

## COMMERCIAL LEASE

THIS COMMERCIAL LEASE (“Lease”) is made and entered this \_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”) by and between **BR HEALTH HOLDINGS, LLC** (“Landlord”), and **CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF PARKS & RECREATION** (“Tenant”).

### ARTICLE I

#### LEASE OF PREMISES; CONDITIONS PRECEDENT

**Section 1.01. GROUND LEASE AND DESCRIPTION OF PREMISES.** This Lease is expressly conditioned upon Landlord’s acquisition of a leasehold interest in the Real Estate (as hereinafter defined) pursuant to that certain Ground Lease by and between Landlord and the Indianapolis Metropolitan Development Commission (“**Prime Landlord**”) upon such terms and conditions as shall be acceptable to Landlord in its sole and absolute discretion (the “**Ground Lease**”). If this condition is not satisfied by October 31, 2020 (the “**Condition Date**”) as may be extended by the COVID-19 Condition, this Lease shall be deemed null and void for all purposes unless otherwise agreed to by the parties. Subject to and effective upon the effectiveness of the Ground Lease, Landlord does hereby lease, demise and let to Tenant, and Tenant does hereby lease from Landlord, subject to and upon the terms, provisions and conditions hereinafter set forth, and each in consideration of the duties covenants and obligations of the other hereunder, the Leased Premises (as defined in **Section 2.01(g)**) located in Marion County, Indiana, located on that certain real estate commonly known as 1426 Broad Ripple Avenue, Indianapolis, IN 46220 and further described on **Exhibit A-1**, attached hereto and incorporated herein by reference (the “**Real Estate**”). This Lease is granted and accepted upon and subject to the foregoing and the following provisions, covenants, conditions and restrictions, and Landlord and Tenant hereby expressly agree to keep, perform and observe all of the terms, covenants, conditions and restrictions herein contained on its part to be kept, performed and observed. Tenant acknowledges and agrees that this Lease is subject and subordinate to all terms and conditions of the Ground Lease. If there is any conflict between the terms of this Lease and the Ground Lease, as between Tenant and Landlord, this Lease shall control, except to the extent it would cause a breach or default under the Ground Lease, in which event the affected terms of the Ground Lease shall control. This Lease and the rights of parties hereunder are subject and subordinate to the Ground Lease and the rights of Prime Landlord thereunder. Landlord agrees to perform all affirmative covenants under the Ground Lease, except as expressly provided otherwise in this Lease and to refrain from performing any act which is prohibited by the negative covenants of the Ground Lease. Tenant agrees to execute any estoppels, subordinations or similar documents required under the Ground Lease, and shall refrain from performing any act which is prohibited by the negative covenants of the Ground Lease, where the obligation to refrain from performing is by its nature imposed upon the party in possession of the Premises or otherwise in the control of Tenant. This Lease shall automatically terminate on the cancellation, expiration, or termination of the Ground Lease for any reason; provided that Tenant hereby agrees, upon the request of the Prime Landlord, to recognize the assignment of this Lease to Prime Landlord as a direct lease with Prime Landlord or to

enter into a new direct lease with Prime Landlord with substantially the same provisions as in this Lease. Notwithstanding the foregoing, neither Landlord nor Tenant shall be relieved from liability to the other under this Lease by reason of any termination of this Lease pursuant to the termination of the Ground Lease as a result of a default by Landlord or Tenant, respectively, in the performance of its obligations under this Lease. Upon the termination of this Lease, the improvements thereon, including the Building and the Tenant Improvements, shall remain the property of Landlord. Tenant further hereby agrees and acknowledges that (a) each and every indemnification obligation and release hereunder in favor of Landlord shall run to the benefit of both Landlord, Prime Landlord and Landlord's lender (whether or not so stated); and (b) each and every insurance policy to be obtained by Tenant which is to run in favor of or name Landlord as an insured or additional insured shall name the Prime Landlord in addition to the Landlord. To the extent permitted by law, Tenant agrees to defend, indemnify and hold Landlord harmless from any Losses, as defined in **Section 9.07**, caused by Tenant's breach of this Lease which in turn causes a breach of the Ground Lease. Tenant, upon notice from Landlord, shall defend the Losses as provided in the prior sentence, at Tenant's expense, by counsel reasonably satisfactory to Landlord. To the extent permitted by law, Landlord agrees to defend, indemnify and hold Tenant harmless from any Losses caused by Landlord's breach of this Lease which in turn causes a breach of the Ground Lease. Landlord, upon notice from Tenant, shall defend the Losses as provided in the prior sentence, at Landlord's expense, by counsel reasonably satisfactory to Tenant.

**Section 1.02. ADDITIONAL CONDITIONS.** This Lease is further expressly conditioned on the satisfaction of the following conditions on or before the Condition Date:

(a) no claim, cause of action, or other related litigation has been asserted or remains pending (beyond all applicable appeals periods) against the Ground Lease, Lease, the Project or the use of the Real Estate for the Rec Center Use, the use of other space in the Building for medical office uses, or otherwise materially and adversely affecting the Project or the Landlord's ability to lease or construct the Building;

(b) the Indiana Department of Local Government Finance has not rendered an adverse decision with regard to any taxpayer appeal of this Lease or the Ground Lease;

(c) satisfaction of all conditions set forth in that certain Project Agreement by and between Landlord and the Consolidated City of Indianapolis, acting by and through its Department of Metropolitan Development ("**DMD**") (the "**Project Agreement**"), including, without limitation, **Sections 5-7**, so that the Project Agreement is in full force and effect;

(d) the parties have approved the Final Plans and Specifications (as defined in the Work Letter) in accordance with the Work Letter; and

(e) Community Health Network, Inc. or its affiliate ("**Community**"), as the other initial tenant in the Building, shall have agreed upon a Programming Agreement providing for the use by Community and its employees and patients of certain community

spaces and Rec Center spaces for the duration of the Community lease term at no cost or expense (the “**Programming Agreement**”).

If the conditions above have not been satisfied by the Condition Date, this Lease shall terminate and be of no further force or effect, unless otherwise agreed to by the parties.

## **ARTICLE II** **DEFINITIONS**

**Section 2.01. DEFINITIONS.** The following terms, whenever used in this Lease, shall have the meanings contained in or referred to by this Section:

- (a) Approved Final Plans: As defined in the Work Letter Agreement.
- (b) Boat Ramp Area: the portion of the Real Estate described on **Exhibit A-2**.
- (c) Building Area: the aggregate of the gross building area of each of the two (2) levels of the Building (approximately 40,000 rentable square feet) as determined by Landlord’s architect in accordance with most recent BOMA Standards subject to confirmation, at its election, by Tenant.
- (d) Building: the building commonly known as Broad Ripple Park Family Center (together with any replacement, reconstruction or restoration thereof) located upon the Real Estate.
- (e) COVID-19 Condition: As defined in **Section 19.09**.
- (f) Date of Substantial Completion: Date on which Tenant receives written notice from Landlord’s architect that the Tenant Improvements have been substantially completed and a certificate of occupancy (or the equivalent for the City of Indianapolis) has been issued, subject to any Punch-List items established pursuant to **Section 3.04** (“**Substantial Completion**”).
- (g) Expiration Date: Thirty (30) years from the first day of the month next following the Possession Date, unless extended as provided in **Section 3.01(b)**.
- (h) FMR: FMR shall mean the annual amount of Minimum Monthly Rent (exclusive of Additional Rent) that a willing tenant would pay and a willing landlord would accept in an arm’s length, bona fide negotiation for lease of the Leased Premises to be executed at the time of determination and to commence on the commencement of the Renewal Term(s), based upon other lease transactions made for other comparable or similar uses in the Indianapolis metropolitan market or in such other urban or suburban recreational centers in other markets of similar size and with similar rental rates generally as the Indianapolis metropolitan market, taking into consideration all relevant terms and conditions of any comparable leasing transactions, including, without limitation: (i) location, quality, and age of the Building and its interior improvements (taking into consideration renovations); (ii) use and size of the space in question; (iii) location and/or floor level within the Building, including proper adjustments for comparables not located

in the Indianapolis metropolitan market; (iv) extent of leasehold improvement allowances; (v) the amount of any abatement of rental or other charges; (vi) refurbishment and repainting allowances; (vii) any and all other concessions or inducements; (viii) extent of services to be provided; (ix) distinctions between “gross,” “modified gross,” and “net” lease; (x) base year or dollar amount for escalation purposes (both operating costs and ad valorem/real estate taxes if applicable); (xi) any other adjustments (including by way of example, indexes or fixed increases, including the fixed increased provided for under this Lease) to base rental; (xii) credit standing and financial stature of the tenant; and (xiii) length of term. In no event shall FMR be less than 102% of the annual base rent payable under **Section 5.02** for the last year of the original Term or first Option Period (as applicable).

(i) Landlord's Agent: N/A

(j) Leased Premises: approximately 25,000 square feet of rentable space in the Building, as depicted on **Exhibit B** attached hereto and incorporated herein by reference with the final rentable square footage determined by Landlord’s architect according to the most recent BOMA standards, subject to confirmations, if elected, by Tenant. Tenant shall further have the exclusive license to use the Boat Ramp Area.

(k) Possession Date: The earlier of (i) the date on which Tenant first takes possession of the Leased Premises; (ii) the Date of Substantial Completion of the Tenant Improvements so long as advance notice thereof is timely delivered pursuant to **Section 3.03**; or (iii) the date on which the Date of Substantial Completion would have occurred but for Tenant Delay.

(l) Project: The family center featuring a recreational facility, green spaces and a 40,000± square foot multi-use building on the Real Estate being developed by Landlord.

(m) Rental Commencement Date: The first day of the month following the first annual anniversary of the Possession Date occurs

(n) Target Occupancy Date: June 30, 2022, as extended for Force Majeure, Tenant Delay, and/or the COVID-19 Condition.

(o) Tenant Delay: As defined in the Work Letter Agreement.

(p) Tenant Improvements: As defined in **Section 3.02**.

(q) Tenant's Permitted Use: public recreation center together with administrative office and community use space and incidental uses related thereto (the “**Rec Center Use**”) or following the expiration of the Programming Agreement any other legal use, provided that any use other than the Rec Center Use or similar Parks Department use shall be subject to Landlord's approval, which shall not be unreasonably withheld.

(r) Term: Thirty (30) Lease Years commencing on the Possession Date as may be extended by “Option to Extend” pursuant to **Section 3.01(b)** herein below.

(s) Work Letter Agreement or Work Letter: The Work Letter Agreement in the form attached as Exhibit C.

(t) Tenant's Proportionate Share: The product, expressed as percentage, of dividing the total rentable square feet of the Leased Premises by the total rentable square feet of the Building Area. As of the Effective Date, Tenant's Proportionate Share is expected to be 62.5%.

### **ARTICLE III**

#### **TERM AND PREPARATION OF LEASED PREMISES**

##### **Section 3.01. TERM.**

(a) Initial Term. The Term of this Lease shall begin, and Tenant shall be entitled to possession of the Leased Premises (subject to **Section 3.02** hereof), on the Possession Date and end on the Expiration Date.

(b) Option to Extend. So long as no Event of Default exists, Tenant shall have the option to extend the Term of this Lease ("**Option to Extend**") for two (2) additional terms of ten (10) years each (each an "**Option Period(s)**"). Such extensions shall be upon the same terms and conditions contained in the Lease for the original Term except for this provision giving the Option to Extend and subject to an adjustment of the "**Minimum Rental Rate**" as provided in **Section 5.02** herein below. Such Options to Extend shall be exercised by Tenant giving written notice to Landlord of its intention to exercise the Option to Extend no earlier than two (2) years prior to the expiration of the original Term or the Option Term then in effect (as applicable) and no later than one hundred and eighty (180) days prior to the expiration of the original Term or the Option Period then in effect (as applicable). Tenant's failure to exercise any Option to Extend shall extinguish its right for any subsequent Option to Extend.

##### **Section 3.02. PREPARATION OF LEASED PREMISES.**

(a) Tenant Improvements. Subject to the terms and conditions hereof, Landlord agrees, at its cost and expense to complete a "turnkey" interior build-out ("**Tenant Improvements**") of the Leased Premises in accordance with the conditions stated in the Work Letter attached hereto as Exhibit C and incorporated hereby pursuant to the Approved Final Plans to be finalized and approved in accordance with the Work Letter and upon approval attached thereto. Any changes or modifications to the Approved Final Plans thereafter must be done in writing and signed by both Tenant and Landlord in accordance with the Work Letter. So long as in accordance with Article 19 of this Lease, Tenant agrees that Landlord shall be entitled to select, in its reasonable discretion and acting in good faith, all architects, engineers, contractors and material suppliers necessary to furnish the labor and materials for the construction of the Tenant Improvements. Landlord shall be the sole contracting party with respect to the employment of contractors which perform the work necessary to construct the Tenant Improvements. Tenant shall not be entitled to access to the Leased Premises prior to the Date of Substantial Completion and Tenant shall not interfere with or impair in any material way the construction of the Tenant Improvements,

and any such interference or impairment shall be included within a Tenant Delay as defined in the Work Letter and shall entitle Landlord to all remedies provided herein for breach of this Lease. Prior to the Possession Date, Tenant shall not enter into any contract for construction of any improvements within the Leased Premises with any person other than Landlord without Landlord's prior written consent. Tenant, at Tenant's expense, shall obtain and maintain any and all necessary permits and licenses to enable Tenant to conduct Tenant's Permitted Use, and the failure of Tenant to obtain or maintain same shall not in any manner affect the Tenant's obligations hereunder. Landlord shall be solely responsible, at its cost and expense, for obtaining all permits and approvals related to the Tenant Improvements.

(b) FF&E Allowance. Landlord hereby grants Tenant an allowance in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "**FF&E Allowance**"), to be used by Landlord to pay the costs of furniture, fixtures and equipment for the Premises not included in Tenant Improvements and which are approved by Tenant. The FF&E Allowance may be used for the actual market purchase price of the furniture, fixtures and equipment as well as design, ordering, installation or coordination of the Tenant FF&E with the Premises or other soft costs directly related thereto ("**Tenant FF&E**"). Any costs of Tenant FF&E in excess of the FF&E Allowance (whether for hard or soft costs) shall be born solely by Tenant. Upon the request of Tenant, Landlord shall supply copies of all invoices and records related to the Tenant FF&E expenses. For the avoidance of doubt, Tenant FF&E shall not be considered part of the Tenant Improvements.

**Section 3.03. TIME FOR SUBSTANTIAL COMPLETION.** Landlord shall cause the Tenant Improvements to be Substantially Completed according to the Approved Final Plans, and in compliance with all Laws in effect as of the time of filing for the building permit and this Lease, on or before the Target Occupancy Date (as may be extended as provided in **Section 2.01(n)**). No Tenant Improvements which have not been completed and which would affect materially Tenant's use or operations shall be included in the Punch-List. Landlord shall provide Tenant with not less than thirty (30) days advance written notice of the estimated Date of Substantial Completion if such date varies from the Target Occupancy Date. In the event Landlord fails to provide such notice, and if such notice is required, the Date of Substantial Completion shall not be earlier than thirty (30) days after the date of such notice from Landlord.

**Section 3.04. ACCEPTANCE OF LEASED PREMISES.** On or before the Possession Date, Tenant and Landlord shall each execute the letter agreement in the form attached hereto as Exhibit E (the "**Letter Agreement**"). By its execution of the Letter Agreement or occupancy of the Leased Premises, Tenant shall be deemed to represent and certify that it has examined the Leased Premises and that it thereby accepts the Leased Premises in its condition at the time, except for the list of defects and/or omissions identified in writing prior to the Possession Date (the "**Punch-List**") and latent defects, but subject, in all cases, to Landlord's repair, maintenance and replacement obligations set forth in this Lease and to the warranty related to the Tenant Improvements, as provided in the Work Letter Agreement. After the notice provided in **Section 3.03** and prior to the Possession Date, the parties shall meet in the Leased Premises to establish the Punch-List. Landlord shall review the Punch-List items with Tenant and correct all undisputed Punch-

List items within a reasonable time, not to exceed thirty (30) days after receipt of the Punch-List; provided that, if any Punch-List items cannot be corrected within such thirty (30) day period despite reasonable diligence by Landlord, then, so long as Landlord commences correction of such Punch-List items within such thirty (30) day period and diligently pursues such correction to completion, no default by Landlord shall be deemed to have occurred. Punch-List items for completion taking longer than six (6) months to complete (and not otherwise the result of Force Majeure, Tenant Delay, or the COVID-19 Condition) shall trigger a day for day prorated Minimum Monthly Rent abatement. The Tenant Improvements shall be subject to a two (2) year warranty, from the Possession Date, with regard to materials, design and workmanship, as provided in more detail in the Work Letter Agreement. Tenant shall reasonably cooperate with Landlord in providing required information as needed for Landlord to pursue vendor warranties on a timely basis, as requested in writing by Landlord. Landlord will pursue any valid warranty claims against its contractor beyond the two (2) year warranty provided that any expenses incurred and/or any recovery obtained shall be treated as either additional Operating Costs or an offset to Operating Costs under **Section 5.03(a)**.

**Section 3.05. DELAYED COMPLETION.** If the Date of Substantial Completion is after the Target Occupancy Date (as may be extended as provided in **Section 2.01(n)**) then Tenant shall be entitled, as its sole and exclusive remedies (i) one (1) additional day of free Rental from the Target Occupancy Date (as may be extended as provided in **Section 2.01(n)**) until the Possession Date, and (ii) if Substantial Completion has not occurred by one hundred twenty (120) days after Target Occupancy Date (as may be extended as provided in **Section 2.01(n)**) Tenant shall have the right to complete the Tenant Improvements on Landlord's behalf and at Landlord's cost, including an oversight fee equal to 15% of the cost incurred by Tenant in completing the Tenant Improvements.

