

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made and entered into effective as of October 3, 2024 (“**Effective Date**”), by and between the **TOWN OF MIDDLETOWN, RHODE ISLAND** (the “**Town**”), and **MIDDLETOWN COMMONS TOWN CENTER, LLC**, a Rhode Island limited liability company (the “**Developer**”). The Town and the Developer are sometimes individually referred to as a “**Party**” and are sometimes collectively referred to as the “**Parties**”.

RECITALS

The Town is the owner of the property located on West Main Road in Middletown, Rhode Island and identified as Lots 3, 4, 5, 6, and 7 on Middletown Tax Assessor’s Plat 102, consisting of approximately 15.27 acres of land, as more specifically described on Exhibit A, attached hereto (the “**Property**”).

A. On or about June 2, 2021, the Town issued a Request for Information (the “**RFI**”) to seek information from potential developers interested in a mixed development opportunity on the Property, and setting forth the Town’s development goals and potential uses.

B. The Developer submitted a response to the RFI, a copy of which is on file with the Town, and after scoring all of the proposals received in response to the RFI, the Town selected the Developer as the entity with which to negotiate exclusively for purposes of accomplishing the development purposes of the RFI.

C. Subsequent to the selection of the Developer for exclusive negotiations, the Town and the Developer entered into an Exclusive Negotiating Agreement, dated January 19, 2022 (“**ENA**”) for purposes of achieving a mixed-use development consisting of retail, restaurant and family entertainment uses, multifamily housing rentals, including affordable units, and a hotel on the Property.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Town and the Developer do hereby agree that the foregoing recitals are hereby incorporated by this reference as if fully set forth herein, and do further agree as follows:

ARTICLE 1

CONDITIONS PRECEDENT TO AND CONDITIONS

RELATING TO GROUND LEASES TO THE DEVELOPER

1.1 Agreement to Lease. As more particularly described in Section 1.4 of this Agreement, the Master Development Plan provides that a portion of the Property will be used for multi-family residential housing including affordable units (the “**Residential Parcel**”); a portion of the Property will be used for retail purposes (the “**Retail Parcel**”); and a portion of the Property will be used for hotel purposes (the “**Hotel Parcel**”). The Residential Parcel, the Retail Parcel,

and the Hotel Parcel are sometimes referred to herein collectively as the “**Parcels**” and individually as a “**Parcel**”. Following issuance of all Development Permits (as herein defined), and satisfaction of the Condition Precedent described more fully in Section 1.10, the Town shall execute a separate ground lease for each of the Parcels to the Developer or to a designated Affiliate of Developer (each a “**Ground Lessee**”, and collectively, the “**Ground Lessees**”), substantially in the form of leases attached hereto as Exhibits B-1, B-2, and B-3, respectively (each such lease herein called a “**Lease**” or “**Ground Lease**” and collectively called the “**Leases**” or “**Ground Leases**”). The Town shall not unreasonably withhold consent to any change in the form of any of the Ground Leases which is (i) reasonably requested by any Leasehold Mortgagee (as defined in the Leases) or (ii) reasonably required in light of circumstances arising or discovered during Due Diligence or the Permitting Process. The Leases shall be signed by the Town and the respective Ground Lessees, and possession of the Parcels shall be delivered to each of the respective Ground Lessees on the date (the “**Lease Commencement Date**”), which shall be the date on which all Development Permits have been obtained and the Town has satisfied the Condition Precedent described in Section 1.10 of this Agreement. As used in this Agreement, Development Permits are deemed to have been obtained when such Development Permits have been issued by the Appropriate Governmental Authorities on terms and conditions acceptable to Developer and all appeal periods have passed without appeal having been taken, or if any appeal is taken, upon resolution satisfactory to Developer in its sole discretion. In the event that an appeal of the Development Permits has not been resolved within eighteen (18) months of the time the Development Permits were initially issued, either Party shall be permitted in its sole discretion to terminate this Agreement. The aggregate Base Rent under the three Ground Leases shall be as shown on Exhibit B-4, which rent will be allocated among the three Ground Leases based on the ratio that the square footage of each Parcel bears to the total square footage of all three Parcels, based on the survey to be obtained by the Developer. The development of the Property by each of the Ground Lessees shall be in accordance with the Development Documents, as hereinafter defined, and the provisions of the Ground Leases (the “**Project**”).

1.2 This Agreement shall be deemed satisfied and shall therefore terminate upon full execution of all Ground Leases. It is understood that certain terms of this Agreement may also be specifically included in each Ground Lease, as applicable, in which such case such terms shall survive, but only to the extent and in the manner included in the Ground Leases.

1.3 Developer Obligations to Develop the Project. Upon issuance of Development Permits and satisfaction of all other conditions herein, the Developer agrees to develop the Project in accordance with the following plans and schedules that have been reviewed and approved by the Town as the owner of the property (collectively the “**Development Documents**”):

1.3.1 The Master Development Plan, as more fully described in Section 1.4. and as attached as Exhibit C;

1.3.2 RESERVED;

1.3.3 the Development Schedule, as more fully described in Section 1.6, and as attached as Exhibit E; and

1.3.4 the Financing Plan, as more fully described in Section 1.7, and as attached as Exhibit F.

1.4 **Master Development Plan.**

1.4.1 A Master Development Plan as attached hereto as Exhibit C for the Property that includes: (a) a detailed description of the proposed use of the Property, including the approximate square footage of each type of use; (b) a detailed explanation of the proposed affordable housing units, as applicable to any residential units, and the nature of any affordability controls as applicable to the Residential Parcel; (c) a preliminary site plan, which shall include the general location of each of the Parcels and the proposed buildings (“**Buildings**”), landscaping, the massing of the proposed Buildings, roadways, parking and points of ingress and egress, and any other improvements to be constructed as part of the Project, to include the Common Infrastructure, as more fully defined and described in Article 8; and (d) for each Parcel an analysis of the anticipated Development Permits (as defined in Section 3.2 hereof) and the Master Development Plan attached hereto as Exhibit C.

1.4.2 The Parties understand that the Master Development Plan may need to be revised to address the reconfiguration of the Town Parcel to accommodate the Town’s intent to remove the restrictive covenant on the use of such portion of the Property as more fully described in Section 1.10.2, provided that such revision to the Master Development Plan need be approved on behalf of the Town, only by the Town Administrator, and any such reconfiguration is subject to Developer’s approval in its sole discretion.

1.4.3 During the Due Diligence Period (as herein defined) and the Permit Process (as herein defined), Developer may provide for Town Approval any applicable updated analysis of the Development Permits required for the entire Project, and any proposed changes to the Master Development Plan. It is understood that the specific legal boundaries of each of the Parcels may change during the Permit Process as described in Section 3 of this Agreement.

1.4.4 **Use of Property.** The Developer and Ground Lessees may use the Property for such uses set forth in the Development Documents, as they may be amended, the Ground Leases, and Applicable Laws (“**Permitted Use**”); provided that such Permitted Use not include the (i) cultivation, sale, or use of drug paraphernalia, to include, but not limited to, marijuana shops or dispensaries; (ii) any use that is unlawful or inherently dangerous; (iii) activities involving the storage, treatment, transportation, disposal, or manufacture of toxic or Hazardous Materials, other than in quantities and under conditions in compliance with Applicable Laws; (iv) gambling of any sort (other than the sale of lottery tickets in the ordinary course); (v) prostitution; (vi) any establishment exhibiting or selling pornographic materials, adult books, videos, or other adult entertainment (items (i) through (vi) collectively herein called “**Prohibited Uses**”).

1.4.5 The Developer acknowledges and agrees that the Town intends to utilize a portion of the parcel identified as Lot 6 on Middletown Tax Assessor’s Plat 102 (“**Lot 6**”), and/or on a portion of the “Adjacent Parcel” referenced in Section 9.8 hereof (collectively

the “**Town Parcel**”) for public purposes. The parties agree that the Town Parcel shall not be included in the Parcels leased to the Developer by the Town. Although property utilized for the Town Parcel shall not be leased to Developer, the Town and Developer agree and acknowledge that mutual easements and agreements shall be executed for the purpose of allowing the separate ground lessees and the Town, as owner of the Town Parcel, to utilize and maintain the infrastructure that will serve the entirety of the Project, as well as the Town Parcel.

1.4.6 It is understood that each of the Ground Leases will be between the Town (as Ground Lessor) and a separate newly created limited liability company, each of which will be an Affiliate of Developer, as Ground Lessee.

1.4.7 It is understood that with respect to the Residential Parcel, the Master Development Plan will require ten percent (10%) of the permitted and constructed residential units to be classified as “affordable” housing units, with qualified occupants earning not more than eighty percent (80%) of Area Median Income (“**AMI**”) for Newport County, Rhode Island. Such affordable housing units shall be commensurate in size, quality, and construction with all other Units.

1.5 Reserved.

1.6 Development Schedule. A complete and comprehensive development schedule that includes, at a minimum, a timeline for the Developer to submit applications for all Development Permits (the “**Development Schedule**”) is attached hereto as Exhibit E. Upon request by the Town, Developer will provide updates to the Development Schedule as the Permit Process, as hereafter defined, proceeds. Developer shall use good faith, diligent efforts to conform the Permit Process and development of the Parcels to the Development Schedule, with the understanding that the Development Schedule will be subject to, and dependent, in part, on the timelines required by the various Governmental Authorities during the Permit Process. The Development Schedule shall be extended by the amount of time required to process requests for Town Approval with respect to any matters requiring Town Approval as set forth herein, and on account of any Force Majeure.

1.7 Financing Plan. A general financial analysis of the Project and the Developer’s proposal to provide sufficient funds to complete the Master Development Plan in accordance with the Development Schedule (the “**Financing Plan**”) is attached hereto as Exhibit F. If each of the Retail Parcel, the Residential Parcel, and the Hotel Parcel are to be developed and financed separately, then a separate Financing Plan for each such parcel will be made a part of the Financing plan.

1.8 Community Engagement and Outreach Program. In the event the Town, at Town expense, wishes to engage in a program for public involvement, education or outreach, the Developer will participate in good faith.

1.9 Town Approval. If any changes to the Master Development Plan are required during the Permit Process on account of matters that are outside of the Developers’ control, such as on account of DOT requirements or traffic studies, soils, and physical site conditions, etc., the

Master Development Plan will be deemed amended by such requirements, and the Developer shall provide timely notice to the Town of the circumstances giving rise to such requested change to the Master Development Plan, and the actual change to the Master Development Plan. Nevertheless, Town Approval for a change to the Master Development Plan will be required in the event such circumstances require a Material Change to the Master Development Plan. The Leases will provide that once the Development Permits have been obtained, the Ground Lessees will construct their respective improvements in accordance with the Development Documents, as they may be amended, provided that prior to Substantial Completion (as defined In Exhibit I) any Material Changes to the Master Development Plan will require Town Approval, and after Substantial Completion, any changes or amendments of the Master Development Plan (including Material Changes) will require approval by the appropriate Governmental Authorities only. In the event of any conflict between the terms of this Agreement and the terms of the Ground Leases, the terms of the Ground Leases shall be controlling.

1.10 Town Conditions Precedent to Developer's Rights and Obligations to Develop the Project.

1.10.1 Developer Proposed Zoning Overlay. The Developer shall, within sixty (60) days from the Effective Date, submit for Town Approval a Developer Proposed Zoning Overlay which Developer expects will be required for development of the Project ("**Developer Proposed Zoning Overlay**"). Town Approval of such Developer Proposed Zoning Overlay is a Condition Precedent to executing each of the Ground Leases.

1.10.2 Restrictive covenant. A portion of the Property is currently encumbered by a restrictive covenant. The Town is currently in the process of removing such encumbrance, and the Town agrees to use good faith, diligent efforts to accomplish such removal and will advise Developer promptly upon obtaining such removal. The Town shall remove said encumbrance from the Property as a Condition Precedent to executing each of the Ground Leases.

1.11 Town Agreement. As of the Effective Date, the Town will not enter into any new agreements (or modifications of agreements) related to the Property, including leases and contracts that affect the Property, nor will the Town enter, suffer, or permit any liens, mortgages or other encumbrances to be placed against the Property without written approval of the Developer, in its sole discretion.

1.12 Developer Access and Due Diligence. Upon execution of this Agreement, and upon execution of the Access and Indemnification Agreement set forth as Exhibit G, and as further described in Section 9.4, Developer shall have access to the Property in order to conduct any analysis, investigations, and other due diligence as may be necessary or desirable to prepare for the Permit Process and to assist Developer in determining the feasibility of the Project, which may include, without limitation, analysis and investigations with respect to title, survey, environmental conditions, soil and ground water conditions, traffic structures, and economic feasibility (collectively, "**Due Diligence**"). The Parties understand and acknowledge that one or more buildings on the Property contain asbestos or other Hazardous Materials which require environmental remediation prior to demolition ("**Building Remediation**"). The Town agrees to pay for all costs and expenses incurred, in connection with such Building Remediation prior to the

Ground Lessee commencing demolition of such building. Unless otherwise agreed between the Parties, the Developer shall obtain quotes from at least three (3) reputable environmental companies (two of which shall be companies designated by the Town) for the Building Remediation, and shall choose the company with the lowest quote (or within ten percent (10%) of the lowest quote) provided such company is able to perform the Building Remediation in a timely manner consistent with the Construction Schedule as provided in the Ground Leases.

ARTICLE 2 PROJECT DEFINITION

2.1 Press Releases, Marketing, Signage and Promotional Materials.

2.1.1 The name of the Project shall be the “Middletown Town Center” or such other name as the Developer shall select with Town Approval.

2.1.2 The Town shall have the right to Approve the general template for use of the Town’s name, logo, or like identifiers. Expressly excluded from this provision are publications, marketing materials, solicitations, and/or informational materials specifically designed by the Developer to recruit or market to prospective lessees, buyers, investors, lenders, and/or other financial institutions, as to which no requirement to identify the Town shall apply, and no Town Approval shall be required.

2.1.3 Upon Town Approval of the Development Documents, the Town may launch and maintain a website relating to the Project, in form and with content acceptable to Developer in its reasonable discretion.

2.1.4 The Developer shall use good faith efforts to coordinate with the Town all Project press releases that are prepared by the Developer with respect to the Project starting from the Effective Date; provided, however, any press releases prepared by the Developer that reference the duties, obligations, or commitments of the Town with respect to the Project shall be subject to Town Approval in its sole and absolute discretion, which Town Approval shall be obtained prior to publication of the press release. The Town shall coordinate with the Developer all press releases issued by the Town with respect to the Project starting from the Effective Date. Nothing in this paragraph shall prevent the Developer or any Affiliate from providing any disclosure that is required by law, including but not limited to applicable securities Laws, and no such legally required disclosure shall constitute a breach of this Agreement.

2.1.5 Prior to commencement of the Ground Leases, the Developer shall coordinate with, invite, and provide notice to the Town of all significant Project public events (i.e., community meetings, stakeholder meetings, presentations to trade association groups, presentation to out-of-town dignitaries and similar events) organized by the Developer. For any event involving the immediate community or key public officials (such as Council members, international ambassadors, members of Congress and their aides, officials of the Federal government and executives of regional organizations), the Developer shall use reasonable efforts to timely notify the Town and schedule such meetings such that the Town representatives may attend. Any event organized by the

Developer that is required to be coordinated with the Town pursuant to this Section 2.1.5 that are to be attended by key public officials will be coordinated using the protocols appropriate to the office of the key public official as reasonably directed by the Town.

2.2 Intentionally Omitted.

2.3 Developer Status Reports. In addition to the other Development Documents required pursuant to this Article or Article 1, the Developer shall submit to the Town quarterly, a report (each, a “**Developer Status Report**”) setting forth the current status of the Project, which shall include, at a minimum, (i) a detailed account of current progress of the Development Schedule, to include the Permit Process; (ii) any public meetings planned for the Project within the next month; and (iii) either confirmation that there have been no changes or a description of any changes in the ownership of the interest in, or Control of, the Developer. In addition, the Developer shall provide additional status information in each report that the Town may reasonably require from time to time in writing, provided that the Town provides the Developer at least thirty (30) days’ prior notice of its additional requests.

ARTICLE 3 TOWN APPROVAL AND PERMIT PROCESS

3.1 Scope of Developer Authority. As more fully described below, the Parties agree and acknowledge that the Developer is solely responsible for all decisions related to the Project except such decisions that are retained by the Town herein where Town Approval is expressly required, or is required by Applicable Laws.

3.2 Developer to Seek Development Permits. Promptly after completion of all or such portion of Developer’s Due Diligence as Developer may require, the Developer shall proceed to file applications for required land use entitlement and other permits or regulatory approval as described in Section 3.3 below (the “**Development Permits**”). The standard Town permit process shall apply for all required Development Permits.

3.3 Development Permits or Regulatory Approvals.

3.3.1 Permits or regulatory approvals required by generally applicable state and municipal laws and regulations, shall be subject to all procedural and substantive provisions of those laws and regulations, including but not limited to timelines, substantive standards, and compliance with the Middletown Zoning Code, as applicable, provided, that nothing herein shall preclude Developer, or each Ground Lessee, from submitting to the Town for Town approval the Developer Proposed Zoning Overlay, consistent with the approved Master Development Plan.

3.3.2 The standard Town permit process shall apply for required Development Permits (the “**Permit Process**”).

3.3.3 If it is determined that any additional Development Permits are required by applicable state or municipal laws and regulations, then Developer will file such applications and follow all procedures for obtaining such additional Development Permits. If Developer determines in its good faith judgment that Developer will not be able to obtain

all Development Permits as may be required for construction of the Project, then Developer shall have the option to terminate this Agreement in its sole discretion, by written notice to the Town, at which time this Agreement shall be deemed null and void without recourse to the Parties.

3.4 No Representation. Except as may be provided by the Town in its regulatory capacity, the Town's review and approval of any Development Documents as the owner of the Property and any changes thereto is not and shall not be construed as a representation or other assurance that such Development Documents complies with zoning or any building codes, regulations, or standards, including, without limitation, building, engineering, and structural design, or any other Applicable Laws. The Town shall incur no liability by reason of its review of any Development Documents and is reviewing such Development Documents solely for the purpose of protecting its own interests under this Agreement.

ARTICLE 4 ASSIGNMENT

4.1 Assignment by Developer. The Developer acknowledges that: (i) the development of the Property as set forth in the Master Development Plan is important to the general welfare of the community in which the Property is located; (ii) the qualifications and identity of the Developer, its principal officers, managers, Members, and partners are of particular importance to the Town; and (iii) the Town is entering into this Agreement with the Developer because of the qualifications and identity of the Developer and its principal officers, managers, Members and partners, and in so entering into this Agreement, is willing to accept and rely on the obligations of the Developer for the faithful performance of all of the Developer's undertakings and covenants in this Agreement. Accordingly, the Developer shall not assign this Agreement without the Town Approval, which may be withheld in its sole discretion. The Town shall not assign this Agreement without the Developer's approval, which may be withheld in its sole discretion.

4.2 Change of Control. Developer shall not sell, assign, transfer or convey or permit the sale, assignment, transfer or conveyance of membership or other beneficial ownership interests (collectively "**Interest**") in Developer without the Town's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided however, that the following transfers of Interest shall be permitted without the Town's prior written consent: (i) transfers of Interest between and among the Members of Developer existing as of the date of this Agreement ("**Existing Members**"); (ii) transfers of Interest from and to Existing Members and their respective family members and/or trusts and other entities established for the benefit of such family members; and (iii) other transfers of Interest so long as any one or more of (a) James J. Karam (or upon the death of James J. Karam, James M. Karam, or Jeffrey T. Karam); (b) Robert Kempenaar II; and/or (c) Christopher C. Bicho, is in Control of Developer.

4.3 Release. Upon assignment of this Agreement as permitted in Section 4.1 above, the named Developer shall be released, and the assignee shall be deemed to have assumed all obligations of the Developer under this Agreement. The Developer and assignee shall execute a customary assignment and assumption agreement evidencing such assumption by assignee.

ARTICLE 5 DEFAULTS AND REMEDIES

5.1 Default by the Developer.

5.1.1 Events of Default. Each of the following shall constitute an “**Event of Default**” by the Developer under this Agreement:

5.1.2 Monetary Defaults. The Developer shall fail to pay or cause to be paid any Town Consideration or any other amount required to be paid by the Developer under this Agreement, and such default shall continue for thirty (30) days after written Notice from the Town specifying such default (a “**Monetary Default**”). The Parties acknowledge that there is no Town Consideration due or payable from Developer to the Town under this Agreement. Developer’s monetary obligations to the Town are limited to payment of such fees as may be required in connection with applications for Permits in the ordinary course.

5.1.3 Misrepresentation. Any of the Developer’s representations and warranties under Section 6.2 is not true and correct in all material respects as of the Effective Date, and Developer fails, within thirty (30) days after notice from the Town, to cure or correct such conditions as may be required to cause such representations to be then true and correct in all material respects.

5.1.4 Prohibited Person. The Developer becomes a Prohibited Person, as hereinafter defined, due to an action or omission arising from or relating to this Agreement or the Property, and Developer fails to cure such condition within ten (10) days after notice from the Town by assignment of Interest herein permitted or otherwise approved by the Town.

5.1.5 Bankruptcy. The Developer shall be adjudicated bankrupt and subject to a court approved Chapter 11 plan for liquidation.

5.1.6 Other Default. If the Developer shall breach any material term, covenant or condition of this Agreement not specified in the foregoing clauses of this Section 5.1, and the Developer shall fail to remedy such breach within thirty (30) days after written Notice by the Town, or if such breach is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, then the Developer shall have such additional period of time as may be reasonably necessary to cure such breach, provided that the Developer commences the cure within the original thirty (30) day period and thereafter diligently pursues and completes such cure.

5.2 Town Remedies Upon an Event of Default by the Developer. During the continuance of an uncured Event of Default by the Developer, the Town shall have the following remedies only, which may be exercised at the Town’s sole election:

5.2.1 If (i) the Event of Default is a Monetary Default, or (ii) the Event of Default is due to the Developer becoming a Prohibited Person or being adjudicated bankrupt, then the Town may terminate this Agreement and retain all consideration paid to date and may collect all amounts then due and owing;

5.2.2 With respect to Events of Default other than as designated in Section 5.2.1 above, the Town may, after giving the Developer a notice of its intention to do so at least ten (10) Business Days before the Town's commencing to cure such Event of Default (or upon such notice as may be practical, if any, in the event of an emergency), cure such Event of Default, at the Developer's sole cost and expense, in which event the Developer shall reimburse the Town its actual out-of-pocket costs for such cure within ten (10) Business Days after demand therefor; and

5.2.3 With respect to Events of Default other than as designated in Sections 5.2.1 and 5.2.2 above, the Town may pursue injunctive relief, other than termination of this Agreement, and in all events subject to Section 5.6.

5.3 No Waiver by Delay; No Waiver as to Other Defaults. Notwithstanding anything to the contrary contained herein, any delay by either Party in instituting or prosecuting any actions or proceedings with respect to a default by the other Party hereunder or in asserting its rights or pursuing its remedies under this Article 5, or otherwise or any other right or remedy available under law or in equity, shall not operate as a waiver of such rights or to deprive either Party of or limit such rights in any way (it being the intent of this provision that the Parties shall not be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by the non-defaulting Party hereunder must be made in writing. Any waiver in fact made by the non-defaulting Party with respect to any specific default by the other Party under this Article 5 shall not be considered or treated as a waiver of the non-defaulting Party with respect to any other defaults by the other Party or with respect to the particular default except to the extent specifically waived in writing.

5.4 Rights and Remedies Cumulative. The rights and remedies of the Parties under this Agreement, whether provided by law, in equity, or by the terms of this Agreement, as applicable, shall be cumulative, and the exercise by the non-defaulting Party of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach. Notwithstanding the foregoing or any other provision of this Agreement or of Law, neither Party shall have the right to terminate this Agreement except as expressly permitted in this Agreement.

5.5 Effect of Termination. In the event this Agreement is terminated by Developer on account of Developer's dissatisfaction with the results of its Due Diligence, then, upon Town's request and reimbursement of Developer's third party costs and expenses thereof, Developer shall deliver to the Town a copy of any environmental reports and assessments, soil condition reports, and water table reports obtained by Developer in connection with Developer's Due Diligence investigation ("**Environmental Materials**"), provided, however, Developer shall not be required to provide the Town with any internally prepared memoranda, analysis or proprietary information developed by Developer, or any attorney-client privileged information, or any materials of which Developer has a duty of confidentiality, and the Town shall have no right to rely on any such Environmental Materials unless specifically authorized by the providers thereof.

5.6 No Consequential or Punitive Damages. Notwithstanding the provisions of this Article 5 or anything in this Agreement to the contrary, in no event shall the Town or the Developer ever be liable for any consequential, punitive, indirect, or special damages; provided, however,

that this Section 5.6 shall not be deemed to preclude or prevent the collection of any fees or monetary payments expressly provided for in this Agreement.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Town. As of the Effective Date, the Town hereby represents and warrants to the Developer as follows:

6.1.1 Execution, Delivery, and Performance. The Town (i) has all requisite right, power, and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery, and performance of this Agreement; and (iii) owns the Property in Fee Simple and can provide clear title such that upon execution of the Ground Leases, the Developer or its designee(s) as Ground Lessees, can obtain a Leasehold title insurance policy, without exceptions other than the so-called “standard exceptions”, and such other exceptions as are approved by Developer in its sole discretion. This Agreement has been duly executed and delivered by the Town and constitutes the legal, valid, and binding obligation of the Town, enforceable against it in accordance with its terms. The Person signing this Agreement on behalf of the Town is authorized to do so.

6.1.2 No Violation. The execution, delivery, and performance by the Town of this Agreement and the transactions contemplated hereby and the performance by the Town of its obligations hereunder will not violate any of the terms, conditions, or provisions of (i) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or Law to which the Town is subject, or (ii) any agreement or contract to which the Town is a party or to which it is subject.

6.1.3 No Consents. No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery, and performance of this Agreement by the Town.

6.1.4 No Brokers. The Town has not dealt with any agent, broker, or other similar Person in connection with the transfer of the interests in the Property as provided herein.

6.1.5 No Litigation. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or to the Town’s knowledge, threatened against the Town that relates to this Agreement or the Property.

6.1.6 No Encumbrances. Except as identified herein, the Town has not entered into, granted, created, or amended, and is not aware of the existence of, any easement, covenant, or other encumbrance or conveyance restricting or affecting the use or development of the Property or any portion thereof.

6.2 Representations and Warranties of the Developer. As of the Effective Date, the Developer hereby represents and warrants to the Town as follows:

6.2.1 Due Formation. The Developer is a limited liability company organized in the State of Rhode Island, duly formed and validly existing and in good standing and has full power and authority under the laws of the State of Rhode Island to conduct the business in which it is now engaged.

6.2.2 Organization. The Developer is a Rhode Island limited liability company known as Middletown Commons Town Center, LLC and Developer has provided true and correct copies of Developer's Operating Agreement and its Articles of Organization to the Town.

6.2.3 Execution, Delivery, and Performance. The Developer has the full right, power, and authority to acquire its interests in the Property as provided in this Agreement and to conduct the Developer's obligations hereunder, and all requisite action necessary to authorize the Developer to enter into this Agreement and to conduct its obligations hereunder have been taken. This Agreement has been duly executed and delivered by the Developer and constitutes the legal, valid, and binding obligation of the Developer, enforceable against the Developer in accordance with its terms. The Person signing this Agreement on behalf of the Developer is authorized to do so.

6.2.4 No Violation. The execution, delivery, and performance of this Agreement by the Developer and the transactions contemplated hereby and the performance by the Developer of its obligations hereunder do not violate any of the terms, conditions, or provisions of (i) the Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation or ruling of any court or other Governmental Authority, or Law to which the Developer is subject, or (iii) any agreement or contract to which the Developer is a party or to which it is subject.

6.2.5 No Consents. No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery, and performance of this Agreement by the Developer.

6.2.6 No Brokers. The Developer has not dealt with any agent or broker in connection with the transfer of interests in the Property to the Developer as provided herein.

6.2.7 No Litigation. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or threatened in writing against the Developer which, if decided adversely to the Developer, (i) would impair the Developer's ability to enter into and perform its obligations under this Agreement, or (ii) would materially adversely affect the financial condition or operations of the Developer.

6.2.8 No Speculation. The Developer is entering into this Agreement and will enter into the Lease for the purposes contemplated therein and not with the view of speculating in land holding or transferring its interest in the Lease except as permitted thereunder.

6.2.9 No Bankruptcy. Neither the Developer nor any of its Members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

6.2.10 Anti-Money Laundering; Anti-Terrorism.

6.2.10.1 The Developer has not, and to the Developer's knowledge, no Developer Party has engaged in any dealings or transactions (i) in contravention of the applicable anti-money laundering laws, regulations, or orders, including without limitation, money laundering prohibitions, if any, set forth in the Bank Secrecy Act (12 U.S.C. Sections 1818(s), 1829(b) and 1951-1959 and 31 U.S.C. Sections 5311-5330), the USA Patriot Act of 2001, Pub. L. No. 107-56, and the sanction regulations promulgated pursuant thereto by U.S. Treasury Department Office of Foreign Assets Control (collectively, together with regulations promulgated with respect thereto, the "**Anti-Money Laundering Acts**"), (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("**Anti-Terrorism Order**"), (iii) in contravention of the provisions set forth in 31 C.F.R. Part 103, the Trading with the Enemy Act, 50 U.S.C. Appx. Section 1 et seq. or the International Emergency Economics Powers Act, 50 U.S.C. Section 1701 et seq. (together with the Anti-Money Laundering Acts, the "**Terrorist Acts**"), or (iv) is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time.

6.2.10.2 To the Developer's knowledge, neither the Developer nor any other Developer Party (a) is conducting any business or engaging in any transaction with any Person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A, or is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time, or (b) is a Person described in Section 1 of the Anti-Terrorism Order (a "**Restricted Person**").

6.3 Representations and Warranties Condition of Obligations. It shall be a condition of Developer's obligation to perform under this Agreement that the representations and warranties of the Town set forth in Section 6.1 above are true and correct in all material respects as of the Lease Commencement Date; and it shall be a condition of the Town's obligation to perform under this Agreement that the representations and warranties of the Developer set forth in Section 6.2 above are true and correct in all material respects as of the Lease Commencement Date.

ARTICLE 7 NOTICES

To be effective, any notice to be given under this Agreement (a “**Notice**”) shall be in writing and delivered by email, certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to the Town at the following addresses:

To: Shawn J. Brown, CPA, CFE
Town Administrator
Town of Middleton
350 East Main Road
Middletown, Rhode Island 02840

With a copy to: Ronald Wolanski, AICP
Town Planner
Town of Middletown
350 East Main Road
Middletown, Rhode Island 02840

With a copy to: Peter Brent Regan, Esq.
Sayer Regan & Thayer, LLP
130 Bellevue Avenue
Newport, Rhode Island 02840

Any Notices to be given under this Agreement to the Developer shall be in writing and delivered by certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to the Developer at the following addresses:

To: Middletown Commons Town Center, LLC
c/o Robert Kempenaar II
351 West Main Road
Middletown, Rhode Island 02842

With a copy to: Girard Galvin, Esq.
Galvin Law, Ltd.
10A Washington Square
Newport, Rhode Island 02840

With a copy to: James J. Karam, President
First Bristol Corp.
P.O. Box 2516/10 North Main Street
Fall River, Massachusetts 02720

Either Party may change the recipients or addresses to which notice shall be given by written Notice to the other Party. Notices which shall be served in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the date of actual delivery;

(iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof, or (iv) if by email, when sent, with receipt acknowledged. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

ARTICLE 8 COMMON INFRASTRUCTURE

8.1 The Parties understand and agree that construction and development of the Project will require the placement and maintenance of certain common infrastructure across the Property and the Town Parcel, such as, but without limitation, roads, parking areas, accessways, off-site improvements, and utilities (collectively, “**Common Infrastructure**”), which use will be shared by the owners, lessees, and occupants of each of the Parcels. Accordingly, it is intended that the Developer and the Town, as landlord under the Lease, and/or the Ground Lessees together with the Town as the owner of the Town Parcel, will enter into one or more agreements for easements, covenants, conditions, and restrictions (the “**ECCR’s**”), whereby the applicable parties will appropriately and equitably allocate responsibilities for and costs and expenses relating to construction, installation, and maintenance of such Common Infrastructure, with the understanding that the Town will not be required to contribute to the cost of the construction, installation, and maintenance of such Common Infrastructure for so long as the Town is the owner of the Town Parcel.

8.2 Prior to execution of the Ground Leases, Developer will submit to the Town for its approval the proposed form of ECCR’s and the Parties agree to work cooperatively and in good faith with each other and with the Ground Lessees to agree on the form and content of the ECCR’s, and in all events, the Town will not unreasonably withhold, condition, or delay its approval thereof. Upon approval by the Town of the form of ECCR’S, the Town agrees to join in such ECCR’s, and/or to consent and subordinate its fee interest in the Parcels, including the Town Parcel to such ECCR’s.

8.3 The Developer and its designated Affiliates, as the Ground Lessees, acknowledge that each of them shall be jointly and severally liable for the completion, maintenance, and operation of the Common Infrastructure.

ARTICLE 9 MISCELLANEOUS

9.1 **Former Military Installation.** Some or all portions of the Property were part of a former military installation conveyed to the Town by the Navy by Quitclaim Deed(s) for economic development purposes; such Quitclaim Deed(s) contain certain environmental notices and obligations with regard to the Property.

9.2 The Town represents that immediately upon execution of this Agreement, to the best of its knowledge, provide or make available for inspection by the Developer such Quitclaim Deed(s) and Navy prepared environmental reports in its possession. The Developer acknowledges that it has received or inspected such Quitclaim Deed(s) and Navy environmental reports relating

to the Property and will comply with all such notices and obligations contained therein. The Developer acknowledges and agrees that all materials, data, and information delivered by the Town to the Developer in connection with the transactions contemplated hereby are provided to the Developer as a convenience only and that any reliance on or use of such materials, data, or information by the Developer shall be at the sole risk of the Developer. Without limiting the generality of the foregoing provisions, the Developer acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by the Town to the Developer shall be for general informational purposes only, (b) the Developer shall not have any right to rely on any such report delivered by the Town to the Developer (except to the extent permitted by the Person that prepared such report and to the extent set forth in such report), but rather will rely on its own inspections and investigations of the Property and any reports commissioned by the Developer with respect thereto, and (c) except as specifically authorized, neither the Town nor the Person that prepared any such report delivered by the Town to the Developer shall have any liability to the Developer for any inaccuracy in or omission from any such report.

9.3 Soils and Groundwater. The Town makes no representation as to the condition or content of surface or subsurface soils and groundwater that may be encountered during construction, repair, utility work, development, use, or occupancy of the Property. However, the Town is obligated to share any information on this topic in its possession with the Developer.

9.4 Due Diligence Period. In accordance with Section 1.12, the Developer shall have access to the Property to conduct Developer's Due Diligence investigation, which, in addition to the matters described in Section 1.12, may include, without limitation, environmental assessments, and investigations, including, subsurface testing and analysis, and testing and analysis of building materials, to the extent recommended by Developer's environmental engineers. If at any point during the pendency of this Agreement, but prior to Lease Commencement Dates under the Ground Leases, the Developer determines that the environmental or any other condition of the Property or any portion thereof is not satisfactory to Developer, or that the Project is otherwise not feasible, or that title or surveys of the Parcels are not acceptable, or if Developer is otherwise not satisfied with its Due Diligence investigation, in Developer's sole discretion, Developer shall notify the Town of such finding and Developer shall have the right to terminate this Agreement at its sole discretion, in which event this Agreement shall be deemed null and void without recourse to the Parties. Developer shall use good faith efforts to complete its initial Due Diligence investigations within eight (8) months after the date hereof (the "**Due Diligence Period**"); provided, however, at Developer's request, the Due Diligence Period may be extended on a month-to-month basis upon Town Approval, which shall not be unreasonably withheld to the extent Developer, in its good faith judgment, determines that additional time is necessary to complete its Due Diligence investigation.

9.5 Information as to Members; Maintenance Books and Accounts. The Developer shall keep books and accounts of its operations and transactions relating to the Project separate and distinct from any other property or business enterprise owned or operated by the Developer (or any Member or Affiliate of the Developer).

9.6 Town Cooperation. The Town will keep the Developer informed of all communications related to the Property and all the activities contemplated by this Agreement,

including by providing copies of documents sent and received related to the Property, invitations to meetings (in person or otherwise) related to the Property, and copies of all environmental documents prepared or received related to the Property, all of which shall be sent or delivered on a prompt and current basis.

9.7 Zoning Regulations. If the Project, as envisioned by the Parties, and in conformance with the approved Master Development Plan would not be feasible under the Town's current zoning regulations, the parties shall cooperate in drafting proposed amendments to said regulations, referenced previously as the Developer Proposed Zoning Overlay, provided however, that nothing in this Agreement shall require the Town to adopt or enact any such amendments, and the review and adoption of any amendments to the Town's zoning regulations shall be in compliance with all applicable notice and hearing requirements and with all other requirements of Rhode Island law, including without limitation, the requirement that any such amendment be consistent with the Town's Comprehensive Community Plan, a copy of which shall be delivered to Developer simultaneously with the execution of this Agreement. In the event that the Zoning Overlay approved by the Town is different from the Developer Proposed Zoning Overlay, the Developer shall have, in its sole discretion, the right to terminate this Agreement within thirty (30) days of enactment of the approved Zoning Overlay, without recourse to the Parties.

9.8 Acquisition of Adjacent Parcel. The Parties agree that the feasibility of the Project and the ingress and egress to the Property would be enhanced by the Town's acquisition of that certain parcel of land containing approximately 58,375 square feet of area, which directly abuts Lot 6 on Middletown Tax Assessor's Plat 102 to the north and west, as shown on the Plan attached hereto as Exhibit H (the "**Adjacent Parcel**"). The Parties agree to cooperate in the Town's efforts to acquire the Adjacent Parcel. To the extent such Adjacent Parcel is acquired by the Town, a portion thereof shall be added to, and become part of the Town Parcel and shall be used for ingress and egress to the Parcels, as shown on the Initial Master Development Plan, and otherwise upon such terms and conditions as may be acceptable to the Parties. Notwithstanding the foregoing, the acquisition of the Adjacent Parcel by the Town is not a condition of Developer's rights or the Town's obligations hereunder, provided however, if the Town does not acquire the Adjacent Parcel, then the Town shall approve a change to the Master Development Plan for relocation of the ingress and egress areas to another location on the Town Parcel reasonably acceptable to Developer and Town.

9.9 Estoppel Certificates. The Parties shall, from time to time, within seven (7) Business Days of request in writing of the other Party, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the Party delivering the estoppel certificate views them), that (i) this Agreement is in full force and effect; (ii) this Agreement has not been modified or amended (or if it has, a list of the amendments); (iii) to such Party's knowledge, the Party requesting the estoppel certificate is not then in default under this Agreement; (iv) to such Party's knowledge, the Party requesting the estoppel certificate has fully performed all of its respective obligations hereunder (or, if it has not, identifying any such failures to perform); and (v) such other statements as reasonably may be required by any Party or, as to the Developer, any other appropriate party such as its partners, lenders, or investors providing funding for the Project.

9.10 No Persons Other Than Parties Personally Liable. No Person other than the Parties to this Agreement, and the permitted assignees of such Parties, shall have any liability or obligation under this Agreement. Without limiting the generality of the foregoing, (i) the Developer agrees that no employee, officer, director, official, consultant, contractor, agent or attorney engaged by the Town in connection with this Agreement or the transactions contemplated by this Agreement shall have any liability or obligation to the Developer under this Agreement and (ii) the Town agrees that no direct or indirect member or other equity or beneficial ownership holder, nor any manager, employee, officer, director, consultant, contractor, agent or attorney engaged by the Developer in connection with this Agreement or the transactions contemplated by this Agreement shall have any liability or obligation to the Town under this Agreement.

9.11 Titles of Articles and Sections. Titles and captions of the several parts, articles and sections of this Agreement are inserted for convenient reference only and shall be disregarded in construing or interpreting Agreement provisions.

9.12 Singular and Plural Usage. Whenever the sense of this Agreement so requires, the use herein of the singular number shall be deemed to include the plural, and the use of the plural shall be deemed to include the singular.

9.13 Applicable Law; Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Rhode Island, without reference to the conflicts of laws provisions thereof. Any suit, action, proceeding or claim relating to this Agreement or the transactions contemplated by this Agreement shall be brought exclusively in the United States District Court for the State of Rhode Island, or the Superior Court for the State of Rhode Island, and the Town and the Developer agree that such courts are the most convenient forum for resolution of any such action and further agree to submit the jurisdiction of such courts and waive any right to object to venue in such courts.

9.14 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings related to the subject matter hereof. All Exhibits hereto are incorporated herein by reference regardless of whether so stated.

9.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

9.16 Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a day that is not a Business Day is automatically extended to the next Business Day.

9.17 Successors and Assigns. This Agreement shall be binding upon and, shall inure to the benefit of, the successors and assigns of the Town and the Developer and where the term “Developer” or “Town” is used in this Agreement, it shall mean and include their respective permitted successors and assigns.

9.18 Third Party Beneficiary. No Person shall be a third-party beneficiary of this Agreement.

9.19 WAIVER OF JURY TRIAL. ALL PARTIES HERETO HEREBY, AND ALL PERSONS ACCEPTING AN INTEREST IN THE PROJECT THEREBY, WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

9.20 Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully conduct the purposes and intent of this Agreement.

9.21 Modifications and Amendments. None of the terms or provisions of this Agreement may be changed, waived, modified, or terminated except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or termination is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

9.22 Anti-Deficiency. The Developer acknowledges that the Town cannot enter into any financial obligations under this Agreement without the lawful availability of funds and absent compliance with all other applicable State Laws. The Developer acknowledges and agrees that the obligation of the Town to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement relating to any public funds, or any subsequent agreement entered into pursuant to this Agreement or referenced herein relating to any public funds are and will remain subject to the provisions of the State's fiscal law, as the foregoing statutes may be amended from time to time. Any provision herein contained that violates the State's fiscal law may be waived, at the Town's sole discretion, to the extent such waiver is permissible under law. In the event of such waiver, any debt or obligation of the Town shall be restructured so that payment in full is made.

9.22.1 Notwithstanding the foregoing, no officer, employee, director, member, or other natural Person or agent of the Town shall have any personal liability in connection with the breach of this Agreement.

9.22.2 This Agreement shall not constitute an indebtedness of the Town, nor shall it constitute an obligation for which the Town is obligated to levy or pledge any form of taxation or for which the Town has levied or pledged any form of taxation.

9.23 Submission of Agreement. The submission by either Party to the other of this Agreement in unsigned form shall be deemed to be a submission solely for the other Party's consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option, and shall not confer any rights upon the recipient or impose any obligations upon the submitting Party, irrespective of any reliance thereon, change of position or partial performance.

9.24 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Applicable Laws, such provisions shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this

Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement, unless this construction would constitute a substantial deviation from the general intent of the Parties as reflected in this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

9.25 No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Developer and the Town, it being understood and agreed that neither the method of computation of any participation nor any other provision contained herein, nor any acts of the parties hereto shall be deemed to create any such relationship.

9.26 Interest. In the event a Party fails to timely pay to or reimburse the other Party within ten (10) days after demand, for any amounts due pursuant to this Agreement, or a Party advances any amounts to pay or satisfy any obligations of the other Party under this Agreement (including, without limitation in curing any default of the other Party), such amounts shall accrue interest at the rate of eight (8%) percent per annum (or the highest rate permitted by law, if less), from the date which is ten (10) days after such demand until paid or reimbursed by the other Party.

9.27 Releases.

9.27.1 Release of Town. As additional consideration for the Town's entry into this Agreement, the Developer does hereby release and forever discharge the Town and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "**Town Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which the Developer may now have or claim to have against the Town Released Parties as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon the Town's treatment of the Developer's RFP Response, the Property, any documents executed in connection therewith (including any term sheets, business terms, letters of intent or memoranda of understanding) or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the Effective Date. The agreement and covenant on the part of the Developer under this Section 9.27.1 is contractual and not a mere recital.

9.27.2 Release of Developer. As additional consideration for the Developer's entry into this Agreement, the Town does hereby release and forever discharge the Developer and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors, and assigns and all Persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "**Developer Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which the Town may now have or claim to have

against the Developer Released Parties as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon the Town's treatment of the Developer's RFP Response, the Property, any documents executed in connection therewith (including any term sheets, business terms, letters of intent or memoranda of understanding) or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the Effective Date. The agreement and covenant on the part of the Town under this Section 9.27.2 is contractual and not a mere recital.

9.28 No Construction Against Drafter. This Agreement has been negotiated and prepared by the Town and the Developer and their respective attorneys and, should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

9.29 Town Liability. Any review, analysis, examination, investigation or approval or consent by the Town pursuant to the terms of this Agreement or otherwise in connection with the Project or the Property is solely for the benefit of the Town and shall not be relied upon or construed by the Developer or any other Person as acceptance by the Town of any responsibility or liability therefor as to completeness or sufficiency thereof for any particular purpose or compliance with any Applicable Laws or other governmental requirements. In furtherance of the foregoing, the grant of consent or approval by the Town under this Agreement shall be intended solely to satisfy the Town's rights under this Agreement and for no other purposes.

9.30 Limited Recourse to the Parties. Subject to the additional limitations set forth in this Agreement, any damages and claims against the Town or the Developer shall be limited to the value of their respective interests in the Property.

9.31 Confidentiality. The following provisions are applicable to requests filed under the Rhode Island Access to Public Records Act and the regulations promulgated thereunder ("APRA") or any similar Law for information regarding this Agreement or any communications, documents, agreements, information, or records with respect to this Agreement:

9.31.1 Non-Disclosure. Communications, documents, agreements, information, and records that qualify as "**Confidential Information**" under APRA or other Law provided to the Town by the Developer under or pursuant to this Agreement shall be maintained by the Town as confidential, and the Town shall not disclose such information to any Persons other than the appropriate attorneys, accountants, underwriters, financial advisors, construction consultants, bond insurers, rating agencies, auditors and employees of the Town.

9.31.2 Acknowledgment; Requests for Disclosure. As required by the terms of this Agreement, the Developer shall provide to the Town certain documentation and information. The Town acknowledges that such documentation and information is generally held by the Developer in strict confidence, and is not of the kind that would

customarily be released to the general public by the Developer because the disclosure thereof would cause substantial harm to the competitive position of the Developer. The Town further acknowledges and agrees that the Developer will be considered as “submitter” of such documentation and information for purposes of the APRA. Accordingly, if a Person files a request under the APRA or any similar Law for any such documentation or information (solely for purposes of this Section, a “**Request**”), the Town shall promptly, and in any event not more than five (5) days following the receipt of the Request, notify the Developer of the Request and allow the Developer five (5) Business Days after receipt of such notice (and, in any event, at least five (5) days prior to the disclosure of any documentation or information (“**Requested Information**”) that would be disclosed pursuant to the Request) within which to object to the Town, and any other relevant judicial or administrative body, to the disclosure of any of the Requested Information. If, following receipt of the Developer’s objection to the release of the Requested Information, or if the Town does not receive any objection from Developer within five (5) Business Days after such notice, then not less than ten (10) Business Days following receipt of the Request, the Town reasonably determines that the Requested Information is exempt from disclosure pursuant to the APRA or other Law, the Town shall promptly, and in any event, within the time limits mandated under the APRA, assert such exemption from disclosure and decline to provide such information. If, following receipt of the Developer’s objection to the release of the Requested Information, or not less than ten (10) days following receipt of the Request, the Town reasonably determines that the information sought by the Request is not exempt from disclosure pursuant to the APRA or other Law, the Town shall promptly notify the Developer of such determination, and shall refrain from making such disclosure for not less than ten (10) Business Days following receipt of such notice by the Developer in order to afford the Developer an opportunity to seek an injunction or other appropriate remedy if the Developer believes that the Town’s determination is erroneous. The term “days” as used in this Section, shall be determined in the manner provided in the APRA.

9.31.3 Notice. The Developer shall endeavor to clearly mark each page of all documents which the Developer wishes to designate as Confidential Information “Confidential Trade Secret Information, Contact the Developer Before Any Disclosure” and shall also include a reference to this Agreement; provided, however, that the Developer’s failure to mark any document shall not foreclose the Developer from asserting that a document should be designated as Confidential Information.

9.31.4 Certain Required Disclosures. Nothing in this Agreement shall limit or restrict the Town from disclosing to the extent required by Law, any information, communication, or record to the United States Congress, the Council, the State Inspector General or the State Auditor; provided that the Town shall use all reasonable measures to prevent further dissemination of such information to the extent such information is Confidential Information.

9.32 Generally Applicable State Law. The Developer acknowledges that (i) nothing set forth in this Agreement exempts the Project or any portion thereof from generally Applicable Laws and regulations in effect from time to time in the State or the Town, (ii) execution of this Agreement by the Town is not binding upon, and does not affect the jurisdiction of or the exercise

of police or regulatory power by, State or Town agencies, including, without limitation, independent agencies of the State or Town (including, without limitation, the Town's Planning Division, in the lawful exercise of their authority and (iii) no approval provided by the Town as a contract party to this Agreement shall in any way bind or be considered to be an approval by any other Town agency acting in its capacity as a Governmental Authority (and not as a contract party to this Agreement), including, without limitation, independent agencies of the State or the Town, such as the Town's Planning Division. The Developer acknowledges and agrees that any unauthorized act by the Town may be void.

9.33 Agreement Use. The Town shall not be responsible for reimbursing or otherwise paying or repaying any costs, fees, or expenses incurred by or on behalf of the Developer or any other Person or entity associated therewith prior to or during the term of this Agreement. The Developer shall not be responsible for reimbursing or otherwise paying or repaying any costs, fees or expenses incurred by or on behalf of the Town prior to or during the term of this Agreement. Other than as set forth herein, no obligation or liability with respect to any future agreements described herein will exist, nor will any representations be deemed made, nor any reliance on any communications regarding the subject matter hereof be reasonable or justified. It is expressly agreed by the Developer that the Town is under no obligation to reimburse the Developer or its consultants, sub-contractors or successors for any cost, expense, or efforts incurred.

9.34 Laws. Any reference to a specific law in this Agreement shall mean such Applicable Law as it may be amended, supplemented, or replaced, except as the context otherwise may require.

