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2 **BILL NO. R-20-02-25**

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4 **RESOLUTION NO. R-11-20**

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6 **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT**  
7 **WAYNE, INDIANA, REGARDING THE APPROVAL OF A PARKING**  
8 **STRUCTURE LEASE AND THE APPROPRIATION OF AVAILABLE LOCAL**  
9 **INCOME TAX REVENUES TO PAY RENTS DUE PURSUANT TO A PARKING**  
10 **STRUCTURE LEASE WITH REGARD TO AN ECONOMIC DEVELOPMENT**  
11 **PROJECT FOR A NEW MIXED-USE PROJECT TO BE UNDERTAKEN BY**  
12 **THE RIVERFRONT AT PROMENADE PARK, LLC AND FORT WAYNE**  
13 **GARAGE ASSOCIATES, TWO, LLC**  
14 **(THE RIVERFRONT AT PROMENADE PARK PROJECT)**

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

21 WHEREAS, the Commission has previously designated and declared in  
22 accordance with the Act an area in the City of Fort Wayne, Indiana (the "City"), known  
23 as the "Riverfront I - Columbia Street Economic Development Area," to be a  
24 redevelopment area and an allocation area (the "Area"), adopted a Redevelopment Plan,  
25 and established an allocation fund for said Area; and

26 WHEREAS, the Commission has entered into an Economic Development  
27 Agreement ("EDA") with The Riverfront at Promenade Park, LLC and Fort Wayne  
28 Garage Associates, Two, LLC (the "Developers"), wherein the Developers agreed to  
29 develop and construct a mixed-use building consisting of a multi-family component,  
30

1 ground floor commercial component, office component and parking structure,  
2 constituting an aggregate investment of approximately Eighty-Eight Million Seven  
3 Hundred Thousand and No/100 Dollars (\$88,700,000.00), to be located within the Area  
4 at the northeast corner of Superior Street and Harrison Street in downtown Fort Wayne  
5 (the "Project"), and the Commission agreed to provide certain economic development  
6 incentives; and  
7

8 WHEREAS, the Commission has determined that the completion of the  
9 Project is in the best interests of the citizens and taxpayers of the City and, to stimulate  
10 and induce the completion of the development of the Project, the Commission agreed in  
11 the EDA, subject to further proceedings as required by law, to provide certain economic  
12 development incentives in exchange for the development of the Project; and  
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14 WHEREAS, the Commission agreed to provide support to the Project  
15 pursuant to the EDA in substantially the form of the Parking Structure Lease attached  
16 hereto as Exhibit A and incorporated herein by reference ("Lease"), wherein the  
17 Commission shall lease, operate and manage the parking structure for a period of twenty-  
18 five (25) years in exchange for its payment of Basic Rent and Additional Rent (as each is  
19 defined in the Lease) as and when the same are due and payable pursuant to the Lease;  
20 and  
21

22 WHEREAS, the Commission has held a public hearing on the Lease and  
23 thereafter determined that the service to be provided throughout the term of the Lease  
24 will serve the public purpose of the City and that the execution of the Lease is in the best  
25 interest of its residents pursuant to Indiana Code 36-7-14-25.2(c).

26 WHEREAS the annual amounts of Basic Rent are shown on Exhibit B  
27 attached to the Lease; and  
28

1                   WHEREAS, the Commission approved Declaratory Resolution 2020-12  
2 for Amendment I to the Riverfront I – Columbia Street Economic Development Area  
3 establishing a new allocation area for only the real estate upon which the Project would  
4 be constructed, which allocation area, if approved pursuant to Indiana Code 36-7-14,  
5 would allow for the capture of twenty-five years of Project-generated tax increment; and

6                   WHEREAS, the Commission shall pledge the tax increment revenues  
7 generated by the Project (“TIF Revenue”) and the net operating revenue generated by the  
8 Commission’s operation of the parking structure pursuant to the Lease (“Operating  
9 Revenue”) to the payment of the amount due pursuant to the Lease; and

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

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

1                   WHEREAS, pursuant to the ordinances, resolutions and other instruments  
2 authorizing the Outstanding LIT Obligations (including, without limitation, the 2019  
3 Bond Ordinance), the City has reserved the right to authorize and issue additional bonds  
4 or other obligations payable out of the LIT Revenues, ranking on a parity with the pledge  
5 of the LIT Revenues to the Outstanding LIT Obligations (collectively, the "Parity  
6 Obligations"), provided that certain conditions are met; and  
7

8                   WHEREAS, the Common Council has determined that the completion of  
9 the Project is in the best interests of the citizens and taxpayers of the City and desires to  
10 provide for the stimulation and inducement of the Project, approve the Lease and  
11 appropriate the LIT Revenues as provided in this Resolution;  
12

13                   NOW, THEREFORE, BE IT RESOLVED BY THE COMMON  
14 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

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


18                   2.       The Common Council hereby finds and determines that the Lease  
19 is in the best interests of the citizens and taxpayers of the City of Fort Wayne and the  
20 Lease is approved in substantially the form attached to this Resolution as Exhibit A. As  
21 set forth in the Lease, the maximum term of the Lease shall be twenty-five (25) years and  
22 the maximum annual amount of Basic Rent shall be Three Million Eight Hundred Sixty  
23 Thousand Two Hundred Forty-Nine and No/100 Dollars (\$3,860,249.00) per year,  
24 pursuant to Indiana Code 36-7-14-25.2(c).  
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1                   3. Pursuant to and in accordance with Indiana Code 5-1-14-4 and 6-  
2 3.6-10-6, the Common Council does hereby appropriate and pledge the LIT Revenues to  
3 the payment of Basic Rent and Additional Rent for so long as the Lease remains in  
4 effect; provided that the LIT Revenues: (a) available to pay Basic Rent and Additional  
5 Rent in any given year shall equal (but in no event exceed) the Annual Rent Amount for  
6 such year; and (b) shall be made available: (i) as and when each payment of Basic Rent  
7 and/or Additional Rent is due and payable; and (ii) to the extent necessary for such Basic  
8 Rent and/or Additional Rent to be paid in full (it being understood that the Commission  
9 shall utilize Operating Revenue and TIF Revenue to pay Basic Rent and/or Additional  
10 Rent prior to utilizing LIT Revenues for such purposes).

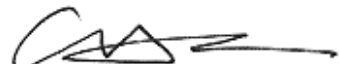
11  
12                   4. The pledge of the LIT Revenues to the payment of Basic Rent  
13 shall rank on a parity with the pledge of the LIT Revenues to the payment of the  
14 Outstanding LIT Obligations and, accordingly, shall constitute a Parity Obligation. The  
15 pledge of the LIT Revenues to the payment of Additional Rent shall be subordinate to the  
16 pledge of the LIT Revenues to the payment of the Basic Rent and the Outstanding LIT  
17 Obligations.

18  
19                   5. The City reserves the right to authorize and issue additional Parity  
20 Obligations for any legally authorized purpose, provided that the authorization and  
21 issuance of Parity Obligations shall be subject to the conditions precedent set forth in  
22 Section 20 of the 2019 Bond Ordinance, which Section 20 is incorporated in this  
23 Resolution by reference, including, without limitation, the condition that, following the  
24 issuance of additional Parity Obligations, the debt service coverage ratio will remain at  
25 least 1.35:1.0, as determined pursuant to the 2019 Bond Ordinance.  
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1                   6.       This Resolution, and the pledge of LIT Revenues set forth herein,  
2 shall be binding and in full force and effect from and after the time it has been adopted  
3 by Common Council, approved by the Mayor and otherwise executed and delivered in  
4 accordance with any and all laws appertaining thereto.  
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8 Council Member

9 APPROVED AS TO FORM AND LEGALITY:

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12 Carol Helton, City Attorney  
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RESOLUTION 2020-10  
FORT WAYNE REDEVELOPMENT COMMISSION

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

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

WHEREAS, the Commission has previously designated and declared in accordance with the Act an area in the City of Fort Wayne, Indiana (the "City"), known as the "Riverfront I – Columbia Street EDA," to be a redevelopment area and an allocation area (the "Area"), adopted a redevelopment plan for the Area, and established an allocation fund for the Area; and

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

WHEREAS, the Commission has determined that the completion of the Project is in the best interests of the citizens of the City and, to stimulate and induce the completion of the development of the Project, the Commission entered into that certain Economic Development Agreement pursuant to Resolution 2020-09 approved by the Commission on February 10, 2020 ("EDA") with Developer and Summit Development Corp. ("Summit"); and

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

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

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

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

WHEREAS, the Commission intends to pay rent to the Lessor (the "Rental Payments"), pursuant to the terms of the Lease, at a rate not to exceed Three Million Eight Hundred Sixty Thousand Two Hundred Forty-Nine and No/100 Dollars (\$3,860,249.00) per year for a period not to exceed twenty-five (25) years, as provided in the Lease; and

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

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

1. The Rental Payments to be paid by the Commission, pursuant to the terms of the Lease, at a rate not to exceed Three Million Eight Hundred Sixty Thousand Two Hundred Forty-Nine and No/100 Dollars (\$3,860,249.00) per year for a period not to exceed twenty-five (25) years, as provided in the Lease, are fair and reasonable, and the service to be provided throughout the term of the Lease will serve the public purpose of the City and is in the best interests of its residents.
2. The President and the Secretary of the Commission are hereby authorized and directed, on behalf of the Commission, to execute and attest, respectively, and to deliver the Lease in substantially the form presented at this meeting with such changes in form or substance as the President and Executive Director of the Commission shall approve, such approval to be conclusively evidenced by the execution thereof, following the approval of the Lease by the Common Council of the City (the "Common Council").
3. The Secretary of the Commission is hereby directed to transmit to the Common Council a copy of this Resolution, and the Commission hereby approves and ratifies action taken by the Secretary of the Commission to file with the Common Council a resolution approving the Lease.
4. The Commission hereby ratifies any and all actions taken by Commission officers and staff to cause publication of the notice of public hearing on the Lease.
5. The obligation of the Commission to make rental payments under the Lease is limited to Pledged Revenues and shall not be considered a debt of the City or the Redevelopment District of the City for purposes of the Constitution or laws of the State of Indiana.
6. The President and the Secretary of the Commission are, and each of them is, hereby authorized and directed to take all such further actions and to execute all such agreements, instruments or documents as are desirable to carry out the transactions contemplated by this Resolution, in such form as the President, the Vice President and the Secretary of the Commission executing the same shall deem proper, to be evidenced by the execution thereof.
7. This Resolution shall be in full force and effect after its adoption by the Commission.

