

1 A RESOLUTION APPROVING A GROUND LEASE AGREEMENT BETWEEN FULTON
2 COUNTY, GEORGIA (LANDLORD) AND PRO PLAYER HOLDINGS, LLC (TENANT)
3 FOR THE PURPOSE OF LEASING APPROXIMATELY 19 ACRES OF REAL
4 PROPERTY AT CAMP TRUITT FOR THE PURPOSE OF DEVELOPING ATHLETIC
5 FACILITIES ONSITE WITH RENTAL PROCEEDS TO BE USED IN THE
6 FURTHERANCE OF 4H ACTIVITIES ; AUTHORIZING THE CHAIRMAN TO EXECUTE
7 THE GROUND LEASE AGREEMENT AND RELATED DOCUMENTS; AUTHORIZING
8 THE COUNTY ATTORNEY TO APPROVE THE GROUND LEASE AGREEMENT AND
9 RELATED DOCUMENTS AS TO FORM AND TO MAKE NECESSARY
10 MODIFICATIONS THERETO PRIOR TO EXECUTION; AND FOR OTHER PURPOSES.
11

12 **WHEREAS**, Fulton County, Georgia is the fee simple owner of the real property
13 located at 3124 Lake Shore Drive, College Park, Georgia, consisting of approximately
14 37.78 acres formally known as Camp Truitt by virtue of a Limited Warranty Deed from
15 John W. Chaplan as Grantor dated May 27, 1937 and recorded in Deed Book Page 1655
16 and Page 142; and

17 **WHEREAS**, Fulton County's Limited Warranty Deed contains a right of reversion
18 and use restriction that requires the subject property to be used "exclusively for park,
19 recreation grounds, and educational purposes [among other things].," and in the event a
20 use is permitted other than those stipulated, ownership of the real property shall revert
21 back to the Grantor and or Grantor's heirs, devisees and assigns; and

22 **WHEREAS**, on June 29, 1958, the Executrix of Mr. Chapman's estate, the grantor
23 of the property to the County, recorded a document in the Real Estate Records for Fulton
24 County in Deed Book Page 3551, Page 97, which modified the reversion and use
25 restriction to provide:

26 Notwithstanding any of the restrictions contained in the deed dated May 27,
27 1937 above referred to, or the right of reversion contained in said deed, and
28 reserved to John M. Chapman, his heirs, successors and assigns, the use
29 of said property conveyed in said deed, by Fulton County or the State of
30 Georgia for any purpose to serve the 4-H Clubs of Fulton County and
31 Georgia and to promote agricultural, social and economic interest of the
32 rural people of Fulton County and the State of Georgia, are declared to be
33 proper uses of said property and not in violation of the restrictions imposed
34 thereon by the deed dated May 27, 1937 above referred to, and no violation
35 of said deed or right of reversion of any interest in said property shall ever
36 exist as long as said property is used for such purposes, or any other
37 purpose specifically described and set forth in said deed; and

38 **WHEREAS**, the Executrix's recording further provided:

1 The rental or use of any portion of the property conveyed in the deed date
2 May 27, 1937 so as to produce an income derived from any person, shall
3 not constitute a violation of said deed or give rise to any right of reversion,
4 provided the income from such property so received, shall itself be reserved
5 for, and used for the purposes authorized in the original deed dated May
6 27, 1937 and in this Agreement; and

7 **WHEREAS**, presently the University of Georgia Cooperative Extension provides
8 4-H related and other services to resident of Fulton County at Camp Truitt; and
9

10 **WHEREAS**, Pro Player Holdings, LLC has proposed to Fulton County that they be
11 allowed to ground lease and develop approximately 19 acres of the Camp Truitt Site with
12 a \$20 million dollar, 50,000 square feet facility with indoor basketball and volleyball courts,
13 indoor soccer fields, retractable bleacher seating for attendees, a 300-meter multi-lane
14 indoor track, training rooms, an aquatic pool, and other amenities; and

15 **WHEREAS**, the addition of the proposed development is to provide Fulton County
16 residents multiple amenities and health benefits to include; improvements with overall
17 community health that can be obtain when residents work out at a state of the art
18 community health facility within their community, reductions in teen crimes that results
19 when teens are provided alternate activities to engage themselves in, and national
20 exposure when sports events are held onsite; and

21 **WHEREAS**, the Department of Real Estate and Asset Management has
22 negotiated mutually acceptable ground leasing terms with Pro Player Holdings, LLC to
23 lease approximately 19 acres of real property at 3124 Lake Shore Drive, College Park,
24 Georgia; and

25 **WHEREAS**, said lease terms include (i) a 30 year term with two optional 10 year
26 renewal options, (ii) yearly rent of \$27,200 (\$2,266.67 per month) based on the results of
27 a ground rent appraisal report, (iii) the obligation of Pro Player Holdings to complete
28 construction of their improvements within four (4) years of the Effective Date of the ground
29 lease agreement, and (iv) a one-time payment of \$1,000,000.00 to be made 30 days after
30 the end of the Due Diligence Period (120 days after lease execution), to be held in escrow
31 until the date construction of the improvements begins; and

32 **WHEREAS**, the approval of the Fulton County Board of Commissioners is required
33 prior to the Chairman executing a ground lease agreement that will permit the
34 development of approximately 19 acres of real property owned within the site formally
35 known as Camp Truitt; and

36 **WHEREAS**, it is the desire of Fulton County and Pro Player Holding, LLC to enter
37 into a ground lease agreement; and

1 **WHEREAS**, pursuant to Fulton County Code § 1-117, the Fulton County Board of
2 Commissions has exclusive jurisdiction and control over directing and controlling all
3 property of the county.

4 **NOW, THEREFORE, BE IT RESOLVED**, that the Board of Commissioners hereby
5 approves a Ground Lease Agreement with Pro Player Holding, LLC, in substantially the
6 form attached hereto as Exhibit "A."

7 **BE IT FURTHER RESOLVED**, that the Chairman of the Board of Commissioners
8 (or Vice-Chairman, in the Chairman's absence) is hereby authorized to execute the
9 Ground Lease Agreement between Fulton County and Pro Player Holding, LLC.

10 **BE IT FURTHER RESOLVED**, that the County Attorney is hereby authorized to
11 approve the Ground Lease Agreement as to form, and to make such other or additional
12 modifications as are necessary to protect the County's interests prior to execution by the
13 Chairman.

14 **BE IT FINALLY RESOLVED**, that this Resolution shall become effective upon its
15 adoption, and that all resolutions and parts of resolutions in conflict with this Resolution
16 are hereby repealed to the extent of the conflict.

17 **PASSED AND ADOPTED** by the Board of Commissioners of Fulton County,
18 Georgia, this 15th day of December, 2021.



FULTON COUNTY BOARD OF
COMMISSIONERS

Robert L. Pitts

Robert L. Pitts, Chairman

27 ATTEST:

28
29
30 *Tonya R. Grier*

31 Tonya R. Grier, Clerk to the Commission

32
33 APPROVED AS TO FORM:

34
35
36
37 *Y. Soo Jo*

38 Y. Soo Jo, County Attorney

39

PARTICIPATING GROUND LEASE AGREEMENT

THIS ~~PARTICIPATING~~ ^{PLP} GROUND LEASE AGREEMENT ("Agreement") is entered into this ~~1st day of March 2022~~ ^{15th day of April 2022} ("Effective Date"), by and between FULTON COUNTY, GEORGIA, a political subdivision of the State of Georgia ("Ground Lessor") and PRO PLAYER HOLDINGS, LLC, a Georgia limited liability company ("Ground Lessee").

WITNESSETH:

WHEREAS, Ground Lessor is the owner of certain real property located in the State of Georgia, as defined below in Section 1.1.31 as the "**Premises**"; and

WHEREAS, Ground Lessee is leasing the Premises from Ground Lessor for the purpose of developing, constructing, maintaining, managing and operating a multi-purpose sports, health and wellness complex and other improvements (as defined below in Section 1.1.8 as "**Commercial Facilities**"); and

WHEREAS, Ground Lessee desires to lease a portion of the land owned by Ground Lessor to construct the Commercial Facilities (the "Project") on a portion of the Premises pursuant to the terms and conditions of this Agreement; and

WHEREAS, Ground Lessee is engaged in the business of developing, constructing, managing and operating the Commercial Facilities; and

WHEREAS, on, and subject to, the terms and conditions contained in this Agreement, Ground Lessor is willing to lease the Premises to Ground Lessee for such purposes.

NOW, THEREFORE, for and in consideration of the above recitals (which are incorporated into this Agreement by reference), and the agreements, covenants and conditions set forth below, Ground Lessor and Ground Lessee agree as follows:

1.1 DEFINITIONS

1.1.1 The term "**Affiliate**", whenever used herein, shall mean, with respect to Ground Lessee:

1.1.1.1 the members, managers, partners, directors, officers, or employees of Ground Lessee; or

1.1.1.2 any other individual or entity which owns, directly or indirectly, at least thirty percent (30%) of the interest in the capital, profits or voting rights of Ground Lessee; or

1.1.1.3 any other entity in which Ground Lessee owns, directly or indirectly, a capital, profits or voting interest in at least thirty percent (30%); or

1.1.1.4 any other entity which, in common with Ground Lessee, is owned, directly or indirectly, by another individual or entity holding at least thirty percent (30%) of the interest in the capital, profits or voting rights of Ground Lessee and such other entity.

For purposes of this Agreement, Ground Lessor has no Affiliates.

1.1.2 The term “**Assignee**”, whenever used herein, means, as applicable in the context the term is used, (i) any assignee of Lender's interest in the Loan, or (ii) any assignee of Ground Lessee's rights and duties under this Agreement pursuant to Section 2.1 below; or (iii) a Permitted Foreclosure Assignee.

1.1.3 The term “**Budget**”, whenever used herein, means the written development and construction budget for the Project to be prepared by Ground Lessee and presented to Ground Lessor. A copy of the development and construction budget is attached as Exhibit B to this Agreement.

1.1.4 The term “**Capital Improvement Expenditures**” whenever used herein, means the expenses and costs of a capital nature incurred by Ground Lessee associated with the development of the portion of the Commercial Facilities located on the Premises, such as development and infrastructure expenses and costs, including also certain Maintenance and Operation expenses.

1.1.5 The term “**Casualty**”, whenever used herein, has the meaning set forth in Section 2.10.1 below.

1.1.6 Intentionally omitted.

1.1.7 The term “**Commence Construction**”, or similar phrase, whenever used herein, means, (i) commencing construction of the Initial Improvements on the Premises by Ground Lessee causing its construction contractor to obtain occupancy and control of the Premises to begin actual site preparation, development and construction, or (ii) commencing construction of related off-site work and shall be a date no more than thirty (30) days after (i) the date Ground Lessor approves Ground Lessee's plans for the construction of its Improvements and Ground Lessee receives its Land Disturbance Permit to commence site development or (ii) a date otherwise agreed to by the Parties.

1.1.8 The term “**Commercial Facilities**”, whenever used herein, means the commercial real estate improvements, together with all utilities, parking lots, landscaping, and all other improvements to be constructed on the Premises by Ground Lessee in accordance with the terms and conditions of this Agreement. Said real estate improvements shall be limited to Lessee's “**Pro-T.E.A.M. Sports Complex**”, a \$20,000,000, 50,000 to 100,000 square foot technology, education, athletics, and medical center that will accommodate a wide range of athletic events.

1.1.9 The term “**Complete Taking**”, whenever used herein, has the meaning set forth in Section 2.15 below.

1.1.10 The term “**Construction Plan**”, wherever used herein, has the meaning given to it in Section 1.10 below.

1.1.11 The terms “**Designated Representative**” or “**DR**”, whenever used herein, means Ground Lessor’s designated representative. As of the Effective Date, the DR is the County Manager or his designee. Promptly following any change to or resignation of the DR, Ground Lessor shall inform Ground Lessee of the new DR. The DR shall communicate any and all consents, approvals, agreements or disapprovals which under this Agreement Ground Lessor is entitled or obligated to make, and Ground Lessee shall be entitled to rely on any such consent, approval, agreement or disapproval communicated by the DR as the consent, approval, agreement or disapproval of Ground Lessor. Notwithstanding the foregoing, the Parties acknowledge and agree that any amendment to or modification of the terms of this Agreement is subject to approval by the Fulton County Board of Commissioners.

1.1.12 The term “**Disputed Item**”, whenever used herein, has the meaning set forth in Section 1.11.2 below.

1.1.13 The term “**Effective Date**”, whenever used herein, means ~~March 1, 2022~~

ELP
April 15, 2022

1.1.14 The term “**Environmental Laws**”, whenever used herein, means the following statutes as the same are amended from time to time:

1.1.14.1 COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION AND LIABILITY ACT (42 U.S.C. § 9601 *et seq.*)

1.1.14.2 RESOURCE CONSERVATION AND RECOVERY ACT (42
U.S.C. § 6901 *et seq.*)

1.1.14.3 TOXIC SUBSTANCES CONTROL ACT (15 U.S.C. § 2601 *et*
seq.)

1.1.14.4 SAFE DRINKING WATER ACT (42 U.S.C. § 300h *et seq.*)

1.1.14.5 CLEAN WATER ACT (33 U.S.C. § 1251 *et seq.*)

1.1.14.6 CLEAN AIR ACT (42 U.S.C. § 7401 *et seq.*)

and the regulations promulgated thereunder, and any other laws, regulations and ordinances (whether enacted by the Federal, State or local government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment (including, but not limited to, the ambient air procedures and records detailing chlorofluorocarbons (“CFC”), ambient air, ground water, surface water and land use, including sub-strata land.

