

EXHIBIT A
TO MASTER DEVELOPMENT AGREEMENT
Property

EXHIBIT A-1
TO MASTER DEVELOPMENT AGREEMENT

Hotel/Condo Property

EXHIBIT A-2
TO MASTER DEVELOPMENT AGREEMENT
Power Plant Property

EXHIBIT A-3
TO MASTER DEVELOPMENT AGREEMENT

Office Property

EXHIBIT B
TO MASTER DEVELOPMENT AGREEMENT

City Utility Infrastructure Improvements

<u>Infrastructure Improvement</u>	<u>Anticipated Completion Date</u>
Relocate the portion of the 24" waterline necessary to complete the driveway on the Property which is parallel to Third Street	March 31, 2009, subject to Force Majeure

EXHIBIT C
TO MASTER DEVELOPMENT AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:
Thompson & Knight L.L.P.
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201
Attention: Andrew A. Ingram

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this "**Declaration**") is made to be effective as of the ____ day of _____, 2008 by THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**Declarant**").

RECITALS:

A. Declarant is the owner of that certain tract of land located in the County of Travis, State of Texas described on Exhibit A attached hereto and made a part hereof ("**Property**") which is approximately _____ acres;

B. Pursuant to a Master Development Agreement (the "**MDA**") dated _____, 2008 between Declarant and Seaholm Development, LLC, a Delaware limited liability company ("**Seaholm**"), the Declarant has engaged Seaholm as the developer of the Property;

C. In the course of the development of the Property, the Property has been, or will be, subdivided into 3 distinct parcels or lots: a hotel/condo portion described on Exhibit A-1 attached hereto (the "**Hotel/Condo Property**"), the power plant portion described on Exhibit A-2 attached hereto (the "**Power Plant Property**") and an office portion described on Exhibit A-3 attached hereto (the "**Office Property**"); and

D. To ensure that the Property is developed, owned, managed and maintained as a uniform development, the Declarant desires to impose certain restrictions on the Property.

NOW THEREFORE, Declarant declares for the benefit of the Property, that the Property be held, transferred, sold, conveyed, or occupied subject to the following restrictions:

1. Design Approval.

(a) No substantial improvement will be commenced or constructed upon the Property, nor will any substantial exterior addition to or substantial exterior change or alteration thereof be made, unless and until the site plan, the exterior facades and the

landscape plans therefor (and any material exterior modifications thereto) will have first been submitted to and reasonably approved in writing by the Declarant. Except as provided in Section 2(b) hereof and pursuant to the Declarant's regulatory capacity, the Declarant will not have any rights to review or approve interior aspects of the improvements.

(b) Each request for Declarant's approval (a "**Design Approval Request**") under sections (a) and (b) above must be accompanied by plans and specifications showing the partition layout, site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation and such other information related to the exterior appearance of the improvements as Declarant may reasonably require (the "**Plans**"); which Plans must be submitted for Declarant's approval through a Design Approval Request at the conclusion of the following 2 planning stages – (A) upon completion of conceptual Plans (i.e., prior to commencement of detailed construction drawings) and (B) upon completion of "50% construction drawings". The existing improvements on the Power Plant Property have been designated historic and, as such, are subject to federal regulation affecting any changes that may be made thereto.

(c) In reviewing a Design Approval Request, Declarant may consider any factors it reasonably deems relevant, including, without limitation, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, and harmony of the proposed external design with surrounding structures and environment.

(d) If Declarant fails to notify Owner in writing of its approval, disapproval or comments to the complete Design Approval Request within 30 days of Declarant's deemed receipt thereof, Owner may provide Declarant a second written Design Approval Request (containing a statement in all bold and capital letters that reads "**FAILURE TO RESPOND TO THIS DESIGN APPROVAL REQUEST WITHIN 15 DAYS SHALL CONSTITUTE DEEMED APPROVAL OF THIS DESIGN APPROVAL REQUEST**") which if not responded to by Declarant within 15 days after deemed receipt will be deemed approval of the Design Approval Request. In such event and on Seaholm's written request to the Declarant, the Declarant will provide written confirmation to Seaholm of such deemed approval. Declarant will notify the applicant in writing of any materials that Declarant believes are missing to make a Design Approval Request complete. Declarant may: (i) approve the Design Approval Request with or without conditions; (ii) approve a portion of the Design Approval Request and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (iii) disapprove the Design Approval Request.

(e) If Declarant approves the Design Approval Request with conditions, approves a portion of the Design Approval Request and disapproves other portions and a revised Design Approval Request with revised Plans is submitted, Declarant shall notify the applicant in writing of the final determination on any such revised Design Approval Request no later than 15 days after its receipt of such revised Design Approval Request and all required submissions.

(f) Following such approval, Declarant shall promptly apply for and diligently pursue regulatory approval (e.g., building permit, site plan) concerning such approved construction. If construction does not commence within the period required by such regulatory approval, the approval granted hereunder shall automatically expire, and the applicant must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

2. Design Changes.

(a) Owner may, with the Declarant's prior consent (which consent shall not be unreasonably withheld or conditioned) switch the "condo" portion of the Hotel/Condo Property to the Office Property, which approval will be requested, evaluated and granted under the same procedure as approval of the construction plans in Section 1 above.

(b) No substantial exterior addition to or substantial exterior change or alteration to the Property may be made, unless and until the modified site plan, the exterior facades and the landscape plans therefor will have first been submitted to and reasonably approved in writing by the Declarant, provided however, Declarant's approval shall not be required regarding changes solely related to a reduction in (A) the square footage of the improvements to the "hotel" portion of the Hotel/Condo Property in excess of 20% of an anticipated 100,676 square feet of hotel improvements, (B) the "condo" portion of the Hotel/Condo Property in which the total residential condo unit count is less than 40 units, and/or (C) the square footage of the improvements to the Office Property in excess of 20% of an anticipated 66,000 square feet may be made, unless the plans therefor will have first been submitted to and approved in writing by the Declarant, which approval will be requested, evaluated and granted under the same procedure as approval of the construction plans in Section 1 above.

3. Architectural Standards. The following architectural standards apply to the Power Plant Property:

(a) The generator building must be diligently conserved and thoughtfully adapted for one (or more) highly public uses to create a region-wide attraction.

(b) The events center should amplify the inherent architectural attraction that the Power Plant Property offers.

(c) One or more exterior boiler structures and all smokestacks of the Power Plant Property are considered to be intrinsic to the historic significance of the complex and must be preserved.

(d) The industrial "power plant" spirit of the Power Plant Property should be clearly maintained and enhanced. Certain of the Power Plant Property's key artifacts have been selected to remain in and around the building as witness to its previous life. The Property should incorporate the power plant "Light" and "Power" motifs.

(e) The new uses should honor the Power Plant Property's architectural form and style.

(f) Constructed elements within the turbine hall of the Power Plant Property may be added to define space and increase square footage at potential mezzanine levels, but must maintain the sense of the overall volume of the space by ensuring that the clerestory windows and entire ceiling is visible from any point within this space. Likewise, suspended ceiling systems are inappropriate here, as these would obscure the original shell of the building. Mechanical and lighting systems should be expressed rather than hidden, in keeping with the industrial and functional spirit of the Power Plant Property.

(g) The Power Plant Property must conserve and restore the existing neon signage on the west face of the Power Plant Property depicting the “City of Austin Power Plant” and on its two southern doorways “Light” and “Power”. The Property should work with these themes in establishing its new identity.

4. Construction. Each holder of fee simple title to all or any part of the Property, except if the applicable portion of the Property is subject to a Ground Lease, in which case the ground lessee (each such party, an “**Owner**”) agrees to perform its respective construction: (i) where approval is required, in accordance with such approved Plans; (ii) with due diligence to completion and in a good and workmanlike manner, using first class materials; provided however, the standard for construction and completion contained in the MDA shall govern the initial construction of the improvements; (iii) so as not to unreasonably interfere with any construction work being performed on any other portion of the Property or with the use, occupancy and enjoyment of any other portion of the Property; (iv) to comply with the then current private and governmental requirements applicable thereto (including amendments and modifications), including, without limitation, the Downtown Austin Design Guidelines, building, environmental and zoning laws of the state, county, municipality or other subdivision in which the Property is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments and the appropriate departments, commissions, agencies, boards and officers thereof (collectively, “**Legal Requirements**”).

5. Maintenance. Each Owner shall maintain its portion of the Property, including all structures, parking areas, landscaping, and other improvements, in good condition and repair in a manner consistent with a Class A mixed use urban development. Such maintenance includes, but is not limited to, the following (as applicable), which will be performed in a timely manner:

- (a) Prompt removal of all litter, trash, refuse, and waste.
- (b) Tree and shrub pruning.
- (c) Watering.
- (d) Keeping exterior lighting and mechanical facilities in working order.
- (e) Keeping lawn and garden areas alive, free of weeds, and in an attractive condition.
- (f) Keeping planting beds free of turf grass.
- (g) Keeping sidewalks and driveways in good condition, repair and

appearance.

(h) Complying with all government, health, safety and police requirements applicable to its portion of the Property in all material respects.

(i) Repainting of improvements.

Each Owner shall also be responsible for maintaining landscaping and common areas within that portion of any adjacent public right-of-way, plaza, common area, street or alley provided that the Owner has been granted and accepted a license from the Declarant in its regulatory capacity to do so.

The responsibility for maintenance includes responsibility for repair and replacement. Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on its Property, less a reasonable deductible, unless another entity (e.g., a condominium or owners association) carries such insurance. Within 180 days after any damage to or destruction of any improvement constructed upon the Property, the applicable Owner shall promptly repair or reconstruct the improvement in a manner consistent with the original construction or such other plans and specifications as are approved hereunder. Alternatively, the applicable Owner shall clear its Property of debris and maintain it in a neat and attractive landscaped condition.

