

PROPOSED FORM OF LEASE

TOWN OF BARNSTABLE,

(Landlord)

and

_____,
(Tenant)

Dated as of _____, 20__

GROUND LEASE

This ground lease (the "**Lease**") is entered into as of this _____ day of _____, 20____, by and between the **Town of Barnstable**, acting by and through the Barnstable Municipal Airport Commission, a municipal corporation of the Commonwealth of Massachusetts (the "**Landlord**"), with offices located at 480 Barnstable Road Hyannis, MA 02601 and _____ a _____ (the "**Tenant**"), with offices located at _____.

BACKGROUND

Pursuant to that certain Request for Proposals dated [_____] (the "**RFP**"), Landlord has accepted Tenant’s proposal (the "**RFP Response**") for a ground lease of the Premises (as defined in Section 1.1 below) as _____ under the specific terms and conditions described herein.

Landlord and Tenant now agree as follows:

ARTICLE 1 - PREMISES.

1.1 Lease of Premises.

Landlord, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term (as defined in Section 2.1 below) and upon the terms and conditions set forth herein, the following described premises (hereinafter called the "**Premises**"):

That certain parcel of land located at 790 Iyannough Road, Barnstable, Massachusetts, commonly known as Cape Town Plaza, consisting of approximately 25.88 acres and identified as Assessor’s Map 311 as Parcel Number 092, and more particularly described in Exhibit A attached hereto and made a part hereof (the "**Land**"), together with the buildings and other improvements constructed on the Land (collectively, the "**Improvements**"), and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Land or the Improvements or the use or occupancy of the Land or the Improvements, whether or not of record (together with the Land and the Improvements, the "**Premises**").

1.2 Reserved Rights.

Landlord reserves the following rights and imposes upon Tenant the following obligations in connection with the Premises:

Upon reasonable prior notice to Tenant, Landlord shall have the right to access and enter upon the Premises for the purposes of inspection, complying with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions and orders and requirements of all public authorities and exercising any right reserved to Landlord by this Lease. Landlord shall use commercially reasonable efforts to minimize interference with or disruption of Tenant, Tenant’s business, its occupants, its operators and its subtenants, if any.

1.3 Condition of the Premises.

Tenant acknowledges that it has leased the Premises and after a full and complete examination of the Premises, including, without limitation, legal title, any subsurface conditions, the presence of any Hazardous Materials (as defined in Section 11.4 below and as shown in the Phase I Environmental Site Assessment provided by the former ground tenant prior the Commencement Date), located on, in or under the Premises, and accepts the same in the same condition in which they or any part thereof now are, and except as otherwise expressly provided in this Lease, waives all rights to object to the condition thereof and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of Landlord, and without recourse to Landlord.

1.4 Title.

[Tenant acknowledges that it has obtained a commitment for a leasehold owner's title insurance policy with respect to the Premises and that Tenant is solely responsible for curing any title defects identified by such title insurance commitment which may be necessary for the financing, development, completion, use or occupancy of the Premises.]

ARTICLE 2 - TERM.

2.1 Term.

The term of this Lease shall be [_____] (the "**Initial Term**"), commencing on _____ (the "**Commencement Date**") and, unless earlier terminated in accordance with the provisions hereof, ending on _____, 20__ (the "**Termination Date**"). [Note: the term of the Lease shall be for a maximum term of 49 years, including any extensions.]

2.2 Extension Term(s).

Provided that no Event of Default (as defined in Section 13.1 below) shall then exist either on the date of the Extension Notice (as defined below) or as of the commencement of the applicable Extension Term (as defined below), Tenant shall have the option to extend the Initial Term of this Lease for two successive terms of ten (10) years each (each, an "**Extension Term**") and by providing Landlord with written notice of its intention to extend (the "**Extension Notice**") at least twelve (12) months prior to the expiration of the then-current term. As used herein "**Term**" shall mean the Initial Term, as it may be extended by Tenant's exercise of the Extension Notice to include an Extension Term. If Tenant timely makes the foregoing election, the Initial Term shall be extended upon all of the terms and conditions set forth in this Lease, except that there shall be one (1) less Extension Term for each extension option exercised hereunder and Rent shall be adjusted pursuant to the provisions of Article 4 hereof. In the event of Tenant's failure to timely send an Extension Notice as provided herein, at the expiration of the then current term, then this Lease shall terminate upon the expiration of the current term, and all obligations of the parties hereunder shall cease except those provisions of this Lease applicable upon expiration of the Term.]

ARTICLE 3 - TENANT'S IMPROVEMENTS

3.1 Initial Improvements.

Tenant shall, at its sole cost and expense, perform the Initial Improvements described in and in accordance with the RFP Response and that certain Agreement by and between Landlord and Tenant dated _____ (the "**Agreement**"), a description of such Initial Improvements is attached hereto as Exhibit B, including achieving completion of certain milestones related to the Initial Improvements in accordance with the schedule attached hereto as Exhibit C, as the same may be amended by a mutual agreement of the parties (the "**Development Milestones**"). Subject to delays due to Force Majeure (as such term is defined herein), Tenant shall commence construction of the Initial Improvements on or before [_____], and diligently and continuously prosecute such improvements to Final Completion, which shall in no event occur later than [_____] (the "**Outside Completion Date**").

For the purposes of this Lease, construction of the Initial Improvements shall be deemed to have "commenced" upon the commencement of actual physical work (including, without limitation, building demolition or site work) on the Premises or any portion thereof pursuant to a demolition permit or a building permit for the construction of the Initial Improvements. Tenant shall use diligent and continuous efforts in good faith to obtain all Required Permits (as such term is defined herein) for the construction of all of Tenant's Initial Improvements in accordance with the Design Plans (as such term is defined herein). For the purposes of this Lease, "**Final Completion**" of all Tenant's Initial Improvements will be deemed to have occurred upon the date of final completion, as determined by Landlord in its reasonable discretion, of the Initial Improvements in accordance with the Design Plans, and shall require the issuance of a Certificate of Occupancy for the improvements.

If Tenant shall fail to commence the construction of the Initial Improvements as required herein, Landlord may at its election terminate this Lease by notice to Tenant, which termination shall be effective not earlier than thirty (30) days after such notice is given to Tenant (the "**Cure Period**"), unless Tenant has commenced construction prior to the expiration of the Cure Period, provided Landlord has delivered such notice of termination to Tenant not later than thirty (30) days following the date by which Tenant is required to commence such construction.

3.2 Required Permits.

(a) Tenant shall obtain all permits, approvals and licenses from governmental authorities ("**Required Permits**") required for construction of the Initial Improvements, and use of the Initial Improvements, and for any other alterations, removals, installations, additions, changes, replacements or improvements to the Premises (collectively with the Initial Improvements, "**Tenant Work**"), and shall, upon written request, provide Landlord with a copy of each. Upon full or partial completion of the Initial Improvements and prior to occupying any part of the Premises for any purpose other than performing the Initial Improvements, and upon completion of any other Tenant Work, Tenant shall obtain from each authority granting the Required Permits such evidence of approval ("**Required Approval**") as may be necessary to permit such part of the Premises to be used and occupied for the Permitted Uses (as defined in Section 8.1 below). Tenant may occupy all or part of the Premises under temporary or conditional certificates of occupancy, but shall not be relieved from the obligation of obtaining

permanent certificates of occupancy for the Initial Improvements or other similar licenses or permits required to permit the Premises to be used and occupied for the Permitted Uses.

(b) Landlord, without cost to it, promptly shall execute and deliver any reasonable documents which may be necessary to obtain or maintain any Required Permit or Required Approval and shall further cooperate with Tenant in obtaining or maintaining any Required Permit or Required Approval, as Tenant may from time-to-time reasonably request; provided, however, that with the exception of zoning or other matters, where Landlord's execution of petitions, application, appeals or other documents or joinder in proceedings may be required as a condition to Tenant's proposed action, Landlord shall in no event be required to join in or become a party to any document or proceeding in which it will oppose Landlord or any agency or subdivision thereof, nor shall Landlord be required in connection with any such document or proceeding or otherwise to oppose in any way any policy previously established by Landlord nor to take a position inconsistent with a position previously taken and made public by Landlord.

3.3 Ownership.

During the Term, the Initial Improvements shall be vested in the Tenant, and the Tenant shall be entitled to any depreciation deductions and investment tax credits thereon for income tax purposes. Upon the expiration or earlier termination of this Lease, title to the Initial Improvements shall immediately vest in Landlord and shall be surrendered at that time in accordance with Section 14.1 below.

3.4 Reproducible Drawings.

Within ninety (90) days after Final Completion of the Initial Improvements or any other Tenant Work affecting the exterior of the Initial Improvements, structural improvements or utilities on the Premises, Tenant shall prepare at its expense and deliver to Landlord one complete, legible and reproducible full-sized set of as-built plans showing the Initial Improvements or such work, as the case may be, a certified survey plan by a Commonwealth of Massachusetts registered land surveyor showing the location of all of the Initial Improvements. Tenant shall also deliver the as-built plans and survey in digital format.

3.5 Manner of Construction; Cost of Initial Improvements.

Tenant shall perform all construction in a good and workmanlike manner, in compliance with Legal Requirements (as such term is defined herein) and good engineering and construction practices. The Initial Improvements shall be constructed in material compliance with the Approved Construction Drawings (as such term is defined in the Agreement)(the "**Approved Construction Drawings**"), the Required Permits and the Development Schedule.

Tenant shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the construction, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to properly police same. Dust, noise and other effects of such work shall be controlled using commercially accepted methods customarily utilized in order to control deleterious effects associated with construction projects in a populated or developed area. Tenant shall pay (or cause to be paid) all costs and expenses associated with any Tenant Work (including, without limitation, all architectural, engineering, construction, legal and consultant fees and costs) and shall defend, indemnify and hold Landlord Parties (as defined in Section 7.14

below) harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) (collectively, “**Claims**”) attributable to the performance of any Tenant Work.

3.6 Tenant’s Responsibility to Discharge Liens.

(a) If any mechanic’s, laborer’s or materialman’s lien shall at any time during the Term, or any Extension Term, be recorded or filed against the Premises, the underlying fee, or any part thereof with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming by, through or under Tenant, Tenant, within thirty (30) days after notice of the recording or filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith, together with interest at an annual rate equal to the greater of (i) the prime rate of interest reported from time-to-time in the Wall Street Journal or any successor publication plus five percentage points and (ii) eighteen percent (18%), but in no event greater than the highest rate of interest permitted by law (the “**Default Rate**”), from the respective dates of Landlord’s making of the payment or incurring of the cost and expense until paid in full, shall constitute Additional Rent (as defined in Section 4.1 below) under this Lease and shall be paid by Tenant to Landlord on demand.

(b) Notwithstanding the foregoing, Tenant may contest, in good faith by appropriate proceedings, at Tenant’s sole expense, the amount or validity in whole or in part of any mechanic’s, laborer’s or materialman’s lien, and may defer the discharge of record thereof, provided that:

(i) Tenant shall provide Landlord with security reasonably satisfactory to Landlord or shall bond over to assure payment of contested items;

(ii) Tenant shall immediately pay or shall bond over such contested item or items if the protection of the Premises or of Landlord’s interest therein from any lien or claim shall, in the reasonable judgment of Landlord, require such payment;

(iii) Landlord shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord. Landlord shall not be subjected to any liability for the payment of any loss, costs or expenses in connection with any such proceedings, and Tenant shall defend, indemnify and save Landlord Parties harmless from and against any such loss, costs and expenses; and,

(iv) Notwithstanding the provisions of Subsection (iii) above, Landlord shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose Landlord or any agency or subdivision thereof nor shall Landlord be required in connection with any such proceeding or otherwise to oppose in any way any policy previously

established by Landlord nor to take any position inconsistent with a position previously taken and made public by Landlord.

Subject to the foregoing, and without cost to it, Landlord shall promptly execute and deliver any reasonable documents which may be necessary to permit Tenant so to contest any such lien and shall further cooperate with Tenant in such contest, as Tenant may from time-to-time reasonably request.

3.7 No Consent.

Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent to payment or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof.

3.8 Changes to Plans.

Landlord shall have the right to approve any material changes (the "Approvable Changes") to the Approved Construction Documents, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the following shall be excluded from the definition of "Approvable Changes": (A) any changes that are required to comply with Legal Requirements (as such term is defined herein), (B) any changes resulting from implementation of alternatives or qualified substitutions as described in the Approved Construction Documents, (C) any changes related to further development of the Approved Construction Documents consistent with previously approved versions of the same, and (D) minor changes to reflect field conditions or unforeseen conditions (collectively, the "Permitted Changes"). If Tenant desires to make an Approvable Change to the Initial Improvements that is not a Permitted Change, then Tenant shall promptly notify Landlord of the change and request Landlord's approval of the same. Within ten (10) days after delivery of such notice to Landlord, Landlord shall notify Tenant whether it approves such change, or, if not, the revisions required to be made by Tenant. Landlord shall not unreasonably withhold, condition or delay any approval of a requested change and shall cooperate with Tenant in approving such changes necessary to satisfy Tenant's schedule.

