the extent caused by Landlord's active negligence or willful misconduct. Landlord shall have the right to post appropriate notices of non-responsibility.

5.3 *Construction Schedule.* Landlord and Tenant hereby acknowledge that as a result of the phasing of construction of the Public Project and Private Project (both as defined in the Implementation Agreement), Tenant shall not Commence Construction of the Project until the Completion of the Public Project and the L.A. Live Way Parking Structure in order to permit Tenant to use the Premises as a construction staging area, such use as a staging area shall be subject to the provisions of Section 8.3.2 below. Accordingly, Tenant shall deliver the Demolition Commencement Notice and Commence Construction of the Project as soon as reasonably practicable after the Completion of the Private Project and the L.A. Live Way Parking Structure, subject to extension for Force Majeure Events and Landlord Delays (the "Commencement Obligation"), and shall prosecute the same diligently to Completion, using all commercially reasonable efforts to timely Complete the Project in accordance with any Schedule of Performance, if any, required by the Implementation Agreement. Tenant shall Complete the Project no later than the date on which Completion of the Event Center occurs, subject to extension for Force Majeure and Landlord Delays (the "Completion Obligation").

5.4 *Standards for Design and Construction of Project.* Tenant shall design the Parking Structure and shall construct the Project so as to comply with this Lease, the Implementation Agreement, the requirements of Law, plans approved by Landlord in accordance with this Lease



and the Implementation Agreement, and building permits. Landlord acknowledges that Tenant is responsible for the design of the Parking Structure and that, subject only to compliance with the design approval rights of Landlord set forth herein and the requirements of Law, except as set forth in this Lease, Tenant has ultimate control over all design and construction decisions regarding the Parking Structure. Tenant shall cause the Parking Structure to be designed by an architectural firm (to be selected and retained by Tenant) experienced in the design of parking structures and subject to the reasonable approval of Landlord. Landlord hereby confirms that it has approved Gensler and HNA/Pacific as the architectural firms for the Project.

5.4.1 Standards for Design of Parking Structure. Tenant will prepare plans and specifications for the Parking Structure, including the Truck Staging Area in accordance with the terms and provisions of the Implementation Agreement ("Parking Structure Design Development Documents"). Landlord will have the right to review and approve the Parking Structure Design Development Documents, and certain material changes thereto, in accordance with, and subject to the terms of, the Implementation Agreement. Tenant agrees that the design of the Parking Structure shall be subject to the requirements of Laws, including any design review and approval rights Landlord may have in its Governmental Capacity (as defined in Section 42.1 below) under applicable law. Landlord acknowledges and agrees that Tenant has prepared, and Landlord has approved, schematic design drawings for the construction of the Parking Structure (the "Approved Schematics"), which Approved Schematics are referenced in more detail on Exhibit C attached hereto and made a part hereof.

5.4.2 Standards for Construction of Parking Structure. The Parking Structure shall be constructed by Tenant substantially in accordance with Section 1.2 of this Lease, the Implementation Agreement, the approved Parking Structure Design Development Documents, and in accordance with Laws. Tenant shall pay, discharge or bond all Prohibited Liens and Stop Notices arising from the construction of the Parking Structure, all in accordance with the provisions of this Lease regarding Prohibited Liens and Stop Notices. Tenant shall obtain and pay for all permits and approvals required by Law in order for Tenant to construct the Parking Structure. Upon Completion of Construction, Tenant shall provide to Landlord (a) a certificate stating that Completion of Construction has occurred, (b) a copy of the temporary or permanent certificate of occupancy, or other final governmental "sign-off" or approval which permits the legal occupancy of the Parking Structure, and (c) a set of "as built" plans for the Parking Structure.

5.5 Cooperation by Landlord. Unless inconsistent with or contrary to the terms and provisions of this Lease, upon Tenant's request, Landlord shall, without cost to Landlord (other than a *de minimus* cost) and at Tenant's sole cost, promptly join in and execute any instruments which are reasonably required for the construction of the Parking Structure and which require the approval of the owner of the property, including, but not limited to, applications for building permits, demolition permits, alteration permits, appropriate consents, zoning, rezoning or use approvals, amendments and variances relating to the construction of the Premises, and such other instruments as Tenant may from time to time reasonably request to enable Tenant to use, develop, improve and construct improvements on the Premises during the Term consistent with the provisions, standards and use restrictions set forth in this Lease, provided each of the

foregoing is in reasonable and customary form and does not cause the Fee Estate to be encumbered as security for any obligation and does not expose the Fee Estate to any risk of forfeiture during the Term. Landlord agrees not to oppose or object to any applications filed by Tenant with any Government Agency in connection with development, operation or alteration of any improvements located on the Premises which are consistent with the provisions and standards set forth in this Lease. Nothing in this Section 5.5 shall be construed to limit Landlord's discretionary review and approval process in its Governmental Capacity.

5.6 *Title to Improvements and Personal Property.* Notwithstanding anything to the contrary in this Lease, all improvements and personal property located in, on or at the Premises or otherwise constituting part of the Premises shall at all times during the Term be owned by, and shall belong to, Tenant. Tenant shall have title to the foregoing throughout the Term and Landlord shall have title to the foregoing after the Term. All the benefits and burdens of ownership of the foregoing shall be and remain in Tenant during the Term and shall be and remain in Landlord after the Term.

5.7 *Equipment Liens.* If at any time or from time to time Tenant desires to enter into or grant any Equipment Liens, then upon Tenant's request Landlord shall enter into such customary documentation with respect to the property leased or otherwise financed pursuant to such Equipment Liens as Tenant shall reasonably request, providing for matters such as (a) Landlord's waiver of the right to take possession of such property upon occurrence of a Tenant Default (as defined in Section 33.1 below) and (b) customary agreements by Landlord to enable the secured party to repossess such property in the event of a default by Tenant permitting such secured party to exercise remedies under its Equipment Lien.

5.8 *Principles of Lease.* Landlord and Tenant agree that it is their mutual intention (a) that the standards for development and construction imposed upon Tenant by means of the covenants of Tenant under this Lease are not intended to confer any decision-making authority upon Landlord regarding the construction, design or operation of the Project, except as expressly set forth in this Lease, and (b) that this Lease shall be non-cancelable by Landlord or Tenant, except as specifically and expressly set forth herein.

## 6. *RENT.*

6.1 *Fixed Rent.* As specified in this Section 6, in addition to any other amounts payable by Tenant under this Lease, Tenant shall pay Landlord, without notice or demand, in lawful money of the United States of America, the "Fixed Rent", which defined term shall include, collectively, the "First Fixed Rent," a series of annual "Intermediate Fixed Rent," and the "Last Fixed Rent," all as set forth below in Sections 6.5 through 6.7, inclusive. Tenant shall pay Landlord the Fixed Rent commencing upon the "Rent Commencement Date" (defined below) through and until this Lease expires or terminates. The parties acknowledge and agree that Tenant shall have no obligation to pay Rent prior to the Rent Commencement Date, and as such, no Rent shall be payable during the Non-Possessory Period and the Construction Term (unless the Rent Commencement Date occurs prior to the Primary Term Commencement Date).

6.2 *Fixed Rent Year.* The defined term "Fixed Rent Year" shall mean each twelve

(12) month period commencing upon, and inclusive of, April 1st and ending upon, and inclusive of, March 31st, during which period a Fixed Rent is due and payable.

6.3 *Fixed Rent Amounts.* Other than the First Fixed Rent and the Last Fixed Rent, the series of annual Fixed Rent (each and collectively referred to as the “Intermediate Fixed Rent”) owed under this Lease, each in its full amount, without proration, shall be due and payable on the first day of a Fixed Rent Year (i.e. April 1st). In light of the fact that the payment due date of the First Fixed Rent will likely not fall on the first day of a Fixed Rent Year (i.e. April 1st), the First Fixed Rent may need to be prorated to reflect the partial Fixed Rent Year for which the First Fixed Rent will be paid. The method of prorating the First Fixed Rent is set forth below in Section 6.5. Similarly, in light of the fact that the payment due date of the Last Fixed Rent will likely not fall on the last day of a Fixed Rent Year (i.e. March 31st), the Last Fixed Rent may need to be prorated to reflect the partial Fixed Rent Year for which the Last Fixed Rent will be paid. The method of prorating the Last Fixed Rent is set forth below in Section 6.7.

6.4 *Fixed Rent Amount.* The “Fixed Rent Amount,” upon which the calculation of the First Fixed Rent, the Intermediate Fixed Rent, and the Last Fixed Rent will be based, shall vary depending on when the Rent Commencement Date occurs; provided, that (i) if the Rent Commencement Date occurs prior to September 1, 2014, then the Fixed Rent Amount shall be \$465,259.00; (ii) if the Rent Commencement Date occurs between September 1, 2014 and August 31, 2015, then the Fixed Rent Amount shall be \$474,564.00; and (iii) if the Rent Commencement Date occurs on or after September 1, 2015, then the Fixed Rent Amount shall be \$484,055.00. Once the Rent Commencement Date is determined, the Fixed Rent Amount shall be determined.

6.5 *First Fixed Rent.* Tenant shall pay Landlord, in advance, the “First Fixed Rent” (as described below) on or before the date it is due. The First Fixed Rent shall be due and payable upon the earliest date of the following: (i) the Completion of the Parking Structure, or (ii) Tenant’s commencement of parking operations on the Premises, but in no event later than the third anniversary of the issuance of the Lease Revenue Bonds (which date shall be the “Rent Commencement Date”).

The amount of the First Fixed Rent shall be calculated as follows: (i) in the event that the Rent Commencement Date falls on the first day of a Fixed Rent Year (i.e. April 1st), then no proration of the rent amount is necessary, and the amount of the First Fixed Rent shall be equal to the Fixed Rent Amount (as defined above); or (ii) in the event that the Rent Commencement Date falls on a day other than the first day of a Fixed Rent Year (i.e. April 1st), then the First Fixed Rent for such partial Fixed Rent Year shall be appropriately prorated by multiplying the Fixed Rent Amount by a fraction (“First Proration Fraction”), the numerator of which is the number of days in that partial Fixed Rent Year that have not completely passed as of the Rent Commencement Date (the day on which the Rent Commencement Date falls shall be deemed to not have completely passed) and the denominator of which is the total number of days in that entire Fixed Rent Year.

6.6 *Intermediate Fixed Rent.* Tenant shall pay Landlord annually, in advance, each “Intermediate Fixed Rent” (as described below) on or before the date it is due. The first

Intermediate Fixed Rent shall be due and payable on the first April 1st after the Rent Commencement Date (if the Rent Commencement Date falls on an April 1st, then the first Intermediate Fixed Rent is due and payable on the July 1st of the following year), and thereafter, each Intermediate Fixed Rent shall be due and payable on the first day of each Fixed Rent Year (i.e. July 1st).

The amount of the first Intermediate Fixed Rent shall be calculated as follows: (i) in the event that proration of the First Fixed Rent was not necessary because the Rent Commencement Date fell on a day that was the first day of a Fixed Rent Year (i.e. April 1<sup>st</sup>), then the amount of the first Intermediate Fixed Rent shall be equal to the mathematical product resulting from multiplying 1.0175 by the Fixed Rent Amount; (ii) in the event that the First Fixed Rent was prorated and the First Proration Fraction (defined above) was less than  $\frac{1}{2}$ , then the amount of the first Intermediate Fixed Rent shall be equal to the Fixed Rent Amount; or (iii) in the event that the First Fixed Rent was prorated and the First Proration Fraction was equal to or more than  $\frac{1}{2}$ , then the amount of the first Intermediate Fixed Rent shall be equal to the mathematical product resulting from multiplying 1.0175 by the Fixed Rent Amount. After the first Intermediate Fixed Rent, each "Intermediate Fixed Rent" thereafter shall be in the amount equal to the mathematical product resulting from multiplying 1.0175 by the Intermediate Fixed Rent for the previous Fixed Rent Year.

6.7 *Last Fixed Rent.* Tenant shall pay Landlord, in advance, the "Last Fixed Rent" (as described below) on or before the date it is due. The Last Fixed Rent shall be due and payable on the last April 1st before the day on which this Lease expires or terminates (if this Lease expires or terminates on an April 1st, then the Last Fixed Rent shall be due on that day). If this Lease terminates earlier than anticipated and Tenant has paid Fixed Rent beyond the Lease termination date, then Landlord shall refund to Tenant any overpayment portion of the Last Fixed Rent.

The amount of the Last Fixed Rent shall be calculated as follows: (i) in the event that this Lease expires or terminates on the last day of a Fixed Rent Year (i.e. March 31st), then the Last Fixed Rent shall not require proration, and the amount of the Last Fixed Rent shall be equal to the Fixed Rent Amount; or (ii) in the event that this Lease expires or terminates on a day other than the last day of a Fixed Rent Year, then the Last Fixed Rent shall be appropriately prorated by multiplying: (a) the mathematical product resulting from multiplying the Intermediate Fixed Rent for the previous Fixed Rent Year by (b) a fraction, the numerator of which is the number of days of the partial Fixed Rent Year that have partially or completely passed prior to the Lease expiration or termination (the day on which the date of expiration/termination falls shall be deemed to have partially passed) and the denominator of which is the total number of days in that entire Fixed Rent Year.

7. *TAXES, ASSESSMENTS, UTILITIES, AND POSSESSORY INTEREST TAXES.* Landlord and Tenant shall each pay any and all real estate taxes and assessments levied upon or assessed against the Premises as their respective interests in the Premises give rise, as the same become due. Tenant further agrees to pay for any and all utilities, including, without limitation, electrical, water, gas, telephone and other similar utility services used on the Premises by Tenant. By executing this Lease and accepting the benefits thereof, a property interest may be created

known as "possessory interest" and such property interest will be subject to property taxation. Tenant, as the party in whom the possessory interest is vested, may be subject to the payment of the property taxes levied upon such interest. Tenant acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided.

## 8. *USE.*

8.1 *Generally.* During the Non-Possessory Period, subject to Section 29 below, Tenant may enter onto the Premises for inspection purposes and to conduct necessary pre-construction testing, planning and other customary pre-development activities. During the Construction Term, Tenant may use the Premises as a staging area in accordance with the limitations set forth in Section 8.3.2, and otherwise only to carry out demolition and construction activities necessary for the construction of the Parking Structure and related improvements in accordance with this Lease and the Implementation Agreement. During the Primary Term, Tenant may use the Premises for the operation of the Project all in accordance with the terms and conditions of this Lease, and, so long as the Project has been developed and is being operated as a parking structure pursuant to and in accordance with the terms and conditions of this Lease, all other lawful uses ancillary thereto and permitted by applicable Law.