6. Prohibited Uses on the Property. Unless otherwise approved by Declarant, no Owner may operate or permit on its portion of the Property:

(a) Any use which constitutes a public or private nuisance or which permits or generates a noxious (as opposed to the normal and customary Class A retail, Class A restaurant, Class A office, Class A hotel or residential) odor, noise, sound, litter, dust, or dirt which can be heard, smelled or readily seen outside of the Property.

(b) Any use which produces or is accompanied by any unusual fire, explosive, or other damaging or dangerous hazards (including the storage or sale of explosives or fireworks).

(c) A thrift shop (e.g., Goodwill or St. Vincent de Paul), flea market or pawn shop.

(d) Repair or service center (except that service centers or service uses which are incidental to a store selling goods and/or services is not prohibited hereunder).

(e) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(f) Any massage parlor (except that this prohibition will not prohibit day spas or health clubs or spas including those associated with a hotel use).

(g) Any pet store (other than a "boutique" pet store), veterinary hospital, veterinary office or animal raising or boarding facilities.

- (h) Any mortuary, funeral home, or crematorium.
- (i) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall; provided however this will not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation.
- (j) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, fabricating, distilling, refining, smelting, agricultural or mining operation.
- (k) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live nude or partially clothed dancers or wait staff or similar establishments; provided, however, this will not prohibit the operation of a movie theater for movies, Blockbuster Video, Hollywood Video or similar operation or a Borders, Barnes & Noble, Waldenbooks or a Books-A-Million or similar operation so long as such operations are not adult oriented (as defined in the sexually-oriented business ordinance of the City).
- (l) A dry cleaning plant, provided this will not prohibit a dry cleaning drop off and pick up use.
- (m) A tattoo parlor, beauty supply store or tanning salon (other than tanning equipment incidental with a spa, health club or hotel).
- (n) A store selling alcoholic beverages for off-premises consumption, other than (i) an “upscale” store selling wines and similar alcoholic beverages, and (ii) stores in which beverages represent less than five percent (5%) of the store’s merchandise calculated on the basis of approximate number of individually sold items in such store, it not being Declarant’s intent, for example, to prohibit use of the Property for a market in which alcoholic beverages for off-premises consumption represent only a portion of the merchandise available in such market.
- (o) Dance clubs, bars or cocktail lounges with aggregate square footage in excess of 8,000 square feet on the ground level of a building (provided that live music venues, hotels, restaurants or comedy clubs with bars or cocktail lounges are permitted).
- (p) Bowling alleys on the ground level.
- (q) Check-cashing services, unless incidental to use as a bank or other financial institution. This restriction will not prohibit automated teller machines.
- (r) Correctional or detention facilities.
- (s) Janitorial supplies or services (other than normal janitorial services being provided exclusively to the Property).

(t) Laundromats, provided that this will not prohibit an internal laundry facility associated with a hotel.

(u) Plant nursery (but florist shops are permitted as long as they do not grow flowers in bulk on the premises).

(v) Tools and heavy equipment sales.

(w) Workers compensation offices.

7. Prohibited Uses in Power Plant Property. No Owner of any of the Power Plant Property may operate or permit on its portion of the Power Plant Property:

(a) Any school, training or educational facility, including but not limited to: beauty schools, barber colleges, trade school, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition will not be applicable to on-site employee training incidental to the conduct of its business in the Power Plant Property.

(b) A daycare center larger than 5,000 square feet.

(c) Any business operated on a part time retail basis (i.e., a business operated less than 7 days per week or half of a weekday or Saturday), other than seasonal kiosks.

(d) Collection agencies.

(e) Doctor or dentist offices or other medical facilities (other than incidental first aid facilities).

(f) Rental offices (furniture, etc.); other than rental offices for local transport (e.g., personal motorized transports, boats).

(g) Tobacco shop (other than a "high end" tobacco shop) (provided that the ancillary sale of tobacco is permitted in other retail establishments).

(h) Any residential use, including, but not limited to: single family dwellings, apartments, townhouses, condominiums, other multi-family units and other forms of living quarters, sleeping apartments or lodging rooms.

(i) With respect to the ground level of the Power Plant Property, any Office and Services Use. The term "Office or Service Use" includes those uses which are traditionally associated with an office, industrial, limited office and related uses and include Quasi-Retail, Service Retail, and Service Office uses. "Quasi-Retail" includes but is not limited to a travel agency, establishment that sells glasses but also has an optometrist on site, cell phone store. "Service Retail" includes but is not limited to a copy center, cleaners, tailor/alterations, salon, travel agent, etc. "Service Office" includes but is not limited to brokerage office, insurance agency, medical or dental office, law office, office offering income tax preparation.

It is the intent of the Declarant that the Power Plant Property be utilized for traditional retail uses except as specifically provided above.

8. Other Restrictions And Requirements.

(a) Plaza Programming. The Owners must cause the Property's management company to submit to the Declarant, for the Declarant's review and approval, on or before January 1 of each of the first 3 years following completion of the renovation of the Power Plant Property a proposed programming plan for the plaza located on the North side of the Power Plant Property. Such programming plan will include, in reasonable detail, the events planned for the upcoming year.

(b) Naming of Development. Owner shall not change the name of the Power Plant Property without the prior written consent of Declarant, which consent may be granted or withheld in Declarant's sole discretion.

(c) Tax Exempt Entities. Prior to the Repayment Incentives Date (as defined in the MDA), the Owner shall not sell any portion of the Property or lease any portion of the Property to a governmental entity, nonprofit corporation, nonprofit organization or similar entity which may be exempted under Legal Requirements from the obligation to pay Ad Valorem Taxes without the prior approval of the Declarant.

(d) Green Building Covenant. Owner will cause the shell portion of the improvements on the Hotel/Condo Property and the Office Property (i.e., not including individual condominium units or other commercial interiors) to be constructed to achieve at least a Three Star Green Building rating under the Declarant's Green Building Program. Owner will cause the shell portion of the improvements on the Power Plant Property (i.e., not including individual condominium units or other commercial interiors) to be renovated to achieve at least a Two Star Green Building rating under the Declarant's Green Building Program. If Declarant's Green Building Program no longer exists, Declarant, in its reasonable discretion, shall select another comparable program and standard with which to evaluate the improvements.

(e) Affordable Housing. If any portion(s) of the Property equal to or greater 10% of the total units in the Property is owned by a single owner or a group of related owners and such units are utilized as a "for rent" residential multi-unit facility (e.g., not a hotel or the lease of individual units by end users), such applicable portion(s) of the Property must comply with the remainder of this Section. The Property is anticipated to be developed as a hotel, retail, office and "for sale" residential condos. If the Property is not so developed (or is later redeveloped) or all or any portion (or multiple portions) of the Property is utilized as a "for rent" (i.e., a common owner owns multiple units and rents such units to end users), it is the intent of the Declarant to ensure that a portion of such "for rent" units be available to persons of limited financial means, as provided below.

(i) For a period of 25 years beginning on the date the Property is utilized as "for lease" property (the "**Affordable Housing Period**"), the applicable Owner agrees to lease, or hold available to lease, to households whose

income is equal to or less than 80% of the median income for households of equivalent size as determined by the United States Department of Housing and Urban Development (“**HUD**”) for the Austin – San Marcos, Texas Metropolitan Statistical Area (the “**MSA**”), 5% of the units then in existence in the applicable portion of the Property. A unit that is leased, or held available for lease, to persons who meet the above criteria (a “**Qualifying Household**”) is hereinafter referred to as a “**Restricted Unit**”. If the applicable portion of the Property contains at least twenty units of a particular type (e.g., one bedroom, two bedroom three bedroom), then at least 5% of the “for rent” units of that type shall be Restricted Units. If the applicable portion of the Property contains less than twenty units of a particular type, then Owner may, but is not obligated to, designate one or more of the units of that type as a Restricted Unit. The Restricted Units must be comparable in quality to similarly sized, non-restricted units of the same type on the applicable Property, but Owner shall have the discretion to designate any unit on the applicable portion of the Property as a Restricted Unit and to change such designation at any time. The examples set out above (one bedroom, two bedroom, three bedroom, etc.) are examples only, and Owner is not obligated to construct or offer any specific type of unit, nor any specific number of particular types of units

(ii) The rental rate for the Restricted Units must be an amount which does not exceed 28% of such Qualifying Household’s gross income. During the Affordable Housing Period, Owner shall keep records of the rental amounts of the Restricted Units and the gross income of the Qualifying Households. The records will be available for annual review by the Declarant.

(iii) Notwithstanding any other provision of this Declaration, the following provisions will govern any breach by Owner of its covenants in this Section:

(A) Owner must not be considered to have breached any covenant in this Section until Declarant has provided Notice to Owner of Owner’s breach and Owner has not cured such breach within 30 days of Owner’s receipt of such Notice.

(B) Should Owner breach a covenant in this Section and until such time as the breach is cured, as Declarant’s sole and exclusive remedies, (i) Owner shall pay to Declarant liquidated damages in the amount of \$1,000 per month for each unrestricted unit that would need to be restricted in order to maintain the requirement that 5% of the units in the applicable portion of the Property be Restricted Units and (ii) Declarant shall have the right to specifically enforce the covenants set forth in this Section.

(C) Declarant acknowledges that Owner will be relying on prospective tenants to provide Owner with the information to determine whether or not such prospective tenants are Qualifying Households. Declarant agrees that in no event will Owner be held liable for a breach of

this Section due to false information provided to Owner by such prospective tenants, provided that upon learning that a tenant of a Restricted Unit is not a Qualifying Household, Owner diligently pursues the leasing of such Restricted Unit to a Qualifying Household following the expiration of the lease term of such tenant.

9. Modifications and Termination. This Declaration may be modified or terminated upon the written consent of all of (a) Declarant, and (b) the Owner(s) of at least fifty-one percent (51%) of the floor area of the improvements within two of the buildings located on the Property; provided however, the City may remove any portion of the Property from this Declaration if it owns fee title to said portion of the Property and such portion of the Property is not burdened by a ground lease. In (b) above "Owners" shall mean, with respect to a portion of the Property that is subject to a ground lease, the ground lessee and not the ground lessor.