3.9 Payment and Performance Bond.

Simultaneously with the execution of this Lease, Tenant shall deliver to Landlord, in form and substance reasonably satisfactory to Landlord, payment and performance bonds of a surety company licensed to do business in the Commonwealth of Massachusetts, naming the Tenant's general contractor, Tenant, the Guarantor (as such term is defined therein) and Landlord as obligees, as their respective interests may appear (each such bond, a "Payment and Performance Bond"), to be in the amount of the entire contract sum of Tenant's contract with its major subcontractors having a contract sum in excess of _____ for the Initial Improvements. Tenant's obligation to provide Payment and Performance Bond(s) as required under this Section 3.9 shall apply for the duration of construction of the Initial Improvements, including all design services and construction work associated with the Initial Improvements.

ARTICLE 4 - RENT [TO BE REVISED BASED ON RESPONSE TO RFP]

4.1 Base Rent.

(a) Commencing on the [Commencement Date] and continuing thereafter throughout the Term, Tenant shall pay to Landlord, without notice or demand, and except as otherwise explicitly provided for in this Lease, without offset or deduction annual base rent in the amount of _____ (\$_____) Dollars, which amount shall be paid in equal monthly installments of \$_____, partial months to be prorated (“**Fixed Base Rent**”). Fixed Base Rent shall be increased annually by three percent (3%) throughout the Term, as of the anniversary of the first day of the first full calendar month following the Commencement Date (the “**Adjustment Rent**”). In addition to Fixed Base Rent and Adjustment, Tenant shall pay [___ percent (___%) of Adjusted Revenue (as such term is defined herein) per lease year (“**Percentage Base Rent**”). Fixed Base Rent, Adjustment Rent and Percentage Base Rent shall be referred to herein as “**Base Rent**”. “**Adjusted Revenue**” shall mean, with respect to any lease year, without duplication, an amount equal to all gross income and revenue of every kind and nature (whether in case or on credit or in kind) received by Tenant or an Affiliate of Tenant (as such term is defined herein) with respect to the Premises, all determined on a cash basis in accordance with generally accepted accounting principles, including, without limitation, any rental, lease or other income received by Tenant or an Affiliate of Tenant with respect to subleases, concessions, licensees or other occupancy agreement.

(b) Thereafter, as specified above, the Fixed Base Rent payments shall increase annually on the first (1st) anniversary of the Commencement Date, and each year by three percent (3%).

(c) If any expenditure groups, items, or components used to compute the Price Index are added, deleted, or otherwise changed, or of the weights assigned to any spending categories are materially altered, or if the Price Index population is materially changed, or of the Price Index is calculated with respect to a different base year, or if the Bureau of Labor Statistics should otherwise cease to publish such Price Index in its present form and calculated on the present basis, then Landlord shall appropriately adjust the Price Index or designate a comparable index or designate an index reflecting changes in the cost of living determined in a similar manner or, by substitution, combination or weighing of available indices, expenditure groups, items, components or population, establish such a substituted Price Index.

(d) Notwithstanding the foregoing, Fixed Base Rent shall also be adjusted every five (5) years from the Commencement Date to reflect the Fair Market Rental Value. The term “**Fair Market Rental Value**” for the Premises shall mean the rent that Landlord would be able to obtain from a third party desiring to lease the Premises for the Term taking into account the age of the Improvements, the size and location of the Premises, the quality of construction of the Improvements and the Premises, the services provided under the terms of this Lease, the rent then being obtained for new leases of space comparable to the Premises, and all other factors that would be relevant to a third party desiring to lease the Premises for the Term in determining the rent such party would be willing to pay therefor. No later than twelve (12) calendar months prior to the fifth, tenth, fifteenth, twentieth, twenty-fifth, thirtieth, thirty-fifth, fortieth, and forty-fifth years of the Term (the “**Rent Adjustment Years**”), Landlord shall deliver to Tenant its proposed then current fair market value rental rate (the “**Proposed Rental Rate**”). If Tenant wishes to

dispute Landlord's Proposed Rental Rate, Tenant shall give notice to Landlord of Tenant's intent to submit the matter to the appraisal process described below within thirty (30) days after receipt of notice of Landlord's determination. If Tenant so elects, then within fifteen (15) days after the date of Tenant's notice of its election to submit the matter to the appraisal process, each party, at its cost, shall engage a real estate appraiser to act on its behalf in determining the then current Fair Market Rental Value for the Premises. If Tenant fails to give Landlord such notice within such thirty-day period, Tenant shall be deemed to have accepted Landlord's determination of Fair Market Rental Value. Each appraiser shall be endorsed by a commercial real estate broker or appraiser with at least ten (10) years' experience in the leasing of commercial real estate owned by an airport (a "**Qualified Appraiser**"). If a party does not appoint a Qualified Appraiser within fifteen (15) days after the other party has given notice of the name of its Qualified Appraiser, the single Qualified Appraiser appointed shall be the sole appraiser and shall set the Fair Market Rental Value for the Premises. If the two Qualified Appraisers are appointed by the parties as stated herein, such Qualified Appraisers shall meet promptly and attempt to set the Fair Market Rental Value for the Premises. In the event that the first two (2) Qualified Appraisers cannot agree upon a then current fair market rental value within twenty (20) days after the Qualified Appraisers meet to set the Fair Market Rental Value, either party, upon notice to the other party, may request an appointment of a third Qualified Appraiser by the American Arbitration Association in Boston, Massachusetts (or any successor thereto), or upon its failure, refusal or inability to act, may apply for such appointment to a court of competent jurisdiction. Within fifteen (15) days following the appointment of the third (3rd) Qualified Appraiser, the third (3rd) Qualified Appraiser shall select Landlord's Qualified Appraiser's rate or Tenant's Qualified Appraiser's Rate that most closely represents the Fair Market Rental Value for the Premises, and that rental rate will be final and binding and will be used for Base Rent hereunder during the applicable year. The Qualified Appraisers shall not have the power to add to, modify, or change any of the provisions of this Lease.

Each party shall pay its own counsel fees and expenses, if any, in connection with the process set forth in this Section, including the expenses and fees of any Qualified Appraiser selected by it in accordance herewith, and the parties shall share equally all other expenses and fees of the process described in this Section.

If the dispute between the parties as to Fair Market Rent has not been resolved before the commencement of Tenant's obligation to pay Base Rent based upon Fair Market Rent for any Rent Adjustment Year, Tenant shall pay the Base Rent then being paid by Tenant during the last month falling within the last day of the existing Term until a decision is rendered as set forth in this Article 2, at which time Tenant shall promptly pay any underpayment of Base Rent to Landlord.

As used herein, "Fair Market Rent" means the current annual fair market rent for premises of comparable size, quality, age and location in Barnstable, Massachusetts, taking into account all relevant factors, including the fact that the Premises may only be used for the Permitted Use, as set forth in Article 8, and for no other purpose, and including any improvements or alterations made to the Premises by Tenant, but in no event shall Fair Market Rent during the Rent Adjustment Years be less than the Base Rent in the previous year.

4.2 Additional Rent.

In addition to Base Rent, Tenant shall pay any fee, charge or other amount required to be paid by Tenant to Landlord under this Lease as additional rent (“**Additional Rent**”). Base Rent and Additional Rent (collectively, “**Rent**”) shall be paid without counterclaim, notice, demand, abatement or offset at Landlord’s address set out in Section 17.2. It is the intention of the parties that the Rent payable hereunder shall be net to Landlord.

4.3 Rent During Extension Term.

(a) If Tenant exercises the right to extend the Term of this Lease as herein provided, then no later than one hundred twenty (120) days prior to the first day of the Extension Term, Landlord shall deliver its Proposed Rental Rate. If Tenant does not object to Landlord’s Proposed Rental Rate within thirty (30) days after receipt of Landlord’s notice of Proposed Rental Rate, then Tenant shall be deemed to have accepted the Proposed Rental Rate. If Tenant does timely object to Landlord’s Proposed Rental Rate, then the parties will submit the matter to the appraisal process set forth in Section 4.1(d) above.

(b) Beginning on the first day of the second lease year of the Extension Term, Rent shall increase annually by three percent (3%).

4.4 Annual Audited Statements.

For each rent year included in the Term, Tenant shall deliver to Landlord without notice or demand and within sixty (60) days after the end of each lease year a statement confirming all items necessary to calculate Adjusted Revenue with respect to the preceding lease year, with such annual statement to be prepared by an independent certified public accountant reasonably acceptable to the Landlord and certified by such accountant as correct.

4.5 Late Payments.

Any payment of Rent due hereunder not paid when due shall bear interest at the Default Rate if not paid to Landlord within seven (7) days of its due date calculated from the date such sum was first due to Landlord (each occurrence shall hereinafter be referred to as a “**Late Payment**”).

ARTICLE 5 - TAXES AND UTILITIES

5.1 Impositions.

Tenant shall pay or cause to be paid as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, special use or assessment district taxes, water and sewer charges, excises, levies, license and permit fees and all other governmental charges of any kind and nature which during the Term may be assessed, levied, imposed upon or become due with respect to, or become a lien on the Premises or the leasehold, or any part thereof, or any appurtenance thereto, and payments in lieu of such taxes, assessments, charges or fees, whether such charges are made directly to Tenant or through or in the name of Landlord. All such charges shall be referred to herein as “**Impositions.**” Tenant shall have the right to contest or object to the amount or validity of any Imposition but shall not withhold payment of any Imposition while any such contest or objection is pending. Tenant, upon request of Landlord, shall furnish to Landlord within thirty (30) days of the date when any

Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing payment thereof.

5.2 Personal Property Taxes.

Tenant shall pay promptly when due all taxes which may be imposed upon personal property (including fixtures taxed as personal property) in, on or within the Premises directly to the Town of Barnstable Tax Collector.

5.3 Utilities.

(a) Tenant shall pay when due, or shall cause to be paid, directly to the utility provider, all charges by any public authority or utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, and service inspections made therefor, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of Landlord (“**Utility Charges**”).

(b) Tenant, at its sole cost and expense, shall install and maintain all utility infrastructure on the Premises, including without limitation, connections and services as may be required by any applicable authority and/or required for the operation of the Tenant’s Initial Improvements.

(c) Landlord agrees to provide reasonable access easements over the Premises to utility companies for the purposes of bringing and connecting utility service to the Premises.

5.4 No Liability of Landlord.

The Tenant shall be solely responsible for procuring and maintaining any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, sewer, steam, heat, gas, hot water, electricity, light and power. Landlord makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply the Initial Improvements, and Landlord shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited to water, steam, sewer, heat, gas, hot water, electricity, light and power.

ARTICLE 6 - REPAIRS AND MAINTENANCE

6.1 Repair and Maintenance.

Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises (including without limitation all Initial Improvements) and all roadways, parking lots, sidewalks (and associated drainage systems), curbs, landscaped areas, lighting, fences and entranceways adjoining the same, and shall keep the same in good order and condition (except for reasonable wear and tear and damage from a Taking (as defined in Section 11.1 below) or from fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder), and shall make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen in order to keep the Premises in safe, clean and sanitary condition throughout the Term. Without limitation, Tenant shall keep the common driveway, lighting, parking lots and sidewalks (and associated drainage systems) in good order and condition and shall be responsible for removing ice and snow therefrom. Tenant shall keep

the Premises free of accumulations of dirt and rubbish, and shall use all reasonable precautions to prevent waste, damage or injury to the Premises.

6.2 No Obligation of Landlord.

Landlord shall in no event be required to maintain or repair or to make any alterations, restoration, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

6.3 Tenant's Responsibility to Comply with Laws Involving Health and Safety.

Should any federal, state, regional, district or municipal agency determine that the Premises are in violation of any health, safety, building, environmental law, regulation or code and the Tenant fails to remedy said violation within the time prescribed by the applicable governmental agency, then Landlord shall be entitled to terminate this lease agreement, subject to the provisions of Article 14 below.

6.4 Signage.

Tenant may erect any sign, decoration, lettering, advertising matter or any other similar display (collectively referred to herein as a "**Sign**") in the interior of the Initial Improvements, without obtaining the Landlord's approval, except that any interior Sign that would be visible from the exterior of the Initial Improvements shall require the Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant may erect any Sign on the exterior of the Initial Improvements or elsewhere on the Premises, only if the Landlord shall have first approved in writing in each instance the location, dimensions, materials and design of any such Sign, which approval shall not be unreasonably withheld, conditioned or delayed. Any sign shall be in compliance with all Legal Requirements.

