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AGREEMENT OF LEASE

between

CITY OF MIAMI BEACH, FLORIDA
(Owner)

and

LINCOLN PLAZA PARTNERS, LLC
(Tenant)

Dated as of September 1, **1999**

LINCOLN PLAZA PROJECT

Prepared By and Record and Return to:

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AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, dated as of the 1st day of September, 1999 (the "**Commencement Date**"), by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation duly organized and existing under the laws of the State of Florida, as Owner, and **LINCOLN PLAZA PARTNERS, LLC**, a Florida limited liability company, as Tenant.

RECITALS

WHEREAS, on December 30, 1997, pursuant to the authorization of the Mayor and City Commission, the Administration issued a Request for Proposals for the development of public-private parking facilities in the area of south Dade Boulevard ("**RFP**"); and

WHEREAS, the City issued the RFP in order to solicit qualified development teams to bid on certain publicly-owned sites identified in the RFP and/or to propose the development of parking on privately owned property; and

WHEREAS, on April 6, 1998, the City received proposals from five (5) different development teams for various sites throughout the South Beach area; and

WHEREAS, on June 30, 1998, an Evaluation Committee appointed by the City Manager and approved by the Mayor and City Commission, heard presentations from the five teams; and

WHEREAS, in accordance with the criteria identified in the RFP, the Evaluation Committee ranked the proposals and provided their recommendations to the City Manager; and

WHEREAS, on July 15, 1998, the City Commission adopted Resolution No. 98-22857, authorizing the Administration to negotiate with a joint venture composed of SRC Lincoln Plaza LLC, a Florida limited liability company and RDP Lincoln Plaza LLC, a Florida limited liability company and Michael Milberg (which joint venture is now known as Lincoln Plaza Partners LLC), with regard to the site located between 17th Street and Lincoln Lane and Jefferson and Michigan Avenues in the City; and

WHEREAS, said negotiations have been concluded and the Mayor and City Commission, in Resolution No. 99-23236, adopted after two (2) duly noticed public hearings held pursuant to the Development Agreement Act and Sections 82-36 through 82-40 of the City Code. It is in the best interest of the City to enter into an Agreement of Lease and Development Agreement with Lincoln Plaza Partners LLC for the development of the aforementioned Project Site.

TERMS OF AGREEMENT

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

Article 1 - Definitions

Section 1.1 Definitions.

For all purposes of this Lease the terms defined in this Article 1 shall have the following meanings and the other provisions of this Article 1 shall apply:

"**Acceptable Operator**" means any corporation or Person which has the following qualifications:

1. The Acceptable Operator must be, or have a management contract with, a Property Manager.

2. The Acceptable Operator must establish and maintain an on site property management office within a portion of the Project.

3. The Acceptable Operator and any Property Manager hired by the Acceptable Operator shall have no outstanding building code violations for which notice has been served (other than those which are being corrected or contested diligently and in good faith) against any property owned or managed by such Acceptable Operator within the City of Miami Beach, Miami-Dade County and any cities located within Miami-Dade County.

4. The Acceptable Operator must have been in the business of operating similar projects and parking garages for the past five (5) years (or have management personnel who have been in the business of operating similar projects and parking garages for at least five (5) years).

5. The Acceptable Operator must have been in the business of managing retail or office space for at least five (5) years (or have management personnel who have been in the business of managing retail or office space for at least five (5) years).

Any entity contracted as an Acceptable Operator must continue to meet the above throughout its service as an Acceptable Operator hereunder unless certain of said qualifications were waived by the Owner, in writing.

6. An Acceptable Operator shall not be a Foreign Instrumentality.

"**Accounting Principles**" means generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants, except as otherwise provided by this Lease, with such changes as Owner and Tenant shall mutually agree are consistent with this Lease in order to reflect technologies and methodologies not addressed in the Accounting Principles.

"**Affiliate**" or "**Affiliates**" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common

control with, such Person. For purposes hereof, the term "**control**" (including the terms "**controlled by**" and "**under common control with**") shall mean the possession of a Controlling Interest.

"**Alterations**" has the meaning provided in **Section 14.5(a)**.

"**Annual Financial Statements**" has the meaning provided in **Section 28.1(c)**.

"**Annual Report**" has the meaning provided in **Section 27.1(b)**.

"**Assignee**" has the meaning provided in **Section 10.2(b)**.

"**Assignment**" has the meaning provided in **Section 10.2(a)**.

"**Back Rent**" has the meaning provided in **Section 10.2(c).**

"**Base Rent**" has the meaning provided in **Section 3.2(c)**.

"**Building Equipment**" means all installations incorporated in, located at or attached to and used or usable in the operation of, or in connection with, the Premises and shall include, but shall not be limited to, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof, excluding, however, any personal property which is owned by subtenants, licensees, concessionaires or contractors (except to the extent any of the foregoing are Affiliates of Tenant).

"**Building Index**" has the meaning provided **Section 7.12(b)**.

"**Business Day**" or "**business day**" means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed and are, in fact, closed.

"**Casualty Restoration**" has the meaning provided in **Section 8.2(a)**.

"**Certificate of Occupancy**" means the document by that name that is required prior to the occupancy of any premises by Section 307.1 of the South Florida Building Code as amended from time to time; provided, however, that such definition shall not apply to a temporary certificate of occupancy if issued only for the Garage and retail portions of the Project and only for a period not to exceed twelve (12) months prior to the office portion of the Project receiving a Certificate of Occupancy. Such term shall include both Temporary CO and Final CO, as the context may require.

"**City**" means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida.

"**CO Date**" means the date on which Tenant receives a Certificate of Occupancy for any of the Garage, office building or retail space, whichever occurs first.

"**Commencement Date**" has the meaning provided in the preamble of this Lease.

"**Commissioner**" means a duly elected or appointed member of the City Commission of the City of Miami Beach.

"**Condemnation Restoration**" has the meaning provided in **Section 9.2(b)**.

"**Condominium Tenant**" has the meaning provided in **Section 23.1(b)(ii)**.

"**Consenting Party**" has the meaning provided in **Section 26.2(c)(i)**.

"**Construction Agreements**" means all agreements executed in connection with any Construction Work affecting the Premises and the Improvements, including, without limitation, a Restoration, Alteration or other Construction Work performed in connection with the use, maintenance or operation of the Premises.

"**Construction Commencement Date**" has the meaning provided in the Development Agreement.

"**Construction Phase**" means the period beginning on the Possession Date and ending on the CO Date.

"**Construction Work**" means any construction work performed under any provision of this Lease affecting the Premises and the Improvements, including, without limitation, the initial construction of the Project, a Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Premises.

"**Controlling Interest**" means the ownership of greater than fifty percent (50%) of the voting Equity Interests in a Person or the ownership of greater than fifty percent (50%) of the votes necessary to elect a majority of the Board of Directors or other governing body of such Person.

"**CPI**" means the Consumer Price Index for All Urban Consumers for the United States, all items, index base period 1982-84=100 (commonly referred to as CPI-U), as published periodically by the United States Bureau of Labor Statistics.

"**Date of Taking**" has the meaning provided in **Section 9.1(c)(i)**.

"**Debt**" has the meaning provided in **Section 11.2(a)**.

"**Debt Service**" means all payments in respect of principal and interest on Debt (including, without limitation, the net cost to Tenant of interest rate protection agreements and arrangements,

and any and all fees paid to the lender(s), administrative fees and charges, extension fees, and the like). In the event, and only during the period in which, a Recognized Mortgagee or its Designee becomes Tenant under this Lease by virtue of a foreclosure of its Recognized Mortgage or by virtue of an assignment or conveyance in lieu thereof, Debt Service shall mean the payments that would have been due under the Recognized Mortgage if foreclosure or conveyance in lieu thereof had not occurred and there had been no acceleration of the Recognized Mortgage, and in the event that the maturity date of the Recognized Mortgage has occurred or occurs in such period, Debt Service shall mean the amount that would have been due in order to make monthly payments, calculated on a level debt service basis, of (a) interest on the remaining unpaid principal indebtedness (i.e., the "balloon") secured by the Recognized Mortgage computed at the contract (i.e., non-default) rate specified in the maturing Recognized Mortgage, plus (b) principal payments using the same amortization period as the maturing Recognized Mortgage (i.e., if the maturing Recognized Mortgage had a ten (10) year term with a twenty-five (25) year amortization period, the amortization period for calculating the monthly principal payments on the remaining principal balance shall be twenty-five (25) years).

"**Declaration**" has the meaning provided for in **Section 23.1(a)**.

"**Default**" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

"**Default Notice**" has the meaning provided in **Section 25.1(b)**.

"**Delay Date**" means the earlier to occur of (i) the CO Date or (ii) the date which is twenty-four (24) months after the Possession Date (which date shall not be subject to Unavoidable Delay).

"**DEP**" means the State of Florida Department of Environmental Protection.

"**DERM**" means the Miami-Dade County Department of Environmental Resources Management.

"**Development Budget**" has the meaning provided in the Development Agreement.

"**Environment**" has the meaning provided in **Section 35.1(c)**.

"**Environmental Compliance**" has the meaning provided in **Section 35.5**.

"**Environmental Condition**" has the meaning provided in **Section 35.1(d)**.

"**Environmental Damages**" has the meaning provided in **Section 35.1(e)**.

"**Environmental Laws**" has the meaning provided in **Section 35.1(b)**.

"**EPA**" means the Environmental Protection Agency of the United States.

"**Equity Interest**" has the meaning provided in **Section 10.2(d)**.

"**Event of Default**" has the meaning provided in **Section 25.1**.

"**Expiration of the Term**" means the expiration of the initial Term of this Lease, or the expiration of any extensions thereof, as the case may be, or on such earlier date as this Lease may be terminated as provided herein.

"**Fair Market Rent**" means the rent that the Land should bring if it were raw and unimproved (i.e., all existing Improvements shall be disregarded) and if it were available for use only for the same uses as the Project as it is then being used, in a competitive and open market under all conditions requisite to a fair lease, Owner and Tenant each acting prudently, knowledgeably, and assuming the rent is not affected by undue stimulus. Implicit in this definition is consummation of a lease as of a specified date under conditions whereby:

(i) Owner and Tenant are typically motivated;

(ii) Both parties are well-informed or well-advised and acting in what they consider their own best interests;

(iii) A reasonable time is allowed for exposure in the open market;

(iv) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(v) The rent represents the normal consideration for property leased unaffected by special or creative financing or concessions granted by anyone associated with the lease.

"**Final CO**" means a certificate(s) of occupancy issued by the City's Building Department for all or a portion of the Improvements, other than a Temporary CO(s).

"**First Transferee**" has the meaning provided in **Section 11.12(e)**.

"**Fixed Expiration Date**" means the date which is the last day of the month in which the fiftieth (50th) anniversary of the Delay Date shall occur, provided, however, that in the event the Term is extended as provided herein, Fixed Expiration Date shall mean the last day of any extension or extensions of the Term in accordance with the provisions of **Section 2.1** hereof.

"**Foreclosed Tenant**" has the meaning provided in **Section 11.12(e)**.

"**Foreclosure Transferee**" and "**Foreclosure Transfer**" have the meanings provided in **Section 11.12(c)**.

"**Foreign Instrumentality**" means a foreign (i.e., non-United States of America) government or instrumentality thereof or a Person controlled thereby. A Person shall be deemed to be "controlled by" a foreign government or instrumentality if such government or instrumentality, directly or indirectly, directs or causes the direction of the management and policies of such Person.

"**Garage**" means the part of the Premises consisting of approximately seven hundred (700) parking spaces, a portion of which shall be available as a public parking facility subject to the terms and conditions of **Section 6.1(b)**.

"**Governmental Authority or Authorities**" means the United States of America, the State of Florida, the City (acting in its governmental, not proprietary, capacity), Miami-Dade County, and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Tenant, or any owner, tenant or other occupant of, or over or under the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises, or airspace over the Premises.

"**Imposition(s)**" has the meaning provided in **Section 3.4(b)**.

"**Improvement(s)**" means any building (including footings and foundations), Building Equipment, and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"**Institutional Lender**" means a Person which, at the time it becomes an Institutional Lender, is a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution [in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity]; an insurance company organized and existing under the laws of the United States of America or any state thereof or a foreign insurance company [in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity]; an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code of 1986, as amended, or other public or private investment entity in each case whether acting as principal or agent); a brokerage or investment banking organization [in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity as principal or agent]; an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; a financing subsidiary or division of a New York Stock Exchange listed company; any governmental agency or entity insured by a governmental agency or any combination of Institutional Lenders; provided that each of the above entities shall qualify as an Institutional Lender only if (at the time it becomes an Institutional Lender) it shall (a) have assets of not less than One Hundred Million Dollars ($100,000,000) adjusted for inflation and (b) not be an Affiliate of Tenant (it being further agreed that none of the standards set forth in this definition shall be applicable to participants or co-lenders in a loan secured by a Mortgage which is held by an Institutional Lender [whether acting individually or in a fiduciary or representative

(such as an agency) capacity]. The term "**Institutional Lender**" also includes an Affiliate of an Institutional Lender as described in this paragraph.

"**Joint Board**" means the Joint Historic Preservation and Design Review Board created and established pursuant to the Land Use Regulations or any board or body which may succeed to its functions.

"**Land**" means the real property and air rights, if any, described on **Exhibit A** attached hereto and incorporated by reference herein.

"**Late Charge Rate**" has the meaning provided in **Article 4**.

"**Lease**" means, collectively, this Agreement of Lease and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Lease or by mutual agreement of the parties.

"**Lease Year**" means (a) the period commencing on the Delay Date, and expiring on the last day of the next occurring December which is at least twelve (12) months thereafter; (b) each succeeding 12-month period during the Term; and (c) the final shorter period, if any, ending on the last day of the Term.

"**Major Alteration**" has the meaning provided in **Section 14.5(a)(vi)**.

"**Management Agreement**" means a written agreement between Tenant and Acceptable Operator pursuant to which Acceptable Operator has agreed to manage and operate the Premises in accordance with the terms thereof, and any replacements, substitutions, restatements or modifications thereof.

"**Managing Member(s)**" means the Member(s) who can legally bind the limited liability company.

"**Master Sublease(s)**" has the meaning provided in **Section 10.2(f)**.

"**Master Subtenant**" has the meaning provided in **Section 10.2(g)**.

"**Mayor**" means the Mayor of the City.

"**Member(s)**" means a Person who owns an Equity Interest in a limited liability company.

"**Membership Interest(s)**" means the Equity Interest of a Member.

"**Mortgage**" has the meaning provided in **Section 11.2(b)**.

"**Mortgagee**" means the holder of a Mortgage.

"**Net Condemnation Award**" has the meaning provided in **Section 9.1(c)(iii)**.

"**Net Insurance Proceeds**" has the meaning provided in **Section 8.2(a)**.

"**Notice**" has the meaning provided in **Section 26.1.**

"**Notice of Failure to Cure**" has the meaning provided in **Section 11.4(a)**.

"**Operating Expense(s)**" means, without duplication, all costs and expenses incurred in owning, maintaining, conducting and operating the Premises, other than Debt Service and any other payments of pricipal or interest [whether or not permitted hereunder (and this reference thereto not constituting consent or approval thereof)], Rental, depreciation, amortization and the original costs of constructing the Improvements pursuant to the Development Agreement. Operating Expenses shall include, without limitation, all operating costs; all wages and benefits and payroll taxes; other goods, supplies, utilities and services; all repairs and maintenance; all professional fees and expenses; all costs of advertising, marketing and promotion; all costs incurred by Tenant or any Affiliate of Tenant under any leasing agreement, management agreement or other similar agreement regarding the leasing or management of the Project entered into by Tenant or any Affiliate of Tenant; all Impositions, all insurance costs; all payments under equipment leases; all real estate, personal property and other taxes, assessments, governmental charges and other Impositions (other than income taxes, unless imposed in lieu of any of the foregoing taxes, assessments, charges or Impositions); provided, however, that no deduction shall be permitted for Alterations which under this Lease require the consent of Owner (unless such consent has been obtained or is deemed to be obtained). Any Operating Expense payable to an Affiliate of Tenant or Acceptable Operator shall be deemed an Operating Expense only to the extent of the fair market value of the goods or services supplied by such Affiliate.

"**Owner**" means the City, acting in its proprietary capacity, and any assignee or transferee of the entire Owner's Interest in the Premises, from and after the date of the assignment or transfer pursuant to which the entire Owner's Interest in the Premises was assigned or transferred to such assignee or transferee.

"**Owner Indemnified Parties**" means, collectively, the City (and any successor Owner), and their respective elected and appointed officials (including the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, partners, holders of other ownership interests, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and Affiliates. An "**Owner Indemnified Party**" shall mean any of the foregoing.

"**Owner's Interest in the Premises**" means Owner's interest in the Land and Owner's interest in this Lease.

"**Parties**" means Owner and Tenant.

"**Permit**" has the meaning provided in **Section 35.1(f)**.

"**Permitted Transfer**" has the meaning provided in **Section 16.3(c)(iii)**.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"**Plans and Specifications**" has the meaning given to such term in the Development Agreement.

"**Possession Date**" means the earlier to occur of (i) one (1) year (which is not subject to Unavoidable Delays) from the Commencement Date or (ii) the date upon which Tenant elects to take possession of the Land.

"**Premises**" means, collectively, the Land and the Improvements.

"**Prohibited Uses**" has the meaning provided in **Section 6.2(a)**.

"**Project**" has the meaning provided in **Section 13.1.**

"**Project Opening Date**" means the date on which the Project is opened to the public for business, but not later than the date that is thirty (30) days following the issuance of a CO for the entire Project.

"**Project Revenue(s)**" has the meaning provided in **Section 3.3(c).**

"**Property Manager**" means a commercial real estate property manager licensed to do business in the State of Florida and the City.

"**Public Company**" means a Person that is required to comply with the reporting requirements under the Securities Exchange Act of 1934, as amended, or any successor statute.

"**Recognized Accounting Firm**" means Ernst & Young/Kenneth Leventhal; Coopers & Lybrand; Arthur Andersen; Price Waterhouse; Deloitte & Touche; KPMG Peat Marwick; Pannell, Kerr & Foster; Mallah, Furman, Berkowitz, Dick, Pollack & Burnet; Rachlin, Cohen & Holtz; or any successor entity of any of the foregoing or any other certified public accountants mutually acceptable to Tenant and Owner.

"**Recognized Mortgage**" has the meaning provided in **Section 11.2(c)**.

"**Recognized Mortgagee**" means the holder of a Recognized Mortgage; provided, however, that, except to the extent permitted by **Section 11.2(c)**, a Recognized Mortgagee may not be an Affiliate of Tenant (except if Tenant is an Affiliate of a Recognized Mortgagee that has caused this Lease to be assigned to such Affiliate in lieu of foreclosure of the Recognized Mortgage of such Recognized Mortgagee).

"**Reinstatement Date**" has the meaning provided in **Section 11.5(a)**.

"**Release**" has the meaning provided in **Section 35.1(g)**.

"**Replacement Value**" has the meaning provided in **Section 7.12(a)**.

"**Rental**" means rent, Base Rent, Percentage Rent, adjustments and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any provisions of this Lease, to pay and/or deposit.

"**Request for Proposals**" or "**RFP**" means Request for Proposals (RFP No. 20-97/98 (Amended)) issued by the City on December 30, 1997, with respect to the Land.

"**Requesting Party**" has the meaning provided in **Section 26.2(c)(ii)**.

"**Requirements**" has the meaning provided in **Section 15.2**.

"**Reserve Account**" has the meaning provided in **Section 16.5(a)**.

"**Restoration**" means either a Casualty Restoration or a Condemnation Restoration, or both.

"**Sale of the Project**" has the meaning provided in **Section 10.2(e)**.

"**Security Deposit**" has the meaning provided in **Section 3.6**.

"**Significant Alteration**" has the meaning provided in **Section 14.5(a)(i)**.

"**Substantial Completion**" has the meaning provided in the Development Agreement.

"**South Florida Building Code**" means the South Florida Building Code (Revised 1994), as amended from time to time, or any successor thereto.

"**Substantial Controlling Interest**" means the ownership of greater than fifty percent (50%) of the Equity Interests in a Person and the ownership of greater than fifty percent (50%) of the votes necessary to elect a majority of the Board of Directors or other governing body of such Person.

"**Temporary CO**" means a temporary certificate of occupancy, as the same may be amended from time to time, issued by the City's Building Department for all or a portion of the Improvements.

"**Tenant**" means Lincoln Plaza Partners, LLC, a Florida limited liability company, and any assignee, transferee or subtenant of the entire Tenant's Interest in the Premises that is permitted under this Lease from and after the date of the permitted assignment, transfer or sublease pursuant to which the entire Tenant's Interest in the Premises was assigned, transferred or sublet to such assignee, transferee or subtenant.

"**Tenant Indemnified Parties**" means Tenant and its directors, officers, shareholders, employees, successors, assigns, subtenants, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, joint venturers, members, holders of other ownership interests, partners of a partnership constituting a partner or Member of Tenant, Members of a limited liability company constituting a partner or Member of Tenant, trustees, partners, principals, invitees and Affiliates. A "**Tenant Indemnified Party**" shall mean any of the foregoing.

"**Tenant's Interest in the Premises**" means Tenant's interest in this Lease and Tenant's ownership of the Improvements as provided in **Section 29.3.**

"**Term**" means the term of years commencing on the Commencement Date and, subject to earlier termination as provided hereunder, expiring at 11:59 p.m. on the Fixed Expiration Date. "**Term**," as the context may require, shall include the initial period from the Commencement Date to the Fixed Expiration Date and any extensions or renewals thereof.

"**Threat of Release**" has the meaning provided in **Section 35.1(h).**

"**Title Matters**" has the meaning provided in **Section 2.1.**

"**Transfer**" has the meaning provided in **Section 10.2(h).**

"**Transferee**" has the meaning provided in **Section 10.2(i).**

"**Unavoidable Delays**" means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, eminent domain, catastrophic weather conditions, a court order which actually causes a delay (unless resulting from disputes between or among the party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging party or Affiliates (or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging party), the application of any Requirement, or another cause beyond such party's control or which, if susceptible to control by such party, shall be beyond the reasonable control of such party. Such party shall use reasonable good faith efforts to notify the other party not later than twenty (20) days after such party knows of the occurrence of an Unavoidable Delay; provided, however, that either party's failure to notify the other of the occurrence of an event constituting an Unavoidable Delay shall not alter, detract from or negate its character as an Unavoidable Delay or otherwise result in the loss of any benefit or right granted to the delayed party under this Lease. In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an "Unavoidable Delay" (except for an Institutional Lender's inability to fund, which inability is not

caused by Tenant) with respect to such party and (ii) any delay arising from a party's (or its Affiliate's) default under this Lease or the Development Agreement constitutes an "Unavoidable Delay" with respect to such party's obligations hereunder. The times for performance set forth in this Lease (other than for monetary obligations of a party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Lease.

"U.S. Government" means the federal government of the United States of America, including all agencies and departments thereof.

Article 2 - Demise of Land and Term of Lease

Section 2.1 Demise of Land for Term.

(a) Owner does hereby demise and lease to Tenant, and Tenant does hereby lease and take from Owner, the Land, together with all the appurtenances, rights, privileges and hereditaments thereto, "AS IS" subject to (i) the terms and conditions of this Lease and (ii) the matters set forth in **Exhibit 2.1** (the **"Title Matters"**) attached hereto and incorporated by reference herein, to have and to hold unto Tenant, its successors and assigns for an initial Term commencing on the Commencement Date and continuing until the fiftieth (50th) anniversary of the Delay Date unless sooner terminated pursuant to the terms hereof; provided, however, that as a condition precedent to Tenant's entering upon and taking possession of Parcel 1 (as described on **Exhibit A** attached hereto), Tenant shall deliver to Owner special warranty deeds (subject only to the matters set forth in **Exhibit 2.1** hereto and further subject to a right of reverter in the event that this Lease is terminated for any reason prior to the Commencement of Construction, and free of any other liens, charges or encumbrances other than taxes not yet due and payable) to Parcel 2 (as described on said **Exhibit A**) to the City, as grantee. Upon satisfaction of the condition precedent set forth in the immediately preceding sentence, Tenant's right to possession and control of the Land shall extend to Parcels 1 and 2 (as described on said **Exhibit A**). Unless (A) this Lease has been previously terminated in accordance with the provisions hereof, or (B) there exists an uncured Event of Default of Tenant on the date the current Term is scheduled to end, or (C) Tenant notifies the City within the last twenty-four (24) months of the end of the Term in question that it is not going to elect to extend this Lease for each extension provided in this **Section 2.1** on the terms and conditions provided herein, this Lease shall be automatically extended for up to two (2) additional Terms of twenty (20) years each, for a total possible maximum Term of ninety (90) years (plus the period from the Commencement Date to the Delay Date). Notwithstanding anything contained in this **Section 2.1(a)** to the contrary, the Land shall not include Parcel 2 until such time as said Parcel is conveyed to Owner as set forth in this **Section 2.1(a)**.

(b) Notwithstanding anything to the contrary contained herein, Tenant shall have the right to be released from its liability and obligations [except the obligation to pay Rental and/or Impositions prior to the Possession Date pursuant to **Section 3.2(a)**] and to terminate the Development Agreement and this Lease prior to the Possession Date because (i) changes to the Preliminary Plans and Specifications required by the DRB, Joint Board, or any other Governmental Authority (including the City), render the Project economically unfeasible in the reasonable business

judgment of Tenant, (ii) the Project cannot meet concurrency requirements under Section 163.3180, Florida Statutes (1997), or the costs of concurrency mitigation are, in the reasonable business judgment of Tenant, economically unfeasible, or (iii) Tenant, after good faith efforts, has been unable to obtain a full building permit for the Project pursuant to the Plans and Specifications submitted by Tenant. In the event of termination of the Development Agreement and this Lease pursuant to this **Section 2.1**, each Party shall bear its own costs and expenses incurred in connection with the Development Agreement and this Lease and neither Party shall have any further liability to the other.

Section 2.2 No Encumbrances.

Owner will not permit or suffer any encumbrance, mortgage, pledge or hypothecation of Owner's Interest in the Premises except with respect to those matters (such as utility easements and nonmonetary reciprocal easement agreements) reasonably approved by Tenant in writing and which do not adversely affect the operation or development of the Project. At Tenant's request, Owner shall join in any utility easements and other easements necessary for the Project. Tenant shall pay all of Owner's reasonable attorneys' fees and costs associated therewith and shall indemnify and hold harmless Owner from any and all liability and expenses associated therewith. Notwithstanding the foregoing, Owner shall have the absolute right to pledge its interest in the Rental and/or Impositions payable hereunder so long as such pledge does not include a pledge of Owner's Interest in the Premises (other than the Rental and/or Impositions payable hereunder), and the pledgee shall have no rights under this Lease other than the right to receive payments of Rental and/or Impositions. Any pledge of Rental and/or Impositions permitted hereunder shall not create any rights in the pledgee thereunder to enforce any of the provisions of this Lease. Owner shall deliver to Tenant and any Recognized Mortgagee, within fifteen (15) days after the effective date thereof, a true and correct copy of any pledge instrument permitted hereunder.

Section 2.3 Sale of Entire Interest.

Owner shall not sell, transfer, convey or assign Owner's Interest in the Premises, except for a sale, transfer, conveyance or assignment of the entire Owner's Interest in the Premises.

Article 3 - Rent

Section 3.1 Method and Place of Payment.

Except as otherwise specifically provided herein, all Rental and/or Impositions shall be paid without notice or demand. All Rental and/or Impositions payable to Owner (except Impositions, if the Requirements governing such payments are to the contrary) shall be paid by good checks (payable upon presentment) drawn on a United States or state chartered bank, in currency of the United States of America. Rental and/or Impositions that are payable to Owner (other than Impositions, if the Requirements governing such payments are to the contrary) shall be payable at the address of Owner set forth herein or at such other place as Owner shall direct by notice to Tenant. Impositions that are not payable directly to Owner shall be payable in the form and at the location provided by Requirements governing the payment of such.

Section 3.2 Rent.

(a) **Rent Prior to the Possession Date.** On the Commencement Date, in consideration of the execution of this Lease by Owner, Tenant shall pay Owner the lump sum of Fifty Thousand Dollars ($50,000), which sum shall be full and complete consideration for the period from the Commencement Date to the Possession Date, and a portion of which represents reimbursement to Owner for certain expenses incurred by Owner pursuant to Section 82-39 of the Miami Beach City Code, as amended.

(b) **Rent After the Possession Date.** Tenant and Owner agree that Owner will lose significant parking revenues during the Construction Phase. In order to compensate Owner for said lost revenues, Tenant shall pay One Hundred and Seventy-Five Thousand Dollars ($175,000) per year as rent, commencing on the Possession Date and ending on the earlier to occur of (i) the CO Date and (ii) the Delay Date.

(c) **Rent After the Delay Date.** Tenant shall pay Owner annual rent for each Lease Year, including any adjustments thereto (the "**Base Rent**"), during the Term commencing on the Delay Date. The initial Base Rent shall be Two Hundred Fifty Thousand Dollars ($250,000), and shall be increased as described in **Sections 3.2(d), 3.2(e)** and **3.2(f)** hereof, until the Expiration of the Term. In no event shall Base Rent during an adjustment period be less than the Base Rent during any prior period.

(d) **Adjustments to Base Rent.** (i) The Base Rent shall be increased to Three Hundred Thousand Dollars ($300,000) per annum, commencing on the first month of the sixth (6th) Lease Year, and (ii) the Base Rent shall be further increased by the lesser of twelve percent (12%) or the cumulative CPI over the previous five (5) year period and shall be adjusted commencing with the first (1st) month of the eleventh (11th) Lease Year and every five (5) Lease Years thereafter.

(e) **Appraisal Adjustments to Base Rent.** Sometime during the 49th (if the Term has been extended) and 69th (if the Term has been extended) Lease Years, the Parties shall cause to be made appraisals of the Fair Market Rent according to the provisions set forth below, for the purpose of adjusting the Base Rent, which adjustments shall be effective at the beginning of the fiftieth (50th) (if the Term has been extended) and seventieth (70th) (if the Term has been extended) Lease Years, while maintaining the Percentage Rent payments as provided in **Section 3.3** herein:

(i) Appraisals shall be made by three (3) real estate appraisers, each of which (i) shall be a member of the American Institute of Real Estate Appraisers, and (ii) shall have not less than ten (10) years experience in managing and appraising real estate. One appraiser shall be selected and appointed by Owner (the "Owner's Appraiser"), and shall be paid by Owner, one shall be selected and appointed by Tenant (the "Tenant's Appraiser") and shall be paid by Tenant; and the third shall be selected and appointed by the first two (2) appraisers so appointed (the "Third Appraiser"). The cost of the Third Appraiser shall be evenly split between Tenant and Owner. In the event of a failure of Owner's Appraiser and Tenant's Appraiser to agree on the Third Appraiser within fifteen (15) days after their appointment, the Third Appraiser shall be appointed by the

President of the American Institute of Real Estate Appraisers (or its successor) on the application of either appraiser appointed by Owner or Tenant on ten (10) days' notice to the other appraiser so appointed.

(ii) In the event either Owner or Tenant shall fail to appoint an appraiser within fifteen (15) days after demand from the other to make the appointment, then the appraiser appointed by the party not in default shall appoint the second appraiser, and the two (2) appraisers so appointed shall appoint the Third Appraiser. If the first two (2) appraisers so appointed shall fail to agree on such Third Appraiser within fifteen (15) days after their appointment, the Third Appraiser shall be appointed in the same manner provided in **Subsection 3.2(e)(i)** herein.

(iii) After appointment, the three (3) appraisers, after having been duly sworn to perform their duties with impartiality, shall proceed promptly to prepare an appraisal of the Fair Market Rent. The Fair Market Rent determined by the appraisers shall be binding and conclusive on Owner and Tenant. The appraisers shall have the right, by majority vote among them, to determine the procedure to be adopted in arriving at the Fair Market Rent (but in so doing they must apply the definition of Fair Market Rent as provided herein), and may, in their discretion, dispense with formal hearings, it being agreed that their task will be solely that of appraisal.

(iv) If prior to the expiration of the initial Term or any extended Term the Fair Market Rent has not been determined for any reason, Tenant shall continue to pay rent as calculated pursuant to **Section 3.2(c)** utilizing the Base Rent in effect for the year prior to the expiration date of the initial Term or any extended Term. When the Fair Market Rent has been determined, the Base Rent will be increased as provided retroactively to the expiration date of the initial Term or any extended Term, and the rent payments shall be recalculated in accordance with **Section 3.2(c)**. If the adjusted Base Rent results in rent due Owner, Tenant shall pay to Owner with the next installment of rent, the amount of rent due, if any. In no event shall the adjusted Base Rent result in a decrease in the Base Rent in effect for the year prior to the expiration of the initial Term, or any extended Term, as applicable.

(f) **Additional Adjustment to Base Rent.** It is the intention of Owner, and Tenant acknowledges, that the City will derive an additional benefit from the Premises being placed on the tax roll. Therefore, as a condition to Owner's agreement to enter into this Lease and subject to the provisions of **Section 3.4(h)** hereof, Tenant agrees that the Premises shall be subject to real estate taxes which Tenant is required to pay hereunder and Tenant shall not seek, based on immunity from taxation, exemption from taxation, classified use, restrictive covenant, applicable judicial limitation, local or state land use regulation, historic preservation ordinance, moratorium or other limitation, to reduce or eliminate the assessed value of the Premises nor reduce, eliminate, abate or defer the real estate taxes thereon. If after the CO Date, the Premises are not subject to real estate taxes or if the real estate taxes are reduced, waived, abated, deferred or exempted due to legislation, judicial action or otherwise, Tenant shall, for each applicable year during the remaining Term of this Lease and any extensions thereof, make payments to the City in lieu of real estate taxes, in an amount equal to the City's portion and, for so long as a redevelopment trust fund and/or tax increment district exists, the Miami-Dade County portion of real estate taxes on the Premises for every year as if they

had been imposed. Payment in lieu of real estate taxes will be added to Base Rent under this Lease. For the purposes of this **Section 3.2(f)**, the amount of the payment in lieu of real estate taxes for any calendar year shall be equal to the sum of the assessed value (in use) of the Land, plus an amount equal to the value of the Improvements determined in accordance with the assessment methodology used for other comparable non-exempt, non-classified commercial properties in the area multiplied by the then applicable millage rate for that calendar year.

(g) **Payment of Rent and Base Rent.** On and after the Possession Date, rent and Base Rent shall be paid in monthly installments equal to one-twelfth of the then applicable annual rent and Base Rent and shall be paid in advance, on the first day of each and every calendar month thereafter during the Term. All rent and Base Rent which is due for any period of less than a full month or a full calendar year shall be appropriately apportioned.

(h) **Interim Garage Rent.** Notwithstanding anything to the contrary contained in this Lease, in the event that the Garage is substantially completed and receives a temporary certificate of occupancy prior to the office portion of the Project, for the period commencing on the date such temporary certificate of occupancy is issued and ending on the earlier of (i) twelve (12) months from the date such certificate of occupancy is issued, (ii) the CO Date or (iii) the Delay Date, Tenant shall pay to Owner an additional Twenty-Five Thousand Dollars ($25,000) per year as Base Rent, prorated on a monthly basis with respect to the Garage.

(i) **Interim Retail Rent.** Notwithstanding anything to the contrary contained in this Lease, in the event that the retail portion of the Project is substantially completed and receives a temporary certificate of occupancy prior to the office portion of the Project, for the period commencing on the date such temporary certificate of occupancy is issued and ending on the earlier of (i) twelve (12) months from the date such certificate of occupancy is issued, (ii) the CO Date or (iii) the Delay Date, Tenant shall pay to Owner an additional Twenty-Five Thousand Dollars ($25,000) per year as Base Rent, prorated on a monthly basis, with respect to the retail portion of the Project.

Section 3.3 Percentage Rent.

(a) Tenant shall pay Owner annual percentage rent for each Lease Year (the "**Percentage Rent**") during the Term in an amount equal to two and one-half percent (2 ½ %) of the amount of Project Revenue for each Lease Year commencing on the earlier to occur of (i) the ninth (9th) Lease Year or (ii) the Sale Date; provided, however, for the initial and final Lease Years, the Percentage Rent shall be prorated according to the actual number of days in such Lease Year.

(b) Payment of Percentage Rent. Tenant shall pay the full amount of Percentage Rent due in annual installments, in arrears, within sixty (60) days after the end of each Lease Year for the preceding Lease Year. The Percentage Rent that accrues in the ninth (9th) Lease Year shall be payable in ten (10) equal annual installments, without interest. Each of such ten (10) annual installments of the Percentage Rent for the ninth (9th) Lease Year shall be paid to Owner at the same time as the Percentage Rent that is due and payable for the tenth (10th) through nineteenth (19th)

Lease Years is paid pursuant to this **Section 3.3(b)**. The obligation to pay Percentage Rent shall survive Expiration of the Term as to Percentage Rent which accrued prior to the Expiration of the Term, subject to **Article 28**.

(c) Definition.

"Project Revenue" means (without duplication):

(i) all revenue, payments, income received, escalation adjustments, rental and operating cost reimbursements reserved under any lease, sublease, concession, license, or other arrangement or from the operation of the Project (including any reimbursements for Operating Expenses and common area maintenance) and paid to Tenant for the use or occupancy of any portion of the Project; provided, however, that for purposes of calculating Project Revenue (i) if any space in the Project other than the Project management office (which shall be limited to a maximum of one thousand (1,000) square feet) is leased to, or used by, Tenant, any Affiliate of Tenant, subtenant, or any other Person at a rental which is less than fair market rental value of such space (determined as of the date such lease is signed), the rent shall be increased by an amount equal to the difference between the rent being paid and the fair market rental value; and (ii) if any space in the Project is leased to, or used by Tenant, any Affiliate of Tenant, subtenant, or any other Person on a basis whereby the Tenant pays real estate taxes, common area maintenance charges or operating costs other than utilities directly to the taxing authority or service provider rather than to Tenant, the rent under such leases shall be increased by the amount of such taxes; common area maintenance charges and/or operating costs (other than utilities) paid directly to the taxing authority or service provider by the Tenant; and

(ii) all revenue, receipts, or other income derived by Tenant from the Garage or any other parking service, including revenue derived by Tenant from valet service; and

(iii) Proceeds of rental loss insurance to the extent that such proceeds replace items of revenue referenced in (i) and (ii) above.

If Tenant shall enter into a Master Sublease of all or substantially all of the Project or of twenty percent (20%) or more of the Garage to a single tenant, "Project Revenue" with respect to the space included in the Master Sublease shall be computed with respect to the revenues received by the Master Subtenant (but in such case the rental payments made by the Master Subtenant to Tenant shall be excluded).

Project Revenue shall be computed on a cash basis in accordance with the Accounting Principles.

The following shall, however, be excluded from Project Revenue:

(1) Federal, state and municipal excise, sales, resort, use, and other taxes collected from patrons or guests as a part of or based upon the sales price of any goods or services, including with limitation, gross receipts, room, bed, admission, cabaret, or similar taxes;

(2) Any gratuities collected;

(3) Allowances, rebates and refunds not included in Project Revenue in accordance with the Accounting Principles;

(4) The proceeds of any financing or refinancing;

(5) Interest on funds in the Reserve Account;

(6) Proceeds from the Sale of the Project;

(7) Real estate commissions and management fees;

(8) any reimbursements paid by the tenants to Tenant for increases in amounts paid by Tenant to Owner pursuant to the terms of this Lease (to the extent such increases occur during the term of the respective tenant's lease); and

(9) Payments to the Reserve Account.

Section 3.4 Impositions.

(a) **Obligation to Pay Impositions.** In addition to the payment of Rental, from and after the Possession Date, Tenant shall pay or cause to be paid, in the manner provided in this **Section 3.4**, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Owner or Tenant with respect to (i) the Premises, or (ii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Premises, or (iii) any other appurtenances of the Premises, or (iv) any personal property, Building Equipment or other facility used in the operation thereof, or (v) any document to which Tenant is a party creating or transferring an interest or estate in the Premises of, by or to Tenant, or (vi) the use and occupancy of the Premises, or (vii) this transaction.

(b) **Definition.**

"**Imposition**" or "**Impositions**" means the following imposed by a Governmental Authority:

(i) real property taxes and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district);

(ii) personal property taxes;

(iii) sales and/or use taxes on Rental;

(iv) water, water meter and sewer rents, rates and charges;

(v) excises;

(vi) levies;

(vii) license and permit fees;

(viii) any other governmental levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever;

(ix) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; and

(x) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

(c) **Payment of Impositions.**

(i) Subject to the provisions of **Section 32.2** hereof, from and after the Possession Date, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency). However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall

be responsible for the payment of such installments with interest, if any.

(ii) If Tenant twice fails within any thirty-six (36) month period to make any payment of an Imposition (or installment thereof) on or before the date the same may be paid without penalty, Tenant shall, at Owner's request, and notwithstanding paragraph (i) above, pay all Impositions or installments thereof thereafter payable by Tenant not later than twenty (20) days before the date of delinquency. However, if Tenant thereafter makes all such payments as required in this paragraph (ii) for thirty-six (36) consecutive months without failure, the Imposition payment date in paragraph (i) above shall again become applicable, unless and until there are two further failures within a thirty-six (36) month period, in which case Tenant shall again have the right to cure the failure so that the payment date in paragraph (i) above shall again be applicable, and this provision shall continue to be applicable to each situation in which there are two further failures within a thirty-six (36) month period. Nothing in this paragraph shall be construed to limit Owner's Default remedies as set forth elsewhere in this Lease after failure by Tenant timely to pay any Imposition.

(d) **Evidence of Payment**. Tenant shall furnish to Owner, within thirty (30) days after the date of Owner's request therefor, an official receipt of the appropriate taxing authority or other proof reasonably satisfactory to Owner, evidencing the payment thereof.

(e) **Evidence of Non-Payment**. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, immediately upon receipt of any such certificate, advice or bill, deliver a copy of the same to Owner.

(f) **Apportionment of Imposition**. Any Imposition relating to a fiscal period of the taxing authority, a part of which occurs after the Possession Date and a part of which occurs before the Possession Date or after the Expiration of the Term, shall be apportioned pro rata between Owner and Tenant.

(g) **Exclusions from Impositions**. Except as expressly set forth above, nothing contained herein shall be construed to require Tenant to pay or to be charged for any portion of (i) municipal, state or federal income or gross receipts taxes assessed against Owner (other than sales or use taxes imposed on Rental, notwithstanding that Owner may be primarily liable by law for the payment thereof); (ii) municipal, state or federal capital levy, estate, succession, inheritance, transfer or gains taxes, of Owner; (iii) corporation or franchise taxes imposed on Owner or any corporate

owner of the fee of the Land; or (iv) any penalties or late charges assessed against Owner (unless the same result from Tenant's failure to timely pay Impositions).

(h) **Tax Abatements and Reductions.** Subject to the provisions of **Section 3.2(f)** which shall control over this **Section 3.4(h)** when in conflict, Tenant shall be entitled to the benefit of any tax abatements and reductions as are, or may be, available under applicable law as if Tenant were the fee owner of the Premises. Owner shall not be required to join in any action or proceeding in connection with such abatement or reduction unless the provisions of any Requirement at the time in effect require that such action or proceeding be brought by and/or in the name of Owner. If so required, Owner shall join and cooperate in such proceedings or permit them to be brought by Tenant in Owner's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Owner in connection therewith.

Section 3.5 Net Lease.

It is the intention of Owner and Tenant that (a) Rental be absolutely net to Owner without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, except to the extent expressly set forth in this Lease, and (b) Tenant pay all costs, expenses and charges of every kind or nature (except as expressly provided for herein to the contrary) relating or allocable to the Premises that may arise or become due or payable during or after (but attributable to a period falling within) the Term.

Section 3.6 Security Deposit.

On the Possession Date and continuing until the CO Date, Tenant shall either (i) deposit with Owner the sum of Two Hundred Fifty Thousand Dollars ($250,000) in cash or (ii) post an irrevocable standby letter of credit in form and substance reasonably acceptable to Owner, payable on presentation (site credit), in favor of Owner in the amount of Two Hundred Fifty Thousand Dollars ($250,000) (the "**Security Deposit**") and payable according to the following:

> "This letter of credit may be drawn upon in full by the beneficiary hereunder upon the presentation to the bank of a statement signed by the Mayor, City Manager or any Assistant City Manager of beneficiary that an uncured Event of Default exists under the Agreement of Lease between the beneficiary and Lincoln Plaza Partners, LLC dated [insert date]."

If Tenant elects to post the Security Deposit in cash, it shall be placed by Owner in an interest bearing account with interest earned to follow the money. The Security Deposit shall be considered as security for the payment of all of Tenant's obligations, covenants and agreements under this Lease. Within thirty (30) days after the CO Date, Owner shall (provided that Tenant is not in Default under the terms of this Lease) return the Security Deposit to Tenant less any portion that Owner shall have used to make good any Default of Tenant. In the event of any such Default by Tenant, Owner shall have the right, but not the obligation, to apply all or any portion of the Security Deposit to cure the

Default, in which event the Tenant shall be obligated to deposit with Owner the amount necessary to restore the Security Deposit to the amount in effect prior to the deduction. If a Default exists on the CO Date and if Tenant diligently and in good faith proceeds to cure the Default and, in fact, cures the Default, then, in that event, the Security Deposit shall be returned to Tenant.

Article 4 - Late Charges

Section 4.1 Late Charges.

If Tenant shall fail to make any payment of Base Rent, Percentage Rent, or other Rental and/or Impositions within thirty (30) days after the same shall be due, the late payment shall bear interest from the date due until the date paid at a rate (the "**Late Charge Rate**") equal to the lesser of (a) Four Percent (4%) per annum in excess of the prime rate in effect from time to time at Citibank, N.A. (or The Chase Manhattan Bank, N.A., if Citibank, N.A. shall not then have an established prime rate; or the prime rate of any major banking institution doing business in New York City, as selected by Owner, if none of the aforementioned banks shall be in existence or have an established prime rate) and (b) the maximum interest rate permitted by law. All interest payable under this **Section 4.1** shall be deemed Rental (but shall not be compounded) and shall be due and payable by Tenant on fifteen (15) days demand. The collection by Owner of any interest under this **Section 4.1** shall not be construed as a waiver of Tenant's default or of Tenant's obligation to perform any term, covenant or condition of this Lease nor shall it affect any other right or remedy of Owner under this Lease.

Article 5 - Inflation Adjustment

Section 5.1 Inflation Adjustment.

Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as "**adjusted for inflation**" or "**subject to adjustment for inflation**" (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI for the calendar year immediately preceding the date of such adjustment, and the denominator of which shall be the CPI for the calendar year during which the Delay Date occurred. All amounts subject to adjustment hereunder shall be adjusted effective as of January 1 of each year pursuant to the formula described above. If the CPI ceases to be published, and there is no successor thereto, such other reasonably similar index as Owner and Tenant mutually designate shall be substituted for the CPI. No such adjustment shall result in Base Rent being an amount that is less than the Base Rent prior to the adjustment.

Article 6 - Use

Section 6.1 Use.