10. Term. The term of this Declaration will commence upon the date of filing this instrument for record in the land records of Travis County, Texas and will continue for a term of forty (40) years; thereafter this Declaration will be renewed automatically for successive twenty (20) years terms unless, at any time, terminated pursuant to Section 9 of this Declaration, and such termination is filed of record.

11. Default.

(a) In the event of a default of the terms and conditions of this Declaration by any Owner, such Owner will have 20 days in which to cure such default after receipt of notice of said default from Declarant or another Owner. Declarant shall also deliver such written notice to any unaffiliated, third party lender ("**Lender**") of such defaulting Owner if Declarant is provided notice of such Lender in writing (with a contact name and address) prior to such default and such Lender will have the same right of cure hereunder as the defaulting Owner and the timeframe for cure will run concurrently with such Owner's cure period. If the default can not be cured, using reasonable due diligence, within 20 days of receipt of the notice of default, then the defaulting Owner or the applicable Lender will have such additional time as may be reasonably necessary to cure such default, conditioned upon the defaulting Owner or applicable Lender commencing the cure within such 20 day period and diligently pursuing the curing of the default through conclusion; provided however, such additional time will not apply for any situations, conditions or issues in which the health or safety of the public at large is compromised. If that the default cannot be cured in a timely manner as required in this Section, Declarant or the notifying Owner will have the right to obtain an injunction from an applicable court of law to enforce specific performance on the part of the defaulting Owner, the amount of any bond for same being not more than \$100. In addition to the foregoing, the Declarant will have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration against the defaulting Owner. With respect to a default of maintenance responsibilities under Section 5 hereof, following the notice and cure period set forth above, the Declarant may perform such maintenance responsibilities and assess all costs incurred by the Declarant against such defaulting Owner; provided, Declarant may assign its right to conduct such maintenance to any appropriate entity. **THE DECLARANT AND ANY NOTIFYING OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR**

EMPLOYEES WILL NOT BE HELD LIABLE TO ANY PERSON FOR EXERCISING THE RIGHTS GRANTED BY THIS DECLARATION (INCLUDING LIABILITIES RESULTING FROM DECLARANT'S OR NOTIFYING OWNER'S NEGLIGENCE OR STRICT LIABILITY) UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR BAD FAITH OF THE DECLARANT OR NOTIFYING OWNER, AS THE CASE MAY BE, OR ONE OR MORE OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES.

(b) In the event of a default hereunder which is not cured within any time herein specified, it will not terminate this Declaration nor the obligations of any of the Owners, nor terminate the rights of any other Owner with respect to its portion of the Property, nor withhold the benefits of this Declaration from any other Owner by reason of any default by such Owner, it being the express understanding that, subject to any other terms hereof, this Declaration will continue in effect throughout its term, notwithstanding any default by any Owner.

12. Approval. Unless expressly stated otherwise herein to the contrary, any approval (including without limitation, approval of any amendment), agreement, determination, consent, waiver, estoppel certificate, estimate or joinder by the Declarant required hereunder may be given by the City Manager of the Declarant or its designee; *provided however*, except for minor amendments, modifications or clarifications, the City Manager does not have the authority to execute any substantial modification or termination of this Declaration without the approval of the Austin City Council. With respect to any plan approvals, the City Manager may enlist any individual or party to assist in such approval.

13. Miscellaneous.

(a) Capacity of Declarant. **GENERALLY, APPROVALS UNDER THIS DECLARATION ARE NOT A SUBSTITUTE FOR ANY APPROVALS OR REVIEWS REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR ENTITY HAVING JURISDICTION OVER ARCHITECTURAL OR CONSTRUCTION MATTERS. THE DECLARANT UNDER THIS DECLARATION IS A GOVERNMENTAL ENTITY, HOWEVER, ALL ACTIONS OF DECLARANT TAKEN SOLELY WITH RESPECT TO THIS DECLARATION WILL BE ACTIONS TAKEN IN ITS CAPACITY AS A LANDOWNER (I.E., A SELLING LANDOWNER AND AS THE OWNER OF AN ADJACENT PARCEL OF LAND) INSTEAD OF IN ITS CAPACITY AS A GOVERNMENTAL ENTITY. BY WAY OF EXAMPLE AND NOT OF LIMITATION, APPROVAL BY DECLARANT OF THE PLANS WILL NOT CONSTITUTE APPROVAL TO COMMENCE CONSTRUCTION (I.E., A BUILDING PERMIT) BY THE CITY OF AUSTIN IN ITS REGULATORY CAPACITY. NOTHING IN THIS SECTION IS DEEMED TO WAIVE OR INHIBIT ANY SOVEREIGN IMMUNITY RIGHTS. OWNER ACKNOWLEDGES THAT THE DECLARANT CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.**

(b) Notices. Formal notices, demands and communications will be

sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the Declarant may designate in writing from time to time:

If Declarant: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

With a copy to: City of Austin
Economic Growth and Redevelopment Services Office
301 West 2nd Street
Austin, Texas 78701
Attention: Director

With a copy to: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: City Attorney

Notices to the Owners within the Property will be sent to the tax address maintained by the Travis Central Appraisal District (or successor entity).

(c) Consents. Whenever pursuant to this Declaration an Owner's consent or approval is required, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval will be in the sole discretion of such Owner and such consent or approval may be withheld by such Owner for any reason.

(d) Covenants Run with the Land. The terms of this Declaration constitute covenants running with, and will be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration will inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby. All provisions of this Declaration that govern the conduct of the Owner and that provide for sanctions against the Owner for the breach hereof will also apply to all occupants (including lessees), guests, and invitees. Every Owner shall cause all occupants (including lessees) of the Owner's portion of the Property to comply with this Declaration and any rules and regulations adopted, and will be responsible for all violations and losses caused by those occupants (including lessees), notwithstanding the fact that those occupants (including lessees) of the Owner's portion of the Property are fully liable and may be sanctioned for any violation of this Declaration and rules and regulations adopted pursuant thereto.

(e) Singular and Plural. Whenever required by the context of this Declaration, the singular will include the plural, and vice versa, and the masculine will include the feminine and neuter genders, and vice versa.

(f) Negation of Partnership or Other Entity. None of the terms or provisions of this Declaration will be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise. Each Owner will be considered a separate owner, and no Owner will have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

(g) Not a Public Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Owner will inure to the benefit of any third party, nor will any third party be deemed to be a beneficiary of any of the provisions contained herein.

(h) Severability. Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order will in no way affect any of the other provisions hereof or the application thereof to any other person and the same will remain in full force and effect.

(i) Captions and Capitalized Terms. The captions preceding the text of each article and/or section are included only for convenience of reference. Captions will be disregarded in the construction and interpretation of the Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

(j) Time. Time is of the essence of this Declaration.

(k) Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof will not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and will not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

(l) No Merger. The subsequent merger of title in and to any one or more of portions of the Property, or any portions thereof, by sale, transfer or other conveyance, will not operate as a merger or termination of any other rights created and established hereunder, it being the intent that such rights will survive notwithstanding the merger of title.

(m) Legal Fees. In any action to enforce this Declaration, the prevailing party will be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs reasonably incurred in such action.

(n) Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Property will at all times be subject and subordinate to the terms of this Declaration and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, will acquire title subject to all of the terms and provisions of this Declaration.

(o) Binding Effect. Every agreement, declaration, covenant, promise undertaking, condition, right, privilege, option and restriction made, declared, granted or assumed, as the case may be, in this Declaration is not only for the benefit of each Owner personally but also as Owners of a portion of the Property, and will constitute an equitable servitude on the portion of the Property owned or leased by such party appurtenant to and for the benefit of the other portions of the Property, and the benefits and burdens thereof will run with the title to the Property. Any transferee of any part of the Property will automatically be deemed, by acceptance of the title to any portion of the Property, to have assumed all obligations of this Declaration relating thereto to the extent of its interest in its portion of the Property and to have agreed with the then Owner or Owners of all other portions of the Property to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration at no cost to such Owners. Upon the completion of such transfer, the transferor will be relieved of all further liability under this Declaration except liability with respect to matters remaining unsatisfied which arose during its period of ownership of the portion of the Property so conveyed. All obligations and restrictions set out in this Declaration will run with the land, be binding upon and inure to the benefit of all of the Owners of the Property.

(p) Remedies Cumulative. All of the remedies permitted or available to the Declarant or Owners under this Declaration, or at law or in equity, will be cumulative and not alternative, and the invocation of any such remedy will not constitute a waiver or election of remedies with respect to any other permitted or available remedy.

(q) Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the restrictions and covenants herein described or to this Declaration will be sufficient to create and reserve such covenants to the respective grantees, mortgagees, or trustees of such parcels as fully and completely as if those restrictions and covenants were fully related and set forth in their entirety in said documents.

(r) Effect of Force Majeure. If the Declarant or an Owner is delayed, hindered, or prevented from performance of any of its respective obligations under this Declaration by reason of acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, order of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, acts of public enemies, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a

governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Declaration or other causes not reasonably within the control of the party claiming such inability (other than (a) financial inability to perform, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof), and if such party has not otherwise committed an event of default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(i) The affected party shall give prompt written notice of such occurrence to the other party; and

(ii) The affected party shall diligently use commercially reasonable efforts to remove, resolve, or otherwise eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration on the date of acknowledgment set forth below to be effective as of the date set forth above.