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FORT WAYNE REDEVELOPMENT COMMISSION

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Christopher Guerin, President

ADOPTED: 10 February 2020

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Mark D. Becker, Secretary

## EXHIBIT A

### Description of Project

#### The Riverfront at Promenade – Project Description:

- Located on approximately 3.44-acre parcel at northeast corner of Superior Street and Harrison Street.
- Six-story mixed-use building.
- Estimated cost of approximately \$88,700,000.
- Approximately 7 ground-floor townhomes generally located along the northern façade.
- Approximately 222 apartments on upper floors.
- Approximately 14,000 gross square feet of retail/office space on the first floor, approximately 13,000 gross square feet of office space on the second floor, and approximately 11,200 gross square feet of office space on the third floor. Commercial space is generally located within the southwest and northwest corners of the building.
- Approximately 12,800 square feet of flex space along Harrison Street between the commercial spaces which, depending on marketability, may be converted to approximately eight additional townhome units.
- Approximately 913-space parking garage:
  - The parking garage is expected to contain four levels of parking including one level at grade and three levels above grade.
  - In addition to the aforementioned spaces, certain townhomes may contain private garages accessed from within the parking garage. These spaces are not included in the total number of parking spaces
  - The majority of the garage will be wrapped by the mixed-use portion of the building. Exposed portions of the garage will include screening.
- An indoor/outdoor amenity area for apartment residents located within the building at ground level and between the building and Headwaters Park. It is anticipated that open space near the northwest corner of the site could be used for a public or quasi-public purpose such as an outdoor plaza or restaurant seating.
- Additional outdoor amenity areas for apartment residents will be located on the roof of the parking garage, overlooking the Saint Mary's River.

## EXHIBIT B

### Legal Description of Project Real Estate

#### Tract I:

##### Parcel I:

Lots Numbered 574 and 575, except the East 30 feet of the South 164 feet of Lot Number 575, in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, page 525 in the Office of the Recorder of Allen County, Indiana, and that portion of the south 1/2 of vacated Clair Street adjacent on the North as vacated by General Ordinance No. G-03-98.

##### Excepting therefrom:

That portion of vacated Clair Street (formerly Eureka Street and Locust Alley) deeded to the City of Fort Wayne by instrument recorded as Instrument No. 980007073.

The above described tract includes that part of alley opened by Declaratory Resolution Number 504-1924 and vacated by Circuit Order 109, pages 434-435.

##### Parcel II:

A non-exclusive easement for vehicular access for the benefit of Parcel I as created by Grant of Easement for Vehicular Access dated January 13, 1998, recorded February 4, 1998 as Document Number 980007072, over and across the following described real estate:

Commencing at the Northwestern corner of Calhoun Street and Superior Street; thence Northwesterly, along the Westerly right-of-way line of Calhoun Street, a distance of 583.00 feet to the point of intersection of the Southerly right-of-way line of Clair Street with the Westerly right-of-way line of Calhoun Street, thence Northwesterly by a deflection angle to the left of 68 degrees 33 minutes 21 seconds, along the Southerly right-of-way line of Clair Street, a distance of 25.14 feet; thence Southwesterly by a deflection angle to the left of 42 degrees 04 minutes 45 seconds, along the Southerly right-of-way line of Clair Street, a distance of 286.01 feet to the point of beginning for this description; thence continuing Southwesterly, along the last described course and being the Southerly right-of-way line of Clair Street, a distance of 83.10 feet to the Easterly right-of-way line of Harrison Street; thence Northwesterly by a deflection angle to the right of 110 degrees 45 minutes 59 seconds, along the Easterly right-of-way line of Harrison Street and Northwesterly projection of said right-of-way line, a distance of 24.40 feet to a point on a regular curve to the left, thence Northeasterly by a deflection angle to the right of 53 degrees 16 minutes 35 seconds, along the chord of said regular curve to the left, having a radius of 14.50, a chord distance of 10.91 feet, a length of 11.19 feet and a central angle of 44 degrees 12 minutes 28 seconds to the point of tangency; thence Northeasterly by a deflection angle to the left of 22 degrees 06 minutes 14 seconds a distance of 30.70 feet to the point of curvature of a regular curve to the right; thence Northeasterly by a deflection angle to the right of 31 degrees 23 minutes 11 seconds, along the chord of said regular curve to the right, having a radius of 40.50, a chord distance of 42.19 feet, a length of 44.37 feet and a central angle of 62 degrees 46 minutes 23 seconds to the point of reverse curvature; thence Northeasterly by a deflection angle to the right of 13 degrees 50 minutes 59 seconds, along the chord of a regular curve to the left, having a radius of 4.50, a chord distance of 2.71 feet, a length of 2.75 feet and a central angle of 35 degrees 04 minutes 25 seconds; thence Southeasterly by a deflection angle to the right of 72 degrees 27 minutes 47 seconds a distance of 25.00 feet; thence Southeasterly by a

deflection angle to the right of 30 degrees 59 minutes 47 seconds a distance of 26.41 feet to the point of beginning for this description, containing 1.08 acres of land, more or less.

#### Tract II:

Lot number 577 in the plat of Hanna's Addition to the Town, now City of Fort Wayne, Indiana, as recorded in Deed Book 1, Pages 703 and 704, in the Office of the Recorder of Allen County, Indiana.

**EXHIBIT C**

**Parking Structure Lease**

*(see attached)*

Exhibit C

**PARKING STRUCTURE  
LEASE AGREEMENT  
Premier Riverfront**

This Parking Structure Lease Agreement (Premier Riverfront) (the "Lease") is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and among FORT WAYNE GARAGE ASSOCIATES TWO, LLC, an Indiana limited liability company (the "Landlord"), SUMMIT DEVELOPMENT CORP., an Indiana nonprofit corporation ("Tenant"), and THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT, acting by and through the FORT WAYNE REDEVELOPMENT COMMISSION, a municipal corporation organized and existing under the laws of the State of Indiana (the "Subtenant").

WHEREAS, Landlord intends: (a) to construct the Garage Improvements on the Land; and (b) subject to the terms of this Lease, to lease the Leased Premises to Tenant, which Tenant in turn will sublease to Subtenant for Subtenant's use; and

WHEREAS, Landlord, Tenant, and Subtenant intend that: (a) Landlord shall be entitled to enforce directly against Subtenant all of Subtenant's obligations under this Lease; (b) Subtenant shall be obligated directly to Landlord to perform Subtenant's obligations under this Lease; and (c) the satisfaction by Subtenant of its obligations under this Lease shall be deemed to satisfy any obligation of Tenant under this Lease.

FOR AND IN CONSIDERATION OF the premises and the rents and provisions herein stipulated to be paid and performed, Landlord, Tenant, and Subtenant, intending to be legally bound, hereby covenant and agree to the terms and conditions set forth herein.

**1. Demise of Leased Premises.**

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

(b) Landlord hereby leases, demises, and lets the Leased Premises to Tenant, and Tenant hereby takes and leases the Leased Premises from Landlord, and Tenant hereby subleases, demises, and lets the Leased Premises to Subtenant, and Subtenant hereby takes and subleases the Leased Premises from Tenant, all for the Term and upon the provisions hereinafter specified. The Garage Improvements are being constructed in conjunction with the Mixed-Use Improvements.

**2. Definitions.**

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

**Alterations** shall mean any or all changes, additions (whether or not adjacent to or abutting any then-existing buildings), expansions (whether or not adjacent to or abutting any then-existing buildings), improvements, reconstructions, removals, or replacements of any of the Leased Premises, whether interior, exterior, ordinary, or extraordinary.

**Basic Rent** shall mean the basic semi-annual rent payable for the Leased Premises, as set forth in

Exhibit B.

**Basic Rent Payment Date** shall mean each June 1 and December 1 during the Term.

**Claims** shall mean claims, liabilities, losses, damages, penalties, assessments, costs and expenses, causes of action, suits, demands, and/or judgments of any kind, including, without limitation: (a) diminution in property value; (b) reasonable expenses incurred in connection with investigations by engineers, environmental consultants, and similar professionals; and (iii) reasonable attorneys' fees and expenses.

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

**Condemnation** shall mean a Taking and/or a Requisition.

**Default Rate** shall mean an annual rate of interest equal to: (a) the highest rate of interest that may be lawfully charged on amounts past due with respect to the Loan; or (b) if no Loan is then in effect, 15%; provided that in no event shall the Default Rate exceed the highest lawful rate of interest that may be charged on past due Basic Rent or Additional Rent under this Lease.

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

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

**Environmental Claim** shall mean any Claim of any nature arising (or alleged to arise), based on, or resulting from: (a) the presence, or release into the environment, of any Hazardous Materials at or from the Leased Premises; or (b) circumstances forming the basis of any violation (or alleged violation) of any Environmental Law.

**Environmental Laws** shall mean Laws pertaining to health, industrial hygiene, Hazardous Materials, or the environment, including, without limitation: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; (c) the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; (d) the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §1251 et seq.; (e) the Clean Air Act, 42 U.S.C. §7401 et seq.; and (f) the Hazardous Materials Transportation Act of 1994, 49 U.S.C. §5101 et seq.; as any of the foregoing may be amended.

**Equipment** shall mean, with the exception of Trade Fixtures, the equipment from time to time owned by Landlord and installed as part of the use and operation of the Garage Improvements.

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

**Garage Improvements** shall mean a fully equipped and operational structured parking facility containing approximately 913 parking spaces, together with entrances and exits, ramps and drives, elevator lobbies, and related facilities, to be constructed on the Land. The Garage Improvements: (a) are "wrapped" by the Mixed-Use Improvements; and (b) will incorporate a roof (as opposed to an open top level of parking spaces) on which a portion of the Mixed-Use Improvements (including the portion thereof comprised of residential amenities) may be constructed. The Garage Improvements: (a) are being constructed in conjunction with the Mixed-Use Improvements; and (b) are part of the Leased Premises. For purposes of clarity, the private garages attached to the portion of the Mixed-Use Improvements comprised of the townhomes are part of the Mixed-Use Improvements, and are not part of the Garage Improvements; accordingly, the parking spaces housed by such garages are not located in the Garage Improvements and, as a result, are not included in the number of, or references to, the parking spaces in the Garage Improvements.

**Garage Operating Agreement** shall mean that certain Garage Operating Agreement (Premier Riverfront) executed contemporaneously herewith by Landlord, Mixed-Use Owner, and Subtenant.

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

**Hazardous Materials** shall mean any material, waste, or substance that is: (a) included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in or pursuant to any Laws, or subject to regulation under any Law; (b) listed in: (i) the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. Section 172.101; or (ii) the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302; and/or (c) explosive, radioactive, asbestos, a polychlorinated biphenyl, petroleum or a petroleum product or waste oil; as any of the foregoing definitions or Laws may be amended.

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

**Impositions** shall mean, subject to Subsection 8(a)(ii), all: (a) taxes of every kind and nature (including real, *ad valorem*, personal property, gross income, franchise, withholding, profits, and gross receipts taxes) on or with respect to the Leased Premises and any other real property included in the tax parcel of which the Leased Premises are a part; (b) charges and/or taxes for any easement or agreement maintained for the benefit of the Leased Premises; (c) general and special assessments, levies, permits, inspection and license fees on or with respect to the Leased Premises; (d) water, sewer, utility, and environmental rents and other charges on or with respect to the Leased Premises; (e) ground rents on or with respect to the Leased Premises; and (f) other public charges and/or taxes, whether of a like or different nature, and even if unforeseen or extraordinary, imposed, assessed, or becoming a Lien prior to or during the Term upon, against, or with respect to: (i) the Leased Premises (and any additional real property in the tax parcel of which the Leased Premises are a part); or (ii) Landlord, Subtenant or any sub-subtenant of the Leased Premises as a result of, or arising with respect to: (A) the occupancy, leasing, use, maintenance, operation, management, repair, or possession of the Leased Premises (including, without limitation, any activity conducted on the Leased Premises); or (B) the Basic Rent or Additional Rent, including, without limitation, any gross income tax, sales tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Basic Rent or Additional Rent.