(a) **Continuous Legal Use.** Tenant shall use and operate the Premises throughout the Term only as permitted by this Lease. In any event, the Premises shall be used only in accordance with the final Certificate[s] of Occupancy therefor which from time to time exist (or temporary

Certificate[s] of Occupancy, to the extent that final Certificate[s] of Occupancy have not been issued therefor).

(b) **Scope of Use.** In accordance with Tenant's obligations to meet and comply with the maintenance and operating standards set forth in Article 14 and other provisions of this Lease, Tenant shall, from and after the Project Opening Date, operate the Premises as an office, retail and commercial (excluding any apartments, hotels, apartment hotels or residential uses) project and parking garage containing not less than seven hundred (700) parking spaces. The number of parking spaces required by the Land Development Regulations for the uses within the Premises shall be available to Tenant to sublease or license to its subtenants; provided, however, that the remainder of the parking spaces in the Garage (but in no event less than one hundred (100) parking spaces) shall be available for use by members of the general public at all times and all of the spaces in the Garage shall be available for use by members of the general public during non-office hours to the extent not used by subtenants. Furthermore, Tenant shall provide not less than fifty (50) parking spaces for monthly parking for members of the general public who are not subtenants of the Premises at monthly garage parking rates established by Tenant, which rates shall not be higher than the highest rate paid by any subtenant in the Premises. Notwithstanding the preceding sentence, Tenant reserves the right to close or restrict access to any portion of the Premises in connection with Alterations undertaken in accordance with the provisions of this Lease or to such extent as may, in the reasonable opinion of Tenant's counsel, be legally necessary to prevent a dedication thereof or the accrual of prescriptive rights to any Person or Persons.

(c) **Character and Operation of the Premises.** The parties recognize and acknowledge that the manner in which the Premises are developed, operated and maintained are matters of critical concern to the City by reason of the need to alleviate a serious parking shortage within the City, and Tenant hereby agrees to develop, operate and maintain the Premises and all other property and equipment located thereon which are owned, leased or maintained by Tenant in a manner consistent with other comparable first class projects of similar age and in good order, condition, repair and appearance, and in compliance with **Article 14**. To accomplish this result, Tenant shall establish such reasonable rules and regulations governing the use and operation of the Premises by subtenants as Tenant shall deem necessary or desirable in order to comply with **Article 16** and assure the level of quality and character of operation of the Premises required herein, and it will use all reasonable efforts to enforce such rules and regulations.

Section 6.2 Prohibited Uses.

(a) Without limiting the provisions of **Section 6.1**, Tenant shall not use or occupy the Premises or any part of the Premises, and neither permit nor suffer the Premises to be used or occupied, for any of the following ("**Prohibited Uses**"):

(i) for any unlawful or illegal business, use or purpose, including, but not limited to businesses, uses or purposes which are immoral or disreputable (including "adult entertainment establishments" and "adult

bookstores"), or any business, use or purpose that is extra hazardous, or which will violate the Environmental Laws;

(ii) for any use which is a public nuisance;

(iii) tatoo parlors, psychics, palm and tarot card readers, body piercing shops or as a gambling casino or facility, in the event that gambling is ever made a legal activity under Federal, state or local law;

(iv) in any manner that will violate any Certificate of Occupancy for the Premises, or which will violate any laws, ordinances or other rules or regulations applicable to the Premises;

(v) in such manner as may make void or voidable any insurance then in force with respect to the Premises; or

(vi) for any use involving any ownership structure such as time share, time interval, cooperative or condominium (commercial or otherwise), except as provided herein.

(b) Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any subtenants, licensees, invitees or concessionaires, subject to applicable Requirements.

Section 6.3 Garage Parking Rates.

All charges for parking in the Garage, including, but not limited to, the hourly, daily, weekly, monthly and evening flat rates, shall not be less than garage parking rate being charged by the City or the Miami Beach Redevelopment Agency and shall not be greater than comparable garage parking rates being charged in Miami-Dade County, Florida. Parking rates shall not be increased for special events such as Art Deco Weekend, boat shows or any similar events or activities that create high demand for parking spaces in the area of the Project.

Article 7 - Insurance

Section 7.1 Insurance Requirements.

(a) **Liability Insurance.** At all times during the Term, Tenant, at its sole cost and expense, shall carry or cause to be carried insurance against liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises in an amount of not less than Twenty-Five Million Dollars ($25,000,000) per occurrence, subject to adjustment for inflation, combined single limit, and designating Tenant as a named insured, and Owner and, if required by a

Recognized Mortgage, a Recognized Mortgagee as additional insureds. Such insurance shall meet all of the standards, limits, minimums and requirements described in **Section 7.7**.

(b) **Property Insurance**. At all times during the Term, Tenant at its sole cost and expense, shall carry or cause to be carried "**All Risk**" (or its equivalent) property damage insurance protecting Tenant, Owner and any Recognized Mortgagees as their interests may appear against loss to the Premises and Improvements and meeting all of the standards, limits, minimums and requirements described in **Section 7.8**.

(c) **Other Insurance**. At all times during the Term, Tenant shall procure and carry insurance meeting all of the standards, limits, minimums, and requirements described in **Section 7.9**.

(d) **Construction Insurance**. Prior to the commencement of any Construction Work, Tenant shall procure or cause to be procured, and after such dates shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance described in **Section 7.10**.

(e) **Garage Liability/Garagekeeper's Liability Insurance**. From and after the CO Date, Tenant shall procure or cause to be procured, and after such date shall carry or cause to be carried with respect to the Garage, Garagekeeper's legal liability coverage in an amount not less than Five Million Dollars ($5,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Owner, but not more than Fifty Thousand Dollars ($50,000) per loss, subject to adjustment for inflation; and (ii) automobile liability insurance covering any automobile owned, non-owned or hired in an amount not less than Twenty-Five Million Dollars ($25,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Tenant of not more than Ten Thousand Dollars ($10,000) per loss, subject to adjustment for inflation.

Section 7.2 Treatment of Proceeds.

(a) **Proceeds of Casualty Insurance in General**. Insurance proceeds payable with respect to a property loss shall be payable either to Owner or any Recognized Mortgagee or other Institutional Lender pursuant to a mutually acceptable insurance trust agreement, either of which shall hold such proceeds in trust for the purpose of paying the cost of the Casualty Restoration, or shall be payable to Tenant with respect to insurance proceeds not exceeding One Million Dollars ($1,000,000), adjusted for inflation, per occurrence, and such proceeds shall be applied to the payment in full of the cost of such Casualty Restoration in accordance with the provisions of **Article 8**.

(b) **Proceeds of Rent Insurance**. Rent Insurance referred to in **Section 7.9** shall be carried in the name of Tenant as named insured and shall be payable to Owner and Tenant to be applied to Rental and/or Impositions for the period from the occurrence of the damage or destruction until completion of the Restoration as determined in accordance with the provisions of **Article 8**. Without limiting the foregoing provisions of this **Section 7.2(b)**, if required by a Recognized

Mortgage, such amounts shall be paid to a Recognized Mortgagee so long as all Rental and/or Impositions are first paid to Owner subject to the provisions of **Section 12.1** herein.

(c) **Cooperation in Collection of Proceeds.** Tenant, Owner and any Recognized Mortgagee shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss, and Tenant, Owner and any Recognized Mortgagee shall as soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant, Owner or any Recognized Mortgagee, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

(d) **Adjustments for Claims.** All property insurance policies required by this **Article 7** shall provide that all adjustments for claims with the insurers involving a loss in excess of One Million Dollars ($1,000,000) adjusted for inflation be made jointly with Tenant, Owner and the Recognized Mortgagee.

Section 7.3 General Provisions Applicable to All Policies.

(a) **Insurance Companies.** All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of Florida that have a rating in the latest edition of **"Best's Key Rating Guide"** of **"A:VIII"** or better or another comparable rating reasonably acceptable to Owner, considering market conditions.

(b) **Required Forms.** All references to forms and coverages in this **Article 7** shall be those used by the Insurance Services Organization (ISO) or equivalent forms reasonably satisfactory to Owner in all material respects.

(c) **Required Certificates.** Certificates of insurance evidencing the issuance of all insurance required by this **Article 7** to the extent then required, describing the coverage and providing for thirty (30) days prior notice to Owner by the insurance company of cancellation or non-renewal, shall have been delivered to Owner by the Possession Date, and in the case of any policies replacing or renewing any policies expiring during the Term, not later than fifteen (15) days before the expiration dates of any expiring policies. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance, or its duly authorized agent, shall also deliver to Owner proof reasonably satisfactory to Owner that the premiums for at least the first year of the term of each policy (or installment payments to the insurance carrier then required to have been paid on account of such premiums) have been paid. During the performance of any Construction Work, Tenant shall deliver to Owner an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy. At all other times, Tenant shall deliver to Owner an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy within a reasonable period of time after Owner's request therefor. Tenant shall notify Owner of any material changes in the coverage provided under any policy promptly after requesting an insurance company to make such change or receiving any notice from an insurance company advising Tenant of any such change; provided,

however, that no such change may reduce or otherwise modify the insurance coverage required under this Lease.

(d) **Compliance with Policy Requirements**. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article, and Tenant shall perform, satisfy and comply with, or cause to be performed, satisfied and complied with, all conditions, provisions and requirements of all insurance policies.

(e) **Required Insurance Policy Clauses**. Each policy of insurance required to be carried pursuant to the provisions of this Article and each certificate issued by or on behalf of the insurer shall contain (i) a provision stating substantially that no act or omission of Tenant (or any other Person) or any use or occupation of the Premises for purposes more hazardous than are permitted by the policy shall invalidate the policy as to Owner or affect or limit the obligation of the insurance company to pay to Owner the amount of any loss sustained and that no act or omission of Owner shall invalidate the policy as to Tenant or affect or limit the obligation of the insurance company to pay to Tenant the amount of any loss; (ii) a written waiver of the right of subrogation against all of the named insureds and additional insureds, including Owner in its capacity as owner of the Land and any Recognized Mortgagee named in such policy, with respect to losses payable under such policy; (iii) a clause designating Owner, and any Recognized Mortgagee as loss payee or additional insured, as their interests may appear for losses in excess of One Million Dollars ($1,000,000), adjusted for inflation; and (iv) an agreement by the insurer that such policy shall not be canceled, materially modified, or denied renewal without at least thirty (30) days prior written notice to Owner and the holder of the Recognized Mortgage named under a standard New York form of mortgagee endorsement or its equivalent, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium, except that ten (10) days' notice or statutory notice, whichever is greater, shall be given with respect only to non-payment of premium.

(f) **Separate Insurance**. Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Owner and any Recognized Mortgagee are included therein as additional insureds with respect to liability or loss payee with respect to property, as their interests may appear, with loss payable as in this Lease provided. Tenant shall immediately notify Owner of the carrying of any such separate insurance and shall cause the same to be delivered as in this Lease hereinbefore required.

(g) **Duration of Policies**. Tenant shall procure policies for all insurance required by any provision of this Lease for periods of not less than one (1) year and shall procure renewals thereof from time to time at least fifteen (15) days before the expiration thereof, except that Builders' Risk Insurance shall only be renewed for the term of any construction period.

Section 7.4 Additional Coverage.

(a) **Other Insurance**. Tenant shall maintain such other insurance, in such amounts as from time to time reasonably may be required by Owner, against such other insurable

hazards as at the time are commonly insured against in the case of mixed-use garages in South Florida of a size, nature and character similar to the size, nature and character of the Project.

(b) **Adjustment of Limits.** All of the limits of insurance required pursuant to this **Article** 7 shall be subject to review by Owner and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as Owner may reasonably require from time to time, but Owner may not impose such new limits any more frequently than once in every five (5) year period from the CO Date. Any request by Owner that Tenant carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of similar projects in South Florida of a size, nature and character similar to the size, nature and character of the Project; provided, however, that the provisions of this subsection (b) shall not relieve Tenant of its obligation to carry or to cause to be carried All Risk insurance in an amount not less than the Replacement Value as provided in **Section 7.12(a)**. Tenant shall be responsible for all deductibles.

Section 7.5 No Representation as to Adequacy of Coverage.

The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Owner or Tenant that such insurance is in any respect adequate.

Section 7.6 Blanket or Umbrella Policies.

The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's election, be effected by blanket, wrap-up and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Owner, upon Owner's request, certificates of insurance and copies (certified by Tenant to be true, complete and correct) of such policies as provided in **Section 7.3(c)**, together with schedules annexed thereto setting forth the amount of insurance applicable to the Premises.

Section 7.7 Liability Insurance Requirements.

The insurance required by **Section 7.1(a)** shall consist of commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury. Such insurance shall (within the limits of the insurance required by **Section 7.1(a)**):

(a) include a broad form property damage liability endorsement with fire legal liability limit of not less than Fifty Thousand Dollars ($50,000), subject to adjustment for inflation;

(b) contain blanket contractual liability insurance covering written and oral contractual liability;

(c) contain contractual liability insurance specifically covering Tenant's indemnification obligations under **Article 20**, to the extent such indemnification obligation is for an insurable risk;

(d) contain independent contractors coverage;

(e) contain a notice of occurrence clause;

(f) contain a knowledge of occurrence clause;

(g) contain an errors and omissions clause;

(h) contain coverage for suits arising from the use of reasonable force to protect persons and property;

(i) contain an endorsement providing that excavation and foundation work are covered and the "XCU" exclusions have been deleted;

(j) contain a waiver of completion and occupancy condition;

(k) contain no exclusions unless specifically approved in each instance by Owner, other than the industry standard exclusions for projects of similar size and location;

(l) contain Products Liability/Completed Operations coverage; and

(m) provide for a deductible determined by Tenant, but not more than Fifty Thousand Dollars ($50,000) per loss, subject to adjustment for inflation.

Section 7.8 Property Insurance Requirements.

The insurance required by **Section 7.1(b)** shall consist at least of property damage insurance under an "**All Risk**" policy or its equivalent covering the Premises and all Improvements with replacement cost valuation and an Agreed Amount Endorsement (to be effective not later than promptly following the CO Date) in an amount not less than the full Replacement Value (determined in accordance with **Section 7.12**) and including the following coverages or clauses:

(a) coverage for physical loss or damage to the Improvements;

(b) a replacement cost valuation without depreciation or obsolescence clause;

(c) debris removal coverage;

(d) provision for a deductible determined by Tenant, but not more than Fifty Thousand Dollars ($50,000) per loss (for other than flood or windstorm, with regard to which the deductible shall be a commercially reasonable amount), subject to adjustment for inflation;

(e) contingent liability from operation of building laws;

(f) demolition cost for undamaged portion coverage;

(g) increased cost of construction coverage;

(h) an Agreed Amount Endorsement (to be effective not later than promptly following the CO Date) in an amount not less than the full Replacement Value negating any coinsurance clauses;

(i) flood coverage (to the extent available at commercially reasonable rates, limits and deductibles);

(j) windstorm coverage (to the extent available at commercially reasonable rates, limits and deductibles);

(k) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by Owner);

(l) business interruption coverage in accordance with **Section 7.9**;

(m) a clause designating Owner and a Recognized Mortgagee as additional insureds, as their interests may appear; and

(n) contain no exclusions unless approved in writing by Owner, other than the industry standard exclusions for projects of similar size and location.

Tenant shall be named insured, and Owner and any Recognized Mortgagee shall be additional insureds, as their interests may appear. The Recognized Mortgagee or Owner shall be designated loss payee on such "**All Risk**" policy for the benefit of Owner, Tenant and any Recognized Mortgagee. If not included within the "**All Risk**" coverage above, Tenant shall also carry or cause to be carried coverage against damage due to (i) water and sprinkler leakage and collapse, which shall be written with limits of coverage of not less than the full Replacement Value per occurrence, with a deductible of not more than Fifty Thousand Dollars ($50,000), subject to adjustment for inflation and (ii) flood, which shall be written with limits of coverage of not less than Twenty-Five Million Dollars ($25,000,000), with a deductible of not more than Two Hundred Fifty Thousand Dollars ($250,000), subject to adjustment for inflation, to the extent available at commercially reasonable rates and deductibles.

If Tenant elects to insure Tenant's personal property used in connection with the Premises, the replacement value of such personal property shall be added to the amount of insurance required by this Section.

For the purposes of this **Section 7.8**, any rate, limit or deductible shall be "commercially reasonable" if such rate, limit or deductible is comparable to the rates, limits or deductibles in the insurance carried by similar projects in South Florida of a size, nature and character similar to the size, nature and character of the Project.

Section 7.9 Other Insurance Requirements.

The insurance required by **Section 7.1(c)** shall consist at least of the following:

(a) Business Interruption Insurance to include Rent Insurance on an "**All Risk**" basis in an amount equal to (i) prior to the CO Date, not less than the annual Base Rent and (ii) following the CO Date, not less than the aggregate amount of annual Rental and/or Impositions. The insurance specified in this subsection shall:

(i) provide coverage against all reasonably insurable risks of physical loss or damage to the Improvements;

(ii) Extra Expense coverage, with a limit of at least One Million Dollars ($1,000,000), adjusted for inflation, to cover overtime and other extra costs incurred to expedite repairing or rebuilding the damaged portion of the Premises;

(iii) provide for coverage through the attainment of pre-existing business levels;

(iv) contain flood and windstorm coverage to the extent available at commercially reasonable rates, limits and deductibles;

(v) contain explosion caused by steam pressure fired vessels coverage (which coverage may be provided under a separate policy reasonably approved by Owner);

(vi) provide for a deductible determined by Tenant, but for not more than Fifty Thousand Dollars ($50,000) per loss (other than for flood or windstorm, with regard to which the deductible shall be a commercially reasonable amount), subject to adjustment for inflation;

(vii) designate Owner, Tenant and any Recognized Mortgagee as loss payee but shall be payable only to Tenant with respect to Business

Interruption proceeds not exceeding One Hundred Thousand Dollars ($100,000), subject to adjustment for inflation, per occurrence; and

(viii) contain no exclusions, unless approved by Owner, other than industry standard exclusions for projects of similar size and location.

(b) Statutory Workers' Compensation and any other insurance required by law covering all employees of Tenant or any entity performing work on or for the Premises or the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount not less than One Million Dollars ($1,000,000), subject to adjustment for inflation.

(c) After CO Date, Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air conditioning systems, located on any portion of the Premises and other machinery located on any portion of the Premises, which shall designate Tenant as named insured and loss payee and designate Owner and any Recognized Mortgagee as additional insureds.

(d) Automobile liability insurance covering any automobile or other motor vehicle used in connection with the Project in an amount not less than Twenty-Five Million Dollars ($25,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Tenant of not more than Ten Thousand Dollars ($10,000) per loss, subject to adjustment for inflation.

Section 7.10 Construction Insurance Requirements.

The insurance required by **Section 7.1(d)** shall consist at least of the following:

(a) Builder's Risk Insurance (standard "**All Risk**" or equivalent coverage) in an amount not less than the cost of construction, written on a completed value basis or a reporting basis, for property damage protecting Tenant, Owner, the general contractor, and any Recognized Mortgagee, with a deductible determined by Tenant of not more than Fifty Thousand Dollars ($50,000), subject to adjustment for inflation (except as to flood and windstorm, with regard to which the deductible shall be a commercially reasonable amount), to include rental payment coverage from the date of projected completion and extending for at least twelve (12) months following such date of projected completion.

(b) Automobile liability insurance covering any automobile or other motor vehicle used in connection with work being performed on or for the Premises in an amount not less than Five Million Dollars ($5,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Tenant of not more than Ten Thousand Dollars ($10,000), subject to adjustment for inflation.

(c) The insurance required pursuant to **Section** 7.7.

Section 7.11 Annual Aggregates.

Excluding Umbrella/Excess Liability Insurance, if there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

Section 7.12 Determination of Replacement Value.

(a) **Definition**. The current replacement value of the Improvements (the "**Replacement Value**") shall be the full cost of replacing the Improvements according to Requirements in effect at that time, including, without limitation, all hard costs of construction as well as the costs of post-casualty debris removal, and soft costs, including without limitation, architects', engineers', surveyors', assessors' and other professional fees and development fees. On the CO Date, Replacement Value of the Improvements shall be deemed to be an amount equal to the actual costs incurred or expended in connection with the construction of the Premises as certified by the architect upon completion of the Premises, other than foundations and financing and other soft costs not applicable to replacement, adjusted for each year after completion of the Premises in accordance with the percentage change in the Building Index. If the insurance required by **Section 7.8** above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such adjustment, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

(b) **Building Index**. As used herein, the "**Building Index**" shall mean the Marshall and Swift Cost Index or such other published index of construction costs which shall be selected from time to time by Owner and reasonably agreed to by Tenant, provided that such index shall be a measure of construction costs widely recognized in the insurance industry and appropriate to the type and location of the Improvements.

Section 7.13 Master Subleases.

All Master Subleases shall require the Master Subtenant to carry liability insurance naming Tenant, Owner and any Recognized Mortgagee as additional insureds with limits reasonably prudent under the circumstances.

Section 7.14 Additional Interests.

All insurance policies in this **Article** 7 shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to Owner, as its interests may appear. Any holder of a Recognized Mortgage which, pursuant to the Recognized Mortgage, is required to be named under any of the insurance carried hereunder shall be named under a standard New York form of mortgagee endorsement or its equivalent.

Article 8 - Damage, Destruction and Restoration

Section 8.1 Notice to Owner.

If the Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify Owner of same as soon as reasonably possible after Tenant's discovery of same.

Section 8.2 Casualty Restoration.

(a) **Obligation to Restore.** If all or any portion of the Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, whether prior to or after completion of the initial construction of the Project, Tenant shall, in accordance with the provisions of this **Article 8** and **Article 2** of the Development Agreement (a copy of which is attached hereto as **Exhibit 8.2**; the provisions of which shall be deemed to apply to all Construction Work necessary to complete the Casualty Restoration, to the extent the same are not inconsistent with the terms hereof) restore the Premises to the condition thereof as it existed immediately before such casualty (a "**Casualty Restoration**"), regardless of whether the Net Insurance Proceeds shall be sufficient therefor. "**Net Insurance Proceeds**" shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

(b) **Commencement of Construction Work.** Subject to Unavoidable Delays, Tenant shall commence the Construction Work in connection with a Casualty Restoration within ninety (90) days after receipt of the Net Insurance Proceeds by the Recognized Mortgagee or Owner arising from the damage or destruction which caused the need for such Casualty Restoration and shall diligently pursue the completion of such Casualty Restoration.

(c) **Pay Down of Mortgages Prohibited.** No Mortgagee (Recognized or otherwise) shall have the right to apply any insurance proceeds paid in connection with any casualty toward payment of the sum secured by its Mortgage to the extent that this Lease requires that Tenant effect a Casualty Restoration with such proceeds.

Section 8.3 Restoration Funds.

(a) Except as may be otherwise required by any Recognized Mortgage, all Net Insurance Proceeds shall, if in an amount equal to Five Hundred Thousand Dollars ($500,000), adjusted for inflation, or less per occurrence, be paid to Tenant and applied as provided herein. If greater than Five Hundred Thousand Dollars ($500,000), adjusted for inflation, then all Net Insurance Proceeds shall be deposited with the Recognized Mortgagee, or, if none, with another Institutional Lender pursuant to a mutually acceptable trust agreement. Provided Tenant is conducting the Casualty Restoration in accordance with this Lease, the Net Insurance Proceeds shall be paid out from time to time as the Casualty Restoration progresses, upon the written request of Tenant, which request shall be accompanied by the following:

(i) A certificate signed by Tenant and the architect or engineer in charge of the Casualty Restoration, reasonably satisfactory to Owner, dated not more than fifteen (15) days prior to such request, setting forth:

(1) that the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the work specified, and stating that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of the Net Insurance Proceeds;

(2) a brief description of the services and materials;

(3) that, except for the amount described in **Section 8.3(a)(i)(1)**, there is no outstanding indebtedness actually known to the persons signing such certificate, after due inquiry, which is then due for labor, materials, or services in connection with the Casualty Restoration;

(4) that the cost, as estimated by the persons signing such certificate, of the work required to complete the Casualty Restoration does not exceed the amount of the remaining Net Insurance Proceeds, plus any amount deposited by Tenant to defray the expenses of the Casualty Restoration; and

(5) that the work described has been completed in accordance with the plans and specifications applicable thereto, in a good and workmanlike manner and in accordance with all Requirements.

(ii) Lien waivers, title insurance company reports or such other evidence, reasonably satisfactory to Owner, to the effect that there has not been filed with respect to the Premises, any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested; and

(iii) Such other documentation regarding the Casualty Restoration as Owner or the Recognized Mortgagee shall reasonably require.

(b) Tenant shall, prior to the commencement of the Casualty Restoration, furnish to Owner an estimate of the total cost of the Casualty Restoration certified by the architect or engineer in charge of the Casualty Restoration. If such cost estimate or any subsequent estimate

provided pursuant to **Section 8.3(a)** shall show that the cost of completing the Casualty Restoration is in excess of the amount of the Net Insurance Proceeds then available, Tenant shall promptly deposit with the holder of the Net Insurance Proceeds an amount equal to such excess. The amount so deposited shall be included in the Net Insurance Proceeds for all purposes of this **Article 8**.

(c) Upon compliance by Tenant with the foregoing provisions of this **Article 8**, the holder of the Net Insurance Proceeds shall pay, to Tenant or the persons named in the certificate referred to in **Section 8.3(a)**, from the Net Insurance Proceeds, an amount equal to ninety percent (90%) of the cost of the Casualty Restoration which is evidenced by the request. At the completion of each contract or subcontract in connection with the Casualty Restoration, the balance of the Net Insurance Proceeds relating to that portion of the work, to the extent of and as required to complete the payment of Casualty Restoration costs relating to that portion of the work, shall be paid to Tenant and Tenant shall provide to Owner reasonable evidence that the Casualty Restoration relating to that portion of the work has been paid for in full.

(d) If the amount of any Net Insurance Proceeds, excluding deposits made by Tenant pursuant to **Section 8.3(b)** above, shall exceed the entire cost of the Casualty Restoration, such excess, upon completion of the Casualty Restoration, shall, if this Lease shall be in full force and effect, and not in default, be disbursed to Tenant, or if this Lease is no longer in full force and effect or is in default, such excess shall be paid to and retained by Owner and shall be (i) credited against any amounts due hereunder which are in default, or (ii) deemed to be Percentage Rent hereunder to the extent that Percentage Rent was reduced during Casualty Restoration and not reimbursed from insurance proceeds and if any balance remains then, in that event, said remaining balance to Tenant as Project Revenue. Any amounts deposited by Tenant pursuant to **Section 8.3(b)** hereof shall be returned to Tenant to the extent the same are not necessary to fund the cost of the Casualty Restoration.

Section 8.4 Effect of Casualty on This Lease.

This Lease shall not terminate, be forfeited or be affected in any manner, and there shall be no reduction or abatement of Rental (except to the extent Owner receives the net proceeds of the insurance described in **Section 7.8**), by reason of damage to, or total or partial destruction of, or untenantability of, the Premises or any part thereof resulting from such damage or destruction. Tenant's Rental obligations hereunder shall continue as though the Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever. Subject to Unavoidable Delays and taking into account Tenant's Casualty Restoration obligations (including, without limitation, the effect of the casualty and the Casualty Restoration on the Tenant's ability to comply with the maintenance obligations under **Article 14** hereof), Tenant's non-Rental obligations hereunder shall continue as though the Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 8.5 Collection of Proceeds.

Each of the parties shall execute such documents as may be reasonably required to facilitate collection of any insurance proceeds paid or payable in connection with any casualty affecting the Premises.

Article 9 - Condemnation

Section 9.1 Substantial Taking.

(a) **Termination of Lease for Substantial Taking.** If all or Substantially All of the Premises are taken (excluding a taking of the fee interest in the Premises if, after such taking, Tenant's rights under this Lease are not affected and no rights of any Recognized Mortgagee are affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Tenant, Recognized Mortgagee and those authorized to exercise such right, this Lease shall terminate on the Date of Taking and the Rental and/or Impositions payable by Tenant hereunder shall be apportioned and paid to the Date of Taking.

(b) **Disbursement of Award.** If all or Substantially All of the Premises are taken or condemned as provided in **Section 9.1(a)**, the Net Condemnation Award paid or payable to Owner, Tenant or any lender or mortgagee claiming through either of them in connection with such taking or condemnation shall be paid as follows: (1) there shall first be paid to Owner an amount equal to the Net Condemnation Award multiplied by a fraction, the numerator of which is the appraised value of the Land immediately prior to such condemnation, and the denominator of which is the appraised value of the Premises immediately prior to such condemnation; (2) there shall next be paid to the Recognized Mortgagee so much of the Net Condemnation Award as shall equal the unpaid principal indebtedness secured by such Recognized Mortgagee with interest thereon at the rate specified therein to the date of payment (including any prepayment fees thereon and any so-called "yield maintenance" or "make-whole" amounts or other sums intended to assure to the Recognized Mortgagee a certain rate of return under the loan secured by the Recognized Mortgage, if any, as well as any costs payable by Tenant in connection with such Recognized Mortgage pursuant to any "swap" or other interest rate protection or hedging mechanism); and (3) the remaining Net Condemnation Award shall be disbursed to Tenant. The appraised values referred to in **Section 9.1(b)(1)** shall be determined using the appraisal process outlined in **Section 3.2(e)**, except that the appraised values shall be based upon "fair market value" and not Fair Market Rent.

(c) **Definitions.**

(i) "**Date of Taking**" means the earlier of (1) the date on which actual possession of all or Substantially All of the Premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable law or (2) the date on which title to all or Substantially All of the Premises, or any part

thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable law.

(ii) "**Substantially All of the Premises**" means such portion of the Premises as, when so taken, would leave, in Tenant's good faith determination, a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, physical constraints, zoning laws, building regulations and other Requirements then existing, readily accommodate a new or reconstructed building or buildings and other improvements of a type fully comparable to the Improvements existing at the Date of Taking. Tenant shall notify Owner, on or about the Date of Taking, in writing of its determination as to whether or not "Substantially All of the Premises has been taken. If Tenant does not determine that Substantially All of the Premises" has been taken, then this Lease shall not terminate and expire but shall continue in force and effect, subject to the other provisions of this **Article 9**. If Tenant determines that Substantially All of the Premises" has been taken, then this Lease shall terminate and expire on the Date of Taking pursuant to **Section 9.1(a)**.

(iii) "**Net Condemnation Award**" shall mean the actual amount of the award paid in connection with or arising from the acquisition or other taking of all or Substantially All of the Premises or any portion of the Premises by any authority, less all reasonable out-of-pocket expenses incurred by Owner, Tenant or Recognized Mortgagee in connection with obtaining such award, including, without limitation, all reasonable attorneys' fees and disbursements incurred in connection therewith.

Section 9.2 Less Than Substantial Taking.

(a) **Taking of Less than Substantially All of the Premises.** If less than Substantially All of the Premises are taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Tenant, any Recognized Mortgagee and the entity authorized to exercise such right, whether prior to or after the completion of the initial construction of the Project, this Lease shall continue for the remainder of the Term (subject to paragraph (b) below) without diminution of any of Tenant's obligations hereunder, but with a fair and equitable abatement of Rental and, in the event Tenant is then making payments to Owner pursuant to **Section 3.2(f)**, such payments, taking into account, amongst other things, that the Net Condemnation Award (if not sufficient for the Condemnation Restoration) is insufficient to complete the Condemnation Restoration.

(b) **Obligation to Restore the Premises**. If less than Substantially All of the Premises are taken as provided in **Section 9.2(a)**, whether prior to or after the completion of the initial construction of the Project, Tenant shall, in accordance with the provisions of this **Article 9** and **Article 2** of the Development Agreement (a copy of which is attached hereto and incorporated by reference herein as **Exhibit 8.2**; the provisions of which shall be deemed to apply to all Construction Work necessary to complete the Condemnation Restoration, to the extent the same are not inconsistent with the terms hereof) restore the remaining portion of the Premises, to the extent feasible, to the condition thereof as it existed immediately before such taking (a "**Condemnation Restoration**"), regardless of whether the Net Condemnation Award shall be sufficient therefor.

(c) **Disbursement**. If less than Substantially All of the Premises are taken as provided in **Section 9.2(a)**, the Net Condemnation Award payable to Owner, Tenant and any lender or mortgagee claiming through either of them shall be paid as follows: (1) first to the cost of the Condemnation Restoration; (2) second to Owner for payment of any amounts due and payable hereunder which are in default other than Percentage Rent; (3) third to the Recognized Mortgagee for any amounts due and payable under its Recognized Mortgage which are in default; (4) fourth to Owner for any accrued, but unpaid, Percentage Rent; (5) fifth to Recognized Mortgagee to the extent required by the Recognized Mortgage as a result of the less than Substantial Taking; and (6) sixth pursuant to **Section 9.1(b)(1)**.

(d) **Commencement of Construction Work**. Subject to Unavoidable Delays, Tenant shall commence the Construction Work in connection with a Condemnation Restoration within ninety (90) days after receipt of the Net Condemnation Award arising from the taking which caused the need for such Condemnation Restoration and shall diligently pursue the completion of such Condemnation Restoration.

(e) **Pay Down of Mortgages Prohibited**. No Mortgagee (Recognized or otherwise) shall have the right to apply any award proceeds paid in connection with any taking toward payment of the sum secured by its Mortgage to the extent that this Lease requires that Tenant effect a Condemnation Restoration with such proceeds.

Section 9.3 Restoration Funds.

(a) If in connection with a taking the Net Condemnation Funds are in excess of Five Hundred Thousand Dollars ($500,000), adjusted for inflation, then the Net Condemnation Award shall be deposited with the Recognized Mortgagee, or, if none, with an Institutional Lender pursuant to a mutually acceptable trust agreement. Except as may otherwise be required by a Recognized Mortgagee, if such Net Condemnation Funds are less than Five Hundred Thousand Dollars ($500,000) adjusted for inflation, the same shall be paid directly to Tenant to be applied as provided herein. Provided Tenant is conducting the Condemnation Restoration in accordance with this Lease, the Net Condemnation Award shall be paid out from time to time as the Condemnation Restoration progresses, upon the written request of Tenant, which request shall be accompanied by the following:

(i) A certificate signed by Tenant and the architect or engineer in charge of the Condemnation Restoration, reasonably satisfactory to Owner, dated not more than fifteen (15) days prior to such request, setting forth:

(1) that the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the work specified, and stating that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of the Net Condemnation Award;

(2) a brief description of the services and materials;

(3) that, except for the amount described in **Section 9.3(a)(i)(1)**, there is no outstanding indebtedness actually known to the persons signing such certificate, after due inquiry, which is then due for labor, materials, or services in connection with the Condemnation Restoration;

(4) that the cost, as estimated by the persons signing such certificate, of the work required to complete the Condemnation Restoration does not exceed the amount of the remaining Net Condemnation Award, plus any amount deposited by Tenant to defray the expenses of the Condemnation Restoration; and

(5) that the work described has been completed in accordance with the plans and specifications applicable thereto, in a good and workmanlike manner and in accordance with all Requirements;

(ii) Lien waivers, title company reports or such other evidence, reasonably satisfactory to Owner, to the effect that there has not been filed with respect to the Premises, any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested; and

(iii) Such other documentation regarding the Condemnation Restoration as Owner or the Recognized Mortgagee shall reasonably require.

(b) Tenant shall, prior to the commencement of the Condemnation Restoration, furnish to Owner an estimate of the total cost of the Condemnation Restoration certified by the architect or engineer in charge of the Condemnation Restoration. If such cost estimate or any

9.3, and Tenant shall, subject to the rights of any Recognized Mortgagee, be entitled to retain any remaining amount of such award.

(c) **Temporary Taking Extending Beyond the Expiration of the Term.** If the temporary taking is for a period extending beyond the Expiration of the Term, the award or payment shall first be disbursed pursuant to **Section 9.3** to be applied toward such restoration of the Improvements as may have been necessitated by such taking, and the remainder shall be equitably apportioned between Owner and Tenant as of the Expiration of the Term.

Section 9.5 Governmental Action Not Resulting in a Taking.

In case of any governmental action not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental and/or Impositions. Any award payable thereunder shall be applied (i) first to reimburse Tenant for any Construction Work performed by Tenant resulting from such governmental action and for attorneys' fees and costs related thereto as well as to Owner for its attorneys' fees and costs related thereto; provided, however, that Owner was not acting in its governmental capacity, (ii) second, any remaining amount shall be used to cure any monetary defaults under this Lease, and (iii) the remainder shall be paid to Tenant.

Section 9.6 Collection of Awards.

Each of the parties shall execute such documents as may be reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this **Article 9**.

Section 9.7 Negotiated Sale.

In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 9.8 Intention of Parties.

The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any condemnation or taking of less than Substantially All of the Premises.

Section 9.9 No Waiver.

Notwithstanding anything to the contrary contained herein, the City, acting in its governmental capacity, does not waive, and hereby reserves, its right to consent or withhold consent to any acquisition of property owned by or belonging to the City, including the Premises.

Section 9.10 Effect of Taking on This Lease.

Except as provided in **Section 9.1**, this Lease shall not terminate, be forfeited or be affected in any manner, and there shall be no reduction or abatement of Rental and/or Impositions, by reason of any taking of the Premises or any part thereof. Except as provided in **Section 9.2(a)**, Tenant's Rental and/or Imposition obligations hereunder shall continue as though the Premises had not been taken and shall continue without abatement, suspension, diminution or reduction whatsoever. Subject to Unavoidable Delays and taking into account Tenant's Condemnation Restoration obligations, Tenant's non-Rental obligations hereunder shall continue as though the Premises had not been taken and shall continue without abatement, suspension, diminution or reduction whatsoever.

Article 10 - Sale of the Project, Transfer and Subletting

Section 10.1 Purpose of Restrictions on Transfer.

Subject to the provisions of this Article 10, this Lease is granted to Tenant solely for the purpose of development of the Land and its subsequent use in accordance with the terms hereof, and not for speculation in landholding. Tenant recognizes that, in view of the importance of the development of the Land to the general welfare of the community, the qualifications and identity of Tenant are of particular concern to the community and Owner. Tenant further recognizes that it is because of such qualifications and identity that Owner is entering into this Lease with Tenant and, in so doing, is further willing to accept and rely on the obligations of Tenant for the faithful performance of all undertakings and covenants by it to be performed.

Section 10.2 Definitions.

(a) "**Assignment**" means a sale, exchange, assignment, transfer or other disposition by Tenant of all or a portion of Tenant's Interest in the Premises, whether by operation of law or otherwise, which is not a Transfer or a Master Sublease. The creation or granting of a Mortgage shall not constitute an Assignment or a Transfer.

(b) "**Assignee**" means a purchaser, assignee, transferee, or other Person which acquires all or any portion of Tenant's Interest in the Premises.

(c) "**Back Rent**" means the amount of unpaid Rental (other than accrued, but unpaid, Percentage Rent) as of the Reinstatement Date, including accrued simple interest on the unpaid Rental (other than accrued, but unpaid, Percentage Rent) from the date due at the default rate specified in the Recognized Mortgage, as well as reasonable attorneys' fees and costs at the trial court and all appellate levels and other expenses incurred by Owner in connection with enforcing this Lease.

(d) "**Equity Interest**" means, with respect to any entity, (1) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (2) the legal (other than as a nominee) or beneficial ownership of any partnership, Membership Interest or other voting

or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (3) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust and (4) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

(e) "**Sale of the Project**" means (i) any Assignment or Master Sublease by Tenant of fifty percent (50%) or more of Tenant's Interest in the Premises or (ii) any change, by operation of law or otherwise, in the ownership of an Equity Interest in Tenant wherein such change in ownership, directly or indirectly, produces any change in the Substantial Controlling Interest of Tenant.

(f) "**Master Sublease(s)**" means any sublease (including a sub-sublease or any further level of subletting) of all or any portion of the Premises, but does not include subleases serving the functional equivalent of a Recognized Mortgage or subleases to actual space users or other subleases entered into in the ordinary course of business for parking, retail, office or other space at the Premises; provided, however, that in the event of a sublease of greater than Twenty Percent (20%) of the parking on the Premises (other than to subtenants of space in the Project to meet their parking needs), Owner shall have the right to approve the subtenant.

(g) "**Master Subtenant**" means any party granted rights by Tenant under a Master Sublease or by any other Master Subtenant (immediate or remote) under a Master Sublease.

(h) "**Transfer**" means (i) any change, by operation of law or otherwise, in the ownership of an Equity Interest in Tenant, wherein such change in ownership, directly or indirectly, does not produce any change in the Substantial Controlling Interest of Tenant, or (ii) any transaction or series of transactions, by operation of law or otherwise, including, without limitation, the issuance of additional Equity Interests or the direct or indirect revision of the beneficial ownership or control structure of the management or operation of Tenant or any direct or indirect constituent entity of Tenant, which, in either case, does not produce any change, by operation of law or otherwise, in the Substantial Controlling Interest in Tenant.

(i) "**Transferee**" means a Person to which a Transfer is made.

Section 10.3 Restrictions on Sale of the Project or Transfer.

(a) **No Sale of the Project or Transfer Prior to CO Date.** There shall not be any Sale of the Project or Transfer prior to the CO Date other than as permitted by the provisions in **Section 10.4** and other than a Foreclosure Transfer.

(b) **No Sale of the Project or Transfer to a Foreign Instrumentality.** Notwithstanding anything in this Lease to the contrary, there shall not be any Sale of the Project or any Transfer to a Foreign Instrumentality.

(c) **Restriction on Sale of the Project.** Subject to the provisions of **Section 10.3(a)** and **(b)** herein, Tenant may not effect a Sale of the Project except to a permitted buyer (the "Permitted Buyer") which shall mean any of the following:

(i) a real estate investor or real estate investment entity (including without limitation, a real estate investment trust) investing funds for its own account,

(ii) a pension fund, pension fund advisor or investment advisor investing on behalf of others, or

(iii) a developer who either invests, for its own account (with or without additional equity investors investing with said developer), in or develops commercial real estate projects located within or outside the United States;

provided, however, that such Permitted Buyer in fact meets or exceeds and certifies to Tenant and Owner that it meets or exceeds the criteria described in subsections (A) through (G) below. For purposes of the Sale of the Project being permitted under this **Section 10.3(c)**, Owner shall rely solely on Permitted Buyer's certification that the Permitted Buyer meets such criteria, together with the financial statements described in (A) below. At any time within the thirty (30) day period described in the last paragraph of this **Section 10.3(c)**, Owner shall be entitled to engage an independent accounting firm to review the books, records and other information upon which the certifications and financial statements described below were based for the purpose of determining whether the certifications or the financial statements described below are accurate and complete.

(A) Together, with the Permitted Buyer's Affiliates, has equity ownership in real estate (or, in the case of pension fund advisors or investment advisors, current real estate equity under management) plus cash and/or cash equivalent of at least Twenty Million Dollars ($20,000,000), adjusted for inflation, [of which not less than Ten Million Dollars ($10,000,000), adjusted for inflation, must be equity ownership in real estate] (such real estate may either be owned or, in the case of pension fund advisors or investment advisors, under management by Affiliates owned or controlled by such Permitted Buyer or its principals), as set forth in the most recent year end financial statements of the persons or entities used to arrive at said Twenty Million Dollars ($20,000,000), adjusted for inflation. Said financial statements shall be examined by an independent certified public accounting firm and shall be accompanied by such independent certified public accounting firm's "examined special report", in accordance with attestation standards established by the American Institute of Certified Public

Accountants, stating that the sum of the Permitted Buyer's equity ownership in real estate based upon current fair market value and cash or cash equivalent (of which at least Ten Million Dollars ($10,000,000), adjusted for inflation, consists of equity ownership in real estate) exceeds Twenty Million Dollars ($20,000,000), adjusted for inflation, (or, if such examined financial statements are not available, such equity may alternatively be established by evidence reasonably satisfactory to Owner's independent certified public accounting firm, however, such alternative evidence must be submitted to Owner and approved by Owner's independent certified public accounting firm prior to any Sale of the Project being effective. Such approval shall be deemed given if the alternative evidence has not been disapproved in writing, with reasons given for disapproval, within forty-five (45) days of all such evidence being submitted to Owner);

(B) Is not (nor is any of the individuals or entities included for purposes of the calculation of the Twenty Million Dollars ($20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above), a Foreign Instrumentality;

(C) Must not have been (nor are any of the individuals or entities included for purposes of the calculation of the Twenty Million Dollars ($20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) within the seven (7) years preceding the date of the Sale of the Project, in an adversarial relationship in litigation or are not in an adversarial relationship in litigation currently pending with Owner, in both cases including but not limited to, litigation with respect to ordinances, charter provisions or resolutions of the City, including building codes or tax code violations (but excluding zoning appeals and appeals of property tax assessments);

(D) Must not be owned, controlled or run by entities or individuals (including for this purpose, all entities and individuals included for purposes of the calculation of the Twenty Million Dollars ($20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or domestic jurisdiction;

(E) Must not (including for this purpose all entities and individuals included for purposes of the calculation of the Twenty Million Dollars ($20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) have filed or been discharged from bankruptcy, reorganization or insolvency proceedings within the past seven years (bankruptcy filings by Affiliates shall not disqualify an assignee, unless such Affiliates were included for purposes of determining the Twenty Million Dollars ($20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent calculation described in (A) above);

(F) Must not in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the operating agreement of any limited liability company, the partnership agreement and partnership certificate for any partnership, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (x) the violent overthrow of, or armed resistance against, the U.S. Government; or (y) genocide, violence, hatred or animosity toward persons based solely on their race, religion, creed, color, sexual orientation or national origin; and

(G) Unless the Permitted Buyer is publicly held, must have an entity within the group of entities included for purposes of the calculation of the Twenty Million Dollars ($20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above which has not less than a five (5) years operating history or must have entered into a Management Agreement with an Acceptable Operator.

In any Sale of the Project under this **Section 10.3(c)**, Tenant agrees to provide Owner, at least thirty (30) days in advance of the actual Sale of the Project, with the certifications of the Permitted Buyer referred to above, together with the financial statements described in (A) above, and if the Permitted Buyer is a real estate investment trust that is not publicly held, the identity of the principal owners of such trust and the proposed documentation required by **Section 10.5** below; provided, however, such delivery shall be for informational purposes only and shall not require any consent or other action by Owner (other than the approval of Owner of the form of assumption document as contemplated by **Section 10.6**) below which approval shall be deemed given unless Owner responds in writing within ninety (90) days of receipt specifying changes to such document).

(d) **Foreclosure Transfer.** A Foreclosure Transfer pursuant to the provisions of **Section 11.12** shall not require the consent of Owner.

Section 10.4 Transfers.