THE CITY OF AUSTIN, a Texas home rule city
and municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form and content for the City
by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 200____, by
_____, _____ of THE CITY
OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

(Printed name)

My Commission Expires:

EXHIBIT A
TO DECLARATION OF RESTRICTIVE COVENANTS
Property

EXHIBIT A-1
TO DECLARATION OF RESTRICTIVE COVENANTS

Hotel/Condo Property

EXHIBIT A-2
TO DECLARATION OF RESTRICTIVE COVENANTS

Power Plant Property

EXHIBIT A-3
TO DECLARATION OF RESTRICTIVE COVENANTS

Office Property

EXHIBIT D
TO MASTER DEVELOPMENT AGREEMENT

Form of Special Warranty Deed

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:

DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, Texas 78701
Attention: Rick Reed

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF TRAVIS §

1. Grant. THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (“**City**”), for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration paid to City by SEAHOLM DEVELOPMENT, LLC, a Delaware limited liability company (“**Seaholm**”), the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, SELL, CONVEY, ASSIGN and DELIVER to Seaholm the real property described in Exhibit A attached hereto and made a part hereof, together with all buildings and other improvements situated thereon, all fixtures and other property affixed thereto and all and singular the rights and appurtenances pertaining to such real property (the “**Property**”), subject to the encumbrances described in Exhibit B attached hereto and made a part hereof (the “**Permitted Encumbrances**”).

2. Warranty. TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Seaholm, its successors and assigns, forever, and City does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto Seaholm, its successors and assigns against every person whomsoever lawfully claiming, or to claim the same, or any part thereof by, through or under City, but not otherwise; subject, however, to the Permitted Encumbrances.

3. AS-IS. **EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THAT MASTER DEVELOPMENT AGREEMENT DATED _____, 2008 BETWEEN CITY AND SEAHOLM RELATING TO THE PROPERTY (THE “MDA”) TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER “AS IS” WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR**

IMPLIED REPRESENTATION OR WARRANTY BY CITY. CITY HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN AS SET FORTH IN THE MDA AND CITY'S SPECIAL WARRANTY OF TITLE CONTAINED HEREIN), ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY AND CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. SEAHOLM ACKNOWLEDGES AND AGREES THAT IT IS ACCEPTING THIS SPECIAL WARRANTY DEED WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND THE MDA) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY CITY OR ANY REPRESENTATIVE OF CITY OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF CITY WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY. SEAHOLM REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT IT IS RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA) SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA). SEAHOLM FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN CITY'S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE PROPERTY TO SEAHOLM.

4. Terms. Capitalized terms used herein but not defined have the meanings assigned to such terms in the MDA and the following terms shall have the meanings assigned:

"Commenced Construction" and **"Commencement of Construction"** mean the commencement of bona-fide pouring of concrete footings for construction of the proposed "build out" of the improvements on the applicable portion of the Property.

"Delinquency Interest Rate" means a per annum rate of interest equal to the lesser of (1) the Prescribed Rate plus 3% or (2) the then highest lawful contract rate which Seaholm is authorized to pay and the City is authorized to charge under the laws of the State of Texas with respect to the relevant obligation.

"Owner" means the owner of the Property.

"Prescribed Rate" means the "prime rate" published in The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks on the first Business Day following the due date of such payment. If The Wall Street Journal ceases to publish such a prime rate, the Prescribed Rate will be the per annum interest rate which a large U.S. money center commercial bank doing business in Texas designated by the City publicly announces (whether or not actually charged in each

instance) from time to time (adjusted daily) as its “prime rate” (or if there is no “prime rate,” a similar borrowing reference rate).

“Repurchase Price” means

(a) prior to a conveyance of the Property by foreclosure or a deed in lieu of foreclosure, the amount of architectural, engineering and “hard” construction costs concerning the Property incurred and paid by Owner for which Owner has received a lien release reasonably acceptable to City, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the City by Owner under any agreement related to the Property (but without duplication); or

(b) following the conveyance of the Property by foreclosure in which an independent third party purchases the Property (i.e., not the Owner, Mortgagee or an affiliate thereof), the sum of (i) amount paid by such purchaser at the foreclosure sale, *plus* (ii) the amount of architectural, engineering and “hard” construction costs concerning the Property incurred and paid by such purchaser for which such purchaser has received a lien release reasonably acceptable to City, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the City by such purchaser under any agreement related to the Property (but without duplication); or

(c) following the conveyance of the Property by foreclosure or deed in lieu of foreclosure in which the Mortgagee (or its affiliate) acquires title to the Property, the sum of (i) the outstanding principal balance of the loan by such Mortgagee together with all accrued interest thereon (excluding however, any late charges, default interest, exit fees, breakage charges, prepayment premiums or similar fees) *plus* (ii) the amount of architectural, engineering and “hard” construction costs concerning the Property incurred and paid by Mortgagee (or its affiliate) for which Mortgagee (or its affiliate) has received a lien release reasonably acceptable to City, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the City by Mortgagee (or its affiliate) under any agreement related to the Property (but without duplication).

“Repurchase Permitted Exceptions” means the same exceptions as appear on Exhibit B hereof and those exceptions which the City has required or consented to in

writing following the date hereof whether in its regulatory or landowner capacities or are otherwise allowed under the terms of the MDA.

5. Repurchase Right – Seaholm Major Event of Default under MDA. Subject to all the terms and conditions hereof and the financing and Mortgagee protection provisions of the MDA, City hereby reserves the preferential and exclusive option (but not obligation) if a Seaholm Major Event of Default occurs and is continuing under the MDA to repurchase the Property (the “**Repurchase Right - MDA Default**”) at a repurchase price equal to the Repurchase Price. If such option is exercised by City, then the Owner will reconvey the Property to City not more than 120 days following the date the City gives written notice to Owner and any Mortgagee of Owner of the City’s exercise of the Repurchase Right – MDA Default by a deed in substantially the same form as this Special Warranty Deed, with no title exceptions except for the Repurchase Permitted Exceptions. City will have the right to enforce the Repurchase Right - MDA Default by specific performance in addition to all other legal and equitable remedies. Upon termination of the Repurchase Right - MDA Default for any reason described herein and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Repurchase Right - MDA Default. The Repurchase Right - MDA Default will run with the land and bind future owners of the Property but will automatically terminate (a) with respect to the entirety of the Property, upon the Repayment Incentives Date (as defined in the MDA), and (b) with respect to individual residential condominiums on the Property, upon the closing of the sale of such residential condominium to a third party.

6. Repurchase Right – Failure to Commence Construction.

(a) Subject to all the terms and conditions hereof and the financing and Mortgagee protection provisions of the MDA, City hereby reserves the preferential and exclusive option (but not obligation) to repurchase the Property (the “**Repurchase Right - Commencement of Construction**”) at a repurchase price equal to 100% of the gross purchase price paid by Seaholm to City under the MDA under the circumstances contained in this paragraph, which amount is payable simultaneously with the reconveyance of the Property as described below.

(b) If the Owner has not Commenced Construction of the Improvements on the Property on or before _____ [30 months following the MDA Commencement Date] (the “**Construction Commencement Date**”) such event will be deemed an event of default hereunder and City will be entitled to exercise its Repurchase Right – Commencement of Construction if the Owner does not, in good faith, Commence Construction on or before the date which is 30 days following written notice by the City to the Owner and any Mortgagee of Owner of the City’s intent to exercise its Repurchase Right – Commencement of Construction. The Construction Commencement Date will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and City Caused Delays.

(c) If such option is exercised by City, and the Repurchase Right – Commencement of Construction does not terminate because of the Commencement of Construction as described above, Owner will reconvey the Property to City not more than 120 days following the date of City’s notice by a deed in substantially the same form as this Special Warranty Deed, with no title exceptions except for the Repurchase Permitted

Exceptions. City will have the right to enforce the Repurchase Right - Commencement of Construction by specific performance in addition to all other legal and equitable remedies. Upon termination of the Repurchase Right - Commencement of Construction for any reason described herein and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Repurchase Right - Commencement of Construction. The Repurchase Right - Commencement of Construction will run with the land and bind future owners of the Property but will automatically terminate in the event Commencement of Construction has occurred on the applicable portion of the Property on or before the Construction Commencement Date.

7. Liquidated Damages – Work Stoppage. Upon Commencement of Construction, Owner agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition (the “**Dry-In Condition**”). If, following Commencement of Construction, the good faith and bona-fide construction of the Improvements ceases for a period of 45 or more consecutive days (a “**Delay Period**”), such event will be deemed an event of default hereunder and Owner will pay to City as liquidated damages the sum of \$1,000 per day for each day past the Delay Period which bona-fide construction does not occur (such amount, “**Liquidated Damages - Work Stoppage**”). The calculation of each potential Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and City Caused Delays which would otherwise be within such Delay Period. City and Owner agree that the Liquidated Damages - Work Stoppage has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Work Stoppage will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Work Stoppage which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate. Upon termination of the this Liquidated Damages – Work Stoppage provision (including payment of any Liquidated Damages – Work Stoppage) and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Liquidated Damages – Work Stoppage. This provision will run with the land and bind future owners of the Property but will automatically terminate upon Dry-In Condition being achieved (but will not release Owner for any unpaid Liquidated Damages – Work Stoppage) or City’s election to exercise the Repurchase Right – Work Stoppage.

8. Repurchase Right – Work Stoppage.

(a) Subject to all of the terms and conditions hereof and the financing and Mortgagee protection provisions of the MDA, in addition to the Liquidated Damages - Work Stoppage set forth in the previous section and the Liquidated Damages – Completion set forth in the following section, City hereby reserves the preferential and exclusive option (but not obligation) to repurchase the Property (the “**Repurchase Right - Work Stoppage**”) at the Repurchase Price under the circumstances contained in (b) below, which Repurchase Price is payable simultaneously with the reconveyance as described below.