**Insurance Requirements** shall mean, as the case may be, any one or more of the terms of each insurance policy required to be carried by Subtenant under this Lease and the requirements of the issuer of such policy, and whenever Subtenant is engaged in any Work, the term "Insurance Requirements" shall be deemed to include a requirement that: (a) Subtenant obtain, or cause its contractor to obtain, completed value builder's risk insurance when the estimated cost of the Work in any one instance exceeds the sum of \$50,000.00; and (b) Subtenant or its contractor obtain worker's compensation insurance or other adequate insurance coverage covering all Persons employed in connection with the Work, whether by Subtenant or its contractors or subcontractors, with respect to whom death or bodily injury claims could be asserted against Subtenant or Landlord.

**Land** shall mean a three-dimensional space, the exact description of which will be determined as the final plans and specifications for the Parking Structure are completed. The Land will be "wrapped" by, and will "notch into" the real estate on and within which the Mixed-Use Improvements will be constructed and, therefore, is difficult to depict; accordingly, the depiction on Exhibit A reflects the general appearance of what will constitute the Land, the Garage Improvements, and the Mixed-Use Improvements; provided that, upon completion thereof, the parties may elect to attach the three-dimensional legal description of

the Land as part of Exhibit A.

**Laws** shall mean all: (a) constitutions, laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines or requirements; and (c) judicial orders, judgments, consents, and/or decrees; applicable with respect to the Leased Premises.

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

**Legal Requirements** shall mean, as the case may be: (a) any one or more of present and future Laws; (b) the REA; and (c) covenants, restrictions, and conditions now of record and applicable to all or any portion of the Leased Premises or the interest of Landlord, Tenant, or Subtenant therein. The foregoing shall include those Laws, covenants, restrictions, and/or conditions applicable to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction of the Leased Premises, even if compliance therewith: (a) necessitates structural changes or improvements (including changes required to comply with the "Americans with Disabilities Act"); (b) results in interference with the use or enjoyment of the Leased Premises; or (c) requires Subtenant to carry insurance other than as required by the provisions of this Lease.

**Lender** shall mean any Person: (a) that makes a Loan to Landlord that is secured by a Mortgage and evidenced by a Note; and (b) that is the holder of a Mortgage and Note as a result of an assignment or purchase thereof.

**Lien** shall mean, as applicable, a charge, encumbrance, title retention agreement, pledge, security interest, mortgage, and/or deed of trust.

**LIT Resolution** shall mean Resolution No. \_\_\_\_\_, [title of resolution in which the LIT Revenue is pledged], adopted by the Governmental Authority on \_\_\_\_\_, 2020.

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

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

**Mixed-Use Improvements** shall mean: (a) a building housing approximately: (i) 229 residential units (seven of which likely will be townhomes); (ii) 12,778 gross square feet of flex space (which, depending on marketability, may be converted to eight townhome units); (iii) 14,011 gross square feet of retail/office space on the 1<sup>st</sup> floor; (iii) 12,987 gross square feet of office space on the 2<sup>nd</sup> floor; and (iv) 11,177 gross square feet of office space on 3<sup>rd</sup> floor; which building will "wrap" the majority of the Garage Improvements; together with (b) attendant residential amenities. Some of the residential units and residential amenities comprising the Mixed-Use Improvements may be located on and/or above the roof of the Garage Improvements.

**Mixed-Use Owner** shall mean The Riverfront at Promenade Park, LLC.

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

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

**Net Garage Revenue** shall mean an amount equal to: (a) the gross receipts received by Tenant and/or Subtenant, or to which either or both is entitled, in connection with the Leased Premises; minus (b) the reasonable, actual, out-of-pocket costs and expenses incurred in connection with the operation of the Leased Premises.

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

**Note** shall mean one or more promissory notes executed by Landlord and payable to Lender, which note or notes will be secured by a Mortgage and an assignment of leases and rents.

**Notice** shall mean any notice, demand, request, consent, approval, offer, statement, or other instrument or communication required or permitted to be given pursuant to the terms and conditions of this Lease.

**Permitted Encumbrances** shall mean: (a) the Impositions; (b) the Legal Requirements (including the REA); (c) any other matters consented to by Tenant or Subtenant; and (d) those covenants, restrictions, reservations, liens, conditions, encroachments, easements, encumbrances, and other matters of title that affect the Leased Premises as of the Effective Date, or that arise from or due to: (i) documents, instruments or agreements executed prior to or on the Effective Date and related to: (A) Landlord's acquisition of Land; (B) the lease of the Leased Premises to Tenant; and/or (C) Tenant's lease of the Leased Premises to Subtenant; (ii) the acts or omissions of Tenant or Subtenant; and/or (iii) the acts or omissions of Landlord, with Tenant's or Subtenant's written consent, after the Effective Date. Without limitation of the foregoing, the Permitted Encumbrances include all matters specified on Exhibit C.

**Person** shall mean a natural person or an entity of any type, including, without limitation, a corporation, partnership, joint venture, limited liability company, firm, or trust.

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

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

**REA** shall mean the Easement Agreement, together with any other declaration, reciprocal easement agreement, easement agreement, license, or other agreement or document of record affecting the Leased Premises.

**Regulated Activity** shall mean the generation, manufacture, storage, handling, use, transfer, treatment, recycling, transportation, processing, production, refinement, or disposal of any Hazardous Materials.

**Remedial Work** shall mean investigation, site monitoring, containment, "clean-up", removal, restoration, or other similar work undertaken in connection with the presence (or suspected presence) of Hazardous Materials.

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

**Resolution** shall mean that certain [title of resolutions by which the Project Increment and the Net Garage Revenue are pledged].

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

**Restoration Award** shall mean that portion of the Net Award that reasonably will be needed to perform the Restoration.

**Restoration Account** shall mean an interest-bearing federally insured account held by the Trustee or Lender and dedicated to solely the receipt and subsequent disbursement of Restoration Funds payable to the Trustee and any funds that Subtenant elects to deposit pursuant to Subsection 15(h).

**Restoration Funds** shall mean, at any given time, the aggregated Net Proceeds, Restoration Award, and/or Subtenant Insurance Payments, as applicable.

**Scheduled Expiration Date** shall mean the date that is 25 years after the Commencement Date.

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

**Substantial Completion** shall have occurred when: (a) the Parking Structure legally may be occupied for its intended purpose pursuant to a valid certificate of occupancy issued by the Allen County Building Department; and (b) Landlord has received from its architect a certificate of substantial completion stating that the Garage Improvements have been completed in material compliance with the final plans and specifications therefor, subject only to identified "punch-list" items that will not have a material effect on the use and operation of the Garage Improvements for their intended purpose.

**Subtenant Insurance Payments** shall have the meaning ascribed to such term in Subsection 14(f).

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

**Term** shall mean the period: (a) commencing on the Commencement Date; and (b) ending on Scheduled Expiration Date.

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

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

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

**Trustee** shall mean a federally insured bank or other financial institution selected jointly by Landlord and Subtenant, each acting reasonably, and satisfactory to Lender; provided that, if the Leased Premises are covered by a Mortgage, then, absent direction from Lender to the contrary, Lender shall be the Trustee.

**Warranties** shall mean all: (a) warranties, guaranties, and indemnities, whether express or implied, with respect to the Leased Premises provided by any manufacturer, engineer, contractor, architect, or builder to Landlord or any Landlord-affiliated Person; and (b) rights of a nature similar to the foregoing in favor of Landlord or any Landlord-affiliated Person, whether created by contract or existing pursuant to the Uniform Commercial Code.

**Work** shall mean any and all work performed on or about the Leased Premises in connection with: (a) the construction and/or installation of improvements thereon; and/or (b) the completion of repairs,

replacements, and/or Alterations thereof or thereon.

**3. Title and Condition.**

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

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

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

Except as otherwise specifically set forth herein, Landlord leases to Tenant and Subtenant, and Tenant and Subtenant accept and lease from Landlord, the Leased Premises "AS IS", and Tenant and Subtenant acknowledge that Landlord (whether acting as Landlord hereunder or in any other capacity) has not made (and shall not be deemed to have made), and shall not make (or be deemed to make), any warranty or representation, express or implied, with respect to any portion of the Leased Premises, including any warranty or representation as to: (i) its fitness for use; (ii) its purpose; (iii) its design or condition for any particular use or purpose; (iv) the quality of the material or workmanship therein, latent or patent; (v) Landlord's title thereto; or (vi) its value, compliance with specifications, location, use, condition, merchantability, quality, description, durability, or operation; it being agreed that all risks incident thereto are to be borne by Subtenant (in connection with which Subtenant may, but is not obligated to, enforce any applicable Warranties and/or contractual obligations of any party). If there is any defect or deficiency of any nature in any portion of the Leased Premises, whether patent or latent, then neither party shall have any responsibility or liability: (i) to the other party with respect thereto; or (ii) for any incidental or consequential damages (including strict liability in tort). The foregoing provisions of this Subsection have been negotiated, and are intended to be a complete exclusion and negation of any warranties by Landlord, express or implied, with respect to any portion of the Leased Premises, including those arising pursuant to the Uniform Commercial Code or any other Law now or hereafter in effect.

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

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

#### **4. Use/Quiet Enjoyment.**

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

(b) Subtenant shall not: (i) permit any unlawful occupation, business, or trade to be conducted on the Leased Premises; (ii) permit any use of the Leased Premises that is contrary to the Legal Requirements or Insurance Requirements; or (iii) use, occupy, or permit any of the Leased Premises to be used or occupied, nor do or permit anything to be done in or on any of the Leased Premises, in a manner that would: (A) void or make voidable any insurance that Subtenant is required hereunder to maintain then in force with respect to any of the Leased Premises; (B) affect the ability of Subtenant to obtain any insurance that Subtenant is required to furnish hereunder, or (C) cause any injury or damage to any of the Garage Improvements. The foregoing shall not be deemed to affect any of the rights of Subtenant under this Lease with respect to Alterations, Restoration, or the contests permitted pursuant to Section 18.

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

continuing.

**5. Term.**

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

(b) Landlord agrees that, in advance of the date of Substantial Completion (and, accordingly, prior to the Commencement Date), Subtenant may elect to enter into a license agreement with Landlord under which Subtenant may take possession of those portions of the Garage Improvements identified by Landlord from time-to-time as: (i) being substantially complete and available for use; and (ii) not needed for construction staging and other purposes relating to the construction of the Garage Improvements and/or the Mixed-Use Improvements; which license agreement shall be on the same terms and conditions as are set forth in this Lease; provided that, instead of Annual Rent, Subtenant shall pay, in the same manner in which Annual Rent will be payable during the Term, a license fee in an amount equal to the Annual Rent payable from and after the Commencement Date, prorated based upon the ratio of: (i) the number of parking spaces in the portions of the Garage Improvements with respect to which Subtenant has elected to take possession; to (ii) the total number of parking spaces that will be in the Garage Improvements upon Substantial Completion.

**6. Rent.**

(a) Commencing on the Commencement Date, and continuing throughout the Term, Subtenant shall pay the Basic Rent. Basic Rent shall be due and payable in advance on each Basic Rent Payment Date in funds that, at the time of such payment, are legal tender for the payment of public or private debts in the United States of America; provided that, if Lender requires payment by wire transfer, then Subtenant shall wire immediately available federal funds to a bank account designated by Lender in writing. If the Commencement Date does not occur on the first day of a month, Basic Rent shall be prorated for the period from and including the Commencement Date through and including the last day of the month immediately prior to the date on which the next semi-annual period begins, and shall be paid on the Commencement Date.