### 8.2 *Tenant's Use of Premises.*

8.2.1 Tenant, or a parking operator selected and retained by Tenant pursuant to and in accordance with the provisions of Section 8.6.1 below, shall operate the Parking Structure both for Tenant's use and Landlord's use during Permitted LACC Events, as defined in Section 8.3 below.

8.2.2 Subject only to Landlord's rights as provided in Section 8.3 below, Tenant shall have the exclusive right to use the Parking Structure for any and all parking purposes during the Term, including but not limited to, providing parking for (i) any and all events or uses at the Event Center or Staples Center Arena, (ii) any and all events or uses occurring within the District, and (iii) any and all events or uses elsewhere during the Term.

### 8.3 *Landlord's Use.*

#### 8.3.1 *Permitted LACC Events.*

(a) Subject to the terms and conditions set forth below, Landlord shall have the right to make arrangements with Tenant or its designated parking operator to use the Parking Structure for purposes of large, hi-capacity LACC events, which shall include: the Auto Show, E3, the Gift show and other events requiring comparable use of the Parking Structure (collectively, "Permitted Hi-Capacity LACC Events"), for not more than sixty (60) days in total each calendar year during the Term as follows:

- (i) Up to thirty (30) times per year for week-day events (being defined as Monday through Friday, 6:00p.m.-4:00p.m.);
- (ii) Up to five (5) times per year for week-night events (being defined as

- Monday through Friday, after 4:00p.m.);
- (iii) Up to ten (10) times per year for Saturday day-time events (being defined as 6:00a.m.-4:00p.m.);
- (iv) Up to ten (10) times per year for Sunday day-time events (being defined as 6:00a.m.-4:00p.m.); and
- (v) Up to five (5) times per year for weekend night-time events (being defined as Saturday or Sunday, after 4:00p.m.).

As more particularly described below, Landlord and Tenant shall work in good faith to agree on certain details with respect to the operation of the Parking Structure during Permitted Hi-Capacity LACC Events, including the permitted hours of use; provided, however, that in any event, the Parking Structure shall at all times actually be managed by Tenant or Tenant's designated parking operator, and not by Landlord.

(b) In addition to Landlord's use of the Parking Structure in connection with the Permitted Hi-Capacity LACC Events as described in subsection (a) above, subject in all events to the use of the Parking Structure by Tenant in connection with events scheduled at the Staples Center Arena or the Event Center or both (a "Tenant-Related Event"), Landlord may request from Tenant, in writing or as permitted under the Shared Parking Plan (as defined in Section 8.3.1(d) below), that Tenant make the Parking Structure available for all other LACC events ("Additional Permitted LACC Events" and together with the Permitted Hi-Capacity LACC Events, the "Permitted LACC Events"); provided, however, that in connection with all such Additional Permitted LACC Events, Tenant shall be entitled to receive One Hundred Percent (100%) of all revenue generated by such use of the Parking Structure. In furtherance of the foregoing, it is hereby acknowledged and agreed that if Landlord requests the use of the Parking Structure for any Additional Permitted LACC Event and any Tenant-Related Event is scheduled for the same day, but the Additional Permitted LACC Event is scheduled for a time which, as reasonably determined by Tenant, would not conflict with such Tenant-Related Event, then Tenant will not withhold its consent to the Additional Permitted LACC Event, however Tenant may specify the permitted hours of use of the Parking Structure by Landlord's users, and the time by which Landlord's users must enter and exit the Parking Structure.

(c) Notwithstanding anything herein which may be construed to the contrary, it is hereby acknowledged and agreed that (i) in the case of all Permitted Hi-Capacity LACC Events, Landlord's use of the Parking Structure for such Permitted Hi-Capacity LACC Events shall have priority over Tenant's use of the Parking Structure for any Staples Center Arena or Event Center Event which would conflict with Landlord's use, except only for "Event Center Priority Events," which shall in all instances have priority over all other events, including without limitation, Permitted Hi-Capacity LACC Events; provided, however, that Tenant shall endeavor to the greatest extent commercially feasible to provide Landlord with written notice by no later than July 1<sup>st</sup> of each year during the Term of the estimated dates, times and durations of the Event Center Priority Events scheduled to occur over the immediately succeeding July 1<sup>st</sup> - June 30<sup>th</sup> period; and (ii) in all other instances, including without limitation any requested use by Landlord of the Parking Structure for any proposed Additional Permitted LACC Event, Tenant's use of the Parking Structure shall have priority over Landlord's use of the Parking Structure for any proposed LACC Event which would conflict with Tenant's use. For the purposes of this

Lease, "Event Center Priority Events" shall be defined as all NFL games and up to an additional ten (10) event days per year in which the anticipated attendance for an event at the Event Center is anticipated to be in excess of 50,000 patrons.

(d) The parties (together with certain of their respective Affiliates) shall jointly establish and implement a parking coordination plan (the "Shared Parking Plan"), which shall seek to minimize conflicts and ensure the optimal and mutually beneficial operation of the Parking Structure together with certain other parking structures owned and operated by the parties hereto. Such Shared Parking Plan shall seek to provide sufficient parking for LACC patrons, and shall take into account LACC's desire that such parking shall be available at customary LACC parking rates on those days when there are conflicting events occurring in either Staples Center Arena or the Event Center, and shall contemplate that the parties will seek to implement such commercially reasonable measures as may be feasible in order to satisfy LACC's desire, including without limitation, the parties may explore and seek to implement a joint parking validation program and similar measures, all pursuant to and in accordance with the terms and conditions of the Shared Parking Plan.

(e) Landlord shall, and/or Tenant's Operator may, notify drivers of all vehicles entering the Parking Structure for a Permitted LACC Event that they must vacate the Parking Structure by the end of Landlord's permitted time of use.

(f) If any vehicles remain in the Premises after the permitted time of use for an LACC Event, Landlord shall, at no cost to Tenant, make available parking spaces in an amount equal to the number of spaces occupied by such remaining vehicles at an alternative Landlord owned or operated parking facility reasonably satisfactory to Tenant.

8.3.2 Truck Staging Area. During the Construction Term under the L.A. Live Way Parking Lease, the "Truck Staging Area" shall be the Premises to the extent Tenant has not otherwise made available to Landlord an Off-Site Truck Staging Area satisfying the Truck Staging Criteria, in which event any use by Tenant of the Premises for construction staging purposes shall not materially interfere with Landlord's use of the Premises as a Truck Staging Area. During the Construction Term under this Lease, but prior to the Completion of the LA Live Way Parking Structure, Tenant may provide an Off-Site Truck Staging Area as the "Truck Staging Area". During the Construction Term under this Lease, but after the Completion of the LA Live Way Parking Structure, Tenant shall provide an Off-Site Truck Staging Area as the "Truck Staging Area". During the Construction Term, to the extent any proposed Off-Site Truck Staging Area does not satisfy the Truck Staging Criteria, Landlord shall in good faith consider reasonable modifications to the Truck Staging Criteria to permit Tenant to satisfy its obligations pursuant to this Section 8.3.2. During the Primary Term under this Lease, the "Truck Staging Area" shall be the first floor of the Parking Structure to the extent Tenant has not otherwise made available to Landlord an Off-Site Truck Staging Area satisfying the Truck Staging Criteria. Subject in all events to the use by Landlord and Tenant of the Parking Structure in order to accommodate the applicable parking requirements in connection with events scheduled at the Staples Center Arena, Event Center, and the LACC, and otherwise subject to all of the terms and conditions of this Lease, Landlord shall have the right to use the Truck Staging Area in connection with LACC Events. In lieu of Landlord's full-time use of the Truck Staging Area,

subject to the terms and conditions set forth in this Section 8.3.2, Tenant shall secure an off-site location (the "Off-Site Truck Staging Area") which shall satisfy the "Truck Staging Criteria" (as defined herein) for the shared use by Landlord and Tenant in connection with LACC Events and events scheduled at the Staples Center Arena and Event Center throughout the Term. Landlord shall not be obligated to compensate Tenant for the use or cost of the truck staging, whether provided on-site within the Truck Staging Area or on the Off-Site Truck Staging Area. Notwithstanding anything herein to the contrary, if for whatever reason during the Term Tenant is unable to provide an Off-Site Truck Staging Area satisfying the Truck Staging Criteria, then during such time, Landlord shall have the first-priority right to use the Truck Staging Area for its use in connection with LACC Events. For the purposes of this Lease, the "Truck Staging Criteria" shall be defined as follows:

- (i) Minimum Lot Size – 63,178 square feet;
- (ii) Proximity to LACC-- not greater than 1/4 mile from LACC; and
- (iii) Functionality—Not less than (one) two-lane ingress and (one) two-lane egress for the facilitation of truck movement. In addition, ample space should be given for truck turning and queuing within the area.

8.4 *Revenue.* Tenant shall receive One Hundred Percent (100%) of the revenue generated by the Parking Structure.

8.5 *Use Covenants.* Tenant and Landlord each covenant as follows with respect to operating the Parking Structure:

8.5.1 Tenant shall maintain (including the removal of graffiti) and operate the Premises as a professional, first-class parking facility in accordance with the applicable standards maintained by other similar first-class parking structures in Los Angeles, California. Tenant shall, at Tenant's expense (subject to Section 7) keep the Premises, including the Parking Structure and Truck Staging Area, in a neat and clean condition and in good operating condition.

8.5.2 Tenant shall provide security for the Premises, including the Parking Structure and Truck Staging Area, at a level that Tenant deems reasonably warranted and necessary to protect users of the Premises, including the Parking Structure and Truck Staging Area, Landlord's and Tenant's personnel and patrons and their property while using or operating the Parking Structure.

8.5.3 Tenant shall be responsible for costs and expenses of purchasing and maintaining all supplies and materials necessary for the day-to-day care, maintenance, management and efficient operation of the Parking Structure on an on-going basis.

8.5.4 Tenant shall be solely responsible for performing and supervising routine cleanup of the Parking Structure, maintaining parking access and all other parking-related equipment therein in a neat and clean condition and in good operating condition.

8.5.5 Tenant shall be responsible to keep and maintain in good repair and working order and perform maintenance upon the: (a) structural and capital improvements of the



Parking Structure, (b) mechanical, electrical and fire/life safety systems serving the Parking Structure in general, (c) parking operator equipment, (d) roof of the Parking Structure, and (e) elevators serving the Parking Structure (if any).

8.5.6 Landlord and Tenant shall cooperate to establish compatible graphics, signage and notices related to their respective uses of the Parking Structure and Truck Staging Area.

8.5.7 Tenant shall, in its discretion, establish parking rates for the Parking Structure, regardless of whether for Tenant's use or Landlord's use (except that Landlord's use of the Truck Staging Area shall be subject to mutually agreeable arrangements determined pursuant to Section 8.5.9 below).

8.5.8 Tenant shall collect and be entitled to retain all parking fees for the operation of the Parking Structure (including, without limitation, in connection with all Permitted Hi-Capacity LACC Events).

8.5.9 Landlord and Tenant shall each designate a representative, who shall meet and confer regularly to discuss the operation of the Parking Structure and schedules of the Permitted LACC Events and Tenant's uses.

#### 8.6 *Operator.*

8.6.1 Engagement. The Parking Structure shall, at all times during the Term, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how to operate the Parking Structure in accordance with this Lease ("Operator"), who may be Tenant itself or one of its Affiliates or a non-affiliated third party. The Operator on the Effective Date shall be the Tenant unless the Tenant has selected another "Person" to be the Operator prior to the Effective Date. At any time Tenant may employ another Person with the requisite expertise, qualifications, experience, competence, skills and know-how as a consultant (the "Operations Consultant") to direct Tenant and Tenant's employees in the operation of the Parking Structure. In the event that Tenant employs an Operations Consultant, Tenant shall be deemed the Operator for all purposes of this Lease. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of Tenant, and any delegation to an Operator shall not relieve Tenant of any obligations, duties or liability hereunder. Tenant shall immediately notify Landlord upon the termination or resignation of an Operator. Any agreement between Tenant and any Operator shall by its terms terminate without penalty at the election of Landlord or the Operator upon three Business Days' notice to such Operator or Landlord, as applicable, upon the termination of this Lease. The Operator shall have no interest in or rights under this Lease or in the Parking Structure unless the Operator is Tenant itself.

#### 8.6.2 Intentionally Omitted.

8.6.3 Police Permit. The Operator and any replacement Operator shall, on the Effective Date and at all times during the Term of this Lease, be in compliance with Municipal

Code Section 103.202, which requires a Police Permit for each Structure and the posting of a bond.

#### 8.7 *Tenant Covenants.*

8.7.1 *Continued Existence.* Tenant covenants to maintain its continued legal existence throughout the Term of this Lease.

8.7.2 *Responsibility for Financing.* Tenant covenants that any financing required in connection with its development and operation of the Parking Structure shall be the sole responsibility and cost of Tenant.

#### 8.8 *Taxes.*

8.8.1 *Sales Tax Origin.* Tenant shall designate, and shall use good faith efforts to cause its contractors, subcontractors, vendors and other third parties under its control or with whom it enjoys privity of contract to designate the City as the point of sale for California sales and use tax purposes (to the extent the payment of sales and use tax is required by applicable Law), for all purchases of materials, fixtures, furniture, machinery, equipment and supplies for the Project during the construction thereof and for all other items in connection with the operation of the Parking Structure.

8.8.2 *City Parking Tax.* Tenant shall maintain records which are reasonably sufficient to accurately identify the parking taxes and parking revenue collected by Tenant in connection with its operation of the Parking Structure.

8.9 *Living Wage; Prevailing Wage.* In connection with the construction and operation of the Parking Structure (including all demolition work on the Premises), Tenant shall comply, to the extent applicable, with the provisions of the City's Living Wage Ordinance. In connection with the construction of the Parking Structure (including all demolition work on the Premises), Tenant shall comply with the provisions of the State of California's "prevailing wages" requirements, as such requirements are accepted by and made applicable to the City.

8.10 *Business Licenses.* Tenant agrees to instruct all Persons and entities with whom it contracts for services related to the construction of the Project and the operation of the Parking Structure, in professions or fields to which the City's business license laws and taxes apply, that such Persons or entities must obtain City business licenses, and instruct their subcontractors to obtain City business licenses.

### 9. *QUIET ENJOYMENT.*

Landlord covenants that, so long as this Lease has not expired or terminated in accordance with its terms and Tenant is not in breach thereof beyond all applicable notice and cure periods, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term. By such covenant, Landlord makes no representation or warranty as to the condition of title beyond that set forth in Section 26.1, and with respect to title, Landlord's conveyance is

"as is," except as set forth in Section 26.1.

10. *LAWS.*

During the Term, Tenant shall, at its own expense, comply with all Laws affecting the Premises. Tenant shall obtain and pay for all permits and approvals required by Law in connection with Tenant's construction upon, operation, use and occupancy of the Premises and shall comply with all such permits and approvals.