1.1.15 The term “**Force Majeure**”, whenever used herein, shall mean any strike, boycott, labor dispute, embargo, shortage of materials, act of God, act of the public enemy, governmental regulation or delay, act of governmental authority (including any moratorium imposed by such authority or inability to obtain necessary permits, approvals and entitlements from any such

authority), unusual weather condition, flood, riot, rebellion, terrorist act or sabotage, declared pandemic, or other condition or circumstance beyond the control of a Party.

1.1.16 The term “**Foreclosing Lender**”, whenever used herein, has the meaning given to it in Section 2.1.4 below.

1.1.17 The term “**Foreclosure Transfer**”, whenever used herein, has the meaning given to it in Section 2.14.6 below.

1.1.18 The term “**Ground Lessee**”, whenever used herein, means Pro Player Holdings, LLC, a Georgia limited liability company, entering into this Agreement as the holder of the ground leasehold estate in the Premises, and as the developer, owner, and operator of the Project.

1.1.19 The term “**Ground Lessor**”, whenever used herein, means Fulton County, Georgia, a political subdivision of the State of Georgia, entering into this Agreement as the fee owner of the Premises, as represented by its Designated Representative or DR (as defined in this Agreement).

1.1.20 The term “**Ground Lessor Delay**”, whenever used herein, means any delay Ground Lessee encounters in the performance of Ground Lessee's obligations under this Agreement arising from or related to any act or omission of Ground Lessor or its agents, employees or contractors, including the DR. By way of example and not limitation, Ground Lessor Delay includes any delays by Ground Lessor in providing Ground Lessee with information reasonably requested by Ground Lessee, or in providing consents or approvals requested by Ground Lessee, or any delays caused solely by Ground Lessor or its agents, employees, or contractors with Ground Lessee's construction of the Commercial Facilities. If a specific time period is set forth in this Agreement for a response or decision on the part of Ground Lessor, there shall be no Ground Lessor Delay if Ground Lessor provides a response or decision within the specified time period. Further, there shall be no Ground Lessor Delay if the delay is caused by Force Majeure, but the Force Majeure itself shall extend Ground Lessee deadlines in accordance with Section 1.5.6 below. Notwithstanding the foregoing, Ground Lessee will use reasonable efforts to notify Ground Lessor as soon as possible in writing of any circumstances of which Ground Lessee is aware that may or has caused a Ground Lessor Delay, so that Ground Lessor may take whatever action is appropriate to prevent or minimize any such Ground Lessor Delay. The provisions of this Section 1.1.20 only apply to the acts and omissions of Ground Lessor in its capacity as a Party to this Agreement. Nothing in this Agreement shall diminish or eliminate Ground Lessee's responsibility to comply with applicable law in connection with its development of the Project.

1.1.21 The term “**Hazardous Material**”, whenever used herein, means the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, regulated substance or solid waste as defined within the following:

1.1.21.1 COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION AND LIABILITY ACT (42 U.S.C. § 9601 *et seq.*)

1.1.21.2 RESOURCE CONSERVATION AND RECOVERY ACT (42
U.S.C. § 6901 *et seq.*)

1.1.21.3 HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. § 5101 *et seq.*) and all present or future regulations promulgated thereto

1.1.21.4 DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS TABLE (49 C.F.R. Part 172) and amendments thereto

1.1.21.5 ENVIRONMENTAL PROTECTION AGENCY (40 C.F.R. Part 300 and amendments the Appendices thereto)

1.1.21.6 and all substances, materials and wastes that are, or that become, regulated under, or that are classified as, listed as, identified as, or otherwise defined as hazardous or toxic under any Environmental Law, whether such laws are Federal, State or local, and petroleum and its breakdown products.

1.1.22 The term "**Improvements**", whenever used herein, means on-and-off site work and building shell for one hundred percent (100%) of the Commercial Facilities contemplated by the Construction Plan.

1.1.23 The term "**Interest**", whenever used herein, means an amount of simple interest calculated by applying an annual rate determined as of January 1 of each calendar year equal to the greater of: (a) 300 basis points over the then current "**prime rate**" as published in The Wall Street Journal or comparable business publication of national circulation, and (b) eight percent (8%). Interest shall adjust each year on the above-mentioned date based on such published prime rate.

1.1.24 The term "**Lender**", whenever used herein, shall mean the provider of a Loan to Ground Lessee in connection with its development of the Commercial Facilities.

1.1.25 The term "**Lender Affiliate**", whenever used herein, has the meaning set forth in Section 2.1.4 below.

1.1.26 The term "**Loan**", whenever used herein, shall mean a loan made by a Lender to Ground Lessee for construction, interim or permanent financing (or any refinancing) of the Commercial Facilities located on the Premises and satisfying the requirements of this Section 1.1.26. Any Loan may be secured by a mortgage, deed of trust, security deed, or other security instrument encumbering the leasehold estate evidenced by this Agreement. The proceeds of the Loan shall be used solely for development of the Premises, financing the construction of the Commercial Facilities, the payment of other Project Costs or refinancing of an existing Loan. The proceeds of any refinancing, to the extent not used to pay off the Loan being refinanced, shall be used for the purpose of: (i) repairing, constructing or reconstructing the Commercial Facilities; (ii) held in reserve for such purposes; (iii) the payment of other Project Costs; (iv) used for the repayment of Interest thereon; (v) or used for such other purposes as Ground Lessor and Ground Lessee may, in writing, agree.

1.1.27 The term "**Maintenance and Operations**", whenever used herein, means the expenses for maintenance, operation, administration, improvement, repair or replacement of the Commercial Facilities, including but not limited to, the expenses for maintenance, operation, administration, improvement, repair or replacement of the plumbing, heating, ventilating and air conditioning systems, electrical systems, outdoor developed areas, walking trails, athletic fields, lighting facilities, fire protection systems, utility installations, fixtures, walls, foundations, roofs, ceilings, floors, structural systems, doors, dock doors and leveling systems, glass, skylights, landscaping and irrigating systems, driveways, parking lots, fences, retaining walls, signs, sidewalks, and all janitorial, landscape maintenance, security and fire alarm services, trash disposal and sanitation services, water, gas, electricity, and other utilities together with any taxes thereon.

1.1.28 The term "**Partial Taking**", whenever used herein, has the meaning set forth in Section 2.15.2 below.

1.1.29 The term "**Parties**", whenever used herein, means Ground Lessor and Ground Lessee, jointly, and the term "**Party**" means one or the other of Ground Lessor and Ground Lessee.

1.1.30 The term "**Permitted Foreclosure Assignee**", whenever used herein, has the meaning given to it in Section 2.14.6 below.

1.1.31 The term "**Premises**", whenever used herein, means that portion of the real property described and/or depicted on Exhibit "A", which will be identified on an ALTA survey to be prepared by Ground Lessee at its sole expense and approved by Ground Lessor, which will be attached hereto and incorporated herein by reference together with non-exclusive easements for pedestrian, utility and storm water ingress, egress as needed for the Project. The Premises shall not include any other portion of the Camp Truitt property.

1.1.32 The term "**Project**", whenever used herein, means a \$20,000,000 full service athletic and activities center with facilities to support indoor basketball, indoor soccer, indoor volleyball, a 200-to-300-meter indoor track, Olympic-size pool, training and workout rooms, locker rooms, arcade and play areas and food service area along with other indoor and outdoor amenities and, medical and physical activity uses.

1.1.33 The term "**Project Cost**", whenever used herein, means all costs incurred by Ground Lessee in designing, developing, financing, constructing, owning, operating, maintaining, leasing, and managing the Commercial Facilities. Except as otherwise provided in this Agreement, Project Costs shall include, but be not limited to, the following, to the extent associated with the Project:

(a) all architectural, engineering and surveying expense;

(b) all plan check fees, building permit fees, school fees, drainage/flood control fees, sewer fees, connection fees, impact or mitigation fees, and all other governmental, quasi-governmental and utility fees, license and permit costs;

(c) all costs of environmental impact reports, traffic and air quality studies, biological studies and all other reports and studies required by governmental agencies, quasi-governmental entities or utility companies and in compliance with the applicable laws;

(d) all costs, if required, to subdivide and re-subdivide the Premises, or perform lot line adjustments;

(e) all costs in constructing the Commercial Facilities, whether on or off the Premises, including without limitation all grading, fencing, paving, lighting, roadways, parking lots, landscaping, underground water, sewer, gas, electrical, communication or other utility lines and connections, drainage facilities, water quantity and quality detention and retention facilities, traffic control system, and buildings and structures;

(f) all Capital Improvement Expenditures;

(g) all Maintenance and Operations expenses;

(h) all costs incurred for uninsured losses, earthquake, flood or other casualty, or repairs or replacements to the Commercial Facilities and the unreimbursed portion of any insured losses (including any deductible or “**retained risk**” amount);

(i) all costs of complying with Environmental Laws, including any remediation costs or related costs for which Ground Lessee is responsible under Section 3.1 of this Agreement;

(j) all insurance premiums for insurance required hereunder, including without limitation, title insurance;

(k) all legal and accounting fees;

(l) all loan fees, points, appraisal fees, capital market fees and other costs associated with the obtaining of any Loan;

(m) all interest and principal on any Loan;

(n) all property taxes, excises, license fees and permit fees contemplated by Section 2.5 below; and

(p) all other expenses of Ground Lessee related to the development, construction, use, maintenance, financing, management and operation of the Premises and the Commercial Facilities.

1.1.34 The term “**Project Development Plans**”, whenever used herein, means the prototypical project development plans for the Project, as approved by Ground Lessor which will later be supplemented and amended by the final approved and stamped project development plans which have been approved by Ground Lessor and required governmental agencies. Once approved by Ground Lessor, a copy of the prototypical Project Development Plans is to be attached hereto

as Exhibit C which will later be replaced by the final approved Project Development Plans. The prototypical and the final Project Development Plans shall set forth in detail all proposed improvements as determined by a licensed civil engineer and/or architect retained at Ground Lessee on an ALTA survey prepared by Ground Lessee at Ground Lessee's expense and approved by Ground Lessor. The Project Development Plan shall depict the location and nature of the portion of Ground Lessee's proposed Improvements located on the Premises, together with a detailed schedule of completion for the Project development and the portion of the Project development improvements located on the Premises reflecting the steps and milestone dates Ground Lessee will meet to submit plans for construction of its Improvements within six (6) months of the Effective Date and 18 months from the date of Landlord's approval of the same. In the event Ground Lessee fails to meet the milestone dates for submittal of its plans to the Ground Lessor or to complete construction of the Improvements on the Premises, the Premises shall revert back to the Ground Lessor.

1.1.35 The term "**Records and Accounts**", whenever used herein, has the meaning set forth in Section 1.8.1 below.

1.1.36 The terms "**Release**" and "**Released**", whenever used herein, mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Material into the environment.

1.1.37 The term "**Rent**", whenever used herein, means \$2,267.00 per month (\$27,200.00 per year) which is the fair market value based upon a current rental appraisal prepared for Ground Lessor which shall become payable on the Rent Commencement Date, which date shall be memorialized in a Rent Commencement Letter.

1.1.38 The term "**Rent Commencement Date**" whenever used herein, means the first day of the month immediately after the close of the Due Diligence Period.

1.1.39 The term "**Restoration Work**", whenever used herein, has the meaning set forth in Section 2.9.2 below.

1.1.40 The term "**Term**", whenever used herein, means the duration of the ground leasehold estate created by this Agreement, as specified in Section 1.2 below, including any extension thereof.

1.1.41 The term "**Total Revenue**", whenever used herein, means, without limitation, but subject to the terms and conditions of this Agreement: (a) the total amount of all rents, charges, fees and/or other income collected by Ground Lessee from any use of the Commercial Facilities or the Premises, (b) any unused reserves upon termination or expiration hereof, (c) any net proceeds received by Ground Lessee as a result of a Complete Taking or Partial Taking and (d) any Offset. Total Revenue shall exclude insurance proceeds.

1.2 TERM

1.2.1 The initial term of the Lease shall expire on the thirty (30) year anniversary of the last day of the month following the "Effective Date", which may be extended by mutual agreement of the Parties for two (2) additional periods of ten (10) years, provided that there have been no more than one (1) Ground Lessee default in any given year of the Initial Term, or first mutually agreed to 10-year extension of the Initial Term.

1.2.2 Ground Lessee shall have a period of one hundred and twenty (120) days after the date of execution of the Agreement in which to undertake, at Ground Lessee's expense, any and all due diligence for the Ground Lessee to conduct any and all physical inspections and other investigations concerning the Premises as Ground Lessee, in its sole and absolute discretion may deem appropriate, including, without limited, title, ALTA survey, legal access, environmental testing, traffic studies, marketing studies and the like to determine the feasibility of Ground Lessee's Project and the use and operation of the Premises (the "Due Diligence Period"). During the Due Diligence Period, if Ground Lessee determines the Premises are unsuitable for Ground Lessee's intended use as determined in Ground Lessee's sole and absolute discretion, Ground Lessee may terminate this Agreement with no further obligation to continue with this Agreement. On or before the end of the Due Diligence Period, Ground Lessee shall inform Ground Lessor in writing of whether Ground Lessee will proceed with the Project or is terminating this Agreement. In the event that Ground Lessee fails to so notify Ground Lessor of whether it is proceeding with the Project or terminating this Agreement on or before the end of the Due Diligence Period, Ground Lessor shall deem Ground Lessee to be non-compliant and to have elected not to proceed with the Project and to terminate the Agreement, unless Ground Lessor, in its sole and absolute discretion, agrees to an extension of the Due Diligence Period, and shall notify Ground Lessee of the same and this Agreement shall terminate as of the day of Ground Lessor's notice to Ground Lessee. Regardless of Ground Lessee's election to continue with the Agreement or not, Ground Lessee shall be solely responsible for restoration of the Property to the condition prior to its inspection for any and all damages, including the loss or destruction of any trees or structures on the Property, caused by its testing and inspection of the Camp Truitt parcel irrespective of the amount insurance coverage maintained by Ground Lessee, its agents and contractors.