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

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

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

(e) Pledged Revenues

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

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

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

**7. Net Lease/No Termination.**

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

(b) This Lease shall not terminate (except as otherwise expressly provided in Section 13 and Subsection 19(b)), and Subtenant shall not have any right to terminate this Lease (except as expressly provided in Section 13), during the Term. Except as specifically provided in Subsection 15(i), Subtenant shall not be entitled to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction,

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

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

(d) Except as otherwise provided in this Lease, this Lease is the absolute and unconditional obligation of Subtenant. Subtenant waives all rights that are not expressly stated in this Lease but may now or hereafter otherwise be conferred by Law: (i) to quit, terminate or surrender this Lease or any of the Leased Premises; (ii) to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction, or defense of or to Basic Rent, Additional Rent, or any other sums payable under this Lease; and (iii) for any statutory Lien or offset right against Landlord or its property.

## **8. Impositions/Legal and Insurance Requirements.**

(a) Impositions.

(i) Subject to the provisions of Section 18, Tenant, before interest or penalties are due thereon, shall pay and discharge all Impositions. If received by Landlord, Landlord shall promptly deliver to Subtenant any bill or invoice with respect to any Imposition. Without limitation of any

other provisions of this Section, Subtenant agrees to pay all Impositions that accrue or become due with respect to any period prior to or during the Term.

(ii) Nothing herein shall obligate Subtenant to pay, and the term Impositions shall exclude, federal, state or local: (A) transfer taxes as the result of a conveyance by (or suffered by) Landlord; (B) franchise, capital stock or similar taxes if any, of Landlord; (C) income, excess profits, or other taxes, if any, of Landlord determined on the basis of, or measured by, its net income; or (D) any estate, inheritance, succession, gift, capital levy, or similar taxes; except to the extent that the taxes referred to in clauses (B) and (C) above are in lieu of, or a substitute for, any other tax or assessment upon or with respect to any of the Leased Premises that, if such other tax or assessment were in effect on the Commencement Date, would be payable by Subtenant. In the event that any assessment against any of the Leased Premises may be paid in installments, Subtenant shall have the option to pay such assessment in installments and, in such event, Subtenant shall be liable only for those installments that become due and payable during the Term. Subtenant shall: (A) prepare and file all tax reports required by governmental authorities that relate to the Impositions; and (B) deliver to Landlord, within 20 days after Landlord's written request therefor, copies of all settlements and notices pertaining to the Impositions that have been issued by any governmental authority; and (C) deliver to Landlord, within 30 days after payment is made, receipts for payment of all Impositions made during each calendar year of the Term.

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

#### **9. Liens/Recording.**

(a) Subtenant shall not, directly or indirectly, create or permit to be created or to remain, and, subject to its rights under Section 18, promptly shall discharge, any Lien on the Leased Premises, the Basic Rent, and/or the Additional Rent; provided that the foregoing shall exclude the Mortgage, the Permitted Encumbrances, and any Lien or other charge created by, or resulting from, any act or omission by Landlord or those claiming by, through or under Landlord (except Subtenant). Notice is hereby given that Landlord shall not be liable for any labor, services or materials furnished or to be furnished to Subtenant, or to anyone holding any of the Leased Premises through or under Subtenant, and that no mechanic's or other Liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to any of the Leased Premises.

(b) Landlord, Tenant, and Subtenant shall execute, acknowledge, and deliver a written memorandum of this Lease to be recorded in the Office of the Allen County Recorder for the purposes of giving public notice, and protecting the validity, of this Lease. In the event of any discrepancy between the provisions of the recorded memorandum and the provisions of this Lease, the provisions of this Lease shall prevail.

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

**10. Indemnification.**

(a) From and after the date on which Subtenant first takes possession of all or any portion of the Leased Premises, and except as specifically set forth herein, Subtenant agrees to defend, pay, protect, indemnify, save, and hold harmless Landlord, Tenant, and Lender from and against any and all Claims of any nature whatsoever, howsoever caused, arising or alleged to arise from: (i) the Leased Premises or the ownership, use, non-use, occupancy, condition, maintenance, repair, or rebuilding of the Leased Premises; (ii) any breach or violation by Subtenant of this Lease or any Legal Requirement; and/or (iii) Landlord's enforcement of the provisions of this Lease; including, without limitation: (i) Claims with respect to: (A) injury to or death of any Person; or (B) loss of, or damage to, any property, whether real or personal; and (ii) third party Claims resulting from violations or alleged violations by Subtenant or any sub-subtenant of any provision of this Lease, any Legal Requirement, or any other contract agreement to which Subtenant or such sub-subtenant is a party; in all cases whether or not Landlord or Lender has, or should have, knowledge or notice of the defect or conditions, if any, causing or contributing to the Claim (collectively, the "Indemnified Liabilities"); provided that the foregoing shall not apply to the extent that a Claim is the result of the gross negligence or intentional wrongful misconduct of Landlord. If any action or proceeding is brought against Landlord or Lender by reason of any Indemnified Liabilities, then, upon receipt of notice from Landlord, Tenant, or Lender, Subtenant, at its cost and expense, shall resist, and defend Landlord and Lender in connection with, such action or proceeding; provided that, upon receipt of request from Subtenant, Tenant and Landlord, at Subtenant's cost and expense, will provide reasonable cooperation and assistance in the defense of such action or proceeding.

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

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

**11. Maintenance and Repair.**

(a) Subtenant at all times shall put, keep, and maintain the Leased Premises in accordance with: (i) the terms and conditions of the Easement Agreement; and (ii) the standards of maintenance, repair, and restoration that are common to owners and managers of the best comparable vehicle parking garages in the Fort Wayne, Indiana, metropolitan area; including, without limitation: (i) environmental monitoring that is required by the Laws or the terms of any agreement with respect thereto executed by the parties; and (ii) compliance with the maintenance standards set forth in the Easement Agreement and the Garage Operating Agreement. Subtenant shall promptly make all repairs and replacements of every kind and nature, whether foreseen or unforeseen, that may be required to be made upon, or in connection with, the Leased Premises in order to keep and maintain the Leased Premises in the order and condition required by this Subsection. Landlord shall not be required to: (i) make any repair, whether foreseen or unforeseen; or (ii) maintain in any way the Leased Premises or the streets, sidewalks,

curbs, gores, and/or vault spaces adjoining the Leased Premises; and Subtenant hereby expressly waives the right that Subtenant may have at Law to make repairs at the expense of the Landlord. Nothing in this Section shall be deemed to have any effect on the right of Subtenant to: (i) receive insurance proceeds or condemnation awards for Restoration pursuant to Subsections 13(c) and 14(g); or (ii) enforce its right, as the assignee of the Warranties, to make claims thereunder or pursuant to the Garage Operating Agreement; accordingly, Subtenant shall have the right to pursue any and all claims available to it under the Warranties and pursuant to the Garage Operating Agreement. In all events, Subtenant shall make all repairs for which it is responsible hereunder promptly, and all repairs shall be in a good, proper and workmanlike manner.

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

(c) During the continuance of an Event of Default by Subtenant under this Section or Section 26, Landlord may take such actions as it deems to be necessary or reasonably appropriate to cure the Event of Default for the account, and at the expense, of Subtenant;

provided that, in the case of an emergency, and regardless of whether failure or default by Subtenant constitutes an Event of Default: (i) Landlord shall make reasonable efforts to notify Subtenant of the situation by phone or other available communication before taking any action to cure the Event of Default; but (ii) receipt by Subtenant of such communication is not required for Landlord to commence such action. All reasonable costs and expenses incurred by Landlord in effecting a cure (including, without limitation, attorneys' fees and expenses), together with interest thereon at the Default Rate from the date on which the expense is incurred by Landlord until the date on which it is reimbursed by Subtenant, shall constitute Additional Rent payable by Subtenant to Landlord upon receipt of demand.

(d) Subtenant shall repair, remove, and/or replace Equipment that: (i) becomes worn out or unusable for the purpose for which it is intended; (ii) is removed (or rendered unusable for the purpose for which it is intended) as part of a Condemnation; or (iii) lost, stolen, damaged, or destroyed; in each case with parts or new equipment, as applicable, of a quality at least as good as that being repaired, removed, and/or replaced. In connection with the foregoing, Subtenant, at its cost and expense, shall repair any damage to the Leased Premises caused by Subtenant's repair, removal, and/or replacement of such Equipment. All equipment and/or parts used in connection with any repair, removal, and/or replacement of Equipment shall: (i) become the property of Landlord; (ii) be free and clear of all Liens and rights of others; and (iii) become a part of the Equipment.

(e) Within 30 days after the end of each quarter during the Term, Subtenant, at its own expense, shall provide to Landlord and Lender a certificate under which it certifies that the Leased Premises: (i) are in good and safe condition and repair; and (ii) have been maintained in good order, repair, and condition (including all structural and non-structural elements), and in compliance with the standards and other requirements set forth in Section 11.

## 12. Alterations.

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

(b) In the event that Landlord gives its prior written consent to any Alterations, or if such consent is not required, Subtenant agrees that, in connection with any Alterations made by it: (i) the structural integrity of the Leased Premises shall not be impaired; (ii) there will not be a reduction of the gross floor area of the Garage Improvements; (iii) all Work shall be: (A) performed in a good and workmanlike manner, and under the supervision of an architect or engineer; (B) performed in accordance with plans and specifications that have been submitted to Landlord (for informational purposes only) prior to commencement; and (C) completed expeditiously and in compliance with all Legal Requirements and Insurance Requirements; (iv) Subtenant shall promptly pay all costs and expenses of any such Alterations and, subject to the provisions of Section 18, shall discharge all Liens filed against any of the Leased Premises arising as a result thereof; and (v) Subtenant shall procure and pay for all required permits and licenses. All Alterations shall be the property of Landlord and a part of the Leased Premises.

### **13. Condemnation.**

(a) Tenant and Subtenant, promptly upon obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Landlord thereof, and Landlord shall be entitled to participate in such proceeding. Landlord, promptly upon obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Tenant and Subtenant thereof, and Tenant and Subtenant shall have the right to participate in such proceeding. Subject to the provisions of this Section 13 and Section 15, Tenant and Subtenant hereby irrevocably assign to Lender or to Landlord, in that order, any award or payment in respect of any Condemnation of Landlord's interest in the Leased Premises; provided that Tenant and Subtenant shall not be deemed to assign to Lender or Landlord any award or payment made to it: (i) on account of the Trade Fixtures; or (ii) to cover moving expenses and out-of-pocket expenses incidental to the move; to the extent Subtenant has the right to make a separate claim therefor against the condemnor, it being agreed, however, that neither Tenant nor Subtenant shall in event be entitled to any payment that reduces the award to which Landlord is or would be entitled for the condemnation of Landlord's interest in the Leased Premises.

(b) If: (i) at least 50% of the Garage Improvements, or the primary means of access to the Garage Improvements, are the subject of a Taking; and (ii) the resulting loss, even after Restoration, in Subtenant's reasonable business judgment would be substantially and materially adverse to the business operations of Subtenant at the Leased Premises; then Subtenant, within 90 days after the Taking occurs, may serve notice upon Landlord and Tenant of Subtenant's intention to terminate this Lease on the Basic Rent Payment Date specified in such notice; provided that the Termination Date shall not occur prior to the first Basic Rent Payment Date occurring at least 30 days after the date that Subtenant serves its notice.