#### **ARTICLE IV** **USE AND OCCUPANCY**

**Section 4.01. USE.** The Leased Premises are to be used and occupied by Tenant (and its permitted subtenants or assigns) solely for the purpose of Tenant's Permitted Use, subject to the terms and conditions of this **Article IV**. Tenant (and its permitted subtenants or assigns) may use any facilities and equipment necessary and appropriate for Tenant's Permitted Use. Nothing in this Lease shall be deemed to require Tenant to operate or occupy the Leased Premises, so long as Tenant fulfills all other obligations under this Lease (including, without limitation, maintenance, repair, insurance, and utility services).

**Section 4.02. CARE OF THE LEASED PREMISES.** Tenant shall not commit, or allow any party under its control to commit, any waste or damage to be committed on any portion of the Leased Premises and shall at all times keep the same in the condition delivered, subject to normal wear and tear and to Landlord's obligations under this Lease. Tenant shall not occupy or use or permit any portion of the Leased Premises to be occupied or used, for any business or purpose which is unlawful, disreputable or deemed to be hazardous, or permit anything to be done which would in any way increase the cost of insurance coverage on the Building and/or its contents. Tenant shall not place any objects in the Leased Premises or any in other part of the Building that would place a load on the

floors of the Building beyond their designed weight-bearing capacity. Landlord reserves the right to direct the positioning of all heavy equipment, furniture and fixtures which Tenant desires to place in the Leased Premises so as to distribute properly the weight thereof. Landlord may require the removal of any equipment or furniture which exceeds the weight limits of the Building.

**Section 4.03. LAWS, REGULATIONS, RULES AND COVENANTS.** Tenant shall comply, and cause Tenant's employees, agents, invitees and visitors to comply, with all laws, ordinances, orders, rules and regulations (state, federal, municipal, or promulgated by other agencies or bodies having any jurisdiction thereof) covenants, encumbrances, commitments and restrictions relating to the use, condition or occupancy of the Leased Premises and/or the Building ("**Laws**"), and the rules of the Building, attached hereto as **Exhibit F**, and such additional rules promulgated by Landlord from time to time, so long as reasonable and customary for similar buildings in Indianapolis, Indiana, and applied on a non-discriminatory basis ("**Rules of the Building**").

**Section 4.04. NUISANCE.** Tenant shall conduct its business and control its agents, employees, invitees and visitors in such manner as not to create any nuisance, or materially interfere with or disturb any owners, tenants, occupants, or visitors of the Building, neighboring real estate or the public in general.

**Section 4.05. CHANGES IN BUILDING.** Tenant shall not, without the express written consent of the Landlord, at Landlord's sole discretion (i) change the arrangement and/or location of the Common Areas, including the corridors, passageways, elevators, mechanical areas and rooms, stairways and stairs, or restrooms, (ii) the Building or (iii) the Real Estate. Tenant's right to make alterations to the Leased Premises is provided for below. After the completion of the Tenant Improvements, changes to the Boat Ramp Area may be made only by Tenant, but shall be subject to Landlord's approval, not to be unreasonably withheld.

**Section 4.06. SIGNAGE.** Tenant may, from time to time, erect or place signs upon the Building and Real Estate (all of the aforementioned signs being referred to collectively hereafter as "**Signs**"), subject to Landlord's prior written approval of the location, style, content and size thereof not to be unreasonably withheld, including, without limitation, a public bulletin board on the outside of the Building at a location reasonably acceptable to Landlord. Tenant shall cause all Signs to comply with all zoning and other municipal and county regulations, as may be amended from time to time. Except for Signs included in the Tenant Improvements, if any, Tenant agrees to pay all costs of the Signs, including without limitation the installation, permits, any zoning variance or approval, operation, repair and maintenance thereof. Tenant shall maintain the Signs in good condition and in compliance with all zoning and building codes throughout the Lease Term. Upon expiration or early termination of the Lease Term, Tenant shall remove any and all Signs and at its sole cost and expense repair all damage to the Leased Premises, the Building and/or Real Estate caused by such removal of Signs. Tenant's indemnity in **Section 9.07** below shall include Losses caused by the Signs, the installation thereof, or its breach of this **Section 4.06**.

**Section 4.07. HAZARDOUS SUBSTANCES.**

(a) Tenant's Use. Notwithstanding anything to the contrary set forth herein, Tenant shall not: (i) use or permit the use of the Leased Premises for the treatment or disposal of any Hazardous Substances; or (ii) store or use or permit the storage or use of any Hazardous Substance on the Leased Premises except in strict conformance with Environmental Laws. All storage, usage, and transportation of Hazardous Substances shall be conducted in compliance with any and all applicable Laws and Rules of the Building, and Tenant shall take all necessary and appropriate safety precautions in connection with such storage, usage, and transportation.

(b) Tenant's Indemnity. Tenant agrees to indemnify and hold harmless Landlord, and any party affiliated with Landlord, from and against any and all Losses incurred by Landlord (whether arising from third parties or directly incurred by Landlord) arising from, or in connection with: (i) any treatment, disposal, storage or usage of any Hazardous Substances in, on, or about the Leased Premises; or (ii) any transportation of any Hazardous Substances to or from the Leased Premises, whether or not such storage or usage constitutes a failure of Tenant fully to observe or perform its obligations under this **Section 4.07** or fully to comply with or observe the limitations and restrictions under this **Section 4.07**. In no event shall Tenant be liable for, nor shall this indemnity apply to, Hazardous Substances introduced to the Leased Premises, the Building or the Real Estate by Landlord, other tenants or other third parties (excluding, however, (a) Prime Landlord, or (b) third parties affiliated with Tenant, acting under the control of Tenant, acting with the consent of Tenant, or which constitute licensees, invitees, agents, contractors, or guests of Tenant).

(c) Landlord's Indemnity. Landlord agrees to indemnify and hold harmless Tenant and any party affiliated with Tenant from and against all Losses incurred by Tenant (whether arising from third parties or directly incurred by Tenant) arising from, or in connection with: (i) any treatment disposal, storage or usage of any Hazardous Substances in or about the Real Estate or Building by or at the direction of Landlord; (ii) any transportation of any Hazardous Substance to or from the Real Estate or Building by Landlord or at the direction of Landlord. In no event shall Landlord be liable for, nor shall this indemnity apply to, Hazardous Substances introduced to the Leased Premises, the Building or the Real Estate by Prime Landlord or other third parties (excluding, however, third parties affiliated with Landlord, acting under the control of Landlord, acting with the consent of Landlord, or which constitute licensees, invitees, agents, contractors, or guests of Landlord).

(d) Extent of Claims. The claims, judgments, liabilities, losses, costs, and expenses from and against which the parties have agreed to indemnify and hold harmless each other, and any party affiliated therewith, under this Section shall include (without limitation) the following: (i) any obligation or liability of Tenant or Landlord under any Law to remove any Hazardous Substance or contaminated soil or groundwater, from the Leased Premises, the Building or the Real Estate, "clean up" any contamination of the soil or the groundwater in, on, or under the Building or the Real Estate, or perform any remediation of or for the Leased Premises, the Building or the Real Estate; (ii) all charges,

fines, or penalties imposed by governmental authority or under any Law governing Hazardous Substances; and (iii) all claims by, and liabilities to, any third party arising in each case of (i), (ii) and (iii) above, from the matters set forth in **subsection (b) and (c)** above, as applicable.

(e) Definitions. For purposes of this **Section 4.07**, the following terms shall mean:

**“Environmental Laws”** — all statutes, ordinances, rules, regulations, and orders relating to environmental quality, contamination, and cleanup of Hazardous Substances, including, without limitation: (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; (b) the Resource Conservation and Recovery Act of 1976; and (c) state superlien and environmental cleanup statutes, as the foregoing may be supplemented, amended or modified from time to time.

**“Hazardous Substances”** — includes all wastes, materials, or substances that are hazardous, toxic, or radioactive and that are, or become, regulated by any Environmental Laws.

**Section 4.08. COMMON AREA USE.** Tenant is hereby given an irrevocable license (in common with all others to whom Landlord has or may hereafter grant rights) to use, during the Term, the Common Areas as defined in **Section 5.03(c)** as they may now or at any time during the Term exist; provided, however, that Landlord reserves the right to change the size, location, or arrangement of such Common Areas or the type of facilities at any time forming a part thereof be changed, enlarged, or diminished, or otherwise altered as permitted under this Lease. Landlord shall not be subject to any liability nor shall such change, enlargement, or alteration of such areas be deemed a breach of this Lease or a constructive or actual eviction so long as (a) the parking available to the Building is not materially reduced, and (b) the modification does not materially and adversely affect Tenant’s operations (a **“Material Change”**). Any Material Change shall be permitted with Tenant’s consent not to be unreasonably withheld, conditioned, or delayed. Tenant hereby acknowledges, consents, and agrees that any deliveries, services, facilities, and access by the public to the Leased Premises and/or to the Building may be suspended in whole or in part during any periods of actual or threatened civil commotion, insurrection, or other circumstances beyond Landlord’s control, so long as Landlord uses all commercially reasonable efforts to restore the same in a timely manner.

## **ARTICLE V**

### **RENT**

**Section 5.01. COVENANT.** All amounts due by Tenant to Landlord under this Lease other than Minimum Monthly Rental (defined in **Section 5.02(a)**) shall be known in this Lease as **“Additional Rent”**. The aggregate of all rentals and charges provided in this **Article V** or elsewhere in this Lease, including Additional Rent, is hereinafter sometimes referred to as **“Rentals”** or, individually a **“Rental”**. Tenant covenants that it will pay all Rentals to Landlord at Landlord’s office, at, or at such other place as Landlord may from

time to time specify in writing, on or before the due dates thereof and without relief from valuation or appraisal laws; provided, however, that Tenant shall have no obligation to pay any Minimum Monthly Rental under this Lease from the date hereof until the Rental Commencement Date. Additional Rent shall commence on the Possession Date.

**Section 5.02. RENTAL.**

(a) Original Term. Tenant shall pay to Landlord throughout the Term of the Lease, the Minimum Monthly Rental in advance, on or before the first day of each month, as provided in the chart below. Landlord shall endeavor to provide Tenant an invoice (at the Tenant’s notice address provided in **Section 7.01** without any need for delivery to “copy to” parties) at least ten (10) days prior to the due date of each Minimum Monthly Rental Date, but such failure shall not be deemed an Event of Default by Landlord or excuse Tenant from its obligation to timely remit any rental payments hereunder. Notwithstanding the foregoing, Tenant may, with no less than thirty (30) days advance written notice to Landlord, elect to pay Rental on a quarterly basis or semi-annual basis (in advance), subject, however, in all cases to any restrictions or limitations imposed by Landlord’s lender.

<b>Lease Year</b>	<b>Minimum Monthly Rental</b>
Lease Year 1 (Months 1-12) (excluding the Stub Period)	Additional Rent only.
Lease Year 2 (Months 13-24) (including the Stub Period)	\$79,900.00
Lease Year 3-Year 30 (Months 25-360)	Every Lease Year starting in Month 25 shall be calculated by multiplying the Minimum Monthly Rental for the prior Lease Year by 1.02

“**Lease Year**” shall mean each twelve (12) month period beginning on (i) the first day of the month next following the Possession Date, and (ii) each anniversary thereof; provided, that the first Lease Year shall also include the period beginning on the Possession Date through such first day of the next following month.

“**Stub Period**” shall mean partial month period from the first anniversary of the Possession Date until the end of the first Lease Year. If the Possession Date is the first day of a calendar month, there will be no Stub Period.

Note - The initial Minimum Monthly Rental is subject to change if the Approved Final Plans are changed due to a Change Order or as otherwise provided in Section 7 of the Work Letter.

(b) Option Term(s). In the event that the Tenant exercises any Option to Extend as provided hereunder, the Minimum Rental Rate for the first year of the ensuing Option Period shall, at the option of Landlord in its sole and absolute discretion, be an amount equal to the FMR. In the event that Landlord and Tenant are unable to agree on the FMR,

by the date which is sixty (60) days after Tenant delivers written notice of its election to extend the Lease Term (the “**Trigger Date**”), then the FMR shall be determined in accordance with the terms below.

- (1) If Landlord and Tenant are unable to reach agreement on the FMR by the Trigger Date, then within ten (10) business days thereafter, Landlord and Tenant shall each simultaneously submit to the other in a sealed envelope its good faith estimate of the FMR for the Option Term (each an “**FMR Proposal**”). If either Landlord or Tenant fails to provide an FMR Proposal at such time, then the FMR for the Option Term proposed by the other party shall prevail. If the higher of such proposals is not more than one hundred ten percent (110%) of the lower, then the FMR shall be the average of the two. Otherwise, the dispute shall be resolved in accordance with the below.
- (2) If the procedure in the preceding paragraph did not result in agreement on the FMR, then within ten (10) business days after the expiration of the foregoing ten (10) business day period, Landlord and Tenant shall each appoint one (1) independent MAI Appraiser (as defined below). If either party fails to timely select a MAI Appraiser, then the FMR for the Option Term proposed by the party that selected a MAI Appraiser shall prevail. If each party timely selects a MAI Appraiser, then the two MAI Appraisers shall then have fifteen (15) business days after the appointment of the second MAI Appraiser in which to determine whether the Landlord's or the Tenant's FMR Proposal should be utilized.
- (3) In the event that the two MAI Appraisers are unable to agree on either the Landlord's or the Tenant's Market Rental Rate Proposal within the foregoing fifteen (15) day period, then the two MAI Appraisers shall pick a third MAI Appraiser within five (5) business days after the expiration of such foregoing fifteen (15) day period. If the three (3) MAI Appraisers, within fifteen (15) business days thereafter, cannot unanimously agree upon the FMR, then each of the three MAI Appraisers shall immediately select one of the two FMR Proposals, and the selection of either the Landlord's or the Tenant's Market Rental Rate Proposal by any two (2) of the three (3) FMR shall be final and conclusive for all purposes in determining Fair Market Value. The parties understand, stipulate and agree that there will be no compromise, modification or averaging of the Landlord's and Tenant's FMR Proposals, and the MAI Appraisers must select one or the other, and that the FMR Proposal selected by the foregoing arbitration procedure shall be final, binding, conclusive and effective on Landlord and Tenant for purposes under this Lease, and same shall not be subject to judicial review, mediation or any other legal proceeding.
- (4) As used in this **Section 5.02(b)**, the term “**MAI Appraiser**” shall mean a Member Appraisal Institute designated and Indiana State certified real estate appraiser with at least ten (10) combined years of experience in office, recreational, or medical office leasing valuations in the Indianapolis

metropolitan market. The fees of the third MAI Appraiser, if applicable, shall be shared equally by Landlord and Tenant. The fees of each party's respective MAI Appraiser, if applicable, shall be borne by that party.

(c) The Minimum Rental Rate for each year after the first year of an Option Period shall be an amount equal to the Minimum Rental Rate for the immediately preceding year multiplied by 1.02.

**Section 5.03. OPERATING COSTS ADJUSTMENT.** In addition to Minimum Monthly Rental, Tenant shall pay to Landlord, from Possession Date and throughout the Term of this Lease (including any Option Periods) as Additional Rent, Tenant's Proportionate Share of Landlord's Operating Costs for the Leased Premises.

(a) Operating Costs. The term "**Operating Costs,**" as used in this Lease, shall mean all expenses and costs of every kind and nature which Landlord shall pay or become obligated to pay because of or in connection with the ownership, operation, maintenance, replacement, and repair of the Building, Real Estate and Common Areas (but expressly excluding all costs associated with the initial construction of the Building and Tenant Improvements) including, without limitation, any and all buildings, structures, and improvements in the Common Areas, and the Real Estate computed in accordance with generally accepted accounting principles consistently applied ("**GAAP**"), including, without limitation, painting (including, without limitation, façade painting or caulking); service and maintenance contracts; accounting, consulting, and reasonable legal fees incurred in the operation of Real Estate (not tenant specific or related to Landlord's operation as an entity); windows and general cleaning; removing of snow, ice, debris, garbage, and other refuse and surface water; security personnel; electronic intrusion and fire control and telephone alert systems; machinery and equipment used in the maintenance, repair, replacement, and operation of the Common Areas and the Building; storm, sanitary, and other drainage or detention systems; sprinklers and other fire protection systems; irrigation systems; electrical, gas, water, sewage, telephone, and other utility systems and charges; roof, roof membrane, entrances; the cost of compliance with any accessibility statute including, without limitation, the Americans with Disabilities Act, including all amendments thereto and regulations thereof ("**ADA**") occurring after the Possession Date and, if such compliance requires a capital repair or improvement, the same shall be subject to the limitations provided below; all costs and expenses of water or other common utilities; off-site improvements (including off-site detention areas, landscaping, and traffic signals); traffic regulation, directional signs, and traffic consultants; all licenses, permits, certificates, and inspection fees related to ongoing maintenance and operations of the Building or Real Estate including all Common Areas; paving, curbs, sidewalks, walkways, roadways, and parking surfaces (including repaving, sealing, striping, and patching and snow, ice and hazard removal), lighting facilities; informational signage; surcharges levied upon or assessed against parking spaces or areas; payments toward mass transit or otherwise as required by federal, state or local governmental authorities; the cost and expense of landscaping, gardening, and planting; decorating; heating, ventilating, and air conditioning and other Building systems maintenance serving the Common Areas that are not otherwise the obligations of Tenant hereunder; the costs of any and all types of insurance coverages customary for similar buildings or otherwise required herein and

carried by Landlord covering the Common Areas, Building and Real Estate, including, without limitation, public liability, personal and bodily injury and property damage liability and automobile coverage, fire and extended coverage, vandalism and malicious mischief and all broad form coverages, sign insurance, rental abatement insurance, terrorism (if customary), and any other insurance that may be carried by Landlord covering the Common Areas, Building and Real Estate which is customary for similar buildings or otherwise required herein; the rental charges for such machinery and equipment used therefor; all charges for utilities supplied to the Common Areas; the cost of personnel (including applicable payroll taxes, workmen's compensation insurance, and disability insurance) to the extent actually involved in the operations of the Building or required to implement any of the foregoing, including the policing of the Common Areas and the directing of traffic and parking of automobiles on the parking areas thereof with costs to be prorated based on the actual time spent on operations for the Common Areas; all costs and expenses incurred by Landlord pursuant to any off-site easement or other agreement or matter of record related to the Real Estate (including, without limitation, the off-site parking easement and access easements benefitting the Real Estate); and an overhead cost equal to five percent (5%) of the amount of all Operating Costs exclusive of the overhead costs ("**Administration Fee**"). Landlord may cause any or all of said services to be provided by an independent contractor or contractors, management agent, or management company, provided that the costs of providing such services shall be paid exclusively from the Administrative Fee and shall not be separately included as part of the Operating Costs. The cost of any Operating Costs incurred by Landlord which are required or permitted to be capitalized pursuant to Section 263A of the Internal Revenue Code of 1986, as amended, and Department of Treasury regulations promulgated thereunder (a "**Capitalized Expense**"), shall be amortized over the useful life of such Capitalized Expense on a straight-line basis without markup (except for the Administration Fee), and Tenant shall reimburse Landlord for the amortized portion of such Capitalized Expense accrued, as an Operating Costs, each calendar year until the Capitalized Expense is fully amortized. The useful life of any Capitalized Expense shall be determined by reference to the categories of property under the "general depreciation system" as published by the Internal Revenue Service from time to time (currently published as IRS Publication 946). In addition, in the event Landlord installs equipment in or makes improvements or alterations to the Building or Real Estate which are for the purpose of reducing energy costs, maintenance costs, or other costs and expenses, or which are required under any Laws (including any accessibility statute) which were not required as of the Possession Date, the same shall also be considered a Capitalized Expenses, Landlord may amortize such investment on a straight line basis over the useful life of such equipment, improvement, or alteration determined by reference to the categories of property under the "general depreciation system" as published by the Internal Revenue Service from time to time (currently published as IRS Publication 946). For the avoidance of doubt, in the event the Lease terminates prior to the conclusion of any amortization period determined hereunder, Tenant shall not be liable for the unamortized amount of any Capitalized Expense that remains outstanding as of the time of such termination. ). In no event shall those matters set forth in **Exhibit H** be included in Operating Costs.