11. *MAINTENANCE AND ALTERATIONS.*

11.1 *Tenant's Right to Perform Alterations.* At Tenant's sole cost and expense, Tenant shall be entitled from time to time to make improvements, repairs or alterations to the Parking Structure, and to alter, modify or reconstruct such improvements as are located on the Premises, as Tenant shall consider necessary or appropriate, subject to the terms of this Lease, and subject to all applicable Laws. If any such improvement, repair or alteration, including any such improvement, repair or alteration made pursuant to Section 16, will materially alter the exterior design of the Parking Structure or reduce the number of parking spaces in the Parking Structure below that required in Section 1.2 (each, a "Material Change"), then such improvement, repair or alteration shall be subject to Landlord's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be given or reasonably conditioned or withheld within thirty (30) days after Tenant requests the same. If Landlord fails to respond to Tenant's request within such thirty (30) day period, then Tenant may deliver a written reminder notice to Landlord stating in bold typeface that Landlord's failure to approve or reasonably disapprove the proposed Material Change within five (5) business days of Landlord's receipt of Tenant's written reminder notice, shall be deemed to constitute Landlord's approval of the proposed Material Change. If Landlord so fails to approve or reasonably disapprove the proposed Material Change within five (5) business days of Landlord's receipt of Tenant's written reminder notice, then Landlord shall be deemed to have approved the proposed Material Change. Such review and approval shall be carried out in accordance with the design review and approval process set forth in Section 5.4.1 above. Landlord's approval shall not be required for improvements, repairs or alterations which do not constitute a Material Change.

11.2 *Plans and Specifications.* To the extent that Tenant makes or permits to be made any improvements, repairs or alterations to the Premises (including initial construction of the Project), Tenant shall provide Landlord with any plans and specifications (including working plans and specifications and "as-built" plans and specifications) for such improvements, repairs or alterations.

11.3 *Hazardous Substances and Environmental Remediation.*

11.3.1 *Tenant's Obligations.* Tenant shall comply with all Environmental Laws at all times during the Term with respect to the Premises. Tenant may use any Hazardous Substance normally contained in janitorial supplies or otherwise normally used in the operation of facilities comparable to the Parking Structure, it being agreed that Tenant shall not use any other Hazardous Substances in, on or about the Parking Structure without Landlord's prior

written consent. Tenant shall not Release any Hazardous Substance in, on or under the Premises or permit the Release of any Hazardous Substance in, on or under the Premises by any of its contractors, employees or agents. In the event of the discovery of Hazardous Substances or any Release of any Hazardous Substance in, on or under the Premises, whether prior to or after execution of this Lease and whether known or unknown at the time of execution of this Lease, Tenant shall notify Landlord immediately and promptly perform investigation and Remediation of such Release in compliance with all Environmental Laws at Tenant's sole cost and expense. Notwithstanding the foregoing, Tenant shall have no obligation to Remediate nor any other liability relating to any Release to the extent arising from the active negligence of, or any willful act committed by, Landlord or its officials, officers, boards, commissioners, employees, contractors and agents (collectively, the "Excluded Environmental Claims").

11.3.2 Intentionally Omitted.

11.3.3 Notice of Violation. Tenant shall notify Landlord immediately upon (a) discovery or Release of Hazardous Substances which Tenant is required to report to any Environmental Agency by any applicable Environmental Law or (b) receipt of notice from any Environmental Agency or other party asserting a violation of any Environmental Law or requiring Remediation of a Hazardous Substance located in, on or under the Premises.

11.3.4 Investigation and Remediation. Tenant, upon receipt of any notice of violation of any Environmental Law or other requirement to Remediate or upon receipt of any other knowledge that such a violation or event requiring Remediation may have occurred, shall promptly Investigate, determine the appropriate course of action with respect to such notice or requirement and Remediate, provided, however, that Tenant shall have no obligation to Remediate, nor any other liability relating to, any Excluded Environmental Claim. If Tenant is required to notify any Environmental Agency of the need for or results of its Investigation or Remediation by any applicable Environmental Laws, it shall also (a) notify Landlord of the need for and results of its Investigation and Remediation and (b) provide Landlord with copies of all documents filed with, or received from, any Environmental Agency with respect to such Investigation and Remediation. Any Investigation and any Remediation required of Tenant pursuant to the terms of this Lease shall be undertaken by the Tenant at its sole cost and expense.

11.3.5. Indemnification. Tenant hereby agrees to defend, indemnify and hold harmless Landlord and its officials, officers, boards, commissioners, employees and agents from and against: (a) any Claim(s) by any Environmental Agency or any other party arising from or related to any Release of a Hazardous Substance from, in, on, under or about the Premises, (b) any discovery or Release of Hazardous Substances from, in, on, under or about the Premises, (c) any Claim(s) arising from or related to violation of any Environmental Law with respect to the Premises ("Violation"); and/or (d) any Claim(s) reasonably associated with Investigation and/or Remediation of any Release from, in, on or under the Premises, in each case (a) through (d) above, whether occurring before or after the execution of this Lease and whether known or unknown, provided, however, that the foregoing indemnity shall not apply to any Excluded Environmental Claim. The foregoing indemnity and hold harmless agreement by the Tenant shall apply in accordance with its terms (but exclusive of any Excluded Environmental Claim) notwithstanding the acts or omissions to act of the Landlord, its officials, officers, boards,

commissioners, employees, or agents, it being the intent of the parties that the Landlord shall not bear any cost or liability for Claims, Releases, Violations, Investigations or Remediations arising from or related to the Premises, other than to the extent arising from or related to Excluded Environmental Claims.

11.3.6 Release. Tenant hereby generally releases, waives, acquits, remises and forever discharges Landlord and its officials, officers, boards, commissioners, employees and agents from and against any Hazardous Substance or Claim which Tenant now has or may have or which may arise in the future with respect to any Claim, Release, Violation, Investigation and/or Remediation to which the indemnity described in Section 11.3.5 would apply, whether occurring before or after the execution of this Lease and whether known or unknown at the time of execution of this Lease, except in all cases that this release of claims shall not apply to the Excluded Environmental Claims. With respect to this Agreement, Tenant specifically waives the benefit of California Civil Code Section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The foregoing release of Landlord by Tenant shall apply in accordance with its terms (exclusive of the Excluded Environmental Claims), notwithstanding the act or omission to act of the Landlord, or its officers, officials, boards, commissioners, employees, and agents, any of them, it being the intent of the parties that the Landlord shall not bear any cost or liability for Claims, Releases, Violations, Investigations or Remediation arising from or related to the Premises, except to the extent arising from or related to the Excluded Environmental Claims.

11.3.7 Tenant Responsible for All Hazardous Substances. The parties intend by this Section 11.3 to place upon Tenant all responsibility, both financial and remediation, for all Hazardous Substances found on, or released on, the Premises during the Term of this Lease, except to the extent arising from or related to the Excluded Environmental Claims. Such responsibility includes both Remediation of the Hazardous Substances and indemnification of Landlord as to all claims other than the Excluded Environmental Claims.

11.3.8 Obligations Survive Termination of Lease. The obligations to Investigate and Remediate and the indemnities and releases set forth in this Section 11.3 shall survive the termination of this Lease with regard to any Release which (i) occurred prior to the date of termination of this Lease, or (ii) arising out of the use of the Premises by Tenant, its employees, agents and invitees, pursuant to this Lease.

11.3.9 Definitions. For purposes of this Lease, the following terms are defined as follows:

11.3.9.1 "Claim(s)" means any and all claims, actions, causes of action, writs, demands, rights, damages, liabilities, costs, expenses (including, without limitation, reasonable attorneys', experts', and consultants' fees and administrative and/or litigation costs),

finer, penalties, liens, taxes, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen.

11.3.9.2 **"Environmental Agency"** means the United States Environmental Protection Agency, the California Environmental Protection Agency and all of its sub-entities including without limitation the Regional Water Quality Control Board-Los Angeles Region, the State Water Resources Control Board, the Department of Toxic Substances Control and the California Air Resources Board; the City; the County; the South Coast Air Quality Management District; the United States Environmental Protection Agency; and/or any other federal, state or local governmental agency or entity that has jurisdiction over Hazardous Substances Releases or the presence, use, storage, transfer, manufacture, licensing, reporting, permitting, analysis, disposal or treatment of Hazardous Substances in, on, under, about or affecting the Premises. All references to an Environmental Agency or Agencies shall mean and include any successor Environmental Agency.

11.3.9.3 **"Environmental Laws"** means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, directives, guidelines, or permit conditions in existence as of the date of this Agreement or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory decrees, judgments and orders and common law, including, without limit, those relating to industrial hygiene, safety, health or protection of the environment or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) ("CERCLA"); the Resource Conservation and Recovery Act, as amended, (42 U.S.C. Section 6901 et seq.) ("RCRA"); federal Water Pollution Control Act, as amended, (33 U.S.C. Section 1251 et seq.); Toxic Substances Control Act, as amended, (15 U.S.C. Section 2601 et seq.); the Carpenter-Presley-Tanner Hazardous Substances Account Act, (California Health and Safety Code Section 25300 et seq.); Chapter 6.5 commencing with Section 25200 (Hazardous Waste Control); Chapter 6.7 commencing with Section 25280 (Underground Storage of Hazardous Substances) of the California Health and Safety Code; and the California Environmental Quality Act (California Public Resources Code Section 2100 et seq.).

11.3.9.4 **"Hazardous Substances"** means, without limitation: (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., and in the regulations promulgated pursuant to said laws; (b) those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code, or as "hazardous substances" in Section 25316 of the California Health & Safety Code, and in the regulations promulgated pursuant to said laws; (c) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. part 302 and amendments thereto); (d) any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a

"hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251 et seq. (33 U.S.C. 1321) or listed-pursuant to Section 307 of the Clean Water Act (33 U.S.C. 1317); (v) flammable explosives, or (vi) radioactive materials; and (e) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state, or local laws.

11.3.9.5 "**Investigation(s)**" means any actions including, but not limited to, any observation, inquiry, examination, sampling, monitoring, analysis, exploration, research, inspection, canvassing, questioning, and/or surveying of the Premises or any other affected properties, including the air, soil, surface water, and groundwater, and the surrounding population or properties, or any of them, to characterize or evaluate the nature, extent or impact of Hazardous Substances.

11.3.9.6 "**Release(s)**" means any releasing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment in violation of or resulting in a violation of applicable Environmental Laws.

11.3.9.7 "**Remediate**" or "**Remediation**" means any of those actions with respect to Hazardous Substances constituting a response or remedial action as defined under Section 101(25) of CERCLA, and similar actions with respect to Hazardous Substances as defined under comparable state and local laws, and/or other cleanup, removal, containment, abatement, recycling, transfer, monitoring, storage, treatment, disposal, closure, restoration or other mitigation or remediation of Hazardous Substances or Releases required by any Environmental Agency or within the purview of any Environmental Laws.

11.3.10 Environmental Indemnity Regarding Premises Binding on Successors and Assigns of Tenant. The parties hereto have agreed and Landlord and Tenant hereby reaffirm that conveyance by Landlord of the leasehold interest in Premises has been and will be undertaken by Landlord in order to benefit Tenant under this Lease by providing property for construction of the Parking Structures and related development. Accordingly, the parties hereto agree that the provisions of this Section 11.3, including the indemnities and releases described therein, shall be binding upon Tenant and upon each successor, assign or subtenant of Tenant which is a tenant or subtenant under this Lease (or any New Lease entered into pursuant to the terms of this Lease). Tenant and such successors, assigns and subtenants shall be jointly and severally liable for the obligations set forth in this Section 11.3.

## 12. *PROHIBITED LIENS AND STOP NOTICES.*

12.1 *Tenant's Covenant.* If a Prohibited Lien or Stop Notice is filed, then Tenant shall, within 30 days after receiving Notice of such filing, cause such Prohibited Lien or Stop Notice to be paid, discharged or bonded. Nothing in this Lease shall be construed to restrict Tenant's right to contest the validity of any Prohibited Lien or Stop Notice and to pursue Tenant's position to a final judicial determination, provided Tenant complies with Section 14. The mere existence of a Prohibited Lien or Stop Notice shall not be construed as a Tenant Default under this Lease.

12.2 *Protection of Landlord.* Landlord shall not be liable for any labor or materials

furnished or to be furnished to Tenant upon credit. Nothing in this Lease shall be deemed or construed in any way to constitute Landlord's consent or request, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any improvement, alteration or repair of, or to, the Premises, or any part of the Premises, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens or stop notices against the Fee Estate. Landlord shall have the right to post notices of non-responsibility on the Premises. Tenant shall Indemnify Landlord with respect to any matter arising from or related to work performed on the Premises other than that performed by Landlord or its agents. Such indemnity shall survive the expiration or termination of this Lease.

### 13. *INDEMNIFICATION.*

13.1 *Application.* Landlord's and Tenant's respective obligations with respect to environmental investigation and remediation and indemnification for the same, whether relating to conditions that exist before or after the Effective Date, shall be governed by Section 11.3 of this Lease and shall not be limited by the indemnity obligations set forth in Section 13.2.

13.2 *Indemnity by Tenant.* Tenant does hereby Indemnify Landlord from and against any and all Loss incurred or suffered by Landlord arising directly or indirectly with respect to (a) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any person or entity claiming through or under Tenant or by the agents, contractors, employees, subtenants, licensees, invitees or visitors of the Parking Structure, (b) any violation of law by Tenant or any person or entity claiming through or under Tenant, or by the agents, contractors, employees, subtenants, licensees, invitees or visitors of Tenant, (c) any damages sustained or incurred by Landlord from any labor dispute or strike on the part of Tenant's employees or directed at Tenant, (d) any negligent acts or omissions of Tenant or any person or entity claiming through or under Tenant, or of the agents, contractors, employees or directed at Tenant or (e) any breach of this Lease by Tenant, except in all events to the extent attributable to the negligence or willful misconduct of Landlord or any elected official, partner, member, officer, director, agents and employees.

### 13.3 *Intentionally Omitted.*

13.4 *Indemnification Procedures.* Wherever this Lease requires one party to Indemnify the other, the following procedures and requirements shall apply:

13.4.1 *Notice.* Indemnatee shall provide Indemnitor with Notice of any claim. Indemnatee shall not be entitled to recover from Indemnitor the amount of any Loss which would not have been incurred by Indemnitor but for Indemnatee's failure to provide such Notice in a timely manner.