1.2.3 During the Due Diligence Period, Ground Lessee shall provide Ground Lessor documents and other information sufficient for Ground Lessor to confirm that Ground Lessee (i) has demonstrated experience in the development and construction, and management of comparable commercial real estate properties (as evidenced by at least ten (10) years of such experience or a contractual relationship with a manager or operator with such minimum experience), (ii) has the financial resources sufficient to be financially secure to perform Ground Lessee's obligations hereunder (as evidenced by a net worth of at least Twenty Million and No/100 Dollars (\$20,000,000.00), in constant dollars), and (iii) is a reputable business concern. For the purposes of this Section 1.2.3, a Ground Lessee will be deemed a "reputable business concern" so long as neither it nor any of its principals shall have been convicted of a felony or misdemeanor involving an act of dishonesty, moral turpitude, deceit or fraud. Ground Lessee shall provide Ground Lessor with reasonably satisfactory evidence of Ground Lessee's net worth in a form of audited financial statements, certified by an officer or partner or owner of Ground Lessee as being accurate. Ground Lessee's failure to provide Ground Lessor with the information required by this Section 1.2.3

sufficient for Ground Lessor in its sole and absolute discretion to confirm that Ground Lessee meets the criteria set forth in this Section 1.2.3 during the Due Diligence Period shall be grounds for Ground Lessor to terminate this Agreement without notice or opportunity for Ground Lessee to cure.

1.3 PREMISES

1.3.1 Ground Lessor does hereby demise and let unto Ground Lessee and Ground Lessee does hereby take from Ground Lessor the Premises.

1.3.2 Subject to all obligations of the Ground Lessor in this Agreement, including without limitation, Section 3.1.2.1 of this Agreement with respect to pre-existing environmental conditions, Ground Lessee acknowledges that it has inspected the Premises and accepts the Premises "As Is."

1.3.3 The Commercial Facilities constructed on the Premises by Ground Lessee at any time and from time to time during the Term of this Agreement will be owned by Ground Lessee during the Term of this Agreement, or any extension thereof.

1.4 USE OF PREMISES

Subject to the agreements, provisions and conditions contained in this Agreement, Ground Lessee will have the use of the Premises solely for the construction and operation of the Commercial Facilities. Ground Lessee's use of the Premise may also include wireless communications antenna internal to the Commercial Facilities. Lessee's use of the Premises shall not interfere with or impede the other activities and 4-H uses on Ground Lessor's remaining portions of Camp Truitt.

1.5 DEVELOPMENT, IMPROVEMENTS, AND STANDARDS OF OPERATION

1.5.1 Ground Lessee will develop and cause the Commercial Facilities to be constructed substantially in accordance with the Project Development Plans which shall be approved in writing by Ground Lessor. In connection with Ground Lessee's activities at the Premises, Ground Lessee will design, develop, construct, manage, operate, maintain and repair all Commercial Facilities, including but not limited to grading, fencing, paving, lighting, driveways, roadways, parking lots, landscaping, drainage, buildings, structures and all other improvements. Upon completion of construction of the Commercial Facilities, Ground Lessee, when and as soon as practicable after such documents become available, shall deliver to Ground Lessor copies of a final permit drawing set, as-built drawings, a copy of certificate of occupancy, a copy of a full and final release of liens for all contractors, and any other documentation which Ground Lessor may reasonably request related to the construction of the Commercial Facilities.

1.5.2 Ground Lessor shall provide Ground Lessee with copies of documents in Ground Lessor's possession, custody and control concerning the Premises within fifteen (15) days after signing of the Lease, including surveys, zoning information, geotechnical reports, title information and existing title policies, civil drawings (including, site, utility, grading, drainage and detention

plans), Phase I or Phase II Environmental Site assessments, corrective action plans or any other similar materials related to the Camp Truitt parcel to the extent that such documentation is available. In the case such documentation is not available, this unavailability shall not relieve Ground Lessee from performing the due diligence it believes necessary to satisfy itself regarding proceeding forward with the Project.

1.5.3 Prior to execution of this Agreement, Ground Lessee may obtain a title commitment or preliminary title report. Upon, or as soon as practicable following, the Effective Date, Ground Lessee may obtain at its sole cost and expense an ALTA leasehold policy of title insurance insuring Ground Lessee's ground leasehold estate in the Premises, and containing those endorsements reasonably deemed necessary by Ground Lessee, all issued by a title insurance company selected by Ground Lessee. Ground Lessee may also obtain at its sole cost and expense, a separate title policy insuring the priority of the lien in favor of any Lender, in a form acceptable to such Lender. Ground Lessee's leasehold policy will be subject only to exceptions approved by Ground Lessee. At the time of execution of this Agreement, based on its review of the title commitment or preliminary title report, Ground Lessee will provide Ground Lessor with a list of any objectionable title exceptions. Ground Lessor shall use commercially reasonable efforts to resolve any title exceptions objected to by Ground Lessee. If Ground Lessee is unable to obtain a leasehold title policy in a form acceptable to it within one hundred twenty (120) days following the Effective Date, Ground Lessee may, by written notice to Ground Lessor, terminate this Agreement; provided, however, that to be effective such notice of termination must be received by Ground Lessor within one hundred eighty (180) days following the Effective Date.

1.5.4 Ground Lessee shall Commence Construction on or before the first (1st) day of the twenty-fifth (25th) month following the Effective Date of this Agreement (the "**Entitlement Date**"). Ground Lessee shall submit its plans Ground Lessor for review no later than six (6) months from the Effective Date to include, at minimum, the following: copies of any and all (a) permits, (b) approved permit plans, (c) construction insurance, (d) bond or builders risk insurance, naming Fulton County, Georgia as an additional insured, (e) evidence of a contract with construction company and (f) certificate of insurance from contractor naming Fulton County, Georgia as additional insured, and (g) a detailed timeline of construction. Ground Lessee shall apply for all necessary initial governmental approvals, permits and entitlements within one hundred and eighty (180) days following the Effective Date, and diligently pursue obtaining of both initial and all further necessary approvals, permits and entitlements, unless the Parties mutually agree in writing to delay the same for any reason.

1.5.4.1 If Ground Lessee has not Commenced Construction by the beginning of the sixth (6th) month following the Entitlement Date, it will be a material breach of this Agreement and Ground Lessor will have the right of termination provided in Section 2.10 of this Agreement, subject to the notice and cure provisions of Section 2.10. Ground Lessor agrees not to exercise its rights to terminate until any Lender has been given its rights to cure or foreclose as provided in Section 2.14 of this Agreement.

1.5.5 Subject to the provisions of this Section 1.5, the date of Substantial Completion of the Initial Improvements will be on or before the first (1st) day of the twenty-fourth (24th) month following the Commencement of Construction.

1.5.5.1 If the Initial Improvements are not Substantially Completed within the time allowed in Section 1.5.5 above, Ground Lessor may declare this failure to perform a material breach of this Agreement and Ground Lessor will have the right of termination provided in Section 2.10 of this Agreement, subject to the notice and cure provisions of Section 2.10.3 and Section 2.10.4 of this Agreement.

1.5.6 The deadlines for the Commencement of Construction and for Substantial Completion of the Initial Improvements, as set forth above in this Section 1.5, shall be extended one (1) day for each day of Ground Lessor Delay provided said delay is solely the result of the Ground Lessor actions. Further, the deadlines for Commencement of Construction and for Substantial Completion set forth above in this Section 1.5 shall be extended one (1) day for each day of delay caused by a Force Majeure event as agreed to by both Parties.

1.5.7 At any time during the Term, as it may be extended, Ground Lessee may make alterations, additions, or improvements to the initial Commercial Facilities, without the prior written approval of Ground Lessor; provided, however, that Ground Lessee shall provide Ground Lessor with written notice of any such work which materially deviates from the design and specifications approved by Ground Lessor which Ground Lessor in its sole and absolute discretion may approve. Notwithstanding anything in this Ground Lease to the contrary, Ground Lessee shall deliver the Commercial Facilities in accordance with design and specifications as approved by Ground Lessor and Ground Lessee's failure to do so shall be a default under the Ground Lease.

1.5.8 All Commercial Facilities constructed at any time and from time to time will be owned by Ground Lessee during the Term of this Agreement. All such Commercial Facilities constructed upon the Premises by Ground Lessee are and shall remain real property and may not be severed from this Agreement or the ground leasehold estate created hereby.

1.5.9 Ground Lessee shall pay for all water, gas, power, communications services, trash disposal and all other utilities and services supplied to the Premises and the Commercial Facilities, together with any associated taxes or surcharges.

1.6 PROJECT DEVELOPMENT BUDGET

1.6.1 In accordance with Section 1.2.2 of this Agreement, within 120 days of execution of this Agreement, Ground Lessee shall inform Ground Lessor whether the Premises are suitable or unsuitable for Ground Lessee's intended use as determined in Ground Lessee's sole and absolute discretion and whether it will terminate this Agreement with no further obligation to continue with this Agreement. If Ground Lessee elects to not terminate this Agreement, on or before the end of the Due Diligence Period, Ground Lessee shall provide Ground Lessor with a pro forma Project development and construction budget. Once the actual Project development and construction budget is prepared, it shall be the "**Construction Budget**" for purposes of this Agreement, and shall be substituted as Exhibit B to this Agreement.

1.6.2 Ground Lessee will be entitled to expend funds in accordance with the Construction Budget for the construction of the proposed Commercial Facilities. In the event Ground Lessee is

over-budget on a particular line item. Ground Lessee may reallocate excess funds from one line item to another line item so long as the Commercial Facilities are delivered in accordance with the plans approved by Ground Lessor and any governmental entity having jurisdiction over the Project. Any one or more expenses not covered by the Construction Budget which increase the total Construction Budget by more than ten percent (10%) are subject to the approval of Ground Lessor.

1.7 RENT

1.7.1 Payment of Rent will begin on the Rent Commencement Date.

1.7.2 Rent: The Annual Rent shall be the amount set forth in Section 1.1.3 of this Lease.

1.7.2.1. The Rent Commencement Date for ground rent will be the date established pursuant to Section 1.1.38 of this Lease.

1.7.2.2 Rent shall be paid to Ground Lessor in annual installments in advance for the then upcoming year on or before January 1st of each year during the Term of this Agreement or any extension thereof. Where applicable, such payments shall be accompanied by a statement setting forth the percentage or amount of Offset, defined below. Ground Lessee believes are applicable to said payment. For the initial rental payment, it shall be pro-rated for the remaining portion of the year in which Rent commences.

1.7.2.3 Ground Lessee will make all payments by check made payable to: Fulton County Finance Department, and deliver or mail said payments to:

Attention: Finance Director
For Lease # _____
141 Pryor Street S.W.
Suite 700
Atlanta, Georgia, 30303

or to such other place as Ground Lessor may direct Ground Lessee in writing. Ground Lessee may also make payments by means of wire transfer or other electronic means. Ground Lessee's payment shall include notations of the lease number and for the month(s) the Rent is intended.

1.7.2.4 In the event any required Rent payment is not made by Ground Lessee to Ground Lessor as required and remains unpaid for a period of ten (10) business days or more after Ground Lessor has provided written notice of such default to Ground Lessee, Ground Lessor will be entitled to, and Ground Lessee will pay to Ground Lessor, Interest on all amounts unpaid and which remain unpaid commencing on the day immediately following such grace period. Ground Lessor shall only be obligated to provide such written notice to Ground Lessee one (1) time within any twelve (12) consecutive month period and in the event Ground Lessee fails to timely pay Rent or any other amounts due for a second time during any such twelve (12) consecutive month period, then an immediate Event of Default shall occur as a result of such late payment and Ground Lessor

shall have no obligation or duty to provide notice of such non-payment to Ground Lessee prior to the occurrence of such Event of Default under this Ground Lease.

1.7.2.6 The annual Rent is \$27,200.00 per year, subject to the following increases: a three percent (3%) increase on each anniversary following the Effective Date.

1.7.3.7 Other considerations to the Ground Lessor include an actual cash contribution in the amount not less than One Million and No/100 Dollars \$1,000,000.00 to be made by Ground Lessee to Ground Lessor within 15 days after the end of the Due Diligence Period in the form of an irrevocable Letter of Credit with Fulton County, Georgia as Ground Lessor named as the sole beneficiary to be used at Ground Lessor's sole discretion with a financial institution having a Letter of Credit Bank Minimum Rating for senior, unsecured and unguaranteed long-term debt of "A+" from Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) or "A1" from Moody's Investors Service, Inc., for Fulton County, Georgia's use to improve services and programs to the remaining portion of Camp Truitt not part of this Agreement. So long as Ground Lessee is not in default under the terms of this Agreement and said default remains uncured as set forth in Section 2.10 below, Ground Lessee may offset (an "Offset") the Rent from the amount of this cash contribution. In the event this Agreement is terminated due to a default by Ground Lessee, any remaining amount of the cash contribution shall be deemed as non-refundable to Ground Lessee and shall be for the County's sole immediate use for the betterment of the Camp Truitt facility.

1.8 Records and Accounts.

1.8.1 Throughout the Term of this Agreement and for ten (10) years after, Ground Lessee shall keep and maintain, in accordance with the cash basis of accounting, accurate and complete books, records and accounts of Total Revenue and all items constituting deductions for purposes of calculating Net Revenue (the "Records and Accounts").