(b) **Controllable Expenses.** Landlord shall cap increases of Controllable Expenses at no more than a four percent (4%) increase per year (compounded annually on

a cumulative basis) commencing with the second full calendar year after the Possession Date. For purposes of this Lease, (i) “**Controllable Operating Expenses**” shall mean all Operating Expenses other than Uncontrollable Operating Expenses; and (ii) “**Uncontrollable Operating Expenses**” shall mean costs, dues, fees and assessments incurred under any matters of record and/or that is an appurtenance to the Real Estate; insurance premiums and deductibles; costs in connection with unusual adverse weather conditions (including, without limitation, snow removal); costs incurred in connection with complying with any legal requirements not otherwise incurred due to Landlord’s default and not existing as of the Possession Date; the amortized portion of any Capitalized Expenses; and any other expenses expressly identified in this Lease as being Uncontrollable Operating Expenses. Controllable Operating Expenses will be determined on an aggregate basis for all calendar years and not on an individual basis. Tenant acknowledges and agrees that the foregoing limitation on Controllable Operating Expenses is intended to be applied on a cumulative basis such that the Controllable Operating Expenses shall be limited to a four percent (4%) increase over the higher of (A) the amount of the Controllable Operating Expenses for the immediately preceding calendar year, or (B) the amount Controllable Operating Expenses would be, at the given time, had Controllable Operating Expenses increased at the rate of four percent (4%) for each full calendar year of the Lease Term.

(c) Common Areas. “**Common Areas**” (as initially constructed or as the same may at any time thereafter be enlarged, reduced, or otherwise altered as permitted under this Lease) shall mean all improvements, structures, areas, space, facilities, equipment, signs, utility services, and special services within, on, or servicing the Real Estate, and from time to time made available by Landlord for the common and joint non-exclusive use and benefit of Landlord, Tenant, and other tenants and occupants of the Building, and their respective employees, agents, subtenants, concessionaires, licensees, customers, and invitees, and which may include (but shall not be deemed a representation as to their availability) the sidewalks, parking areas, access roads, driveways, curbs, landscaped areas, truck service ways, loading docks, pedestrian malls (enclosed or open), courts, stairs, ramps and public washrooms. All Common Areas shall be subject to the exclusive control and management of Landlord, expressly reserving to Landlord, without limitation, the right to erect and install, within the Building or the parking areas, planters, or other appropriate improvements, subject to the limitations on modifications to the Common Areas provided for in this Lease. Landlord hereby expressly reserves the right from time to time to, subject to the limitations in this Lease, construct, maintain, and operate lighting and other facilities, equipment, and signs on all of said Common Areas; police the same; change the area, level, location, and arrangement of the parking areas and other facilities forming a part of said Common Areas; modify the use of any existing buildings or structures; restrict parking by tenants and other occupants of the Building and their employees, agents, subtenants, concessionaires, and licensees in a reasonable and non-discriminatory manner; and close temporarily all or any portion of the Common Areas for the purpose of making repairs or changes thereto and to discourage non-customer parking; establish, modify, and enforce reasonable rules and regulations with respect to the Common Areas and the use to be made thereof; change from time to time the dimensions and location of the Common Areas; and change the name, address, number, or designation by which the Building is commonly known, provide that any change of name shall be subject to Tenant's approval, not to be

unreasonably withheld. Landlord shall operate, manage, equip, light, and maintain the Common Areas in good condition and repair consistent with other buildings of similar age and use and Landlord shall have the right and exclusive authority to employ and discharge all personnel with respect thereto. In exercising the rights set forth above, Landlord shall use commercially reasonable efforts to minimize any disruption to Tenant's operations. In addition, Tenant shall have the same right to use the off-site parking lot and access corridor depicted on **Exhibit A-3** on a non-exclusive basis as provided in, and subject to the terms and conditions of, the applicable easements therefor. It is further agreed that the Common Areas shall exclude the Boat Ramp Area.

(d) **Boat Ramp Area.** Upon the Possession Date, Tenant shall have the sole and exclusive use of the Boat Ramp Area. Any use of the Boat Ramp Area by Tenant prior to the Possession Date shall be conducted in a manner so as not to materially interfere with the use of the boat ramp for its intended purpose, except for time periods during which construction is occurring to improve the Boat Ramp Area or adjacent parking area per the Approved Final Plans. Notwithstanding anything to the contrary herein, Tenant, at its sole cost and expense and without reimbursement from Landlord or any other tenant, shall be responsible for all maintenance and repairs to the Boat Ramp Area and for all replacements thereto so as to keep the Boat Ramp Area in good condition and repair consistent with the maintenance standard utilized for Landlord for the remainder of the Real Estate and Common Areas. Tenant further hereby agrees to defend, indemnify and hold Landlord harmless from any Losses (as defined in **Section 9.07**), arising from or related to the Boat Ramp Area and the use thereof by Tenant, or an invitee, licensee, guest or member of the public. Tenant, upon notice from Landlord, shall defend the Losses as provided in the prior sentence, at Tenant's expense, by counsel reasonably satisfactory to Landlord. Tenant further acknowledges that it shall be responsible for insuring the Boat Ramp Area under the insurance policies it is required under maintain under **Article IX** and that Landlord shall have no repair or restoration obligation related thereto regardless of any other terms or condition thereof to the contrary.

**Section 5.04. ESTIMATE OF OPERATING COSTS.** Landlord shall, prior to the Possession Date and prior to January 1 of each calendar year thereafter, estimate the Operating Costs for the following calendar year ("**Estimated Operating Costs**"), acting reasonably and in good faith, and shall provide Tenant with notice thereof (the "**Annual Cost Notice**"). Beginning on the Possession Date, Tenant shall pay Landlord Tenant's Proportionate Share of the Estimated Operating Costs for the year in twelve (12) equal monthly installments payable on the first day of each month with each Minimum Monthly Rental installment. During such first five (5) years following the Possession Date, in the event that Landlord shall determine that the Estimated Operating Cost for such year is too low or too high in comparison to Landlord's then current forecast of Operating Costs, Landlord may, in its reasonable discretion, adjust the Estimated Operating Costs (and the Tenant's monthly obligations therefor) for the balance of the calendar year, with not less than thirty (30) days' notice to Tenant; provided that the adjustment in Estimated Operating Costs shall in no event occur more than once during any one calendar year. Within a reasonable period of time after the end of such calendar year, not to exceed one hundred twenty (120) days, Landlord shall render to the Tenant a statement of the actual Operating Costs for such calendar year, broken down in reasonable detail to show line item costs and

including such supporting information as Tenant may reasonably request (the “**Statement**”), and if the Statement shows that, for such calendar year, Tenant’s Proportionate Share of the actual Operating Costs of such calendar year exceeded Tenant’s Proportionate Share of the Estimated Operating Costs paid by Tenant, Tenant shall pay the amount of such difference (“**Deficiency**”) to Landlord within thirty (30) days after receipt of such statement. If the Statement shows that a refund is due Tenant, such amount shall be credited against the next installment(s) of Rentals payable by Tenant to Landlord, or if so desired by Landlord or if the term of the Lease has expired, paid to Tenant with the Statement. Tenant shall have a right to object to the Statement and to conduct an audit of Landlord’s records related to Operating Costs by an hourly fee-based certified public accounting firm or Tenant’s employees in order to verify the information in the Statement. If the audit discloses that the actual Operating Costs were higher or lower than set forth in the Statement, any resulting Deficiency shall be paid by Tenant to Landlord and any overpayment by Tenant shall be immediately refunded by Landlord. Tenant shall be responsible for the cost of the audit, unless the same shows that Tenant has overpaid Operating Costs by two percent (2%) or more, in which case Landlord shall reimburse Tenant for the reasonable costs of the audit; such reimbursement shall not, however, exceed the lesser of \$2,000 or the Deficiency. Neither Landlord’s failure to deliver, nor the late delivery of, any such statement of the actual Operating Costs shall constitute a default by Landlord or relieve Tenant of its obligation to pay the Deficiency for any period(s) during the Term.

#### **Section 5.05. TAX ADJUSTMENT.**

(a) In addition to Minimum Monthly Rental, Tenant shall pay to Landlord, from the Possession Date and throughout the Term of this Lease (including any Option Periods) as Additional Rent, Tenant’s share of Taxes as and to the extent specified in this **Section 5.05**. Except as otherwise provided below, Tenant’s share of Real Estate Taxes shall be the sum of as applicable of either (1) the Real Estate Taxes applicable to the Leased Premises (if the Leased Premises are separately assessed from the remainder of the Building), or (2) Tenant’s Proportionate Share of Real Estate Taxes assessed against the Real Estate (including land, buildings, and improvements) if the Premises are not separately assessed. Notwithstanding the foregoing, in the event that Marion County, Indiana Assessor or other governmental official charged with setting the value of real property and their improvements in connection with the calculation of Real Estate Taxes (the “**Assessor**”) does not assess the Leased Premises or provides a discounted assessment on the Building equal to the value of the Leased Premises due to the fact that Tenant is a Political Subdivision, then Tenant shall have no obligation to pay Real Estate Taxes.

(b) “**Real Estate Taxes**” shall mean all taxes and assessments (special or otherwise) levied or assessed against the Real Estate (including land, buildings, and improvements) to the extent the same are due and payable during each calendar year of the Term. Notwithstanding the foregoing, regardless of Tenant’s exempt status as a Political Subdivision, Tenant shall also be responsible for its Proportionate Share (as an Operating Cost) of all personal property taxes of Landlord relating to Landlord’s personal property located on the Real Estate and used exclusively in connection with the operation and maintenance thereof; any tax or excise on rents, gross receipts tax, or tax or levy in respect

to the Minimum Monthly Rental, Additional Rent, or other charges reserved under this Lease or as a result of Landlord's receipt of such rents or other charges accruing under this Lease; general and special, ordinary and extraordinary, foreseen as well as unforeseen, of any kind and nature whatsoever, or any other tax, however described, which is levied or assessed by the United States of America or the state in which the Real Estate is located or any city, municipality, or political subdivision thereof or authority or any other taxing authority having jurisdiction over the Real Estate (including expenses directly incurred by Landlord in contesting the validity of, in seeking a reduction in, or in seeking to prevent an increase in any such tax(es) or assessment(s)) ("**Other Taxes**," and collectively with Real Estate Taxes, "**Taxes**"), but excluding any net income, franchise, capital stock, estate or inheritance taxes, transfer or mortgage taxes or similar stamp taxes, impact or use fees which are a part of the initial construction of the Building, taxes based on Landlord's income or receipts as a whole rather than those imposed solely on rents from the Real Estate, similar taxes personal in nature to Landlord, against Landlord, or all or any part of the Real Estate, and all fines, interest and penalties incurred by Landlord unless the cause of the same was the failure of Tenant to pay its share of Taxes as provided herein. Landlord shall pay, before the final respective due dates on which the Taxes may be paid so that the lowest amount of Taxes would be due and no interest, fee or penalty would be due.

(c) Landlord shall estimate the Taxes for each calendar year and include such estimate in the Annual Cost Notice; Tenant shall pay as Additional Rent one-twelfth (1/12) thereof in equal monthly installments, together with the payment of Minimum Monthly Rental. In the event the aggregate of Tenant's installments during the year shall be less than the amount of Taxes due from Tenant, such deficiency shall be paid to Landlord within thirty (30) days after demand therefor. If the aggregate of Tenant's installments in one year shall be more than the amount of Taxes due from Tenant, Landlord shall repay such overpayment to Tenant by crediting said amount against Tenant's monthly installment(s) of Minimum Monthly Rental or following the termination of the Lease, paid to Tenant. Taxes for the first and last calendar years of the Term shall be prorated on an annualized basis. Notwithstanding the foregoing, Tenant, at Tenant's option may choose to directly pay any Real Estate Taxes owed by Tenant to the Prime Landlord or to the Treasurer of Marion County, Indiana or any other taxing authority, in lieu of having Real Estate Taxes estimated and paid to Landlord. Tenant shall provide Landlord prior notice if it elects to pay Taxes directly and shall provide evidence of such payments not less than five (5) days prior to the date the Taxes are due and payable. Once this election is made, Tenant may only change the election with twelve (12) months' notice to Landlord.

(d) The parties hereto acknowledge Tenant is a Political Subdivision (as defined in the Indiana Code) and, as such, is generally exempt from Real Estate Taxes. Landlord agrees, at Tenant's request and at Tenant's sole cost and expense (reimbursable to Landlord as an Advance pursuant to **Section 11.03**), to use commercially reasonable efforts to cause the Boat Ramp Area and/or the Leased Premises to be separately assessed or to otherwise cause the Assessor to exclude the Leased Premises from the assessment of the Real Estate, to exclude, or account for, the value of the improvements which are being leased by Tenant, or, with regard to the Boat Ramp Parcel, are subject to an exclusive and irrevocable license. Landlord further agrees to take reasonable measures to seek an applicable exemption to which Tenant may be entitled; **provided that, Tenant**

acknowledges that (i) the final decision of the taxing authority is conclusive with respect to the assessment and exemption of Taxes, subject to Tenant's right to appeal the same, at its sole cost and expense, (ii) any decision by the applicable taxing authority for any tax year may be applied or determined differently in subsequent tax years, and (iii) Landlord has made no covenant, representation or warranty that Taxes shall not be owed by Tenant hereunder or that any exemption shall be available to Tenant or the Leased Premises or the Boat Ramp Area. In no event shall Tenant be liable for any Taxes imposed due to Landlord's failure to satisfy any material obligation under this subsection.

(e) Landlord shall have the right, acting reasonable and in good faith, to employ a tax consulting firm and/or other professionals, on a contingency basis, to attempt to assure a fair tax burden on the Real Estate and/or to contest any tax assessment, valuation, or levy against the Real Estate. Any refund received as a result of such proceedings shall be applied first to reimburse Landlord for its reasonable expenses of prosecuting such proceedings, including reasonable attorneys' fees, and second to Tenant in its proportionate share as reimbursement for Taxes paid by Tenant to Landlord for the tax year or years for which a refund was issued as a result of such proceedings, and the balance shall become the property of Landlord.

**Section 5.06. UTILITIES ADJUSTMENT.** As part of the Tenant Improvements, Landlord will cause the Utilities (as defined in **Section 6.01**) serving the Leased Premises to be separately metered (or sub-metered, as applicable). The heating, cooling and ventilation system shall be for the exclusive use of the Leased Premises and certain adjacent Common Areas as more particularly set forth in the Final Plans and Specifications. Commencing on the Possession Date, Tenant shall pay such utility costs directly to the provider prior to delinquency provided, however, for water and sewer, if not separately metered, Tenant will pay to Landlord, on a monthly basis, Tenant's share of the total water and sewer charges to the Building based on Tenant's use of water and sewer services as shown on the submeter within thirty (30) days of Landlord's invoicing of same.

**Section 5.07. PRORATION OF RENTALS.** In the event that, by virtue of the timing of the Possession Date or Expiration Date, expansion, or for any other reason, a Rental period results which is not a complete calendar month or calendar year with respect to Minimum Rental or Operating Costs respectively, the amounts payable for such lesser period shall be prorated on the basis of the number of days during the month or year, as the case may be, this Lease was in effect in relation to the total number of days in such period.

**Section 5.08. PLACE OF PAYMENT.** All Rentals shall be made to Landlord and shall be sent to Landlord at Landlord's Notice Address or at such other place as Landlord shall from time to time designate in writing. All Rentals shall be paid without relief from valuation and appraisal laws. At Tenant's request, all Rentals may be paid by electronic means.