Tenant represents and warrants that Tenant has not made, created or suffered any Transfers as of the Commencement Date and that the entities and individuals who or which have an ownership interest in Tenant on the Commencement Date are listed, together with their percentage and character of ownership, in **Exhibit 10.4** attached hereto and incorporated by reference herein. Except as permitted, pursuant to **Sections 10.4(a)-(c)** herein, no Transfer may or shall be made, suffered or created by Tenant, its successors, assigns or transferees without complying with the terms of **Sections 10.5** and **10.6** and other sections herein applicable thereto. The following Transfers shall be permitted hereunder without the consent of Owner or any other action by Owner:

(a) Any Transfer of a Member's interest in Tenant or the admission of additional Members to Tenant provided that, after all such Transfers, the previous Managing Member(s) of Tenant shall maintain, under the operating agreement of Tenant, control over the development and day to day operation and leasing of the Project (subject, however, to any contract made with an Acceptable Operator);

(b) Any Transfer by a Person who is a Member of Tenant of his Membership interest in Tenant into a charitable trust, a blind trust, or for estate planning purposes; and

(c) A Transfer from the holder of an Equity Interest in Tenant (1) to his or her mother, father, spouse, brother, sister or child (an **"Immediate Family Member"**), or any combination thereof, of that holder; (2) to a trust whose sole beneficiary(ies) is (y) a holder of an Equity Interest in Tenant or (z) an Immediate Family Member of a holder of an Equity Interest in Tenant; (3) to a personal representative of the estate of a deceased holder of an Equity Interest in Tenant; (4) to a Person in which a holder of an Equity Interest in Tenant holds, directly or indirectly, the Substantial Controlling Interest; or (5) to any other holder of an Equity Interest in Tenant in which Transferee does not become (unless such Transferee already was) the holder of a Substantial Controlling Interest as a result of such Transfer; (for purposes of this **Section 10.4(c)** only, the term "Transfer" shall include a transfer of an Equity Interest in a Person or Persons having an Equity Interest, directly or indirectly, in Tenant).

(d) If, at the time of a requested Transfer under **Sections 10.4(a)** or **10.4(b)**, Tenant is a corporation or other type of entity, then the references to limited liability company shall be changed to the type entity in question and the Membership Interest being transferred shall be changed to the appropriate ownership interest.

Any consent to a Transfer shall not waive any of Owner's rights to consent to a subsequent Transfer. Any Transfer made in violation of the terms hereof shall be null and void and of no force and effect.

Section 10.5 Required Notices.

(a) Tenant shall give notice to Owner of every proposed Transfer and/or Sale of the Project, which notice shall contain the following information: (i) the name and address of proposed Transferee; (ii) the name and address of proposed transferor; (iii) the nature of the transaction; (iv) the percentage interest conveyed; and (v) such other additional information as Owner shall reasonably request in connection with the proposed Transfer and/or proposed Sale of the Project; provided, however, Owner shall make such request within ten (10) Business Days after receipt of Tenant's information. In addition, with respect to any proposed Transfer other than those described in **Sections 10.4(a)** through **10.4(c)** above and with respect to any Sale of the Project, Tenant shall give or cause to be given to Owner written notice requesting approval of the proposed Transfer and/or proposed Sale of the Project and submit all information necessary for Owner to make an evaluation of the proposed Transferees and/or proposed purchaser of a Substantial Controlling Interest and the proposed Transfer and/or Sale of the Project and to obtain Owner's consent to same. Owner shall, within sixty (60) days of its receipt of such information, advise Tenant if it shall consent to same. If Owner shall fail to respond during such sixty (60) days, it shall be deemed to have consented to the proposed Transfer and/or proposed Sale of the Project in question. If Owner shall not consent to a proposed Transfer and/or proposed Sale of the Project, Owner shall state all of its reasons for such disapproval in its notice to Tenant withholding its consent.

(b) In addition to all other obligations imposed upon Tenant hereunder, Tenant shall reimburse Owner, upon demand, for any reasonable costs incurred by Owner in connection with any such Transfer and/or Sale of the Project and/or Master Sublease, including without limitation, the out-of-pocket cost of making inquiries and investigations into the acceptability of the proposed Transferee and/or purchaser of a Substantial Controlling Interest and/or Master Sublessee, and the reasonable legal costs incurred, if any, in connection therewith.

Section 10.6 Effectuation of Transfers and Sales of the Project.

No Sale of the Project or Transfer of the nature described in **Sections 10.3** and **10.4** shall be effective unless and until:

(a) executed copies of the documents and other agreements between the parties to effectuate the Sale of the Project and/or Transfer are delivered to Owner; and

(b) in the case of a Sale of the Project, the entity to which a Sale of the Project is made, by instrument in writing and in form and substance satisfactory to Owner and in form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of Owner, expressly assume all of the obligations of Tenant under this Lease and agree to be personally liable and subject to all conditions and restrictions to which Tenant is subject; provided, however, that a Recognized Mortgagee shall not be liable under this Lease with respect to any matter arising prior to its actual ownership of the Project, except:

(i) unpaid Rental and/or Impositions (but Percentage Rent, Back Rent and/or Impositions only to the extent the Recognized Mortgagee is obligated to pay such Percentage Rent; Back Rent and/or Impositions pursuant to **Article 11**), other monetary obligations of Tenant under this Lease, including defaults which can be cured by the payment of money and are in a liquidated amount, non-monetary defaults which a Recognized Mortgagee can cure or remedy without title and possession, (all such defaults to include any then existing event, matter or occurrence which, with the passage of time or the happening of future events, matters or occurrences, becomes an Event of Default),

(ii) as provided in **Article 11** (it being understood, nevertheless, that the limitation of any such liability of Recognized Mortgagee shall not impair, impede or prejudice any other right or remedy available to Owner for default by Tenant and/or the then current transferee).

Recognized Mortgagee shall not be liable under this Lease with respect to any matter arising subsequent to the period of its actual ownership of the Project; provided however, that the fact that Recognized Mortgagee has no liability for matters arising subsequent to the period of its actual ownership shall not relieve or except any subsequent transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit Owner of or with respect to any rights, remedies or controls with respect to the Project or the construction of the Improvements.

Section 10.7 Office and Retail Master Subleases.

Subject to the terms and conditions of this Lease, Tenant shall have the right to enter into individual office, retail, parking and commercial subleases at any time and from time to time during the term of this Lease with such subtenants, but only for uses that are not prohibited under **Article 6**, and upon such commercially reasonable terms and conditions as Tenant shall, in its sole discretion, deem fit and proper. At Owner's request, Tenant shall allow Owner to review and inspect any and all subleases for individual office, retail, commercial and parking spaces in the Project. Upon receipt of a written request from Tenant or any sublessee under an office or retail sublease, Owner shall enter into attornment and non-disturbance agreements with sublessees in the office, retail, commercial and parking spaces of the Premises. Such attornment and non-disturbance agreements shall be entered into upon such terms and conditions as are customary for such agreements.

Article 11 - Mortgages

Section 11.1 Right to Mortgage.

(a) Except as otherwise expressly provided for in this Lease, Tenant shall not mortgage, pledge, hypothecate or otherwise encumber Tenant's Interest in the Premises.

(b) Tenant shall have the right to mortgage, pledge, hypothocate or otherwise encumber Tenant's Interest in the Premises to secure Debt by a Recognized Mortgage(s) without Owner's approval.

Section 11.2 Definitions.

(a) "**Debt**" means the principal amount of debt and interest thereon secured by Tenant's Interest in the Premises, together with any other amounts owed by Tenant under a Recognized Mortgage to a Recognized Mortgagee. In addition, Debt shall include any debt obtained in connection with (i) a required Casualty Restoration or Condemnation Restoration, as applicable, if the Net Insurance Proceeds are, or the Net Condemnation Award is, inadequate to achieve the required Casualty Restoration or Condemnation Restoration, as applicable and (ii) any advances made by a Recognized Mortgagee with respect to Tenant's Interest in the Premises for the payment of taxes, assessments, insurance premiums or other costs incurred for the protection of Tenant's Interest in the Premises or the liens created by the Recognized Mortgage, and reasonable expenses incurred by such Recognized Mortgagee, by reason of a default by Tenant under such Recognized Mortgage or under this Lease.

(b) "**Mortgage**" means any mortgage or deed of trust, and all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof, that constitutes a lien on all or a portion of Tenant's Interest in the Premises, and any security interest in or assignment of the Lease or the rents, issues or profits related thereto.

(c) "**Recognized Mortgage**" means a Mortgage (i) that is held by a Person (other than an Affiliate) which is an Institutional Lender, (ii) which expressly provides that it is subject and subordinate to the terms of this Lease and, except as expressly set forth herein regarding Owner's subordination in certain circumstances of its right to Percentage Rent, to Owner's Interest in the Premises, and (iii) a photostatic copy of which is, following the execution and delivery thereof, delivered to Owner, together with a certification by Tenant confirming that the photostatic copy is a true copy of the Mortgage and a certification by the Recognized Mortgagee thereunder confirming the address of such Recognized Mortgagee for notices. Notwithstanding anything contained herein to the contrary, an Affiliate may be part of a lending group constituting a Recognized Mortgagee for so long as such Affiliate (i) does not own more than a forty-nine percent (49%) beneficial interest in the debt held by such Recognized Mortgagee with respect to Tenant or the Project and (ii) is not the lead lender or agent for the lending group.

Section 11.3 Effect of Mortgages.

(a) **Owner's Interest.** No Mortgage shall extend to or be a lien or encumbrance upon, Owner's Interest in the Premises or any part thereof or any appurtenant rights thereto which have not been granted to Tenant under this Lease. A Mortgage may extend to and be a lien or encumbrance upon the entire Tenant's Interest in the Premises.

(b) **Mortgagee's Rights Not Greater than Tenant's.** The execution and delivery of a Recognized Mortgage shall not give or be deemed to give a Recognized Mortgagee any greater rights against Owner than those granted to Tenant hereunder, except as otherwise expressly provided in this Lease.

Section 11.4 Notice and Right to Cure Tenant Defaults.

(a) **Notice to Recognized Mortgagee.** Owner shall give to the Recognized Mortgagee, in the manner provided by the provisions of **Section 26.1** at such address as such Recognized Mortgagee may confirm to Owner in the certification delivered to Owner pursuant to **Section 11.2(c)** or given by notice to Owner in accordance with **Section 26.1**, a copy of each notice of Default at the same time as it gives notice of Default to Tenant, and no such notice of Default shall be deemed effective with respect to any Recognized Mortgagee unless and until a copy thereof shall have been so received by or refused by such Recognized Mortgagee, as applicable. Owner shall also give the Recognized Mortgagee notice ("**Notice of Failure to Cure**") in the event Tenant fails to cure a Default within the period, if any, provided in this Lease for such cure, promptly following the expiration of such period (i.e., an Event of Default). Only Events of Default expressly described in the Notice of Failure to Cure may give rise to a termination of this Lease by Owner pursuant to its termination rights hereunder.

(b) **Right and Time to Cure.** The Recognized Mortgagee shall have a period of sixty (60) days after receipt of the Notice of Failure to Cure, in the case of any Event of Default, to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured, subject to the provisions of **Section 25.1(b)**. Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Tenant. Anything contained in this Lease to the contrary notwithstanding, Owner shall have no right to terminate this Lease prior to the delivery of a Notice of Failure to Cure or following the delivery of a Notice of Failure to Cure if, within sixty (60) days after receipt of Owner's Notice of Failure to Cure, any Recognized Mortgagee shall:

(i) notify Owner of such Recognized Mortgagee's desire to cure the matter described in such Notice of Failure to Cure;

(ii) pay or cause to be paid all Rental and/or Impositions then due and in arrears as specified in the Default Notice from Owner to such Recognized Mortgagee (provided, however, that such Recognized Mortgagee shall not be required to pay or cause to be paid any amounts payable by Tenant under **Section 28.1(b)** to the extent such amounts relate to any Lease Year other than the Lease Year for which the most recent Annual Financial Statements have been made available to Owner; provided further, however, in the event that the Recognized Mortgagee (A) provides notice to Owner pursuant to **Section 11.4(b)(i)**, and (B) files a foreclosure within sixty (60) days of its receipt of the Notice of Failure to Cure and diligently prosecutes such

foreclosure, the Recognized Mortgagee's curative obligations with regard to an Event of Default as provided in this **Section 11.4(b)(ii)** shall be excused, subject to the provisions of **Section 11.4(b)(iv)**, which shall be applicable during the pendency of a foreclosure);

(iii) cure all Defaults by Tenant in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the payment of Rental and/or Impositions), or if any such Default is of such a nature that it cannot reasonably be remedied within such sixty (60) day period (but is otherwise reasonably susceptible to cure), Recognized Mortgagee shall, (i) within sixty (60) days after the giving of such Notice of Failure to Cure, advise Owner of such Recognized Mortgagee's intention to institute all steps (and from time to time, as reasonably requested by Owner, such Recognized Mortgagee shall advise Owner of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same, it being acknowledged by Owner that, if possession or control of the Premises is required to effect such cure, the diligent prosecution of a foreclosure of a Recognized Mortgage, and the continuing efforts by such Recognized Mortgagee to effect such cure following completion of such foreclosure, shall constitute a part of the steps necessary to remedy such Default. Nothing in this Lease shall require a Recognized Mortgagee or its Designee or Foreclosure Transferee to cure any default of Tenant not reasonably susceptible of being cured by such Person (*e.g.*, defaults stated in **Section 25.1(e), (f), (g), (h), (j) and (k)**; and

(iv) if such Recognized Mortgagee files a foreclosure, during the pendency of such foreclosure, pays or causes to be paid all current monthly Rental and/or Impositions due beginning upon the filing of such foreclosure; provided, however, Percentage Rent shall be due only if, and to the extent that, Project Revenues are sufficient to pay Percentage Rent after the payment of Operating Expenses and Debt Service, and the Recognized Mortgagee shall provide to Owner a monthly statement setting forth Project Revenues and Operating Expenses.

Notwithstanding the foregoing provisions of this **Section 11.4(b),** following the delivery of a Notice of Failure to Cure, within five (5) Business Days following the written request of any Recognized Mortgagee (which request may be contained in the notice from such Recognized Mortgagee to Owner given pursuant to **Section 11.4(b)(i)**), Owner shall deliver to such Recognized

Mortgagee a statement certifying the aggregate amount of Rental and/or Impositions then due and in arrears hereunder and the estimated per diem increase in such amount, but no such request shall increase any of the time periods provided for in this **Section 11.4(b)**.

(c) **Acceptance of Mortgagee's Performance.** Owner shall accept performance by a Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(d) **Other Rights of Mortgagees.** Notwithstanding any other provision of this Lease, no payment made to Owner by any Mortgagee shall constitute the Mortgagee's agreement that such payment was, in fact, due under the terms of this Lease.

(e) **Owner's Self-Help Rights.** Notwithstanding the foregoing provisions of this **Section 11.4**, if a Recognized Mortgagee fails (for any reason) to cure any Default by Tenant described in **Section 11.4(b)(iii)** within sixty (60) days following receipt of the Notice of Failure to Cure regarding such Default, then Owner may upon notice, but shall be under no obligation to, perform the obligation of Tenant the breach of which gave rise to such Default, without waiving or releasing Tenant from its obligations with respect to such Default. Tenant hereby grants Owner access to the Premises in order to perform any such obligation. Any amount paid by Owner in performing Tenant's obligations as provided in this **Section 11.4(e)**, including all costs and expenses incurred by Owner in connection therewith, shall constitute Rental hereunder and shall be reimbursed to Owner within thirty (30) days following Owner's demand therefor, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(f) **Acceptance of Owner's Performance.** Tenant shall cause all Mortgages to contain a provision requiring that all Mortgagees shall accept performance by Owner, within the applicable grace periods available to Tenant, to cure defaults under any covenant, condition or agreement on Tenant's part to be performed under such Mortgages with the same force and effect as though performed by Tenant.

Section 11.5 Recognized Mortgagee or its Designee as Tenant Under this Lease.

If a Recognized Mortgagee or its Designee becomes Tenant under this Lease, then, in that event, such Recognized Mortgagee or such Designee shall, during the period of its tenancy:

(a) pay all current Rental and/or Impositions less the Percentage Rent commencing as of the date such Recognized Mortgagee or such Designee becomes Tenant (the "**Reinstatement Date**"); Percentage Rent which was due for periods prior to the Reinstatement Date shall be forgiven and shall not thereafter be payable;

(b) comply with all the covenants and conditions of this Lease, except that the payment of Rental and/or Impositions shall be as specified in this **Section 11.5**;

(c) pay all Back Rent and/or Impositions as of the Reinstatement Date in the following manner:

(i) Monthly, but only to the extent sufficient funds are received by such Recognized Mortgagee or such Designee from Project Revenue after deducting Operating Expenses, Debt Service (which shall be retained by the Recognized Mortgagee or its Designee) and amounts paid in **Section 11.5(a)**;

(ii) Back Rent and/or Impositions shall continue as an obligation of the Recognized Mortgagee or its Designee until paid in full; and

(d) pay all Percentage Rent which accrues subsequent to the Reinstatement Date as follows:

(i) For so long as the Recognized Mortgagee or its Designee is Tenant under this Lease, Percentage Rent shall be payable monthly, but only to the extent that funds are available therefor after making the payments set forth in **Section 11.5(a), (b) and (c)** above. Percentage Rent shall be waived (and not accrued) to the extent that Project Revenue in any Lease Year is not sufficient to pay Percentage Rent after payments have been made with respect to amounts set forth in **Sections 11.5(a)-(c)**.

(ii) Upon a Foreclosure Transfer, any amounts of Percentage Rent accrued, but unpaid, shall be forgiven.

Section 11.6 Execution of New Tenant's Documents.

(a) **Notice of Termination.** If this Lease is terminated by reason of an Event of Default, or by reason of the rejection thereof by or on behalf of Tenant in bankruptcy or for any other reason, Owner shall give prompt notice thereof to each Recognized Mortgagee.

(b) **Request for and Execution of New Tenant's Documents.** If, within sixty (60) days of receipt of the notice referred to in **Section 11.6(a)**, the Recognized Mortgagee shall request, in writing, a new lease (the "**New Tenant's Documents**"), to the Recognized Mortgagee or to a Designee or Foreclosure Transferee identified in such request (other than a Foreign Instrumentality (if the Premises are owned by the City or any instrumentality of the Agency or the City) or an Affiliate of Tenant), then, subject to the provisions of **Sections 11.6(c)** and **11.7**, within ninety (90) days after Owner shall have received such request, Owner shall execute and deliver New Tenant's Documents covering the remainder of the Term to the Recognized Mortgagee or to any Designee or Foreclosure Transferee that has satisfied the requirements set forth in **Section 10.3, 10.4**, and such Recognized Mortgagee (or its Designee or Foreclosure Transferee) shall execute and deliver such New Tenant's Documents to Owner within thirty (30) days following receipt thereof by such

Recognized Mortgagee (or Designee or Foreclosure Transferee). Such New Tenant's Documents shall be effective upon the execution thereof by both Owner and such Recognized Mortgagee or its Designee or Foreclosure Transferee. The New Tenant's Documents shall be at the then current Rental and/or Impositions (subject, however, to **Sections 11.4** and **11.5** as to Percentage Rent, Back Rent and/or Impositions) and otherwise contain all of the covenants, conditions, limitations and agreements, and all of Tenant's rights and remedies, contained in this Lease (including, without limitation, a conveyance by Owner of all then-existing Improvements); provided, however, Owner shall not be deemed to have represented or covenanted that such New Tenant's Documents are superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant; provided further, however, such New Tenant's Documents will have the same priority over any encumbrances on the estate of Owner which Tenant has or had by virtue of this Lease and the Recognized Mortgagee (or its Designee or Foreclosure Transferee) will not have any obligation to perform any acts under this Lease which shall at such time have already been performed by Tenant. Simultaneously with the making of such New Tenant's Documents, the party obtaining such New Tenant's Documents and all other parties junior in priority of interest in the Premises shall, at the option the Recognized Mortgagee or its Designee or Foreclosure Transferee, execute, acknowledge and deliver such new instruments, including new mortgages and new Master Subleases, as applicable, and shall make such payments and adjustments among themselves, as shall be necessary and proper for the purposes of restoring to each of such parties as nearly as reasonably possible, the respective interest and status with respect to the Premises which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

Concurrently with the execution and delivery of such New Tenant's Documents, Owner shall assign to the tenant, declarant or co-declarant (the "**New Tenant**") named therein all of its right, title and interest in and to moneys (including, without limitation, (i) subrents collected which have not been applied or are not being held for application to Rental and/or Impositions and the costs incurred by Owner to operate, maintain and repair the Premises and (ii) insurance and condemnation proceeds which have not been applied or are not being held for application to the costs incurred by Owner to restore the Premises), if any, then held by or payable to Owner which Tenant would have been entitled to receive but for termination of this Lease or Owner's exercise of its rights upon the occurrence of an Event of Default; provided, however, that Owner shall not be required to assign such moneys to such New Tenant unless and until such New Tenant shall have cured all Events of Default that existed under this Lease prior to the execution of such New Tenant's Documents to the extent such Events of Default are reasonably susceptible to cure by such New Tenant.

Upon the execution and delivery of New Tenant's Documents under this **Section 11.6(b)**, all Master Subleases which theretofore may have been assigned to Owner shall be assigned and transferred, without recourse, representation or warranty, by Owner to the New Tenant named in such New Tenant's Documents. Between the date of termination of this Lease and the date of execution and delivery of the New Tenant's Documents (but not later than thirty (30) days following receipt of such New Tenant's Documents by such Recognized Mortgagee, as provided in **Section 11.6(b)**), if a Recognized Mortgagee shall have requested such New Tenant's Documents as provided in this **Section 11.6(b)**, Owner shall not enter into any new Master Subleases, cancel or modify any then existing Master Subleases or accept any cancellation, termination or surrender thereof (unless such

termination shall be effected as a matter of law on the termination of this Lease) without the written consent of a Recognized Mortgagee, except as permitted in the Master Subleases.

For so long as the Recognized Mortgagee (or its Designee or Foreclosure Transferee) shall have the right to enter into a new ground lease with Owner pursuant to this **Section 11.6(b)**, Owner shall not enter into a new lease of the Land with any Person other than the Recognized Mortgagee (or its Designee or Foreclosure Transferee), without the prior written consent of the Recognized Mortgagee. The provisions of **Section 11.6(b)** shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if **Section 11.6(b)** were a separate and independent contract made by Owner, Tenant and any Recognized Mortgagee and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new ground lease if such Recognized Mortgagee (or its Designee or Foreclosure Transferee) has requested the New Tenant's Documents within sixty (60) days after receipt of the aforesaid notice from Owner, the Recognized Mortgagee may use and enjoy the leasehold estate created by this Lease without hindrance by Owner. The aforesaid agreement of Owner to enter into a new ground lease with the Recognized Mortgagee shall be deemed a separate agreement between Owner and such Recognized Mortgagee, separate and apart from this Lease as well as a part of this Lease, and shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by any party.

(c) **Conditions Precedent to Owner's Execution of New Tenant's Documents.** The provisions of **Section 11.6(b)** notwithstanding, Owner shall not be obligated to enter into New Tenant's Documents with a Recognized Mortgagee or its Designee or Foreclosure Transferee unless:

(i) the Recognized Mortgagee or its Designee or Foreclosure Transferee shall pay to Owner, concurrently with the execution and delivery of the New Tenant's Documents, all unpaid Rental and/or Impositions due under this Lease (subject, however, to **Sections 11.4** and **11.5** as to Percentage Rent, Back Rent and/or Impositions) up to and including the date of the commencement of the term of the New Tenant's Documents and all reasonable out-of-pocket expenses, as evidenced by receipted bills therefor, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, the termination of this Lease and the preparation of such New Tenant's Documents, less the net revenue of the Premises actually received by Owner from the date of termination of this Lease to the date of execution of the New Tenant's Documents, with any excess of the total of such sums and expenses to be applied by Owner to the payment of Base Rent and Percentage Rent (subject to **Sections 11.4** and **11.5**) due under such New Tenant's Documents; and

(ii) in the case of a Default or Event of Default, the Recognized Mortgagee or its Designee or Foreclosure Transferee shall promptly after execution of the New Tenant's Documents, satisfy all obligations and cure all Events of Defaults existing or continuing under this Lease at the time of its termination (as though the Term had not been terminated) and which are reasonably susceptible to cure by such Recognized Mortgagee (or its Designee or Foreclosure Transferee).

(d) **No Waiver of Default.** The execution of New Tenant's Documents shall not constitute a waiver of any Default existing or continuing immediately before termination of this Lease and, except as to a Default which is not reasonably susceptible of being cured by the Recognized Mortgagee or its Designee or Foreclosure Transferee (e.g., the insolvency of Tenant), the New Tenant under the New Tenant's Documents shall cure, within the applicable periods in such New Tenant's Documents (which periods shall be identical to the periods set forth in **Section 25.1**), all Defaults existing under this Lease immediately before its termination. Nothing in this Lease shall require a Recognized Mortgagee or its Designee or Foreclosure Transferee, as a condition to the exercise of its right to enter into New Tenant's Documents, to cure any default of Tenant not reasonably susceptible of being cured by such Person (e.g., a bankruptcy-related default).

(e) **Payments under Lease.** If the Recognized Mortgagee or its Designee or Foreclosure Transferee shall enter into New Tenant's Documents pursuant to this Article and if, upon such termination of this Lease, Tenant, but for such termination, would have been entitled to receive any amount pursuant to the provisions of this Lease, then Owner agrees that, subject to any rights of setoff Owner may have, the same shall be paid to the Recognized Mortgagee or its Designee or Foreclosure Transferee, as the New Tenant under the New Tenant's Documents, in the same manner and to the same extent as it would have been paid or apply the same to or for the benefit of the Recognized Mortgagee or its Designee or Foreclosure Transferee as if this Lease had not been terminated.

(f) The provisions of this **Section 11.6** shall survive the Expiration of the Term.

Section 11.7 Application of Proceeds from Insurance or Condemnation Awards.

To the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to the Premises, or the proceeds of an award paid in connection with a taking referred to in **Article 9**, be applied to restore any portion of the Premises, no Mortgagee shall have the right to apply the proceeds of insurance or awards toward the payment of the sum secured by its Mortgage, except for the reasonable costs of collection thereof.

Section 11.8 Appearance at Condemnation Proceedings.

A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

Section 11.9 Rights Limited to Recognized Mortgagees.

The rights granted to a Recognized Mortgagee under the provisions of this Lease shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

Section 11.10 No Surrender or Modification.

Owner agrees not to accept a voluntary surrender, termination or modification of this Lease at any time while such Recognized Mortgage(s) shall remain a lien on Tenant's leasehold estate. It is further understood and agreed that any such Recognized Mortgagee(s) shall not be bound by any surrender, termination or modification of this Lease unless such surrender, termination or modification is made with the prior written consent of such Recognized Mortgagee, and this Lease shall not terminate by merger or otherwise as long as the lien of the Recognized Mortgage(s) remains undischarged. The foregoing is not meant to and shall not prohibit a sale of the fee to Tenant so long as no merger of estates shall result therefrom unless all Recognized Mortgagees are satisfied concurrently therewith. Notwithstanding the foregoing, Owner's waiver or postponement of any obligation of Tenant or any remedy Owner may have under this Lease shall not constitute a modification for purposes hereof.

Section 11.11 Recognition by Owner of Recognized Mortgagee Most Senior in Lien.

If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized as having rights under **Sections 11.4, 11.5** or **11.6**, unless such first priority Recognized Mortgagee has designated in writing to Owner a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

Section 11.12 Recognized Mortgagee's Assignment Rights.

(a) Notwithstanding anything contained in **Article 10** or elsewhere in this Lease to the contrary, a Foreclosure Transfer (other than to a Foreign Instrumentality for so long as the City is Owner) shall not require the consent of Owner or constitute a breach of any provision of or a Default under this Lease. Upon any such Foreclosure Transfer, Owner shall recognize the Foreclosure Transferee as Tenant hereunder, provided, however, that such new Tenant shall deliver to Owner, or shall cause to be delivered to Owner, within thirty (30) days after the execution thereof, the appropriate instruments provided in **Sections 10.5 and 10.6** (subject to the provisions of **Section 11.12(b)**).

(b) Except as expressly provided otherwise in this Lease, no Mortgagee or other Foreclosure Transferee shall be liable under this Lease unless and until such time as it becomes Tenant hereunder, and then only for so long as it remains Tenant hereunder.

(c) Definitions:

(i) "**Foreclosure Transfer**" means a transfer occurring as a result of the foreclosure of a Recognized Mortgage, or any sale of Tenant's Interest in the Premises, or any other transfer or assignment of Tenant's Interest in the Premises by judicial proceedings pertaining to a Recognized Mortgage or by virtue of the exercise of any power contained in a

Recognized Mortgage, or by an assignment-in-lieu or other consensual conveyance, or otherwise:

(x) by or on behalf of Tenant or pursuant to foreclosure proceedings to a Recognized Mortgagee (or its Designee or Foreclosure Transferee); or

(y) by or on behalf of Tenant or a Recognized Mortgagee (or its Designee or Foreclosure Transferee) or pursuant to foreclosure proceedings to a purchaser of Tenant's Interest in the Premises at a foreclosure sale pursuant to a Recognized Mortgage or by a Recognized Mortgagee (or its Designee or its Foreclosure Transferee) after consummating a Foreclosure Transfer as described in clause (x) above or after such foreclosure sale.

(ii) "**Foreclosure Transferee**" means the purchaser, transferee or other assignee in a Foreclosure Transfer.

(iii) "**Designee**" means an Affiliate of a Recognized Mortgagee that is the designee or nominee of such Recognized Mortgagee.

(d) If a Recognized Mortgagee or its Designee acquires Tenant's Interest in the Premises pursuant to a Foreclosure Transfer, all accrued but unpaid Percentage Rent shall be forgiven and shall not thereafter be due and payable [except to the extent that the Recognized Mortgagee has failed to pay amounts it was required to pay pursuant to **Section 11.4(b)(iv)**].

(e) If a Recognized Mortgagee or its Designee acquires Tenant's Interest in the Premises and thereafter conveys or assigns Tenant's Interest in the Premises to a third party (the "**First Transferee**") then, in that event,

(i) all accrued but unpaid Percentage Rent at the time of the conveyance to the First Transferee shall be forgiven and shall not thereafter be due and payable [except to the extent the Recognized Mortgagee has failed to pay amounts it was required to pay pursuant to **Section 11.5(d)**];

(ii) for a period of five (5) years after the First Transferee acquires the Tenant's Interest in the Premises, Percentage Rent shall not accrue or be due and payable (it being understood that Percentage Rent shall be waived during such five year period); and

(iii) Subsequent to the five (5) year period referenced in **Section 11.12(e)(ii)** above, Percentage Rent shall thereafter accrue and be due and payable in accordance with the provisions of this Lease.

(f) Notwithstanding the provisions of **Section 11.12(e)**, there shall be no abatement of Percentage Rent if any portion of the Equity Interest in the Person that is the First Transferee is owned, either legally or beneficially, by the tenant under this Lease that was foreclosed upon (the "**Foreclosed Tenant**") or any Person who had a legal or beneficial interest in the Foreclosed Tenant.

Section 11.13 Notices Under a Mortgage.

Tenant shall give to Owner copies of all notices of default received from a Mortgagee within ten (10) days after receiving written notice of same from Mortgagee.

(a) **Notices**. Tenant shall cause all Mortgages to contain a provision requiring that all Mortgagees shall send to Owner, simultaneously with the sending of such default notices to Tenant, copies of all default notices or other notices relating to the failure of Tenant to keep any Mortgage in good standing, which notices are sent pursuant to any loan document or security document to Tenant.

(b) **Estoppel Requests**. Tenant shall cause all Mortgages to contain a provision requiring that the Mortgagee shall comply with all reasonable estoppel requests of Owner. Owner shall comply with all reasonable estoppel requests of any Mortgagee.

Article 12 - Subordination

Section 12.1 Subordination of Percentage Rent.

In the event of a foreclosure under the Recognized Mortgage, Owner's right to Percentage Rent shall be subordinate, expressly as described in this Lease. This subordination shall not extend to (a) any Mortgage, other than a first mortgage by a Recognized Mortgagee on Tenant's Interest in the Premises, now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's Interest in the Premises or (c) any Master Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Master Subtenant's interest in the Premises.

Section 12.2 No Subordination of Owner's Proprietary Interest in Land.

Owner's proprietary interest in the Land, including, without limitation, Owner's interest in this Lease, as the same may be modified, amended or renewed in accordance with the provisions of this Lease, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's Interest in the Premises or (c) any Master Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Master Subtenant's interest in the Premises.

Section 12.3 Tenant's Interest in the Premises Subject to Title Matters.

Tenant's Interest in the Premises, including, without limitation, this Lease and the leasehold estate of Tenant hereby created and all rights of Tenant hereunder are and shall be subject to the Title Matters.

Article 13 - Project Construction

Section 13.1 Tenant's Obligation to Construct Project

The parties acknowledge that Tenant shall construct the Improvements on the Land described in **Section 13.2** and other improvements described in the Plans and Specifications in accordance with the terms of the Development Agreement and the terms hereof (together with any and all permitted additions and/or alterations thereto and replacements thereof, the "**Project**"). If, with respect to a matter relating to the Construction Work for the initial construction of the Project, a conflict arises between the terms of the Development Agreement and the terms of this Lease, the terms of the Development Agreement shall govern until the Project Opening Date, and thereafter the terms of this Lease shall govern.

Section 13.2 Description of the Project.

Subject to the provisions of **Section 14.5**, the Project will consist of a mixed-use project containing a parking garage with approximately seven hundred (700) parking spaces and rentable area (as defined in accordance with ANSI/BOMA Z65.1 -1996 Standards) of approximately one hundred thousand to one hundred twenty thousand (100,000 to 120,000) square feet of office space and approximately thirty thousand to forty thousand (30,000 to 40,000) square feet of retail and/or commercial space; provided, however, that in no event shall the Project exceed the floor area ratio permitted under applicable City Requirements.

Article 14 - Maintenance, Repair and Alterations

Section 14.1 Maintenance Standards.

(a) Tenant shall, at its own cost and expense, take good care of, and keep and maintain, the Premises in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in good and safe order and condition, as other comparable first class projects in similar usage and of similar age are kept (reasonable wear and tear excepted). Further, Tenant shall, at its own cost and expense, maintain the Garage in accordance with the standards set forth in the ***Parking Garage Maintenance Manual*** (August 1996), published by the National Parking Association/Parking Consultants Council, a copy of which is attached hereto and incorporated by reference herein as **Exhibit 14.1(a)**, as the same may be revised from time to time and shall at all times adhere to the operating schedules and standards set forth in **Exhibits 14.1(b)** and **14.1(c)** attached hereto and incorporated by reference herein.

(b) Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Premises.

(c) All repairs, replacements and renovations made by Tenant shall be substantially equal in quality and class to the original quality of the Improvements being repaired and shall be made in compliance with the Requirements.

(d) Tenant shall keep clean and free from dirt, mud, standing water, rubbish, obstructions and physical encumbrances all areas of the Premises.

Section 14.2 Removal of Building Equipment.

Tenant shall not, without the consent of Owner, remove or dispose of any Building Equipment from the Premises unless such Building Equipment (i) is promptly replaced by Building Equipment of at least equal utility and quality, or (ii) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Building Equipment with reasonable diligence; except, however, Tenant shall not be required to replace any Building Equipment that performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises in accordance with the terms of this Lease.

Section 14.3 No Obligation to Repair or to Supply Utilities.

Owner (in its proprietary capacity only) shall not be required to supply any facilities, services or utilities whatsoever to the Premises. Owner shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair with respect to the Premises.

Section 14.4 Waste Disposal.

Tenant shall dispose of waste from all areas of the Premises in accordance with Requirements and in a prompt and sanitary manner.

Section 14.5 Alterations.

(a) Subject to the terms and conditions of this **Article 14** and the other applicable provisions of this Lease, Tenant may, at any time and from time to time, at its sole cost and expense, make alterations, additional installations, substitutions, improvements, renovations or betterments (collectively, "**Alterations**"); in and to the Premises or any portion thereof provided that:

(i) no Alterations (or series of related Alterations) estimated to cost more than One Hundred Fifty Thousand Dollars ($150,000), adjusted for inflation (as estimated by Tenant's architect or engineer) (a "**Significant Alteration**") and no Alteration affecting the structural portions, roofs or the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical or other service or utility systems shall be undertaken except

under the supervision of a licensed architect or licensed professional engineer;

(ii) the Alterations will not result in a violation of any Requirement or change the use permitted in **Section 6.1** or violate any other provision of this Lease;

(iii) the outside appearance, character or permitted use of the Premises shall not be materially adversely affected unless approved pursuant to the provisions of **Section 14.5(d)**, and the Alterations shall not materially (1) weaken or impair the structure, (2) reduce the size or (3) lessen the value of, the Premises;

(iv) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Premises shall not be materially adversely affected;

(v) if any Alteration (excluding interior subtenant improvements that do not materially affect the major building components) is (or related series of Alterations are) estimated to cost more than Five Hundred Thousand Dollars ($500,000), adjusted for inflation (as estimated by Tenant's architect or engineer), Tenant shall obtain the prior written consent of Owner for such Alterations (a "**Major Alteration**") in accordance with the provisions of 26.2 below; and

(vi) no Major Alteration in excess of One Million Dollars ($1,000,000), adjusted for inflation, shall be undertaken prior to Tenant's delivering to Owner, at Tenant's option, either (x) a performance bond and a labor and materials payment bond (issued by a surety company reasonably satisfactory to Owner and licensed to do business in the State of Florida), each in an amount equal to one hundred percent (100%) of the estimated cost and otherwise in form reasonably satisfactory to Owner or (y) such other security for the completion of the Major Alteration, as may be reasonably satisfactory to Owner; provided, however, this **Section 14.5** shall not apply to a Recognized Mortgagee or its Designee during the period that it is Tenant under this Lease.

(b) **Reimbursement of Owner's Expenses**. Tenant shall reimburse Owner for all actual out-of-pocket architectural and engineering expenses for architectural and engineering review reasonably incurred by Owner in connection with its decision to grant or withhold consent to a proposed Major Alteration and inspecting the Major Alteration to determine whether the same is being or has been performed in accordance with the terms of this Lease, including only the actual reasonable fees and expenses of any architect or engineer employed for such purposes. Any Major Alteration for which consent has been received shall be performed substantially in accordance with the approved Plans

and Specifications, and no material amendments or material additions to the Plans and Specifications shall be made without the prior consent of Owner in accordance with the terms hereof.

(c) **Approvals**. Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authorities for the commencement and prosecution of any Alterations and final approval from Governmental Authorities upon completion, promptly deliver copies of the same to Owner and cause the Alterations to be performed in compliance with all applicable Requirements and requirements of Mortgagees and insurers of the Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workman like manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Premises that are being replaced.

(d) **Submission and Review of Alterations.** Tenant shall submit to Owner plans and specifications showing in reasonable detail any proposed Major Alteration. Owner shall review the plans and specifications for any proposed Major Alteration and shall approve the same provided that the proposed Major Alteration will not:

(i) impair the structural integrity of the Premises; or

(ii) reduce Project Revenues after completion of the Major Alterations; or

(iii) reduce Floor Area or parking spaces, unless Tenant agrees, in writing, to restore the portion of the Premises so modified to the original condition upon request of Owner prior to the Expiration of the Term; or

(iv) change any exterior of the building, unless the DRB, HPB or Joint Board, as applicable, approves the change; or

(v) deviate from any approved uses of the Premises.

Within thirty (30) days after Owner's receipt of such plans and specifications, the City Manager of Owner shall notify Tenant of its approval or disapproval thereof and, in the event of the Owner's disapproval, the reasons therefor. If Tenant desires to modify in any material respect previously approved plans and specifications (as such may have been modified by approved plans and specifications), Tenant shall submit any such proposed modifications to Owner for Owner's approval. Within fifteen (15) days of its receipt of the proposed modifications, Owner shall notify Tenant in writing with specificity of any material inconsistencies of which Owner disapproves between the plans and specifications as modified and the plans and specifications previously approved by Owner. Tenant shall, at its election, have the option of (x) submitting Owner's disapproval to arbitration as to the (i) materiality of the inconsistency and/or (ii) reasonableness of disapproval or (y) submitting revised modifications to the plans and specifications to meet Owner's objections (which revised plans and specifications shall be reviewed as herein above provided).

(e) **Costs of Alterations.** The costs of all Alterations shall be borne by Tenant.

(f) **Prevailing Wages.** All Persons employed by Tenant with respect to Alterations of the Project shall be paid, without subsequent deduction or rebate unless expressly authorized by Requirements, not less than the relevant prevailing wage as prescribed by the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, but only to the extent such Prevailing Wage Ordinance is applicable to the Alteration of the Improvements.

Article 15 - Requirements

Section 15.1 Tenant's Obligation to Comply With Requirements.

In connection with any Construction Work, and with the maintenance, management, use and operation of the Premises and Tenant's performance of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but Tenant may seek to obtain an easement in order to cure an encroachment, if permitted by Requirements), or affecting the maintenance, management, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put. No consent to, approval of or acquiescence in any plans or actions of Tenant by Owner, in its proprietary capacity as landlord under this Lease, or Owner's designee shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient, prudent or in compliance with the Requirements.

Section 15.2 Definition.

"**Requirements**" means:

(a) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Premises or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Premises or any vault in, or under the Premises (including, without limitation, any of the foregoing relating to handicapped access or parking, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

(b) the temporary and/or permanent certificate or certificates of occupancy issued for the Premises as then in force; and

(c) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease.

Section 15.3. Owner's Obligation to Comply With Requirements.

In connection with the performance of Owner's obligations hereunder, Owner shall comply promptly with all Requirements.

Article 16 - Management and Operation of Project

Section 16.1 Management of Project.

(a) Following the Project Opening Date, and continuing throughout the Term of this Lease, Tenant shall be an Acceptable Operator or shall enter into one (1) or more Management Agreement(s) with an Acceptable Operator(s) and shall prudently manage and operate, or cause the Premises to be prudently operated and managed by the Acceptable Operator pursuant to **Section 16.3(d)** and in accordance with the terms and conditions of this Lease, and pursuant to a written Management Agreement:

(i) Providing for services, and containing terms and conditions, reasonable and customary for the operation of comparable first-class buildings of similar age and design;

(ii) Providing that the Premises are operated and maintained in good order and condition, including such repair, replacement, renovation, and maintenance, as necessary, reasonable wear and tear excepted; and

(iii) Consistent with the standards for garage operation and for public area maintenance and operation as set forth, respectively, in the:

(1) Parking Garage Maintenance Manual (August 1996), published by the National Parking Association/Parking Consultants Council, a copy of which is attached hereto as **Exhibit 14.1(a)**, as the same may be revised from time to time;

(2) Owner's Garage Maintenance Standards, attached hereto as **Exhibit 14.1(b)**, as the same may be revised from time to time by mutual consent of Owner and Tenant; and

(3) Owner's Operating Standards, as set forth in **Exhibit 14.1(c)**, as same may be revised from time to time by mutual consent of Owner and Tenant.

(b) The services to be performed by the Acceptable Operator shall include, without limitation, the following:

(i) Acceptable Operator will provide technical services to assist Tenant in the furnishing and equipping, maintenance and operation of the Premises. These services will include, among other things, (1) review and approval of architectural plans, plans for design, and plans for fixtures and equipment to ensure that the Garage will meet the standards set forth in this Lease; (2)

develop criteria for fixtures and equipment and assist in obtaining sources of supply; and (3) assistance in coordinating purchases and installation of fixtures and equipment.

(ii) Acceptable Operator will provide required services to Tenant to prepare the Garage for opening, including, without limitation, (1) recruiting, training and employing personnel; (2) pre-opening marketing and advertising; (3) negotiating contracts for supplies and similar items; (4) assistance in obtaining necessary licenses and permits; and (5) assistance in purchasing initial operating supplies.

(c) Tenant shall provide in the Management Agreement that Acceptable Operator shall operate and manage the Premises in accordance with the provisions of this Lease, including without limitation, **Article 6** hereof. Acceptable Operator shall have authority to operate the Premises in the name of, and for the account of, Tenant.

(d) Tenant hereby agrees to incorporate the covenants and agreements contained in this Article in the Management Agreement as covenants and agreements of the Acceptable Operator.

(e) The Acceptable Operator's interest in the Management Agreement shall be subject and subordinate to (i) the Owner's Interest in the Premises; and (ii) the terms and conditions of this Lease. As between Owner and Tenant, in the event of any conflict between the terms of this Lease and the terms of the Management Agreement, the terms of this Lease shall govern. Tenant shall remain responsible for performing all of its obligations hereunder notwithstanding the fact that the Premises is being managed by the Acceptable Operator.

(f) Notwithstanding anything to the contrary contained in this **Section 16.1**, the Premises may be managed by an operator (including Tenant) that is not an Acceptable Operator, provided that such operator is approved by the Owner, which approval may be granted or withheld in Owner's sole and absolute discretion, for any reason or for no reason whatsoever. Any operator approved by Owner pursuant to this **Section 16.1(f)** shall be deemed to be an Acceptable Operator for all purposes of this Lease.

Section 16.2 Garage Revenue Control Equipment.

(a) Tenant shall, at all times from the CO Date to the earlier to occur of (i) the date on which this Lease is terminated for any reason or (ii) the Fixed Expiration Date, maintain and utilize fully automated garage revenue control equipment.

(b) On or prior to the earlier to occur of (i) the date on which this Lease is terminated for any reason or (ii) the Fixed Expiration Date, Tenant shall provide fully automated garage revenue control equipment in the Garage that is compatible with the equipment that the City uses for its municipal parking system, in the event that the equipment used for the Garage is not compatible at that time.

Section 16.3 Transfer of Acceptable Operator's Interest in the Management Agreement.

If Acceptable Operator effectuates a (i) transfer of the Management Agreement; (ii) termination of Management Agreement or (iii) engagement of a new Manager for the Permises, Owner shall be notified in writing ten (10) days prior to the date thereof. The notice required by this **Section 16.3** shall contain the following information:

(i) the name and address of the new Acceptable Operator or transferee;

(ii) the nature of such transaction and the percent interest to be conveyed;

(iii) in the case of a Management Agreement, a true and complete copy of the instrument effectuating such transaction; and

(iv) a copy of any new Management Agreement or any modifications to an existing Management Agreement.

Section 16.4 Owner's Rights and Remedies.

(a) Tenant will (i) perform or cause to be performed Tenant's material obligations under the Management Agreement, (ii) enforce the performance by Acceptable Operator of all of Acceptable Operator's material obligations under the Management Agreement; and (iii) give Owner prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Tenant.

(b) Upon termination of this Lease, Acceptable Operator shall:

(i) to the extent of Acceptable Operator's interest and to the extent permitted by Requirements, surrender and assign to Owner or its designee any and all licenses, permits and/or governmental authorizations required for the operation of the Premises;

(ii) deliver to Owner any and all of Owner's properties within the possession of Acceptable Operator, including, without limitation, all keys, locks and safe combinations, ledgers, bank statements for the Premises accounts, books and records, insurance policies, bonds and other documents, agreements, leases and licenses required for the operation of the Premises; and

(iii) remit to Owner the balance of any account of the Premises.

(iv) Owner shall not incur any liability to Project Manager under the Management Agreement except to the extent Owner has liability under this Lease;

(c) The rights of Owner set forth in this **Section 16.4** shall, to the extent in conflict with the rights of any Recognized Mortgage, be subject to the rights of such Recognized Mortgagee

provided such Recognized Mortgagee is in the process of, and is diligently, exercising its rights under the applicable Recognized Mortgage.