(b) If the Owner Commences Construction, but such construction is ceased for a period of 90 or more consecutive days for any reason (such 90-day period, a “**Substantial Delay Period**”), such event will be deemed an event of default hereunder

and City will be entitled to exercise its Repurchase Right - Work Stoppage if the Owner does not, in good faith, recommence such construction on or before the date which is 30 days following written notice by the City to the Owner and any Mortgagee of Owner of the City's intent to exercise its Repurchase Right – Work Stoppage. The calculation of each potential Substantial Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and City Caused Delays which would otherwise be within such Substantial Delay Period. It is the intention of the City and Owner that this Repurchase Right – Work Stoppage be exercisable if Owner fails to diligently and in good faith proceed to achieve Dry-In Condition of the Improvements on the Property. Accordingly, actions by Owner to continue construction on an intermittent basis (e.g., one day a week or one week every 90 days) to prevent exercise of the Repurchase Right – Work Stoppage will not prevent such exercise. If the option is exercised by City, the Owner will reconvey the Property to City not more than 120 days following the date of City's notice by a deed in substantially the same form as this Special Warranty Deed, with no title exceptions except for the Repurchase Permitted Exceptions.

(c) City will have the right to enforce the Repurchase Right - Work Stoppage by specific performance in addition to all other legal and equitable remedies. If the Repurchase Right - Work Stoppage is not exercised within one year after the Substantial Delay Period, the Repurchase Right - Work Stoppage will automatically terminate and be of no further force and effect. Upon termination of this Repurchase Right - Work Stoppage provision for any reason described herein and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Repurchase Right - Work Stoppage. The Repurchase Right - Work Stoppage will run with the land and bind future owners of the Property but will automatically terminate upon Dry-In Condition.

9. Liquidated Damages - Completion.

(a) Following Commencement of Construction, Owner agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition on or before the date which is _____ [54 months following the MDA Commencement Date] (such date, the “**Dry-In Condition Date**”).

(b) If the Dry-In Condition has not been achieved on or before the Dry-In Condition Date and the City has not exercised the Repurchase Right – Work Stoppage, such event will be deemed an event of default hereunder and Owner will pay to City, the sum of \$1,000 (the “**Liquidated Damages - Completion**”) per day past the Dry-In Condition Date in which Dry-In Condition has not been achieved. The Dry-In Condition Date will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and City Caused Delays. City and Owner agree that the Liquidated Damages - Completion has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Completion will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Completion which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate.

(c) Upon termination this Liquidated Damages – Completion provision (including payment of any Liquidated Damages – Completion) and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Liquidated Damages – Completion. This section will run with the land and bind future owners of the Property but will automatically terminate upon Dry-In Condition being achieved (but will not release Owner for any unpaid Liquidated Damages – Completion).

(d) If prior to achieving the Dry-In Condition, a Mortgagee acquires title to the Property through a foreclosure sale or deed in lieu of foreclosure, and in the reasonable judgment of such Mortgagee, the Dry-In Condition cannot be achieved by the Dry-In Condition Date, such Mortgagee shall propose in writing to City a new Dry-In Condition Date (together with evidence supporting such new date). If the proposed replacement Dry-In Condition Date is not approved by City (in its reasonable discretion) within 10 days following such written request, Mortgagee and City shall work together during the following 10 days to agree upon the Dry-In Condition Date. If at the expiration of such second 10 day period, the parties still do not agree on the Dry-In Condition Date, Mortgagee or City may request in writing (the “Arbitration Demand”) that such issue (“Issue”) be resolved by an Arbitrator through a binding arbitration process.

The arbitrator (whether one or three, the “Arbitrator”) must be a professional with at least ten (10) years’ experience in commercial construction related matters in the Austin, Texas area. If the parties do not agree upon the Arbitrator within 10 days of the Arbitration Demand, each party shall appoint its own Arbitrator, the two Arbitrators shall appoint a third Arbitrator and the decision of the majority of the Arbitrators shall be binding. The parties shall share equally in the cost of the Arbitrator.

Within 15 days of an Arbitration Demand, each party shall submit to the Arbitrator its proposed Dry-In Condition Date and the materials that such party believes will be useful for the Arbitrator in deciding the Issue (the “Decision Materials”). The Arbitrator will make a determination in writing to both City and Mortgagee within 10 days of its receipt of the Decision Materials.

10. Reservation of Declaration. City is executing and encumbering, or has executed and encumbered, the Property with the Declaration and with respect to certain restrictive covenants executed in connection with the zoning of the Property (the “**Zoning Restrictive Covenants**”). The execution and encumbrance of the Property pursuant to the Declaration and the Zoning Restrictive Covenants is also deemed to be pursuant to a reservation of such rights hereunder and will be superior to any vendor’s lien, deed of trust, mortgage, assignment and/or security interest which burdens the Property.

11. Estoppel. Upon 30 days’ prior written notice and not more than twice in any 12-month period, the City agrees to deliver to any lender of Owner an estoppel certifying, in form and content reasonably acceptable to the City and such Owner, to the extent factually accurate, that neither the Repurchase Right – Commencement of Construction nor the Repurchase Right – Work Stoppage has been exercised. The estoppel may only be relied upon by the party requesting the estoppel and any parties specifically identified by name in the request, may only

be used to estop the responding party from claiming that the facts are other than as set forth in the estoppel, and may not be relied upon by any person or entity, even if named in such estoppel, who knows or should know that the facts are other than as set forth in such estoppel.

12. Miscellaneous. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid, such illegal or invalid term or provision shall not affect the balance of the terms and provisions hereof. If any action or suit is brought by reason of any breach of this Special Warranty Deed or any other dispute between the parties concerning this Special Warranty Deed, then the prevailing party shall be entitled to have and recover from the other party all costs and expenses of suit, including reasonable attorney's fees. This Special Warranty Deed shall be governed by and construed and enforced in accordance with the laws of the State of Texas. This Special Warranty Deed is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistencies or ambiguities exist herein, they shall not be interpreted or construed against either party as the drafter. All paragraph headings are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise affect this Special Warranty Deed. This Special Warranty Deed shall be binding upon and inure to the benefit of City and Seaholm and their respective heirs, successors, legal representatives and assigns.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Special Warranty Deed is executed by City on the date of acknowledgment set forth below to be effective as of the ____ day of _____, 20____.

THE CITY OF AUSTIN, a Texas home rule city
and municipal corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 200____, by
_____, _____ of THE CITY
OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

(Printed name)

My Commission Expires:

[End Of Signature And Notary Blocks]

EXHIBIT E
TO MASTER DEVELOPMENT AGREEMENT
MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of the _____ day of _____, 200__ (the “**Effective Date**”), by and between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (“**Owner**”) and SEAHOLM DEVELOPMENT, LLC, a Delaware limited liability company (“**Manager**”).

WITNESSETH:

WHEREAS, Owner is the owner of an approximately 315 space parking garage located in Austin, Texas and described on Exhibit A attached hereto (the “**Property**”).

WHEREAS, Owner desires to employ Manager as an independent contractor in the management and operation of the Property, whereby Manager shall have certain responsibilities and duties in connection with the operation, management, and supervision of the Property, and Manager desires to assume such responsibilities and duties upon the terms and conditions set forth in this Agreement; and

WHEREAS, the primary purpose of the Property is to provide parking for the office and retail mixed-use development adjacent to the Property known as the “**Seaholm Development**.”

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Owner and Manager agree as follows:

ARTICLE I.
TERM OF AGREEMENT

The term of this Agreement shall commence on the Effective Date for a period of one year and thereafter shall be automatically renewed for annual periods of one year each, unless terminated pursuant to the terms hereof.

ARTICLE II.
DUTIES AND RIGHTS OF MANAGER

2.1 Appointment of Manager. Owner grants to Manager the exclusive right to supervise and direct the management, and operation of the Property, and Manager accepts and assumes the responsibilities and duties specified herein.

2.2 General Operation. Manager shall, subject to the limitations contained herein, operate the Property in a manner which is customary and usual in the operation of comparable facilities and shall provide such services as are customarily provided by managers of properties of comparable class and standing consistent with the Property’s facilities in the Central Business District of Austin, Texas, and shall consult with Owner and keep Owner advised as to all policy matters affecting the Property. In addition to the other obligations of Manager set forth herein,

Manager shall render the following services and perform the following duties for Owner in a faithful, diligent and efficient manner:

(a) Maintain businesslike relations with the users of the Property (the “**Users**”). Complaints of a serious nature shall, after thorough investigation, be reported to Owner with appropriate recommendations.

(b) Collect all rents, charges and other fees (the “**Rent**”) from the Users; and with Owner’s consent, request, demand, collect, receive and receipt for any and all delinquent Rents which become due to Owner. With respect to any delinquencies in Rent beyond 60 days, Manager shall not file suit or take legal action except on behalf of and with prior written approval of Owner.

(c) To the extent practicable, full compliance by the Users with the terms and conditions of their respective lease, use or rental agreements (the “**Rental Agreements**”) shall be secured, and to this end, Manager shall see that all Users are informed with respect to the rules, regulations and notices for the Property as may be promulgated by Owner from time to time. Manager shall be expected, for the account and at the expense of Owner, to perform such other acts and deeds as are reasonable, necessary and proper in the discharge of its duties under this Agreement.

(d) Furnish to Owner, if requested, copies of all correspondence exchanged in connection with the management and operation of the Property.

(e) Maintain a current inventory of all personal property, if any, located in or used in connection with the Property.

(f) Obtain and maintain all licenses, permits and certificates required by federal, state, and/or local authorities for the operation, maintenance and business of the Property.

(g) Use good faith efforts to select and to cause its agents and contractors to comply with the Owner’s Minority and Women Business Enterprise ordinance and retain a third party consultant specializing in outreach to Minority/Women Business Enterprise contractors. Otherwise, Manager shall have full responsibility and authority in hiring, discharging, training, supervising and paying the management staff (i.e. manager, assistant manager, and other personnel necessary to be employed by Manager in order to operate the Property). Owner will not be required to directly pay salaries and payroll expenses of personnel of Manager. Manager shall supervise through said management staff the work, hiring and discharge of all independent contractors performing services in or about the Property. Said independent contractors shall not be deemed to be employees of Manager or Owner and shall carry their own general and automobile liability insurance coverage. Manager shall be responsible for obtaining all proper documentation from said independent contractors, and any increase in Manager’s workers compensation premiums resulting from failure to obtain such documentation shall be the sole expense of Manager.