1.8.2 Ground Lessor may at any time following not less than ten (10) business days' prior written notice to Ground Lessee, have the right to cause an inspection and audit of Ground Lessee's operation of the Premises and Commercial Facilities and of Total Revenue and all items constituting allowable deductions for the two (2) immediately prior calendar years, to be made by a Certified Public Accountant of Ground Lessor's selection (but not one having a financial interest in the results of the audit). If such audit discloses that any calculation of Net Revenue previously provided to Ground Lessor by Ground Lessee for any time period under review is understated (either intentionally or unintentionally) by a margin greater than five percent (5%) of the Total Revenue for the period of review, then Ground Lessee will pay for the reasonable cost of such audit; otherwise the cost of the audit will be paid by Ground Lessor. Regardless of any margin of error, Ground Lessee shall pay to Ground Lessor the additional payments shown to be payable to Ground Lessor by Ground Lessee. In connection with such right to audit, within ten (10) business days following Ground Lessor's written request.

1.8.3 Ground Lessor's inspection and audit rights, as provided above in this Section 1.8 are also subject to the following conditions:

1.8.3.1 Provided that Ground Lessee timely makes the pertinent materials available to Ground Lessor, the inspection or audit must be conducted over a period not to exceed twenty (20) business days (provided that such days need not be consecutive) and be completed no later than thirty (30) days after Ground Lessee provides the pertinent materials; and

1.8.3.2 Ground Lessee shall not be required to provide new analyses or schedules which are not otherwise required to be kept as part of the Records and Accounts pursuant to Section 1.8.1 of this Agreement.

1.9 IMPROVEMENTS, MAINTENANCE AND REPAIR BY GROUND LESSOR

1.9.1 Ground Lessor has no direct responsibility or obligation for any maintenance, repair or replacement of the Premises or any Commercial Facilities constructed thereon, except as otherwise expressly set forth in this Agreement.

1.9.2 In connection with the Commercial Facilities, at any time and from time to time during the Term of this Agreement, Ground Lessor shall, upon the written request of Ground Lessee and within the reasonable time frame set forth in such written request and at no cost to Ground Lessor, execute and deliver such instruments as may be reasonably appropriate or necessary for (a) the grant or dedication of any easement, right of way or other property right to any public entity, public utility or service corporation or for the development of the Premises, so long as such grant or dedication does not impair the value of the Ground Lessor's fee interest in the real property underlying the Premises and is necessary and directly tied to the development of the premises, or (b) the application to any governmental authority for, or the obtaining of, approvals, consents, general plan amendments, environmental impact reports, specific plans, zoning changes, conditional uses, variances, in each instance for the purpose of permitting Ground Lessee to develop the Premises, construct the Commercial Facilities on the Premises, or make any alteration or addition to the Commercial Facilities, or (c) obtaining of one or more Loans, including such Estoppel Certificates, Non-Disturbance and Attornment Agreements, or other agreements, in customary form, as may be reasonably required by such Lenders.

1.10 CONSTRUCTION STANDARDS

Design and construction plans and specifications, and related documentation, for the Commercial Facilities (the "**Construction Plan**") must (1) be reasonably consistent with the Project Development Plan, (2) provide that the overall Project is in keeping with the plan as proposed and approved, (3) be reviewed and approved by Ground Lessor and the applicable governmental authorities with jurisdiction over the Commercial Facilities, and (4) comply with any statute, ordinance, rule or regulation of any applicable governmental agency, department or authority, whether Federal, State or local. In addition to the above, a copy of the Construction Plan shall be delivered to Ground Lessor within ten (10) days of submission to the applicable governmental authorities (if different from Ground Lessor). Ground Lessee shall keep the DR apprised of the progress of construction on a regular basis.

1.11 APPROVALS TO BE REASONABLY GIVEN

1.11.1 Unless otherwise stated herein, it is understood and agreed that all provisions of this Agreement which require approval by or the consent of Ground Lessor will receive timely response and such approvals or consents will not be unreasonably withheld, conditioned or delayed. Except with respect to an approval or consent that must be granted by the Fulton County Board of Commissioners, if Ground Lessor fails to respond in writing to Ground Lessee's written request for approval or consent (by either approving or disapproving or granting or withholding consent, as applicable) within fifteen (15) business days (or such other period as may be set forth in this Agreement with respect to a particular request), the request for approval or consent shall be deemed given without any further action on the part of either Party. In case of an approval or consent that must be granted by the Fulton County Board of Commissioners, Ground Lessor shall use reasonable efforts to have the matter heard by the Fulton County Board of Commissioners as soon as practicable following receipt of Ground Lessee's request.

1.11.2 Any dispute between Ground Lessor and Ground Lessee arising from Ground Lessor's refusal to grant any such approval or consent (or unreasonably conditioning or delaying the same) shall be resolved as follows. If disapproved within the applicable time period, Ground Lessor will inform Ground Lessee in writing of its disapproval, describing with specificity the disapproved items, actions, elements or other provisions and stating the reasons for such disapproval or requesting clarification thereof ("**Disputed Items**"). Ground Lessee will respond within fourteen (14) days with either a modification or verification (i.e., confirmation of its original position) of the Disputed Items or clarification of such Disputed Items, as the case may be. If the Parties cannot agree upon the elements requiring such approval or consent or upon the interpretation of the intent thereof, the Parties agree that the Disputed Items shall be submitted to mediation. The Parties will jointly appoint an acceptable mediator and share equally in the cost of such mediation. Either Party may commence mediation by providing to the other Party a written request for mediation. The Parties shall have ten (10) days from the time of the written request to commence mediation.

1.11.3 The Parties agree to have the principals participate in the mediation process, including being present throughout the mediation session(s). If mediation fails to resolve the Dispute Items or if the mediation is not timely commenced, the Parties may exercise all available remedies. Nothing in this section shall prevent either Party from seeking emergency legal or equitable relief pending mediation. The Parties agree that each Party will bear its own costs and expenses incurred for its attorney's fees, preparation and presentation costs for the mediation process or in pursuit of any other remedies.

1.11.4 Notwithstanding any provision to the contrary in this Agreement, in the event of an emergency, Ground Lessee may take immediate action to prevent loss, injury or damage to persons or property or to preserve the Premises and the Commercial Facilities without the prior approval of Ground Lessor, and such reasonable costs incurred in connection therewith shall be a Project Cost. Ground Lessee shall inform Ground Lessor of any such emergency, the action taken by the Ground Lessee, and any impact to the Ground Lessor's remaining premises and operation within 24 hours of the emergency.

2.1 ASSIGNMENT

2.1.1 Except as otherwise provided in this Agreement, Ground Lessee will not assign and/or transfer its rights or duties hereunder or any estate created hereunder, in whole or in part, without the prior written consent of Ground Lessor, which consent shall be not unreasonably withheld. Notwithstanding the foregoing, Ground Lessee shall construct, own and operate the Commercial Facilities for a minimum of five (5) years before any assignment or transfer of this Agreement may take place.

2.1.1.1 Ground Lessor shall provide any such required consent if the proposed Assignee presented has the following qualifications: (i) demonstrated experience in the development and construction, and management of comparable commercial real estate properties (as evidenced by at least ten (10) years of such experience or a contractual relationship with a manager or operator with such minimum experience), (ii) financial resources sufficient to be financially secure to perform Ground Lessee's obligations hereunder (as evidenced by a net worth of at least Twenty Million and No/100 Dollars (\$20,000,000.00), in constant dollars, and (iii) being a reputable business concern. For the purposes of this Section 2.1.1.1 or Section 2.1.1.2 below, a proposed Assignee will be deemed a "reputable business concern" so long as neither it nor any of its principals shall have been convicted of a felony or misdemeanor involving an act of dishonesty, moral turpitude, deceit or fraud. Ground Lessor shall provide Ground Lessor with reasonably satisfactory evidence of the proposed Assignee's net worth in a form of audited financial statements \certified by an officer or partner or owner of the proposed Assignee as being accurate. Ground Lessee and any of its successors (whether by merger, consolidation or otherwise) shall, despite any permitted assignment or sublease, remain directly and primarily liable for the performance of all of the covenants, duties, and obligations of Ground Lessee hereunder, including, without limitation, all Rent, and Ground Lessor shall be permitted to enforce the provisions of this Agreement against Ground Lessee or any assignee or sublessee without demand upon or proceeding in any way against any other person.

2.1.1.2 Upon the occurrence of an assignment or subletting, whether or not consented to by Ground Lessor, to other than individuals providing services similar to those set forth in Section 2.2 below (personal trainers, physical therapists, laundry services, food services, medical professionals, or other uses related to the permitted uses), Ground Lessee hereby assigns, transfers and conveys to Ground Lessor thirty percent (30%) of all rents or other sums (or a combination of the rent payable under such assignment or sublease, plus any bonus or other consideration therefor or incidental thereto) received or receivable by Ground Lessee under any such assignment or sublease, which are in excess of the rents and other sums payable by Ground Lessee under this Agreement (or in the case of a sublease, which are in excess of the rents and other sums payable by Ground Lessee with respect the portion of the Premises that is subleased); provided that before Ground Lessor is entitled to participation in such excess, Ground Lessee shall be entitled to recover from the excess Ground Lessee's reasonable costs and expenses actually incurred for real estate broker's commissions, tenant improvement costs and reasonable rent concessions afforded or required to assign or sublet. Ground Lessee agrees to pay such amounts required to be paid to Ground Lessee hereunder within ten (10) days after receipt by Ground Lessee.

2.1.2 Any assignment by Ground Lessee that is made without first obtaining Ground Lessor's prior written consent or approval shall be void.

2.1.3 Subject to any provisions of this Agreement to the contrary, any voluntary transfer of fifty percent (50%) or more of the beneficial ownership interests in Ground Lessee will be deemed an assignment which must be approved by Ground Lessor in its sole and absolute discretion.

2.1.3.1 Notwithstanding Section 2.1.3 above, any transfers of the beneficial ownership interests in Ground Lessee by the equity owners of Ground Lessee to each other or to any Affiliate, or to other related parties due to death and inheritance, estate or financial planning purposes or divorce, or pursuant to judicial order, will not be considered an assignment for purposes of this Section 2.1. For purposes of this Section 2.1.3.1, "**related parties**" shall mean, in the case of individuals, any persons related by blood or marriage within the second degree of consanguinity, and in the case of legal entities, their Affiliates, however such assignment will require prior Ground Lessee approval, such approval to not be unreasonably withheld.

2.1.4 The foregoing provisions in this Section 2.1 relating to assignment shall not be applicable to (a) a leasehold mortgage or deed of trust hypothecating or encumbering Ground Lessee's interest in this Agreement and the ground leasehold estate created hereby and the Commercial Facilities located on the Premises, (b) any sale by judicial foreclosure or pursuant to a power of sale by any Lender or to any transfer in lieu of such sale, or (c) to any sales or transfers by any Foreclosing Lender subsequent to a sale by judicial foreclosure or pursuant to a power of sale or any transfer in lieu of such sale. The term "**Foreclosing Lender**", whenever used herein, means any Lender or any Lender Affiliate that acquires title to the Ground Lessee's interest in this Agreement and the ground leasehold estate created hereby and the Commercial Facilities as a result of a sale by judicial foreclosure, or pursuant to a power of sale, or any transfer in lieu of such sale. The term "**Lender Affiliate**", whenever used herein, means a corporation, limited liability company or other entity which controls, is owned or controlled by, or is under common ownership or control with a Lender and such Lender has a net worth of at least Twenty Million Dollars (\$20,000,000), in Constant Dollars.

2.1.5 Ground Lessor may accept Rent or performance of Ground Lessee's obligations from any person other than Ground Lessee pending receipt of Ground Lessor's consent or approval to proposed assignment (to the extent such consent or approval is required under the terms of this Agreement).

2.1.6 Ground Lessor's consent to any assignment requiring consent shall not constitute a consent to any subsequent assignment requiring Ground Lessor's consent. In the event of any default by Ground Lessee, Ground Lessor may proceed directly against Ground Lessee, or anyone else responsible for the performance of Ground Lessee's obligations under this Agreement, including any unauthorized transferee of Ground Lessee, without first exhausting Ground Lessor's remedies against any other person or entity responsible therefor to Ground Lessor.

2.2 SUBLEASING

2.2.1 Ground Lessee may enter into Sublessees or Subtenants. All Subleases and Subtenants must be for those uses permitted in Section 1.4 above or related thereto, including but not limited to related businesses, such as personal trainers, physical therapists, laundry services, food services, medical professionals, or other uses related to the permitted uses, and must incorporate by reference all applicable provisions of this Agreement to ensure every Sublessee's operations and conduct are in compliance with such applicable provisions of this Agreement. Any Sublease shall comply with the following terms and conditions:

2.2.1.1 Any arrangements must be in the form of a written instrument and must be specifically for purposes and uses of the Premises as authorized under this Agreement.

2.2.1.2 All Sublessees will be subject to and subordinate to all terms and conditions of this Agreement.

2.3 ATTORNMENT

2.3.1 If by reason of a default on the part of Ground Lessee as lessee in the performance of the terms and provisions of this Agreement, this Agreement and the ground leasehold estate of Ground Lessee as lessee hereunder are terminated by summary proceedings or otherwise in accordance with the terms of this Agreement, Ground Lessor shall have the option to terminate or accept any subleases concurrent with the termination of this Lease. If Ground Lessor by written notice to any Sublessee accept the Sublease, such Sublessees who receive such notice will recognize Ground Lessor as the successor to Ground Lessee, and render performance hereunder to Ground Lessor as if the Sublease were executed directly between Ground Lessor and the Sublessees. Ground Lessor agrees that so long as Sublessees are not in default. It shall provide quiet enjoyment to Sublessees, and Ground Lessor agrees to be bound by all of the terms and conditions of such Sublessees. If required by any Sublessee, Ground Lessor shall execute a separate Recognition, Non-Disturbance and Attornment Agreement in form and substance reasonably acceptable to Ground Lessor and such Sublessee.