Section 16.5 Repair, Renovation and Replacement Reserve Account.

(a) Maintenance and operation of the Premises will be at no cost to Owner, and Tenant shall itself, or cause (and the Management Agreement shall so provide) the Acceptable Operator, in Tenant's name and for the benefit of Tenant, to establish a separate interest bearing account (the "**Reserve Account**") for the purpose of funding the repair, renovation and replacement of fixtures and equipment required for the operation of the Premises in accordance with the terms of this Lease, as well as to assure that funds are available for maintenance of the Premises from and after the CO Date. To fund the Reserve Account, Tenant shall deposit, or shall cause the Acceptable Operator to deposit, within thirty (30) days after the end of each month during the Term of this Lease from and after the CO Date for such month one-twelfth ($1/12^{th}$) of an amount which is equal to the sum of Twenty-Five Cents ($0.25) per square foot annually of office space (including common areas) times the number of square feet of office space in the Premises, plus Ten Cents ($0.10) per square foot annually times the number of square feet in the Garage (including common areas). No deposit need be made to the Reserve Account for the square footage of retail space within the Premises.

Owner, in its sole and absolute discretion, for any reason and for no reason whatsoever, may consider a reduction of the required payments to the Reserve Account as set forth in this **Section 16.5(a)** above any time after the CO Date.

(b) Tenant shall cause the Acceptable Operator to make expenditures from the Reserve Account for the purposes permitted hereunder as is necessary to maintain or improve the Premises in accordance with this Lease (including capital expenditures); provided, however, that in the event that a Recognized Mortgage provides for a method or procedure for making or authorizing expenditures from the Reserve Account, the provisions of such Recognized Mortgage shall control over the provisions hereof.

(c) Tenant hereby grants to Owner a security interest in the Reserve Account, and all profits and proceeds thereof, in order to secure Tenant's obligations under this **Section 16.5,** which security interest in such Reserve Account shall be automatically fully subject and subordinate only to the rights of the Recognized Mortgagee and any purchase money lender with regard to Reserve Account. Tenant hereby agrees not to grant a security interest in the Reserve Account to any Person other than a Recognized Mortgagee, Owner or a purchase money lender. Owner shall execute and deliver all such instruments as any Recognized Mortgagee or purchase money lender shall reasonably require in order to confirm Owner's subordination of its security interest as aforesaid.

(d) Funding of Reserve Account during Foreclosure or while Recognized Mortgagee or its Designee is Tenant. During the period that (i) a Recognized Mortgagee is pursuing a foreclosure against Tenant; or (ii) a Recognized Mortgagee or its Designee is the Tenant under this Lease, such Recognized Mortgagee or its Designee shall have the option of (1) not funding the Reserve Account; provided, however, such relief from funding shall not be deemed to affect in any way the operational

and maintenance standards imposed upon the Project pursuant to this Lease (including, without limitation, **Section 6.4**); provided further, however, such relief from funding, in any event, shall end upon the earlier to occur of (A) four (4) years after the date of the earlier to occur of (i) the filing of such foreclosure, or (ii) the date upon which such Recognized Mortgagee or its Designee becomes the Tenant under this Lease; or (B) the date a Foreclosure Transferee other than a Recognized Mortgagee or its Designee becomes the Tenant under this Lease; or (2) funding the Reserve Account as provided in this **Section 16.5**.

(e) Notwithstanding anything to the contrary herein contained, to the extent that a Recognized Mortgage contains provisions requiring Tenant to maintain a Reserve Account for the same purpose as this **Section 16.5**, the provisions of this **Section 16.5** shall be waived and the provisions of the Recognized Mortgage shall be controlling. In no event shall Tenant be required to maintain more than one (1) Reserve Account for the purposes set forth herein.

Section 16.6 More Than One Acceptable Operator.

Tenant may, in its discretion, cause different components of the Premises to be operated and maintained by different Acceptable Operators.

Article 17 - Discharge of Liens

Section 17.1 Creation of Liens.

(a) Tenant shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to **Section 17.2**, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Owner, or (iii) any other matter or thing whereby the estate, rights or interest of Owner in and to the Premises or any part thereof or appurtenance thereto might be materially impaired. Notwithstanding the above, Tenant shall have the right to execute Mortgages, subleases and other instruments (including, without limitation, equipment leases) as provided by, and in accordance with, the provisions of this Lease.

(b) Owner shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom (except as otherwise set permitted in **Article 2**) or the Premises or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to **Section 17.2**, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Tenant, or (iii) any other matter or thing whereby the estate, rights or interest of Tenant in and to the Premises or any part thereof or appurtenance thereto might be materially impaired.

Section 17.2 Discharge of Liens.

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of

this Lease) is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Tenant or Owner, Tenant shall, within thirty (30) days after Tenant receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such lien if Tenant shall have (a) furnished Owner with, at Tenant's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Owner) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Owner, in an amount sufficient to pay the lien with interest and penalties and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Tenant's efforts to seek discharge of the lien, Owner reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Tenant, Tenant shall, within ten (10) days after notice to such effect from Owner (but not later than three (3) business days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Owner may thereafter discharge the lien in accordance with **Section 24.2** and look to the security furnished by Tenant for reimbursement of its cost in so doing. Notwithstanding anything to the contrary contained in this **Section 17.2(a)**, in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Tenant shall be required only to pay, on a timely basis, all installments when due.

(b) Notwithstanding anything to the contrary contained in **Section 17.2**, if any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Owner by law or by a provision of this Lease) is filed against the Premises or any part thereof or Tenant's interest therein as a result of any action of Owner, its officers, employees, representatives or agents, Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Owner shall not be required to discharge any such lien if Owner shall have (i) furnished Tenant with, at Owner's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Tenant) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Tenant, in an amount sufficient to pay the lien with interest and penalties and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Owner's efforts to seek discharge of the lien, Tenant reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Owner, Owner shall, within ten (10) days of notice to such effect from Tenant (but not later than three (3) business days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Tenant may thereafter discharge the lien in accordance with **Section 24.2** and look to the security furnished by Owner for reimbursement of its cost in so doing.

Section 17.3 No Authority to Contract in Name of Owner.

Nothing contained in this Article shall be deemed or construed to constitute the consent or request of Owner, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Owner's interest in the Land or any part thereof or against assets of Owner, or Owner's interest in any Rental and/or Impositions. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that to the extent enforceable under Florida law, Owner shall not be liable for any work performed or to be performed at the Premises or any part thereof for Tenant or any Master Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect Owner's interest in the Land or any part thereof or any assets of Owner, or Owner's interest in any Rental and/or Impositions. The foregoing shall not require Tenant to request advance waivers of lien from contractors or subcontractors.

Article 18 - Representations

Section 18.1 No Brokers.

Each of Owner and Tenant represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby, and each party shall indemnify the other against any claim for brokerage commissions, fees or other compensation by any Person alleging to have acted for or dealt with the indemnifying party in connection with this Lease or the transactions contemplated hereby.

Section 18.2 No Other Representations.

Tenant acknowledges, represents and confirms that it or its authorized representatives have visited the Premises and are fully familiar therewith, the physical condition thereof (including but not limited to subsurface conditions) and Title Matters affecting the Premises. Tenant accepts the Premises in existing condition and state of repair and Tenant confirms that: except for the representation contained in **Section 18.1** (and any other representation expressly set forth in this Lease), (i) no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Owner with respect to the Premises or the transactions contemplated by this Lease, the status of title thereto (except as set forth in Exhibit 2.1), the physical condition thereof, the zoning, wetlands or other laws, regulations, rules and orders applicable thereto or the use that may be made of the Premises, or the presence or absence of "**hazardous substances**" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA §9601 et seq.) on or under the Premises, (ii) Tenant has relied on no such representations, statements or warranties, and (iii) Owner shall not be liable to Tenant, in any event whatsoever, to correct any latent or patent defects in the Premises.

Article 19 - No Liability for Injury or Damage

Section 19.1 Liability of Owner or Tenant.

(a) **Owner Not Liable for Injury or Damage, Etc.** The Owner Indemnified Parties shall not be liable to any Tenant Indemnified Party for, and Tenant shall indemnify and hold Owner Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury (whether physical (including, without limitation, death), economic or otherwise) to Tenant or to any other Person in, about or concerning the Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about or concerning the Premises, irrespective of the cause of injury, damage or loss (including, without limitation, the acts or negligence of any tenant or occupant of the Premises or of any owners or occupants of adjacent or neighboring property or caused by any Construction Work or by operations in construction of any private, public or quasi-public work) or any latent or patent defects in the Premises, except to the extent any of the foregoing is due to the gross negligence or willful misconduct of any Owner Indemnified Party. The Owner Indemnified Parties shall not be liable, to the extent of insurance proceeds paid by insurance carriers under Tenant's insurance policies, for any loss or damage to any Person or property even if due to the gross negligence or willful misconduct of any Owner Indemnified Party and, to that extent, Tenant relieves Owner Indemnified Parties from such liability. Without limiting the generality of the foregoing, except to the extent caused by the gross negligence or willful misconduct of any of Owner Indemnified Parties (and then only in such Owner Indemnified Party's proprietary capacity as opposed to its governmental capacity), Owner Indemnified Parties shall not be liable for (i) any failure of water supply, gas or electric current, (ii) any injury or damage to person or property resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, act of God, act of war, enemy action, flood, wind or similar storms or disturbances, water, rain or ice, or (iii) leakage of gasoline or oil from pipes, appliances, sewer or plumbing works.

(b) **Zoning Changes.** Except when Owner (if Owner, at the time of application is the City), acting in its proprietary capacity, is the applicant, Owner hereby assigns to Tenant any and all rights of Owner, as owner of the Land, under Requirements to execute objections or waivers of objections to applications for variances or other exceptions or exemptions from zoning or other Requirements by the owner of any property with respect to which, under applicable Requirements, the owner of the Land would have the right to object or consent to variances or other exceptions or exemptions from zoning or other Requirements. Such assignment shall in no way limit or otherwise restrict any other rights of the City, any instrumentalities of the City, or any elected or appointed officials or employees of the City, in its respective governmental capacities, from taking or refraining from taking any action or expressing any views and opinions in connection with such application. If Owner is required to join in such application by Requirements, Owner shall do so provided Tenant pays all costs, including reasonable attorneys' fees, for same.

Section 19.2 Owner's Exculpation.

(a) Except as such liability may be eliminated or reduced by any constitutional, statutory, common law or other protections afforded to public bodies or governments (for such time as Owner is a Governmental Authority), including, but not limited to, sovereign immunity statutes, the liability of Owner (including, without limitation, with respect to any gross negligence or willful misconduct), or of any other Person who has at any time acted as Owner (for such time as Owner is a Governmental Authority) hereunder, for damages or otherwise, arising out of or in connection with any breach of this Lease or any injury (whether physical (including death) economic or otherwise) incurred in connection with this Lease or the Premises, shall be limited to One Million Dollars ($1,000,000), adjusted for inflation, under this Lease and the Development Agreement, in the aggregate. As used in the preceding sentence, the terms "**breach**" and "**injury**" shall include all breaches and injuries arising out of the facts and circumstances resulting in such breach or injury.

(b) Except for conversion, fraud or willful misconduct (and then only to the extent such party acted in its proprietary capacity as opposed to its governmental capacity), none of the Owner Indemnified Parties (except Owner as provided in **Section 19.2(a)**) shall have any liability (personal or otherwise) hereunder, and except for Owner's Interest in the Premises (to the extent permitted by applicable Requirements), no property or assets of the Owner Indemnified Parties shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or any other liability of the Owner Indemnified Parties arising from or in connection with this Lease or the Premises. Nothing contained herein shall be deemed a waiver of any equitable remedies available to Tenant.

(c) Nothing contained in this **Section 19.2** or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon Owner's liability as set forth in §768.28, Fla.Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

Section 19.3 Notice of Injury or Damage.

Tenant shall notify Owner within thirty (30) days of any occurrence at the Premises of which Tenant has notice and which Tenant believes could give rise to a claim of One Hundred Thousand Dollars ($100,000), adjusted for inflation, or more, whether or not any claim has been made, complaint filed or suit commenced; however, Tenant's failure to so notify Owner shall not constitute or result in a breach or default of any of the terms or conditions of this Lease or result in a loss of any benefit or right granted to Tenant under this Lease.

Section 19.4 Tenant's Exculpation.

Except for (a) Tenant's liability for conversion, willful misconduct or fraud, (b) liabilities of Tenant arising under applicable Requirements when Owner is acting in or pursuant to its governmental capacity, and (c) liability with respect to Tenant's obligation to pay Rental and/or Impositions that is past due but not yet paid, and except with respect to any rights or remedies for non-monetary relief (including, without limitation, equitable relief), the liability of Tenant under this Lease and with respect

to the Premises for damages or other monetary amounts shall be limited to One Million Dollars ($1,000,000) adjusted for inflation, under this Lease and the Development Agreement, in the aggregate. Notwithstanding anything to the contrary in this Lease, Owner's right to terminate this Lease and force Tenant to surrender title to and possession of the Improvements to Owner shall not be subject to the limitation of liability contained in this **Section 19.4**. Other than Tenant's Interest in the Premises, no other property or assets of Tenant shall be subject to levy of execution or enforcement procedure for the satisfaction of Owner's remedies hereunder or any other liability of Tenant arising from or in connection with this Lease or the Premises. Without limiting the preceding sentence, if, and only if, a Tenant Indemnified Party other than Tenant engages in conversion, fraud or willful misconduct, then such Tenant Indemnified Party shall have personal liability hereunder and the property and assets of such Tenant Indemnified Party shall be subject to levy of execution or enforcement procedure for the satisfaction of Owner's remedies hereunder with respect to such conversion, fraud or willful misconduct. Nothing contained herein shall be deemed a waiver of any equitable remedies available to Owner.

Section 19.5 No Punitive Damages.

Neither Owner nor Tenant shall be liable to the other for any punitive damages in connection with this Lease and Owner and Tenant agree not to seek punitive damages from each other in connection with any lawsuit or other claim relating to this Lease.

Section 19.6 Survival.

The provisions of this **Article 19** shall survive the Expiration of the Term.

Article 20 - Indemnification

Section 20.1 Indemnification of Owner.

(a) Tenant shall indemnify and hold Owner Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against an Owner Indemnified Party arising from (a) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any Person claiming through or under Tenant or (b) any acts, omissions or negligence of Tenant or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Premises either during or after the expiration of, the Term, including, without limitation, any acts, omissions or negligence in connection with any Construction Work or in the making or performing of any repairs, restoration, alterations or improvements, except to the extent any of the foregoing is caused by the gross negligence or willful misconduct of any of the Owner Indemnified Parties.

(b) In the event that any suit, action or proceeding is brought against Owner to compel disclosure of any document described in **Article 27** or **Article 28**, whether such suit, action or

proceeding is brought under Chapter 119, Florida Statutes or any other provision of law, Tenant agrees to defend, indemnify and hold the Owner Indemnified Parties harmless from and against any loss, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements, including both in-house and outside counsel, and also including any attorneys' fees and disbursements which any court of competent jurisdiction may award to the plaintiff in such suit, action or proceeding, in all cases including any appeals thereof or post-judgment proceedings relating thereto), penalty or fine incurred in connection with or arising from such suit, action or proceeding. Owner shall notify Tenant of any such public records request but failure to give such notice shall not impose any liability on Owner. Notwithstanding the foregoing, in the event that Owner receives a proper notice under Chapter 119, Florida Statutes, as amended, to produce a document, and Owner has such document in its possession and Owner fails to produce such document due to Owner's own negligence, malfeasance or misfeasance, Tenant shall not be liable for any loss, claim, damage, penalty or fine as aforesaid.

Section 20.2 Indemnification of Tenant.

Owner shall indemnify and hold the Tenant Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against a Tenant Indemnified Party arising from any acts, omissions or negligence of Owner made in its proprietary capacity or any Person claiming through or under Owner (in its proprietary capacity only), or of the contractors, agents, servants, employees, guests, invitees or licensees of Owner (in its proprietary capacity only) or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Premises either during, or after the expiration of, the Term, except to the extent any of the foregoing is caused by the gross negligence or willful misconduct of any of the Tenant Indemnified Parties.

Section 20.3 Contractual Liability.

(a) The obligations of Tenant under this **Article 20** or **Article 19** shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises; provided, however, that if Owner actually receives any proceeds of Tenant's insurance with respect to an obligation of Tenant under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Tenant with respect to such obligation.

(b) The obligations of Owner under this **Article 20** or **Article 19** shall not be affected in any way by the absence or presence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises; provided, however, that if Tenant actually receives any proceeds of Owner's insurance with respect to an obligation of Owner under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Owner with respect to such obligation.

Section 20.4 Defense of Claim, Etc.

(a) If any claim, action or proceeding is made or brought against any Owner Indemnified Party by reason of any event to which reference is made in **Section 20.1** or **Article 19**, then, upon demand by Owner or such Owner Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Owner Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as Owner shall reasonably approve. The foregoing notwithstanding, such Owner Indemnified Party may at its own expense engage its own attorneys to defend such Owner Indemnified Party, or to assist such Owner Indemnified Party in such Owner Indemnified Party's defense of such claim, action or proceeding, as the case may be.

(b) If any claim, action or proceeding is made or brought against any Tenant Indemnified Party by reason of any event to which reference is made in **Section 20.2** or **Article 19**, then, upon demand by Tenant or such Tenant Indemnified Party, Owner, or any successor owner, as applicable, shall either resist, defend or satisfy such claim, action or proceeding in such Tenant Indemnified Party's name, by the attorneys for, or approved by, Owner's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Tenant shall reasonably approve. The foregoing notwithstanding, such Tenant Indemnified Party may at its own expense engage its own attorneys to defend such Tenant Indemnified Party, or to assist such Tenant Indemnified Party in such Tenant Indemnified Party's defense of such claim, action or proceeding, as the case may be.

Section 20.5 Notification and Payment.

(a) Each Owner Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against such Owner Indemnified Party of any cost or expense as to which Tenant has agreed to indemnify such Owner Indemnified Party pursuant to the provisions of this **Article 20**. Tenant agrees to pay such Owner Indemnified Party, as Rental hereunder, all amounts due under this **Article 20** within sixty (60) days after receipt of the notice from such Owner Indemnified Party.

(b) Each Tenant Indemnified Party shall promptly notify Owner of the imposition of, incurrence by or assertion against such Tenant Indemnified Party of any cost or expense as to which Owner has agreed to indemnify such Tenant Indemnified Party pursuant to the provisions of this **Article 20**. Owner agrees to pay such Tenant Indemnified Party all amounts due under this **Article 20** within sixty (60) days after receipt of the notice from such Tenant Indemnified Party.

Section 20.6 Governs Lease.

The provisions of this **Article 20** shall govern every other provision of this Lease. The absence of explicit reference to this **Article 20** in any particular provision of this Lease shall not be construed to diminish the application of this **Article 20** to such provision.

Section 20.7 Survival.

The provisions of this **Article 20** shall survive the Expiration of the Term.

Article 21 - Covenant Against Waste and Inspection

Section 21.1 Waste.

Except as otherwise permitted by this Lease, Tenant covenants not to do or suffer any demolition, waste or damage, disfigurement or injury to the Premises or any part of it. The provisions of this **Section 21.1** shall not apply to any demolition or disfigurement involved with repairs, renovations, upgrading or new construction.

Section 21.2 Inspection of Premises.

Owner, its agents, employees and authorized representatives may enter the Premises at any time in response to an emergency, and at reasonable times as Owner deems necessary to, incident to, or connected with the performance of Owner duties and obligations hereunder or in the exercise of its rights and functions.

Article 22 - Owner's Security Interest in Building Equipment

Section 22.1 Grant of Security Interest.

Solely for the purpose of securing Tenant's obligations to deliver to Owner the Improvements upon Expiration of the Term, Tenant hereby grants to Owner a security interest in all of the Building Equipment now or hereafter located on the Premises and owned by Tenant, and in all products and proceeds thereof; provided, however, that Owner's security interest shall be automatically fully subordinate and subject to any purchase money financing permitted hereunder and any Recognized Mortgagee's security interest in the Building Equipment. Upon the Expiration of the Term, Owner shall be entitled to all of the rights, remedies, powers and privileges available to a secured party under (and subject to the provisions of) the Uniform Commercial Code enacted by the State of Florida. Tenant shall execute and deliver all such instruments and take all such action as Owner, from time to time, may reasonably request in order to obtain the full benefits of the security interest described in this **Section 22.1** and of the rights and powers herein created and to maintain and perfect the security interest granted above. To the extent permitted by Requirements, Tenant irrevocably authorizes Owner to file financing statements and continuation statements with respect to the foregoing collateral without the signature of Tenant. Owner shall execute and deliver all such instruments as any Recognized Mortgagee or permitted purchase money lender shall reasonably require in order to confirm Owner's subordination of its security interest as aforesaid. Subject to **Section 14.2** , Tenant may, during the Term, remove, replace and otherwise deal with the Building Equipment in the ordinary course of the operation of the Project.

Article 23 - Leasehold Condominium

Section 23.1 Creation of Leasehold Condominium.

(a) Tenant shall have the right to create a leasehold condominium for Tenant's Interest in the Project, provided that at the time of creation of said leasehold condominium, the declaration of condominium (the "**Declaration**") is in compliance with Chapter 718, Florida Statutes, as amended, and this **Article 23**; and further provided that the original Tenant, the declarant, shall not sell, convey, assign or otherwise transfer any of the condominium units until Substantial Completion of the Project. Owner shall consent to the Declaration, provided, however, that Owner shall have the right to approve the form and substance of the Declaration. Tenant shall pay all reasonable costs of Owner's review of the proposed Declaration, including, but not limited to reasonable fees and costs of Owner's outside counsel.

(b) For purposes of this Lease, in the event of the creation of a leasehold condominium, the following terms and provisions shall apply to said leasehold condominium and the Declaration shall so provide:

(i) The leasehold condominium shall be limited to three (3) units consisting of an office unit, a retail unit and a garage unit. The garage unit shall be the Garage, as defined in this Lease.

(ii) Unless otherwise provided in the Declaration, the new Tenant (the "**Condominium Tenant**") shall be a Florida not-for-profit condominium association, created to operate and maintain the leasehold condominium. The Declaration may provide, as agreed to by Owner and Tenant prior to the recording of the Declaration, that Rental and/or, if payable to Owner, Impositions shall be paid directly by unit owners to Owner, rather than to the condominium association, in proportions reasonably acceptable to Owner; provided, however, that in no event shall the mechanism or procedure for the payment of Rental and/or Impositions, or any other amounts required by this Lease to be paid to Owner, affect the priority of Owner's right to receive Rental and/or, if payable to Owner, Impositions or any other payments due under this Lease. Tenant shall, at Tenant's sole cost and expense, provide Owner with an opinion of counsel (which counsel shall be acceptable to Owner) to the effect that the aforementioned provisions of the Declaration do not affect the priority of Owner's right to receive Rental and/or Impositions or any other payments under this Lease.

(iii) There shall be an Acceptable Operator for each unit and there may be a Property Manager and a Management Agreement for each unit.

(iv) There may be a Recognized Mortgagee and a Recognized Mortgage for each unit, and the rights and obligations of said Recognized Mortgagees shall be limited to the units burdened by their respective Recognized Mortgages.

(v) If a lease of a unit meets the definition of Master Sublease as to such unit, such lease shall be treated as a Master Sublease for purposes of this Lease.

(vi) Percentage Rent shall be based upon Project Revenue derived from the operations of each of the three (3) units, individually.

(vii) **Article 10** relating to transfers and sales shall be separately applied to each of the individual condominium units; provided, however, that the Twenty Million Dollar ($20,000,000), adjusted for inflation, equity requirement described in **Section 10.3(c)(A)**, shall be changed to Ten Million Dollars ($10,000,000), adjusted for inflation, for each unit at the time of acquisition and provided further, however, if a Person acquires two (2) units, the aggregate equity requirement computed pursuant to **Section 10.3(c)(A)** for such Person shall be Ten Million Dollars ($10,000,000), adjusted for inflation, or if a Person acquires three (3) units, such aggregate equity requirement shall be Twenty Million Dollars ($20,000,000), adjusted for inflation. All other provisions of this Lease shall be separately applied to each of the individual condominium units.

(viii) A Recognized Mortgagee holding a Recognized Mortgage on a unit shall not become the Tenant under this Lease; provided, however, the Condominium Tenant's obligation to pay Percentage Rent derived from a condominium unit which has been transferred to a Recognized Mortgagee pursuant to a Foreclosure Transfer shall be subordinated as provided in this Lease, and Percentage Rent derived from such unit, when payable, shall be paid to Owner in accordance with **Article 11** and **Article 12** of this Lease. The rights and obligations of a Designee and a First Transferee from such Recognized Mortgagee relative to Percentage Rent shall similarly apply.

(ix) Owner's rights to review financial records of Condominium Tenant shall include the right to review corresponding financial records of all of the unit owners. To the extent Condominium Tenant is obligated to pay costs and fees to Owner relating to such review, Condominium Tenant shall pay such additional costs and fees resulting from reviews of the financial records of three (3) unit owners as opposed to a single Tenant.

(x) The Declaration shall provide for appropriate easements, covenants and restrictions such that the operation, use and management of the condominium is consistent with this Lease including, without limitation, **Article 6** hereof and all applicable Land Development Regulations (as such term is defined in the Development Agreement).

(xi) A unit owner which is in default of its obligations under the Declaration, after reasonable notice and grace periods as provided in the Declaration, shall lose its right to vote as a member, officer, director or in any other capacity of the condominium association so long as the default remains uncured.

(xii) In the event a unit owner fails to pay any condominium assessment to Owner or Condominium Tenant, as applicable, which includes that unit's proportionate share of Rental and/or, if payable to Owner, Impositions, Owner shall accept payments of Rental and/or Impositions to the extent paid to Condominium Tenant, and/or by the other unit owners, and the balance of the Rental and/or Impositions shall be treated as Back Rent and/or Impositions, and Owner shall not proceed with remedies available to Owner for non-payment of Rental and/or Impositions unless and until Condominium Tenant and the Recognized Mortgagee holding a Recognized Mortgage on the defaulting unit have failed to diligently proceed with their respective remedies against the defaulting unit owner. In the event the Condominium Tenant by foreclosure or deed in lieu of foreclosure of its lien for assessments, or a Recognized Mortgagee or its Designee, obtains title to the unit after such a default, the obligations of such new unit owner relative to payment of Back Rent and/or Impositions and Percentage Rent under such circumstances shall be governed by the applicable provisions of this Lease.

(xiii) The condominium association's lien for the payment of assessments for common expenses, including Rental and/or Impositions, shall be subordinate to the lien of any and all Recognized Mortgages on the respective units, provided, however, that in no event shall the relative priority of said condominium association's lien affect the superior priority of Owner's right to receive Rental and/or Impositions or any other payments due under this Lease. Tenant shall, at Tenant's sole cost and expense, provide Owner with an opinion of counsel (which counsel shall be acceptable to Owner) to the effect that the aforementioned provisions of the Declaration concerning the relative priority of said condominium association's lien do not affect the superior priority of Owner's right to receive Rental and/or Impositions or any other payments due under this Lease.

(ix) The Declaration shall cease to exist and shall become null and void as of the Fixed Expiration Date.

The Declaration provided for in this **Article 23** shall not alter the legal effect of any of the provisions of this Lease which were in effect prior to the recording of such Declaration (i.e., the legal rights of Owner shall not be impaired, diminished or improved after the recording of such Declaration except as otherwise specifically provided in this **Article 23**). Therefore, to effectuate the provisions of this **Section 23.1**, all legal issues and interpretations under this Lease regarding the rights and

obligations of Owner, including but not limited to all payments due Owner, shall be made as if the Declaration did not exist subject to the provisions of this **Article 23**.

Article 24 - Right to Perform the Other Party's Obligations.

Section 24.1 Right to Perform the Other Party's Obligations.

(a) If a Default shall occur and be continuing beyond any applicable grace period, Owner may, but shall be under no obligation to, perform the obligation of Tenant the breach of which gave rise to such Default, without waiving or releasing Tenant from any of its obligations contained herein, provided that Owner shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice, and Tenant hereby grants Owner access to the Premises in order to perform any such obligation.

(b) If a default by Owner under this Lease shall occur and be continuing beyond any applicable grace period, Tenant may, but shall be under no obligation to, perform the obligations of Owner (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default or event of default, without waiving or releasing Owner from any of its obligations contained herein, provided that Tenant shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice to Owner or the City, as applicable.

Section 24.2 Discharge of Liens.

(a) If Tenant fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Tenant by law or by a provision of this Lease) to be discharged of record in accordance with the provisions of **Article 17**, Owner may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Owner's title is threatened or a material interest of Owner is impaired, Owner may also, if Tenant has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

(b) If Owner fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Owner by law or by a provision of this Lease) to be discharged of record in accordance with the provisions of **Article 17**, Tenant may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Tenant's leasehold interest in the Premises (or any portion thereof) is threatened or a material interest of Tenant is impaired, Tenant may also, if Owner has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 24.3 Reimbursement for Amounts Paid Pursuant to this Article.

(a) Any amount paid by Owner in performing Tenant's obligations as provided in this **Article 24**, including all costs and expenses incurred by Owner in connection therewith, shall constitute Rental hereunder and shall be reimbursed to Owner within thirty (30) days of Owner's demand, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(b) Any amount paid by Tenant in performing Owner's obligations as provided in this **Article 24**, including all costs and expenses incurred by Tenant in connection therewith, shall be reimbursed to Tenant within thirty (30) days of Tenant's demand, together with a late charge on amounts actually paid by Tenant, calculated at the Late Charge Rate from the date of notice of any such payment by Tenant to the date on which payment of such amounts is received by Tenant.

Section 24.4 Waiver, Release and Assumption of Obligations.

(a) Owner's payment or performance pursuant to the provisions of this **Article 24** shall not be, nor be deemed to constitute, Owner's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

(b) Tenant's payment or performance pursuant to the provisions of this **Article 24** shall not be, nor be deemed to constitute, Tenant's assumption of Owner's obligations to pay or perform any of Owner's past, present or future obligations hereunder.

Article 25 - Events of Default, Conditional Limitations, Remedies, Etc.

Section 25.1 Definition.

Each of the following events shall be an "**Event of Default**" hereunder:

(a) if Tenant fails to make any payment (or any part thereof) of Rental and/or Impositions due hereunder and such failure continues for a period of thirty (30) days after notice is given by Owner that the same is past due;

(b) if Tenant shall default in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the covenants for the payment of Rental and/or Impositions or as expressly set forth below) and Tenant shall fail to remedy such Default within thirty (30) days after notice by Owner of such Default (the "**Default Notice**"), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Tenant shall not (i) within thirty (30) days after the giving of such Default Notice, advise Owner of Tenant's intention to institute all steps (and from time to time, as reasonably requested by Owner, Tenant shall advise Owner of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such

Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same;

(c) failure of Tenant to deliver the special warranty deeds subject to the provisions of **Section 2.1(a)** to Parcel 2 (as described on **Exhibit A**) on or before the Possession Date;

(d) if Tenant fails to operate the Garage as a parking facility as described in **Section 6.1(b)** in which event such failure shall be treated as a Default as described in **Section 25.1(b)**;

(e) if a default by Tenant under the Development Agreement shall have occurred and be continuing beyond any applicable cure period, including any cure period applicable to a Recognized Mortgagee;

(f) to the extent permitted by law, if Tenant admits, in writing, that it is generally unable to pay its debts as such become due;

(g) to the extent permitted by law, if Tenant makes an assignment for the benefit of creditors;

(h) to the extent permitted by law, if Tenant files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Tenant files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of all or any part of Tenant's Interest in the Premises, and the foregoing are not stayed or dismissed within one hundred and fifty (150) days after such filing or other action;

(i) to the extent permitted by law, if, within one hundred and fifty (150) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred and eighty (180) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of all or any part of Tenant's Interest in the Premises, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred and eighty (180) days after the expiration of any such stay, such appointment has not been vacated;

(j) if a levy under execution or attachment in an aggregate amount of One Hundred Thousand Dollars ($100,000), adjusted for inflation, at any one time, is made against the Premises or any part thereof or rights appertaining thereto (except for a levy made in connection with actions taken by Owner (other than solely as holder of Owner's Interest in the Premises)), the income therefrom, this

Lease or the leasehold estate created hereby and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days after Tenant becomes aware of such levy or attachment, subject to Unavoidable Delays; or

(k) if any of the representations made by Tenant in **Article 18** is proved to be or becomes false or incorrect in any material respect and the circumstances are not cured or modified so as to eliminate such material incorrectness within thirty (30) days after notice;

(l) any event described in **Section 35.8** which is not cured by Tenant as provided in **Section 35.8**.

In the event of a Default which with the giving of notice to Tenant and the passage of time would constitute an Event of Default, Owner's notice of such Default to Tenant shall state with specificity the provision of this Lease under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured, and that the failure of Tenant to cure such Default by the date set forth in such notice will result in Owner having the right to terminate this Lease.

Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred until such time as Owner shall have given Tenant notice of the occurrence of an Event of Default (an "**Event of Default Notice**").

Section 25.2 Enforcement of Performance; Damages and Termination.

If an Event of Default occurs and Owner chooses to pursue a remedy with respect to that Event of Default, Owner shall elect to: (a) enforce performance or observance by Tenant of the applicable provisions of this Lease; (b) recover damages for breach of this Lease; or (c) terminate this Lease pursuant to **Section 25.3(a).** Owner's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect Owner's right to elect any of the remedies available to Owner hereunder with respect to any other Event of Default.

Section 25.3 Expiration and Termination of Lease.

(a) If an Event of Default occurs, provided Owner has elected the remedy of termination, Owner may, within ten (10) Business Days after the date of entry by a court of a final judgment that an Event of Default exists (but without Tenant waiving any rights it may have to stay the termination pending appeal), give Tenant and any Recognized Mortgagee notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date shall not be less than ten (10) days after the giving of the notice, and this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Fixed Expiration Date, and Tenant shall quit and surrender Tenant's Interest in the Premises and possession thereof forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in **Sections 25.1(h)** or **25.1(i)**, or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to

assume Tenant's obligations under this Lease within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, Owner, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days' notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the five (5) day period, this Lease shall expire and terminate and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender Tenant's Interest in the Premises and possession thereof forthwith.

(b) If this Lease is terminated as provided in **Section 25.3(a)**, Owner may, without notice, re-enter and repossess Tenant's Interest in the Premises (which may include, but not be limited to, re-entering and repossessing the Premises) and may dispossess Tenant by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to applicable Requirements.

(c) If this Lease is terminated as provided in **Section 25.3(a)**:

(i) Tenant shall pay to Owner all Rental and/or Impositions payable under this Lease by Tenant to Owner to the date upon which the Term shall have expired and come to an end and Tenant shall surrender to Owner Tenant's Interest in the Premises (and possession thereof) in the manner required by this Lease, and both parties shall be relieved of all further obligations hereunder, except to the extent this Lease expressly provides that an obligation hereunder shall survive the Expiration of the Term; and

(ii) In no event shall Tenant be entitled to receive any credit or payment with respect to the value of the Land and Improvements, title to which shall automatically vest in Owner upon such termination.

Section 25.4 Waiver of Rights of Tenant and Owner.

To the extent not prohibited by law, Owner and Tenant hereby waive and release all rights now or hereafter conferred by statute or otherwise that would have the effect of limiting or modifying any of the provisions of this Article. Notwithstanding the foregoing, (i) neither party shall be deemed to have waived the benefit of any automatic stay provisions under any present or future bankruptcy code and (ii) Owner shall not be deemed to have waived or released any rights conferred by any sovereign immunity conferred by statute or otherwise, as provided in **Section 19.2(c)** hereof.

Section 25.5 Receipt of Moneys After Notice or Termination.

No receipt of money by Owner from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Owner to recover Tenant's Interest in the Premises (which may include, but not be limited to, recovering possession of the Premises) by proper remedy. After the service of notice to terminate this Lease or the

commencement of any suit or summary proceedings or after a final order or judgment for the possession of Tenant's Interest in the Premises (which may include, but not be limited to, a judgement for possession of the Premises), Owner may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of Tenant's Interest in the Premises (including, without limitation, the use and occupation of the Premises) or, at the election of Owner, on account of Tenant's liability hereunder.

Section 25.6 Strict Performance.

No failure by Owner or Tenant to insist upon strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to such party by reason of the other party's default or an Event of Default, and no payment or acceptance of full or partial Rental and/or Impositions during the continuance (or with Owner's knowledge of the occurrence) of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. Subject to **Section 11.11**, no covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default. Payment by Tenant to Owner of any Rental and/or Impositions shall be without prejudice to, and shall not constitute a waiver of, any rights of Tenant against Owner provided for under this Lease or at law or in equity. Tenant's compliance with any request or demand made by Owner shall not be deemed a waiver of Tenant's right to contest the validity of such request or demand.

Section 25.7 Right to Enjoin Defaults.

In the event of Tenant's Default or Event of Default, Owner shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner's remedies are expressly limited by the terms hereof. In the event of any default by Owner of any term, covenant or condition under this Lease, Tenant shall be entitled to seek to enjoin the default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Tenant's remedies are expressly limited by the terms hereof. Provided however, in the event of any such default, Tenant shall be required to give Owner notice of such default and Owner shall have thirty (30) days from receipt of such notice to effect a cure of such default or if such default is not reasonably susceptible of being cured within such thirty (30) day period, Owner shall have a reasonable time to effect a cure of such default so long as Owner is diligently prosecuting such cure. Each right and remedy of Owner and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise except to the extent Owner's remedies and Tenant's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by Owner or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or

in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Owner or Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner's remedies and Tenant's remedies are expressly limited by the terms hereof.

Section 25.8 Remedies Under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's Interest in the Premises or Owner or Owner's Interest in the Premises as applicable, in any proceeding which is commenced by or against Tenant or Owner, as applicable, under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant or Owner, as applicable, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Owner or Tenant, as applicable, shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Owner's or Tenant's, as applicable, right, title and interest in and to the Premises or this Lease or any part thereof and adequately assure the complete and continuous future performance of the other party's obligations under this Lease. Owner or Tenant, as applicable, may petition the Bankruptcy Court to determine that adequate protection of Owner's or Tenant's, as applicable, right, title and interest in and to the Premises or this Lease, and adequate assurance of the complete and continuous future performance of the other party's obligations under this Lease, shall include, without limitation, all of the following requirements:

(a) that the other party shall comply with all of its obligations under this Lease;

(b) in the case of a proceeding concerning Tenant, that Tenant shall continue to use the Premises in the manner required by this Lease;

(c) in the case of a proceeding concerning Tenant, that Owner shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(d) in the case of a proceeding concerning Tenant, that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(e) in the case of a proceeding concerning Tenant, that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Owner that sufficient funds will be available to fulfill the obligations of Tenant under this Lease; and

(f) in the case of a proceeding concerning Tenant, that Owner shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease, subject to the rights of any Recognized Mortgagee under the Recognized Mortgage.

Section 25.9 Funds Held By Tenant.

From and after the date, if any, on which an Event of Default (including, without limitation, any Event of Default that occurs during the course of the Construction Work for the initial construction of the Project) has been deemed to have occurred and while such Event of Default shall be continuing, Tenant shall not pay, disburse or distribute any rents, issues or profits of the Premises, or portion thereof, the proceeds of any insurance policies covering or relating to the Premises or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to **Article 8** or **9**) or any undistributed proceeds from any sale or financing except to (i) creditors which are not Affiliates, in payment of amounts then due and owing by Tenant to such creditors with respect to work at the Premises, (ii) Affiliates, in payment of amounts then due and owing by Tenant to such Affiliates for items and services provided to Tenant in connection with its operations conducted at the Premises or any portion thereof, only to the extent such amounts do not exceed that which is customarily and reasonably paid in arms-length transactions to Persons who are not Affiliates for comparable items and services, and (iii) the holder of a Recognized Mortgage, in payment of the principal amount of, and all unpaid and accrued interest then outstanding under, such Recognized Mortgage and any other amounts payable pursuant to such Recognized Mortgage and any instruments and documents related thereto.

Section 25.10 Inspection.

Owner and its representatives shall have the right, upon twenty-four (24) hours prior notice to Tenant, to enter upon the Premises (a) to inspect the operation, sanitation, safety, maintenance and use of the same (but Owner shall not thereby assume any responsibility or liability for the performance of Tenant's obligations hereunder, nor any liability arising from the improper performance thereof) and (b) to conduct inspections for the purpose of determining whether a Default or Event of Default has occurred, provided that Owner shall be accompanied by a representative of Tenant (in areas of the Project other than areas readily available to the general public), and provided further that such entry shall not unreasonably interfere with the operation of the Premises. Tenant agrees to make a representative of Tenant available to accompany Owner on any such inspection.

Article 26 - Notices, Consents and Approvals

Section 26.1 Service of Notices and Other Communications.

(a) **In Writing.** Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other (or any Recognized Mortgagee), or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication (referred to in this **Section 26.1** as a "**Notice**") shall be in writing (whether or not so indicated elsewhere in this Lease) and shall be effective for any purpose only if given or served by

certified or registered U.S. Mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or a recognized national courier service, addressed as follows:

if to Tenant: Lincoln Plaza Partners LLC
c/o SRC Lincoln Plaza LLC
230 Fifth Street
Miami Beach, FL 33139
Attention: Scott Robins, Managing Member

with a copy to: Stuart K. Hoffman, Esq.
Holland & Knight
701 Brickell Avenue
Suite 3000
Miami, FL 33131

if to Owner: City of Miami Beach
City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139

with a copy to:

City of Miami Beach
City Attorney
1700 Convention Center Drive
Miami Beach, Florida 33139

and with a copy to:

Bloom & Minsker
Suite 700
1401 Brickell Avenue
Miami, Florida 33131
Attention: Joel N. Minsker, P.A.

Any such Notice may be given, in the manner provided in this **Section 26.1**, (x) on either party's behalf by its attorneys designated by such party by notice hereunder, and (y) at Tenant's request, on its behalf by any Recognized Mortgagee designated in such request.

(b) **Effectiveness**. Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

(c) **References**. All references in this Lease to the "**date**" of Notice shall mean the effective date, as provided in the preceding **Section 26.1(b)**.

Section 26.2 Consents and Approvals.

(a) **Effect of Granting or Failure to Grant Approvals or Consents.** All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act.

(b) **Standard.** All consents and approvals which may be given by a party under this Lease shall not (whether or not so indicated elsewhere in this Lease) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. In furtherance of the foregoing, in determining whether Owner has acted reasonably in not giving its consent or approval, the trier of fact shall take into consideration (for so long as Owner is the City or any Governmental Authority) that Owner is a political body governed by elected officials or persons that are appointed, directly or indirectly, by elected officials. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(c) **Deemed Approval.**

(i) If a party entitled to grant or deny its consent or approval (the "**Consenting Party**") within the specified time period shall fail to do so, then, except as otherwise provided in **Section 26.2(c)(ii)** and **(iii)**, and provided that the request for consent or approval (and the envelope in which such request is transmitted to the extent permitted by the carrier) bears the legend set forth below in capital letters and in a type size not less than that provided below, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

"FAILURE TO RESPOND TO THIS REQUEST WITHIN THE TIME PERIOD PROVIDED IN THE LEASE AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA [NAME OF CURRENT TENANT] SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION [FILL IN APPLICABLE SECTION] OF SUCH LEASE AGREEMENT."

(ii) If the matter to which consent or approval is requested pertains to **Article 10** or **Article 16**, then such matter shall not be deemed consented to or approved unless (i) the Consenting Party fails to timely

respond to the other party's (the "**Requesting Party's**") initial request, which request (and the envelope in which such request is transmitted to the extent permitted by the carrier) shall bear the legend set forth above and (ii) the Requesting Party shall thereafter send a second request to the Consenting Party which request (and the envelope in which such request is transmitted to the extent permitted by the carrier) conspicuously bears the legend set forth above, and Owner shall fail to timely respond to such second request.

(iii) Notwithstanding anything to the contrary contained in this Lease, including, without limitation, **Sections 26.2(c)(i)** and **26.2(c)(ii)** above, if the City or any instrumentality of the City shall be the "**Owner**" hereunder and the matter (other than a matter referred to in **Section 26.2(c)(iv)**) to be consented to or approved requires the consideration of the City Commission and/or the governing body of such instrumentality of the City as applicable (whether pursuant to Requirements or the written opinion of the City Attorney, or the chief legal officer of such other instrumentality of the City) then, provided Owner gives Tenant notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless Owner shall fail to respond to Tenant's request (or second request if the provisions of **Section 26.2(c)(ii)** are applicable) by the date which is fifteen (15) days after the first regular meeting of the City Commission (and/or such other instrumentality's governing body, as applicable) which occurs no earlier than ten (10) days following the receipt of such request (or second request, as applicable); but in any event not later than sixty (60) days following such request (or second request), as applicable.

(iv) Owner hereby agrees, for so long as the City or any other Governmental Authority shall be the "**Owner**" hereunder, that, subject to Requirements, the City Manager or the chief operating officer of such other Governmental Authority, as applicable, shall be authorized to grant consents or approvals on behalf of the City and/or other Governmental Authority as applicable, with respect to the following Sections of this Lease: **Article 7** and **Sections 8.3, 9.3, 10.7** (for execution of instruments), **14.2, 14.5, 16.1, 20.4, 27.2, 32.2(b)** and **32.3.**

(v) The foregoing provisions of this **Section 26.2(c)** shall not be construed to modify or otherwise affect a party's right to litigate the failure of a party to act reasonably in granting or denying a request for consent or to timely respond to a request for a consent, but such right to litigate

shall not serve to delay the time period within which a grant or denial of such request is required hereunder.

(d) **Remedy for Refusal to Grant Consent or Approval.** If, pursuant to the terms of this Lease, any consent or approval by Owner or Tenant is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled by litigation. In the event there shall be a final determination that the consent or approval was unreasonably withheld, conditioned or delayed so that the consent or approval should have been granted, the consent or approval shall be deemed granted and the Requesting Party shall be entitled to any and all damages resulting therefrom, subject to the limitations provided in this Lease.

(e) **No Fees, etc.** Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease (provided that the foregoing shall not be deemed in any way to limit Owner acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

(f) **Governmental Capacity.** Notwithstanding anything to the contrary contained in this **Section 26.2**, the City shall not be required by this Lease to give its consent to any matter arising from or in connection with this Lease when the City is acting in its governmental capacity.

Article 27 - Certificates By Owner and Tenant

Section 27.1 Certificate of Tenant.

(a) Tenant shall, within fifteen (15) days after notice by Owner, execute, acknowledge and deliver to Owner, or any other Person specified by Owner, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Lease is a true, correct and complete copy of this Lease), and (ii) the date to which each item of Rental and/or Impositions payable by Tenant hereunder has been paid, and (b) stating (i) whether Tenant has given Owner written notice of any default, or any event that, with the giving of notice or the passage of time, or both, would constitute a default, by Owner in the performance of any covenant, agreement, obligation or condition contained in this Lease, which default or event has not been cured, and (ii) whether, to the actual knowledge of Tenant (but without independent inquiry), Owner is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default.