(h) Negotiate arrangements for utilities, maintenance, security protection, and any other services which are provided for comparable parking garages of similar quality.

Contracts which can be terminated with 30 days prior notice do not require Owner's written approval. Manager shall also place purchase orders for such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the Property. When taking bids or issuing purchase orders, Manager shall use commercially reasonable efforts to secure for and credit to Owner any discounts, commissions and rebates obtainable as a result of such purchases. Manager shall at all times make purchases and (where necessary or desirable) let bids for necessary labor and materials at the lowest possible cost as in its judgment is consistent with good quality workmanship and service standards. For any major expenditure (defined as a single expenditure in excess of \$5,000), at least two competitive bids shall be submitted in writing by Manager to Owner. Manager shall not incur any obligation to any person or entity in which Manager, its officers, agents, employees, or family members of any of the former, has a financial interest, at a price or fee higher than that which would have been charged as a result of bona fide, arms-length negotiations for goods or services of comparable quality, and shall disclose to Owner all non-arms-length or related-party transactions.

(i) Subject to the limitations and requirements set forth herein, shall do or cause to be done at Owner's expense, all necessary or desirable repairs, interior and exterior cleaning, painting and decorating, alterations, replacements, improvements and other normal maintenance and repair work in and to the Property as are customarily in the operation of parking garages of similar quality and utility; provided, however, that no alterations, additions or improvements involving a fundamental change in the character of the building or constituting a major new construction program (the expenses of which will exceed \$5,000) shall be made without the prior written approval of Owner. No expenditures in excess of the Budget (as defined in Section 5.2) which will be approved in advance by Owner may be made for any purpose under this Agreement without the prior written approval of Owner; provided, however, that emergency repairs involving manifest danger to life or substantial damage to property and immediately necessary for the preservation or the safety of the Property, or for the safety of the Users, may be made by Manager, provided such emergency repairs shall be made only to the extent necessary to obviate the manifest danger to life or substantial damage to property, and immediate continuous, diligent and reasonable efforts must be made by Manager to notify Owner of the existence of such situation and to obtain Owner's written approval and consent to any further action.

(j) Notify Owner promptly upon receipt of any notice, demand, or similar communication charging or claiming a default with respect to any obligation of Owner. Manager shall comply with all statutes, laws, rules, regulations, requirements, orders, notices, and ordinances of any government or governmental agency having jurisdiction over the Property and with the requirements of any insurance companies covering any risks relating to the Property. If the cost of compliance with any such statute or law exceeds \$1,000 in any instance, Manager shall promptly obtain Owner's written approval before authorizing or making any such expenditure. Manager's responsibilities shall be limited to funds made available by Owner to cause such compliance.

(k) In addition to the other notices it is required to give pursuant to this Agreement, give written notice to Owner of the occurrence of any of the following events

within 3 business days of said occurrence: the filing, or the threat to file, any mechanics' or materialmen's lien materially affecting the Property; any breach of contract by any contractor, subcontractor, service company, or material supplier, which, in the reasonable opinion of the Manager is of material significance; any labor dispute or work stoppage of a material nature involving any contractor or subcontractor; any rejection of any item of work by any building inspector, authorized government authority or public utility which results in total, substantial or prolonged (i.e., more than 3 days) work stoppage; and any casualty loss.

ARTICLE III. MANAGEMENT FEE

The Management Fee (herein so called) shall be equal to an amount equal to the greater of (a) an annual fee of \$*_____, or (b) of 3% of the collected aggregate Rents of the Property for the applicable monthly accounting period. For purposes of this Agreement, an "applicable monthly accounting period" means the period encompassing a full calendar month as designated by Owner. Such payment shall be made by Manager from the Rents and other revenues before distributing any sums to Owner hereunder. For purposes of this Section, "Rents" will be deemed not to include: (i) cancellation or penalty payments; (ii) late payment charges or default interest; (iii) rental payable but not received by Owner by reason of concession; (iv) deposits such as security, utility and/or for damages until the forfeiture of any deposit and its payment to Owner; (v) interest on bank accounts; (vi) proceeds from the sale of any part or all, or refinancing of the Property; (vii) insurance dividends or proceeds; (viii) condemnation awards; and (ix) any trade discounts and/or rebates received in connection with the operation and maintenance of the Property and/or purchase of personal property; and/or (x) such other additional income Owner and Manager mutually agree to eliminate (there being no obligation on the part of Manager or Owner to agree to any such elimination).

ARTICLE IV. PROCEDURE FOR HANDLING RECEIPTS AND OPERATING CAPITAL

4.1 Bank Deposits. It is understood that Manager for the benefit of Owner will be collecting rents and paying the expenses for the operation of the Property. All monies, except security deposits or other amounts paid as deposits received by Manager for or on behalf of Owner in connection with the operation and management of the Property, shall be deposited by Manager in a separate account established at a bank approved by Owner (the "**Bank**"), and such monies shall not be commingled by Manager with any funds belonging to or held on behalf of anyone other than Owner. All such deposits will constitute the property of the Owner and will not be subject to any lien, security interest, assignment or setoff rights of Manager's lender(s).

4.2 Disbursement of Deposits. Manager for the benefit of Owner shall disburse and pay all funds on deposit in such amounts and at such times as the same are required in connection with the ownership, maintenance, and operation of the Property on account of:

(a) All previously approved expenses and costs in connection with the operation of the Property, including Manager's fees, all expenditures for repairs and maintenance, for capital improvements, legal fees, utilities, services, and concessions at

the Property, and any and all other expenditures provided in this Agreement, shall be paid by Manager for the benefit of Owner;

(b) All taxes, insurance and similar items, including those items required to be paid under the terms of any mortgage affecting the Property will be paid by Manager for the benefit of Owner if such amounts are included in the Budget or if Owner otherwise makes funds available therefor.

On the 15th day of each month during the term of this Agreement or at such other time as requested by Owner, Manager will disburse to Owner upon the written direction of Owner, all funds remaining in such bank account after payment of all expenses and fees provided hereunder for the preceding calendar month, less an amount for working capital equal to that provided for in the Budget. In the event the amounts in the bank account are less than the approved expenses payable and working capital, if any, provided hereunder, the Manager shall notify Owner thereof, and Owner shall deposit into said account an amount not less than such deficiency.

4.3 Manager's Obligations Limited. Manager shall not be obligated to make any advances to or for the account of Owner or to pay any sum (except as specifically provided above) except out of funds held in any account for the benefit of Owner, nor shall Manager be obligated to incur any liability or obligation for the account of Owner or the Property without written assurance that the necessary funds for the discharge thereof shall be provided by Owner.

4.4 Authorized Signatories. Designated officers and employees of Manager, indicated to Owner in writing and acceptable to Owner, shall be the authorized signatories on the bank account established by Manager pursuant this Article and shall have authority to make disbursements from such account. Manager shall cause all persons who are authorized signatories or who in any way handle funds for the Property to be bonded in an amount acceptable to Owner unless such requirement as to any person or persons is waived in writing by Owner. Owner shall at all times be a signatory to such account and have the right jointly or severally to draw upon the account. To the extent Owner draws funds from the account other than for expenses permitted by the Budget, Owner will assume the liability (to the extent of such withdrawal) for all existing financial obligations for the Property which were incurred by the Manager pursuant to, and in accordance with, the terms of this Agreement.

ARTICLE V. ACCOUNTING

5.1 Books and Records. Manager for the benefit of Owner shall keep and, on behalf of Owner, shall supervise and direct the keeping of a comprehensive system of office records, books and accounts on a cash basis and in a manner reasonably satisfactory to Owner, which records shall be subject to examination by Owner, or its authorized agent, attorneys and accountants at all reasonable business hours upon not less than 24 hours notice to Manager. Manager shall preserve all records, books, and accounts for a period of five years and at the end of such period shall deliver or make available to Owner such records. All such records shall, at all times, be the property of Owner.

5.2 Budget. Manager shall submit for written approval of Owner, not later than 30

days prior to the first day of each calendar year, a proposed Budget with respect to the operation and management of the Property for the ensuing calendar year. Such budget, as approved as set forth in this Agreement, is herein called the “**Budget.**” If Owner, in Owner’s sole and absolute judgment, disapproves of any proposed Budget submitted by Manager, Owner shall give Manager written notice thereof, in which event Manager shall (i) make all revisions thereto which Owner shall direct and (ii) resubmit the revised Budget to Owner for its written approval. In the absence of such written notice of disapproval within 30 days after delivery of the Budget to Owner, the Budget shall be deemed to have been approved by Owner as of the first day of the first month of such calendar year until the date, if any, that Owner delivers to Manager written notice of disapproval of the Budget. Each approved Budget shall constitute the control instrument under which Manager shall operate for the calendar year covered thereby. Approval of the Budget shall be deemed to be approval by Owner of all items specified therein. Subject to Section 2.2(i) hereof, Manager shall not incur, or permit to be incurred, expenses in any approved Budget (excluding utility expenses, general real estate taxes, insurance premiums, and emergency expenses) in excess of the amount set forth in the Budget for any single expense classification. Subject to Section 2.2(i) hereof, there shall be no variance from any approved Budget without the prior written consent of Owner. Owner reserves the right to modify and/or update the Budget periodically throughout the calendar year; provided that such modification or update is without prejudice to any expense incurred or commitment made by Manager in accordance herewith prior to such change or update that is in compliance with the Budget in effect at the time such expense is incurred or commitment made.

5.3 Periodic Statements. On or before 15 days following the end of each month during the term of this Agreement, Manager shall deliver or cause to be delivered to Owner (i) a summary of gross income (including all income, receipts, proceeds or revenue pertaining to the Property) and disbursements for the preceding calendar month and the calendar year to date; (ii) a rental delinquency schedule; (iii) a monitoring statement comparing Budget items to actual expenses incurred; (iv) copies of bank statements and bank reconciliations for all accounts held for or on behalf of Property and/or Owner; and (v) a balance sheet showing cash on hand and in bank accounts, cash advances from Owner and cash distributions to Owner. Within 90 days after the end of each calendar year, Manager will deliver or cause to be delivered to Owner, at Owner’s expense, an income and expense statement showing the results of operation of the Property during the preceding calendar year, in a form reasonably acceptable to Owner. At Owner’s request and expense, Manager shall prepare financial reports and perform a bookkeeping service in addition to those provided herein including but not limited to the preparation of Internal Revenue Service Form 1099 Misc. for all contractors rendering services to the Property.

5.4 Audit. At the option and expense of Owner, an annual audit of the records may be requested, and Manager shall reasonably cooperate with the auditors at no additional charge to Owner and shall make all books and records reasonably available.

ARTICLE VI. GENERAL COVENANTS OF OWNER AND MANAGER

6.1 Operating Expenses. Owner shall be solely liable for the costs and expenses of maintaining and operating the Property, and shall pay (subject to the limitations and

requirements set forth herein) all such costs and expenses.

6.2 Time Devoted. Manager shall devote such of its time, attention and business capacity to the management and operation of the Property as may be necessary in order for Manager to fully comply with the terms of this Agreement; provided, however, that nothing contained herein shall restrict the right of Manager, its officers, directors and shareholders, to own, operate and/or manage other properties that compete with or might be competitive with the Property.

6.3 Covenants of Owner. Owner agrees that, subject to the terms and conditions of this Agreement, Manager shall be the exclusive management agent for the Property during the term of this Agreement.

6.4 Parking Rates. Manager shall not charge parking rates which are lower than the current list of parking rates from time to time approved by Owner. The parking rates must be generally consistent with the parking rates charged for similar properties.

ARTICLE VII. PAYMENTS OF EXPENSES

7.1 Permitted Costs. Any and all costs necessary to the management, control, operation, direction, and maintenance of the Property which are covered within the Budget or which may exceed the Budget but which are approved by Owner or otherwise authorized under this Agreement (except as specifically excluded by Section 7.2) shall be paid directly from the Rents (collectively, the **"Permitted Costs"**). Subject to applicable budgetary limitations set forth in this Agreement, such costs include:

(a) Costs of the gross salary and all compensation or a pro rata share thereof (to include, payroll taxes, insurance, workers' compensation, if applicable, and other benefits, bonuses and burdens, and an allocation of central support charges for payroll processing, personnel and training) of the staff and a reasonable allocation of said costs of any off-site staff;

(b) An appropriate allocation of all costs for general accounting, control and financial reporting services for Manager's accounting office (whether located on-site and/or off-site) which may include gross salary and compensation, rent, payroll taxes, and all other bonuses, benefits and burdens;

(c) Cost of all business forms, papers, ledgers, and all other supplies and equipment used in the on-site or off-site Manager's office which are related to the Property;

(d) Costs to correct any violation of federal, state and municipal laws, ordinances, regulations and orders relative to the leasing, use, repair and maintenance of the Property, or relative to the rules, regulations or orders of the local board of fire underwriters or other similar body, provided that such cost is not a result of the gross negligence or willful misconduct of Manager or its agents or employees;

- (e) Actual costs of making all repairs, decorations and alterations to the Property;
- (f) Costs incurred in connection with all service agreements;
- (g) Costs of collection of delinquent rentals;
- (h) Costs of capital expenditures;
- (i) Legal fees of attorneys, provided such attorneys have been approved by Owner in writing in advance of retention;
- (j) Costs of an on-site management office, if applicable;
- (k) All other out-of-pocket costs and expenses reasonably incurred by Manager in performing its duties hereunder; and
- (l) All other costs and expenses for which Owner is obligated to reimburse Manager as provided for in this Agreement.

7.2 Not Permitted Costs. All costs incurred by or on behalf of Manager as a result of Manager's willful misconduct, fraud, bad faith, gross negligence or breach of this Agreement shall be at the sole cost and expense of Manager and shall not be reimbursed by Owner.

ARTICLE VIII. TERMINATION

8.1 Termination. Either party may terminate this Agreement, for cause or without cause, at any time upon 30 days prior written notice to the other party. In case of termination for cause, any compensation due Manager shall be subject to Owner's offset rights against such compensation concerning any amounts owed by Manager to Owner hereunder or otherwise. In case of termination without cause, Manager shall be entitled to all compensation accrued or earned prior to termination and remaining unpaid. Upon termination, all books, records, Rental Agreements, rent rolls and other properties and operating and maintenance information regarding the Property (including those stored in computers) must be delivered to Owner; provided Manager may keep a copy thereof for its own records.

8.2 Expiration of Term. Upon the expiration of the term hereof pursuant to ARTICLE I hereof, unless sooner terminated pursuant to Section 7.1, Manager shall deliver to Owner all funds, records and other property of Owner then in possession or control of Manager; provided Manager may keep a copy thereof for its own records.

8.3 Following Termination. If this Agreement is terminated, the City shall take appropriate steps to restrict the use and/or management of the Property to ensure that the primary purpose of the Property is to provide parking for the Seaholm Development.

ARTICLE IX. INSURANCE

9.1 Manager's Insurance Coverage. Manager shall provide and maintain, at Manager's sole cost and expense (subject to reimbursement as provided herein), so long as this Agreement is in force, workers compensation insurance, including a waiver of subrogation in favor of Owner, covering all employees of Manager performing work in respect to the Property operations, as well as comprehensive general liability and automobile liability insurance, with minimum limits of \$1,000,000 per occurrence. Notwithstanding anything contained herein, Manager shall at all times during the term of this Agreement carry automobile liability and workers compensation insurance covering all of Manager's employees engaged in the management and operation of the Property and shall provide Owner with a certificate of insurance evidencing such coverage. Proof of such insurance shall be furnished to Owner by means of a certificate of insurance showing at least 30 days notice of cancellation. Each such policy of insurance shall name Owner and such other parties and/or entities specified by Owner as named insured, additional named insured, additional insured, or such other designation specified by Owner in each instance. Manager shall promptly investigate and report to Owner and the insurance company involved all accidents, claims for damage relating to the ownership, operation, and maintenance of the Property, and any damage or any and all claims against insurance companies that may be covered by any such policies.

Owner and Manager hereby waive any rights against the other party arising out of loss or damage to the Property to the extent that such loss or damage is covered or could be covered by a "special form" property insurance policy, **EVEN IF SUCH LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF THE INDEMNIFIED PARTY OR ITS EMPLOYEES, AGENTS OR INVITEES AND EVEN IF THE INDEMNIFIED PARTY WOULD OTHERWISE BE STRICTLY LIABLE UNDER APPLICABLE LAW.** Each party agrees to give its respective insurance company written notification of the terms of the mutual waiver contained in this paragraph, and to have said insurance policy properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver (provided that if Manager is procuring and maintaining property insurance for the Property on behalf of the Owner and at Owner's expense, then Manager shall give such notice to the insurer of the Property).

ARTICLE X. LIABILITY OF MANAGER

Manager shall not be responsible to Owner for any loss which may occur by reason of depreciation in the value of the Property, or any other loss or damage which may occur to Owner, except that Manager shall be liable to Owner for fraud, misrepresentation, negligence or intentional misfeasance in the management of the Property by Manager or any of its employees or agents. Manager shall indemnify and hold harmless Owner from and against any and all claims arising from any fraud, misrepresentation, intentional misfeasance or negligence of Manager or any Manager's employees or agents. Owner agrees to maintain general liability insurance of at least \$1,000,000 per occurrence for the Property and no less than \$2,000,000 commercial umbrella insurance, and to cause Manager to be named as an additional insured under such policy.

ARTICLE XI.
MISCELLANEOUS PROVISIONS

11.1 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas. Manager shall notify Owner promptly of any violation which comes to Manager's attention and which by nature is Owner's responsibility under this Agreement (zoning, fire, etc.). Manager shall not accept service of process for Owner.

11.2 Notices. Any notice or communication hereunder must be in writing, and may be given by certified mail, return receipt requested, and if given by certified mail, same shall be deemed to have been given and received 3 days after a certified letter containing such notice, properly addressed, with postage prepaid, return receipt requested, is deposited in an official depository under the regular care and custody of the United States mail; and if given otherwise than by registered mail, it shall be deemed to have been given when delivered to and actually received by the party to whom it is addressed. Such notices or communications shall be given to the parties hereto at their following address:

<u>Manager:</u>	Seaholm Development, LLC c/o Southwest Strategies Group 1214 W. 6th Street, Suite 220 Austin, Texas 78703-5261 Attention: John Rosato
with a copy to:	Seaholm Development, LLC c/o Centro Partners LLC 823 Congress Avenue, Suite 800 Austin, Texas 78701 Attention: Kent Collins
<u>Owner:</u>	City of Austin City Manager's Office 301 West 2 nd Street Austin, Texas 78701 Attention: City Manager
with a copy to:	City of Austin Economic Growth and Redevelopment Services Office 301 West 2 nd Street Austin, Texas 78701 Attention: Director
and:	City of Austin Law Department 301 West 2 nd Street Austin, Texas 78701 Attention: Susan Groce

Any party hereto may at any time, by giving 10 days written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice or communication shall be given.

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

11.4 No Joint Venture or Partnership. Owner and Manager hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Manager and Owner joint venturers or partners. In no event shall Manager have any obligation or liability whatsoever with respect to any debts, obligations or liabilities of Owner. Manager is not authorized to make any representations or warranties regarding the Property or to bind Owner to any contract.