**Section 5.09. LATE PAYMENTS.** If any payment of Rentals is not received by Landlord within five (5) business days of Tenant's receipt of notice from Landlord that the same is past due, then Tenant shall pay to Landlord interest on the unpaid Rentals from the

date due to the date of payment at the Default Rate as provided in **Section 11.03**. Amounts recoverable from Tenant pursuant to this Section shall be: (a) in addition to, and not in lieu of, any other right or remedy that Landlord may have hereunder, at law, or in equity; and (b) payable by Tenant, even if there is not an Event of Default with respect to the unpaid Rental.

**Section 5.10. NSF CHARGES.** In the event the Tenant issues a check or other negotiable instrument to Landlord which is returned for nonsufficient funds, because the account closed or is not honored for any other reason by the financial institution on which it is drawn, Tenant shall immediately make the check or other negotiable instrument “good” and shall pay to Landlord as liquidated damages to cover the costs of Landlord on account of the check or negotiable instrument the greater of the sum of Thirty Dollars (\$30.00) or One Hundred Fifty Percent (150%) of the NSF charge assessed to Landlord by Landlord's financial institution, and Tenant will not be credited for such payment until it is reconciled notwithstanding its prior delivery of the dishonored payment.

**Section 5.11. SURVIVAL.** The obligation of the Tenant to pay the Rental and the Landlord to reimburse the Tenant for any overcharges under this **Article V** shall survive the expiration or sooner termination of this Lease.

**Section 5.12. TENANT'S TAXES.** Tenant shall pay before delinquency any and all taxes, assessments, fees or charges, including any sales, gross income, rental, business occupation or other taxes, levied or imposed upon Tenant's business operations in the Leased Premises and any personal property or similar taxes levied or imposed upon Tenant's trade fixtures, leasehold improvements or personal property located within the Leased Premises. In the event any such taxes, assessments, fees or charges are charged to the account, of or are levied or imposed upon the property of Landlord, Tenant shall reimburse Landlord for the same as additional rent.

## **ARTICLE VI**

### **BUILDING OPERATION AND SERVICES**

**Section 6.01. STANDARD UTILITIES.** This Lease is considered a triple net Lease. Landlord shall supply all necessary connections for the delivery of water, gas, telephone, electricity, and sewer services to the Leased Premises (collectively, the “**Utilities**”) that are a part of the Tenant Improvements. Tenant agrees that the Utilities included in the Approved Final Plans will be the only Utilities Landlord is obligated to install. Tenant, at its cost and expense, shall be responsible for handling and disposing of all of Tenant's waste.

**Section 6.02. SERVICES.** If Tenant requests, in writing, any Utilities or Building services in frequency, scope, quality or quantity greater than those which Landlord shall provide pursuant to **Section 6.01** above (“**Additional Services**”), then Landlord shall reasonably cooperate with Tenant to obtain such Additional Services at the sole cost and expense of Tenant, and Tenant shall reimburse Landlord for any portion thereof paid by Landlord, as additional Rental, at the same time Monthly Minimum Rental is due.

**Section 6.03. EXCESSIVE DISCHARGE OF HEAT.** If any lights, machines or equipment (including but not limited to computers not typical for the Rec Center Use) used by Tenant in the Building materially affect the temperature otherwise maintained by the Building systems or generate substantially more heat in the Building (other than in the Leased Premises) than that which would normally be generated by the lights and machines or equipment typically used by other tenants in buildings similarly situated, then Landlord shall have the right to install any machinery or equipment which is reasonably necessary in order to restore the temperature balance in the Building, including equipment which modifies the Building's air-conditioning system. Any and all costs expended by Landlord to install any such machinery and equipment shall be borne by Tenant, and Tenant shall reimburse Landlord for any portion thereof paid by Landlord, as additional Rental, at the same time Minimum Rental is due.

**Section 6.04. EXCESSIVE POWER USAGE.** Tenant shall not install or connect, without Landlord's prior written consent, any electrical equipment which requires or uses electrical current in excess of that for which the electrical system included in the Tenant Improvements is designed. If the electricity used by the equipment to be so installed or connected in the Building exceeds the designed load capacity of the Building's electrical system or is incompatible therewith, then Landlord shall have the right, as a condition to granting its consent, to make such modifications to the electrical system or other parts of the Building, or to require Tenant to make such modifications to the equipment to be installed or connected, as reasonably necessary before such equipment may be so installed or connected. The costs of any such modifications shall be borne by Tenant, and Tenant shall reimburse Landlord for any portion thereof paid by Landlord, as additional Rental, at the same time Minimum Rental is due.

**Section 6.05. INTERRUPTION OF SERVICE.** Tenant understands, acknowledges and agrees that: (i) Tenant shall be responsible for the maintenance and repair of any and all of the mains and conduits furnishing the Utilities located in the Leased Premises and Landlord shall be responsible for all other mains and conduits furnishing utilities to the Building not otherwise owned or maintained by the applicable utility provider; (ii) any one or more of the Utilities may be interrupted by reason of accident, emergency, or other causes, or may be disconnected or diminished temporarily until certain repairs, alterations or improvements can be made; (iii) Landlord makes no representation or warranties as to the uninterrupted availability of such Utilities; and (iv) so long as the interruption is not caused by Landlord's negligent or willful misconduct, or default under this Lease any such interruption shall not be deemed a constructive eviction or disturbance of Tenant's right to possession, occupancy and use of the Building or Real Estate or any part thereof, or render Landlord liable to Tenant for damages by abatement of rent or otherwise, or relieve Tenant from the obligation to pay Rental and otherwise perform its covenants under this Lease. Landlord shall be responsible for restoring such service to the extent due to Landlord's negligence or intentional misconduct or due to Landlord's default under this Lease. Tenant shall give Landlord reasonable notice of Tenant's intention of performing any repairs or improvements that will likely result in an interruption of Utilities and shall exert all reasonable efforts to limit the length of any such interruption; Landlord shall cooperate with Tenant in causing such repairs to be made. Tenant shall suspend Utilities when necessary or advisable by reason of governmental regulations, civil

commotion, strike or riot, fire or other accident or emergency, or if any Utilities may not be reasonably available on account of energy shortages or for any other reason beyond the power or control of Landlord. No interruption of any utilities and Building services by reason of governmental regulations, civil commotion, strike or riot, fire or other accident or emergency, shall constitute an actual or constructive eviction in whole or in part, or entitle Tenant to any abatement or diminution of Rental, or relieve Tenant from any of Tenant's obligations under this Lease or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant or injury to or interruption of Tenant's business or otherwise. Notwithstanding the foregoing, if the interruption of Utilities is caused by Landlord's negligence, willful misconduct or default and is not restored within five (5) business days, Tenant shall be entitled to free Rental from the end of such five (5) business day period until the date restored to a point that permits Tenants' normal operations.

**Section 6.06. TRASH AND JANITORIAL.** Landlord shall supply the Leased Premises with trash and recycling services, janitorial services on a 5-day a week basis (or as otherwise agreed to by Landlord and Tenant) as is customary for similar Buildings which costs shall be included in Operating Costs in accordance with the terms of **Section 5.03(c)** and shall not be a Controllable Expense.

## **ARTICLE VII**

### **REPAIRS, MAINTENANCE, ALTERATIONS AND IMPROVEMENTS**

#### **Section 7.01. REPAIR AND MAINTENANCE.**

(a) **Landlord Repairs and Maintenance.** Landlord shall maintain in good order and repair the exterior walls, demising walls and exterior surfaces of the Building (excluding the exterior of and the frames surrounding all windows, doors, door closure devices, plate glass, and Tenant signs); the roof, roof membrane and roof drainage system (including gutters and downspouts); the foundations and load bearing items of the Building; the plumbing, pipes, and conduits located outside of the Leased Premises, to the extent not required to be maintained by Tenant hereunder; and all other Common Areas, in good condition and repair consistent with the Building's age and use, all to be paid by Tenant as described in and/or limited by **Article V** above. Landlord shall not be required to perform (but after an Event of a Default or in the event of an emergency or other exigent circumstances, only after such notice as is reasonable under the circumstances, Landlord may, at its option perform, but subject to Tenant's obligation to reimburse Landlord for its reasonable and necessary out-of-pocket costs, including an oversight fee equal to 15% of the cost of the work) any maintenance or repairs where same were made necessary by the Tenant's default hereunder or the negligence or willful misconduct of Tenant, Tenant's directors, officers, shareholders, members, managers, partners (both general and limited), or legal and personal representatives, or any assignee, subtenant, or concessionaire, or their respective employees, agents, invitees, licensees, visitors, or contractors, or by fire or other casualty or condemnation, except as provided in **Articles X and XII**. Any costs incurred by Landlord pursuant to the foregoing sentence shall be deemed an advance pursuant to **Section 11.03** and shall be payable within thirty (30) days of Tenant's receipt of Landlord's request therefor accompanied by appropriate documentation showing the completion of

such work. All such work by Landlord shall not violate any applicable warranty and to the extent Landlord violates any warranty related to the Building, it shall be responsible for all future costs and expenses related to such warranted item that would have been warranted but for Landlord's repair for the remainder of the item's warranty. In the event the Leased Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give written notice thereof to Landlord and Landlord shall commence such repairs within thirty (30) days (or in emergency situations, such shorter period as is reasonable under the circumstances) of its receipt of Tenant's notice (or from the date Landlord shall otherwise gain actual knowledge of the need for such repairs) and shall complete such repairs in a commercially reasonable time frame, so long as Landlord promptly commences and diligently pursues such cure. If Landlord fails to timely commence or complete its repair obligations pursuant to the requirements of this **Section 7.01(a)**, then Tenant may perform the repairs on Landlord's behalf and at Landlord's cost and in a manner that will not violate any applicable warranty. To the extent Tenant violates any warranty related to the Building, it shall be responsible for all future costs and expenses related to such warranted item that would have been warranted but for such Tenant repair for the remainder of the item's warranty, as Advances as provided in **Section 11.03**. Subject to the foregoing, Landlord shall reimburse Tenant for Tenant's reasonable and necessary out-of-pocket costs in curing Landlord's failure pursuant to this **Section 7.01(a)**, including an oversight fee equal to 15% of the cost of the work. Such reimbursement shall be made within thirty (30) days of Tenant's request therefor accompanied by appropriate documentation showing the completion of such work and lien waivers for such work. Tenant shall permit Landlord (or its designees) to erect, use, maintain, replace, and repair pipes, cables, conduits, plumbing, vents, and telephone, electric, and other wires or other items, in, to, and through the Leased Premises in such a manner that the same shall not materially interfere in any way with Tenant's use thereof, as and to the extent that may now or hereafter be necessary or appropriate for the proper operation and maintenance of the Building.

(b) Tenant Repairs and Maintenance. Tenant shall make and pay for all repairs to the Leased Premises and shall maintain, replace, and keep in good repair all equipment and systems which exclusively serve the Leased Premises from and after including, but not limited to, all fixtures, furnishings, lighting, and signs of Tenant, and all plumbing wiring, pipes, conduits, and other utility facilities exclusively serving the Leased Premises from and after their points of connection with the meter for such utilities, and shall replace all things which are necessary to keep the same in good states of repair and operating order. Tenant shall also maintain, replace, and keep in good repair and operating order all HVAC, plumbing, fire alarm and safety systems, electrical installations, ceilings, inside walls, carpeting, and floor surfaces within or primarily serving the Leased Premises. Tenant shall at all times keep the Leased Premises and all exterior entrances, glass, moldings, partitions, doors, floor (but not the slab or subfloor which are Landlord's responsibility), surfaces, fixtures, equipment, and appurtenances thereof in good order, condition, and repair, and in a reasonably satisfactory condition of cleanliness, and Tenant shall make such other necessary repairs in and to the Leased Premises as required herein not specified in **Section 7.01(a)** as being the responsibility of Landlord. During the Term of this Lease, Tenant shall engage a reputable service contractor reasonably satisfactory to Landlord to perform periodic maintenance and repairs on the HVAC equipment (and in no event less

often than two (2) times per year unless required to be done more frequently by the applicable manufacturer's warranty requirements or maintenance recommendations, in which case, Tenant shall comply with such recommendations or requirements). Tenant shall provide Landlord with an executed copy of the service contract with terms and content reasonably acceptable to Landlord within thirty (30) days of a written request for the same by Landlord. If Tenant has failed to maintain and repair the HVAC equipment as required by this **Section 7.01(b)**, Landlord shall provide notice of the same containing a detailed description of such failure(s). If Tenant shall not cure such failures set forth in Landlord's notice within thirty (30) days, or if unable to be cured in said thirty (30) day period, such longer period as may be reasonable under the circumstances of Landlord's notice, Landlord may, at Tenant's sole cost and expense, perform the repairs or maintenance required to satisfy Tenant's obligations concerning the same. The cost of this work performed by Landlord shall be considered Additional Rent. Tenant shall at its expense replace all broken or damaged glass or substitutes therefor, as the case may be. The provisions of this **Section 7.01(b)** shall not limit Landlord's obligation to restore or repair under **Articles X and XII**.

**Section 7.02. INTENTIONALLY OMITTED.**

**Section 7.03. ADDITIONS, ALTERATIONS AND IMPROVEMENTS.**

Landlord shall not be obligated to make any additions, alterations, or improvements to the Leased Premises, Building, or Real Estate ("**Capital Improvements**"), except as specifically agreed in writing by and between Landlord and Tenant or as otherwise provided in this Lease. Tenant shall not make or allow to be made any Capital Improvements without first obtaining Landlord's prior written consent, which shall not be unreasonably withheld. Tenant hereby agrees that Landlord's approval of Capital Improvements may be conditioned upon such Capital Improvements being made by a contractor approved by Landlord, not to be unreasonably withheld; Landlord's lender's reasonable approval and any requirements it may reasonably impose on any such approval; Landlord's advance approval of all plans and specifications therefor, not to be unreasonably withheld; security for the proper payment and performance of such Capital Improvements, to the extent reasonable under the circumstances; and Landlord's receipt of such other documentation, approvals, requirements, and consents as Landlord may reasonably require. Notwithstanding the foregoing, Tenant (without Landlord's or Landlord's lender's consent) shall be entitled to make non-structural changes to the interior of the Leased Premises (i) that do not affect (1) the exterior appearance of the Building, (2) the Building systems (including, without limitation, the HVAC, sprinkler or life safety systems), and (3) the roof or any other structural component of the Building; and (ii) do not exceed \$150,000 in any year; and (iii) so long as Tenant provides advance notice to Landlord and Tenant of such Capital Improvements and complies with the other requirements below. Upon completion of any Capital Improvements (regardless of whether consent is required or not), Tenant shall provide Landlord with written notice as to the completion thereof together with copies of all applicable permits and any "as-built" plans and specifications reasonably required with respect to the applicable Capital Improvements. All Capital Improvements (regardless of whether consent is required or not) will be performed in accordance with all applicable Laws and in a good and workmanlike manner with first-class materials, and Tenant will obtain all necessary

permits therefor. Tenant will maintain (and will require its contractors performing work on behalf of the Tenant to maintain) insurance reasonably satisfactory to Landlord during the construction of any Capital Improvements. At the time Tenant requests approval of a Capital Improvements (or provides advance notice of any Capital Improvements not requiring consent), Tenant may request in writing that Landlord make the determination as to whether or not the Capital Improvements must be removed at the end of the Lease Term (which written request must make specific reference to such needed determination and this **Section 7.03**. If Landlord does not respond to the request to make the determination within thirty (30) days of its receipt of Tenant's request, Landlord will be deemed to have made the determination that the Capital Improvements do not need to be removed by Tenant. If Tenant does not make a written request for such a determination by Landlord or if Landlord determines (in accordance with the foregoing) that a Capital Improvement must be removed at the end of the Term, then Tenant shall be required to remove any applicable Capital Improvements at the end of the Term. If Tenant is required to cause the removal of a Capital Improvements, Tenant will remove such Capital Improvements on or before the termination or expiration of this Lease and restore the Leases Premises to its condition prior to such Capital Improvements, normal wear and tear and acts of casualty and condemnation excepted. Except as otherwise provided in this Lease or to the extent Tenant elects or is required to remove any Capital Improvements prior to the expiration or earlier termination of this Lease, all Capital Improvements will otherwise become part of the Premises upon the expiration or earlier termination of the Lease without payment therefor by Landlord and will be surrendered to Landlord upon the expiration or earlier termination of this Lease. Tenant will repair any damage caused by the removal of such Capital Improvements upon surrender of the Leased Premises, normal wear and tear and acts of casualty and condemnation excepted. Tenant's obligations under this **Section 7.03** shall survive expiration or earlier termination of this Lease.

**Section 7.04. MOVABLE OFFICE FURNITURE AND EQUIPMENT.** Any movable office furniture and equipment installed in the Leased Premises at the sole cost and expense of Tenant, such as movable partitions, counters, shelving, desks, mirrors, and the like, shall be removed by Tenant on the expiration or earlier termination of this Lease, provided that Tenant bears the cost of such removal and repairs all damage to the Leased Premises arising from such removal. If Tenant fails to remove any and all such movable office furniture and equipment from the Leased Premises on or before the expiration or earlier termination of this Lease, all such furniture and equipment shall, following notice to Tenant, become the sole property of Landlord, unless Landlord elects to require the removal thereof, in which case Tenant shall, at its expense, promptly remove the same and pay for restoring the Leased Premises to their condition prior to the installation thereof, ordinary wear and tear excepted; in the event that Tenant fails to so remove such furniture and equipment or repair any damage caused by such removal, Landlord shall remove and/or repair the same at Tenant's cost and expense, which shall be paid by Tenant with ten (10) days of Landlord's demand for payment of the same. Tenant's obligations under this **Section 7.04** shall survive expiration or earlier termination of the Lease.