(b) Tenant shall file with Owner at least annually, a sworn affidavit, signed by an authorized officer of Tenant, to the effect that since the date of the last such affidavit (or in the case of the first such affidavit, since the Commencement Date) (1) no changes have been made to the operating agreement or other organic document under which Tenant is organized (the **"Tenant**

Document"), or, if changes shall have been made to the Tenant Document, a statement as to the specific nature of the changes and a notification to Owner that the amended or modified Tenant Document is on file at the office of Tenant located in Miami-Dade County, Florida, and that it is available for inspection by Owner, (2) the full names and addresses of holders of membership interests in Tenant (who hold at least two percent (2%) interest in Tenant) are only those that are listed in such affidavit, and that the Managing Member(s) confirms its continued ownership in Tenant (if Tenant is an entity different than a limited liability company, this provision shall apply to the nature of the appropriate ownership interests for the entity in question), and (3) the obligation of Tenant's Members to each other related thereto under the operating agreement have not been amended or modified in any way that is materially adverse to Owner, and (4) if the Managing Member of Tenant is a corporation, it remains a Florida corporation in good standing and the annual report of said corporation, required to be filed with the Department of State of the State of Florida pursuant to Chapter 607, Florida Statutes, as amended (the **"Annual Report"**), and any fees required for the filing thereof, are not delinquent; or, if not a Florida corporation, it is a corporation properly authorized to do business in the State of Florida, and a statement to the effect that the Substantial Controlling Interest in said Managing Member or any successor thereto has not changed. A copy of the latest Annual Report of the Managing Member of Tenant shall be attached to the aforesaid certificate.

Section 27.2 Certificate of Owner.

Owner shall, within fifteen (15) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Lease is a true, correct and complete copy of this Lease), and (ii) the date to which each item of Rental and/or Impositions payable by Tenant hereunder has been paid, and (b) stating (i) whether an Event of Default has occurred or whether Owner has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, which Default or Event of Default has not been cured, and (ii) whether, to the actual knowledge of Owner (but without independent inquiry), Tenant is in default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default.

Article 28 - Financial Reports and Records

Section 28.1 Books and Records; Audit Rights.

(a) Tenant shall at all times during the Term of this Lease keep and maintain (separate from any of Tenant's other books, records and accounts), and shall cause the Project Manager to keep and maintain, accurate and complete records pertaining to the Premises related thereto, including, without limitation, books of account reflecting the Project Revenue of the Acceptable Operator and such other matters referenced in this Lease, in accordance with the Accounting Principles with such exceptions as may be provided for in this Lease, and provided that Tenant (and the Acceptable Operator) may make such reasonable modifications in such books of account as are

consistent with Acceptable Operator's standard practice in accounting for its operations under management contracts generally. Owner and its representatives shall have, during normal business hours and upon reasonable advance notice, access to inspect the books and records of Tenant and the Acceptable Operator pertaining to the Project Revenue, including, without limitation, books of account properly reflecting the operations of the Premises, which books and records shall be kept at the Premises. Owner shall have the right to cause an audit by Owner's internal auditors (in accordance with the Accounting Principles) of such books and records to be made at any time (but not more frequently than one (1) time in any twelve (12) month period and only with respect to Project Revenue), at Owner's expense (a copy of which shall be delivered to Tenant). Such right of inspection and audit may be exercised at any time within three (3) years after the end of the Lease Year to which such books and records relate, and Tenant and Acceptable Operator shall maintain all such books and records for at least such period of time and, if any Dispute between the parties has arisen and remains unresolved at the expiration of such period of time, for such further period of time until the resolution of such Dispute. Notwithstanding anything to the contrary contained herein, at Tenant's option, the audit described in this **Section 28.1(a)** shall be performed by Owner's external auditors (which shall be a Recognized Accounting Firm), in which case Tenant shall pay the reasonable fees and expenses of said external auditors; and, provided further that in the event that Owner determines to have such audit performed by its external auditors, Owner shall pay the fees and expenses or said external auditors.

(b) If, upon any audit by Owner as described above of the books or records of Tenant or Acceptable Operator, (i) an error (which shall mean a mistake in calculation of Project Revenue, an accounting error, but shall exclude any error based on assertions that Tenant acted imprudently or unwisely in connection with the collection of the Project Revenue) shall be revealed which results in there being due to Owner Percentage Rent for any Lease Year for which Annual Financial Statements are being audited pursuant to **Section 28.1(a)**, the amounts of any such underpayments of Percentage Rent which may be disclosed by such audit, together with interest accrued thereon at the Late Charge Rate from the date on which such underpayment was made until the date of payment of the correct amount, shall be paid to Owner upon thirty (30) days demand or (ii) an error (as defined in clause (i) above) shall be revealed which resulted in an overpayment by Tenant to Owner of Percentage Rent, Owner shall remit the amount of such overpayment (less the cost of such audit) to Tenant within thirty (30) days after the completion of such audit. If Owner does not notify Tenant of any error in the calculation of Percentage Rent within three (3) years after the end of any Lease Year, then Owner shall be deemed to have conclusively waived any and all objections with respect to any Percentage Rent payments with respect to such Lease Year.

(c) As soon as available, but in no event later than the date which is one hundred fifty (150) days after the end of each Lease Year, Tenant shall make available at the Premises for inspection and examination (or photocopying) by Owner or its representatives a copy of the annual financial statements (the "**Annual Financial Statements**") for such Lease Year (which statements shall be audited by any Recognized Accounting Firm) accurately reflecting receipt of Project Revenue prepared and certified by Tenant and such independent certified public accountant in accordance with the Accounting Principles.

(d) As soon as available, but in no event later than thirty (30) days after the end of each month, Tenant shall make available at the Project for inspection and examination (or photocopying) by Owner or its representatives an unaudited statement of Project Revenue for both the current month and Lease Year to date.

(e) As soon as available, but in no event later than thirty (30) days prior to the commencement of each Lease Year, Tenant shall make available at the Project for inspection and examination (or photocopying) by Owner or its representatives an informational copy of a projected income and expense statement reflecting the budget for the Project for such coming Lease Year (the "**Budget**").

(f) Notwithstanding any of the foregoing provisions of this **Article 28**, so long as Owner is the City or any instrumentality of the City, the following provisions shall be applicable to the books and records of the Project, the Annual Financial Statements, the Budget and any other documents (collectively, the "**Project Documents**") required to be delivered or made available to Owner under this **Article 28**:

(i) All Project Documents shall be maintained at the Premises.

(ii) All Project Documents shall be made available to Owner and its representatives as provided above.

(iii) If a copy of any Project Document is made by Owner or any of its representatives and delivered to Owner's offices, there shall be attached to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

"THE ATTACHED DOCUMENT CONTAINS BUSINESS OR FINANCIAL INFORMATION. THE ATTACHED DOCUMENT IS TO BE KEPT SOLELY IN THE OFFICE OF THE CITY ATTORNEY OF THE CITY OF MIAMI BEACH, FLORIDA. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICE AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH APPLICABLE LAW."

(g) Any third party representatives (including, without limitation, any Recognized Accounting Firm) of Owner that review any Project Documents shall execute a confidentiality agreement mutually acceptable to Owner and Tenant. If a copy of any Project Document is made by any such representative for use in the offices of such representative, there shall be attached to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

"THE ATTACHED DOCUMENT CONTAINS BUSINESS OR FINANCIAL INFORMATION. THE ATTACHED DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT AND SHALL BE KEPT SOLELY IN THE OFFICES OF [INSERT NAME OF REPRESENTATIVE]. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICES AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH SUCH CONFIDENTIALITY AGREEMENT AND APPLICABLE LAW."

(h) Promptly following receipt of a request under any Requirement for the release of a copy of any Project Document, Owner shall send notify Tenant of such request, but neither Owner nor any Owner Indemnified Party shall incur any liability to Tenant or any Tenant Indemnified Party if Owner fails to provide any such notice.

(i) Neither Owner nor any Owner Indemnified Party shall incur any liability to Tenant or any Tenant Indemnified Party in the event any Project Document is stolen, misplaced or otherwise released in violation of the foregoing provisions of this **Section 28.1**.

(j) The obligations of Tenant and Owner under this **Article 28** shall survive the Expiration of the Term.

(k) Any third party representatives (including, without limitation, any Recognized Accounting Firm) of Owner that review any Project Documents shall execute a confidentiality agreement mutually acceptable to Owner and Tenant. If an extract of any Project Document is made by any such representative for use in the offices of such representative, there shall be attached by Owner or its representative to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

"THE ATTACHED DOCUMENT CONTAINS BUSINESS OR FINANCIAL INFORMATION THAT HAS BEEN DESIGNATED AS CONFIDENTIAL BY [INSERT NAME OF TENANT]. THE ATTACHED DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT AND SHALL BE KEPT SOLELY IN THE OFFICES OF [INSERT NAME OF REPRESENTATIVE]. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICES AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH SUCH CONFIDENTIALITY AGREEMENT AND APPLICABLE LAW."

Article 29 - Surrender at End of Term

Section 29.1 Surrender of Premises.

Upon the Expiration of the Term (or upon a re-entry by Owner upon the Premises pursuant to **Article 25**), Tenant, without any payment or allowance whatsoever by Owner, shall surrender the Premises to Owner in good order, condition and repair, reasonable wear and tear excepted and (subject to the provisions of **Article 8**) damage from casualty excepted, free and clear of all Master Subleases, liens and encumbrance other than as set forth below and the Title Matters. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 29.2 Delivery of Subleases, Etc.

Upon the Expiration of the Term (or upon a re-entry by Owner upon the Premises pursuant to **Article 25**), Tenant shall deliver to Owner the following (to the extent then in Tenant's possession or control): Tenant's original executed counterparts, if available (and if not available, true and correct copies thereof), of all subleases then in effect, any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy then in effect for the Premises, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Building Equipment installed in the Premises (such to be delivered without representation or warranty by Tenant), together with a duly executed assignment thereof (without recourse) to Owner in form suitable for recording, and all financial reports required by **Article 28** and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Improvements.

Section 29.3 Title to Improvements.

Owner recognizes and agrees that until Expiration of the Term, ownership of and title to the Improvements shall be in Tenant and that until such time, Tenant has, and shall be entitled to, all rights and privileges of ownership of such Improvements. Ownership of and to all Improvements shall automatically vest in Owner upon the Expiration of the Term, without the payment of consideration therefor, and without the necessity for the execution and delivery by Tenant of any instrument transferring title. Notwithstanding the foregoing, Tenant covenants and agrees that upon the Expiration of the Term, Tenant shall, upon Owner's request, execute and deliver to Owner any instrument or document reasonably requested by Owner to confirm title to said Improvements in Owner.

Section 29.4 Title to Reserve Account.

Ownership of and to the Reserve Account and all proceeds thereof shall automatically vest in Owner (subject to the lien therein of the Recognized Mortgagee) upon the Expiration of the Term, without the payment of consideration therefor, and without the necessity for the execution and delivery by Tenant of any instrument transferring title thereto. Notwithstanding the foregoing, Tenant covenants and agrees that upon the Expiration of the Term, Tenant shall, upon Owner's request, execute and

deliver to Owner any instrument or document reasonably requested by Owner to confirm title to said Reserve Account and proceeds thereof in Owner.

Section 29.5 Cash and Accounts Receivable.

Tenant shall retain the right to all cash and accounts receivable on or in connection with the Premises existing as of the Expiration of the Term and Owner shall pay Tenant for all unopened consumable supplies located at the Premises upon the Expiration of the Term (based on Tenant's actual cost therefor); provided, however that Tenant shall turn over to Owner all deposits, accounts receivables and other payments for periods after the Expiration of the Term. If, after the Expiration of the Term, Owner collects any accounts receivable to which Tenant is entitled, Owner shall promptly remit such amounts to Tenant, subject to the rights of any Recognized Mortgagee.

Section 29.6 Personal Property.

Any personal property of Tenant or of any Master Subtenant which remains on the Premises after the termination of this Lease or after the removal of Tenant or such Master Subtenant from the Premises, may, at the option of Owner, be deemed to have been abandoned by Tenant or such Master Subtenant, and either may be retained by Owner as its property or be disposed of, without accountability, in such manner as Owner may see fit, in its absolute and sole discretion, but in compliance with applicable Requirements. Owner shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Master Subtenant.

Section 29.7 Survival Clause.

The provisions of this **Article 29** shall survive the Expiration of the Term.

Article 30 - Quiet Enjoyment

Section 30.1 Quiet Enjoyment.

Owner covenants that, as long as this Lease is in full force and effect without an Event of Default existing hereunder, Tenant shall and may (subject to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy Tenant's Interest in the Premises for the Term without molestation or disturbance by or from Owner (solely in its proprietary capacity) or any Person claiming by, under or through Owner (solely in its proprietary capacity).

Article 31 - Reserved

Article 32 - Administrative and Judicial Proceedings, Contests, Etc.

Section 32.1 Tax Contest Proceedings.

Tenant shall have the right (subject to the provisions of **Section 32.2**), at its sole cost and expense, to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith and in accordance with applicable Requirements.

Section 32.2 Imposition Contest Proceedings.

Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, subject to Requirements, if, and only as long as:

(a) Neither the Premises nor any part thereof would, by reason of such postponement or deferment, be, in the reasonable judgment of Owner, in danger of being forfeited to a Governmental Authority and Owner is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in **Section 32.2(b)** by reason of nonpayment thereof; and

(b) Tenant has deposited with a Recognized Mortgagee, if any (or if not, with a third party escrow agent proposed by Tenant, subject to Owner's consent, not to be unreasonably withheld (failure to respond within fifteen (15) days after notice being conclusively deemed approval)), cash in the amount so contested and unpaid or, alternatively, at Tenant's option, a surety company bond or an irrevocable letter of credit issued by an Institutional Lender (in form reasonably satisfactory to Owner) or other security (for example, a personal guaranty) reasonably satisfactory to Owner, in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might, in Owner's reasonable judgment, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings; provided, however, any amount deposited with any governmental entity, the making of which deposit is required by law in order for Tenant to contest such matters, shall be considered part of the amount so required of Tenant by Owner (the intent being that Tenant shall not be required to make duplicitous deposits under this **Section 32.2(b)**). Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and, upon such payment, any Recognized Mortgagee or escrow agent holding any amount or other security deposited with it with respect to such Imposition shall (subject to the terms of any agreement between Tenant and any Recognized Mortgagee or escrow agent) return the same, together with the interest, if any, earned

thereon. However, if such Recognized Mortgagee or escrow agent is so requested by Tenant, such Recognized Mortgagee or escrow agent shall disburse said moneys on deposit with it directly to the Person to whom or to which such Imposition is payable. If at any time during the continuance of such proceedings Owner, in its reasonable judgment, deems insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Owner's demand, shall make an additional deposit of such additional sums or other acceptable security as Owner may request, and upon failure of Tenant to so do, the amount theretofore deposited, together with the interest, if any, earned thereon, shall, upon demand by Owner, be applied by such Recognized Mortgagee or escrow agent to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Owner as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Owner or the Person entitled to receive it, within ten (10) days after Owner's demand.

Section 32.3 Requirement Contest.

Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant provided that before instituting any such proceeding, Tenant shall furnish such Recognized Mortgagee, if any (or if not, with a third party escrow agent proposed by Tenant, subject to Owner's consent, not to be unreasonably withheld (failure to respond within fifteen (15) days after notice being conclusively deemed approval)), with a surety company bond or, alternatively at Tenant's option, a cash deposit, an irrevocable letter of credit issued by an Institutional Lender or other security (e.g., a personal guaranty), in form and amount reasonably satisfactory to Owner, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith; provided, however, any amount deposited with any governmental entity, the making of which deposit is required by law in order for Tenant to contest such matters, shall be considered part of the amount so required of Tenant by Owner (the intent being that Tenant shall not be required to make duplicitous deposits under this **Section 32.3**). Any such proceeding instituted by Tenant shall be commenced as soon as possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of **Section 15.1** if, in Owner's reasonable judgment, (i) noncompliance therewith would create an emergency condition involving the health or safety of persons, (ii) the Premises, or any part thereof, are in material danger of being forfeited to an authority (other than Owner when the Agency or the City or an instrumentality thereof is Owner) or (iii) Owner is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided by reason of noncompliance therewith, and any security posted by Tenant shall (subject to the terms of any agreement between Tenant and any Recognized Mortgagee or escrow agent) be returned to Tenant with any interest accrued thereon.

Section 32.4 Owner's Participation in Contest Proceedings.

Owner shall not be required to join in any action or proceeding referred to in this **Article 32.4** unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Owner. If so required, Owner shall join and cooperate in such proceedings or permit them to be brought by Tenant in Owner's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Owner in connection therewith. Notwithstanding the foregoing, Owner's joinder and cooperation shall be limited to actions necessary to enable Tenant to satisfy technical requirements of any such action or proceeding and in no event shall Owner be required to join in any such action or proceeding in any substantive capacity.

Section 32.5 Nonapplicability of this Article 32.

None of the rights granted to Tenant in this **Article 32** shall apply to any matters covered by **Section 3.2(f)**. The provisions of **Section 3.2(f)** shall govern and control over the provisions of this **Article 32** when in conflict.

Article 33 - Nondiscrimination

Section 33.1 Nondiscrimination.

Tenant shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person because of race, religion, creed, national origin, sex, age, disability, marital status or sexual orientation.

Article 34 - Indictment, Investigations, Etc.

Section 34.1 Cooperation in Investigations.

To the extent required by Requirements, Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. In addition, Tenant shall promptly report in writing to the City Attorney of the City of Miami Beach, Florida any solicitation, of which Tenant's officers or directors have knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other Person relating to the procurement or obtaining of this Lease by Tenant or affecting the performance of this Lease.

Article 35 - Environmental Matters

Section 35.1 Definitions.

For the purposes of this Lease, the following terms shall have the following definitions:

(a) "**Hazardous Materials**" shall mean (i) petroleum and its constituents; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "**hazardous substances,**" "**hazardous materials,**" "**hazardous wastes,**" "**pollutants or contaminants,**" "**solid wastes**" or words of similar import under any Requirement including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (iv) any other chemical, material, gas or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Premises or the operations thereon;

(b) "**Environmental Laws**" shall mean all Requirements relating to the protection of human health or the Environment, including:

(i) all Requirements relating to reporting, licensing, permitting, investigation and remediation of Releases or Threat of Release into the Environment, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials; and

(ii) all Requirements pertaining to the protection of the health and safety of employees or the public;

(c) "**Environment**" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air;

(d) "**Environmental Condition**" shall mean any condition with respect to the Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of Tenant's business or the operation of the business of any subtenant or occupant of the Premises or that of any other property owner or operator in the vicinity of the Premises or any activity or operation formerly conducted by any Person on or off the Premises;

(e) "**Environmental Damages**" shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the assessment, monitoring, remediation or mitigation of an Environmental Condition (and shall include any damages for the failure to do so), including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work;

(f) "**Permit**" shall mean any environmental permit, license, approval, consent or authorization issued by a federal, state or local governmental or quasi-governmental entity;

(g) "**Release**" shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of a Hazardous Material into the Environment; and

(h) "**Threat of Release**" shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

Section 35.2 Representations and Warranties of Tenant.

Tenant represents and warrants that it has made such physical inspection of the Land, and has inspected such records of the City, Miami-Dade County, Florida, the State of Florida, and the United States of America, as Tenant deemed necessary to make an informed business decision that it would enter into this Lease with the knowledge that Tenant shall be solely responsible for the remediation and abatement of any Environmental Condition existing as of the Commencement Date, including any Environmental Condition caused by Owner or any prior owner of the Land, that must be remediated and/or abated pursuant to any Environmental Laws. Tenant agrees to expeditiously undertake such assessment, remediation, and monitoring of the soil and ground water as required under applicable Environmental Laws; and to take such action as necessary to obtain a No Further Action determination from DERM or DEP, if required under Environmental Laws as soon as may be practical after the Possession Date, and, in any event, prior to the commencement of construction of the Project. Tenant agrees that in connection with any remediation or abatement pursuant to this **Section 35.2** it will provide to Owner all correspondence, reports, studies and other documents exchanged between Owner, its consultants, and DERM or DEP promptly after those documents are provided to or received from DERM or DEP.

Section 35.3 Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous Material to be brought on, kept or used in or about the Premises except as necessary or useful to Tenant's business and in compliance with all Environmental Laws.

Section 35.4 Tenant Indemnification of Owner.

Tenant hereby indemnifies and holds harmless the Owner Indemnified Parties from and against any and all Environmental Damages to the Premises during the term of this Lease except for Environmental Damages to the Premises caused by any of the Owner Indemnified Parties during the Term. Such obligation of Tenant shall include the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably satisfactory to Owner), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the Owner Indemnified Parties. Without limiting the foregoing, if the presence or Release on or from the Premises caused or permitted by Tenant results in contamination of the Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to remediate the Premises in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities; provided that Owner's approval of such actions shall first be obtained.

Section 35.5 Compliance.

Tenant, at its sole cost and expense (except as otherwise provided in this Lease), shall comply and cause the Acceptable Operator, all Master Subtenants and all subtenants to comply with all Environmental Laws with respect to the use and operation of the Premises.

Section 35.6 Notices.

If Tenant or Owner receives any notice of a Release, Threat of Release or Environmental Condition or a notice with regard to air emissions, water discharges, noise emissions, recycling, violation of any Environmental Law or any other environmental, health or safety matter affecting Tenant or the Premises (an "**Environmental Complaint**") independently or by notice from any Governmental Authority having jurisdiction over the Premises, including the EPA, or with respect to any litigation regarding Environmental Conditions at or about the Premises, then such party shall give prompt oral and written notice of same to the other party detailing all relevant facts and circumstances.

Section 35.7 Owner's Remedies.

Provided Tenant does not diligently commence to remediate the applicable Environmental Conditions promptly after becoming aware of the same and thereafter diligently pursue the completion thereof in a reasonable time (and in any event in accordance with Requirements), Owner shall have the right, but not the obligation, to enter onto the Premises and remediate the Premises in compliance with

Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities, at Tenant's sole cost and expense, upon its obtaining knowledge of such matters independently or by receipt of any notice from any Person, including the EPA.

Section 35.8 Defaults.

From and after the Possession Date, the occurrence of any of the following events shall constitute an Event of Default under this Lease:

(a) if the EPA or any other federal, state or local body or agency creates a lien upon the Premises which is not discharged by payment or bonding within ninety (90) days except in the event said lien is the result of Environmental Damages caused by any of the Owner Indemnified Parties during the Term; or

(b) if the EPA or any other federal, state or local body or agency makes a claim (which shall mean, for the purposes of this **Section 35.8**, issuance of a warning notice, citation, notice of violation or administrative complaint) against Tenant (or any subtenant, licensee or other occupant of the Premises), the Premises or Owner, for damages or cleanup costs related to a Release or an Environmental Complaint on or pertaining to the Premises; provided however, such claim shall not constitute an Event of Default if, within thirty (30) days of the lien or claim:

(i) Tenant has commenced and is diligently pursuing either: (x) cure or correction of the event which constitutes the basis for the lien or claim and continues diligently to pursue the cure or correction to the satisfaction of the Governmental Authority that asserted the lien or claim and obtains the discharge of any lien, or (y) proceedings for an injunction, restraining order, administrative or other appropriate emergency relief contesting the validity of the claim and, if such relief is granted, the emergency relief is not thereafter dissolved or reversed on appeal; and

(ii) Tenant has posted a bond, letter of credit or other security satisfactory in form and substance to Owner to secure the proper and complete cure or correction of the event which constitutes the basis of the claim. The amount of the bond, letter of credit or other security shall be determined in the following manner: (A) Owner, Tenant and their respective consultants shall use their best efforts to agree upon the most probable cost to cure or correct the event which constitutes the basis of the claim; (B) in the event Owner and Tenant are unable to agree despite their best efforts, Owner's consultant and Tenant's consultant shall select a third consultant who shall provide an estimate of the most probable cost of curing or correcting the event which constitutes the basis of the claim. Owner and Tenant shall each pay the cost of their own consultant under

this **35.8(b)(ii)** and shall share evenly the cost of the third consultant should use of a third consultant become necessary.

Section 35.9 Owner Responsibility.

Owner (in its proprietary capacity) is responsible for all Environmental Damages resulting from an Environmental Condition caused by any of the Owner Indemnified Parties during the Term.

Section 35.10 Survival.

The provisions of this **Article 35** shall survive the Expiration of the Term.

Article 36 - Reciprocal Rights of First Refusal

Section 36.1 Tenant's Reciprocal Right of First Offer.

(a) If, during the Term, Owner shall desire to sell, convey or otherwise transfer, directly or indirectly, all of such Owner's estate in and to the Premises (a "**Right of First Offer Transaction**"), such Owner shall first deliver to Tenant a Notice (an "**Offer Notice**") thereof setting forth the material terms of such proposed Right of First Offer Transaction. For a period of forty-five (45) days after Tenant's receipt of the Offer Notice, Tenant shall have the right to elect in writing to consummate the Right of First Offer Transaction described therein at the price and upon such other material terms set forth in the Offer Notice. As used in this **Section 36.1**, the material terms of a Right of First Offer Transaction shall be the terms set forth in **Exhibit 36.1(a)** attached hereto and incorporated by reference herein.

(b) If Tenant does not consummate a Right of First Offer Transaction pursuant to this **Section 36.1**, Owner shall have the right to consummate the proposed transaction with any other Person upon such terms and conditions as shall be no less favorable to Owner than those which are set forth in the Offer Notice, within one hundred eighty (180) days following the earlier of (i) the expiration of such forty-five (45) day period or (ii) the receipt by Owner of a notice from Tenant stating that Tenant does not elect to consummate such Right of First Offer Transaction. If Owner shall fail to consummate the Right of First Offer Transaction as set forth in such Offer Notice within such one hundred eighty (180) day period (subject to extensions not to exceed, in the aggregate, sixty (60) days), the provisions of this **Section 36.1** shall be applicable to any future Right of First Offer Transaction. Notwithstanding anything to the contrary contained herein, Owner may, in good faith, negotiate with any other Person the terms and conditions of a Right of First Offer Transaction that Tenant has elected not to consummate; provided, however, that if the material terms of such Right of First Offer Transaction are modified so that such terms, when so modified, are less favorable to Owner, then such transaction shall be deemed a new Right of First Offer Transaction and the provisions of this **Section 36.1** (including, without limitation, **Section 36.1(a)**), shall be applicable with respect to such Right of First Offer Transaction; provided, further, however, that such Owner may modify the material terms of any such Right of First Offer Transaction and provide notice thereof to Tenant as provided herein, only once. Owner shall give twenty (20) days' notice to Tenant of the terms of any Right of First Offer

Transaction as so modified prior to consummating the same, so that Tenant may determine whether such modifications are sufficiently material that Tenant now desires to consummate such Right of First Offer Transaction. If Tenant does not elect to consummate a Right of First Offer Transaction pursuant to this **Section 36.1**, Owner shall provide Tenant with a true, complete and correct copy of the executed purchase agreement for such Right of First Offer Transaction not less than ten (10) days prior to the closing of such Right of First Offer Transaction.

(c) Owner and Tenant shall diligently undertake to consummate any Right of First Offer Transaction involving Tenant under this **Section 36.1** as soon as practicable after Tenant's election as hereinabove described. If Tenant defaults in its obligation to close the Right of First Offer Transaction in accordance with the terms thereof (subject to reasonable extensions not to exceed, in the aggregate, sixty (60) days), the foregoing right of first offer shall be null and void with respect to any future Right of First Offer Transaction.

(d) In addition, Owner may not sell such interest in the Premises together with any other interests or other assets. Any sale of the Premises together with any other interests or other assets, shall be null and void and of no effect.

(e) If Tenant does not exercise its right of first offer and Owner consummates its Right of First Offer Transaction, the purchaser shall be deemed to have acquired the Premises subject to the provisions of this Lease and the purchaser shall be deemed to have assumed the obligations of Owner hereunder accruing from and after the effective date of such consummation, and Owner shall deliver to Tenant, or shall cause to be delivered to Tenant, within ten (10) business days after the execution thereof, a true, complete and correct copy of an executed instrument of transfer and a true, complete and correct copy of an instrument of assumption by the transferee of Owner's obligations under this Lease accruing from and after the date of such transfer.

(f) If an owner does not comply with the terms of this **Section 36.1**, any Right of First Offer Transaction entered into by such owner shall have no validity and shall be null and void and without effect.

(g) Notwithstanding the foregoing provisions of this **Section 36.1**, Owner may not institute the procedures set forth herein for a Right of First Offer Transaction more than once in any fiscal year, except with respect to any modifications of the Right of First Offer Transaction as provided in **Section 36.1(b)**.

Section 36.2 Owner's Reciprocal Right of First Refusal.

(a) If, during the Term, Tenant shall desire to sell, convey or otherwise transfer, directly or indirectly, all of such Tenant's estate in and to the Premises (a "**Right of First Offer Transaction**"), such Tenant shall first deliver to Owner a Notice (an "**Offer Notice**") thereof setting forth the material terms of such proposed Right of First Offer Transaction. For a period of forty-five (45) days after Owner's receipt of the Offer Notice, Owner shall have the right to elect in writing to consummate the Right of First Offer Transaction described therein at the price and upon such other

material terms set forth in the Offer Notice. As used in this **Section 36.2**, the material terms of a Right of First Offer Transaction shall be the terms set forth in **Exhibit 36.2(a)** attached hereto and incorporated by reference herein.

(b) If Owner does not consummate a Right of First Offer Transaction pursuant to this **Section 36.2**, Tenant shall have the right to consummate the proposed transaction with any other Person upon such terms and conditions as shall be no less favorable to Tenant than those which are set forth in the Offer Notice, within one hundred eighty (180) days following the earlier of (i) the expiration of such forty-five (45) day period or (ii) the receipt by Tenant of a notice from Owner stating that Owner does not elect to consummate such Right of First Offer Transaction. If Tenant shall fail to consummate the Right of First Offer Transaction as set forth in such Offer Notice within such one hundred eighty (180) day period (subject to extensions not to exceed, in the aggregate, sixty (60) days), the provisions of this **Section 36.2** shall be applicable to any future Right of First Offer Transaction. Notwithstanding anything to the contrary contained herein, Tenant may, in good faith, negotiate with any other Person the terms and conditions of a Right of First Offer Transaction that Owner has elected not to consummate; provided, however, that if the material terms of such Right of First Offer Transaction are modified so that such terms, when so modified, are less favorable to Tenant, then such transaction shall be deemed a new Right of First Offer Transaction and the provisions of this **Section 36.2** (including, without limitation, **Section 36.2(a)**), shall be applicable with respect to such Right of First Offer Transaction; provided, further, however, that such Tenant may modify the material terms of any such Right of First Offer Transaction, and provide notice thereof to Owner as provided herein, only once. Tenant shall give twenty (20) days' notice to Owner of the terms of any Right of First Offer Transaction as so modified prior to consummating the same, so that Owner may determine whether such modifications are sufficiently material that Owner now desires to consummate such Right of First Offer Transaction. If Owner does not elect to consummate a Right of First Offer Transaction pursuant to **Section 36.2**, Tenant shall provide Owner with a true, complete and correct copy of the executed purchase agreement for such Right of First Offer Transaction not less than ten (10) days prior to the closing of such Right of First Offer Transaction.

(c) Tenant and Owner shall diligently undertake to consummate any Right of First Offer Transaction involving Owner under this **Section 36.2** as soon as practicable after Owner's election as hereinabove described. If Owner defaults in its obligation to close the Right of First Offer Transaction in accordance with the terms thereof (subject to reasonable extensions not to exceed, in the aggregate, sixty (60) days), the foregoing right of first offer shall be null and void with respect to any future Right of First Offer Transaction.

(d) In addition, Tenant may not sell such interest in the Premises together with any other interests or other assets. Any sale of the Premises together with any other interests or other assets, shall be null and void and of no effect.

(e) If Owner does not exercise its right of first offer and Tenant consummates its Right of First Offer Transaction, the purchaser shall be deemed to have acquired the Premises subject to the provisions of this Lease and the purchaser shall be deemed to have assumed the obligations of Tenant hereunder accruing from and after the effective date of such consummation, and Tenant shall

deliver to Owner, or shall cause to be delivered to Owner, within ten (10) business days after the execution thereof, a true, complete and correct copy of an executed instrument of transfer and a true, complete and correct copy of an instrument of assumption by the transferee of Tenant's obligations under this Lease accruing from and after the date of such transfer.

(f) If a tenant does not comply with the terms of this **Section 36.2**, any Right of First Offer Transaction entered into by such tenant shall have no validity and shall be null and void and without effect.

(g) Notwithstanding the foregoing provisions of this **Section 36.2**, Tenant may not institute the procedures set forth herein for a Right of First Offer Transaction more than once in any fiscal year, except with respect to any modifications of the Right of First Offer Transaction as provided in **Section 36.2(b)**.

Section 36.3 Assignment.

The rights of Tenant pursuant to **Sections 36.1 and 36.2** above shall not be severed from Tenant's Interest in the Premises and shall be assigned, transferred or otherwise conveyed to the transferee only upon a Sale of the Project or a Foreclosure Transfer.

Section 36.4 No Merger.

Notwithstanding anything set forth to the contrary in **Sections 36.1** through **36.3**, under no circumstances shall the fee estate of Owner and the leasehold estate created hereby merge, even though owned by the same party, without the prior written consent of the holder of a Recognized Mortgage.

Article 37 - Miscellaneous

Section 37.1 Governing Law.

This Lease shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Lease shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court.

Section 37.2 References and Interpretation of Lease.

(a) **Captions.** The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease. All captions, when referring to Articles or Sections, refer to Articles or Sections in this Lease, unless specified otherwise.

(b) **Table of Contents.** The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

(c) **Reference to Owner and Tenant.** The use herein of the neuter pronoun in any reference to Owner or Tenant shall be deemed to include any individual Owner or Tenant, and the use herein of the words "**successors and assigns**" or "**successors or assigns**" of Owner or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Owner or Tenant.

(d) **City's Governmental Capacity.** Nothing in this Lease or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police or governmental power.

(e) **Reference to "herein", "hereunder", etc.** All references in this Lease to the terms "**herein**", "**hereunder**" and words of similar import shall refer to this Lease, as distinguished from the paragraph, Section or Article within which such term is located.

(f) **Reference to "Approval" or "Consent", etc.** All references in this Lease to the terms "approval", "consent" and words of similar import shall mean "reasonable written approval" or "reasonable written consent" except where specifically provided otherwise.

(g) **Singular and Plural, Gender, Etc.** Words importing singular number shall include the plural number in each case and vice versa, and words importing "persons" shall include firms, associations, corporations, and other entities, including governments and governmental bodies, as well as natural persons, unless the context shall otherwise indicate. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and vice versa, as the context may require.

Section 37.3 Entire Agreement.

This Lease, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between Owner and Tenant concerning the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments hereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. Notwithstanding anything to the contrary set forth in this Lease, the terms of this Lease shall supersede the terms of the RFP and Tenant's response thereto.

Section 37.4 Counterparts.

This Lease may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

Section 37.5 Waiver, Modification, Etc.

No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or

termination executed by Owner and Tenant. No waiver of any Default or default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

Section 37.6 Effect of Other Transactions.

No Master Sublease, Mortgage or other agreement of any kind, whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Owner, shall be deemed to modify this Lease in any respect, and in the event of an inconsistency or conflict between this Lease and any such instrument, this Lease shall control, except where specifically stated otherwise herein.

Section 37.7 Severability.

If any provision of this Lease or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Lease, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 37.8 Merger.

Unless Owner, Tenant and all Mortgagees execute and record an agreement to the contrary, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 37.9 Remedies Cumulative.

Each right and remedy of either party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Lease), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Lease, shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Lease.

Section 37.10 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Lease, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

Section 37.11 Recognized Mortgagee Charges and Fees.

Tenant shall pay any and all fees, charges and expenses owing to a Recognized Mortgagee in connection with any services rendered by it as a depositary pursuant to the provisions of this Lease.

Section 37.12 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Owner and Tenant and, except as otherwise provided herein, their respective permitted successors and permitted assigns and shall be construed as covenants running with the Land.

Section 37.13 Recording of Lease.

Tenant shall cause this Lease and any amendments hereto to be recorded in the Public Records of Miami-Dade County, Florida promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

Section 37.14 Notice of Defaults.

Notwithstanding anything to the contrary set forth in this Lease, under no circumstances shall any party to this Lease lose any right or benefit granted under this Lease or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

Section 37.15 No Liability of Officials and Employees of Owner or Tenant.

It is expressly understood that this Lease and obligations issued hereunder are solely corporate obligations, and, except as otherwise provided in **Article 19**, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, members, partners, holders of other ownership interests, directors, elected or appointed officials (including, without limitation, the Mayor and Commissioners of the City and the members of any other governing body of Owner) or employees, as such, of Owner or Tenant, or of any successor corporation or other successor entity, or any of them, under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom; and, except as otherwise provided in **Article 19**, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, member, partner, holder of other ownership interest, director, elected or appointed official (including, without limitation, the Mayor and Commissioners of the City and the members of any other governing body of Owner) or employee, as

such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

Section 37.16 Conflict of Interest.

Tenant represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Lease, nor has participated in any decision relating to this Lease that is prohibited by law. Tenant represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Lease, directly or indirectly, from Tenant. Tenant represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Tenant acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Lease and would not enter into this Lease absent the same.

Section 37.17 No Partnership or Joint Venture.

The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease or the other documents executed by the parties with respect to the Project, whether based on the calculation of Rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this **Section 37.17** shall survive Expiration of the Term.

Section 37.18 Time Periods.

Any time periods in this Lease of less than thirty (30) days shall be deemed to be computed based on business days (regardless of whether any such time period is already designated as being computed based on business days). In addition, any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

Section 37.19 Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Lease as to both Owner and Tenant, including, but not limited to, the times within which Tenant must commence and complete construction of the Project.

Section 37.20 Radon Notice.

Chapter 88-285, Laws of Florida, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a rental agreement for any building:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

Section 37.21 No Third Party Beneficiaries.

Nothing in this Lease shall confer upon any Person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Lease; provided, however, that a Recognized Mortgagee or its Designee shall be an intended third party beneficiary hereunder to the extent such Recognized Mortgagee or such Designee is granted rights hereunder.

EXECUTION

IN WITNESS WHEREOF, Owner and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

WITNESSES:

Print Name: LAWRENCE A. LEVY

Print Name: JOEL W. MINSKOFF

CITY OF MIAMI BEACH , FLORIDA,
a municipal corporation of the State of Florida

By: _____
Neisen O. Kasdin, Mayor

ATTEST:

By: _____
Robert Parcher, City Clerk

[SEAL]

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/1/99
Date

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STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 1st day of September, 1999, by Neisen O. Kasdin, as Mayor, and Robert Parcher, as City Clerk, of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or ~~produced valid Florida driver's licenses as identification.~~

My commission expires:

OFFICIAL NOTARY SEAL
LILLIAN BEAUCHAMP
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC738572
MY COMMISSION EXP. APR. 29,2002

Lillian Beauchamp
Notary Public, State of Florida
Print Name: Lillian Beauchamp

WITNESSES:

Print Name: Stuart K. Hoffman

Print Name: Joe N. Minsker

LINCOLN PLAZA PARTNERS LLC,
a Florida limited liability company
By: SRC Lincoln Plaza LLC, a Florida limited liability company, as Managing Member

By:
~~Scott Robins~~, Managing Member

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 1st day of September, 1999, by Scott Robins, as Managing Member of SRC Lincoln Plaza LLC, a Florida limited liability company, the Managing Member of LINCOLN PLAZA PARTNERS LLC, a Florida limited liability company, on behalf of such limited liability company. He is personally known to me or produced a valid Florida driver's license as identification.

My commission expires:

Notary Public, State of Florida
Print Name:

Stuart K. Hoffman
MY COMMISSION # CC499242 EXPIRES
October 5, 1999
BONDED THRU TROY FAIN INSURANCE, INC.

List of Exhibits

Exhibit "A"	Legal Description of the Land
Exhibit 2.1	Title Matters
Exhibit 8.2	Article 2 of the Development Agreement
Exhibit 10.4	Ownership Interest in Tenant
Exhibit 14.1(a)	Parking Garage Maintenance Manual
Exhibit 14.1(b)	Parking Facility and Common Grounds Maintenance Schedule
Exhibit 14.1(c)	Owner's Operating Standards
Exhibit 36.1(a)	Terms of Tenant's Right of First Offer Transaction
Exhibit 36.2(a)	Terms of Owner's Right of First Offer Transaction

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1

Lots 7 through 10, and Lots 16 through 20, Block 37, PALM VIEW SUBDIVISION, as recorded in Plat Book 6, Page 29 of the Public Records of Miami-Dade County, Florida.

PARCEL 2

Lots 14 and 15, Block 37, PALM VIEW SUBDIVISION, according to the Plat thereof, recorded in Plat Book 6, at Page 29, of the Public Records of Miami-Dade County, Florida.

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EXHIBIT 2.1

TITLE MATTERS

As to Parcels 1 and 2

Taxes for the year 1999 and subsequent years.

EXHIBIT 8.2

ARTICLE 2 OF DEVELOPMENT AGREEMENT

ARTICLE 2.

CONSTRUCTION

Section 2.1 Consistency with City's Comprehensive Plan and Zoning Regulations.

The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Development Agreement dealing with the Land are consistent with the City's adopted Comprehensive Plan and Land Development Regulations, subject to all applicable Requirements, Permits and Approvals.

Section 2.2 Planning Board Approval.

(a) Developer has heretofore submitted an application to the Planning Board for its review of the Project, and the Planning Board has reviewed the Project.

(b) If at any time in the future it shall be necessary in connection with the construction, reconstruction or renovation of the Premises to apply to the Planning Board for its review or approval of any changes or modifications to the Premises, Developer shall be solely responsible for making such application.

Section 2.3 Design of the Project.

(a) The Developer shall be solely responsible for the design of the Project, and such design shall be (1) substantially in accordance with the design shown in Developer's response to the Request for Proposals (RFP No. 20-97/98 (Amended)) issued by the City on December 30, 1997, except to the extent that changes thereto have been negotiated with, and approved, by Owner, and (2) at the sole cost and expense of Developer. Developer shall be solely responsible for obtaining the approval of the City's Design Review Board, and the City's Historic Preservation Board or the Joint Board, if applicable, and the City shall have no duty or obligation to approve any particular design. Prior to submission of the Project design to the DRB and HPB or Joint Board, if applicable, Developer shall submit to Owner (acting in its proprietary capacity as owner of the Land) all of the Preliminary Plans and Specifications for the Project which shall include, but not be limited to, a detailed site plan, elevation drawings of each facade, a detailed floor plan for each of the floors of the Project, a calculation of the floor areas for each floor of the Project, and a calculation of the total floor area dedicated to each use within the Project (the "**Preliminary Plans and Specifications**") which shall be submitted to Owner's City Manager for approval within twenty-four (24) weeks of the Commencement Date. The City Manager shall have twenty (20) Business Days to review the Preliminary Plans and Specifications, and shall review the Preliminary Plans and Specifications solely for consistency with the

Developer's response to the RFP. If Owner disapproves the Preliminary Plans and Specifications, then Developer shall, at its election, either (x) submit Owner's disapproval to expedited arbitration pursuant to **Section 3.6** and **Section 22.1** as to the reasonableness of the disapproval, or (y) submit a revised modification to the Preliminary Plans and Specifications to meet Owner's objections, which revised modification shall be submitted and reviewed as provided in **Section 3.1(b)**. Failure of the Developer to submit Preliminary Plans and Specifications by the date which is twenty-four (24) weeks from the Commencement Date shall constitute a Default under this Development Agreement.

(b) Developer shall, within eight (8) weeks of Owner's approval of the Preliminary Plans and Specifications, submit an application for approval of the Project design to the City's Design Review Board and to the Historic Preservation Board or Joint Board, if applicable. Failure of the Developer to submit its application, as provided in this Section, to the DRB and HPB or Joint Board, if applicable, by the date which is eight (8) weeks from the receipt of Owners Approval as above provided shall constitute a Default under this Development Agreement.

(c) Developer shall pursue approval of its application to the DRB, HPB or Joint Board, if applicable, diligently and in good faith.

Section 2.4 Public Facilities and Concurrency.

(a) Owner and Developer anticipate that the Project will be served by those roadway transportation facilities currently in existence as provided by state, county and local roadways. It is also anticipated that the Project will be served by public transportation facilities currently in existence, including those provided by Miami-Dade County, the City, and other governmental entities as may presently operate public transportation services within the City. Sanitary sewer, solid waste, drainage, and potable water services for the proposed Project are expected to be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, and the City. The Project will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12), Florida Statutes (1997), as such are described in the City's Comprehensive Plan, specifically including, but not limited to, those facilities described in the Infrastructure Element and Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the Planning, Design and Historic Preservation Department of the City of Miami Beach. The foregoing, however, shall not be deemed to be an approval of, nor shall it be deemed to relieve Developer of the obligation to comply with, Section 163.3180 , Florida Statutes (1997).

(b) Developer shall be solely responsible for obtaining all land use permits, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (1997), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation (the "**Concurrency Requirements**"). Developer shall, within twenty-four (24) weeks of the Commencement Date, apply to the appropriate Governmental Authorities for letters or other evidence that the Project is pursuing all applicable Concurrency Requirements, and shall diligently and in good faith pursue such letters or other evidence that the

Project meets all applicable Concurrency Requirements, or shall attempt to negotiate agreements acceptable to Tenant to mitigate the impacts of developing the Project.

Section 2.5 Plans and Specifications.

(a) Upon receipt of the DRB's approval of the Project, and the HPB's or Joint Board's approval if applicable, Developer shall prepare Plans and Specifications for construction of the Project, consistent with the Preliminary Plans and Specifications, as approved by the DRB, and the HPB or Joint Board's, if applicable, for review by Owner. The Plans and Specifications shall be submitted to the Owner within thirty-two (32) weeks from the date on which the DRB and the HPB or Joint Board, as applicable, approves the Project. Failure of the Developer to submit Plans and Specifications to the Owner within thirty-two (32) weeks from the date on which the DRB approves the Project shall constitute a Default under this Development Agreement. The Plans and Specifications shall be reviewed by the City Manager solely for consistency with the Preliminary Plans and Specifications as the same have been modified by the DRB and HPB, or Joint Board, if applicable. If Owner disapproves the Plans and Specifications, then Developer shall, at its election, either (x) submit Owner's disapproval to expedited arbitration pursuant to **Section 3.6** and **Section 22.1** as to the reasonableness of the disapproval, or (y) submit a revised modification to the Plans and Specifications to meet Owner's objections, which revised modification shall be submitted and reviewed as provided in **Section 3.1(b)**.

(b) Developer shall pursue approval by the City of the Plans and Specifications diligently and in good faith.

Section 2.6 Conditions Precedent to Developer's Commencement of Construction of the Project.

(a) Developer shall obtain a Building Permit for the entire Project by not more than twenty-four (24) months from the Commencement Date and failure to do so shall constitute a Default under this Development Agreement. Subject to **Section 2.6(c)**, Developer shall not Commence Construction of the Project unless and until (i) Developer shall have obtained and delivered to Owner's Consultant copies of all Permits and Approvals required to Commence Construction and (ii) Developer shall have delivered to Owner original certificates of the policies of insurance required to be carried pursuant to the provisions of **Article 7** of this Agreement.

