

**GROUND LEASE
EVENT CENTER VILLAGE**

between

HUNT SERVICES, INC.

and

THE CITY OF ROCKY MOUNT, NORTH CAROLINA

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Ground Lease (Event Center Village)

THIS GROUND LEASE (EVENT CENTER VILLAGE) (this “*Ground Lease*”) dated as of [____], 2019, between the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina (the “*City*”), and **HUNT SERVICES, INC.**, a Tennessee corporation authorized to do business in North Carolina (as more particularly described below, the “*Developer*”).

RECITALS:

WHEREAS, the City has determined that the development of a hotel, retail, residential and parking facilities in the area around the Rocky Mount Event Center is critical to the revitalization of downtown Rocky Mount, and has determined to develop a critically needed parking facility under the provisions of N.C.G.S. Section 143-128.1C that permit public-private partnerships to construct certain capital improvement projects (the “*PPP Act*”); and

WHEREAS, the Developer is experienced in the development of hotels, retail, residential and parking facilities in urban areas; and

WHEREAS, the City reviewed the qualifications of the Developer to serve as its development partner to develop a critically needed parking facility as part of a mixed-use project, commonly known as Event Center Village, consisting of a hotel, a mixed-use building and the Parking Facility (as defined below, and collectively hereinafter referred to as the “*Project*”) to be developed on certain real property located within the corporate limits of the City, including an approximately 2.45 acre parcel owned by the City (as more particularly described on **Exhibit A** attached hereto, the “*City Land*”), including review of the Developer’s: (i) financial stability, (ii) experience in constructing developments such as the Project, (iii) experience and that of its project team and its proposed method of design and construction of the Project, and (iv) proposed timeline for construction; and

WHEREAS, after conducting such review, the City and has determined to enter into that certain Project Development and Cooperation Agreement dated as of [____], 2019 (the “*Project Agreement*”), this Ground Lease and the Capital Lease (as defined in the Project Agreement) in order to accomplish the purposes set forth herein; and

WHEREAS, the City and the Developer have agreed to cooperate with each other in order to facilitate the planning, design, financing, construction, and operation of the Project; and

WHEREAS, as part of the Project, the Developer will construct a structured parking facility providing at least 700 spaces that meets the minimum requirements set forth in Section 3.6 of the Project Agreement (the “*Parking Facility*”), and will lease it to the City pursuant to the terms and conditions of the Capital Lease; and

WHEREAS, it is the intent of the City and the Developer that the development of the Project and the design, construction and leasing of the Parking Facility constitute a public-private project and that the Project Agreement be a “development contract” under the PPP Act; and

WHEREAS, the City has complied with the requirements of N.C.G.S. Sections 160A-272(b1) and 160A-269 prior to entering into this Ground Lease; and

WHEREAS, the parties hereto have common and compelling interests in developing the Project, and the Parking Facility in particular, in order to foster the success of the Rocky Mount Event Center and the revitalization of downtown Rocky Mount.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements and conditions as set forth herein, and desiring to provide for the terms and conditions in which the efforts of the parties will be conducted, the City and the Developer hereby covenant and agree as follows:

**ARTICLE I
BASIC TERMS AND DEFINITIONS; RULES OF CONSTRUCTION**

Section 1.1 Definitions. Unless otherwise set forth in this Ground Lease, all definitions set forth in the Project Agreement shall be applicable to this Ground Lease. The following definitions shall be applicable to this Ground Lease:

“*Additional Rent*” means all amounts payable by the Developer under this Ground Lease other than the Base Rent or the Percentage Rent.

“*Affiliate*” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, “control” when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting rights, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Applicable Laws*” means any present or future law (including Environmental Laws), statute, ordinance, regulation, code, judgment, injunction, arbitral award, order, rule, directive, proclamation, decree, common law or other requirement, ordinary or extraordinary, foreseen or unforeseen, of the United States, any state or local government, or any political subdivision thereof, arbitrator, department, commission, board, bureau, agency or instrumentality thereof, or of any court or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, or of any other public or quasi-public authority or group, having jurisdiction over the Premises; and any reciprocal easement, covenant, restriction, or other agreement, restriction or easement of record affecting the Premises as of the date of this Ground Lease or subsequent thereto.

“*Base Rent*” means the amount required to be paid under Section 3.1 hereof.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which banking institutions in the State of North Carolina are authorized to be closed.

“*Closing Date*” means [_____], 2019.

“*City*” means the City of Rocky Mount, North Carolina, a municipal corporation duly created under the laws of the State of North Carolina.

“*Developer*” means Hunt Services, Inc., a Tennessee corporation and includes its successors and assigns permitted hereunder and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party, as permitted hereunder.

“*Environmental Laws*” means all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, resolutions, executive orders and decisions of Governmental

Authorities relating to Hazardous Substances, natural resources, human health or the environment, including, without limitation, as amended from time to time, the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, 6903 et seq.), Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601(14) et seq.), Federal Hazardous Materials Transportation Control Act (42 U.S.C. Section 1801 et seq.), Federal Clean Air Act (42 U.S.C. Section 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1317), Federal Water Act of 1977 (93 U.S.C. Section 1251 et seq.), Federal Insecticide, Fungicide and Rodenticide Act, Radioactive Waste Storage and Transportation Act of 1980, and Federal Clean Air Act (42 U.S.C. Section 7401, et seq.).

“GAAP” shall mean means those conventions, rules, procedures, and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States.

“Governmental Authority” means any governmental authority, agency, department, district, commission, board or instrumentality of the United States of America, the State, the City, North Carolina, and any other governmental authority having jurisdiction over the Premises.

“Gross Hotel Revenues” shall mean all revenue and income of any kind derived directly or indirectly from operations at the Hotel and properly attributable to the period under consideration (including rentals or other payments from licensees, lessees, or concessionaires of any retail space in the Hotel, but not gross receipts of such licensees, lessees, or concessionaires), determined in accordance with GAAP, except that the following shall not be included in determining Gross Hotel Revenues:

- A. government taxes, duties, levies and/or charges collected directly from patrons or guests, or as a part of the sales price of any goods or services sold at the Hotel;
- B. rebates, discounts, or credits of a similar nature (not including charge or credit card discounts, which shall not constitute a deduction from revenues in determining Gross Hotel Revenues, but shall constitute Operating Expenses);
- C. proceeds of any financing or refinancing of the Hotel;
- D. refunds to Hotel guests of any sums or credits to any Hotel customers for lost or damaged items; and
- E. refunds to parking customers of any sums or credits to any parking customers for lost or damaged items.

“Ground Lease” means this Ground Lease, by and between the City and the Developer.

“Hazardous Substances” means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials or other substances regulated or classified by Environmental Laws as hazardous, toxic, dangerous or harmful to human health or property.

“Hotel” means an approximately 107 room, limited service hotel to be constructed on the City Land in the approximate location depicted on the Site Plan and to be operated under an Approved Hotel Flag. The Hotel shall meet the minimum requirements set forth in Section 3.6 of the Project Agreement.

“Impositions” has the meaning provided therefor in Section 4.1 hereof.

“*Improvements*” means the “Project”, as defined in the Recitals.

“*Liabilities*” means all losses, claims, suits, demands, costs, liabilities, and expenses, including reasonable attorneys’ fees, penalties, interest, fines, judgment amounts, fees, and damages, of whatever kind or nature.

“*Market Value*” means the most probable price which a property (whether fee estate, leasehold estate, the City Land or the Project, as the case may be) should bring in a competitive and open market under all conditions requisite for a fair sale, the buyer and seller (or assignee and assignor in the case of the sale of a leasehold estate) each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus or distress, under the following conditions:

- (i) buyer and seller (or assignor and assignee, as the case may be) are typically motivated; and
- (ii) both parties are well informed or well advised, and acting in what they consider their best interests; and
- (iii) a reasonable time is allowed for exposure in the open market; and
- (iv) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- (v) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

“*Net Hotel Revenues*” shall mean Gross Hotel Revenues less Operating Expenses.

“*Operating Expenses*” shall mean the following, but only as it relates to the Hotel: (i) the costs of operating and maintaining the Hotel (including, but not limited to, salaries and wages, employee benefits, laundry, cleaning, operating supplies and linens); (ii) debt service on any Construction Loan, permanent loan and/or subordinate mezzanine financing; (iii) general, administrative and marketing expenses (including, but not limited to, legal, accounting and audit fees for services directly related the Hotel, including bookkeeping, record keeping and audit of the Hotel in accordance with this Ground Lease); (iv) property maintenance, operation and repair expenses, (v) energy and other utility costs; (vi) a reasonable hotel management fee not to exceed six percent (6%) of Gross Hotel Revenues; (vii) Base Rent; (viii) Additional Rent and (ix) insurance premiums, all as determined in accordance with GAAP. Operating Expenses shall not include: (i) reserves for furniture, fixtures and equipment, (ii) any hotel management fee paid to the Developer or any Affiliate of the Developer, and (iii) with respect to expenses paid for goods and services provided by Affiliates, any amount paid in excess of market rates.

“*Parking Facility*” means the “Parking Facility” as defined in the Recitals.

“*Percentage Rent*” means the amount required to be paid under Section 3.1 hereof.

“*Permitted Encumbrances*” means as of any particular time, (i) liens for ad valorem taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with the terms of this Ground Lease, (ii) the currently existing utility, access, and other easements and rights of way, restrictions, and exceptions set forth on **Exhibit B** attached hereto, (iii) mechanics’ and materialman’s liens that arise by operation of law but that have not been perfected by the

required filing of record, for work done or materials delivered after the date hereof, and (iv) any additional exceptions or encumbrances created or consented to by both the City and the Developer.

“*Permitted Use*” means the Premises shall be used for hotel and parking uses and uses ancillary thereto in connection with the Project, and any other lawful use related to the Project, including the use of the City Land by the Developer or its Affiliate (or an Affiliate of Hunt Properties).

“*Person*” means any individual, corporation, partnership, firm or other legal entity.

“*Personal Property*” means all furniture and other personal property owned or leased by the City or the Developer, located at the Premises and used in the operation of the Project, excluding trucks and cars.

“*Premises*” means the City Land and any improvements (or portions thereof) thereon, including the Hotel and the Parking Facility, together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto.

“*Project*” means the “Project” as defined in the Recitals.

“*Rent*” means, collectively, Base Rent, Percentage Rent and Additional Rent.

“*State*” means the State of North Carolina.

“*Term*” means the period beginning on the date of execution and delivery hereof and ending on a date sixty-five (65) years after the Closing Date.

Section 1.2 Rules of Construction.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number.

(b) References herein to particular articles or sections are references to articles or sections of this Ground Lease unless some other reference is indicated.

(c) References herein to specific sections or chapters of the General Statutes of North Carolina or to specific legislative acts are intended to be references to these sections, chapters or acts as amended and as they may be amended from time to time by the General Assembly of North Carolina, or any successor statute.

**ARTICLE II
LEASE OF PROPERTY; AS IS CONDITION; AGREEMENT; TERM OF
LEASE; PERMITTED USE; PROJECT AGREEMENT**

Section 2.1 Term. Subject to the terms and conditions of this Ground Lease, the City leases to the Developer, and the Developer leases from the City, the Premises for the Term, subject to earlier termination pursuant to any of the terms, covenants, or conditions of this Ground Lease or pursuant to Applicable Laws.

Section 2.2 As-Is Condition. The Developer has examined the City Land and accepts possession of the City Land in its condition as is on the Closing Date, but free and clear of all liens and

encumbrances other than the Permitted Encumbrances, provided however that the Developer shall not be deemed (i) to have assumed any Liabilities for environmental or other conditions that are in existence prior to the Closing Date and violate any Applicable Laws, whether or not discovered or discoverable (collectively, the “*Pre-Existing Conditions*”). Except as otherwise expressly provided in this Ground Lease or the Capital Lease and except for the Pre-Existing Conditions, the City has no obligation whatsoever to perform any work or make any repairs with respect to the Premises, to furnish any services with respect to the Premises, or to incur any expenses with respect to the Premises, and the City has no responsibility with respect to the condition of the Premises under this Ground Lease. The Developer expressly acknowledges and agrees that the City has not made and is not making, and the Developer, in executing and delivering this Ground Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Ground Lease. Notwithstanding the foregoing, during the Term, the City shall not encumber the Premises with any liens or encumbrances of any nature whatsoever except for the Permitted Encumbrances without the Developer’s prior written consent.

Section 2.3 Permitted Use. Subject to all of the other terms, covenants and conditions of this Ground Lease, the Developer shall use the City Land only for the Permitted Use and for the construction and operation of the Project. The City hereby acknowledges and agrees that the Developer shall lease the Parking Facility to the City pursuant to the Capital Lease. The Developer shall not at any time use or occupy the City Land or the Project, or consent to anyone else using or occupying the Premises: (a) in any manner that violates the provisions of this Ground Lease or the certificate(s) of occupancy for the Premises, once issued, or (b) so as to cause waste, or (c) so as to violate any insurance policy then issued in respect of the Premises, or (d) so as to create a nuisance. In the event of the exercise of remedies under the Leasehold Deed of Trust by the Construction Lender, the City understands that the term Permitted Use will include any lawful use.

Section 2.4 Access to Premises. The City, its authorized representatives, agents, employees, and attorneys may, but shall be under no duty to, enter the Premises at reasonable times and hours without any interference to the Developer to inspect the Premises in order to determine whether the Developer is complying with its obligations under this Ground Lease.

Section 2.5 Compliance with Project Agreement; Cooperation.

(a) The City and the Developer shall observe all requirements terms and conditions of the Project Agreement. To the extent reasonably necessary, and without violating Applicable Laws, the City shall cooperate with the Developer in the Developer’s efforts to obtain the required permits, approvals, and authorizations for the construction of the Project and operation of the Premises in accordance with this Ground Lease, including by joining in applications for building permits, subdivision plat approvals, certificates of dedication, public works or other agreements, utility easements, permits for sewer, water and other utility services, and the dedication to the applicable governmental authorities of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are reasonably necessary or desirable.

(b) Subject to the terms and conditions hereof, the Developer shall have the right at any time throughout the Term, at its sole cost and expense, to subdivide the Premises into two (2) separate lots (each, a “*Lot*”), with the Hotel being located on one (1) such lot and the Parking Facility being located on the other, by the recordation of a subdivision plat (the “*Plat*”), so long as the subdivision and the Plat (i) do not materially change the size, location or dimensions of the Premises, (ii) do not impose additional use, access or development restrictions on the Premises that would prohibit or materially and negatively affect the Permitted Use of the Premises, and (iii) provide insurable access to each such lot that is acceptable to the City. Such subdivision of the Premises into the Lots must be approved by the City in

accordance with its subdivision regulations, ordinances, processes and procedures. Within five (5) Business Days after the recordation of the Plat (following approval thereof by all applicable governmental authorities), the parties agree that, to the extent the platted legal description differs from the legal description attached hereto as Exhibit A-1 or attached to any memorandum hereof, the parties will, at the City's or the Developer's election, enter into an amendment to this Ground Lease or any memorandum hereof for the purpose of revising the legal description to reflect the platted legal description.

ARTICLE III RENT

Section 3.1 Base Rent. In consideration for the granting of this Ground Lease, the Developer shall pay to the City \$1.00 per year (the "*Base Rent*") with the first payment due on the Closing Date and thereafter beginning on each anniversary of such date during the Term. None of the Base Rent is refundable in the event of an early termination hereof.

Section 3.2 Percentage Rent. Commencing on the first calendar day of the [quarter] following the date the Hotel is "substantially complete" as evidenced by the issuance of a certificate of occupancy and continuing on the first Business Day of every calendar [quarter] thereafter, the Developer shall pay to the City, throughout the Term, rent (in addition to the Base Rent and the Additional Rent) in an amount equal to five percent 5% of Net Hotel Revenues (the "*Percentage Rent*"). The Percentage Rent for each calendar [quarter] shall be due and payable [quarterly] on the [45th] day following the [last] calendar day of such calendar [quarter]; provided that, the amount due for the [quarter] ending December 31 of each year shall be payable within sixty (60) days after the last calendar day of such [quarter] based on the actual results of such [quarter]. The Developer shall provide information to the City within forty-five (45) or sixty (60) days after the end of each [quarter], as applicable, detailing the calculation of Net Hotel Revenues. The Percentage Rent shall be paid to the City at the place provided for in Section 21.13 hereof in lawful money of the United States of America by good check or, at the City's request, by wire transfer.

Section 3.3 Additional Rent. The parties hereto understand and agree that this is a so-called "triple net" lease and that the Developer shall pay, or cause to be paid, any and all costs and expenses, and shall perform (or cause to be performed) all obligations, relating to the ownership, use, occupancy, operation, maintenance and repair of, and maintenance of insurance on, and payment of taxes or assessments of any sort with respect to, the Premises, and all such payments shall be deemed Additional Rent for purposes of this Ground Lease whether paid directly to the City or to others. Additional Rent paid directly to others shall be paid on or before the initial due date thereof. Additional Rent paid directly to the City for any period shall be paid within thirty (30) days after the City provides the Developer with a written statement of the estimated or actual additional rent due for such period; the City will provide the Developer with a final adjustment statement within ninety (90) days after the close of each calendar year. In addition, during the Term of this Ground Lease, the City shall have no monetary obligations with respect to the Premises, except as otherwise expressly provided in the Project Agreement or the Capital Lease.

Section 3.4 Additional Rent Payment. Additional Rent may be paid directly to the person to whom it is owed, with notice to the City or, if applicable, to the City at the place provided for in Section 21.13 hereof in lawful money of the United States of America by good check or, at the City's request, by wire transfer. A bill for Additional Rent payable to the City sent by first class mail to the address to which Notices are to be given under this Ground Lease shall be deemed a proper demand for the payment of the amounts set forth therein.

Section 3.5 Non-Waiver. The City's delay in rendering, or failure to render, any statement or bill for Additional Rent for any period shall not waive the City's right to render a statement or collect such Additional Rent for that or any subsequent period. If the City delivers to the Developer an incorrect statement with respect to any Additional Rent, the City shall have the right to give the Developer a corrected statement for the period covered by the incorrect statement and to collect the correct amount of the Rent.

Section 3.6 Inability to Pay Rent. If at any time during the Term the Rent is not fully collectible by reason of any Applicable Laws, the Developer shall enter into such agreements and take such other action as the City reasonably requests to permit the City to collect the Rent.

Section 3.7 Interest and Charges on Late Payments. If any Base Rent or the Percentage Rent is not paid within ten (10) days of when due, the Developer shall pay interest on the amount not so paid from its due date until paid at the lesser of eight percent (8%) per annum or the maximum lawful rate of interest permitted by applicable law. If any Additional Rent payable directly to the City is not paid within fifteen days after the date any bill therefor is mailed to the Developer, the Developer shall pay the City, as Additional Rent, interest on the amount not so paid from its due date until paid at the lesser of eight percent (8%) per annum or the maximum lawful rate of interest permitted by applicable law. Such additional payments shall be in addition to, and not in lieu of, any other remedy the City may have.

ARTICLE IV PAYMENT OF IMPOSITIONS AND UTILITIES

Section 4.1 Impositions. The term "*Impositions*" shall mean, collectively, (a) all real estate taxes, all special assessments and all other property assessments, including all assessments for public improvements or betterments, whether or not commenced or completed within the Term of this Ground Lease, (b) all ad valorem, sales and use taxes, (c) all rent taxes, occupancy taxes and all similar taxes, (d) all fines, fees, charges, penalties, and interest imposed by any Governmental Authority, including the City, and (e) all other governmental charges and taxes, in each case of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary, which are at any time during or with respect to the Term assessed, levied, charged, confirmed or imposed with respect to the Premises or the use, leasing, ownership or operation thereof, or become payable out of or become a lien upon the Premises or the rents or income therefrom. If at any time during the Term the present method of real estate taxation or assessment is changed so that there is substituted for the type of Impositions presently being assessed or imposed on real estate, or in lieu of any increase in such Impositions, a tax, such substitute taxes shall be deemed to be included within the term "*Impositions*."

Section 4.2 Payable When Due. The Developer will pay, or cause to be paid, all Impositions as and when the same shall become due and payable directly to the Governmental Authority charged with the collection thereof, provided that if any Imposition may by Applicable Laws be paid in installments, the Developer may pay such Imposition in installments as permitted by Applicable Laws.

Section 4.3 Refund of Impositions. If all or any part of an Imposition is refunded (whether through cash payment or credit against Impositions), the party who paid the Imposition to which the refund relates shall be entitled to such refund to the extent such refund relates to any Imposition paid by such party. If either party receives a refund (whether by cash payment or credit) to which the other party is entitled, the receiving party shall promptly pay the amount of such refund or credit to the entitled party, less the receiving party's reasonable expenses, if any, in obtaining such refund or credit.

ARTICLE V
EFFECT OF GROUND LEASE ON OWNERSHIP OF PROPERTY; AND
CERTAIN OTHER INCIDENTS OF GROUND LEASE

Section 5.1 Ownership of Property. At all times during the Term, all Improvements and all Personal Property acquired (or leased) by the Developer shall be the property of the Developer, but shall remain on the Premises throughout such Term. During the Term, the Developer alone shall be entitled to all of the tax attributes of ownership of the Improvements and all Personal Property acquired (or leased) by the Developer, including, without limitation, the right to claim depreciation or cost recovery deductions. This Ground Lease is intended to convey to the Developer all the benefits and burdens of ownership and to cause the Developer to be treated as the owner of the Improvements for federal income tax purposes. The parties agree to treat this Ground Lease in a manner consistent with this intention, including filing all federal income tax returns and other reports consistent with such treatment. The City will not claim any tax credits, depreciation or any other federal or state income tax benefits with respect to the Improvements, or take any action which is inconsistent with this provision. Upon the expiration or sooner termination of the Term, the Improvements and all Personal Property shall become the sole property of the City at no cost to the City, except (i) that the Developer may remove from the Premises upon any such termination any of the Personal Property that is moveable, but the Developer shall repair any damage caused by such removal and (ii) as otherwise expressly provided in the Project Agreement or the Capital Lease. The foregoing shall not apply to the Parking Facility.

Section 5.2 Replacement of Fixtures. Notwithstanding the foregoing, the Developer may replace and may permit any other tenant to replace any fixtures, machinery, equipment and Personal Property from time to time, provided such replacements are new and of quality and utility at least equal to the fixtures, machinery, equipment and Personal Property being replaced. Any such replacements shall remain on the Premises and become the property of the City at the expiration or sooner termination of this Ground Lease as provided above.

Section 5.3 Lien-Free. The Developer shall keep the Premises and this Ground Lease free from any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect or engineer and free from any similar lien or encumbrance with respect to work, material or services alleged to have been performed for the Developer. If any such lien or encumbrance is filed or recorded, the Developer shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after the Developer receives notice of such lien or encumbrance. If the Developer fails to discharge such lien or encumbrance within such 30-day period, the City may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as the City deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by the Developer. The amount so paid and costs incurred by the City shall be deemed Additional Rent under this Ground Lease payable within thirty (30) days after the Developer is billed therefor. Nothing in this Ground Lease shall be deemed in any way to: (a) constitute the City's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of the Premises; or (b) evidence the City's agreement to subject the Premises to any such lien.

Section 5.4 Certain Rights and Duties of Leasehold Deed of Trust Beneficiaries. The Developer shall have the right from time to time to apply for and obtain mortgage loan financing and to grant to the providers of such financing (collectively, the "Leasehold Deed of Trust Beneficiaries") leasehold deeds of trust, assignments of leases and rents and such other security instruments covering and affecting all or any portion of the Developer's interest in the Premises as the Developer may deem necessary or appropriate.

(a) ***Mortgagee's Right to Take Possession.*** Any of the Leasehold Deed of Trust Beneficiaries, during the term of their deed of trust and subject to clause (e) below, may, under the provisions of such deed of trust, have inter alia the right to enter upon and take possession of the Premises, for any default in or breach of the Developer's obligations to such Leasehold Deed of Trust Beneficiary. Notice thereof shall be sent to the City and to all Leasehold Deed of Trust Beneficiaries.

(b) ***Right of Leasehold Deed of Trust Beneficiaries to Cure Defaults.*** Each Leasehold Deed of Trust Beneficiary who gives written notice to the City shall have the benefit of the following provisions in addition to those elsewhere provided in this Ground Lease:

(i) all notices or copies of notices which are by the terms of this Ground Lease to be sent to such Leasehold Deed of Trust Beneficiaries shall be in writing and shall be sent to the address set forth in Section 21.13 hereof;

(ii) no notice of default given by the City to the Developer shall be effective unless it sets forth in sufficiently reasonable detail the nature of the Developer's uncured default and until a copy thereof shall also be sent to all Leasehold Deed of Trust Beneficiaries; and

(iii) after the occurrence of a default and receipt of the notice described in clause (ii) above, Leasehold Deed of Trust Beneficiaries shall have the same time period subsequent to the receipt of such notice to cure any default or cause the same to be cured as shall be permitted under this Ground Lease to the Developer, plus an additional 90 days, and the City shall not exercise any remedy provided for in Section XV hereof until such cure period has expired.

Nothing contained in this clause (b) shall require a Leasehold Deed of Trust Beneficiary to begin or continue such possession or foreclosure proceedings or to begin or continue to cure any default by the Developer.

(c) ***Attornment and Non-Termination of this Ground Lease.*** In the event any Leasehold Deed of Trust Beneficiary enters upon and takes possession of the Premises due to the default of the Developer under any loan documents executed for the benefit of Leasehold Deed of Trust Beneficiary, such Leasehold Deed of Trust Beneficiary or its nominee shall attorn to the City as landlord under this Ground Lease and the City shall accept and recognize such Leasehold Deed of Trust Beneficiary or its nominees as tenant for the remainder of the Term so that there shall be no lapse of this Ground Lease, at the rent and upon the covenants, agreements, terms, provisions and limitations herein contained. Any such Leasehold Deed of Trust Beneficiary, as tenant under this Ground Lease, shall have the same rights, title and interest in and to the buildings and improvements on the City Land as the Developer had under this Ground Lease.

(d) ***Protection of Interests of Leasehold Deed of Trust Beneficiary.*** If a Leasehold Deed of Trust Beneficiary, through its rights hereunder or through its leasehold deed of trust or operation of its loan documents, or by entry as a mortgagee in possession or by foreclosure, or by acceptance of an assignment in lieu of foreclosure, acquires the Developer's interest in the City Land (or any portion thereof), such Leasehold Deed of Trust Beneficiary shall have the right, at its option, to:

(i) operate the Premises itself and in all respects comply with the provisions of this Ground Lease from and after the date on which such Leasehold Deed of Trust Beneficiary acquired possession; or

(ii) assign or transfer the Developer's interest in the Premises, provided that the assignee or transferee shall expressly assume all of the covenants, agreements and obligations of

the Developer under this Ground Lease arising from and after the date of such assignment or transfer by written instrument to be recorded in the appropriate real property records.

No such action by a Leasehold Deed of Trust Beneficiary shall relieve the Developer of any of its obligations hereunder.

(e) ***Obligations and Rights of a Leasehold Deed of Trust Beneficiary in Possession.*** If a Leasehold Deed of Trust Beneficiary shall enter upon and take possession of the Premises, but not otherwise, it shall be bound thereafter to keep and perform all duties and covenants and agreements of the Developer arising under this Ground Lease from and after the date on which such Leasehold Deed of Trust Beneficiary entered and took possession of the Premises and neither the Leasehold Deed of Trust Beneficiary, nor any of its successors, assigns or grantees, shall be liable for any duties, covenants, agreements or obligations of the Developer arising prior to the date on which such Leasehold Deed of Trust Beneficiary, or its successor, assign or grantee, enters and takes possession of the Premises. In addition notwithstanding anything in the foregoing or any other provision hereof to the contrary, (i) if any default shall have been cured and the Developer shall resume possession, or (ii) if after such entry upon and taking possession of the Premises, the City and the Leasehold Deed of Trust Beneficiary shall accept, in writing, another tenant in place of the Developer or the Leasehold Deed of Trust Beneficiary shall have assigned or transferred the Developer's interest in the Premises pursuant to subsection (d)(ii) above, then the Leasehold Deed of Trust Beneficiary shall no longer be so bound.

(f) ***No Modification or Termination by the Developer.*** During the term of any leasehold deed of trust, this Ground Lease shall not be (i) amended or modified or (ii) terminated or canceled by the Developer hereunder, or by the giving of any notice by the Developer hereunder nor shall the City accept a surrender of the Developer's leasehold interest, unless such amendment, modification, termination, surrender or cancellation is assented to in writing in advance by all Leasehold Deed of Trust Beneficiaries. Any such attempted amendment or modification, termination, surrender or cancellation without such prior written assent shall be void.

(g) ***Rights of Purchaser/Assignee.*** The rights of Leasehold Deed of Trust Beneficiaries described in this Section 5.4 also shall inure to the benefit of any purchaser at a foreclosure sale or any purchaser or assignee of the Leasehold Deed of Trust Beneficiary's interest after the Leasehold Deed of Trust Beneficiary has acquired leasehold title by foreclosure or acceptance of a deed in lieu of foreclosure.

(h) ***Additional Documentation.*** The City will execute and deliver, within five days of the Developer's request therefor, estoppel certificates or such other similar certificates as may be reasonably requested from any Leasehold Deed of Trust Beneficiaries, affirming such facts with respect to this Ground Lease as may be required by parties to such financing and offering, among other matters, that this Ground Lease is in full force and effect. Furthermore, the City agrees, promptly after submission, to execute, acknowledge and deliver any normal and customary agreements modifying this Ground Lease reasonably requested by Leasehold Deed of Trust Beneficiary, provided that such modifications do not decrease the Developer's obligations pursuant to this Ground Lease.

ARTICLE VI COMPLIANCE WITH LAW; ENVIRONMENTAL LAWS; CONTEST

Section 6.1 Compliance With General Laws. The Developer, at no expense to the City, shall comply in all material respects at all times, with all Applicable Laws. Without limiting the foregoing, the Developer shall promptly cure, or cause the cure of, all violations of Applicable Laws caused by the Developer as to which a notice of violation has been issued or as to which a directive or

order has been issued by any public officer or other person having authority; promptly discharge of record any such notice of violation by the Developer; promptly comply with any such order or directive; and pay all fines, penalties, interest, and other costs imposed by any Governmental Authority in connection with any violation or requirement of Applicable Laws by the Developer. Notwithstanding the foregoing, the Developer shall not have any responsibility or liability with respect to any Pre-Existing Conditions, which shall remain the responsibility of the City in accordance with Section 2.2 above.

Section 6.2 Compliance With Environmental Laws. Without limiting the foregoing:

(a) The following terms, as used in this Ground Lease and in all amendments hereto (unless otherwise specified or unless the context otherwise requires), shall have the meanings and/or be construed, as the case may be, as set forth below:

“*Remedial Action*” shall mean the investigation, response, clean up, remediation, prevention, mitigation or removal of contamination, environmental degradation or damage caused by, related to or arising from the release of sediment or the existence, generation, use, handling, treatment, storage, transportation, disposal, discharge, Release (including a continuous Release) or emission of any Hazardous Substance, including the investigation, removal or closure of any underground storage tanks and any soil or groundwater investigation, remediation or other action required under or necessary to comply with any Environmental Laws.

“*Release*” shall mean the release or threatened release of sediment or any Hazardous Substances into or upon or under any land, water or air, or otherwise into the environment, including by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, powering, escaping, emptying, placement and the like.

“*Material*”, as used to describe the Developer’s compliance obligations in this Article VI, shall mean that the failure to so comply may reasonably be expected to result in material risk of (1) physical injury or illness to any individual, (2) physical damage to the City Land or the Project, (3) criminal liability or (4) fines or Remedial Action.

(b) Subject to subparagraph (c) and to Section 6.4 below, the Developer, at no expense to the City, shall comply in all material respects at all times, with all Environmental Laws. Such compliance includes the Developer’s obligation, at no expense to the City, to take, or cause the taking of, Remedial Action when required by Applicable Laws (in accordance with Applicable Laws and this Ground Lease) and to pay, or cause the payment of, all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation or requirement of Applicable Laws by the Developer, including any additional fines or penalties levied in the matter resulting from the City’s failure to comply with any Environmental Laws in the past.

(c) The Developer shall notify the City promptly if (i) the Developer becomes aware of the presence of any sediment or Hazardous Substances or Release at, on, under, within, emanating from or migrating to the Premises in any quantity or manner, which could reasonably be expected to violate in any material respect any Environmental Laws or give rise to any Material liability or the obligation to take Remedial Action or other material obligations under any Environmental Law, or (ii) the Developer receives any written notice, claim, demand, request for information or other communication from a Governmental Authority, or a third party, regarding the presence of any sediment or any Hazardous Substances or Release at, on, under, within, emanating from or migrating to the Premises or related to the Premises which could reasonably be expected to violate in any material respect any Environmental Laws or give rise to any Material liability or obligation to take Remedial Action or other material obligations under any Environmental Law.

(d) If the Release of any Hazardous Substance onto the Premises or the Release of sediment was the result of action or negligent omission of the Developer, the Developer shall take and complete, or cause the taking and completion of, any Remedial Action with respect to the Premises in full compliance with all Laws and shall, when such Remedial Action is completed, submit to the City written confirmation from the applicable Governmental Authorities that no further Remedial Action is required to be taken (“*Final Governmental Approval*”). In connection with any Material Remedial Action, (i) the Developer shall promptly submit, or cause the submission, to the City the plan of Remedial Action and all material modifications thereof, (ii) the Developer shall use an environmental consultant reasonably acceptable to the City, and (iii) the Developer shall apprise the City, on a [quarterly] basis (or more frequently if reasonably requested by the City), of the status of such remediation plan and provide the City with copies of all correspondence, plans, proposals, contracts and other documents relating to such plan or proposed plan. If the Developer’s environmental consultant determines that there is not a reasonable likelihood of obtaining Final Governmental Approval prior to the third anniversary of the date on which the remediation plan is first submitted to the City, a certificate to that effect shall be provided to the City by such environmental consultant on behalf of the Developer, which certificate shall also state, to the reasonable satisfaction of the City, the status of the Remedial Action and the schedule for completion of the Remedial Action, the reasons why such Final Governmental Approval is not likely to be obtained within such time period and that all Remedial Actions to date have been completed in accordance with all Environmental Laws.

Section 6.3 Developer’s Right to Contest Claimed Violations. The Developer shall have the right to contest, at no cost to the City, by appropriate legal proceedings, the amount or validity of any fine, charge or penalty imposed in connection with an alleged violation of Applicable Laws the validity of any Applicable Laws to the Premises, the validity of any application of any Applicable Laws to the Premises, the existence of any violation of Applicable Laws, and/or the validity of any notice of violation of Applicable Laws issued to the Developer (the “*Contested Obligation*”). The Developer may defer payment and/or performance of the Contested Obligation to the extent that and so long as the Developer is diligently contesting, at no expense to the City, by appropriate legal proceedings the existence, amount or validity of the Contested Obligation, provided that all of the following conditions are met:

- (a) There is no outstanding Event of Default.
- (b) Such contest is made and prosecuted in good faith.
- (c) Such proceeding shall operate during the pendency thereof to prevent (i) the sale, forfeiture or loss of the City’s fee estate in the City Land, (ii) the forfeiture or loss of the Base Rent or Additional Rent, (iii) any interference with the use or occupancy of the Premises, and (iv) the cancellation of any insurance policy required to be maintained by the Developer pursuant to Article VIII of this Ground Lease. In addition, such proceeding shall not create an imminent, material risk that any of the foregoing will occur.
- (d) The City is not exposed to any risk of criminal liability, penalty, or sanction.
- (e) The Developer reimburses the City, within ten days of being billed therefor, for all Liabilities incurred by the City in connection with such contest.
- (f) The Developer is not contesting a criminal liability, penalty, or sanction.
- (g) The Developer shall, promptly upon the City’s request, apprise the City of the status of the contest and provide the City with copies of all documentation relating to such contest.

(h) The Developer promptly and diligently prosecutes such contest to final conclusion by appropriate legal proceeding, but the Developer shall have the right to attempt to settle or compromise such contest, subject to receipt of the City's consent, which shall not be unreasonably withheld, unless the settlement or compromise will in the City's reasonable judgment have a material impact on the use and occupancy of the Premises.

The Developer shall indemnify and save the City harmless against any and all Liabilities incurred by the City in connection with any such contest or the Contested Obligation. The Developer shall, promptly after the final determination of such contest, comply with the requirements of such determination and pay all amounts levied, assessed, charged or imposed on the City, the Developer, the Premises or any part thereof, in connection therewith, together with all fines, penalties, interest, costs and Liabilities.

Section 6.4 Environmental Matters. To the best of the City's knowledge, without independent investigation, and except as expressly disclosed in writing by the City, the City represents that (a) the Premises, including, without limitation, soil and groundwater conditions, is not in violation of any Environmental Law, nor has the City received any written notice nor is the City otherwise aware of any such violation or alleged violation; (b) neither the City nor any third party has used, manufactured, stored or disposed of, on, under or about the Premises, or transported to or from the Premises, any Hazardous Substances; and (c) no underground storage tanks exist on or have been removed from the Premises, nor have the Premises ever been used as a dump or landfill site. The City acknowledges and agrees that it shall be solely responsible for any and all Liabilities associated with any Pre-Existing Conditions.

Section 6.5 Reservation of Rights. Nothing contained in this Ground Lease shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which either Developer and/or City may have against any third party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved

ARTICLE VII REPAIRS AND MAINTENANCE

Section 7.1 Standards. Subject to the terms of the Project Agreement and the Capital Lease, the Developer, at no expense to the City, shall at all times (a) maintain or cause to be maintained the Premises in an orderly and safe condition, in a good state of repair, and in a manner consistent with the standards of operation and maintenance of first class properties similar to the Premises, and (b) make or cause to be made such repairs, replacements and alterations to the Premises as are necessary to keep it in the condition required by the preceding clause (a) and to comply or require any tenant to comply with the requirements of Article V, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen.

Section 7.2 No Waste or Nuisance. The Developer shall not permit any waste of the Premises or permit any nuisance to exist on the Premises.

Section 7.3 No Accumulation. The Developer shall keep or cause to be kept the entire Premises, including adjoining sidewalks, substantially free of any accumulation of dirt, rubbish, snow and ice.

Section 7.4 City's Obligation. Unless otherwise expressly provided in this Ground Lease, the Project Agreement or the Capital Lease, the City is under no obligation to maintain, repair, clean, alter or improve the Premises or to provide any service to the Premises.

ARTICLE VIII INSURANCE; COMPLIANCE WITH INSURANCE REQUIREMENTS

Section 8.1 Insurance. During the Term, the Developer shall carry and maintain all insurance coverages as set forth in **Exhibit C** attached hereto and shall name the City and any Construction Lender as additional insureds under such coverage.

Section 8.2 Insurance Policies. All policies required by this Article shall be issued by insurance companies licensed to do business in the State of North Carolina and must be approved by the City. All such insurers shall have the rating of "A-V" or better corresponding to an adjusted policyholder surplus of not less than \$500,000,000 by A.M. Best (or any successor rating agency or entity reasonably selected by the City if A.M. Best discontinues publishing ratings of insurance companies or if the rating system is changed). If it is commercially impracticable to obtain insurance from an insurer with the "A-V" rating because of changes in the insurance industry or conditions in the vicinity of the Premises, the Developer's insurers shall have a policy holder's rating that is at least equal to the customarily required rating.

Section 8.3 Blanket Coverage. Such policies may be carried under a blanket or umbrella policy covering the Premises and other locations of the Developer, if such blanket policy contains an endorsement that guarantees a minimum limit available for the Premises equal to the minimum limits required by this Article and that the minimum limits shall not be reduced for claims made with respect to other properties, and otherwise complies with this Article.

Section 8.4 Named and Additional Insured. The liability policy shall name the Developer as insured and shall include the City as additional insured. Notwithstanding the foregoing, to the extent this Section or any other Section of this Ground Lease requires the City to be (a) included as additional insured in any policy of insurance or (b) benefited by a waiver of subrogation endorsement, such requirement shall be triggered as to any lender or as to the City's managing agent only when the City has advised the Developer of the names and addresses of such entities and requested such inclusion.

Section 8.5 No Cancellation Without Notice to City. All insurance policies required by this Article shall (i) contain endorsements that such insurance may not be canceled, except upon not less than thirty (30) days prior written notice to the City from said insurance carrier or the Developer, and (ii) be written as primary policies not contributing to or in excess of any policies carried by the City, and (iii) each contain a waiver of subrogation endorsement, in form and substance reasonably satisfactory to the City, in favor of the City.

Section 8.6 Certificate of Insurance. Concurrently with execution of this Ground Lease and thereafter at least fifteen (15) days prior to the expiration of any policy, the Developer shall deliver to the City certificates evidencing the insurance required by this Article in form and content reasonably satisfactory to the City, together with evidence of payment of the annual premium for each policy. The Developer shall at any time and from time to time during the Term, promptly upon the City's request, furnish the City with a copy of the then current paid-up property damage policy, appropriately authenticated by the insurer or, at the City's option, the declarations page of such policy evidencing the required insurance.

Section 8.7 Failure to Maintain Insurance. If the Developer fails to maintain the insurance required by the foregoing provisions of this Article or to timely furnish to the City the required evidence of such insurance and payment of the insurance premiums, the Developer shall be responsible for all Liabilities incurred by the City with respect to such default, including any Liabilities that would have been covered by the insurance the Developer is required to maintain. If the Developer fails to maintain any of the insurance required by this Article, the City may, at its option, in addition to exercising any other remedies available to it under this Ground Lease or at law, obtain the insurance described in this Article, in which event the Developer shall reimburse the City, as Additional Rent, within ten (10) days of being billed therefor, for the costs incurred by the City to obtain such insurance.

ARTICLE IX INDEMNITY

Section 9.1 Indemnity. Except (i) as otherwise provided in this Ground Lease or the Capital Lease, (ii) to the extent caused by the negligence or misconduct of the City or its offices, representatives, agents, contractors, employees or invitees and (iii) with respect to any Pre-Existing Conditions, the Developer shall indemnify and hold harmless the City from and against any and all Liabilities arising from or in connection with all of the following: (a) any operations or activities by the Developer on the Premises during the Term and after the Term for so long as the Developer, or any person holding through or under the Developer, remains in possession of the Premises, except to the extent such Liabilities arise out of the City's possessory rights under the Capital Lease, the negligence or misconduct by the City or its officers, representatives, agents, contractors, employees or invitees; (b) any act, negligent omission, negligence, or misconduct of the Developer, or any person holding through or under the Developer and/or any of the Developer's officers, directors, employees, partners, members, agents, contractors, invitees; (c) any accident, injury or damage (including death) occurring in, at or about the Premises during the Term and after the Term for so long as the Developer, or any person holding through or under the Developer, remains in possession of the Premises, except to the extent such Liabilities arise out of the City's use or possessory rights under the Capital Lease, the negligence or misconduct by the City or its officers, representatives, agents, contractors, employees or invitees; (d) any breach or default by the Developer, or any person holding through or under the Developer under this Ground Lease; and (e) any holdover by the Developer, or by any person(s) holding through the Developer, after the Term. If any action or proceeding is brought against the City by reason of any such claim(s), the Developer, upon notice from the City, shall cooperate with the City to resist and defend such action or proceeding by counsel reasonably satisfactory to the City.

ARTICLE X CASUALTY DAMAGE AND DESTRUCTION

Section 10.1 Damage. If the Premises are damaged or destroyed by fire or other cause (ordinary or extraordinary), the Developer shall give the City prompt notice of such event and (i) so long as the Leasehold Deed of Trust is in effect, shall take such action as is required by the Leasehold Deed of Trust and (ii) so long as the Leasehold Deed of Trust is in effect and except as provided in Section 10.3 below, the terms and conditions of which are incorporated herein by this reference, the Developer shall repair such damage and restore the Premises to the condition existing prior to such damage or destruction and to a standard and quality no less than the construction of the original Improvements (the "Restoration"). Such repair and restoration shall be effected with reasonable diligence, subject to reasonable delays for adjustment of the insurance loss. Subject to Section 10.3, such obligation shall survive any termination of this Ground Lease. Except as provided in this Section 10.1 or Section 16.1, this Ground Lease shall not terminate solely by reason of such damage or destruction.

Section 10.2 Proceeds of Insurance. So long as the Leasehold Deed of Trust is in effect, the parties hereto acknowledge that the proceeds of any property damage policy shall be disbursed to the Leasehold Deed of Trust Beneficiaries to be applied as provided in the Leasehold Deed of Trust. In the event the Leasehold Deed of Trust is no longer in effect and unless the Developer is permitted to terminate this Ground Lease pursuant to Section 10.3, the proceeds of any property damage policy shall be disbursed to the Developer, to be used for the repair and restoration of the Premises as required by Section 10.1 hereof.

Section 10.3 Termination Rights. Subject to the foregoing:

(a) If the Capital Lease is terminated as a result of such casualty, or the proceeds of any property damage policy are insufficient to pay for the cost of Restoration; or

(b) If the Premises (or any discrete portion thereof) are damaged or destroyed by fire or other cause during the last five (5) years of the Term and the cost to restore the Premises (or portion thereof), as reasonably estimated, would equal or exceed 25% of the full replacement cost of the Improvements;

then, the Developer may terminate this Ground Lease with respect to the Premises (or any discrete portion thereof) within ninety (90) days after such fire or casualty event, provided that the Developer must as a condition precedent to such termination pay to the City the proceeds of any property damage policy to the extent permitted by the Leasehold Deed of Trust. In such event, this Ground Lease shall cease and come to an end as of the later of the date forty-five (45) days after the date the City receives such notice and the parties shall accurately reconcile any previously deposited rates.

ARTICLE XI CONDEMNATION

Section 11.1 Definitions. The following basic terms, as used in this Ground Lease and in all amendments to this Ground Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

“*Taking*” shall mean a taking during the Term of all or any part of the Premises, or any interest therein or right accruing thereto including any right of access, by or on behalf of any Governmental Authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Premises as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Premises. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.

“*Award*” shall mean the condemnation award and/or proceeds of the Taking, including any interest earned on the Award.

“*Partial Taking*” means any taking that is not a Substantial Taking or a Temporary Taking.

“*Substantial Taking*” means a taking that would render the Project unusable for the Permitted Use during the remainder of the Term.

“*Temporary Taking*” means a taking of the use of the Project that renders the Project unusable for the Permitted Use during the period of the Temporary Taking.

Section 11.2 Nature of Taking. The City and the Developer shall each notify the other if either becomes aware of a threatened or possible Taking (including any letter of interest from the condemning authority or its designee), or the commencement of any proceedings or negotiations which might result in a Taking. The City and the Developer shall have the right to appear in such proceedings, as their interests may appear, and be represented by their respective counsel.

Section 11.3 Taking While Leasehold Deed of Trust in Effect. If there is a Taking (whether a Substantial Taking, Partial Taking or Temporary Taking), the parties hereto acknowledge that so long as the Leasehold Deed of Trust is in effect the proceeds of any Award shall be disbursed to the Leasehold Deed of Trust Beneficiaries to be applied as provided in the Leasehold Deed of Trust and related Documents.

Section 11.4 Taking After Discharge of Leasehold Deed of Trust. If there is a taking after the discharge of the Leasehold Deed of Trust, then the following provisions shall apply.

(i) If such taking is a Substantial Taking, at the Developer’s election, the Term of this Ground Lease shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated expiration of the Term hereof and the parties shall accurately reconcile any previously deposited rent payments. The Award for a Substantial Taking shall be paid to the Developer.

(ii) If such taking is a Temporary Taking the Award shall be paid to the Developer.

(iii) If such taking is a Partial Taking, this Ground Lease shall remain in full force and effect; provided, however, that on the date of such Taking this Ground Lease shall terminate as to the portion of the Premises taken, which portion shall no longer be deemed part of the Premises. Thereafter, the Developer, to the extent of the Award made available to it, shall promptly restore, or cause the restoration of, the Premises, to the extent reasonably practicable given the nature and scope of the Taking and the requirements of Applicable Laws to their condition immediately prior to such Partial Taking in accordance with the provisions of this Ground Lease and to a standard and quality no less than the construction of the original Improvements (the “*Condemnation Restoration*”). The Award for the Partial Taking shall be allocated as follows:

If the Partial Taking includes any of the Project or the Improvements (including any parking area), the Award shall first be applied to effect the Condemnation Restoration. The balance of the Award (if any) shall be allocated as follows:

(A) the City shall be entitled to an amount equal to the diminution in the Market Value of its fee interest in the City Land; and

(B) the balance of the Award, if any, shall be paid to the Developer.

If the cost of the Condemnation Restoration, as reasonably estimated, is less than the portion of the Award needed to effect the Condemnation Restoration, the Award shall be paid to the Developer, who shall effect the Condemnation Restoration, and if the cost of effecting the Condemnation Restoration is equal to or greater than the portion of the Award needed for restoration of the Premises, the Award shall be paid to the City, who shall distribute such portion of the Award to the Developer as the Condemnation Restoration progresses in the same manner as provided in Section 10.2 with respect to insurance proceeds

and subject to the same conditions; provided, however, that the Developers restoration obligations shall be limited to the Award.

If the Partial Taking does not include any portion of the Project, the entire Award shall be paid to the City.

Section 11.5 Reimbursement for Taxes. Notwithstanding anything in this Article XI to the contrary, to the extent any Award is allocated to reimbursement for real estate taxes and assessments that have been paid with respect to periods after the date title vests in the condemning authority or its designee, such portion shall be paid to the party who paid such taxes and assessments. To the extent any Award is allocated to reimbursement of prepayment penalties, such portion shall be paid to the party that paid the prepayment penalty.

Section 11.6 No Benefit to Condemning Party. Nothing in this Article is included for the benefit of the condemning authority, the intent being only to set out the rights of the parties vis-a-vis one another.

ARTICLE XII ESTOPPEL CERTIFICATES

Section 12.1 Estoppel Certificates. The City and the Developer shall, at any time and from time to time, within thirty (30) Business Days following receipt of written request from the other party, execute, acknowledge and deliver a written statement certifying to such parties as such requesting party may require, including lenders: that this Ground Lease is in full force and effect and unmodified (or, if modified, stating the nature and date of such modification); the Closing Date; the end of the Term; whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Ground Lease including the payment of Additional Rent (and, if so, specifying each such default of which the signer shall have knowledge and the amount of any unpaid Additional Rent); if the signer is the Developer, that the Developer is not in default of any of its obligations under this Ground Lease; and as to such other matters regarding this Ground Lease as may reasonably be requested. Failure to deliver such statement within the 30-Business Days' period shall be conclusive as to the facts stated in the requested certification and binding upon the party who failed to deliver such certification as it relates to the entity seeking the certification. However, the failure to deliver said statement shall not be a waiver of any claim the City may otherwise have against the Developer to the extent the enforcement of the City's claim does not adversely impact the entity seeking the certification.

ARTICLE XIII ASSIGNMENT AND SUBLEASE

Section 13.1 Prohibition of Assignment and Subleasing. Except as permitted by this Article, or with the City's approval, the Developer may not assign this Ground Lease or sublease all or substantially all of the Premises in a single transaction or related transactions, or otherwise transfer (whether by operation of law or otherwise) all or substantially all of its interest in this Ground Lease or the Premises. The City agrees that the Developer may, without the prior written consent, authorization or other acknowledgment of the City, grant a leasehold mortgage, collateral assignment or assignment as security with respect to the rights, interests and estates of the Developer under this Ground Lease or its rights, interests and estates in the Premises, and assign its rights under this Ground Lease to an Affiliate of the Developer or an Affiliate of Hunt Properties, an unincorporated Tennessee general partnership ("*Hunt Properties*") so long as Hunt Services, Inc. remains liable for the obligations of the Developer under this Ground Lease, either as co-Developer or as guarantor. In the event of an assignment to an Affiliate of the Developer or an Affiliate of Hunt Properties, the Developer shall notify the City in writing

within fifteen (15) days prior to the effective date of any such assignment together with evidence reasonably satisfactory to the City of Hunt Services, Inc.'s continued obligation with respect to this Ground Lease.

Section 13.2 Permitted Assignment and Subletting. The City and the Developer agree that (i) the Capital Lease is permitted and (ii) any Leasehold Deed of Trust is permitted.

**ARTICLE XIV
DEFAULT; INSOLVENCY EVENTS; AND CONDITIONS OF
LIMITATION**

Section 14.1 Events of Default. This Ground Lease and the term and estate thereof are subject to the conditional limitation set forth below. If any of the following events occur and a court of competent jurisdiction renders a judgment in favor of the City (each, an “*Event of Default*”):

(a) The Developer fails to pay Base Rent to the City when the same is due and payable under the terms of this Ground Lease, or

(b) The Developer fails to pay Percentage Rent to the City when the same is due and payable under the terms of this Ground Lease and such failure continues for a period of thirty (30) days after written notice thereof is given to the Developer, or

(c) The Developer fails to pay to the City any Additional Rent when the same is due and payable under the terms of this Ground Lease and such failure continues for a period of thirty (30) days after written notice thereof is given to the Developer, or

(d) The Developer, whether by action or inaction, fails to timely perform or observe any of the other terms, covenants or conditions of this Ground Lease and such default is not remedied within sixth (60) days after written notice thereof is given to the Developer, provided that if such default cannot, with reasonable diligence, be fully remedied within such 60-day period, the Developer shall have as long as is reasonably necessary to cure such default, provided the Developer commences compliance within such 60-day period (or as promptly as reasonably possible in an emergency) and thereafter pursues compliance to completion with reasonable diligence.

Then in any such case the City may, at any time during the continuance of such Event of Default after the applicable notice and cure periods have expired, give the Developer notice of termination of this Ground Lease and, upon the date five (5) days after service of such notice, this Ground Lease and the term and estate thereof shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Ground Lease, but the Developer shall remain liable for damages as provided in this Ground Lease and the City may resort to and enforce any of the remedies provided in Article XV below; provided, however, that the City acknowledges that any rights hereunder are subject to the rights of the Leasehold Deed of Trust Beneficiaries set forth in Section 5.4 above; and provided further that with respect to a default under clause (d) above, the City shall have, as its sole remedy for such default, the right to maintain an action in law or equity to require specific performance of the terms of this Ground Lease.

Section 14.2 Insolvency Events. Following the repayment in full or other discharge of the Construction Loans, this Ground Lease and the term and estate thereof is subject to the further conditional limitation that if any of the following events occur (“*Insolvency Events*”):

- (a) The Developer makes an assignment for the benefit of its creditors, or
- (b) If an involuntary petition is filed against the Developer under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, and such petition is not dismissed within one hundred twenty (120) days after the date filed; or
- (c) The Developer shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by the Developer under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a petition shall be filed by the Developer under the arrangement provisions of the United States Bankruptcy Act or under the provisions of any law of like import.

Then in any such case the City may, at any time during the continuance of such Insolvency Event, after the applicable notice and cure period have expired, give the Developer notice of termination of this Ground Lease and, upon the date five days after service of such notice, this Ground Lease and the term and estate thereof shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Ground Lease, but the Developer shall remain liable for damages as provided in this Ground Lease and the City may resort to and enforce any of the remedies provided in Article XV below; provided, however, that the City acknowledges that any rights hereunder are subject to the rights of the Leasehold Deed of Trust Beneficiaries set forth in Section 5.4 above; and provided further that with respect to a default under clause (c), the City shall have, as its sole remedy for such default, the right to maintain an action in law or equity to require specific performance of the terms of this Ground Lease.

Section 14.3 Material Default. Notwithstanding any provision to the contrary herein, the City shall not have the right to terminate this Ground Lease unless the Developer's Event of Default materially impacts the City's long-term economic interest or is a default under Section 14.1 (a), Section 14.1(b), Section 14.1(c) or an Insolvency Event (each a "*Material Default*"). In the event of a non-Material Default by the Developer, the City shall have the right to exercise such other, non-termination remedies as it may elect pursuant to Article XV below, except as otherwise expressly provided herein.

Section 14.4 City Default. It shall be a default under and breach of this Ground Lease by the City if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Ground Lease for a period of thirty (30) days after notice thereof from the Developer; provided, however, that if the term, condition, covenant or obligation to be performed by the City is of such nature that the same cannot reasonably be performed within such 30-day period, such default shall be deemed to have been cured if the City commences such performance within said 30-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such the default by the City, the Developer may (a) cure such default by the City and offset Additional Rent against such amounts, or (b) sue for injunctive relief or to recover damages for any loss resulting from the breach or may pursue any other remedies available to it under Applicable Laws.

ARTICLE XV REMEDIES

Section 15.1 Rights of City. Subject to the rights of the Leasehold Deed of Trust Beneficiaries under this Ground Lease, if (a) this Ground Lease is terminated pursuant to Article XIV, or (b) the City re-enters or obtains possession of the Premises by summary proceedings or any other action or proceeding, or (c) the City re-enters or obtains possession by any other legal act (which the City may do without further notice and without liability or obligation to the Developer or any occupant of the

Premises if this Ground Lease is terminated pursuant to Article XVI), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this Ground Lease):

(a) The Developer shall immediately vacate the Premises and surrender the Premises to the City in good order, condition and repair, excepting reasonable wear and tear and damage that is not the Developer's obligation to repair; and, if the Developer fails to surrender the Premises in such condition, the Developer shall reimburse the City for all costs incurred by the City to restore the Premises to such condition.

(b) The City, at the City's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of the City, the Developer or otherwise, as determined by the City, to any person and on any terms, but the City shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on the City or relieve the Developer of any obligation or liability under this Ground Lease), and (ii) make any changes to the Premises as the City, in the City's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on the City or relieving the Developer of any obligation or liability under this Ground Lease.

(c) The Developer shall pay the City the following amounts:

(i) All Rent payable to the date on which this Ground Lease is terminated or the City reenters or obtains possession of the Premises;

(ii) Any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the 12 month period immediately preceding the termination, re-entry or obtaining of possession); and (ii) the rents, if any, applicable to that period collected under any reletting of any portion of the Premises; and the Developer shall pay any such deficiency in installments on the dates specified in this Ground Lease for payment of installments of the Base Rent, and the City shall be entitled to recover from the Developer each deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice the City's right to collect the deficiency for any subsequent month. The Developer shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent; and

(iii) Any costs and expenses incurred by the City in connection with the termination, re-entry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting.

Nothing contained in this Ground Lease shall be considered to limit or preclude the recovery by the City from the Developer of the maximum amount allowed to be obtained as damages or otherwise by any Applicable Laws.

Section 15.2 Right of Injunction. Either party may seek to enjoin any breach or threatened breach of any provision of this Ground Lease. The right of any party to exercise any particular remedy available under this Ground Lease, at law or in equity, shall not preclude such party from exercising any other remedy it might have pursuant to this Ground Lease, in law or in equity. Each right and remedy specified in this Ground Lease and each other right or remedy that may exist at law, in equity or otherwise

upon breach of any provision in this Ground Lease, shall be deemed distinct, separate and cumulative; and no right or remedy, whether exercised or not, shall be deemed to be in exclusion of any other unless otherwise expressly provided in this Ground Lease.

Section 15.3 City May Cure Default. If (a) there is then an Event of Default, or (b) if the Developer fails to comply with any obligation under this Ground Lease which in the City's reasonable opinion creates an emergency, the City may, but is not obligated to, cure the default. The Developer shall reimburse the City, as Additional Rent, for all Liabilities incurred by the City in connection therewith, within ten days after the Developer is billed for such Liabilities.

Section 15.4 No Waiver by the City. No payment by the Developer or receipt by the City of a lesser amount than the Rent shall be considered other than on account of the Rent. No endorsement or statement on any check or letter accompanying any check or payment shall prevent the City from cashing the check or otherwise accepting the payment, without prejudice to the City's right to recover the balance of the Rent or pursue any other remedy.

Section 15.5 Developer Waiver. The Developer waives the Developer's right, if any, to designate the items against which any Rent payments made by the Developer pursuant to this Ground Lease are to be credited and the Developer agrees that the City may apply any payments made by the Developer to any Rent items the City sees fit irrespective of and notwithstanding any designation or request by the Developer as to the items against which any such payments shall be credited.

Section 15.6 Jurisdiction. All legal actions relating to this Ground Lease shall be adjudicated in any North Carolina state court or in any federal court having jurisdiction in the City. The Developer irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this Ground Lease and waives any claim that any legal action relating to this Ground Lease brought in any such court has been brought in an inconvenient forum. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by Applicable Laws or this Section, is necessary in order to confer jurisdiction upon the person of the Developer and the subject matter in question in any such court.

Section 15.7 Re-Enter. The words "re-enter," "re-entry" and "re-entered" as used in this Ground Lease shall not be considered to be restricted to their technical legal meanings.

ARTICLE XVI BROKER

Section 16.1 No Broker. Each of the City and the Developer represents and warrants that it has not dealt with any broker in connection with this Ground Lease, and each party shall be responsible for any broker's fee or commission for any broker claiming through such party. The Developer shall indemnify and hold the City harmless from and against any and all claims for any brokerage fee or commission with respect to this Ground Lease transaction by any broker with whom the Developer has dealt or is alleged to have dealt. The provisions of this Section shall survive any termination of this Ground Lease.

Section 16.2 No Broker's Lien. The Developer shall keep the Premises and this Ground Lease free from any broker's lien, other than the lien of any broker that the City is obligated to pay pursuant to this Ground Lease.

ARTICLE XVII
NO IMPAIRMENT OF CITY'S TITLE

Section 17.1 Rights Granted by City. Nothing contained in this Ground Lease or any action or inaction by the City, shall be deemed or construed to mean that the City has granted to the Developer any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of the City in the Premises.

Section 17.2 No Impairment of City's Title. In amplification and not in limitation of the foregoing, the Developer shall not permit the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Ground Lease, in such manner as might reasonably tend to impair the City's title to or interest in the Premises or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises.

Section 17.3 Liens. The Developer shall not cause the City's fee estate in the Premises to be encumbered by any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect, or engineer with respect to the work, materials or services alleged to have been performed at or with respect to the Premises. If any such lien or encumbrance is filed or recorded, the Developer shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after the Developer receives notice of such lien or encumbrance. If the Developer fails to discharge such lien or encumbrance within such 30-day period, the City may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as the City deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by the Developer. The amount so paid and costs incurred by the City shall be deemed Additional Rent under this Ground Lease payable within thirty (30) days after the Developer is billed therefor.

ARTICLE XVIII
QUIET ENJOYMENT

Section 18.1 Quiet Enjoyment. The City covenants that if and so long as the Developer observes and performs each and every covenant, agreement, term, provision and condition of this Ground Lease on the part of the Developer to be observed and performed, the Developer shall quietly enjoy the Premises without hindrance or molestation of the City or any other person or entity acting through or on behalf of the City, subject to the covenants, agreements, terms, provisions and conditions of this Ground Lease. The City represents and warrants that there is no lien encumbering the City's fee interest in the City Land or any improvements located thereon.

ARTICLE XIX
LIMITATION OF CITY LIABILITY

Section 19.1 Transfer by City. If the City sells, assigns, or otherwise transfers (whether by operation of law or otherwise) all or part of its interest in the Premises or this Ground Lease, the assignment agreement must fully obligate the assignee to assume all of the City's obligations and responsibilities pursuant to this Ground Lease. The City shall be relieved of all of its obligations and liabilities under this Ground Lease accruing after the effective date of the transfer, and the transferee shall be deemed to have assumed all of the City's obligations and liabilities under this Ground Lease effective from and after the effective date of the transfer.

Section 19.2 No Personal Liability. The officers, directors, employees, agents and attorneys of the City, disclosed and undisclosed, shall have no personal liability under or in connection with this Ground Lease.

ARTICLE XX END OF TERM

Section 20.1 Surrender of Premises. At the end of the Term whether by the running of the Term or on such earlier date that this Ground Lease terminates or expires, the Developer shall peaceably and quietly surrender the Premises to the City, broom clean, in good order, condition and repair excepting reasonable wear and tear and damage that is not the Developer's obligation to repair, free and clear of all subleases, liens, and other encumbrances (except for the Capital Lease and any other liens and encumbrances either existing as of the date hereof caused or expressly consented to by the City), and with all Personal Property acquired (or leased) by the Developer removed. The Developer shall deliver to the City, on or before the end of the Term or such earlier date that this Ground Lease terminates or expires, upon the City's request, all licenses, permits, warranties, and guaranties then in effect for the Premises (and shall assign same to the City upon the City's request) and all books and records reasonably requested by the City. The Developer shall cooperate with the City to achieve an orderly transition of the Premises to the City's control. The City and the Developer shall, prior to the expiration of the Term, (a) adjust for Impositions and all other appropriate expenses and income of the Premises, and (b) if a memorandum of lease has been recorded, execute a document in recordable form evidencing the termination of this Ground Lease and all amendments thereto.

Section 20.2 Personal Property. Any Personal Property which shall remain on the Premises after the expiration of the Term or such earlier date that this Ground Lease terminates or expires, may, at the option of the City, be deemed to have been abandoned and either may be retained by the City as its property or be disposed of, without accountability, in such manner as the City may see fit, except that the property of any tenant then in possession shall be retained by such tenant. The Developer shall reimburse the City, as Additional Rent, for all costs and expenses incurred by the City in connection with disposing of such property.

Section 20.3 Holdover. If the Premises are not vacated and surrendered in accordance with this Ground Lease at the conclusion of the Term or sooner termination of this Ground Lease, the Developer shall be liable to the City for (a) all Liabilities incurred by the City in connection with such holdover, including Liabilities incurred in connection with any summary proceedings, action or proceeding to recover possession of the Premises from the Developer, and (b) per diem use and occupancy in respect of the Premises equal to the fair rental value of the Premises, and (c) all damages incurred by the City in connection with such holdover, including any lost opportunity damages incurred by the City. If only a portion of the Premises is timely vacated and surrendered, the Developer shall nevertheless remain liable for per diem use and occupancy with respect to the entire Premises, but any reletting proceeds received by the City during the period of the Developer's holdover shall be credited against the Developer's liability for use and occupancy for the entire Premises. In no event shall this Section be construed as permitting the Developer (or other occupants) to remain in possession of the Premises after the Term or sooner termination of this Ground Lease. The Developer shall indemnify, defend and hold harmless the City against all claims made by any succeeding tenants to the extent such claims arise by reason of the failure of the Developer (and all other occupants) timely to vacate and surrender the Premises (or any portion thereof) in accordance with this Ground Lease. The City may recover amounts due it under this Section in any summary proceeding and/or any separate action or proceeding.

Section 20.4 No Acceptance of Surrender. No act or thing done by the City or the City's agents (including receipt of keys) during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by the City.

ARTICLE XXI MISCELLANEOUS

Section 21.1 Modifications in Writing. This Ground Lease may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Section 21.2 No Waiver. Receipt or acceptance of Rent by the City and payment of any Rent by the Developer shall not be deemed to be a waiver of any default under the covenants, agreements, terms, provisions and conditions of this Ground Lease, or of any right which the City or the Developer, as the case may be, may be entitled to exercise under this Ground Lease. Failure to insist upon the strict performance of any of the provisions of this Ground Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such provision, right, remedy or election, but the same shall continue and remain in full force and effect. The waiver by either party of any breach of this Ground Lease shall not be deemed a waiver of any future breach.

Section 21.3 Consent of City. Consent of the City to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve the Developer from the obligation wherever required under this Ground Lease to obtain the consent of the City to any other act or matter. If the Developer requests the City's consent or approval and the City fails or refuses to give such consent or approval, the Developer shall not be entitled to any damages for any withholding by the City of its consent or approval, it being intended that the Developer's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where the City has expressly agreed in writing not to unreasonably withhold or delay its consent or where as a matter of law the City may not unreasonably withhold its consent.

Section 21.4 No Partnership. The City and the Developer acknowledge that they are not partners or joint venturers and that, except with respect to casualty insurance proceeds and condemnation awards, they do not stand in a fiduciary relationship to one another.

Section 21.5 Further Liability. Upon the expiration of the Term of this Ground Lease, neither party shall have any further obligation or liability to the other except as otherwise provided in this Ground Lease and except for (a) such obligations as by their nature or under the circumstances can only be, or by the provisions of this Ground Lease may be, performed after such expiration, and (b) any liability for Rent, and (c) any liability for acts or negligent omissions occurring during the Term, and (d) any obligation or liability under Articles IX, all of which shall survive such expiration.

Section 21.6 Validity of Lease. Each party represents and warrants (a) that this Ground Lease has been duly authorized, executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, (b) that there are no actions, suits or proceedings pending or, to the knowledge of such party, threatened against or affecting such party, at law or in equity or before any Governmental Authority which would impair such party's ability to perform its obligations under this Ground Lease, and (c) that the consummation of the transactions hereby contemplated and the performance of this Ground Lease will not result in any breach or violation of, or constitute a default under any lease, bank loan or credit agreement. The Developer shall provide to the City, upon the City's request, evidence that the execution and delivery of this Ground Lease have been duly authorized by the

Developer and that the person or persons executing and delivering this Ground Lease on behalf of the Developer have been duly authorized to do so, together with a certified copy of the Developer's articles of incorporation, partnership agreement or operating agreement, as applicable, and all amendments thereto.

Section 21.7 No Merger. There shall be no merger of this Ground Lease or the leasehold estate created by this Ground Lease with a fee interest in the Premises by reason of the fact that the same person may acquire, own or hold, directly or indirectly, this Ground Lease or the leasehold estate created by this Ground Lease and the fee estate in the Premises, unless and until such person shall join in a written instrument expressly providing for such merger and such instrument is recorded.

Section 21.8 Memorandum of Ground Lease. The parties shall execute and acknowledge, in a manner suitable for recording, a Memorandum of Ground Lease in the form attached hereto as **Exhibit D**, which Memorandum of Ground Lease may be recorded by either of the parties.

Section 21.9 Entire Agreement. This Ground Lease represents the entire agreement of the parties with respect to the Premises, and, accordingly, all prior understandings and agreements between the parties with respect to the Premises are merged into this Ground Lease, which alone fully and completely expresses the agreement of the parties.

Section 21.10 Independent Covenants. Each covenant, agreement, obligation or other provision of this Ground Lease on the Developer's part to be performed, shall be deemed and construed as a separate and independent covenant of the Developer, not dependent on any other provision of this Ground Lease.

Section 21.11 Inclusion. All terms and words used in this Ground Lease shall be deemed to include any other number and any other gender as the context may require.

Section 21.12 Negotiations Have No Binding Effect. The submission of drafts of and comments to this Ground Lease, the negotiation of this Ground Lease, and the exchange of correspondence concerning the negotiation and execution of this Ground Lease shall have no binding force or effect and shall confer no rights nor impose any obligations, including brokerage obligations, on either party. This Ground Lease shall become a binding agreement only after both the City and the Developer have executed this Ground Lease and duplicate originals thereof (including any counterparts) shall have been delivered to the respective parties.

Section 21.13 Notice. All notices or other communications required to be given under this Ground Lease shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally; or the next Business Day, if delivered to a nationally recognized overnight courier service, addressed as follows:

Notice to the City:

City of Rocky Mount, North Carolina
P.O. Box 1180
Rocky Mount, NC 27804
Attention: City Manager

With copies to:

Jep Rose, City Attorney
Poyner & Spruill

130 S. Franklin St.
Rocky Mount, NC 27804

Notice to the Developer:

Hunt Services, Inc.
1031 Greystone Square
Jackson, TN 38305
Attention: David B. Hunt, President

With a copy to:

C. Randall Minor, Esq.
Maynard Cooper & Gale, P.C.
1901 Sixth Avenue N. Suite 2400
Birmingham, AL 35203

Notice to the initial Leasehold Deed of Trust Beneficiaries:

Attention: _____

Each party hereto may, by notice given to each of the other parties, designate any additional or different addresses to which subsequent notices, certificates, demands, requests, or other communications shall be sent. Notwithstanding anything contained herein to the contrary, any notice required to be given by the City or the Developer hereunder shall be deemed to have been given and shall be effective as of the date such notice is received or refused reflected on said notice. All notices, certificates, demands, requests, or other communications made by either party to the other which are required or permitted by the provisions of this Ground Lease shall be in writing.

Section 21.14 No Claims Against City. Except to the extent expressly provided in this Ground Lease, nothing contained in this Ground Lease shall be deemed to authorize the Developer to enter into any contract or agreement on behalf of the City or to subject the City's interest in the Premises or in this Ground Lease to any lien or encumbrance, including without limiting the generality of the foregoing, any liens for the construction, repair, renovation or addition of any improvements so as to permit the making of any claim against the City or the City's interest in the City Land, the Improvements or the Personal Property, or shall be deemed a waiver by the City of any right, remedy, or interest granted to the City under this Ground Lease. The Developer is hereby prohibited from taking any such action. Any persons rendering any labor or service or furnishing materials to the Developer or to the Premises, or otherwise contracting with the Developer, shall look solely to the Developer for payment therefor.

HUNT SERVICES, INC., a Tennessee corporation

By: _____
Print Name: _____
Its: _____

STATE OF

COUNTY OF

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David B. Hunt, as President of Hunt Services, Inc., a Tennessee corporation.

Dated: September __, 2019

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF CITY LAND

BEING ALL of Tract 5 containing 2.45 acres, as shown on map or plat entitled "Recombination Survey for Downtown Community Facility Tract 5 Rocky Mount Township, Edgecombe County, North Carolina" dated April 28, 2017, by Mack Gay Associates, P.A., a copy of which is recorded in Plat Book 12, Page 88, Edgecombe County Registry.

EXHIBIT B

PERMITTED ENCUMBRANCES

[All of the exceptions from coverage included on Schedule B to Developer's Leasehold Policy of Title Insurance issued by First American Title Insurance Company on the Closing Date.]

EXHIBIT C

INSURANCE REQUIREMENTS

During the Term, the Developer shall carry and maintain all insurance coverages described herein and shall name the City as additional insureds under such coverage. Such coverage shall include the following: (i) casualty insurance in an amount equal to at least the full replacement cost of the Parking Facility, with a maximum deductible of [\$25,000]; (ii) commercial general liability coverage (“*All Risk*”) with a limit of \$[2,000,000 per occurrence, \$3,000,000 in the aggregate]. Casualty insurance shall include coverage for terrorism and earthquake.

EXHIBIT D

MEMORANDUM OF GROUND LEASE

Prepared by and Return to:

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "*Memorandum*") is made and entered into as of the [] day of [], 2019, by and between the City of Rocky Mount, North Carolina, a municipal corporation duly created under the laws of the State of North Carolina (the "*City*"), and Hunt Services, Inc., a Tennessee corporation, authorized to do business in North Carolina (the "*Developer*").

WITNESSETH:

WHEREAS, the City and the Developer entered into a certain Ground Lease dated as of [August 7], 2019 (the "*Ground Lease*"); and

WHEREAS, the City and the Developer desire to have a memorandum of the Ground Lease recorded in the Office of the Register of Deeds for Rocky Mount, North Carolina.

NOW, THEREFORE, the City and the Developer hereby state the following for recording:

1. The address for the City and the Developer as set forth in the Ground Lease are as follows:

For the City:

City of Rocky Mount, North Carolina
P.O. Box 1180 _____
Rocky Mount, NC 27804 _____
Attention: City Manager _____

For the Developer:

Hunt Services, Inc.
1031 Greystone Square
Jackson, TN 38305
Attention: David B. Hunt

2. Pursuant to the terms of the Ground Lease, the City leases to the Developer all that certain tract or parcel of land described in **Exhibit A** attached to this Memorandum hereto and made a part hereof by this reference.

3. The term of the Ground Lease shall commence on the date of execution and delivery thereof and shall terminate on _____, 20__.

4. In the event of termination of the Ground Lease for any reason contained therein, or upon the expiration of the term of the Ground Lease, if applicable, this Memorandum shall be deemed terminated, null and void, of no further force and effect and removed of record.

5. This Memorandum has been executed for recording purposes only, and shall not be deemed to amend or supplement the Ground Lease. In the event of any conflicts between the provisions of this Memorandum and the provisions of the Ground Lease, the provisions of the Ground Lease shall prevail.

[Remainder of Page Left Blank]

HUNT SERVICES, INC., a Tennessee corporation

By: _____
Print Name: _____
Its: _____

STATE OF

COUNTY OF

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David B. Hunt, as President of Hunt Services, Inc., a Tennessee corporation.

Dated: September __, 2019

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A TO MEMORANDUM OF GROUND LEASE

LEGAL DESCRIPTION

BEING ALL of Tract 5 containing 2.45 acres, as shown on map or plat entitled "Recombination Survey for Downtown Community Facility Tract 5 Rocky Mount Township, Edgecombe County, North Carolina" dated April 28, 2017, by Mack Gay Associates, P.A., a copy of which is recorded in Plat Book 12, Page 88, Edgecombe County Registry.