13.4.2 *Selection of Counsel.* If Indemnatee requests that Indemnitor provide Indemnatee's defense, Indemnitor shall select counsel with the reasonable approval of Indemnatee. Notwithstanding any other provision of this Lease, if Indemnatee intends to retain



its own counsel with respect to its defense, such counsel shall be reasonably acceptable to Indemnitor, and Indemnitor's reasonable attorneys' and experts fees (including in-house fees at prevailing in-house attorney rates) and costs shall be subject to Indemnitor's indemnity.

13.4.3 Settlement. Indemnitor may, with the consent of Indemnatee, not to be unreasonably withheld, settle the claim, except that no consent by Indemnatee shall be required as to any settlement by which (a) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnatee pursuant to which Indemnatee is not required to make any payment whatsoever to the third party making the claim or to take any action, (b) neither Indemnatee nor Indemnitor acting on behalf of Indemnatee makes any admission of liability, and (c) the continued effectiveness of this Lease is not jeopardized in any way.

13.4.4 Insurance Proceeds. Indemnitor's obligations shall be reduced by net insurance proceeds actually collected and retained by Indemnatee on account of any loss.

13.5 Survival. This Section 13 shall survive the expiration or termination of this Lease.

#### 14. RIGHT OF CONTEST.

Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to contest, at its sole expense, by appropriate legal proceedings diligently conducted, (a) the amount or validity of any Imposition, Prohibited Lien or Stop Notice, (b) the valuation, assessment or reassessment (whether proposed or final) of the Premises for purposes of real estate taxes or possessory interests, (c) the validity of any Law or the application of any Law to the Premises, or (d) the validity or merit of any claim against which Tenant is required to Indemnify Landlord under this Lease (collectively, "Contested Item"). Tenant may defer payment of any Contested Item pending the outcome of such contest, provided that such deferral does not subject the Premises to risk of forfeiture or subject Landlord to any material liability. Landlord shall not be required to join in any such contest proceedings unless a Law shall require that such proceedings be brought in the name of Landlord or any owner of the Fee Estate. In such case, Landlord shall cooperate with Tenant, so as to permit such proceedings to be brought in Landlord's name. Tenant shall pay all of Tenant's costs and expenses (including attorneys' fees) incident to such proceedings, and if such contest is brought in Landlord's name, the reasonable costs and expenses of Landlord (including Landlord's reasonable attorneys' fees) with respect thereto. Tenant shall Indemnify Landlord with respect to any such contest. Tenant shall be entitled to any refund of any Contested Item (and penalties and interest paid by Tenant) based upon Tenant's prior overpayment of such Contested Item, whether such refund is made during or after the Term. Upon the final determination of Tenant's contest of a Contested Item, Tenant shall pay the amount of such Contested Item (if any) as has been finally determined in such proceedings to be due, together with any costs, interest, penalties or other liabilities in connection with such Contested Item. Upon final termination of Tenant's contest of a Law, Tenant shall comply with such final determination. Landlord shall not, in its Proprietary Capacity as Landlord under this Lease, enter any objection to any contest proceeding undertaken by Tenant pursuant to this Article 14. Tenant's right to contest any Contested Item shall be to the exclusion of Landlord, and Landlord shall have no right to contest the foregoing without Tenant's consent, not to be unreasonably withheld. Nothing in this Section 14 shall be construed to limit Landlord's rights

to act with respect the matters addressed in this Section 14 in its Governmental Capacity.

## 15. *INSURANCE.*

15.1 *Insurance Requirements.* Tenant's insurance obligations during the Non-Possessory Period shall be governed by Section 29 below. During the Term, Tenant shall, at its sole cost and expense, during the Term, maintain the following insurance coverage (or its then reasonably available equivalent):

15.1.1 *General Liability.* Throughout the Term (and during the Non-Possessory Period, to the extent required under Section 29 below), Tenant shall carry Commercial General Liability insurance at least as broad as ISO Form CG0001 (Commercial General Liability) or its equivalent, with the extensions noted below, covering claims against property damage and bodily injury, to include death, occurring in or about the Premises and any other property of the named insured to the extent not covered by the common area liability policy required by the Reciprocal Easement Agreement, in minimum limits of not less than Ten Million Dollars (\$10,000,000) per occurrence. Such commercial general liability insurance shall include the following coverage extensions if obtainable from underwriters: sudden and accidental pollution subject to a sublimit of not less than \$5 million per accident; broadened notice of occurrence endorsement; personal injury liability; garage keepers legal liability of not less than Ten Million Dollars (\$10,000,000) per occurrence, unintentional errors and omissions endorsements. Such insurance shall include a waiver of Subrogation in favor of the additional insureds specified in Section 15.3.1.

15.1.2 *Automobile.* Throughout the Term (and during the Non-Possessory Period, to the extent required under Section 29 below), Tenant shall provide business automobile insurance at least as broad as ISO Form CA001 (Auto Liability) in minimum limits of not less than Ten Million Dollars (\$10,000,000) per occurrence, covering all autos owned or hired by Tenant and used at the Premises including owned, non-owned and hired autos. Such insurance shall include a Waiver of Subrogation in favor of the additional insureds specified in Section 15.3.

15.1.3 *Garagekeeper's Legal Liability.* Throughout the Term, Tenant shall provide garagekeeper's legal liability insurance, covering fire, theft and collision, in minimum limits of not less than Ten Million Dollars (\$10,000,000) per occurrence. Such insurance shall include a Waiver of Subrogation in favor of the additional insureds specified in Section 15.3.

15.1.4 *Workers' Compensation.* Throughout the Term (and during the Non-Possessory Period, to the extent required under Section 29 below), in accordance with California Labor Code 3700 *et seq.* and other relevant Laws, Tenant shall maintain, and ensure that its contractors maintain, workers' compensation insurance, or provide proof of self-insurance in accordance with the provisions of that same Code, covering all Persons employed in connection with the Premises or with development, construction, alteration, repair or operation of the Premises, for injury, illness, or death, in statutory amounts for compensation, with not less than \$1 million for employer's liability for bodily injury by accident and occupational disease. Such insurance shall include a Waiver of Subrogation in favor of the additional insureds specified in Section 15.3.

### 15.1.5 Property Insurance.

15.1.5.1 *Construction.* From the Commencement of Construction until Completion of the Project, Tenant shall obtain "Builders Risk" insurance coverage in an amount equal to 100% of the full replacement cost of the Project, covering course of construction exposure, including all risks of direct physical loss (including flood, earthquake with limits as set forth in Section 15.1.5.2(a) below, transit and off-site storage), materials and supplies used at the site, and soft costs including delayed opening and extra expense. During any subsequent period of construction or alteration involving work of significant scope, Tenant shall obtain "Builders Risk" insurance coverage as specified above in an amount equal to 100% of the full replacement cost of that particular work of construction or alteration.

15.1.5.2 *Operation.* Beginning upon Completion of the Project and thereafter throughout the Term, Tenant shall carry "All Risk" insurance coverage in an amount equal to 100% of the full replacement cost of the Parking Structure, providing coverage for all risks of direct physical loss described in Section 15.1.5.1; provided, however, that coverage for the peril of earthquake shall be subject to market availability at commercially reasonable premium cost (determined from time to time as provided in Section 15.1.5.2(a) below), and shall be purchased in an amount equal to the maximum probable loss as determined from time to time by a reputable seismic engineer acceptable to Landlord and Tenant.

(a) *Tenant's Inability to Obtain Earthquake Insurance.* The insurance coverage for the peril of earthquake required by this Lease is subject to availability on the open market at commercially reasonable premium cost (as defined below). If such earthquake insurance coverage should, after diligent effort by Tenant, be unobtainable at a commercially reasonable premium cost, then Tenant shall obtain the maximum insurance reasonably obtainable at commercially reasonable premium cost (if any) and give Notice to Landlord of the extent of Tenant's inability to obtain, in full, the insurance required by this Lease, and in such event, Tenant's obligation to procure and maintain such insurance as is unobtainable shall be excused. Landlord and Tenant agree that: (i) a premium cost for earthquake insurance coverage of up to 150% of the premium cost paid by Tenant for such coverage on the Effective Date (which premium cost shall be increased by two percent (2%) per annum on a compounded basis throughout the Term on each anniversary of the Effective Date) shall automatically constitute a "commercially reasonable premium cost" and (ii) "commercially reasonable premium cost" shall otherwise be determined in accordance with Section 15.9 below. Non-availability at commercially reasonable premium cost must be documented by a letter from Tenant's insurance broker or agent indicating a good faith effort to place the required insurance and showing, at a minimum, the names of three (3) insurance carriers and the declinations or quotations received from each.

15.1.5.3 *General Requirements.* All property insurance (builder's risk and operations insurance) shall include the following extensions of coverage: vacancy or occupancy clause waived; no coinsurance; Waiver of Subrogation in favor of Landlord; demolition and increased cost of construction; earthquake (if applicable) to include landslide, mudslide, sinkhole, collapse, earth movement or subsidence; costs to prove loss; debris removal; flood and

surface water; coverage for foundations, pilings and underground property; coverage for machinery and equipment breakdown, boiler explosion, etc.; architect's fees; valuable paper and records, including EDP media; damage resulting from faulty or defective workmanship, material, construction or design; plans, blueprints and specifications; mechanical or electrical apparatus; property of others in the care, custody or control of the insured.

15.1.6 Other. Throughout the Term, Tenant shall carry all other insurance required by any Leasehold Mortgage, and such other insurance as Tenant determines appropriate in the exercise of Tenant's reasonable business judgment.

## 15.2 *General Provisions.*

15.2.1 Insurance Approval. Evidence of insurance shall be submitted to Landlord or Landlord's designated risk management professional prior to commencement of any work or tenancy under this Lease, in accordance with Los Angeles Administrative Code Section 11.48.

15.2.2 Deductibles; Self Insured Retention. Any deductible or self-insured retention greater than \$250,000 must be declared to Landlord and shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed

15.2.3 Insurance Carrier Standards. Each insurance carrier of Tenant shall (a) have a "Best's" rating of at least A-VII or equivalent, and (b) unless otherwise agreed by Landlord and in compliance with Section 15.2.4, be authorized to transact business in the State.

15.2.4 Admitted Carrier/Licensed California Broker. Surplus lines insurance from carriers of Tenant who are not admitted in California must be submitted through a California-licensed broker or agency and is subject to the same standards outlined in Section 15.2.3.

15.2.5 Evidence of Insurance. At least sixty (60) days before each insurance policy is initially required to be obtained by Tenant pursuant to this Lease, Tenant shall deliver to Landlord its plan for placing such coverage in effect. At least five (5) days prior to the effective date of coverage, Tenant shall provide to Landlord certificates of insurance confirming that Tenant maintains the insurance required of it under this Section 15, which certificates shall be executed by an authorized agent of the appropriate insurer(s) indicating that the required coverage has been obtained and Landlord, its officials, boards, employees, and agents have, where applicable, been named as additional insureds. Within 45 days after the effective date of each insurance policy required by this Lease, Tenant shall provide Landlord with a copy of the declaration page and a copy of all terms and conditions pertinent to the properties required by this Lease, and endorsed "paid" or accompanied by other evidence that the premiums for such policies have been paid. Evidence of renewal of an expiring policy may be submitted on a manually signed renewal endorsement which shall be submitted at least five (5) days prior to the expiration of the then current policy. If the policy or carrier has changed, however, new evidence under this Section 15.2.5 must be submitted.

15.2.6 Underlying Insurance. Tenant shall be responsible for requiring such indemnification and insurance as it deems appropriate from consultants, agents and subcontractors, if any.

15.3 Policy Requirements and Endorsements. All insurance policies required by this Lease shall contain (by endorsement or otherwise) the following provisions:

15.3.1 Additional Insureds. All liability insurance policies shall name Landlord and Leasehold Mortgagees and their respective boards, officials, officers, directors, agents, employees, volunteers and bondholders, as additional insureds. Landlord shall be named as "loss payee as its interests may appear" in all required property coverage.

15.3.2 Primary Coverage. All policies shall be written as primary policies not contributing with or in excess of any coverage that Landlord may carry. Tenant's insurance shall not call on Landlord's insurance program for contributions.

15.3.3 Tenant's Acts or Omissions. Each policy shall include a provision that any act or omission of Tenant shall not prejudice Landlord's rights as an additional insured under such insurance coverage. Any failure by Tenant to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the additional insureds.

15.3.4 Separation of Insureds. Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom a claim or suit is brought. The inclusion of any Person or organization as an insured shall not affect any right which such Person or organization would have as a claimant if not so included.

15.3.5 Cancellation/Reduction in Coverage Notice. Tenant will cause all insurance policies required under this Lease to expressly provide that such insurance shall not be canceled or reduced below the coverage or limits required under this Lease except after thirty (30) days' prior written notice has been given to: City Administrative Officer, Risk Management, City Hall East, Room 1240, 200 N. MAIN STREET, LOS ANGELES, CA 90012-4168.

15.3.6 Failure to Obtain or Maintain Insurance. If at any time during the Term of this Lease, either the general liability insurance required to be provided under Section 15.1.1 of this Lease, the garagekeeper's liability insurance required by Section 15.1.3, or the property insurance required to be provided under Section 15.1.5 of this Lease is canceled, lapsed or reduced below minimums required under this Lease, then Tenant shall immediately cease all operation of the Parking Structure until such required insurance coverage is reinstated. Failure to provide evidence of general liability insurance or property insurance as required by Section 15.2.5 of this Lease shall not, by itself, be considered a cancellation, lapse or reduction below minimums required of general liability or property insurance.

At any time during the Term of this Lease, in the event that Tenant fails to obtain

or renew any insurance as required by this Lease and such default continues beyond all applicable notice and cure periods in Section 33.1.1 below, Landlord may (but shall not be obligated to), in addition to any other remedies it may have pursuant to this Lease, procure or renew such insurance to protect the interests of the Landlord, pay any and all premiums in connection therewith, and recover from Tenant all monies so paid, together with and all related costs, expenses, and attorneys fees reasonably incurred by Landlord, and with interest on all of the foregoing at the Prime Rate plus three percent (3%). The foregoing costs of insurance and related costs, expenses, attorney fees, and interest shall constitute Additional Rent and shall be paid by Tenant within 30 days after Landlord's demand accompanied by evidence reasonably establishing that Landlord properly and reasonably incurred such sums in accordance with this Lease. Landlord's purchase of insurance under this section shall not cure Tenant's default unless and until Tenant reimburses Landlord for all of the foregoing costs.

15.4 *Blanket and Umbrella Policies.* Tenant may provide any insurance required by this Lease pursuant to a "blanket" or "umbrella" insurance policy, provided that (a) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall not be subject to reduction on account of claims made with respect to other properties, and (b) such policy shall otherwise comply with this Lease.

15.5 *Intentionally Omitted.*

15.6 *Waiver of Subrogation.* To the extent that Landlord or Tenant purchases any hazard insurance relating to the Premises (other than workers' compensation insurance), the party purchasing such insurance shall obtain a Waiver of Subrogation from its insurance earner.