(b) Owner (solely in its capacity as the owner of the Project Site and not in its governmental capacity) shall reasonably cooperate with Developer in obtaining the Permits and Approvals required by **Sections 2.2(a) and 2.10(a)** and any necessary utility access agreements, shall sign any application reasonably made by Developer which is required in order to obtain such Permits and Approvals and utility access agreements and shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if available to Owner) which is necessary to procure such Permits and Approvals and utility access agreements. Any such accommodation by Owner shall be without prejudice to, and shall not constitute a waiver of, Owner's rights to exercise its discretion in connection with its governmental functions. Developer shall

reimburse Owner, within ten (10) days after Owner's demand, for any reasonable out-of-pocket cost or expense payable to Owner's technical consultants (other than Owner's Consultant and Owner's employees), such as architects and engineers, so incurred by Owner in connection with Owner's assistance in obtaining the Permits and Approvals and utility access agreements required by **Sections 2.6(a) and 2.10(a)**.

(c) Developer shall not Commence Construction of the Project, or any portion thereof, unless and until Owner shall have approved the Plans and Specifications, as provided in **Section 2.5**. However, if Developer chooses to perform any Construction of the Project on a "fast-track" basis, Developer may request the necessary approval of Owner in stages and perform that portion of the Construction Work which has been approved (provided Developer shall comply with all other requirements with respect to such portion of the Construction Work), even if progress plans and specifications for other portions of the Construction Work have not yet been prepared.

(d) Payment and Performance Bond. Prior to Commencement of Construction of the Project, Developer shall cause the General Contractor to furnish to Owner a payment and performance bond (the **"Payment and Performance Bond"**), in a form reasonably acceptable to Owner, issued by a surety listed in the most recent United States Department of Treasury listing of approved sureties, guaranteeing the performance of the General Contractor under that certain guaranteed maximum price contract for the Construction of the Project. Owner may accept, in its sole and absolute discretion, for any reason and/or for no reason whatsoever, a completion guarantee from the General Contractor in substitution for such Payment and Performance Bond. Owner shall be named as a dual obligee under the Payment and Performance Bond; provided, however, Owner's rights under the Payment and Performance Bond shall be subordinate to the Recognized Mortgagee's (as defined in the Ground Lease) rights under the Payment and Performance Bond and Owner shall agree in writing with such Recognized Mortgagee that Owner shall only seek to enforce its rights under the Payment and Performance Bond if the Ground Lease is terminated and such Recognized Mortgagee fails to exercise its rights under Section 11.6 of the Ground Lease for the execution of New Tenant's Documents (as defined in the Ground Lease).

Section 2.7 Commencement and Completion of Construction of the Project.

Developer shall at its expense (a) Commence Construction on or before sixty (60) days after all Permits and Approvals necessary for the Commencement of Construction are issued (the **"Construction Commencement Date"**) and (b) thereafter continue to prosecute Construction of the Project with diligence and continuity to completion. If, after Developer has Commenced Construction, Developer fails to diligently prosecute Construction of the Project (subject to Unavoidable Delays), and such failure continues (subject to Unavoidable Delays) for thirty (30) consecutive days after Developer's receipt of notice of such failure, Owner shall, in addition to all of its other remedies under this Agreement and the Ground Lease, have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of Construction of the Project (subject to Unavoidable Delays) by Developer, it being understood that Construction of the Project is a material inducement to Owner to enter into the Ground Lease and monetary damages shall be inadequate to compensate Owner for harm resulting from such failure.

Notwithstanding anything to the contrary contained herein, if Developer fails to Substantially Complete Construction of the Project by the Default Date, then the same shall constitute a Default under this Agreement and under the Ground Lease.

Section 2.8 Completion of Construction of the Project.

(a) Substantial Completion of the Project shall be accomplished in a diligent manner, and in any event by the Completion Deadline, and final completion of the Construction of the Project, including but not limited to completion of all punch-list items, shall be accomplished in a diligent manner thereafter, in each case in a good and workerlike manner, in substantial accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), in accordance with all applicable Requirements and, except as provided in **Article 6**, at Developer's sole cost and expense.

(b) Upon Substantial Completion of Construction of the Project, Developer shall furnish Owner with the following:

(i) a certification of the Architect (certified to Owner on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the Project has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

(ii) if Requirements require the same, a copy or copies of the temporary certificates of occupancy for the Project (or portion thereof, as applicable) issued by the City of Miami Beach Building Department;

(iii) lien waivers in form and substance reasonably satisfactory to Owner from each contractor, subcontractor, supplier or materialman retained by or on behalf of Developer in connection with the Construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Project;

(iv) a complete set of "as built" plans and a survey showing the Improvement(s) (excluding personalty) for which the Construction of the Project has been completed. Owner shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Project Site without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Project Site, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to "as built" plans shall be satisfied by Developer furnishing to Owner, at Developer's expense, a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof,

marked to show all changes, additions, deletions and selections made during the course of the Construction of the Project; and

(v) a Contractor's Final Affidavit in form and substance reasonably satisfactory to Owner executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Developer in connection with the Construction of the Project have been paid in full for all work performed or materials supplied in connection with the Construction of the Project and (ii) otherwise complying with all of the requirements under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended.

(c) In the event that Developer has not Substantially Completed construction of the Improvements by the Completion Deadline, Developer shall forfeit the Security Deposit held pursuant to **Section 3.6** of the Lease to Owner as liquidated damages, and not as a penalty, the Parties agreeing that it is impossible to ascertain actual damages to Owner in the event that Developer does not Substantially Complete construction of the Improvements by the Completion Deadline.

Section 2.9 Confirmation of Land Development Regulations.

The City Commission held a duly noticed public hearing on July 7, 1999, after which it determined, pursuant to Section 142-425 of the City Code, that the zoning district classification of the Land under the Lease is CD-3, as defined in the Land Development Regulations.

Section 2.10 Required Development Permits.

(a) Developer shall be solely responsible for obtaining the Development Approvals listed in **Exhibit 2.10** attached hereto, if applicable.

(b) There are no reservations and/or dedications of land for public purposes that are proposed under the terms of this Development Agreement.

Section 2.11 Proposed Permitted Development.

The proposed permitted development on the Land shall not exceed a Floor Area Ratio (as defined in the City's Land Use Regulations) of 2.75, and the height of the development on the Land shall not exceed eighty (80) feet.

Section 2.12 Developer's Right of Termination.

Notwithstanding anything to the contrary contained herein, Developer shall have the right to be released from its liability and obligations [except the obligation to pay Rental and/or Impositions prior to the Possession Date pursuant to Section 3.2(a) of the Ground Lease] and to terminate this Development Agreement and the Ground Lease prior to the Possession Date because (a) changes to the Preliminary Plans and Specifications required by the DRB, Joint Board, or any other Governmental

Authority (including the City), render the Project economically unfeasible in the reasonable business judgment of Developer, (b) the Project cannot meet concurrency requirements under Section 163.3180, Florida Statutes (1997), or the costs of concurrency mitigation are, in the reasonable business judgment of Developer, economically unfeasible, or (c) Developer, after good faith efforts, has been unable to obtain a full building permit for the Project pursuant to the Plans and Specifications submitted by Developer. In the event of termination of this Development Agreement and the Ground Lease pursuant to this **Section 2.12**, each Party shall bear its own costs and expenses incurred in connection with this Development Agreement and the Ground Lease and neither Party shall have any further liability to the other.

EXHIBIT 10.4

OWNERSHIP INTEREST IN TENANT

Member	Percentage Membership Interest Owned
SRC Lincoln Plaza LLC, a Florida limited liability company - owned by Scott Robins (100%)	49
RDP Lincoln Plaza LLC, a Florida limited liability company - owned by R. Donahue Peebles (100%)	49
Michael Milberg	2
TOTAL	100

EXHIBIT 14.1(a)

PARKING GARAGE MAINTENANCE MANUAL

A Publication of the
National Parking Association/Parking Consultants Council

OFF. REC. 18770 PG 583

PARKING GARAGE MAINTENANCE MANUAL

August 1996

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FOREWORD

The National Parking Association, founded in 1951, is the leading trade organization for parking professionals. Its membership represents public and private facility parking owners and operators throughout the United States, Canada and Europe.

The Parking Consultants Council, a specialized professional group within the National Parking Association, is concerned with the following parking and parking-related functions:

- Parking Planning and Surveys
- Economic Feasibility
- Functional Planning
- Environmental Studies
- Architect/Engineer Services
- Parking Control Systems
- Design/Construct Services
- Private/Public Financing
- Traffic Studies
- Research Activities
- Expert Witness

The recommended provisions that follow are intended to be general guidelines for the maintenance of parking garages and are not intended to cover every aspect of parking garage maintenance. Owners and operators of parking garages should carefully evaluate whether these recommended maintenance provisions are appropriate for the parking garages for which they may be concerned or responsible. Consultation with a qualified engineering consultant is recommended for structural repair and preparation of a garage maintenance program.

Neither the National Parking Association nor the Parking Consultants Council assume any responsibility for damages arising from the use or application of these parking garage maintenance guidelines.

The maintenance guidelines presented herein are a revision and update of those in the "Parking Garage Maintenance Manual" prepared by the Parking Consultants Council and published by NPA in 1982 and 1991.

This manual is the result of work led by the committee members listed previously, who are active participants of the National Parking Association's Parking Consultants Council. This publication represents their work but is not to be considered as any evidence of a standard for the industry. Special thanks is given to Federal APD, a division of Federal Signal Corporation, for its contribution on the maintenance of parking control equipment.

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INTRODUCTION

This manual is intended to provide the owner and/or operator with guidelines for maintaining a parking garage in a serviceable condition that minimizes safety hazards and maintains the structural integrity of the facility. This manual includes practices and procedures considered essential to the prevention of the deterioration of the concrete and steel structure and equipment failures. These items are discussed along with other aspects of maintenance that involve cleaning or repairs.

Various geographic areas result in widely varying exposure conditions for parking garages such as exposure to de-icing salts in northern climates or salt air in coastal regions. Thus, this manual can only point out the problem areas and present broad guideline recommendations. Use of these guidelines must be tailored for each structure and its specific climate. It is recommended that the owner/operator engage an engineer experienced in parking structure design and maintenance to assist in developing a specific maintenance program for each parking garage.

The service environment of a parking garage is more severe than most other buildings and is more nearly like that of highway bridges. In some areas of the country, extensive use of deicing salt in winter often causes contamination of the concrete with chlorides, which can result in corrosion of reinforcing steel, structural steel, and damage to the concrete. In all geographic areas, exposure to temperature changes and moisture poses a more severe service environment for parking garages than for other buildings.

This manual is intended to apply to parking garages of all types. This includes free-standing parking garages, underground parking garages, and parking garages that are constructed integrally with other facilities such as apartments and office buildings.

Many different terms are used to describe structured parking facilities. The reasons for the different terms include building code definitions, local custom, and others. Common terms include parking deck, parking ramp, parking structure, garage, parking garage, multi-level parking deck, parking facility, and open parking structure. This manual will use the term "parking garage" to apply to all situations. In many instances, the guidelines presented herein may also be applicable to surface parking lots.

While the maintenance requirements of many parking garage elements are similar to their counterparts in other building types, the frequency of required attention may be different due to more severe exposure conditions. Because very little has been written about the specific maintenance required for the structural system of parking garages, this subject is discussed in greater detail than other aspects of maintenance.

The terms "housekeeping," "preventive maintenance," and "repairs" are used with the following meaning in the manual:

"Housekeeping" is the general cleaning and maintaining of the facility. These are routine tasks that have to be done in order for the parking garage to function safely such as sweeping, emptying trash receptacles, mopping elevator floors, replacing lights, cleaning windows, and periodic repainting.

"Preventive Maintenance" are those tasks to prevent the need for major repairs at some future time such as sealing cracks, resealing floors, and washdowns.

"Repairs" are those items done to restore or replace certain portions of the parking garage structural elements on an ongoing basis to forestall the need for major repairs to the facility. An example would be the patching and sealing of a concrete spall (pothole) in the floor of the parking garage. This repair procedure may be required on an ongoing basis to prevent the need for major repairs such as concrete slab overlays or even full-depth concrete slab replacement.

The amount of maintenance required for an individual parking garage will depend on the original design details, materials, and workmanship involved in original construction, as well as the environmental exposure conditions. The details and materials for some parking garages may have been selected specifically with minimum maintenance and long-term performance in mind, while in others, less importance may have been placed on these items.

In the Appendix ("Recommended Maintenance Program"), a checklist provides a recommended frequency and minimum frequency for many maintenance items. The text indicates the amount of effort typically associated with each item. Where appropriate, each chapter is divided into three categories: housekeeping, preventive maintenance, and repairs. Many of the items on the checklist are simply condition inspections and performance testing. If abnormalities are found during the inspection, appropriate corrective action should be implemented. Some of the items are related to the appearance presented to the public, some are related to safety, while others pertain to preventive maintenance that will help avoid costly future repairs. Preventive maintenance is usually more cost effective than repetitive repairs and certainly less disruptive to operations.

Many parking garages are leased to a contract parking operator for day-to-day operation. Although "maintenance" is often designated as the responsibility of the operator, the level of maintenance desired or the need of regular preventive maintenance is often neglected in such agreements. It is essential that lease agreements clearly define the party responsible for maintenance and also the responsibility for identifying and informing that party of observed maintenance or repair needs.

What are some of the consequences of deferred maintenance? Failures associated with some operational features such as lighting, parking equipment, or security-monitoring devices are relatively easy to correct and may only cause inconvenience or short-term loss of revenue. Deferred structural maintenance can lead to deficiencies that, in extreme cases, may result in partial collapse of the structure. Premature deterioration of concrete floors is costly — both for the repairs and for the revenue loss while repairs are underway. In multi-purpose structures where parking is integrated with other building uses, deterioration of parking floors could affect the integrity and use of the entire structure.

A comprehensive maintenance program requires that an adequate budget be established to support the maintenance program. This should be an annual budget, beginning with the first year of operation. Major items, such as the re-application of protective concrete sealers and sealing of joints in the concrete, occur at intervals of several years and must be anticipated in the main-

tenance budget. Annual maintenance reserve funding should be included in the operating budget when the facility opens to account for re-application at the end of useful life. This will help eliminate the unexpected major costs when replacement and/or major repairs are necessary.

In summary, a comprehensive maintenance program of housekeeping, preventive maintenance, and repairs is required and must be tailored to each individual parking garage. The specific program for a given structure will depend on many factors including original design details, quality of materials, construction quality, and exposure conditions. It may prove beneficial to employ an engineer experienced in parking facility design, operation, and restoration to develop a cost-effective maintenance program. To function at required performance levels, all elements of a parking garage need periodic maintenance.

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1. CLEANING

NOTES

Included in this section are discussions of:

Sweeping floors
Washing floors
Trash pick-up
Windows
Other cleaning:
Walls
Elevators
Public areas
Rest rooms
Parking control equipment

Housekeeping

Cleaning relates to the appearance of the parking garage and the resulting image that is portrayed to the public. Some items can cause problems if neglected. For example, trash may clog drains and result in ponding or flooding, and trash left on stairs or landings may become hazards for pedestrians.

In part, the suggested frequencies of cleaning are based on the concept that people have less tendency to litter in a clean, neat environment than in an environment that is already messy. A clean, well-kept parking garage promotes a good reputation and invites people to return and use the facility again. Often the increased revenue more than offsets the cost of keeping the facility clean.

One of the most frequently overlooked aspects of parking garage maintenance is proper floor cleaning. It is recommended that all parking floor areas, including curbs, be swept weekly, but no less often than monthly. Sweeping can be done either with hand brooms or mechanized sweepers designed for use in parking garages. Between sweepings it is desirable to pick up any litter daily. Expansion joints should be cleaned of debris periodically.

Grease and oil dripping from vehicles can build up within parking spaces and at entrance and exit lanes. These grease buildups and oil deposits represent a potential safety hazard to pedestrians, and,

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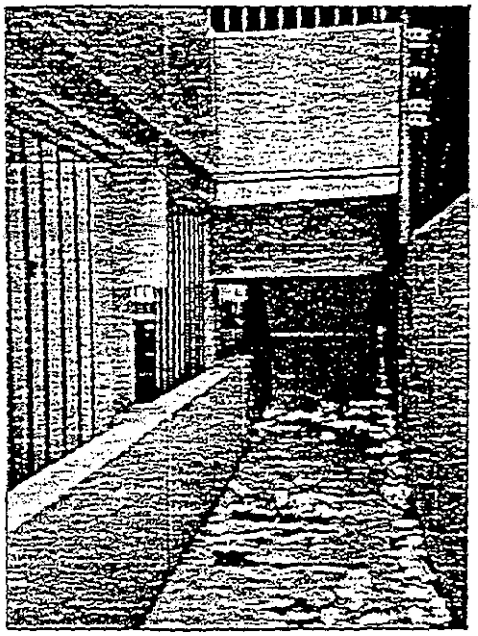
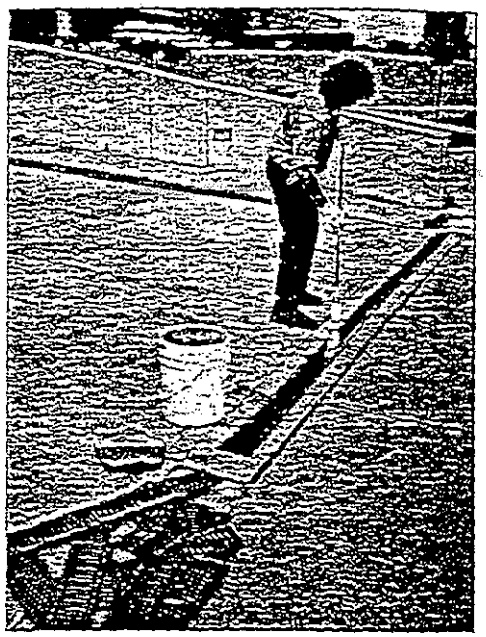
therefore, should be removed with appropriate degreasers such as an industrial detergent. A minimum frequency of twice a year is recommended for such cleaning. For garages with membrane waterproofing, the degreaser should be tested to assure that it will not harm the membrane. Membrane manufacturers should be contacted for recommendations regarding cleaning materials and procedures.



Dirt and trash



Worker cleaning trench drain

Some floor areas should have daily cleaning by sweeping or mopping. These include lobbies or waiting areas, toilet rooms, cashier booths, offices, elevators, elevator lobbies, and entrance and exit lanes. Stairs should be cleaned with the same frequency as the parking areas and more frequently if they are heavily used. Heavily used stairs should be checked daily for trash and swept at least weekly.

Windows in cashier booths, lobbies, and elevator cabs should be washed daily. Other windows such as those in office areas, lobbies, stairways, elevator cabs, or elevator shafts, should be washed at a frequency of once a month to once a quarter, depending on their condition and accessibility.

Other areas that need to be cleaned on a regular basis include walls in rest rooms, walls in elevator cabs, and walls in other areas used by the public. Trash cans should be emptied regularly, preferably daily. Stair handrails should also be cleaned, preferably each time the stairs are swept.

Parking control equipment should be cleaned weekly. The control equipment housing should be waxed periodically to protect against corrosion.

In many situations, the use of a large trash receptacle (dumpster) provided by a refuse hauling service may prove desirable.

NOTES

Preventive Maintenance

In addition to sweeping, a semi-annual washdown of the parking floors with a high-pressure, high-volume water hose (minimum 1-1/2 inch diameter) is recommended for all climates. In areas where salt is used to melt snow and ice, it is especially important to wash the floors in early spring. This recommendation is also important in coastal salt water areas. Sweeping should precede the washdown. More frequent washing of high-traffic areas such as entrance lanes and main driving aisles is desirable and in cold climates may be performed during winter whenever moderate temperatures occur. In cold climates, if moderate temperatures do not occur, then squeegees or brooms should be used to remove salt laden slush or water. Before and after washing floors, all drains should be checked to see that they are functioning properly. Sand washed off the floors can clog drains. Temporary burlap or straw filters may be used to prevent sand from getting into drains, but those temporary filters must be removed immediately after washing.

High-pressure water may be used for removing grease spots on the floor slab when care is taken to avoid damage to joint sealant materials and membrane waterproofing.

Particular care should be given to frequent and regular cleaning of the tracks and grooves in elevator sills. These tracks are in both the elevator cab door sill and each landing door sill. Dirt in these tracks can cause the elevator doors to malfunction.

A cleaning program should be established for the facility that directs personnel to perform required cleaning tasks regularly.

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NOTES

2. DOORS AND HARDWARE

Included in this section are discussions of:

Pedestrian access doors

Vehicle access doors / rolling gates

Housekeeping

Many types of pedestrian and vehicle access doors are used in parking garages. Their use is related primarily to safety, security, and building code requirements. Doors are also used for temperature control of heated or air conditioned spaces, and other occupied areas. Vehicle access doors include sliding and roll-down security grilles and overhead solid doors. It is recommended that all doors be checked daily to see that they operate properly. The check of access doors and hardware should include latch sets, panic hardware, door closers, door sweeps, hinges, locks, mechanized opening and closing equipment, and tracks for sliding, rolling, or overhead doors.

When a malfunction is noted, it should be corrected as soon as possible to maintain the safety and security of the parking garage. Pedestrian doors that are propped open may reduce safety and/or security functions of the parking garage. Propping open such doors may violate fire or building codes. Similarly, this breach of security could lead to a negligence action if it is determined that this action contributes to an assault or robbery.

Preventive Maintenance

Doors and hardware require lubrication at regular intervals. Lubrication should be scheduled in accordance with the manufacturer's recommendations but at least semi-annually. Painting also should be a part of the preventive maintenance program — refer to Section 7.

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3. ELECTRICAL SYSTEMS

NOTES

Included in this section are discussions of:

General lighting
Exit lights
Emergency lighting
Distribution panels and conduit
Emergency power
Contactor switches

Housekeeping

Operating a parking garage properly requires sufficient lighting and electrical power to ensure that users can move easily and securely within the facility. The most common problem with lighting is dirty lenses, as well as burned-out lamps and ballasts. Lamps should be replaced regularly, either when needed as shown by regular inspections, or by scheduled replacement based on anticipated lamp life. Lamps and ballasts should be stocked for prompt replacement. Operating controls for lighting such as time clocks and photocells should be checked monthly and maintained as required. Time clocks that are not astronomically corrected may require resetting periodically to compensate for daylight savings and astronomical changes of time if they are not coupled with photo electric cell operation.

Pedestrian "exit" lights should be visually checked frequently. Battery-pack-powered emergency light units are generally located close to "exit" lights and may be checked at the same time. Most battery-operated lighting packs have a visible status indicator light that will indicate if the unit has power and is operative. All battery packs have test buttons that should be activated at regular intervals to verify working condition. Battery packs should be maintained according to manufacturer's recommendations.

Internally illuminated signs are covered in Section 13 - Signs (Graphics) of this manual. However, provisions for general lighting system inspections in this section also apply to sign lamps.

Electrical metallic conduit (EMT) exposed to water leaks or the elements should be protected from potential corrosion problems. Proper repair or replacement procedures should be instituted

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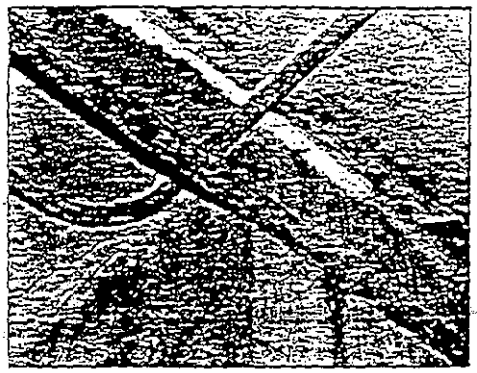
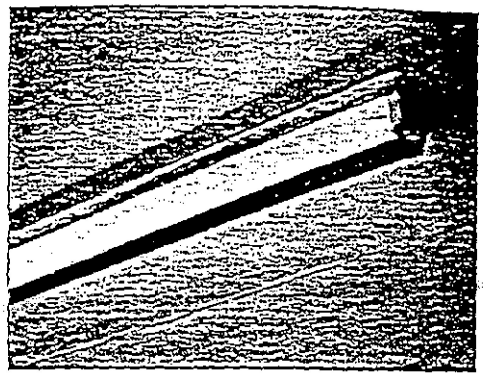
whenever any conduit (EMT or plastic) is damaged or shows exposed wiring from improper installation and support, or from adverse conditions. Cover plates should be in place on junction boxes and outlets. Electrical outlets should be working.



Rusted conduit



Rusted light fixture

Preventive Maintenance

Periodic inspection of the entire electrical system is a good practice. Electrical equipment and conduits should be inspected for corrosion and deterioration where exposed to moisture. If electrical equipment exposed within the garage area proper is not designed to withstand the rigors of weathering characteristics of open garage environments, this equipment should be provided with a corrosion-resistant treatment to prevent further deterioration. Periodic painting of all exposed electrical conduit and boxes should be implemented as deemed necessary. Electrical panels, if exposed within the unprotected environs of the garage, should be provided with a corrosion-protective coating.

Regular inspection and maintenance is required for battery-powered emergency lighting. Some battery systems require replenishment of the water/electrolyte. Electrical service for parking and revenue control equipment is covered in Section 8 - Parking Control Equipment.

Regular inspection of lighting fixture interiors and plastic refractors is important. Many plastic refractors (light diffusers) tend to yellow after five years, resulting in diminished light output. These discolored diffusers should be replaced and the insides of the fixtures should be cleaned.

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Under a planned preventive maintenance program, a group relamping program should be instituted when the lamp burn time reaches 70 percent of its rated life to assure the reliability of adequate lighting at all times, particularly in high-security applications. Fixture cleaning programs could be instituted at the same time.

Time clock control of exterior lighting systems should be checked periodically to insure proper function of time-switch-controlled applications. Photocell controls should also be calibrated and adjusted.

NOTES

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NOTES

4. ELEVATORS

Housekeeping

In those instances where the operator is responsible for elevator maintenance, all lamps, including ceiling and indicator lights, both inside and outside the cab, should be checked daily and replaced as required. Emergency lighting, which is required by most codes, should be checked daily.

The elevator cabs should be maintained in a clean, neat manner. A discussion on cleaning is given in Section 1 - Cleaning. Cleaning of windows within the elevator shaft requires safety precautions, and may require involvement of qualified elevator maintenance personnel.

The overall performance of the elevator system should be reviewed during peak usage times. Long waiting times may discourage parkers from returning to the facility. A sudden change in the response times could indicate an equipment problem.

Preventive Maintenance

Preventive maintenance is essential for proper operation of elevators and their associated hardware. Additionally, the American National Standard Safety Code for Elevators requires periodic safety checks and maintenance services for all elevators, shafts, and hardware. Local building codes may have more stringent requirements. The level and frequency of the inspection program will vary with the type of equipment, its intended use, and the appropriate state and local code provisions.

Water accumulation is the most frequent cause of elevator equipment problems. Leakage into the elevator shaft or equipment room should be corrected as soon as it is discovered. Elevator pit sump pumps, if installed, should be checked periodically to ensure proper operation. Pumps and elevator pits should be cleaned as required. The equipment rooms should also be monitored to ensure the heating and ventilation systems are operating properly. Allowing the equipment to become too hot or too cold may result in improper operation, or equipment damage if system components use computer chips.

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NOTES

5. HEATING, VENTILATION AND AIR CONDITIONING (HVAC)

Housekeeping

In underground or enclosed garages, ventilation equipment must be checked daily for proper operation. The presence of ventilation air may be checked manually or by automatic equipment. Carbon monoxide sensors must be checked for proper operation as well. Dangerous levels of carbon monoxide can build up quickly if systems fail to operate.

Noisy operation of HVAC equipment may be the result of dirty air filters, inadequate lubrication, and/or bad bearings, and should be reported immediately. Any water leaking into equipment rooms should also be reported and the cause corrected immediately, as corrosion, freeze-ups, and electrical short-circuit grounding can render equipment inoperable.

Self-contained parking control booths many times have self-contained heating and cooling units. Filters on these units should be cleaned and replaced periodically.

Preventive Maintenance

Dirty filters increase fan operating costs. Filters should be replaced or cleaned on a regular basis as required by local conditions. Like filters, dirty heating and cooling coils increase operating costs and reduce heat transfer. These coils should be checked at least annually for the build-up of foreign matter. If filter failure is observed, coils, dampers, and fans downstream should be checked and cleaned as necessary. Motors, motor drives, and fan wheels should be checked monthly and lubricated according to manufacturer's instructions. Dampers and their actuators should be checked quarterly, at least for proper operation. This equipment may seize up, resulting in improper ventilation and excessive energy use.

Service manuals provided by the manufacturers should be checked for appropriate maintenance action. All required servicing should be performed as specified by the manufacturer. Belt drives should be checked for proper belt tension to prevent belt slippage. Replacement belts and pulleys for fans should be kept in stock.

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Worn or damaged belts or other parts should be replaced to minimize the chance of a breakdown.

It is recommended that the control systems be calibrated annually, either by trained maintenance personnel or by a control system contractor. All control system components should be checked for proper operation in accordance with the manufacturer's specifications, including temperature and/or containment sensors, relays, switches, actuators, etc.

Repairs

Repairs to faulty HVAC equipment should be performed promptly to ensure that adequate air quality is maintained, and to prevent further damage from improper operation. Water leaks into the equipment rooms should also be corrected immediately to protect the equipment.

NOTES

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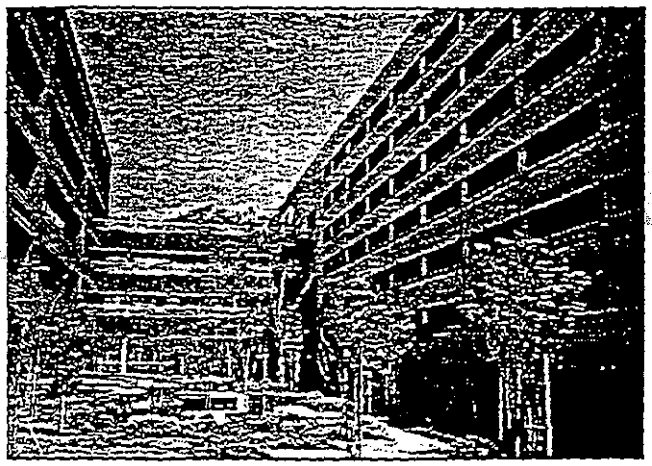
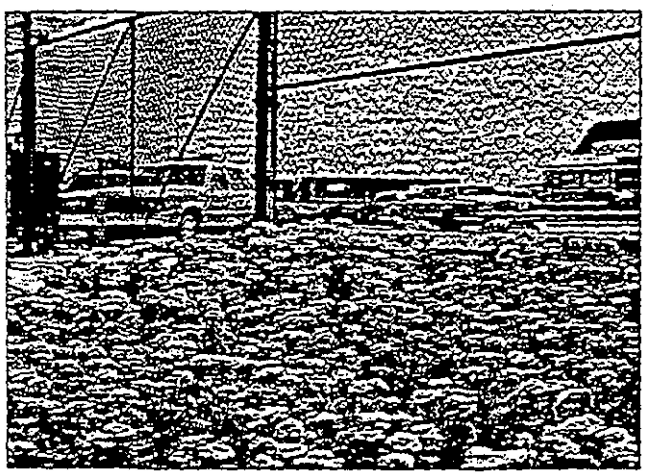
NOTES

6. LANDSCAPING

Housekeeping

Daily removal of trash from landscaped areas is required to maintain a pleasing appearance. Watering, cutting the grass, and weeding should be performed regularly. Shrubs should be pruned annually. Automatic sprinklers are an effective method of watering, but the system must be checked periodically for proper operation and proper drainage. Also ensure that sprinkling or planting drainage systems do not create slippery surfaces. Lawns should be edged and trees and shrubs pruned to prevent encroachment onto sidewalk areas and other pedestrian and vehicular traffic paths. Pruning of trees and shrubs should be performed to maintain adequate sightlines at entrances and exits, and to eliminate hiding places for would-be criminals.





In cold weather climates, irrigation systems must be shut down during winter and properly drained. Each irrigation head should be adjusted, if required, at the time of the spring "start-up." This is an excellent time to leach salts through the topsoil by extending the daily operating times of the irrigation system.

Frequencies for performing this work will vary depending on the time of the year, the type and extent of plant material, and the part of the country. A landscaping specialist should be consulted when

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developing schedules for this work. These tasks can be contracted out to a landscape service, or performed by in-house staff. Adequate on-site storage for supplies and equipment must be provided if the work is to be performed by in-house staff.

NOTES

Preventive Maintenance

Timely maintenance is a must to preserve landscaping. A maintenance schedule should be developed and adhered to. Consulting with a local landscaping specialist will aid in determining when basic tasks, such as cultivation, fertilizing, reseeding, etc., should be performed. A professional should also be consulted for insect and disease control.

The type of landscaping used should be selected to minimize the amount of maintenance required. Plants requiring minimum watering should be used in dry areas; plants that can tolerate cold should be used in northern states, etc. Care should be taken to place plants in locations where they will not be damaged by salt spray during the winter months. Use of salt-resistant plants offers an alternative. Alternative landscaping, such as timbers, rock gardens, etc., should also be considered for areas susceptible to damage from salt spray, or in desert areas, as these require minimal maintenance. Maintenance of automatic sprinkler systems also should be part of any maintenance plan.

If possible, landscaping materials should not be placed on supported structural members due to excessive loading requirements or chemical attack to concrete members. An experienced engineer should review landscape loading that is to be placed on supported structural members.

Repairs

Damaged or dying plants should be replaced each spring. Leaving dead plants in place severely detracts from the appearance of the facility.

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NOTES

7. PAINTING

Included in this section are discussions of:

Inspection of painted surfaces

Metals

Stall striping

Concrete / masonry

Painted signs, symbols, and supergraphics

Touch up

Repainting

Painting serves several purposes:

- Protection of metals against corrosion and resulting loss of structural capacity
- Enhancement of appearance
- Safety
- Information

Housekeeping

Painted elements that are operations or safety related should be inspected monthly to verify they are fulfilling their intended purpose. This group of painted elements includes parking stall striping, curb delineations, and garage surface painted signs. When the paint is faded, soiled, or becoming worn away, then cleaning or repainting should be done promptly.

Parking space striping is a basic element of all parking garages. Parking space stripes should be repainted whenever the paint fades or deteriorates. With the increasing number of small cars on the road, many parking facilities are being restriped to reflect smaller vehicle sizes. The mix of vehicle sizes in the facility should be carefully considered whenever restriping is considered. It is recommended that when changing the striping, the old stripes be removed completely by shot blasting or water blasting rather than being painted over. Painting over old stripes usually results in two sets of stripes being visible, thereby confusing the user. A check should also be made with state and local traffic departments for preferred striping color and basic stall dimensions. White or yellow

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NOTES

are typically used. Gravity-fed paint for stall striping tends to last longer than sprayed paint. The type of striping paint must be compatible with the parking surface. For example, a water-based paint will not adhere to a concrete surface that has been treated with a water repellent such as a silane or siloxane sealer.

Painting of curbs is usually safety related. Curbs should be repainted more frequently than other elements. Semi-annual painting is recommended.

Painted signs and symbols on walls, beams and floor should be maintained in conjunction with illuminated and non-illuminated signs in Section 13 - Signs (Graphics).

Preventive Maintenance

All painted metal surfaces should be inspected to determine their condition, and small rust spots that are observed should be cleaned and touched up. Complete repainting should be done whenever required by the elements, type of paint, and/or exposure conditions.

Paint as a protective coating depends on its adherence to the underlying surface. Therefore, before painting any surface, it is extremely important to properly clean and prepare that surface. Preparation for painting may include removal of rust, removal of previous coats of paint, application of caulking or sealant, waterproofing concrete or masonry, or other preparation appropriate to the surface and exposure conditions. If deterioration is observed on structural metal, an engineering evaluation is recommended. Paints should be carefully selected to be appropriate for each particular application.

Handrails and guardrails serve safety-related functions. They should be inspected and painted at intervals as required to ensure retention of their structural capacity.

Regular painting of exposed metals such as doors, door frames, pipes, and pipe guards helps to prevent corrosion and provides an attractive appearance. Metal pan stairs must be inspected and painted on a regular basis.

The painting or staining of interior or exterior concrete and masonry is usually done for appearance. Some masonry paints also serve as waterproofing. At regular intervals, these elements should be repainted. Anti-graffiti paints are effective for that purpose and should be considered where graffiti is a problem.

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NOTES

Some metals such as anodized aluminum and stainless steel do not require painting. Galvanized steel surfaces do not initially require painting. However, because the galvanizing is sacrificial, under some exposure conditions, cleaning and painting may be required to maintain the corrosion protection as the surfaces age.

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8 PARKING CONTROL EQUIPMENT

NOTES

Included in this section are discussions of:

Operation checks

Preventive maintenance

Emergency service

Inventory of parts

Housekeeping

All parking control equipment should be checked at least once each day to ensure proper function and to minimize the down time during peak activity periods. Ticket stocks in ticket dispensers must be replenished as appropriate for each dispenser.

Cleaning of the exterior of the parking control equipment is discussed in Section 1 - Cleaning.

Preventive Maintenance

A preventive maintenance program should be implemented to minimize breakdowns. A service agreement with an authorized parking equipment supplier is recommended. This agreement should include regular preventive maintenance service, as well as emergency repair service. Quick response to calls for emergency service, as well as local availability of appropriate replacement parts, should be considered when selecting a service firm. Consideration also should be given to special training for in-house staff to take care of preventive maintenance and most emergency situations.

Copies of operating and service manuals for all equipment in the facility should be kept on hand for easy reference. It is desirable to establish a log of maintenance and service work completed on each piece of equipment. It is also prudent to maintain an inventory of critical replacement parts so that equipment can be repaired quickly.

NOTES

A maintenance program should be based on the following key items:

1) Safety first

2) Good, low-surge electrical power using CVTs, UPS systems, lightning protection, etc., as appropriate

3) Installation per manufacturer's specifications

4) Operation, supervision, and maintenance training

5) Documentation

GENERAL MAINTENANCE SCHEDULE FOR PARKING CONTROL EQUIPMENT

		ACTIVITIES REQUIRED					Maint Labor
Device Type	Interval	Clean	Lube	Inspect	Test	Adjust	Est Hrs
Autogate	30 days	X	X	X	X	X	1.0
Gate Controller	90 days	X		X	X		.2
Ticket Dispenser	30 days	X	X	X	X	X	1.0
Dispenser Controller	90 days	X		X	X		.2
Fee Computer	90 days	X		X	X		.3
Exit Validator	30 days	X	X	X	X	X	.7
Power Supply	180 days	X		X	X		.2
Cash Drawer	180 days	X	X	X	X	X	.2
Printer	30 days	X	X	X	X	X	.3
Interface	180 days	X		X	X		.1
Exit Verifier	30 days	X	X	X	X	X	.5
Coin & Token	180 days	X		X	X	X	.2
Card Access Controller	180 days	X		X	X		.1
Read Head	90 days	X		X	X	X	.1
Power Supply	180 days	X		X	X		.1
Detector & Loop	90 days	X		X	X		.2
Software	180 days				X		8.0

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As a general guideline, the chart (opposite page) outlines basic maintenance activities that are to be performed. Below is a short outline on those items. In all cases, however, it is always best to follow the manufacturer's recommendations as to procedure, materials, intervals, test equipment, check-points, tools, consumable items, replacement parts, etc.

NOTES

Repairs

Repair of parking control equipment is best performed by in-house staff or an outside organization specifically trained for that equipment.

Autogates

a. Vee-belt tension should be checked every 30 days; 10 days after a new installation.

b. Vee-belts should be changed every six to nine months depending on usage.

c. A coat of automotive-type wax will reduce corrosion and prolong cabinet or post life.

d. Cam-operated switches should be mechanically and electrically checked.

e. Gear reducers should be topped off with Mobil SHC 629 or an equivalent synthetic gear lubricant to the sight glass level.

f. Heaters and thermostats should be checked for proper operation.

g. All nuts, bolts, flanges, screws, connecting rods, mounting bolts, other miscellaneous hardware, etc., should be mechanically sound and tight.

h. All sockets, cables, and connectors should be unplugged and replugged several times per scheduled maintenance cycle to clean corrosion and oxidation from contacts and to ensure electrical and mechanical integrity.

i. Inspect for vehicular damage.

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NOTES

Ticket Dispenser

a. Dirt is the enemy! Using compressed air and a long-handled artist paintbrush, keep the entire mechanism free of ticket dust or other contaminants.

b. Degrease and re-lubricate sparingly the ticket cutter assembly, type section bearing points, and the ribbon reverse mechanism with light machine oil. Degrease and re-lubricate sparingly the index cam with white grease. Do not lubricate the clutch assembly.

c. Adjust cutter so the dispensed ticket has a short tab on the back of the ticket. Don't cut on the perforation.

d. Adjust type section clock as necessary for accurate time stamping.

e. All nuts, bolts, flanges, screws, mounting bolts, and other miscellaneous hardware should be mechanically sound and tight.

f. All sockets, cables, and connectors should be unplugged and replugged several times per scheduled maintenance cycle to clean corrosion and oxidation from contacts and to insure electrical and mechanical integrity.

g. Inspect for vehicular damage.

h. Heaters and thermostats should be checked, particularly in colder climates.

Fee Computer & Accessories

a. Exterior of all equipment should be kept clean.

b. Ensure all external displays, lights, etc., are clear, bright, and functional.

c. Test all buttons on keypads for proper function.

d. Dirt is the enemy in the printer mechanism. Using compressed air and a long-handled artist paintbrush, keep the entire printer mechanism free of ticket dust or other contaminants.

e. Lubricate printer mechanism drive cam and gears using IMB #23 or equivalent grease.

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NOTES

f. Clean all vend relay contacts where appropriate.

g. Ensure coffee, soft drinks, other foodstuffs, paper clips, eraser residue, staples, etc., are kept away from and out of the equipment.

h. Check cash drawer(s) interlock switch for proper operation.

i. Verify CVT, UPS system, lightning protection equipment, etc., are working properly.

j. All nuts, bolts, flanges, screws, mounting bolts, and other miscellaneous hardware, etc., should be mechanically sound and tight.

k. All sockets, cables, and connectors should be unplugged and replugged several times per scheduled maintenance to clean corrosion and oxidation from contacts and to ensure electrical and mechanical integrity.

Coin & Token

a. Clean all foreign material from rejector mechanism using soap and water.

b. Ensure mechanism works freely without binding.

c. Verify that only proper coinage vends mechanisms.

d. Verify all enclosures and stands are securely mounted and have not sustained damage.

Card Access

a. Clean all read heads using compressed air, brushes, or factory supplied or recommended cleaning materials.

b. Ensure security cards can be inserted and removed smoothly from the read head.

c. Verify all enclosures and stands are securely mounted and have not sustained vehicular damage.

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NOTES

Controllers

a. Clean the exterior surfaces of all gate and dispenser controllers.

b. Using compressed air, clean the interior of all controllers.

c. Polish the contacts of all circuit breakers after power is removed.

d. Polish the contacts of all accessible relay contacts.

e. Test for proper operation.

Detectors & Loop

a. Verify that all loop detectors are properly sealed using a good-quality butyl-based caulk.

b. Test loops electrically, preferably using a megohm tester made for this purpose.

c. Verify correct mode for specific lane operation.

d. Ensure sensitivity settings are proper.

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9 PLUMBING SYSTEMS

NOTES

Included in this section are discussions of:

- *Water supply*
  - *Sanitary facilities*
  - *Washdown*
  - *Irrigation*
- *Water heater*
- *Sanitary plumbing*
- *Stormwater drainage*
  - *Trench, roof and floor drains*
  - *Sediment basins*
  - *Grease traps*
  - *Sump pumps*
- *Fire protection*
  - *Sprinklers*
  - *Standpipes*
  - *Fire pumps*
  - *Hose cabinets*
  - *Fire extinguisher*

Housekeeping

Hose cabinets and hoses, while required by some local authorities, are often targets for vandalism. Consequently, they should be checked often for damage and replaced if necessary. Many municipalities require that the local fire department furnish their own hoses at times of fire. This requirement may eliminate the necessity of maintaining hose cabinets, thus preventing theft and vandalism as the standpipe outlets will only be provided with a cap and chain.

Portable fire extinguishers and their cabinets are also targets for vandalism, and should be checked frequently to see that they are in place, charged, and operable. Where theft or vandalism of fire extinguishers is a problem, a glass front cabinet with a lock and/or alarm, where permitted by local code, can provide security while maintaining access in the event of a fire. An extra fire extinguisher should be kept in the parking garage office. See also Section 11 - Safety Checks.

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NOTES

The fire protection system should be inspected, maintained and checked periodically in accordance with local fire code requirements.

Sanitary and storm lines need to be maintained in working order.

Preventive Maintenance

The water supply piping for sanitary facilities (e.g., toilets, wash-basins, mop sinks) is generally protected against freezing and usually requires only a periodic check for leaks and working order.

The piping for washdown and irrigation, if exposed to freezing temperatures in the winter, must be drained each fall, in addition to periodic checks.

If there is a water heater, it should be checked and flushed annually. A check of sanitary plumbing can be done at the same time the water supply is checked. Regular inspection of heater components such as relief valves, gas pilots, etc., is recommended.

The most extensive plumbing in a parking garage is the storm-water collection and drainage piping system. Neglect of the system can have expensive consequences. Floor drain inlets and basins must be kept clear of rubbish and sediment to prevent clogging and ponding. Drains at the lowest floor may have backwater valves that should be checked for operation. When washing down the floors, temporary filters of burlap may be put over the drain inlets to keep them clear. Periodically, especially before and after washdowns, sediment basins and traps must be checked to ensure continued proper operation. Sump pumps, sand buckets in drains, pump motors, and control switches should all be checked for proper operation. Inspection of drainage systems for leaks during rainstorms and washdown operations is recommended.

Fire protection sprinklers used in parking garages are usually dry systems. Equipment for the sprinklers include an air compressor, dry pipe valve, alarm devices, tamper switches, and test drains. Inspection and servicing should be performed only by qualified personnel. Dry systems should be drained and left dry after each use. If the system is wet, or always charged, similar checks must be made. Sprinkler heads must be checked for operation and freedom from corrosion.

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Fire standpipes in parking garages are usually dry. They may be interconnected and are supplied through a siamese pumper connection at street level. The connections should be checked periodically for lubrication and damaged threads. Check valves at siamese inlets should be monitored for proper operation. Dry systems should be left dry and unclogged after each use. Wet systems and fire pumps must be checked and maintained by qualified people.

For all systems, the pipes, sleeves and pipehangers must be kept free of rust. See Section 7 - Painting.

Backflow prevention devices are an absolute necessity. These require extensive use of hoses, and the possibility of contamination of potable water supply exists. Periodic inspection and/or maintenance of these devices is essential.

Repairs

All plumbing and fire protection repairs should be performed by qualified plumbers and fire systems installers in accordance with local codes and ordinances.