9.35 No Tax Exemption. In no event shall the Developer, or any of its employees, contractors, subcontractors, agents, servants, beneficial owners, or any Member, partner, or principal of any beneficial owner of the Developer assert for its own benefit, or attempt to assert, an exemption (including from sales taxes) or immunity available to the Town, if any, under any government requirements or Law on the basis of the Town's involvement in the transactions contemplated by this Agreement.

9.36 Form of Payments. All payments due hereunder shall be paid in lawful money of the United States of America.

9.37 Force Majeure. Neither the Town nor the Developer shall be in default under this Agreement if the performance of any obligation, duty, or act under this Agreement is delayed or prevented by or due to one or more event(s) caused by Force Majeure.

9.38 Change in Prohibited Person Status. The Developer shall immediately notify the Town in the event that the Developer or one of its Affiliates becomes or is reasonably likely to become a Prohibited Person.

9.39 Definitions. For the purposes of this Agreement, the capitalized terms shall have the meanings ascribed to them in Exhibit F to this Agreement and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

9.40 Exhibits. This Agreement includes the following Exhibits:

Exhibit A	Legal Description of the Property
Exhibit B	Forms of Ground Leases (B-1, B-2, and B-3)
Exhibit B-4	Schedule of Annual Base Rent
Exhibit C	Master Development Plan
Exhibit D	Reserved
Exhibit E	Development Schedule
Exhibit F	Financing Plan
Exhibit G	Access and Indemnification Agreement
Exhibit H	Map of Adjacent Parcel
Exhibit I	Definitions

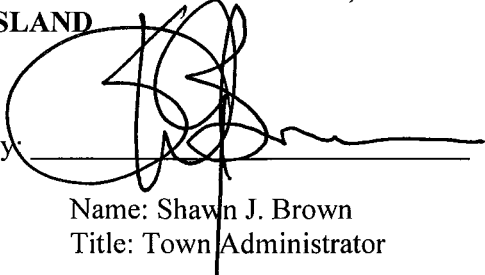
End of Agreement – Signature pages follow

EXECUTION VERSION

IN TESTIMONY WHEREOF, the Town and the Developer have caused this Agreement to be signed on their behalf as of the Effective Date.

TOWN:

**TOWN OF MIDDLETOWN, RHODE
ISLAND**

By: 

Name: Shawn J. Brown
Title: Town Administrator

(Signature Page to Development Agreement follows)

IN TESTIMONY WHEREOF, the Town and the Developer have caused this Agreement to be signed on their behalf as of the Effective Date.

DEVELOPER:

**MIDDLETOWN COMMONS TOWN CENTER,
LLC**, a Rhode Island limited liability corporation

By: West Main Commons LLC, its Manager

By: _____

Name: James J. Karam, its Manager
Duly authorized

By: Landings I, LLC, its Manager

By: _____

Name: Christopher C. Bicho, its Manager
Duly authorized

(End of Signature Pages)

IN TESTIMONY WHEREOF, the Town and the Developer have caused this Agreement to be signed on their behalf as of the Effective Date.

DEVELOPER:

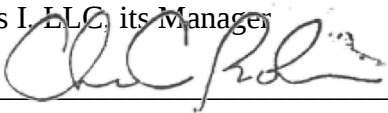
**MIDDLETOWN COMMONS TOWN CENTER,
LLC**, a Rhode Island limited liability corporation

By: West Main Commons LLC, its Manager

By: _____

Name: James J. Karam, its Manager
Duly authorized

By: Landings I, LLC, its Manager

By:  _____

Name: Christopher C. Bicho, its Manager
Duly authorized

(End of Signature Pages)

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

All those certain lots or parcels of land together with all the buildings and improvements thereon, situated in the Town of Middletown, Rhode Island and described as follows:

BEING Lots 3, 4, 5, 6, and 7 on Middletown Tax Assessor's Plat 102 as presently constituted, consisting of approximately 15.27 acres of land, more or less.

Exhibit B

FORMS OF GROUND LEASES

See attached:

Exhibit B-1: Form of Ground Lease of Residential Parcel

Exhibit B-2: Form of Ground Lease of Hotel Parcel

Exhibit B-3: Form of Ground Lease of Retail Parcel

Exhibit B-4: Schedule of Annual Base Rent

Exhibit B-1**GROUND LEASE AGREEMENT FOR RESIDENTIAL PARCEL**

This Ground Lease Agreement for Residential Parcel (this “**Lease**”) is made and entered into this _____, day of _____, 2024 by and between the **TOWN OF MIDDLETOWN, RHODE ISLAND** (the “**Town**” or “**Landlord**”), and _____, a _____ (the “**Tenant**”). The Town and Tenant, and their respective successors and assigns, are sometimes individually referred to as a “**Party**” and are sometimes collectively referred to as the “**Parties**.”

RECITALS

A. The Town is the owner in fee simple of the property located on West Main Road in Middletown, Rhode Island and identified as Lots 3, 4, 5, 6, and 7 on Middletown Tax Assessor’s Plat 102, consisting of approximately 15.27 acres of land, as more specifically described on Exhibit A, attached hereto (the “**Town Land**”).

B. On or about June 2, 2021, the Town issued a Request for Information (the “**RFI**”) to seek information from potential developers interested in a mixed development opportunity on the Town Land, and setting forth the Town’s development goals and potential uses.

C. Middletown Commons Town Center LLC (“**Developer**”) submitted a response to the RFI (the “**Proposal**”), a copy of which is on file with the Town, and after scoring all of the proposals received in response to the RFI, the Town selected the Developer as the entity with which to negotiate exclusively for purposes of accomplishing the development purposes of the RFI.

D. Subsequent to the selection of the Developer for exclusive negotiations, the Town and the Developer entered into an Exclusive Negotiating Agreement, dated January 19, 2022 (“**ENA**”) for purposes of achieving a mixed-use development (the “**Project**”) consisting of retail, restaurant and family entertainment uses (“**Retail Use**”), multifamily housing rentals, including affordable units (“**Residential Use**”), and a hotel (“**Hotel Use**”) on a portion of the Town Land.

E. In accordance with the ENA, the Town and Developer entered into a Development Agreement, dated October 3, 2024 (the “**Development Agreement**”), which provides that the Developer and/or its designees have the right to construct and develop certain portions of the Town Land, as designated, to be used for the Residential Use (the “**Residential Parcel**”), the Retail Use (the “**Retail Parcel**”), and the Hotel Use (the “**Hotel Parcel**”) as shown on the Master Development Plan attached hereto as Exhibit B (as it may be amended from time to time, the “**Master Development Plan**”).

F. The Development Agreement contemplates that a portion of the Town Land is intended to be used for public purposes in accordance with the Master Development Plan (the “**Town Use**”) and such portion, which may be combined with the Adjacent Parcel, as defined on Exhibit G (together herein called the “**Town Parcel**”) shall continue to be owned by the Town, and may be developed by the Town for public purposes.

G. The Town has reviewed and approved all Development Documents required by the Development Agreement, and the Developer and the Town have each satisfactorily completed their respective conditions precedent to this Ground Lease as required under the Development Agreement.

H. The Developer has received Town Approval and has achieved all permits and regulatory approvals (“**Development Permits**”) required to develop the Project on the Residential Parcel, the Retail Parcel, and the Hotel Parcel in accordance with the Master Development Plan.

I. The Developer has designated Tenant as the entity to develop the Residential Parcel for the Residential Use, and this Lease constitutes the lease of the Residential Parcel as more particularly described on Exhibit C attached hereto and made a part hereof (the “**Premises**”) to Tenant for such purpose.

ARTICLE 1 AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Town and Tenant do hereby agree as follows:

ARTICLE 2 DEFINITIONS/RECITALS

For the purposes of this Lease, the capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in Exhibit D, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular. The foregoing Recitals are hereby incorporated by this reference as if fully set forth herein.

ARTICLE 3 LEASE TO THE TENANT

3.1 Agreement to Lease. The Town hereby agrees to lease to Tenant the Premises, and Tenant agrees to lease from the Town the Premises, effective as of _____, 20____ [*date to be inserted is later of the date the Developer has obtained (i) the Development Permits pursuant to Section 1.1 of the Development Agreement, and (ii) the date that the Town Conditions Precedent as described in Section 1.10.1 and 1.10.2 of the Development Agreement have been satisfied*] (the “**Lease Commencement Date**”). Possession of the Premises shall be delivered to Tenant on the Lease Commencement Date. Concurrently herewith, the Town has leased the Retail Parcel to a designee of Developer (the “**Retail Lessee**”) and has leased the Hotel Parcel to a designee of Developer (the “**Hotel Lessee**”). The Retail Lessee and the Hotel Lessee are sometimes herein collectively called the “**Other Project Lessees**”, or individually an “**Other Project Lessee**”; and the Retail Parcel and the Hotel Parcels are sometimes herein collectively called the “**Other Project Parcels**”, or individually an “**Other Project Parcel**”, and the Residential Parcel, the Retail Parcel, and the Hotel Parcel are sometimes herein called collectively the “**Project Parcels**” or individually, a “**Project Parcel**”).

3.2 Term. The term of this Lease (the “**Term**”) shall commence on the Lease Commencement date and shall terminate upon the ninety-ninth (99th) anniversary of the Lease Commencement Date. This Lease may also include certain terms and conditions that are expressly stated herein to survive the expiration or termination of this Lease (sometimes herein called “**Surviving Obligations**”).

3.3 Annual Base Rent. There shall be no rent due from Tenant until the sooner of that date on which (i) a final Certificate of Occupancy is issued by the Town for seventy-five percent (75%) of the units as permitted under the Master Development Plan, or (ii) that date which is thirty-two (32) months after the Lease Commencement Date (the earlier of (i) and (ii) is sometimes herein called the “**Rent Commencement Date**”). On the Rent Commencement Date, and each anniversary thereafter, Tenant shall pay to the Town the amount (the “**Annual Base Rent**”) as set forth on Schedule 3.3 attached hereto and made a part hereof, provided however, at Tenant’s option, Tenant may pay Annual Base Rent in monthly installments, each in the amount of one-twelfth (1/12) of the Annual Base Rent (“**Monthly Payments**”) on the first day of each month commencing on the Rent Commencement Date (provided however, if the Rent Commencement Date is not on the first day of any month, then the Monthly Payment for that month shall be appropriately apportioned based on the number of days in that month.)

3.3.1 As set forth on the Rent Schedule, the Annual Base Rent shall be adjusted (a “**Rent Adjustment**”) to increase by twelve and one-half percent (12.5%) every five (5) years (each an “**Adjustment Date**”), with the first Adjustment Date occurring on that date which is five (5) years after the Rent Commencement Date (“**First Adjustment Date**”).

3.3.2 The Annual Base Rent has been determined based upon the assumption that neither the Town, nor any other Applicable Law will require more than ten percent (10%) of the residential units to be classified as “affordable” housing units, with qualified occupants earning not more than eighty percent (80%) of Area Median Income (“**AMI**”) for Newport County, Rhode Island (the “**Required Affordable Units**”), and that all other units may be leased at market rate rents.

3.3.3 Notwithstanding Section 3.3.1 above, during any period upon which any unit rent for the Residential Project shall be or become uncollectible, reduced, or required to be refunded because of any rent control or other Applicable Law enacted and imposed by the Town of Middletown (“**Rent Regulation Period**”), the Annual Base Rent shall not be subject to a Rent Adjustment increase.

3.4 Quiet Enjoyment. The Town covenants that Tenant, at all times during the Lease Term and prior to an Event of Default, shall peaceably and quietly hold and enjoy the use and occupancy of the Premises during the Term, or until the earlier termination of this Lease in accordance with the provisions hereof, without hinderance or interference from others.

3.5 Use of Premises. During the Term, Tenant may use the Premises for residential apartment use and related amenities and any other purposes consistent with this Lease, the Development Permits, the Master Development Plan, and Applicable Laws (“**Permitted Use**”); provided that such Permitted Use not include the (i) cultivation, sale, or use of drug paraphernalia, to include, but not limited to, marijuana shops or dispensaries; (ii) any use that is unlawful or

inherently dangerous; (iii) activities involving the storage, treatment, transportation, disposal, or manufacture of toxic or Hazardous Materials, other than in quantities and under conditions in compliance with Applicable Laws; (iv) gambling of any sort (other than the sale of lottery tickets in the ordinary course); (v) prostitution; (vi) any establishment exhibiting or selling pornographic materials, adult books, videos, or other adult entertainment (items (i) through (vi) collectively herein called “**Prohibited Uses**”).

3.6 Net Lease. This Lease of the Premises to Tenant is a triple net lease, and the Annual Base Rent and all other sums payable hereunder to or on behalf of the Town shall be paid without notice or demand and without setoff, counterclaim, abatement, suspension, deduction, or defense, except as otherwise specifically set forth herein.

3.7 Taxes and Assessments. Tenant shall pay, prior to delinquency: (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time or which arise with respect to the Premises and the operation, possession or use of the Premises; (ii) all real estate taxes and other sales, value added, ad valorem, use and similar taxes at any time levied, assessed to or payable by Tenant on account of Tenant’s leasing, operation, possession or use of the Premises; and (iii) all fees for charges of utilities, communications, fire services, permits, and similar services serving the Premises. Notwithstanding anything set forth herein to the contrary, Tenant shall not be obligated to pay or reimburse any fees, taxes, expenses, or other charges to the Town (a) that arise or are allocable to periods prior to the Lease Commencement Date, or (b) that are not explicitly authorized by Applicable Laws or required by this Lease, or (c) that constitute income taxes on Landlord’s income, franchise taxes, capital stock, transfer taxes, estate taxes or inheritance taxes. The term “real estate taxes” means those taxes which are assessed against the Residential Project and the Premises, which includes all taxes, assessments, betterments, water or sewer entrance fees, and similar charges imposed upon or against the land, the Residential Project, and any improvements thereon then comprising the Premises. This definition of real estate taxes is based upon the present system of real estate taxation in the State of Rhode Island, provided however, if taxes upon rentals or any other basis shall be substituted for the present ad valorem real estate taxes, the term real estate taxes shall be deemed changed to the extent to which there is such a substitution for the present ad valorem real estate taxes.

3.8 Town Parcel. For clarification purposes, as used herein, the term “**Project**” includes the Residential Parcel, the Retail Parcel, and the Hotel Parcel, and the Permitted Uses thereon. To the extent consistent with the context, the Town Parcel may sometimes be included within the meaning of “Project” as used herein, solely for descriptive purposes, provided, however, Tenant shall have no obligations or liabilities with respect to the Town Parcel other than with respect to the Common Infrastructure and ECCR’s as described in Section 5.7 of this Lease. The Town has no obligation to construct buildings or improvements on or otherwise develop the Town Parcel for the Town Use, however, the Town Parcel shall not be (i) sold or leased to any third parties without compliance with Article 14 hereof, or (ii) permitted to waste.

ARTICLE 4 CONDITION OF PREMISES

4.1 Former Military Installation. Some or all portions of the Premises were part of a former military installation conveyed to the Town by the Navy by Quitclaim Deed(s) for economic development purposes, and such Quitclaim Deed(s) contain certain environmental notices and obligations with regard to the Premises. The Town represents and warrants that to the best of its knowledge it has provided or made available for inspection by Tenant such Quitclaim Deed(s) and Navy prepared environmental reports in its possession. The Tenant acknowledges that it has received or inspected such Quitclaim Deed(s) and Navy environmental reports relating to the Premises and will cooperate with the Town to comply with all notices and obligations therein.

4.2 Environmental Reports. The Town represents that, to the best of its knowledge, it has made available to Tenant all environmental reports and studies in its possession and control relating to the Premises. The Town will provide any such additional reports and documentation to Tenant as they become available. Tenant acknowledges and agrees that all materials, data, and information delivered by the Town to Tenant in connection with the transactions contemplated hereby are provided to Tenant as a convenience only and that any reliance on or use of such materials, data, or information by Tenant shall be at the sole risk of Tenant. Without limiting the generality of the foregoing provisions, Tenant acknowledges and agrees that (a) any environmental or other report with respect to the Premises which is delivered by the Town to Tenant shall be for general informational purposes only, (b) Tenant shall not have any right to rely on any such report delivered by the Town to Tenant (except to the extent permitted by the Person that prepared such report (“**Provider**”)) and to the extent set forth in such report), but rather will rely on its own inspections and investigations of the Premises and any reports commissioned by Tenant with respect thereto, and (c) neither the Town nor the Provider shall have any liability to Tenant for any inaccuracy in or omission from any such report, except as set forth in such report or in any other agreement between Tenant or Developer and the Provider. The Town and Tenant acknowledge that certain environmental conditions affecting the building(s) on the Premises existing as of the Lease Commencement Date (“**Existing Building**”) must be remediated pursuant to Applicable Law before such Existing Building may be demolished, and the Town agrees to reimburse Tenant for all costs and expenses incurred by Tenant in connection with such environmental remediation pursuant to Section 5.10.7 of this Lease.

4.3 Soils and Groundwater. The Town makes no representation as to the condition or content of surface or subsurface soils and groundwater that may be encountered during construction, repair, utility work, development, use, or occupancy of the Premises.

4.4 DISCLAIMERS.

4.4.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS LEASE AND IN THE DEVELOPMENT AGREEMENT, THE TOWN IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO THE QUALITY OR QUANTITY OF THE PREMISES; HABITABILITY, MERCHANTABILITY, FITNESS, OR SUITABILITY FOR A

PARTICULAR PURPOSE; TITLE; ZONING; TAX CONSEQUENCES; LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION; UTILITIES; OPERATING HISTORY OR PROJECTIONS; VALUATION; GOVERNMENTAL APPROVALS; THE COMPLIANCE OF THE PREMISES WITH APPLICABLE LAWS; THE TRUTH, ACCURACY, OR COMPLETENESS OF ANY DOCUMENTS OR OTHER INFORMATION PERTAINING TO THE PREMISES; THE STATUS OF ANY LITIGATION OR OTHER MATTER; OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF THE TOWN TO TENANT; OR ANY OTHER MATTER OR THING REGARDING THE PREMISES.

4.4.2 TENANT ACKNOWLEDGES AND AGREES THAT THE TOWN IS LEASING THE PREMISES TO TENANT “AS IS, WHERE IS, WITH ALL FAULTS.”

4.4.3 FURTHER, DEVELOPMENT OF THE PREMISES IN ACCORDANCE WITH THIS LEASE SHALL BE “AS IS, WHERE IS, WITH ALL FAULTS.”

4.4.4 TENANT IS ADVISED THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY EXIST AT THE PREMISES AND THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY CAUSE PHYSICAL INJURIES, INCLUDING, WITHOUT LIMITATION, ALLERGIC REACTIONS, RESPIRATORY REACTIONS OR OTHER PROBLEMS, PARTICULARLY IN PERSONS WITH IMMUNE SYSTEM PROBLEMS, YOUNG CHILDREN AND ELDERLY PERSONS.

4.4.5 OTHER THAN THE EXPRESS REPRESENTATIONS MADE BY THE TOWN IN SECTION 11.1, AND ELSEWHERE IN THIS LEASE, TENANT HAS NOT RELIED AND WILL NOT RELY ON, AND THE TOWN IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PREMISES OR RELATING THERETO MADE OR FURNISHED BY THE TOWN, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT THE TOWN, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING.

4.4.6 TENANT REPRESENTS TO THE TOWN THAT TENANT HAS CONDUCTED SUCH INVESTIGATIONS OF THE PREMISES, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS TENANT DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PREMISES AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PREMISES, AND WILL NOT RELY UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF THE TOWN OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO.

4.4.7 TENANT SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS (INCLUDING MOLD, FUNGI,

VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS, RADIOLOGICAL CONDITIONS OR ITEMS OR TOXIC SUBSTANCES), MAY NOT HAVE BEEN REVEALED BY TENANT'S INVESTIGATIONS, AND TENANT, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED THE TOWN FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH TENANT MIGHT HAVE ASSERTED OR ALLEGED AGAINST THE TOWN AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PREMISES, OTHER THAN TO THE EXTENT ACTUALLY CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF THE TOWN OR THOSE ACTING BY, THROUGH, OR UNDER THE TOWN OR ON ACCOUNT OF THE BREACH OF ANY REPRESENTATIONS OF THE TOWN EXPRESSLY SET FORTH IN THIS LEASE.

4.4.8 THE TOWN SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PREMISES IN ANY WAY FOR DEVELOPMENT AT ANY TIME.

4.4.9 If prior to construction of any buildings or other improvements Tenant discovers an environmental defect on the Premises which existed prior to the Lease Commencement Date that was not discovered in the course of Tenant's reasonable due diligence investigation, and that was not caused by Tenant or Developer, or by others acting by, through or under either of them, which defect makes the development of the Premises or the Project infeasible, impractical, or which would pose a threat of harm to the health or safety of any Persons, then Tenant shall have the right to terminate this Lease by written notice to the Town, in which event this Lease shall be deemed null and void without recourse to the Parties hereto.

4.5 Legal Recourse Against the Navy.

4.5.1 Tenant acknowledges that it is familiar with avenues of legal recourse against the Navy for any pre-existing environmental condition caused or contributed to by the Navy, including the provisions of Sections 107 and 120(h)(3) of CERCLA and Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993.

4.5.2 If the Town reasonably requests Tenant to assist or cooperate in the pursuit of a claim tendered by the Town against the United States pursuant to Section 120(h)(3) of CERCLA or Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993 related to portions of the Town Land owned by the Town and leased to Tenant, Tenant shall reasonably cooperate with, and provide reasonable assistance to, the Town in the pursuit of the claim, provided the reasonable costs of tendering and pursuing the claim are paid by the Town.

4.5.3 If Tenant reasonably requests the Town to assist or cooperate in the pursuit of a claim tendered by Tenant against the United States pursuant to Section 120(h)(3) of CERCLA or Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993 or pursuant to any other Applicable Laws, related to portions of the Town Land leased to Tenant or any Other Project Lessee, the Town shall reasonably cooperate with, and provide reasonable assistance to, Tenant in the pursuit of the claim, provided the reasonable costs of tendering and pursuing the claim are paid by Tenant.

ARTICLE 5

DEVELOPMENT/OPERATION OF THE PREMISES

5.1 **Master Development Plan.** The Residential Project shall be developed in accordance with the Master Development Plan, as it may be amended. Until Substantial Completion, the Residential Parcel shall conform to the Master Development Plan as such Master Development Plan is approved by the Town, and any Material Change to the Master Development Plan affecting the Residential Project requested by Tenant shall be subject to Town Approval. After Substantial Completion, any proposed changes to the Master Development Plan affecting the Residential Parcel (including Material Changes) must be approved only by the appropriate Governmental Authorities except that in all events any proposed reduction in the percentage of Required Affordable Units which shall remain subject to Town Approval.

5.2 **Development by Tenant.**

5.2.1 On or before the Lease Commencement Date, Tenant will have obtained all licenses, approvals and authorizations from all Governmental Authorities (collectively, “**Development Permits**”) necessary to proceed with the development of residential apartment buildings (the “**Buildings**”) and other improvements and amenities (together with the Buildings, collectively the “**Improvements**”) at the Premises in a manner consistent with the Permitted Use (the “**Residential Project**”).

5.2.2 Following the Lease Commencement Date, Tenant shall use good faith efforts to submit applications for, and obtain all construction permits, including without limitation, all demolition permits, building permits, foundation permits, and other licenses and approvals (“**Construction Permits**”) from all Governmental Authorities necessary to construct the Improvements and shall use good faith, diligent efforts to Substantially Complete construction of the Residential Project within a period of thirty-six (36) months after the Lease Commencement Date, all in accordance with the construction schedule to be submitted in connection with Tenant’s application for Construction Permits (the “**Construction Schedule**”). The Town and Tenant acknowledge and agree that the Construction Schedule may be extended on account of Force Majeure and by other economic or practical matters beyond Tenant’s reasonable control.

5.2.3 In order to expedite the granting of Construction Permits, the Town will retain, at its own cost and expense, a consultant to speed the review of construction plans and drawings and process Construction Permits.

5.2.4 Until Substantial Completion any Material Change to the Master Development Plan affecting the Premises shall be subject to Town Approval. With the exception of any reduction in the percentage of Required Affordable Units, which shall remain subject to Town Approval, after Substantial Completion, any proposed changes to the Master Development Plan affecting the Premises (including without limitation any Material Changes) must be approved only by the appropriate Governmental Authorities in accordance with and to the extent required by the applicable municipal regulatory process. Until Substantial Completion, Tenant shall have the right to construct and reconstruct, repair, enlarge, rebuild, alter, change, improve, demolish, or remove any Buildings and other Improvements at the Premises in a manner consistent in all material respects with the Development Permits and the Master Development Plan, and which are otherwise approved in writing by the appropriate Governmental Authorities as may be necessary under Applicable Laws. Following Substantial Completion, Tenant shall have the right to construct and reconstruct, repair, enlarge, rebuild, alter, change, improve, demolish, or remove any Buildings and other Improvements at the Premises which are approved in writing by the appropriate Governmental Authorities as may be necessary under Applicable Laws.

5.2.5 Tenant shall not be required to restore or replace the Buildings or other Improvements permitted hereunder in the event of damage by casualty.

5.2.6 Tenant shall have the right to freely sublease to any subtenant, without approval of the Town, as long as the use remains consistent with the Development Permits and the Master Development Plan.

5.3 **Improvements Commitment.** Tenant's construction of the Improvements shall provide the number of Required Affordable Units reflected in the Master Development Plan in similar size, quality, and construction as the units not designated as affordable units ("**Affordable Unit Construction Requirements**"). Any reduction in the percentage of such Required Affordable Units or changes in the Affordable Unit Construction Requirements must receive Town Approval, be in accordance with the Master Development Plan as it may be amended, and as approved by the appropriate Governmental Authorities as required under Applicable Laws.

5.4 **Buildings, Improvements, and Personal Property.** As between the Town and Tenant, Tenant shall be the owner for all purposes (including for state and federal taxation purposes), of the Buildings and other Improvements now or hereafter constructed or installed on the Premises, and shall be the owner of and have rights to all personal property located at the Premises and/or within the Improvements, to use or dispose of in Tenant's sole discretion.

5.5 **Provision of Services.** Subject to any Applicable Laws, Tenant has the right to provide certain services (directly, indirectly, or through third party contractors that may include local government) to the Premises and may assess and collect fees from tenants or others to cover the costs of providing such services to the Premises. Such services may include human resources, health and human services, education, trash and recycling, utilities, security, transportation, communication, video, data and internet services, and parks and recreation.

5.6 Operation and Maintenance. Beginning on the Lease Commencement Date and throughout the Lease Term, Tenant shall be responsible for maintaining and operating (including all costs arising therefrom) the Premises, including all Buildings and other Improvements thereon, and the Town shall have no responsibility for the maintenance or operation of the Premises as of the Lease Commencement Date. Without limitation, Tenant agrees throughout the Term of this Lease, at Tenant's sole cost and expense, to maintain, or cause to be maintained, the Premises and any and all Buildings and/or structures located thereon, and each and every part thereof, in good order and condition in all respects, free of accumulation of rubbish, and, specifically with regard to snow and ice, as necessary to maintain appropriate driveways, roads, access ways, sidewalks and pedestrian areas, and parking areas, and to make all necessary repairs and replacements, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, to the extent necessary to maintain such areas in compliance with all Applicable Laws, in all events subject to reasonable wear and tear, casualty, and eminent domain. Any and all repairs and maintenance by Tenant shall be performed in a good and workmanlike manner. Notwithstanding anything set forth in this Lease, it is understood and agreed that Tenant shall have no responsibility to maintain the Town Parcel (other than any obligations of Tenant under the ECCR's as described in Section 5.7 hereof, to the extent relating to the Common Infrastructure located on the Town Parcel). The Town will continue to be the owner in fee simple of the Town Parcel and all buildings and other improvements now or hereafter located thereon, and the maintenance and operation of the Town Parcel shall remain the Town's obligation, subject to the ECCR's.

5.7 Common Infrastructure.

5.7.1 The Parties understand and agree that construction and development of the Project will require certain common infrastructure, such as, but without limitation, roads, parking areas, accessways, off-site improvements, and utilities (collectively, "**Common Infrastructure**"), which will be shared by the owners, lessees, and occupants of the Premises and each of the Other Project Parcels, and the Town Parcel. Accordingly, it is intended that the Developer and the Town, as Landlord under this Lease, and/or the Tenant and Other Project Lessees together with the Town as the owner of the Town Parcel, have entered into (or shall simultaneously enter into), one or more agreements for easements, covenants, conditions, and restrictions (the "**ECCR's**", as set forth in Exhibit E) to appropriately and equitably allocate responsibilities for and costs and expenses relating to construction, installation and maintenance of such Common Infrastructure in accordance with Section 5.7.3, and the Town, as Landlord, agrees to join in such ECCR's, and/or to consent and subordinate its fee interest in the Town Land thereto; provided, however, that such ECCR's shall contain a prohibition on short-term residential rentals, as more fully set forth in such ECCR's.

5.7.2 The Town and Tenant agree to work cooperatively and in good faith with each other and with the Other Project Lessees to agree on any future modifications and amendments to such ECCR's, and in all events, the Town will not unreasonably withhold, condition, or delay its approval thereof, provided any such modifications do not increase any responsibility or liability of the Town and do not restrict or decrease any rights and benefits of the Town, in each case, in any material respect.

5.7.3 The construction of the Common Infrastructure, in accordance with the Master Development Plan, the Construction Schedule, and the ECCR's, shall be the sole responsibility and cost of the Tenant and the Other Project Lessees. The Tenant agrees that the Tenant and the Other Project Lessees shall be jointly and severally liable for the completion of construction of the Common Infrastructure, with the understanding that so long as the Town of Middletown, Rhode Island is the owner of the Town Parcel the Town will not be required to contribute to the cost of the construction, installation, and/or maintenance of such Common Infrastructure.

5.8 **Inspection of Site.** The Town reserves for itself and its employees and agents ("Town Representatives") the right to enter the Premises at reasonable times and from time to time upon reasonable prior notice to Tenant (or upon such notice as may be reasonable, if any, in the event of an emergency), for the purpose of performing inspections in connection with the construction of the Residential Project on the Premises, including the conformance of the Residential Project to the Master Development Plan and the Construction Schedule, provided that Town Representatives shall not enter individual residences except in accordance with Applicable Law. Tenant waives any claim for trespass or interference that it may have against the Town arising out of entry upon the Premises for the aforementioned purposes, resulting from causes other than gross negligence or willful misconduct of the Town or the Town Representatives, provided that at all times during construction on the Premises the Town Representatives shall have entry only in the company of Tenant or its agents and such Town Representatives follow all precautionary and safety measures requested by Tenant or required by Applicable Laws (collectively "**Precautionary Measures**") applicable to a construction site. Any inspection of the Premises or access to the Premises by the Town or Town Representatives hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Residential Project or Premises with any Permits, building codes, regulations, or standards, including, without limitation, building engineering and structural design, or other Applicable Laws.

5.9 **Issuance of Permits.** Tenant shall have the sole responsibility, at Tenant's sole cost and expense, for obtaining all Development Permits, Construction Permits, and any other permits necessary for the development, construction work, and operation of the Premises to complete the Residential Project, and shall make application therefor directly to the applicable Governmental Authority. The Town shall, upon request by Tenant, execute applications for Permits, as the owner of the Premises, to the extent required by the applicable Governmental Authority, at no out of pocket cost, expense, obligation, or liability to the Town. In no event shall Tenant commence demolition, construction, or renovation of all, or any portion of the Premises until Tenant shall have obtained all Permits required for such work. From and after the date of Tenant's submission of an application for a Permit, Tenant shall diligently prosecute such application until receipt or final denial of the Permit. In addition, from and after submission of any such application, and until issuance of the Permit, Tenant shall report the Permit status in writing as part of the Tenant Status Report, as hereafter defined. Notwithstanding anything set forth herein to the contrary, in the event Tenant is unable to obtain any Permits required to construct and operate the Residential Project with such conditions as are reasonably acceptable to Tenant, Tenant shall have the right to terminate this Lease in its sole discretion by written notice to the Town, in which event this Lease shall be deemed terminated without recourse to the Parties hereto.

5.10 **Compliance with Applicable Environmental Requirements.**

5.10.1 Tenant hereby covenants that it shall comply with all provisions of Environmental Laws applicable to the Premises and all uses, improvements, and appurtenances of and to the Premises. Tenant shall indemnify, defend, and hold the Town and its officers, directors, agents, and employees (individually, a “**Town Indemnified Party**” and collectively, the “**Town Indemnified Parties**”) harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Town Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (i) Tenant’s violation of any Environmental Law or (ii) conduct, negligence, or willful misconduct of the Tenant resulting in any Release of Hazardous Material, as defined in applicable Environmental Laws, or any condition of pollution, contamination, or Hazardous Material-related Release or nuisance on, under, or from the Property which is a violation of Environmental Laws and which is not properly reported, monitored, and remediated by Tenant pursuant to applicable Environmental Laws; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys’ fees and court costs) to the extent (a) arising from the conduct, negligence or willful misconduct of any Town Indemnified Party; and/or (b) relating to any environmental condition existing at the Premises or on, in, under or from the Town Land or any property adjacent thereto first arising prior to the Lease Commencement Date. Nothing in this Section in any way alters or limits or waives any of Navy’s obligations contained in the Lease, Navy Quitclaim Deeds, or Laws.

5.10.2 Tenant shall provide the Town with written notice of any claims or allegations of Releases of Hazardous Materials, pollutants and/or contaminants at, from, or on the Premises, and notices of violations of applicable Environmental Laws received by Tenant relating to the Premises, promptly after Tenant receives or has actual knowledge of such notices or allegations. The Town shall provide the Tenant with written notice of any claims or allegations of Releases of hazardous substances, pollutants and/or contaminants at, from, or on the Premises, and notices of violations of applicable Environmental Laws received by the Town relating to the Premises, promptly after the Town receives or has actual knowledge of such notices or allegations.

5.10.3 Tenant shall obtain and maintain, at its sole cost and expense, any Permits or other approvals required under applicable Environmental Laws for construction of the Improvements and/or operation of the Premises for the Residential Project. The Town will not co-sign or otherwise be identified as a responsible party for any Permits or activities that Tenant conducts on or about the Premises, except as may be required by Applicable Laws. For so long as the Town owns fee simple title to or is leasing or otherwise in control of the Premises, or the applicable portion thereof, the Town shall, upon request by Tenant, execute applications for Permits or other approvals required under applicable Environmental Laws, as the Person with rights to the applicable portion of the Premises, to the extent required by the applicable Governmental Authority, at no third party cost, expense, obligation, or liability to the Town.

5.10.4 The Town shall have the right, upon request to Tenant, to review and comment on applications for Permits and other approvals required under applicable

Environmental Laws prior to submission to environmental Governmental Authorities. Where practicable, Tenant shall provide the Town with advance notice of and an opportunity to jointly participate in meetings, including Permit application meetings, with environmental regulatory authorities relating to the Premises.

5.10.5 Tenant shall promptly provide the Town with copies of all non-routine correspondence with environmental regulatory authorities related to enforcement actions or notices of violations affecting the Premises promptly after receipt.

5.10.6 Tenant shall not cause or permit to be removed or disturbed any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity which are restricted from removal or disturbance under Applicable Laws (“**Restricted Artifacts**”). In the event such Restricted Artifacts are discovered, Tenant shall promptly notify the Town and protect the site and the Restricted Artifacts from further disturbance until clearance to proceed has been provided by applicable Governmental Authorities. In the event that the presence of such Restricted Artifacts prevents, limits, or restricts the construction of the Improvements or use of the Premises in any material respect, the Parties shall work in good faith to amend the Construction Schedule and Master Development Plan, accordingly.

5.10.7 Notwithstanding anything set forth in this Lease to the contrary, the Town shall be responsible to pay all costs and expenses, including reasonable attorney’s fees, incurred by Tenant in connection with the remediation of environmental conditions affecting the Existing Building prior to demolition as described in Section 4.2 hereof. Unless otherwise agreed between the Parties, the Tenant and Other Project Lessees shall obtain quotes from at least three (3) reputable environmental companies (two of which shall be selected by the Town) for the Building Remediation, and shall choose the company with the lowest quote (or within ten percent (10%) of such lowest quote), provided such company is able to perform the Building Remediation in a timely manner consistent with the Construction Schedule. The Town shall make such payment within ten (10) Business Days after invoicing therefor by Tenant.

5.11 Tenant’s Encumbrances. Tenant has the right and authority to record liens and other encumbrances against Tenant’s leasehold interest in the Premises, provided that Tenant shall provide a copy of such liens and encumbrances to the Town prior to such recording. In no event will the Town’s fee ownership interest in the Premises be encumbered by any lien or encumbrance against Tenant’s interest in the Premises, except with respect to the ECCR’s as described in Section 5.7. Subject to the immediately preceding sentence, to the extent necessary, the Town will execute routine status agreements with any lender taking a security interest in Tenant’s leasehold interest in the Premises that acknowledges Tenant’s interest in the Premises and that does not impair or encumber the Town’s fee ownership interest in the Premises. On or after the Lease Commencement Date, the Town will not convey, transfer, assign, grant, record, incur, authorize, or take any other action that creates any mortgages, liens, or other encumbrances on the Town’s ownership interest in the Premises, whether recorded or otherwise, other than routine municipal undertakings, include zoning, taxes, etc., without the prior written approval of Tenant, and in the event any of same arise for any reason, they shall be subordinate to this Lease, and shall be removed by the Town within ten (10) days after arising.

5.12 Risk of Loss. Beginning on the Lease Commencement Date, Tenant shall have the risk of loss for any casualties occurring to all or any portion of the Premises or any improvements constructed thereon. Subject to the provisions of Article 13 hereof, in no event shall the Town or Tenant have any obligation to rebuild or restore any Improvements existing or constructed on the Premises after any casualty.

5.13 Tenant's Force Majeure. The outside dates for any of Tenant's obligations under this Lease shall be extended for delays caused by Force Majeure as defined in Exhibit D. Any such extension shall be day-for-day for the period of Force Majeure. Tenant shall use good faith efforts to notify the Town in writing, within fifteen (15) Business Days of discovery of any Force Majeure event, which notice shall include Tenant's estimate of the length of the delay that will be caused by such Force Majeure event and the actions Tenant is taking to minimize such delay. In all instances, Tenant shall use commercially reasonable efforts to mitigate the length of a delay occurring on account of a Force Majeure event.

ARTICLE 6 TENANT PERMITS DURING DEVELOPMENT

6.1 Amendments to the Development Permits. Tenant shall not make, or permit to be made, a change to the approved Development Permits without the required regulatory approval of applicable Governmental Authorities to the extent required by Applicable Laws. Subject to the provisions of Section 5.1 with respect to required Town Approval of amendments for Material Changes to the Master Development Plan, amendments to the Development Permits shall not require Town Approval.

6.2 Press Releases, Marketing, Signage and Promotional Materials.

6.2.1 The name of the Project shall be the "Middletown Town Center" or such other name as the Developer shall select with Town Approval.

6.2.2 The Town shall have the right to approve the general template for use of the Town's name, logo, or like identifiers. Expressly excluded from this provision are publications, marketing materials, solicitations, and/or informational materials specifically designed by the Tenant to recruit or market to prospective lessees, buyers, investors, lenders, and/or other financial institutions, as to which no requirement to identify the Town shall apply.

6.3 Tenant Status Reports. Tenant shall submit to the Town no later than December 31st and June 30th of each year during the Lease Term until the Tenant obtains a Certificate of Occupancy for at least fifty percent (50%) of the residential units set forth in the Master Development Plan, a report (each, a "**Tenant Status Report**") setting forth the current status of the Residential Project, which shall include, at a minimum, (i) a reasonably detailed account of current progress of construction of the Residential Project; and (ii) any public meetings planned for the Residential Project within the next six (6) month period. In addition, Tenant shall provide such additional status information in each report that the Town may reasonably request from time to time in writing, provided that the Town provides Tenant at least forty-five (45) days' prior notice of its additional requests. Tenant shall include as part of each Tenant Status Report a reasonable number

of construction photographs taken since the last report submitted by Tenant. In the event of a known upcoming delay of more than six (6) months to the Construction Schedule, the Tenant shall provide the Town prior notification (“**Status Report Notification**”).

ARTICLE 7

SCOPE OF TENANT AUTHORITY

7.1 Tenant Decisions. As more fully described below, the Parties agree and acknowledge that Tenant is solely responsible for all decisions related to the Residential Project except such decisions that are retained by the Town herein, if any, where Town Approval is expressly required.

7.2 Scope of Town Approval of Tenant’s Permits. Permits or regulatory approvals required by Applicable Laws, shall be subject to all procedural and substantive provisions of those laws, including but not limited to timelines, substantive standards, procedural requirements, and compliance with the Rhode Island Environmental Quality Act, as applicable. The Town acknowledges that all Development Documents and Development Permits as described in the Development Agreement have been previously approved by the Town; accordingly, other than an amendment to the Master Development Plan requiring approval by the Town pursuant to the provisions of Section 5.1 and Section 5.2 hereof, no further Town Approval shall be required except as required by Applicable Law.

7.3 Approvals in Writing. All approvals or objections required or permitted pursuant to this Lease must be in writing. In no event shall any alleged oral approval of any matter requiring the Town’s approval in its capacity as Landlord under this Lease be binding on the Town.

7.4 No Representation. The Town shall incur no liability by reason of its review of any Development Documents or any reports required to be submitted by Tenant under this Lease or the Development Agreement, and Tenant hereby acknowledges that any such Development documents or other reports reviewed by the Town are solely for the purpose of protecting the Town’s own interests under this Lease.

ARTICLE 8

SUBLEASE AND ASSIGNMENT

8.1 Subleasing of Premises. Tenant shall have the right to lease, rent, license, permit occupancy and/or sublease all or any portion of the Premises to any Person (“**Sublessee**”) for any use consistent with this Lease and Applicable Laws. With respect to all such subleases, licenses and other occupancy agreements entered by Tenant in good faith and in the ordinary course of Tenant’s business, the Town agrees that so long as the Sublessee is not in default uncured within applicable grace and cure periods, if any, under its sublease, license or other occupancy agreement, then the Sublessee will have the right to continued occupancy of the subleased, licensed or occupied premises pursuant to the terms of the sublease, license or other occupancy agreement, notwithstanding any termination of this Ground Lease. Additionally, at Tenant’s request, the Town shall enter into a Non-Disturbance and Attornment Agreement with any such Sublessee, in form attached hereto as Exhibit F or such other form as may be reasonably approved by the Town and such Sublessee, which Non-Disturbance and Attornment Agreement shall be recorded in the Land

Records. The foregoing non-disturbance agreement shall not apply to subleases which are entered into at rents materially below then current rents for other similar units at the Premises at the time such subleases are entered, but may include then current market leasing concessions.

8.1.1 The number of Subleases shall include a certain number of affordable units as specified in the Master Development Plan.

8.2 Assignment of Lease.

8.2.1 The Tenant acknowledges that: (i) the development and operation of the Premises as set forth in the Master Development Plan is important to the general welfare of the community in which the Premises are located; (ii) the qualifications and identity of the Tenant, its principal officers, managers, Members, and partners are of particular importance to the Town; and (iii) the Town is entering into this Lease with the Tenant because of the qualifications and identity of the Developer and its principal officers, managers, members, partners, and Affiliates, and in so entering into this Lease, is willing to accept and rely on the obligations of the Tenant for the faithful performance of all of the Tenant's undertakings and covenants in this Lease. Accordingly, until the Tenant obtains a Certificate of Occupancy for at least fifty percent (50%) of the residential units set forth in the Master Development Plan, Tenant shall not assign this Lease without Town Approval, which shall not be unreasonably withheld, conditioned, or delayed. The Town shall not assign this Lease except in connection with a sale of the Town Land, subject to the provisions of Article 14 hereof.

8.2.2 After the Tenant obtains a Certificate of Occupancy for at least fifty percent (50%) of the residential units set forth in the Master Development Plan, Tenant shall have the right without Town Approval to assign this Lease to a Permitted Assignee, as herein defined, provided such assignment complies with the provisions of this Section 8.2 and the other terms and conditions of this Lease. As used herein, the term "**Permitted Assignee**" shall mean: (i) any Affiliate of Tenant; (ii) any entity which is a parent or subsidiary of Tenant or which controls or which is under common control with Tenant, (iii) any entity with which Tenant merges or consolidates, (iv) any entity which acquires all or substantially all of Tenant's right, title, and interest in this Lease and the Buildings and other Improvements on the Premises, and/or (v) any Leasehold Mortgagee. Notwithstanding that no prior Town Approval shall be required, Tenant shall deliver to the Town not less than ten (10) Business Days before the effective date of any such assignment: (a) written notice of such assignment, which notice shall include all pertinent information regarding the assignee, including documentation evidencing that the assignee is a Permitted Assignee (provided that where, due to confidentiality obligations, written notice cannot be provided prior to an assignment hereunder, Tenant must promptly notify the Town of the assignment upon the underlying transaction being publicly announced); and (b) a written agreement whereby such Permitted Assignee agrees to assume all liabilities and all payment and performance obligations of Tenant under this Lease, and to comply with and be bound by all the terms, covenants, conditions, provisions and agreements of this Lease. In no event shall Tenant be permitted to assign this Lease to a Prohibited Person. The provisions of this Sub-section 8.2.2 shall apply also to a sublease of all or substantially all of the Premises to a sublessee which is a Permitted Assignee.

8.2.3 Tenant shall not have the right to assign this Lease to entities other than a Permitted Assignee without Town Approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Town Approval, once given, shall not negate Tenant's obligation to obtain Town Approval to any further assignment by Tenant or any transferee of Tenant pursuant to this Section 8.2.3.

8.2.4 Except for Permitted Interest Transfers as herein defined, the assignment, transfer, or conveyance of more than 50% of the membership or other beneficial ownership interests (collectively "**Interest**") in Tenant shall be deemed an assignment subject to the provisions of subsections 8.2.1 and 8.2.2 above. As used herein, "**Permitted Interest Transfers**" means the following: (i) transfers of Interest between and among the Members of Tenant existing as of the date of this Lease ("**Existing Members**"); (ii) transfers of Interest between and among Existing Members and their respective family members and/or trusts and other entities established for the benefit of such family members ("**Family Members**"); (iii) transfers of Interest between and among the Existing Members and the Members of any of the Other Project Lessees existing as of the date of this Lease and/or their respective Family Members; and (iv) other transfers of Interest so long as any one or more of (a) James J. Karam (or upon the death or disability of James J. Karam, James M. Karam, or Jeffrey T. Karam); (b) Robert Kempenaar II; and/or (c) Christopher C. Bicho, is in Control of Tenant.

8.3 Release. Upon assignment of this Lease as permitted in Section 8.2 above, the Tenant shall be released, and the assignee shall be deemed to have assumed all obligations of the Tenant under this Lease. The Tenant and assignee shall execute an assignment and assumption agreement in commercially reasonable form evidencing such assumption by assignee.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 Default under this Lease.

9.1.1 Each of the following shall constitute an "**Event of Default**" by Tenant under this Lease:

(1) Monetary Defaults. Tenant shall fail to pay or cause to be paid any Monthly Payment of Annual Base Rent or any other amount required to be paid by Tenant under this Lease, and such default shall continue for thirty (30) days after written Notice from the Town to Tenant specifying such default (a "**Monetary Default**").

(2) Misrepresentation. Any of Tenant's representations and warranties set forth in Section 11.2 hereof is not true and correct in all material respects as of the Lease Commencement Date, and, Tenant fails, within thirty (30) days after notice from the Town, to cure or correct such conditions as may be required to cause such representations to be then true and correct in all material respects.

(3) Insurance. Tenant shall fail to obtain or maintain in effect the Tenant required insurance under this Lease, or pay any insurance premiums, as and when the same

become due and payable, or fails to reinstate, maintain, and provide evidence to the Town of the insurance required to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease, and such failure shall continue for a period of thirty (30) days after written Notice from the Town to Tenant.

(4) Assignment. Tenant shall breach the restriction on assignment set forth in Section 8.2 of this Lease and such breach shall not be remedied within thirty (30) days after written Notice of such breach from the Town to Tenant.

(5) Prohibited Person. Tenant becomes a Prohibited Person due to an action or omission arising from or relating to this Lease or the Premises and Tenant fails to cure such condition by assigning this Lease either to (a) one of the Other Project Lessees which is not a Prohibited Person; or (b) a third party which is not a Prohibited Person and is either a Permitted Assignee or is approved by the Town pursuant to Section 8.2.3 of this Lease.

(6) Bankruptcy. Tenant shall be adjudicated bankrupt and subject to a court approved Chapter 11 plan for liquidation.

(7) Construction Schedule. Tenant shall fail to use good faith diligent efforts to Substantially Complete construction of the Buildings on the Premises in accordance with the terms of this Lease and the Master Development Plan and such failure is not cured within thirty (30) days after written notice by the Town.

(8) Other Default. If Tenant shall breach any material term, covenant or condition of this Lease not specified in the foregoing clauses of this Sub-section 9.1.1 of this Lease, and Tenant shall fail to remedy such breach within thirty (30) days after written Notice by the Town, or if such breach is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, then Tenant shall have such additional period of time as may be reasonably necessary to cure such breach, provided that Tenant commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure.

9.1.2 During the continuance of an uncured Event of Default by Tenant, the Town shall have the following remedies only, which may be exercised at the Town's sole election, but subject in each instance to the rights of any Leasehold Mortgagee under Article 15 hereof or under the terms of any agreement entered into between the Town and such Leasehold Mortgagee, if any:

(A) If (i) the Event of Default is a Monetary Default, or (ii) the Event of Default is due to Tenant becoming a Prohibited Person without cure in accordance with Section 9.1.1.(5) above, then the Town may, subject to Section 9.3, terminate this Lease and retain all consideration paid to date and may collect all amounts then due and owing, subject to the rights of any Leasehold Mortgagee; or

(B) With respect to Events of Default other than as described in Section 9.1.2(A) above, subject to the rights of any Leasehold Mortgagee, the Town may exercise the following remedies: (a) after giving Tenant a notice of its intention to do so at least ten (10) Business Days before the Town's commencing to cure such

Event of Default (or upon such notice as may be practical, if any, in the event of an emergency), cure such Event of Default, at Tenant's sole cost and expense, in which event Tenant shall reimburse the Town its actual out-of-pocket costs for such cure within ten (10) Business Days after demand therefor; or (b) the Town may pursue collection of all Annual Base Rent and all other monetary obligations of Tenant under this Lease as and when due; or (c) the Town may pursue injunctive relief.