6.5 Alterations.

Following completion of the Initial Improvements, Tenant may not undertake any other additional work without the Landlord's prior written approval ("**Alterations**"), provided that the Landlord's prior written approval shall not be required for any Alteration that does not affect the exterior of the Initial Improvements and is not located on the street level and visible from the exterior of the Initial Improvements, and for which the total design and construction costs are less than \$100,000 in the aggregate, provided further that all other requirements with respect to any such Alteration set forth in this Lease, shall apply thereto. Tenant shall reimburse the Landlord for all actual out-of-pocket architectural and engineering expenses for review reasonably incurred by Landlord in connection with its review of a proposed Alteration.

ARTICLE 7 - INSURANCE AND INDEMNITY

7.1 Casualty Insurance.

During the Term, Tenant, at its sole cost and expense, shall keep in full force and effect property casualty insurance on the Initial Improvements and other property installed or used in, on or about any Initial Improvement in amounts sufficient at all times to prevent Landlord or Tenant from becoming a co-insurer under the provisions of applicable policies of insurance, but, in any event, at least equal to the full replacement cost thereof (exclusive of cost of excavations, foundations and footings), without deduction for depreciation, against all risks of direct physical loss or damage as may from time-to-time be included within the definition of an "All Risks

Insurance Policy” and extended to include coverage against earthquake, earth movement, flood (including back-up of sewers and drains), sprinkler leakage, breakdown of boilers, machinery and electrical equipment, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke and demolition. Such insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount endorsement satisfactory to Landlord.

7.2 Builder’s Risk.

During the period of any construction or structural alteration of the Premises or the Improvements, Tenant shall also keep in full force and effect, at its sole cost and expense, “Builder’s All Risk” insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as Landlord may reasonably require.

7.3 Liability Insurance.

Throughout the Term, Tenant shall maintain, for the benefit of Landlord and Tenant, and identifying Landlord as an additional insured, commercial general liability insurance against claims for personal injury, death, and property damage occurring upon, in or about the Premises or the Improvements, and on, in or about the adjoining sidewalks, roadways, parking lots and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least Ten Million \$10,000,000.00 Dollars combined single limit, including bodily injury and death and for property damage. If Tenant has other locations that it owns or leases, the policy shall include an aggregate limit per location endorsement. Such liability insurance shall be primary and not contributing to any insurance available to Landlord, and Landlord’s insurance shall be in excess thereto.

7.4 Personal Property Insurance.

Throughout the Term, Tenant shall maintain personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises for perils covered by the cause of loss. Such insurance shall be written on a replacement cost basis in an amount equal to no less than eighty percent (80%) of the full insurable replacement value of the aggregate of the foregoing.

7.5 Insurance Carried by Contractors.

During the construction of the Initial Improvements, Tenant shall also require the construction manager and/or general contractor for the Initial Improvements to maintain (i) for the benefit of Tenant and Landlord, as additional insureds, commercial general liability insurance, including products and completed operations coverage, against any claims for personal injury, death and property damage occurring upon, in or about the Premises and on, in and about the adjoining sidewalks, roadways, parking lots and passageways during the construction of the Initial Improvements for at least Ten Million (\$10,000,000) Dollars combined single limit; (ii) worker's compensation in amounts required by state statute; (iii) employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000); and (iv) automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired or nonowned, in an amount not less than One Million Dollars (\$1,000,000) combined single limit.

7.6 Insurance Coverage Increases.

The minimum coverage stated in this Article 7 shall be reviewed every five (5) years by Landlord and Tenant, and shall be increased at such intervals if such increases are reasonably necessary to reflect inflation or changes in the nature or degree of risks insured or to protect against judgments from time-to-time being awarded in Massachusetts for injury, death and property damage.

7.7 Insurance Carriers, Policies.

All insurance provided for in this Article 7 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of "AA" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to Landlord. Upon the execution of this Lease, and thereafter not less than fifteen (15) days prior to the expiration dates from time-to-time of the policies required pursuant to this Article 7, binders of such insurance or, upon written request of Landlord, duplicate originals of the policies, shall be delivered by Tenant to Landlord.

7.8 Blanket Policy.

Nothing in this Article 7 shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Section 7 under a blanket insurance policy or policies covering other properties as well as the Premises, provided, however, that any such policy or policies of blanket insurance:

(i) shall specify therein, or in a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by this Article 7, and

(ii) such amounts so specified shall be sufficient to prevent any of the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to endorsements and coverage with the provisions of this Article 7.

7.9 No Separate Insurance.

Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section 7 to be furnished by, or which may reasonably be required to be furnished by, Tenant unless Landlord and Tenant are included therein as insureds, with loss payable as in this Lease provided. Tenant shall immediately notify Landlord of the placing of any such separate insurance and shall cause the same to be delivered as in Section 7.7 hereof required.

7.10 Adjustment.

All policies of insurance provided for in Section 7 hereof shall name Landlord and Tenant as the insureds as their respective interests may appear. The loss, if any, under such policies shall be adjusted with the insurance companies by Tenant, and shall be payable to Tenant. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of any of the Tenant Parties (as defined in Section 7.14 below) shall

affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

7.11 Non-cancellation.

Each policy or binder issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to Landlord, Tenant and any Permitted Institutional Mortgagee (as defined in Section 12.3 below) named therein.

7.12 Waiver of Subrogation.

Landlord and Tenant mutually agree that with respect to any loss which is covered by property insurance then being carried by Landlord or Tenant, respectively, the party carrying such insurance and suffering said loss releases the other of and from any and all claims with respect to such loss; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. Landlord for itself and parties claiming by, through or under Landlord, hereby waives any and all rights of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the improvements on the Premises, to the extent the same are covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Tenant, for itself and for parties claiming by, through or under Tenant, hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees, for the loss or damage to Tenant's furniture, furnishings, fixtures and other personal property owned by and removable by Tenant under the provisions hereof notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees or such other tenant and the servants, agents or employees thereof.

7.13 Tenant's Risk.

To the maximum extent permitted by applicable law, Tenant agrees to use and occupy the Premises at Tenant's own risk, and Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person, at any time on the Premises, including any damage or injury to Tenant or to any of Tenant's officers, agents, servants, employees, contractors, licensees, guest, invitees or sublessees, except to the extent cause by the negligent or wrongful acts or omissions of Landlord.

7.14 Indemnification.

(a) Tenant shall defend (with counsel reasonably acceptable to Landlord), indemnify and save Landlord Parties (as defined below) harmless against and from any and all Claims which may be imposed upon or incurred by or asserted against Landlord Parties by reason of any of the following occurrences:

(i) any work or thing done during the Term of this Lease in, on or about the Premises or any part thereof, including during construction of the Initial Improvements and any other Tenant Work, by Tenant or any other party other than Landlord, their employees, contractors, agents, servants, or licensees (collectively with Landlord, the "**Landlord Parties**");

(ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, during the Term of this Lease by Tenant or any other party other than Landlord Parties;

(iii) any negligence or willful misconduct on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, occupants, guests, licensees, operators, or invitees (together with Tenant, the "**Tenant Parties**");

(iv) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, unless the same occurs solely as a result of the gross negligence or wrongful act of any of Landlord Parties; and

(v) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

Notwithstanding the foregoing, nothing herein shall be construed as a waiver by Landlord of any statutory limits of liability to which Landlord may be entitled nor may any third party rely on the herein indemnification provisions as waiver of said liability limits.

(b) If Landlord obtains separate counsel due to reasonable concerns that its interests and that of Tenant may be adverse or that counsel provided by Tenant may have a conflict in interest or is not providing effective representation of Landlord, then the reasonable expenses of such separate counsel shall be at Tenant's expense.

(c) The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to Landlord which would exist at common law or under any other provision of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with Article 7. This Lease is made on the express condition that Landlord shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Premises, specifically including any damage or injury to the person or property of Tenant or any of the Tenant Parties, from whatever cause, in any way connected with the condition, use, occupational safety or occupancy of the Premises, unless caused by the gross negligence or willful misconduct of Landlord.

(d) The provisions of this Section 7.14 shall survive termination or expiration of this Lease.

ARTICLE 8 - USE OF PREMISES

8.1 Permitted Uses.

The Premises shall be used for [_____] (collectively, the "**Permitted Uses**") and for no other purpose.

The Tenant expressly agrees for itself, its successors and assigns to prevent the use of the Premises for purposes which will create or result in hazards to flight such as, but not limited to, purposes which will (i) produce electrical interference with radio communications, (ii) make it difficult for pilots to distinguish between airport lights and others, (iii) project glare in the eyes of pilots (except for solar panels constructed in accordance with all applicable Federal Aviation Administration (FAA) or legal requirements), (iv) impair visibility in the vicinity of the airport, or (v) otherwise endanger the landing, taking off or maneuvering of the aircraft.

8.2 Abandonment of Use.

Subject to Force Majeure (as such term is defined herein), except during construction of the Initial Improvements and thereafter during reasonable periods of repair, remodeling and/or restoration, Tenant covenants and agrees to continuously and uninterruptedly use the Premises for the Permitted Uses. If the Premises shall be abandoned, deserted, or vacated by the Tenant (such decision to abandon, desert or vacate or discontinue construction or operation of the facilities located on the Premises shall be referred to as a decision to “**Discontinue Operations**”), Landlord shall have the right to terminate the Lease and recover exclusive possession of the Premises by written notice to Tenant. In the event Landlord exercises its right to terminate the Lease under this Section 8.2, the Lease shall terminate as of the date that is sixty (60) days after the date of Landlord’s notice to Tenant thereof, and Tenant’s liability with respect to the Lease shall terminate as of such date.

8.3 No Waste.

Tenant shall not injure, overload, deface or strip or cause waste or damage to, the Premises or the Initial Improvements constructed thereon, nor commit any nuisance or unlawful conduct; nor permit the emission of any objectionable noise or odor; nor permit or suffer any subtenant, guest, licensee, operator, occupancy, constructor, subcontractor, invitee or others to do any of the foregoing.

8.4 Legal Requirements.

Throughout the Term of this Lease, Tenant, at its expense, shall promptly comply with and shall cause all Tenant Parties to promptly comply with, all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, housing authorities, fire regulations, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and the sidewalks (and all associated drainage systems), sewers, roadways, parking lots and curbs adjoining the same, or to the use or manner of use of the same or to any of the Tenant Parties, whether or not such law, ordinance, rule, regulation or requirement is specifically applicable or related to the conduct of the Permitted Uses, or shall affect the interior or exterior of the Improvements or any Tenant Work, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises (collectively, “**Legal Requirements**”).

8.5 Compliance with Insurance Requirements.

Throughout the Term of this Lease, Tenant, at its expense, shall observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises, and Tenant shall, without limiting any other requirements of this Lease, in the event of any violation or any

attempted violation of the provisions of this Section 8.5 by any Tenant Party, take all reasonable steps, immediately upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

8.6 Property Management.

Tenant shall hire a reputable and experienced property management company to manage the Premises. Prior to its completion of the Initial Improvements, Tenant shall submit to Landlord for approval (a) the name of Tenant's proposed property management company, (b) evidence that such company has (i) a good business and character reputation in the community, and (ii) proven property management experience of at least five (5) years prior to the date of the designation by Tenant, and (c) the identity, background and experience of the senior operational officer, and all agents and employees who will be engaged in the management of the Premises. No change in the designated management company shall be permitted unless the Tenant first obtains Landlord's prior written authorization for said change.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 Restoration Required.

If the whole or any part of the Premises be damaged or destroyed by any cause whatsoever, whether insured or uninsured, at any time during the Term of this Lease, Tenant will, irrespective of insurance proceeds, promptly commence to replace or repair the portion of the Premises that is damaged or destroyed, and complete such repair and/or restoration with due diligence and at its sole cost and expense, with such changes, alterations or modifications as are reasonably determined by Tenant so long as such changes, alterations or modifications (a) do not diminish the overall utility for the Permitted Uses, and (b) comply with the aesthetic requirements contained in the RFP. The parties recognize that such damage or destruction may require emergency replacement or repair. Tenant will be entitled to all insurance proceeds in order to effect such replacement, modifications or alterations. Such restorations, repairs, replacements, building or alterations shall be commenced as soon as practicable following the occurrence of such damage or destruction and thereafter be prosecuted continuously to completion with diligence.

9.2 No Surrender or Abatement.

Except as otherwise provided in Section 9.3 below, no destruction of or damage to the improvements on the Premises or any part thereof by fire or casualty, whether or not insured, shall permit Tenant to surrender this Lease or shall relieve Tenant from its liability to pay the full Rent and other charges payable under this Lease or from any of its other obligations under this Lease, and Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Premises, or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage.

9.3 Damage or Destruction near end of Term.

Notwithstanding anything to the contrary contained in this Article 9, if at any time during the last five (5) years of the Term of this Lease (a) more than 25% of the then current insurable value of the improvements shall be destroyed by fire or other casualty, (b) Tenant has provided property insurance coverage to the full extent required in this Lease, (c) the proceeds thereof are made available by the applicable insurance carrier or the insurance carrier has acknowledged in

writing its liability to pay proceeds under the applicable policy and has not raised any defenses to payment thereof, and (d) Tenant notifies Landlord of its election within sixty (60) days of such destruction to terminate this Lease, then this Lease shall terminate as follows: (i) Tenant shall pay to the Landlord, or as otherwise directed in writing by Landlord, the property insurance proceeds (or, if applicable, assign to Landlord Tenant's right to receive property insurance proceeds) in the amount required to be insured hereunder, plus all proceeds of insurance for Landlord's loss of Rent, (ii) if Landlord elects in its sole discretion, Tenant shall, prior to the effective date of termination, at its expense, subject to reimbursement from available insurance proceeds, tear down and remove all parts of the damaged improvements then remaining and the debris resulting from such destruction, or shall otherwise clean up and restore the Premises to a clean and safe condition, free and clear of any and all liens and encumbrances and (iii) within ten (10) days after the completion of said clean-up and restoration, Tenant shall surrender to Landlord possession of the Premises and shall pay (A) to Landlord, any Rent then due to Landlord accruing to the date of said surrender to the extent not yet paid, in addition to the amounts described in clause (i) above and (B) all other amounts required of Tenant under this Lease, to the extent not yet paid, whether paid to Landlord or otherwise, adjusted through the date of surrender.

ARTICLE 10 - TAKING

10.1 Award.

In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between Landlord and Tenant and those authorized to exercise such right (any such matters being herein referred as a "**Taking**"), Landlord and Tenant shall have the right to participate in any Taking proceedings or agreement for the purpose of protecting their interests hereunder. Each party so participating shall pay its own expenses therein.

10.2 Substantial Taking.

(a) If at any time during the Term of this Lease there shall be a Taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on the earlier of (i) the date upon which the condemning authority takes possession of the real estate subject to the Taking; or (ii) the date title to the real estate is vested in the condemning authority. Rent hereunder shall be paid to the date of such Taking. For the purpose of this Article, "**substantially all of the Premises**" shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the restoration of the Initial Improvements, if any, such as to allow the economic and feasible operation thereof by Tenant, as determined by Landlord in Landlord's reasonable discretion. Tenant's interest in any Taking award will equal the value to Tenant of the remaining Term of this Lease, the value to Tenant of the use and enjoyment of the Improvements, if any, and Tenant's relocation expenses insofar as relocation expenses are paid by the Taking authority (collectively, the "**Tenant's Share**"). Landlord's interest in any Taking will equal the value of its fee interest plus the remaining interest in the Improvements (the "**Landlord's Share**"). All awards from the Taking will be divided between Tenant and Landlord in the proportion that Tenant's Share bears to Landlord's Share. Notwithstanding the foregoing, however, if the Tenant has constructed the Improvements, Landlord shall not share in any Taking award with respect to the Improvements unless and until the unpaid balance of the Permitted Institutional Mortgage (as defined in Section 12.3 below) on the Premises, if any, is paid in full,

all such Taking proceeds being used first to pay off and discharge such Permitted Institutional Mortgage.

(b) No such termination of this Lease under this Article 10 shall release Tenant from any obligation hereunder for Rent accrued or payable for or during any period prior to the effective date of such termination, and any prepaid rent and insurance premiums beyond the effective date of such termination shall be adjusted.

10.3 Insubstantial Taking.

If a portion of the Premises is taken and Section 10.2 does not apply, then this Lease will automatically terminate on the date of the Taking only as to the portion of the Premises taken and this Lease will continue in full force and effect with respect to the remaining portion of the Premises with Base Rent proportionately reduced. In such event, any partial Taking award shall be paid first to the Tenant in an amount equal to the greater of (i) the unamortized cost of any Improvements constructed by Tenant on the portion of the Premises subject to the Taking; or (ii) the amount necessary to discharge or, if such amount is insufficient, to reduce any Permitted Institutional Mortgage. The balance, if any, of the Taking award shall be paid to Landlord.

10.4 Temporary Taking.

If the whole or any part of the Premises shall be the subject of a temporary Taking, this Lease shall remain in full force and Tenant shall continue to pay in full the Rent payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive any award so made for the period of the temporary Taking which is within the Term. If such temporary Taking shall extend beyond the expiration or earlier termination of this Lease, Tenant shall then pay to the Landlord a sum equal to the cost of performing any obligations required of Tenant by this Lease with respect to the surrender of the Premises.

ARTICLE 11 - ENVIRONMENTAL

11.1 Environmental Laws Defined.

“Environmental Laws” means, collectively, any federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time-to-time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. (**“CERCLA”**); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (**“RCRA”**); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. (**“SARA”**); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. (**“TSCA”**); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, Mass.Gen.L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass.Gen.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass.Gen.L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, Mass.Gen.L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or Landlord or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined in Section 11.4 below) or

providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

11.2 Tenant's Environmental Representations, Warranties and Covenants.

Tenant hereby represents, warrants and covenants as follows:

(a) Except as may be permitted by and only in accordance with Environmental Laws, Tenant shall not allow any Hazardous Materials (as defined in Section 11.4 below) to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises. Without limiting the generality of the foregoing, Tenant is not, and will not become, involved in operations at the Premises involving Hazardous Materials, except as expressly permitted by Legal Requirements.

(b) No activity shall be undertaken on the Premises by Tenant which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or (iii) the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

(c) Tenant shall, with due diligence, at its own cost and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to Landlord), take all actions (to the extent and at the time or from time-to-time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises including all removal, containment and remedial actions. Tenant shall pay or cause to be paid at no expense to Landlord all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises.

(d) Tenant, upon execution of this Lease, shall furnish Landlord with a copy of any Material Safety Data Sheets and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to Mass. Gen. L. c. 111F which Tenant is required to prepare, file or maintain pursuant to said chapter for any substances used or stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated during the Term of this Lease, Tenant shall promptly furnish a copy of such updated or changed Material Safety Data Sheets or list to Landlord.

11.3 Landlord's Environmental Representations, Warranties and Covenants

Landlord hereby represents, warrants and covenants as follows:

(a) Neither Landlord nor anyone else, to Landlord's knowledge, (i) has received notice of any private or governmental lien or judicial or administrative notice, order or action

relating to Hazardous Materials or environmental liabilities or violations with respect to the Premises, or, (ii) is in, or with any applicable notice or lapse of time, or failure to take certain curative or remedial actions, will be in, either direct or indirect violation of any Environmental Laws.

(b) No activity shall be undertaken on the Premises by Landlord which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or (iii) the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

11.4 Hazardous Materials Defined.

For purposes of this Lease, "**Hazardous Materials**" shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any Environmental Law.

11.5 Notices.

(a) Tenant shall provide Landlord with copies of any notices of releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to Landlord concurrently with mailing or delivery to the governmental agencies or authorities. Tenant also shall provide Landlord with copies of any notices of responsibility or any other notices received by or on behalf of Tenant from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials or substances located on or about the Premises. In addition, in connection with any litigation or threat of litigation affecting the Premises, Tenant shall deliver to Landlord any documentation or records as Landlord may reasonably request and which are in Tenant's possession and may be lawfully delivered to Landlord, and Landlord shall deliver to Tenant any documentation or records as Tenant may reasonably request and which are in Landlord's possession and may be lawfully delivered to Tenant.

(b) Tenant or Landlord shall immediately notify the other party in writing should Tenant or Landlord become aware of (i) any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to the Premises or any real property adjoining or in the vicinity of the Premises or such other property which could subject Landlord, Tenant or the Premises to a Claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws; (ii) any lien recorded or filed, action taken or notice given of the nature described in Sections 11.2(b) or 11.3(b) above; (iii) any notice given to Tenant from any

occupant of the Premises or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials; or (iv) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

11.6 Environmental Indemnity.

Tenant hereby presently, unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel acceptable to Landlord and save harmless Landlord Parties for, from and against any and all Claims (including, without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of CERCLA), of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of Landlord Parties and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described herein, relating to the Premises, or as a consequence of any of Tenant's or Landlord's interest in or operation of the Premises, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and warranties. Tenant does further agree and covenant that except as otherwise set forth in this Lease, none of Landlord Parties shall assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by Landlord on such property or as a result of any re-entry by Landlord onto the Premises or otherwise. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive termination of this Lease. In addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of any remedy by Landlord under the Lease. Tenant agrees that the indemnification granted herein may be enforced by any of Landlord Parties; provided, however, that nothing contained herein shall prevent Landlord from exercising any other rights under the Lease.

ARTICLE 12 - TRANSFER OF TENANT'S INTEREST

12.1 Assignment by Tenant.

Tenant will not assign this Lease or any interest in this Lease without the prior written consent of Landlord, which consent may be withheld in its reasonable discretion. At the Landlord's option, any attempted transfer without said prior written approval shall be void, *ab initio*, shall be of no force and effect, and shall confer no rights on or in favor of third parties, provided that the Landlord may, at its option, collect rent from any such transferee and apply the net amount collected to Rent due from Tenant hereunder, but no such collection shall be deemed a waiver of such violation, or the acceptance of such transferee as a tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant set forth in this Lease.

Tenant shall give written notice to Landlord of the name and address of any proposed assignee and any other information reasonably requested by Landlord regarding such proposed assignee and any documents of assignment as Landlord may reasonably request. Landlord shall, within thirty (30) days from the date of receipt from Tenant of such notice, give notice to Tenant of Landlord's approval or disapproval of such proposed assignment. Where Landlord has given

such approval to Tenant to transfer Tenant's interest in the Lease, such transfer shall be effective upon compliance with the following conditions:

(a) At the time of such assignment, there shall not exist hereunder any Event of Default;

(b) Such assignee shall be subject to and bound by all of the terms and conditions hereof, and shall agree, by written instrument reasonably satisfactory to Landlord, to assume and be bound by all of the obligations on the part of Tenant to be performed and observed, under this Lease, including, without limitation, the covenants contained in this Section 12.1 requiring such approval of and agreement with Landlord in the case of further assignment of this Lease; and

(c) Tenant shall reimburse Landlord on demand, as Additional Rent, for all reasonable out-of-pocket fees, costs and expenses incurred by the Landlord (including without limitation, any reasonable attorneys' fees) in connection with the request for such transfer by Tenant.

12.2 Permitted Transfers.

Notwithstanding anything in this Section 12 or elsewhere in the Lease to the contrary, Tenant shall have the right, without Landlord's consent, but upon at least thirty (30) days prior written notice thereto, to assign this Lease or sublet all or any portion of the Premises to an Affiliate (as defined herein), provided, however, that Tenant shall remain liable for all of Tenant's obligations contained herein, and, provided, with respect to an assignment of this Lease to an Affiliate, such Affiliate shall have, immediately after such assignment, a net worth equal to or greater than Tenant immediately prior to such assignment. As used herein "Affiliate" shall mean an entity which controls, is controlled by or is under common control with Tenant.

12.3 Tenant's Right to Sublet.

No consent of Landlord shall be required to any sublet or license of the Premises to an unaffiliated subtenant or licensee as part of a transaction in which Tenant or Tenant's Affiliates remain in possession of the Premises or portion thereof being sublet or licensed as users or operators under a sub-sublease or license. Tenant shall provide Landlord with a statement from Tenant containing a certification, warranty and representation that the terms of the proposed sublease are in all respects consistent with and in accordance with the terms of this Lease, including the requirement that the proposed subtenant file with the Landlord a statement disclosing the identification of all parties who are required to be disclosed pursuant to Massachusetts General Laws as having a beneficial interest, direct or indirect, in the sublease as of the date of execution thereof.

12.4 Leasehold Mortgages.

(a) Notwithstanding anything to the contrary contained in this Lease, Tenant may, upon prior written consent from Landlord, which consent shall not be unreasonably, withheld, delayed or conditioned, from time-to-time, encumber, hypothecate or mortgage its interest in the Premises with one or more mortgages, assignments of leasehold interest or any other security instruments in favor of a "**Permitted Institutional Mortgagee**" (which means any bank, trust, trust company, savings and loan association, insurance company, state agency, quasi-state agency, federal, quasi-federal agency, or title company authorized to make mortgage loans in

Massachusetts) as partial security for a loan or loans and the holder of such “**Permitted Institutional Mortgage**”. Each such Permitted Institutional Mortgage shall be expressly subject to the terms and conditions of this Lease. Tenant shall promptly deliver to Landlord a true copy of the Permitted Institutional Mortgage. Tenant shall notify Landlord of the address of the Permitted Institutional Mortgagee to which notices may be sent.