2.3.2 All Sublessees of Ground Lessee will contain the following provision:

If by reason of a default on the part of [Ground Lessee] as lessee in the performance of the terms of the provisions of the underlying ground lease [define, as needed, in Sublease] and Ground Lessor affirms the Sublease by written notice to the Sublessee, the underlying ground lease and leasehold estate of [Ground Lessee] as lessee thereunder are terminated by summary proceedings or otherwise in accordance with the terms of the underlying ground lease, the [Sublessee] will attorn to [Ground Lessor] and recognize [Ground Lessor], as lessor; provided, however, [Ground Lessor] agrees that so long as the [Sublessee] is not in default of this Sublease, [Ground Lessor] agrees to provide quiet enjoyment to the Sublessee and to be bound by all the terms and conditions of this Sublease (but in no event shall [Ground Lessor] be liable for actions taken by [Ground Lessee] prior to [Ground Lessor] coming into possession of the Premises).

2.3.3 Consistent with the terms of Section 2.3.2 above, in the event this Agreement is terminated for any reason, all Sublessees will be liable to Ground Lessor for their payment of rents and fees, and all Subleases will contain provisions to that effect.

2.3.4 In the event Lender succeeds to title to Ground Lessee's ground leasehold estate through foreclosure or otherwise, all Subleases of the Premises shall run directly to Lender and all such Sublessees shall attorn and be permitted to attorn to Lender as the successor sublessor and perform their obligations to Lender as successor to Ground Lessee under this Agreement as if the Sublease were executed directly between Lender and the Sublessee. Ground Lessor hereby agrees to subordinate Ground Lessor's own attornment rights with respect to any Sublessee contained in this Agreement to the attornment rights of Lender.

2.4 SUCCESSORS AND ASSIGNS

All covenants and conditions of this Agreement will extend to and bind the legal representatives, successors, and permitted assigns, if any, of the respective Parties hereto and all agreements with Assignees will include all provisions contained in this Agreement.

2.4 INTENTION OF PARTIES

This Agreement is intended solely for the benefit of Ground Lessor and Ground Lessee and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large, except for those provisions of this Agreement specifically applicable to and for the benefit of a Lender and any benefits Ground Lessee will provide the public. Without limiting the generality of the foregoing, in no event shall this Agreement or the Parties' relationship hereunder be deemed to constitute a partnership or joint venture between Ground Lessee and Ground Lessor.

2.5 LIENS

Provided that such liens attach during the Term of this Agreement, and subject to the rights to contest set forth in Section 2.6 below, Ground Lessee will cause to be removed any and all tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Ground Lessee or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises. Should any such lien be made or filed, Ground Lessee will bond against or discharge the same within fifteen (15) days after written request by Ground Lessor. The cost of bonding against or discharging any liens relating to construction or installation of Commercial Facilities shall be a Project Cost, unless the liens were the result of Ground Lessee's negligence or willful misconduct.

2.6 TAXES, LICENSES AND PERMITS

Ground Lessee will promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its lease of the Premises hereunder and operation of the Commercial Facilities, including any personal or real property taxes. All such taxes for the first and last years

of the Term hereof shall be equitably prorated between the Parties. Ground Lessee shall not be responsible for any of Ground Lessor's franchise, inheritance, income, succession, transfer or other tax levied on Ground Lessor or Ground Lessor's right in and to the Premises or Ground Lessor's right to receive income from the Premises, if applicable. Ground Lessee may elect, however, in Ground Lessee's or Ground Lessor's name, if needed, to contest (without payment thereof, if permitted by law) any tax, excise, levy or assessment payable by Ground Lessee hereunder in its or Ground Lessor's name. Ground Lessor, if requested in writing by Ground Lessee, shall cooperate with Ground Lessee in any such proceedings. Ground Lessee will keep current municipal, state or local licenses or permits required-for the conduct of its business.

2.7 INDEMNITY

2.7.1 Ground Lessee shall indemnify, defend and hold Ground Lessor forever harmless from and against all liability, loss, demand, judgment or other expense (including, but not limited to, defense costs, expenses and reasonable attorney's fees) imposed upon Ground Lessor by reason of injuries or death of persons (including wrongful death), damages to or loss of property, in whole or in part (including, but not limited to all or a portion of the Premises or the remaining portions of Camp Truitt), caused during and because of Ground Lessee's use or occupancy of the Premises or any actions or non-actions of Ground Lessee, its employees, agents, or other representatives, or Ground Lessee's use or alteration of the Premises or the conduct of its business or from any activity performed or permitted by Ground Lessee in or about the Premises during the Term or prior to the Effective Date if Ground Lessee has been provided access to the Premises for any purpose, or arising from any other act, neglect, fault or omission of Ground Lessee or any of its officers, agents, directors (acting within the scope of their relationship with Ground Lessee), contractors, employees, Subtenants, assignees, licensees or invitees; provided, however, that such indemnity will not apply as to gross negligence or willful misconduct of Ground Lessor, its employees, agents or representatives. The indemnification provisions of this Section shall survive the expiration or earlier termination of the Term of this Agreement, regardless of the cause of such earlier termination and is not limited or offset by any insurance requirement to be provided by Ground Lessee.

2.8 INSURANCE

2.8.1 Prior to the commencement of any improvement or equipment installation on or about the Premises, Ground Lessee will require that its construction contractor and subcontractors (or its construction contractor on behalf of itself and its subcontractors) procure and maintain insurance for such construction and installation protecting both Ground Lessee and Ground Lessor as well as the construction contractor, and such proof of insurance shall be submitted to Ground Lessor. Such insurance will provide coverage and limits as are customary in the industry. Such insurance will include, but is not limited to:

- (a) Commercial General Liability on an "occurrence" basis (or equivalent);
- (b) Automobile Liability; and

- (c) Builder's Risk equal to the replacement value of the Commercial Facilities and all construction materials and equipment; or Ground Lessee at its option may procure and maintain builders risk insurance for the replacement value of the Commercial Facilities.

2.8.2 Ground Lessee's (or its Contractor's) insurance will be primary as respects Ground Lessor and Ground Lessee, their officers, employees and volunteers acting as agents of Ground Lessor (hereinafter referred to as "volunteers"). Any other coverage available to Ground Lessor, its officers, employees, and volunteers will be excess over the insurance required by this Agreement and non-contributory.

2.8.3 Ground Lessee will maintain worker's compensation coverage in the amounts and form as required by applicable law.

2.8.4 Ground Lessee will keep insured with responsible insurance carriers any Commercial Facilities constructed by it upon and within the Premises to the extent of not less than one hundred percent (100%) of the full replacement cost of such improvements using the "Causes of Loss – Special Form" property insurance coverage (or comparable coverage), but excluding earthquake, terrorism and flood coverage, except to the extent such additional property insurance coverage is required by a Lender. Ground Lessee will also be responsible for maintaining insurance coverage for rental loss due to all covered perils under such form of property insurance (or comparable coverage), with such coverage extending for up to one (1) year.

2.8.5 Ground Lessee will obtain and keep in full force and effect a policy of commercial general liability insurance (or equivalent) on an "**occurrence**" basis. Such a policy must include, but need not be limited to, coverage for bodily injury, property damage, personal injury, Broad Form property damage, and premises and operations. Such policy shall have a limit of no less than Three Million Dollars (\$3,000,000) per occurrence and include the Ground Lessor as an additional insured.

2.8.6 Ground Lessee will maintain Automobile Liability coverage with a limit of no less than One Million Dollars (\$1,000,000) for claims for damage because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicles whether owned, hired or non-owned.

2.8.7 All required insurance coverage as stated in this Section 2.8 will be evidenced by one or more current certificates of insurance. Such certificates will include, but will not be limited to, the following:

2.8.7.1 All certificates for each insurance policy are to be signed by a person authorized by that insurer.

2.8.7.2 Each insurance company providing the coverage required in this Section 2.8 shall have a Financial Strength Rating of "A" or better, and a Financial Size Category of "VIII" or larger, based on the most recent published ratings of the A.M. Best Company (or equivalent).

2.8.7.3 Ground Lessee (or its contractor) will furnish renewal certificates for the required insurance during the period of coverage required by this Agreement. Ground Lessee (or its contractor) will furnish renewal certificates for the same insurance coverages as required in this Agreement, and Ground Lessee's failure to do so will constitute a Default in accordance with the terms herein.

2.8.7.4 Ground Lessor, its officers, employees and volunteers must be covered as additional insureds with respect to liability arising out of the activities by or on behalf of the named insured in connection with this Agreement.

2.8.7.5 All insurance coverage maintained by Ground Lessee (or its contractor) must be endorsed to provide that the amount of coverage afforded to Ground Lessor by the terms of this Agreement will not be suspended, voided, or canceled except after thirty (30) days' prior written notice to Ground Lessor, and Ground Lessee's (or its contractor's) failure to do so will constitute a Default in accordance with the terms herein.

2.8.7.6 Any deductible, as it relates to coverage provided under this Agreement, will be fully disclosed on the certificates of insurance. Any deductible provided will be reasonable and customary for this type of risk, except that the deductibles for commercial general liability and commercial automobile liability insurance shall not exceed \$10,000 per occurrence, unless otherwise agreed to by Ground Lessor.

2.8.7.7 If aggregate limits are imposed on the insurance coverage, then the amounts of such limits must be not less than Three Million Dollars (\$3,000,000) per occurrence or per accident. The minimum aggregates must be fully disclosed and the amount entered on the required certificate of insurance.

2.8.7.8 The insurance company issuing the policy or policies required under this Agreement shall have no recourse against Ground Lessor (including its agents and agencies) for payment of any premiums or for assessments under any form of policy.

2.8.7.9 Any and all deductibles under the above-described insurance policies shall be paid by Ground Lessee

2.8.8 Without affecting any other rights or remedies, Ground Lessee hereby releases and relieves Ground Lessor, and waives its entire right to recover damages against Ground Lessor, for loss of or damage to the Commercial Facilities arising out of or incident to the perils required to be insured against herein. The effect of such release and waiver is not limited by the amount of insurance carried or required or by any deductibles applicable thereto. If such waiver of subrogation is not already a feature of Ground Lessee's insurance policies, Ground Lessee agrees to cause their property damage insurance carriers to waive any right to subrogation that such companies may have against Ground Lessor.

2.8.9 If Ground Lessee fails to maintain any of the insurance coverages required herein, then Ground Lessor will have the option to declare Ground Lessee in breach, subject to the notice and cure rights contained in Sections 2.10 and 2.14 below, or Ground Lessor may (without

obligation) purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverages may be maintained. In such event, Ground Lessee shall immediately reimburse Ground Lessor for the cost of same plus Interest, commencing from the date the amount is paid by Ground Lessor.

2.8.10 The minimum insurance limits set forth in this Section 2.8 are sufficient as of the Effective Date. It is understood that due to the effect of inflation and/or other factors, it may be necessary for Ground Lessor to raise the minimum insurance limits to protect its interests. Ground Lessee hereby agrees to maintain such insurance limits as may be reasonably required by Ground Lessor; provided, however, that any such increases will not exceed increases in insurance limits for like properties and operations in the market area. All costs in obtaining and maintaining the insurance required in this Section 2.8 are a Project Cost.

2.8.11 Ground Lessee, at its option, may satisfy its obligations hereunder to insure within the coverage of any so-called blanket policy or policies of insurance which it now or hereafter may carry, by appropriate amendment, rider, endorsement or otherwise; provided, however, that the interests of Ground Lessor shall thereupon be as fully protected by such blanket policy or policies as they would be if this option to so insure by blanket policy were not permitted.

2.9 DAMAGE AND DESTRUCTION

2.9.1 In the event of damage or destruction or loss of eighty percent (80%) of the Commercial Facilities by any cause ("**Casualty**"), the following provisions shall apply:

2.9.1.1 In the event of an uninsured Casualty and the damage, destruction, or loss is not capable of being repaired or restored within thirty (30) days, Ground Lessee will have the option to terminate this Agreement, which option is exercisable by written notice to Ground Lessor within ninety (90) days after the occurrence of such event. As used in this Section 2.9, "**uninsured**" means either (a) a Casualty that is not a covered peril under the terms of the applicable insurance required to be maintained by Ground Lessee hereunder, or (b) a Casualty that is a covered peril under such insurance but the proceeds of such insurance are, for whatever reason, insufficient to cover the reasonably anticipated cost of the repair or restoration work (as determined without regard to any deductible amount under any such policy).

2.9.1.2 In the event of an insured Casualty and the damage, destruction, or loss is not capable of being repaired or restored within one hundred twenty (120) days, Ground Lessee will have the option to terminate this Agreement, which option is exercisable by written notice to Ground Lessor within ninety (90) days after the occurrence of such event. As used in this Section 2.9, "**insured**" means a Casualty that is a covered peril under the terms of the applicable insurance required to be maintained by Ground Lessee hereunder, and the proceeds of such insurance are or will be available for Ground Lessee's use.