9.2 Termination. Notwithstanding anything set forth in this Lease to the contrary, termination of this Lease shall affect the Premises only, and shall not impact in any way the status, existence, or pendency of any of the Other Project Lessees or the ground leases covering any of the Other Project Parcels.

9.3 Additional Termination. Subject to the rights of Tenant under this Lease, and notwithstanding anything herein to the contrary, if, under the Terrorist Acts or Anti-Terrorism Order, as may be supplemented by additional legislation, orders, or regulations, it shall become a violation of Applicable Laws for the Town to do business with Tenant during the term of this Lease, the Town shall be entitled to terminate this Lease after providing ten (10) days written notice to Tenant, unless Tenant is able to cure such condition within thirty (30) days after such notice or if Tenant is able to assign its interest under this Lease to an assignee with which the Town is not prohibited from doing business, provided such assignee is approved by the Town in its reasonable discretion.

9.4 No Waiver by Delay; No Waiver as to Other Defaults. Notwithstanding anything to the contrary contained herein, any delay by the Town in instituting or prosecuting any actions or proceedings with respect to a default by Tenant hereunder or in asserting its rights or pursuing its remedies under this Lease, shall not operate as a waiver of such rights or to deprive the Town of or limit such rights in any way (it being the intent of this provision that the Town shall not be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by the Town hereunder must be made in writing. Any waiver in fact made by the Town with respect to any specific default by Tenant under this Section shall not be considered or treated as a waiver of the Town with respect to any other defaults by Tenant or with respect to the particular default except to the extent specifically waived in writing.

9.5 Rights and Remedies Cumulative. The rights and remedies of the Town under this Lease, whether provided by law, in equity, or by the terms of this Lease, as applicable, shall be cumulative, and the exercise by the Town of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach. Notwithstanding the foregoing or any other provision of this Lease or of Applicable Laws, the Town shall not have the right to terminate this Lease except as expressly permitted in this Article 9.

9.6 Effect of Termination. In the event of a valid termination of this Lease by the Town, provisions of this Lease which are specifically stated herein to continue or survive the termination of this Lease, shall continue to survive as needed to resolve open issues with respect to this Lease. Upon termination, the Town will accept and recognize all then existing subleases at the Premises that are permitted pursuant to the terms of this Lease. The Parties shall otherwise reasonably cooperate to effect an orderly transition of the management of the Premises.

9.7 No Consequential or Punitive Damages. Notwithstanding the provisions of this Article 9 or anything in this Lease to the contrary, in no event shall the Town or Tenant ever be liable for any consequential, indirect, punitive, or special damages; provided, however, that this Section 9.7 shall not be deemed to preclude or prevent the collection of any fees or monetary penalties expressly provided for in this Lease.

9.8 Default Interest and Late Charges.

9.8.1 All payments that Tenant is obligated to make under this Lease, including without limitation, Monthly Payments of Annual Base Rent, which are not paid within thirty (30) days after notice from the Town to Tenant, shall bear interest from its due date until payment in full, at a rate of four percent (4%) over the prime rate charged by the principal commercial banks in the city of New York as of the date the payment is due. Should the interest be held as usurious, then interest shall be deemed to have accrued at and continue to accrue at the maximum rate of interest permissible under Rhode Island law.

9.8.2 Should Tenant fail to make a Monthly Payment of Annual Base Rent, and such failure continues for ten (10) days after notice from the Town to Tenant, then Tenant shall also pay to the Town a sum to recover the Town's administrative expenses, attorneys' fees and collection costs equal to Fifty Dollars (\$50.00) per day until paid.

9.8.3 Anything contained in this Section 9.8 regarding the payment of overdue amounts shall not constitute an extension of the due date of any amount Tenant is obligated to pay under this Lease, nor or shall it constitute a waiver of Tenant's obligation to pay such amounts as provided in this Lease.

ARTICLE 10 INSURANCE

10.1 Insurance. Tenant will maintain insurance on the Premises of the following character:

10.1.1 Upon Substantial Completion of the Buildings, all risk property insurance in standard form with typical endorsements in an amount not less than one hundred percent (100%) replacement cost;

10.1.2 Commercial general liability insurance and/or umbrella liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises in the minimum amounts of \$2,000,000 aggregate coverage;

10.1.3 Worker's compensation insurance to the extent required by the Rhode Island law (or, to the extent permitted by Laws, Tenant may self-insure with respect to worker's compensation insurance);

10.1.4 Pollution Legal Liability insurance in the minimum amount of \$5,000,000 in form and substance satisfactory to the Town in its reasonable discretion which insurance shall not be reduced or terminated without the prior written consent of the Town;

10.1.5 Such insurance shall be written by companies legally allowed to do business in Rhode Island and rated at least A-1 in the most current available AM Best's Key Rating Guide or any successor thereto; and the commercial general liability and pollution legal liability insurances shall designate the Town as an additional insured.

10.2 Insurance During Construction. During any material construction work at the Premises by Tenant, Tenant must have in force the following insurance policies:

10.2.1 "builders' risk" insurance which provides coverage for any construction work estimated to be over \$500,000.00.

10.2.2 Workers' Compensation from the State Insurance Fund Corporation in such coverage amounts as required by law.

10.3 Insurance Policy Increase. Tenant will pay any premium increase required by an insurance company to cover additional risks resulting from any alteration, change, addition, or infrastructure improvement made by Tenant to the Premises.

10.4 Evidence of Payment; Renewal of Policies. Tenant will deliver to Town satisfactory evidence of payment of the insurance premiums within fifteen (15) days of the respective renewal dates of the respective policies and at the same time submit the corresponding insurance certificate for each renewed policy.

10.5 Claims. Tenant shall have the right, in its sole discretion, to handle all insurance claims, including the preparation of damage reports and other documents required to process the claim, and including settlement of all claims. If requested by Tenant, the Town will cooperate with Tenant in the claims process, without cost or liability to the Town.

10.6 Periodic Reviews. Town reserves the right to review and demand periodic increases in the limits of the commercial general liability coverage required in this Lease to the extent consistent with then industry standards resulting from Tenant's specific use of the Premises and of inflation.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Town. As of the Effective Date, the Town hereby represents and warrants to Tenant as follows:

11.1.1 The Town (i) has all requisite right, power, and authority to execute and deliver this Lease and to perform its obligations under this Lease, and (ii) has taken all necessary action to authorize the execution, delivery, and performance of this Lease. This Lease has been duly executed and delivered by the Town and constitutes the legal, valid, and binding obligation of the Town, enforceable against it in accordance with its terms. The Person signing this Lease on behalf of the Town is authorized to do so.

11.1.2 The execution, delivery, and performance by the Town of this Lease and the transactions contemplated hereby and the performance by the Town of its obligations hereunder will not violate any of the terms, conditions, or provisions of (i) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or Law to which the Town is subject, or (ii) any agreement or contract to which the Town is a party or to which it is subject.

11.1.3 No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery, and performance of this Lease by the Town.

11.1.4 The Town has not dealt with any agent, broker, or other similar Person in connection with the transfer of the interests in the Premises as provided herein.

11.1.5 There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending, or to the Town's knowledge, threatened against the Town that relates to this Lease or the Premises.

11.1.6 The Town owns the Premises in fee simple, without any liens, easements, covenants, conditions, restrictions, or other encumbrances which would or could in any way limit, restrict, or otherwise impact or affect the right of Tenant to use or develop the Premises for the Permitted Use in accordance with the terms of this Lease.

11.2 Representations and Warranties of Tenant. As of the Effective Date, Tenant hereby represents and warrants to the Town as follows:

11.2.1 Tenant is a corporation or limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the State of Rhode Island to conduct the business in which it is now engaged.

11.2.2 Intentionally Omitted.

11.2.3 Tenant has the full right, power, and authority to acquire its interests in the Premises as provided in this Lease and to carry out Tenant's obligations hereunder, and all requisite action necessary to authorize Tenant to enter into this Lease and to carry out its obligations hereunder have been taken. This Lease has been duly executed and delivered by Tenant and constitutes the legal, valid, and binding obligation of Tenant, enforceable against Tenant in accordance with its terms. The Person signing this Lease on behalf of Tenant is authorized to do so.

11.2.4 No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained or will not be obtained, is required in connection with the execution, delivery, and performance of this Lease by Tenant.

11.2.5 The execution, delivery, and performance of this Lease by Tenant and the transactions contemplated hereby and the performance by Tenant of its obligations hereunder do not violate any of the terms, conditions, or provisions of (i) Tenant's organizational documents, (ii) any judgment, order, injunction, decree, regulation or ruling of any court or other Governmental Authority, or Law to which Tenant is subject, or (iii) any agreement or contract to which Tenant is a party or to which it is subject.

11.2.6 Tenant has not dealt with any agent or broker who would be entitled to any commission or fee in connection with this Lease.

11.2.7 There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or threatened in writing against Tenant which, if decided adversely to Tenant, (i) would impair Tenant's ability to enter into and perform its obligations under this Lease, or (ii) would materially and adversely affect the financial condition or operations of Tenant.

11.2.8 Tenant is entering into this Lease and will enter into the Lease for the purposes contemplated therein and not with the view of speculating in land holding or transferring its interest in the Lease except as permitted thereunder.

11.2.9 Neither Tenant nor any of its Members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

11.2.10 Anti-Money Laundering; Anti-Terrorism.

(1) Tenant has not, and to Tenant's knowledge, no Tenant Affiliate has engaged in any dealings or transactions (i) in contravention of the applicable anti-money laundering Laws, regulations, or orders, including without limitation, money laundering prohibitions, if any, set forth in the Bank Secrecy Act (12 U.S.C. Sections 1818(s), 1829(b) and 1951-1959 and 31 U.S.C. Sections 5311-5330), the USA Patriot Act of 2001, Pub. L. No. 107-56, and the sanction regulations promulgated pursuant thereto by U.S. Treasury Department Office of Foreign Assets Control (collectively, together with regulations promulgated with respect thereto, the "**Anti-Money Laundering Acts**"), (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("**Anti-Terrorism Order**"), (iii) in contravention of the provisions set forth in 31 C.F.R. Part 103, the Trading with the Enemy Act, 50 U.S.C. Appx. Section 1 et seq. or the International Emergency Economics Powers Act, 50 U.S.C. Section 1701 et seq. (together with the Anti-Money Laundering Acts, the "**Terrorist Acts**"), or (iv) is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time.

(2) To Tenant's knowledge, neither Tenant nor any other Tenant Affiliate (a) is conducting any business or engaging in any transaction with any Person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A, or is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time, or (b) is a Person described in Section 1 of the Anti-Terrorism Order (a "**Restricted Person**").

ARTICLE 12 NOTICES

To be effective, any notice to be given under this Lease (a "**Notice**") shall be in writing and delivered by email, certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to the Town at the following addresses:

To: Shawn J. Brown, CPA, CFE
Town Administrator
Town of Middletown
350 East Main Road
Middletown, Rhode Island 02840

With a copy to: Ronald Wolanski, AICP
Town Planner
Town of Middletown
350 East Main Road
Middletown, Rhode Island 02840

With a copy to: Peter Brent Regan, Esq.
Sayer Regan & Thayer, LLP
130 Bellevue Avenue
Newport, Rhode Island 02840

Any Notices to be given under this Lease to Tenant shall be in writing and delivered by certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to Tenant at the following addresses:

To: Landings Capital and Development, LLC
543 Thames Street
Newport, Rhode Island 02840
Attention: Christopher C. Bicho

With a copy to: Nixon Peabody LLP
799 Ninth St., NW
Suite 500
Washington, DC 20001
Attention: Colette A. Dafoe

With a copy to: Girard Galvin, Esq.
 Galvin Law, Ltd.
 10A Washington Square
 Newport, Rhode Island 02840

Either Party may change the recipients or addresses to which notice shall be given by written Notice to the other Party. Notices which shall be served in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the date of actual delivery; (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof, or (iv) if by email, when sent with evidence of receipt by the addressee Party. If notice is tendered under the terms of this Lease and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Lease.

ARTICLE 13

CASUALTY AND CONDEMNATION

13.1 Casualty.

13.1.1 In the event that during the Term any building and/or structure on the Premises shall be damaged or destroyed by fire or other casualty, this Lease shall remain in full force and effect and Tenant shall have the right to expend so much of any available insurance proceeds as may be necessary to restore the Buildings and other Improvements to substantially the same condition as existed prior to such casualty, or to such other manner and condition as Tenant may, in its sole discretion, determine, provided same shall comply with all Applicable Laws and be in accordance with all Permits necessary to be obtained from any applicable Governmental Authorities. Tenant shall not be responsible for any delay which may result from any cause beyond the reasonable control of Tenant. Should the net amount of insurance proceeds made available to Tenant be insufficient to cover the cost of restoring any Building and/or other Improvements on the Premises, or if rebuilding or reconstructing the Buildings or other Improvements is otherwise not economically feasible, Tenant may, but shall have no obligation to, supply the amount of such insufficiency and restore the Buildings and/or Improvements with all reasonable diligence, or Tenant may terminate this Lease by giving written notice to the Town within sixty (60) days of Tenant determining the estimated net amount of insurance proceeds available to Tenant and the estimated cost of such restoration. In case of damage or destruction as a result of a risk that is not covered by insurance available to Tenant, Tenant shall be entitled to rebuild the Building and/or Improvements, all as aforesaid, unless Tenant, within sixty (60) days after the determining the anticipated cost of such restoration, gives written notice to the Town of Tenant's election to terminate this Lease, in which event this Lease shall be deemed terminated without recourse to the Parties hereto.

13.1.2 In the event that the Tenant elects not to repair or replace the portion of the Premises, Buildings, and/or Improvements so damaged, Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice to the Town (the "**Casualty Termination Notice**"). After delivery of the Casualty Termination Notice to the Town,

Tenant shall (i) use so much of the net insurance proceeds as may be available to make temporary repairs for the protection of the Improvements to the extent required by Applicable Laws; and (ii) within one hundred twenty (120) days after giving such notice, Tenant will deliver possession of the Premises to the Town, subject to the rights of any subtenants and occupants.

13.2 Condemnation.

13.2.1 If all or substantially all of the Premises and/or the Buildings or other Improvements constructed thereon shall be taken or condemned under eminent domain proceedings, then the Term of this Lease shall cease and terminate when the Premises and/or any Buildings and/or other Improvements on the Premises is taken. All payment obligations of Tenant hereunder shall cease as of said termination date.

13.2.2 If, upon the taking of a portion of the Premises, and/or any Building, structure or other Improvement located thereon, (i) the total interior floor area remaining in any such building or structure or the Premises shall be reduced to less than ninety-five percent (95%) of such areas at the commencement of the Term hereof; or (ii) any portion of the Premises other than within any building shall be taken such that access to the Premises or the Building(s) thereon is affected in any material adverse manner, or if the number of parking areas available on the Premises (or otherwise available at the Project for the benefit of the Premises) is reduced by more than five percent (5%) or is otherwise reduced so as to affect the use of the Premises in any material adverse respect; or (iii) Tenant determines in its good faith reasonable judgment that it is not economically feasible to repair or reconstruct the portion of the Premises or Buildings so remaining after such taking, or that the taking is of such a scope that the untaken portion of the Premises is insufficient to permit the restoration of the Improvements and the operation of Tenant's business thereon, then at the election of Tenant, this Lease may be terminated without recourse to the Parties, as of the date when Tenant is required to vacate the portion of the Premises so taken. Notwithstanding anything set forth in this Lease, in the event this Lease is not terminated, and Tenant remains in operation, all Annual Base Rent due hereunder shall be equitably adjusted based on the portion of the Premises or Buildings or other Improvements remaining as affected by any taking.

13.2.3 In any event, Tenant shall have no claim against the Town by reason of such taking or termination except in the event that such eminent domain proceedings are initiated by the Town or any authority or division or department thereunder (a "**Town Taking**"). Except in the event of a Town Taking, to the extent permitted by Applicable Laws, the Town and Tenant shall use good faith efforts to prosecute and settle the proceedings for the determination and payment of the award payable on account of any such taking, provided, however, nothing contained in this Lease shall prevent either Party from prosecuting claims in any condemnation or eminent domain proceedings for the value of their respective interests. Notwithstanding anything set forth herein to the contrary, in no event shall the Town be entitled to any award if the taking or eminent domain proceeding is a Town Taking, in which event the Tenant shall be entitled to all awards on account of such taking.

13.2.4 In the event Tenant elects to continue the Lease and rebuild and restore the Premises in accordance with the Master Development Plan, as amended, a just and equitable abatement of Annual Base Rent shall apply until such restoration is complete, provided that Tenant uses prompt and diligent efforts to complete such restoration work, and provided further that Tenant continues to pay all Tenant expenses set forth in Article 5 hereof and all other costs and expenses which Tenant is obligated to pay hereunder.

ARTICLE 14

TENANT RIGHTS OF ASSUMPTION AND FIRST REFUSAL TO PURCHASE AND LEASE

14.1 Right to Assume Ground Lease of the Retail Parcel or Hotel Parcel Upon Termination. Notwithstanding anything set forth herein or elsewhere in this Lease to the contrary, in the event that the Ground Lease of the Retail Parcel and/or the Ground Lease of the Hotel Parcel are terminated (herein called a “**Terminated Lease**” or “**Terminated Lease Parcel**”, as appropriate) for any reason, Tenant shall have the right to assume the Ground Lease of the Terminated Lease Parcel, as applicable (the “**Assumption Right**”), which shall be subject to the rights of any Leasehold Mortgagee of such Terminated Lease Parcel. The Assumption Rights may be exercised as set forth in this Section 14.1, and any Assumption Party (as herein defined) may designate an Affiliate to exercise its Assumption Right as the Assumption Party.

14.1.1 The Town shall give prompt written notice (“**Termination Notice**”) to Tenant and to the Other Project Lessees, excluding the lessee under the Terminated Lease (collectively, the “**Assumption Parties**”, and individually, an “**Assumption Party**”).

14.1.2 Each of the Assumption Parties may exercise its respective Assumption Right of the Terminated Lease by giving written notice of such intent to assume the Terminated Lease (“**Assumption Exercise Notice**”) within sixty (60) days after receipt of the Termination Notice.

14.1.3 If one or more than one of the Assumption Parties exercises its Assumption Right by timely delivery of the Assumption Exercise Notice, then such exercising Assumption Party or Assumption Parties shall proceed to assume the Terminated Lease (as if it had not been terminated), or upon request by the Assumption Party or Assumption Parties, the Town and the Assumption Party or Assumption Parties shall execute a new lease upon the same terms and conditions as the Terminated Lease, but providing for the revival of any rights and/or options which may have lapsed due to the tenant’s action or inaction under the Terminated Lease. If more than one of the Assumption Parties delivers an Exercise Notice, then their assumption shall be joint and several, unless the Assumption Parties, between themselves, decide otherwise.

14.1.4 Notwithstanding anything to the contrary herein, any Assumption Right by an Assumption Party with regard to the Terminated Lease Parcel shall be subject and subordinate to all rights of the Leasehold Mortgagee under the Terminated Lease.

14.2 Right of First Refusal to Purchase Premises and Town Land. If the Town receives a bona-fide third party offer (“**Offer**”) to sell all or any portion of the Town Land including

without limitation, the Town Parcel ("**Sale Property**") which the Town desires to accept (whether or not the Offer has then been accepted in writing), then the Tenant and the Other Project Lessees shall have the right of first refusal ("**Purchase Right**") to purchase the Sale Property, which may be exercised as set forth in this Section 14.2, and any Purchase Party (as herein defined) may designate an Affiliate to exercise its Purchase Right as the Purchase Party.

14.2.1 The Town shall give prompt written notice ("**Sale Notice**") to Tenant and each of the Other Project Lessees (collectively, the "**Purchase Parties**", and individually, a "**Purchase Party**"), which Sale Notice shall outline in reasonable detail the terms of the Offer, and if a written offer is in effect, a copy of the written Offer shall be included.

14.2.2 Each of Tenant and the Other Purchase Parties may exercise their respective Purchase Right by giving written notice of such intent to exercise such Purchase Right ("**Purchase Exercise Notice**") within sixty (60) days after receipt of the Sale Notice, and subsequently negotiating with the Town within one hundred eighty (180) days a mutually satisfactory purchase and sale agreement on the terms set forth in the Offer.

14.2.3 If one or more than one of the Purchase Parties exercises its Purchase Right by timely delivery of the Exercise Notice, then such exercising Purchase Party or Purchase Parties shall proceed to purchase the Sale Property on the terms set forth in the Offer, as further described in the mutually satisfactory purchase and sale agreement within one-hundred-eighty (180) days after execution of the purchase and sale agreement. If more than one of the Purchase Parties timely delivers a Purchase Exercise Notice, then their purchase shall be joint and several unless the exercising Purchase Parties, among themselves, decide otherwise; provided, however, if the Town Land is subdivided such that the Residential Parcel, Retail Parcel, and Hotel Parcel are to be sold as individual lots, then the Lessee of the Parcel being sold shall have the right to itself solely exercise the Purchase Right with respect to that Parcel.

14.2.4 If none of the Purchase Parties timely exercises its Purchase Right, or fails to purchase the Sale Property in accordance with its Purchase Right, then the Town shall have the right to sell the Sale Property to such third party subject to this Lease and the other Ground Leases on the terms set forth in the Offer, provided such sale occurs within eight (8) months after the Sale Notice. If such sale does not occur on the terms set forth in the Offer within such eight (8) month period for any reason, or if the Town desires to sell the Sale Property on terms which differ in any material respect from the Offer, then the Purchase Right set forth in this Section 14.2 shall be reinstated on the terms set forth herein.

14.3 Right of First Refusal to Lease Town Land. If the Town receives a bona-fide third party offer ("**Lease Offer**") to lease the Town Parcel or all or any portion of the Town Land which is not then subject to this Lease or to a lease on the Other Project Parcels ("**Town Leasable Property**") which the Town desires to accept (whether or not the Lease Offer has then been accepted in writing), then the Tenant and the Other Project Lessees shall have the first right to lease the Town Leasable Property ("**Lease Right**"), which may be exercised as set forth in this Section 14.3, and any Lease Party (as herein defined) may designate an Affiliate to exercise its Lease Right as the Lease Party.

14.3.1 The Town shall give prompt written notice (“**Lease Notice**”) to Tenant and each of the Other Project Lessees (collectively, the “**Lease Parties**”, and individually, a “**Lease Party**”), which Lease Notice shall outline in reasonable detail the terms of the Lease Offer, and if a written offer is in effect, a copy of the written Lease Offer shall be included. In all events, the Lease Offer shall not permit any Prohibited Uses, nor shall it permit any uses which would not be consistent with the zoning overlay governing the Town Land as approved by the Town.

14.3.2 Each of the Lease Parties may exercise their respective Lease Right by giving written notice of such intent to exercise such Lease Right (“**Lease Exercise Notice**”) within sixty (60) days after receipt of the Lease Notice, and subsequently negotiating with the Town within one hundred eighty (180) days a mutually satisfactory lease consistent with the terms of the Lease Offer.

14.3.3 If one or more than one of the Lease Parties exercises its Lease Right by timely delivery of the Lease Exercise Notice, then such exercising Lease Party shall proceed to lease the Town Leasable Property on the terms set forth in the Lease Offer, as further described in the mutually satisfactory lease, within one hundred eighty (180) days after delivery of the Lease Exercise Notice. If more than one of the Lease Parties timely delivers the Lease Exercise Notice, then their lease shall be joint and several unless the exercising Lease Parties, between themselves, decide otherwise.

14.3.4 If none of the Lease Parties timely exercises its Lease Right or fails to lease the Town Leasable Property in accordance with its Lease Right, then the Town shall have the right to lease the Town Leasable Property to such third party, provided such lease occurs within eight (8) months after the Lease Notice. If such lease does not occur within such eight (8) month period for any reason, or if the Town desires to lease the Town Leasable Property on terms which differ in any material respect from the Lease Offer, then the Lease Right set forth in this Section 14.3 shall be reinstated on the terms set forth herein.

ARTICLE 15 LEASEHOLD MORTGAGES

Tenant shall have the right at any time and from time to time to obtain financing secured in whole or in part by its leasehold interest in this Lease, and in connection therewith to mortgage, encumber and/or otherwise assign the leasehold interest herein demised upon such terms, conditions and maturity as the Tenant shall determine, and to enter into all renewals, modifications, consolidations, replacements and extensions of such leasehold financing (“**Leasehold Mortgage**”).

As long as any Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply for the benefit of Tenant and the holder of the Leasehold Mortgage and its successors and assigns (“**Leasehold Mortgagee**”) notwithstanding anything else to the contrary contained in this Lease:

(i) Upon written notice given by Tenant to Town that Tenant has assigned its interest under this Lease or otherwise granted a Leasehold Mortgage, the Town shall give

the Leasehold Mortgagee written notice of any default by Tenant under this Lease. There shall be added to any grace period allowed by the terms of this Lease to Tenant for curing any default, an additional ninety (90) days in the case of default of Monthly Payments of Annual Base Rent and an additional one hundred twenty (120) days in the case of all other defaults, for Leasehold Mortgagee to cure the same beyond the time allowed to Tenant, except that for any such default other than a default in payment of Monthly Payments of Annual Base Rent, such one hundred twenty (120) day period shall be extended for such additional time as may be required to cure such default, and for the Leasehold Mortgagee to succeed to Tenant's interest under this Lease by foreclosure or otherwise, provided that Leasehold Mortgagee has commenced the cure of such default or initiated proceedings to acquire Tenant's interest under this Lease during the one hundred twenty (120) day cure period.

(ii) The Town shall not seek to assert any default against a Leasehold Mortgagee which default(s) is/are personal to the within-named Tenant, provided, however, that this shall not be construed to relieve any party from payment of rent, taxes and water and sewer charges or insurance premiums. In no event shall the continuation of this Lease be conditioned on defaults that are personal to Tenant being cured by Leasehold Mortgagee.

(iii) No Leasehold Mortgagee shall be or become liable to the Town as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by the Town and Leasehold Mortgagee or such liability (in which event the Leasehold Mortgagee's liability shall be limited to matters occurring during the period of time during which it is the owner of the leasehold estate created hereby); provided, however, that an assumption shall be assumed upon a foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Lease. The liability of Leasehold Mortgagee (or its designee) hereunder (including following the foreclosure of the mortgage) shall be limited to its interest in the Premises and Leasehold Mortgagee (or its designee) shall automatically be released from such liability from and after the date it no longer holds an interest in the Premises.

(iv) In the event of transfer of the Tenant's interest under the Lease to any Leasehold Mortgagee or its designee, the Leasehold Mortgagee shall have the right thereafter to freely assign the Tenant's interest under this Lease, without Town Approval, to any assignee provided such assignee is not a Prohibited Person. Subsequent to the assignment of Tenant's interest by Leasehold Mortgagee or its designee to any assignee, the Town shall look only to the named Tenant and the successors and assigns of Leasehold Mortgagee or its designee, as applicable, for performance of Tenant's obligations under the Lease.

(v) The Town shall give the Leasehold Mortgagee such agreements as may be reasonably requested to facilitate the Tenant's financing provided same are in form

reasonably acceptable to the Town and do not adversely affect the Town's right to be paid Base Rent and obtain enforcement under the Lease.

(vi) This Lease may not be terminated in the event of a casualty or condemnation without the prior consent of Leasehold Mortgagee.

(vii) If the Lease is terminated for any reason, provided that all Monthly Payments of Annual Base Rent then due and payable have been paid by Tenant or any Leasehold Mortgagee, the Town shall, upon the written request of the Leasehold Mortgagee, execute a new Lease with the Leasehold Mortgagee or its successors and assigns, upon the same terms and conditions as this Lease (but providing for the revival of any rights and/or options which may have lapsed due to the Tenant's action or inaction under the Lease) and such new Lease shall have the same relative priority in right, title and interest in and to the Premises as under this Lease.

(viii) So long as a Leasehold Mortgage encumbers the Premises: (a) all insurance proceeds payable in connection with any casualty, damage or destruction to any portion of the Premises to which the Tenant is entitled and/or any awards or sales proceeds which are attributable to any Improvements in the event any portion of the Premises is taken in any proceedings by public authorities (by condemnation or otherwise) or is acquired for public or quasi-public purposes by sale in lieu thereof, shall be applied as provided for under the provisions contained in the Leasehold Mortgage and the Town hereby subordinates any right that it may have to such proceeds, to the rights and liens of the Leasehold Mortgagee in and to such proceeds; (b) such payment must not be less than the total award minus the value of the remainder interest in the fee considered as unimproved; (c) in the event of a partial taking, Tenant shall be permitted to rebuild and restore the Improvements unless the Leasehold Mortgagee consents to distribution of such proceeds; (d) Leasehold Mortgagee shall be permitted to participate on tenant's behalf in the adjustment of losses and settlement.

(ix) If Tenant defaults as mortgagor under a Leasehold Mortgage, such default under the Leasehold Mortgage shall not in and of itself constitute an Event of Default under this Lease, except to the extent that Tenant's acts or omissions, in and of themselves, constitute an Event of Default under the express terms of this Lease.

(x) The Town shall not unreasonably withhold consent to any change in the form of this Ground Lease reasonably requested by any Leasehold Mortgagee provided such change does not impose any additional liability or obligation on the Town, or reduce the Term of the Lease or the Rents payable to the Town hereunder, and does not otherwise adversely affect the benefits to be derived by the Town under this Lease.

(xi) In the event Tenant pursues U.S. Department of Housing & Urban Development ("HUD") financing, Landlord agrees to comply with, all rules, regulations and requirements issued or promulgated by HUD governing any current or future HUD insured mortgage financing to which the Premises may now or hereafter be subject, including the HUD Program Requirements (as such term is used in the HUD Lease Addendum-Multifamily (Exp. 9/30/2021)). Landlord and Tenant expressly agree to

incorporate such addendums to this Lease as may be required by HUD or any other governmental agency or authority in connection with any financing of the Premises, and also to maintain and operate the Premises in accordance with any requirements of HUD or other governmental agency and authority that would apply in connection with a mortgage financing of the Premises.

With respect to financing obtained by Tenant secured by any Leasehold Mortgage, the Town shall not have any liability for, nor shall Town be required to execute any documents or agreements which would render the Town liable for, repayment of any such financing.

ARTICLE 16 MISCELLANEOUS

16.1 Information as to Members; Maintenance Books and Accounts.

16.1.1 Tenant shall keep books and accounts of its operations and transactions relating to the Premises separate and distinct from any other property or business enterprise owned or operated by Tenant (or any Member or Affiliate of Tenant).

16.1.2 Upon request by the Town, Tenant shall provide to the Town the identity of all Members of Tenant holding twenty-five percent (25%) or more of the membership Interest in Tenant.

16.2 Town Cooperation. Town will keep Tenant informed of all communications related to the Premises and or the activities contemplated by this Lease, including by providing copies of documents sent and received related to the Premises, invitations to meetings (in person or otherwise) related to the Premises, and copies of all environmental documents prepared or received related to the Premises.

16.3 Estoppel Certificates. The Parties shall, from time to time, within seven (7) Business Days of request in writing of the other Party, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the Party delivering the estoppel certificate views them), that (i) this Lease is in full force and effect; (ii) this Lease has not been modified or amended (or if it has, a list of the amendments); (iii) to such Party's knowledge, the Party requesting the estoppel certificate is not then in default under this Lease; (iv) to such Party's knowledge, the Party requesting the estoppel certificate has fully performed all of its respective obligations hereunder (or, if it has not, identifying any such failures to perform); and (v) such other statements as reasonably may be required by any Party or, as to Tenant, any other appropriate party such as its partners, lenders, or investors providing funding for the Project.

16.4 No Personal Liability. No Person other than the Parties to this Lease, and the permitted assignees of such Parties, shall have any liability or obligation under this Lease. Without limiting the generality of the foregoing, (i) Tenant agrees that no employee, officer, director, official, consultant, contractor, agent or attorney engaged by the Town in connection with this Lease or the transactions contemplated by this Lease shall have any liability or obligation to Tenant under this Lease or otherwise relating to this Lease or the Premises or the Other Project Parcels and (ii)

the Town agrees that no Member, nor any direct or indirect holder of any equity or other beneficial ownership interest in Tenant, nor any officer, director, employee, consultant, contractor, agent or attorney engaged by Tenant in connection with this Lease or the transactions contemplated by this Lease, shall have any liability or obligation to the Town under this Lease or otherwise relating to this Lease or the Premises or the Other Project Parcels.

16.5 Titles of Articles and Sections. Titles and captions of the several parts, articles and sections of this Lease are inserted for convenient reference only and shall be disregarded in construing or interpreting provisions under this Lease.

16.6 Singular and Plural Usage. Whenever the sense of this Lease so requires, the use herein of the singular number shall be deemed to include the plural, and the use of the plural shall be deemed to include the singular.

16.7 Applicable Law; Jurisdiction. This Lease shall be construed in accordance with and governed by the laws of the State of Rhode Island, without reference to the conflicts of Laws provisions thereof. Any suit, action, proceeding or claim relating to this Lease or the transactions contemplated by this Lease shall be brought exclusively in the United States District Court for the State of Rhode Island, or the Superior Court for the State of Rhode Island, and the Town and Tenant agree that such courts are the most convenient forum for resolution of any such action and further agree to submit the jurisdiction of such courts and waive any right to object to venue in such courts.

16.8 Entire Agreement. This Lease constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings related to the subject matter hereof. All Exhibits hereto are incorporated herein by reference regardless of whether so stated.

16.9 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

16.10 Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a day that is not a Business Day is automatically extended to the next Business Day.

16.11 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of, the successors and assigns of the Town and Tenant, and where the term “Tenant” or “Town” is used in this Lease, it shall mean and include their respective permitted successors and assigns.

16.12 Third Party Beneficiary. No Person shall be a third-party beneficiary of this Lease.

16.13 WAIVER OF JURY TRIAL. ALL PARTIES HERETO HEREBY, AND ALL PERSONS ACCEPTING AN INTEREST IN THE PREMISES THEREBY, WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS LEASE OR THE TRANSACTIONS CONTEMPLATED BY THIS LEASE.

16.14 Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Lease.

16.15 Modifications and Amendments. None of the terms or provisions of this Lease may be changed, waived, modified, or terminated except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or termination is asserted and no such modification, amendment, cancellation, or termination of this Lease shall be made without the prior written consent of any Leasehold Mortgagee. The Town shall not accept a voluntary surrender of this Lease by Tenant without the prior written consent of Leasehold Mortgagee. None of the terms or provisions of this Lease shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

16.16 Anti-Deficiency. Tenant acknowledges that the Town cannot enter into any financial obligations under this Lease without the lawful availability of funds and absent compliance with all other Applicable Laws. Tenant acknowledges and agrees that the obligation of the Town to fulfill financial obligations of any kind pursuant to any and all provisions of this Lease relating to any public funds, or any subsequent agreement entered into pursuant to this Lease or referenced herein relating to any public funds are and will remain subject to the provisions of the State's Anti-Deficiency Act, as the foregoing statutes may be amended from time to time. Any provision herein contained that violates the State's Anti-Deficiency Acts may be waived, at the Town's sole discretion, to the extent such waiver is permissible under law.

16.16.1 Notwithstanding the foregoing, no officer, employee, director, member, or other natural person or agent of the Town shall have any personal liability in connection with the breach of this Lease.

16.16.2 This Lease shall not constitute an indebtedness of the Town, nor shall it constitute an obligation for which the Town is obligated to levy or pledge any form of taxation or for which the Town has levied or pledged any form of taxation.

16.17 Submission of Lease. The submission by either Party to the other of this Lease in unsigned form shall be deemed to be a submission solely for the other Party's consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option, and shall not confer any rights upon the recipient or impose any obligations upon the submitting Party, irrespective of any reliance thereon, change of position or partial performance.

16.18 Severability. If any provision of this Lease is held to be illegal, invalid, or unenforceable under present or future Applicable Laws, such provisions shall be fully severable; this Lease shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Lease; and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Lease, unless this construction would constitute a substantial deviation from the general intent of the Parties as reflected in this Lease. Furthermore, there shall be added automatically as a part of this Lease a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

16.19 No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Tenant and the Town, it being understood and agreed that neither the method of computation of any participation nor any other provision contained herein, nor any acts of the Parties hereto shall be deemed to create any such relationship.

16.20 Time is of the Essence. Time is of the essence with respect to all matters set forth in this Lease. For all deadlines set forth in this Lease, the standard of performance for the Party required to meet such deadlines shall be strict adherence and not reasonable adherence subject to Force Majeure in all such cases.

16.21 Interest. In the event a Party fails to timely pay to or reimburse the other Party within ten (10) days after demand for any amounts due pursuant to this Lease, or a Party advances any amounts to pay or satisfy any obligations of the other Party under this Lease (including, without limitation in curing any default of the other Party), such amounts shall accrue interest at the rate of eight percent (8%) per annum (or the highest rate permitted by law, if less), from the date which is ten (10) days after demand until paid or reimbursed by the other Party.

16.22 Releases.

16.22.1 As additional consideration for the Town's entry into this Lease, Tenant does hereby release and forever discharge the Town and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "**Town Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which Tenant may now have or claim to have against the Town Released Parties as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon the Town's treatment of Tenant, the Premises, this Lease, and any documents executed in connection herewith (including any term sheets, business terms, letters of intent or memoranda of understanding), or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the Parties up to and including the Effective Date. The agreement and covenant on the part of Tenant under this Section 16.22.1 is contractual and not a mere recital.

16.22.2 As additional consideration for Tenant's entry into this Lease, the Town does hereby release and forever discharge Tenant and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "**Tenant Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which the Town may now have or claim to have against Tenant Released Parties as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon the Town's treatment of Tenant, the Premises, this Lease, and any documents executed in connection herewith (including any term sheets, business terms, letters of intent or memoranda of understanding) or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the Effective Date. The agreement and covenant on the part of the Town under this Section 16.22.2 is contractual and not a mere recital.

16.23 No Construction Against Drafter. This Lease has been negotiated and prepared by the Town and Tenant and their respective attorneys and, should any provision of this Lease require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

16.24 Town Liability. Any review, analysis, examination, investigation or approval or consent by the Town pursuant to the terms of this Lease or otherwise in connection with the Project or the Premises is solely for the benefit of the Town and shall not be relied upon or construed by Tenant or any other Person as acceptance by the Town of any responsibility or liability therefor as to completeness or sufficiency thereof for any particular purpose or compliance with any Applicable Laws or other governmental requirements. In furtherance of the foregoing, the grant of consent or approval by the Town under this Lease shall be intended solely to satisfy the Town's rights under this Lease and for no other purposes.

16.25 Limited Recourse to the Parties. Subject to the additional limitations set forth in this Lease, any damages and claims against the Town or Tenant relating in any way to this Lease or the obligations contemplated hereunder, shall be limited to the value of their respective interests in the Premises.

16.26 Confidentiality. The following provisions are applicable to requests filed under the Rhode Island Access to Public Records Act and the regulations promulgated thereunder ("**APRA**") or any similar Law for information regarding this Lease or any communications, documents, agreements, information, or records with respect to this Lease:

16.26.1 Communications, documents, agreements, information, and records that qualify as "**Confidential Information**" under APRA or other Law provided to the Town by Tenant under or pursuant to this Lease shall be maintained by the Town as confidential, and the Town shall not disclose such information to any Persons other than the appropriate attorneys, accountants, underwriters, financial advisors, construction consultants, bond insurers, rating agencies, auditors and employees of the Town.

16.26.2 As required by the terms of this Lease, Tenant shall provide to the Town certain documentation and information. The Town acknowledges that such documentation and information is generally held by Tenant in strict confidence, and is not of the kind that would customarily be released to the general public by Tenant because the disclosure thereof would cause substantial harm to the competitive position of Tenant. The Town further acknowledges and agrees that Tenant will be considered as “submitter” of such documentation and information for purposes of the APRA. Accordingly, if a Person files a request under the APRA or any similar Law for any such documentation or information (solely for purposes of this Section, a “**Request**”), the Town shall promptly, and in any event not more than five (5) days following the receipt of the Request, notify Tenant of the Request and allow Tenant five (5) Business Days after receipt of such notice (and, in any event, at least five (5) days prior to the disclosure of any documentation or information (“**Requested Information**”) that would be disclosed pursuant to the Request) within which to object to the Town, and any other relevant judicial or administrative body, to the disclosure of any of the Requested Information. If, following receipt of Tenant’s objection to the release of the Requested Information, or if the Town does not receive any objection from Tenant within five (5) Business Days after such notice, then not less than ten (10) Business Days following receipt of the Request, the Town reasonably determines that the Requested Information is exempt from disclosure pursuant to the APRA or other Law, the Town shall promptly, and in any event, within the time limits mandated under the APRA, assert such exemption from disclosure and decline to provide such information. If, following receipt of Tenant’s objection to the release of the Requested Information, or not less than ten (10) days following receipt of the Request, the Town reasonably determines that the information sought by the Request is not exempt from disclosure pursuant to the APRA or other Law, the Town shall promptly notify Tenant of such determination, and shall refrain from making such disclosure for not less than ten (10) Business Days following receipt of such notice by Tenant in order to afford Tenant an opportunity to seek an injunction or other appropriate remedy if Tenant believes that the Town’s determination is erroneous. The term “days” as used in this Section, shall be determined in the manner provided in the APRA.

16.26.3 Tenant shall endeavor to clearly mark each page of all documents which Tenant wishes to designate as Confidential Information “Confidential Trade Secret Information, Contact Tenant Before Any Disclosure” and shall also include a reference to this Lease; provided, however, that Tenant’s failure to mark any document shall not foreclose Tenant from asserting that a document should be designated as Confidential Information.

16.26.4 Nothing in this Lease shall limit or restrict the Town from disclosing, to the extent required by Law, any information, communication, or record to the United States Congress, the Council, the State Inspector General or the State Auditor; provided that the Town shall use all reasonable measures to prevent further dissemination of such information to the extent such information is Confidential Information.

16.27 Generally Applicable State Law. Tenant acknowledges that (i) nothing set forth in this Lease exempts the Premises or any portion thereof from Applicable Laws and regulations in effect from time to time in the State or the Town, (ii) execution of this Lease by the Town is not

binding upon, and does not affect the jurisdiction of or the exercise of police or regulatory power by, State or Town agencies, including, without limitation, independent agencies or officials of the State or Town (including, without limitation, the Town's Building and Zoning Officials, in the lawful exercise of their authority and (iii) no approval provided by the Town as a contract party to this Lease shall in any way bind or be considered to be an approval by any the Town agency acting in its capacity as a Governmental Authority (and not as a contract party to this Lease), including, without limitation, independent agencies of the State or the Town, such as the Town's Zoning and Planning Boards. Tenant acknowledges and agrees that any unauthorized act by the Town may be void.

16.28 Agreement Use. Except as specifically set forth herein, the Town shall not be responsible for reimbursing or otherwise paying or repaying any costs, fees, or expenses incurred by or on behalf of Tenant or any other Person or entity associated therewith prior to or during the term of this Lease. Tenant shall not be responsible for reimbursing or otherwise paying or repaying any costs, fees or expenses incurred by or on behalf of the Town prior to or during the term of this Lease. Other than as set forth herein, no obligation or liability with respect to any future agreements described herein will exist, nor will any representations be deemed made, nor any reliance on any communications regarding the subject matter hereof be reasonable or justified. It is expressly agreed by Tenant that the Town is under no obligation to reimburse Tenant or its consultants, sub-contractors or successors for any cost, expense, or efforts incurred.

16.29 Laws. Any reference to a specific law or to Applicable Laws in this Lease shall mean such law as it may be amended, supplemented, or replaced, except as the context otherwise may require.

16.30 No Tax Exemption. In no event shall Tenant, or any of its employees, contractors, subcontractors, agents, servants, beneficial owners, or any Member, partner, or principal of any beneficial owner of Tenant assert for its own benefit, or attempt to assert, an exemption (including from sales taxes) or immunity available to the Town, if any, under any government requirements or Law on the basis of the Town's involvement in the transactions contemplated by this Lease.

16.31 Form of Payments. All payments due hereunder shall be paid in lawful money of the United States of America.

16.32 Force Majeure. Neither the Town nor Tenant shall be in default under this Lease if the performance of any obligation, duty, or act under this Lease is delayed or prevented by or due to one or more event(s) caused by Force Majeure.

16.33 Change in Prohibited Person Status. Tenant shall immediately notify the Town in the event that Tenant or one of its Affiliates becomes or is reasonably likely to become a Prohibited Person.

16.34 Memorandum of Lease. The Town and Tenant shall execute and deliver a Memorandum of Lease in form attached hereto as Exhibit H or such other form as is reasonably acceptable to the Town and Tenant (and of any amendments thereto in the event this Lease is hereafter amended and such amendment affects the provisions of the previously recorded Memorandum of Lease) for the purpose of recording such Memorandum of Lease in the Land

Records, but such Memorandum of Lease shall not in any circumstances be deemed to modify or to change any of the provisions of this Lease. Tenant shall pay the costs associated with the recording of such Memorandum of Lease in applicable Land Records.

16.35 Exhibits. This Lease includes the following Exhibits:

Exhibit A	Legal Description of Town Land
Exhibit B	Master Development Plan
Exhibit C	Legal Description of Premises
Exhibit D	Definitions
Exhibit E	ECCR's
Exhibit F	Form of Non-Disturbance Agreement
Exhibit G	Map of Adjacent Parcel
Exhibit H	Form of Memorandum of Lease

16.36 Schedules. This Lease includes the following Schedule 3.3:

Schedule 3.3	Annual Base Rent Schedule
--------------	---------------------------

End of Lease – Signature pages follow

IN TESTIMONY WHEREOF, the Town and the Tenant have caused this Lease to be signed on their behalf as of the Effective Date.

TOWN:

**TOWN OF MIDDLETOWN, RHODE
ISLAND**

By: _____

Name: Shawn J. Brown

Title: Town Administrator

Signature page to Lease Agreement follows

IN TESTIMONY WHEREOF, the Town and the Tenant have caused this Lease to be signed on their behalf as of the Effective Date.

TENANT:

_____,

By: _____

Name: _____

Title: _____

End of Signature Pages

Exhibit A

LEGAL DESCRIPTION OF TOWN LAND

Exhibit B

MASTER DEVELOPMENT PLAN

Exhibit C

LEGAL DESCRIPTION OF PREMISES

Exhibit D

DEFINITIONS

For the purposes of this Lease, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“Adjacent Parcel” shall mean the Adjacent Parcel as shown on the Map of Adjacent Parcel attached hereto as Exhibit G.

“Affiliate” means with respect to any Person (**“first Person”**), (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, trustee, general partner, manager, or any direct or indirect member, shareholder, partner, beneficiary or other beneficial or equity owner of such first Person, or (iii) any officer, director, trustee, general partner, manager, or any direct or indirect member, shareholder, partner, beneficiary or other beneficial or equity owner of any Person described in clauses (i) or (ii) of this sentence.

“Annual Base Rent” has the meaning given in Section 3.3 hereof.

“Anti-Money Laundering Acts” has the meaning given in Section 11.2.10 hereof.

“Anti-Terrorism Order” has the meaning given in Section 11.2.10 hereof.

“Applicable Laws” means all applicable local, State, and federal laws, ordinances, rules, codes, regulations, resolutions, executive orders, and standards, including, without limitation, Environmental Laws, zoning requirements, building codes, and all laws relating to accessibility for persons with disabilities.

“Business Days” means Monday through Friday, inclusive, other than holidays or other days on which the State government is closed.

“Certificate of Occupancy” means a final certificate issued by the Town of Middletown, Rhode Island which permits the occupancy of the premises for which it is intended.

“Common Infrastructure” shall have the meaning given in Section 5.7.1.

“Confidential Information” has the meaning given in Section 16.26.1 hereof.

“Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the day-to-day management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, which term shall not preclude major decision approval by others. The terms “Control,” “Controlling,” “Controlled by,” or “under common Control with” shall have meanings correlative thereto.

“Developer” has the meaning given in the Preamble hereof.

“Development Documents” means those certain plans, specifications, documents, schedules, items, and other matters to be submitted by the Developer to the Town pursuant to the terms of the Development Agreement.

“Effective Date” means the Lease Commencement Date.

“Environmental Law” means any federal or State law, act, statute, ordinance, rule, regulation, order, decree, permit, or ruling of any federal, State, or administrative regulatory body, agency, board, or commission or a judicial body, relating to the protection of human health or the environment or otherwise regulating or restricting the management, use, storage, disposal, treatment, handling, release, and/or transportation of a Hazardous Material, which are applicable to the Project or activities on or about the Premises or Other Project Parcels, including but not limited to 42 U.S.C. § 9601, et seq. (CERCLA), 42 U.S.C. § 6901 et seq. (RCRA), the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Emergency Planning and Community Right To Know Act, 42 U.S.C. § 11001 et seq., and any State equivalent laws as each of the same is amended or supplemented from time to time.

“Event of Default” has the meaning given in Section 9.1 hereof.

“Force Majeure” means any act of God, fire, earthquake, flood, explosion or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; inability to procure, or a general shortage of, labor, equipment, facilities, materials or supplies in the open market; failure, unavailability or shortage of transportation; strikes, lockout or actions of labor unions; taking by eminent domain, requisition, laws, or orders of governmental or quasi-governmental bodies or of civil, military, or naval authority; adverse weather of greater frequency, duration or severity than is common for the month in question; pandemics or epidemics; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of, and is not reasonably foreseeable by any Party hereto, and is not due to the fault or negligence of any such Party and that results in a delay in the commencement, prosecution, or completion of an applicable requirement of this Lease.

“Governmental Authority” means any and all municipal, federal, or State governmental or quasi-governmental municipal corporation, board, agency, authority, department, or body having jurisdiction over all or any portion of the Premises or the Project or the Tenant, but excluding the Town in its capacity as Landlord under this Lease.