(c) No Termination.

(i) Subject to the requirements of Section 15, if there is a Condemnation of any part of the Leased Premises that does not result in a termination of this Lease, then: (A) the Net Award of such Condemnation shall be retained by Landlord; and (B) promptly after such Condemnation, Subtenant shall commence and diligently pursue the

Restoration of the Leased Premises in accordance with the provisions of this Lease, including, without limitation, the provisions of Subsection 11(a) and Sections 12 and 15.

(ii) Upon the payment to Landlord of the Net Award of a Taking of the nature referenced in Subsection 13(c)(i): (A) Landlord and Lender shall make the Restoration Award actually received available to Subtenant to use for the Restoration in accordance with the provisions of Section 15; and (B) promptly after completion of the Restoration, the balance of the Net Award shall be paid to Subtenant; and all Basic Rent, Additional Rent, and other sums payable hereunder shall continue unabated and unreduced, except as otherwise provided specifically to the contrary in Subsection 15(i).

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

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

#### **14. Insurance.**

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

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

(ii) Contractual and comprehensive general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises, which insurance shall be written on a so-called "Occurrence Basis," and shall provide minimum protection with

a combined single limit in an amount not less than the greater of: (A) \$1,000,000.00 (or in such increased limits from time to time to reflect declines in the purchasing power of the dollar as Landlord may reasonably request); or (B) the aggregate amount of such insurance customarily carried by Subtenant, for bodily injury, death and property damage in any one occurrence.

(iii) Worker's compensation insurance covering all Persons employed by Subtenant, its property manager, or any agent of Subtenant to perform any Work for which claims for death or bodily injury could be asserted against Landlord, Subtenant or the Leased Premises.

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

(v) Whenever Subtenant, whether as Landlord's construction agent or otherwise, is performing any Work, Subtenant shall obtain or cause its contractor to obtain: (A) completed value builder's risk insurance when the estimated cost of the Work in any one instance exceeds the sum of Fifty Thousand Dollars (\$50,000); and (B) worker's compensation (or other adequate) insurance covering all Persons employed in connection with the Work (whether Subtenant or its contractors or subcontractors) with respect to whom or which death or bodily injury claims could be asserted against Subtenant or Landlord.

(vi) Business interruption insurance.

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

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

(c) Each insurance policy referred to in Subsections 14(a)(i) and (a)(iv) (and (a)(v) if requested by Lender) shall: (i) contain standard non-contributory mortgagee clauses in favor of any Lender that holds a Mortgage on the Leased Premises; (ii) provide that it may not be canceled except after 30 days' prior notice to Landlord and any Lender; and (iii) provide that any losses otherwise payable thereunder shall be payable to Lender

notwithstanding (i) any act or omission of Landlord or Subtenant that might, absent such provision, result in a forfeiture of all or a part of such insurance payment, or (ii) the occupation or use of any of the Leased Premises for purposes more hazardous than permitted by the provisions of such policy.

(d) Subtenant shall: (i) pay as they become due all premiums for the insurance required by this Section; (ii) renew or replace each policy in a timely manner; and (iii) deliver to Landlord and Lender a certificate or other evidence (reasonably satisfactory to Lender and Landlord) reflecting that, at least 30 days prior to the expiration of a then-existing policy, Subtenant has renewed or replaced such then-existing policy. Each such policy shall provide that it shall not expire until the Landlord and Lender have received notice from the insurer to the effect that such policy will expire on the date that is 30 days after receipt by Landlord and Lender of such notice. In the event of Subtenant's failure to comply with any of the foregoing requirements of this Section within five business days of the giving of written notice by Landlord to Subtenant, Landlord shall be entitled to procure such insurance. Any sums expended by Landlord in procuring such insurance shall be Additional Rent and shall be repaid by Subtenant, together with interest thereon at the Default Rate, from the time of payment by Landlord until fully paid by Subtenant immediately upon written demand therefor by Landlord.

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

(f) The following shall apply in the event of any casualty loss.

(i) Subtenant shall give Landlord immediate notice thereof. Subtenant shall adjust, collect and compromise any and all claims, with the consent of Lender and Landlord, not to be unreasonably withheld or delayed, and Landlord and Lender shall have the right to join with Subtenant therein. If the estimated cost of Restoration or repair is \$50,000.00 or less then the Restoration Award, or the proceeds of any insurance required under Subsections 14(a)(i) an (a)(iv) (and (a)(v) if requested by Lender), shall be payable to Subtenant. In all other events, the Restoration Award and proceeds of insurance shall be payable to the Trustee.

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

(iii) The Net Proceeds of such insurance payment shall be retained by the Trustee and, promptly after such casualty, Subtenant, as required

in Subsection 11(a) and Section 12, shall commence and diligently continue to perform the Restoration to the Leased Premises in accordance with the terms and conditions of this Lease and in compliance with the Easement Agreement. Upon payment to the Trustee of such Net Proceeds, the Trustee shall, to the extent available, make the Net Proceeds available to Subtenant for Restoration in accordance with the provisions of Section 15. Regardless of whether the Net Proceeds are sufficient for the purpose, Subtenant promptly shall repair or replace the Garage Improvements and Equipment in accordance with the provisions of Subsection 11(a) and the Net Proceeds of such loss shall thereupon be payable to Subtenant, subject to the provisions of Section 15 hereof. If any damage or destruction occurs at a time when Subtenant is not maintaining third-party insurance in accordance with Subsection 14(a)(i), (iv), (v), or (vi), then Subtenant shall pay to the Trustee the amount of the proceeds that would have been payable had such insurance program been in effect (the "Subtenant Insurance Payment").

**15. Restoration.** If Restoration Funds are payable to the Trustee, then they shall be held by the Trustee in the Restoration Account and disbursed by the Trustee in accordance with the terms and conditions of this Lease and the Easement Agreement, including the following conditions:

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

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

(c) Disbursements shall be made from time to time in an amount not exceeding the hard and soft costs and expenses incurred in connection with the Work (including costs and costs incurred since the last disbursement upon receipt of: (i) satisfactory evidence (including architects' certificates of the stage of completion) of: (A) the estimated costs incurred in connection with the Work to date; and (B) the performance of the Work to date in a good and workmanlike manner and in accordance with the contracts, plans, and specifications therefor; (ii) partial releases of Liens; and (iii) other reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by Work that has been performed and/or materials that have been delivered, in each case free and clear of mechanics' Lien claims.

(d) Each request for disbursement shall be accompanied by a certificate of Subtenant that: (i) states the amount requested for payment; (ii) includes invoices or other evidence of the costs and expenses for which payment is requested; and (iii) states that Subtenant has not previously received a disbursement of funds to pay such costs and expenses. Following substantial completion thereof, Subtenant shall deliver to Landlord a certificate stating that the Work has been completed in all material respects in compliance with the terms and conditions of this Lease.

(e) The Trustee may retain 20% of all draws submitted for receipt of Restoration Funds from the Restoration Account until the Restoration is at least 50% complete, and thereafter 10% until the Restoration is complete.

(f) At all times the undisbursed balance of the Restoration Funds held by Trustee, together with any funds contributed to the Restoration Account by Subtenant, shall be not less than the cost of completing the Restoration, free and clear of all Liens.

(h) If, at any time, the estimated cost of Restoration, as reasonably determined by Landlord, exceeds the amount on deposit in the Restoration Account and available for disbursement to pay Restoration costs, then either: (i) the amount of the shortfall shall be paid by Subtenant to the Trustee to be added to the Restoration Account; or (ii) Subtenant shall fund, at its own expense, the costs of Restoration until such time as the amount on deposit in the Restoration Account is sufficient to fund the remainder of the Restoration. Any amount remaining in the Restoration Account upon the completion of Restoration shall be paid to Subtenant. For purposes of determining the source of funds with respect to the disposition of Restoration Funds remaining in the Restoration Account after the completion of Restoration, the Net Proceeds, Restoration Award, and/or Subtenant Insurance Payments shall be deemed to be disbursed prior to any amount added by Subtenant.

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

**16. Subordination to Financing.**

(a) Subordination.

(i) Subject to the provisions of Section 16 (a)(ii), Tenant and Subtenant agree: (A) that this Lease at all times shall be subject and subordinate to the Lien of any Mortgage; and (B) upon demand and without any charge, to execute such instruments as reasonably may be required to confirm such subordination, the terms and conditions of which instruments shall be consistent with the terms and conditions of this Section.

(ii) Absent a continuing Event of Default: (A) none of this Lease, Tenant's or Subtenant's tenancy or subtenancy, respectively, or Tenant's or Subtenant's rights under this Lease shall be disturbed, terminated, or otherwise adversely affected by any default under any Mortgage; and (B) in the event of a foreclosure or other proceeding to enforce any Mortgage (including a sale in lieu of foreclosure): (1) the purchaser of the Leased Premises shall be bound to Tenant and Subtenant for the Term; (2) the rights of Tenant and Subtenant under this Lease shall expressly survive; and (3) this Lease shall in all respects continue in full force and effect.

Tenant and Subtenant shall not be named as a party defendant in any foreclosure suit, except as may be required by Law. Any Mortgage to which this Lease is now or hereafter subordinate shall provide that, during the Term, insurance proceeds and Restoration Award shall be permitted to be used for Restoration in accordance with the provisions of this Lease.

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

(c) Tenant and Subtenant agree, during the Term and upon the terms and conditions of this Lease, to attorn to the owner of the Leased Premises and to any Lender that has granted non-disturbance to Tenant and Subtenant pursuant to Subsection 16(a). The provisions of this Subsection shall: (i) inure to the benefit of such owner or Lender; (ii) apply notwithstanding that, as a matter of law, this Lease may terminate upon the foreclosure of the Mortgage; (ii) be self-operative upon any demand; and no further instrument shall be required to give effect to such provisions.

(d) Each party agrees to execute, from time to time and upon receipt of written demand, instruments confirming and/or acknowledging the provisions of this Section, which instruments reasonably are satisfactory in form and substance to the applicable parties.

(e) Each of Tenant, Subtenant, Landlord, and Lender agrees that, upon receipt of written request by another party or the Lender, it shall execute, without charge, a Subordination, Non-Disturbance, and Attornment Agreement in form and substance reasonably satisfactory to the applicable parties; provided that such agreement shall be consistent with the terms and conditions of this Section. Each of Tenant and Subtenant agrees for the benefit of Lender that, without the prior written consent of Lender, it shall not:

(i) amend or modify (or enter into an agreement with Lender to amend or modify) this Lease; provided that Lender, in its sole discretion, may withhold or condition its consent to any amendment or modification that would or could: (A) alter in any way the amount or time for payment of any Basic Rent or Additional Rent; (B) alter or materially diminish the nature of Subtenant's obligations hereunder; (C) result in a termination of this Lease prior to the end of the Term; or (D) otherwise, in Lender's reasonable judgment, affect the rights or obligations of Landlord, Tenant, or Subtenant hereunder;

(ii) terminate or surrender (or seek to terminate or surrender, or enter into any agreement with Landlord to terminate or surrender) this Lease or the Leased Premises; provided that: (A) Lender may withhold its consent in its sole discretion; and (B) this prohibition shall not be construed to affect the rights or obligations of any party or Lender with respect to any termination permitted under the express terms hereof in connection with an offer to purchase the Leased Premises following certain events of Condemnation, as provided in Section 13 hereof); or

(iii) pay any installment of Basic Rent more than one month in advance of the due date thereof, or otherwise than in the manner provided for in this Lease.