15.7 *Modifications in Limits.* From time to time under this Lease, either party, unilaterally, may propose to the other party that the policy limits set forth in this Lease be increased or decreased, in order to bring such policy limits into conformity with the limits customarily maintained for similar parking garages, including those located in Southern California. If the parties are able to agree upon an increase or decrease, the modified limits they agreed upon shall supersede those set forth in this Lease. If the parties are not able to agree upon a proposed increase or decrease within 30 days after its proposal, then the matter shall be resolved through the procedure set forth in Section 15.9 below, based upon the limits customarily maintained for similar parking garages, including those located in Southern California. Policy limits established pursuant to this Section 15 shall not be increased or decreased during the first five years after the Effective Date of this Lease or more frequently than once every five years thereafter, unless a significant change in the law or in the insurance industry makes an intervening increase or decrease necessary or equitable under the circumstances. In considering any proposed modification to policy limits, the parties shall consider the frequency and nature of past claims.

15.8 *Compliance with REA Provisions.* Tenant shall also comply with the insurance requirements applicable to it set forth in the Reciprocal Easement Agreement.

15.9 *Certain Determinations.* If it becomes necessary to determine whether earthquake coverage is available on the open market at a commercially reasonable premium cost, or the

amount of maximum probable loss, or the amount of any modifications in limits, then either party may give the other party Notice that such determination is required and shall set forth such party's estimate of the amount. The parties shall thereupon attempt, in good faith, to agree upon the amount within 60 days of such Notice. Failing any agreement within such 60-day period, then Landlord and Tenant agree to abide by the findings and recommendations of a reputable, independent risk management consultant who is experienced with properties similar to the Premises and with properties in the southern California area, and who is acceptable to Landlord and Tenant. An independent risk management consultant is a risk management consultant who has no affiliation with any insurance company or insurance broker and who does not receive any wages, commissions or similar compensation from any insurance company or insurance broker. Landlord and Tenant shall each pay one-half of the fees, expenses and other costs incurred in connection with the selection and engagement of the independent risk management consultant.

#### 16. *DAMAGE OR DESTRUCTION.*

16.1 *No Rent Abatement; Notice.* There shall be no abatement or reduction in Rent on account of any Casualty, and all obligations of Tenant under this Lease shall remain unchanged and in full force and effect. Tenant shall promptly give Landlord Notice of any Casualty for which the cost of repair exceeds Five Hundred Thousand Dollars (\$500,000) (such amount shall be subject to a two percent (2%) annual increase commencing one year after the Primary Term Commencement Date).

16.2 *Minor Casualty.* In the event of a Minor Casualty at any time during the Term, and regardless of whether such Minor Casualty is insured or uninsured, Tenant shall be obligated to repair, rebuild or restore the damaged improvements.

16.3 *Major Casualty.* In the event of any Major Casualty at any time during the Term, Tenant may choose to, but shall not be required to, repair, rebuild or restore the damaged improvements if such Major Casualty is uninsured and Tenant was not obligated to have obtained insurance for the cause of such Major Casualty by this Lease. If such Major Casualty is insured or Tenant was obligated to insure it by this Lease, Tenant shall be obligated to restore the damaged improvements only if (a) such Major Casualty occurs during the Primary Venue Contract Term (as defined in the Event Center Ground Lease), and (b) Tenant receives "all or substantially all" insurance proceeds necessary to effect repair, rebuilding or restoration (other than deductible amounts), or, alternatively, receives evidence from the insurer reasonably confirming that all or substantially all of such proceeds will be provided as and when needed in order to effect such repair, rebuilding or restoration (other than deductible amounts); provided, however, that if such insurance proceeds are not available to Tenant because of its failure to have obtained insurance required by this Lease for the cause of such Major Casualty, then Tenant shall be deemed to have received such insurance proceeds on the date of such Major Casualty, and (c) Tenant receives those permits reasonably necessary for the repair, rebuilding or restoration. In the event of any Major Casualty occurring after the end of the Primary Venue Contract Term, Tenant shall not be required to repair, rebuild or restore the damaged improvements regardless of whether such Casualty is insured or uninsured.

16.4 *Standard For Restoration; Termination of Lease.* In the event of any Casualty

where Tenant is required to, or chooses to, repair, rebuild or restore the damaged improvements, Tenant shall commence promptly and shall restore the damaged improvements, at a minimum, to their condition, quality, and class immediately prior to such Casualty, with such changes or alterations as Tenant shall elect to make in conformity with this Lease. Tenant shall proceed with all due diligence, in an effort to: (i) obtain such insurance proceeds, or evidence from the insurer that such proceeds will be provided as and when needed in order to effect such repair, rebuilding or restoration, and (ii) obtain such permits reasonably necessary for the repair, rebuilding or restoration.

In the event of any Major Casualty where Tenant is not required to repair, rebuild or restore the damaged improvements, Tenant shall, within 180 calendar days following such Major Casualty, provide Notice to Landlord either (i) of its intent to repair, rebuild or restore the damaged improvements or (ii) to terminate this Lease. If Tenant provides Notice within such period, and Tenant elects to so terminate this Lease, then this Lease shall automatically terminate effective 30 days following the date of such Notice (and such termination shall not be subject to any cure rights of Tenant or any Qualified Leasehold Mortgagee). If Tenant does not provide Notice within such period of its intent to either terminate this Lease or repair, rebuild or restore the improvements, then this Lease shall automatically terminate upon the expiration of the above-mentioned 180-day period (and such termination shall not be subject to any cure rights of Tenant or any Qualified Leasehold Mortgagee). In the event that this Lease is terminated, Landlord shall have the right, by Notice to Tenant within 120 days following the Termination Date, to require Tenant to cause the remaining improvements to be demolished and the debris removed, so that the Premises are returned to Landlord as vacant and level land, which work shall be completed with reasonable promptness but the completion of which shall not be a condition to termination of this Lease. The costs of such demolition shall be paid from available insurance proceeds, and if such proceeds are insufficient, shall be paid by Tenant. The provisions of this Section 16.4 shall survive termination of this Lease.

*16.5 Adjustment of Claims.* Neither Landlord nor Tenant shall settle or compromise any insurance award affecting the interests of the other party (a) without the consent by such other party, such consent not to be unreasonably withheld, conditioned or delayed (provided, however, that the parties acknowledge that in instances where Landlord is the party whose consent is sought, such consent from Landlord shall be subject to the approval of the city council of the City, at its sole and absolute discretion), and (b) in the case of an insurance award affecting the interest of Tenant, without the consent of any Qualified Leasehold Mortgagee whose Leasehold Mortgage provides for such a right of consent. Each of Landlord and Tenant shall be entitled to appear in all proceedings affecting its respective interest and to participate in any settlement, arbitration or other proceeding involving same. Subject to the terms of its Leasehold Mortgage, any Qualified Leasehold Mortgagee shall also be entitled to appear in such proceedings and empowered to participate in any settlement, arbitration or other proceeding with respect to insurance proceeds.

*16.6 Control of Funds When Lease Not Terminated.* In the event of a Casualty where Tenant is required to, or chooses to, repair, rebuild or restore the damaged improvements, the following provisions regarding control of funds shall apply.



16.6.1 Proceeds Less Than \$1,000,000. All property insurance proceeds less than \$1,000,000 shall be distributed to Tenant (subject to the provisions of any Leasehold Mortgage entered into by Tenant with a Qualified Leasehold Mortgagee), and shall be applied by Tenant in accordance with this Section 16.

16.6.2 Proceeds Greater Than \$1,000,000.

16.6.2.1 *When Fund Control Mechanism in Leasehold Mortgage Governs.* If any Leasehold Mortgage entered into by Tenant and a Qualified Leasehold Mortgagee contains a fund control mechanism providing that all property insurance proceeds in excess of \$1,000,000 shall be deposited with such Leasehold Mortgagee or a third party depository specified in such Leasehold Mortgage to be disbursed to repair, rebuild or restore the Premises, the mechanics for fund control set forth in such Leasehold Mortgage shall have priority over the corresponding mechanics for fund control set forth in Section 16.6.2.2.

16.6.2.2 *When The Fund Control Mechanism in This Lease Governs.* Subject to Section 16.6.2.1, if property insurance proceeds total in excess of \$1,000,000, then upon request of Landlord all such proceeds shall be deposited with the Depository to be disbursed in accordance with this Section 16.6.2.2. The Depository shall pay such proceeds to Tenant, or to such party as Tenant may direct from time to time, to reimburse Tenant for, or to pay, the cost of such repair, rebuilding or restoration. Such payment shall be made only (a) upon written request of Tenant to Depository accompanied by a certificate of an independent architect or construction manager (which architect or construction manager shall be reasonably satisfactory to Landlord) to the effect that the amount requested has been paid or is then due and payable and is properly a part of such cost, (b) upon certification of Depository to Landlord that Depository has received evidence satisfactory to that no Prohibited Liens or Stop Notices have been filed in connection with such repair, rebuilding or restoration to date or that such have been adequately provided for in accordance with the requirements of this Lease, and (c) upon certification of Depository to Landlord that the balance of said proceeds after making the payment requested will be sufficient to pay the balance of the cost of repair, rebuilding or restoration. Upon receipt by Landlord of evidence that repair, rebuilding or restoration has been completed and the cost thereof paid in full or has been adequately provided for, and that there are no Prohibited Liens or Stop Notices which have not been adequately provided for, the balance, if any, of such proceeds shall be paid to Tenant.

16.7 *Inapplicability of Civil Code Sections.* The provisions of California Civil Code §§1932(2) and 1933(4), and any successor statutes, are inapplicable with respect to any destruction of any part of the Premises; such sections provide that a lease terminates on the destruction of the Premises unless otherwise agreed between the parties to the contrary.

17. *CONDEMNATION.*

17.1 *Total Taking.* If a Total Taking of the Premises shall occur, then this Lease shall terminate as of the effective date of such Total Taking, and the Rent shall be apportioned accordingly. The proceeds of the Total Taking shall be allocated between Landlord and Tenant

in accordance with their respective interests as determined by the court that has jurisdiction over such Taking.

17.2 *Partial Taking.* If a Partial Taking shall occur, then any award or awards shall be allocated between Landlord and Tenant in accordance with their respective interests as determined by the court that has jurisdiction over such Taking. In the event of a Partial Taking, Tenant shall perform all necessary repair, rebuilding or restoration in accordance with the applicable requirements of this Lease to the extent of the Taking award proceeds received by Tenant. There shall be no abatement or reduction of Rent or any other sum payable hereunder as a result of any Partial Taking.

17.3 *Temporary Taking.* If a Temporary Taking shall occur with respect to use or occupancy of the Premises for a period greater than 120 days, then Tenant shall, at its option, be entitled to terminate this Lease effective as of the commencement date of the Temporary Taking. If the Temporary Taking relates to a period of 120 days or less, or if Tenant does not elect to terminate this Lease, then all proceeds of such Temporary Taking (to the extent attributable to periods within the Term) shall be paid to Tenant, and Tenant's obligations under this Lease shall not be affected in any way.

17.4 *Other Government Agency Action.* In the event of any action by any Government Agency not resulting in a Taking but creating a right to compensation, this Lease shall continue in full force and effect without reduction or abatement of Rent, and the award or payment made in connection with such action shall be allocated between Landlord and Tenant in accordance with their respective interests.

17.5 *Settlement or Compromise.* Neither Landlord, in its Proprietary Capacity as Landlord under this Lease, nor Tenant shall settle or compromise any Taking award affecting the interests of the other party without (a) the consent by such other party, such consent not to be unreasonably withheld (provided, however, that the parties acknowledge that in instances where Landlord is the party whose consent is sought, such consent from Landlord shall be subject to the approval of the City Council of the City, at its sole and absolute discretion), and (b) in the case of a Taking award affecting the interest of Tenant, without the consent of any Qualified Leasehold Mortgagee whose Leasehold Mortgage provides for such a right of consent, which consent shall not be unreasonably withheld. Each of Landlord and Tenant shall be entitled to appear in all Taking proceedings affecting its respective interest, to participate in any settlement, arbitration or other proceeding involving such a Taking and to claim its Taking award under this Lease. Subject to the terms of its Leasehold Mortgage, any Qualified Leasehold Mortgagee shall also be entitled to appear in such proceedings and empowered to participate in any settlement, arbitration or other proceeding involving any Taking.

17.6 *Prompt Notice.* If either party becomes aware of any Taking or threatened or contemplated Taking, then such party shall promptly give Notice thereof to the other party.

17.7 *Waiver.* The provisions of this Lease governing Takings are intended to supersede the application of Chapter 10, Article 2 of the California Code of Civil Procedure and all similar Laws, to the extent inconsistent with this Lease. Nothing in this Section 17.7 shall be construed

to limit Landlord's powers with respect to Takings in its Governmental Capacity.

17.8 *Relocation.* In the event of a Partial Taking or Total Taking, Landlord shall have no obligation to find and/or provide a relocation site for the Parking Structure.

18. *TRANSFERS BY LANDLORD.*

18.1 *Assignment or Conveyance by Landlord.* Except as otherwise expressly provided in this Lease, Landlord shall not assign or convey any direct or indirect interest in all or any portion of the Fee Estate or this Lease without the prior written consent of Tenant, which consent may be withheld in the sole but good faith discretion of Tenant. Notwithstanding the foregoing, Landlord may assign all or any portion of its interests in this Lease or in the Premises or any portion thereof, with prior Notice to Tenant but without obtaining the prior consent of Tenant, to a governmental unit or units (including, without limitation, a joint powers authority or other multi-governmental organization). At the election of Landlord, in any such assignment, Landlord may delegate its proprietary rights and responsibilities to Landlord's transferee while retaining its governmental rights under this Lease or under Law. Any assignee shall expressly assume in writing the rights and responsibilities so assigned.

18.2 *No Encumbrances.* During the Term (a) Landlord shall not enter into, grant, permit or suffer to attach to the Fee Estate any mortgage, deed of trust, deed to secure debt, assignment, security interest, pledge, financing statement or any other instrument(s) or agreement(s) intended to grant security for any obligation (each a "Fee Mortgage") or any lien (including mechanics' lien, material suppliers' lien, or other statutory lien) affecting title to the Fee Estate, and (b) Landlord shall not enter into, grant, permit or suffer to attach to the Fee Estate any easement, restriction or other encumbrance affecting title to the Fee Estate without Tenant's prior written consent, which shall not be unreasonably withheld.