2.9.2 Any exercise by Ground Lessee of a termination option set forth above shall require the prior written consent of any Lender. In the event Ground Lessee does not exercise such termination option or in the event that such damage, destruction, or loss (whether uninsured or insured) is capable of being repaired within the applicable time periods specified above, then

Ground Lessee shall repair, restore, replace, rebuild, or alter the same (the "Restoration Work") as nearly as possible to the value, condition, and character existing immediately prior to such damage or destruction. Notwithstanding the foregoing, such requirement to perform the Restoration Work shall be void and of no further force or effect if such Casualty occurs during the last ten (10) years of the Term of this Agreement and if Ground Lessee, in the exercise of its sole discretion, elects to terminate this Agreement by providing written notice to Ground Lessor within ninety (90) days after the occurrence of such event. In the event Ground Lessee does exercise such termination option, then all available insurance proceeds shall be disbursed according to the following priority: first, to any Lender, according to its rights under the applicable Loan documents; second, to repayment of Advances; and third, one-half of any remaining insurance proceeds to Ground Lessor and one-half to Ground Lessee; provided, however, in the event no insurance proceeds are to be made available unless they are used to carry out the Restoration Work, then Ground Lessee shall assign to Ground Lessor all of Ground Lessee's rights and benefits under the applicable insurance policy.

2.9.3 If Ground Lessee does not exercise any termination option provided above, Ground Lessee shall commence any Restoration Work required by the terms of this Section 2.9 within fifteen (15) days following receipt of all required governmental approvals and permits, the application for which shall be commenced within fifteen (15) days following Ground Lessee's receipt (or reasonably adequate assurance of the receipt) of sufficient insurance proceeds to perform the Restoration Work, less any deductible amount under the policies, which shall be paid by Ground Lessee (in case of an insured Casualty), and shall diligently and in good faith prosecute such Restoration Work to completion.

2.9.4 Notwithstanding any language to the contrary herein, the disposition of the proceeds of any and all available insurance proceeds shall be governed by the terms of the Lender's Loan documents and not by the terms of this Agreement, to the extent they are inconsistent.

2.10 TERMINATION BY GROUND LESSOR

2.10.1 Default by Ground Lessee.

Ground Lessee will be considered in default (following written notice of default where applicable by Ground Lessor and failure to cure) as lessee under this Agreement in the event of any one or more of the following occurrences:

2.10.1.1 The liquidation under federal bankruptcy statutes which causes the discontinuance of the fulfillment of any required provision of this Agreement by Ground Lessee.

2.10.1.2 Ground Lessee fails to pay the Rent or other charges required by this Agreement when the same are due and the continuation of such failure for a period of ten (10) days after written notice thereof from Ground Lessor to Ground Lessee.

2.10.1.3 Ground Lessee voluntarily abandons any of the Premises for a period of sixty (60) days following written notice from Ground Lessor to Ground Lessee.

2.10.1.4 Ground Lessee fails to fulfill any of the other terms, covenants, or conditions set forth in this Agreement if such failure continues for a period of more than sixty (60) days after written notice thereof from Ground Lessor unless cured as provided below.

2.10.2 Cure. Subject to the lender protection provisions of Section 2.14 below, Ground Lessee will be considered in default of this Agreement if Ground Lessee fails to fulfill any of the terms, covenants, or conditions set forth in this Agreement following the expiration of the cure period and/or written notice set forth in this Section 2.10.1 above, except that if the nature of such default is such that the same cannot reasonably be cured within the specified cure or notice period, Ground Lessee shall not be deemed to be in default if Ground Lessee shall have commenced in good faith to perform whatever may be required for fulfillment within the specified cure or notice period after receipt of notice and continues such performance to completion and without interruption except as a result of a Force Majeure event.

2.10.3 Termination for Default by Ground Lessee. Subject to the Lender protection provisions of Section 2.14 below, if default is made by Ground Lessee as described Section 2.10.1 above, and such default is not cured as provided in such sections, Ground Lessor may elect to terminate this Agreement following sixty (60) days' prior written notice to Ground Lessee.

2.10.4 Ground Lessor hereby agrees to give Lender at least thirty (30) days prior notice of any intended amendment, modification, revocation, surrender, cancellation or termination of this Agreement. Ground Lessor further agrees that it will not consent to or accept any surrender, revocation, cancellation or other termination by Ground Lessee, nor agree to any modification of this Agreement, without Lender's prior written approval. No expiration or early termination of this Agreement shall terminate or extinguish this Agreement without the prior written consent of Lender, unless the termination arises after a Ground Lessee default and Lender has been given the notice and cure rights specified under this Section 2.10 and Section 2.14 of this Agreement, and has failed to cure in accordance therewith.

2.10.4.1 In the event of any termination for default by Ground Lessee, Ground Lessor will have the right to enter upon the Premises and take possession of same. Redelivery and disposal of the Commercial Facilities and other property located at the Premises will be governed by Section 2.13 of this Agreement.

2.10.5 Notwithstanding the foregoing, upon default of Ground Lessee and subject to the Lender protection provisions of Section 2.14 below, Ground Lessor has the right to pursue any rights or remedies available to Ground Lessor at law or in equity. All such rights and remedies shall be cumulative and not alternative.

2.11 TERMINATION BY GROUND LESSEE

2.11.1 Default by Ground Lessor. Ground Lessor will be considered in default as lessor under this Agreement if Ground Lessor fails to fulfill any of the terms, covenants or conditions set forth in this Agreement if such failure shall continue for a period of more than sixty (60) days after delivery by Ground Lessee of a written notice of such breach or default unless cured as provided below.

2.11.2 Ground Lessor will not, however, be considered in breach of this Agreement if the nature of such default is such that the same cannot reasonably be cured within the sixty (60) day period, and Ground Lessor shall have commenced in good faith to perform whatever may be required for fulfillment within the specified cure period after receipt of notice and continues such performance to completion and without interruption except as a result of a Force Majeure event.

2.11.3 Termination for Default by Ground Lessor. If default is made by Ground Lessor as described in Section 2.11.1 above, Ground Lessee may elect to terminate this Agreement following sixty (60) days' prior written notice to Ground Lessor, provided, however, that this Agreement may be terminated only following a Ground Lessor default (and the failure to cure within the applicable cure period therefor).

2.11.3.1 In the event of the termination for default by Ground Lessor, redelivery and disposal of improvements will be as described in Section 2.13 of this Agreement.

2.11.4 Ground Lessee reserves the rights to any remedies it may have at law or in equity arising from Ground Lessor's breach of this Agreement. All such rights and remedies shall be cumulative and not alternative.

2.12 WAIVERS

No waiver of default by either Party hereto of any of the terms, covenants or conditions hereof to be performed, kept or observed will be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, conditions herein contained to be performed, kept and observed. Neither Party hereto may waive any provisions regarding Lender's rights without such Lender's prior written consent.

2.13 REDELIVERY AND DISPOSAL OF IMPROVEMENTS AT TERMINATION

2.13.1 Ground Lessee covenants that at the expiration of the Term or earlier termination of this Agreement, it will quit and surrender the Premises in good repair and condition, excepting reasonable wear and tear, acts of God, the public enemy, the action of the elements, or a Force Majeure event as contemplated in Section 3.2 below.

2.13.2 Title to and ownership of the Commercial Facilities shall remain in Ground Lessee until the expiration of the Term or earlier termination of this Agreement. In either event, Ground Lessee will leave in place all of the permanent improvements included within the Commercial Facilities in their then existing condition, whereupon title and ownership will pass from Ground Lessee and vest in Ground Lessor without any further consideration required from Ground Lessor. Ground Lessee agrees that it will thereupon immediately execute, acknowledge and deliver to Ground Lessor any documents or instruments pertaining to such transfer of title as may be reasonably requested in writing by Ground Lessor. For purposes of this Section 2.13.2, the term "**permanent improvements**" means all paving, landscaping, buildings, structures and related appurtenances, and building systems.

2.13.3 Upon the expiration of the Term, including any extension term, or earlier or termination of this Agreement, Ground Lessee shall have the right (but not the obligation) to remove or cause to be removed from the Premises, within sixty (60) days following either event, all equipment, trade fixtures, and personal property belonging to Ground Lessee or any Subtenant. For purposes of this Section 2.13.3, the words **“equipment, trade fixtures and personal property”** will include, but not be limited to, (i) signs (electrical or otherwise), (ii) all equipment used in connection with the conduct of Ground Lessee’s business whether or not such equipment is attached to the Premises or the Commercial Facilities, (iii) any other mechanical device, and (iv) all other miscellaneous equipment, furnishings and fixtures installed on or placed on or about the Premises and used in connection with Ground Lessee’s business thereon; provided, however, that such words shall not include elevators, escalators, plumbing systems, electrical systems, life safety systems, boilers, heating, ventilating and air conditioning systems, floor and wall coverings, ceiling lights, built-in shelving and cabinets, doors, windows, outside walls and fencing, and landscaping. All equipment, trade fixtures and personal property that are not removed within sixty (60) days following the end of the Term shall become the property of Ground Lessor.

2.14 FINANCING

2.14.1 Notwithstanding anything to the contrary contained in this Agreement, Ground Lessee will have the right at any time during the Term hereof to execute and deliver to any or all of its Lenders any documents evidencing a Loan and which will operate as collateral security for any Loan or Loans made, even if such documents result in a form or type of conveyance or assignment of the ground leasehold estate created by this Agreement. It is hereby agreed by Ground Lessor that Ground Lessee or any such Lender(s) will have the right to immediately record such document or document(s), or memorandum or other evidence thereof, with an appropriate public official or officials. Ground Lessee shall provide the DR with copies of all such recorded Loan documents promptly following recording. Ground Lessee is also hereby granted the right to refinance any existing Loan with any Lender at prevailing market terms (including without limitation, loan-to-value and interest rates), provided that such refinanced Loan’s amortization period does not exceed the remaining duration of the Term. Any Lender which will succeed to Ground Lessee’s interest hereunder will so succeed subject to all the terms and conditions of this Agreement. Ground Lessor agrees to cooperate in executing any documents reasonably requested of Ground Lessor by Ground Lessee or Lender in connection with any Loan; PROVIDED HOWEVER, UNDER NO CIRCUMSTANCES SHALL GROUND LESSOR BE OBLIGATED TO ENCUMBER ITS FEE INTEREST IN THE PREMISES TO SECURE ANY LOAN, AND, NOTWITHSTANDING ANY TERM OR PROVISION OF ANY SUCH LOAN OR THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL ANY SUCH LOAN CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF GROUND LESSOR NOR SHALL GROUND LESSOR BE LIABLE IN ANYWAY FOR THE PAYMENT OF ANY PORTION OF THE INDEBTEDNESS EVIDENCED BY SUCH LOAN OR FOR THE PAYMENT OR PERFORMANCE OF ANY OBLIGATION THEREUNDER OR SECURED THEREBY. NOTHING IN THIS AGREEMENT SHALL OPERATE AS A PLEDGE OF GROUND LESSOR’S CREDIT WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION.

2.14.2 The amount of any Loan shall include any fees, including loan points, a capital market fee (equal to twenty (20) basis points on the Loan amount and payable to Ground Lessee or an Affiliate of Ground Lessee), legal fees, loan broker fees, closing costs, and other Loan charges (monthly or otherwise) payable to any Lender or, in the case of loan and capital market fees, to Ground Lessee or an Affiliate of Ground Lessee, provided however that any such fees payable to Ground Lessee or an Affiliate of Ground Lessee, together with any Loan related fees payable to third parties, shall not exceed the costs of obtaining a similar loan in the market. The principal amount of any such Loan shall not be amortized over more than thirty (30) years (or the then remaining period under the Term, if shorter). Any Loan obtained by Ground Lessee shall be at commercially reasonable interest rates, points, fees, closing costs, and other terms and conditions.

2.14.3 Ground Lessor will deliver to any such Lender via nationally-recognized commercial courier or certified mail, return receipt requested, written notice of any default of Ground Lessee under the terms of this Agreement and such notice will specify the nature of the default. Before terminating this Agreement, Ground Lessor will allow such Lender to cure or commence to cure any default of Ground Lessee in accordance with Section 2.10 above and this Section 2.14. The time period to cure any default of Ground Lessee will commence when such notice is received by Lender. Lender and any person designated by Lender shall have and are hereby granted the right to enter upon the Premises at any time and from time to time for the purpose of taking any cure action permitted under this Agreement. In the event Ground Lessee fails to timely cure a default after receipt of written notice and expiration of any applicable cure period, Ground Lessor agrees to provide any Lender with a second written notice and provide such Lender with an additional sixty (60)-day cure period. Ground Lessor will not have the right to exercise any of its remedies under this Agreement so long as Lender is diligently working toward the cure of a non-monetary default. If such non-monetary is of a nature which is incapable of being cured by Lender, Ground Lessor agrees not to exercise its remedies arising from such default if (a) Lender notifies Ground Lessor in writing within such additional sixty (60) day cure period that Lender intends to foreclose its mortgage or deed of trust and Lender commences and diligently pursues such foreclosure within thirty (30) days following Lender's notice to Ground Lessor; and (b) Lender makes all payments due by Ground Lessee under this Agreement through the date of foreclosure, to the extent the amount of such payments can be ascertained by Lender.

2.14.4 Any default by Ground Lessee in the payment of money as required under the terms of this Agreement may be cured by Lender in accordance with the terms of Section 2.10 of this Agreement (and subject to the notification and cure provisions of Section 2.10) and this Section 2.14, and Ground Lessor will accept any such payment or cure from such Lender during the term of Lender's Loan to Ground Lessee.

2.14.4.1 Should Ground Lessee default under the terms of this Agreement and should the default be such that it cannot be cured by the payment of money, Ground Lessor will accept payments of Rent from such Lender (to the extent the amount of such payment can be ascertained by Lender) and this Agreement will not terminate, but will remain in full force and effect, pending Lender's cure of such default within the time periods described herein or resort to foreclosure under its mortgage, deed of trust, security deed, or other security instrument, as provided in Section 2.14 above.