**Section 7.05. LIENS.** Tenant shall keep the Leased Premises, free from any liens whatsoever, including but not limited to mechanic's liens. In the event any lien attaches to the Leased Premises as a result of any work done by or on behalf of the Tenant, Tenant

shall cause the same to be discharged by deposit, bonding, payment or otherwise reasonably satisfactory to Landlord within forty-five (45) days after written notice by Landlord. If Tenant shall fail to cause such lien to be discharged within the aforesaid period, then, in addition to any other remedy or right Landlord may have, Landlord may, following notice to Tenant, pay the amount of such lien to cause its release and the payment shall be deemed an advance under **Section 11.03** hereof. Tenant shall reimburse, defend, indemnify and hold harmless Landlord from and against any and all Losses incurred by Landlord as a result of, or in connection with, any such mechanic's lien. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to constitute consent to, or request of, any party for the performance of any work for, or the furnishing of any materials to, Tenant, nor as giving Tenant the right or authority to contract for, authorize, or permit the performance of any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to Landlord's interest.

## **ARTICLE VIII** **ASSIGNMENT AND SUBLETTING**

**Section 8.01. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or encumber this Lease or any interest herein, or sublet the Leased Premises or any part thereof, or permit the use of the Leased Premises or any part thereof by any party other than Tenant, without the prior written consent of Landlord, which shall not be unreasonably withheld. No such action shall relieve the Tenant of any liability under this Lease, whether arising before or after the date of assignment. If Tenant is an entity other than a natural person, any change in the controlling interest in Tenant shall be deemed an assignment for purposes of this Lease. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the requirement for such consent to any subsequent assignment or subletting. Notwithstanding the foregoing, Tenant may freely assign this Lease or sublet to other agencies or bodies of Marion County, Indiana, or the City of Indianapolis, Indiana but only for the Permitted Use.

## **ARTICLE IX** **NON-LIABILITY, INDEMNIFICATION, AND INSURANCE**

**Section 9.01. EXCULPATION OF LANDLORD; WAIVER OF CLAIMS BY TENANT.** Tenant agrees to carry such insurance as it deems adequate to fully protect it against loss or damage to its property by any casualty whatsoever or liability to others, and all such insurance shall contain or be endorsed with a clause permitting waiver of rights of recovery prior to a loss and waiving all rights of subrogation against Landlord, so long as such clause is available. Notwithstanding any term herein to the contrary, Tenant hereby waives all claims for recovery from Landlord and its agents, subtenants, employees or invitees, for any loss or damage to the property of Tenant or its agents, licensees, invitees (including, without limitation, members of the public using the Boat Ramp Area), guests, and employees to the extent that such loss is or could have been insured by valid, commercially available and collectible fire and extended coverage insurance policies and commercial general liability insurance policies in standard form containing a waiver of

subrogation endorsement regardless of the cause thereof, including Landlord's negligence; it being the intent of the parties hereto to assign the entire risk of loss arising out of damage to Tenant's property to such insurance to be procured by Tenant at its own expense. To the extent Tenant elects to self-insure any insurance coverage, such self-insurance shall be deemed to include such waiver of subrogation on terms comparable to the waiver of subrogation endorsement/terms carried under Landlord's insurance policies. Landlord shall remain liable to Tenant for the cost of repairing any damage to the Leased Premises or other property of Tenant to the extent caused or contributed to by the negligence or intentional misconduct of Landlord, or its agents, employees or invitees, or Landlord's breach of this Lease, but only to the extent that such damage is not insured by Tenant (or self-insured by Tenant) and would not be insured under the special form fire and extended coverage insurance policies or commercial general liability insurance policies required hereunder.

**Section 9.02. WAIVER OF CLAIMS BY LANDLORD.** Landlord shall procure and keep in effect at all times during the Term of this Lease, special form fire and extended coverage insurance, with coverage equal to the full replacement value of the Building and other improvements (excluding the Boat Ramp Area), including the Tenant Improvements provided by the Landlord, arising out of casualty covered by such insurance or liability to others. All fire and extended coverage insurance and commercial general liability insurance policies which may be carried by Landlord with respect to the Building or the property of Landlord located therein shall contain or be endorsed with a clause permitting waiver of rights of recovery prior to a loss and waiving all rights of subrogation against Tenant, so long as such a clause is available. Notwithstanding any term herein to the contrary, Landlord waives all claims for recovery from Tenant for any loss or damage to the Building or the property of Landlord located therein to the extent such loss is or could have been covered by valid, commercially available and collectible special form fire and extended coverage insurance policies and commercial general liability insurance policies in standard form containing a waiver of subrogation endorsement, regardless of the cause thereof, including Tenant's negligence. Tenant shall remain liable to Landlord for the cost of repairing any damage to the Leased Premises, Building or Common Areas, or other property of Landlord to the extent caused or contributed to by the negligence or intentional misconduct of Tenant, or its subtenants, agents, employees or invitees, or Tenant's breach of this Lease, but only to the extent that such damage is not insured by Landlord and would not be insured by Landlord under the special form fire and extended coverage insurance policies and commercial general liability insurance policies required hereunder. Any expense to Landlord in obtaining such waiver of subrogation endorsement, together with the underlying premiums for such insurance, shall be included as an element of the Operating Costs of the Building.

**Section 9.03. LANDLORD'S NON-LIABILITY.** Landlord shall not be liable to Tenant, or any other person in the Leased Premises, in the Building or upon the Real Estate (including, without limitation, the Boat Ramp Area) by Tenant's consent, invitation or license, express or implied, for any damage either to person or property sustained by reason of the condition of the Leased Premises, the Building or the Real Estate, or any part thereof, or arising from the bursting or leaking of any water, gas, sewer or steam pipes, or due to any act or neglect of any other occupant of the Building or other person therein, or due to

any casualty or accident in or about the Leased Premises, the Building or the Real Estate, except to the extent that any such damage arises as a result of Landlord's negligence or Landlord's breach under this Lease.

**Section 9.04. TENANT'S GENERAL LIABILITY INSURANCE.** Tenant shall procure and maintain during the Term of this Lease (and shall cause any and all subtenants to also procure and maintain) a policy or policies of insurance, written by a responsible insurance company or companies satisfactory to Landlord, insuring both Landlord and Tenant against any and all losses, claims, demands, or actions, whatsoever for injury or death of any one or more persons, and damage to property, in any one occurrence to the limit of not less than One Million Dollars (\$1,000,000), with an annual aggregate of not less than Two Million Dollars (\$2,000,000.00), and umbrella coverage of not less than Three Million Dollars (\$3,000,000.00) arising from Tenant's conduct and operation of Tenant's Permitted Use in the Leased Premises or the Boat Ramp Area, and to furnish Landlord customary ACORD certificates evidencing the existence thereof. Such insurance policies shall name Landlord, Prime Landlord, and Landlord's lender as a loss payees as their interests shall appear and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord, Prime Landlord, Landlord's lender, and Tenant prior notice. Tenant may, so long as covered under insurance programs covered by the City of Indianapolis/Marion County, Indiana, self-issue any insurance coverage Tenant is required to carry under this Section or under any other section of this Lease, and in such event, the self-insurance shall be treated in the same manner as if provided by the coverage required above, including, without limitation, the required waiver of subrogation.

**Section 9.05. PROPERTY INSURANCE TENANT'S RESPONSIBILITY.** Tenant, at its expense, shall carry at all times during the Term of this Lease one or more policies of special form fire and extended coverage insurance with respect to any property located in, on or about the Leased Premises in which Tenant has an insurable interest as reasonably required to protect and insure Tenant's interest in such property. Such insurance policies shall name Landlord, Prime Landlord, and Landlord's lender as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord, Prime Landlord, and Tenant thirty (30) days' prior notice. Tenant may, so long as covered under insurance programs covered by the City of Indianapolis/Marion County, Indiana, self-issue any insurance coverage Tenant is required to carry under this Section or under any other section of this Lease, and in such event, the self-insurance shall be treated in the same manner as if provided by the coverage required above, including, without limitation, the required waiver of subrogation.

**Section 9.06. LANDLORD'S GENERAL LIABILITY INSURANCE FOR BUILDING.** Landlord shall procure and maintain during the Term of this Lease, as a component of Operating Costs, a policy or policies of insurance, written by a responsible insurance company or companies, insuring Landlord against any and all losses, claims, demands or actions for injury to or death of any one or more persons and damage to property in any one occurrence to the limit of not less than One Million Dollars (\$1,000,000), with an annual aggregate of not less than Two Million Dollars (\$2,000,000) and umbrella coverage of not less than Ten Million Dollars (\$10,000,000), which insurance

will cover accidents or occurrences: (i) occurring in the Building or upon its environs (other than inside the Leased Premises); and (ii) caused by acts performed or required to be performed by Landlord under this Lease including acts on, within or affecting the Leased Premises. In the event that the City of Indianapolis/Marion County Indiana or a related entity covered under the insurance program carried by the City of Indianapolis/Marion County, Indiana, becomes Landlord under this Lease, it may self-insure any insurance coverage Landlord is required to carry under this Section, **Section 9.02** above, or under other section of this Lease.

**Section 9.07. GENERAL INDEMNITY.** To the extent permitted by Law and subject to the other provisions of the Lease, Tenant agrees to reimburse, defend, indemnify and save harmless Landlord, its members, agents, and employees, from and against any and all losses, liens, obligations, fines, liabilities, causes of action, damages, claims, costs and expenses (including reasonable attorneys' fees) (collectively, "**Losses**"), including, without limitation, any claim (valid or invalid) for any bodily injury (including death) or damage to property sustained by any person to the extent caused by Tenant's breach of this Lease or its use and occupancy of, the Leased Premises by Tenant or its subtenants, except for Losses resulting from the Landlord's intentional misconduct, negligence of Landlord, or Landlord's breach of this Lease. "Losses", as used in this Lease, shall include both third-party claims and first-party claims (*i.e.*, losses or damages suffered directly by the indemnified party or suffered by the indemnified party as a result of third party claims). The indemnification herein provided shall include all reasonable legal fees, expenses and damages incurred in connection with any such claim, action or proceedings brought thereon. The foregoing indemnity shall be subject at all times to the limitations provided for in the Indiana Tort Claims Act to the extent it legally applies to any indemnity claims against Tenant by Landlord or any related party under this Lease.

## **ARTICLE X**

### **DESTRUCTION AND DAMAGE**

**Section 10.01. DAMAGE BY CASUALTY.** In the event of a fire or other casualty in the Leased Premises, Tenant shall give prompt notice thereof to Landlord. If the Leased Premises shall be partially destroyed by fire or other casualty so as to render the Leased Premises partially or wholly untenable, the Rental shall be abated on the basis of rentable square footage remaining and occupied thereafter, until such time as the Leased Premises, including the Tenant Improvements, are made fully fit for use by Tenant; provided, however, that if any act or neglect of Tenant, or its subtenants, agents, employees or invitees shall have caused fire or other casualty, the Rental shall not be abated during the period of restoration of the Leased Premises except to the extent Landlord is compensated therefor by rental insurance proceeds in which event the costs of such rental insurance shall be deemed an Operating Expense.

**Section 10.02. RESTORATION; PARTIAL OR TOTAL DESTRUCTION OF BUILDING.** In the event the Building shall be partially or totally destroyed by fire or other casualty, the same shall be repaired as soon as is reasonably possible, at the expense of Landlord, unless Landlord or Tenant shall elect to terminate this Lease as hereinafter provided. Notwithstanding anything herein contained to the contrary, Landlord shall have

no duty to repair, restore or replace any improvements, or fixtures, installed, or owned by Tenant but shall repair and replace the Tenant Improvements. If (i) the holder of any mortgage or mortgages on the Building fails to release insurance proceeds to Landlord; (ii) such damage is uninsured despite carrying the insurance required hereunder; (iii) damage to the Leased Premises is to such extent that the cost of restoration will exceed 75% of the replacement value of the Building (exclusive of the foundation) in its condition just prior to the occurrence of the damage; or (iv) the Building cannot be reconstructed in material conformance with its original design or for its original uses due to zoning limitations or other legal challenges or limitations; Landlord may, no later than the ninetieth (90th) day following such damage, give Tenant notice that it elects to terminate this Lease. If such notice shall be given:

(a) This Lease shall terminate on the tenth (10th) day following the giving of said notice, unless the damage does not prevent the use of the Leased Premises, in which case Tenant may extend the termination date by an additional forty-five (45) days;

(b) Tenant shall surrender possession of the Leased Premises on or before such termination date; and

(c) The rental provided hereunder shall be apportioned as of the date of such termination or the date of the casualty if Tenant is not able to operate from the Leased Premises due to such casualty and any Rental paid for any period beyond said date shall be refunded to Tenant.

Unless Landlord so elects to terminate this Lease, Landlord shall proceed with the restoration of the Leased Premises as soon as reasonably possible. If the damage to the Building as the result of any casualty is such that the Leased Premises cannot be used for Tenant's operations for a period of twelve (12) months, (or one month if the event occurs in final Lease Year), either Landlord or Tenant may cancel and terminate this Lease by giving notice of such termination to the other party within thirty (30) days after the date of such casualty. In such event of termination, all Rental shall be apportioned as of the date of such termination and any Rental paid for any period beyond said date shall be refunded to Tenant.

## **ARTICLE XI** **DEFAULTS AND REMEDIES**

**Section 11.01. EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall be deemed to be an “**Event of Default**”:

(a) The failure of Tenant to pay any installment of Rental within five (5) business days after written notice and demand therefor is served upon Tenant by Landlord.

(b) The failure of Tenant to perform, or cause to be performed, any other of its covenants under this Lease and if curable, the failure continues for thirty (30) days after written notice or demand therefor is served upon Tenant by Landlord; provided that if such default cannot reasonably be cured in said thirty (30) day period, Tenant shall be entitled

to such additional time as is reasonable under the circumstances to complete the cure so long as Tenant promptly begins the cure and diligently pursues the same to completion.

(c) The making by Tenant of an assignment for the benefit of its creditors;

(d) The levying of a writ of execution or attachment on or against the Leased Premises or Tenant's interest therein as the property of Tenant, and the same not being released or discharged within sixty (60) days thereafter;

(e) The institution of proceedings in a court of competent jurisdiction for the reorganization, liquidation, voluntary, or involuntary dissolution of Tenant, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of Tenant, and said proceedings are not dismissed, and any receiver, trustee or liquidator appointed therein discharged, within sixty (60) days after the institution of said proceedings; and

(f) Tenant's breach of **Section 8.01, Article IX** with regard to the carrying of any required Tenant insurance, **13.01 or 14.01** if not cured within five (5) business days of notice of such default.

**Section 11.02. REMEDIES.** Upon the occurrence of an Event of Default, Landlord shall have the option to:

(a) Terminate the Lease or Tenant's right to possession without terminating Tenant's obligations hereunder;

(b) Re-enter the Leased Premises with or without process of law, using such means as may be necessary to remove all persons and property therefrom; and/or

(c) Exercise any other right or remedy available to Landlord at law or in equity in addition to or as an alternative to any of the other rights and remedies of Landlord herein specified upon the occasion of any such Event of Default.

In the event that an Event of Default occurs and Landlord should relet the Leased Premises or a portion thereof during the balance of the Term of this Lease, the proceeds of such reletting, after deduction of all reasonable costs incurred by Landlord in connection with repossession and such reletting (including without limitation, all legal fees, leasing commissions, remodeling costs and similar expenses) shall be applied to satisfaction of Tenant's obligations hereunder. Alternatively, in the event Landlord should elect to terminate this Lease, Landlord shall be entitled to recover forthwith as damages from Tenant a sum of money equal to: (i) the cost of recovering possession of the Leased Premises, (ii) the unpaid Rental owed at the time of such termination, (iii) the balance of the Rental for the remainder of the Term, and (iv) any other sum of money or damages owed by Tenant to Landlord, less the fair market rental value of the Leased Premises which Landlord reasonably determines would be obtained under any reletting of the Leased Premises for the remainder of the Term of this Lease. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for any previous Event of Default. Tenant's liability for the foregoing amounts shall survive

any termination of this Lease.

**Section 11.03. ADVANCES.** If an Event of Default occurs, Landlord shall also have the right to cure such breach for the account at the expense of Tenant. Any money spent or costs or expenses incurred in curing such a breach or default for the account of Tenant, together with fifteen per cent (15%) per annum additional overhead charge, shall be reimbursed to Landlord within twenty (20) days of rendition of a bill or statement to Tenant for such monies, costs and expenses, and Landlord shall have the same remedies for the nonpayment thereof as for the nonpayment of Rental. If the amounts owed Landlord under this Section are not paid within twenty (20) days of rendition of a bill or statement to Tenant, the amounts shall accrue interest at the Default Rate as provided in **Section 11.05**, from the date of the bill or statement until such amounts are paid in full by Tenant to Landlord.

**Section 11.04. FEES AND COSTS.** In the event Landlord employs an attorney or other professional for the enforcement of any of the terms of this Lease, or recovery of possession of the Leased Premises, Tenant agrees to pay Landlord all reasonable attorneys' fees and other professional fees and costs incurred by Landlord in connection therewith.

**Section 11.05. WAIVER OF TYPES OF DAMAGES.** Neither Landlord nor Tenant shall be liable for any cost profits, lost economic opportunities, punitive damages, or special consequential or indirect damages as a result of any actual or alleged breach or default by Landlord or tenant, as applicable.

**Section 11.06. INTEREST AFTER DEFAULT.** All amounts payable by Tenant after occurrence of an Event of Default shall carry interest at the rate of twelve per centum (12%) per annum in effect on the date any such amounts become delinquent until paid ("**Default Rate**").