18.3 *Assignment of Rent.* Notwithstanding anything to the contrary, Landlord may, without Tenant's consent, from time to time and at Landlord's sole and absolute discretion, pledge and/or assign to any entity (including without limitation private lender(s)), any and all Rent and any right to receive funds under this Lease so long as no such pledge or other assignment shall in any way constitute or be deemed to be an assignment of any of Landlord's rights or obligations as "Landlord" under this Lease or vest in such pledgee/assignee any right or ability whatsoever to take (or refrain from taking) any action or actions as the "Landlord" under this Lease; and provided, however, that any Rent paid by Tenant and actually received by the pledgee/assignee of such pledge or assignment shall be deemed to have been received by the Landlord for all purposes, including, without limitation, for the purpose of calculating Gap Funding Obligor's gap funding obligation under the Gap Funding Agreement.

19. *TRANSFERS BY TENANT.*

19.1 *Assignment or Conveyance by Tenant.*

19.1.1 *General.* The qualifications and identity of the Tenant and its principals are of particular concern to Landlord. It is because of those qualifications and identity that

Landlord has entered into this Lease with Tenant. No voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease, except as expressly set forth herein.

19.1.2 Change in Control. A transfer or other change in the ownership of Tenant which would cause control of Tenant to be held by an individual or entity other than an Affiliate shall be deemed an assignment for purposes of this Section 19. Notwithstanding the foregoing, any transfer or series of transfers of an ownership interest of Tenant (a) resulting in Philip F. Anschutz, together with his Affiliates, collectively or individually owning (directly or indirectly) 50% or more of the ownership interest in Tenant, or (b) to a family member or members, and/or one or more trusts for the benefit of a family member or members, and/or The Anschutz Foundation, and/or up to three additional nationally-recognized organizations which qualify for exemption from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code (none of which additional organizations shall own more than a 10% ownership interest in Tenant), as a result of the death of Philip F. Anschutz, or (c) to an entity owned or controlled by the owner of any National Football League franchise which is committed to play substantially all of its games in the Event Center, or (d) in connection with the sale of the Event Center, the Staples Center Arena, or all or substantially all of the improvements within the District shall not be deemed an assignment for purposes of this Section 19; provided, however, that Tenant shall in each case remain bound by the terms of this Lease.

19.1.3 Subleases. Tenant may enter into subleases as set forth in Section 19.2.

19.1.4 General Restriction on Assignment. Except as otherwise expressly provided in this Section 19, Tenant may not transfer, sell, convey or assign (in such case referred to herein as "assign" or as "assignment") all or any portion of its interest in this Lease, in the Parking Structure or the Premises or in any portion thereof without the prior written consent of Landlord, which consent may be withheld in the sole but good faith discretion of Landlord.

19.1.5 Assignment to Affiliate. Tenant may assign all or any portion of its interest in this Lease, the Parking Structure or the Premises or any portion thereof to either one or more Affiliates (as owners of separate portions, as tenants-in-common, or in any other legally permitted way) or in connection with a sale or other transfer of all or substantially all of the assets of or ownership interests in Tenant without obtaining the prior consent of Landlord. At least thirty (30) days prior to such an assignment, Tenant shall provide to Landlord: (a) written notice of the assignment, and (b) a copy of the assignment document or proposed assignment document, in which the assignee(s) shall have assumed all obligations of Tenant applicable to the interest assigned. Such an assignment shall not relieve Tenant of liability for the performance of its obligations under this Lease.

19.1.6 Collateral Assignment to Lender. Tenant must not collaterally assign all or any portion of this Lease except as expressly set forth in Section 20.

19.1.7 Assignment Documents. At least 30 days prior to any assignment for which Landlord's consent is required pursuant to Section 19.1.4, Tenant shall provide Landlord: (a) written notice of the assignment, (b) evidence reasonably satisfactory to Landlord that the

assignee satisfies all criteria set forth in the provisions of this Section 19 which are applicable to such assignment, and (c) a copy of the assignment document or proposed assignment document pursuant to which the assignee shall assume the obligations of Tenant applicable to the interest assigned. Such an assignment shall not relieve Tenant of liability for the performance of its obligations hereunder. Each assignee of Tenant shall expressly assume in writing all obligations and liabilities of Tenant under this Lease applicable to the interest assigned. Following any assignment, Tenant shall provide Landlord with written notice of any assignment of all or any portion of its interest in this Lease, the Parking Structure or the Premises.

## *19.2 Subletting.*

19.2.1 *Generally.* Tenant, in the normal course of business, may enter into any Sublease, license, concession agreement or any other similar arrangement, extend, renew or modify any Sublease, consent to any subleasing or further levels of subleasing (all of which shall be within the defined term "Sublease," and the occupants thereunder shall all be deemed "Subtenants"), terminate any Sublease or evict any Subtenant, all without Landlord's consent; provided, however, that any long-term ground sublease or other lease or contract which in effect serves to transfer to the Subtenant substantially all of Tenant's economic interest in this Lease or the Premises or the improvements thereon or in similarly significant portions of the Premises or the improvements thereon shall be deemed to be an assignment, and not a Sublease, for purposes of this Section 19. With respect to such long-term ground subleases and other leases or contracts which are deemed to be assignments, the parties acknowledge that Tenant has the right to assign all or any portion of its interest in this Lease, the Parking Structure or the Premises in accordance with Section 19.1 above. The term of any Sublease (including renewal options) shall not extend beyond the Term, unless agreed by Landlord in its sole discretion.

19.2.2 *No Release of Tenant upon Sublease.* No Sublease shall affect or reduce any obligations of Tenant or rights of Landlord under this Lease. All rights of Landlord and obligations of Tenant under this Lease shall continue in full force and effect notwithstanding any Sublease.

19.2.3 *Landlord's Assumption Rights.* Tenant shall not enter into any material Sublease or assignment which contains terms or provisions that prohibit or prevent Landlord from assuming Tenant's rights and obligations under such Sublease/assignment.

## *19.3 Nondisturbance and Attornment.*

19.3.1 *Generally.* Tenant may from time to time request that Landlord enter into a Nondisturbance and Attornment Agreement substantially in the form of Exhibit D ("Nondisturbance and Attornment Agreement") with respect to any Sublease. If Tenant makes such a request, Tenant shall provide Landlord with a copy of such Sublease or proposed Sublease for Landlord's review and approval in its reasonable discretion as to: (a) the financial terms of the Sublease, (b) the financial capacity of the Subtenant and (c) compliance of the Sublease with the provisions of this Lease, including the use restrictions. Landlord shall not be required to enter into any Non-Disturbance and Attornment Agreement with respect to any Sublease or Subtenant to which Landlord has not consented. Landlord shall respond (either positively or negatively) in

writing to Tenant's request within 30 days after Landlord's receipt of the same.

## 20. *MORTGAGES.*

20.1 *No Landlord Mortgage.* Landlord represents and warrants that as of the Effective Date the Fee Estate is not subject to any Fee Mortgage(s). Landlord shall not have the right to execute or deliver any Fee Mortgage(s) during the Term.

20.2 *No Subordination.* The Fee Estate and Landlord's interest under this Lease shall not be subordinate to any Leasehold Mortgage. No Leasehold Mortgage or other financing document shall provide any right for anyone to: (i) foreclose on the Fee Estate (including without limitation any right to receive deed-in-lieu of foreclosure with respect to the Fee Estate), (ii) acquire the Fee Estate by any means, or (iii) otherwise encumber the Fee Estate.

20.3 *Limitations on Cumulative Loan to Value Ratio.* At any given time after the Completion of the Parking Structure, the aggregate principal amount of all financing of the Parking Structure shall not exceed an amount (the "Financing Cap") equal to the lesser of (i) 60% of the then fair market value of the Parking Structure, or (ii) 70% of the total project costs in connection with the development of the Parking Structure, which amount described in this subsection (ii) shall be increased by 5% per annum on a compounded basis throughout the Term on each anniversary of the Rent Commencement Date.

### 20.4 *Collateral Assignment.*

20.4.1 *No Leasehold Mortgage Prior to Completion.* Prior to the Completion of the Project, Tenant shall not have the right to enter into any Leasehold Mortgage encumbering the Leasehold Estate or Tenant's interest in this Lease. Notwithstanding anything in this Lease to the contrary, following Tenant's Completion of the Project, Tenant shall have the right to execute and deliver to any Leasehold Mortgagee a Leasehold Mortgage(s) encumbering this Lease and the Leasehold Estate and complying with the provisions of this Article 20, at any time and from time to time during the Term without Landlord's consent; provided, however, that all Leasehold Mortgages shall be subject to Landlord's confirmation rights as set forth in Section 20.4.2.

### 20.4.2 *Institutional Lenders.*

20.4.2.1 *No Consent; Limited Exceptions.* Notwithstanding anything in this Lease to the contrary, Tenant shall have the right to execute and deliver to Institutional Lenders Leasehold Mortgage(s) encumbering this Lease and the Leasehold Estate at any time and from time to time during the Term, subject to the following limitations:

(a) From Completion of the Parking Structure until the expiration of the initial term of the Lease Revenue Bonds, without Landlord's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), this Lease and the Leasehold Estate shall not be cross-collateralized with any loan or borrowing for the Event Center and/or the L.A.

Live Way Parking Structure, provided however that notwithstanding the foregoing, Tenant may, without Landlord's consent, cross-collateralize this Lease and the Leasehold Estate together with financing which is collateralized by the Event Center so long as the aggregate loan-to-value ratio of such financing does not exceed an amount equal to the lesser of (i) sixty percent (60%) of the then combined fair market value of the Parking Structure, and as applicable, the Event Center and/or the L.A. Live Way Parking Structure, or (ii) seventy percent (70%) of the total project costs in connection with the development of the Parking Structure, and as applicable, the Event Center and/or L.A. Live Way Parking Structure.

(b) From the Completion of Construction, without Landlord's prior written consent, this Lease and the Leasehold Estate may be cross-collateralized with any loan or borrowing for the L.A. Live Way Parking Structure only.

(c) All Leasehold Mortgages under this Section 20.4.2.1 shall be subject to the loan-to-value limitations set forth in Section 20.3 above.

(d) All Leasehold Mortgages under this Section 20.4.2.1 shall be subject to Landlord's confirmation rights as set forth in Section 20.4.2.2.

(e) Concurrently with the recordation of any Leasehold Mortgage under this Section 20.4.2.1, such Leasehold Mortgagee, Landlord and Tenant shall enter into and record a commercially reasonable subordination non-disturbance and attornment agreement which confirms the rights and obligations of the parties set forth in Sections 20-24 of this Lease.

**20.4.2.2 Landlord Confirmation Rights.** At least 30 days prior to entering into any Leasehold Mortgage with any Institutional Lender, Tenant shall deliver to Landlord such Institutional Lender's loan documents and such other information as may be reasonably necessary for Landlord to confirm the following matters, and Landlord shall have the right to review the loan documents to ascertain that they comply with the following provisions:

(a) For all such Leasehold Mortgages, that the Leasehold Mortgagee is an Institutional Lender.

(b) For all Leasehold Mortgages permitted by this Lease, the loan documents shall require the Leasehold Mortgagee to provide Notice to Landlord concurrently with the provision of any notice to Tenant of any event which has occurred which would trigger the commencement of any cure periods under the loan documents.

(c) For all such Leasehold Mortgages, that the Leasehold Mortgage complies with the limitations set forth in Section 20.3 above.

### 20.4.3 Non-Institutional Lenders.

20.4.3.1 *Consent Required.* Tenant shall have the right, but only with Landlord's prior written consent, to execute and deliver Leasehold Mortgage(s) encumbering this Lease and the Leasehold Estate to Non-Institutional Lenders at any time and from time to time during the Term, subject to Landlord's review rights set forth in Section 20.4.3.24 and subject to the following limitations:

(a) Following Completion of Construction of the Project, the standard for Landlord's consent to the execution and delivery of any Leasehold Mortgage to a Non-Institutional Lender shall be the same standard then in effect under this Lease for Landlord's consent to assignees, as set forth in Section 19.

(b) Without Landlord's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), this Lease and the Leasehold Estate shall not be cross-collateralized with any loan or borrowing for the Event Center, provided however that notwithstanding the foregoing, Tenant may, without Landlord's consent, cross-collateralize this Lease and the Leasehold Estate together with financing which is collateralized by the Event Center Lease, the Parking Structure and/or the L.A. Live Way Parking Structure Lease so long as the aggregate loan-to-value ratio of such financing does not exceed an amount equal to the lesser of (i) sixty percent (60%) of the then combined fair market value of the Event Center, the Parking Structure and/or the L.A. Live Way Parking Structure, as applicable, to the extent subject to such financing, or (ii) seventy percent (70%) of the total project costs in connection with the development of the Event Center, the Parking Structure and the L.A. Live Way Parking Structure, as applicable, to the extent subject to such financing.

(c) Following the Completion of Construction, without Landlord's prior written consent, this Lease and the Leasehold Estate may be cross-collateralized with any loan or borrowing for the L.A. Live Way Parking Structure only.

(d) All Leasehold Mortgages under this Section 20.4.3.1 shall be subject to the loan-to-value limitations set forth in Section 20.3 above.

(e) Concurrently with the recordation of any Leasehold Mortgage under this Section 20.4.3.1, such Leasehold Mortgagee, Landlord and Tenant shall enter into and record a commercially reasonable subordination non-disturbance and attornment agreement which confirms the rights and obligations of the parties set forth in Sections 20-24 of this Lease.

20.4.3.2. *Landlord Confirmation Rights.* At least 30 days prior to entering into any Leasehold Mortgage with any Non-Institutional Lender, Tenant shall deliver to Landlord such lender's loan documents and such other information as may be reasonably necessary for Landlord to confirm that the loan documents and the terms of the loan transaction:



(i) satisfy the requirements set forth in Section 20.4.3.1 above; (ii) include provisions with respect to such other matters as may be reasonably requested by Landlord with respect to its approval of such collateral assignment.

20.5 *Landlord's Acknowledgment of Qualified Leasehold Mortgage.* Within thirty (30) days following Tenant's delivery of the loan documents and information required under Section 20.4.2.2 or 20.4.3.2, as the case may be, Landlord shall acknowledge receipt of the name and address of any Leasehold Mortgagee (or proposed Leasehold Mortgagee), and either (a) confirm to Tenant and such Leasehold Mortgagee that such Leasehold Mortgagee satisfies the criteria set forth in Section 20.4.2.1 or 20.4.3.1, as the case may be, and therefore constitutes a "Qualified Leasehold Mortgagee" (or would be, upon closing of its loan, a Qualified Leasehold Mortgagee) and has (or would have) all the rights of a Qualified Leasehold Mortgagee under this Lease, or (b) if Landlord determines that any proposed Leasehold Mortgagee does not or would not meet the criteria set forth in Section 20.4.2.1 or 20.4.3.1, give Notice of such determination to Tenant and the proposed Leasehold Mortgagee, which Notice shall specify the basis for such determination. Any acknowledgment delivered by Landlord to Tenant under clause (a) above shall, if requested by Tenant, be in recordable form. If Landlord delivers the notice described in clause (b) to Tenant and the proposed Leasehold Mortgagee, then Tenant may resubmit such proposed Leasehold Mortgagee and such resubmission shall be governed by the terms of this Section 20.5.