2.14.5 Notwithstanding the provisions of Section 2.14.4.1 above, should Ground Lessee default under the terms of this Agreement and should the default be such that it cannot be cured by the payment of money and the default (in the reasonable judgment of Ground Lessor) affects the security or safety of the Premises and if Lender does not wish this Agreement to terminate, then upon written notice from Ground Lessor, Lender will have the option to cure immediately or to commence to cure the default during the cure period available to Ground Lessee under Section 2.10.2 of this Agreement and will not need to wait until the expiration of Ground Lessee's cure period.

2.14.6 If any default under this Agreement has been cured by a Lender or an Assignee thereof, Ground Lessor agrees that upon completion of any foreclosure proceedings or sale under the mortgage, deed of trust, security deed, or other security instrument securing the Loan, or upon delivery of a deed in lieu of foreclosure (a "**Foreclosure Transfer**"), (i) the Foreclosing Lender (as defined in Section 2.1.4 above), (ii) a third party who purchases at a Foreclosure Transfer, or (iii) a third party who purchases from the Foreclosing Lender subsequent to a Foreclosure Transfer (the parties described in clause (ii) or (iii) shall be referred to herein as "**Permitted Foreclosure Assignees**"), shall be recognized by Ground Lessor as the ground lessee under the terms of this Agreement for all purposes for the remaining Term hereof. The leasehold interest in the Premises of the Foreclosing Lender or such Permitted Foreclosure Assignee will not be adversely affected or terminated by reason of any non-monetary default occurring prior to the completion of such proceedings or sale, provided such default has been promptly remedied (unless the non-monetary default is of a nature which is incapable of cure), or if such default requires possession to cure, provided such Foreclosing Lender or Permitted Foreclosure Assignees promptly commences to cure upon taking possession of the Premises.

2.14.7 A Lender shall not become liable under the terms and obligations of this Agreement unless and until it assumes the obligations and is recognized by Ground Lessor as ground lessee under this Agreement (i.e., until it becomes a Foreclosing Lender) and will be liable only so long as such Lender maintains ownership of the ground leasehold estate and recourse to such Lender.

2.14.8 Within fifteen (15) days after a written request by Ground Lessee or any Lender, Ground Lessor, through the DR, will execute, acknowledge and deliver to Ground Lessee or such person or entity as Ground Lessee designates, an estoppel certificate containing the terms generally described below. Without limiting the generality of the foregoing, the estoppel certificate shall state, in part:

(a) That this Agreement is the only agreement between Ground Lessor and Ground Lessee concerning the Premises and is unmodified and in full force and effect in accordance with its terms (or if there have been modifications, that this Agreement is in force and effect as modified, and identifying the modification agreements, or if this Agreement is not in full force and effect, that it is not);

(b) The commencement and expiration dates of the term of this Agreement and the date to which Rent has been paid to Ground Lessor under this Agreement;

(c) Whether or not there is an existing default by Ground Lessee in the payment of Rent or any other sum of money under this Agreement, and whether or not there is any other existing default by either Party under this Agreement with respect to which a notice of default has been served, and if there is such a default specifying its nature and extent;

(d) Whether or not there are any set-offs, defenses or counterclaims against enforcement of the obligations to be performed by Ground Lessor under this Agreement;

(e) Such other information and terms that a Lender or a Lender's Assignee may reasonably request.

2.14.9 The bankruptcy or insolvency of Ground Lessee will not operate or permit Ground Lessor to terminate this Agreement as long as all Rent or other monetary payments required to be paid by Ground Lessee continue to be made and other required obligations are performed in accordance with the terms of this Agreement.

2.14.9.1 The rejection of this Agreement by a trustee-in-bankruptcy of Ground Lessor shall not affect or impair the lien of any mortgage or deed of trust in favor of Lender or Lender's rights with respect to this Agreement. In addition to the ground leasehold estate created hereunder in favor of Ground Lessee and all other interest specified in any mortgage or deed of trust in favor of Lender, the lien of such mortgage or deed of trust shall attach to, and shall encumber Ground Lessee's right to use and possession of the Premises if a trustee-in-bankruptcy of Ground Lessor rejects this Agreement. This Agreement shall not be treated as terminated by reason of Ground Lessor's rejection of this Agreement pursuant to Section 365(h)(1) of the federal Bankruptcy Code without Lender's prior written consent, and any such purported termination without Lender's prior written consent shall be null and void and of no force and effect.

2.14.10 In the event that Ground Lessor or Ground Lessee terminates this Agreement, whether as a result of the rejection of this Agreement pursuant to the federal Bankruptcy Code or otherwise, then, provided that Lender has cured any monetary defaults under this Agreement (including the payment of Rent due, to the extent the amount of such Rent can be ascertained by Lender), Lender shall have the right within thirty (30) days after termination of this Agreement to request in writing, and upon such request Ground Lessor shall execute a new lease covering the Premises for the remaining Term and containing the same terms and conditions as set forth herein. Any such new lease agreement shall have the same title priority as this Agreement and shall be subject only to the exceptions to title having priority over this Agreement or such additional exceptions to which such Lender has consented in writing. In the event Ground Lessor and such Lender enter into any such new lease agreement, title to the Commercial Facilities shall automatically vest in such Lender.

2.14.11 Following any Foreclosure Transfer, Ground Lessor shall recognize the Foreclosing Lender (as defined in Section 2.1.4 above) or the Permitted Foreclosure Assignee (as defined in Section 2.14.6 above), as applicable, as the ground lessee under this Agreement, without further consent or approval by Ground Lessor.

2.14.11.2 In the event of a default under Lender's mortgage, deed of trust, security deed, or other security instrument, Lender or Lender Affiliate shall have the right, after giving notice to Ground Lessor, to oust Ground Lessee and take possession of the Premises in accordance with the terms of Lender's loan documents. Such ouster shall not constitute a termination of this Agreement, but shall be deemed an exercise of the assignment of this Agreement to Lender, which assignment shall not require further consent or approval by Ground Lessor.

2.14.11.3 Notwithstanding the above provisions of this Section 2.14 to the contrary, the following shall apply: (a) a Permitted Foreclosure Assignee shall pay the same rental amount that would have been payable by the Foreclosing Lender and shall be subject to the terms and provisions of this Agreement; and (b) Ground Lessor shall not, without Lender's prior written consent, which may be withheld in its sole and absolute discretion, take or permit any action to terminate this Agreement or merge the ground leasehold estate into the fee estate prior to payment of all obligations owing in connection with the Loan. For purposes of this Section 2.14, "**ground leasehold estate**" shall mean the leasehold estate granted to Ground Lessee by Ground Lessor pursuant to this Agreement.

2.14.12 Any mortgage, security deed, lien, encumbrance, deed of trust, or other security instrument placed by Ground Lessor on the fee title to the Premises shall be subordinate to (a) this Agreement (and any replacement to or amendment of this Agreement), and (b) any mortgage, deed of trust, security deed, or other security instrument in favor of Lender encumbering the ground leasehold estate. Ground Lessor shall obligate the holder of any such fee mortgage, security deed, lien, encumbrance, deed of trust, or security instrument to execute and acknowledge any documentation reasonably requested in writing by Ground Lessee or any Lender to confirm such subordinate status.

2.14.13 In connection with Lender's cure rights in this Section 2.14 and prior to any termination of this Agreement by Ground Lessor, any Lender shall be allowed sufficient time necessary to complete any foreclosure action, including delays due to official restraint (including by law, process or injunction issued by a court), so long as such Lender is making payments required by this Agreement (to the extent the same can be reasonably ascertained by Lender) prior to acquiring Ground Lessee's ground leasehold estate. Lender shall have the right to suspend or discontinue foreclosure proceedings at any time if Ground Lessee has cured its defaults under its Loan.

2.14.14 Any Lender shall have the right to participate in any settlement or adjustment of losses under property insurance policies maintained by Ground Lessee under this Agreement. Such Lender shall be named as a loss payee (with respect to property insurance required of Ground Lessee under this Agreement) or additional insured with respect to liability insurance required of Ground Lessee under this Agreement) in accordance with any Loan documents executed by Ground Lessee. In the event any proceeds of such insurance policies are to be distributed, Ground Lessor and Lender agree to be bound by the provisions of the Loan documents executed by Ground Lessee in favor of Lender concerning distribution of insurance proceeds.

2.14.15 Whenever in this Agreement, Ground Lessee shall have the right to request any information, statements, documents, or anything else whatsoever from Ground Lessor. Lender shall have the right to request the same from Ground Lessor, and such information, statements, documents and other material requested in writing by Lender shall thereafter be given to Lender as if Ground Lessee had requested the same. In addition, Ground Lessor shall furnish Lender with copies of all notices of default and notices of intent served on Ground Lessee under this Agreement concurrently with any delivery to Ground Lessee.

2.14.17 Ground Lessor agrees to provide Ground Lessee and Lender prior written notice of its intent to assign, transfer, convey or sell Ground Lessor's interest in this Agreement and/or the fee interest in the Premises and will furnish Lender and Ground Lessee with the name and address of such assignee, transferee, grantee or buyer. Any assignment, transfer, conveyance or sale of Ground Lessor's interest in this Agreement and/or the fee interest in the Premises to a co-tenancy must have a sole managing member or authorized agent to sign on behalf of such co-tenancy. Concurrent with the closing of any assignment, transfer, conveyance or sale of Ground Lessor's interest in this Agreement and/or the fee interest in the Premises, Ground Lessor shall provide Ground Lessee and Lender with an estoppel certificate as contemplated by Section 2.14.8 above.

2.14.18 Lender shall have the right to participate in any alternative dispute resolution proceedings involving Ground Lessor and Ground Lessee in connection with any matter under this Agreement materially affecting Lender's interest.

2.14.19 Ground Lessor shall cooperate in amending this Agreement from time to time to add any provision which may reasonably be requested in writing by any Lender or prospective lender for the purpose of implementing the Lender protection provisions contained in this Agreement and allowing such Lender or prospective Lender reasonable means to protect or preserve the lien of its security documents and the value of its security. Ground Lessor agrees to execute and deliver (and to acknowledge if necessary for recording purposes) any agreement necessary to effect any such amendment. Notwithstanding the foregoing, no such amendment shall in any way affect or change the Term of this Agreement or the Rent or other amounts payable to Ground Lessor under this Agreement or encumber the fee interest of Ground Lessor in the Premises. Notwithstanding the foregoing, the Parties acknowledge and agree that any amendment of this Agreement is subject to the approval of the Fulton County Board of Commissioners.

2.14.21 To the extent any of the other terms of this Agreement are inconsistent with the terms of this Section 2.14, the terms of this Section 2.14 shall control.

2.15 EMINENT DOMAIN

2.15.1 If all or substantially all of the Premises are taken under the power of eminent domain or sold under the threat of that power (a "Complete Taking"), this Agreement shall terminate and all sums, including damages and interest, awarded for the fee or the leasehold or both shall (i) be delivered to Ground Lessor and Ground Lessee (or to any Lender), respectively, if such award has been apportioned between Ground Lessor and Ground Lessee by such condemning authority, or (ii) be deposited promptly with an escrow agent selected by Ground

Lessor if there is only a single award, to be distributed and disbursed as follows (and in the following order of priority):

(a) First, to any Lender an amount equal to the balance then due (including principal, interest, and all other charges payable under the Loan documents) on account of the Loan;

(b) Second, the remaining balance of the award shall be divided between Ground Lessor and Ground Lessee as follows:

(i) Ground Lessor shall be entitled to the portion of damages related to taking of the real property and any improvements made to the Premises by Ground Lessor; and

(ii) Ground Lessee shall be entitled to any damages for the taking of its leasehold estate or the diminution of the value thereof and for any leasehold improvements to the Premises or material alterations, structural changes or repairs thereto at Ground Lessee's expense, regardless of when made. Ground Lessee shall be entitled to claim an award for the unamortized balance of Ground Lessee's cost thereof, and if the condemning authority does not make a separate award therefor Ground Lessor shall assign a portion of its award equal to such damages to Ground Lessee. In addition, Ground Lessee shall be entitled to claim an award for loss of business, damage to merchandise and fixtures, removal and reinstallation costs and moving expenses.

2.15.1.1 In the event of a Complete Taking, Ground Lessee's Lender shall be entitled to receive all sums due to Lender under the Loan documents evidencing and securing the Loan secured by Ground Lessee's ground leasehold estate and the Commercial Facilities. Notwithstanding and in replacement of the foregoing, if a Foreclosing Lender or a Permitted Foreclosure Assignee has succeeded to the interest of Ground Lessee as of such Complete Taking, such party shall be entitled to receive the amount which was due to it on the date of the Foreclosure Transfer or purchase from the Foreclosing Lender, as applicable

2.15.1.2 In the event of a taking of less than all or substantially all of the Premises which Ground Lessee reasonably believes to be, in effect, a Complete Taking, Ground Lessee may, by written notice to Ground Lessor approved by all Lenders, elect to treat such taking as a Complete Taking, provided that such notice is given Ground Lessor within one hundred twenty (120) days following Ground Lessee's receipt of written notice of such taking. If Ground Lessee fails to make such timely election, such taking shall be deemed to be a Partial Taking for all intents and purposes.

2.15.2 If less than all or less than substantially all of the Premises are taken under the power of eminent domain or sold under threat of that power (a "**Partial Taking**"), this Agreement shall remain in full force and effect as to the portion of the Premises remaining. In the event of a Partial Taking, all sums, including damages and interest, awarded for the fee or the leasehold or

both shall (i) be delivered to Ground Lessor and Ground Lessee (or to any Lender), respectively, if such award has been apportioned between Ground Lessor and Ground Lessee by such condemning authority, or (ii) be deposited promptly with an escrow agent selected by Ground Lessor if there is only a single award, to be distributed and disbursed as follows:

(a) First, to taxes constituting a superior lien on the portion of the Premises taken;

(b) Second, to restore (to the extent possible) the remaining portion of the Premises to return it to the value, condition and character that existed immediately prior to the Partial Taking, taking into consideration the amount of land remaining after such Partial Taking;

(c) Third, to any Lender to the extent that the security for its Loan has been impaired as a result of the Partial Taking or as required by the Loan documents, whichever amount is greater;

(d) Fourth, to Ground Lessor an amount equal to the then present value of Ground Lessor's interest in the income stream from rental payments attributable to the portion of the Premises being taken, measured by the diminution in rental payments, plus an amount equal to the then present value of the reversionary interest of Ground Lessor at the expiration of this Agreement in that portion of the real property underlying the Premises that is taken in such Partial Taking; and

(e) Fifth, the balance of the award to Ground Lessee, subject to the terms of Section 1.1.51 above.

Sums being held by an approved escrow agent pending disbursement (whether pursuant to this Section 2.15.2 or Section 2.15.1 above) shall be deposited in one or more federally insured-interest bearing account(s) and, upon disbursement, each Party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of such sums.

2.15.3 Notwithstanding any language to the contrary in this Section 2.15, in the event of a Partial or Complete Taking of the Premises, Ground Lessor and Ground Lessee agree to be bound by the provisions of the Loan documents executed by Ground Lessee in favor of Lender concerning condemnation process and proceeds (or awards in lieu thereof), including the right of Lender to recover from such condemnation proceeds (or awards) an amount equal to the then unpaid balance of its Loan.

2.15.4 Ground Lessor, Ground Lessee and any Lender that would be affected by either a Complete or Partial Taking shall each have the right to represent its respective interest in each proceeding or negotiation with respect to any taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the prior written consent of Ground Lessor, Ground Lessee and Lender, which consent shall not be unreasonably withheld. Ground Lessor and Ground Lessee agree to execute and deliver to the other any instruments that may be required to effectuate or facilitate any of the

provisions of this Section 2.15.4, provided that such execution or delivery will not adversely affect the right of such Party to receive just compensation for any loss in such negotiation or proceeding.

2.15.5 Unless the respective values are determined by the court in the eminent domain proceeding, the values of the interests for which Ground Lessor and Ground Lessee are entitled to compensation in the event of a Complete or Partial Taking shall be determined by the mutual written agreement of Ground Lessor and Ground Lessee. If Ground Lessor and Ground Lessee are unable to agree on the value of their interests within thirty (30) days after the deposit of the sums awarded with the escrow agent, then within thirty (30) days thereafter, each Party shall submit its good faith estimate of the value of such interests as of the date of the Complete or Partial Taking. If the higher of such estimates is not more than 105% of the lower of such estimates, the values shall be the average of the submitted estimates. If otherwise, then unless the Parties agree to submit the matter to mediation the dispute shall be submitted for resolution to the court with jurisdiction over the eminent domain proceeding.

3.1 ENVIRONMENTAL POLICY

3.1.1 Violation of Environmental Laws

During the Term, Ground Lessee will not cause or permit any Hazardous Material to be released on, under or about the Premises by Ground Lessee, their agents, employees, and contractors in quantities or concentrations that exceed the applicable regulatory cleanup standards under the Environmental Laws.

3.1.1.1 Ground Lessee will provide to Ground Lessor copies of all notices, reports, claims, demands or actions concerning any Release or threatened Release of Hazardous Materials affecting the Premises.

3.1.2 Contamination of the Premises

During the Term, if the Release of any Hazardous Material on, under or about the Premises arising from a breach of Section 3.1.1 above results in the presence of Hazardous Material on the Premises in quantities or concentrations that exceed applicable regulatory cleanup standards under the Environmental Laws, Ground Lessee will promptly take all actions as are necessary to remediate the Premises to the extent required by applicable Environmental Laws.

3.1.2.1 Notwithstanding anything herein to the contrary, Ground Lessor will be solely responsible for the cost and timely performance of remediation of any Hazardous Material which was present (prior to the Effective Date) on, under or about the Premises in quantities or concentrations that exceed applicable regulatory cleanup standards under the Environmental Laws, as well as for the cost and timely performance of remediation of any Release of Hazardous Material caused by Ground Lessor during the Term of this Agreement. Ground Lessor shall not be responsible for the cost or performance of the remediation of any Release of Hazardous Material that is caused by Ground Lessee during the Term of this Agreement.

3.1.3 Right to Inspect

If Ground Lessee remediates any environmental condition under the terms of Section 3.1.2 above, Ground Lessee will submit to the DR a written plan for completing all remediation work. The DR retains the right, following reasonable prior written notice to Ground Lessee, to review and inspect all such work at any time using consultants and/or representatives of his/her choice, at Ground Lessee's cost and expense.

3.2 FORCE MAJEURE

3.2.1 Neither Ground Lessor nor Ground Lessee will be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to a Force Majeure event. The existence of a Force Majeure event shall not relieve Ground Lessee of its obligation to remit Rent to Ground Lessor, to the extent Net Revenue is available (unless the Force Majeure event affects the mail delivery system, bank wire transfer system and other commercially reasonable methods of delivering the Rent to Ground Lessor, in which case the time for making such payments will be extended, but under no circumstances shall Ground Lessee be released from the obligation to make such payments because of any such Force Majeure event). Notwithstanding the above, the performance by Ground Lessor of its obligations under this Agreement shall be neither excused nor delayed by reason of any circumstances solely within Ground Lessor's reasonable control or over which it has exclusive jurisdiction.

3.3 QUIET ENJOYMENT

Ground Lessor agrees that, on payment of the Rent and performance of the covenants, conditions and agreements on the part of Ground Lessee to be performed hereunder, Ground Lessee and licensees of Ground Lessee will have the right to peaceably occupy and enjoy the Premises. Ground Lessee acknowledges that prior to entering into this Agreement, Ground Lessee has been provided copies of Ground Lessor's vesting deed and a related document recorded in the real estate records for Fulton County, in Book 1655, Pages 142-43 and Book 3351, Pages 97-99 respectively, which contain certain restrictions on the use of the Premises and a reversionary clause in favor of Ground Lessor's grantor's heirs. Ground Lessee has reviewed these documents and educated itself on the restrictions contained therein. Ground Lessee covenants and agrees that based on its review of these documents it is entering into this Agreement and assuming the risk that its use of the Premises may be negatively affected by these instruments, including, but not limited to, the loss of use of all or part of the Premises. Ground Lessor shall not be liable to Ground Lessee for any damages Ground Lessee may suffer relating to its quiet enjoyment of the Premises relating to any negative effects of these instruments. Ground Lessee is entering into this Agreement not in any way in reliance on representations or statements made by Ground Lessor.

3.4 NOTICES

Any notice or communication to be given under the terms of this Agreement shall be in writing and shall be (i) personally delivered, (ii) delivered by nationally recognized commercial courier/overnight delivery service, or (iii) sent by registered or certified mail, return receipt requested.

Notices shall be addressed as follows:

If to Ground Lessor: Fulton County, Georgia
Office of County Manager 141 Pryor Street
Atlanta, Georgia 30303
Attention: County Manager
Phone: (404) 612-8320

And

Fulton County, Georgia
Office of the County Attorney
141 Pryor Street S.W., Suite 4038
Atlanta, Georgia 30303
Attention: County Attorney
Phone: (404) 612-0246

And

Fulton County, Georgia
Department of Real Estate and Asset Management
141 Pryor Street, S.W., Suite G-119
Atlanta, Georgia 30303
Attention: Director or Deputy Director
Phone: (404) 612-5900

If to Ground Lessee: Pro Player Holdings, LLC
191 Peachtree Street
Suite 3275
Atlanta, GA, 30303
Attention: Dale Davis
Phone: _____

With a copy to: Law Office of Louis E. Bridges, LLC
5784 Lake Forrest Dr., Suite 270
Atlanta, GA 30328
Attention: Louis Bridges
Phone: _____

All such notices shall be deemed to have been given: (i) if personally delivered, upon receipt, (ii) if by registered or certified mail, upon the date indicated on the return receipt, and (iii) if by courier service, upon the date delivered as shown by the records of the courier. The Parties may, from time to time, change their address for delivery of notice by sending notice of its new address to the other Party in accordance with the terms of this Section 3.4.

3.5 HEADINGS, TITLES OR CAPTIONS

Article, section or paragraph headings, titles or captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or extent of any provision of this Agreement.

3.6 INVALID PROVISIONS

It is expressly understood and agreed by and between the Parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision will in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Ground Lessor or Ground Lessee in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

3.7 GOVERNING LAW

This Agreement will be interpreted under and governed by the laws of the State of Georgia without regard to its principles of choice of law or conflicts of law.

3.8 HOLDOVER

Any unauthorized holding over by Ground Lessee for more than ninety (90) days after the termination of this Agreement or the expiration of its terms without the written consent of Ground Lessor, except for the period authorized for removal of Ground Lessee's property upon the expiration or termination hereof, shall entitle Ground Lessor to collect from Ground Lessee as liquidated damages for such holding over, one hundred fifty percent (150%) of the then Rent.

3.9 ENTIRE AGREEMENT

3.9.1 This document represents the entire agreement between the Parties hereto and will not be modified or canceled by mutual agreement or in any manner except by instrument in writing, executed by the Parties or their respective successors in interest, and supersedes all prior oral or written agreements and understandings with respect to the subject matter hereof. The Parties further understand and agree that the other Party and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability for cause for termination shall be asserted by either Party against the other, and such Party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other Party being expressly waived.

3.9.2 The Parties warrant that the individuals executing this Agreement have full authority to execute this Agreement on their behalf and have the requisite authority to do so.

3.9.3 The Parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, which are hereby incorporated into this Agreement

by this reference, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

3.10 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, or permitted assigns, as the case may be.

3.11 COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which when so executed shall constitute in the aggregate but one and the same document.

3.12 INDEPENDENT CONTRACTOR

Ground Lessee is deemed to be an independent contractor for all purposes regarding its operations at the Premises and no agency, partnership or joint venture, express or implied, exists.

3.13 RECORDATION

3.13.1 Under no circumstances shall all or part of this Agreement be recorded with the Clerk of the Superior Court of Fulton County, Georgia.

3.13.2 As soon as practicable following the Effective Date but no later than thirty (30) days thereafter, Ground Lessor and Ground Lessee agree to execute and acknowledge a Memorandum of Participating Ground Lease Agreement which

(i) evidences the existence of this Agreement, the rights of Ground Lessee to develop, own, lease and manage the Commercial Facilities, the ground leasehold estate of Ground Lessee in and to the Premises, the Term of this Agreement, and

(ii) containing a legal description of the Premises.

Such Memorandum, substantially in the form of that attached as Exhibit D hereto, shall be recorded with the Clerk of the Superior Court of Fulton County, Georgia. Without limiting the generality of the foregoing, upon expiration of the Term or earlier termination of this Agreement, Ground Lessee, upon Ground Lessor's written request, shall execute, acknowledge and deliver to Ground Lessor such documents as Ground Lessor shall prepare and which are reasonably required to terminate the effect of the recorded Memorandum of Ground Lease on the Premises, which Ground Lessor, at Ground Lessor's sole expense, shall have the right to record with the Clerk of the Superior Court of Fulton County, Georgia.

3.14 FURTHER ASSURANCES

Each Party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

3.15 MISCELLANEOUS

3.15.1 Patriot Act

Ground Lessee represents and warrants to Ground Lessor that Ground Lessee is not, and is not acting, directly or indirectly, for or on behalf of, any person or entity named as a "specially designated national and blocked person" (as defined in Presidential Executive Order 13224) on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control, and that Ground Lessee is not engaged in this transaction, directly or indirectly, on behalf of, and is not facilitating this transaction, directly or indirectly, on behalf of, any such person or entity. Ground Lessee also represents and warrants to Ground Lessor that neither Ground Lessee nor its affiliates are in violation of any laws relating to terrorism or money laundering, including the aforesaid Executive Order and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56), as amended. To the extent allowed by law, Ground Lessee hereby agrees to defend, indemnify and hold harmless Ground Lessor from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney fees and costs) arising from or related to any breach of the foregoing representations and warranties by Ground Lessee.

(Continued on Following Page)

IN WITNESS WHEREOF, Ground Lessor and Ground Lessee have executed this Agreement as of the day and year first written above.

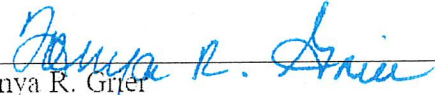
GROUND LESSOR:

FULTON COUNTY, GEORGIA,
a political subdivision of State of Georgia



Robert L. Pitts, Chairman

ATTEST:



Tonya R. Grier
Clerk to the Commission



APPROVED AS TO FORM:

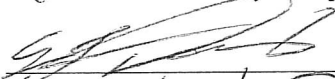


Y. Soe Jo
County Attorney

(Signatures Continued on Following Page)

GROUND LESSEE:


PRO PLAYER HOLDINGS, LLC
a Georgia limited liability company

By: 
Name: Elliot Davis
Its: CEO

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GROUND LESSEE:

PRO PLAYER HOLDINGS, LLC
a Georgia limited liability company

By: 
Name: Elliot Davis
Its: CEO

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EXHIBIT A

(Premises)

EXHIBIT B
(Construction Budget)

EXHIBIT C

(Project Development Plan)

EXHIBIT D

(Memorandum of Participating Ground Lease)