“Hazardous Materials” means a substance that falls within one or more of the following categories, other than in quantities or concentrations that constitute Permitted Materials: (1) Any “hazardous substance” under 42 U.S.C. § 9601, et seq. or “hazardous waste” under 42 U.S.C. § 6901, et seq.; (2) Any substance or chemical defined and regulated under requirements promulgated, respectively, by the U.S. Environmental Protection Agency at 40 C.F.R. part 355, by the U.S. Department of Transportation at 49 C.F.R. parts 100-180, by the U.S. Occupational Safety and Health Administration at 29 C.F.R. § 1910.1200 and ionizing materials otherwise regulated by the U.S. Nuclear Regulatory Commission at 10 C.F.R. part 20; (3) Any substance or chemical that is defined as a pollutant, contaminant, dangerous substance, toxic substance,

hazardous or toxic chemical, hazardous waste or hazardous substance under any other Environmental Law, or the presence of which requires reporting, investigation, removal and remediation or forms the basis of liability under any applicable environmental requirements; (4) Any substance or material that the Secretary of Defense designates as a “toxic or hazardous material” under 10 U.S.C. § 2692(a)(2); (5) Any substance the presence of which on the Premises or adjacent property causes or threatens to cause a nuisance or poses or threatens to pose a hazard to health or safety of persons on or about the Premises or adjacent property; (6) Gasoline, diesel fuel, or other petroleum hydrocarbons, including refined oil, crude oil and fractions thereof, natural gas, synthetic gas and any mixtures thereof; (7) Asbestos or asbestos containing material; and (8) Polychlorinated bi-phenyls or materials or fluids containing the same.

“Land Records” means the Land Evidence Records of the Town of Middletown, Rhode Island.

“Lease” has the meaning given in the Preamble hereof.

“Lease Commencement Date” has the meaning given in the Preamble hereof.

“Master Development Plan” has the meaning given in the Recitals.

“Material Change” means a change in the Master Development Plan that would result in (a) a change in use of the Premises to other than for multifamily residential use; or (b) a reduction in the number of apartment units (**“Units”**) to less than seventy-five (75%) of the Units permitted under the Master Development Plan, or a reduction of the number of Required Affordable Units to less than ten percent (10%) of the Units constructed.

“Member” means any Person with an ownership interest in any entity, whether as a member of a limited liability company, a shareholder in a corporation, a partner in a partnership, a beneficiary under a trust, or otherwise.

“Monetary Default” has the meaning given in Section 9.1.1(1) hereof.

“Navy” means the United States Department of Navy.

“Parcel” or **“Parcels”** means, individually or collectively, the Residential Parcel, the Retail Parcel, the Hotel Parcel and/or the Town Parcel.

“Party” and **“Parties”** have the meanings given in the Preamble.

“Permit” means any demolition, site, building, construction, historic preservation, and other permit, approval, license and/or right required or necessary to be obtained under Law from a Governmental Authority for the commencement, performance, and completion of the Project or any part thereof, other than the Development Permits.

“Permitted Materials” means any materials or substances regulated by Environmental Laws which are in quantities and concentrations and used, handled, and stored under conditions in compliance with all applicable Environmental Laws.

“Person” means any individual, or any corporation, limited liability company, trust, partnership, association, or other entity.

“Premises” has the meaning given in the Recitals.

“Prohibited Person” means any Person who or which (a) has been convicted of a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) perjury, (v) conspiracy to commit a crime, (vi) making false statements to a government agency, (vii) improperly influencing a government official, and (viii) extortion; (b) could be debarred if the standards applied in applicable Town regulations were applied to such Person’s failure to satisfy a contractual obligation to the Town; (c) is on the Town’s list of debarred, suspended or ineligible Persons; or (d) is a Restricted Person.

“Prohibited Uses” has the meaning set forth in Section 3.5.

“Project” has the meaning given in the Recitals.

“Proposal” has the meaning given in the Recitals.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other receptacles containing any Hazardous Materials or Permitted Materials).

“Request” has the meaning given in Section 16.26.2 hereof.

“Requested Information” has the meaning given in Section 16.26.2 hereof.

“Required Affordable Unit” shall mean a residential unit set aside for qualified occupants earning not more than eighty percent (80%) of Area Median Income (“**AMI**”) for Newport County, Rhode Island.

“Residential Project” shall have the meaning given in Section 5.2.

“Restricted Person” has the meaning given in Section 11.2.10(2) hereof.

“State” means the State of Rhode Island.

“Substantial Completion” or **“Substantially Complete”** means the date on which Certificates of Occupancy have been issued for seventy-five percent (75%) of the Units permitted under the Master Development Plan, provided that no less than ten (10%) percent of such Units shall be classified as “Required Affordable Units.”

“Tenant Released Parties” has the meaning given in Section 16.22.2 hereof.

“Term” has the meaning given in Section 3.2.

“Terrorist Acts” has the meaning given in Section 11.2.10(1) hereof.

“Town” has the meaning given in the Preamble hereof.

“Town Approval” means written approval by the Town Council of the Town of Middletown (which in the Town’s sole discretion, may be in executive session and/or with delegation of authority, if and to the extent permitted by Applicable Law), not to be unreasonably withheld, conditioned, or delayed, and with the Town agreeing to use good faith efforts to process all requests for Town Approval within sixty (60) days of such request in accordance with Applicable Law.

“Town Released Parties” has the meaning given in Section 16.22.1 hereof.

Exhibit E

ECCR's

Exhibit F

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

(Ground Lease)

This Non-Disturbance and Attornment Agreement (the “**Agreement**”), dated as of this ____ day of _____, 20__, by and between The Town of Middletown, Rhode Island (“**Ground Lessor**”), and _____, a _____ (“**Tenant**”).

WITNESSETH:

(a) Tenant has entered into a certain lease (the “**Lease**”) dated _____, 20__, with _____ (“**Landlord**”), covering certain leased premises located in the Town of Middletown, Rhode Island, and more particularly described in Exhibit A hereto (the “**Premises**”); and

(b) Ground Lessor has entered into that certain Ground Lease for _____ Parcel with Landlord, dated _____, 20__ (the “**Ground Lease**”), covering certain real property in Middletown, Rhode Island, which includes the Premises as part thereof; and

(c) The parties hereto desire to set forth their agreement with regard to the priority of the Ground Lease and the effect thereof on Tenant and its leasehold interest in the aforesaid Premises, as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and of the sum of One (\$1.00) Dollar by each party in hand paid to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Lease is a sublease and shall be subject and subordinate to the Ground Lease insofar as it affects the real property of which the Premises form a part.

2. Tenant agrees that in the event of a termination of the Ground Lease, Tenant will attorn to Ground Lessor as its landlord under the Lease for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in the Lease so long as Tenant is not in default under any of the material terms, covenants, or conditions of the Lease continuing beyond any applicable grace or cure period provided in the Lease.

3. In the event that the Ground Lease is terminated for any reason, Ground Lessor will not terminate the Lease nor join Tenant in summary proceedings so long as Tenant is not in default under any of the material terms, covenants, or conditions of the Lease continuing beyond any applicable grace or cure period provided in the Lease.

4. In the event that Ground Lessor shall succeed to the interest of Landlord under the Lease, Ground Lessor shall not be (a) liable for any act or omission of any prior lessor (including Landlord); or (b) liable for the return of any security deposits unless delivered to Ground Lessor; or (c) bound by any rent or other periodic payments which Tenant might have paid for more than thirty (30) days in advance to any prior lessor (including Landlord).

5. Notwithstanding the foregoing, Ground Lessor acknowledges and agrees that if Ground Lessor shall succeed to the interest of Landlord under the Lease, Ground Lessor shall recognize Tenant's rights and remedies properly exercised under the Lease, and that such rights of Tenant are not limited or impaired in any way by the terms and provisions of this Agreement.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

7. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which, taken together, constitute one and the same agreement.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto have executed this Agreement under seal as of the day and year first above written.

GROUND LESSOR:

TOWN OF MIDDLETOWN, RHODE ISLAND

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, ss.

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.as _____ of the Town of Middletown, Rhode Island.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

Signature Page to Non-Disturbance and Attornment Agreement

In witness whereof, the parties hereto have executed this Agreement under seal as of the day and year first above written.

TENANT:

By: _____

Name: _____

Title: _____

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

_____, SS.

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of _____...

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

Signature Page to Non-Disturbance and Attornment Agreement

Exhibit G

MAP OF ADJACENT PARCEL

Exhibit H

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF GROUND LEASE

This instrument was prepared by
and upon recording return to:

Bernkopf Goodman LLP
Two Seaport Lane, 9th Floor
Boston, MA 02210
Telephone: (617) 790-3000
Attn: Sheryl C. Starr, Esq.

This space reserved for Recorder's use only.

MEMORANDUM OF GROUND LEASE

Notice is hereby given pursuant to the provisions of Rhode Island General Laws § 34-11-1, of the following:

LANDLORD:

Town of Middletown, Rhode Island

Attn: _____

TENANT:

Attn: _____

LEASED PREMISES:

The land with all buildings and other improvements now or hereafter located thereon as more particularly described on Exhibit A attached hereto and incorporated herein.

DATE OF LEASE EXECUTION:

LEASE COMMENCEMENT
DATE:

TERM OF LEASE:

Ninety-Nine (99) Years from the Lease Commencement Date.

RIGHT OF FIRST REFUSAL:

The Lease contains certain rights of first refusal to purchase and/or lease the Premises and/or other portions of the property on which the Premises is located ("**Property**"), as more particularly described in Exhibit B attached hereto and incorporated herein.

LEASE TERMS INCORPORATED: All of the terms, covenants and conditions of the Lease are incorporated herein and made a part hereof. The purpose of this Memorandum of Ground Lease is to give notice of the existence of the tenancy created by the Lease; and shall not be construed to vary or otherwise affect the rights or obligations of the parties under the Lease as it may be amended.

TITLE REFERENCE: For title to Property, see Deed(s) to Landlord recorded in the _____ Land Evidence Records in Book _____, Page _____; Book _____, Page _____; Book _____, Page _____.

End of Memorandum of Lease – Signature page follows

EXECUTED as a sealed instrument as of this _____ day of _____, 20____.

LANDLORD:

TOWN OF MIDDLETOWN, RHODE ISLAND

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, SS.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, in his/her/its capacity as _____ of the Town of Middletown, Rhode Island, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/it signed it voluntarily for its stated purpose, and further acknowledged the foregoing to be his/her/its voluntary free act and deed.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

Notary ID #: _____

My Commission Expires: _____

Signature page to Memorandum of Lease

EXECUTED as a sealed instrument as of this _____ day of _____, 20____.

TENANT:

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, SS.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, in his/her/its capacity as _____ of _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/it signed it voluntarily for its stated purpose, and further acknowledged the foregoing to be his/her/its voluntary free act and deed.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

Notary ID #: _____

My Commission Expires: _____

Signature page to Memorandum of Lease

Exhibit A

Legal Description of Leased Premises

Schedule 3.3

ANNUAL BASE RENT

Exhibit B-2GROUND LEASE AGREEMENT FOR HOTEL PARCEL

This Ground Lease Agreement for Hotel Parcel (this “**Lease**”) is made and entered into this _____, day of _____, 2024 by and between the **TOWN OF MIDDLETOWN, RHODE ISLAND** (the “**Town**” or “**Landlord**”), and _____, a _____ (the “**Tenant**”). The Town and Tenant, and their respective successors and assigns, are sometimes individually referred to as a “**Party**” and are sometimes collectively referred to as the “**Parties**.”

RECITALS

A. The Town is the owner in fee simple of the property located on West Main Road in Middletown, Rhode Island and identified as Lots 3, 4, 5, 6, and 7 on Middletown Tax Assessor’s Plat 102, consisting of approximately 15.27 acres of land, as more specifically described on Exhibit A, attached hereto (the “**Town Land**”).

B. On or about June 2, 2021, the Town issued a Request for Information (the “**RFI**”) to seek information from potential developers interested in a mixed development opportunity on the Town Land, and setting forth the Town’s development goals and potential uses.

C. Middletown Commons Town Center LLC (“**Developer**”) submitted a response to the RFI (the “**Proposal**”), a copy of which is on file with the Town, and after scoring all of the proposals received in response to the RFI, the Town selected the Developer as the entity with which to negotiate exclusively for purposes of accomplishing the development purposes of the RFI.

D. Subsequent to the selection of the Developer for exclusive negotiations, the Town and the Developer entered into an Exclusive Negotiating Agreement, dated January 19, 2022 (“**ENA**”) for purposes of achieving a mixed-use development (the “**Project**”) consisting of retail, restaurant and family entertainment uses (“**Retail Use**”), multifamily housing rentals, including affordable units (“**Residential Use**”), and a hotel (“**Hotel Use**”) on a portion of the Town Land.

E. In accordance with the ENA, the Town and Developer entered into a Development Agreement, dated October 3, 2024 (the “**Development Agreement**”), which provides that the Developer and/or its designees have the right to construct and develop certain portions of the Town Land, as designated, to be used for the Residential Use (the “**Residential Parcel**”), the Retail Use (the “**Retail Parcel**”), and the Hotel Use (the “**Hotel Parcel**”) as shown on the Master Development Plan attached hereto as Exhibit B (as it may be amended from time to time, the “**Master Development Plan**”).

F. The Development Agreement contemplates that a portion of the Town Land is intended to be used for public purposes in accordance with the Master Development Plan (the “**Town Use**”) and such portion, which may be combined with the Adjacent Parcel, as defined on Exhibit G (together herein called the “**Town Parcel**”) shall continue to be owned by the Town, and may be developed by the Town for public purposes.

G. The Town has reviewed and approved all Development Documents required by the Development Agreement, and the Developer and the Town have each satisfactorily completed their respective conditions precedent to this Ground Lease as required under the Development Agreement.

H. The Developer has received Town Approval and has achieved all permits and regulatory approvals (“**Development Permits**”) required to develop the Project on the Residential Parcel, the Retail Parcel, and the Hotel Parcel in accordance with the Master Development Plan.

I. The Developer has designated Tenant as the entity to develop the Hotel Parcel for the Hotel Use, and this Lease constitutes the lease of the Hotel Parcel as more particularly described on Exhibit C attached hereto and made a part hereof (the “**Premises**”) to Tenant for such purpose.

ARTICLE 1 AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Town and Tenant do hereby agree as follows:

ARTICLE 2 DEFINITIONS/RECITALS

For the purposes of this Lease, the capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in Exhibit D, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular. The foregoing Recitals are hereby incorporated by this reference as if fully set forth herein.

ARTICLE 3 LEASE TO THE TENANT

3.1 Agreement to Lease. The Town hereby agrees to lease to Tenant the Premises, and Tenant agrees to lease from the Town the Premises, effective as of _____, 20____ [*date to be inserted is later of the date the Developer has obtained (i) the Development Permits pursuant to Section 1.1 of the Development Agreement, and (ii) the date that the Town Conditions Precedent as described in Section 1.10.1 and 1.10.2 of the Development Agreement have been satisfied*] (the “**Lease Commencement Date**”). Possession of the Premises shall be delivered to Tenant on the Lease Commencement Date. Concurrently herewith, the Town has leased the Retail Parcel to a designee of Developer (the “**Retail Lessee**”) and has leased the Residential Parcel to a designee of Developer (the “**Residential Lessee**”). The Retail Lessee and the Residential Lessee are sometimes herein collectively called the “**Other Project Lessees**”, or individually an “**Other Project Lessee**”; and the Retail Parcel and the Residential Parcels are sometimes herein collectively called the “**Other Project Parcels**”, or individually an “**Other Project Parcel**”, and the Residential Parcel, the Retail Parcel, and the Hotel Parcel are sometimes herein called collectively the “**Project Parcels**” or individually, a “**Project Parcel**”).

3.2 Term. The term of this Lease (the “**Term**”) shall commence on the Lease Commencement date and shall terminate upon the ninety-ninth (99th) anniversary of the Lease Commencement Date. This Lease may also include certain terms and conditions that are expressly stated herein to survive the expiration or termination of this Lease (sometimes herein called “**Surviving Obligations**”).

3.3 Annual Base Rent. There shall be no rent due from Tenant until the sooner of that date on which (i) a final Certificate of Occupancy is issued by the Town for the opening of the Hotel as permitted under the Master Development Plan, or (ii) that date which is thirty-two (32) months after the Lease Commencement Date (the earlier of (i) and (ii) is sometimes herein called the “**Rent Commencement Date**”). On the Rent Commencement Date, and each anniversary thereafter, Tenant shall pay to the Town the amount (the “**Annual Base Rent**”) as set forth on Schedule 3.3 attached hereto and made a part hereof, provided however, at Tenant’s option, Tenant may pay Annual Base Rent in monthly installments, each in the amount of one-twelfth (1/12) of the Annual Base Rent (“**Monthly Payments**”) on the first day of each month commencing on the Rent Commencement Date (provided however, if the Rent Commencement Date is not on the first day of any month, then the Monthly Payment for that month shall be appropriately apportioned based on the number of days in that month.)

3.3.1 As set forth on the Rent Schedule, the Annual Base Rent shall be adjusted (a “**Rent Adjustment**”) to increase by twelve and one-half percent (12.5%) every five (5) years (each an “**Adjustment Date**”), with the first Adjustment Date occurring on that date which is five (5) years after the Rent Commencement Date (“**First Adjustment Date**”).

3.3.2 Reserved.

3.3.3 Reserved.

3.4 Quiet Enjoyment. The Town covenants that Tenant, at all times during the Lease Term and prior to an Event of Default, shall peaceably and quietly hold and enjoy the use and occupancy of the Premises during the Term, or until the earlier termination of this Lease in accordance with the provisions hereof, without hinderance or interference from others.

3.5 Use of Premises. During the Term, Tenant may use the Premises for hotel use and related amenities and any other purposes consistent with this Lease, the Development Permits, the Master Development Plan, and Applicable Laws (“**Permitted Use**”); provided that such Permitted Use not include the (i) cultivation, sale, or use of drug paraphernalia, to include, but not limited to, marijuana shops or dispensaries; (ii) any use that is unlawful or inherently dangerous; (iii) activities involving the storage, treatment, transportation, disposal, or manufacture of toxic or Hazardous Materials, other than in quantities and under conditions in compliance with Applicable Laws; (iv) gambling of any sort (other than the sale of lottery tickets in the ordinary course); (v) prostitution; (vi) any establishment exhibiting or selling pornographic materials, adult books, videos, or other adult entertainment (items (i) through (vi) collectively herein called “**Prohibited Uses**”).

3.6 Net Lease. This Lease of the Premises to Tenant is a triple net lease, and the Annual Base Rent and all other sums payable hereunder to or on behalf of the Town shall be paid without

notice or demand and without setoff, counterclaim, abatement, suspension, deduction, or defense, except as otherwise specifically set forth herein.

3.7 Taxes and Assessments. Tenant shall pay, prior to delinquency: (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time or which arise with respect to the Premises and the operation, possession or use of the Premises; (ii) all real estate taxes and other sales, value added, ad valorem, use and similar taxes at any time levied, assessed to or payable by Tenant on account of Tenant's leasing, operation, possession or use of the Premises; and (iii) all fees for charges of utilities, communications, fire services, permits, and similar services serving the Premises. Notwithstanding anything set forth herein to the contrary, Tenant shall not be obligated to pay or reimburse any fees, taxes, expenses, or other charges to the Town (a) that arise or are allocable to periods prior to the Lease Commencement Date, or (b) that are not explicitly authorized by Applicable Laws or required by this Lease, or (c) that constitute income taxes on Landlord's income, franchise taxes, capital stock, transfer taxes, estate taxes or inheritance taxes. The term "real estate taxes" means those taxes which are assessed against the Hotel Project and the Premises, which includes all taxes, assessments, betterments, water or sewer entrance fees, and similar charges imposed upon or against the land, the Hotel Project, and any improvements thereon then comprising the Premises. This definition of real estate taxes is based upon the present system of real estate taxation in the State of Rhode Island, provided however, if taxes upon rentals or any other basis shall be substituted for the present ad valorem real estate taxes, the term real estate taxes shall be deemed changed to the extent to which there is such a substitution for the present ad valorem real estate taxes.

3.8 Town Parcel. For clarification purposes, as used herein, the term "**Project**" includes the Residential Parcel, the Retail Parcel, and the Hotel Parcel, and the Permitted Uses thereon. To the extent consistent with the context, the Town Parcel may sometimes be included within the meaning of "Project" as used herein, solely for descriptive purposes, provided, however, Tenant shall have no obligations or liabilities with respect to the Town Parcel other than with respect to the Common Infrastructure and ECCR's as described in Section 5.7 of this Lease. The Town has no obligation to construct buildings or improvements on or otherwise develop the Town Parcel for the Town Use, however, the Town Parcel shall not be (i) sold or leased to any third parties without compliance with Article 14 hereof, or (ii) permitted to waste.

ARTICLE 4 CONDITION OF PREMISES

4.1 Former Military Installation. Some or all portions of the Premises were part of a former military installation conveyed to the Town by the Navy by Quitclaim Deed(s) for economic development purposes, and such Quitclaim Deed(s) contain certain environmental notices and obligations with regard to the Premises. The Town represents and warrants that to the best of its knowledge it has provided or made available for inspection by Tenant such Quitclaim Deed(s) and Navy prepared environmental reports in its possession. The Tenant acknowledges that it has received or inspected such Quitclaim Deed(s) and Navy environmental reports relating to the Premises and will cooperate with the Town to comply with all notices and obligations therein.

4.2 Environmental Reports. The Town represents that, to the best of its knowledge, it has made available to Tenant all environmental reports and studies in its possession and control relating to the Premises. The Town will provide any such additional reports and documentation to Tenant as they become available. Tenant acknowledges and agrees that all materials, data, and information delivered by the Town to Tenant in connection with the transactions contemplated hereby are provided to Tenant as a convenience only and that any reliance on or use of such materials, data, or information by Tenant shall be at the sole risk of Tenant. Without limiting the generality of the foregoing provisions, Tenant acknowledges and agrees that (a) any environmental or other report with respect to the Premises which is delivered by the Town to Tenant shall be for general informational purposes only, (b) Tenant shall not have any right to rely on any such report delivered by the Town to Tenant (except to the extent permitted by the Person that prepared such report (“**Provider**”) and to the extent set forth in such report), but rather will rely on its own inspections and investigations of the Premises and any reports commissioned by Tenant with respect thereto, and (c) neither the Town nor the Provider shall have any liability to Tenant for any inaccuracy in or omission from any such report, except as set forth in such report or in any other agreement between Tenant or Developer and the Provider. The Town and Tenant acknowledge that certain environmental conditions affecting the building(s) on the Premises existing as of the Lease Commencement Date (“**Existing Building**”) must be remediated pursuant to Applicable Law before such Existing Building may be demolished, and the Town agrees to reimburse Tenant for all costs and expenses incurred by Tenant in connection with such environmental remediation pursuant to Section 5.10.7 of this Lease.

4.3 Soils and Groundwater. The Town makes no representation as to the condition or content of surface or subsurface soils and groundwater that may be encountered during construction, repair, utility work, development, use, or occupancy of the Premises.

4.4 DISCLAIMERS.

4.4.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS LEASE AND IN THE DEVELOPMENT AGREEMENT, THE TOWN IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO THE QUALITY OR QUANTITY OF THE PREMISES; HABITABILITY, MERCHANTABILITY, FITNESS, OR SUITABILITY FOR A PARTICULAR PURPOSE; TITLE; ZONING; TAX CONSEQUENCES; LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION; UTILITIES; OPERATING HISTORY OR PROJECTIONS; VALUATION; GOVERNMENTAL APPROVALS; THE COMPLIANCE OF THE PREMISES WITH APPLICABLE LAWS; THE TRUTH, ACCURACY, OR COMPLETENESS OF ANY DOCUMENTS OR OTHER INFORMATION PERTAINING TO THE PREMISES; THE STATUS OF ANY LITIGATION OR OTHER MATTER; OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF THE TOWN TO TENANT; OR ANY OTHER MATTER OR THING REGARDING THE PREMISES.

4.4.2 TENANT ACKNOWLEDGES AND AGREES THAT THE TOWN IS LEASING THE PREMISES TO TENANT “AS IS, WHERE IS, WITH ALL FAULTS.”

4.4.3 FURTHER, DEVELOPMENT OF THE PREMISES IN ACCORDANCE WITH THIS LEASE SHALL BE “AS IS, WHERE IS, WITH ALL FAULTS.”

4.4.4 TENANT IS ADVISED THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY EXIST AT THE PREMISES AND THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY CAUSE PHYSICAL INJURIES, INCLUDING, WITHOUT LIMITATION, ALLERGIC REACTIONS, RESPIRATORY REACTIONS OR OTHER PROBLEMS, PARTICULARLY IN PERSONS WITH IMMUNE SYSTEM PROBLEMS, YOUNG CHILDREN AND ELDERLY PERSONS.

4.4.5 OTHER THAN THE EXPRESS REPRESENTATIONS MADE BY THE TOWN IN SECTION 11.1, AND ELSEWHERE IN THIS LEASE, TENANT HAS NOT RELIED AND WILL NOT RELY ON, AND THE TOWN IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PREMISES OR RELATING THERETO MADE OR FURNISHED BY THE TOWN, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT THE TOWN, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING.

4.4.6 TENANT REPRESENTS TO THE TOWN THAT TENANT HAS CONDUCTED SUCH INVESTIGATIONS OF THE PREMISES, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS TENANT DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PREMISES AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PREMISES, AND WILL NOT RELY UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF THE TOWN OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO.

4.4.7 TENANT SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS (INCLUDING MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS, RADIOLOGICAL CONDITIONS OR ITEMS OR TOXIC SUBSTANCES), MAY NOT HAVE BEEN REVEALED BY TENANT’S INVESTIGATIONS, AND TENANT, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED THE TOWN FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS’ FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH TENANT MIGHT HAVE ASSERTED OR ALLEGED AGAINST THE TOWN AT ANY

TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PREMISES, OTHER THAN TO THE EXTENT ACTUALLY CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF THE TOWN OR THOSE ACTING BY, THROUGH, OR UNDER THE TOWN OR ON ACCOUNT OF THE BREACH OF ANY REPRESENTATIONS OF THE TOWN EXPRESSLY SET FORTH IN THIS LEASE.

4.4.8 THE TOWN SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PREMISES IN ANY WAY FOR DEVELOPMENT AT ANY TIME.

4.4.9 If prior to construction of any buildings or other improvements Tenant discovers an environmental defect on the Premises which existed prior to the Lease Commencement Date that was not discovered in the course of Tenant's reasonable due diligence investigation, and that was not caused by Tenant or Developer, or by others acting by, through or under either of them, which defect makes the development of the Premises or the Project infeasible, impractical, or which would pose a threat of harm to the health or safety of any Persons, then Tenant shall have the right to terminate this Lease by written notice to the Town, in which event this Lease shall be deemed null and void without recourse to the Parties hereto.

4.5 Legal Recourse Against the Navy.

4.5.1 Tenant acknowledges that it is familiar with avenues of legal recourse against the Navy for any pre-existing environmental condition caused or contributed to by the Navy, including the provisions of Sections 107 and 120(h)(3) of CERCLA and Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993.

4.5.2 If the Town reasonably requests Tenant to assist or cooperate in the pursuit of a claim tendered by the Town against the United States pursuant to Section 120(h)(3) of CERCLA or Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993 related to portions of the Town Land owned by the Town and leased to Tenant, Tenant shall reasonably cooperate with, and provide reasonable assistance to, the Town in the pursuit of the claim, provided the reasonable costs of tendering and pursuing the claim are paid by the Town.

4.5.3 If Tenant reasonably requests the Town to assist or cooperate in the pursuit of a claim tendered by Tenant against the United States pursuant to Section 120(h)(3) of CERCLA or Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993 or pursuant to any other Applicable Laws, related to portions of the Town Land leased to Tenant or any Other Project Lessee, the Town shall reasonably cooperate with, and provide reasonable assistance to, Tenant in the pursuit of the claim, provided the reasonable costs of tendering and pursuing the claim are paid by Tenant.

ARTICLE 5 DEVELOPMENT/OPERATION OF THE PREMISES

5.1 Master Development Plan. The Hotel Project shall be developed in accordance with the Master Development Plan, as it may be amended. Until Substantial Completion, the Hotel Parcel shall conform to the Master Development Plan as such Master Development Plan is approved by the Town, and any Material Change to the Master Development Plan affecting the Hotel Project requested by Tenant shall be subject to Town Approval. After Substantial Completion, any proposed changes to the Master Development Plan affecting the Hotel Project (including Material Changes) must be approved only by the appropriate Governmental Authorities.

5.2 Development by Tenant.

5.2.1 On or before the Lease Commencement Date, Tenant will have obtained all licenses, approvals and authorizations from all Governmental Authorities (collectively, “**Development Permits**”) necessary to proceed with the development of hotel building or buildings (the “**Buildings**”) and other improvements and amenities (together with the Buildings, collectively the “**Improvements**”) at the Premises in a manner consistent with the Permitted Use (the “**Hotel Project**”).

5.2.2 Following the Lease Commencement Date, Tenant shall use good faith efforts to submit applications for, and obtain all construction permits, including without limitation, all demolition permits, building permits, foundation permits, and other licenses and approvals (“**Construction Permits**”) from all Governmental Authorities necessary to construct the Improvements and shall use good faith, diligent efforts to Substantially Complete construction of the Hotel Project within a period of thirty-six (36) months after the Lease Commencement Date, all in accordance with the construction schedule to be submitted in connection with Tenant’s application for Construction Permits (the “**Construction Schedule**”). The Town and Tenant acknowledge and agree that the Construction Schedule may be extended on account of Force Majeure and by other economic or practical matters beyond Tenant’s reasonable control.

5.2.3 In order to expedite the granting of Construction Permits, the Town will retain, at its own cost and expense, a consultant to speed the review of construction plans and drawings and process Construction Permits.

5.2.4 Until Substantial Completion any Material Change to the Master Development Plan affecting the Premises shall be subject to Town Approval. After Substantial Completion, any proposed changes to the Master Development Plan affecting the Premises (including without limitation any Material Changes) must be approved only by the appropriate Governmental Authorities in accordance with and to the extent required by the applicable municipal regulatory process. Until Substantial Completion, Tenant shall have the right to construct and reconstruct, repair, enlarge, rebuild, alter, change, improve, demolish, or remove any Buildings and other Improvements at the Premises in a manner consistent in all material respects with the Development Permits and the Master Development Plan, and which are otherwise approved in writing by the appropriate

Governmental Authorities as may be necessary under Applicable Laws. Following Substantial Completion, Tenant shall have the right to construct and reconstruct, repair, enlarge, rebuild, alter, change, improve, demolish, or remove any Buildings and other Improvements at the Premises which are approved in writing by the appropriate Governmental Authorities as may be necessary under Applicable Laws.

5.2.5 Tenant shall not be required to restore or replace the Buildings or other Improvements permitted hereunder in the event of damage by casualty.

5.2.6 Tenant shall have the right to freely sublease to any subtenant, without approval of the Town, as long as the use remains consistent with the Development Permits and the Master Development Plan.

5.3 **Reserved.**

5.4 **Buildings, Improvements, and Personal Property.** As between the Town and Tenant, Tenant shall be the owner for all purposes (including for state and federal taxation purposes), of the Buildings and other Improvements now or hereafter constructed or installed on the Premises, and shall be the owner of and have rights to all personal property located at the Premises and/or within the Improvements, to use or dispose of in Tenant's sole discretion.

5.5 **Provision of Services.** Subject to any Applicable Laws, Tenant has the right to provide certain services (directly, indirectly, or through third party contractors that may include local government) to the Premises and may assess and collect fees from tenants or others to cover the costs of providing such services to the Premises. Such services may include human resources, health and human services, education, trash and recycling, utilities, security, transportation, communication, video, data and internet services, and parks and recreation.

5.6 **Operation and Maintenance.** Beginning on the Lease Commencement Date and throughout the Lease Term, Tenant shall be responsible for maintaining and operating (including all costs arising therefrom) the Premises, including all Buildings and other Improvements thereon, and the Town shall have no responsibility for the maintenance or operation of the Premises as of the Lease Commencement Date. Without limitation, Tenant agrees throughout the Term of this Lease, at Tenant's sole cost and expense, to maintain, or cause to be maintained, the Premises and any and all Buildings and/or structures located thereon, and each and every part thereof, in good order and condition in all respects, free of accumulation of rubbish, and, specifically with regard to snow and ice, as necessary to maintain appropriate driveways, roads, access ways, sidewalks and pedestrian areas, and parking areas, and to make all necessary repairs and replacements, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, to the extent necessary to maintain such areas in compliance with all Applicable Laws, in all events subject to reasonable wear and tear, casualty, and eminent domain. Any and all repairs and maintenance by Tenant shall be performed in a good and workmanlike manner. Notwithstanding anything set forth in this Lease, it is understood and agreed that Tenant shall have no responsibility to maintain the Town Parcel (other than any obligations of Tenant under the ECCR's as described in Section 5.7 hereof, to the extent relating to the Common Infrastructure located on the Town Parcel). The Town will continue to be the owner in fee simple of the Town

Parcel and all buildings and other improvements now or hereafter located thereon, and the maintenance and operation of the Town Parcel shall remain the Town's obligation, subject to the ECCR's.

5.7 Common Infrastructure.

5.7.1 The Parties understand and agree that construction and development of the Project will require certain common infrastructure, such as, but without limitation, roads, parking areas, accessways, off-site improvements, and utilities (collectively, "**Common Infrastructure**"), which will be shared by the owners, lessees, and occupants of the Premises and each of the Other Project Parcels, and the Town Parcel. Accordingly, it is intended that the Developer and the Town, as Landlord under this Lease, and/or the Tenant and Other Project Lessees together with the Town as the owner of the Town Parcel, have entered into (or shall simultaneously enter into), one or more agreements for easements, covenants, conditions, and restrictions (the "**ECCR's**", as set forth in Exhibit E) to appropriately and equitably allocate responsibilities for and costs and expenses relating to construction, installation and maintenance of such Common Infrastructure in accordance with Section 5.7.3, and the Town, as Landlord, agrees to join in such ECCR's, and/or to consent and subordinate its fee interest in the Town Land thereto; provided, however, that such ECCR's shall contain a prohibition on short-term residential rentals, as more fully set forth in such ECCR's.

5.7.2 The Town and Tenant agree to work cooperatively and in good faith with each other and with the Other Project Lessees to agree on any future modifications and amendments to such ECCR's, and in all events, the Town will not unreasonably withhold, condition, or delay its approval thereof, provided any such modifications do not increase any responsibility or liability of the Town and do not restrict or decrease any rights and benefits of the Town, in each case, in any material respect.

5.7.3 The construction of the Common Infrastructure, in accordance with the Master Development Plan, the Construction Schedule, and the ECCR's, shall be the sole responsibility and cost of the Tenant and the Other Project Lessees. The Tenant agrees that the Tenant and the Other Project Lessees shall be jointly and severally liable for the completion of construction of the Common Infrastructure, with the understanding that so long as the Town of Middletown, Rhode Island is the owner of the Town Parcel the Town will not be required to contribute to the cost of the construction, installation, and/or maintenance of such Common Infrastructure.

5.8 Inspection of Site. The Town reserves for itself and its employees and agents ("**Town Representatives**") the right to enter the Premises at reasonable times and from time to time upon reasonable prior notice to Tenant (or upon such notice as may be reasonable, if any, in the event of an emergency), for the purpose of performing inspections in connection with the construction of the Hotel Project on the Premises, including the conformance of the Hotel Project to the Master Development Plan and the Construction Schedule, provided that Town Representatives shall not enter individual residences except in accordance with Applicable Law. Tenant waives any claim for trespass or interference that it may have against the Town arising out

of entry upon the Premises for the aforementioned purposes, resulting from causes other than gross negligence or willful misconduct of the Town or the Town Representatives, provided that at all times during construction on the Premises the Town Representatives shall have entry only in the company of Tenant or its agents and such Town Representatives follow all precautionary and safety measures requested by Tenant or required by Applicable Laws (collectively “**Precautionary Measures**”) applicable to a construction site. Any inspection of the Premises or access to the Premises by the Town or Town Representatives hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Hotel Project or Premises with any Permits, building codes, regulations, or standards, including, without limitation, building engineering and structural design, or other Applicable Laws.

5.9 Issuance of Permits. Tenant shall have the sole responsibility, at Tenant’s sole cost and expense, for obtaining all Development Permits, Construction Permits, and any other permits necessary for the development, construction work, and operation of the Premises to complete the Hotel Project, and shall make application therefor directly to the applicable Governmental Authority. The Town shall, upon request by Tenant, execute applications for Permits, as the owner of the Premises, to the extent required by the applicable Governmental Authority, at no out of pocket cost, expense, obligation, or liability to the Town. In no event shall Tenant commence demolition, construction, or renovation of all, or any portion of the Premises until Tenant shall have obtained all Permits required for such work. From and after the date of Tenant’s submission of an application for a Permit, Tenant shall diligently prosecute such application until receipt or final denial of the Permit. In addition, from and after submission of any such application, and until issuance of the Permit, Tenant shall report the Permit status in writing as part of the Tenant Status Report, as hereafter defined. Notwithstanding anything set forth herein to the contrary, in the event Tenant is unable to obtain any Permits required to construct and operate the Hotel Project with such conditions as are reasonably acceptable to Tenant, Tenant shall have the right to terminate this Lease in its sole discretion by written notice to the Town, in which event this Lease shall be deemed terminated without recourse to the Parties hereto.

5.10 Compliance with Applicable Environmental Requirements.

5.10.1 Tenant hereby covenants that it shall comply with all provisions of Environmental Laws applicable to the Premises and all uses, improvements, and appurtenances of and to the Premises. Tenant shall indemnify, defend, and hold the Town and its officers, directors, agents, and employees (individually, a “**Town Indemnified Party**” and collectively, the “**Town Indemnified Parties**”) harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Town Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (i) Tenant’s violation of any Environmental Law or (ii) conduct, negligence, or willful misconduct of the Tenant resulting in any Release of Hazardous Material, as defined in applicable Environmental Laws, or any condition of pollution, contamination, or Hazardous Material-related Release or nuisance on, under, or from the Property which is a violation of Environmental Laws and which is not properly reported, monitored, and remediated by Tenant pursuant to applicable Environmental Laws; provided however, that the foregoing

indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) to the extent (a) arising from the conduct, negligence or willful misconduct of any Town Indemnified Party; and/or (b) relating to any environmental condition existing at the Premises or on, in, under or from the Town Land or any property adjacent thereto first arising prior to the Lease Commencement Date. Nothing in this Section in any way alters or limits or waives any of Navy's obligations contained in the Lease, Navy Quitclaim Deeds, or Laws.

5.10.2 Tenant shall provide the Town with written notice of any claims or allegations of Releases of Hazardous Materials, pollutants and/or contaminants at, from, or on the Premises, and notices of violations of applicable Environmental Laws received by Tenant relating to the Premises, promptly after Tenant receives or has actual knowledge of such notices or allegations. The Town shall provide the Tenant with written notice of any claims or allegations of Releases of hazardous substances, pollutants and/or contaminants at, from, or on the Premises, and notices of violations of applicable Environmental Laws received by the Town relating to the Premises, promptly after the Town receives or has actual knowledge of such notices or allegations.

5.10.3 Tenant shall obtain and maintain, at its sole cost and expense, any Permits or other approvals required under applicable Environmental Laws for construction of the Improvements and/or operation of the Premises for the Hotel Project. The Town will not co-sign or otherwise be identified as a responsible party for any Permits or activities that Tenant conducts on or about the Premises, except as may be required by Applicable Laws. For so long as the Town owns fee simple title to or is leasing or otherwise in control of the Premises, or the applicable portion thereof, the Town shall, upon request by Tenant, execute applications for Permits or other approvals required under applicable Environmental Laws, as the Person with rights to the applicable portion of the Premises, to the extent required by the applicable Governmental Authority, at no third party cost, expense, obligation, or liability to the Town.

5.10.4 The Town shall have the right, upon request to Tenant, to review and comment on applications for Permits and other approvals required under applicable Environmental Laws prior to submission to environmental Governmental Authorities. Where practicable, Tenant shall provide the Town with advance notice of and an opportunity to jointly participate in meetings, including Permit application meetings, with environmental regulatory authorities relating to the Premises.

5.10.5 Tenant shall promptly provide the Town with copies of all non-routine correspondence with environmental regulatory authorities related to enforcement actions or notices of violations affecting the Premises promptly after receipt.

5.10.6 Tenant shall not cause or permit to be removed or disturbed any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity which are restricted from removal or disturbance under Applicable Laws ("**Restricted Artifacts**"). In the event such Restricted Artifacts are discovered, Tenant shall promptly notify the Town and protect the site and the Restricted Artifacts from further disturbance

until clearance to proceed has been provided by applicable Governmental Authorities. In the event that the presence of such Restricted Artifacts prevents, limits, or restricts the construction of the Improvements or use of the Premises in any material respect, the Parties shall work in good faith to amend the Construction Schedule and Master Development Plan, accordingly.

5.10.7 Notwithstanding anything set forth in this Lease to the contrary, the Town shall be responsible to pay all costs and expenses, including reasonable attorney's fees, incurred by Tenant in connection with the remediation of environmental conditions affecting the Existing Building prior to demolition as described in Section 4.2 hereof. Unless otherwise agreed between the Parties, the Tenant and Other Project Lessees shall obtain quotes from at least three (3) reputable environmental companies (two of which shall be selected by the Town) for the Building Remediation, and shall choose the company with the lowest quote (or within ten percent (10%) of such lowest quote), provided such company is able to perform the Building Remediation in a timely manner consistent with the Construction Schedule. The Town shall make such payment within ten (10) Business Days after invoicing therefor by Tenant.

5.11 Tenant's Encumbrances. Tenant has the right and authority to record liens and other encumbrances against Tenant's leasehold interest in the Premises, provided that Tenant shall provide a copy of such liens and encumbrances to the Town prior to such recording. In no event will the Town's fee ownership interest in the Premises be encumbered by any lien or encumbrance against Tenant's interest in the Premises, except with respect to the ECCR's as described in Section 5.7. Subject to the immediately preceding sentence, to the extent necessary, the Town will execute routine status agreements with any lender taking a security interest in Tenant's leasehold interest in the Premises that acknowledges Tenant's interest in the Premises and that does not impair or encumber the Town's fee ownership interest in the Premises. On or after the Lease Commencement Date, the Town will not convey, transfer, assign, grant, record, incur, authorize, or take any other action that creates any mortgages, liens, or other encumbrances on the Town's ownership interest in the Premises, whether recorded or otherwise, other than routine municipal undertakings, include zoning, taxes, etc., without the prior written approval of Tenant, and in the event any of same arise for any reason, they shall be subordinate to this Lease, and shall be removed by the Town within ten (10) days after arising.

5.12 Risk of Loss. Beginning on the Lease Commencement Date, Tenant shall have the risk of loss for any casualties occurring to all or any portion of the Premises or any improvements constructed thereon. Subject to the provisions of Article 13 hereof, in no event shall the Town or Tenant have any obligation to rebuild or restore any Improvements existing or constructed on the Premises after any casualty.

5.13 Tenant's Force Majeure. The outside dates for any of Tenant's obligations under this Lease shall be extended for delays caused by Force Majeure as defined in Exhibit D. Any such extension shall be day-for-day for the period of Force Majeure. Tenant shall use good faith efforts to notify the Town in writing, within fifteen (15) Business Days of discovery of any Force Majeure event, which notice shall include Tenant's estimate of the length of the delay that will be caused by such Force Majeure event and the actions Tenant is taking to minimize such delay. In all instances,

Tenant shall use commercially reasonable efforts to mitigate the length of a delay occurring on account of a Force Majeure event.

ARTICLE 6

TENANT PERMITS DURING DEVELOPMENT

6.1 Amendments to the Development Permits. Tenant shall not make, or permit to be made, a change to the approved Development Permits without the required regulatory approval of applicable Governmental Authorities to the extent required by Applicable Laws. Subject to the provisions of Section 5.1 with respect to required Town Approval of amendments for Material Changes to the Master Development Plan, amendments to the Development Permits shall not require Town Approval.

6.2 Press Releases, Marketing, Signage and Promotional Materials.

6.2.1 The name of the Project shall be the “Middletown Town Center” or such other name as the Developer shall select with Town Approval.

6.2.2 The Town shall have the right to approve the general template for use of the Town’s name, logo, or like identifiers. Expressly excluded from this provision are publications, marketing materials, solicitations, and/or informational materials specifically designed by the Tenant to recruit or market to prospective lessees, buyers, investors, lenders, and/or other financial institutions, as to which no requirement to identify the Town shall apply.

6.3 Tenant Status Reports. Tenant shall submit to the Town no later than December 31st and June 30th of each year during the Lease Term until the Tenant obtains a Certificate of Occupancy for the opening of the hotel as set forth in the Master Development Plan, a report (each, a “**Tenant Status Report**”) setting forth the current status of the Hotel Project, which shall include, at a minimum, (i) a reasonably detailed account of current progress of construction of the Hotel Project; and (ii) any public meetings planned for the Hotel Project within the next six (6) month period. In addition, Tenant shall provide such additional status information in each report that the Town may reasonably request from time to time in writing, provided that the Town provides Tenant at least forty-five (45) days’ prior notice of its additional requests. Tenant shall include as part of each Tenant Status Report a reasonable number of construction photographs taken since the last report submitted by Tenant. In the event of a known upcoming delay of more than six (6) months to the Construction Schedule, the Tenant shall provide the Town prior notification (“**Status Report Notification**”).

ARTICLE 7

SCOPE OF TENANT AUTHORITY

7.1 Tenant Decisions. As more fully described below, the Parties agree and acknowledge that Tenant is solely responsible for all decisions related to the Hotel Project except such decisions that are retained by the Town herein, if any, where Town Approval is expressly required.

7.2 Scope of Town Approval of Tenant's Permits. Permits or regulatory approvals required by Applicable Laws, shall be subject to all procedural and substantive provisions of those laws, including but not limited to timelines, substantive standards, procedural requirements, and compliance with the Rhode Island Environmental Quality Act, as applicable. The Town acknowledges that all Development Documents and Development Permits as described in the Development Agreement have been previously approved by the Town; accordingly, other than an amendment to the Master Development Plan requiring approval by the Town pursuant to the provisions of Section 5.1 and Section 5.2 hereof, no further Town Approval shall be required except as required by Applicable Law.

7.3 Approvals in Writing. All approvals or objections required or permitted pursuant to this Lease must be in writing. In no event shall any alleged oral approval of any matter requiring the Town's approval in its capacity as Landlord under this Lease be binding on the Town.

7.4 No Representation. The Town shall incur no liability by reason of its review of any Development Documents or any reports required to be submitted by Tenant under this Lease or the Development Agreement, and Tenant hereby acknowledges that any such Development documents or other reports reviewed by the Town are solely for the purpose of protecting the Town's own interests under this Lease.

ARTICLE 8 SUBLEASE AND ASSIGNMENT

8.1 Subleasing of Premises. Tenant shall have the right to lease, rent, license, permit occupancy and/or sublease all or any portion of the Premises to any Person ("**Sublessee**") for any use consistent with this Lease and Applicable Laws. With respect to all such subleases, licenses and other occupancy agreements entered by Tenant in good faith and in the ordinary course of Tenant's business, the Town agrees that so long as the Sublessee is not in default uncured within applicable grace and cure periods, if any, under its sublease, license or other occupancy agreement, then the Sublessee will have the right to continued occupancy of the subleased, licensed or occupied premises pursuant to the terms of the sublease, license or other occupancy agreement, notwithstanding any termination of this Ground Lease. Additionally, at Tenant's request, the Town shall enter into a Non-Disturbance and Attornment Agreement with any such Sublessee, in form attached hereto as Exhibit F or such other form as may be reasonably approved by the Town and such Sublessee, which Non-Disturbance and Attornment Agreement shall be recorded in the Land Records. The foregoing non-disturbance agreement shall not apply to subleases which are entered into at rents materially below then current market rents and terms for similar properties in the Middletown/Newport County area at the Premises at the time such subleases are entered, provided then current market leasing concessions and tenant improvement provisions may be included.

8.1.1 Reserved.

8.2 Assignment of Lease.

8.2.1 The Tenant acknowledges that: (i) the development and operation of the Premises as set forth in the Master Development Plan is important to the general welfare of

the community in which the Premises are located; (ii) the qualifications and identity of the Tenant, its principal officers, managers, Members, and partners are of particular importance to the Town; and (iii) the Town is entering into this Lease with the Tenant because of the qualifications and identity of the Developer and its principal officers, managers, members, partners, and Affiliates, and in so entering into this Lease, is willing to accept and rely on the obligations of the Tenant for the faithful performance of all of the Tenant's undertakings and covenants in this Lease. Accordingly, until the Tenant obtains a Certificate of Occupancy for the opening of the hotel as set forth in the Master Development Plan, Tenant shall not assign this Lease without Town Approval, which shall not be unreasonably withheld, conditioned, or delayed. The Town shall not assign this Lease except in connection with a sale of the Town Land, subject to the provisions of Article 14 hereof.

8.2.2 After the Tenant obtains a Certificate of Occupancy for the opening of the hotel as set forth in the Master Development Plan, Tenant shall have the right without Town Approval to assign this Lease to a Permitted Assignee, as herein defined, provided such assignment complies with the provisions of this Section 8.2 and the other terms and conditions of this Lease. As used herein, the term "**Permitted Assignee**" shall mean: (i) any Affiliate of Tenant; (ii) any entity which is a parent or subsidiary of Tenant or which controls or which is under common control with Tenant, (iii) any entity with which Tenant merges or consolidates, (iv) any entity which acquires all or substantially all of Tenant's right, title, and interest in this Lease and the Buildings and other Improvements on the Premises, and/or (v) any Leasehold Mortgagee. Notwithstanding that no prior Town Approval shall be required, Tenant shall deliver to the Town not less than ten (10) Business Days before the effective date of any such assignment: (a) written notice of such assignment, which notice shall include all pertinent information regarding the assignee, including documentation evidencing that the assignee is a Permitted Assignee (provided that where, due to confidentiality obligations, written notice cannot be provided prior to an assignment hereunder, Tenant must promptly notify the Town of the assignment upon the underlying transaction being publicly announced); and (b) a written agreement whereby such Permitted Assignee agrees to assume all liabilities and all payment and performance obligations of Tenant under this Lease, and to comply with and be bound by all the terms, covenants, conditions, provisions and agreements of this Lease. In no event shall Tenant be permitted to assign this Lease to a Prohibited Person. The provisions of this Sub-section 8.2.2 shall apply also to a sublease of all or substantially all of the Premises to a sublessee which is a Permitted Assignee.

8.2.3 Tenant shall not have the right to assign this Lease to entities other than a Permitted Assignee without Town Approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Town Approval, once given, shall not negate Tenant's obligation to obtain Town Approval to any further assignment by Tenant or any transferee of Tenant pursuant to this Section 8.2.3.