20.6 *Sale and Leaseback.* If Tenant assigns the Leasehold Estate to a third party for purposes of a sale-leaseback transaction and Tenant or a Tenant Affiliate concurrently enters into or reserves, retains or receives a Sublease of the Premises or similar interest, then (a) such third party shall be deemed to be a "Leasehold Mortgagee" and the Sublease shall be deemed to be a "Leasehold Mortgage", and (b) such third party shall not be deemed to have assumed or become liable under this Lease except to the extent that such third party has exercised remedies against Tenant under Tenant's Sublease functionally equivalent to foreclosure under a Leasehold Mortgage or acceptance of an assignment in lieu thereof or otherwise takes Control of the Premises.

20.7 *Change in Loan Documents.* Once Landlord has approved loan documents as satisfying the requirements of this Lease, neither Tenant nor any Qualified Leasehold Mortgagee shall modify or agree to modify those loan documents in a manner affecting the requirements of this Lease without the prior written approval of Landlord in its sole discretion.

20.8 *Further Assurances.* Upon request by either party or by any existing or prospective Leasehold Mortgagee, the other party shall deliver to the requesting party a separate written instrument in recordable form signed and acknowledged by the other party setting forth and confirming the rights of Qualified Leasehold Mortgagees under this Lease.

## 21. *EFFECT OF LEASEHOLD MORTGAGES.*

21.1 *Initial Notice.* If Tenant enters into any Leasehold Mortgage(s) reviewed and, if required, consented to, by Landlord pursuant to Section 20, then the Leasehold Mortgagee(s) thereunder, if confirmed by Landlord as "Qualified Leasehold Mortgagee(s)" pursuant to

Section 20.4, shall be entitled to the Leasehold Mortgagee protections provided for under this Lease from and after such time as Tenant or such Qualified Leasehold Mortgagee has either (a) given Landlord Notice of the name and address of such Leasehold Mortgagee, accompanied by a copy of the executed Leasehold Mortgage, or (b) recorded or caused to be recorded an instrument (which may be the Leasehold Mortgage itself or a memorandum thereof) giving record notice of such Leasehold Mortgage.

21.2 *Leasehold Mortgagee Protections.* No Leasehold Mortgagee shall be a Qualified Leasehold Mortgagee or be entitled to the protections provided to Qualified Leasehold Mortgagees under this Lease unless (a) such Leasehold Mortgagee has been reviewed and, if required, consented to, by Landlord pursuant to Article 20, and (b) Tenant has complied with Section 21.1.

21.3 *Termination of Leasehold Mortgagee's Rights.* If a Leasehold Mortgagee is a Qualified Leasehold Mortgagee under this Lease, then such status shall not terminate unless and until such time, if any, as the Qualified Leasehold Mortgage shall have been satisfied and discharged of record.

21.4 *Effect of a Leasehold Mortgage.* Tenant's making of a Leasehold Mortgage shall not constitute an assignment or transfer of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under its Leasehold Mortgage or this Lease, be deemed to be an assignee or transferee or mortgagee in possession of the Leasehold Estate so as to require such Leasehold Mortgagee to assume or otherwise be obligated to perform any of Tenant's obligations under this Lease except when, and then only for so long as, such Leasehold Mortgagee has obtained Control of the Premises (as defined in Exhibit B) in the exercise of its remedies under its Leasehold Mortgage (as distinct from its rights under this Lease to cure Tenant Defaults or exercise Mortgagee's Cure Rights, as defined in Section 22.4 below). Once a Leasehold Mortgagee does obtain Control of the Premises, it will be deemed to have assumed and to be obligated to perform Tenant's obligations under this Lease, but only for so long as such Leasehold Mortgagee remains in possession. No Leasehold Mortgagee (even if such Leasehold Mortgagee is the purchaser at a foreclosure sale held pursuant to its Leasehold Mortgage) shall be liable under this Lease unless and until such time as it becomes, and then only so long as it remains, the owner of the Leasehold Estate; provided that such Leasehold Mortgagee shall remain liable for obligations which arose during its period of ownership.

21.5 *Change of Address.* Any Qualified Leasehold Mortgagee shall be free to change its name and address from time to time by Notice to Landlord. Notice of any change of a Qualified Leasehold Mortgagee's identity or address, or of a transfer of a Leasehold Mortgage, may be made pursuant to Section 43.

21.6 *Foreclosure.* No sale of this Lease or of the Leasehold Estate in any proceedings for the foreclosure of any Leasehold Mortgage, or any assignment, transfer or conveyance in lieu of such foreclosure, shall be deemed to violate this Lease, provided, however, that any such sale, assignment, transfer or conveyance shall constitute an assignment of the Lease and shall be subject to the provisions of Section 19 regarding assignment, including Section 19.1.7, applied as

follows:

21.6.1 Qualified Leasehold Mortgagee. The Qualified Leasehold Mortgagee whose Leasehold Mortgage is being sold assigned or transferred shall be deemed to be an approved assignee for purposes of Section 19.

21.6.2 Other Institutional Lenders. Any other Person who would qualify as an Institutional Lender shall be deemed to be an approved assignee for purposes of Section. At least 30 days prior to the proposed sale, assignment or transfer to any such Person, Tenant shall deliver to Landlord such information as may be reasonably required for Landlord to confirm that such Person is an Institutional Lender.

21.6.3 Pre-Qualification. As to any Person not deemed to be an approved assignee under Sections 21.6.1 and 21.6.2 above, within 30 days after (a) written request by any Qualified Leasehold Mortgagee or by the trustee named in its deed of trust, and (b) Landlord's receipt of such information as Tenant would be required to provide by the provisions of Section 19 regarding the proposed buyer, assignee or transferee, Landlord shall approve or disapprove of the proposed buyer, assignee or transferee (and if Landlord fails to do so, Landlord shall be deemed to have approved of such proposed buyer, assignee or transferee). The standard for Landlord's approval shall be the same standard then in effect for Landlord's consent to assignees, as set forth in Section 19. If Landlord disapproves of any proposed buyer, assignee or transferee, Landlord shall give Notice of such disapproval to the Person making the written request for approval to Landlord, within the period set forth above, which Notice shall specify the basis for such disapproval.

21.7 Modifications Required by Leasehold Mortgagee. If any Qualified Leasehold Mortgagee or prospective Leasehold Mortgagee shall reasonably require any modification(s) of this Lease (including clarifications and supplements to Mortgagee's Cure Rights), then Landlord shall, at Tenant's request, promptly execute and deliver to Tenant such instruments in recordable form effecting such modification(s) as such Leasehold Mortgagee or prospective Leasehold Mortgagee shall reasonably require, provided that such modification(s): (a) are consistent with the customary requirements of Institutional Lenders at the time, or are required by banking, insurance or similar laws and regulations setting forth provisions that must appear in a lease in order for such lease to be accepted as security by the Leasehold Mortgagee or prospective Leasehold Mortgagee requesting the change and (b) do not materially adversely affect any of Landlord's rights or materially increase any of Landlord's obligations under this Lease.

22. PROTECTION OF LEASEHOLD MORTGAGEES. If Tenant at any time or from time to time enters into any Leasehold Mortgage(s) with any Qualified Leasehold Mortgagee(s), then such Qualified Leasehold Mortgagee(s) shall be entitled to the following protections:

22.1 Voluntary Cancellation, Surrender, Amendment, Etc. Except in the case where Landlord has the right to terminate this Lease pursuant to the terms and provisions of this Lease, no voluntary cancellation, termination, surrender, acceptance of surrender, amendment, or modification of this Lease shall bind any Qualified Leasehold Mortgagee if done without the prior written consent of such Qualified Leasehold Mortgagee.

## 22.2 Notices.

22.2.1 Copies of Tenant Notices. If Landlord shall give any Notice to Tenant relating to any Tenant Default, then Landlord shall at the same time and by the same means give a copy of such Notice to each Qualified Leasehold Mortgagee.

22.2.2 Cure Period Expiration Notices. If Tenant is in Tenant Default under this Lease and such Tenant Default remains uncured beyond expiration of the cure period, if any, available to Tenant for such Tenant Default, then Landlord shall have the right (but is not obligated to) give Notice of such fact to Tenant and to each Qualified Leasehold Mortgagee, which Notice shall describe in reasonable detail such Tenant Default (a "Tenant's Cure Period Expiration Notice").

22.2.3 Incipient Re-Entry Default Notices. If Landlord believes that any event or condition has occurred and is continuing, which such event or condition, with the passage of 180 calendar days from Tenant's receipt of a Notice of Incipient Re-Entry Default (defined below), will become a Re-Entry Default pursuant to Section 33.1.4.1 (Failure to Commence Construction) or Section 33.1.4.2 (Failure to Complete Construction) of this Lease (an "Incipient Re-Entry Default"), then Landlord shall have the right to (but shall not be obligated to) promptly give Notice of such fact to Tenant and to each Qualified Leasehold Mortgagee, which Notice shall describe in reasonable detail such Re-Entry Default (a "Notice of Incipient Re-Entry Default"), provided that Landlord shall not have the right to exercise any rights or remedies expressly available to Landlord under Section 33.2 of this Lease as a result of such Incipient Re-Entry Default until Landlord has provided a Notice of Incipient Re-Entry Default to Tenant and each Qualified Leasehold Mortgagee and such Incipient Re-Entry Default remains uncured beyond the expiration of all cure periods available to Tenant and each Qualified Leasehold Mortgagee under Section 33.1.4.1 and 33.1.4.2 below. Nothing in this Lease shall preclude Tenant or any Leasehold Mortgagee from contesting the information provided in any Notice of Incipient Re-Entry Default from Landlord; no such contest, however, shall be the basis for any claim by Tenant, any Leasehold Mortgagee or any third party, or impose on Landlord any duty to give any additional Notice of Incipient Re-Entry Default with respect to such claimed Re-Entry Default.

22.2.4 Effect of Failure to Give Notices. Landlord's failure to provide any Notice referred to in this Lease to each Qualified Leasehold Mortgagee shall not invalidate the Notice provided to Tenant. Notwithstanding any other provision in this Lease to the contrary, however, as between Landlord and each Qualified Leasehold Mortgagee, no time period applicable to such Qualified Leasehold Mortgagee shall start to run unless and until Landlord shall have given the appropriate Notice to such Qualified Mortgagee (and no termination of this Lease, as to which Notice from Landlord to such Qualified Leasehold Mortgagee is required under this Lease, shall occur until the applicable cure periods shall have run). It is further understood and agreed that with respect to any Tenant Defaults that are subject to an extended cure period for the benefit of Qualified Leasehold Mortgagees as provided in this Lease, Landlord shall not have the right to exercise any of its remedies against Tenant under this Lease until after each Qualified Leasehold Mortgagee's applicable extended cure period has expired.

22.3 *Right to Perform Covenants and Agreements.* Any Qualified Leasehold Mortgagee shall have the right, but not the obligation, to perform any obligation of Tenant under this Lease and to remedy any Tenant Default. Landlord shall accept performance by, or at the instigation of, any Qualified Leasehold Mortgagee in fulfillment of Tenant's obligations within the times specified in this Section 22, for the account of Tenant and with the same force and effect as if performed by Tenant. No such performance by any Leasehold Mortgagee shall, in the absence of possession of the Premises, cause such Leasehold Mortgagee to become a "mortgagee in possession" or otherwise cause such Leasehold Mortgagee to be deemed to be in Control of the Premises or bound by this Lease. Without limiting the generality of the foregoing, Landlord shall accept performance by, or at the instigation of, any Qualified Leasehold Mortgagee of any obligation of Tenant necessary to prevent any Incipient Re-Entry Default from becoming a Re-Entry Default.

22.4 *Mortgagee's Cure Rights.* Upon receiving any Notice of Default or any Notice of Incipient Re-Entry Default, each Qualified Leasehold Mortgagee shall have the original cure period granted to Tenant under this Lease (if any), plus the additional time provided for below, within which to take (if such Qualified Leasehold Mortgagee so elects) whichever of the actions set forth below shall apply with respect to the Tenant Default described in such Notice of Default or to the Incipient Re-Entry Default specified in the Notice of Incipient Re-Entry Default, as the case may be (such actions shall constitute "Mortgagee's Cure"; and a Qualified Leasehold Mortgagee's rights to take such actions shall constitute "Mortgagee's Cure Rights").

22.4.1 *Monetary Defaults.* In the case of any Tenant Default under Section 33.1.1 (Failure to Pay Rent or Comply with Insurance Requirements) or Section 33.1.2 (Failure to Pay Additional Rent) (collectively, "Monetary Default", and all other Tenant Defaults shall be referred to collectively as "Non-Monetary Default"), each Qualified Leasehold Mortgagee shall be entitled (but not required) to cure such Tenant Default within a cure period consisting of Tenant's cure period under this Lease (if any) extended through the date 45 calendar days after such Qualified Leasehold Mortgagee shall have received Tenant's Cure Period Expiration Notice as to such Tenant Default. If the amount of any Monetary Default has not been finally determined (for example, if a dispute has arisen between Landlord and Tenant regarding the amount of any Rent), then in place of curing such Monetary Default any Qualified Leasehold Mortgagee that is an Institutional Lender shall be entitled instead (a) to cure such Monetary Default to the extent the amount thereof is not in dispute, (b) to undertake in writing that such Leasehold Mortgagee shall cure the remaining disputed portion of such Monetary Default within 45 calendar days after the dispute shall have been resolved (and the parties shall then cooperate to resolve such dispute promptly in accordance with this Lease), and (c) to pay the amount ultimately determined to be due plus interest on such amount, at the interest rate set forth in Section 33.4 below, from the date such amount was first due and payable until the date when such Leasehold Mortgagee actually makes such payment.

22.4.2 *Non-Monetary Defaults Curable Without Obtaining Control.* In the case of any Non-Monetary Default that is reasonably susceptible of being cured by a Qualified Leasehold Mortgagee without having Control of the Premises, each Qualified Leasehold Mortgagee shall be entitled, but not required (a) to advise Landlord within a period consisting of

Tenant's cure period (if any) for the Tenant Default, extended through the date 60 days after the Qualified Leasehold Mortgagee's receipt of the Tenant's Cure Period Expiration Notice as to such Tenant Default, of Qualified Leasehold Mortgagee's intention to take all reasonable steps necessary to remedy such Non-Monetary Default, (b) to duly commence the cure of such Non-Monetary Default within such extended period, and thereafter diligently prosecute to completion the remedy of such Non-Monetary Default, subject, if applicable, to Force Majeure Events, and (c) to complete such remedy within a reasonable time under the circumstances, subject, if applicable, to Force Majeure Events.