**17. Assignment/Subleasing.**

(a) Subtenant shall have the right to enter into a sub-sublease with the Mixed-Use Owner under which, for any given month during the term thereof, the Mixed-Use Owner may designate up to [327-340] parking spaces within the areas of the Garage Improvements determined mutually by Subtenant and the Mixed-Use Owner, which parking spaces, when designated, shall be available for the exclusive use by tenants of

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

(b) In addition to the provisions of Subsection 17(a), the Leased Premises may be sub-sublet in whole or in part by Subtenant without the consent of Landlord; provided, that: (i) no such sub-sublease shall release Subtenant from any of its obligations or liabilities under this Lease; (ii) no such sub-sublease may be entered into if an Event of Default has occurred and is continuing; (iii) the sub-subtenant under any sub-sublease shall not be party to any bankruptcy, insolvency or similar proceeding at the inception of the sub-sublease; (iv) the sub-subtenant under any sub-sublease shall be permitted to use the Leased Premises only for the purposes permitted under this Lease; and (v) no such sub-sublease shall be for a term that extends beyond the Term.

(c) Except as provided in Subsections 17(a) and 17(b) above, neither Tenant nor Subtenant may assign this Lease, either directly or indirectly, without Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion. If Landlord consents to an assignment: (i) no such assignment shall release Tenant or Subtenant from any of its obligations or liabilities under this Lease; (ii) no such assignment may be entered into if an Event of Default has occurred and is continuing; (iii) the assignee under any assignment shall not be party to any bankruptcy, insolvency or similar proceeding at the inception of the assignment; and (iv) the assignee under any assignment shall be permitted to use the Leased Premises only for the purposes permitted under this Lease. If, at the time of a proposed assignment, the Leased Premises are subject to a Mortgage, then neither Tenant nor Subtenant shall assign this Lease without first delivering to Landlord the written consent of Lender to the assignment, which consent shall be in form and substance reasonably satisfactory to Landlord. Nothing contained herein shall be deemed to limit Landlord's right to sell, assign, or otherwise transfer the Leased Premises and this Lease.

(d) Each sub-sublease of the Leased Premises or any part thereof shall be subject and subordinate to the provisions of this Lease. No assignment or sub-sublease shall affect or reduce any of the obligations of Subtenant hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made. Notwithstanding any assignment or subletting Tenant and Subtenant shall continue to remain liable and responsible for the payment of the Basic Rent and Additional Rent, and for the performance of all its other obligations under this Lease. No assignment or sublease shall impose any obligations on Landlord under this Lease except as otherwise provided

in this Lease. Further, each sub-sublease must provide that any rent and other amounts payable thereunder may not be paid more than one (1) month in advance and shall include all provisions required by applicable Legal Requirements. To the extent required by applicable Legal Requirements, all security deposits and other deposits delivered under any sub-sublease shall be held in separate interest-bearing accounts and, in any event, shall be held and disposed of as required by applicable Legal Requirements. Tenant and Subtenant agree that in the case of an assignment of this Lease approved by Landlord, Tenant and Subtenant shall, within 15 days after the execution and delivery of any such assignment, deliver to Landlord: (i) a duplicate original of such assignment in recordable form; and (ii) an agreement executed and acknowledged by the assignee in recordable form wherein the assignee shall agree to assume and agree to observe and perform all of the terms and provisions of this Lease on the part of the Tenant and Subtenant to be observed and performed from and after the date of such assignment. In the case of all subleases, Tenant and Subtenant shall, immediately upon request of Landlord, deliver to Landlord and Lender a duplicate original or certified copy of all such subleases.

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

**18. Permitted Contests.** After prior written notice to Landlord, neither Tenant nor Subtenant shall be required to: (a) pay any Imposition; (b) comply with any Legal Requirement; (c) discharge or remove any Lien; or (d) take any action with respect to any violation referred to in Subsection 11(b); so long as Tenant or Subtenant, respectively, contests, in good faith and at its expense: (a) the existence, the amount, or the validity thereof; (b) the amount of the damages caused thereby; or (c) the extent of its or Landlord's liability therefor; provided that such contest shall be by proceedings that operate during the pendency thereof to prevent: (a) the collection of, or other realization upon, the contested Imposition or Lien; (b) the sale, forfeiture, or loss of any of the Leased Premises, any Basic Rent, or any Additional Rent to: (i) pay the Imposition; (ii) comply with the Legal Requirement; (iii) discharge the Lien; or (iv) correct the violation; or to pay any damages resulting therefrom; (c) any interference with the use or occupancy of any of the Leased Premises or the payment of any Basic Rent or any Additional Rent, and (e) the cancellation of any insurance policy.

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

Each of Tenant and Subtenant agrees that each contest shall be promptly and diligently prosecuted to a final conclusion; provided that Tenant or Subtenant, respectively, shall have the right to attempt to settle or compromise such contest through negotiations. Subtenant: (a) shall pay, and save Lender and Landlord harmless, against any and all Claims (including all attorneys' fees and expenses) in connection with any such contest; and (b) promptly after the final determination of such contest shall: (i) pay and discharge in full the amounts that are levied, assessed, charged or imposed, or determined to be payable as a result of or in connection with the contest, together with all penalties, fines, interest, costs, and

expenses incurred in connection therewith; and (ii) perform all acts, the performance of which is ordered or decreed as a result of such contest.

**19. Defaults/Remedies.**

(a) The occurrence of any one or more of the following events shall constitute an Event of Default:

(i) a failure by Subtenant to make any payment of Basic Rent, or deposit a Net Award or any Net Proceeds (to the extent such New Award and Net Proceeds are received by Subtenant) as required by this Lease, regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency, or other proceedings, in law, in equity or before any administrative tribunal that had or might have the effect of preventing Subtenant from complying with the provisions of this Lease), if such failure is not remedied within five days; (ii) the failure by Subtenant to make any payment of Additional Rent, if such failure is not remedied within 15 days after receipt of written notice of such failure;

(iii) the failure by Subtenant to maintain insurance as and to the extent required by Section 14;

(iv) the failure by Subtenant to perform and/or observe any other provision in this Lease, if such failure is not remedied within 30 days after receipt of written notice thereof; provided that, if such failure is of a nature that it cannot reasonably be cured within 30 days, then such period shall be extended as reasonably may be necessary so long as: (A) Subtenant has commenced to cure such failure within the 30-day period and is actively, diligently, and in good faith proceeding to remedy such default; and (B) the delay will not result in a material adverse effect on the value of the Leased Premises; provided that, in all events the cure period shall expire on the first to occur of: (A) the date that is 90 days after commencement of the cure period; or (B) the expiration of the Term;

(v) Subtenant, or any guarantor of Subtenant's obligations hereunder: (A) voluntarily is adjudicated a bankrupt or insolvent; (B) voluntarily consents to the appointment of a receiver or trustee for itself or for any of the Leased Premises; (C) voluntarily files a petition seeking relief under the bankruptcy or other similar laws of the United States, any state, or any jurisdiction; (D) voluntarily files a general assignment for the benefit of creditors; or (E) voluntarily consents to the entry by a court of an order, judgment, or decree: (1) appointing a receiver or trustee for Subtenant or such guarantor or for the Leased Premises; or (2) approving a petition filed against Subtenant or such guarantor that seeks relief under the bankruptcy or other similar laws of the United States or any state; if such order, judgment, or decree is not discharged within 90 days;

(vi) Subtenant, or any guarantor of Subtenant's obligations hereunder: (A) is liquidated or dissolved in any insolvency proceeding; or (B) voluntarily commences proceedings towards its liquidation or dissolution; or

(vii) the estate or interest of Subtenant in the Leased Premises is levied upon or attached in any proceeding, and either: (A) such estate or

interest is about to be sold or transferred; or (B) such proceeding has not been vacated or discharged within 90 days; whichever applies first.

(b) Remedies.

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

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

(B) Regardless of whether this Lease has been terminated pursuant to Subsection 19(b)(i)(A), Landlord may give Tenant or Subtenant notice to surrender the Leased Premises to Landlord on a date specified in such notice, on which date Tenant or Subtenant shall surrender and deliver possession of the Leased Premises to Landlord unless the Event of Default for which the surrender is required has been cured by Tenant or Subtenant. Upon or at any time after taking possession of the Leased Premises, Landlord may remove any Persons or property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. No such entry or repossession shall be construed as an election by Landlord to terminate this Lease unless Landlord gives a written notice of such intention to Tenant or Subtenant pursuant to Subsection 19(b)(i)(A).

(C) After repossession of any of the Leased Premises pursuant to Subsection 19(b)(i)(B), and regardless of whether this Lease has been terminated pursuant to Subsection 19(b)(i)(A), Landlord may relet the Leased Premises or any part thereof to such tenant or tenants for such term or terms (which may be greater or less than the period that would otherwise have constituted the balance of the Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be

applied: (1) first to the reasonable and actual expenses of such reletting and collection, including, without limitation, necessary renovation and alterations of the Leased Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid; and (2) thereafter toward payment of all sums due or to become due Landlord hereunder. If a sufficient amount to pay such expenses and sums is not realized or secured, then Tenant and Subtenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise. In no event shall Landlord be required to pay Tenant or Subtenant any sums received by Landlord on a reletting of the Leased Premises in excess of the Annual Rent; provided that any such excess shall reduce any accrued present or future obligations of Tenant and Subtenant hereunder. Landlord's re-entry and reletting of the Leased Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth above. Landlord may make such Alterations as Landlord in its reasonable discretion may deem advisable. Tenant and Subtenant agree to pay Landlord, as Additional Rent and immediately upon demand, all reasonable expenses incurred by Landlord in obtaining possession, in performing Alterations and in reletting any of the Leased Premises, including fees and commissions of attorneys, architects, agents and brokers.

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

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

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

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

(c) In the event of any termination of this Lease or repossession of any of the Leased Premises by reason of the occurrence of an Event of Default, Tenant and Subtenant shall pay to Landlord Basic Rent and Additional Rent to and including the date of such termination or repossession. From the date of termination or repossession through the Scheduled Expiration Date, and regardless of whether the Leased Premises has been relet, Tenant and Subtenant shall remain liable for, and shall pay to Landlord as

liquidated and agreed current damages: (i) Basic Rent and Additional Rent; less (ii) the net proceeds, if any, of any reletting pursuant to Subsection 19(b)(i)(C), after deducting therefrom all of Landlord's reasonable expenses in connection with such reletting (including all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, employees' expenses, costs of Alteration, and expenses of preparation for reletting). Landlord may institute and maintain successive actions or legal proceedings against Tenant and Subtenant for the recovery of the amounts set forth above. Nothing herein contained shall be deemed to require Landlord to wait to begin such action or other legal proceedings until the Scheduled Expiration Date.