If a sump pump is removed for maintenance, even if for "just a few hours," a working replacement should be installed. Just a few hours could become several days, and rainwater runoff could flood an area with no working pump.

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10. ROOFING AND WATERPROOFING

The comments and information in this section are intended to apply to the many different types of waterproofing applications that may occur in a parking garage. The common waterproofing applications include:

- Joint sealant at construction joints, control joints, and cracks in floors and walls
- Expansion joints in floors and walls
- Concrete sealers on floors
- Membrane waterproofing system on floors
- Membrane waterproofing system on basement walls
- Coating on basement walls and block walls
- Roofing
- Sealant at doors and windows
- Rubber window gaskets

Nearly all of these waterproofing systems have finite life spans. The elastomeric materials used for joint sealant and some expansion joints commonly have a life expectancy of eight to 10 years. Those materials in areas exposed to direct sunlight will often have a shorter life than in areas not exposed to direct sunlight.

Background Information on Waterproofing Systems

A. Deck Sealers

A sealer is a liquid applied to protect and preserve concrete by filling the concrete pores or by sealing the concrete surface against penetration by water-borne deicing salts and other deterioration-causing contaminants. A quality material, properly applied and renewed periodically, will provide supplemental protection against freeze-thaw damage, corrosion, and wear. It is important to note that sealers do not bridge moving cracks.

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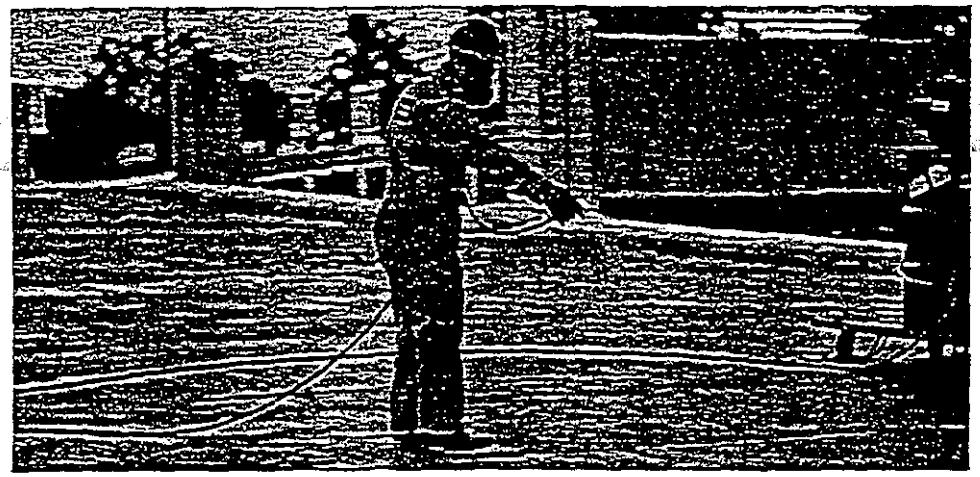
NOTES

Sealers are not cure-alls, however, and the concrete to which it is applied must be sound for the sealer to be effective. Sealers do wear under use and some are subject to ultraviolet light deterioration. They must be reapplied at intervals ranging from one to 10 years, depending on the product, rate of application, and conditions of exposure and use. Life-cycle costs should be evaluated in making a choice of sealers.



Worker spraying deck sealer

With many sealers on the market, and more coming, seek professional advice as to which is best suited for a particular use and exposure. Some help in evaluating sealers may be obtained from a review of American Society for Testing and Materials (ASTM) C672-76, "Standard Test Method for Scaling Resistance of Concrete Surfaces Exposed to De-Icing Chemicals" and the 1981 National Cooperative Highway Research Program Report 244 "Concrete Sealers for Protection of Bridge Structures." To date, no ASTM test exists that satisfactorily measures penetrating sealers performance. NCHRP Report 244 does describe a test program. Another publication by the Ontario Ministry of Transportation and Communications (Report No. M1-79, April 1985) provides additional guidance for sealer selection.

Once a sealer is selected, it should be applied by a manufacturer-approved applicator in accordance with the manufacturer's instructions. Some coatings may produce a slippery glaze on the concrete surface, reducing traction, and increasing the possibility of cars skidding. The same caution applies to application of sealers on stairs, landings, and lobby floors. A small test application of the sealer at proposed coverage rates should be applied and tested for both wet and dry skid resistance before full-scale application.

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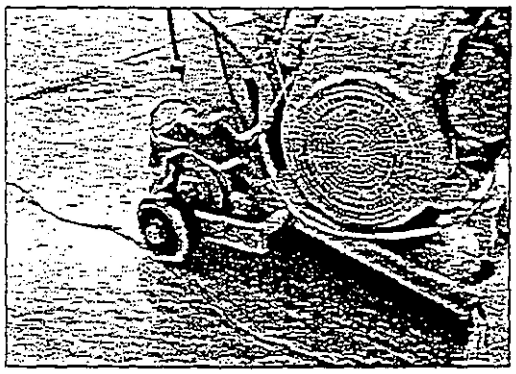
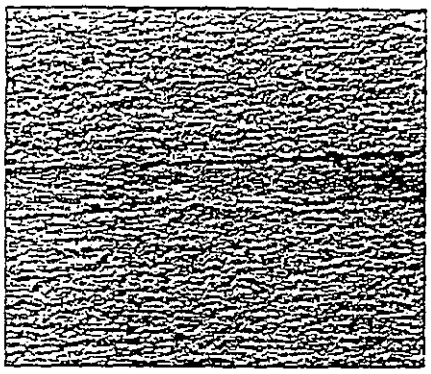
NOTES

B. Crack and Joint Sealants

Sealants are used to seal control and construction joints in floors to protect against moisture intrusion. Caulking is normally used on walls and architectural elements. The materials may be self-leveling or non-sag, depending on whether they are intended for use on horizontal or vertical surfaces. Sealants are intended to remain relatively soft and flexible throughout their service lives and must be designed for exterior use. They seal properly prepared joints through adhesion to the surrounding concrete. Sealants for relatively narrow joints are applied to joints in horizontal surfaces by pouring or with a caulking gun, and are applied to vertical surfaces by a caulking gun. Sealants should meet or exceed the requirements of Federal Specification TT S-00227OE, for Sealants, Class A, Type 1 and 2, self-leveling and non-sag.

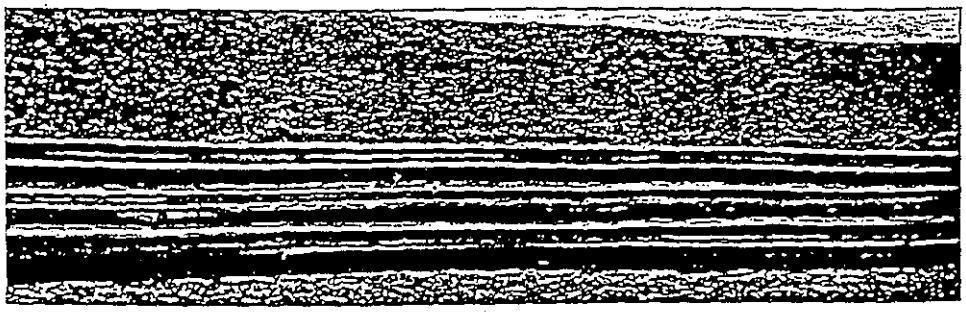


Routing crack



Completed sealant joint

Expansion (isolation) joint waterproof glands and sealants function similar to those for control and construction joints. Expansion joints are more vulnerable to wear because they experience greater lateral/transverse movement and are directly exposed to wheel traffic. Prefabricated joint seals installed by experienced factory-approved contractors tend to give better performance than poured expansion joint sealants.



Installed expansion joint

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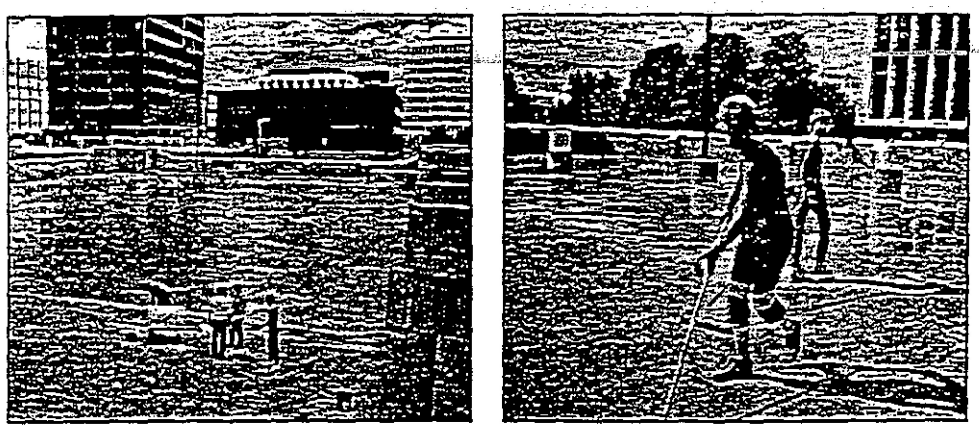
C. *Traffic-Bearing Membranes*

Protective membrane systems are generally installed to eliminate leaks through a floor slab and reduce moisture ingress beyond the capabilities of concrete sealers.

Since sealers cannot bridge moving cracks and are sometimes not effective in slowing reinforcement corrosion to acceptable levels, (depending on the amount of moisture and salt contamination), it may be necessary to apply a membrane to eliminate moisture penetration.



Applying traffic-bearing membrane

Several types of membranes are available:

C.1 Thin Traffic-Bearing Membranes

These systems typically consist of a thin elastomeric base layer (neoprene or urethane) covered by a thin wearing course usually including grit (epoxy, modified epoxy, or urethane) with the total system thickness in the order of 40 to 80 mils. ASTM Standard C957 outlines criteria for evaluating performance and properties of thin elastomeric membranes.

C.2 Asphaltic or Rubberized Wear Course Systems

These systems typically consist of a hot- or cold-applied rubberized asphalt membrane overlaid by either mastic or asphaltic concrete pavements. Thicknesses of 5/8 inch for mastic wear courses and about 1-1/2 inches for asphaltic concrete overlays are usual.

It should be recognized that asphaltic concrete-wearing courses are porous to some degree and may allow build-up of salts and moisture at the level of the membrane. For this reason, they are not recommended on elevated concrete slabs. Drains should have weepholes at the level of the membrane to minimize build-up of moisture on

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the top of the membrane. If the membrane is damaged, contamination of the structure could occur at an accelerated rate. On roof decks, black asphalt surfaces increase the heating and associated thermal movement of the structure. This may present problems with expansion joints or structural elements. Asphalt should be well compacted with sufficient stability to avoid displacement in drive aisles, ramps, or under vehicle wheels in stalls.

Asphaltic or rubberized membrane should be continuously bonded to the substrate to prevent water from penetrating under the membrane through breaks or pinholes. Flashing should be installed to protect asphalt membranes applied to exposed vertical surfaces.

Housekeeping

Housekeeping requires observation of visible waterproofing elements, looking for signs of failure such as leaks, stains, cracks, etc. It is recommended that all areas of the parking garage be inspected for water leakage monthly, and in no case less than semi-annually. Take advantage of rain storms to locate leaks from the underside of parking decks, roofs, and joints, then try to assess where any problems originate on the surface above. Inspection for leaks through parking decks can also be performed during garage washing, hosing down of the parking decks, or when snow accumulation melts. Check all visible waterproofing elements for deterioration semi-annually, or at least annually. Remember to look at the stairwell roofs, sealant in exterior wall surfaces, and any other waterproofing that is not normally seen.

Preventive Maintenance

Inspection

The first step in maintaining a waterproofing system, whether for a new or old garage, is a regularly scheduled visual inspection of the entire facility. Items to be noted include visible wear of surface sealers or membranes, cracking, bubbling, debonding, discoloration, softening, tearing or displacement of membranes, sealants, and wear course overlays. If possible, the visual inspection should be done during and after a washdown of the decks in order to detect any leakage through the structure indicating membrane or sealant failure, and to ensure any damage does not go unnoticed under a layer of sand or accumulated debris.

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Spot Repair

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Thin Traffic-Bearing Membrane

Reapplication of wearing course layers in high-traffic areas such as ramps and drive aisles is typically required at three- to five-year intervals.

Particular care must be taken to ensure the membrane is not damaged by snowplow blades.

Asphalt Membrane and Wear Course System

Maintenance of these systems consists of periodic replacement of asphalt softened by vehicle oil drippings and an application, approximately every two years, of seal coat emulsions to wear course surfaces to offset oxidation and embrittlement of the asphalt.

Sealants/Repairs

Sealants, being soft and flexible, are susceptible to tire abrasion and tearing by improperly used snowplows. Sealants that have failed will allow leakage and, thus, possible deterioration of the concrete substrate and reinforcing steel.

The manufacturer and/or installer of the sealant should be consulted for proper materials and methods of repair. Also review sealant warranties; some products come with warranties as long as five years. Depending on the type and exposure conditions, most sealants have a useful life of seven to 10 years and somewhat less on roofs due to ultraviolet exposure. When old sealants are removed, examine the underlying concrete for deterioration, make necessary repairs, and apply a compatible primer to the concrete before installing the new sealants. As a rule of thumb, when 30 percent of the sealant joints in the structure need repair or have been repaired, it is time to start planning for replacement of the sealant in all joints.

Traffic Deck Membranes/Repairs

Repairs to membranes, particularly the proprietary thin traffic-bearing systems, involve specialized surface preparation and material application procedures. Finding damage to traffic-bearing systems and performing repairs is relatively straightforward. However, failures in asphalt membrane and wear course systems are detected indirectly through leaks on the underside of the structure. Finding and repairing such leaks may require tearing up the

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wearing surface above the leak so that the membrane can be patched.

Repair of rutting or displacement of asphalt wear courses in high-traffic volume areas may involve removal of both the wear course and membrane in affected areas as the membrane will likely be damaged during topping removal.

Consult the membrane installer and/or manufacturer for proper repair materials and methods. The membrane may have a warranty that should be checked for applicability.

Foundation Wall Waterproofing Repairs

Damage to foundation waterproofing usually shows up after the waterproofing has been made inaccessible by backfilling around the garage walls. Sometimes leaks in basement or retaining walls below ground level may be sealed from the inside, using any of the number of available techniques including quick-setting grouts, pressure-injected epoxies or other materials. If that fails, bentonite, a clay that swells when wetted, may be injected into the outside ground adjacent to the leak. Bentonite installers with specialized equipment operate under a number of trade names and can be found in most metropolitan phone books. Be sure to check the installer's references.

If all other repairs fail, it may be necessary to eliminate the source of groundwater or alternatively, the earth next to the foundation wall may have to be excavated and the waterproofing repaired directly. Other repair methods are possible, but are beyond the scope of this manual. Consultation with a qualified geotechnical or structural engineer should be considered.

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11. SAFETY CHECKS

NOTES

Included in this section are discussions of:

Carbon monoxide monitors
Guardrails and handrails
Pedestrian exit signs
Emergency lights
Fire safety equipment
Tripping hazards
Air handling systems

Housekeeping

When an operator is responsible for maintaining the foregoing, safety checks of the above items should be made daily or at least weekly. There are some elements in a parking garage that merit special safety checks.

Carbon monoxide monitors, noise alarm systems, and communication systems are often used in enclosed or underground parking garages. These monitors and the ventilation systems should be checked daily for proper performance. The instruction and operation manuals for this equipment should be consulted and followed.

Metal handrails and guardrails at the edges of parking floors are subject to damage from impact and corrosion. It is recommended that these handrails and guardrails be checked monthly to verify that they are rigid, are not damaged, and can serve their intended purpose. Less susceptible to damage, but equally deserving of periodic safety checks, are concrete guard walls, stair handrails, railing bases, and stair nosings.

Most building codes require illuminated exit signs to be placed by each stairway on all floors and at other points of pedestrian ingress or egress. Many times these signs are white with red letters. These illuminated signs should be checked daily to see that the light bulbs are working, and the sign faces are intact.

Special emergency lights and the total lighting system should be checked regularly for proper operation. See Section 3 - Electrical Systems.

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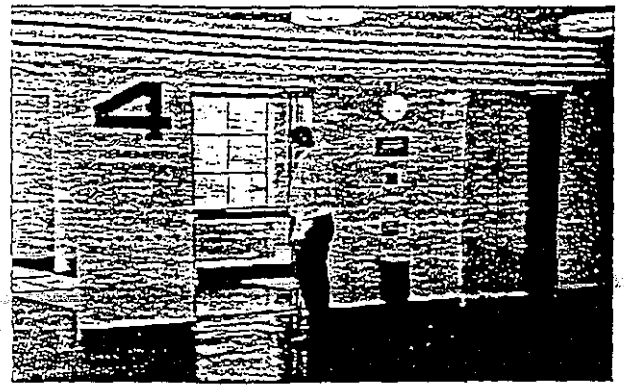
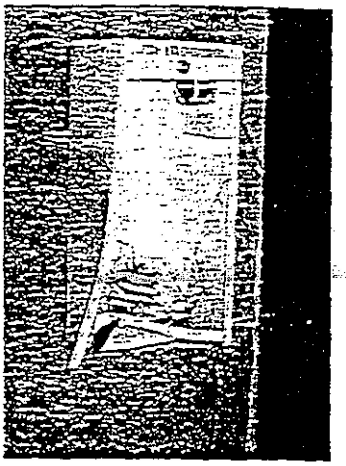
Fire safety equipment should be checked regularly. This includes fire extinguishers, standpipes, hose cabinets, fire sprinkler systems, and fire pumps, as well as fire safety informational signing. See Section 9 - Plumbing Systems.





Above: Clean lobby
Right: Damaged fire hose cabinet

Preventive Maintenance

Due to deterioration, concrete floors, sidewalks, or other walkway surfaces can develop holes or pockets that can cause tripping hazards. These holes or pockets should be filled immediately, even if on a temporary basis. See Section 14 - Structural Systems, for causes of deterioration and cautions about temporary patching materials.

Repairs

Only experienced and qualified personnel should install and repair carbon monoxide and air handling equipment.

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12. SECURITY SYSTEMS

NOTES

Included in this section are discussions of:

Audio monitoring
Call for assistance buttons
Closed circuit television
Elevator cab communication
Alarms - Cashier booths
Doors
Elevators

Housekeeping

It is suggested that in those instances when the operator has the responsibility to maintain the security system that the system be checked daily as part of a walk-through inspection, but no less often than weekly, to determine if the system appears to be functioning properly.

Security systems that may be used in parking garages include the following:

- Audio monitoring devices may be located in stairs, elevator cabs, and/or parking areas. Both the monitoring devices and the sequencer/listening stations should be checked.
- Two-way audio systems that may be incorporated with audio monitoring system and/or activated by "call for assistance buttons" placed at elevator cabs, stairways, and/or other locations.
- Telephones in elevator cabs, cashier booths, or other locations.
- Alarms in elevator cabs, cashier booths, and offices.
- Alarms or other warning devices on stairway doors to indicate that they have been opened and/or are not closed properly.
- Closed-circuit television in special areas or throughout the parking garage.

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Preventive Maintenance

Preventive maintenance and repair of security system equipment is best left to those specially trained for the specific equipment. Elaborate systems may also merit a service contract to help assure quick response of qualified repair personnel when needed.

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13. SIGNS (GRAPHICS)

NOTES

Included in this section are discussions of:

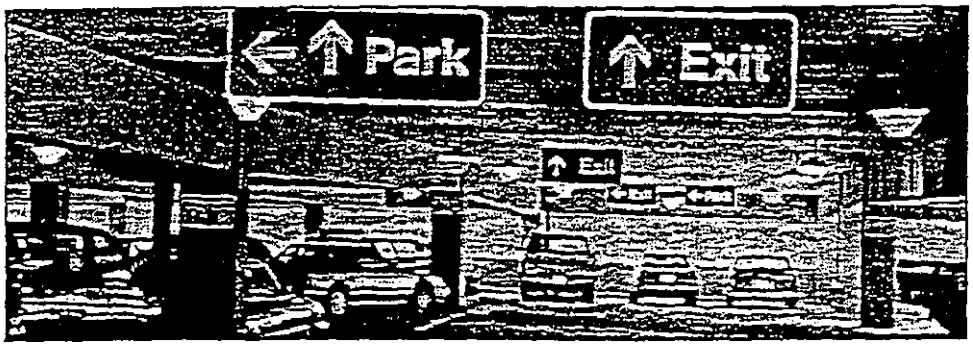
Illuminated signs (internal and external)

Non-illuminated signs

Graphics on walls, beams, floors, etc. (not painted)

The signs inside and outside any parking garage play important roles directing and informing the users. These signs may include illuminated graphics or other graphics mounted or painted on walls, posts, floors, beams, columns, or suspended from ceilings.

For painted signs or supergraphics, see Section 7 - Painting.



Easy-to-read signage

Housekeeping

It is recommended that all mounted signs be checked weekly to verify that they are in place and visible for proper functioning. Most illuminated signs such as "full" signs, fee indicators, and exit signs should be checked daily.

Replacement or cleaning should be done as required to maintain all signs and graphics in a clean and legible condition, at least quarterly.

Preventive Maintenance

Quarterly, the sign or facing material should be examined for deterioration and dirt. See also Section 1 - Cleaning.

Graphics applied on floors should be carefully inspected twice annually to determine their legibility to the motorist. Dirt, oil, etc., should be removed and the graphics replaced as needed.

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14. STRUCTURAL SYSTEMS

Included in this section are discussions of:

Floors
Expansion joints
Control joints
Construction joints
Stair and elevator towers
Beams, columns and walls
Structural steel elements

The structural system is the main element of any parking garage and usually represents the largest portion (up to two-thirds or more) of the construction investment. Protection of that investment requires an adequately budgeted program of regular inspection and preventive maintenance. Deferred maintenance can lead to costly repairs. Certain precautions during construction can also improve performance of the structure. Adequate drainage, proper concrete quality control, crack control, and proper sealant detailing are key items.

The garage structure support system may be one of many common types of steel and/or concrete framing. Common to all systems is steel, whether concrete reinforcement or structural steel shapes. Unless protected, steel will corrode (rust). Corrosion of the steel may weaken the garage structure. There have been cases where a car has broken through a floor, or where part of a garage has collapsed because of excessive corrosion.

In planning new structures or repairing structures, one of the keys to proper long-term performance of a parking structure is proper concrete cover over the reinforcing steel. This is particularly important for reinforcing steel located near the driving surface. Whether the reinforcing steel is mild steel reinforcing bars or post-tensioned tendons, it is recommended that a minimum clear concrete cover of 1-1/4 inches be used in any area of the country, with the cover increased to 2 inches for field-placed concrete where deicer salts or airborne salts are present.

Equally important for new construction or repair is the quality of the concrete. A minimum concrete strength of 4,000 psi is recommended and 5,000 psi preferred. Of primary importance is the water-cement ratio. A ratio of no more than 0.40 is recommended.

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This should provide high-quality, low-porosity concrete with increased ability to resist the penetration of chloride ions.

In the typical garage, the floor surface is subject to the most severe conditions of load, wear, and exposure. The floor (containing steel reinforcement, construction joints, expansion joints, joint sealants, electrical conduit, electrical junction boxes, and possible heating cable or piping) may also have sprinklers, drain piping, and signs suspended from it. The above elements, plus the application of deicing salts, combine to make the floor susceptible to premature deterioration if not properly drained, sealed, and maintained.

Types of deterioration which tend to occur in a concrete floor are spalling, cracking, leaching, scaling, and joint deterioration. Spalling, leaching, and scaling may be controlled, or at least reduced by good concrete quality control during construction and by the periodic application of a high-quality concrete sealer or membrane system.

Joint leaking also contributes to concrete deterioration and is the cause of many durability problems experienced by parking structures today. The deterioration is especially prevalent in areas that use deicer salts, and in areas adjacent to or near salt water.

Spalls or potholes in reinforced concrete surfaces caused by corrosion are usually dish-shaped cavities. They can be up to several inches deep and cover one to several square feet of surface area. Spalls can occur individually or in groups covering several hundred square feet.

Horizontal fractures called "delaminations" often develop parallel to the exposed concrete surface when the reinforcement is closely spaced. Fractures originate where corrosion has damaged embedded reinforcement or other embedded metal, especially ferrous electrical conduit. Freeze-thaw cycles, vehicular traffic, and additional corrosion influence the rate of fracture migration and spall development.

Spalls can also develop from concentrated loads at edges or corners of members or from a sharp blow from external sources.

Contamination

Concrete is a naturally porous material. During construction, excess water not required for hydration eventually evaporates, leaving behind an interconnected network of pores and capillaries. Concrete capillaries have diameters ranging from 10 to 1,000 Angstroms in diameter. The chloride ions are less than 2 Angstroms

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in diameter. Penetration of chloride ions into concrete and subsequent accumulation occurs readily on surfaces exposed to deicing salts, wetting and drying, and freeze-thaw cycles.

Locations in coastal areas are also exposed to salts. Essentially, all concrete is susceptible to chloride ion contamination by virtue of its natural porosity.

Concrete porosity can be reduced during construction by reducing the amount of mixwater, and by additives. By removing excess mixwater, permeability is reduced. Silica fume has been used successfully to lower the permeability of the concrete. Other admixtures are generally called pore blockers and pore liners.

Reinforcement embedded in concrete is usually protected by a thin oxide film remaining after manufacturing and the passive effect of highly alkaline concrete. Salts, either calcium or sodium chloride, can penetrate sound high-quality concrete and accumulate in sufficient quantities to cause corrosion of embedded reinforcement. Research indicates that the corrosion threshold (when corrosion can begin) is when chloride ion accumulation exceeds 1.1 to 1.6 pounds per cubic yard (300-400 ppm).

Metallic corrosion is an electro-chemical process that induces progressive deterioration. Corrosion by-products, "rust," develop at the steel surface causing high stress in the surrounding concrete. Rust expands to a volume of two to three times that of the parent metal. The by-product accumulation creates internal pressure on the adjacent concrete, which results in cracks developing in the surrounding concrete (see Figure 1). Initial cracking due to corrosion can occur

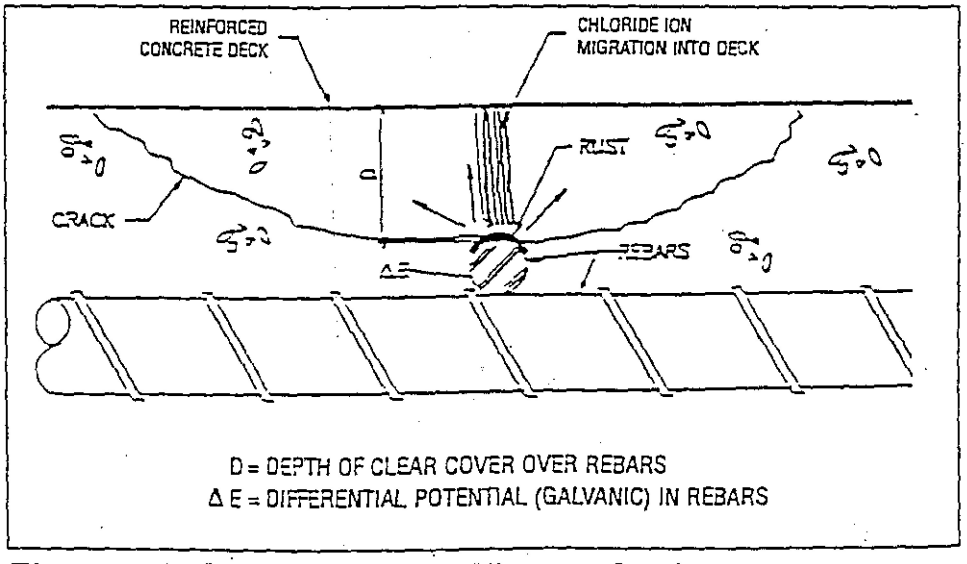

Figure 1 - Rebar corrosion spalling mechanism

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when the section loss of the parent metal is as low as 5 percent. Cracks may appear vertically over the reinforcement nearest the exposed surface. These cracks allow direct access of moisture and additional chloride to the reinforcement. This causes accelerated corrosion and subsequent delamination. The problem may be further accelerated when cracks form from a total horizontal delamination.

Once initiated, corrosion stops only when the supply of oxygen and moisture is cut off completely, when an opposing electrical current is applied to the reinforcement network (cathodic protection), or if the electrolyte (water) is removed, or if the parent metal is entirely consumed by rusting. The corrosion process consists of microcell and macrocell corrosion. Microcell corrosion occurs when electrical current discharges from reinforcement at the anode and returns to the same reinforcement at a cathode. Macrocell corrosion occurs between different areas of floor slab reinforcement, which has different levels of chloride contamination, different moisture content, or for some other cause creates differential electrical potentials. A battery effect occurs, which causes rapid corrosion and related deterioration.

The corrosion process and its subsequent effect on a reinforced member is progressive. The rate of corrosion is related to the chloride content. The rate of corrosion correlates directly with the occurrence of additional delaminations and subsequent spalling. The corrosion rate is generally thought to be controlled primarily by the availability of moisture, oxygen, and chlorides, and, secondly, by the amount of surface area of the anode and cathode. Also, corrosion is accelerated by increased heat. Corrosion is basically dormant below freezing; the rate of corrosion approximately doubles for every 10 degrees Centrigrade above freezing. Corrosion and subsequent deterioration can be slowed by reducing the availability of moisture and oxygen.

The effect that corrosion has on a structural member is variable. Four things happen, all of which are detrimental to structural integrity:

- Surface spalling occurs, causing a maintenance and serviceability problem.
- The reinforcement loses cross-section and stress redistribution throughout the remaining network occurs.
- The reinforcement loses its bond with the concrete.

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- Concrete cross-section loss, in addition to reinforcement cross-section loss and bond loss, impairs the load-carrying capacity of floor slabs and beams (see Figure 2).

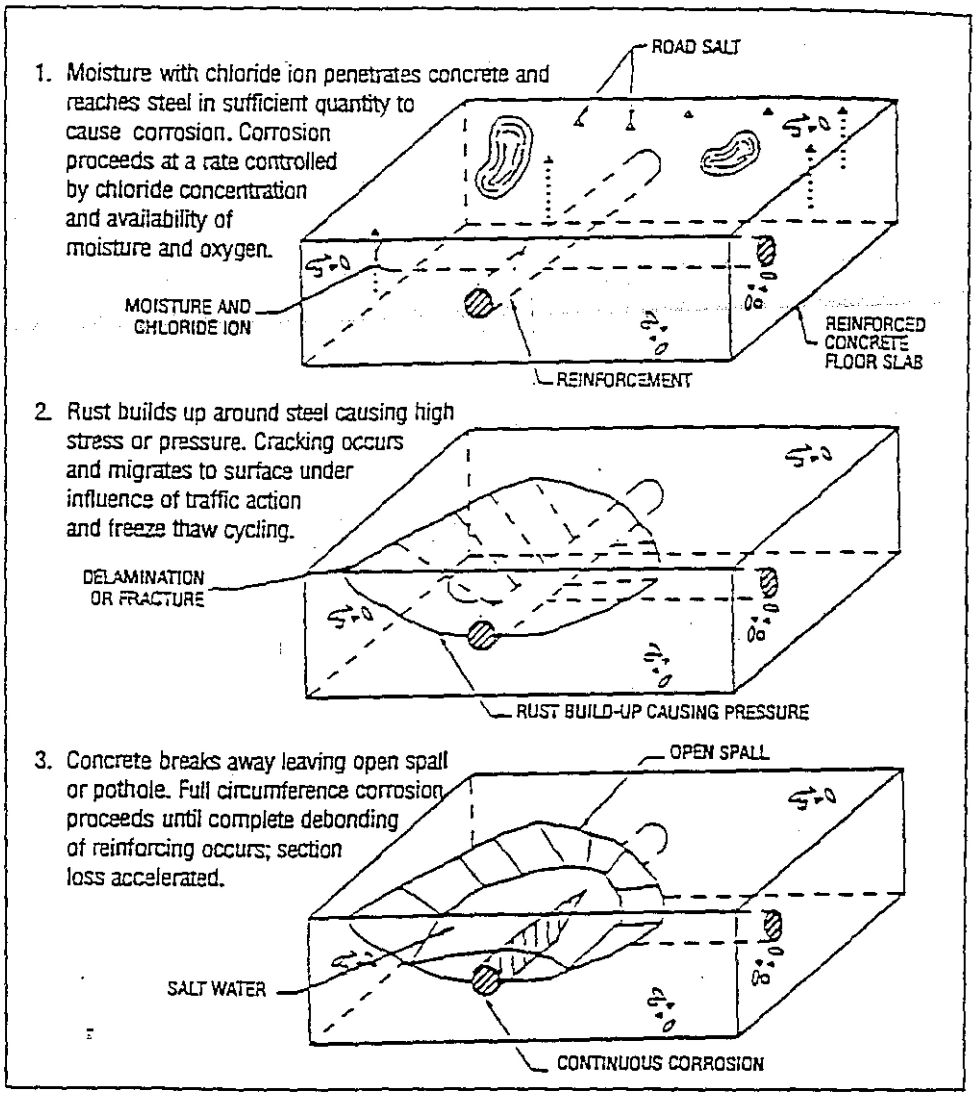

Figure 2 - Corrosion-induced spalling process

One aspect of the corrosion phenomena that makes repairs difficult is that multiple delaminations may occur as the chlorides migrate deeper into the floor slab. Where top surface spalling coincides with full-depth floor slab cracks, it is common to find ceiling spalls directly below floor spalls. The bottom reinforcement corrodes similarly to the top, thus causing a multiple effect of concrete and reinforcement section loss. Surface spalling can reduce the concrete section. At the same time, severe corrosion of tension-reinforcement (top reinforcement at supports and bottom reinforcement at mid-span) can result in over-stressing and possible reinforcement yielding or failure.

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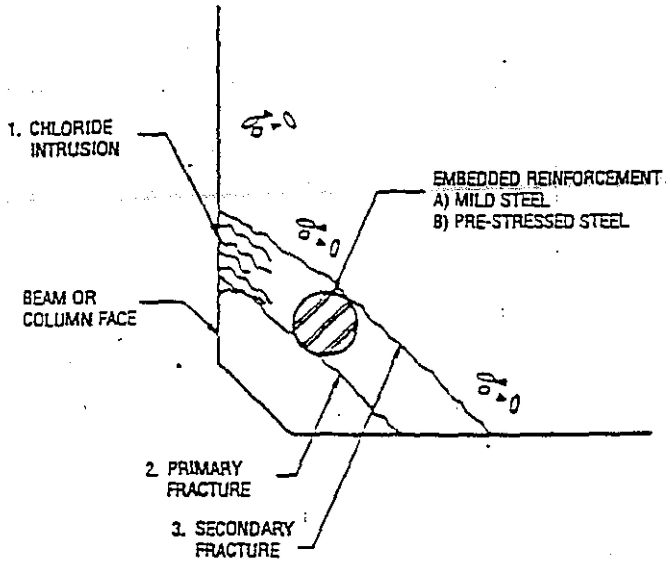
Spalling can occur on all structural members. Floor slab systems frequently experience the most extensive and widespread effect of spalling. Beams, columns, and walls are also susceptible to corrosion-induced spalling when subject to chloride contamination from runoff or spray (see Figure 3).



PROCESS DESCRIPTION

1. Chloride ion intrusion contaminates concrete — lowers pH and induces corrosion of embedded reinforcement.
2. Corrosion by-products "rust" develop at bar surface and require expansion room.
3. Rust expansion causes pressures which crack surrounding concrete.

Figure 3 - Spall development in beam and column

Influence Factors

In the absence of a permanent protective barrier between the slab surface and the reinforcement (such as a membrane or epoxy coating on the reinforcement), the depth of concrete cover over embedded reinforcement and the permeability of the concrete are the most important aspects of design and construction that can delay the onset of spalling. Floor slabs with less than recommended cover over the reinforcement, which are subject to intense deicing expo-

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sure, undergo rapid and severe corrosion-induced spalling. Floor slabs constructed with lower water-cement ratio concretes, additional concrete cover at top reinforcement and with protection from intense deicing exposure will provide increased service life.

In preparing maintenance programs for parking facilities, consideration should be given to the areas where concentrations of reinforcement occur near the surface. With flat slab design, this involves areas adjacent to the column. For one-way slab and beam designs, the area above the beam typically has more top reinforcement than at mid-span. Maintenance efforts directed at protecting these areas from intense exposure will pay off in reduced spalling and extensions of repair-free service life.

In order to properly prepare restoration construction documents, it is first necessary to evaluate the effect spalling has had on the carrying capacity of individual members and then to evaluate the cost effectiveness of repair procedures with regard to the total restoration program. A structural engineer experienced in parking garage restoration should be retained to perform the required investigation, analysis, and evaluations.

Cracking

Concrete cracking is caused by tensile stress. This may be either construction or service related. Cracking commonly attributed to construction may be caused by improper concrete placement, improper consolidation, improper curing of the concrete, premature removal of form supports, or by plastic or drying shrinkage of the concrete. Service-related cracking is usually due to temperature changes, load, settlement, or internal stress. Corrosion of reinforcement and aggregate chemical reaction are common causes of internal stress.

Not all cracking is detrimental to the concrete member. In many cases, cracks are anticipated and reinforcement is provided to transfer stress across the crack. Properly positioned reinforcement arrests crack development by keeping cracks short and limiting their width. Cracking can be detrimental when it occurs to an extent and frequency not expected. If this happens, steps are necessary to minimize the effect cracking has on long-term durability.

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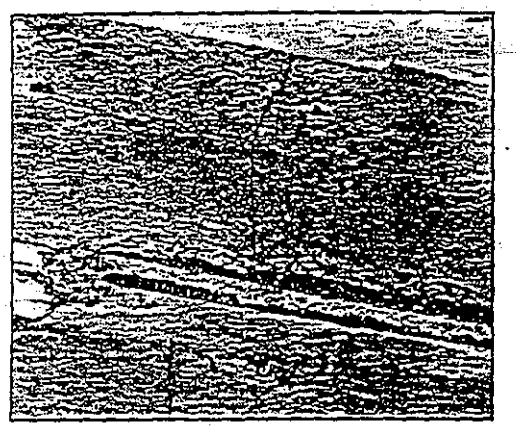
Leaching

Leaching is caused by frequent water migration through the floor slab or cracks. As water migrates through the concrete, it takes along a part of the cementing constituents, depositing them as a white film, stain, or a stalactite on the ceiling below. This process may weaken the concrete over a period of years. It is accelerated by porous or perpetually moist concrete. Leaching frequently occurs at cracks beneath gutterlines in the concrete surfaces above.



Leaking construction joint



Reinforcing steel corrosion

Scaling

Concrete scaling is a deterioration mechanism that attacks the mortar fraction (cement paste) of the concrete mix. It is characterized initially as a minor flaking and disintegration of the concrete surface. With passing time it progresses deeper into the concrete, eventually exposing aggregate, which breaks away. This further contributes to the process by exposing more paste to the elements. In extreme cases, apparently sound concrete can be reduced to a gravel-like condition in a short period of time (see Figure 4 - following page).

Concrete scaling is generally caused by freeze-thaw action. When dry concrete is frozen, there is little damage. If saturated concrete is frozen, excess water freezing in the concrete causes high stress and weakens the mortar. Exposure to cyclic freeze-thaw action is very destructive to concrete in a saturated state if the original concrete is not of sufficient high quality. Concrete with a proper amount and distribution of entrained air is resistant to scaling.

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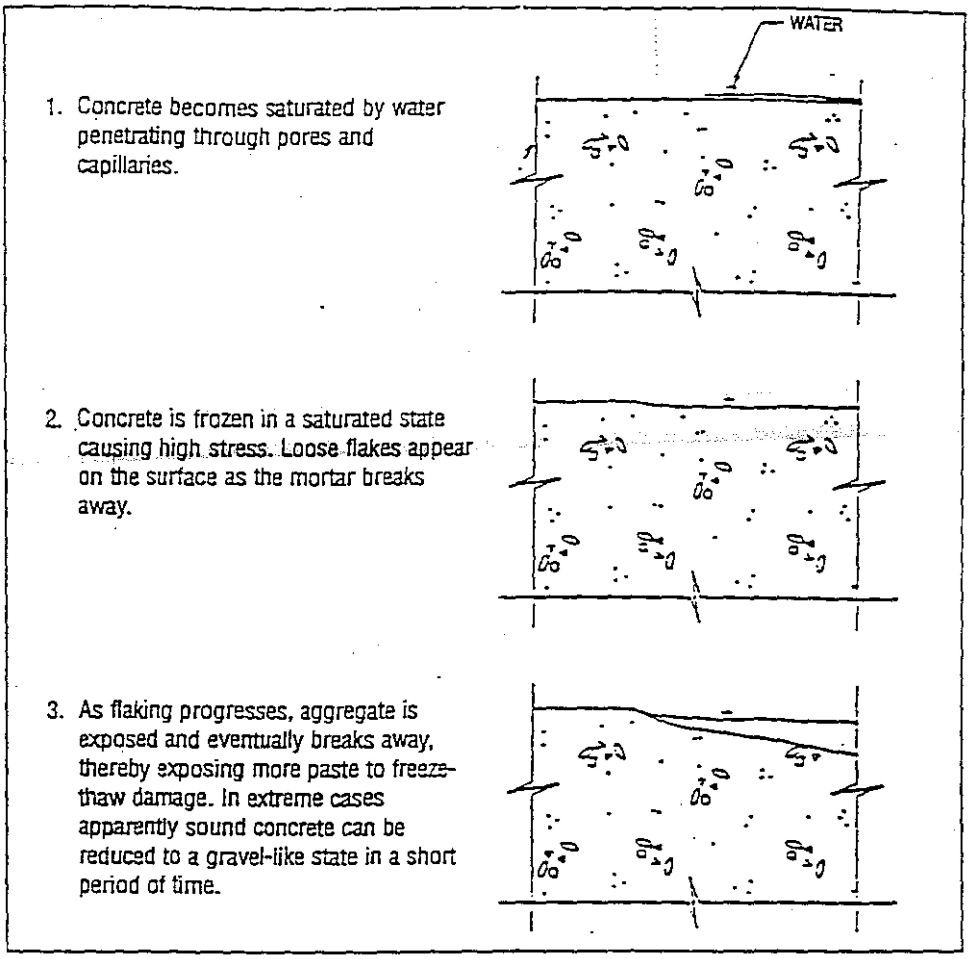

Figure 4 - Concrete surface scaling

Joint Deterioration

The two most common provisions made for crack control or relief of restraint in concrete slabs are control joints and isolation joints. Such joints have long been a source of maintenance problems. Joints on supported floor slabs must be sealed against water leakage and intrusion of incompressible materials. Both situations are damaging to the joint system.

Construction joints deteriorate for several reasons, usually associated with failure of the sealant or failure of the adjacent concrete. Joint sealants may not have the required degrees of flexibility, bond, strength, or durability for a particular application. If concrete adjacent to the joint is not sufficiently durable, then local scaling will cause failure of the joint sealant by destroying its bond to the concrete.

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Isolation joints are also susceptible to premature deterioration. The most common causes of early deterioration are improper joint design or sealant material specifications, incorrect installation of the expansion device, and in-service damage from traffic or snow plows.

Cracks in concrete are common. The existence of a crack does not necessarily mean that the structure is in structural danger. Cracks are generally serious when they occur in a pattern or frequency that is not considered typical for a particular structural member. Cracks are also a problem when they allow water leakage and subsequent contamination of the concrete and accelerated corrosion of embedded reinforcement. Cracks also allow leaching and surface staining, which can also cause visible deterioration of a structure, and staining of parked vehicles from dripping water. The extent and nature of cracking is influenced by design details, construction methods, and quality. Cracking generally results from three basic actions: restraint of volumetric movement; shrinkage of the concrete; or structural tension.

Methods of sealing a crack to prevent or limit moisture penetration will depend on the cause of the crack and a prediction of what the crack will do in the future. Some crack repairs require restoration of the concrete into its original monolithic state; others can be sealed and left free to move.

The restoration of cracked concrete to its original monolithic state is typically accomplished with epoxy injection. For very shallow fine cracks a low-viscosity epoxy may be poured into the joints until it fills and seals the cracks. Larger and deeper cracks (> .003 inches to .005 inches) may require the use of pressure epoxy injection. This injection should proceed from the bottom of a crack and either be considered filled when it emerges from the top surface of an unsealed crack or from an upper access port for a sealed crack. Manufacturers' recommendations should be followed regarding the mixing, installation, application, temperature, and curing of such epoxy applications.

Cracks that are to be left free to move and do not require structural restoration should be sealed to avoid water penetration. Typically, these cracks should be sealed from the top only. They may be sealed by routing out the cracks and using an appropriate sealant. These cracks are typically routed out using a grinder to achieve a uniform width and depth to a sound surface prior to sealant application. Typically a urethane sealant is then applied into the crack for its length. Sealant size should be at least 1/2-inch deep and 1/2-inch wide.

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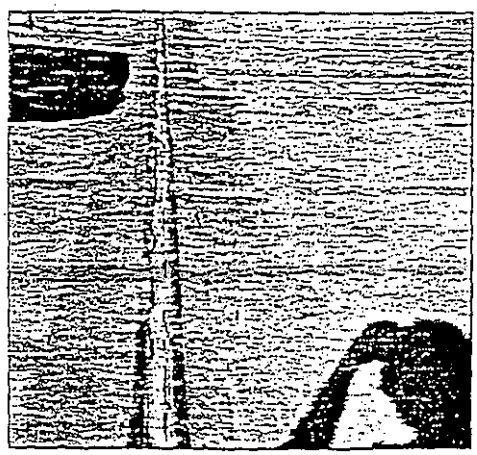
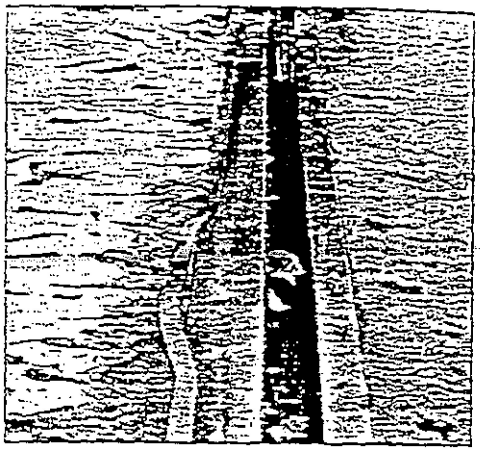
Some "joints" are designed and built into the typical garage to accommodate movement and shrinkage strains within the garage, (expansion/isolation joints, construction joints, control joints, and precast member joints).



Failed joint sealant



Failed expansion joint

Isolation (expansion) joints provide complete separation between sections of a garage and accommodate movements associated with temperature changes and long-term shrinkage and creep. They are generally detailed with a flexible material as a seal. Other joint designs provide a steel traffic plate to bridge the joint opening, or may simply employ a flexible gland to seal the joint while allowing for movement. Joints of all kinds must be checked regularly for damage and deterioration. Isolation joints work best when differential deflection between the two sides of the joint is minimized by structural supports crossing the joint.