22.4.3 Non-Monetary Defaults Curable Only by Obtaining Control. In the case of any Non-Monetary Default that is not reasonably susceptible of being cured by a Leasehold Mortgagee without obtaining Control of the Premises, including any Non-Curable Tenant Default, each Qualified Leasehold Mortgagee shall be entitled (but not required), so long as, with respect to any Tenant Defaults which are curable without Control of the Premises, such Qualified Leasehold Mortgagee has exercised or is exercising the applicable Mortgagee's Cure Rights as defined in this Lease, (a) to institute proceedings to obtain Control of the Premises at any time during the cure period (if any) that applies to Tenant, extended through the date 180 days after such Qualified Leasehold Mortgagee's receipt of the Tenant's Cure Period Expiration Notice as to such Tenant Default, or if no cure period applies to Tenant, then within 180 days after the Qualified Leasehold Mortgagee's receipt of Notice of such Non-Monetary Default, and (b) to diligently prosecute Mortgagee's Cure Rights to completion (before or after expiration of such 180-day period), subject, in each case, to any stay in any proceedings involving the bankruptcy, insolvency, or reorganization of Tenant or the like, any injunction, and, if applicable, Force Majeure Events.

22.4.4 Incipient Re-Entry Default.

22.4.4.1 Right to Cure. In the case of any Incipient Re-Entry Default, each Qualified Leasehold Mortgagee shall be entitled (but not required) to cure such Incipient Re-Entry Default within 180 days after receiving a Notice of such Incipient Re-Entry Default, so long as, with respect to any Curable Tenant Default, such Qualified Leasehold Mortgagee has exercised or is exercising the applicable Mortgagee's Cure Rights as defined in this Lease. Notwithstanding anything to the contrary in this Lease, in order to prevent such Incipient Re-Entry Default from becoming a Re-Entry Default, the Qualified Leasehold Mortgagee must cure the Incipient Re-Entry Default before the expiration of such 180-day cure period, and such 180-day cure period shall not be subject to any further cure periods or to any extension or time, including without limitation extension for Force Majeure Events.

22.4.4.2 Outside Date to Cure Re-Entry Defaults. As to Qualified Leasehold Mortgagees only, if the Qualified Leasehold Mortgagee's 180-day period to cure the Incipient Re-Entry Default ends later than the outside date for Tenant to cure such Incipient Re-Entry Default provided elsewhere in this Lease, the Qualified Leasehold Mortgagee's 180-day cure period shall control.

22.5 Effect of Cure. If and when all Curable Tenant Defaults have been cured by Tenant or by a Qualified Leasehold Mortgagee within the time limitations set forth in Section 22.4 for

curing Curable Tenant Defaults, this Lease shall continue in full force and effect as if no Tenant Default(s) had occurred.

22.6 *No Obligation to Cure Tenant Defaults.* No Leasehold Mortgagee shall be required to cure any Non-Curable Tenant Default.

22.7 *Leasehold Mortgagee's Right To Enter Premises.* Landlord and Tenant authorize each Qualified Leasehold Mortgagee to enter the Premises as necessary to effect Mortgagee's Cure and take any action(s) reasonably necessary to effect Mortgagee's Cure. The rights of Qualified Leasehold Mortgagees under this Section 22.7 shall not constitute Control of the Premises or otherwise be construed to mean that any Leasehold Mortgagee has possession of the Premises.

22.8 *Upon Acquiring Control.* If any Qualified Leasehold Mortgagee or a purchaser at a foreclosure sale shall (a) acquire Control of the Premises, (b) cure all Monetary Defaults (c) diligently prosecute the remedy of all Curable Tenant Defaults, subject, if applicable, to Force Majeure Events, and complete such remedy within a reasonable time under the circumstances (but subject to the time limitations set forth in Section 22.4 for curing Tenant Defaults), and (d) be an approved assignee as set forth in Section 21.6, then (i) any Non-Curable Tenant Defaults shall no longer be deemed Tenant Defaults, and (ii) Landlord shall recognize as "Tenant" any purchaser of the Leasehold Estate pursuant to a foreclosure sale under a Qualified Leasehold Mortgage, or any transferee of the Leasehold Estate under an assignment in lieu of foreclosure, or, if the Qualified Leasehold Mortgagee should be such purchaser or assignee, the Qualified Leasehold Mortgagee and any assignee of the Qualified Leasehold Mortgagee, so long as such assignee is an Institutional Lender.

22.9 *Failure to Cure Default.* If any Re-Entry Default is not cured within the cure period(s), if any, set forth in Section 33.1 and Section 22.4, then Landlord shall have the right to terminate this Lease pursuant to Section 33.2.

22.10 *Payments Made by Leasehold Mortgagee.* Any payment made by any Qualified Leasehold Mortgagee to Landlord to cure any claimed Tenant Default shall be without prejudice to Tenant's or such Qualified Leasehold Mortgagee's recovery of such payment if Landlord's claim of a Tenant Default shall be determined to have been erroneous.

## 23. *LEASEHOLD MORTGAGEE'S RIGHT TO A NEW LEASE.*

23.1 *New Lease.* If this Lease shall terminate before its stated expiration date for any reason other than a Casualty, or a Taking, then (in addition to any other or previous Notice required to be given by Landlord to any Qualified Leasehold Mortgagee) Landlord shall, within 10 Business Days, give Notice of such termination to each Qualified Leasehold Mortgagee. Landlord shall, upon any Qualified Leasehold Mortgagee's request given within 60 days after the date of Landlord's delivery of such notice, enter into (and if Landlord fails to do so, shall be deemed to have entered into) a new lease of the Premises (a "New Lease"), effective as of the Termination Date, for the remainder of the Term on the same terms and provisions contained in this Lease, including all rights, options, or privileges and all obligations of Tenant under this

Lease, but excluding any requirements that have already been performed or no longer apply, provided that such Qualified Leasehold Mortgagee, at the time of execution and delivery of such New Lease, shall pay to Landlord any and all sums then due under this Lease as if this Lease had not been terminated. In no event, however, shall any Qualified Leasehold Mortgagee be required to cure a Non-Curable Tenant Default. If any Qualified Leasehold Mortgagee enters into a New Lease, then such Leasehold Mortgagee shall pay all reasonable expenses, including reasonable court costs and disbursements (but excluding attorneys' fees), incurred by Landlord in connection with Tenant Defaults and the termination of this Lease, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease. The following additional provisions shall apply to any New Lease:

23.2 *Form and Priority.* Any New Lease shall be evidenced by a memorandum in recordable form. Such New Lease shall not be subject to any rights, liens or interests imposed by Landlord or otherwise arising by reason of Landlord's acts or activities during the period from and after the Termination Date, other than those to which this Lease was subject at the time of its termination. Landlord shall, if requested, at New Tenant's expense, execute and deliver such resolutions, certificates and other documents as shall be reasonably necessary to enable the tenant under such New Lease (the "New Tenant") to obtain title insurance with respect to the New Lease, at such New Tenant's expense.

23.3 *Adjustment for Net Income.* Upon the execution of a New Lease, the New Tenant shall be entitled to an amount equal to the net income derived from the Premises during the period from the Termination Date to the date of execution of such New Lease, provided that the New Tenant concurrently pays Landlord all sums required to be paid Landlord during that period of time pursuant to this Lease including all Additional Rent (plus interest at the rate of the Prime Rate plus four percent (4%), to the extent such sums are overdue), upon execution of such New Lease..

23.4 *Pendency of Dispute.* If Landlord and the New Tenant disagree regarding any payment due Landlord in connection with execution of a New Lease, then the New Tenant shall be deemed to have performed its payment obligation if the New Tenant (a) pays Landlord the full amount not in controversy, and (b) agrees to pay any additional sum ultimately determined to be due promptly upon such determination with interest at the Prime Rate plus four percent (4%) from the date such amount was first due and payable until the date when such New Tenant actually makes such payment. The parties shall cooperate to determine any disputed amount promptly in accordance with the terms of this Lease or the New Lease, whichever applies.

23.5 *Assignment of Certain Items.* Upon execution of a New Lease and payment by the New Tenant of the sums required to be paid to Landlord pursuant to this Lease, including all Additional Rent, Landlord shall assign to the New Tenant all of Landlord's right, title and interest in and to (a) all moneys (including insurance proceeds and Taking awards), if any, then held by Landlord that Tenant would have been entitled to receive but for termination of this Lease, and (b) all Subleases subject to executed Non-Disturbance and Attornment Agreements or otherwise approved by Landlord.

23.6 *Preservation of Subleases.* Between (a) the Termination Date and (b) either the



date of execution and delivery of a New Lease, if any Qualified Leasehold Mortgagee timely exercises its right to request a New Lease, or the date on which any Qualified Leasehold Mortgagee's right to make such a request expires without its having made such a request (if such Leasehold Mortgagee makes no such request), Landlord shall not cancel any Sublease or accept any cancellation, termination or surrender of any Sublease (unless such termination shall be effected as a matter of law upon the termination of this Lease) without the consent of such Qualified Leasehold Mortgagee. At the same time Landlord enters into the New Lease, Landlord shall, if requested by it or New Tenant, enter into Non-Disturbance and Attornment Agreements with respect to those Subleases for which Landlord had previously entered into Non-Disturbance and Attornment Agreements.

23.7 *Escrowed New Lease.* Upon written request made at any time by Tenant or any Qualified Leasehold Mortgagee, Landlord agrees to execute a New Lease and related documentation as required by this Lease, to be held in escrow pursuant to documentation reasonably satisfactory to Landlord, Tenant and such Qualified Leasehold Mortgagee and released only if and when such Qualified Leasehold Mortgagee is entitled to a New Lease. The escrowee shall be either (a) a Person reasonably satisfactory to Landlord, Tenant and such Qualified Leasehold Mortgagee, or (b) a national title company, or (c) one of the 20 largest accounting firms in the United States (by number of principals in the United States) selected by such Qualified Leasehold Mortgagee and reasonably approved by Landlord and Tenant.

#### 24. *INTERACTION OF LEASEHOLD MORTGAGES WITH OTHER ESTATES AND PARTIES.*

24.1 *Leasehold Mortgages and Fee Estate.* A Leasehold Mortgage shall not encumber or in any other way affect the Fee Estate or, except as expressly provided in this Lease, affect, limit or restrict Landlord's rights and remedies under this Lease. Upon a foreclosure under any Leasehold Mortgage or delivery of an assignment of this Lease in lieu of foreclosure under any Leasehold Mortgage, the Leasehold Mortgagee shall succeed only to the Leasehold Estate, and any such foreclosure or assignment in lieu of foreclosure shall not affect the Fee Estate.

24.2 *Interaction between Lease and Leasehold Mortgage.* If any Qualified Leasehold Mortgagee's Leasehold Mortgage limits such Leasehold Mortgagee's exercise of any rights and protections provided for in this Lease, then as between Tenant and such Qualified Leasehold Mortgagee the terms of such Leasehold Mortgage shall govern. Tenant's default as mortgagor under a Leasehold Mortgage shall not constitute a Tenant Default under this Lease except to the extent that Tenant's action or failure to act in and of itself constitutes a breach of this Lease.

24.3 *Conflicts between Leasehold Mortgagees.* If more than one Qualified Leasehold Mortgagee desires to exercise Mortgagee's Cure Rights or the right to obtain a New Lease, or if more than one Qualified Leasehold Mortgagee desires to exercise any other right or privilege provided for Qualified Leasehold Mortgagees under this Lease, then the party against whom such rights or privileges are to be exercised shall be required to recognize either (a) only the Qualified Leasehold Mortgagee that desires to exercise such right or privilege and whose Leasehold Mortgage is most senior in lien priority (as against other Leasehold Mortgages), or (b) such other Qualified Leasehold Mortgagee as has been designated in writing by all Qualified Leasehold Mortgagees to exercise such right or privilege. Landlord shall be entitled to rely

conclusively on the priority of Leasehold Mortgages evidenced either by (y) the report or certificate of a title insurance company licensed to do business in the State or (z) joint written instructions of all Qualified Leasehold Mortgagees.

24.4 *No Merger.* Unless this Lease is terminated pursuant to its terms, the Fee Estate and the Leasehold Estate shall remain distinct and separate estates and shall not merge, notwithstanding the acquisition of both the Fee Estate and the Leasehold Estate by Landlord, Tenant, any Leasehold Mortgagee or a third party, whether by purchase or otherwise, unless otherwise agreed in writing by Landlord, Tenant, and all Qualified Leasehold Mortgagees.

## 25. *BANKRUPTCY*

25.1 *Affecting Tenant.* If Tenant, as debtor in possession, or a trustee in bankruptcy for Tenant, rejects this Lease in connection with any proceeding involving Tenant under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "Bankruptcy Proceeding"), then Landlord agrees for the benefit of each and every Qualified Leasehold Mortgagee that such rejection shall be deemed Tenant's assignment of the Lease and the Leasehold Estate to Tenant's Qualified Leasehold Mortgagee(s) in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, this Lease shall not terminate and each Qualified Leasehold Mortgagee shall become a Tenant hereunder as if the Bankruptcy Proceeding had not occurred, unless such Qualified Leasehold Mortgagee(s) shall reject such deemed assignment by Notice to Landlord within 30 days after receiving Notice of Tenant's rejection of this Lease in Bankruptcy Proceedings. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the deemed assignment provided for in place of rejection of this Lease, then Tenant's Qualified Leasehold Mortgagees shall continue to be entitled to a New Lease as and to the extent provided in Section 23.

25.2 *Affecting Landlord.* If Landlord, as debtor in possession, or a trustee in bankruptcy for Landlord, rejects this Lease in connection with any Bankruptcy Proceeding involving Landlord, then:

25.2.1 *Tenant's Election.* Tenant shall not have the right to elect to treat this Lease as terminated except with the prior written consent of each and every Leasehold Mortgagee whose recorded Leasehold Mortgage requires such consent by the applicable Leasehold Mortgagee.

25.2.2 *Continuation of Leasehold Mortgages.* The lien of any Leasehold Mortgage that was in effect before the rejection of this Lease shall extend to Tenant's continuing possessory rights with respect to the Premises following such rejection, with the same priority as it would have enjoyed had such rejection not taken place.

## 26. *REPRESENTATIONS AND WARRANTIES.*

26.1 *By Landlord; Tenant Takes Premises "As Is."* Landlord conveys, and Tenant accepts, the Premises "AS IS", that is, without representation or warranty with respect thereto, express or implied, except only as set forth in this Lease, with regard to the physical or other