(d) At any time after: (i) termination of this Lease pursuant to this Section or pursuant to Law; or (ii) Landlord reenters the Leased Premises; and regardless of whether Landlord has recovered any amounts under Subsections 19(b)(i)(C) or 19(c), Landlord shall be entitled to recover from Tenant and Subtenant, upon demand and as and for liquidated and agreed final damages: (i) the amount by which the Basic Rent and Additional Rent that would have been payable through the Scheduled Expiration Date exceeds: (A) the then fair and reasonable rental value of the Leased Premises for the same period, discounted to present worth at an annual rate equal to the applicable yield for Treasury Securities maturing at the expiration of the Term; minus (ii) any such monthly deficiencies previously recovered from Tenant or Subtenant pursuant to Subsection 19(b)(i)(C); and plus (iii) all reasonable legal fees and other costs and expenses incurred by Landlord and Lender as a result of any default under this Lease and the exercise of any rights and remedies hereunder.

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

## 20. **Additional Rights.**

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

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

(c) Landlord hereby waives any Landlord's or similar Lien upon Trade Fixtures and any other property of Subtenant located at the Leased Premises, regardless of whether such Lien is created by statute or otherwise. Landlord agrees to execute, at the request of Subtenant, a waiver of any Landlord's or similar Lien for the benefit of any present or future holder of a security interest in, or lessor of, any of Trade Fixtures or any other personal property of Subtenant located at the Leased Premises, so long as such holder waives in writing any claim against or interest in the Leased Premises, this Lease, the Basic Rent and the Additional Rent.

(d) If a party prevails in any litigation or other action instituted by it to enforce the obligations of another party hereunder, then such prevailing party shall be entitled to reimbursement of all reasonable costs and expenses that it has incurred in connection with such litigation or other action by the other party that did not prevail. Subtenant agrees to pay or reimburse Landlord on demand for any costs or expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection with enforcing the terms of this Lease in the event of any default by Subtenant or any sub-subtenant in complying with the terms and conditions of this Lease. Any amount payable by Subtenant to Landlord pursuant to this Subsection shall be due and payable by Subtenant to Landlord as Additional Rent. No sum payable by Landlord to Subtenant under this Subsection will be payable or recoverable from any sums pledged or assigned (or intended to have been pledged or assigned) by Landlord to Lender, Subtenant's right to recover such sums from Landlord being subordinate to the rights of Lender, and such sums only being recoverable after payment to Lender in full of the Loan.

**21. Notices.** All Notices shall be in writing and shall be deemed to have been given for all purposes: (a) on the earlier of receipt or three business days after having been sent by United States mail or by registered or certified mail with return receipt requested, in any case with postage prepaid; or (b) one business day after having been sent by Federal Express or other nationally recognized air courier service; in any case addressed to the other party at its address set forth below:

If to Landlord: Barrett & Stokely, Inc.  
Attn: Rex Barrett  
3755 E. 82<sup>nd</sup> Street, Suite 300  
Indianapolis, Indiana 46240  
Email: [rmb@barrettandstokely.com](mailto:rmb@barrettandstokely.com)

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

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

If to Tenant: Summit Development Corp.  
Attn: Karl Bandemer  
200 East Berry Street, 4<sup>th</sup> Floor  
Fort Wayne, IN 46818  
Email: [karl.bandemer@cityoffortwayne.org](mailto:karl.bandemer@cityoffortwayne.org)

If to Subtenant: The City of Fort Wayne, Indiana  
Department of Redevelopment  
Attention: Executive Director  
Citizen's Square  
200 East Berry Street, Suite 320  
Fort Wayne, IN 46802

Telephone: 260-427-2323  
Facsimile: 260-427-1375

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

And with a copy to: Jon A. Bomberger  
Faegre Baker Daniels LLP  
110 W. Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Telephone: 260-424-8000  
Facsimile: 260-460-1700  
Email: [jon.bomberger@faegrebd.com](mailto:jon.bomberger@faegrebd.com)

Basic Rent shall be payable to Landlord's address set forth above (or to such other address identified by Landlord in a written notice to Subtenant. If any Lender has delivered written Notice to Subtenant that it is the holder of a Mortgage, and states in such Notice its address for the receipt of Notices, then, simultaneously with the giving of any Notice by Tenant or Subtenant to Landlord, Tenant and Subtenant shall send a copy of such Notice to Lender at the address specified by Lender. For the purposes of this Section, any party may substitute its address by giving Notice to the other party in the manner set forth in this Section at least 15 days in advance. Any Notice may be given on behalf of any party by its counsel.

**22. Estoppel Certificates.** From time to time upon not less than 20 days' written request, Landlord, Tenant, and Subtenant shall execute, acknowledge, and deliver to the other a statement in writing, certifying: (a) that this Lease is unmodified and in full effect (or, if there have been modifications, setting forth such modifications and stating that this Lease is in full effect as modified; (b) the date to which Basic Rent has been paid; (c) that, to the knowledge of the signer of such certificate, no default by Landlord, Tenant, or Subtenant exists hereunder (or, if applicable, specifying each default of which the signer has knowledge); (d) the Scheduled Expiration Date; (e) with respect to a certificate signed on behalf of Tenant or Subtenant, that: (A) that to the knowledge of the signer of such certificate, there are no proceedings pending or threatened against Tenant or Subtenant before or by any court or administrative agency which, if adversely decided, would materially and adversely affect the financial condition and operations of Tenant or Subtenant (or, if such signer has knowledge of any pending or threatened actions, specifying and describing such actions); and (B) neither the Tenant nor Subtenant has any claim of offset, abatement, or deduction of Basic Rent or Additional Rent; and (f) to such other matters as may reasonably be requested by the party requesting the certificate. It is intended that any such statements may be relied upon by Lender, the recipient of such statements, the recipients' assignees, and any prospective purchaser, assignee, or subtenant of the Leased Premises.

**23. Surrender/Holding Over.**

(a) Upon the expiration of the Term or the earlier termination of this Lease, Tenant and Subtenant shall peaceably leave and surrender the Leased Premises (except as to any portion thereof with respect to which this Lease has previously terminated) to Landlord in the same condition as when originally delivered to Subtenant, reasonable wear and tear and any Alteration to which Landlord has consented excepted. In connection with such surrender, Subtenant: (i) shall remove from the Leased Premises the Trade Fixtures and personal property that is owned by Subtenant, or by third parties other than Landlord; and (ii) at its expense shall repair any damage caused by such removal. Trade Fixtures and personal property not so removed at the end of the Term or, if applicable, within 30 days after the earlier termination of this Lease shall become the

property of Landlord, and Landlord may thereafter may remove and dispose of such property; provided that the cost of such removal and disposal, together with the cost of repairing any damage to any of the Leased Premises caused by such removal, shall be borne by Subtenant. Landlord shall not in any manner or to any extent be obligated to reimburse Subtenant for any property that becomes the property of Landlord as a result of the failure of Subtenant to remove such property upon the expiration of the Term or the earlier termination of this Lease.

(b) Any holding over by Tenant or Subtenant of the Leased Premises after the expiration of the Term or the earlier termination of this Lease, with the consent of Landlord, shall operate and be construed as a tenancy from month-to-month on the same terms and conditions as those contained in this Lease; provided that: (i) the Basic Rent payable shall be 150% of the Basic Rent payable at the time of the expiration of the Term or the earlier termination of this Lease; and (ii) neither Tenant nor Subtenant shall have any right to renew or extend the Term. If Tenant or Subtenant holds over without Landlord's consent, then, in addition to collecting Basic Rent at the rate set forth above, Landlord may exercise all rights and remedies provided by law or in equity, including the remedies of Subsection 19(b).

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

**24. No Merger.** There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in or ownership of any of the Leased Premises by reason of the fact that the same Person may acquire or hold or own, directly or indirectly: (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate; and (b) the fee estate or ownership of any of the Leased Premises or any interest in such fee estate or ownership; unless and until all persons, corporations, firms, and other entities having any interest in: (a) this Lease or the leasehold estate created by this Lease; and (b) the fee estate in or ownership of the Leased Premises or any part thereof; execute and record a written instrument effecting such merger.

**25. Landlord Definition.**

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

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

**26. Hazardous Materials.**

(a) Each of Tenant and Subtenant covenants that it shall: (i) comply, and cause the Leased Premises to comply, with all applicable Environmental Laws; (ii) not use, and shall prohibit the use of, the Leased Premises for any Regulated Activity; (iii) not install or permit the installation on the Leased Premises of any underground storage tanks or surface impoundments; (iv) not permit there to originate and exist on the Leased Premises any petroleum contamination in violation of any applicable Environmental

Laws; (v) notify all responsible third parties, and appropriate government agencies, of any petroleum contamination on the Leased Premises that originates from a source off of the Leased Premises, and, thereafter, take such actions (including, if applicable, undertaking legal action) as are necessary to enforce any "clean-up" obligations of such third parties; provided that, to the extent: (A) that the responsible third parties fail to satisfy their "clean-up" obligations; and (B) technically feasible and commercially practicable; Subtenant shall undertake remediation or other "clean-up" actions as are required by the Environmental Laws; and (vi) cause any Alterations to be undertaken and completed in a manner that complies with all Environmental Laws and, in connection therewith, shall remove any Hazardous Materials existing in or on the Leased Premises: (A) in violation of applicable Environmental Laws; or (B) that present a danger to Persons working on or visiting the Leased Premises.

Notwithstanding anything to the contrary set forth in the previous paragraph, Landlord agrees that Subtenant may engage in Regulated Activities that are customary in connection with the use, operation, and maintenance of properties similar in nature to the Leased Premises (such as, by way of example, the use of household and commercial cleaners and chemicals), so long as Subtenant complies with all Environmental Laws.

(b) If, at any time during the Term, Hazardous Materials are found in or on the Leased Premises in violation of Environmental Laws, then Subtenant shall (at Subtenant's sole expense), promptly commence and diligently prosecute to completion all Remedial Work required by Environmental Laws, and in compliance with Environmental Laws, and at Subtenant's sole cost; provided, that Landlord shall not be required to accept any institutional control (such as a deed restriction) that restricts the permitted use of the Leased Premises or any real property as a condition to any remedial plan approved by any governmental agency in connection with such Remedial Work.

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

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

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

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

(iv) the discovery of any occurrence or condition on the Leased Premises, or written notice received by Subtenant of an occurrence or condition on any real property adjoining or in the vicinity of the Leased Premises, that reasonably could be expected to: (A) lead to the Leased Premises, or any portion thereof, being: (1) in violation of any Environmental Laws; or (2) subject to any restriction on ownership, occupancy, transferability, or use under any Environmental Laws; or

(B) subject Landlord or Lender to any Environmental Claim.

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

(d) Tenant and Subtenant shall be solely responsible for, and shall defend, reimburse, indemnify, and hold Landlord and Lender harmless from and against, all Claims arising out of, in respect of, or in connection with: (i) Subtenant's breach of its representations, warranties, covenants or obligations in this Section; (ii) the occurrence of any Regulated Activity at, on, or under the Leased Premises at any time during or prior to the Term; (iii) any environmental claim with respect to the Leased Premises against any indemnified party or any Person whose liability for such environmental claim Landlord, Tenant, or Subtenant has or may have assumed or retained, either contractually or by operation of law; provided that, after the Commencement Date, Landlord shall not contractually assume liability for an environmental liability that Landlord would not otherwise have by operation of law without the consent of Subtenant; (iv) the release, threatened release, or presence of any Hazardous Materials at, on, or under the Leased Premises, regardless of how discovered by Landlord, Tenant, or Subtenant, or any third party, except to the extent that Subtenant can demonstrate that such release, threatened release, or presence occurred solely subsequent to the Term; (v) any Remedial Work required to be performed pursuant to any Environmental Law or the terms hereof with respect to matters arising or occurring prior to or during the Term; or (vi) any matters arising under or relating to any Environmental Law and relating to Subtenant or the Leased Premises.