8.2.4 Except for Permitted Interest Transfers as herein defined, the assignment, transfer, or conveyance of more than 50% of the membership or other beneficial ownership interests (collectively "**Interest**") in Tenant shall be deemed an assignment subject to the provisions of subsections 8.2.1 and 8.2.2 above. As used herein, "**Permitted Interest**

Transfers” means the following: (i) transfers of Interest between and among the Members of Tenant existing as of the date of this Lease (“**Existing Members**”); (ii) transfers of Interest between and among Existing Members and their respective family members and/or trusts and other entities established for the benefit of such family members (“**Family Members**”); (iii) transfers of Interest between and among the Existing Members and the Members of any of the Other Project Lessees existing as of the date of this Lease and/or their respective Family Members; and (iv) other transfers of Interest so long as any one or more of (a) James J. Karam (or upon the death or disability of James J. Karam, James M. Karam, or Jeffrey T. Karam); (b) Robert Kempenaar II; and/or (c) Christopher C. Bicho, is in Control of Tenant.

8.3 Release. Upon assignment of this Lease as permitted in Section 8.2 above, the Tenant shall be released, and the assignee shall be deemed to have assumed all obligations of the Tenant under this Lease. The Tenant and assignee shall execute an assignment and assumption agreement in commercially reasonable form evidencing such assumption by assignee.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 Default under this Lease.

9.1.1 Each of the following shall constitute an “**Event of Default**” by Tenant under this Lease:

(1) Monetary Defaults. Tenant shall fail to pay or cause to be paid any Monthly Payment of Annual Base Rent or any other amount required to be paid by Tenant under this Lease, and such default shall continue for thirty (30) days after written Notice from the Town to Tenant specifying such default (a “**Monetary Default**”).

(2) Misrepresentation. Any of Tenant’s representations and warranties set forth in Section 11.2 hereof is not true and correct in all material respects as of the Lease Commencement Date, and, Tenant fails, within thirty (30) days after notice from the Town, to cure or correct such conditions as may be required to cause such representations to be then true and correct in all material respects.

(3) Insurance. Tenant shall fail to obtain or maintain in effect the Tenant required insurance under this Lease, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain, and provide evidence to the Town of the insurance required to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease, and such failure shall continue for a period of thirty (30) days after written Notice from the Town to Tenant.

(4) Assignment. Tenant shall breach the restriction on assignment set forth in Section 8.2 of this Lease and such breach shall not be remedied within thirty (30) days after written Notice of such breach from the Town to Tenant.

(5) Prohibited Person. Tenant becomes a Prohibited Person due to an action or omission arising from or relating to this Lease or the Premises and Tenant fails to cure such condition by assigning this Lease either to (a) one of the Other Project Lessees which is not a Prohibited Person; or (b) a third party which is not a Prohibited Person and is either a Permitted Assignee or is approved by the Town pursuant to Section 8.2.3 of this Lease.

(6) Bankruptcy. Tenant shall be adjudicated bankrupt and subject to a court approved Chapter 11 plan for liquidation.

(7) Construction Schedule. Tenant shall fail to use good faith diligent efforts to Substantially Complete construction of the Buildings on the Premises in accordance with the terms of this Lease and the Master Development Plan and such failure is not cured within thirty (30) days after written notice by the Town.

(8) Other Default. If Tenant shall breach any material term, covenant or condition of this Lease not specified in the foregoing clauses of this Sub-section 9.1.1 of this Lease, and Tenant shall fail to remedy such breach within thirty (30) days after written Notice by the Town, or if such breach is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, then Tenant shall have such additional period of time as may be reasonably necessary to cure such breach, provided that Tenant commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure.

9.1.2 During the continuance of an uncured Event of Default by Tenant, the Town shall have the following remedies only, which may be exercised at the Town's sole election, but subject in each instance to the rights of any Leasehold Mortgagee under Article 15 hereof or under the terms of any agreement entered into between the Town and such Leasehold Mortgagee, if any:

(A) If (i) the Event of Default is a Monetary Default, or (ii) the Event of Default is due to Tenant becoming a Prohibited Person without cure in accordance with Section 9.1.1.(5) above, then the Town may, subject to Section 9.3, terminate this Lease and retain all consideration paid to date and may collect all amounts then due and owing, subject to the rights of any Leasehold Mortgagee; or

(B) With respect to Events of Default other than as described in Section 9.1.2(A) above, subject to the rights of any Leasehold Mortgagee, the Town may exercise the following remedies: (a) after giving Tenant a notice of its intention to do so at least ten (10) Business Days before the Town's commencing to cure such Event of Default (or upon such notice as may be practical, if any, in the event of an emergency), cure such Event of Default, at Tenant's sole cost and expense, in which event Tenant shall reimburse the Town its actual out-of-pocket costs for such cure within ten (10) Business Days after demand therefor; or (b) the Town may pursue collection of all Annual Base Rent and all other monetary obligations of Tenant under this Lease as and when due; or (c) the Town may pursue injunctive relief.

9.2 Termination. Notwithstanding anything set forth in this Lease to the contrary, termination of this Lease shall affect the Premises only, and shall not impact in any way the status, existence, or pendency of any of the Other Project Lessees or the ground leases covering any of the Other Project Parcels.

9.3 Additional Termination. Subject to the rights of Tenant under this Lease, and notwithstanding anything herein to the contrary, if, under the Terrorist Acts or Anti-Terrorism Order, as may be supplemented by additional legislation, orders, or regulations, it shall become a violation of Applicable Laws for the Town to do business with Tenant during the term of this Lease, the Town shall be entitled to terminate this Lease after providing ten (10) days written notice to Tenant, unless Tenant is able to cure such condition within thirty (30) days after such notice or if Tenant is able to assign its interest under this Lease to an assignee with which the Town is not prohibited from doing business, provided such assignee is approved by the Town in its reasonable discretion.

9.4 No Waiver by Delay; No Waiver as to Other Defaults. Notwithstanding anything to the contrary contained herein, any delay by the Town in instituting or prosecuting any actions or proceedings with respect to a default by Tenant hereunder or in asserting its rights or pursuing its remedies under this Lease, shall not operate as a waiver of such rights or to deprive the Town of or limit such rights in any way (it being the intent of this provision that the Town shall not be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by the Town hereunder must be made in writing. Any waiver in fact made by the Town with respect to any specific default by Tenant under this Section shall not be considered or treated as a waiver of the Town with respect to any other defaults by Tenant or with respect to the particular default except to the extent specifically waived in writing.

9.5 Rights and Remedies Cumulative. The rights and remedies of the Town under this Lease, whether provided by law, in equity, or by the terms of this Lease, as applicable, shall be cumulative, and the exercise by the Town of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach. Notwithstanding the foregoing or any other provision of this Lease or of Applicable Laws, the Town shall not have the right to terminate this Lease except as expressly permitted in this Article 9.

9.6 Effect of Termination. In the event of a valid termination of this Lease by the Town, provisions of this Lease which are specifically stated herein to continue or survive the termination of this Lease, shall continue to survive as needed to resolve open issues with respect to this Lease. Upon termination, the Town will accept and recognize all then existing subleases at the Premises that are permitted pursuant to the terms of this Lease. The Parties shall otherwise reasonably cooperate to effect an orderly transition of the management of the Premises.

9.7 No Consequential or Punitive Damages. Notwithstanding the provisions of this Article 9 or anything in this Lease to the contrary, in no event shall the Town or Tenant ever be liable for any consequential, indirect, punitive, or special damages; provided, however, that this Section 9.7 shall not be deemed to preclude or prevent the collection of any fees or monetary penalties expressly provided for in this Lease.

9.8 Default Interest and Late Charges.

9.8.1 All payments that Tenant is obligated to make under this Lease, including without limitation, Monthly Payments of Annual Base Rent, which are not paid within thirty (30) days after notice from the Town to Tenant, shall bear interest from its due date until payment in full, at a rate of four percent (4%) over the prime rate charged by the principal commercial banks in the city of New York as of the date the payment is due. Should the interest be held as usurious, then interest shall be deemed to have accrued at and continue to accrue at the maximum rate of interest permissible under Rhode Island law.

9.8.2 Should Tenant fail to make a Monthly Payment of Annual Base Rent, and such failure continues for ten (10) days after notice from the Town to Tenant, then Tenant shall also pay to the Town a sum to recover the Town's administrative expenses, attorneys' fees and collection costs equal to Fifty Dollars (\$50.00) per day until paid.

9.8.3 Anything contained in this Section 9.8 regarding the payment of overdue amounts shall not constitute an extension of the due date of any amount Tenant is obligated to pay under this Lease, nor or shall it constitute a waiver of Tenant's obligation to pay such amounts as provided in this Lease.

ARTICLE 10 INSURANCE

10.1 Insurance. Tenant will maintain insurance on the Premises of the following character:

10.1.1 Upon Substantial Completion of the Buildings, all risk property insurance in standard form with typical endorsements in an amount not less than one hundred percent (100%) replacement cost;

10.1.2 Commercial general liability insurance and/or umbrella liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises in the minimum amounts of \$2,000,000 aggregate coverage;

10.1.3 Worker's compensation insurance to the extent required by the Rhode Island law (or, to the extent permitted by Laws, Tenant may self-insure with respect to worker's compensation insurance);

10.1.4 Pollution Legal Liability insurance in the minimum amount of \$5,000,000 in form and substance satisfactory to the Town in its reasonable discretion which insurance shall not be reduced or terminated without the prior written consent of the Town;

10.1.5 Such insurance shall be written by companies legally allowed to do business in Rhode Island and rated at least A-1 in the most current available AM Best's Key Rating Guide or any successor thereto; and the commercial general liability and pollution legal liability insurances shall designate the Town as an additional insured.

10.2 Insurance During Construction. During any material construction work at the Premises by Tenant, Tenant must have in force the following insurance policies:

10.2.1 “builders’ risk” insurance which provides coverage for any construction work estimated to be over \$500,000.00.

10.2.2 Workers’ Compensation from the State Insurance Fund Corporation in such coverage amounts as required by law.

10.3 Insurance Policy Increase. Tenant will pay any premium increase required by an insurance company to cover additional risks resulting from any alteration, change, addition, or infrastructure improvement made by Tenant to the Premises.

10.4 Evidence of Payment; Renewal of Policies. Tenant will deliver to Town satisfactory evidence of payment of the insurance premiums within fifteen (15) days of the respective renewal dates of the respective policies and at the same time submit the corresponding insurance certificate for each renewed policy.

10.5 Claims. Tenant shall have the right, in its sole discretion, to handle all insurance claims, including the preparation of damage reports and other documents required to process the claim, and including settlement of all claims. If requested by Tenant, the Town will cooperate with Tenant in the claims process, without cost or liability to the Town.

10.6 Periodic Reviews. Town reserves the right to review and demand periodic increases in the limits of the commercial general liability coverage required in this Lease to the extent consistent with then industry standards resulting from Tenant’s specific use of the Premises and of inflation.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Town. As of the Effective Date, the Town hereby represents and warrants to Tenant as follows:

11.1.1 The Town (i) has all requisite right, power, and authority to execute and deliver this Lease and to perform its obligations under this Lease, and (ii) has taken all necessary action to authorize the execution, delivery, and performance of this Lease. This Lease has been duly executed and delivered by the Town and constitutes the legal, valid, and binding obligation of the Town, enforceable against it in accordance with its terms. The Person signing this Lease on behalf of the Town is authorized to do so.

11.1.2 The execution, delivery, and performance by the Town of this Lease and the transactions contemplated hereby and the performance by the Town of its obligations hereunder will not violate any of the terms, conditions, or provisions of (i) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or Law to which the Town is subject, or (ii) any agreement or contract to which the Town is a party or to which it is subject.

11.1.3 No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery, and performance of this Lease by the Town.

11.1.4 The Town has not dealt with any agent, broker, or other similar Person in connection with the transfer of the interests in the Premises as provided herein.

11.1.5 There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending, or to the Town's knowledge, threatened against the Town that relates to this Lease or the Premises.

11.1.6 The Town owns the Premises in fee simple, without any liens, easements, covenants, conditions, restrictions, or other encumbrances which would or could in any way limit, restrict, or otherwise impact or affect the right of Tenant to use or develop the Premises for the Permitted Use in accordance with the terms of this Lease.

11.2 Representations and Warranties of Tenant. As of the Effective Date, Tenant hereby represents and warrants to the Town as follows:

11.2.1 Tenant is a corporation or limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the State of Rhode Island to conduct the business in which it is now engaged.

11.2.2 Intentionally Omitted.

11.2.3 Tenant has the full right, power, and authority to acquire its interests in the Premises as provided in this Lease and to carry out Tenant's obligations hereunder, and all requisite action necessary to authorize Tenant to enter into this Lease and to carry out its obligations hereunder have been taken. This Lease has been duly executed and delivered by Tenant and constitutes the legal, valid, and binding obligation of Tenant, enforceable against Tenant in accordance with its terms. The Person signing this Lease on behalf of Tenant is authorized to do so.

11.2.4 No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained or will not be obtained, is required in connection with the execution, delivery, and performance of this Lease by Tenant.

11.2.5 The execution, delivery, and performance of this Lease by Tenant and the transactions contemplated hereby and the performance by Tenant of its obligations hereunder do not violate any of the terms, conditions, or provisions of (i) Tenant's organizational documents, (ii) any judgment, order, injunction, decree, regulation or ruling of any court or other Governmental Authority, or Law to which Tenant is subject, or (iii) any agreement or contract to which Tenant is a party or to which it is subject.

11.2.6 Tenant has not dealt with any agent or broker who would be entitled to any commission or fee in connection with this Lease.

11.2.7 There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or threatened in writing against Tenant which, if decided adversely to Tenant, (i) would impair Tenant's ability to enter into and perform its obligations under this Lease, or (ii) would materially and adversely affect the financial condition or operations of Tenant.

11.2.8 Tenant is entering into this Lease and will enter into the Lease for the purposes contemplated therein and not with the view of speculating in land holding or transferring its interest in the Lease except as permitted thereunder.

11.2.9 Neither Tenant nor any of its Members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

11.2.10 Anti-Money Laundering; Anti-Terrorism.

(1) Tenant has not, and to Tenant's knowledge, no Tenant Affiliate has engaged in any dealings or transactions (i) in contravention of the applicable anti-money laundering Laws, regulations, or orders, including without limitation, money laundering prohibitions, if any, set forth in the Bank Secrecy Act (12 U.S.C. Sections 1818(s), 1829(b) and 1951-1959 and 31 U.S.C. Sections 5311-5330), the USA Patriot Act of 2001, Pub. L. No. 107-56, and the sanction regulations promulgated pursuant thereto by U.S. Treasury Department Office of Foreign Assets Control (collectively, together with regulations promulgated with respect thereto, the "**Anti-Money Laundering Acts**"), (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("**Anti-Terrorism Order**"), (iii) in contravention of the provisions set forth in 31 C.F.R. Part 103, the Trading with the Enemy Act, 50 U.S.C. Appx. Section 1 et seq. or the International Emergency Economics Powers Act, 50 U.S.C. Section 1701 et seq. (together with the Anti-Money Laundering Acts, the "**Terrorist Acts**"), or (iv) is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time.

(2) To Tenant's knowledge, neither Tenant nor any other Tenant Affiliate (a) is conducting any business or engaging in any transaction with any Person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A, or is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time, or (b) is a Person described in Section 1 of the Anti-Terrorism Order (a "**Restricted Person**").

ARTICLE 12 NOTICES

To be effective, any notice to be given under this Lease (a “**Notice**”) shall be in writing and delivered by email, certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to the Town at the following addresses:

To: Shawn J. Brown, CPA, CFE
Town Administrator
Town of Middleton
350 East Main Road
Middletown, Rhode Island 02840

With a copy to: Ronald Wolanski, AICP
Town Planner
Town of Middletown
350 East Main Road
Middletown, Rhode Island 02840

With a copy to: Peter Brent Regan, Esq.
Sayer Regan & Thayer, LLP
130 Bellevue Avenue
Newport, Rhode Island 02840

Any Notices to be given under this Lease to Tenant shall be in writing and delivered by certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to Tenant at the following addresses:

To: First Bristol Corporation
10 North Main Street
Fall River, MA 02720
Attention: James J. Karam

With a copy to: Bernkopf Goodman LLP
Two Seaport Lane, 9th Floor
Boston, MA 02210
Attention: Sheryl C. Starr

With a copy to: Girard Galvin, Esq.
Galvin Law, Ltd.
10A Washington Square
Newport, Rhode Island 02840

Either Party may change the recipients or addresses to which notice shall be given by written Notice to the other Party. Notices which shall be served in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand

delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the date of actual delivery; (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof, or (iv) if by email, when sent with evidence of receipt by the addressee Party. If notice is tendered under the terms of this Lease and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Lease.

ARTICLE 13 CASUALTY AND CONDEMNATION

13.1 Casualty.

13.1.1 In the event that during the Term any building and/or structure on the Premises shall be damaged or destroyed by fire or other casualty, this Lease shall remain in full force and effect and Tenant shall have the right to expend so much of any available insurance proceeds as may be necessary to restore the Buildings and other Improvements to substantially the same condition as existed prior to such casualty, or to such other manner and condition as Tenant may, in its sole discretion, determine, provided same shall comply with all Applicable Laws and be in accordance with all Permits necessary to be obtained from any applicable Governmental Authorities. Tenant shall not be responsible for any delay which may result from any cause beyond the reasonable control of Tenant. Should the net amount of insurance proceeds made available to Tenant be insufficient to cover the cost of restoring any Building and/or other Improvements on the Premises, or if rebuilding or reconstructing the Buildings or other Improvements is otherwise not economically feasible, Tenant may, but shall have no obligation to, supply the amount of such insufficiency and restore the Buildings and/or Improvements with all reasonable diligence, or Tenant may terminate this Lease by giving written notice to the Town within sixty (60) days of Tenant determining the estimated net amount of insurance proceeds available to Tenant and the estimated cost of such restoration. In case of damage or destruction as a result of a risk that is not covered by insurance available to Tenant, Tenant shall be entitled to rebuild the Building and/or Improvements, all as aforesaid, unless Tenant, within sixty (60) days after the determining the anticipated cost of such restoration, gives written notice to the Town of Tenant's election to terminate this Lease, in which event this Lease shall be deemed terminated without recourse to the Parties hereto.

13.1.2 In the event that the Tenant elects not to repair or replace the portion of the Premises, Buildings, and/or Improvements so damaged, Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice to the Town (the "**Casualty Termination Notice**"). After delivery of the Casualty Termination Notice to the Town, Tenant shall (i) use so much of the net insurance proceeds as may be available to make temporary repairs for the protection of the Improvements to the extent required by Applicable Laws; and (ii) within one hundred twenty (120) days after giving such notice, Tenant will deliver possession of the Premises to the Town, subject to the rights of any subtenants and occupants.

13.2 Condemnation.

13.2.1 If all or substantially all of the Premises and/or the Buildings or other Improvements constructed thereon shall be taken or condemned under eminent domain proceedings, then the Term of this Lease shall cease and terminate when the Premises and/or any Buildings and/or other Improvements on the Premises is taken. All payment obligations of Tenant hereunder shall cease as of said termination date.

13.2.2 If, upon the taking of a portion of the Premises, and/or any Building, structure or other Improvement located thereon, (i) the total interior floor area remaining in any such building or structure or the Premises shall be reduced to less than ninety-five percent (95%) of such areas at the commencement of the Term hereof; or (ii) any portion of the Premises other than within any building shall be taken such that access to the Premises or the Building(s) thereon is affected in any material adverse manner, or if the number of parking areas available on the Premises (or otherwise available at the Project for the benefit of the Premises) is reduced by more than five percent (5%) or is otherwise reduced so as to affect the use of the Premises in any material adverse respect; or (iii) Tenant determines in its good faith reasonable judgment that it is not economically feasible to repair or reconstruct the portion of the Premises or Buildings so remaining after such taking, or that the taking is of such a scope that the untaken portion of the Premises is insufficient to permit the restoration of the Improvements and the operation of Tenant's business thereon, then at the election of Tenant, this Lease may be terminated without recourse to the Parties, as of the date when Tenant is required to vacate the portion of the Premises so taken. Notwithstanding anything set forth in this Lease, in the event this Lease is not terminated, and Tenant remains in operation, all Annual Base Rent due hereunder shall be equitably adjusted based on the portion of the Premises or Buildings or other Improvements remaining as affected by any taking.

13.2.3 In any event, Tenant shall have no claim against the Town by reason of such taking or termination except in the event that such eminent domain proceedings are initiated by the Town or any authority or division or department thereunder (a "**Town Taking**"). Except in the event of a Town Taking, to the extent permitted by Applicable Laws, the Town and Tenant shall use good faith efforts to prosecute and settle the proceedings for the determination and payment of the award payable on account of any such taking, provided, however, nothing contained in this Lease shall prevent either Party from prosecuting claims in any condemnation or eminent domain proceedings for the value of their respective interests. Notwithstanding anything set forth herein to the contrary, in no event shall the Town be entitled to any award if the taking or eminent domain proceeding is a Town Taking, in which event the Tenant shall be entitled to all awards on account of such taking.

13.2.4 In the event Tenant elects to continue the Lease and rebuild and restore the Premises in accordance with the Master Development Plan, as amended, a just and equitable abatement of Annual Base Rent shall apply until such restoration is complete, provided that Tenant uses prompt and diligent efforts to complete such restoration work, and provided further that Tenant continues to pay all Tenant expenses set forth in Article 5 hereof and all other costs and expenses which Tenant is obligated to pay hereunder.

ARTICLE 14
TENANT RIGHTS OF ASSUMPTION AND FIRST REFUSAL
TO PURCHASE AND LEASE

14.1 Right to Assume Ground Lease of the Retail Parcel or Residential Parcel Upon Termination. Notwithstanding anything set forth herein or elsewhere in this Lease to the contrary, in the event that the Ground Lease of the Retail Parcel and/or the Ground Lease of the Residential Parcel are terminated (herein called a “**Terminated Lease**” or “**Terminated Lease Parcel**”, as appropriate) for any reason, Tenant shall have the right to assume the Ground Lease of the Terminated Lease Parcel, as applicable (the “**Assumption Right**”), which shall be subject to the rights of any Leasehold Mortgagee of such Terminated Lease Parcel. The Assumption Rights may be exercised as set forth in this Section 14.1, and any Assumption Party (as herein defined) may designate an Affiliate to exercise its Assumption Right as the Assumption Party.

14.1.1 The Town shall give prompt written notice (“**Termination Notice**”) to Tenant and to the Other Project Lessees, excluding the lessee under the Terminated Lease (collectively, the “**Assumption Parties**”, and individually, an “**Assumption Party**”).

14.1.2 Each of the Assumption Parties may exercise its respective Assumption Right of the Terminated Lease by giving written notice of such intent to assume the Terminated Lease (“**Assumption Exercise Notice**”) within sixty (60) days after receipt of the Termination Notice.

14.1.3 If one or more than one of the Assumption Parties exercises its Assumption Right by timely delivery of the Assumption Exercise Notice, then such exercising Assumption Party or Assumption Parties shall proceed to assume the Terminated Lease (as if it had not been terminated), or upon request by the Assumption Party or Assumption Parties, the Town and the Assumption Party or Assumption Parties shall execute a new lease upon the same terms and conditions as the Terminated Lease, but providing for the revival of any rights and/or options which may have lapsed due to the tenant’s action or inaction under the Terminated Lease. If more than one of the Assumption Parties delivers an Exercise Notice, then their assumption shall be joint and several, unless the Assumption Parties, between themselves, decide otherwise.

14.1.4 Notwithstanding anything to the contrary herein, any Assumption Right by an Assumption Party with regard to the Terminated Lease Parcel shall be subject and subordinate to all rights of the Leasehold Mortgagee under the Terminated Lease.

14.2 Right of First Refusal to Purchase Premises and Town Land. If the Town receives a bona-fide third party offer (“**Offer**”) to sell all or any portion of the Town Land including without limitation, the Town Parcel (“**Sale Property**”) which the Town desires to accept (whether or not the Offer has then been accepted in writing), then the Tenant and the Other Project Lessees shall have the right of first refusal (“**Purchase Right**”) to purchase the Sale Property, which may be exercised as set forth in this Section 14.2, and any Purchase Party (as herein defined) may designate an Affiliate to exercise its Purchase Right as the Purchase Party.

14.2.1 The Town shall give prompt written notice (“**Sale Notice**”) to Tenant and each of the Other Project Lessees (collectively, the “**Purchase Parties**”, and individually, a “**Purchase Party**”), which Sale Notice shall outline in reasonable detail the terms of the Offer, and if a written offer is in effect, a copy of the written Offer shall be included.

14.2.2 Each of Tenant and the Other Purchase Parties may exercise their respective Purchase Right by giving written notice of such intent to exercise such Purchase Right (“**Purchase Exercise Notice**”) within sixty (60) days after receipt of the Sale Notice, and subsequently negotiating with the Town within one hundred eighty (180) days a mutually satisfactory purchase and sale agreement on the terms set forth in the Offer.

14.2.3 If one or more than one of the Purchase Parties exercises its Purchase Right by timely delivery of the Exercise Notice, then such exercising Purchase Party or Purchase Parties shall proceed to purchase the Sale Property on the terms set forth in the Offer, as further described in the mutually satisfactory purchase and sale agreement within one-hundred-eighty (180) days after execution of the purchase and sale agreement. If more than one of the Purchase Parties timely delivers a Purchase Exercise Notice, then their purchase shall be joint and several unless the exercising Purchase Parties, among themselves, decide otherwise; provided, however, if the Town Land is subdivided such that the Residential Parcel, Retail Parcel, and Hotel Parcel are to be sold as individual lots, then the Lessee of the Parcel being sold shall have the right to itself solely exercise the Purchase Right with respect to that Parcel.

14.2.4 If none of the Purchase Parties timely exercises its Purchase Right, or fails to purchase the Sale Property in accordance with its Purchase Right, then the Town shall have the right to sell the Sale Property to such third party subject to this Lease and the other Ground Leases on the terms set forth in the Offer, provided such sale occurs within eight (8) months after the Sale Notice. If such sale does not occur on the terms set forth in the Offer within such eight (8) month period for any reason, or if the Town desires to sell the Sale Property on terms which differ in any material respect from the Offer, then the Purchase Right set forth in this Section 14.2 shall be reinstated on the terms set forth herein.

14.3 Right of First Refusal to Lease Town Land. If the Town receives a bona-fide third party offer (“**Lease Offer**”) to lease the Town Parcel or all or any portion of the Town Land which is not then subject to this Lease or to a lease on the Other Project Parcels (“**Town Leasable Property**”) which the Town desires to accept (whether or not the Lease Offer has then been accepted in writing), then the Tenant and the Other Project Lessees shall have the first right to lease the Town Leasable Property (“**Lease Right**”), which may be exercised as set forth in this Section 14.3, and any Lease Party (as herein defined) may designate an Affiliate to exercise its Lease Right as the Lease Party.

14.3.1 The Town shall give prompt written notice (“**Lease Notice**”) to Tenant and each of the Other Project Lessees (collectively, the “**Lease Parties**”, and individually, a “**Lease Party**”), which Lease Notice shall outline in reasonable detail the terms of the Lease Offer, and if a written offer is in effect, a copy of the written Lease Offer shall be included. In all events, the Lease Offer shall not permit any Prohibited Uses, nor shall it

permit any uses which would not be consistent with the zoning overlay governing the Town Land as approved by the Town.

14.3.2 Each of the Lease Parties may exercise their respective Lease Right by giving written notice of such intent to exercise such Lease Right (“**Lease Exercise Notice**”) within sixty (60) days after receipt of the Lease Notice, and subsequently negotiating with the Town within one hundred eighty (180) days a mutually satisfactory lease consistent with the terms of the Lease Offer.

14.3.3 If one or more than one of the Lease Parties exercises its Lease Right by timely delivery of the Lease Exercise Notice, then such exercising Lease Party shall proceed to lease the Town Leasable Property on the terms set forth in the Lease Offer, as further described in the mutually satisfactory lease, within one hundred eighty (180) days after delivery of the Lease Exercise Notice. If more than one of the Lease Parties timely delivers the Lease Exercise Notice, then their lease shall be joint and several unless the exercising Lease Parties, between themselves, decide otherwise.

14.3.4 If none of the Lease Parties timely exercises its Lease Right or fails to lease the Town Leasable Property in accordance with its Lease Right, then the Town shall have the right to lease the Town Leasable Property to such third party, provided such lease occurs within eight (8) months after the Lease Notice. If such lease does not occur within such eight (8) month period for any reason, or if the Town desires to lease the Town Leasable Property on terms which differ in any material respect from the Lease Offer, then the Lease Right set forth in this Section 14.3 shall be reinstated on the terms set forth herein.

ARTICLE 15 LEASEHOLD MORTGAGES

Tenant shall have the right at any time and from time to time to obtain financing secured in whole or in part by its leasehold interest in this Lease, and in connection therewith to mortgage, encumber and/or otherwise assign the leasehold interest herein demised upon such terms, conditions and maturity as the Tenant shall determine, and to enter into all renewals, modifications, consolidations, replacements and extensions of such leasehold financing (“**Leasehold Mortgage**”).

As long as any Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply for the benefit of Tenant and the holder of the Leasehold Mortgage and its successors and assigns (“**Leasehold Mortgagee**”) notwithstanding anything else to the contrary contained in this Lease:

(i) Upon written notice given by Tenant to Town that Tenant has assigned its interest under this Lease or otherwise granted a Leasehold Mortgage, the Town shall give the Leasehold Mortgagee written notice of any default by Tenant under this Lease. There shall be added to any grace period allowed by the terms of this Lease to Tenant for curing any default, an additional ninety (90) days in the case of default of Monthly Payments of Annual Base Rent and an additional one hundred twenty (120) days in the case of all other

defaults, for Leasehold Mortgagee to cure the same beyond the time allowed to Tenant, except that for any such default other than a default in payment of Monthly Payments of Annual Base Rent, such one hundred twenty (120) day period shall be extended for such additional time as may be required to cure such default, and for the Leasehold Mortgagee to succeed to Tenant's interest under this Lease by foreclosure or otherwise, provided that Leasehold Mortgagee has commenced the cure of such default or initiated proceedings to acquire Tenant's interest under this Lease during the one hundred twenty (120) day cure period.

(ii) The Town shall not seek to assert any default against a Leasehold Mortgagee which default(s) is/are personal to the within-named Tenant, provided, however, that this shall not be construed to relieve any party from payment of rent, taxes and water and sewer charges or insurance premiums. In no event shall the continuation of this Lease be conditioned on defaults that are personal to Tenant being cured by Leasehold Mortgagee.

(iii) No Leasehold Mortgagee shall be or become liable to the Town as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by the Town and Leasehold Mortgagee or such liability (in which event the Leasehold Mortgagee's liability shall be limited to matters occurring during the period of time during which it is the owner of the leasehold estate created hereby); provided, however, that an assumption shall be assumed upon a foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Lease. The liability of Leasehold Mortgagee (or its designee) hereunder (including following the foreclosure of the mortgage) shall be limited to its interest in the Premises and Leasehold Mortgagee (or its designee) shall automatically be released from such liability from and after the date it no longer holds an interest in the Premises.

(iv) In the event of transfer of the Tenant's interest under the Lease to any Leasehold Mortgagee or its designee, the Leasehold Mortgagee shall have the right thereafter to freely assign the Tenant's interest under this Lease, without Town Approval, to any assignee provided such assignee is not a Prohibited Person. Subsequent to the assignment of Tenant's interest by Leasehold Mortgagee or its designee to any assignee, the Town shall look only to the named Tenant and the successors and assigns of Leasehold Mortgagee or its designee, as applicable, for performance of Tenant's obligations under the Lease.

(v) The Town shall give the Leasehold Mortgagee such agreements as may be reasonably requested to facilitate the Tenant's financing provided same are in form reasonably acceptable to the Town and do not adversely affect the Town's right to be paid Base Rent and obtain enforcement under the Lease.

(vi) This Lease may not be terminated in the event of a casualty or condemnation without the prior consent of Leasehold Mortgagee.

(vii) If the Lease is terminated for any reason, provided that all Monthly Payments of Annual Base Rent then due and payable have been paid by Tenant or any Leasehold Mortgagee, the Town shall, upon the written request of the Leasehold Mortgagee, execute a new Lease with the Leasehold Mortgagee or its successors and assigns, upon the same terms and conditions as this Lease (but providing for the revival of any rights and/or options which may have lapsed due to the Tenant's action or inaction under the Lease) and such new Lease shall have the same relative priority in right, title and interest in and to the Premises as under this Lease.

(viii) So long as a Leasehold Mortgage encumbers the Premises: (a) all insurance proceeds payable in connection with any casualty, damage or destruction to any portion of the Premises to which the Tenant is entitled and/or any awards or sales proceeds which are attributable to any Improvements in the event any portion of the Premises is taken in any proceedings by public authorities (by condemnation or otherwise) or is acquired for public or quasi-public purposes by sale in lieu thereof, shall be applied as provided for under the provisions contained in the Leasehold Mortgage and the Town hereby subordinates any right that it may have to such proceeds, to the rights and liens of the Leasehold Mortgagee in and to such proceeds; (b) such payment must not be less than the total award minus the value of the remainder interest in the fee considered as unimproved; (c) in the event of a partial taking, Tenant shall be permitted to rebuild and restore the Improvements unless the Leasehold Mortgagee consents to distribution of such proceeds; (d) Leasehold Mortgagee shall be permitted to participate on tenant's behalf in the adjustment of losses and settlement.

(ix) If Tenant defaults as mortgagor under a Leasehold Mortgage, such default under the Leasehold Mortgage shall not in and of itself constitute an Event of Default under this Lease, except to the extent that Tenant's acts or omissions, in and of themselves, constitute an Event of Default under the express terms of this Lease.

(x) The Town shall not unreasonably withhold consent to any change in the form of this Ground Lease reasonably requested by any Leasehold Mortgagee provided such change does not impose any additional liability or obligation on the Town, or reduce the Term of the Lease or the Rents payable to the Town hereunder, and does not otherwise adversely affect the benefits to be derived by the Town under this Lease.

(xi) Reserved.

With respect to financing obtained by Tenant secured by any Leasehold Mortgage, the Town shall not have any liability for, nor shall Town be required to execute any documents or agreements which would render the Town liable for, repayment of any such financing.

ARTICLE 16 MISCELLANEOUS

16.1 Information as to Members; Maintenance Books and Accounts.

16.1.1 Tenant shall keep books and accounts of its operations and transactions relating to the Premises separate and distinct from any other property or business enterprise owned or operated by Tenant (or any Member or Affiliate of Tenant).

16.1.2 Upon request by the Town, Tenant shall provide to the Town the identity of all Members of Tenant holding twenty-five percent (25%) or more of the membership Interest in Tenant.

16.2 Town Cooperation. Town will keep Tenant informed of all communications related to the Premises and or the activities contemplated by this Lease, including by providing copies of documents sent and received related to the Premises, invitations to meetings (in person or otherwise) related to the Premises, and copies of all environmental documents prepared or received related to the Premises.

16.3 Estoppel Certificates. The Parties shall, from time to time, within seven (7) Business Days of request in writing of the other Party, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the Party delivering the estoppel certificate views them), that (i) this Lease is in full force and effect; (ii) this Lease has not been modified or amended (or if it has, a list of the amendments); (iii) to such Party's knowledge, the Party requesting the estoppel certificate is not then in default under this Lease; (iv) to such Party's knowledge, the Party requesting the estoppel certificate has fully performed all of its respective obligations hereunder (or, if it has not, identifying any such failures to perform); and (v) such other statements as reasonably may be required by any Party or, as to Tenant, any other appropriate party such as its partners, lenders, or investors providing funding for the Project.

16.4 No Personal Liability. No Person other than the Parties to this Lease, and the permitted assignees of such Parties, shall have any liability or obligation under this Lease. Without limiting the generality of the foregoing, (i) Tenant agrees that no employee, officer, director, official, consultant, contractor, agent or attorney engaged by the Town in connection with this Lease or the transactions contemplated by this Lease shall have any liability or obligation to Tenant under this Lease or otherwise relating to this Lease or the Premises or the Other Project Parcels and (ii) the Town agrees that no Member, nor any direct or indirect holder of any equity or other beneficial ownership interest in Tenant, nor any officer, director, employee, consultant, contractor, agent or attorney engaged by Tenant in connection with this Lease or the transactions contemplated by this Lease, shall have any liability or obligation to the Town under this Lease or otherwise relating to this Lease or the Premises or the Other Project Parcels.

16.5 Titles of Articles and Sections. Titles and captions of the several parts, articles and sections of this Lease are inserted for convenient reference only and shall be disregarded in construing or interpreting provisions under this Lease.

16.6 Singular and Plural Usage. Whenever the sense of this Lease so requires, the use herein of the singular number shall be deemed to include the plural, and the use of the plural shall be deemed to include the singular.

16.7 Applicable Law; Jurisdiction. This Lease shall be construed in accordance with and governed by the laws of the State of Rhode Island, without reference to the conflicts of Laws provisions thereof. Any suit, action, proceeding or claim relating to this Lease or the transactions contemplated by this Lease shall be brought exclusively in the United States District Court for the State of Rhode Island, or the Superior Court for the State of Rhode Island, and the Town and Tenant agree that such courts are the most convenient forum for resolution of any such action and further agree to submit the jurisdiction of such courts and waive any right to object to venue in such courts.

16.8 Entire Agreement. This Lease constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings related to the subject matter hereof. All Exhibits hereto are incorporated herein by reference regardless of whether so stated.

16.9 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

16.10 Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a day that is not a Business Day is automatically extended to the next Business Day.

16.11 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of, the successors and assigns of the Town and Tenant, and where the term “Tenant” or “Town” is used in this Lease, it shall mean and include their respective permitted successors and assigns.

16.12 Third Party Beneficiary. No Person shall be a third-party beneficiary of this Lease.

16.13 WAIVER OF JURY TRIAL. ALL PARTIES HERETO HEREBY, AND ALL PERSONS ACCEPTING AN INTEREST IN THE PREMISES THEREBY, WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS LEASE OR THE TRANSACTIONS CONTEMPLATED BY THIS LEASE.

16.14 Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Lease.

16.15 Modifications and Amendments. None of the terms or provisions of this Lease may be changed, waived, modified, or terminated except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or termination is asserted and no such modification, amendment, cancellation, or termination of this Lease shall be made without the prior written consent of any Leasehold Mortgagee. The Town shall not accept a voluntary surrender of this Lease by Tenant without the prior written consent of Leasehold

Mortgagee. None of the terms or provisions of this Lease shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

16.16 Anti-Deficiency. Tenant acknowledges that the Town cannot enter into any financial obligations under this Lease without the lawful availability of funds and absent compliance with all other Applicable Laws. Tenant acknowledges and agrees that the obligation of the Town to fulfill financial obligations of any kind pursuant to any and all provisions of this Lease relating to any public funds, or any subsequent agreement entered into pursuant to this Lease or referenced herein relating to any public funds are and will remain subject to the provisions of the State's Anti-Deficiency Act, as the foregoing statutes may be amended from time to time. Any provision herein contained that violates the State's Anti-Deficiency Acts may be waived, at the Town's sole discretion, to the extent such waiver is permissible under law.

16.16.1 Notwithstanding the foregoing, no officer, employee, director, member, or other natural person or agent of the Town shall have any personal liability in connection with the breach of this Lease.

16.16.2 This Lease shall not constitute an indebtedness of the Town, nor shall it constitute an obligation for which the Town is obligated to levy or pledge any form of taxation or for which the Town has levied or pledged any form of taxation.

16.17 Submission of Lease. The submission by either Party to the other of this Lease in unsigned form shall be deemed to be a submission solely for the other Party's consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option, and shall not confer any rights upon the recipient or impose any obligations upon the submitting Party, irrespective of any reliance thereon, change of position or partial performance.

16.18 Severability. If any provision of this Lease is held to be illegal, invalid, or unenforceable under present or future Applicable Laws, such provisions shall be fully severable; this Lease shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Lease; and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Lease, unless this construction would constitute a substantial deviation from the general intent of the Parties as reflected in this Lease. Furthermore, there shall be added automatically as a part of this Lease a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

16.19 No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Tenant and the Town, it being understood and agreed that neither the method of computation of any participation nor any other provision contained herein, nor any acts of the Parties hereto shall be deemed to create any such relationship.

16.20 Time is of the Essence. Time is of the essence with respect to all matters set forth in this Lease. For all deadlines set forth in this Lease, the standard of performance for the Party

required to meet such deadlines shall be strict adherence and not reasonable adherence subject to Force Majeure in all such cases.

16.21 Interest. In the event a Party fails to timely pay to or reimburse the other Party within ten (10) days after demand for any amounts due pursuant to this Lease, or a Party advances any amounts to pay or satisfy any obligations of the other Party under this Lease (including, without limitation in curing any default of the other Party), such amounts shall accrue interest at the rate of eight percent (8%) per annum (or the highest rate permitted by law, if less), from the date which is ten (10) days after demand until paid or reimbursed by the other Party.

16.22 Releases.

16.22.1 As additional consideration for the Town's entry into this Lease, Tenant does hereby release and forever discharge the Town and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "**Town Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which Tenant may now have or claim to have against the Town Released Parties as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon the Town's treatment of Tenant, the Premises, this Lease, and any documents executed in connection herewith (including any term sheets, business terms, letters of intent or memoranda of understanding), or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the Parties up to and including the Effective Date. The agreement and covenant on the part of Tenant under this Section 16.22.1 is contractual and not a mere recital.

16.22.2 As additional consideration for Tenant's entry into this Lease, the Town does hereby release and forever discharge Tenant and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "**Tenant Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which the Town may now have or claim to have against Tenant Released Parties as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon the Town's treatment of Tenant, the Premises, this Lease, and any documents executed in connection herewith (including any term sheets, business terms, letters of intent or memoranda of understanding) or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the Effective Date. The agreement and covenant on the part of the Town under this Section 16.22.2 is contractual and not a mere recital.

16.23 No Construction Against Drafter. This Lease has been negotiated and prepared by the Town and Tenant and their respective attorneys and, should any provision of this Lease require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

16.24 Town Liability. Any review, analysis, examination, investigation or approval or consent by the Town pursuant to the terms of this Lease or otherwise in connection with the Project or the Premises is solely for the benefit of the Town and shall not be relied upon or construed by Tenant or any other Person as acceptance by the Town of any responsibility or liability therefor as to completeness or sufficiency thereof for any particular purpose or compliance with any Applicable Laws or other governmental requirements. In furtherance of the foregoing, the grant of consent or approval by the Town under this Lease shall be intended solely to satisfy the Town's rights under this Lease and for no other purposes.

16.25 Limited Recourse to the Parties. Subject to the additional limitations set forth in this Lease, any damages and claims against the Town or Tenant relating in any way to this Lease or the obligations contemplated hereunder, shall be limited to the value of their respective interests in the Premises.

16.26 Confidentiality. The following provisions are applicable to requests filed under the Rhode Island Access to Public Records Act and the regulations promulgated thereunder ("APRA") or any similar Law for information regarding this Lease or any communications, documents, agreements, information, or records with respect to this Lease:

16.26.1 Communications, documents, agreements, information, and records that qualify as "**Confidential Information**" under APRA or other Law provided to the Town by Tenant under or pursuant to this Lease shall be maintained by the Town as confidential, and the Town shall not disclose such information to any Persons other than the appropriate attorneys, accountants, underwriters, financial advisors, construction consultants, bond insurers, rating agencies, auditors and employees of the Town.

16.26.2 As required by the terms of this Lease, Tenant shall provide to the Town certain documentation and information. The Town acknowledges that such documentation and information is generally held by Tenant in strict confidence, and is not of the kind that would customarily be released to the general public by Tenant because the disclosure thereof would cause substantial harm to the competitive position of Tenant. The Town further acknowledges and agrees that Tenant will be considered as "submitter" of such documentation and information for purposes of the APRA. Accordingly, if a Person files a request under the APRA or any similar Law for any such documentation or information (solely for purposes of this Section, a "**Request**"), the Town shall promptly, and in any event not more than five (5) days following the receipt of the Request, notify Tenant of the Request and allow Tenant five (5) Business Days after receipt of such notice (and, in any event, at least five (5) days prior to the disclosure of any documentation or information ("**Requested Information**") that would be disclosed pursuant to the Request) within which to object to the Town, and any other relevant judicial or administrative body, to the disclosure of any of the Requested Information. If, following receipt of Tenant's objection

to the release of the Requested Information, or if the Town does not receive any objection from Tenant within five (5) Business Days after such notice, then not less than ten (10) Business Days following receipt of the Request, the Town reasonably determines that the Requested Information is exempt from disclosure pursuant to the APRA or other Law, the Town shall promptly, and in any event, within the time limits mandated under the APRA, assert such exemption from disclosure and decline to provide such information. If, following receipt of Tenant's objection to the release of the Requested Information, or not less than ten (10) days following receipt of the Request, the Town reasonably determines that the information sought by the Request is not exempt from disclosure pursuant to the APRA or other Law, the Town shall promptly notify Tenant of such determination, and shall refrain from making such disclosure for not less than ten (10) Business Days following receipt of such notice by Tenant in order to afford Tenant an opportunity to seek an injunction or other appropriate remedy if Tenant believes that the Town's determination is erroneous. The term "days" as used in this Section, shall be determined in the manner provided in the APRA.

16.26.3 Tenant shall endeavor to clearly mark each page of all documents which Tenant wishes to designate as Confidential Information "Confidential Trade Secret Information, Contact Tenant Before Any Disclosure" and shall also include a reference to this Lease; provided, however, that Tenant's failure to mark any document shall not foreclose Tenant from asserting that a document should be designated as Confidential Information.

16.26.4 Nothing in this Lease shall limit or restrict the Town from disclosing, to the extent required by Law, any information, communication, or record to the United States Congress, the Council, the State Inspector General or the State Auditor; provided that the Town shall use all reasonable measures to prevent further dissemination of such information to the extent such information is Confidential Information.

16.27 Generally Applicable State Law. Tenant acknowledges that (i) nothing set forth in this Lease exempts the Premises or any portion thereof from Applicable Laws and regulations in effect from time to time in the State or the Town, (ii) execution of this Lease by the Town is not binding upon, and does not affect the jurisdiction of or the exercise of police or regulatory power by, State or Town agencies, including, without limitation, independent agencies or officials of the State or Town (including, without limitation, the Town's Building and Zoning Officials, in the lawful exercise of their authority and (iii) no approval provided by the Town as a contract party to this Lease shall in any way bind or be considered to be an approval by any the Town agency acting in its capacity as a Governmental Authority (and not as a contract party to this Lease), including, without limitation, independent agencies of the State or the Town, such as the Town's Zoning and Planning Boards. Tenant acknowledges and agrees that any unauthorized act by the Town may be void.

16.28 Agreement Use. Except as specifically set forth herein, the Town shall not be responsible for reimbursing or otherwise paying or repaying any costs, fees, or expenses incurred by or on behalf of Tenant or any other Person or entity associated therewith prior to or during the term of this Lease. Tenant shall not be responsible for reimbursing or otherwise paying or repaying

any costs, fees or expenses incurred by or on behalf of the Town prior to or during the term of this Lease. Other than as set forth herein, no obligation or liability with respect to any future agreements described herein will exist, nor will any representations be deemed made, nor any reliance on any communications regarding the subject matter hereof be reasonable or justified. It is expressly agreed by Tenant that the Town is under no obligation to reimburse Tenant or its consultants, sub-contractors or successors for any cost, expense, or efforts incurred.

16.29 Laws. Any reference to a specific law or to Applicable Laws in this Lease shall mean such law as it may be amended, supplemented, or replaced, except as the context otherwise may require.

16.30 No Tax Exemption. In no event shall Tenant, or any of its employees, contractors, subcontractors, agents, servants, beneficial owners, or any Member, partner, or principal of any beneficial owner of Tenant assert for its own benefit, or attempt to assert, an exemption (including from sales taxes) or immunity available to the Town, if any, under any government requirements or Law on the basis of the Town's involvement in the transactions contemplated by this Lease.

16.31 Form of Payments. All payments due hereunder shall be paid in lawful money of the United States of America.

16.32 Force Majeure. Neither the Town nor Tenant shall be in default under this Lease if the performance of any obligation, duty, or act under this Lease is delayed or prevented by or due to one or more event(s) caused by Force Majeure.

16.33 Change in Prohibited Person Status. Tenant shall immediately notify the Town in the event that Tenant or one of its Affiliates becomes or is reasonably likely to become a Prohibited Person.

16.34 Memorandum of Lease. The Town and Tenant shall execute and deliver a Memorandum of Lease in form attached hereto as Exhibit H or such other form as is reasonably acceptable to the Town and Tenant (and of any amendments thereto in the event this Lease is hereafter amended and such amendment affects the provisions of the previously recorded Memorandum of Lease) for the purpose of recording such Memorandum of Lease in the Land Records, but such Memorandum of Lease shall not in any circumstances be deemed to modify or to change any of the provisions of this Lease. Tenant shall pay the costs associated with the recording of such Memorandum of Lease in applicable Land Records.

16.35 Exhibits. This Lease includes the following Exhibits:

Exhibit A	Legal Description of Town Land
Exhibit B	Master Development Plan
Exhibit C	Legal Description of Premises
Exhibit D	Definitions
Exhibit E	ECCR's
Exhibit F	Form of Non-Disturbance Agreement
Exhibit G	Map of Adjacent Parcel

Exhibit H

Form of Memorandum of Lease

16.36 Schedules. This Lease includes the following Schedule 3.3:

Schedule 3.3

Annual Base Rent Schedule

End of Lease – Signature page follows

IN TESTIMONY WHEREOF, the Town and Tenant have caused this Lease to be signed on their behalf as of the Effective Date.

TOWN:

**TOWN OF MIDDLETOWN, RHODE
ISLAND**

By: _____

Print Name: _____

Title: _____

Signature page to Lease Agreement follows

IN TESTIMONY WHEREOF, the Town and Tenant have caused this Lease to be signed on their behalf as of the Effective Date.

TENANT:

_____,

By: _____

Print Name: _____

Title: _____

End of signature pages

Exhibit A

LEGAL DESCRIPTION OF TOWN LAND

Exhibit B

MASTER DEVELOPMENT PLAN

Exhibit C

LEGAL DESCRIPTION OF PREMISES

Exhibit D

DEFINITIONS

For the purposes of this Lease, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“Adjacent Parcel” shall mean the Adjacent Parcel as shown on the Map of Adjacent Parcel attached hereto as Exhibit G.

“Affiliate” means with respect to any Person (**“first Person”**), (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, trustee, general partner, manager, or any direct or indirect member, shareholder, partner, beneficiary or other beneficial or equity owner of such first Person, or (iii) any officer, director, trustee, general partner, manager, or any direct or indirect member, shareholder, partner, beneficiary or other beneficial or equity owner of any Person described in clauses (i) or (ii) of this sentence.

“Annual Base Rent” has the meaning given in Section 3.3 hereof.

“Anti-Money Laundering Acts” has the meaning given in Section 11.2.10 hereof.

“Anti-Terrorism Order” has the meaning given in Section 11.2.10 hereof.

“Applicable Laws” means all applicable local, State, and federal laws, ordinances, rules, codes, regulations, resolutions, executive orders, and standards, including, without limitation, Environmental Laws, zoning requirements, building codes, and all laws relating to accessibility for persons with disabilities.

“Business Days” means Monday through Friday, inclusive, other than holidays or other days on which the State government is closed.

“Certificate of Occupancy” means a final certificate issued by the Town of Middletown, Rhode Island which permits the occupancy of the premises for which it is intended.

“Common Infrastructure” shall have the meaning given in Section 5.7.1.

“Confidential Information” has the meaning given in Section 16.26.1 hereof.

“Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the day-to-day management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, which term shall not preclude major decision approval by others. The terms “Control,” “Controlling,” “Controlled by,” or “under common Control with” shall have meanings correlative thereto.

“Developer” has the meaning given in the Preamble hereof.

“Development Documents” means those certain plans, specifications, documents, schedules, items, and other matters to be submitted by the Developer to the Town pursuant to the terms of the Development Agreement.

“Effective Date” means the Lease Commencement Date.

“Environmental Law” means any federal or State law, act, statute, ordinance, rule, regulation, order, decree, permit, or ruling of any federal, State, or administrative regulatory body, agency, board, or commission or a judicial body, relating to the protection of human health or the environment or otherwise regulating or restricting the management, use, storage, disposal, treatment, handling, release, and/or transportation of a Hazardous Material, which are applicable to the Project or activities on or about the Premises or Other Project Parcels, including but not limited to 42 U.S.C. § 9601, et seq. (CERCLA), 42 U.S.C. § 6901 et seq. (RCRA), the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Emergency Planning and Community Right To Know Act, 42 U.S.C. § 11001 et seq., and any State equivalent laws as each of the same is amended or supplemented from time to time.

“Event of Default” has the meaning given in Section 9.1 hereof.

“Force Majeure” means any act of God, fire, earthquake, flood, explosion or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; inability to procure, or a general shortage of, labor, equipment, facilities, materials or supplies in the open market; failure, unavailability or shortage of transportation; strikes, lockout or actions of labor unions; taking by eminent domain, requisition, laws, or orders of governmental or quasi-governmental bodies or of civil, military, or naval authority; adverse weather of greater frequency, duration or severity than is common for the month in question; pandemics or epidemics; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of, and is not reasonably foreseeable by any Party hereto, and is not due to the fault or negligence of any such Party and that results in a delay in the commencement, prosecution, or completion of an applicable requirement of this Lease.

“Governmental Authority” means any and all municipal, federal, or State governmental or quasi-governmental municipal corporation, board, agency, authority, department, or body having jurisdiction over all or any portion of the Premises or the Project or the Tenant, but excluding the Town in its capacity as Landlord under this Lease.

“Hazardous Materials” means a substance that falls within one or more of the following categories, other than in quantities or concentrations that constitute Permitted Materials: (1) Any “hazardous substance” under 42 U.S.C. § 9601, et seq. or “hazardous waste” under 42 U.S.C. § 6901, et seq.; (2) Any substance or chemical defined and regulated under requirements promulgated, respectively, by the U.S. Environmental Protection Agency at 40 C.F.R. part 355, by the U.S. Department of Transportation at 49 C.F.R. parts 100-180, by the U.S. Occupational Safety and Health Administration at 29 C.F.R. § 1910.1200 and ionizing materials otherwise regulated by the U.S. Nuclear Regulatory Commission at 10 C.F.R. part 20; (3) Any substance or chemical that is defined as a pollutant, contaminant, dangerous substance, toxic substance,

hazardous or toxic chemical, hazardous waste or hazardous substance under any other Environmental Law, or the presence of which requires reporting, investigation, removal and remediation or forms the basis of liability under any applicable environmental requirements; (4) Any substance or material that the Secretary of Defense designates as a “toxic or hazardous material” under 10 U.S.C. § 2692(a)(2); (5) Any substance the presence of which on the Premises or adjacent property causes or threatens to cause a nuisance or poses or threatens to pose a hazard to health or safety of persons on or about the Premises or adjacent property; (6) Gasoline, diesel fuel, or other petroleum hydrocarbons, including refined oil, crude oil and fractions thereof, natural gas, synthetic gas and any mixtures thereof; (7) Asbestos or asbestos containing material; and (8) Polychlorinated bi-phenyls or materials or fluids containing the same.

“Hotel Project” shall have the meaning given in Section 5.2.

“Land Records” means the Land Evidence Records of the Town of Middletown, Rhode Island.

“Lease” has the meaning given in the Preamble hereof.

“Lease Commencement Date” has the meaning given in the Preamble hereof.

“Master Development Plan” has the meaning given in the Recitals.

“Material Change” means a change in the Master Development Plan that would result in (a) a change in use of the Premises to other than for hotel use; or (b) a reduction in the number of rooms in the hotel to less than seventy-five (75%) of the rooms permitted under the Master Development Plan.

“Member” means any Person with an ownership interest in any entity, whether as a member of a limited liability company, a shareholder in a corporation, a partner in a partnership, a beneficiary under a trust, or otherwise.

“Monetary Default” has the meaning given in Section 9.1.1(1) hereof.

“Navy” means the United States Department of Navy.

“Parcel” or **“Parcels”** means, individually or collectively, the Residential Parcel, the Retail Parcel, the Hotel Parcel and/or the Town Parcel.

“Party” and **“Parties”** have the meanings given in the Preamble.

“Permit” means any demolition, site, building, construction, historic preservation, and other permit, approval, license and/or right required or necessary to be obtained under Law from a Governmental Authority for the commencement, performance, and completion of the Project or any part thereof, other than the Development Permits.

“Permitted Materials” means any materials or substances regulated by Environmental Laws which are in quantities and concentrations and used, handled, and stored under conditions in compliance with all applicable Environmental Laws.

“Person” means any individual, or any corporation, limited liability company, trust, partnership, association, or other entity.

“Premises” has the meaning given in the Recitals.

“Prohibited Person” means any Person who or which (a) has been convicted of a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) perjury, (v) conspiracy to commit a crime, (vi) making false statements to a government agency, (vii) improperly influencing a government official, and (viii) extortion; (b) could be debarred if the standards applied in applicable Town regulations were applied to such Person’s failure to satisfy a contractual obligation to the Town; (c) is on the Town’s list of debarred, suspended or ineligible Persons; or (d) is a Restricted Person.

“Prohibited Uses” has the meaning set forth in Section 3.5.

“Project” has the meaning given in the Recitals.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other receptacles containing any Hazardous Materials or Permitted Materials).

“Request” has the meaning given in Section 16.26.2 hereof.

“Requested Information” has the meaning given in Section 16.26.2 hereof.

“Restricted Person” has the meaning given in Section 11.2.10(2) hereof.

“State” means the State of Rhode Island.

“Substantial Completion” or **“Substantially Complete”** means the date on which a Certificate of Occupancy has been issued for the opening of the Hotel as permitted under the Master Development Plan.

“Tenant Released Parties” has the meaning given in Section 16.22.2 hereof.

“Term” has the meaning given in Section 3.2.

“Terrorist Acts” has the meaning given in Section 11.2.10(1) hereof.

“Town” has the meaning given in the Preamble hereof.

“Town Approval” means written approval by the Town Council of the Town of Middletown (which in the Town’s sole discretion, may be in executive session and/or with delegation of authority, if and to the extent permitted by Applicable Law), not to be unreasonably withheld, conditioned, or delayed, and with the Town agreeing to use good faith efforts to process all requests for Town Approval within sixty (60) days of such request in accordance with Applicable Law.

“Town Released Parties” has the meaning given in Section 16.22.1 hereof.

Exhibit E

ECCR's

Exhibit F

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

(Ground Lease)

This Non-Disturbance and Attornment Agreement (the “**Agreement**”), dated as of this ____ day of _____, 20__, by and between The Town of Middletown, Rhode Island (“**Ground Lessor**”), and _____, a _____ (“**Tenant**”).

WITNESSETH:

(a) Tenant has entered into a certain lease (the “**Lease**”) dated _____, 20__, with _____ (“**Landlord**”), covering certain leased premises located in the Town of Middletown, Rhode Island, and more particularly described in Exhibit A hereto (the “**Premises**”); and

(b) Ground Lessor has entered into that certain Ground Lease for _____ Parcel with Landlord, dated _____, 20__ (the “**Ground Lease**”), covering certain real property in Middletown, Rhode Island, which includes the Premises as part thereof; and

(c) The parties hereto desire to set forth their agreement with regard to the priority of the Ground Lease and the effect thereof on Tenant and its leasehold interest in the aforesaid Premises, as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and of the sum of One (\$1.00) Dollar by each party in hand paid to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Lease is a sublease and shall be subject and subordinate to the Ground Lease insofar as it affects the real property of which the Premises form a part.

2. Tenant agrees that in the event of a termination of the Ground Lease, Tenant will attorn to Ground Lessor as its landlord under the Lease for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in the Lease so long as Tenant is not in default under any of the material terms, covenants, or conditions of the Lease continuing beyond any applicable grace or cure period provided in the Lease.

3. In the event that the Ground Lease is terminated for any reason, Ground Lessor will not terminate the Lease nor join Tenant in summary proceedings so long as Tenant is not in default under any of the material terms, covenants, or conditions of the Lease continuing beyond any applicable grace or cure period provided in the Lease.

4. In the event that Ground Lessor shall succeed to the interest of Landlord under the Lease, Ground Lessor shall not be (a) liable for any act or omission of any prior lessor (including Landlord); or (b) liable for the return of any security deposits unless delivered to Ground Lessor; or (c) bound by any rent or other periodic payments which Tenant might have paid for more than thirty (30) days in advance to any prior lessor (including Landlord).

5. Notwithstanding the foregoing, Ground Lessor acknowledges and agrees that if Ground Lessor shall succeed to the interest of Landlord under the Lease, Ground Lessor shall recognize Tenant's rights and remedies properly exercised under the Lease, and that such rights of Tenant are not limited or impaired in any way by the terms and provisions of this Agreement.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

{Remainder of page intentionally left blank}

In witness whereof, the parties hereto have executed this Agreement under seal as of the day and year first above written.

GROUND LESSOR:

TOWN OF MIDDLETOWN, RHODE ISLAND

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, ss.

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.as _____ of the Town of Middletown, Rhode Island.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

Signature Page to Non-Disturbance and Attornment Agreement

In witness whereof, the parties hereto have executed this Agreement under seal as of the day and year first above written.

TENANT:

By: _____

Name: _____

Title: _____

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

_____, SS.

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of _____...

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

Signature Page to Non-Disturbance and Attornment Agreement

Exhibit G

MAP OF ADJACENT PARCEL

Exhibit H

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF GROUND LEASE

This instrument was prepared by
and upon recording return to:

Bernkopf Goodman LLP
Two Seaport Lane, 9th Floor
Boston, MA 02210
Telephone: (617) 790-3000
Attn: Sheryl C. Starr, Esq.

This space reserved for Recorder's use only.

MEMORANDUM OF GROUND LEASE

Notice is hereby given pursuant to the provisions of Rhode Island General Laws § 34-11-1, of the following:

LANDLORD:

Town of Middletown, Rhode Island

Attn: _____

TENANT:

Attn: _____

LEASED PREMISES:

The land with all buildings and other improvements now or hereafter located thereon as more particularly described on Exhibit A attached hereto and incorporated herein.

DATE OF LEASE EXECUTION:

LEASE COMMENCEMENT
DATE:

TERM OF LEASE:

Ninety-Nine (99) Years from the Lease Commencement Date.

RIGHT OF FIRST REFUSAL:

The Lease contains certain rights of first refusal to purchase and/or lease the Premises and/or other portions of the property on which the Premises is located ("**Property**"), as more particularly described in Exhibit B attached hereto and incorporated herein.

LEASE TERMS INCORPORATED: All of the terms, covenants and conditions of the Lease are incorporated herein and made a part hereof. The purpose of this Memorandum of Ground Lease is to give notice of the existence of the tenancy created by the Lease; and shall not be construed to vary or otherwise affect the rights or obligations of the parties under the Lease as it may be amended.

TITLE REFERENCE: For title to Property, see Deed(s) to Landlord recorded in the _____ Land Evidence Records in Book _____, Page _____; Book _____, Page _____; Book _____, Page _____.

End of Memorandum of Lease – Signature page follows

EXECUTED as a sealed instrument as of this _____ day of _____, 20____.

LANDLORD:

TOWN OF MIDDLETOWN, RHODE ISLAND

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, SS.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, in his/her/its capacity as _____ of the Town of Middletown, Rhode Island, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/it signed it voluntarily for its stated purpose, and further acknowledged the foregoing to be his/her/its voluntary free act and deed.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

Notary ID #: _____

My Commission Expires: _____

Signature page to Memorandum of Lease

EXECUTED as a sealed instrument as of this _____ day of _____, 20____.

TENANT:

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, SS.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, in his/her/its capacity as _____ of _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/it signed it voluntarily for its stated purpose, and further acknowledged the foregoing to be his/her/its voluntary free act and deed.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

Notary ID #: _____

My Commission Expires: _____

Signature page to Memorandum of Lease

Exhibit A

Legal Description of Leased Premises

Exhibit B

Legal Description of Property

Schedule 3.3
ANNUAL BASE RENT

Exhibit B-3GROUND LEASE AGREEMENT FOR RETAIL PARCEL

This Ground Lease Agreement for Retail Parcel (this “**Lease**”) is made and entered into this _____, day of _____, 2024 by and between the **TOWN OF MIDDLETOWN, RHODE ISLAND** (the “**Town**” or “**Landlord**”), and _____, a _____ (the “**Tenant**”). The Town and Tenant, and their respective successors and assigns, are sometimes individually referred to as a “**Party**” and are sometimes collectively referred to as the “**Parties**.”

RECITALS

A. The Town is the owner in fee simple of the property located on West Main Road in Middletown, Rhode Island and identified as Lots 3, 4, 5, 6, and 7 on Middletown Tax Assessor’s Plat 102, consisting of approximately 15.27 acres of land, as more specifically described on Exhibit A, attached hereto (the “**Town Land**”).

B. On or about June 2, 2021, the Town issued a Request for Information (the “**RFI**”) to seek information from potential developers interested in a mixed development opportunity on the Town Land, and setting forth the Town’s development goals and potential uses.

C. Middletown Commons Town Center LLC (“**Developer**”) submitted a response to the RFI (the “**Proposal**”), a copy of which is on file with the Town, and after scoring all of the proposals received in response to the RFI, the Town selected the Developer as the entity with which to negotiate exclusively for purposes of accomplishing the development purposes of the RFI.

D. Subsequent to the selection of the Developer for exclusive negotiations, the Town and the Developer entered into an Exclusive Negotiating Agreement, dated January 19, 2022 (“**ENA**”) for purposes of achieving a mixed-use development (the “**Project**”) consisting of retail, restaurant and family entertainment uses (“**Retail Use**”), multifamily housing rentals, including affordable units (“**Residential Use**”), and a hotel (“**Hotel Use**”) on a portion of the Town Land.

E. In accordance with the ENA, the Town and Developer entered into a Development Agreement, dated October 3, 2024 (the “**Development Agreement**”), which provides that the Developer and/or its designees have the right to construct and develop certain portions of the Town Land, as designated, to be used for the Residential Use (the “**Residential Parcel**”), the Retail Use (the “**Retail Parcel**”), and the Hotel Use (the “**Hotel Parcel**”) as shown on the Master Development Plan attached hereto as Exhibit B (as it may be amended from time to time, the “**Master Development Plan**”).

F. The Development Agreement contemplates that a portion of the Town Land is intended to be used for public purposes in accordance with the Master Development Plan (the “**Town Use**”) and such portion, which may be combined with the Adjacent Parcel, as defined on Exhibit G (together herein called the “**Town Parcel**”) shall continue to be owned by the Town, and may be developed by the Town for public purposes.

G. The Town has reviewed and approved all Development Documents required by the Development Agreement, and the Developer and the Town have each satisfactorily completed their respective conditions precedent to this Ground Lease as required under the Development Agreement.

H. The Developer has received Town Approval and has achieved all permits and regulatory approvals (“**Development Permits**”) required to develop the Project on the Residential Parcel, the Retail Parcel, and the Hotel Parcel in accordance with the Master Development Plan.

I. The Developer has designated Tenant as the entity to develop the Retail Parcel for the Retail Use, and this Lease constitutes the lease of the Retail Parcel as more particularly described on Exhibit C attached hereto and made a part hereof (the “**Premises**”) to Tenant for such purpose.

ARTICLE 1 AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Town and Tenant do hereby agree as follows:

ARTICLE 2 DEFINITIONS/RECITALS

For the purposes of this Lease, the capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in Exhibit D, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular. The foregoing Recitals are hereby incorporated by this reference as if fully set forth herein.

ARTICLE 3 LEASE TO THE TENANT

3.1 Agreement to Lease. The Town hereby agrees to lease to Tenant the Premises, and Tenant agrees to lease from the Town the Premises, effective as of _____, 20____ [*date to be inserted is later of the date the Developer has obtained (i) the Development Permits pursuant to Section 1.1 of the Development Agreement, and (ii) the date that the Town Conditions Precedent as described in Section 1.10.1 and 1.10.2 of the Development Agreement have been satisfied*] (the “**Lease Commencement Date**”). Possession of the Premises shall be delivered to Tenant on the Lease Commencement Date. Concurrently herewith, the Town has leased the Hotel Parcel to a designee of Developer (the “**Hotel Lessee**”) and has leased the Residential Parcel to a designee of Developer (the “**Residential Lessee**”). The Hotel Lessee and the Residential Lessee are sometimes herein collectively called the “**Other Project Lessees**”, or individually an “**Other Project Lessee**”; and the Hotel Parcel and the Residential Parcels are sometimes herein collectively called the “**Other Project Parcels**”, or individually an “**Other Project Parcel**”, and the Residential Parcel, the Retail Parcel, and the Hotel Parcel are sometimes herein called collectively the “**Project Parcels**” or individually, a “**Project Parcel**”).

3.2 Term. The term of this Lease (the “**Term**”) shall commence on the Lease Commencement date and shall terminate upon the ninety-ninth (99th) anniversary of the Lease Commencement Date. This Lease may also include certain terms and conditions that are expressly stated herein to survive the expiration or termination of this Lease (sometimes herein called “**Surviving Obligations**”).

3.3 Annual Base Rent. There shall be no rent due from Tenant until the sooner of that date on which (i) a final Certificate of Occupancy is issued by the Town for fifty percent (50%) of the aggregate square footage of retail space as permitted under the Master Development Plan, or (ii) that date which is thirty-two (32) months after the Lease Commencement Date (the earlier of (i) and (ii) is sometimes herein called the “**Rent Commencement Date**”). On the Rent Commencement Date, and each anniversary thereafter, Tenant shall pay to the Town the amount (the “**Annual Base Rent**”) as set forth on Schedule 3.3 attached hereto and made a part hereof, provided however, at Tenant’s option, Tenant may pay Annual Base Rent in monthly installments, each in the amount of one-twelfth (1/12) of the Annual Base Rent (“**Monthly Payments**”) on the first day of each month commencing on the Rent Commencement Date (provided however, if the Rent Commencement Date is not on the first day of any month, then the Monthly Payment for that month shall be appropriately apportioned based on the number of days in that month.)

3.3.1 As set forth on the Rent Schedule, the Annual Base Rent shall be adjusted (a “**Rent Adjustment**”) to increase by twelve and one-half percent (12.5%) every five (5) years (each an “**Adjustment Date**”), with the first Adjustment Date occurring on that date which is five (5) years after the Rent Commencement Date (“**First Adjustment Date**”).

3.3.2 Reserved.

3.3.3 Reserved.

3.4 Quiet Enjoyment. The Town covenants that Tenant, at all times during the Lease Term and prior to an Event of Default, shall peaceably and quietly hold and enjoy the use and occupancy of the Premises during the Term, or until the earlier termination of this Lease in accordance with the provisions hereof, without hinderance or interference from others.

3.5 Use of Premises. During the Term, Tenant may use the Premises for retail use and related amenities and any other purposes consistent with this Lease, the Development Permits, the Master Development Plan, and Applicable Laws (“**Permitted Use**”); provided that such Permitted Use not include the (i) cultivation, sale, or use of drug paraphernalia, to include, but not limited to, marijuana shops or dispensaries; (ii) any use that is unlawful or inherently dangerous; (iii) activities involving the storage, treatment, transportation, disposal, or manufacture of toxic or Hazardous Materials, other than in quantities and under conditions in compliance with Applicable Laws; (iv) gambling of any sort (other than the sale of lottery tickets in the ordinary course); (v) prostitution; (vi) any establishment exhibiting or selling pornographic materials, adult books, videos, or other adult entertainment (items (i) through (vi) collectively herein called “**Prohibited Uses**”).

3.6 Net Lease. This Lease of the Premises to Tenant is a triple net lease, and the Annual Base Rent and all other sums payable hereunder to or on behalf of the Town shall be paid without

notice or demand and without setoff, counterclaim, abatement, suspension, deduction, or defense, except as otherwise specifically set forth herein.

3.7 Taxes and Assessments. Tenant shall pay, prior to delinquency: (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time or which arise with respect to the Premises and the operation, possession or use of the Premises; (ii) all real estate taxes and other sales, value added, ad valorem, use and similar taxes at any time levied, assessed to or payable by Tenant on account of Tenant's leasing, operation, possession or use of the Premises; and (iii) all fees for charges of utilities, communications, fire services, permits, and similar services serving the Premises. Notwithstanding anything set forth herein to the contrary, Tenant shall not be obligated to pay or reimburse any fees, taxes, expenses, or other charges to the Town (a) that arise or are allocable to periods prior to the Lease Commencement Date, or (b) that are not explicitly authorized by Applicable Laws or required by this Lease, or (c) that constitute income taxes on Landlord's income, franchise taxes, capital stock, transfer taxes, estate taxes or inheritance taxes. The term "real estate taxes" means those taxes which are assessed against the Retail Project and the Premises, which includes all taxes, assessments, betterments, water or sewer entrance fees, and similar charges imposed upon or against the land, the Retail Project, and any improvements thereon then comprising the Premises. This definition of real estate taxes is based upon the present system of real estate taxation in the State of Rhode Island, provided however, if taxes upon rentals or any other basis shall be substituted for the present ad valorem real estate taxes, the term real estate taxes shall be deemed changed to the extent to which there is such a substitution for the present ad valorem real estate taxes.

3.8 Town Parcel. For clarification purposes, as used herein, the term "**Project**" includes the Residential Parcel, the Retail Parcel, and the Hotel Parcel, and the Permitted Uses thereon. To the extent consistent with the context, the Town Parcel may sometimes be included within the meaning of "Project" as used herein, solely for descriptive purposes, provided, however, Tenant shall have no obligations or liabilities with respect to the Town Parcel other than with respect to the Common Infrastructure and ECCR's as described in Section 5.7 of this Lease. The Town has no obligation to construct buildings or improvements on or otherwise develop the Town Parcel for the Town Use, however, the Town Parcel shall not be (i) sold or leased to any third parties without compliance with Article 14 hereof, or (ii) permitted to waste.

ARTICLE 4 CONDITION OF PREMISES

4.1 Former Military Installation. Some or all portions of the Premises were part of a former military installation conveyed to the Town by the Navy by Quitclaim Deed(s) for economic development purposes, and such Quitclaim Deed(s) contain certain environmental notices and obligations with regard to the Premises. The Town represents and warrants that to the best of its knowledge it has provided or made available for inspection by Tenant such Quitclaim Deed(s) and Navy prepared environmental reports in its possession. The Tenant acknowledges that it has received or inspected such Quitclaim Deed(s) and Navy environmental reports relating to the Premises and will cooperate with the Town to comply with all notices and obligations therein.

4.2 Environmental Reports. The Town represents that, to the best of its knowledge, it has made available to Tenant all environmental reports and studies in its possession and control relating to the Premises. The Town will provide any such additional reports and documentation to Tenant as they become available. Tenant acknowledges and agrees that all materials, data, and information delivered by the Town to Tenant in connection with the transactions contemplated hereby are provided to Tenant as a convenience only and that any reliance on or use of such materials, data, or information by Tenant shall be at the sole risk of Tenant. Without limiting the generality of the foregoing provisions, Tenant acknowledges and agrees that (a) any environmental or other report with respect to the Premises which is delivered by the Town to Tenant shall be for general informational purposes only, (b) Tenant shall not have any right to rely on any such report delivered by the Town to Tenant (except to the extent permitted by the Person that prepared such report (“**Provider**”) and to the extent set forth in such report), but rather will rely on its own inspections and investigations of the Premises and any reports commissioned by Tenant with respect thereto, and (c) neither the Town nor the Provider shall have any liability to Tenant for any inaccuracy in or omission from any such report, except as set forth in such report or in any other agreement between Tenant or Developer and the Provider. The Town and Tenant acknowledge that certain environmental conditions affecting the building(s) on the Premises existing as of the Lease Commencement Date (“**Existing Building**”) must be remediated pursuant to Applicable Law before such Existing Building may be demolished, and the Town agrees to reimburse Tenant for all costs and expenses incurred by Tenant in connection with such environmental remediation pursuant to Section 5.10.7 of this Lease.

4.3 Soils and Groundwater. The Town makes no representation as to the condition or content of surface or subsurface soils and groundwater that may be encountered during construction, repair, utility work, development, use, or occupancy of the Premises.

4.4 DISCLAIMERS.

4.4.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS LEASE AND IN THE DEVELOPMENT AGREEMENT, THE TOWN IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO THE QUALITY OR QUANTITY OF THE PREMISES; HABITABILITY, MERCHANTABILITY, FITNESS, OR SUITABILITY FOR A PARTICULAR PURPOSE; TITLE; ZONING; TAX CONSEQUENCES; LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION; UTILITIES; OPERATING HISTORY OR PROJECTIONS; VALUATION; GOVERNMENTAL APPROVALS; THE COMPLIANCE OF THE PREMISES WITH APPLICABLE LAWS; THE TRUTH, ACCURACY, OR COMPLETENESS OF ANY DOCUMENTS OR OTHER INFORMATION PERTAINING TO THE PREMISES; THE STATUS OF ANY LITIGATION OR OTHER MATTER; OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF THE TOWN TO TENANT; OR ANY OTHER MATTER OR THING REGARDING THE PREMISES.

4.4.2 TENANT ACKNOWLEDGES AND AGREES THAT THE TOWN IS LEASING THE PREMISES TO TENANT “AS IS, WHERE IS, WITH ALL FAULTS.”

4.4.3 FURTHER, DEVELOPMENT OF THE PREMISES IN ACCORDANCE WITH THIS LEASE SHALL BE “AS IS, WHERE IS, WITH ALL FAULTS.”

4.4.4 TENANT IS ADVISED THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY EXIST AT THE PREMISES AND THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY CAUSE PHYSICAL INJURIES, INCLUDING, WITHOUT LIMITATION, ALLERGIC REACTIONS, RESPIRATORY REACTIONS OR OTHER PROBLEMS, PARTICULARLY IN PERSONS WITH IMMUNE SYSTEM PROBLEMS, YOUNG CHILDREN AND ELDERLY PERSONS.

4.4.5 OTHER THAN THE EXPRESS REPRESENTATIONS MADE BY THE TOWN IN SECTION 11.1, AND ELSEWHERE IN THIS LEASE, TENANT HAS NOT RELIED AND WILL NOT RELY ON, AND THE TOWN IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PREMISES OR RELATING THERETO MADE OR FURNISHED BY THE TOWN, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT THE TOWN, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING.

4.4.6 TENANT REPRESENTS TO THE TOWN THAT TENANT HAS CONDUCTED SUCH INVESTIGATIONS OF THE PREMISES, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS TENANT DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PREMISES AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PREMISES, AND WILL NOT RELY UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF THE TOWN OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO.

4.4.7 TENANT SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS (INCLUDING MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS, RADIOLOGICAL CONDITIONS OR ITEMS OR TOXIC SUBSTANCES), MAY NOT HAVE BEEN REVEALED BY TENANT’S INVESTIGATIONS, AND TENANT, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED THE TOWN FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS’ FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH TENANT MIGHT HAVE ASSERTED OR ALLEGED AGAINST THE TOWN AT ANY

TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PREMISES, OTHER THAN TO THE EXTENT ACTUALLY CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF THE TOWN OR THOSE ACTING BY, THROUGH, OR UNDER THE TOWN OR ON ACCOUNT OF THE BREACH OF ANY REPRESENTATIONS OF THE TOWN EXPRESSLY SET FORTH IN THIS LEASE.

4.4.8 THE TOWN SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PREMISES IN ANY WAY FOR DEVELOPMENT AT ANY TIME.

4.4.9 If prior to construction of any buildings or other improvements Tenant discovers an environmental defect on the Premises which existed prior to the Lease Commencement Date that was not discovered in the course of Tenant's reasonable due diligence investigation, and that was not caused by Tenant or Developer, or by others acting by, through or under either of them, which defect makes the development of the Premises or the Project infeasible, impractical, or which would pose a threat of harm to the health or safety of any Persons, then Tenant shall have the right to terminate this Lease by written notice to the Town, in which event this Lease shall be deemed null and void without recourse to the Parties hereto.

4.5 Legal Recourse Against the Navy.

4.5.1 Tenant acknowledges that it is familiar with avenues of legal recourse against the Navy for any pre-existing environmental condition caused or contributed to by the Navy, including the provisions of Sections 107 and 120(h)(3) of CERCLA and Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993.

4.5.2 If the Town reasonably requests Tenant to assist or cooperate in the pursuit of a claim tendered by the Town against the United States pursuant to Section 120(h)(3) of CERCLA or Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993 related to portions of the Town Land owned by the Town and leased to Tenant, Tenant shall reasonably cooperate with, and provide reasonable assistance to, the Town in the pursuit of the claim, provided the reasonable costs of tendering and pursuing the claim are paid by the Town.

4.5.3 If Tenant reasonably requests the Town to assist or cooperate in the pursuit of a claim tendered by Tenant against the United States pursuant to Section 120(h)(3) of CERCLA or Section 330 of the 1993 National Defense Authorization Act for Fiscal Year 1993 or pursuant to any other Applicable Laws, related to portions of the Town Land leased to Tenant or any Other Project Lessee, the Town shall reasonably cooperate with, and provide reasonable assistance to, Tenant in the pursuit of the claim, provided the reasonable costs of tendering and pursuing the claim are paid by Tenant.

ARTICLE 5 DEVELOPMENT/OPERATION OF THE PREMISES

5.1 Master Development Plan. The Retail Project shall be developed in accordance with the Master Development Plan, as it may be amended. Until Substantial Completion, the Retail Parcel shall conform to the Master Development Plan as such Master Development Plan is approved by the Town, and any Material Change to the Master Development Plan affecting the Retail Project requested by Tenant shall be subject to Town Approval. After Substantial Completion, any proposed changes to the Master Development Plan affecting the Retail Project (including Material Changes) must be approved only by the appropriate Governmental Authorities.

5.2 Development by Tenant.

5.2.1 On or before the Lease Commencement Date, Tenant will have obtained all licenses, approvals and authorizations from all Governmental Authorities (collectively, “**Development Permits**”) necessary to proceed with the development of the retail building or buildings (the “**Buildings**”) and other improvements and amenities (together with the Buildings, collectively the “**Improvements**”) at the Premises in a manner consistent with the Permitted Use (the “**Retail Project**”).

5.2.2 Following the Lease Commencement Date, Tenant shall use good faith efforts to submit applications for, and obtain all construction permits, including without limitation, all demolition permits, building permits, foundation permits, and other licenses and approvals (“**Construction Permits**”) from all Governmental Authorities necessary to construct the Improvements and shall use good faith, diligent efforts to Substantially Complete construction of the Retail Project within a period of thirty-six (36) months after the Lease Commencement Date, all in accordance with the construction schedule to be submitted in connection with Tenant’s application for Construction Permits (the “**Construction Schedule**”). The Town and Tenant acknowledge and agree that the Construction Schedule may be extended on account of Force Majeure and by other economic or practical matters beyond Tenant’s reasonable control.

5.2.3 In order to expedite the granting of Construction Permits, the Town will retain, at its own cost and expense, a consultant to speed the review of construction plans and drawings and process Construction Permits.

5.2.4 Until Substantial Completion any Material Change to the Master Development Plan affecting the Premises shall be subject to Town Approval. After Substantial Completion, any proposed changes to the Master Development Plan affecting the Premises (including without limitation any Material Changes) must be approved only by the appropriate Governmental Authorities in accordance with and to the extent required by the applicable municipal regulatory process. Until Substantial Completion, Tenant shall have the right to construct and reconstruct, repair, enlarge, rebuild, alter, change, improve, demolish, or remove any Buildings and other Improvements at the Premises in a manner consistent in all material respects with the Development Permits and the Master Development Plan, and which are otherwise approved in writing by the appropriate

Governmental Authorities as may be necessary under Applicable Laws. Following Substantial Completion, Tenant shall have the right to construct and reconstruct, repair, enlarge, rebuild, alter, change, improve, demolish, or remove any Buildings and other Improvements at the Premises which are approved in writing by the appropriate Governmental Authorities as may be necessary under Applicable Laws.

5.2.5 Tenant shall not be required to restore or replace the Buildings or other Improvements permitted hereunder in the event of damage by casualty.

5.2.6 Tenant shall have the right to freely sublease to any subtenant, without approval of the Town, as long as the use remains consistent with the Development Permits and the Master Development Plan.

5.3 **Reserved.**

5.4 **Buildings, Improvements, and Personal Property.** As between the Town and Tenant, Tenant shall be the owner for all purposes (including for state and federal taxation purposes), of the Buildings and other Improvements now or hereafter constructed or installed on the Premises, and shall be the owner of and have rights to all personal property located at the Premises and/or within the Improvements, to use or dispose of in Tenant's sole discretion.

5.5 **Provision of Services.** Subject to any Applicable Laws, Tenant has the right to provide certain services (directly, indirectly, or through third party contractors that may include local government) to the Premises and may assess and collect fees from tenants or others to cover the costs of providing such services to the Premises. Such services may include human resources, health and human services, education, trash and recycling, utilities, security, transportation, communication, video, data and internet services, and parks and recreation.

5.6 **Operation and Maintenance.** Beginning on the Lease Commencement Date and throughout the Lease Term, Tenant shall be responsible for maintaining and operating (including all costs arising therefrom) the Premises, including all Buildings and other Improvements thereon, and the Town shall have no responsibility for the maintenance or operation of the Premises as of the Lease Commencement Date. Without limitation, Tenant agrees throughout the Term of this Lease, at Tenant's sole cost and expense, to maintain, or cause to be maintained, the Premises and any and all Buildings and/or structures located thereon, and each and every part thereof, in good order and condition in all respects, free of accumulation of rubbish, and, specifically with regard to snow and ice, as necessary to maintain appropriate driveways, roads, access ways, sidewalks and pedestrian areas, and parking areas, and to make all necessary repairs and replacements, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, to the extent necessary to maintain such areas in compliance with all Applicable Laws, in all events subject to reasonable wear and tear, casualty, and eminent domain. Any and all repairs and maintenance by Tenant shall be performed in a good and workmanlike manner. Notwithstanding anything set forth in this Lease, it is understood and agreed that Tenant shall have no responsibility to maintain the Town Parcel (other than any obligations of Tenant under the ECCR's as described in Section 5.7 hereof, to the extent relating to the Common Infrastructure located on the Town Parcel). The Town will continue to be the owner in fee simple of the Town

Parcel and all buildings and other improvements now or hereafter located thereon, and the maintenance and operation of the Town Parcel shall remain the Town's obligation, subject to the ECCR's.

5.7 Common Infrastructure.

5.7.1 The Parties understand and agree that construction and development of the Project will require certain common infrastructure, such as, but without limitation, roads, parking areas, accessways, off-site improvements, and utilities (collectively, "**Common Infrastructure**"), which will be shared by the owners, lessees, and occupants of the Premises and each of the Other Project Parcels, and the Town Parcel. Accordingly, it is intended that the Developer and the Town, as Landlord under this Lease, and/or the Tenant and Other Project Lessees together with the Town as the owner of the Town Parcel, have entered into (or shall simultaneously enter into), one or more agreements for easements, covenants, conditions, and restrictions (the "**ECCR's**", as set forth in Exhibit E) to appropriately and equitably allocate responsibilities for and costs and expenses relating to construction, installation and maintenance of such Common Infrastructure in accordance with Section 5.7.3, and the Town, as Landlord, agrees to join in such ECCR's, and/or to consent and subordinate its fee interest in the Town Land thereto; provided, however, that such ECCR's shall contain a prohibition on short-term residential rentals, as more fully set forth in such ECCR's.

5.7.2 The Town and Tenant agree to work cooperatively and in good faith with each other and with the Other Project Lessees to agree on any future modifications and amendments to such ECCR's, and in all events, the Town will not unreasonably withhold, condition, or delay its approval thereof, provided any such modifications do not increase any responsibility or liability of the Town and do not restrict or decrease any rights and benefits of the Town, in each case, in any material respect.

5.7.3 The construction of the Common Infrastructure, in accordance with the Master Development Plan, the Construction Schedule, and the ECCR's, shall be the sole responsibility and cost of the Tenant and the Other Project Lessees. The Tenant agrees that the Tenant and the Other Project Lessees shall be jointly and severally liable for the completion of construction of the Common Infrastructure, with the understanding that so long as the Town of Middletown, Rhode Island is the owner of the Town Parcel the Town will not be required to contribute to the cost of the construction, installation, and/or maintenance of such Common Infrastructure.

5.8 Inspection of Site. The Town reserves for itself and its employees and agents ("**Town Representatives**") the right to enter the Premises at reasonable times and from time to time upon reasonable prior notice to Tenant (or upon such notice as may be reasonable, if any, in the event of an emergency), for the purpose of performing inspections in connection with the construction of the Retail Project on the Premises, including the conformance of the Retail Project to the Master Development Plan and the Construction Schedule, provided that Town Representatives shall not enter individual residences except in accordance with Applicable Law. Tenant waives any claim for trespass or interference that it may have against the Town arising out

of entry upon the Premises for the aforementioned purposes, resulting from causes other than gross negligence or willful misconduct of the Town or the Town Representatives, provided that at all times during construction on the Premises the Town Representatives shall have entry only in the company of Tenant or its agents and such Town Representatives follow all precautionary and safety measures requested by Tenant or required by Applicable Laws (collectively “**Precautionary Measures**”) applicable to a construction site. Any inspection of the Premises or access to the Premises by the Town or Town Representatives hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Retail Project or Premises with any Permits, building codes, regulations, or standards, including, without limitation, building engineering and structural design, or other Applicable Laws.

5.9 Issuance of Permits. Tenant shall have the sole responsibility, at Tenant’s sole cost and expense, for obtaining all Development Permits, Construction Permits, and any other permits necessary for the development, construction work, and operation of the Premises to complete the Retail Project, and shall make application therefor directly to the applicable Governmental Authority. The Town shall, upon request by Tenant, execute applications for Permits, as the owner of the Premises, to the extent required by the applicable Governmental Authority, at no out of pocket cost, expense, obligation, or liability to the Town. In no event shall Tenant commence demolition, construction, or renovation of all, or any portion of the Premises until Tenant shall have obtained all Permits required for such work. From and after the date of Tenant’s submission of an application for a Permit, Tenant shall diligently prosecute such application until receipt or final denial of the Permit. In addition, from and after submission of any such application, and until issuance of the Permit, Tenant shall report the Permit status in writing as part of the Tenant Status Report, as hereafter defined. Notwithstanding anything set forth herein to the contrary, in the event Tenant is unable to obtain any Permits required to construct and operate the Retail Project with such conditions as are reasonably acceptable to Tenant, Tenant shall have the right to terminate this Lease in its sole discretion by written notice to the Town, in which event this Lease shall be deemed terminated without recourse to the Parties hereto.

5.10 Compliance with Applicable Environmental Requirements.

5.10.1 Tenant hereby covenants that it shall comply with all provisions of Environmental Laws applicable to the Premises and all uses, improvements, and appurtenances of and to the Premises. Tenant shall indemnify, defend, and hold the Town and its officers, directors, agents, and employees (individually, a “**Town Indemnified Party**” and collectively, the “**Town Indemnified Parties**”) harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Town Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (i) Tenant’s violation of any Environmental Law or (ii) conduct, negligence, or willful misconduct of the Tenant resulting in any Release of Hazardous Material, as defined in applicable Environmental Laws, or any condition of pollution, contamination, or Hazardous Material-related Release or nuisance on, under, or from the Property which is a violation of Environmental Laws and which is not properly reported, monitored, and remediated by Tenant pursuant to applicable Environmental Laws; provided however, that the foregoing

indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) to the extent (a) arising from the conduct, negligence or willful misconduct of any Town Indemnified Party; and/or (b) relating to any environmental condition existing at the Premises or on, in, under or from the Town Land or any property adjacent thereto first arising prior to the Lease Commencement Date. Nothing in this Section in any way alters or limits or waives any of Navy's obligations contained in the Lease, Navy Quitclaim Deeds, or Laws.

5.10.2 Tenant shall provide the Town with written notice of any claims or allegations of Releases of Hazardous Materials, pollutants and/or contaminants at, from, or on the Premises, and notices of violations of applicable Environmental Laws received by Tenant relating to the Premises, promptly after Tenant receives or has actual knowledge of such notices or allegations. The Town shall provide the Tenant with written notice of any claims or allegations of Releases of hazardous substances, pollutants and/or contaminants at, from, or on the Premises, and notices of violations of applicable Environmental Laws received by the Town relating to the Premises, promptly after the Town receives or has actual knowledge of such notices or allegations.

5.10.3 Tenant shall obtain and maintain, at its sole cost and expense, any Permits or other approvals required under applicable Environmental Laws for construction of the Improvements and/or operation of the Premises for the Retail Project. The Town will not co-sign or otherwise be identified as a responsible party for any Permits or activities that Tenant conducts on or about the Premises, except as may be required by Applicable Laws. For so long as the Town owns fee simple title to or is leasing or otherwise in control of the Premises, or the applicable portion thereof, the Town shall, upon request by Tenant, execute applications for Permits or other approvals required under applicable Environmental Laws, as the Person with rights to the applicable portion of the Premises, to the extent required by the applicable Governmental Authority, at no third party cost, expense, obligation, or liability to the Town.

5.10.4 The Town shall have the right, upon request to Tenant, to review and comment on applications for Permits and other approvals required under applicable Environmental Laws prior to submission to environmental Governmental Authorities. Where practicable, Tenant shall provide the Town with advance notice of and an opportunity to jointly participate in meetings, including Permit application meetings, with environmental regulatory authorities relating to the Premises.

5.10.5 Tenant shall promptly provide the Town with copies of all non-routine correspondence with environmental regulatory authorities related to enforcement actions or notices of violations affecting the Premises promptly after receipt.

5.10.6 Tenant shall not cause or permit to be removed or disturbed any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity which are restricted from removal or disturbance under Applicable Laws ("**Restricted Artifacts**"). In the event such Restricted Artifacts are discovered, Tenant shall promptly notify the Town and protect the site and the Restricted Artifacts from further disturbance

until clearance to proceed has been provided by applicable Governmental Authorities. In the event that the presence of such Restricted Artifacts prevents, limits, or restricts the construction of the Improvements or use of the Premises in any material respect, the Parties shall work in good faith to amend the Construction Schedule and Master Development Plan, accordingly.

5.10.7 Notwithstanding anything set forth in this Lease to the contrary, the Town shall be responsible to pay all costs and expenses, including reasonable attorney's fees, incurred by Tenant in connection with the remediation of environmental conditions affecting the Existing Building prior to demolition as described in Section 4.2 hereof. Unless otherwise agreed between the Parties, the Tenant and Other Project Lessees shall obtain quotes from at least three (3) reputable environmental companies (two of which shall be selected by the Town) for the Building Remediation, and shall choose the company with the lowest quote (or within ten percent (10%) of such lowest quote), provided such company is able to perform the Building Remediation in a timely manner consistent with the Construction Schedule. The Town shall make such payment within ten (10) Business Days after invoicing therefor by Tenant.

5.11 Tenant's Encumbrances. Tenant has the right and authority to record liens and other encumbrances against Tenant's leasehold interest in the Premises, provided that Tenant shall provide a copy of such liens and encumbrances to the Town prior to such recording. In no event will the Town's fee ownership interest in the Premises be encumbered by any lien or encumbrance against Tenant's interest in the Premises, except with respect to the ECCR's as described in Section 5.7. Subject to the immediately preceding sentence, to the extent necessary, the Town will execute routine status agreements with any lender taking a security interest in Tenant's leasehold interest in the Premises that acknowledges Tenant's interest in the Premises and that does not impair or encumber the Town's fee ownership interest in the Premises. On or after the Lease Commencement Date, the Town will not convey, transfer, assign, grant, record, incur, authorize, or take any other action that creates any mortgages, liens, or other encumbrances on the Town's ownership interest in the Premises, whether recorded or otherwise, other than routine municipal undertakings, include zoning, taxes, etc., without the prior written approval of Tenant, and in the event any of same arise for any reason, they shall be subordinate to this Lease, and shall be removed by the Town within ten (10) days after arising.

5.12 Risk of Loss. Beginning on the Lease Commencement Date, Tenant shall have the risk of loss for any casualties occurring to all or any portion of the Premises or any improvements constructed thereon. Subject to the provisions of Article 13 hereof, in no event shall the Town or Tenant have any obligation to rebuild or restore any Improvements existing or constructed on the Premises after any casualty.

5.13 Tenant's Force Majeure. The outside dates for any of Tenant's obligations under this Lease shall be extended for delays caused by Force Majeure as defined in Exhibit D. Any such extension shall be day-for-day for the period of Force Majeure. Tenant shall use good faith efforts to notify the Town in writing, within fifteen (15) Business Days of discovery of any Force Majeure event, which notice shall include Tenant's estimate of the length of the delay that will be caused by such Force Majeure event and the actions Tenant is taking to minimize such delay. In all instances,

Tenant shall use commercially reasonable efforts to mitigate the length of a delay occurring on account of a Force Majeure event.

ARTICLE 6

TENANT PERMITS DURING DEVELOPMENT

6.1 Amendments to the Development Permits. Tenant shall not make, or permit to be made, a change to the approved Development Permits without the required regulatory approval of applicable Governmental Authorities to the extent required by Applicable Laws. Subject to the provisions of Section 5.1 with respect to required Town Approval of amendments for Material Changes to the Master Development Plan, amendments to the Development Permits shall not require Town Approval.

6.2 Press Releases, Marketing, Signage and Promotional Materials.

6.2.1 The name of the Project shall be the “Middletown Town Center” or such other name as the Developer shall select with Town Approval.

6.2.2 The Town shall have the right to approve the general template for use of the Town’s name, logo, or like identifiers. Expressly excluded from this provision are publications, marketing materials, solicitations, and/or informational materials specifically designed by the Tenant to recruit or market to prospective lessees, buyers, investors, lenders, and/or other financial institutions, as to which no requirement to identify the Town shall apply.

6.3 Tenant Status Reports. Tenant shall submit to the Town no later than December 31st and June 30th of each year during the Lease Term until the Tenant obtains a Certificate of Occupancy for fifty percent (50%) of the aggregate square footage of retail space as set forth in the Master Development Plan, a report (each, a “**Tenant Status Report**”) setting forth the current status of the Retail Project, which shall include, at a minimum, (i) a reasonably detailed account of current progress of construction of the Retail Project; and (ii) any public meetings planned for the Retail Project within the next six (6) month period. In addition, Tenant shall provide such additional status information in each report that the Town may reasonably request from time to time in writing, provided that the Town provides Tenant at least forty-five (45) days’ prior notice of its additional requests. Tenant shall include as part of each Tenant Status Report a reasonable number of construction photographs taken since the last report submitted by Tenant. In the event of a known upcoming delay of more than six (6) months to the Construction Schedule, the Tenant shall provide the Town prior notification (“**Status Report Notification**”).

ARTICLE 7

SCOPE OF TENANT AUTHORITY

7.1 Tenant Decisions. As more fully described below, the Parties agree and acknowledge that Tenant is solely responsible for all decisions related to the Retail Project except such decisions that are retained by the Town herein, if any, where Town Approval is expressly required.

7.2 Scope of Town Approval of Tenant's Permits. Permits or regulatory approvals required by Applicable Laws, shall be subject to all procedural and substantive provisions of those laws, including but not limited to timelines, substantive standards, procedural requirements, and compliance with the Rhode Island Environmental Quality Act, as applicable. The Town acknowledges that all Development Documents and Development Permits as described in the Development Agreement have been previously approved by the Town; accordingly, other than an amendment to the Master Development Plan requiring approval by the Town pursuant to the provisions of Section 5.1 and Section 5.2 hereof, no further Town Approval shall be required except as required by Applicable Law.

7.3 Approvals in Writing. All approvals or objections required or permitted pursuant to this Lease must be in writing. In no event shall any alleged oral approval of any matter requiring the Town's approval in its capacity as Landlord under this Lease be binding on the Town.

7.4 No Representation. The Town shall incur no liability by reason of its review of any Development Documents or any reports required to be submitted by Tenant under this Lease or the Development Agreement, and Tenant hereby acknowledges that any such Development documents or other reports reviewed by the Town are solely for the purpose of protecting the Town's own interests under this Lease.

ARTICLE 8 SUBLEASE AND ASSIGNMENT

8.1 Subleasing of Premises. Tenant shall have the right to lease, rent, license, permit occupancy and/or sublease all or any portion of the Premises to any Person ("**Sublessee**") for any use consistent with this Lease and Applicable Laws. With respect to all such subleases, licenses and other occupancy agreements entered by Tenant in good faith and in the ordinary course of Tenant's business, the Town agrees that so long as the Sublessee is not in default uncured within applicable grace and cure periods, if any, under its sublease, license or other occupancy agreement, then the Sublessee will have the right to continued occupancy of the subleased, licensed or occupied premises pursuant to the terms of the sublease, license or other occupancy agreement, notwithstanding any termination of this Ground Lease. Additionally, at Tenant's request, the Town shall enter into a Non-Disturbance and Attornment Agreement with any such Sublessee, in form attached hereto as Exhibit F or such other form as may be reasonably approved by the Town and such Sublessee, which Non-Disturbance and Attornment Agreement shall be recorded in the Land Records. The foregoing non-disturbance agreement shall not apply to subleases which are entered into at rents materially below then current market rents and terms for similar properties in the Middletown/Newport County area at the Premises at the time such subleases are entered, provided then current market leasing concessions and tenant improvement provisions may be included.

8.1.1 Reserved.

8.2 Assignment of Lease.

8.2.1 The Tenant acknowledges that: (i) the development and operation of the Premises as set forth in the Master Development Plan is important to the general welfare of

the community in which the Premises are located; (ii) the qualifications and identity of the Tenant, its principal officers, managers, Members, and partners are of particular importance to the Town; and (iii) the Town is entering into this Lease with the Tenant because of the qualifications and identity of the Developer and its principal officers, managers, members, partners, and Affiliates, and in so entering into this Lease, is willing to accept and rely on the obligations of the Tenant for the faithful performance of all of the Tenant's undertakings and covenants in this Lease. Accordingly, until the Tenant obtains a Certificate of Occupancy for at least fifty percent (50%) of the aggregate square footage of retail space as set forth in the Master Development Plan, Tenant shall not assign this Lease without Town Approval, which shall not be unreasonably withheld, conditioned, or delayed. The Town shall not assign this Lease except in connection with a sale of the Town Land, subject to the provisions of Article 14 hereof.

8.2.2 After the Tenant obtains a Certificate of Occupancy for at least fifty percent (50%) of the aggregate square footage of retail space as set forth in the Master Development Plan, Tenant shall have the right without Town Approval to assign this Lease to a Permitted Assignee, as herein defined, provided such assignment complies with the provisions of this Section 8.2 and the other terms and conditions of this Lease. As used herein, the term "**Permitted Assignee**" shall mean: (i) any Affiliate of Tenant; (ii) any entity which is a parent or subsidiary of Tenant or which controls or which is under common control with Tenant, (iii) any entity with which Tenant merges or consolidates, (iv) any entity which acquires all or substantially all of Tenant's right, title, and interest in this Lease and the Buildings and other Improvements on the Premises, and/or (v) any Leasehold Mortgagee. Notwithstanding that no prior Town Approval shall be required, Tenant shall deliver to the Town not less than ten (10) Business Days before the effective date of any such assignment: (a) written notice of such assignment, which notice shall include all pertinent information regarding the assignee, including documentation evidencing that the assignee is a Permitted Assignee (provided that where, due to confidentiality obligations, written notice cannot be provided prior to an assignment hereunder, Tenant must promptly notify the Town of the assignment upon the underlying transaction being publicly announced); and (b) a written agreement whereby such Permitted Assignee agrees to assume all liabilities and all payment and performance obligations of Tenant under this Lease, and to comply with and be bound by all the terms, covenants, conditions, provisions and agreements of this Lease. In no event shall Tenant be permitted to assign this Lease to a Prohibited Person. The provisions of this Sub-section 8.2.2 shall apply also to a sublease of all or substantially all of the Premises to a sublessee which is a Permitted Assignee.

8.2.3 Tenant shall not have the right to assign this Lease to entities other than a Permitted Assignee without Town Approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Town Approval, once given, shall not negate Tenant's obligation to obtain Town Approval to any further assignment by Tenant or any transferee of Tenant pursuant to this Section 8.2.3.

8.2.4 Except for Permitted Interest Transfers as herein defined, the assignment, transfer, or conveyance of more than 50% of the membership or other beneficial ownership interests (collectively "**Interest**") in Tenant shall be deemed an assignment subject to the

provisions of subsections 8.2.1 and 8.2.2 above. As used herein, “**Permitted Interest Transfers**” means the following: (i) transfers of Interest between and among the Members of Tenant existing as of the date of this Lease (“**Existing Members**”); (ii) transfers of Interest between and among Existing Members and their respective family members and/or trusts and other entities established for the benefit of such family members (“**Family Members**”); (iii) transfers of Interest between and among the Existing Members and the Members of any of the Other Project Lessees existing as of the date of this Lease and/or their respective Family Members; and (iv) other transfers of Interest so long as any one or more of (a) James J. Karam (or upon the death or disability of James J. Karam, James M. Karam, or Jeffrey T. Karam); (b) Robert Kempenaar II; and/or (c) Christopher C. Bicho, is in Control of Tenant.

8.3 Release. Upon assignment of this Lease as permitted in Section 8.2 above, the Tenant shall be released, and the assignee shall be deemed to have assumed all obligations of the Tenant under this Lease. The Tenant and assignee shall execute an assignment and assumption agreement in commercially reasonable form evidencing such assumption by assignee.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 Default under this Lease.

9.1.1 Each of the following shall constitute an “**Event of Default**” by Tenant under this Lease:

(1) **Monetary Defaults.** Tenant shall fail to pay or cause to be paid any Monthly Payment of Annual Base Rent or any other amount required to be paid by Tenant under this Lease, and such default shall continue for thirty (30) days after written Notice from the Town to Tenant specifying such default (a “**Monetary Default**”).

(2) **Misrepresentation.** Any of Tenant’s representations and warranties set forth in Section 11.2 hereof is not true and correct in all material respects as of the Lease Commencement Date, and, Tenant fails, within thirty (30) days after notice from the Town, to cure or correct such conditions as may be required to cause such representations to be then true and correct in all material respects.

(3) **Insurance.** Tenant shall fail to obtain or maintain in effect the Tenant required insurance under this Lease, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain, and provide evidence to the Town of the insurance required to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease, and such failure shall continue for a period of thirty (30) days after written Notice from the Town to Tenant.

(4) **Assignment.** Tenant shall breach the restriction on assignment set forth in Section 8.2 of this Lease and such breach shall not be remedied within thirty (30) days after written Notice of such breach from the Town to Tenant.

(5) Prohibited Person. Tenant becomes a Prohibited Person due to an action or omission arising from or relating to this Lease or the Premises and Tenant fails to cure such condition by assigning this Lease either to (a) one of the Other Project Lessees which is not a Prohibited Person; or (b) a third party which is not a Prohibited Person and is either a Permitted Assignee or is approved by the Town pursuant to Section 8.2.3 of this Lease.

(6) Bankruptcy. Tenant shall be adjudicated bankrupt and subject to a court approved Chapter 11 plan for liquidation.

(7) Construction Schedule. Tenant shall fail to use good faith diligent efforts to Substantially Complete construction of the Buildings on the Premises in accordance with the terms of this Lease and the Master Development Plan and such failure is not cured within thirty (30) days after written notice by the Town.

(8) Other Default. If Tenant shall breach any material term, covenant or condition of this Lease not specified in the foregoing clauses of this Sub-section 9.1.1 of this Lease, and Tenant shall fail to remedy such breach within thirty (30) days after written Notice by the Town, or if such breach is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, then Tenant shall have such additional period of time as may be reasonably necessary to cure such breach, provided that Tenant commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure.

9.1.2 During the continuance of an uncured Event of Default by Tenant, the Town shall have the following remedies only, which may be exercised at the Town's sole election, but subject in each instance to the rights of any Leasehold Mortgagee under Article 15 hereof or under the terms of any agreement entered into between the Town and such Leasehold Mortgagee, if any:

(A) If (i) the Event of Default is a Monetary Default, or (ii) the Event of Default is due to Tenant becoming a Prohibited Person without cure in accordance with Section 9.1.1.(5) above, then the Town may, subject to Section 9.3, terminate this Lease and retain all consideration paid to date and may collect all amounts then due and owing, subject to the rights of any Leasehold Mortgagee; or

(B) With respect to Events of Default other than as described in Section 9.1.2(A) above, subject to the rights of any Leasehold Mortgagee, the Town may exercise the following remedies: (a) after giving Tenant a notice of its intention to do so at least ten (10) Business Days before the Town's commencing to cure such Event of Default (or upon such notice as may be practical, if any, in the event of an emergency), cure such Event of Default, at Tenant's sole cost and expense, in which event Tenant shall reimburse the Town its actual out-of-pocket costs for such cure within ten (10) Business Days after demand therefor; or (b) the Town may pursue collection of all Annual Base Rent and all other monetary obligations of Tenant under this Lease as and when due; or (c) the Town may pursue injunctive relief.

9.2 Termination. Notwithstanding anything set forth in this Lease to the contrary, termination of this Lease shall affect the Premises only, and shall not impact in any way the status, existence, or pendency of any of the Other Project Lessees or the ground leases covering any of the Other Project Parcels.

9.3 Additional Termination. Subject to the rights of Tenant under this Lease, and notwithstanding anything herein to the contrary, if, under the Terrorist Acts or Anti-Terrorism Order, as may be supplemented by additional legislation, orders, or regulations, it shall become a violation of Applicable Laws for the Town to do business with Tenant during the term of this Lease, the Town shall be entitled to terminate this Lease after providing ten (10) days written notice to Tenant, unless Tenant is able to cure such condition within thirty (30) days after such notice or if Tenant is able to assign its interest under this Lease to an assignee with which the Town is not prohibited from doing business, provided such assignee is approved by the Town in its reasonable discretion.

9.4 No Waiver by Delay; No Waiver as to Other Defaults. Notwithstanding anything to the contrary contained herein, any delay by the Town in instituting or prosecuting any actions or proceedings with respect to a default by Tenant hereunder or in asserting its rights or pursuing its remedies under this Lease, shall not operate as a waiver of such rights or to deprive the Town of or limit such rights in any way (it being the intent of this provision that the Town shall not be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by the Town hereunder must be made in writing. Any waiver in fact made by the Town with respect to any specific default by Tenant under this Section shall not be considered or treated as a waiver of the Town with respect to any other defaults by Tenant or with respect to the particular default except to the extent specifically waived in writing.

9.5 Rights and Remedies Cumulative. The rights and remedies of the Town under this Lease, whether provided by law, in equity, or by the terms of this Lease, as applicable, shall be cumulative, and the exercise by the Town of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach. Notwithstanding the foregoing or any other provision of this Lease or of Applicable Laws, the Town shall not have the right to terminate this Lease except as expressly permitted in this Article 9.

9.6 Effect of Termination. In the event of a valid termination of this Lease by the Town, provisions of this Lease which are specifically stated herein to continue or survive the termination of this Lease, shall continue to survive as needed to resolve open issues with respect to this Lease. Upon termination, the Town will accept and recognize all then existing subleases at the Premises that are permitted pursuant to the terms of this Lease. The Parties shall otherwise reasonably cooperate to effect an orderly transition of the management of the Premises.

9.7 No Consequential or Punitive Damages. Notwithstanding the provisions of this Article 9 or anything in this Lease to the contrary, in no event shall the Town or Tenant ever be liable for any consequential, indirect, punitive, or special damages; provided, however, that this Section 9.7 shall not be deemed to preclude or prevent the collection of any fees or monetary penalties expressly provided for in this Lease.

9.8 Default Interest and Late Charges.

9.8.1 All payments that Tenant is obligated to make under this Lease, including without limitation, Monthly Payments of Annual Base Rent, which are not paid within thirty (30) days after notice from the Town to Tenant, shall bear interest from its due date until payment in full, at a rate of four percent (4%) over the prime rate charged by the principal commercial banks in the city of New York as of the date the payment is due. Should the interest be held as usurious, then interest shall be deemed to have accrued at and continue to accrue at the maximum rate of interest permissible under Rhode Island law.

9.8.2 Should Tenant fail to make a Monthly Payment of Annual Base Rent, and such failure continues for ten (10) days after notice from the Town to Tenant, then Tenant shall also pay to the Town a sum to recover the Town's administrative expenses, attorneys' fees and collection costs equal to Fifty Dollars (\$50.00) per day until paid.

9.8.3 Anything contained in this Section 9.8 regarding the payment of overdue amounts shall not constitute an extension of the due date of any amount Tenant is obligated to pay under this Lease, nor or shall it constitute a waiver of Tenant's obligation to pay such amounts as provided in this Lease.

ARTICLE 10 INSURANCE

10.1 Insurance. Tenant will maintain insurance on the Premises of the following character:

10.1.1 Upon Substantial Completion of the Buildings, all risk property insurance in standard form with typical endorsements in an amount not less than one hundred percent (100%) replacement cost;

10.1.2 Commercial general liability insurance and/or umbrella liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises in the minimum amounts of \$2,000,000 aggregate coverage;

10.1.3 Worker's compensation insurance to the extent required by the Rhode Island law (or, to the extent permitted by Laws, Tenant may self-insure with respect to worker's compensation insurance);

10.1.4 Pollution Legal Liability insurance in the minimum amount of \$5,000,000 in form and substance satisfactory to the Town in its reasonable discretion which insurance shall not be reduced or terminated without the prior written consent of the Town;

10.1.5 Such insurance shall be written by companies legally allowed to do business in Rhode Island and rated at least A-1 in the most current available AM Best's Key Rating Guide or any successor thereto; and the commercial general liability and pollution legal liability insurances shall designate the Town as an additional insured.

10.2 Insurance During Construction. During any material construction work at the Premises by Tenant, Tenant must have in force the following insurance policies:

10.2.1 “builders’ risk” insurance which provides coverage for any construction work estimated to be over \$500,000.00.

10.2.2 Workers’ Compensation from the State Insurance Fund Corporation in such coverage amounts as required by law.

10.3 Insurance Policy Increase. Tenant will pay any premium increase required by an insurance company to cover additional risks resulting from any alteration, change, addition, or infrastructure improvement made by Tenant to the Premises.

10.4 Evidence of Payment; Renewal of Policies. Tenant will deliver to Town satisfactory evidence of payment of the insurance premiums within fifteen (15) days of the respective renewal dates of the respective policies and at the same time submit the corresponding insurance certificate for each renewed policy.

10.5 Claims. Tenant shall have the right, in its sole discretion, to handle all insurance claims, including the preparation of damage reports and other documents required to process the claim, and including settlement of all claims. If requested by Tenant, the Town will cooperate with Tenant in the claims process, without cost or liability to the Town.

10.6 Periodic Reviews. Town reserves the right to review and demand periodic increases in the limits of the commercial general liability coverage required in this Lease to the extent consistent with then industry standards resulting from Tenant’s specific use of the Premises and of inflation.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Town. As of the Effective Date, the Town hereby represents and warrants to Tenant as follows:

11.1.1 The Town (i) has all requisite right, power, and authority to execute and deliver this Lease and to perform its obligations under this Lease, and (ii) has taken all necessary action to authorize the execution, delivery, and performance of this Lease. This Lease has been duly executed and delivered by the Town and constitutes the legal, valid, and binding obligation of the Town, enforceable against it in accordance with its terms. The Person signing this Lease on behalf of the Town is authorized to do so.

11.1.2 The execution, delivery, and performance by the Town of this Lease and the transactions contemplated hereby and the performance by the Town of its obligations hereunder will not violate any of the terms, conditions, or provisions of (i) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or Law to which the Town is subject, or (ii) any agreement or contract to which the Town is a party or to which it is subject.

11.1.3 No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery, and performance of this Lease by the Town.

11.1.4 The Town has not dealt with any agent, broker, or other similar Person in connection with the transfer of the interests in the Premises as provided herein.

11.1.5 There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending, or to the Town's knowledge, threatened against the Town that relates to this Lease or the Premises.

11.1.6 The Town owns the Premises in fee simple, without any liens, easements, covenants, conditions, restrictions, or other encumbrances which would or could in any way limit, restrict, or otherwise impact or affect the right of Tenant to use or develop the Premises for the Permitted Use in accordance with the terms of this Lease.

11.2 Representations and Warranties of Tenant. As of the Effective Date, Tenant hereby represents and warrants to the Town as follows:

11.2.1 Tenant is a corporation or limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the State of Rhode Island to conduct the business in which it is now engaged.

11.2.2 Intentionally Omitted.

11.2.3 Tenant has the full right, power, and authority to acquire its interests in the Premises as provided in this Lease and to carry out Tenant's obligations hereunder, and all requisite action necessary to authorize Tenant to enter into this Lease and to carry out its obligations hereunder have been taken. This Lease has been duly executed and delivered by Tenant and constitutes the legal, valid, and binding obligation of Tenant, enforceable against Tenant in accordance with its terms. The Person signing this Lease on behalf of Tenant is authorized to do so.

11.2.4 No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained or will not be obtained, is required in connection with the execution, delivery, and performance of this Lease by Tenant.

11.2.5 The execution, delivery, and performance of this Lease by Tenant and the transactions contemplated hereby and the performance by Tenant of its obligations hereunder do not violate any of the terms, conditions, or provisions of (i) Tenant's organizational documents, (ii) any judgment, order, injunction, decree, regulation or ruling of any court or other Governmental Authority, or Law to which Tenant is subject, or (iii) any agreement or contract to which Tenant is a party or to which it is subject.

11.2.6 Tenant has not dealt with any agent or broker who would be entitled to any commission or fee in connection with this Lease.

11.2.7 There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or threatened in writing against Tenant which, if decided adversely to Tenant, (i) would impair Tenant's ability to enter into and perform its obligations under this Lease, or (ii) would materially and adversely affect the financial condition or operations of Tenant.

11.2.8 Tenant is entering into this Lease and will enter into the Lease for the purposes contemplated therein and not with the view of speculating in land holding or transferring its interest in the Lease except as permitted thereunder.

11.2.9 Neither Tenant nor any of its Members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

11.2.10 Anti-Money Laundering; Anti-Terrorism.

(1) Tenant has not, and to Tenant's knowledge, no Tenant Affiliate has engaged in any dealings or transactions (i) in contravention of the applicable anti-money laundering Laws, regulations, or orders, including without limitation, money laundering prohibitions, if any, set forth in the Bank Secrecy Act (12 U.S.C. Sections 1818(s), 1829(b) and 1951-1959 and 31 U.S.C. Sections 5311-5330), the USA Patriot Act of 2001, Pub. L. No. 107-56, and the sanction regulations promulgated pursuant thereto by U.S. Treasury Department Office of Foreign Assets Control (collectively, together with regulations promulgated with respect thereto, the "**Anti-Money Laundering Acts**"), (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("**Anti-Terrorism Order**"), (iii) in contravention of the provisions set forth in 31 C.F.R. Part 103, the Trading with the Enemy Act, 50 U.S.C. Appx. Section 1 et seq. or the International Emergency Economics Powers Act, 50 U.S.C. Section 1701 et seq. (together with the Anti-Money Laundering Acts, the "**Terrorist Acts**"), or (iv) is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time.

(2) To Tenant's knowledge, neither Tenant nor any other Tenant Affiliate (a) is conducting any business or engaging in any transaction with any Person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A, or is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time, or (b) is a Person described in Section 1 of the Anti-Terrorism Order (a "**Restricted Person**").

ARTICLE 12 NOTICES

To be effective, any notice to be given under this Lease (a “**Notice**”) shall be in writing and delivered by email, certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to the Town at the following addresses:

To: Shawn J. Brown, CPA, CFE
Town Administrator
Town of Middleton
350 East Main Road
Middletown, Rhode Island 02840

With a copy to: Ronald Wolanski, AICP
Town Planner
Town of Middletown
350 East Main Road
Middletown, Rhode Island 02840

With a copy to: Peter Brent Regan, Esq.
Sayer Regan & Thayer, LLP
130 Bellevue Avenue
Newport, Rhode Island 02840

Any Notices to be given under this Lease to Tenant shall be in writing and delivered by certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to Tenant at the following addresses:

To: First Bristol Corporation
10 North Main Street
Fall River, MA 02720
Attention: James J. Karam

With a copy to: Bernkopf Goodman LLP
Two Seaport Lane, 9th Floor
Boston, MA 02210
Attention: Sheryl C. Starr

With a copy to: Girard Galvin, Esq.
Galvin Law, Ltd.
10A Washington Square
Newport, Rhode Island 02840

Either Party may change the recipients or addresses to which notice shall be given by written Notice to the other Party. Notices which shall be served in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand

delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the date of actual delivery; (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof, or (iv) if by email, when sent with evidence of receipt by the addressee Party. If notice is tendered under the terms of this Lease and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Lease.

ARTICLE 13 CASUALTY AND CONDEMNATION

13.1 Casualty.

13.1.1 In the event that during the Term any building and/or structure on the Premises shall be damaged or destroyed by fire or other casualty, this Lease shall remain in full force and effect and Tenant shall have the right to expend so much of any available insurance proceeds as may be necessary to restore the Buildings and other Improvements to substantially the same condition as existed prior to such casualty, or to such other manner and condition as Tenant may, in its sole discretion, determine, provided same shall comply with all Applicable Laws and be in accordance with all Permits necessary to be obtained from any applicable Governmental Authorities. Tenant shall not be responsible for any delay which may result from any cause beyond the reasonable control of Tenant. Should the net amount of insurance proceeds made available to Tenant be insufficient to cover the cost of restoring any Building and/or other Improvements on the Premises, or if rebuilding or reconstructing the Buildings or other Improvements is otherwise not economically feasible, Tenant may, but shall have no obligation to, supply the amount of such insufficiency and restore the Buildings and/or Improvements with all reasonable diligence, or Tenant may terminate this Lease by giving written notice to the Town within sixty (60) days of Tenant determining the estimated net amount of insurance proceeds available to Tenant and the estimated cost of such restoration. In case of damage or destruction as a result of a risk that is not covered by insurance available to Tenant, Tenant shall be entitled to rebuild the Building and/or Improvements, all as aforesaid, unless Tenant, within sixty (60) days after the determining the anticipated cost of such restoration, gives written notice to the Town of Tenant's election to terminate this Lease, in which event this Lease shall be deemed terminated without recourse to the Parties hereto.

13.1.2 In the event that the Tenant elects not to repair or replace the portion of the Premises, Buildings, and/or Improvements so damaged, Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice to the Town (the "**Casualty Termination Notice**"). After delivery of the Casualty Termination Notice to the Town, Tenant shall (i) use so much of the net insurance proceeds as may be available to make temporary repairs for the protection of the Improvements to the extent required by Applicable Laws; and (ii) within one hundred twenty (120) days after giving such notice, Tenant will deliver possession of the Premises to the Town, subject to the rights of any subtenants and occupants.

13.2 Condemnation.

13.2.1 If all or substantially all of the Premises and/or the Buildings or other Improvements constructed thereon shall be taken or condemned under eminent domain proceedings, then the Term of this Lease shall cease and terminate when the Premises and/or any Buildings and/or other Improvements on the Premises is taken. All payment obligations of Tenant hereunder shall cease as of said termination date.

13.2.2 If, upon the taking of a portion of the Premises, and/or any Building, structure or other Improvement located thereon, (i) the total interior floor area remaining in any such building or structure or the Premises shall be reduced to less than ninety-five percent (95%) of such areas at the commencement of the Term hereof; or (ii) any portion of the Premises other than within any building shall be taken such that access to the Premises or the Building(s) thereon is affected in any material adverse manner, or if the number of parking areas available on the Premises (or otherwise available at the Project for the benefit of the Premises) is reduced by more than five percent (5%) or is otherwise reduced so as to affect the use of the Premises in any material adverse respect; or (iii) Tenant determines in its good faith reasonable judgment that it is not economically feasible to repair or reconstruct the portion of the Premises or Buildings so remaining after such taking, or that the taking is of such a scope that the untaken portion of the Premises is insufficient to permit the restoration of the Improvements and the operation of Tenant's business thereon, then at the election of Tenant, this Lease may be terminated without recourse to the Parties, as of the date when Tenant is required to vacate the portion of the Premises so taken. Notwithstanding anything set forth in this Lease, in the event this Lease is not terminated, and Tenant remains in operation, all Annual Base Rent due hereunder shall be equitably adjusted based on the portion of the Premises or Buildings or other Improvements remaining as affected by any taking.

13.2.3 In any event, Tenant shall have no claim against the Town by reason of such taking or termination except in the event that such eminent domain proceedings are initiated by the Town or any authority or division or department thereunder (a "**Town Taking**"). Except in the event of a Town Taking, to the extent permitted by Applicable Laws, the Town and Tenant shall use good faith efforts to prosecute and settle the proceedings for the determination and payment of the award payable on account of any such taking, provided, however, nothing contained in this Lease shall prevent either Party from prosecuting claims in any condemnation or eminent domain proceedings for the value of their respective interests. Notwithstanding anything set forth herein to the contrary, in no event shall the Town be entitled to any award if the taking or eminent domain proceeding is a Town Taking, in which event the Tenant shall be entitled to all awards on account of such taking.

13.2.4 In the event Tenant elects to continue the Lease and rebuild and restore the Premises in accordance with the Master Development Plan, as amended, a just and equitable abatement of Annual Base Rent shall apply until such restoration is complete, provided that Tenant uses prompt and diligent efforts to complete such restoration work, and provided further that Tenant continues to pay all Tenant expenses set forth in Article 5 hereof and all other costs and expenses which Tenant is obligated to pay hereunder.

ARTICLE 14
TENANT RIGHTS OF ASSUMPTION AND FIRST REFUSAL
TO PURCHASE AND LEASE

14.1 Right to Assume Ground Lease of the Hotel Parcel or Residential Parcel Upon Termination. Notwithstanding anything set forth herein or elsewhere in this Lease to the contrary, in the event that the Ground Lease of the Hotel Parcel and/or the Ground Lease of the Residential Parcel are terminated (herein called a “**Terminated Lease**” or “**Terminated Lease Parcel**”, as appropriate) for any reason, Tenant shall have the right to assume the Ground Lease of the Terminated Lease Parcel, as applicable (the “**Assumption Right**”), which shall be subject to the rights of any Leasehold Mortgagee of such Terminated Lease Parcel. The Assumption Rights may be exercised as set forth in this Section 14.1, and any Assumption Party (as herein defined) may designate an Affiliate to exercise its Assumption Right as the Assumption Party.

14.1.1 The Town shall give prompt written notice (“**Termination Notice**”) to Tenant and to the Other Project Lessees, excluding the lessee under the Terminated Lease (collectively, the “**Assumption Parties**”, and individually, an “**Assumption Party**”).

14.1.2 Each of the Assumption Parties may exercise its respective Assumption Right of the Terminated Lease by giving written notice of such intent to assume the Terminated Lease (“**Assumption Exercise Notice**”) within sixty (60) days after receipt of the Termination Notice.

14.1.3 If one or more than one of the Assumption Parties exercises its Assumption Right by timely delivery of the Assumption Exercise Notice, then such exercising Assumption Party or Assumption Parties shall proceed to assume the Terminated Lease (as if it had not been terminated), or upon request by the Assumption Party or Assumption Parties, the Town and the Assumption Party or Assumption Parties shall execute a new lease upon the same terms and conditions as the Terminated Lease, but providing for the revival of any rights and/or options which may have lapsed due to the tenant’s action or inaction under the Terminated Lease. If more than one of the Assumption Parties delivers an Exercise Notice, then their assumption shall be joint and several, unless the Assumption Parties, between themselves, decide otherwise.

14.1.4 Notwithstanding anything to the contrary herein, any Assumption Right by an Assumption Party with regard to the Terminated Lease Parcel shall be subject and subordinate to all rights of the Leasehold Mortgagee under the Terminated Lease.

14.2 Right of First Refusal to Purchase Premises and Town Land. If the Town receives a bona-fide third party offer (“**Offer**”) to sell all or any portion of the Town Land including without limitation, the Town Parcel (“**Sale Property**”) which the Town desires to accept (whether or not the Offer has then been accepted in writing), then the Tenant and the Other Project Lessees shall have the right of first refusal (“**Purchase Right**”) to purchase the Sale Property, which may be exercised as set forth in this Section 14.2, and any Purchase Party (as herein defined) may designate an Affiliate to exercise its Purchase Right as the Purchase Party.

14.2.1 The Town shall give prompt written notice (“**Sale Notice**”) to Tenant and each of the Other Project Lessees (collectively, the “**Purchase Parties**”, and individually, a “**Purchase Party**”), which Sale Notice shall outline in reasonable detail the terms of the Offer, and if a written offer is in effect, a copy of the written Offer shall be included.

14.2.2 Each of Tenant and the Other Purchase Parties may exercise their respective Purchase Right by giving written notice of such intent to exercise such Purchase Right (“**Purchase Exercise Notice**”) within sixty (60) days after receipt of the Sale Notice, and subsequently negotiating with the Town within one hundred eighty (180) days a mutually satisfactory purchase and sale agreement on the terms set forth in the Offer.

14.2.3 If one or more than one of the Purchase Parties exercises its Purchase Right by timely delivery of the Exercise Notice, then such exercising Purchase Party or Purchase Parties shall proceed to purchase the Sale Property on the terms set forth in the Offer, as further described in the mutually satisfactory purchase and sale agreement within one-hundred-eighty (180) days after execution of the purchase and sale agreement. If more than one of the Purchase Parties timely delivers a Purchase Exercise Notice, then their purchase shall be joint and several unless the exercising Purchase Parties, among themselves, decide otherwise; provided, however, if the Town Land is subdivided such that the Residential Parcel, Retail Parcel, and Hotel Parcel are to be sold as individual lots, then the Lessee of the Parcel being sold shall have the right to itself solely exercise the Purchase Right with respect to that Parcel.

14.2.4 If none of the Purchase Parties timely exercises its Purchase Right, or fails to purchase the Sale Property in accordance with its Purchase Right, then the Town shall have the right to sell the Sale Property to such third party subject to this Lease and the other Ground Leases on the terms set forth in the Offer, provided such sale occurs within eight (8) months after the Sale Notice. If such sale does not occur on the terms set forth in the Offer within such eight (8) month period for any reason, or if the Town desires to sell the Sale Property on terms which differ in any material respect from the Offer, then the Purchase Right set forth in this Section 14.2 shall be reinstated on the terms set forth herein.

14.3 Right of First Refusal to Lease Town Land. If the Town receives a bona-fide third party offer (“**Lease Offer**”) to lease the Town Parcel or all or any portion of the Town Land which is not then subject to this Lease or to a lease on the Other Project Parcels (“**Town Leasable Property**”) which the Town desires to accept (whether or not the Lease Offer has then been accepted in writing), then the Tenant and the Other Project Lessees shall have the first right to lease the Town Leasable Property (“**Lease Right**”), which may be exercised as set forth in this Section 14.3, and any Lease Party (as herein defined) may designate an Affiliate to exercise its Lease Right as the Lease Party.

14.3.1 The Town shall give prompt written notice (“**Lease Notice**”) to Tenant and each of the Other Project Lessees (collectively, the “**Lease Parties**”, and individually, a “**Lease Party**”), which Lease Notice shall outline in reasonable detail the terms of the Lease Offer, and if a written offer is in effect, a copy of the written Lease Offer shall be included. In all events, the Lease Offer shall not permit any Prohibited Uses, nor shall it

permit any uses which would not be consistent with the zoning overlay governing the Town Land as approved by the Town.

14.3.2 Each of the Lease Parties may exercise their respective Lease Right by giving written notice of such intent to exercise such Lease Right (“**Lease Exercise Notice**”) within sixty (60) days after receipt of the Lease Notice, and subsequently negotiating with the Town within one hundred eighty (180) days a mutually satisfactory lease consistent with the terms of the Lease Offer.

14.3.3 If one or more than one of the Lease Parties exercises its Lease Right by timely delivery of the Lease Exercise Notice, then such exercising Lease Party shall proceed to lease the Town Leasable Property on the terms set forth in the Lease Offer, as further described in the mutually satisfactory lease, within one hundred eighty (180) days after delivery of the Lease Exercise Notice. If more than one of the Lease Parties timely delivers the Lease Exercise Notice, then their lease shall be joint and several unless the exercising Lease Parties, between themselves, decide otherwise.

14.3.4 If none of the Lease Parties timely exercises its Lease Right or fails to lease the Town Leasable Property in accordance with its Lease Right, then the Town shall have the right to lease the Town Leasable Property to such third party, provided such lease occurs within eight (8) months after the Lease Notice. If such lease does not occur within such eight (8) month period for any reason, or if the Town desires to lease the Town Leasable Property on terms which differ in any material respect from the Lease Offer, then the Lease Right set forth in this Section 14.3 shall be reinstated on the terms set forth herein.

ARTICLE 15 LEASEHOLD MORTGAGES

Tenant shall have the right at any time and from time to time to obtain financing secured in whole or in part by its leasehold interest in this Lease, and in connection therewith to mortgage, encumber and/or otherwise assign the leasehold interest herein demised upon such terms, conditions and maturity as the Tenant shall determine, and to enter into all renewals, modifications, consolidations, replacements and extensions of such leasehold financing (“**Leasehold Mortgage**”).

As long as any Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply for the benefit of Tenant and the holder of the Leasehold Mortgage and its successors and assigns (“**Leasehold Mortgagee**”) notwithstanding anything else to the contrary contained in this Lease:

(i) Upon written notice given by Tenant to Town that Tenant has assigned its interest under this Lease or otherwise granted a Leasehold Mortgage, the Town shall give the Leasehold Mortgagee written notice of any default by Tenant under this Lease. There shall be added to any grace period allowed by the terms of this Lease to Tenant for curing any default, an additional ninety (90) days in the case of default of Monthly Payments of Annual Base Rent and an additional one hundred twenty (120) days in the case of all other

defaults, for Leasehold Mortgagee to cure the same beyond the time allowed to Tenant, except that for any such default other than a default in payment of Monthly Payments of Annual Base Rent, such one hundred twenty (120) day period shall be extended for such additional time as may be required to cure such default, and for the Leasehold Mortgagee to succeed to Tenant's interest under this Lease by foreclosure or otherwise, provided that Leasehold Mortgagee has commenced the cure of such default or initiated proceedings to acquire Tenant's interest under this Lease during the one hundred twenty (120) day cure period.

(ii) The Town shall not seek to assert any default against a Leasehold Mortgagee which default(s) is/are personal to the within-named Tenant, provided, however, that this shall not be construed to relieve any party from payment of rent, taxes and water and sewer charges or insurance premiums. In no event shall the continuation of this Lease be conditioned on defaults that are personal to Tenant being cured by Leasehold Mortgagee.

(iii) No Leasehold Mortgagee shall be or become liable to the Town as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by the Town and Leasehold Mortgagee or such liability (in which event the Leasehold Mortgagee's liability shall be limited to matters occurring during the period of time during which it is the owner of the leasehold estate created hereby); provided, however, that an assumption shall be assumed upon a foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Lease. The liability of Leasehold Mortgagee (or its designee) hereunder (including following the foreclosure of the mortgage) shall be limited to its interest in the Premises and Leasehold Mortgagee (or its designee) shall automatically be released from such liability from and after the date it no longer holds an interest in the Premises.

(iv) In the event of transfer of the Tenant's interest under the Lease to any Leasehold Mortgagee or its designee, the Leasehold Mortgagee shall have the right thereafter to freely assign the Tenant's interest under this Lease, without Town Approval, to any assignee provided such assignee is not a Prohibited Person. Subsequent to the assignment of Tenant's interest by Leasehold Mortgagee or its designee to any assignee, the Town shall look only to the named Tenant and the successors and assigns of Leasehold Mortgagee or its designee, as applicable, for performance of Tenant's obligations under the Lease.

(v) The Town shall give the Leasehold Mortgagee such agreements as may be reasonably requested to facilitate the Tenant's financing provided same are in form reasonably acceptable to the Town and do not adversely affect the Town's right to be paid Base Rent and obtain enforcement under the Lease.

(vi) This Lease may not be terminated in the event of a casualty or condemnation without the prior consent of Leasehold Mortgagee.

(vii) If the Lease is terminated for any reason, provided that all Monthly Payments of Annual Base Rent then due and payable have been paid by Tenant or any Leasehold Mortgagee, the Town shall, upon the written request of the Leasehold Mortgagee, execute a new Lease with the Leasehold Mortgagee or its successors and assigns, upon the same terms and conditions as this Lease (but providing for the revival of any rights and/or options which may have lapsed due to the Tenant's action or inaction under the Lease) and such new Lease shall have the same relative priority in right, title and interest in and to the Premises as under this Lease.

(viii) So long as a Leasehold Mortgage encumbers the Premises: (a) all insurance proceeds payable in connection with any casualty, damage or destruction to any portion of the Premises to which the Tenant is entitled and/or any awards or sales proceeds which are attributable to any Improvements in the event any portion of the Premises is taken in any proceedings by public authorities (by condemnation or otherwise) or is acquired for public or quasi-public purposes by sale in lieu thereof, shall be applied as provided for under the provisions contained in the Leasehold Mortgage and the Town hereby subordinates any right that it may have to such proceeds, to the rights and liens of the Leasehold Mortgagee in and to such proceeds; (b) such payment must not be less than the total award minus the value of the remainder interest in the fee considered as unimproved; (c) in the event of a partial taking, Tenant shall be permitted to rebuild and restore the Improvements unless the Leasehold Mortgagee consents to distribution of such proceeds; (d) Leasehold Mortgagee shall be permitted to participate on tenant's behalf in the adjustment of losses and settlement.

(ix) If Tenant defaults as mortgagor under a Leasehold Mortgage, such default under the Leasehold Mortgage shall not in and of itself constitute an Event of Default under this Lease, except to the extent that Tenant's acts or omissions, in and of themselves, constitute an Event of Default under the express terms of this Lease.

(x) The Town shall not unreasonably withhold consent to any change in the form of this Ground Lease reasonably requested by any Leasehold Mortgagee provided such change does not impose any additional liability or obligation on the Town, or reduce the Term of the Lease or the Rents payable to the Town hereunder, and does not otherwise adversely affect the benefits to be derived by the Town under this Lease.

(xi) Reserved.

With respect to financing obtained by Tenant secured by any Leasehold Mortgage, the Town shall not have any liability for, nor shall Town be required to execute any documents or agreements which would render the Town liable for, repayment of any such financing.

ARTICLE 16 MISCELLANEOUS

16.1 Information as to Members; Maintenance Books and Accounts.

16.1.1 Tenant shall keep books and accounts of its operations and transactions relating to the Premises separate and distinct from any other property or business enterprise owned or operated by Tenant (or any Member or Affiliate of Tenant).

16.1.2 Upon request by the Town, Tenant shall provide to the Town the identity of all Members of Tenant holding twenty-five percent (25%) or more of the membership Interest in Tenant.

16.2 Town Cooperation. Town will keep Tenant informed of all communications related to the Premises and or the activities contemplated by this Lease, including by providing copies of documents sent and received related to the Premises, invitations to meetings (in person or otherwise) related to the Premises, and copies of all environmental documents prepared or received related to the Premises.

16.3 Estoppel Certificates. The Parties shall, from time to time, within seven (7) Business Days of request in writing of the other Party, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the Party delivering the estoppel certificate views them), that (i) this Lease is in full force and effect; (ii) this Lease has not been modified or amended (or if it has, a list of the amendments); (iii) to such Party's knowledge, the Party requesting the estoppel certificate is not then in default under this Lease; (iv) to such Party's knowledge, the Party requesting the estoppel certificate has fully performed all of its respective obligations hereunder (or, if it has not, identifying any such failures to perform); and (v) such other statements as reasonably may be required by any Party or, as to Tenant, any other appropriate party such as its partners, lenders, or investors providing funding for the Project.

16.4 No Personal Liability. No Person other than the Parties to this Lease, and the permitted assignees of such Parties, shall have any liability or obligation under this Lease. Without limiting the generality of the foregoing, (i) Tenant agrees that no employee, officer, director, official, consultant, contractor, agent or attorney engaged by the Town in connection with this Lease or the transactions contemplated by this Lease shall have any liability or obligation to Tenant under this Lease or otherwise relating to this Lease or the Premises or the Other Project Parcels and (ii) the Town agrees that no Member, nor any direct or indirect holder of any equity or other beneficial ownership interest in Tenant, nor any officer, director, employee, consultant, contractor, agent or attorney engaged by Tenant in connection with this Lease or the transactions contemplated by this Lease, shall have any liability or obligation to the Town under this Lease or otherwise relating to this Lease or the Premises or the Other Project Parcels.

16.5 Titles of Articles and Sections. Titles and captions of the several parts, articles and sections of this Lease are inserted for convenient reference only and shall be disregarded in construing or interpreting provisions under this Lease.

16.6 Singular and Plural Usage. Whenever the sense of this Lease so requires, the use herein of the singular number shall be deemed to include the plural, and the use of the plural shall be deemed to include the singular.

16.7 Applicable Law; Jurisdiction. This Lease shall be construed in accordance with and governed by the laws of the State of Rhode Island, without reference to the conflicts of Laws provisions thereof. Any suit, action, proceeding or claim relating to this Lease or the transactions contemplated by this Lease shall be brought exclusively in the United States District Court for the State of Rhode Island, or the Superior Court for the State of Rhode Island, and the Town and Tenant agree that such courts are the most convenient forum for resolution of any such action and further agree to submit the jurisdiction of such courts and waive any right to object to venue in such courts.

16.8 Entire Agreement. This Lease constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings related to the subject matter hereof. All Exhibits hereto are incorporated herein by reference regardless of whether so stated.

16.9 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

16.10 Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a day that is not a Business Day is automatically extended to the next Business Day.

16.11 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of, the successors and assigns of the Town and Tenant, and where the term “Tenant” or “Town” is used in this Lease, it shall mean and include their respective permitted successors and assigns.

16.12 Third Party Beneficiary. No Person shall be a third-party beneficiary of this Lease.

16.13 WAIVER OF JURY TRIAL. ALL PARTIES HERETO HEREBY, AND ALL PERSONS ACCEPTING AN INTEREST IN THE PREMISES THEREBY, WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS LEASE OR THE TRANSACTIONS CONTEMPLATED BY THIS LEASE.

16.14 Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Lease.

16.15 Modifications and Amendments. None of the terms or provisions of this Lease may be changed, waived, modified, or terminated except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or termination is asserted and no such modification, amendment, cancellation, or termination of this Lease shall be made without the prior written consent of any Leasehold Mortgagee. The Town shall not accept a voluntary surrender of this Lease by Tenant without the prior written consent of Leasehold

Mortgagee. None of the terms or provisions of this Lease shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

16.16 Anti-Deficiency. Tenant acknowledges that the Town cannot enter into any financial obligations under this Lease without the lawful availability of funds and absent compliance with all other Applicable Laws. Tenant acknowledges and agrees that the obligation of the Town to fulfill financial obligations of any kind pursuant to any and all provisions of this Lease relating to any public funds, or any subsequent agreement entered into pursuant to this Lease or referenced herein relating to any public funds are and will remain subject to the provisions of the State's Anti-Deficiency Act, as the foregoing statutes may be amended from time to time. Any provision herein contained that violates the State's Anti-Deficiency Acts may be waived, at the Town's sole discretion, to the extent such waiver is permissible under law.

16.16.1 Notwithstanding the foregoing, no officer, employee, director, member, or other natural person or agent of the Town shall have any personal liability in connection with the breach of this Lease.

16.16.2 This Lease shall not constitute an indebtedness of the Town, nor shall it constitute an obligation for which the Town is obligated to levy or pledge any form of taxation or for which the Town has levied or pledged any form of taxation.

16.17 Submission of Lease. The submission by either Party to the other of this Lease in unsigned form shall be deemed to be a submission solely for the other Party's consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option, and shall not confer any rights upon the recipient or impose any obligations upon the submitting Party, irrespective of any reliance thereon, change of position or partial performance.

16.18 Severability. If any provision of this Lease is held to be illegal, invalid, or unenforceable under present or future Applicable Laws, such provisions shall be fully severable; this Lease shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Lease; and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Lease, unless this construction would constitute a substantial deviation from the general intent of the Parties as reflected in this Lease. Furthermore, there shall be added automatically as a part of this Lease a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

16.19 No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Tenant and the Town, it being understood and agreed that neither the method of computation of any participation nor any other provision contained herein, nor any acts of the Parties hereto shall be deemed to create any such relationship.

16.20 Time is of the Essence. Time is of the essence with respect to all matters set forth in this Lease. For all deadlines set forth in this Lease, the standard of performance for the Party

required to meet such deadlines shall be strict adherence and not reasonable adherence subject to Force Majeure in all such cases.

16.21 Interest. In the event a Party fails to timely pay to or reimburse the other Party within ten (10) days after demand for any amounts due pursuant to this Lease, or a Party advances any amounts to pay or satisfy any obligations of the other Party under this Lease (including, without limitation in curing any default of the other Party), such amounts shall accrue interest at the rate of eight percent (8%) per annum (or the highest rate permitted by law, if less), from the date which is ten (10) days after demand until paid or reimbursed by the other Party.

16.22 Releases.

16.22.1 As additional consideration for the Town's entry into this Lease, Tenant does hereby release and forever discharge the Town and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "**Town Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which Tenant may now have or claim to have against the Town Released Parties as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon the Town's treatment of Tenant, the Premises, this Lease, and any documents executed in connection herewith (including any term sheets, business terms, letters of intent or memoranda of understanding), or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the Parties up to and including the Effective Date. The agreement and covenant on the part of Tenant under this Section 16.22.1 is contractual and not a mere recital.

16.22.2 As additional consideration for Tenant's entry into this Lease, the Town does hereby release and forever discharge Tenant and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "**Tenant Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which the Town may now have or claim to have against Tenant Released Parties as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon the Town's treatment of Tenant, the Premises, this Lease, and any documents executed in connection herewith (including any term sheets, business terms, letters of intent or memoranda of understanding) or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the Effective Date. The agreement and covenant on the part of the Town under this Section 16.22.2 is contractual and not a mere recital.

16.23 No Construction Against Drafter. This Lease has been negotiated and prepared by the Town and Tenant and their respective attorneys and, should any provision of this Lease require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

16.24 Town Liability. Any review, analysis, examination, investigation or approval or consent by the Town pursuant to the terms of this Lease or otherwise in connection with the Project or the Premises is solely for the benefit of the Town and shall not be relied upon or construed by Tenant or any other Person as acceptance by the Town of any responsibility or liability therefor as to completeness or sufficiency thereof for any particular purpose or compliance with any Applicable Laws or other governmental requirements. In furtherance of the foregoing, the grant of consent or approval by the Town under this Lease shall be intended solely to satisfy the Town's rights under this Lease and for no other purposes.

16.25 Limited Recourse to the Parties. Subject to the additional limitations set forth in this Lease, any damages and claims against the Town or Tenant relating in any way to this Lease or the obligations contemplated hereunder, shall be limited to the value of their respective interests in the Premises.

16.26 Confidentiality. The following provisions are applicable to requests filed under the Rhode Island Access to Public Records Act and the regulations promulgated thereunder ("APRA") or any similar Law for information regarding this Lease or any communications, documents, agreements, information, or records with respect to this Lease:

16.26.1 Communications, documents, agreements, information, and records that qualify as "**Confidential Information**" under APRA or other Law provided to the Town by Tenant under or pursuant to this Lease shall be maintained by the Town as confidential, and the Town shall not disclose such information to any Persons other than the appropriate attorneys, accountants, underwriters, financial advisors, construction consultants, bond insurers, rating agencies, auditors and employees of the Town.

16.26.2 As required by the terms of this Lease, Tenant shall provide to the Town certain documentation and information. The Town acknowledges that such documentation and information is generally held by Tenant in strict confidence, and is not of the kind that would customarily be released to the general public by Tenant because the disclosure thereof would cause substantial harm to the competitive position of Tenant. The Town further acknowledges and agrees that Tenant will be considered as "submitter" of such documentation and information for purposes of the APRA. Accordingly, if a Person files a request under the APRA or any similar Law for any such documentation or information (solely for purposes of this Section, a "**Request**"), the Town shall promptly, and in any event not more than five (5) days following the receipt of the Request, notify Tenant of the Request and allow Tenant five (5) Business Days after receipt of such notice (and, in any event, at least five (5) days prior to the disclosure of any documentation or information ("**Requested Information**") that would be disclosed pursuant to the Request) within which to object to the Town, and any other relevant judicial or administrative body, to the disclosure of any of the Requested Information. If, following receipt of Tenant's objection

to the release of the Requested Information, or if the Town does not receive any objection from Tenant within five (5) Business Days after such notice, then not less than ten (10) Business Days following receipt of the Request, the Town reasonably determines that the Requested Information is exempt from disclosure pursuant to the APRA or other Law, the Town shall promptly, and in any event, within the time limits mandated under the APRA, assert such exemption from disclosure and decline to provide such information. If, following receipt of Tenant's objection to the release of the Requested Information, or not less than ten (10) days following receipt of the Request, the Town reasonably determines that the information sought by the Request is not exempt from disclosure pursuant to the APRA or other Law, the Town shall promptly notify Tenant of such determination, and shall refrain from making such disclosure for not less than ten (10) Business Days following receipt of such notice by Tenant in order to afford Tenant an opportunity to seek an injunction or other appropriate remedy if Tenant believes that the Town's determination is erroneous. The term "days" as used in this Section, shall be determined in the manner provided in the APRA.

16.26.3 Tenant shall endeavor to clearly mark each page of all documents which Tenant wishes to designate as Confidential Information "Confidential Trade Secret Information, Contact Tenant Before Any Disclosure" and shall also include a reference to this Lease; provided, however, that Tenant's failure to mark any document shall not foreclose Tenant from asserting that a document should be designated as Confidential Information.

16.26.4 Nothing in this Lease shall limit or restrict the Town from disclosing, to the extent required by Law, any information, communication, or record to the United States Congress, the Council, the State Inspector General or the State Auditor; provided that the Town shall use all reasonable measures to prevent further dissemination of such information to the extent such information is Confidential Information.

16.27 Generally Applicable State Law. Tenant acknowledges that (i) nothing set forth in this Lease exempts the Premises or any portion thereof from Applicable Laws and regulations in effect from time to time in the State or the Town, (ii) execution of this Lease by the Town is not binding upon, and does not affect the jurisdiction of or the exercise of police or regulatory power by, State or Town agencies, including, without limitation, independent agencies or officials of the State or Town (including, without limitation, the Town's Building and Zoning Officials, in the lawful exercise of their authority and (iii) no approval provided by the Town as a contract party to this Lease shall in any way bind or be considered to be an approval by any the Town agency acting in its capacity as a Governmental Authority (and not as a contract party to this Lease), including, without limitation, independent agencies of the State or the Town, such as the Town's Zoning and Planning Boards. Tenant acknowledges and agrees that any unauthorized act by the Town may be void.

16.28 Agreement Use. Except as specifically set forth herein, the Town shall not be responsible for reimbursing or otherwise paying or repaying any costs, fees, or expenses incurred by or on behalf of Tenant or any other Person or entity associated therewith prior to or during the term of this Lease. Tenant shall not be responsible for reimbursing or otherwise paying or repaying

any costs, fees or expenses incurred by or on behalf of the Town prior to or during the term of this Lease. Other than as set forth herein, no obligation or liability with respect to any future agreements described herein will exist, nor will any representations be deemed made, nor any reliance on any communications regarding the subject matter hereof be reasonable or justified. It is expressly agreed by Tenant that the Town is under no obligation to reimburse Tenant or its consultants, sub-contractors or successors for any cost, expense, or efforts incurred.

16.29 Laws. Any reference to a specific law or to Applicable Laws in this Lease shall mean such law as it may be amended, supplemented, or replaced, except as the context otherwise may require.

16.30 No Tax Exemption. In no event shall Tenant, or any of its employees, contractors, subcontractors, agents, servants, beneficial owners, or any Member, partner, or principal of any beneficial owner of Tenant assert for its own benefit, or attempt to assert, an exemption (including from sales taxes) or immunity available to the Town, if any, under any government requirements or Law on the basis of the Town's involvement in the transactions contemplated by this Lease.

16.31 Form of Payments. All payments due hereunder shall be paid in lawful money of the United States of America.

16.32 Force Majeure. Neither the Town nor Tenant shall be in default under this Lease if the performance of any obligation, duty, or act under this Lease is delayed or prevented by or due to one or more event(s) caused by Force Majeure.

16.33 Change in Prohibited Person Status. Tenant shall immediately notify the Town in the event that Tenant or one of its Affiliates becomes or is reasonably likely to become a Prohibited Person.

16.34 Memorandum of Lease. The Town and Tenant shall execute and deliver a Memorandum of Lease in form attached hereto as Exhibit H or such other form as is reasonably acceptable to the Town and Tenant (and of any amendments thereto in the event this Lease is hereafter amended and such amendment affects the provisions of the previously recorded Memorandum of Lease) for the purpose of recording such Memorandum of Lease in the Land Records, but such Memorandum of Lease shall not in any circumstances be deemed to modify or to change any of the provisions of this Lease. Tenant shall pay the costs associated with the recording of such Memorandum of Lease in applicable Land Records.

16.35 Exhibits. This Lease includes the following Exhibits:

Exhibit A	Legal Description of Town Land
Exhibit B	Master Development Plan
Exhibit C	Legal Description of Premises
Exhibit D	Definitions
Exhibit E	ECCR's
Exhibit F	Form of Non-Disturbance Agreement
Exhibit G	Map of Adjacent Parcel

Exhibit H

Form of Memorandum of Lease

16.36 Schedules. This Lease includes the following Schedule 3.3:

Schedule 3.3

Annual Base Rent Schedule

End of Lease – Signature pages follow

IN TESTIMONY WHEREOF, the Town and the Tenant have caused this Lease to be signed on their behalf as of the Effective Date.

TOWN:

**TOWN OF MIDDLETOWN, RHODE
ISLAND**

By: _____

Name: Shawn J. Brown

Title: Town Administrator

Signature page to Lease Agreement follows

IN TESTIMONY WHEREOF, the Town and the Tenant have caused this Lease to be signed on their behalf as of the Effective Date.

TENANT:

_____,

By: _____

Name: _____

Title: _____

End of Signature Pages

Exhibit A

LEGAL DESCRIPTION OF TOWN LAND

Exhibit B

MASTER DEVELOPMENT PLAN

Exhibit C

LEGAL DESCRIPTION OF PREMISES

Exhibit D

DEFINITIONS

For the purposes of this Lease, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“Adjacent Parcel” shall mean the Adjacent Parcel as shown on the Map of Adjacent Parcel attached hereto as Exhibit G.

“Affiliate” means with respect to any Person (**“first Person”**), (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, trustee, general partner, manager, or any direct or indirect member, shareholder, partner, beneficiary or other beneficial or equity owner of such first Person, or (iii) any officer, director, trustee, general partner, manager, or any direct or indirect member, shareholder, partner, beneficiary or other beneficial or equity owner of any Person described in clauses (i) or (ii) of this sentence.

“Annual Base Rent” has the meaning given in Section 3.3 hereof.

“Anti-Money Laundering Acts” has the meaning given in Section 11.2.10 hereof.

“Anti-Terrorism Order” has the meaning given in Section 11.2.10 hereof.

“Applicable Laws” means all applicable local, State, and federal laws, ordinances, rules, codes, regulations, resolutions, executive orders, and standards, including, without limitation, Environmental Laws, zoning requirements, building codes, and all laws relating to accessibility for persons with disabilities.

“Business Days” means Monday through Friday, inclusive, other than holidays or other days on which the State government is closed.

“Certificate of Occupancy” means a final certificate issued by the Town of Middletown, Rhode Island which permits the occupancy of the premises for which it is intended.

“Common Infrastructure” shall have the meaning given in Section 5.7.1.

“Confidential Information” has the meaning given in Section 16.26.1 hereof.

“Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the day-to-day management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, which term shall not preclude major decision approval by others. The terms “Control,” “Controlling,” “Controlled by,” or “under common Control with” shall have meanings correlative thereto.

“Developer” has the meaning given in the Preamble hereof.

“Development Documents” means those certain plans, specifications, documents, schedules, items, and other matters to be submitted by the Developer to the Town pursuant to the terms of the Development Agreement.

“Effective Date” means the Lease Commencement Date.

“Environmental Law” means any federal or State law, act, statute, ordinance, rule, regulation, order, decree, permit, or ruling of any federal, State, or administrative regulatory body, agency, board, or commission or a judicial body, relating to the protection of human health or the environment or otherwise regulating or restricting the management, use, storage, disposal, treatment, handling, release, and/or transportation of a Hazardous Material, which are applicable to the Project or activities on or about the Premises or Other Project Parcels, including but not limited to 42 U.S.C. § 9601, et seq. (CERCLA), 42 U.S.C. § 6901 et seq. (RCRA), the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Emergency Planning and Community Right To Know Act, 42 U.S.C. § 11001 et seq., and any State equivalent laws as each of the same is amended or supplemented from time to time.

“Event of Default” has the meaning given in Section 9.1 hereof.

“Force Majeure” means any act of God, fire, earthquake, flood, explosion or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; inability to procure, or a general shortage of, labor, equipment, facilities, materials or supplies in the open market; failure, unavailability or shortage of transportation; strikes, lockout or actions of labor unions; taking by eminent domain, requisition, laws, or orders of governmental or quasi-governmental bodies or of civil, military, or naval authority; adverse weather of greater frequency, duration or severity than is common for the month in question; pandemics or epidemics; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of, and is not reasonably foreseeable by any Party hereto, and is not due to the fault or negligence of any such Party and that results in a delay in the commencement, prosecution, or completion of an applicable requirement of this Lease.

“Governmental Authority” means any and all municipal, federal, or State governmental or quasi-governmental municipal corporation, board, agency, authority, department, or body having jurisdiction over all or any portion of the Premises or the Project or the Tenant, but excluding the Town in its capacity as Landlord under this Lease.

“Hazardous Materials” means a substance that falls within one or more of the following categories, other than in quantities or concentrations that constitute Permitted Materials: (1) Any “hazardous substance” under 42 U.S.C. § 9601, et seq. or “hazardous waste” under 42 U.S.C. § 6901, et seq.; (2) Any substance or chemical defined and regulated under requirements promulgated, respectively, by the U.S. Environmental Protection Agency at 40 C.F.R. part 355, by the U.S. Department of Transportation at 49 C.F.R. parts 100-180, by the U.S. Occupational Safety and Health Administration at 29 C.F.R. § 1910.1200 and ionizing materials otherwise regulated by the U.S. Nuclear Regulatory Commission at 10 C.F.R. part 20; (3) Any substance or chemical that is defined as a pollutant, contaminant, dangerous substance, toxic substance,

hazardous or toxic chemical, hazardous waste or hazardous substance under any other Environmental Law, or the presence of which requires reporting, investigation, removal and remediation or forms the basis of liability under any applicable environmental requirements; (4) Any substance or material that the Secretary of Defense designates as a “toxic or hazardous material” under 10 U.S.C. § 2692(a)(2); (5) Any substance the presence of which on the Premises or adjacent property causes or threatens to cause a nuisance or poses or threatens to pose a hazard to health or safety of persons on or about the Premises or adjacent property; (6) Gasoline, diesel fuel, or other petroleum hydrocarbons, including refined oil, crude oil and fractions thereof, natural gas, synthetic gas and any mixtures thereof; (7) Asbestos or asbestos containing material; and (8) Polychlorinated bi-phenyls or materials or fluids containing the same.

“Land Records” means the Land Evidence Records of the Town of Middletown, Rhode Island.

“Lease” has the meaning given in the Preamble hereof.

“Lease Commencement Date” has the meaning given in the Preamble hereof.

“Master Development Plan” has the meaning given in the Recitals.

“Material Change” means a change in the Master Development Plan that would result in (a) a change in use of the Premises to other than for retail use; or (b) a reduction in the aggregate square footage of retail buildings permitted under the Master Development Plan to be less than fifty percent (50%) of the permitted square footage.

“Member” means any Person with an ownership interest in any entity, whether as a member of a limited liability company, a shareholder in a corporation, a partner in a partnership, a beneficiary under a trust, or otherwise.

“Monetary Default” has the meaning given in Section 9.1.1(1) hereof.

“Navy” means the United States Department of Navy.

“Parcel” or **“Parcels”** means, individually or collectively, the Residential Parcel, the Retail Parcel, the Hotel Parcel and/or the Town Parcel.

“Party” and **“Parties”** have the meanings given in the Preamble.

“Permit” means any demolition, site, building, construction, historic preservation, and other permit, approval, license and/or right required or necessary to be obtained under Law from a Governmental Authority for the commencement, performance, and completion of the Project or any part thereof, other than the Development Permits.

“Permitted Materials” means any materials or substances regulated by Environmental Laws which are in quantities and concentrations and used, handled, and stored under conditions in compliance with all applicable Environmental Laws.

“Person” means any individual, or any corporation, limited liability company, trust, partnership, association, or other entity.

“Premises” has the meaning given in the Recitals.

“Prohibited Person” means any Person who or which (a) has been convicted of a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) perjury, (v) conspiracy to commit a crime, (vi) making false statements to a government agency, (vii) improperly influencing a government official, and (viii) extortion; (b) could be debarred if the standards applied in applicable Town regulations were applied to such Person’s failure to satisfy a contractual obligation to the Town; (c) is on the Town’s list of debarred, suspended or ineligible Persons; or (d) is a Restricted Person.

“Prohibited Uses” has the meaning set forth in Section 3.5.

“Project” has the meaning given in the Recitals.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other receptacles containing any Hazardous Materials or Permitted Materials).

“Request” has the meaning given in Section 16.26.2 hereof.

“Requested Information” has the meaning given in Section 16.26.2 hereof.

“Restricted Person” has the meaning given in Section 11.2.10(2) hereof.

“Retail Project” shall have the meaning given in Section 5.2.

“State” means the State of Rhode Island.

“Substantial Completion” or **“Substantially Complete”** means the date on which a Certificate of Occupancy has been issued for the opening of the Hotel as permitted under the Master Development Plan.

“Tenant Released Parties” has the meaning given in Section 16.22.2 hereof.

“Term” has the meaning given in Section 3.2.

“Terrorist Acts” has the meaning given in Section 11.2.10(1) hereof.

“Town” has the meaning given in the Preamble hereof.

“Town Approval” means written approval by the Town Council of the Town of Middletown (which in the Town’s sole discretion, may be in executive session and/or with delegation of authority, if and to the extent permitted by Applicable Law), not to be unreasonably withheld, conditioned, or delayed, and with the Town agreeing to use good faith efforts to process

all requests for Town Approval within sixty (60) days of such request in accordance with Applicable Law.

“Town Released Parties” has the meaning given in Section 16.22.1 hereof.

Exhibit E

ECCR's

Exhibit F

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

(Ground Lease)

This Non-Disturbance and Attornment Agreement (the “**Agreement**”), dated as of this ____ day of _____, 20__, by and between The Town of Middletown, Rhode Island (“**Ground Lessor**”), and _____, a _____ (“**Tenant**”).

WITNESSETH:

(a) Tenant has entered into a certain lease (the “**Lease**”) dated _____, 20__, with _____ (“**Landlord**”), covering certain leased premises located in the Town of Middletown, Rhode Island, and more particularly described in Exhibit A hereto (the “**Premises**”); and

(b) Ground Lessor has entered into that certain Ground Lease for _____ Parcel with Landlord, dated _____, 20__ (the “**Ground Lease**”), covering certain real property in Middletown, Rhode Island, which includes the Premises as part thereof; and

(c) The parties hereto desire to set forth their agreement with regard to the priority of the Ground Lease and the effect thereof on Tenant and its leasehold interest in the aforesaid Premises, as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and of the sum of One (\$1.00) Dollar by each party in hand paid to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Lease is a sublease and shall be subject and subordinate to the Ground Lease insofar as it affects the real property of which the Premises form a part.

2. Tenant agrees that in the event of a termination of the Ground Lease, Tenant will attorn to Ground Lessor as its landlord under the Lease for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in the Lease so long as Tenant is not in default under any of the material terms, covenants, or conditions of the Lease continuing beyond any applicable grace or cure period provided in the Lease.

3. In the event that the Ground Lease is terminated for any reason, Ground Lessor will not terminate the Lease nor join Tenant in summary proceedings so long as Tenant is not in default under any of the material terms, covenants, or conditions of the Lease continuing beyond any applicable grace or cure period provided in the Lease.

4. In the event that Ground Lessor shall succeed to the interest of Landlord under the Lease, Ground Lessor shall not be (a) liable for any act or omission of any prior lessor (including Landlord); or (b) liable for the return of any security deposits unless delivered to Ground Lessor; or (c) bound by any rent or other periodic payments which Tenant might have paid for more than thirty (30) days in advance to any prior lessor (including Landlord).

5. Notwithstanding the foregoing, Ground Lessor acknowledges and agrees that if Ground Lessor shall succeed to the interest of Landlord under the Lease, Ground Lessor shall recognize Tenant's rights and remedies properly exercised under the Lease, and that such rights of Tenant are not limited or impaired in any way by the terms and provisions of this Agreement.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

{Remainder of page intentionally left blank}

In witness whereof, the parties hereto have executed this Agreement under seal as of the day and year first above written.

GROUND LESSOR:

TOWN OF MIDDLETOWN, RHODE ISLAND

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, ss.

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.as _____ of the Town of Middletown, Rhode Island.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

Signature Page to Non-Disturbance and Attornment Agreement

In witness whereof, the parties hereto have executed this Agreement under seal as of the day and year first above written.

TENANT:

By: _____

Name: _____

Title: _____

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

_____, SS.

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of _____...

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

Signature Page to Non-Disturbance and Attornment Agreement

Exhibit G

MAP OF ADJACENT PARCEL

Exhibit H

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF GROUND LEASE

This instrument was prepared by
and upon recording return to:

Bernkopf Goodman LLP
Two Seaport Lane, 9th Floor
Boston, MA 02210
Telephone: (617) 790-3000
Attn: Sheryl C. Starr, Esq.

This space reserved for Recorder's use only.

MEMORANDUM OF GROUND LEASE

Notice is hereby given pursuant to the provisions of Rhode Island General Laws § 34-11-1, of the following:

LANDLORD:

Town of Middletown, Rhode Island

Attn: _____

TENANT:

Attn: _____

LEASED PREMISES:

The land with all buildings and other improvements now or hereafter located thereon as more particularly described on Exhibit A attached hereto and incorporated herein.

DATE OF LEASE EXECUTION:

LEASE COMMENCEMENT
DATE:

TERM OF LEASE:

Ninety-Nine (99) Years from the Lease Commencement Date.

RIGHT OF FIRST REFUSAL:

The Lease contains certain rights of first refusal to purchase and/or lease the Premises and/or other portions of the property on which the Premises is located ("**Property**"), as more particularly described in Exhibit B attached hereto and incorporated herein.

LEASE TERMS INCORPORATED: All of the terms, covenants and conditions of the Lease are incorporated herein and made a part hereof. The purpose of this Memorandum of Ground Lease is to give notice of the existence of the tenancy created by the Lease; and shall not be construed to vary or otherwise affect the rights or obligations of the parties under the Lease as it may be amended.

TITLE REFERENCE: For title to Property, see Deed(s) to Landlord recorded in the _____ Land Evidence Records in Book _____, Page _____; Book _____, Page _____; Book _____, Page _____.

End of Memorandum of Lease – Signature page follows

EXECUTED as a sealed instrument as of this _____ day of _____, 20____.

LANDLORD:

TOWN OF MIDDLETOWN, RHODE ISLAND

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, SS.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, in his/her/its capacity as _____ of the Town of Middletown, Rhode Island, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/it signed it voluntarily for its stated purpose, and further acknowledged the foregoing to be his/her/its voluntary free act and deed.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

Notary ID #: _____

My Commission Expires: _____

Signature page to Memorandum of Lease

EXECUTED as a sealed instrument as of this _____ day of _____, 20____.

TENANT:

By: _____

Name: _____

Title: _____

Duly authorized

STATE OF RHODE ISLAND

_____, SS.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, in his/her/its capacity as _____ of _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/it signed it voluntarily for its stated purpose, and further acknowledged the foregoing to be his/her/its voluntary free act and deed.

[Affix Notarial Seal]

NOTARY PUBLIC

Printed Name: _____

Notary ID #: _____

My Commission Expires: _____

Signature page to Memorandum of Lease

Exhibit A

Legal Description of Leased Premises

Exhibit B

Legal Description of Property

Schedule 3.3
ANNUAL BASE RENT

Exhibit B-4

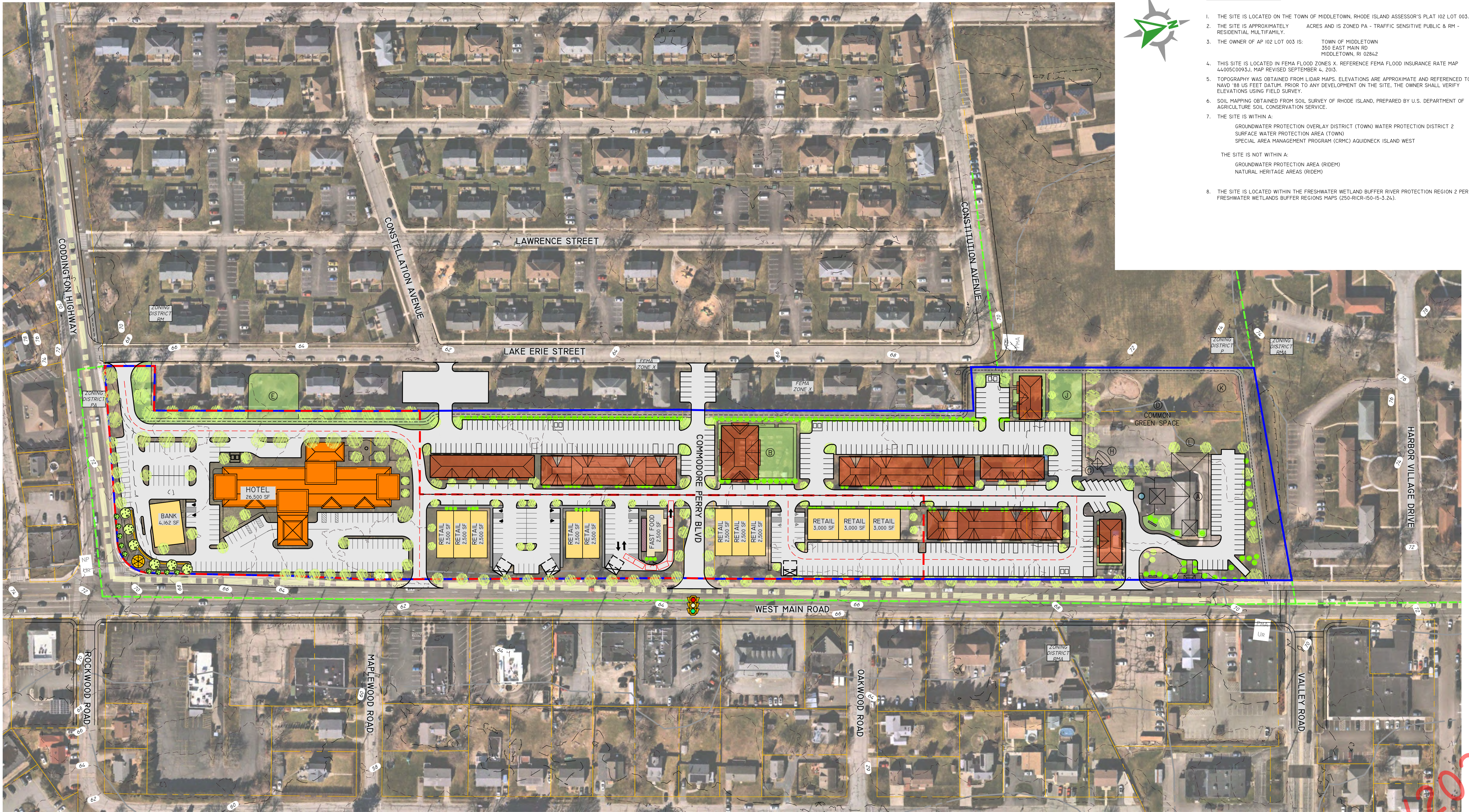
SCHEDULE OF ANNUAL BASE RENT

RENT SCHEDULE:

<u>DATES</u>	<u>RENT/YEAR</u>	<u>RENT/MONTH</u>
Yrs 1-5	\$387,500.00	\$32,291.67
Yrs 6-10	\$435,937.50	\$36,328.13
Yrs 11-15	\$490,429.69	\$40,869.14
Yrs 16-20	\$551,733.40	\$45,977.78
Yrs 21-25	\$620,700.07	\$51,725.01
Yrs 26-30	\$698,287.58	\$58,190.63
Yrs 31-35	\$785,573.53	\$65,464.46
Yrs 36-40	\$883,770.22	\$73,647.52
Yrs 41-45	\$994,241.50	\$82,853.46
Yrs 46-50	\$1,118,521.69	\$93,210.14
Yrs 51-55	\$1,258,336.90	\$104,861.41
Yrs 56-60	\$1,415,629.01	\$117,969.08
Yrs 61-65	\$1,592,582.64	\$132,715.22
Yrs 66-70	\$1,791,655.47	\$149,304.62
Yrs 71-75	\$2,015,612.40	\$167,967.70
Yrs 76-80	\$2,267,563.95	\$188,963.66
Yrs 81-85	\$2,551,009.44	\$212,584.12
Yrs 86-90	\$2,869,885.62	\$239,157.14
Yrs 91-95	\$3,228,621.32	\$269,051.78
Yrs 96-99	\$3,632,198.99	\$302,683.25

Exhibit C

MASTER DEVELOPMENT PLAN



STUDY PLAN NOTES:

1. THE SITE IS LOCATED ON THE TOWN OF MIDDLETOWN, RHODE ISLAND ASSESSOR'S PLAT 102 LOT 003.
2. THE SITE IS APPROXIMATELY ACRES AND IS ZONED PA - TRAFFIC SENSITIVE PUBLIC & RM - RESIDENTIAL MULTIFAMILY.
3. THE OWNER OF AP 102 LOT 003 IS: TOWN OF MIDDLETOWN
350 EAST MAIN RD
MIDDLETOWN, RI 02842
4. THIS SITE IS LOCATED IN FEMA FLOOD ZONES X, REFERENCE FEMA FLOOD INSURANCE RATE MAP 44085C0093J, MAP REVISED SEPTEMBER 4, 2013.
5. TOPOGRAPHY WAS OBTAINED FROM LIDAR MAPS. ELEVATIONS ARE APPROXIMATE AND REFERENCED TO THE NAVD '88 US FEET DATUM. PRIOR TO ANY DEVELOPMENT ON THE SITE, THE OWNER SHALL VERIFY ELEVATIONS USING FIELD SURVEY.
6. SOIL MAPPING OBTAINED FROM SOIL SURVEY OF RHODE ISLAND, PREPARED BY U.S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE.
7. THE SITE IS WITHIN A:
GROUNDWATER PROTECTION OVERLAY DISTRICT (TOWN) WATER PROTECTION DISTRICT 2
SURFACE WATER PROTECTION AREA (TOWN)
SPECIAL AREA MANAGEMENT PROGRAM (CRMC) AQUIDNECK ISLAND WEST

THE SITE IS NOT WITHIN A:
GROUNDWATER PROTECTION AREA (RIDEM)
NATURAL HERITAGE AREAS (RIDEM)
8. THE SITE IS LOCATED WITHIN THE FRESHWATER WETLAND BUFFER RIVER PROTECTION REGION 2 PER THE FRESHWATER WETLANDS BUFFER REGIONS MAPS (250-RICR-150-15-3.24).

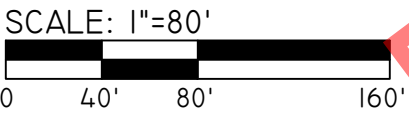
ABBREVIATIONS:

EXISTING
PROPOSED
ASSESSOR'S PLAT
NOW OR FORMERLY

EX
PR
AP
N/F

CERTIFICATION NOTE:

THE EXISTING DATA COMPILED ON THIS CONCEPT/STUDY PLAN IS FROM EXISTING MAPS AND RECORDED DATA. DUE TO METHODS OF COMPILATION AND ACCURACY OF SOME MAPS USED TO COMPILE THIS PLAN, THERE MAY BE SOME DEVIATIONS FROM SAID MAPS AND/OR DATA AND THIS PLAN. THERE ARE MANY FACTORS WHICH LEAD TO THIS, INCLUDING THE ACCURACY OF SAID MAPS AND DATA, AND KNOWN SITE FEATURES SUCH AS STONE WALLS, ROADWAYS, AND BUILDINGS. THESE DEVIATIONS ARE COMMON WHEN COMPILING MAPS AND DATA FROM VARIOUS SOURCES AND CANNOT BE AVOIDED WITHOUT AN ACTUAL FIELD SURVEY AND DEED RESEARCH. THIS PLAN IS TO BE UTILIZED FOR DISCUSSION PURPOSES ONLY. THIS PLAN IS NOT TO BE CONSTRUED AS AN ACCURATE BOUNDARY SURVEY AND MAY BE SUBJECT TO SUCH CHANGES AS AN ACCURATE BOUNDARY SURVEY MAY DISCLOSE.



CONCEPT PLAN F

ASSESSOR'S PLAT 102, LOT 003
LOCATED ON 648 WEST MAIN ROAD
MIDDLETOWN, RHODE ISLAND

DiPrete Engineering

Two Stafford Court, Cranston, RI 02920
tel 401-943-1000 fax 401-464-6006 www.diprete-eng.com

DATE: 06/30/2023
DRAWN BY: SEH

PROJECT INCLUDES:
-144 HOTEL ROOMS
-150 RESIDENTIAL APARTMENTS
-30,000 SQUARE FEET RETAIL/BUSINESS USE

Exhibit D

RESERVED

Exhibit E

DEVELOPMENT SCHEDULE

ID	Task Mode	Task Name	Duration	Start	Finish	May	June	July	August	September	October	November	December	January	February	March	April	May	June
0		MIDDLETOWN COMMONS - DEVELOPMENT SCHEDULE	1238 Business Days	Mon 6/3/24	Wed 2/28/29														
1		Preconstruction																	
2		Ground Lease & Development Agreement Signed	87 Business Days	Mon 6/3/24	Tue 10/1/24														
3		Zoning Overlay Council Referral to Planning Board	24 Business Days	Tue 10/1/24	Fri 11/1/24														
4		Zoning Overlay / Council Approval	31 Business Days	Fri 11/1/24	Fri 12/13/24														
5		Due Diligence - Phase 1 for Master Plan Approval	35 Business Days	Mon 12/16/24	Fri 1/31/25														
6		Master Plan Approval	52 Business Days	Mon 2/3/25	Tue 4/15/25														
7		Due Diligence + Engineering - Phase 2 for Preliminary & Final Site Plan	55 Business Days	Tue 4/15/25	Mon 6/30/25														
8		State Permits - DOT DEM etc	121 Business Days	Tue 4/15/25	Tue 9/30/25														
9		Preliminary & Final Site Plan Application + Hearings	78 Business Days	Tue 9/30/25	Thu 1/15/26														
10		Construction Drawings for Building Permit	64 Business Days	Thu 1/1/26	Tue 3/31/26														
11		Acquisition of Building Permit	58 Business Days	Wed 4/1/26	Fri 6/19/26														
12		Onsite & Offsite Infrastructure Utilities Common Drives	87 Business Days	Fri 5/1/26	Mon 8/31/26														
13		Building Construction to CO	30 Months	Tue 9/1/26	Wed 2/28/29														
Delays in Schedule may be caused due to Municipal Permitting, State Agencies, State Permits, Appeals, & Town Scheduling or Town Quorum Issues																			
Project: MIDDLETOWN COMMO Date: Wed 9/11/24		Task Split Milestone		Summary Project Summary Inactive Task		Inactive Milestone Inactive Summary Manual Task		Duration-only Manual Summary Rollup Manual Summary		Start-only Finish-only External Tasks		External Milestone Deadline Progress		Manual Progress					
Page 1																			

Due Diligence + Engineering - Phase 2 for Preliminary & Final Site Plan

State Permits - DOT DEM etc

Preliminary & Final Site Plan Application + Hearings

Construction Drawings for Building Permit

Acquisition of Building Permit

Onsite & Offsite Infrastructure Utilities Common Drives

Delays in Schedule may be caused due to Municipal Permitting, State Agencies, State Permits, Appeals, & Town Scheduling or Town Quorum Issues

Page 2

Building Construction to CO

Delays in Schedule may be caused due to Municipal Permitting, State Agencies, State Permits, Appeals, & Town Scheduling or Town Quorum Issues

EXHIBIT F
FINANCING PLAN

	Hotel	Retail	Multi-Family	Total
Sources				
Debt	\$29,977,080	\$8,555,190	\$36,268,020	\$241,787
Equity	\$12,847,320	\$3,666,510	\$12,089,340	\$80,596
Total Sources	\$42,824,400	\$12,221,700	\$48,357,360	\$322,382
Uses				
			Per Unit	100%
Hard Costs - Horizontal			\$0	\$0
Hard Costs - Vertical	\$37,678,750	\$10,050,000	\$42,871,820	\$285,812
Soft Costs				
A & E - Base Contract	\$800,000	\$500,000	\$325,000	\$2,167
Site Investigation & Due Diligence	\$50,000	\$50,000	\$50,000	\$333
Professional Fees	\$125,000	\$75,000	\$150,000	\$1,000
Legal Costs	\$200,000	\$200,000	\$150,000	\$1,000
Municipal Permits & Fees	\$60,000	\$40,000	\$50,000	\$333
Builder's Risk Insurance	\$250,000	\$125,000	\$250,000	\$1,667
Taxes	\$100,000	\$65,000	\$100,000	\$667
FF&E	above	above	\$285,901	\$1,906
Lease-up Operational Reserve	\$125,000	\$100,000	\$515,625	\$3,438
Contingency	\$250,000	\$250,000	\$100,000	\$667
GRAND TOTAL - SOFT COSTS				
FINANCING & RELATED COSTS	\$1,165,000	\$550,000	\$1,192,500	\$7,950
DEVELOPMENT FEE				
Development Fee	\$2,020,650	\$216,700	\$2,316,514	\$15,443
TOTAL DEVELOPMENT COST	\$42,824,400	\$12,221,700	\$48,357,360	\$322,382

Exhibit G

ACCESS AND INDEMNIFICATION AGREEMENT

Reference is hereby made to that certain Development Agreement dated as of October 3, 2024 (the “**Development Agreement**”) by and between the Town of Middletown, Rhode Island (the “**Town**”), and Middletown Commons Town Center, LLC, a Rhode Island limited liability company (the “**Developer**”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Development Agreement.

Pursuant to Section 1.11 of the Development Agreement, Developer (including Developer’s employees, contractors, surveyors, lenders, and other third-party consultants assisting Developer in its Due Diligence investigation [collectively “**Developer Representatives**”]), shall have access to the Property in order to conduct any analysis, investigations, and other due diligence as may be necessary or desirable to prepare for the Permit Process and to assist Developer in determining the feasibility of the Project, which may include, without limitation, analysis and investigations with respect to title, survey, environmental conditions, soil and ground water conditions, traffic structures, and economic feasibility (collectively, “**Due Diligence**”), subject to the following terms and conditions:

1. Developer shall provide notice to the Town at least one (1) business day prior to entering the Premises to undertake Due Diligence activities and coordinate access to minimize disruption to current and on-going usage of the Property.

2. Developer shall timely pay for all Due Diligence work contracted by Developer and shall not permit any lien for non-payment against the Property. Developer agrees that all activities of Developer and Developer Representatives shall be at the sole risk and expense of Developer, shall be conducted by qualified professionals engaged by Developer, and any entry upon and activity at the Property by Developer and Developer Representatives shall be in compliance with the terms of this Access and Indemnification Agreement (“**Agreement**”). Before entry onto the Property, Developer shall provide to the Town certificates of insurance confirming that Developer and/or Developer’s Representatives then accessing the Property maintains appropriate commercial general liability insurance and workers compensation insurance as herein required.

3. Developer shall repair any damage caused by Developer or Developer Representatives to any building or other improvements on the Property, provided however, Developer shall not be required to repair de minimus damage to any existing building caused by taking reasonable samples of building materials to determine the extent of environmental remediation that may be required. Developer shall be required to restore the Property to its prior condition of grading and fill any holes caused by taking soil, water, and/or vapor samples in connection with any environmental investigations or assessments performed in connection with Developer’s Due Diligence.

4. Developer agrees to maintain, or to cause Developer’s Representatives to maintain, general liability coverage (naming the Town as an additional insured), in single limit coverage of

not less than \$1,000,000.00 personal injury and \$1,000,000.000 property damage, and to the extent required by Applicable Law, to require that all Developer's Representatives entering upon the Premises be insured with workman's compensation coverage which shall be in an amount not less than the statutory limits.

5. Developer hereby agrees to indemnify and hold harmless the Town from and against any and all actual monetary claims, costs and expenses (including, without limitation, reasonable attorneys' fees) which the Town incurs (collectively, "**Claims**") as a result of personal injury and/or property damage directly resulting from Developer or any of the Developer Representatives having entered upon the Property, and/or the Developer's or such Developer Representatives' causing or permitting the Release of any hazardous substances, pollutants, or contaminants not existing as of the date of this Agreement, or the violation by Developer of the terms of any Applicable Laws in connection therewith. Notwithstanding anything set forth herein, Developer shall have no liability for and Developer shall not be obligated to indemnify or hold harmless the Town on account of (a) Claims for consequential, speculative, punitive or similar damages, (b) Claim arising in connection with the negligence or willful misconduct of the Town or its representatives, or (c) Claims for environmental remediation or clean-up costs or otherwise on account of the discovery and/or report (as may be required by Applicable Laws) of any existing hazardous substances, pollutants, contaminants, or environmental substances or conditions, or other adverse physical condition or defect with respect to the Property.

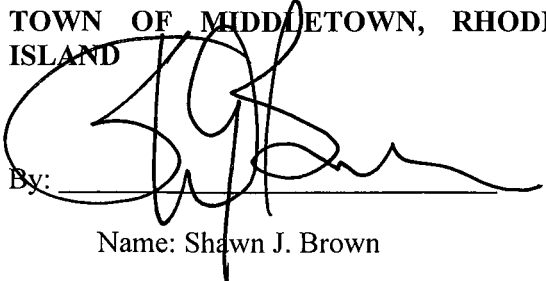
6. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

End of Access and Indemnification Agreement – Signature pages follow

IN WITNESS WHEREOF, the Town and the Developer have caused this Agreement to be signed on their behalf as of this 3rd day of October, 2024.

TOWN:

**TOWN OF MIDDLETOWN, RHODE
ISLAND**

By: 

Name: Shawn J. Brown

Title: Town Administrator

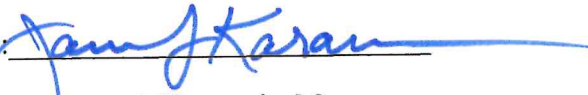
Signature page to Access and Indemnification Agreement follows

IN TESTIMONY WHEREOF, the Town and the Developer have caused this Agreement to be signed on their behalf as of the Effective Date.

DEVELOPER:

**MIDDLETOWN COMMONS TOWN CENTER,
LLC**, a Rhode Island limited liability corporation

By: West Main Commons LLC, its Manager

By: 
Name: James J. Karam, its Manager
Duly authorized

By: Landings I, LLC, its Manager

By: _____

Name: Christopher C. Bicho, its Manager
Duly authorized

End of signature pages to Access and Indemnification Agreement

IN TESTIMONY WHEREOF, the Town and the Developer have caused this Agreement to be signed on their behalf as of the Effective Date.

DEVELOPER:

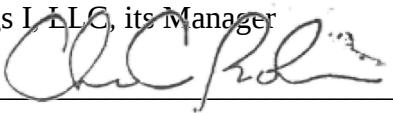
**MIDDLETOWN COMMONS TOWN CENTER,
LLC**, a Rhode Island limited liability corporation

By: West Main Commons LLC, its Manager

By: _____

Name: James J. Karam, its Manager
Duly authorized

By: Landings I, LLC, its Manager

By:  _____

Name: Christopher C. Bicho, its Manager
Duly authorized

End of signature pages to Access and Indemnification Agreement

EXHIBIT H
MAP OF ADJACENT PARCEL
(Containing 58,375 Square Feet ±)

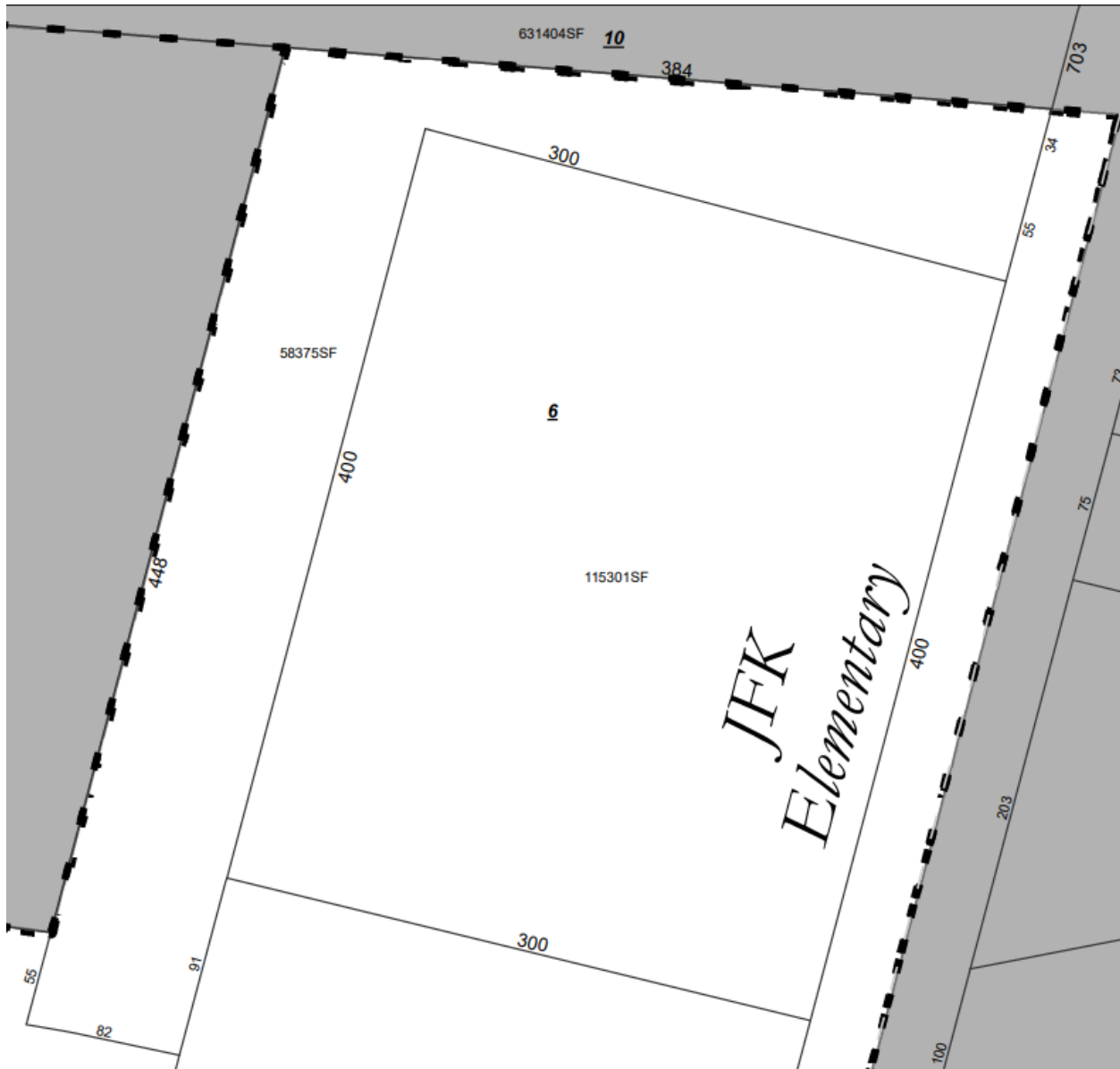


Exhibit I

DEFINITIONS

For the purposes of this Lease, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“Affiliate” means with respect to any Person (“first Person”), (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, general partner, manager, direct or indirect member, or trustee of such first Person, or (iii) any officer, director, general partner, manager, direct or indirect member, or trustee of any Person described in clauses (i) or (ii) of this sentence.

“Agreement” has the meaning given in the Preamble hereof.

“Anti-Money Laundering Acts” has the meaning given in Section 6.2.10.1 hereof.

“Anti-Terrorism Order” has the meaning given in Section 6.2.10.1 hereof.

“APRA” has the meaning given in Section 9.31 hereof.

“Applicable Laws” means all applicable local, State, and federal laws, ordinances, rules, codes, regulations, resolutions, executive orders, and standards, including, without limitation, Environmental Laws, zoning requirements, building codes, and all laws relating to accessibility for persons with disabilities.

“Business Days” means Monday through Friday, inclusive, other than holidays or other days on which the State government is closed.

“Certificate of Occupancy” means a final certificate issued by the Town of Middletown, Rhode Island which permits the occupancy of the premises for which it is intended.

“Community Engagement and Outreach Program” has the meaning given in Section 1.7 hereof.

“Confidential Information” has the meaning given in Section 9.31.1 hereof.

“Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the day-to-day management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, which term shall not preclude major decision approval by others. The terms “Control,” “Controlling,” “Controlled by,” or “under common Control with” shall have meanings correlative thereto.

“Developer” has the meaning given in the Preamble hereof.

“Developer Party” means the Developer, any Member of the Developer, or any Affiliate of the Developer.

“Developer Released Parties” has the meaning given in Section 9.27.2 hereof.

“Developer Status Report” has the meaning given in Section 2.3 hereof.

“Development Documents” means those certain plans, specifications, documents, items, and other matters described more fully in Section 1.3 of this Agreement.

“Development Permits” has the meaning given in Section 3.2 hereof.

“Effective Date” has the meaning set forth on the first page of this Agreement.

“Environmental Law” means any federal or State law, act, statute, ordinance, rule, regulation, order, decree, Permit, or ruling of any federal, State, or administrative regulatory body, agency, board, or commission or a judicial body, relating to the protection of human health or the environment or otherwise regulating or restricting the management, use, storage, disposal, treatment, handling, release, and/or transportation of a Hazardous Material, which are applicable to the Project or activities on or about the Property, including but not limited to 42 U.S.C. § 9601, et seq. (CERCLA), 42 U.S.C. § 6901 et seq. (RCRA), the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Emergency Planning and Community Right To Know Act, 42 U.S.C. § 11001 et seq., and any State equivalent laws as each of the same is amended or supplemented from time to time.

“Event of Default” has the meaning given in Article 5 hereof.

“Force Majeure” means any act of God, fire, earthquake, flood, explosion or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; inability to procure, or a general shortage of, labor, equipment, facilities, materials or supplies in the open market; failure, unavailability or shortage of transportation; strikes, lockout or actions of labor unions; taking by eminent domain, requisition, laws, or orders of governmental or quasi-governmental bodies or of civil, military, or naval authority; adverse weather of greater frequency, duration or severity than is common for the month in question; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of, and is not reasonably foreseeable by any Party hereto and is not due to the fault or negligence of any applicable Party, and that results in a delay in the commencement, prosecution, or completion of an applicable requirement of this Development Agreement.

“Governmental Authority” means any and all municipal, federal, or State governmental or quasi-governmental municipal corporation, board, agency, authority, department, or body having jurisdiction over all or any portion of the Property or the Project or the Developer but excluding the Town in its capacity under this Lease.

“Ground Lessee” means the designated Affiliate of the Developer for any of the Hotel Parcel, Residential Parcel, or Retail Parcel.

“Hazardous Materials” means a substance that falls within one or more of the following categories, other than in quantities or concentrations that constitute Permitted Materials: (1) Any “hazardous substance” under 42 U.S.C. § 9601, et seq. or “hazardous waste” under 42 U.S.C. § 6901, et seq.; (2) Any substance or chemical defined and regulated under requirements promulgated, respectively, by the U.S. Environmental Protection Agency at 40 C.F.R. part 355, by the U.S. Department of Transportation at 49 C.F.R. parts 100-180, by the U.S. Occupational Safety and Health Administration at 29 C.F.R. § 1910.1200 and ionizing materials otherwise regulated by the U.S. Nuclear Regulatory Commission at 10 C.F.R. part 20; (3) Any substance or chemical that is defined as a pollutant, contaminant, dangerous substance, toxic substance, hazardous or toxic chemical, hazardous waste or hazardous substance under any other Environmental Law, or the presence of which requires reporting, investigation, removal and remediation or forms the basis of liability under any applicable environmental requirements; (4) Any substance or material that the Secretary of Defense designates as a “toxic or hazardous material” under 10 U.S.C. § 2692(a)(2); (5) Any substance the presence of which on the Property or adjacent property causes or threatens to cause a nuisance or poses or threatens to pose a hazard to health or safety of persons on or about the Property or adjacent property; (6) Gasoline, diesel fuel, or other petroleum hydrocarbons, including refined oil, crude oil and fractions thereof, natural gas, synthetic gas and any mixtures thereof; (7) Asbestos or asbestos containing material; and (8) Polychlorinated bi-phenyls or materials or fluids containing the same.

“Lease” has the meaning given in Section 1.1 hereof.

“Lease Commencement Date” has the meaning given in Section 1.1 hereof.

“Master Development Plan” means the Master Development Plan attached hereto as Exhibit C, as amended from time to time to the extent permitted pursuant to the terms of this Agreement.

“Material Change” means a change in the Master Development Plan that would result in (a) a change in use of any of the Parcels; and/or (b) any of the following: (i) with respect to the Residential Parcel, a reduction in the number of apartment units (**“Units”**) to less than 75% of the Units permitted under this Master Development Plan, or a reduction in the number of required affordable units to less than 10% of the Units permitted and constructed under the Master Development Plan; (ii) with respect to the Hotel Parcel, a reduction in the number of rooms to less than 75% of the rooms permitted under the Master Development Plan, and (iii) with respect to the Retail Parcel, a reduction in the aggregate square footage of retail buildings permitted under the Master Development Plan to less than 50% of the permitted square footage.

“Member” means any Person with an ownership interest in the Developer, whether as a member of a limited liability company, a shareholder in a corporation, a partner in a partnership, a beneficiary under a trust, or otherwise.

“Monetary Default” has the meaning given in Section 5.1.2 hereof.

“Navy” means the United States Department of Navy.

“Party” and **“Parties”** have the meanings given in the Preamble.

“Permit” means any demolition, site, building, construction, historic preservation, and other permit, approval, license and/or right required or necessary to be obtained under Law from a Governmental Authority for the commencement, performance, and completion of the Project or any part thereof.

“Permitted Materials” means any materials or substances regulated by Environmental Laws which are in quantities and concentrations and used, handled, and stored under conditions in compliance with all applicable Environmental Laws.

“Person” means any individual, or any corporation, limited liability company, trust, partnership, association, or other entity.

“Prohibited Person” means any Person who or which (a) has been convicted of a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) perjury, (v) conspiracy to commit a crime, (vi) making false statements to a government agency, (vii) improperly influencing a government official, and (viii) extortion; (b) could be debarred if the standards applied in applicable Town regulations were applied to such Person’s failure to satisfy a contractual obligation to the Town; (c) is on the Town’s list of debarred, suspended or ineligible Persons; or (d) is a Restricted Person.

“Project” means the development of the Parcels as a mixed use property for residential, hotel and retail purposes in accordance with the terms and conditions of this Lease.

“Property” has the meaning given in the Recitals.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other receptacles containing any Hazardous Materials or Permitted Materials).

“Request” has the meaning given in Section 9.31.2 hereof.

“Requested Information” has the meaning given in Section 9.31.2 hereof.

“Restricted Person” has the meaning given in Section 6.2.10.2 hereof.

“State” means the State of Rhode Island.

“Substantial Completion” means the following: (i) with respect to the Residential Parcel, the date on which Certificates of Occupancy have been issued for 75% of the Units permitted under the Master Development Plan; (ii) with respect to the Hotel Parcel, the date on which a Certificate of Occupancy has been issued for the opening of the Hotel as approved under the Master Development Plan; and (iii) with respect to the Retail Parcel, the date on which Certificates of Occupancy have been issued for 50% of the aggregate square footage of retail space permitted under the Master Development Plan.

“Terrorist Acts” has the meaning given in Section 6.2.10.1 hereof.

“Town” has the meaning given in the Preamble hereof.

“Town Approval” means written approval by the Town Council of the Town of Middletown (which in the Town’s sole discretion, may be in executive session and/or with delegation of authority, if and to the extent permitted by Applicable Law), and with the Town agreeing to use good faith efforts to process all requests for Town Approval within sixty (60) days of such request in accordance with Applicable Law.

“Town Parcel” has the meaning given in Section 1.4.3 hereof.

“Town Released Parties” has the meaning given in Section 9.27.1 hereof.