Construction joints are located at predetermined points. These joints typically have a tooled groove filled with a flexible sealant, or may have cast-in-place water-stops to prevent leakage. Water-stops are not good solutions in freezing climates because water can accumulate at the stop in the joint and cause damage.

Control joints accommodate cracking by creating a series of weakened planes at predetermined points in floors and walls. In precast parking structures such joints are recommended at the junction between all precast deck members. Control joints are groove-tooled or formed in plastic concrete or sawcut in the hardened concrete and then filled with a flexible sealant to prevent water penetration. Sawcutting to form control joints in new construction is not recommended because shrinkage in the concrete frequently develops a

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cracking pattern before the sawcutting can take place. Thus the purpose of the sawcut is defeated.

For precast, pretopped parking structures, the joints between adjacent members become control joints and are sealed with a flexible sealant to prevent leakage.

Floor slabs at entrance and exit lanes receive the most exposure to deicing salts; next come gutter lines adjacent to walls and curbs. Areas where cars turn corners or start/stop are subject to heavier wear than other floor areas. Such areas should be more closely monitored for deterioration and treated promptly.

Regardless of care taken during construction, garage floors often have some areas where water collects into shallow ponds. Deicing salts will collect with the water, making the floor in these pond areas more susceptible to salt penetration. If ponds form over floor joints, possibilities for deterioration are especially great. Areas where ponds tend to form should be checked after each rain or snow, and the ponds eliminated by sweeping, squeegeeing, or adding a drain.

Housekeeping

Routine housekeeping generally consists of frequent sweeping of the garage and periodic washdowns of the decks. Washdowns should be with sufficient quantities of water to wash away chlorides. Garden hoses are too small to do the job. For cleaning recommendations, see Section 1 - Cleaning.

Regular removal of sand and grit accumulations from drive aisles will help to minimize the loss of slab surface through abrasion, as well as help minimize damage to sealers, sealants, and expansion joint systems.

It should, however, be noted that in certain cases, washdowns may be detrimental to a structure if damage due to corrosion has already begun, such as if extensive surface delaminations have begun to form (e.g., more than 1 percent of total surface area).

The advisability of washdowns for a particular structure should be reviewed with a structural engineer who is knowledgeable in such matters. The removal of loose concrete from delaminated or spalled surfaces should also be reviewed with a qualified engineer. The engineer may recommend removal of damaged overhead concrete to pre-

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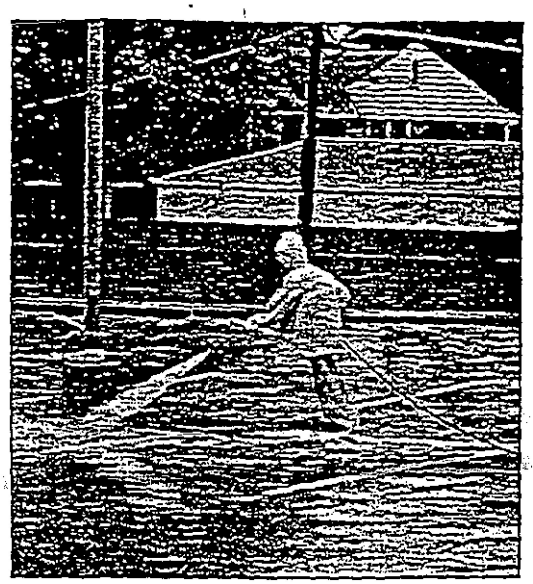

Spring washdown

vent it from falling on a vehicle or pedestrian.

During washdowns, care should be taken to remove excess water from slab surfaces immediately after washing. In enclosed garages, the parking ventilation system should also be operating after washdowns to eliminate humidity buildup. Both measures will reduce the amount of potential moisture penetration into the deck or soffit surfaces.

Snow plowing and ice removal are discussed in Section 15 - Snow and Ice Control.

Preventive Maintenance

Inspection Program

The first step to any well-planned maintenance program, whether for a new or old garage, is a regularly scheduled walk-through survey — a visual inspection of the entire garage. An excellent reference for such a survey is the "Guide for Making a Condition Survey of Concrete in Service," published by the American Concrete Institute.

During the walk-through survey, observe the location and extent of conditions that could cause, or have already caused, concrete or steel deterioration. Items to look for include surface deterioration on top and bottom surfaces of the floor systems; evidence of water leakage and/or staining through or on the floors, walls, or other structural elements; cracks in floors, beams, columns, and walls; and rusting of exposed steel. Leaking and staining are often early indicators of future problems. A survey walk-through must be done by a conscientious observer. If evidence of deterioration, scaling, spalling, cracks, or leaks is observed, an engineer experienced with parking garage restoration should be consulted. However, at least every two years the inspection should be made by a qualified engineer to help ensure that no potentially serious conditions have been overlooked.

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Drainage

Drainage is one of the most important factors affecting the durability of all parking structures. The length of time moisture is allowed to collect on concrete surfaces will have a profound impact on salt contamination levels in the decks. Elimination of ponding by providing additional drains and/or building up drainage slopes is recommended as a first line of defense against corrosion. Concrete surfaces protected with sealers and membranes also require good drainage. These protection systems cannot protect concrete under standing water unless special systems are used. Water puddles should be eliminated where deicing salts are used. Comments regarding maintenance of plumbing systems are presented in Section 9 - Plumbing Systems.

Corrosion Protection

Sealers and waterproof membranes are frequently used to reduce moisture and salt penetration into parking garages, and thereby delay or prevent the onset of corrosion activity in parking garages exposed to salt.

Sealers may improve the abrasion resistance of the exposed concrete surfaces or retard the progression of surface flaking and scaling where slabs may not have sufficient air entrainment to resist freeze-thaw damage.

Membranes and sealants specifically reduce the rate of chloride penetration into concrete. However, such systems are not completely impervious to chloride ions, and they do have a finite lifetime before degradation occurs. There are concrete additives that inhibit corrosion of steel inside the concrete. These additives polarize the steel anodically and/or cathodically, thus reducing the rate of corrosion. It is quite effective to combine membrane or sealant waterproofing with internal corrosion inhibitors.

Another way of reducing chloride penetration into concrete is to reduce the permeability of the concrete. Silica fume is a concrete admixture designed to increase compressive and flexural strengths, increase durability, reduce permeability, and improve hydraulic abrasions-erosion resistance.

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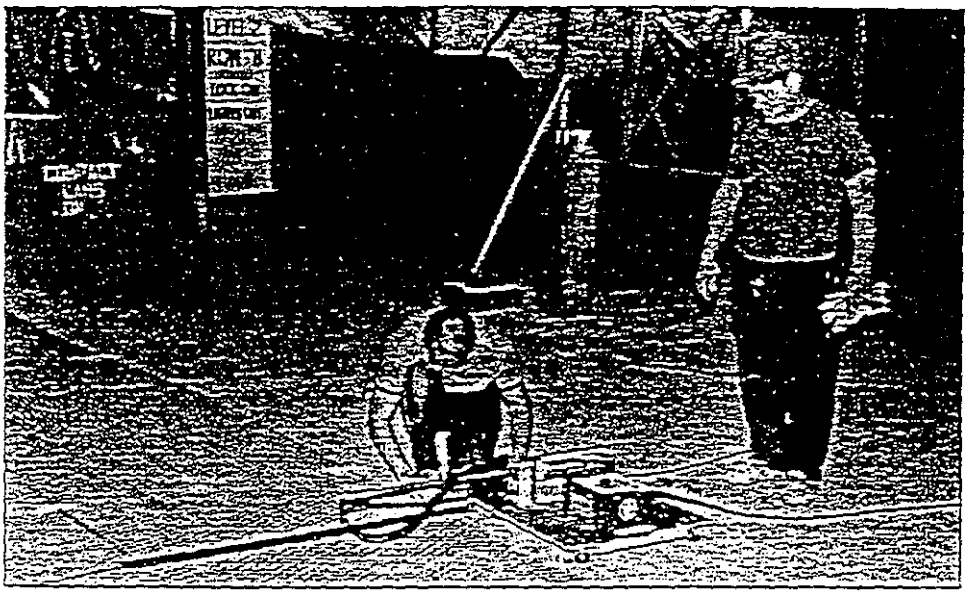
Cathodic protection is gaining greater use in limiting corrosion in reinforced concrete parking structures. The principal behind cathodic protection is the connection of reinforcing steel to a low voltage direct-current power source to produce an electrical charge that electrically impedes the corrosion process. Recent development of conductive coatings has produced a soffit-mounted cathodic protection system that may offer cost-effective protection for some applications. The use of this system in parking garages is relatively new and under continuing development; however, recent installations of cathodic protection in parking garages have generally been successful. Advice of both an independent corrosion engineer and structural engineer should be solicited when evaluating system effectiveness, durability, operating costs, and overall feasibility of cathodic protection.



Installing cathodic protection

Unbonded Post-Tensioned Structures

Current unbonded post-tensioned construction for state-of-the-art parking garages use encapsulated tendon systems containing highly stressed, high-strength steel cables protected by a grease coating and plastic sheathing. It is important that the plastic sheathing, anchorage, and other construction details exclude all water from contact with the grease or the cable, as the grease itself does not typically provide permanent corrosion protection from water. Extended contact with either water or salt water can cause breakage

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of the cables that often cannot be readily detected from a visual examination of the structure.

Investigation by a structural engineer experienced in such matters may be warranted in cases where it is possible for water to gain access into the post-tensioning tendons, either during construction or through the anchorage areas or through discontinuities in the plastic sheathing. Repair of post-tensioned structures can be very complex; therefore, a second opinion (peer review) regarding procedures is often warranted. Note that post-tensioned systems are used in enclosed buildings without the encapsulated protection used in parking garages.

Repairs

Repairs may be classified as cosmetic (minor) or major. Minor repairs are generally those that, if left undone, do not affect the structural integrity of the garage.

An example of a minor cosmetic repair would be a repair required to refinish the corner of a concrete column knocked off by a car bumper. If there is no major damage, then the repair may be made by cleaning and patching with new concrete or any of several commercially available patching materials.

Major repairs to concrete include those for scaling, spalling, and cracking.

A good reference for evaluation and repair procedures is the American Concrete Institute (ACI) Compilation No. 5, "Concrete Repair and Restoration." It contains a broad range of articles on the subject of concrete repairs.

All major repairs are developed through the evaluation of a protection system. Many protection systems are related to corrosion or moisture protection. The expected life of repairs can vary from a short one to three years to much longer depending on the repair details and the protection system.

Evaluation of Repair Scope

The first step in repairing concrete damage of any kind is to determine the nature and extent of the problem. The walk-through survey

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is a start, but it must be understood that a visual survey reviews deterioration visible at the concrete surface. Most of the concrete deterioration is related to problems 2 to 3 inches below the surface.

A review of the walk-through survey results may indicate need for a more comprehensive survey that would include testing for sub-surface fractures and delaminations and/or salt contamination. Despite a most thorough investigation, some hidden deterioration may be revealed only after excavating into the concrete member. An experienced engineer may recommend exploratory excavations to review internal structural conditions before the start of repair work.

Avoid Makeshift Repairs

Repairs to any damaged areas must be undertaken with care. Improper repairs hide, but do not cure, the problem. An example is a temporary asphalt patch over a spall. Asphalt is porous and will permit salt-laden water to collect unseen at the bottom of the spall, which will often accelerate corrosion. If steel reinforcement is exposed at the bottom of the spall, the continuous contact with salt water will expedite the corrosion of the steel and weakening of the floor. The improper repair will hide the problem until the corroding steel has caused a larger spall.

Surface Repairs

Repairs to scaled or severely pitted areas may range in complexity from simple cleaning and sealing, to isolated patching, to installation of a concrete overlay or a protective membrane. Surface scaling and pitting is usually caused by a deficiency in the concrete properties. The deficiency can be evaluated by testing to determine the depth and severity of the problem. Testing is recommended before starting a complex and expensive repair. Cleaning has been discussed in Section 1.

Spall Repairs

A concrete "patch repair" is generally an effective repair for isolated spalls. Concrete "patch repairs" have different expected service lives. The service life is affected by the repair materials, repair details, protection systems, and the cause of the original damage. Patching with "normal" 4,000 psi concrete can accelerate corrosion

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in surrounding chloride-contaminated concrete. It is, therefore, important that repairs consider the specific details and requirements.

A good patch must be durable and must bond well to the concrete substrate. Patch edges should not be feathered because the feathered edge usually fails. The edge should be a minimum of 1/4-inch thick. The patch must also react to temperature changes in the same way concrete does, and be compatible with it. Early failure of many polymeric patching materials is directly due to the difference in coefficients of expansion between the patch material and the underlying concrete.

While many patching materials have been tried, the most widely used and effective are generally Portland cement-based materials. Other successfully used patching materials are various epoxy and polymer concretes, although these are used less extensively due to their greater cost. Polymer concretes are classed as thermosetting and hydrating. Examples of thermosetting polymer concrete are those containing epoxy and those containing methyl methacrylate.

Examples of hydrating polymer concretes are those containing styrene-butadene ("latex") additives that enhance bond and reduce permeability.

In all cases, installation of patching should be performed by a contractor experienced in similar work and capable of maintaining an acceptable standard of patch quality and installation suitability.

American Concrete Institute (ACI) Standard Specifications for epoxy systems (ACI Standards 503.1 through 503.4) are good references. The American Society for Testing Materials (ASTM) standard material specification "ASTM C 881 Epoxy Resin Based Bonding Systems for Concrete" may also be helpful, but in all cases check expansion coefficients for compatibility with conventional concrete. If none are given, do not assume either compatibility or satisfactory performance.

Overlay Repairs

When the total area to be patched is a significant part of the floor area, an overlay may be more cost-effective than isolated patches. An overlay can also be used to modify floor gradients to improve drainage and eliminate ponding.

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Overlays will add thickness to the original floor system. Headroom will then be less than was originally designed and the structure weight (dead load) will be higher. These considerations must be examined by a qualified engineer to ensure that the overlay does not cause more problems than it solves.

Several types of concrete overlay have been used extensively and have been found to be highly effective: low-slump, high-density concrete (LSDC), latex-modified concrete (LMC), and microsilica concrete. Conventional Portland cement concrete has also been used, but less extensively.

LSDC (also called "the Iowa Method") overlay consists of a low water-cement ratio, high cement content concrete that has reduced permeability to water and deicing salts. Workability problems characteristic of LSDC can be solved by using proper additives. This overlay should not be considered if its weight will be a problem.

LMC overlays use a special admixture in the plastic concrete that reduces permeability to water and deicing salts, and is more effective with less thickness than LSDC. The reduced quantities required for an LMC overlay may be offset by its higher unit costs compared to LSDC, so cost comparisons should be made for the specific project.

Conventional concrete overlays consist of a cement-rich mix with usual slump and water reducing admixtures to reduce permeability to water and deicing salts. This overlay may be a somewhat less durable overlay than either LSDC or LMC but at somewhat less cost.

Polymer concrete overlays have been used only on a limited scale and have not been fully evaluated. Such systems, whether referred to as polymer or epoxy concrete, can offer, however, solutions to surface deterioration problems, and should not be excluded from consideration.

Recently, silica fume concrete overlays have been used successfully. Silica fume concrete has low porosity and high strength. Proper attention to placing and curing techniques is mandatory with silica fume concrete.

Overlay cost comparisons should be made only for the specific use intended. General cost comparisons tend to be misleading due to the effects of specific quantities and construction constraints on in-place costs.

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Post Tensioning Repairs

Unbonded post-tensioned structures can sometimes be repaired by removing the old post-tension strand or wires, cleaning the ducts and threading in new strand coated with high-quality grease. In some cases, epoxy-coated strands have been used to provide additional protection against future corrosion. Waterproofing is typically included in the restoration scope to reduce future moisture ingress.

Alternatively, the post-tensioning tendons can be abandoned and an alternate structural system provided, for example, by installing new steel beams below a damaged slab or installing an external post-tensioning system.

Many post-tensioned systems can be repaired by replacing the damaged portion of the system. Damaged post-tensioned anchors or spliced sections of the tendon are often replaced.

Crack Repairs

Isolated leaks may be eliminated by proper crack repairs. If there are many leaks in the floor, installation of a protective membrane may be the best solution.

Ongoing Monitoring and Maintenance

Since repair procedures are often undertaken after deterioration has begun, and since the original construction may not have incorporated certain design features to reduce corrosion, some continued deterioration must be expected. An evaluation procedure should be repeated at regular intervals, preferably annually, to detect any ongoing deterioration at an early stage. Should deterioration occur, engage only qualified engineers and contractors with proven records of expertise in parking garage maintenance and repair.

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15. SNOW AND ICE CONTROL

Included in this section are discussions of:

Snow plowing and removal

Snow melting

Ice control

Housekeeping

As a rule of thumb, snowplow vehicle axle weights should be kept below 4,000 pounds to avoid over-stressing the parking garage's structural system. Good practice dictates checking with the garage designer to ensure that the intended vehicle is not too heavy.

The snowplow blade must not be allowed to damage the concrete floor, sealants, toppings, or expansion joints. A heavy rubber blade edge may be fitted to the bottom of the plow's steel edge, with plow shoes or casters adjusted to keep the steel plow edge at least one half inch above the floor.

Snowfall sufficient to hamper parking operations should be removed. When snow is packed down by car tires, it becomes slippery and can become a hazard. Snow may be plowed to predetermined locations in the garage, particularly on the top floor and simply left to melt, or it may be removed from the structure by a small front-end loader, such as a "Bobcat," or by a heavy-duty snowthrower. Provisions such as gates can be provided in the exterior spandrels to make sure snow is dumped from the structure to a designated area to facilitate removal. Snow should not be piled so high as to overstress the structure.

If the snow is dumped over the side of the garage, care must be taken to avoid damaging the walls, panels, connections, sealants, or other elements. Reasonable and prudent measures should be used to avoid personal injury or property damage during snow removal operations.

Snow dumped over the side may be left on the ground to melt, if space allows. Care must be exercised not to pile snow on or against another structure or to obstruct sight distances or emergency access or cause damage to existing landscaping. In congested areas, or by local ordinance, removal of the snow away from the garage may be required. Removal may have to occur during specific hours.

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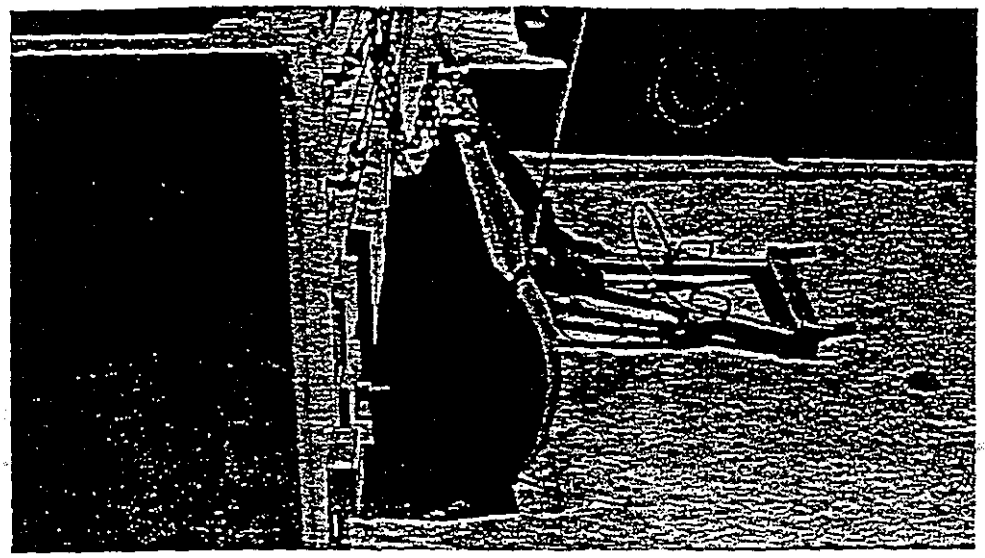

Snowplow with rubber blade attachment

If the snow is left in piles on garage floors, avoid overloading the floor slab beyond its design load. Piles should be located where snow melt will not flow across driving aisles. Melted water may refreeze at night, leaving ice patches in the aisle. Frozen chunks of snow or ice that may have fallen from vehicles should be disposed of daily. Melted snow from the roof may run into a shallow area and freeze, causing slick areas. These areas should be treated with sand.

Ice buildup may be controlled by using heated sand or a mixture of sand and salt. Do not apply deicing chemicals containing chloride directly to concrete unless absolutely necessary. Small amounts of salt (3 to 6 percent by weight) added to sand can be effective in increasing traction and facilitating ice melt.

Apply the sand/salt mixture to concrete only as needed and flush the deck with a high-power water wash as soon as weather permits. A fire hose or a minimum 1-1/2 inch diameter hose is recommended; garden hose volumes are insufficient. Drains should be protected against runoff-related sand accumulation during ice control operations. Temporary burlap or straw filters may be used to prevent drain and piping from clogging.

Recent technology has seen the development of new products that minimize the effects of chloride damage from road salts. Calcium magnesium acetate (CMA) is a promising alternative to salt. CMA is a non-corrosive (non-chloride) deicer.

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Preventive Maintenance

Some parking garages contain gas-fired, electric-powered, or steam snow melters. These units should be checked for proper operation each fall, and periodically during the winter months. To operate properly, some units may need to be turned on several hours before the predicted snowfall. Some units have a "snow sensor" that turns on the unit when it begins to snow. If the sensor is not effective, a manual switch should be installed.

Some parking garages have a snow melting system embedded in the floor of certain areas, such as outside stairs or heated driveways. Such systems are generally one of two kinds: electrical cable or ethylene glycol fluid. In either case, the system should be checked for operation before the first snowfall of the season.

Maintenance should follow the appropriate system manual. Breaks in cables (the electrical system) or pipes (the fluid system are difficult to trace. Consequently, the system installer should be contacted if operational problems arise.

Another snow melting system consists of heat (infrared) lamps mounted above the surface. Maintenance of these lamps is similar to other types of lamps as noted in Section 3 - Electrical Systems. Lamp operation should be checked daily during the snow season. Installation of infrared lamps must account for vehicle queuing at entry/exit points. Vehicles standing in the same position below lamps for long periods of time can have their finishes damaged. Qualified installers should be consulted when contemplating this type of equipment.

Whatever the snow melting system, an indicator light should be installed in a highly visible central location to indicate when the system is in operation. Some operators have learned after they have received their power bill, that their systems were still on in the spring.

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RECOMMENDED MAINTENANCE PROGRAM AND CHECKLIST

The recommended maintenance program that is outlined in this manual is intended to cover the most typical aspects of maintenance, including those related to cleaning, safety, equipment, and structure. For convenience, the maintenance program is divided into 15 descriptive sections. These sections are:

1. Cleaning
2. Doors and Hardware
3. Electrical Systems
4. Elevators
5. Heating, Ventilating, Air Conditioning (HVAC)
6. Landscaping
7. Painting
8. Parking Control Equipment
9. Plumbing Systems
10. Roofing and Waterproofing
11. Safety Checks
12. Security Systems
13. Signs (Graphics)
14. Structural Systems
15. Snow and Ice Control

It is recommended that for each parking garage, a facility-specific maintenance program be developed. The specific maintenance program should include the following items:

A. A schedule of cleaning, inspection, lubrication, and other recurring maintenance activities.

B. A catalog of all equipment, including manufacturer's service manuals for the installed equipment. Product warranties should be included.

C. Records of preventive maintenance performed on any element, and logs of both service calls and types of repairs made.

D. Establishing responsibility for implementing and carrying out all portions of the program.

E. A management control system to verify that the maintenance program is being carried out and is effective.

The checklist that follows is a guide to many of the items in a parking garage that should be checked and maintained at regular intervals. A suggested frequency of observation or attention is indicated.

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PARKING STRUCTURE MAINTENANCE

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually	Other (see notes)
1. CLEANING							
■ Sweeping - localized	●						
■ Sweeping - all areas (including curbs)		●					
■ Expansion joints		●					
■ Empty trash cans	●						
■ Toilets							
—floors, fixtures	●						
—walls		●					
■ Cashier booths							
—floors, fixtures	●						
—walls		●					
■ Elevators							
—floors, doors, tracks	●						
—windows, glass backs			●				
■ Stairs							
—floors, handrails	●						
—windows			●				
■ Lobby, office							
—floors	●						
—windows		●					
■ Wash down parking floors *(see note below)*			● *				
■ Parking control equipment		●					
2. DOORS AND HARDWARE							
■ Doors close and latch properly	●						
■ Mechanized doors	●						
■ Panic hardware at security doors	●						
■ Lubricate mechanized doors			●				

**Spring and Fall*

NOTE: Washdowns should be a minimum of two per year, although it is recommended that they occur quarterly. This may vary due to regional location, however. Northern regions should be washed down more frequently.

PARKING STRUCTURE MAINTENANCE

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually	Other (see notes)
3. ELECTRICAL SYSTEM							
■ Check light fixtures and exposed conduit		●					
■ Relamp fixtures		●					
■ Special units - inspect							1
■ Distribution panels					●		
4. ELEVATORS							
■ Check for normal operation	●						
■ Check indicators and other lights	●						
■ Preventive maintenance service						●	2
5. HEATING, VENTILATION AND AIR CONDITIONING (HVAC)							
■ Check for proper operation		●					
■ Check ventilation in enclosed or underground garage	●						
■ Preventive maintenance service				●			1
6. LANDSCAPING							
■ Remove trash	●						
■ Gardening - mow, trim, weed		●					

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PARKING STRUCTURE MAINTENANCE

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually	Other (see notes)
7. PAINTING							
■ Check for rust spots							
—Doors and door frames				●			
—Handrails and guardrails				●			
—Pipe guards, exposed pipes and conduits				●			
—Other metal				●			
■ Check for appearance							
—Striping			●				
—Signs			●				
—Walls				●			
—Curbs			●				
—Touch-up paint			●				
■ Repaint							1
8. PARKING CONTROL EQUIPMENT							
■ Check for proper operation	●						
■ Preventive maintenance							3
9. PLUMBING/DRAINAGE SYSTEMS							
■ Check for proper operation							
—Sanitary facilities	●						
—Irrigation		●					
—Floor drains		●					
—Sump pump		●					
—Fire protection system			●				
■ Drain water systems for winter						●	
■ Check for icy spots	●						
■ Remove snow and ice	●						

PARKING STRUCTURE MAINTENANCE

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually	Other (see notes)
10. ROOFING AND WATERPROOFING							
■ Check for leaks							
—Roofing			●				
—Joint sealant in floors			●				
—Expansion joints			●				
—Windows, doors and walls			●				
—Floor membrane areas			●				
■ Check for wear and deterioration			●				
11. SAFETY CHECKS	●						
■ Carbon monoxide monitor		●					
■ Handrails and guardrails							
■ Exit lights	●						
■ Emergency lights	●						
■ Tripping hazards	●						
12. SECURITY SYSTEM							
■ Check for proper operation							
—Closed circuit TV	●						
—Audio surveillance	●						
—Panic buttons	●						
—Stair door locks and alarms	●						
13. SIGNS (GRAPHICS)							
■ Check signs for:							
—In place		●					
—Clean				●			
—Legible				●			
—Illuminated	●						

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National Parking Association
1112 16th Street NW, Suite 300
Washington, DC 20036
800/647-PARK or 202/296-4336
Fax: 202/331-8523

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When coating, protection or repair is planned one must be absolutely clear about the objectives and aware of the strengths and weaknesses of the various products and procedures available. Purely cosmetic work may be of value in keeping the building welcoming to the user, but don't fool yourself into thinking it will slow the underlying deterioration.

Waterproofing without attention to falls to prevent ponding is not likely to be reliable. Repairs need to consider developing corrosion around a spall. Concrete is not an easily repaired material and one cannot patch the cover to reinforcement as simply as one can repaint corroded steelwork.

Repairs should either be considered as 'non structural' to patch a hole with no contribution to strength or should be made 'structural'. Repairs always require further cutting out to prepare the surface. This may require temporary support and the repair may deteriorate and lose its structural effectiveness. Specialist Structural Engineering advice should be obtained to ensure that safety is maintained at all stages.

It is difficult to make repairs structurally effective unless they are cut out deep enough to ensure that the repair is fully linked to the substrate concrete by the three dimensional reinforcement cage. The dimensional incompatibilities between repairs and the substrate concrete are such that adhesion at the interface cannot be relied on structurally, even when the underlying concrete is not bruised by the cutting out. Often full depth cutting out with high pressure water jetting and recasting with concrete is the only really effective method of repair.

In some instances 'belt and braces' repair, using additional external strengthening, will be more cost effective than cutting out and recasting the original poor detail, which can be left to harmlessly deteriorate.

If structural repair seems a daunting and expensive business it helps emphasize the need for better initial construction and early action to slow deterioration before structural damage occurs.

6. LESSONS FOR NEW DESIGN

An improved design basis for car parks should be developed by simplifying down from bridge design standards, rather than by uprating building design practice.

Owners should ensure that an explicit 'Durability and Maintainability Audit' is carried out on the design, the construction and site supervision procedures before signing the contract.

Concrete is an essential material for many parts of a car park structure. There is a substantial potential for cost effectively creating more robust and durable concrete car parks by learning from the performance of existing structures. This will require better detailing, the use of higher quality concretes and improvements in the construction practice and supervision. This cannot be achieved for car parks by relying on traditional procedures covered in current building codes.

7. CONCLUSIONS

- Develop a long term stategy for maintenance of the car park and its barriers.
- Have a full set of readily accessible as built drawings and maintenance records.
- Have a survey to establish current trends of deterioration and to predict long term trends.
- Have a structural review carried out to identify the key areas of structural weakness and/or structural sensitivity to deterioration for regular inspection.
- Identify where and when protection, strengthening or repair may become appropriate as part of the long term maintenance programme.
- Protection and local repair can prolong active life, but won't achieve immortality, so check the cost and benefit over the residual life of the structure as part of your strategy.
- Before repairs are carried out ensure that a Structural Engineer has checked the structure 'as built', 'as deteriorated', 'as cut out for repair', 'as repaired' and 'with repair delaminated'.
- Insist on a full recorded survey of condition before problems are hidden below patch repairs, coatings or waterproofing.
- Ensure good falls, wash down regularly and keep the drains clear and have regular specialist inspections carried out.
- At some point, controlled decay until reconstruction will become a better strategy than endless repair.
- When you build a new car park ensure that durability, maintainability and quality control during construction have proper priority.

EXHIBIT 14.1(b)

PARKING FACILITY AND COMMON GROUNDS MAINTENANCE SCHEDULE

DAILY TASKS:

A. General Cleaning:

1. Trash pick up: all ramps, stairwells, elevators, common areas and landscaped areas
2. Empty trash receptacles: in facility and on-site replace trash bag and secure same
3. Clean restrooms: sweep and mop floors, clean toilet basin and sink with disinfectant cleanser, clean mirrors stock all paper goods, empty trash receptacles
4. Stairs and Stairwells: stairs swept, handrails dusted, signage and lighting checked, doors to stairs dusted/cleaned if needed
5. Clean all glass: office and/or booth windows, elevators (as applicable)
6. Office area: work areas dusted (cleaned if necessary), floors mopped, rugs vacuumed, bathrooms cleaned and supplies in bathrooms checked and replenished as needed
7. Sweep and hose off sidewalks, loading dock, trash room
8. Sweep and mop all lobby areas

B. Lighting, Fire Extinguishers and Fire Protection System, Signage and Security System(s):

1. Check all light fixtures: in facility and on-site (replace bulbs as needed)
2. Inventory all fire extinguishers: report any vandalism or missing fire extinguishers
3. Check all signage: both informational and illuminated
4. Check security system: test all radio control boxes, call boxes and speaker horns
5. Check placement of all cameras and reception of camera shots in security office (as applicable)
6. Check elevator cab communication devices and alarms (as applicable)
7. Check elevator lights and replace bulbs as needed

C. Parking Control Equipment and Attendant Booths:

1. Check for proper operation of gate arms, ticket spitters, power pads and proximity readers
2. Dust all booth equipment (power pad, verifier, cash drawer and other, as applicable)
3. Sweep all booths and shake out floor mats

D. Elevators:

1. Mop floors, clean walls and panels with polish, clean or replace ceiling tiles
2. Dust doorframe and sweep door tracks clear of debris

WEEKLY TASKS:

A. **General Cleaning:**

1. Wash trash receptacles: in facility and on-site
2. Pressure wash stairwells and landings
3. Mop and sanitize attendant booths and/or cashier office
4. Removal of infestations: cobwebs, nests, etc. as applicable

B. **Lighting, Fire Extinguishers and Fire Protection System, Signage and Security System(s):**

1. Assure replacement/repair of all lighting: in facility and on-site
2. Assure replacement of all fire extinguishers: in facility and on-site
3. Assure replacement/repair of all emergency fire protection and security system components
4. Repair or replace any broken ballasts
5. Check that all illuminated directional signage is in working order

C. **Parking Control Equipment:**

1. Repair any needs reported re: proper operation of gate arms, ticket spitters, power pads and proximity readers, verifier, cash drawer and other, as applicable
2. Clean and dust all ticket spitters and check for moisture intrusion

D. **Elevators:**

1. Perform any necessary maintenance for optimum performance of each unit
2. Check all panels for vandalism and repair as needed
3. Dust bulbs, fixtures and diffusers
4. Polish metal work throughout

E. **Doors and Hardware:**

1. Check all door components for proper closure, locking and latching
2. Re-calibrate door components as needed
3. Lubricate overhead door devices

F. **Painted surfaces and signage:**

1. Inspect the condition of all painted surfaces and facility signage (interior and exterior) and remove any stickers, gum or other foreign objects
2. Prepare work order for areas needing painting or signs that need replacement

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MONTHLY TASKS:

General Cleaning:

1. Power sweep all ramps and common concrete slab areas
2. Inspect all joints and condition of sealants, prepare work order to address needed deficiencies
3. Hose down all ramps (if using pressure, adhere to PSI recommended by builder)
4. Pressure clean stairwells and landings and all sidewalks
5. Seal and wax all tile floors in facility and common areas
6. Clean or replace all air conditioning filters in facility and common areas
7. Check all drains and remove any foreign objects in facility and common areas
8. Check for any leaks in facility or common areas, offices or booths and repair as needed
9. Check condition of stucco in facility and common areas and repair as needed
10. Remove carbon build up from all exposed surfaces in facility and common areas

B. Lighting, Fire Extinguishers and Fire Protection System, Signage and Security System(s):

1. Replace all missing signage in facility and common areas
2. Inspect all fire extinguisher housings in facility and common areas, and repair or replace as needed
3. Test security system as per manufacturers' specifications and report any variances or need for repair
4. Check fire protection, standpipes and smoke detectors in facility and common areas, repair and replace components as needed to assure optimum performance

C. Parking Control Equipment:

1. Monthly maintenance of all gate arms, ticket spitters, power pads and proximity readers
2. Repair or replace components as needed

D. Painted surfaces and signage:

1. Prepare surfaces of handrails and apply a fresh coat of paint
2. Inspect all painted surfaces in facility and common area, and prepare and paint, or touch-up surfaces as needed
3. Replace all missing signage and order back up inventory

QUARTERLY TASKS:

A. General Cleaning:

1. Degrease all floors and ramps and clean all expansion joints

2. Power scrub or power wash all ramps and concrete slab surfaces (use PSI recommended by builder)

B. Lighting, Fire Extinguishers and Fire Protection System, Signage and Security System(s):

1. Check all light fixtures and exposed conduit. Repair and replace as needed.
2. Check distribution and switchgear
3. Check that all timers and photocells are working properly. Repair or replace as needed.

C. Landscape Maintenance:

1. Trim shrubs and prune all planted materials in facility and on-site
2. Test all irrigation systems in facility and common areas, and repair as needed
3. Replace flowering plants in facility and common areas seasonally as needed
4. Inspect all landscape lighting and uplighting and repair or replace bulbs, photocells or other components as needed

D. Checklist for leaks and water intrusion:

1. Check for leaks at drain basins, inlet grates, leaders, downspouts, floor sleeves, stairwells, elevator roofs, expansion joints, floor joints and cracks, and check basin for buildup
2. Inspect the ceiling below for signs of active leaks
3. Repair and address as required

E. Checklist for structural inspections:

1. Check for cracks and spalls at beams, columns,brick and or block work
2. Check floors and ceilings for cracks, spalls, abrasion and scalling
3. Check expansion joints for deterioration, failed or splitting rubber glands and failed nosing materials
4. Check for roofing material deterioration
5. Check and repair all sealants and caulking
6. Check any waterproofing membrane (if applicable)
7. Repair and replace materials as required

ANNUAL TASKS:

1. Test fire protection systems and complete annual inspection with City
2. Test all elevator system operations and complete annual inspection with City
3. Perform annual inspections by maintenance/supply contractors of:
    a. Revenue control equipment
    b. Air conditioning equipment
    c. All maintenance vehicles/equipment

BI-ANNUAL TASKS

1. Check floor striping for signs of wear and fading and if warranted, restripe all painted surfaces (stalls, floor directional painting etc.)
2. Inspection of facility for structural integrity by a qualified engineering firm. Firm shall prepare a condition survey which shall at a minimum contain information on:
    a. Deterioration of concrete (spalling, corrosion etc.)
    b. Longevity of concrete sealer
    c. Water leakage
    d. Condition of precast connections
    e. Cracking of concrete
    f. Rusting of steel
    g. Condition of waterproofing membrane

EXHIBIT 14.1(c)

OWNER'S OPERATING STANDARDS

1. GENERAL PERSONNEL REGULATIONS AND STANDARDS:

Parking Attendants, Cashiers, Supervisors and Management

a. All personnel shall present a positive and professional appearance and demeanor when conducting the business of the Garage.
b. All personnel shall maintain good grooming standards.
c. All personnel shall wear uniforms which display the name of the parking operator. Uniforms shall be clean and pressed.
d. All personnel shall wear name tags.
e. All personnel shall be responsible for the neat and orderly upkeep of their workstation or attendant booth.
f. All personnel shall be trained in the use of revenue control equipment and proper maintenance of same.
g. All personnel shall be trained in customer service.
h. All personnel shall be able to effectively converse, read and write in English.
i. All personnel shall be able to complete daily cash reports, inspection reports and related management reports (as applicable to individual responsibility levels).
j. All personnel shall understand their role as an ambassador of, and partner to the City of Miami Beach. The City shall provide "in-service" training opportunities for Garage personnel. The City shall also provide collateral printed materials to the Garage Operator, to assist the parking public and visitors.
k. All personnel of the Garage Operator shall be bonded and insured.

Contract Labor: Housekeeping/Janitorial Services, Security Personnel, Landscape Maintenance Personnel

a. All contracted personnel shall present a positive and professional appearance and demeanor when conducting their business in the Garage and on the common areas.
b. All contracted personnel shall maintain good grooming standards.
c. All contracted personnel shall wear uniforms which display the name of their company. Uniforms shall be clean and pressed.
d. All contracted personnel shall wear name tags.
e. All contracted personnel shall be trained in customer service.
f. All contracted personnel shall be able to effectively converse in English.
g. All contracted personnel shall understand their role as an ambassador of, and partner to the City of Miami Beach.
h. All contracted personnel shall fully understand their contractural responsibilities and scope of work assigned, and shall effectively perform said duties.

2. PARKING OPERATION STANDARDS:

a. The Garage shall be attended and secured 24-hours per day, seven days per week.
b. All personnel shall be professional and courteous in the performance of their duties.
c. The Garage shall be sufficiently staffed at all times. At a minimum one cashier/attendant; one manager or supervisor; and one security guard, shall be present and working in the Garage at all times.
d. Housekeeping and janitorial services shall be performed a minimum of eight (8) hours per day. The Garage and common areas shall be kept free of litter at all times.
e. Security services shall be provided continuously, 24-hours per day. Security personnel shall be licensed and insured. Security services shall provide for continuous "roaming" guard patrol throughout the Garage.
f. Landscape maintenance shall be performed on a weekly basis. All landscape maintenance shall be in accordance to the specifications of the Landscape Architect on the Project. Furthermore, all landscape maintenance shall be performed in accordance with "Facility and Garage Maintenance Standards" contained herein and described as Exhibit 14.1(b).
g. Garage Operator shall assure that maintenance contracts are continuously in effect for elevators, parking revenue control systems and security systems, and that said maintenance contracts, at a minimum, shall adhere to the provisions set forth in the "Facility and Garage Maintenance Standards" contained herein and described as Exhibit 14.1(b).
h. Garage Operator shall be responsible for assuring that all contractors (security, houskeeping/janitorial and landscape maintenance) adhere to "Facility and Garage Maintenance Standards" contained herein and described as Exhibit 14.1(b).

3. REPORTING STANDARDS:

a. Garage Operator shall maintain daily records of the Garage operation (cash receipts, usage logs, maintenance records, staffing levels, contractural service levels).
b. Garage Operator shall report the following to the City on a monthly basis:
    1. Daily cash receipts
    2. Daily usage log which includes:
        a. Number of hourly (transient) parkers
        b. Number of flat rate parkers: both daily and special flat rate parkers
        c. Number of monthly parkers
        d. Number of valet parkers (if applicable)
    3. Daily log of contractural security staff hours
    4. Daily log of contractural janitorial/housekeeping staff hours
    5. Copies of monthly landscape maintenance invoices
    6. Copies of monthly maintenance service invoices, and/or receipts for (elevator, security system, parking control equipment)

c. Garage Operator shall report all instances logged on facility security reports, or incidents reported to the City of Miami Beach Police Department.

d. The City reserves the right to inspect all Garage operation records, and audit same.

e. The Garage Operator shall provide annually to the City, a certified audit of Garage operations and revenues.

4. COMPLIANCE WITH OPERATIONAL AND MAINTENANCE STANDARDS: INSPECTION OF PREMISES, CORRECTION OF DEFICIENCIES, AND DISPUTE RESOLUTION

a. Garage Operator shall make Garage and common areas available to the City for inspection at any time. These areas include, but are not limited to: Garage ramp areas, stairwells, elevators, security system, common areas, garage office and attendant booths.

b. Garage Operator shall correct, replace, repair or attend to, any maintenance or operational deficiency identified by the City of Miami Beach as a result of any inspection of the Garage, its common areas, and/or its operation. Notice of deficiency by City to Garage Operator may be verbal, but shall be followed up in written form. Correction of said deficiency shall be handled within seventy-two (72) hours of notice.

c. Garage Operator shall address all operational complaints by the public in a professional, courteous and timely manner. Written complaints which are copied to the City shall be responded to in writing, with copies to the City's Parking Director.

d. The City reserves the right to arbitrate any Garage operation complaint that has not been resolved to the satisfaction of the customer or the City. The City's Parking Director shall act as the liaison in such matters.

EXHIBIT 36.1(a)

TERMS OF TENANT'S RIGHT OF FIRST OFFER TRANSACTION

1. Purchase Price.

The Purchase Price shall be as set forth by Owner in the Offer Notice and shall be payable at the closing of the purchase by wire transfer of immediately available funds to an account designated in writing by Owner. The Purchase Price may not include seller-financing unless Owner is an Institutional Lender or an Affiliate of an Institutional Lender. The purchaser shall not be permitted to make its obligation to close contingent on obtaining third-party financing.

2. Closing Date.

The closing of the purchase shall take place on a date designated by Owner, but in any event not less than sixty (60) days nor more than ninety (90) days following the date such Owner executes a purchase agreement with the purchaser.

3. Deed; Title.

At the closing of the purchase, Owner shall convey to the purchaser (i) all of Owner's right, title and interest in and to the Premises by a special warranty deed and (ii) all of Owner's right, title and interest in and to this Lease by an assignment of lease. The form of such deed and assignment of lease shall be mutually acceptable to Owner and Tenant but shall not in any event provide for any representations by Owner other than a representation that Owner has not theretofore transferred or assigned the items being transferred or conveyed thereby and the representations and warranties customarily contained in a special warranty deed. Owner's Interest in the Premises and the Lease shall be conveyed to Tenant subject to all liens, encumbrances and other matters then affecting the title thereto and any state of facts a survey may reveal (but in all cases subject to Owner's obligations under Section 2.2 of the Lease). Owner shall also execute all other documents customarily used in real estate transactions in Miami-Dade County, Florida; provided, however, that if Owner is a Governmental Authority, (x) such documents shall not include those documents from which Governmental Authorities are exempt pursuant to applicable Requirements and (y) with respect to any title affidavit required of Owner, (i) Owner shall not be required to make any statement or certification regarding parties-in-possession and (ii) any statement or certification regarding mechanics' or materialmen's liens shall cover only work or materials directly contracted for by Owner in writing.

EXHIBIT 36.2(a)

TERMS OF OWNER'S RIGHT OF FIRST OFFER TRANSACTION

1. Purchase Price.

The Purchase Price shall be as set forth by Tenant in the Offer Notice and shall be payable at the closing of the purchase by wire transfer of immediately available funds to an account designated in writing by Tenant. The Purchase Price may not include seller-financing unless Tenant is an Institutional Lender or an Affiliate of an Institutional Lender. The purchaser shall not be permitted to make its obligation to close contingent on obtaining third-party financing.

2. Closing Date.

The closing of the purchase shall take place on a date designated by Tenant, but in any event not less than sixty (60) days nor more than ninety (90) days following the date such Tenant executes a purchase agreement with the purchaser.

3. Deed: Title.

At the closing of the purchase, Tenant shall convey to the purchaser (i) all of Tenant's right, title and interest in and to the Premises by a special warranty deed and (ii) all of Tenant's right, title and interest in and to this Lease by an assignment of lease. The form of such deed and assignment of lease shall be mutually acceptable to Tenant and Owner but shall not in any event provide for any representations by Tenant other than a representation that Tenant has not theretofore transferred or assigned the items being transferred or conveyed thereby and the representations and warranties customarily contained in a special warranty deed. Tenant's Interest in the Premises and the Lease shall be conveyed to Owner subject to all liens, encumbrances and other matters then affecting the title thereto and any state of facts a survey may reveal (but in all cases subject to Tenant's obligations under Section 2.2 of the Lease). Tenant shall also execute all other documents customarily used in real estate transactions in Miami- Dade County, Florida; provided, however, that if Tenant is a Governmental Authority, (x) such documents shall not include those documents from which Governmental Authorities are exempt pursuant to applicable Requirements and (y) with respect to any title affidavit required of Tenant, (i) Tenant shall not be required to make any statement or certification regarding parties-in-possession and (ii) any statement or certification regarding mechanics' or materialmen's liens shall cover only work or materials directly contracted for by Tenant in writing.

4. Rent: Prorations.

At the closing of the purchase, all Rental and/or Impositions shall be prorated through the date of closing and paid to the party entitled thereto. No other prorations shall be made.

5. Expenses.

Each party shall pay its own attorneys' fees. All transfer taxes, title charges, recording fees, survey charges and other expenses incurred in connection with the purchase shall be paid by Owner; provided, however, that Tenant shall pay all documentary stamp taxes and surtax, if any, payable in connection with the purchase.

RECORDERS NOTE:
The legibility of writing, typing or printing unsatisfactory in this document when received.

RECORDED IN OFFICIAL RECORDS BOOK OF DADE COUNTY, FLORIDA.
RECORD VERIFIED
HARVEY RUVIN
CLERK CIRCUIT COURT