**Section 11.07. LANDLORD'S DEFAULT.** Landlord will not be in default under this Lease unless Landlord breaches or fails to perform any of Landlord's obligations under this Lease and the breach or failure continues for a period of thirty (30) days after Tenant notifies Landlord in writing of Landlord's breach or failure; provided that if Landlord is not able through the use of commercially reasonable efforts to cure the breach or failure within such thirty (30) day period, Landlord's breach or failure is not a default as long as Landlord commences to cure its breach or failure within the thirty (30) day period and thereafter diligently pursues the cure to completion. In addition, Landlord shall be in default under this Lease if Landlord fails to perform its obligation in **Section 7.01**, subject only to notice and cure requirements provided therein. If Landlord shall fail to perform any of its obligations under this Lease and if Tenant shall, as a consequence thereof, recover a money judgment against Landlord, Tenant agrees that it shall look solely to Landlord's right, title and interest in and to the Building and all proceeds therefrom for the collection of such judgment; and Tenant further agrees that no other assets of Landlord shall be subject to levy, execution or other process for the satisfaction of Tenant's judgment and that Landlord shall not be liable for any deficiency. Except for the specific remedies provided for in **Section 11.02**, neither party will be liable to the other for any lost profits, lost economic opportunities or any form of consequential, special, or punitive damages as

the result of any actual or alleged breach or default by Landlord or Tenant, as applicable, hereunder. In the event Landlord defaults hereunder which default is not cured within the applicable grace period and Tenant elects to pursue its remedies as provided above, Landlord shall pay Tenant's reasonable attorneys' fees incurred in enforcing the foregoing remedies to the extent Tenant prevails

**Section 11.08. APPLICATION OF PAYMENTS; ACCEPTANCE OF CHECKS.** Landlord shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligation of Tenant to Landlord according to Landlord's sole discretion and regardless of the instructions of Tenant as to application of any such sum, whether such instructions be endorsed upon Tenant's check or otherwise, unless otherwise agreed by both parties in writing. The acceptance by Landlord of a check or checks drawn by others than Tenant shall in no way affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Lease by Tenant.

## **ARTICLE XII** **EMINENT DOMAIN**

**Section 12.01. EFFECTS OF TAKING.** If the whole or any part of the Leased Premises is taken for public or quasi-public use by a governmental or other authority having the power of eminent domain, or shall be conveyed to any such authority in lieu of such taking, and if such taking or conveyance shall cause the remaining part of the Leased Premises to be untenable and inadequate for Tenant's Permitted Use, then this Lease shall terminate as of the date possession of the Leased Premises is required by the condemning authority by giving the other party notice of such termination. If a part of the Leased Premises shall be taken or conveyed but the remaining part is tenantable and adequate for Rec Center Use (as determined by Landlord or Tenant, and with notice of such determination given to the other within fifteen (15) business days of notice of any such taking), then this Lease shall be terminated as to the part taken or conveyed as of the date possession is required by the condemning authority; Landlord shall make such repairs, alterations and improvements as may be necessary to render the part not taken or conveyed tenantable; and the Rental shall be reduced in proportion to the part of the Leased Premises so taken or conveyed. If any part of the Building other than the Leased Premises shall be taken or conveyed, Landlord may, at its election, terminate this Lease as of the date Landlord is required to surrender possession thereof by giving Tenant notice of such termination, which shall be given as soon as reasonably possible. All compensation awarded for such taking or conveyance shall be the sole property of Landlord, without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title and interest in and to any such award; provided, however, Tenant shall have the right to recover from such taking authority, but not from Landlord, such compensation as may be awarded to Tenant on account of moving and relocation expenses and depreciation to and removal of Tenant's property.

**Section 12.02. TEMPORARY TAKING.** If all or a portion of the Leased Premises is taken by the exercise of right of eminent domain for governmental occupancy for a limited period, this Lease shall not terminate and Tenant shall continue to perform its obligations hereunder as though such taking had not occurred except to the extent that it

may be prohibited from so doing pursuant to the terms of the order of the authority which made the taking. In the event of such a temporary taking, Tenant shall be entitled to the entire award made for such taking (whether by way of damages, rent or otherwise) unless the period of governmental occupancy extends beyond the Term of this Lease, in which case the award shall be apportioned between Landlord and Tenant as of the Expiration Date of this Lease. Tenant covenants that at the termination of any such governmental occupancy during the Term of this Lease it will, at its sole cost and expense, restore the Leased Premises as nearly as may be reasonably possible to the condition in which the same was prior to such taking.

### **ARTICLE XIII** **SUBORDINATION TO MORTGAGES**

**Section 13.01. SUBORDINATION AND NON-DISTURBANCE.** This Lease, and the rights of Tenant hereunder, shall automatically be and hereby is subordinate to the lien or liens of any mortgage or mortgages now or at any time hereafter in force with respect to the Real Estate and the Building, and to all advances made or hereafter to be made upon the security thereof, so long as the holder of such interest has agreed not to disturb Tenant's rights under this Lease, subject to the remedies available following an Event of Default. If requested by the holder of any such mortgage or mortgages, Tenant shall execute and deliver to such holder within fifteen (15) days of its receipt of such request an instrument in a commercially reasonable form satisfactory to such holder and Tenant, specifically subordinating this Lease to the lien of such mortgage or mortgages and providing that Tenant's rights under this Lease and its use and occupancy of the Leased Premises shall not be disturbed so long as there is no Event of Default hereunder.

**Section 13.02. WAIVER OF SUBORDINATION.** Notwithstanding the terms of **Section 13.01**, the holder of any such mortgage or mortgages shall have the right at any time prior to the later of thirty (30) days after the date of final execution of this Lease or thirty (30) days after the date of recording of any such mortgage to declare this Lease to be superior in priority to the lien of said mortgage, notwithstanding the respective dates of execution or recording of any such document.

**Section 13.03. ATTORNMENT.** If by reason of any default on the part of Landlord or any successor Landlord as mortgagor under any such mortgage or mortgages to which this Lease is subordinate, any such mortgage is foreclosed by legal proceedings or extinguished by conveyance in lieu of foreclosure or otherwise, Tenant shall attorn to and recognize such mortgage holder and its successors and assigns, including any purchaser in foreclosure or grantee of a deed in lieu thereof, as Landlord under this Lease. Tenant shall execute and deliver at any time, upon request of Landlord or any holder of a mortgage to which this Lease is subordinate, a commercially reasonable instrument to evidence such attornment and containing the agreement of Tenant that no action taken to enforce any such mortgage by reason of any default thereunder shall terminate this Lease or invalidate or constitute a breach of any of the terms hereof, provided that Tenant's possession of the Leased Premises and rights under this Lease shall not be disturbed if there is no existing Event of Default, in a form reasonable acceptable to Tenant. In the event

that several mortgages have a security interest with different priority, Tenant shall attorn to such mortgages in the order of their priority.

**Section 13.04. COPY OF NOTICE TO MORTGAGEE.** Tenant agrees to give the holder(s) of any such mortgage or mortgages to which this Lease is subordinate, by registered mail or by hand delivery or overnight mail, a copy of any notice of default served upon Landlord, provided that prior to such notice of default Tenant has been notified of the existence of such mortgage or mortgages and the address of the holder(s) of such mortgage or mortgages (each, a “**Mortgagee**”). Tenant further agrees that if Landlord has failed to cure any such default within the time provided by **Section 11.06**, then before Tenant shall exercise any remedy involving the termination of this Lease, Mortgagee shall have an additional thirty (30) days within which to cure such default, or if such default cannot be cured within that time, then such additional time as may be necessary to effect such cure if within such thirty (30) days Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default, including, without limitation commencement of foreclosure proceedings if necessary to effect such cure.

#### **ARTICLE XIV CERTIFICATES**

**Section 14.01. AGREEMENT TO EXECUTE.** Each party agrees that, from time to time upon request by the other party, it will execute and deliver to the requesting party or to any Mortgagee of the Building or any purchaser or prospective purchaser of Landlord's or Tenant's interest in the Building or the Premises, a statement in form and content supplied by the requesting party, and reasonably approved by the party which will be signing the same certifying; (i) that this Lease is unmodified and in full force and effect (or if there have been any modifications, identifying the modifications and certifying that the Lease as modified is in full force and effect) (ii) the dates to which Rental and any other charges have been paid; (iii) the dates of commencement and expiration of the term of this Lease; (iv) that neither Tenant nor Landlord is not in default under this Lease or, if any such default is claimed, the exact nature thereof in detail; and (v) such other matters as the requesting party may reasonably request. Any such certificate shall be executed and delivered within fifteen (15) days after request therefor is made.

#### **ARTICLE XV RESERVED RIGHTS**

**Section 15.01. RIGHT OF INSPECTION.** Landlord shall have the right at any reasonable time and from time to time, to enter the Leased Premises by its agents and employees for the purpose of examining the condition thereof. Landlord shall have pass keys to the Leased Premises and all portions thereof. At any time, Landlord has accessed the Leased Premises, Landlord shall use commercially reasonable efforts to avoid disrupting Tenant's operations.

**Section 15.02. REPAIRS.** With reasonable notice and at reasonable times (unless exigent circumstances exist in which event no notice is required), Landlord reserves the right to enter the Leased Premises as may be necessary from time to time for the purpose

of making repairs or alterations thereto or to the Building as may be required for the safety, protection and preservation of the Leased Premises. The reservation of such right of entry shall not enlarge in any way the obligations of Landlord for maintenance and repair of the Leased Premises as otherwise provided in **Article VI** hereof. In exercising such rights, Landlord shall use commercially reasonable efforts to minimize any interference such repairs would have on Tenant's operations.

**Section 15.03. EXHIBITION OF PREMISES.** Landlord reserves the right to enter the Leased Premises during Tenant's normal business hours and with reasonable advance notice to Tenant for the purpose of exhibiting the Leased Premises to prospective purchasers, investors or mortgagees and, during the last one hundred eighty (180) days of the Term of this Lease if no extension or new lease has been agreed upon by Landlord and Tenant, for the purpose of exhibiting the same to prospective tenants.

**Section 15.04. EFFECT OF EXERCISE OF RESERVED RIGHTS.** The reasonable exercise of any right reserved to Landlord under the terms of this Lease shall never be deemed to constitute a constructive eviction of Tenant or a trespass by Landlord or any of its contractors, agents or employees, and Tenant shall not be entitled to any abatement of reduction in Rental by reason thereof. Subject to the above, Tenant hereby waives as against Landlord: (a) any claim for damage for any injury or inconvenience to or interference with Tenant's business; (b) any loss of occupancy or quiet enjoyment of the Leased Premises; and (c) any other loss occasioned; in any case as a result of Landlord's entry upon the Leased Premises, so long as the same are pursuant to, and in accordance with, the terms and conditions of this **Article XV** or as otherwise permitted by this Lease.

## **ARTICLE XVI** **RIGHTS ON TERMINATION**

**Section 16.01. SURRENDER OF POSSESSION.** At the termination of this Lease, by lapse of time or otherwise, Tenant shall remove (a) all of its furniture, office equipment, trade fixtures and equipment, and other unattached and moveable personal property, if any, (b) any items or improvements which Landlord indicated in its written approval of Tenant's Plans that Tenant would be required to remove on or before the expiration or earlier termination of this Lease, and (c) all telephone and computer/data equipment and wiring installed by Tenant, and shall surrender the Leased Premises to Landlord together with all improvements made to the Leased Premises, whether made by Tenant or Landlord, other than the improvements to be removed by Tenant as provided in the preceding **clauses (b) and (c)**, all in as good a condition as delivered on the Possession Date, excepting ordinary wear and tear, damage by the elements, fire or other casualty which Landlord is obligated to repair and condemnation. Tenant, at its expense, promptly shall repair any damage to the Leased Premises caused by removal of its property as provided in **clauses (a), (b) and (c)** above. Any property of Tenant not removed within ten (10) business days after the expiration or earlier termination of this Lease shall be deemed, at Landlord's option, to be the property of Landlord, and Landlord shall have the right, at Tenant's expense, to remove, store, or dispose of such property in such manner as Landlord deems appropriate in its sole discretion and without liability to Tenant. Upon



To Landlord: BR Health Holdings, LLC  
Attn: Laurie Schultz Miller  
c/o Avenue Development  
8435 Keystone Crossing Blvd., Suite 140  
Indianapolis, IN 46240

or to such other address as either party may designate from time to time for itself by notice similarly given.

**ARTICLE XVIII**  
**MISCELLANEOUS AGREEMENTS**

**Section 18.01. WAIVER.** The failure of Landlord or Tenant to seek redress for violation of, or to insist upon strict and timely performance of any covenant or condition of this Lease or any of the Rules of the Building set forth herein or hereafter adopted by Landlord, shall not constitute a waiver of any such violation or prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Landlord of all or a portion of the Rental due, or of a restrictively endorsed check, with knowledge of the breach of covenant of this Lease, shall not be deemed a waiver of such breach and no provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord.

**Section 18.02. LIMITATION OF LANDLORD'S LIABILITY.** The references to Landlord in this Lease shall be limited to mean and include only the owner or owners, at the time, of the equitable interest in the Leased Premises. In the event of a sale or transfer of such interest (except a mortgage or other transfer as security for debt), the "Landlord" named herein, or, in the case of a subsequent transferor, the transferor, shall, after the date of such transfer, be automatically released from all personal liability for the performance or observance of any term, condition, covenants and obligations to the extent arising after the transfer date and/or to the extent assumed by the assignee; and Tenant hereby releases Landlord from any and all liability for the same.

**Section 18.03. REPRESENTATIONS.** Neither Landlord, nor its agents or employees, have made any representation or promise with respect to the Leased Premises, Rental, Operating Costs, or any other matter or thing affecting or related to execution hereof, except as expressly set forth herein, and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth herein. Except as provided in (a) the Project Agreement, or (b) the Professional Services Agreement by and between Landlord and the Consolidated City of Indianapolis Metropolitan Development Commission, dated October 16, 2019, all understandings and agreements heretofore made between the parties with respect to the subject matter hereof are merged in this Lease, which alone fully and completely expresses the agreement between the parties with respect to the subject matter hereof. Any agreement hereafter made shall be ineffective to change, modify or amend this Lease in part or in whole unless such agreement is in writing and signed by the party against which enforcement of such change, modification or amendment is sought.

**Section 18.04. QUIET ENJOYMENT.** Landlord covenants and agrees with Tenant that upon Tenant paying the Rental and all other charges due hereunder and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed under the Terms of this Lease, Tenant may peaceably and quietly enjoy the Leased Premises, subject, however, to the terms and conditions of this Lease and without hindrance from Landlord or any parties lawfully claiming under Landlord, to any ground lease, underlying lease or mortgage or similar lien to which this Lease is subordinate and to the rights of any landlord or mortgagee (as applicable) thereunder.

**Section 18.05. ACCORD AND SATISFACTION.** Landlord is entitled to accept, receive and cash or deposit any payment made by Tenant for any reason or purpose or in any amount whatsoever, and apply the same at Landlord's option to any obligation of Tenant, and the same shall not constitute payment of any amount owed except that to which Landlord has applied the same. No endorsement or statement on any check or letter of Tenant shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to Landlord's right to recover any and all amounts owed by Tenant hereunder and to Landlord's right to pursue any other available remedy.

**Section 18.06. PARTIAL INVALIDITY.** The parties hereto have negotiated and prepared the terms of this Lease in good faith with the intent that each and every one of the terms, covenants and conditions herein be binding upon and inure to the benefit of the respective parties. Accordingly, if any one or more of the terms, provisions, promises, covenants or conditions of this Lease or the application thereof to any person or circumstance shall be adjudged to any extent invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction or an arbitration tribunal, such provision shall be as narrowly construed as possible, and each and all of the remaining terms, provisions, promises, covenants and conditions of this Lease or their application to other persons or circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. To the extent this Lease is in violation of applicable law, then the parties agree to negotiate in good faith to amend this Lease, to the extent possible consistent with its purposes, to conform to law.

**Section 18.07. CONSENTS AND APPROVALS.** Wherever pursuant to this Lease (i) Landlord's exercise any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Landlord, or (iii) any other decision or determination is to be made by Landlord, the decision of Landlord to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Landlord, shall be in the sole discretion of Landlord, except as may be otherwise expressly and specifically provided in this Lease.

**Section 18.08. EXAMINATION OF LEASE.** Submission of this instrument for examination or signature to Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until Tenant has duly executed and delivered duplicate originals of this Lease to Landlord and Landlord has duly executed and delivered one of those duplicate originals to Tenant.

**Section 18.09. FORCE MAJEURE.** Except with respect to Tenant's obligation to pay Rental, and Landlord's obligation to fulfill any monetary obligations under the Lease, either party's inability to fulfill or delay in fulfilling any of its obligations under this Lease expressly or impliedly to be performed by such party or such party's inability to make or delay in making any repairs, additions, alterations, improvements or decorations or such party's inability to supply or delay in supplying any equipment or fixtures, shall not give rise to an Event of Default if such party's inability or delay is due to or arises by reason of strikes, labor troubles or by accident, or by any cause whatsoever beyond such party's reasonable control, including governmental preemption in connection with a national emergency, communicable illness outbreaks, requirements or shortages, or unavailability of labor, fuel, steam, water, electricity or materials, mechanical breakdown, declaration of national or state emergencies, acts of God, acts of war, acts of terrorism, shortages and other effects of blockades, enemy action, civil commotion, fire or other casualty, or any event that is an excusable delay or delays in performance by the Landlord's contractors constructing the Building and the Tenant Improvements not otherwise attributable to Landlord's default or negligence; so long as notice of such event is first provided to the other party within thirty (30) days of the first becoming aware of the event giving rise to a Force Majeure claim (collectively "**Force Majeure**"). For the avoidance of doubt, no notice shall be required for the continuation of an event of Force Majeure after the initial notice has been given.

**Section 18.10. TIME IS OF THE ESSENCE.** Time is of the essence of this Lease and each and all of its provisions.

**Section 18.11. GOVERNING LAW.** This Lease shall be governed by and construed pursuant to the laws of the State of Indiana.

**Section 18.12. INTERPRETATION.** The captions and article and section numbers appearing in this Lease are for convenience of reference only; they shall not be considered a part of this Lease, nor shall they modify, amend or in any way affect the interpretation of its provisions. When applicable, use of the singular form of any word shall mean or apply to the plural and the neuter form shall mean or apply to the feminine or masculine. As used herein the word "including" shall mean "including but not limited to", and the phrase "shall include" or any other phrase of the same or similar import shall mean "shall include, but not be limited to". All schedules or exhibits to this Lease are hereby incorporated herein and form a part hereof. Whenever either party is obligated to pay or reimburse the other for any attorneys' fees, those fees shall include the cost for services of attorneys on the staff and payroll of Landlord or Tenant, as applicable, as reasonably and equitably allocated by such party. Without limiting the effect of specific references in any provision of this Lease, the term "Tenant" shall be deemed to refer to Tenant's assignee and the assignor Tenant under this Lease, unless otherwise agreed to by Landlord, both of whom shall be bound by the provisions of this Lease, provided that no obligation of Tenant may be assigned except as provided in **Section 8.01** of this Lease. Each reference in this Lease to Landlord shall be deemed to include its successors and assigns. This Lease shall inure to the benefit of Landlord and its successors and assigns forever. All indemnities of Tenant contained herein which inure to the benefit of Landlord shall be construed to also inure to the benefit of (i) Prime Landlord and Landlord, (ii) any

current or future mortgagees of the Real Estate and/or Building, (iii) the successors and assigns of any of the foregoing; and (iv) the respective members, managers, shareholders, directors, officers, partners, agents, employees, and affiliates of any persons mentioned in subsections (i) through (iv) above but shall, in all cases be subject to the limitations provided in this Lease.

**Section 18.13. BROKERS.** Landlord and Tenant each represents and warrants that it has not dealt with any agent, broker or similar person in connection with this Lease. Each party shall indemnify the other from any liability for compensation payable to any broker or similar person claiming to have dealt with Tenant or Landlord, as the case may be, in connection with this Lease and/or the leasing of the Leased Premises.

**Section 18.14. RELATIONSHIP OF THE PARTIES.** Nothing contained in this Lease shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent, partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

**Section 18.15. SURVIVAL.** All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease, and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease to the extent such claims arising during the Term of this Lease, and with respect to any Rental and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

**Section 18.16. WAIVER OF TRIAL BY JURY AND VENUE.** LANDLORD AND TENANT EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE. TENANT AGREES THAT THE VENUE OF ANY ACTION ARISING BETWEEN THE PARTIES TO THIS LEASE SHALL BE IN MARION COUNTY, INDIANA, THAT THE FEDERAL JURISDICTION SHALL BE IN THE DISTRICT WHEREIN THE LEASED PREMISES ARE LOCATED, AND THAT TENANT HEREBY WAIVES ANY CLAIMS OF PREFERRED VENUE OR A MORE CONVENIENT FORUM. NOTHING HEREIN SHALL BE DEEMED TO SUPERSEDE SECTION 6 OF THE WORK LETTER. ANY AND ALL CLAIMS AND CAUSES OF ACTION RELATED TO THE MATTERS ADDRESSED IN THE WORK LETTER OR WITH REGARD TO THE TENANT IMPROVEMENTS SHALL BE RESOLVED IN THE MANNER PROVIDED THEREIN.

**Section 18.17. PROJECT AGREEMENT.** The parties acknowledge that a material consideration for this Lease is the parties fulfilling their obligations under the Project Agreement and a default by Landlord under the Project Agreement should be a default by Landlord under this Lease and a default by the City under the Project Agreement shall be a default by Tenant under this Lease, without any additional notice or cure period being required under this Lease.

**Section 18.18. INTENTIONALLY OMITTED.**

**Section 18.19. INTENTIONALLY OMITTED.**

**Section 18.20. GENERAL REPRESENTATIONS AND WARRANTIES.** Each party represents and warrants to the other that: (a) it has the full power and authority to execute and deliver this Lease and to perform its obligations under this Lease; (b) the execution, delivery and performance of this Lease has been duly and validly authorized by all requisite organizational and statutory action, and (iii) this Lease will not result in the breach of any term or provision of the charter, by-laws, partnership or trust agreement, articles of organization, operating agreement or other governing instrument of Tenant or Landlord, as applicable; (c) execution and compliance with this Lease will not result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under any agreement, indenture or loan or credit agreement or other instrument to which Tenant or Landlord, as applicable, is subject, or result in the violation of any law, rule, regulation, order, judgment or decree to which the Tenant or landlord, as applicable is subject; (d) there is no action, suit, proceeding or investigation pending or threatened against it which, either in any one instance or in the aggregate, may result in any material impairment of the right or ability of Tenant or Landlord, as applicable, to carry on its business substantially as now conducted, or which would draw into question the validity of this Lease or of any action taken or to be taken in connection with the obligations of Tenant or Landlord, as applicable, contemplated in this Lease, or which would be likely to impair materially the ability of Tenant to perform under the terms of this Lease; and (e) no approval, authorization, order, license or consent of, or registration or filing with, any other party or any governmental authority, agency, or body is required in connection with this Lease.

**Section 18.21. PARKING.** ADA-compliant surface parking facilities shall be provided by Landlord on the Real Estate and on adjacent parcels as depicted on the attached **Exhibit G** for the non-exclusive use of the Tenant, its subtenants, their employees, agents, customers, invitees and visitors, on a non-assigned, first come basis, except for limited reserved spaces as designated by Tenant and other tenants as shown on **Exhibit D**. Landlord agrees to maintain the parking areas in a clean, neat and safe condition, as would be consistent with parking areas at a building of similar age and use in Indianapolis, Indiana.

**Section 18.22. RECORDATION.** The parties agree not to place this Lease of record but each party shall, at the request of the other, execute and acknowledge so that the same may be recorded, a Memorandum of Lease, indicating the Term, but omitting Rental and other terms and an agreement specifying the date of commencement and expiration of

the Term; PROVIDED, HOWEVER, that the failure to record said Memorandum of Lease shall not affect or impair the validity and effectiveness of this Lease. The party requesting the Memorandum shall pay all costs, taxes, fees and other expenses in connection with or prerequisite to recording. Upon expiration or sooner termination of the Lease, Tenant covenants to execute and record an instrument terminating any such Memorandum. If Tenant fails to do so, Tenant shall be deemed to grant Landlord the power of attorney to execute on Tenant's behalf an instrument of termination of any such Memorandum of Lease reflecting the expiration or earlier termination of this Lease. Tenant further authorizes Landlord to record any such instrument of termination.

**Section 18.23. REVIEW AND CONSULTATION.** Tenant and Landlord hereby understand, acknowledge, and agree that they (i) have read this Lease in its entirety prior to executing it, (ii) understand the provisions and effects of this Lease, (iii) have consulted with such attorneys, accountants and financial and other advisors as deemed appropriate in connection with the execution of this Lease, and (iv) this Lease shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

## **ARTICLE XIX** **ADDITIONAL PROVISIONS**

**Section 19.01. INTENTIONALLY OMITTED.**

**Section 19.02. CONFLICT OF INTEREST.**

(a) Landlord certifies and warrants to Tenant that as of the Effective Date neither it nor any of its officers or employees who will participate in the performance of any services required by this Lease has or will have any conflict of interest, direct or indirect, with Tenant, as defined in Section 293-211 of the Revised Code of the Consolidated City of Indianapolis, Marion County, Indiana.

(b) For purposes of compliance with IC 36-1-21, Landlord certifies and warrants to Tenant that as of the Effective Date Landlord, or a person who wholly or partially owns Landlord, is not a relative, as that term is defined by IC 36-1-21-3, of either the Mayor of Indianapolis, Indiana, or a member of the City-County Council of Indianapolis and Marion County, Indiana.

**Section 19.03. NON-DISCRIMINATION.** Landlord shall not discriminate against any employee, or applicant for employment in the performance of the Lease, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability and United States military service veteran status. Breach of this provision shall be regarded as a material breach of the contract.

**Section 19.04. DEBARMENT AND SUSPENSION.**

(a) Landlord certifies, by entering into this Lease, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Section means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Landlord.

(b) Landlord shall provide immediate written notice to Tenant if, at any time after entering into this Lease, Landlord learns that its certifications were erroneous when submitted, or Landlord is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. If Landlord violates this Section or if its agents, employees or contractor violate their agreements, Landlord may remedy the violation not later than thirty (30) days after Tenant notifies Landlord. If Landlord fails to remedy the violation within the thirty (30) day period, Tenant may, at its option, terminate this Lease.

(c) Landlord shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department, agency or political subdivision of the State of Indiana.

**Section 19.05. COMPLIANCE WITH E-VERIFY PROGRAM.** Pursuant to IC 22-5-1.7, Landlord shall enroll in and verify the work eligibility status of all newly hired employees of Landlord through the E-Verify Program (“**Program**”). Landlord is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

(a) Landlord shall not knowingly, and shall contractually prohibit its employees, agents and contractors from knowingly, employing or contracting with an unauthorized alien or retain an employee or contract with a person that Landlord subsequently learns in an unauthorized alien. If Landlord violates this section or if its agents, employees or contractor violate their agreements, Tenant shall require Landlord to remedy the violation not later than thirty (30) days after Tenant notifies Landlord. If Landlord fails to remedy the violation within the thirty (30) day period, Tenant may, at its option, terminate this Lease. If Tenant terminates this Lease, Landlord shall, in addition to any other contractual remedies, be liable to Tenant for actual damages. There is a rebuttable presumption that Landlord did not knowingly employ an unauthorized alien if Landlord verified the work eligibility status of the employee through the Program.

(b) If Landlord employs or contracts with an unauthorized alien, or if its employees, agents or contractors employ or contract with an unauthorized alien, but Tenant determines that terminating this Lease would be detrimental to the public interest or public property, Tenant may allow this Lease to remain in effect, but Tenant retains the right at

any time this violation remains in effect, to terminate this Lease in accordance with **Section 19.05(a)** above.

(c) Landlord shall, prior to performing any work, require each contractor or materialman to certify to Landlord that the contractor or materialman does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Landlord shall maintain on file a certification from each contractor and materialman throughout the duration of the construction of the Tenant Improvements or any later work performed by Landlord. If Landlord determines that a contractor or materialman is in violation of this Section, Landlord shall terminate its contract with the contractor or materialmen for such violation.

(d) Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming Landlord's enrollment in the Program, unless the Program no longer exists, shall be filed with Tenant prior to the execution of this Lease. This Lease shall not be deemed fully executed until this affidavit is filed with Tenant.

**Section 19.06. MINORITY, WOMEN, VETERANS AND PEOPLE WITH DISABILITIES PARTICIPATION.** To the extent Landlord uses contractors or materialmen, or other agents in the performance of services under this Lease, Landlord shall either (a) use, at a minimum, fifteen (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, three percent (3%) Veteran's Business Enterprises, and one percent (1%) Disability Owned Business Enterprises in the performance of services under this Lease, or (b) demonstrate a good faith effort to achieve such percentages, in compliance with the policies and to the satisfaction of Indianapolis's Department of Minority & Women Business Development. Failure of Landlord to comply with either (a) or (b), above, shall constitute a breach of this Lease.

**Section 19.07. FURTHER RESTRICTIONS.** Landlord certifies to Tenant that no employee or principal of Landlord:

(a) Participated in any way in the solicitation, negotiation, or awarding of this Lease while previously employed by an agency of the City of Indianapolis or Marion County for a period of one (1) year prior to the execution of this Lease;

(b) For a period of one (1) year after such employee or principal ceased supervising the administration or performance of this Lease on behalf of an agency of the City of Indianapolis or Marion County, shall perform any functions on behalf of Landlord under this Lease with respect to the Tenant;

(c) Has violated any provision of Chapter 293 of the Revised Code of the Consolidated City of Indianapolis and Marion County, regarding the solicitation, negotiation, awarding, or performance of this Lease;

(d) Is currently an official or deputy mayor of, or has appointing authority to, any agency of the City of Indianapolis or Marion County; and

(e) Was previously employed by the City of Indianapolis or Marion County within one (1) year of this Lease and currently has the performance of lobbying activity (as that term is defined in Section 909-101 of this Code) related to an agency or an official as a responsibility of his or her employment or contractual relationship with Landlord.

If Landlord violates this section or if its agents, employees or contractor violate their agreements, Landlord may remedy the violation not later than thirty (30) days after Tenant notifies Landlord. If Landlord fails to remedy the violation within the thirty (30) day period, Tenant may, at its option, terminate this Lease. In addition, upon a violation of this certification, Tenant shall report such violation to the Office of Corporation Counsel who may, at its discretion, debar Landlord from eligibility for future Tenant and/or county purchasing, bids, contracts, and/or projects.

**Section 19.08. ADDITIONAL INFORMATION UPON REQUEST.** Landlord shall, upon request of Tenant, make available its policies, practices and standards for the hiring of applicants, except as prohibited under Indiana Code section 22-2-17-3, to the extent such information is related to the provision of services under this Lease.

**Section 19.09. COVID-19.** The parties acknowledge that this Lease is being signed during a period of national and state emergency related to the COVID-19/coronavirus outbreak and that third parties (including, without limitation, lenders, construction companies, material suppliers, surveyors, title companies, engineering firms and other tenants) are under various states of closure, social distancing, shelter in place, and remote work access, and that there is limited access to governmental offices, materials, information and databases (including title records). As such, the Landlord's ability to construct the Building and Tenant Improvements may be delayed beyond the dates for delivery provided herein. The parties agree and acknowledge that they shall cooperate and work together in good faith to coordinate and minimize any delays but that any such delays shall not be deemed a default by Landlord or Tenant hereunder, permit either party any right or remedy, including, without limitation, Tenant's right to free rent as provided in **Section 3.05**, or constitute a Tenant Delay. The foregoing being the "**COVID-19 Condition.**" The parties further agree that upon the removal of the period of national and state emergency related to the COVID-19/coronavirus outbreak, the Condition Date and the Target Occupancy Date shall be revised as is reasonably required due to the COVID-19 Conditions and this Lease shall be amended if necessary.

**IN WITNESS WHEREOF**, Landlord and Tenant have caused this Lease to be executed by their duly authorized officers or agents as of the day, month and year first above written.

[Signature Pages Follow]

**“LANDLORD”**

**BR HEALTH HOLDINGS, LLC**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Its: \_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

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**“TENANT”**

**CONSOLIDATED CITY OF INDIANAPOLIS,  
DEPARTMENT OF PARKS AND RECREATION**

By: \_\_\_\_\_  
Linda Broadfoot, Director

Date: \_\_\_\_\_

As authorized by the Board of Parks & Recreation on \_\_\_\_\_, 2020.

**APPROVED AS TO AVAILABILITY OF FUNDING;**

By: \_\_\_\_\_  
Ken Clark, Controller

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY;**

By: \_\_\_\_\_  
David J. Lichtenberger, Assistant Corporation Counsel

Date: \_\_\_\_\_

## LIST OF EXHIBITS

- Exhibit A-1: Legal Description
- Exhibit A-2: Boat Ramp Area
- Exhibit A-3: Off-Site Easement Areas
- Exhibit B: Floor Plan
- Exhibit C: Work Letter Agreement
- Exhibit D: Reserved Parking
- Exhibit E: Letter Agreement
- Exhibit F: Rules of the Building
- Exhibit G: Depiction of Parking Facilities
- Exhibit H: Excluded Operating Costs

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**EXHIBIT A-1**

**LEGAL DESCRIPTION**  
(to be attached)

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**EXHIBIT A-2**

**BOAT RAMP AREA**  
(to be attached)

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**EXHIBIT A-3**

**OFF-SITE EASEMENT AREAS**  
(to be attached)

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**EXHIBIT B**

**FLOOR PLAN**  
(to be attached)

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## EXHIBIT C

### **WORK LETTER AGREEMENT** **Work Letter Agreement**

1. Landlord's Obligations. The Work Letter Agreement (the “**Work Letter**”) shall be deemed to be a part of and incorporated into the Lease. Landlord shall construct the Building and Common Area and Boat Ramp Area and install within the Leased Premises, in a good and workmanlike manner, the Tenant Improvements, in accordance with the Approved Final Plans, all Laws at the time of filing for the building permit and this Exhibit C.

2. Construction Drawings. Landlord and Tenant have approved the preliminary plans and specifications identified in Schedule C-1 attached hereto (the “**Preliminary Plans**”) and the preliminary budget for such work (the “**Preliminary Budget**”). Following the Effective Date and satisfaction of the conditions in **Sections 1.01 and 1.02(a), (b), (c), and (e)**, Landlord shall prepare and submit to Tenant a set of final construction drawings (the “**Final Plans and Specifications**”) consistent with the Preliminary Plans covering all work to be performed by Landlord in constructing and installing the Building and Tenant Improvements and providing for only such allowances as provided for in the Preliminary Budget in accordance with the schedule attached as Schedule C-2. Tenant shall have twenty (20) days after receipt of the Final Plans and Specifications in which to review the Final Plans and Specifications and to give to Landlord written notice of Tenant's approval of the Final Plans and Specifications or its requested changes to the Final Plans and Specifications. Tenant shall have no right to request any changes to the Final Plans and Specifications that would increase the scope of work in more than a minor or incidental manner without any change to the Preliminary Budget; materially alter the exterior appearance or the design intent of the Building, Common Areas, Boat Ramp Area, or the commonly used Building systems; which are not permitted by the Ground Lease; or which are inconsistent with the Preliminary Plans; provided that Tenant may at all times require changes to the Final Plans and Specifications due to their non-compliance with Laws in effect at the time of filing for the building permit or inconsistency with the Preliminary Plans. If Tenant fails to approve or request changes to the Final Plans and Specifications within twenty (20) days after its receipt thereof, Tenant shall be deemed to have approved the Final Plans and Specifications and the same shall thereupon be final. If Tenant requests any changes to the Final Plans and Specifications permitted above, Landlord shall make those changes which are reasonably requested by Tenant and shall within twenty (20) days of its receipt of such request submit the revised portion of the Final Plans and Specifications to Tenant. Tenant may not thereafter disapprove the revised portions of the Final Plans and Specifications unless Landlord has unreasonably failed to incorporate reasonable comments of Tenant; and, subject to the foregoing, the Final Plans and Specifications, as modified by said revisions, shall be deemed to be final upon the submission of said revisions to Tenant. The Final Plans and Specifications as approved by Landlord and Tenant shall be identified in Schedule C-3 and attached hereto and shall be referred to as the “**Approved Final Plans**.” The parties shall at all times in their review of the Final Plans and Specifications, and of in requesting in any revisions thereto, act reasonably and in good faith. Without limiting the foregoing, Tenant agrees to confirm Tenant's consent to the Approved Final Plans in writing within five (5) business days following Landlord's written request therefor. Upon final approval of the Approved Final Plans, Landlord shall provide Tenant with a proposed schedule for the construction and installation of the Tenant Improvements, which shall be subject to Tenant's reasonable approval and which

shall in no event extend the Target Occupancy Date unless specifically approved in writing by Landlord and Tenant. Landlord shall notify Tenant of any material changes to said schedule and of any situation when the work provided for in this Work Letter is not being completed within the time periods provided for in the schedule or if the work is likely to be not in compliance with such schedule.