(e) Upon Landlord's request at any time during the continuation of an Event of Default, or at such other time as Landlord has reasonable grounds to believe that: (i) Hazardous Materials are being or have been released, stored, or disposed of or on or around the Leased Premises in violation of the terms and conditions of this Lease; or (ii) the Leased Premises may be in violation of the Environmental Laws; Tenant and Subtenant shall provide, at their sole cost and expense, an inspection or audit of the Leased Premises prepared by: (i) a hydrogeologist, environmental engineer, or other appropriate consultant approved by Landlord and Lender indicating the presence or absence of the reasonably suspected Hazardous Materials on the Leased Premises; or (ii) an engineering or consulting firm approved by Landlord and Lender indicating the presence or absence of friable asbestos or substances containing asbestos on the Leased Premises. If Tenant and Subtenant fail to provide such inspection or audit within 30 days after such request, then: (i) Landlord may order such inspection or audit; and (ii) Tenant and Subtenant shall be deemed to have granted to Landlord and Lender, and their respective employees and agents, access to the Leased Premises upon reasonable notice and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Rate from the date incurred by Landlord until the date paid by Tenant and Subtenant, shall be immediately paid by Tenant and Subtenant on demand.

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

maintenance program; and (iv) variation of the operation and maintenance program in response to the reports provided by any such consultants.

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

**27. Entry by Landlord.** Landlord and its authorized representatives shall have the right upon reasonable notice (which shall be not less than two business days except in the case of emergency) to enter the Leased Premises at all reasonable business hours (and at all other times in the event of an emergency) to: (a) inspect the Leased Premises or perform any Work under Subsection 11(c), and take any other action as Landlord may deem to be necessary or appropriate in connection with the foregoing; provided that this Section shall not be deemed to create or imply any duty on Landlord to make any inspection, perform any Work, or take any other action; and (b) show the Leased Premises to prospective purchasers and mortgagees and, at any time within 12 months prior to Scheduled Expiration Date, to prospective tenants. No such entry shall constitute an eviction of Tenant or Subtenant, but any such entry shall be done by Landlord in such reasonable manner as to minimize any disruption of Subtenant's business operation.

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

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

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

**31. Miscellaneous.**

(a) The section headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease. Time is of the essence with respect to all matters under this Lease. All exhibits referenced herein are attached hereto and incorporated herein by reference.

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

(c) This Lease may be modified, amended, discharged or waived only by an

agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

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

(e) This Lease may be executed in counterparts, each of which shall constitute an original, fully enforceable counterpart for all purposes.

(f) All references to "business days" contained herein are references to Monday through and including Friday, exclusive of federal and national bank holidays. Any date or time period specified herein that occurs or expires on a date that is not a business day shall be extended until the next succeeding business day.

(g) Notwithstanding any common principle to the contrary, no provision of this Lease shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Lease, as all parties hereto have: (i) been represented by counsel; and (ii) participated fully; in the negotiation of this Lease.

(h) In the event of any Claim, at law or in equity, by one party against any other party by reason of any matter arising out of, or related to this, Lease, the prevailing party shall recover the costs and expenses incurred by it in maintaining or defending against such Claim (including, without limitation, reasonable attorneys' fees and legal costs).

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

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

**LANDLORD:**

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

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

SUMMIT DEVELOPMENT CORP.

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**SUBTENANT:**

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

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**Land**

The Land cannot be seen, as it is wrapped/enclosed by the real estate on and within which the Mixed-Use Improvements will be constructed.

Upon completion thereof, the parties may elect to attach the three-dimensional legal description of the Land.

**EXHIBIT B**  
**Basic Rent Schedule**

Year	Basic Rent	Semi-Annual Payment	
1	\$ 2,400,000	\$ 1,200,000	\$ 1,200,000
2	\$ 2,448,000	\$ 1,224,000	\$ 1,224,000
3	\$ 2,496,960	\$ 1,248,480	\$ 1,248,480
4	\$ 2,546,899	\$ 1,273,450	\$ 1,273,450
5	\$ 2,597,837	\$ 1,298,919	\$ 1,298,919
6	\$ 2,649,794	\$ 1,324,897	\$ 1,324,897
7	\$ 2,702,790	\$ 1,351,395	\$ 1,351,395
8	\$ 2,756,846	\$ 1,378,423	\$ 1,378,423
9	\$ 2,811,983	\$ 1,405,991	\$ 1,405,991
10	\$ 2,868,222	\$ 1,434,111	\$ 1,434,111
11	\$ 2,925,587	\$ 1,462,793	\$ 1,462,793
12	\$ 2,984,098	\$ 1,492,049	\$ 1,492,049
13	\$ 3,043,780	\$ 1,521,890	\$ 1,521,890
14	\$ 3,104,656	\$ 1,552,328	\$ 1,552,328
15	\$ 3,166,749	\$ 1,583,375	\$ 1,583,375
16	\$ 3,230,084	\$ 1,615,042	\$ 1,615,042
17	\$ 3,294,686	\$ 1,647,343	\$ 1,647,343
18	\$ 3,360,579	\$ 1,680,290	\$ 1,680,290
19	\$ 3,427,791	\$ 1,713,895	\$ 1,713,895
20	\$ 3,496,347	\$ 1,748,173	\$ 1,748,173
21	\$ 3,566,274	\$ 1,783,137	\$ 1,783,137
22	\$ 3,637,599	\$ 1,818,800	\$ 1,818,800
23	\$ 3,710,351	\$ 1,855,176	\$ 1,855,176
24	\$ 3,784,558	\$ 1,892,279	\$ 1,892,279
25	\$ 3,860,249	\$ 1,930,125	\$ 1,930,125

**EXHIBIT C**  
**Permitted Encumbrances**

All matters shown on the title commitment and survey for the Leased Premises, all documents executed at Closing that are to be filed of record, and all Loan Documents to be filed of record

## **DIGEST SHEET**

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

**DEPARTMENT REQUESTING RESOLUTION.** Redevelopment Commission.

**SYNOPSIS OF RESOLUTION.** This resolution approves a 25-year parking structure lease for a 913-space parking structure that will be constructed as part of a new mixed-use building and appropriates local income tax ("LIT") revenues for payment of rents pursuant to the lease. LIT will be used to make up any shortfalls in rent after the application of other funding sources, and will be used as a backstop to secure project financing. The Redevelopment Commission will manage and operate the parking structure during the term of the lease.

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

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

**EFFECT OF NON-PASSAGE.** This \$88.7 million investment will not move forward without passage, and the significant economic and community benefits, including much needed public parking, will be lost.

**MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS).** Annual rent for the first year of the parking structure lease is \$2,400,000, and will increase two percent (2%) annually. Rent will be paid from project-generated tax increment ("TIF") revenue, net operating revenue from the parking garage, and, if approved, annual pledges from the Capital Improvement Board. Any remaining shortfall will be covered with the LIT appropriation authorized through this resolution. Although LIT will account for only a portion of annual rental payments, LIT revenues equal to 135% of each year's rental payment must be reserved in order to secure project financing and meet parity obligations.

**ASSIGNED TO COMMITTEE (PRESIDENT).** \_\_\_\_\_



## COMMUNITY DEVELOPMENT REDEVELOPMENT

Thomas C. Henry, Mayor

City of Fort Wayne  
Community Development  
200 East Berry Street, Suite 320  
Fort Wayne, IN 46802

260-427-2150 [fwcommunitydevelopment.org](http://fwcommunitydevelopment.org)

February 20, 2020

### MEMO

**To:** City of Fort Wayne Common Council

**Copy:** City of Fort Wayne Redevelopment Commission

**From:** Nancy Townsend, Redevelopment Director, 427-2323

**Re:** **Resolution to authorize a parking structure lease and to appropriate local income tax ("LIT") revenues for an economic development project called the Riverfront at Promenade Park**

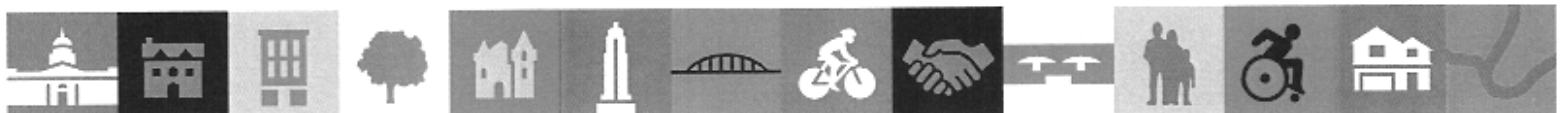
The Redevelopment Commission hereby requests that the Common Council consider and approve the attached resolution to approve a parking structure lease and appropriate available LIT revenue to the payment of rent pursuant to the lease to support an economic development project to be undertaken in downtown Fort Wayne called the Riverfront at Promenade Park.

The mixed-use project, located at the northeast corner of Superior Street and Harrison Street, would consist of approximately 229 dwelling units, 50,000 square feet of commercial space (approximately 12,800 of which is considered flex space), and 913 parking spaces at an investment of approximately \$88,700,000.

On February 10, 2020, the Commission approved an economic development agreement, a pledge of project-generated tax increment revenue and net parking revenue, and a parking lease in furtherance of the project. Prior to the Commission meeting, a public hearing was held on the parking structure lease at which no members of the public submitted testimony.

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

*Vibrant. Prosperous. Growing.*



**REPORT OF COMMITTEE ON FINANCE**

**March 3, 2020**

**Sharon Tucker Chair**

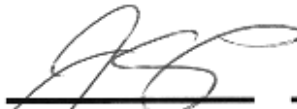

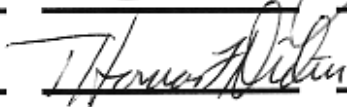



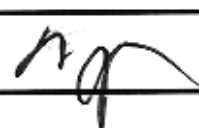


**Jason Arp Co-Chair**

**All Council Members**

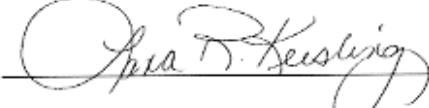
A Resolution of the Common Council of the City of Fort Wayne, Indiana, regarding the approval of a parking structure lease and the appropriation of available Local Income Tax revenues to pay rents due pursuant to a parking structure lease with regard to an Economic Development Project for a new mixed-use project to be undertaken by The Riverfront at Promenade Park, LLC and Fort Wayne Garage Associates, Two, LLC (The Riverfront at Promenade Park Project)

*The maximum term of the Lease shall be twenty-five years and the maximum annual amount of Basic Rent shall be \$3,860,249.00*

**COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Tucker.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilperson Tucker, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


DATED: March 10, 2020

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. R-20-02-25 on the 10th day of March, 2020

ATTEST:

  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th of March 2020, at the hour of 10:00 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 11<sup>TH</sup> day of MARCH

2020, at the hour of 10:00 o'clock AM E.S.T.



  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR