

*American Association of Port Authorities:
Port Administration and Legal Issues Seminar*

*Issues in Real Estate
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Sample Ground Lease Clauses

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**SHERIN AND
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ARTICLE 1
TRANSFERS OF TENANT'S INTEREST

1.1 Assignment. Prior to the Final Completion Date, and subject to the provisions of **Section 1.5** hereof, Tenant shall not directly or indirectly assign, transfer, mortgage or otherwise alienate its estate or other interest under this Lease without the prior written consent of Landlord, which may be withheld or granted in Landlord's sole discretion. After the Final Completion Date, Tenant may, subject to the provisions of **Section 1.5** hereof and with Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, assign or transfer its interest under this Lease.

In furtherance but not in limitation of the foregoing, Landlord may withhold its consent (and shall not be deemed unreasonable for withholding such consent) (i) in the event the proposed assignee or transferee does not have the experience in operating a _____ necessary to properly perform the obligations of Tenant under this Lease; or (ii) because the proposed use to be made of all or any portion of the Premises by the proposed assignee or transferee is not a Permitted Use; or (iii) if the proposed assignee or transferee does not have a financial net worth at least equal to that of Tenant as of the Effective Date or as of the date on which such assignment or other transfer is proposed to become effective (whichever is greater); or (iv) because of Landlord's special concerns as a public entity regarding any proposed assignee's or transferee's character or reputation in the community, whether or not such concerns would be important to a commercial enterprise.

In requesting Landlord's consent pursuant to this Section, Tenant shall make such request in writing and shall furnish to Landlord, at least thirty (30) days prior to the effective date of such proposed assignment or transfer, (i) a reasonably detailed description of the nature of the proposed assignee's or transferee's business, its proposed use of the Premises, and its business experience in the Permitted Uses hereof; (ii) an executed copy of the instrument of assignment or transfer, which shall be in a form reasonably acceptable to Landlord and shall identify the assignee or transferee and its mailing address and provide for the assumption by the assignee or transferee of all of Tenant's obligations under this Lease to be observed or performed after the date of the assignment; (iii) certificates of good standing (or certificates of qualification to do business in the Commonwealth if such assignee or transferee is a foreign entity) of the proposed assignee or transferee issued by the Secretary of the Commonwealth of Massachusetts; (iv) a statement from Tenant containing a certification, warranty and representation that, to the best of Tenant's knowledge, neither the prospective assignee or transferee (as the case may be), nor its respective constituent partners, investors, beneficiaries or affiliates, are Persons described in **Section 1.5** hereof; and (v) any other information reasonably requested by Landlord. Landlord shall, within thirty (30) days of Landlord's receipt of the information and materials described in this paragraph, notify Tenant whether or not Landlord consents to the proposed assignment or other transfer. Without limiting the foregoing, Landlord shall be entitled to withhold its approval of any assignment or transfer which fails to comply with any of the requirements of this **Section 1.1**. As part of Landlord's approval of any proposed assignment or transfer, the assignee or transferee shall be required to execute and deliver to Landlord a separate agreement with Landlord (in form and content acceptable to Landlord) pursuant to which such assignee or transferees assumes and agrees to perform, for the benefit of Landlord, all of Tenant's

obligations under this Lease to be observed or performed after the date of the assignment. Upon Landlord's approval of the proposed assignment or transfer and the execution and delivery of such assumption agreement consistent with the conditions contained herein and, to the extent applicable, compliance by such assignee or transferee with Massachusetts General Laws, Chapter 7, Section 40J or any successor statutes, the assignor shall be relieved from all liabilities and obligations first thereafter accruing hereunder, but until such time the assignor will remain fully and directly liable on all Tenant obligations hereunder and after such time the assignor shall remain liable to Landlord (notwithstanding such assignment) with respect to all obligations arising hereunder prior to such time. Tenant shall reimburse Landlord for all out-of-pocket costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection with any and all requests by Tenant for consent by Landlord of an assignment or transfer, regardless of whether or not such consent is given.

The foregoing provisions concerning assignments and transfers shall apply to voluntary and involuntary assignments and transfers, and to assignments and transfers by operation of law, the sale of all or substantially all of Tenant's assets, and shall include transfer, merger or consolidation of the stock or partnership or member's or other beneficial interests of Tenant or any beneficiary or member of Tenant.

For the purposes of this Lease, the sale or transfer (which term shall include, without limitation, the exchange, issuance and redemption) of forty-nine percent (49%) or more, or such smaller percentage as would result in a change in the voting control, of the immediate or remote beneficial interests of the members of Tenant, the voting stock of any immediate or remote corporate member or guarantor of Tenant, or the voting stock of any immediate or remote controlling corporation of Tenant (whether such sale or transfer occurs at one time or at intervals so that, in the aggregate, over the Term of this Lease, such transfer shall have occurred), or any other transaction(s) overall having the effect of a change in voting control or substantially the same effect if the entity in question is not a corporation (such as, without limitation, a change in the number or the identity of the members of a limited liability company, the partners of a partnership, or of the beneficiaries of a trust), shall be treated as if such sale or transfer or transaction(s) were, for all purposes, an assignment of this Lease and shall be governed by the provisions of this **Article 1**.

Notwithstanding the foregoing provisions of this **Section 1.1** to the contrary, the following transfers shall be permitted without the prior written consent of Landlord (but Tenant shall give written notice thereof to Landlord not later than the effective date of such transfer): (i) a transfer of a legal or beneficial interest in Tenant among the individuals or entities comprising the members of Tenant as of the date of this Lease, (ii) transfer by reason of the death or incapacity of the holder or a legal or beneficial interest in Tenant, (iii) estate planning transfers to family members or trusts for the benefit of family members of an individual holding a legal or beneficial interest in Tenant, and (iv) if Tenant is a publicly-traded corporation, the transfer of the publicly traded stock in Tenant on a recognized exchange. In addition, Tenant may admit one or more new equity investors in Tenant without the necessity of obtaining Landlord's prior written consent, *provided* that in each such case (1) written notice of such transfer or admission of a new investor (including the name and business address of each such transferee or new investor and a breakdown of the ownership of Tenant following such transfer or admission of a

new investor) is given to Landlord not later than the effective date of such transfer or admission, (2) following such transfer or admission of a new investor, _____ and _____ (or an entity which is controlled by, or under common control with, any of the aforementioned entities) continue to own, in the aggregate, at least fifty-one (51%) percent of the voting ownership interest in Tenant, (3) the transferee or new investor is not an individual or entity described in **Section 1.5** hereof, and (4) following such transfer or admission of a new investor, the principals of _____ as of the Effective Date of this Lease remain in control of day-to-day operations of Tenant.

Any attempted assignment or transfer in violation of this **Section** shall be void. All assignments or other transfers made pursuant to this Section (without regard to whether Landlord's consent is required) shall be subject to the provisions of **Section 1.5** hereof.

1.2 Subleases.

(a) Tenant, and Tenant's successors and assigns, shall not permit the use, occupancy or operation of the Premises or any portion thereof by any Person unless:

(i) such use, occupancy or operation is under a written Sublease approved by Landlord in writing, and for a term which does not extend beyond the Term of this Lease;

(ii) such Sublease is with a credit-worthy Subtenant on customary and reasonable terms and at fair market rents without any offsets other than those which are customary and reasonable;

(iii) such Sublease requires the proposed Subtenant to use the Premises only for the Permitted Uses herein;

(iv) such Sublease contains provisions requiring all alterations, additions, changes or improvements to the Premises to be performed in accordance with the requirements of this Lease relating to alterations, additions, changes or improvements, including without limitation, those provisions of this Lease applicable to Tenant's initial construction of the Improvements on the Premises;

(v) such Sublease requires the Subtenant's compliance with Landlord's non-discrimination and affirmative action requirements; and

(vi) such Sublease shall be otherwise in compliance with this **Section 1.2.**

As used in this Lease, the term "**Sublease**" shall mean, collectively, all subleases, tenancies at will, concessions, licenses, operating agreements, management agreements, or other occupancy arrangements of any nature whatsoever (whether written or oral) between Tenant and another Person (a "**Subtenant**") providing for the use, occupancy or operation of any portion of the Premises.

All Subleases shall comply with clauses (i) through (vi) above and be in substantially the form attached hereto as **Exhibit A** (the “**Form Sublease**”). For purposes of this **Section 1.2**, fair market rent and other fair market terms shall be determined by reference to a market which shall include comparable buildings with comparable access to the Boston seaport and shall not be limited to the other buildings in the immediate vicinity of the Premises. All Subleases shall be subject to the prior written final approval by Landlord, which approval, subject to the provisions of this **Section 1.2** and **Section 1.5**, shall not be unreasonably withheld, delayed or conditioned.

(b) With respect to each Sublease, Tenant shall request Landlord’s consent in writing not less than thirty (30) days prior to the effective date of such Sublease, which request shall be accompanied by: (i) a reasonably detailed description of the nature of the proposed Subtenant’s business, its proposed use of the Premises and its business experience in the Permitted Uses hereof; (ii) a copy of the final form of the proposed Sublease, marked to show all changes made to the Form Sublease (with a duly executed copy of such Sublease to promptly follow upon execution thereof); (iii) a statement from Tenant containing a certification, warranty and representation that the Sublease terms are in all respects consistent with and in accordance with the terms of this Lease, including the requirement that the proposed Subtenant file with Landlord a statement disclosing the identification of all parties who are required to be disclosed pursuant to Massachusetts General Laws, Chapter 7, Section 40J, as having a beneficial interest, direct or indirect, in the Sublease as of the date of execution thereof, and a supplemental statement upon any change in such parties during the term of the Sublease within thirty (30) days of any such change, all in compliance with Massachusetts General Laws, Chapter 7, Section 40J; (iv) certificates of good standing (or certificates of qualification to do business in the Commonwealth if such Subtenant is a foreign entity) of the proposed Subtenant issued by the Secretary of the Commonwealth of Massachusetts; (v) a statement from Tenant containing a certification, warranty and representation that, to the best of Tenant’s knowledge, neither the prospective Subtenant, nor its respective constituent partners, investors, beneficiaries or affiliates, are Persons described in **Section 1.5** hereof; and (vi) any other information reasonably requested by Landlord. Landlord shall, within thirty (30) days of Landlord’s receipt of the information and materials described in this paragraph (b), notify Tenant whether or not Landlord consents to the proposed Sublease. Without limiting the foregoing, Landlord shall be entitled to withhold its approval of any Sublease which fails to comply with any of the requirements of this **Section 1.2**, or because of Landlord’s special concerns as a public entity regarding any proposed Subtenant’s character or reputation in the community (whether or not such concerns would be important to a commercial enterprise).

(c) Tenant shall remain primarily liable under this Lease notwithstanding the subletting of all or any part of the Premises and notwithstanding Landlord’s consent to any or all Subleases pursuant to this **Section 1.2**. Tenant promptly shall provide Landlord with a copy of each executed Sublease and all modifications or amendments thereof. All such modifications and amendments shall be subject to the prior written approval of Landlord, which approval shall be deemed given by Landlord ten (10) business days after Landlord’s receipt of Tenant’s written request therefor, provided that in submitting such request to Landlord, Tenant has placed the following legend prominently at the top of the transmittal letter and on the outside of the envelope transmitting the same: “**IMPORTANT RIGHTS MAY BE LOST BY FAILURE**

TO ACT PROMPTLY. THIS SUBMISSION WILL BE DEEMED APPROVED 10 BUSINESS DAYS AFTER RECEIPT.”

(d) It shall be a condition of any Sublease that: (i) any violation of any provision of this Lease, whether by act or omission by any Subtenant, shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the parties that Tenant shall assume and be liable to Landlord for any and all acts and omissions of any and all Subtenants with respect to this Lease, provided that this Lease shall not be terminated due to the default of any Subtenant so long as such default does not constitute or result in an Event of Default under this Lease; (ii) each such Sublease shall provide that in the event this Lease is terminated prior to the expiration of such Sublease, then, subject to the provisions of any non-disturbance and attornment agreement executed by Subtenants and Landlord pursuant to **Section 1.4** of this Lease, the Subtenant thereunder will, at Landlord’s option, either attorn to Landlord and waive any right the Subtenant may have to terminate the Sublease, or surrender possession thereunder as a result of the termination of this Lease, and the Sublease shall terminate simultaneously with the termination or expiration of the this Lease; and (iii) each Sublease shall provide that in the event the Subtenant receives a written notice from Landlord stating that an Event of Default has occurred under this Lease, the Subtenant shall thereafter be obligated to pay all rentals accruing under such Sublease directly to Landlord or as Landlord may direct.

(e) The determination of fair market rent (including adjustments to fair market rent in Subleases) and other fair market terms shall be made by agreement of Landlord and Tenant, provided that if Landlord and Tenant cannot agree upon the same within thirty (30) days after request therefor by any such party, the same shall be determined by the Dispute Resolution Process, as set forth in **Article** __. Notwithstanding anything to the contrary contained in this Lease, a Sublease of all or substantially all of the Premises (regardless of the term thereof) shall require the prior written consent of Landlord in accordance with the provisions of **Section 1.1**, in addition to compliance with this **Section 1.2**. Tenant shall reimburse Landlord for all out-of-pocket costs, fees and expenses (including, without limitation, reasonable attorneys’ fees) incurred by Landlord in connection with any and all requests by Tenant for approval by Landlord of a Sublease, regardless of whether or not such approval is given.

(f) Any attempted Sublease in violation of this **Section 1.2** shall be void.

1.3 No Advance Payments. Tenant shall not directly or indirectly collect or accept any payment of rent under any Sublease for any period in excess of thirty (30) days in advance.

1.4 Non-disturbance. If Tenant delivers a Sublease to Landlord and requests that Landlord enter into a non-disturbance and attornment agreement with the Subtenant thereunder, Landlord shall not unreasonably refuse to execute such an agreement (or unreasonably delay the same) in the form of that attached hereto as **Exhibit E**, provided that (i) Landlord otherwise approves the Sublease pursuant to **Section 1.2** hereof; (ii) the Subtenant is leasing at least _____ square feet of space in the Building (which space is divided into not more than two (2) non-contiguous premises, for a term (including all options to extend or renew) of not less than ten (10) years, provided that, in the case of a Sublease for a term of more than ten (10) years, the rent payable under such Sublease is increased to fair market rent as of the first day of the eleventh

(11th) year and on the first day of each fifth year of such term thereafter through the remainder of such term; (iii) the Sublease is substantially in accordance with the Form Sublease; (iv) at the time of the granting of such non-disturbance and attornment agreement Tenant is not in default under this Lease or under any Security Instrument beyond applicable notice and cure periods; (v) the Sublease does not impose any obligations, liabilities, or expenses on Landlord which are in excess of, or in addition to, the obligations, liabilities, or expenses of Landlord set forth in this Lease; (vi) no rent has been prepaid under the Sublease more than one (1) month in advance; (vii) the Sublease provides that it is, in all respects subject and subordinate to the terms of this Lease; and (viii) the Sublease complies with the requirements of **Section 1.2** hereof. Tenant shall reimburse Landlord for all out-of-pocket costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection with obtaining a non-disturbance and attornment agreement as requested by Tenant, or any Recognized Lender.

1.5 Prohibited Transfers. Notwithstanding any other provision contained in this Lease to the contrary, Tenant shall not knowingly, after reasonable inquiry, transfer or permit the transfer of any legal or beneficial interest in Tenant to, or assign, lease or otherwise transfer all or any portion of its interest under this Lease or in all or any portion of the Premises to, or enter into any Sublease to, any of the following:

(a) Any Person (or any Person whose operations are directed or controlled by a Person) that has been convicted of or has pleaded guilty in a criminal proceeding to a felony or that is an on-going target of a grand jury investigation convened pursuant to applicable statutes concerning organized crime;

(b) Any Person organized in or controlled from a country, the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (1) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, *et seq.*, as amended; (2) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, *et seq.*, as amended; and (3) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. §2405W, as amended; or

(c) Any Person with whom Landlord is restricted from doing business under Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001 (as amended or supplemented from time to time)), or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 10756; as amended, from time to time), or the regulations of the United States Department of the Treasury Office of Foreign Assets Control (including, without limitation, those Persons named on the list of "Specially Designated Nationals and Blocked Persons" as modified from time to time), or other governmental action; or

(d) Any Affiliate of any of the Persons described in the preceding paragraphs (a), (b) or (c).

1.6 Further Consent. Consent by Landlord to any assignment or Sublease or other transfer shall not in any way be construed to relieve Tenant from the obligation to obtain further

written consent for any subsequent assignment, Sublease or other transfer, nor shall any consent by Landlord to any assignment, Sublease or other transfer be deemed to be consent to a further assignment, Sublease or other transfer by the initial transferee thereof. Notwithstanding anything to the contrary contained in this Lease, any subsequent assignment, Sublease or other transfer by such transferee shall require the prior written consent of Landlord, which consent may be withheld by Landlord in its sole and absolute discretion.

ARTICLE 2
LEASEHOLD MORTGAGES AND MEZZANINE FINANCING

2.1 Right to Grant Leasehold Mortgages and Mezzanine Financing.

(a) Tenant, and its successors and assigns, shall have the right to mortgage, pledge, or conditionally assign its leasehold estate in the Premises and its interest in all improvements thereon (in whole, but not in part) by way of one or more “Leasehold Mortgages” (as that term is defined below) (which may be of different priority and exist at the same time) and any and all collateral security agreements from time to time required by the holder of a Leasehold Mortgage (a “**Leasehold Mortgagee**”), including collateral assignments of this Lease, any subleases, assignments or pledges of rents, and any and all rights incidental to the Premises, and security interests under the Uniform Commercial Code or any successor laws to secure the payment of any loan or loans obtained by Tenant with respect to the Premises, subject to the limitations set forth in the definition of “Leasehold Mortgage” below. In addition, subject to the provisions of **Section 2.1(c)** hereof, Tenant, and its successors and assigns, shall have the right to obtain one or more “Mezzanine Loans” as defined below, subject only to the limitations set forth in the definition of “Mezzanine Loan” below. Each pledge or other such security given in connection with a Mezzanine Loan and each Leasehold Mortgage as defined herein is sometimes referred to herein as a “**Security Instrument**”, and each Leasehold Mortgagee and Mezzanine Lender is sometimes referred to herein as a “**Lender**”. In no event shall the fee interest of Landlord in the Premises or any Rent due to Landlord hereunder be subordinate to any Security Instrument.

(b) For purposes of this Lease, the term “**Leasehold Mortgage**” shall mean one or more security agreements in the nature of a mortgage, pledge or conditional assignment by Tenant of its leasehold interest in the Premises and its interest in all improvements thereon (in whole, but not in part), which mortgage, pledge or conditional assignment satisfies each of the following requirements (collectively, the “**Leasehold Mortgage Requirements**”):

(i) The maximum principal amount of indebtedness secured by such mortgage, pledge or conditional assignment, taken together with all indebtedness secured by all other Security Instruments, does not exceed, in the aggregate, (i) with respect to the initial construction financing for the Project, seventy-five percent (75%) of the appraised value of the Improvements on, or to be constructed on, the Premises, as of the date of closing of such transaction, or (ii) with respect to other financings, ninety percent (90%) of the fair market value of Tenant’s interest under this Lease at the time of such financing (collectively, the “**Approved Debt**”). If Tenant has requested in writing, with supporting documentation, Landlord’s approval of Tenant’s calculation of the fair market value of Tenant’s interest in accordance with this definition, Landlord shall reply within thirty (30) days of receiving such request. If Landlord and Tenant cannot agree on such fair market value within thirty (30) days after Tenant’s written request, the same shall be determined pursuant to the Dispute Resolution Process described in **Article** ___;

(ii) Unless Landlord shall otherwise have consented, such mortgage, pledge or conditional assignment is, at the time entered into by Tenant, a first lien on Tenant’s interest under this Lease;

(iii) Such mortgage, pledge or conditional assignment is held by (or assigned to, in the event of an assignment of a Leasehold Mortgage), a bank, trust company, savings and loan association, pension fund endowment or insurance company or a governmental authority empowered to make loans or issue bonds or any other institutional lender engaged in the making of loans or equity investments (A) which is not an Affiliate of Tenant and which has, together with its Affiliates in the aggregate, not less than Five Hundred Million Dollars (\$500,000,000) in assets (an “**Institutional Lender**”), or (B) has been otherwise approved by Landlord in advance, which approval shall not be unreasonably withheld, delayed or conditioned;

(iv) Such mortgage, pledge or conditional assignment becomes due prior to the expiration of the Term, and does not contain or secure obligations unrelated to the Premises;

(v) Such mortgage, pledge or conditional assignment does not require any so-called “equity participation” or “kicker” payment to the Lender, unless approved by Landlord;

(vi) With the exception of guarantees, letters of credit, financial instruments, or direct or indirect pledges of ownership interests in Tenant, and other collateral that leasehold mortgagees may reasonably take, Tenant’s leasehold estate under this Lease shall be the sole security for the loan(s) secured thereby;

(vii) Any loan secured thereby is not cross-defaulted with any other loan;

(viii) Such mortgage, pledge or conditional assignment permits the disbursement of casualty insurance proceeds and payments made in connection with partial eminent domain takings, or conveyances under threat thereof, to be used for the repair and restoration of the Premises on the terms and conditions set forth in this Lease; and

(ix) Documentation for such mortgage, pledge or conditional assignment has been approved in advance by Landlord as complying with this definition of a Leasehold Mortgage. Except as otherwise provided above with respect to Approved Debt, in the event that Tenant has requested in writing Landlord’s approval of documentation for a Permitted Leasehold Mortgage complying with this definition, Landlord shall reply within thirty (30) days of receipt of such written request.

(c) For purposes of this Lease, the term “**Mezzanine Loan**” shall mean one or more loans made to Tenant or to the owner of any ownership interest in Tenant which satisfies each of the following requirements (collectively, the “**Mezzanine Loan Requirements**”):

(i) Such loan is secured by a security interest in, pledge of, or other conditional right to the ownership interests in Tenant or in any entity which owns (directly or indirectly) an ownership interest in Tenant, and such other security given to

the Mezzanine Lender as is customary for mezzanine loans and related to the foregoing collateral (such as guarantees, letters of credit or financial instruments), which shall be the sole security for such Mezzanine Loan;

(ii) The maximum principal amount of indebtedness under such loan, taken together with all indebtedness secured by all other Security Instruments, does not exceed the Approved Debt;

(iii) Such loan is made by a Lender (each a “**Mezzanine Lender**”) which is an Institutional Lender or such other lender as may be approved by Landlord in writing in advance of the making of such Mezzanine Loan, which approval shall not be unreasonably withheld, delayed or conditioned;

(iv) Such loan becomes due prior to the expiration of the Term, and the documentation evidencing or relating thereto does not contain or secure obligations unrelated to the Premises;

(v) Such loan does not require any so-called “equity participation” or “kicker” payment to the Lender, unless approved by Landlord;

(vi) Such loan is not cross-defaulted with any other loan; and

(vii) The documentation evidencing or relating to such loan has been approved in advance by Landlord as complying with this definition of a Mezzanine Loan. Except as otherwise provided above with respect to Approved Debt, in the event that Tenant has requested in writing Landlord’s approval of documentation for a Mezzanine Loan complying with this definition, Landlord shall reply within thirty (30) days of receipt of such written request.

(d) Tenant shall give written notice to Landlord of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such Lender(s) and any other information regarding the Security Instrument(s) which Landlord may reasonably require. It is the intent of the parties to this Lease (and this Lease shall be liberally construed to such end) that Tenant have during the Term of this Lease from time to time subject only to the limitations and other requirements and preconditions referenced above, all of the privileges and rights to enter into Security Instruments with respect to its leasehold estate in the Premises and its title to the Improvements as Tenant would have if it possessed the fee estate in the Premises, except that said Security Instruments will be subject to the terms and conditions of this Lease, including Landlord’s right to approve the Security Instruments as provided above in this **Section 2.1**.

(e) Each Leasehold Mortgagee who notifies Landlord in writing of its name and address for notice purposes, and of the recording reference of its Leasehold Mortgage, and with such notice furnishes to Landlord a true copy of its Leasehold Mortgage (and who shall, promptly following the execution of any modifications or amendments thereto, and of any subordination agreements (or amendments or modifications of such subordination agreements) affecting the priority thereof, provide Landlord with true copies thereof and appropriate recording references therefor), and whose Leasehold Mortgage satisfies the Leasehold

Mortgage Requirements, shall be deemed a “**Recognized Leasehold Mortgagee**.” The most senior Recognized Leasehold Mortgagee from time to time, as determined by Landlord based upon such notices from Leasehold Mortgagees shall, so long as its Leasehold Mortgage satisfies the Leasehold Mortgage Requirements and shall remain unsatisfied of record, or until written notice of satisfaction thereof is given by such Recognized Leasehold Mortgagee to Landlord (whichever shall first occur), be referred to in this Lease, and be entitled to the rights of, the “**Senior Recognized Leasehold Mortgagee**”; and the Recognized Leasehold Mortgage held by such Senior Recognized Leasehold Mortgagee shall be referred to in this Lease as the “**Senior Recognized Leasehold Mortgage**”.

(f) Each Mezzanine Lender who notifies Landlord in writing of its name and address for notice purposes, and with such notice furnishes to Landlord a brief description of the Mezzanine Loan and true copies of the pledge or other security documents evidencing the Mezzanine Loan, and whose Mezzanine Loan satisfies the Mezzanine Loan Requirements, shall be deemed a “**Recognized Mezzanine Lender**”. Each Recognized Leasehold Mortgagee and Recognized Mezzanine Lender is sometimes referred to herein as a “**Recognized Lender**”. The most senior Recognized Mezzanine Lender from time to time, based upon such notices from Tenant or a notice from the then Senior Recognized Mezzanine Lender designating another Recognized Lender as the “Senior Recognized Mezzanine Lender”, shall, so long as its Mezzanine Loan satisfies the Mezzanine Loan Requirements and shall remain unsatisfied, or until written notice of satisfaction thereof is given by such Recognized Mezzanine Lender to Landlord (whichever shall first occur), be referred to in this Lease as, and each such Recognized Mezzanine Lender shall individually be entitled to the rights of, the “**Senior Recognized Mezzanine Lender**”. The Senior Recognized Leasehold Mortgagee and Senior Recognized Mezzanine Lender are referred to collectively herein as the “**Senior Recognized Lenders**”.

(g) Tenant and each Lender (by virtue of its acceptance of its Security Instrument) acknowledges and agrees that Landlord shall have the right to assume that all such notices from Lenders and all documents and instruments delivered to Landlord in connection therewith are in all respects true, complete and accurate, and Landlord shall have the right to rely thereon; and Tenant and each Lender (by virtue of its acceptance of its Security Instrument) agrees that Landlord shall not be liable for taking any action or from refraining from taking any action in reliance thereon. Landlord, within fifteen (15) days of Landlord’s receipt of a communication purporting to constitute a notice from a Leasehold Mortgagee or Mezzanine Lender provided for in the foregoing provisions of this **Section 2.1**, either shall provide the Leasehold Mortgagee or Mezzanine Lender submitting such communication with a written confirmation of the receipt of such communication and that such Leasehold Mortgagee is a “Recognized Leasehold Mortgagee” or that such Mezzanine Lender is a “Recognized Mezzanine Lender”, as the case may be, or notify Tenant and such Leasehold Mortgagee or Mezzanine Lender of any respects in which such communication does not conform with the foregoing provisions of this **Section 2.1** and specifying the basis therefor. Failure so to give such notice of non-conformance within such time shall be deemed conclusive evidence that notice from such Leasehold Mortgagee or Mezzanine Lender conforming to this **Section 2.1** has been received by Landlord and that such Leasehold Mortgagee or Mezzanine Lender is a “Recognized Lender”, provided that in submitting such notice to Landlord, the Leasehold Mortgagee or Mezzanine Lender has placed the following legend prominently at the top of the transmittal letter and on the outside of the envelope transmitting the same: “**IMPORTANT RIGHTS MAY BE LOST BY**

FAILURE TO ACT PROMPTLY. THIS SUBMISSION WILL BE DEEMED APPROVED 15 DAYS AFTER RECEIPT.” In the event of any assignment of a Recognized Leasehold Mortgage or Recognized Mezzanine Loan or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any Recognized Lender, notice of the new name and address for notice purposes shall be provided to Landlord in substantially like manner.

(h) Wherever in this Lease notice is to be given to a Recognized Lender, such notice shall conclusively be treated as having been “given” within the meaning of the respective provisions calling for notice to a Recognized Lender if given in accordance with the provisions of **Section** ___ hereof to the Recognized Lender at the address specified in accordance with the provisions of this **Section 2.1**.

2.2 Rights of Recognized Lenders.

(a) If a Recognized Leasehold Mortgagee, whether by foreclosure, assignment and/or deed in lieu of foreclosure, or otherwise, acquires Tenant’s entire interest in the Premises and all improvements thereon (or in the case of a Recognized Mezzanine Lender, acquires a controlling ownership interest in Tenant), the Recognized Lender shall have the following rights (all or each of which may be exercised at once or over time, as such Recognized Lender sees fit in its sole and absolute discretion), provided that the Recognized Lender notifies Landlord within sixty (60) days of acquiring such interest which option the Recognized Lender elects:

(i) if the Recognized Lender acquires Tenant’s entire interest in the Premises and all improvements thereon (or in the case of a Recognized Mezzanine Lender, acquires a controlling ownership interest in Tenant) prior to Completion of Construction of the Project, then by itself, its agent, designee, nominee or wholly owned subsidiary, to Complete Construction of the Project in accordance with this Lease; or

(ii) to sell, assign or transfer Tenant’s entire interest in the Premises and all improvements thereon, and if such Recognized Lender is a Recognized Mezzanine Lender, the interests of any partner (or member) of Tenant, as applicable, to a purchaser, assignee or transferee; provided: (x) with respect to such a sale, assignment or transfer prior to the Completion of Construction, the Recognized Lender reasonably demonstrates to Landlord that the proposed purchaser, assignee or transferee has the financial capacity and a reputation and experience with respect to the construction, development and management of projects substantially similar to the Project; (y) with respect to such a sale, assignment or transfer after the Completion of Construction, the Recognized Leasehold Mortgagee reasonably demonstrates to Landlord that the proposed purchaser, assignee or transferee has the financial capacity and a reputation and experience with respect to the management of projects substantially similar to the Project; and (z) in either event, prior to the effective date of any such sale, assignment or other transfer, such transferee shall execute and deliver to Landlord an assignment and assumption agreement in form and content acceptable to Landlord. In addition, provided that the leasehold mortgage held by the leasehold mortgagee of such purchaser, assignee or transferee or, if applicable, the mezzanine loan security instruments held by the mezzanine lender to such purchaser, assignee or transferee, satisfy the Leasehold

Mortgage Requirements or the Mezzanine Loan Requirements, as the case may be, and such mortgagee or, if applicable, such mezzanine lender, provides the notice required pursuant to **Section 2.1** in order to be a Recognized Lender, then such leasehold mortgagee or mezzanine lender (as applicable) shall be entitled to all of the rights of a Recognized Lender hereunder,

(b) In the event that a Recognized Lender elects to Complete Construction of the Project pursuant to **Section 2.2(a)(i)** hereof, or sells, assigns or transfers pursuant to **Section 2.2(a)(ii)** hereof prior to the Completion of Construction and satisfies the requirements set forth at **Section 2.2(a)(ii)** hereof, Landlord shall extend the time limits set forth in this Lease as shall be reasonably necessary to Complete Construction of the Project and, upon such completion, the Recognized Lender or purchaser of the leasehold estate, as the case may be, shall be entitled to the same rights, benefits and privileges accruing in favor of, and responsible for the same duties, liabilities, and obligations attributable to, Tenant hereunder.

2.3 Senior Recognized Lenders' Rights. The following provisions shall apply for the benefit of each Senior Recognized Lender:

(a) No cancellation, termination, etc. There shall be no cancellation, surrender, termination or modification of this Lease by joint action of Landlord and Tenant, or termination of this Lease by unilateral action of Tenant under the provisions of this Lease permitting such termination by Tenant, without in each case first securing the prior written consent of each Senior Recognized Lender;

(b) Notices. Landlord shall, upon giving Tenant any notice of a default which could ripen into an Event of Default hereunder, simultaneously give a copy of such notice to each Senior Recognized Lender and no notice of a default which could ripen into an Event of Default hereunder given to Tenant shall be effective until a copy thereof has been given to each Senior Recognized Lender;

(c) Right to Cure. A Senior Recognized Lender shall have the same period, if any, after such notice has been given to it, for remedying any default which could ripen into an Event of Default hereunder or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus (x) in the case of a default in the payment of the Rent, Additional Rent, or any other monetary obligations of Tenant to Landlord hereunder, an additional period of thirty (30) days, and (y) in the case of any nonmonetary default, an additional period of sixty (60) days, and if such nonmonetary default cannot with due diligence be cured within such additional 60-day period, an additional time thereafter, provided that such cure is initiated during such additional 60-day period and thereafter the curing of the same is prosecuted with diligence; and in all cases Landlord shall accept any cure or performance by or on behalf of a Senior Recognized Lender for all purposes under this Lease as if performed by Tenant;

(d) Time to Obtain Possession. Landlord agrees that, only in the event of a non-monetary default which cannot be cured by a Senior Recognized Lender pursuant to paragraph (c) above without obtaining possession of the Premises, Landlord will not terminate this Lease without first giving to the Senior Recognized Lenders a reasonable time within which

to obtain possession of the Premises, including possession by a receiver, or to institute and complete foreclosure proceedings or otherwise acquire Tenant's interest under this Lease with diligence and without unreasonable delay, and the period provided to the Recognized Senior Lenders to cure such a non-monetary default shall not commence until after the expiration of the reasonable time period afforded them to obtain possession as provided under this paragraph, provided that throughout such time such Senior Recognized Lenders cause to be performed all monetary obligations of Tenant under this Lease and all non-monetary obligations of Tenant that can be performed by such Senior Recognized Lenders without first obtaining possession of the Premises. Landlord agrees that the Outside Completion Date shall be extended for a reasonable time in the event the non-monetary default to be cured by the Senior Recognized Lenders is a default referred to in this paragraph (d). A reasonable time shall mean not in excess of three (3) months with respect to commencing foreclosure proceedings, and not in excess of such reasonable time as with due diligence is required to prosecute and complete foreclosure proceedings. Landlord agrees that upon acquisition of Tenant's interest under this Lease by a Senior Recognized Lender and performance by the Senior Recognized Lender of all covenants and agreements of Tenant and curing of all defaults of Tenant, except those which by their nature cannot be performed or cured by any person other than the then-Tenant which has defaulted ("**Incurable Lease Defaults**"), Landlord's right to terminate this Lease shall be waived with respect to the matters which have been cured by the Senior Recognized Lenders and with respect to the Incurable Lease Defaults. Nothing herein contained shall either (i) require a Senior Recognized Lender to begin or continue such possession or foreclosure proceedings or (ii) preclude Landlord from exercising (subject to the provisions of this **Article 2**) any rights or remedies under this Lease with respect to any other default by Tenant during the period of such forbearance;

(e) Notice of Actions. The Senior Recognized Lenders shall be given notice of any legal action or arbitration with respect to this Lease, and shall have the right to intervene therein and be made a party to such proceedings, and the parties hereto consent to such intervention; and

(f) New Lease. Notwithstanding anything herein to the contrary, in the event of a termination of this Lease prior to its stated expiration date by reason of a default on the part of Tenant or the rejection of this Lease by Tenant in bankruptcy, Landlord covenants with the Senior Recognized Lenders that Landlord will promptly give notice of the date of such termination ("**Termination Date**") to the Senior Recognized Lenders ("**Termination Notice**"). The Senior Recognized Lenders shall have the right, in addition to the foregoing rights, to elect to enter into a new lease of the Premises, exercisable by notice in writing to Landlord within sixty (60) days after the last to occur of the giving of the Termination Notice or the Termination Date, for the balance of the Term hereof effective as of the Termination Date, at the Rent and otherwise upon all of the other terms, provisions, covenants and agreements set forth in this Lease, except that Landlord shall not be required to deliver physical possession of the Premises at the time of entering into such new lease unless Landlord, at the time of execution and delivery of such new lease, shall have obtained physical possession of the Premises. In the event that both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender give such notice, the rights of the Senior Recognized Leasehold Mortgagee under this paragraph (f) shall prevail. Notwithstanding anything to the contrary herein contained, Landlord shall not be obligated to enter into such a new lease unless (i) the Senior Recognized Lender which has

requested the same has, contemporaneously with the delivery of such request for a new lease, paid to Landlord all Rent, Additional Rent, and other charges owed by Tenant to Landlord which then remain unpaid, and continues thereafter to pay the Rent, Additional Rent, and other charges for the period after termination of this Lease and until the commencement of the new lease which would have become due under this Lease (less any Rent, Additional Rent, or other charges for such periods actually collected by Landlord from Subtenants of the Premises), together with all expenses, including reasonable attorney's fees, incurred by Landlord in connection with the termination of this Lease and the execution and delivery of such new lease; and (ii) the Senior Recognized Lender which has requested such new lease shall have cured and performed, and thereafter shall continue to cure and perform until the commencement of the new lease, all non-monetary obligations of Tenant to Landlord capable of being performed by the Senior Recognized Lender which existed at, or which accrued from and after, the time of termination and would have accrued hereunder had this Lease remained in force without any Event of Default by Tenant. Landlord and the Senior Recognized Lender which elects to enter into the new lease shall act promptly after such notice and performance to execute and deliver such new lease (and in all events within sixty (60) days after such Senior Recognized Lender gives notice to Landlord of its election to enter into a new lease pursuant to this Section). If a Senior Recognized Lender has made an election pursuant to the foregoing provisions of this Section to enter into a new lease, Landlord shall not execute, amend or terminate any Subleases of the Premises during such sixty (60) day period without the prior written consent of the Senior Recognized Lender which has made such election. It is the intention of Landlord and Tenant that any such new lease shall be superior and not subordinate to any Leasehold Mortgage hereafter given and shall have the same title priority and rights as this Lease; *provided, however*, that Tenant and the Senior Recognized Lender so electing to enter into such new lease agree that Landlord shall not be deemed to warrant or have warranted, or have any obligation or liability, with respect to such priority or rights. Any such new lease may, at the option of the Senior Recognized Lender so electing to enter into such new lease, name as tenant a nominee or wholly owned subsidiary of such Senior Recognized Lender, or, in the case where the Senior Recognized Lender so electing to enter into such new lease is acting as agent for a syndication of lenders, an entity which is controlled by one or more of such lenders. If as a result of any such termination Landlord shall succeed to the interests of Tenant under any Sublease or other rights of Tenant with respect to the Premises or any portion thereof, Landlord shall execute and deliver an assignment without representation, warranty or recourse of all such interests to the tenant under the new lease simultaneously with the delivery of such new lease. The provisions of this **Section 2.3(f)** shall survive the termination of this Lease.

2.4 Undertakings of Recognized Lenders.

(a) Notices. Simultaneously with the giving to Tenant by a Recognized Lender of any process in any action or proceeding brought for the foreclosure of, or the exercise by the Recognized Lender of any other remedies relating to its respective Security Instrument, or the giving of a notice of (i) default or acceleration under such Security Instrument, (ii) a matter on which such a default or acceleration may be predicated or claimed, (iii) a foreclosure of such Security Instrument, or (iv) a condition which if continued may lead to such foreclosure, the Recognized Lender will give duplicate copies thereof to Landlord by registered mail, return

receipt requested, and no such notice to Tenant or process shall be effective unless a copy of such notice or process is so sent to Landlord.

(b) Right to Cure. Landlord shall have the same period after the sending of a notice to it for remedying the default as is given Tenant under the applicable Security Instrument, plus an additional thirty (30) days in the case of a monetary default and an additional sixty (60) days in the case of a nonmonetary default. Each Recognized Lender agrees to accept performance on the part of Landlord as though it had been done or performed by Tenant. No payment made to a Recognized Lender by Landlord shall constitute agreement that such payment was, in fact, due under the terms of the applicable Security Instrument.

(c) Amendment. A Security Instrument shall not be amended in any manner that would cause it, or the loan which it evidences or secures, to no longer satisfy the Leasehold Mortgage Requirements or the Mezzanine Loan Requirements (as the case may be), nor shall any such amendment impose any obligation or expense on Landlord other than as provided in this Lease.

(d) Certificates. The Recognized Lender will, upon request from Landlord, deliver to Landlord a certificate that to the best knowledge of the Recognized Lender, Tenant is not in default under the applicable Security Instrument.

2.4 Assumption by Lenders. No exercise of any of the rights by a Lender permitted to it under this Lease, its Security Instrument or otherwise, shall ever be deemed an assumption of and agreement to perform the obligations of Tenant under this Lease, unless and until (i) such Lender takes possession of the Premises or any portion thereof, or, by foreclosure or otherwise, acquires Tenant's interest in the Premises (or, in the case of a Mezzanine Lender, acquires a controlling interest in Tenant), and then, except as otherwise specifically provided herein, only with respect to those obligations arising during the period of such possession or the holding of such interest by such Lender; or (ii) such Lender, or any wholly-owned subsidiary to whom it may transfer Tenant's interest in the Premises, expressly elects by notice to Landlord to assume and perform such obligations.

2.5 Modifications to this Lease. The parties acknowledge and agree that prospective Lenders to Tenant may desire reasonable modifications to this Lease for the purpose of implementing the protective provisions hereof intended for their benefit or otherwise reasonably facilitating the financeability of this Lease. Provided that (a) Tenant has used its diligent efforts to prevail upon any such prospective Lender to restrict its request for modifications, (b) the requested modification is required for Tenant to obtain reasonably satisfactory terms from the prospective Lender and not only as a condition to Tenant obtaining more favorable terms from such prospective Lender, and (c) Tenant shall reimburse Landlord for all out-of-pocket costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection with the negotiation and drafting thereof, Landlord agrees not to unreasonably withhold or delay its agreement to enter into such requested modifications; *provided, however*, that Landlord shall never be required to agree to any modification to this Lease which would (i) subordinate Landlord's fee interest in the Premises; (ii) reduce, defer or subordinate the payment of Rent under this Lease; (iii) require Landlord to assume or join in any obligation, monetary or otherwise, which would otherwise be an obligation of Tenant; (iv)

relieve Tenant of any obligation, monetary or otherwise, under this Lease; (v) materially impair the value of Landlord's reversionary estate under this Lease; (vi) extend the term of this Lease; (vii) modify Landlord's or Tenant's rights or obligations under this Lease in the event of a taking of or damage to or destruction of the Premises; (viii) permit Tenant to construct improvements on the Premises other than as herein expressly provided; or (ix) otherwise materially or adversely affect Landlord's rights under this Lease.