(b) **Rights and Obligations of Permitted Institutional Mortgagee.** The Permitted institutional Mortgagee shall promptly notify Landlord if said mortgagee forecloses upon said mortgage or in any way varies the terms and conditions of the approved mortgage. Should the mortgagee foreclose upon its mortgage, the Mortgagee shall obtain Landlord's prior written consent for the assignment of this Lease to the Mortgagee or any assignees of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) **Permitted Institutional Mortgagee Cure Rights.**

(i) The Permitted Institutional Mortgagee may give written notice in the manner specified in Section 17.2 below) to Landlord of its name and address and if such notice is given, Landlord shall give to such Permitted Institutional Mortgagee, a copy of each notice of default by Tenant at the same time as and whenever any such notice of default shall thereafter be given by Landlord to Tenant, addressed to such Permitted Institutional Mortgagee at its address last furnished to Landlord. No such notice by Landlord to Tenant hereunder shall be deemed to have been duly given unless and until a copy thereof has been served on such in the manner provided in this Lease. Further, a Permitted Institutional Mortgagee shall have the following rights upon receipt of any such notice:

(ii) Such Permitted Institutional Mortgagee shall (subject to unavoidable delays) thereupon have a period of an additional twenty (20) days within which to cure or correct such default (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if such Permitted Institutional Mortgagee has commenced such cure within such additional twenty (20) day period and is diligently pursuing to completion the remedies or steps necessary to cure or correct such default, but in no event more than ninety (90) days without Landlord's prior written consent, not to be unreasonably withheld. If Tenant defaults with respect to the performance of its obligations hereunder, such Permitted Institutional Mortgagee shall have the right to remedy such default or cause the same to be remedied within the period and otherwise as provided herein. Landlord will accept performance by any such Permitted Institutional Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(iii) The time of the Permitted Institutional Mortgagee to cure any default by Tenant which reasonably requires that said Permitted Institutional Mortgagee be in possession of the Leased Premises to do so shall be deemed extended to include the period of time required by said Permitted Institutional Mortgagee to obtain such possession (by foreclosure or otherwise) with due diligence; provided, however, that such Permitted Institutional Mortgagee shall have delivered to Landlord its written commitment to cure outstanding defaults reasonably requiring possession of the Leased Premises; and further provided, however, that during such period all other obligations of Tenant under this Lease, including payment of rent pursuant to Article 4, are being duly performed. Nothing herein shall preclude Landlord from exercising any rights or

remedies under this Lease with respect to any other default by Tenant during any period of such forbearance, provided the exercise of such rights or remedies are subject to the same cure rights of the Permitted Institutional Mortgagee as set forth herein and further, nothing herein shall be construed as prohibiting Landlord from exercising available legal remedies, through injunctive relief or otherwise, if the default involves threats to health and safety.

(iv) If Landlord shall have given any notice of its intention to terminate this Lease, Landlord shall, upon written request of the Permitted Institutional Mortgagee, made within thirty (30) days of receiving such notice of intention to terminate, promptly execute and deliver a new lease of the Leased Premises to the Permitted Institutional Mortgagee; provided, however, that at or prior to the execution and delivery of said new lease, the Permitted Institutional Mortgagee shall have paid or caused to be paid, all rent and other sums due and payable by Tenant hereunder to the date of commencement of the new lease and shall have cured any other outstanding defaults under the Lease. Such new lease shall grant to, and impose upon, the Permitted Institutional Mortgagee and Landlord, respectively, enforceable rights and obligations identical to the respective rights and obligations created by this Lease, and such new lease shall be for the remainder of the term subsequent to the date of such termination of this Lease and at the rent upon the other terms and conditions herein contained.

12.5 Excess Payments.

If this Lease is assigned or if the entire Premises is otherwise subject to an assignment, mortgage, pledge, or sublease, Tenant shall pay to Landlord as and when received, as Additional Rent, an amount equal to fifty percent (50%) of the difference between any and all amounts Tenant receives from such assignee or sublessee by virtue of such assignment or sublease and the total Rent due under this Lease for the same period, provided said difference is greater than zero. In the event that less than all of the Premises is subleased, the provisions of this Section shall be applied on a pro-rated basis to the portion of the Premises subject to such sublease. This Section shall not apply to any loan proceeds obtained by Tenant in connection with the grant of a leasehold mortgage on this Lease, provided the Landlord has consented to such leasehold mortgage.]

ARTICLE 13 - TERMINATION AND DEFAULT

13.1 Events of Default.

Each of the following events shall be deemed an “**Event of Default**” hereunder:

- (a) If Tenant shall fail to pay, as and when due, any payment of Rent or other sums payable under this Lease, and such failure shall continue for a period of ten (10) days after notice from Landlord to Tenant;
- (b) If Tenant shall fail to comply with the provisions of Sections 8.1 or 8.2 hereof;
- (c) If Tenant shall fail to maintain any insurance required to be maintained by Tenant hereunder and such default continues for a period of seven (7) days after written notice from Landlord to Tenant, subject, however, to Landlord’s right to cure such default prior to the expiration of such seven (7) day cure period, the cost of which shall be reimbursed by Tenant;

(d) If Final Completion of Tenant's Initial Improvements shall not have occurred on or before the Outside Completion Date, subject to delays due to Force Majeure (as such term is defined herein);

(e) If Tenant shall fail to perform or comply with any other of the agreements, terms, covenants or conditions in this Lease, other than those referred to in Subsections (a) - (c) of this Section 13.1, but including achieving completion of any approval, permit or construction requirement under the Development Milestones, subject to delays due to Force Majeure, for a period of thirty (30) days after notice from Landlord to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such thirty (30) day period, Tenant fails to proceed within such thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with diligence (it being intended in connection with a default not susceptible of being cured with diligence within such thirty (30) day period that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with all diligence); or

(f) If Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's leasehold estate for whatever reason, or Tenant shall make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Tenant any such proceedings which are not dismissed within ninety (90) days.

13.2 Remedies.

Upon an Event of Default, Landlord at any time thereafter may give written notice to Tenant specifying such Event or Events of Default, Landlord may exercise the following rights:

(a) In the case of a monetary Event of Default, Landlord may re-enter and take possession of the Premises by any lawful means, upon which Tenant shall surrender the Premises pursuant to the terms of Section 14.1;

(b) To bring suit for the collection of the Rent or other amounts for which Tenant may be in default, or for the performance of any other covenant or agreement of Tenant hereunder, all without entering into possession of the Premises or terminating this Lease; or

(c) To cure the condition causing the Event of Default as set forth in Section 17.26 herein.

(d) Landlord may enforce its rights hereunder by claims for equitable relief.

Upon such cure and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice. Upon the date specified in such notice, this Lease and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate (unless prior to the date specified for termination the Event or Events of Default shall have been cured, in which case this Lease shall remain in full force and effect), and Tenant shall remain liable as hereinafter provided and all Improvements shall become the property of Landlord without the necessity of any deed or conveyance from Tenant to Landlord. Tenant agrees upon request of Landlord to immediately execute and deliver to Landlord any deeds, releases or other documents deemed

necessary by Landlord to evidence the vesting in Landlord of the ownership of all Improvements. Upon such termination, Landlord may re-enter the Premises and dispossess Tenant and anyone claiming by, through or under Tenant by summary proceedings or other lawful process.

13.3 Damages

. Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's Event of Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including attorneys' fees. With respect to damages for any unpaid Rent, such damages shall include, at Landlord's election, either the present value, calculated at a discount rate equal to the then-current Prime Rate plus three percent (3%) per annum, or the excess of the total Base Rent under this Lease for the remainder of the Term over the fair market rental value of the Premises for the balance of the Term minus any deficiencies for said period previously recovered from Tenant; or the Rent payable to Landlord provided for in this Lease, when and as due and payable in this Lease, less Landlord's actual proceeds of reletting less Landlord's actual reasonable costs of reletting. Landlord may recover such damages at any time after an Event of Default, including after expiration of the Term. Landlord need not commence separate actions to enforce Tenant's obligations for each month's Rent not paid, or each month's accrual of damages for Tenant's Event of Default, but may bring and prosecute a single combined action for all such Rent and Damages.

13.4 No Waiver.

No failure by either Landlord or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either Landlord or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by Landlord or Tenant of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

13.5 Injunctive Relief.

In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

13.6 Remedies Cumulative.

Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the

simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 14 - SURRENDER; HOLDOVER

14.1 Surrender.

Tenant shall on the last day of the Term, or upon any earlier termination of this Lease, quit and peacefully surrender and deliver up the Premises, including the Initial Improvements, to the possession and use of Landlord without delay and in good order, condition and repair (excepting only reasonable wear and tear and damage from a Taking or from a fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant, all as provided under this Lease). The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term, those permitted under this Lease or created or suffered by Landlord and shall be surrendered without any payment by Landlord on account of the Improvements. Upon or at any time after the expiration or earlier termination of this Lease, Landlord shall have, hold and enjoy the Premises and the right to receive all income from the same. In the event Tenant fails to remove any of Tenant's personal property from the Premises, such property shall be deemed abandoned, and Landlord is hereby authorized, without liability to Tenant for such loss or damage thereto, and at the sole risk of Tenant, to remove and store any of such property at Tenant's expense, or to retain the same under Landlord's control, or to sell at public or private sale, without notice, any or all of the property not so removed and to apply the net proceeds of any such sale towards the payment of any sum hereunder owing by Tenant to Landlord, or to destroy such property. The provisions of this Section 14.1 shall survive expiration or other termination of this Lease.

14.2 Holdover.

If Tenant or any party claiming by, through or under Tenant, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, then Landlord may, at its option, serve written notice upon Tenant that such holding over constitutes: (i) an Event of Default under the Lease, or (ii) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (iii) the creation of a tenancy-at-sufferance, in any case upon the terms and conditions set forth in this Lease. The rent for any holding over will be equal to two hundred percent (200%) of the Base Rent paid or payable during the last lease year prior to the Lease termination. Additional Rent and any other amounts due and owing shall also be due and payable as provided in this Lease. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this Section shall not constitute a waiver by Landlord of any right of re-entry as set forth in this Lease; nor shall receipt of any Rent or any other act in apparent affirmance of the tenancy operate as a waiver of Landlord's right to terminate this Lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed. The provisions of this Section 14.2 shall survive expiration or other termination of this Lease.

ARTICLE 15 - COVENANTS

15.1 Non-Discrimination.

With respect to its exercise of all rights and privileges granted herein, Tenant agrees that Tenant, its successors in interest, sub-tenants, licensees, operators, and assigns shall not discriminate against any person, employee, or applicant for employment because of race, color, creed, religion, national origin, age, sex, sexual orientation, marital status, handicap, veteran status or any other basis prohibited by law in Tenant's use of the Premises, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors.

15.2 FAA Provisions.

Tenant shall comply at all times with those certain provisions set forth in Exhibit D attached hereto and made a part hereof.

15.3 Non-Compliance.

Tenant shall defend, indemnify and hold Landlord Parties harmless from and against any and all Claims of third persons resulting from Tenant's non-compliance with any of the provisions of this Article 15.

ARTICLE 16 - REPRESENTATIONS AND WARRANTIES

16.1 Landlord.

Landlord represents and warrants to Tenant that the following facts and conditions exist and are true as of the date of this Lease and shall be true as of the Commencement Date.

(a) Due Authorization and Execution. Landlord's execution of this Lease has been authorized by all requisite action on the part of Landlord, and the execution and delivery of this Lease and the performance of its obligations hereunder and thereunder will not violate or contravene any agreement or obligation to which Landlord is a party or by which it is bound.

(b) No Litigation. There is no existing, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Landlord or the Premises that would, materially adversely affect Landlord, the Premises, this Lease, or Tenant's ability to operate the Premises as provided herein.

(c) FIRPTA. Landlord is not a "foreign person" within the meaning of United States Internal Revenue Code §1445(f)(3).

(d) OFAC. Landlord is not a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control of the Department of the Treasury ("OFAC") (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) or other similar governmental action.

16.2 Tenant.

Tenant represents and warrants to Landlord that the following facts and conditions exist and are true as of the date of this Lease and shall be true as of the Commencement Date.

(a) Due Authorization and Execution. Tenant states that it is a duly organized, lawfully existing corporation in good standing under the laws of [_____]. Tenant's execution of this Lease has been authorized by all requisite action on the part of Tenant, and the execution and delivery of this Lease by Tenant and the performance of its obligations hereunder and thereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.

(b) No Litigation. There is no existing, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Tenant that would, materially adversely affect Tenant's ability to develop and operate the Premises as provided herein.

(c) FIRPTA. Tenant is not a "foreign person" within the meaning of United States Internal Revenue Code §1445(f)(3).

(d) OFAC. Tenant is not a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) or other similar governmental action.

ARTICLE 17 - MISCELLANEOUS

17.1 Amendments to Lease.

This Lease may not be amended, modified, supplemented or extended except by a written instrument executed by Landlord and Tenant.

17.2 Notices.

Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be delivered by (i) hand, (ii) nationally recognized overnight express commercial service such as "Federal Express" (in either case with evidence of delivery or refusal thereof) or (iii) registered or certified mail, return receipt requested, addressed if to Landlord to: Airport Manager, 480 Barnstable Road, Hyannis, MA 02601 with a copy to: [_____] or to such other address as Landlord may from time-to-time designate by written notice to the Tenant, or if to the Tenant addressed to:

_____ of

with a copy to:

or to such other address as the Tenant may from time-to-time designate by written notice to Landlord, or to such other agent or agents as may be designated in writing by either party. Such notices shall be deemed delivered on the date of delivery (or when delivery is refused) with

respect to clauses (i) and (ii) above and three (3) business days after deposit in the United States mail, with respect to clause (iii).

17.3 Severability.

If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

17.4 Quiet Enjoyment.

Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by anyone claiming by, through or under Landlord, subject, however, to the exceptions, reservations and conditions of this Lease and matters of record. The foregoing shall not create any liability on the part of Landlord for any defects in or encumbrances on Landlord's title existing as of the date hereof.

17.5 Integration.

All prior understandings and agreements between the parties with respect to this Lease are merged within this Lease, which alone fully and completely sets forth the understanding of the parties.

17.6 Bind and Inure.

The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns.

17.7 Notice of Lease.

Landlord and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Lease, which shall be recorded forthwith with the Barnstable Registry of Deeds, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with said Registry of Deeds.

17.8 Transfer of Premises.

Landlord hereby agrees that it shall provide to Tenant not less than thirty (30) days prior written notice with respect to any voluntary transfer or voluntary disposition of the Landlord's interest in the Premises, provided, however, the failure to give such notice shall not affect the validity of any transfer or disposition of the Landlord's interest.

17.9 Security Deposit.

Tenant agrees that a security deposit in the amount of [_____] (the "**Security Deposit**") will be paid in cash within three (3) business days of Tenant's execution and delivery of this Lease to Landlord, and that Landlord shall hold the same throughout the Term of this Lease in an interest bearing account as security for the performance by Tenant of all obligations on the part of Tenant hereunder. Landlord shall have the right from time to time without

prejudice to any other remedy Landlord may have on account thereof, to apply the Security Deposit, or any part thereof, to Landlord's damages arising from, or to cure, any Event of Default of Tenant. If Landlord shall so apply any or all of the Security Deposit, Tenant shall promptly deposit with Landlord, after written notice thereof to Tenant, the amount so applied to be held as security hereunder. If no Event of Default exists upon the expiration or earlier termination of the Term of this Lease, Landlord shall return the Security Deposit plus any interest earned thereon, or so much thereof as shall have theretofore not been applied in accordance with the terms of this Section, to Tenant, within sixty (60) days after surrender of possession of the Premises by Tenant to Landlord so long as the Premises are in the condition required by this Lease. If Landlord conveys Landlord's interest under this Lease, the Security Deposit, or any part thereof not previously applied, may be turned over by Landlord to Landlord's grantee, and, if so turned over, Tenant agrees to look solely to such grantee for proper application of the Security Deposit in accordance with the terms of this Section, and the return thereof in accordance herewith, provided that such grantee acknowledges receipt of the same, and Tenant's rights thereto, in writing at the time of such transfer and a copy of such receipt is provided to Tenant.

17.10 Enforcement of Landlord's Liability.

Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, Landlord's liability under this Lease shall be enforceable only out of Landlord's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, Landlord, nor shall there be any personal liability on the part of Landlord or any member of its Commission, or any officer or employee of Landlord, with respect to any obligations to be performed hereunder. Without limitation of the foregoing, Landlord shall not be liable for any loss, damage or injury of whatever kind caused by, resulting from, or in connection with: (i) the supply or interruption of water, gas, electric current, oil or any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or subsurface area or from any part of the Premises, or (iii) other leakage from pipes, appliances, sewer or plumbing works therein or from any other place. In no event shall Landlord be liable to Tenant for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Lease.

17.11 No Merger.

There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that Landlord may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless Landlord executes and records an instrument affirmatively electing otherwise.

17.12 Captions.

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

17.13 Table of Contents.

The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

17.14 Massachusetts Law Governs.

This Lease shall be governed exclusively by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

17.15 Time of the Essence.

Time shall be of the essence hereof.

17.16 Excavation and Shoring.

If any excavation shall be made or contemplated to be made by Tenant for building or other purposes upon property or streets adjacent to or nearby the Premises, Tenant shall do or cause to be done all such work as may be necessary to preserve any of the walls or structures of the Improvements from injury or damage and to support the same by proper foundations. All such work done by Tenant shall be at Tenant's sole cost and expense.

17.17 No Partnership or Joint Venture.

Nothing contained under this Lease shall be construed to create a partnership or joint venture between Landlord and Tenant or to make Landlord an associate in any way of Tenant in the conduct of Tenant's business, nor shall Landlord be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

17.18 Tenant Request for Consent.

Tenant shall reimburse Landlord for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Tenant for Landlord's consent hereunder.

17.19 Prevailing Party.

In any litigation between the parties arising out of this Lease, or in connection with any other actions taken or notices delivered in relation to a default by any party to this Lease, the non-prevailing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the enforcement of the terms of this Lease.

17.20 Covenants Running with the Land.

Tenant intends, declares, and covenants, on behalf of itself and all future holders of Tenant's interest hereunder, that this Lease and the covenants and restrictions set forth in this Lease regulating and restricting the use, occupancy, and transfer of the Premises

- (a) shall be and are covenants running with the Premises, encumbering the Premises for the term of this Lease, binding upon Tenant and Tenant's successors-in-interest;
- (b) are not merely personal covenants of Tenant; and,
- (c) the benefits shall inure to Landlord.

17.21 Prohibition Against Hiring Town Employees.

The Tenant shall not, during the term of this lease, hire or employ on either a full-time or part-time basis, any employees of the Town of Barnstable regardless of whether such employee of the Town be full-time or part-time employees, without the express written approval of the [Landlord][Town].

17.22 Brokers.

Each of Landlord and Tenant warrants and represents to the other that it has dealt with no brokers in connection with this Lease. Each party shall defend and hold harmless the other party, and Tenant shall indemnify Landlord, from and against all commissions, fees and expenses, and all claims therefor, in connection with this Lease of, or by, any broker alleging it has deal with the other party.

17.23 Disclosure Statement.

Upon execution of this Lease, Tenant shall furnish to Landlord a statement in the form specified in Exhibit E attached hereto, signed under the pains and penalties of perjury by the persons who have or will have a direct or beneficial interest in the real property. In the event of any change in such beneficial interest during the term of the lease, a new statement disclosing such change must be signed and filed within thirty (30) days of such change.

17.24 Guaranty.

Simultaneously with the execution of this Lease, Tenant has delivered to Landlord a guaranty of Tenant's obligations hereunder, including Tenant's obligations to complete the Initial Improvements in accordance with this Lease, in the form attached hereto as Exhibit F.

17.25 Survival.

All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

17.26 Force Majeure.

In the event that any (a) strike, (b) lock-out, (c) labor dispute, (d) governmental preemption in connection with a national emergency or other governmental action, (e) inability to obtain services, labor, fuel, steam, water, electricity or materials, (f) mechanical breakdown (other than as a result of such party's or its contractor's or subcontractors' gross negligence), (g) acts of God, (h) enemy action or action of terrorists, (i) civil commotion, (j) fire or other casualty, or (l) other cause beyond the reasonable control of the party obligated to perform (which events described in items (a) through (l) are hereafter individually or collectively referred to as "Force Majeure") makes the performance by any party hereto of any portion of this Lease impossible, impractical or financially unfeasible, then performance by such party for a period equal to the period of such Force Majeure shall be excused. The foregoing shall not apply to Tenant's obligations to pay Rent when due hereunder.

17.27 Landlord's Right of Self- Help.

As an additional alternative remedy to the other remedies provided for in this Lease, the Landlord shall have the right (but not the obligation) to cure any Event of Default for and on behalf of Tenant (a) relating to Tenant's obligations regarding insurance, maintenance, repair and use of the Premises; or (b) Tenant's obligations to comply with Legal Requirements, including, without limitation, Environmental Laws; or (c) relating to the obligations of Tenant to discharge liens, if such default, if not promptly cured, results or can reasonably be anticipated to result, in a dangerous, unhealthy or unsafe condition at the Premises, or in a forfeiture, condemnation or loss of interest of the Landlord in the Premises or in exposure of Landlord to liability; provided, however, that the Landlord's right of self-help shall not be exercised by the Landlord prior to providing Tenant with an additional notice of the Landlord's intention to exercise its right of self-

help, and, so long as the Landlord has determined that there is no imminent threat to public health or safety, providing Tenant with an additional cure period, not to exceed seven (7) days. Expenses of the Landlord incurred in exercising its rights under this Section shall be Additional Rent hereunder to be paid by Tenant. The Landlord shall not incur any liability as a result of any exercise of the rights hereunder, and Tenant shall indemnify and hold the Landlord harmless from all costs, claims, closes and liabilities related to the same, including all reasonable attorneys fees. Any amount payable by Tenant to the Landlord pursuant to the provisions of this Section shall be paid within thirty (30) days after request by the Landlord with reasonable documentation relating to such amounts.

17.28 Landlord's Reservation.

Landlord reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the air space above the surface of the Premises, together with the right to cause in said airspace such sound as may be inherent in the operation of aircraft, now known or hereafter used for the navigation of or flight in said airspace, together with the emission of fumes or particles incidental to aircraft navigation, and for the use of said airspace for the landing on, taking off from or operating on Barnstable Municipal Airport.

17.29 National Emergency.

During the time of war or national emergency, Landlord shall have the right to enter into an agreement with the United States Government for military or naval use or part of all of the Barnstable Municipal Airport and the air navigation facilities. If any such agreement is made, the provisions as contained herein, insofar as they are inconsistent with the provisions of said agreement between Landlord and the United States Government, shall be suspended. In the event of such agreement, Tenant shall be entitled to reasonable and proportionate abatement of Rent.

17.30 Subordination to Federal and State Obligations.

The provisions of this Lease are and shall be subject to (i) all aeronautical regulatory approvals, (ii) Landlord's sponsor's obligations under existing and future federal grant assurances and property deeds, (iii) the provisions of any existing or future agreement between Landlord and the United States, the execution of which is required to enable or permit transfer of rights or property to Landlord for airport purposes or expenditure of state and federal grant funds for airport improvement, maintenance or development and (iv) the provisions of any existing or future agreement between Landlord and the Commonwealth of Massachusetts, the execution of which is required to enable or permit transfer of rights or property to Landlord for airport purposes or expenditure of federal grant funds for airport improvement, maintenance or development. If there is a conflict between the terms of this Lease and any of the items described in subsection (i)-(iv), the terms of the latter items will take precedence and govern. There is and shall be no waiver of this subordination clause.

17.31 Counterparts.

This Lease may be executed simultaneously in counterparts, each of which shall be deemed to be an original copy of this Lease and, when taken together, shall be deemed to be one and the same Lease.

EXECUTED as of the date first set forth above.