3. Change Orders. Landlord shall not be obligated to make additions or changes to the Approved Final Plans (a “**Change**”), except as provided herein. If Tenant desires any Change, Tenant will so advise Landlord in writing (a “**Change Order Request**”) as promptly as possible and Landlord shall promptly respond so as not to delay the orderly construction pursuant to the Approved Final Plans. Upon receipt of a Change Order Request, if Landlord approves such Change, not to be unreasonably withheld, Landlord will give written notice thereof to Tenant, which notice will specify the estimated costs or savings associated therewith; the cost thereof and the change, if any, in the Minimum Monthly Rent arising therefrom; and any estimated delay in the expected Date of Substantial Completion/Target Occupancy Date. Within five (5) business days of receipt of Landlord’s response to the Change Order Request, Tenant may withdraw its request by providing notice to Landlord as long as such Change Order has not been signed by Tenant. Upon agreement between Landlord and Tenant on the Change, such Change will be incorporated into the Approved Final Plans by way of a written change prepared by Landlord and jointly executed by the parties (a “**Change Order**”). Landlord shall be permitted to make any changes to the Building, after notice to Tenant, so long as such changes (a) are required to comply with Laws; or (b) are limited to other spaces within the Building not occupied by Tenant; or (c) are necessary as a result of substitutions needed due to material unavailability so long as any substitutions are of equal or better quality; or (d) do not materially and adversely change the design intent of the Building (a “**Landlord Change**”).

4. Tenant Delay. Notwithstanding anything to the contrary contained in the Lease, if Substantial Completion of the Building, Common Areas, or Tenant Improvements is delayed as a result of Tenant Delay (as hereinafter defined), then, for purposes of establishing the Date of Substantial Completion of the Tenant Improvements, the Date of Substantial Completion shall be deemed to have occurred on the Date that Substantial Completion of the Tenant Improvements would have occurred but for such Tenant Delay. “**Tenant Delay**” shall mean any delay in the completion of the Tenant Improvements, not otherwise permitted in this Lease, caused by Tenant, including, without limitation (a) Tenant's (or any employee’s, agent’s or contractor’s) failure to meet any time deadlines specified in this Work Letter or the Lease, (b) Change Orders, unless required due to Landlord's negligence or due to the Approved Final Plans not complying with all Laws in effect at the time of filing for the building permit and are not otherwise a Landlord Change, (c) the performance of any other work in the Leased Premises by any person, firm or corporation employed or contracted by or on behalf of Tenant, or any failure to complete or delay in completion of such work, (d) Landlord's inability to obtain an occupancy permit for the Leased Premises because of the need for completion of all or a portion of improvements being installed in the Leased Premises directly by or on behalf of Tenant, (e) any negligent act, omission or intentional misconduct of Tenant; or (f) any act or omission of any person, firm, or corporation employed or contracted by or on behalf of Tenant conducted while engaged in work at the Leased Premises on Tenant's behalf.

5. Construction Representatives. Landlord hereby designates \_\_\_\_\_ (email: \_\_\_\_\_) to serve as Landlord's representative and Tenant hereby designates Donald Colvin (email: [Donald.Colvin@indy.gov](mailto:Donald.Colvin@indy.gov)) to serve as Tenant's representative during the design and construction of the Tenant Improvements. All communications between Landlord and Tenant relating to the design and construction of the Tenant Improvements will be forwarded to or made by such party's representative. In addition, no Change Order will be binding on either party unless executed by both parties, as provided in **Section 3** above.

6. Dispute Resolution.

(a) Conference of Senior Representatives. The parties will make good faith efforts to resolve any dispute that may arise under this Work Letter in an expedient manner. In the event, however, that any dispute arises, either party may notify the other party of its intent to invoke the dispute resolution procedure herein set forth by delivering written notice to the other party. In such event, if the parties' respective representatives designated in **Section 5** of this Work Letter are unable to reach agreement on the subject dispute within ten (10) business days after delivery of such notice, then each party will, within five (5) business days thereafter, designate a senior executive officer of its management to meet at a mutually agreed location to resolve the dispute.

(b) Arbitration. Subject to the dollar limitation set forth below, disputes as to any work required to be performed by Landlord hereunder that are not resolved by agreement between the designated senior executive officers within five (5) business days after their meeting, may be submitted to arbitration if either party so elects, by delivering written notice to the other party within ten (10) days after the expiration of such five (5) business day period. In such event, the subject dispute will be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, subject to the requirement that a single arbitrator unaffiliated with either party will decide each matter in dispute within fifteen (15) days of the date of his selection, based solely upon the written statements of position submitted by each party. The parties consent to the jurisdiction of any appropriate court to enforce these arbitration provisions and to enter judgments upon the decision of the arbitration. Unless otherwise required by state law, arbitration will be conducted in Indianapolis, Indiana. In the event of an arbitration, the losing party will pay the cost of arbitrator and the arbitration, but each party will bear its own attorneys' fees and costs in preparing for and participating in such arbitration. Only those disputes described above that involve an amount less than One Hundred Thousand and <sup>00</sup>/<sub>100</sub> Dollars (\$100,000.00) in the aggregate or that are expressly identified in the Lease by reference to this Addendum will be subject to mandatory arbitration pursuant to this **Section 6**. Any disputes that are not subject to arbitration and which were not resolved pursuant to **Section 6(a)** of this Addendum may be brought in the state or federal courts with jurisdiction over the Real Estate as provided in **Section 18.16** of the Lease. Without limiting the generality of the preceding sentence, disputes as to the date of Substantial Completion shall not be subject to mandatory arbitration hereunder.

7. Excess Costs. In the event that Landlord and Tenant execute Change Orders (other than a Landlord Change) and the aggregate changes in cost due to such Change Orders results in an increase in the Preliminary Budget (the "Excess Costs"), such Excess Costs shall be paid in full by Tenant to Landlord prior to Landlord undertaking such Change Order.

8. Warranty. Landlord represents and warrants that as of the Possession Date, the Tenant Improvements will be in new condition and in good working order and in compliance with all Laws in effect at the time of filing for the building permits and the Final Approved Plans, and

Landlord warrants labor and materials on all Tenant Improvements installed or constructed by Landlord for a period of two (2) years from the Date of Substantial Completion (the “**Construction Warranty**”); provided, however, that the Construction Warranty will not be effective for any maintenance, repairs, or replacements necessitated due to the misuse of Tenant or its subtenants, employees, agent, licensees, invitees, and guests, or damages caused by, the negligence or intentional misconduct of Tenant, its employees, contractors, agents, subtenants, licensees, invitees, or guests. Landlord shall use commercially reasonable efforts to enforce all manufacturer’s materialman’s, vendor’s, and contractor’s warranties on the Premises (regardless of the duration of the Construction Warranty hereunder). Landlord will pursue any valid warranty claims against its contractor beyond the two (2) year warranty provided that any expenses incurred and/or any recovery obtained shall be treated as either additional Operating Costs or an offset to Operating Costs under **Section 5.03(a)**.

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**Schedule C-1**  
**Preliminary Plans**

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**Schedule C-2**  
**Final Plans and Specifications Preparation Schedule**

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**Schedule C-3**  
**Final Plans and Specifications**

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**EXHIBIT D**  
**RESERVED PARKING**

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**EXHIBIT E**

**LETTER AGREEMENT**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020\_ between **BR HEALTH HOLDINGS, LLC** (hereinafter referred to as “**Landlord**”) and **CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF PARKS & RECREATION** (hereinafter referred to as “**Tenant**”).

WHEREAS, by that certain Commercial Lease (hereinafter called “**Lease**”) made as of \_\_\_\_\_, 2020, Landlord leased to Tenant certain premises (the “**Leased Premises**”) known as \_\_\_\_\_ located at 1426 Broad Ripple Avenue, Indianapolis, IN 46220 for a term of thirty (30) years, unless sooner terminated or extended as provided therein; and

WHEREAS, Landlord and Tenant now desire to set forth the Possession Date and Expiration Date (as those terms are defined in the Lease) of the term of the Lease and to acknowledge Tenant's acceptance of the Building.

NOW, THEREFORE, Landlord and Tenant do hereby agree as follows:

1. The Leased Premises have been substantially completed in accordance with the terms of the Lease; and Tenant has accepted possession of the Leased Premises, subject to those matters set forth in **Section 3.04** of the Lease.
2. Landlord has paid all required contributions by Landlord to Tenant on account of Tenant Improvements, and Tenant has no right to receive any credit against Rental on account of Tenant Improvements.
3. The Possession Date was on \_\_\_\_\_ and the Rental Commencement Date for Minimum Monthly Rental will be on \_\_\_\_\_. The Term of the Lease commenced on the Possession Date and shall expire on \_\_\_\_\_, unless sooner terminated or extended as provided therein.
4. Except as hereby amended, the Lease shall continue in full force and effect.
5. This Agreement shall be binding on the parties hereto, their heirs, executors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the day and year first above written.

[Signature Pages Follow]

**“LANDLORD”**

**BR HEALTH HOLDINGS, LLC**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Its: \_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

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**“TENANT”**

**CONSOLIDATED CITY OF INDIANAPOLIS,  
DEPARTMENT OF PARKS AND RECREATION**

By: \_\_\_\_\_  
Linda Broadfoot, Director

Date: \_\_\_\_\_

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**EXHIBIT F**

**BROAD RIPPLE PARK FAMILY CENTER**

**RULES OF THE BUILDING**

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any tenant or used for any purpose other than for ingress to and egress from the Building. Delivery of merchandise and equipment shall be done in a prompt and efficient manner using only elevators and passageways designated for such delivery by Landlord. There shall not be used in any space, or in the public hall of the Building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks other than those equipped with rubber tires.
  
1. The wash basins, water closets and other plumbing fixtures located in and about the Building shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant.
  
3. No person shall sweep or throw, or permit to be swept or thrown, from the Building any dirt or other substances into any of the corridors, halls, elevators or stairways of the Building.
  
4. No Tenant, nor any of Tenant's subtenants, servants, employees, agents, visitors or licensees shall at any time bring or keep within or upon the Leased Premises any flammable, combustible or explosive fluid, chemical or substance. Tenants shall not use, keep or permit to be used or kept any foul or noxious gas or any flammable, combustible or otherwise hazardous substance in the Leased Premises, or permit or suffer the Leased Premises to be occupied or used in a manner offensive, objectionable, or hazardous to Landlord or other occupants of the Leased Premises, acting reasonably. No X-ray, radiation therapy, or other equipment using high-energy radiation shall be used on the Building unless the Tenant provides screening which is sufficient in Landlord's reasonable opinion to provide an adequate barrier against such radiation to protect other occupants of the Building. Use of any part of the Building as a residence is prohibited.
  
5. Smoking or carrying lighted tobacco products is prohibited within the Building.
  
6. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the Building through the service entrances and corridors. Landlord shall have the right to determine and prescribe, acting reasonably and in good faith, the maximum weight and proper position of any heavy equipment (including but not limited to safes, large files, etc.) that are to be placed in the Leased Premises, and only those which will not damage the floors, structures or elevators may be moved into the Building or Leased Premises without Landlord's consent, not to be unreasonably withheld, but which may be conditioned on the Tenant's agreement to remove the same upon the termination of the Lease and to repair any damage to the Leased Premises resulting therefrom. Any damage

occasioned by any Tenant in connection with the moving or installation of its furniture, equipment, appliances or other articles in the Building, or the existence of the same in the Building, shall be paid for by such Tenant.

7. Tenant shall be solely responsible for the security of the Leased Premises, the property therein, and the safety of persons in or on the Leased Premises.
8. Any and all such keys and pass cards and the locks and security mechanisms and systems shall become the property of Landlord and shall be surrendered with the Leased Premises upon termination of this Lease, unless, at Landlord's sole discretion, Tenant is directed to remove any such systems. Tenant shall be responsible for all persons for whom it issues a key or pass card and shall be liable to Landlord for all acts of such persons. In that event, Tenant shall remove the components as directed by Landlord, and shall repair and restore the Leased Premises damaged by the installation / removal thereof. Upon termination of the Lease, Tenant shall surrender to Landlord all keys, pass cards, and access codes to the Building and shall give to Landlord the keys to and combination of all locks for safes, safe cabinets and vault doors, if any, remaining in the Building.
9. Canvassing, peddling, soliciting and distribution of handbills or any other written materials outside of the Leased Premises are prohibited, and Tenant shall cooperate to prevent the same.
10. These Rules of the Building are in addition to and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any Lease of Premises in the Building. In the event of a conflict between the Rules and this Lease, the terms of the Lease shall control.
11. No bicycles, scooters, or similar items shall be brought into or kept in or about the Common Areas or within the Building and shall only be parked in designated bike parking areas outside the Building or within the Leased Premises.
12. No space in the Building shall be used for manufacturing or warehousing of merchandise or for any other use that violates applicable laws or ordinances.
13. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or materially interfere with or disturb other occupants of this or neighboring buildings or premises of those having business within them. No Tenant shall cause or permit any unusual or objectionable odors to be produced upon or permeate from the Building. Nothing in this rule shall prohibit Tenant from operating the Leased Premises as administrative offices and a recreational center in a manner consistent with similar facilities operated by Tenant at other parks in Indianapolis, Indiana.
14. Landlord reserves the right to make such other reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building, and for the preservation of good order therein.

**EXHIBIT G**

**DEPICTION OF PARKING FACILITIES**

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## EXHIBIT H

### EXCLUSIONS FROM OPERATING COSTS

Notwithstanding anything herein to the contrary, the following shall not be included as part of Operating Costs:

1. Depreciation unless specifically permitted in **Section 5.30(a)**.
2. Interest on, and amortization of, mortgages or other similar indebtedness secured by the Real Estate, Building or the Leased Premises.
3. Leasehold improvements, including painting, made for other tenants of the Building or made in order to prepare any portion of the Building for occupancy by a new tenant.
4. Brokerage commissions.
5. Financing costs.
6. The costs of repairs and restoration necessitated by condemnation and reimbursed by condemnation proceeds.
7. Franchise taxes, gross receipts taxes and income taxes of Landlord.
8. The cost of any item or items for which Landlord is reimbursed by insurance, reimbursed by other tenants of the Building or otherwise compensated or which, with reasonable diligence, Landlord could be so reimbursed.
9. Any material cost of any work or service performed for any tenant of the Building to a greater extent or in a more favorable manner than that furnished generally to Tenant and other occupants of the Building.
10. Rent and other costs under any ground lease and/or underlying leases.
11. The cost of any electric current or other utility services furnished separately to any other tenant through metering or any other means.
12. Compensation of any kind paid by any means to officers and executives of Landlord above the level of building manager or for any type of overhead, management or administrative fee other than the Administration Fee.
13. Any cost stated in Operating Costs representing an amount paid to a corporation or entity which is controlled by or under common control with Landlord which is in excess of the amounts which would be paid in the absence of such relationship.
14. Advertising and promotional expenses incurred in leasing of the Building.

15. The cost of installing, operating and maintaining any specialty amenity such as an observatory, broadcasting facility, luncheon club, athletic or recreational club, theater or cafeteria.
16. The cost of correcting defects in construction of the Leased Premises or other parts of the Building which are covered by Landlord's two-year warranty.
17. Any insurance premium to the extent that Landlord is entitled to be directly reimbursed therefor by Tenant pursuant to this Lease or by any other occupant of the Building.
18. Costs to cause the Building to comply with applicable laws to the extent the Building failed to comply thereto as of the Possession Date or the violation was caused by Landlord.
19. Except as expressly provided in the Lease, expenditures and capital outlays to bring the Building into compliance with the ADA or other similar acts, to the extent related to the initial construction of the Building, the Tenant Improvements, due to Landlord's acts or omissions or due to acts or omissions of other tenants.
20. Any bad-debt loss, rent loss or reserves for bad debts or rent loss.
21. All interest or penalties incurred as a result of Landlord's failing to pay any Operating Costs or Taxes as the same shall become due, unless such delay shall be caused by Tenant or Tenant's agents.
22. Accounting fees and attorneys' fees except for accounting fees directly related to the operation, use, or occupancy of the Building and Real Estate.
23. Any and all costs associated with the operation of the business of Landlord as a legal entity, as the same are distinguished from the costs of operation of the Building or Leased Premises.
24. All charges for complying with Landlord's violation of laws, codes, regulations or ordinances relating to hazardous materials or which are the responsibility of any individual tenant.
25. Any mark-up of the cost of utilities as billed by the utility service beyond a reasonable charge for administration, if administration is actually performed.
26. Any expenses resulting from the negligence of Landlord, its agents, servants or employees.