LANDLORD:

**THE TOWN OF BARNSTABLE, acting by and
through its Airport Commission**

By: _____

Signature

Printed Name: _____

Office Held: _____

TENANT:

By: _____

Signature

Printed Name: _____

Office Held: _____

Attached Exhibits:

Exhibit A – Legal Description of Premises

Exhibit B – Description of Initial Improvements

Exhibit C – Development Milestones

Exhibit D – FAA Requirements

Exhibit E – Disclosure of Beneficial Interest in Real Property Form

Exhibit F – Form of Guaranty

1 Exhibit A

2 LEGAL DESCRIPTION OF PREMISES

3
4 All that tract, piece, or parcel of land situate in the Village of Hyannis, Town of Barnstable,
5 Commonwealth of Massachusetts, bounded and described as follows:

6
7 Beginning at the southeasterly corner of the premises at the southwesterly corner of land of
8 Mitchell Motors, Inc. at a point in a northeasterly line of Iyanough Road, (Route 132); thence N.
9 60° 12' 55" W. by said Iyanough Road, 1466.50 feet; thence by a curve to the right of 249.66
10 feet radius by Airport Road, 426.86 feet; thence N. 37° 44' 50" E. by Airport Road, 169.64 feet
11 to land now or formerly of Jones Construction Co., Inc.; thence S. 63° 54' 10" E. by said last
12 named land, 729.39 feet to a concrete bound and land of Anna F. Morrill; thence S. 84° 18' 55" E
13 by said Morrill land and by land of Ray Blackburn, 700.38 feet; thence S. 6° 41' 30" W. by other
14 land of the Town of Barnstable by a line 200.00 feet westerly from the west end of the WNW-
15 ESE Runway and at right angles to the center line of said Runway, 849.34 feet; (such Runway
16 being a phased-out Runway); thence S. 60° 12' 55" E. by other land of the Town of Barnstable,
17 49.66 feet; thence S. 29° 44' 40" W. in range of land of the aforesaid Mitchell Motors, Inc. and
18 land leased by the Town of Barnstable to said Mitchell Motors, Inc., 250.00 feet to the point of
19 beginning; Containing an area of about 25.88 acres according to said plan and being more fully
20 shown on a plan entitled "Plan of Land In Hyannis, Barnstable, To Be Leased by Barnstable
21 Airport Commission to Cloudhopper Inns, Inc.:" dated November 16, 1961 and drawn by Newell
22 B. Snow, R.L.S., recorded In Barnstable Deeds, Plan Book 168, Page 3.

23
24 Together with slope easement from the Town of Barnstable to Lanning Corp. dated June 22,
25 1972, and recorded in Book 1679, Page 170.

1
2
3

Exhibit B
Initial Improvement Description

1
2
3

Exhibit C
Development Milestones

1 Exhibit D

2 **FAA-REQUIRED CONTRACT PROVISIONS**

3 For purposes of the foregoing sections, Lessee may also be referred to as “contractor” or
4 “concessionaire”, the Town of Barnstable may also be referred to as “sponsor” or “owner”, and
5 this Lease may also be referred to as the “agreement” or “contract”.

6 **A. General Civil Rights Provisions**

7 The tenant/concessionaire/lessee and its transferee agree to comply with pertinent statutes,
8 Executive Orders and such rules as are promulgated to ensure that no person shall, on the
9 grounds of race, creed, color, national origin, sex, age, or disability be excluded from
10 participating in any activity conducted with or benefiting from Federal assistance.

11 This provision obligates the tenant/concessionaire/lessee or its transferee for the period during
12 which Federal assistance is extended to the airport through the Airport Improvement Program.

13 In cases where Federal assistance provides, or is in the form of personal property; real property
14 or interest therein; structures or improvements thereon, this provision obligates the party or any
15 transferee for the longer of the following periods:

- 16 (a) The period during which the property is used by the airport sponsor or any
17 transferee for a purpose for which Federal assistance is extended, or for another
18 purpose involving the provision of similar services or benefits; or
- 19 (b) The period during which the airport sponsor or any transferee retains ownership
20 or possession of the property.

21 **B. Compliance with Nondiscrimination Requirements**

22 During the performance of this contract, the contractor, for itself, its assignees, and successors in
23 interest (hereinafter referred to as the “contractor”) agrees as follows:

- 24 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants)
25 will comply with the Title VI List of Pertinent Nondiscrimination Acts And
26 Authorities, as they may be amended from time to time, which are herein
27 incorporated by reference and made a part of this contract.
- 28 2. **Non-discrimination:** The contractor, with regard to the work performed by it
29 during the contract, will not discriminate on the grounds of race, color, or national
30 origin in the selection and retention of subcontractors, including procurements of
31 materials and leases of equipment. The contractor will not participate directly or
32 indirectly in the discrimination prohibited by the Nondiscrimination Acts and
33 Authorities, including employment practices when the contract covers any
34 activity, project, or program set forth in Appendix B of 49 CFR part 21.

1 3. **Solicitations for Subcontracts, Including Procurements of Materials and**
2 **Equipment:** In all solicitations, either by competitive bidding, or negotiation
3 made by the contractor for work to be performed under a subcontract, including
4 procurements of materials, or leases of equipment, each potential subcontractor or
5 supplier will be notified by the contractor of the contractor's obligations under
6 this contract and the Nondiscrimination Acts And Authorities on the grounds of
7 race, color, or national origin.

8 4. **Information and Reports:** The contractor will provide all information and
9 reports required by the Acts, the Regulations, and directives issued pursuant
10 thereto and will permit access to its books, records, accounts, other sources of
11 information, and its facilities as may be determined by the sponsor or the Federal
12 Aviation Administration to be pertinent to ascertain compliance with such
13 Nondiscrimination Acts And Authorities and instructions. Where any information
14 required of a contractor is in the exclusive possession of another who fails or
15 refuses to furnish the information, the contractor will so certify to the sponsor or
16 the Federal Aviation Administration, as appropriate, and will set forth what
17 efforts it has made to obtain the information.

18 5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with
19 the Non- discrimination provisions of this contract, the sponsor will impose such
20 contract sanctions as it or the Federal Aviation Administration may determine to
21 be appropriate, including, but not limited to:

22 a. Withholding payments to the contractor under the contract until the
23 contractor complies; and/or

24 b. Cancelling, terminating, or suspending a contract, in whole or in part.

25 6. **Incorporation of Provisions:** The contractor will include the provisions of
26 paragraphs one through six in this Section B in every subcontract, including
27 procurements of materials and leases of equipment, unless exempt by the Acts, the
28 Regulations and directives issued pursuant thereto. The contractor will take action
29 with respect to any subcontract or procurement as the sponsor or the Federal
30 Aviation Administration may direct as a means of enforcing such provisions
31 including sanctions for noncompliance. Provided, that if the contractor becomes
32 involved in, or is threatened with litigation by a subcontractor, or supplier because
33 of such direction, the contractor may request the sponsor to enter into any
34 litigation to protect the interests of the sponsor. In addition, the contractor may
35 request the United States to enter into the litigation to protect the interests of the
36 United States.

37 **C. Title VI List of Pertinent Nondiscrimination Acts and Authorities**

38 During the performance of this contract, the contractor, for itself, its assignees, and successors in
39 interest (hereinafter referred to as the "contractor") agrees to comply with the following non-
40 discrimination statutes and authorities; including but not limited to:

- 1 • Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78
2 stat. 252) (prohibits discrimination on the basis of race, color, national
3 origin);
- 4 • 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of
5 The Department of Transportation—Effectuation of Title VI of The Civil
6 Rights Act of 1964);
- 7 • The Uniform Relocation Assistance and Real Property Acquisition
8 Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of
9 persons displaced or whose property has been acquired because of Federal
10 or Federal-aid programs and projects);
- 11 • Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as
12 amended, (prohibits discrimination on the basis of disability); and 49 CFR
13 Part 27;
- 14 • The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et*
15 *seq.*), (prohibits discrimination on the basis of age);
- 16 • Airport and Airway Improvement Act of 1982, (49 USC § 471,
17 Section 47123), as amended, (prohibits discrimination based on race,
18 creed, color, national origin, or sex);
- 19 • The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the
20 scope, coverage and applicability of Title VI of the Civil Rights Act of
21 1964, the Age Discrimination Act of 1975 and Section 504 of the
22 Rehabilitation Act of 1973, by expanding the definition of the terms
23 “programs or activities” to include all of the programs or activities of the
24 Federal-aid recipients, sub-recipients and contractors, whether such
25 programs or activities are Federally funded or not);
- 26 • Titles II and III of the Americans with Disabilities Act of 1990, which
27 prohibit discrimination on the basis of disability in the operation of public
28 entities, public and private transportation systems, places of public
29 accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189)
30 as implemented by Department of Transportation regulations at 49 CFR
31 Parts 37 and 38;
- 32 • The Federal Aviation Administration’s Non-discrimination statute (49
33 U.S.C. § 47123) (prohibits discrimination on the basis of race, color,
34 national origin, and sex);
- 35 • Executive Order 12898, Federal Actions to Address Environmental Justice
36 in Minority Populations and Low-Income Populations, which ensures non-
37 discrimination against minority populations by discouraging programs,
38 policies, and activities with disproportionately high and adverse human
39 health or environmental effects on minority and low-income populations;
- 40 • Executive Order 13166, Improving Access to Services for Persons with
41 Limited English Proficiency, and resulting agency guidance, national

1 origin discrimination includes discrimination because of limited English
2 proficiency (LEP). To ensure compliance with Title VI, you must take
3 reasonable steps to ensure that LEP persons have meaningful access to
4 your programs (70 Fed. Reg. at 74087 to 74100);

- 5 • Title IX of the Education Amendments of 1972, as amended, which
6 prohibits you from discriminating because of sex in education programs or
7 activities (20 U.S.C. § 1681 et seq.)

8 **D. Non-Discrimination Clauses for the Transfer of Real Property Acquired or**
9 **Improved Under the Department of Transportation Activity, Facility or**
10 **Program.**

- 11 1. The Lessee for itself, its heirs, personal representatives, successors in interest, and
12 assigns, as a part of the consideration hereof, does hereby covenant and agree as a
13 covenant running with the land that: In the event facilities are constructed, maintained, or
14 otherwise operated on the property described in this Lease for a purpose for which a
15 Federal Aviation Administration activity, facility, or program is extended or for another
16 purpose involving the provision of similar services or benefits, the Lessee will maintain
17 and operate such facilities and service in compliance with all requirements imposed by
18 the Nondiscrimination Acts and Regulations listed in the Pertinent List of
19 Nondiscrimination Authorities (as may be amended) such that no person on the grounds
20 of race, color, or national origin, will be excluded from participation in, denied the
21 benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 22 2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above
23 Nondiscrimination covenants, the Town of Barnstable will have the right to terminate the
24 Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the
25 same as if the Lease had never been made or issued.

26
27 **E. Fair Labor Standards Act**

28 This Lease incorporates by reference the provisions of 29 U.S.C. § 201, et seq. (the Federal Fair
29 Labor Standards Act (FLSA)), and its implementing regulations, with the same force and effect
30 as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child
31 labor standards for full- and part-time workers.

32 Lessee has full responsibility to monitor compliance to the referenced statute and regulation.
33 Lessee must address any claims or disputes that arise from this requirement directly with the
34 U.S. Department of Labor – Wage and Hour Division.

35 **F. Occupational Safety and Health Act**

36 This Lease incorporates by reference the requirements of 29 CFR Part 1910 with the same force
37 and effect as if given in full text. Lessee must provide a work environment that is free from
38 recognized hazards that may cause death or serious physical harm to the employee. Lessee
39 retains full responsibility to monitor its compliance and its subcontractor's compliance with the
40 applicable requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651, et

1 seq.; 29 CFR Part 1910). Lessee must address any claims or disputes that pertain to a referenced
2 requirement directly with the U.S. Department of Labor – Occupational Safety and Health
3 Administration.

4

1 Exhibit E

2 **DISCLOSURE STATEMENT FOR**
3 **TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY**
4 **M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**
5

6 The undersigned party to a real property transaction with a public agency hereby discloses and
7 certifies, under pains and penalties of perjury, the following information as required by law:
8

9 (1) REAL PROPERTY: A parcel of land located at 790 Iyannough Road/Route 132, Hyannis,
10 MA
11

12 (2) TYPE OF TRANSACTION, AGEEMENT, or DOCUMENT: Ground Lease
13

14
15 (3) PUBLIC AGENCY PARTICIPATING in TRANSACTION: Town of Barnstable, acting on
16 behalf of its Airport Commission
17

18
19 (4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY (IF NOT AN INDIVIDUAL): Town
20 of Barnstable, acting on behalf of its Airport Commission
21

22
23 (5) ROLE OF DISCLOSING PARTY (Check appropriate role):
24

25 Lessor/Landlord Lessee/Tenant
26
27 Seller/Grantor Buyer/Grantee
28
29 Other (Please describe): _____
30
31

32 (6) The names and addresses of all persons and individuals who have or will have a direct or
33 indirect beneficial interest in the real property excluding only 1) a stockholder of a
34 corporation the stock of which is listed for sale to the general public with the securities
35 and exchange commission, if such stockholder holds less than ten per cent of the
36 outstanding stock entitled to vote at the annual meeting of such corporation or 2) an
37 owner of a time share that has an interest in a leasehold condominium meeting all of the
38 conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach
39 additional pages if necessary):
40

41 NAME RESIDENCE
42

43 None
44
45
46
47

48 (7) None of the above- named persons is an employee of the Division of Capital Asset
49 Management and Maintenance or an official elected to public office in the Commonwealth
50 of Massachusetts, except as listed below (insert "none" if none): None
51

1 (8) The individual signing this statement on behalf of the above-named party acknowledges
2 that he/she has read the following provisions of Chapter 7C, Section 38 (formerly
3 Chapter 7, Section 40J) of the General Laws of Massachusetts:

4 *No agreement to rent or to sell real property to or to rent or purchase real*
5 *property from a public agency, and no renewal or extension of such agreement,*
6 *shall be valid and no payment shall be made to the lessor or seller of such*
7 *property unless a statement, signed, under the penalties of perjury, has been*
8 *filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by*
9 *a duly authorized officer thereof giving the true names and addresses of all*
10 *persons who have or will have a direct or indirect beneficial interest in said*
11 *property with the commissioner of capital asset management and maintenance.*
12 *The provisions of this section shall not apply to any stockholder of a corporation*
13 *the stock of which is listed for sale to the general public with the securities and*
14 *exchange commission, if such stockholder holds less than ten per cent of the*
15 *outstanding stock entitled to vote at the annual meeting of such corporation. In*
16 *the case of an agreement to rent property from a public agency where the*
17 *lessee's interest is held by the organization of unit owners of a leasehold*
18 *condominium created under chapter one hundred and eighty-three A, and time-*
19 *shares are created in the leasehold condominium under chapter one hundred*
20 *and eighty-three B, the provisions of this section shall not apply to an owner of a*
21 *time-share in the leasehold condominium who (i) acquires the time-share on or*
22 *after a bona fide arms length transfer of such time-share made after the rental*
23 *agreement with the public agency is executed and (ii) who holds less than three*
24 *percent of the votes entitled to vote at the annual meeting of such organization of*
25 *unit owners. A disclosure statement shall also be made in writing, under penalty*
26 *of perjury, during the term of a rental agreement in case of any change of interest*
27 *in such property, as provided for above, within thirty days of such change.*

28 *Any official elected to public office in the commonwealth, or any employee of the*
29 *division of capital asset management and maintenance disclosing beneficial*
30 *interest in real property pursuant to this section, shall identify his position as part*
31 *of the disclosure statement. The commissioner shall notify the state ethics*
32 *commission of such names, and shall make copies of any and all disclosure*
33 *statements received available to the state ethics commission upon request.*

34 *The commissioner shall keep a copy of each disclosure statement received*
35 *available for public inspection during regular business hours.*

37 (9) This Disclosure Statement is hereby signed under penalties of perjury.

38
39
40 _____
41 PRINT NAME OF DISCLOSING PARTY (from Section 4, above)

42
43 _____
44 AUTHORIZED SIGNATURE of DISCLOSING PARTY DATE (MM / DD / YYYY)

45
46 _____
47 PRINT NAME & TITLE of AUTHORIZED SIGNER

Exhibit F

GUARANTY

This guaranty (this "Guaranty") is made as of _____, 201_ by [_____] ("Guarantor"), for the benefit of The Town of Barnstable, acting on behalf of the Airport Commission (the "Town").

BACKGROUND

A. The Town is the fee simple owner of that parcel of land (the "Land") containing approximately _____ acres and located at _____, Massachusetts that is more fully described in Exhibit A attached hereto and that is shown as the "Land" on the plan attached hereto as Exhibit B (the "Plan").

B. Pursuant to the Ground Lease Agreement between the Town and [_____] (together with its successors and assigns, "Tenant") dated on or about the date hereof (the "Ground Lease"), Tenant is the leasehold owner of the Land (the "Ground Lease Premises").

C. Pursuant to the Ground Lease, Tenant has assumed certain obligations related to the design, construction and completion of the Initial Improvements (as such term is defined in the Ground Lease) (the "Project").

D. Guarantor [owns a direct or indirect interest in Tenant], and Guarantor has agreed to guaranty certain obligations of Tenant under the Ground Lease through the delivery of this Guaranty.

E. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ground Lease.

NOW, THEREFORE, as an inducement to the Town to enter into the Ground Lease, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

ARTICLE 1

NATURE AND SCOPE OF GUARANTY

1.1 Guaranteed Obligations.

(a) Pursuant to the terms and conditions set forth herein, Guarantor hereby irrevocably and unconditionally guarantees to the Town (and the Town's successors and assigns) the full, complete and punctual payment and performance of the obligations, duties, covenants and agreements of Tenant under the Ground Lease directly related to the construction of the Project (the "Work") within the time frame(s) required by the Ground Lease and in compliance with the terms and conditions of the Ground Lease (the "Guaranteed Obligations"). Guarantor acknowledges having received, reviewed and approved a true and complete copy of the Ground Lease.

(b) If Tenant fails to perform the Guaranteed Obligations under the Ground Lease, the Town shall have the same default remedies against Guarantor as the Town has against Tenant for the Guaranteed Obligations as provided for in the Ground Lease, but only after all notice and cure periods set forth in the Ground Lease and after Guarantor has failed to commence performance of the Guaranteed Obligations following (20) business days' written notice of demand delivered by the Town after any applicable notice and cure period. Notwithstanding any terms to the contrary herein or in the Ground Lease, Guarantor shall not have any liability under this Guaranty if Tenant's failure to perform the Guaranteed Obligations is caused by the Town's failure to perform under the Ground Lease.

(c) Satisfaction by Guarantor of any liability hereunder at any one time shall not discharge Guarantor's obligations hereunder at any other time, it being the intent hereof that this Guaranty and the obligations of Guarantor hereunder shall be continuing and may be enforced by the Town to the end that the Work shall be timely completed in accordance with the Ground Lease.

1.2 Nature of Guaranty

. This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance and not a guaranty of collection. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor.

1.3 No Duty To Pursue Others

. It shall not be necessary for the Town (and Guarantor hereby waives any rights which Guarantor may have to require the Town), in order to enforce the obligations of Guarantor hereunder, first to: (a) institute suit or exhaust its remedies against Tenant, (b) join Tenant or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty, (c) exhaust any other remedies available to the Town or (d) resort to any other means of obtaining payment or performance of the Guaranteed Obligations. Notwithstanding the foregoing, the Town shall not seek to require Guarantor to perform or pay any of the Guaranteed Obligations, unless and until Tenant, after any notice and cure period provided for in the Ground Lease, shall have failed to perform or pay any of the Guaranteed Obligations.

1.4 Other Guaranties

. This Guaranty is separate, distinct and in addition to any liability and/or obligations that Tenant or Guarantor may have under any other guaranty or indemnity executed by Tenant or Guarantor in connection with the Ground Lease, and no other agreement, guaranty or indemnity executed in connection with the Ground Lease shall act to reduce or set-off any of any Guarantor's liabilities hereunder.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

Guarantor represents and warrants to the Town as follows:

2.1 Benefit. Guarantor is the owner of a direct or indirect interest in Tenant and has received (or will receive) direct or indirect benefit from the making of this Guaranty with respect to the Guaranteed Obligations.

2.2 Existence. Guarantor represents and warrants that it is a _____duly organized and validly existing under the laws of _____.

2.3 Authority. Guarantor has full power and authority to enter into this Guaranty and perform its obligations hereunder. All necessary corporate action to cause this Guaranty to be executed and binding upon Guarantor has occurred and, when executed and delivered by Guarantor, this Guaranty will be and shall remain a valid and binding agreement with respect to Guarantor’s obligations hereunder.

ARTICLE 3

MISCELLANEOUS

3.1 Waiver

. Failure or delay in exercising any right hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. The rights of the Town hereunder shall be the sole and exclusive rights of the Town against Guarantor hereunder. No modification or waiver of any provision of this Guaranty, nor any consent to departure therefrom, shall be effective unless in writing, and no such consent or waiver shall extend beyond the particular case and purpose involved. No notice or demand given in any case shall constitute a waiver of the right to take other action in the same, similar or other instances without such notice or demand.

3.2 Notices

. Notices under this Guaranty shall be made by overnight delivery or email (with proof of delivery) followed by overnight delivery only to the following addresses:

If to Guarantor:

with copies to:

If to the Town:

with copies to:

3.3 Governing Law; Submission to Jurisdiction

. This Guaranty is made on the condition that it shall be governed exclusively by, and construed in accordance with, the laws of the Commonwealth of Massachusetts and that any court action to be brought by Guarantor or the Town in connection with this Guaranty shall be brought in a court of competent jurisdiction located within the Commonwealth of Massachusetts. Each party

consents to the jurisdiction of such court and hereby waives any right to remove any such action to any other forum.

3.4 Invalid Provisions

. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty, unless such continued effectiveness of this Guaranty, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

3.5 Amendments.

(a) This Guaranty may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced.

(b) No amendment to the Ground Lease shall bind Guarantor, including, without limitation, any amendment that expands the nature, scope or magnitude of the Guaranteed Obligations, unless Guarantor consents in writing to such amendment.

3.6 Parties Bound; Assignment.

(a) This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Guarantor may not assign any of its rights, powers, duties or obligations hereunder without the prior written consent of the Town, such consent not to be unreasonably withheld, conditioned or delayed, provided, however, that Guarantor may assign its rights, powers, duties or obligations hereunder to any successor to Guarantor resulting from an acquisition (whereby such acquisition consists of all or substantially all of Guarantor's stock and assets), merger, spin-off, consolidation or corporate reorganization; provided, further, that any transfers of interests in Guarantor, directly or indirectly, and the sale or issuance of Guarantor's shares (or transfer of publicly traded shares of Guarantor or entities having an interest in Guarantor) over a nationally recognized stock exchange shall be deemed to not constitute an assignment under this Section 3.6(b).

3.7 Non-Recourse

. Anything contained in this Guaranty to the contrary notwithstanding, there shall be no recourse against, or right to seek a deficiency judgment against, or any personal liability on the part of, Guarantor or any general or limited partner member, manager, officer, director, employee or agent thereof with respect to any payments due or any obligations to be performed hereunder.

3.8 Construction

. Section headings are for convenience of reference only and shall in no way affect the interpretation of this Guaranty. Whenever the word “including” is used in this Guaranty, it shall be deemed to mean “including without limitation” unless the applicable provision specifically states otherwise.

3.9 Limitation on Guaranteed Obligations

. Notwithstanding anything to the contrary in the Ground Lease or this Guaranty, this Guaranty shall not entitle the Town to recover lost profits, consequential damages or punitive damages from Guarantor. The provisions of this Section 3.9 shall survive the expiration or earlier termination of this Guaranty.

3.10 Entirety

. This Guaranty, together with all other agreements contemplated or required in this Guaranty and the exhibits attached hereto, sets forth the entire guarantee obligation and understanding of Guarantor and the Town with respect to the subject matter hereof.

3.11 Counterparts

. This Guaranty may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document.

[No Further Text on this Page; Signature Page Follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first set forth above.

GUARANTOR:

By: _____

Name: _____

Its: _____

Acknowledged, accepted and agreed to by the Town as of the date first set forth above.

TOWN:

By: _____

Name: _____

Its: _____

EXHIBIT A (To Exhibit F)

LEGAL DESCRIPTION OF THE LAND

All that tract, piece, or parcel of land situate in the Village of Hyannis, Town of Barnstable, Commonwealth of Massachusetts, bounded and described as follows:

Beginning at the southeasterly corner of the premises at the southwesterly corner of land of Mitchell Motors, Inc. at a point in a northeasterly line of Iyanough Road, (Route 132); thence N. $60^{\circ} 12' 55''$ W. by said Iyanough Road, 1466.50 feet; thence by a curve to the right of 249.66 feet radius by Airport Road, 426.86 feet; thence N. $37^{\circ} 44' 50''$ E. by Airport Road, 169.64 feet to land now or formerly of Jones Construction Co., Inc.; thence S. $63^{\circ} 54' 10''$ E. by said last named land, 729.39 feet to a concrete bound and land of Anna F. Morrill; thence S. $84^{\circ} 18' 55''$ E by said Morrill land and by land of Ray Blackburn, 700.38 feet; thence S. $6^{\circ} 41' 30''$ W. by other land of the Town of Barnstable by a line 200.00 feet westerly from the west end of the WNW-ESE Runway and at right angles to the center line of said Runway, 849.34 feet; (such Runway being a phased-out Runway); thence S. $60^{\circ} 12' 55''$ E. by other land of the Town of Barnstable, 49.66 feet; thence S. $29^{\circ} 44' 40''$ W. in range of land of the aforesaid Mitchell Motors, Inc. and land leased by the Town of Barnstable to said Mitchell Motors, Inc., 250.00 feet to the point of beginning; Containing an area of about 25.88 acres according to said plan and being more fully shown on a plan entitled "Plan of Land In Hyannis, Barnstable, To Be Leased by Barnstable Airport Commission to Cloudhopper Inns, Inc.:" dated November 16, 1961 and drawn by Newell B. Snow, R.L.S., recorded In Barnstable Deeds, Plan Book 168, Page 3.

Together with slope easement from the Town of Barnstable to Lanning Corp. dated June 22, 1972, and recorded in Book 1679, Page 170.

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EXHIBIT B (to Exhibit F)
PLAN
(to be attached)

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