11.5 Modification. This Agreement may be amended or modified only by a written instrument executed by Manager and Owner.

11.6 Attorney's Fees. Should either party employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, or to recover damages for the breach of this Agreement, the non-prevailing party in any action (the finality of which is not legally contested) agrees to pay to the prevailing party all reasonable costs, damages and expenses, including reasonable attorney's fees, expended or incurred in connection therewith.

11.7 Total Agreement. This Agreement is a total and complete integration of any and all undertakings existing between Manager and Owner concerning the management of the Property and supersedes any prior oral or written agreements, promises or representations between them.

11.8 Approvals and Consents. Anything contained herein to the contrary notwithstanding, any authorizations, approvals, or consents required of Owner herein for the operation and management of the Property, including but not limited to the expenditure of funds and the execution of contracts, must be communicated in writing by Owner, it being expressly understood and agreed that the parties hereto shall not be bound by any oral agreement. Unless expressly stated otherwise herein to the contrary, any approval, agreement, clarification, determination, consent, waiver, estoppel certificate, estimate or joinder by the Owner required hereunder may be given by the City Manager of the City of Austin or its designee; provided however, except for clarifications, minor amendments and minor modifications, the City Manager does not have the authority to execute any substantial modification or amendment of this Agreement without approval of the Austin City Council.

11.9 Assignments. Owner shall have the unlimited right of assignment of any or all of

its right, title and interest in and to this Agreement to any party that acquires the Property from Owner. Inasmuch as Owner is looking specifically to Manager for the performance and fulfillment of the duties and obligations of Manager hereunder, Manager shall not have the right to assign, transfer and convey any of its right, title or interest hereunder, except by delegation to its employees and any independent contractors who would normally perform and fulfill such duties and obligations for or on behalf of Manager. Notwithstanding the foregoing, if the Manager transfers its interest in the ground lease concerning that portion of the Seaholm Development known as the “power plant” to another operator, this Agreement shall also be contemporaneously assigned.

11.10 Headings. The Article and Section headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

[END OF TEXT-SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Management Agreement as of the day and year first above written.

OWNER:

THE CITY OF AUSTIN, a Texas home rule city
and municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form and content for the Owner
by the Owner's external legal counsel:

THOMPSON & KNIGHT L.L.P.

MANAGER:

SEAHOLM DEVELOPMENT, LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT F
TO MASTER DEVELOPMENT AGREEMENT

Proforma

[See Attached]

EXHIBIT G
TO MASTER DEVELOPMENT AGREEMENT

Form of Ground Lease

[See Attached]

GROUND LEASE

BETWEEN

THE CITY OF AUSTIN

AND

SEAHOLM DEVELOPMENT, LLC

GROUND LEASE

This Ground Lease (this “**Lease**”) is executed to be effective as of _____, 200_ (the “**Commencement Date**”), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (“**Landlord**”) and SEAHOLM DEVELOPMENT, LLC, a Delaware limited liability company (“**Tenant**”).

Recitals

A. Landlord and Tenant entered into that certain Master Development Agreement (the “**MDA**”) dated as of _____, 2008 concerning the redevelopment of the property commonly known as the Seaholm Power Plant in Austin, Texas.

B. Section 5.1 of the MDA contemplates the leasing by Landlord, as landlord, to Tenant, as tenant, certain real property described on Exhibit A attached hereto located in Austin, Travis County, Texas (the “**Land**”).

C. Landlord and Tenant desire to enter into this Lease to set forth the terms and conditions of the lease of the Land.

NOW, THEREFORE, the parties enter into this Lease upon the terms and conditions herein set forth.

ARTICLE I. DEFINITIONS

1.1 Defined Terms. In addition to the terms set forth above and elsewhere in this Lease, the following terms will have the following meanings:

“**Affiliate**” means any Person controlling, controlled by or under common control with any other Person. For the purposes of this definition, the term “control” when used with respect to any Person means the power to direct the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by law, regulation, contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Bankruptcy Event**” means a petition for relief under the applicable bankruptcy law or an involuntary petition for relief is filed against Tenant under any applicable bankruptcy law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming Tenant or Guarantor is entered under any applicable bankruptcy law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Tenant. A Bankruptcy Event may exist even if an Event of Default cannot be declared because of a Bankruptcy Event.

“**Business Day**” means any day other than a Saturday, Sunday, federally-mandated bank holiday, or the day after Thanksgiving.

“**Casualty**” as defined in Section 17.1(a).

“**Commence Construction**”, “**Commenced Construction**” and “**Commencement of Construction**” mean ***[OFFICE BUILDING - the commencement of bona-fide pouring of concrete footings for construction of the proposed “build out” of the improvements on the applicable portion of the Property]***

*** [POWER PLANT BUILDING the bona-fide, good faith initiation of physical redevelopment of the Property.]***

*** [OFFICE BUILDING - “**Complete Construction**” and “**Completion of Construction**” mean the day on which all of the following have been satisfied:

(a) the Improvements have been substantially completed in accordance with the applicable plans and specifications therefor,

(b) all Governmental Authorities having jurisdiction have issued applicable certificates of completion, certificates of occupancy or their equivalent, as applicable, for the Improvements, and

(c) all bills for such Improvements have been paid or, if in a good faith dispute, appropriate reserves for such bills have been made to the reasonable satisfaction of the Landlord.]***

“**Condemnation**” as defined in Section 17.2.

“**Construction Standards**” as defined in Section 4.2.

“**Declaration**” means the Declaration of Restrictive Covenants dated _____, 200____, burdening the Property.

“**Delinquency Interest Rate**” means a per annum rate of interest equal to the lesser of (1) the Prescribed Rate plus 3% or (2) the then highest lawful contract rate which Tenant is authorized to pay and Landlord is authorized to charge under the laws of the State of Texas with respect to the relevant obligation. “**Prescribed Rate**” means the “prime rate” published in The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks on the first Business Day following the due date of such payment. If The Wall Street Journal ceases to publish such a prime rate, the Prescribed Rate will be the per annum interest rate which a large U.S. money center commercial bank doing business in Texas designated by Landlord publicly announces (whether or not actually charged in each instance) from time to time (adjusted daily) as its “prime rate” (or if there is no “prime rate,” a similar borrowing reference rate).

***[POWER PLANT - “**Dry-In Condition**” means the interior of the Improvements has been demolished and reconstructed in a manner which allows the commencement of construction of all the individual tenant improvements in the Improvements (including construction of applicable improvements to achieve a “dried in”

and “weather tight” condition) and the surrounding property landscaped (as appropriate based on seasonal conditions and construction phasing of a building) in accordance with plans approved by the Landlord, this Agreement and Legal Requirements.

*** [OFFICE - **“Dry-In Condition”** means, the applicable building has been completed to a “dried in” and “weather tight” condition (i.e. completion of the foundation and shell of the building with windows, doors, final roof and final exterior facing) and the surrounding property landscaped (as appropriate based on seasonal conditions and construction phasing of a building), each in accordance with plans approved by the Landlord, this Agreement and Legal Requirements.

“Dry-In Condition Date” as defined in Section 5.4.

“End User” means a third party which subleases space in the Improvements primarily to conduct its business with the general public (as opposed to a party which subleases space in the Improvements to subsublease space to other parties).

“Environmental Claim” means, but is not limited to, any claim, demand, action, cause of action, suit, loss, cost, damage, fine, penalty, expense, liability, judgment, forfeitures, proceeding, or injury, whether threatened, sought, brought, or imposed, that seeks to impose costs or liabilities for: (a) noise, (b) pollution or contamination of the air, surface water, groundwater, or soil, (c) solid, gaseous, or liquid waste generation, handling, treatment, storage, disposal, or transportation, (d) exposure to Hazardous Materials, (e) the generation, handling, treatment, transportation, manufacture, processing, distribution in commerce, use, storage or disposal of Hazardous Materials, (f) injury to or death of any person or persons directly or indirectly connected with Hazardous Materials and directly or indirectly related to the Property, (g) destruction or contamination of any property directly or indirectly in connection with Hazardous Materials and directly or indirectly related to the Property, (h) any and all penalties directly or indirectly connected with Hazardous Materials and directly or indirectly related to the Property, (i) the costs of removal of any and all Hazardous Materials from all or any portion of the Property, (j) costs required to take necessary precautions to protect against the release of Hazardous Materials at, on, in, about, under, within, near or in connection with the Property in or into the air, soil, surface water, groundwater, or soil vapor, any public domain, or any surrounding areas, (k) costs incurred to comply, in connection with all or any portion of the Property or any surrounding areas, with all Legal Requirements with respect to Hazardous Materials, including any such laws applicable to the work referred to in this sentence, (l) the costs of site investigation, response, and remediation of any and all Hazardous Materials at, on, about, under, within, near or in all or any portion of the Property, or (m) any asserted or actual breach or violation of any requirements of Legal Requirements, or any event, occurrence, or condition as a consequence of which, pursuant to any requirements of Legal Requirements, (i) Tenant, Landlord, or any owner, occupant, or person having any interest in the Property will be liable or suffer any disability, or (ii) the Property will be subject to any restriction on use, ownership, transferability, or (iii) any Remedial Work will be required.

“Environmental Costs” mean all liabilities (including strict liabilities), losses, costs, damages (including consequential damages or indirect), expenses, claims, reasonable attorney’s fees, experts’ fees, consultants’ fees and disbursements of any kind or of any nature whatsoever arising from or related to an Environmental Claim. For the purposes of this definition, such losses, costs and damages will include, without limitation, remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs and related costs, expenses, actual losses, damages, penalties, fines, obligations, defenses, judgments, suits, forfeitures, proceedings and disbursements.

“Escrow Agent” means a third party approved by Landlord with an office in Austin, Texas and is (a) a national bank or other institutional lender or a (b) servicing agent with capitalization of \$100,000,000 or greater; provided however, with respect to the disbursement of any insurance proceeds, the Escrow Agent may be the applicable insurance company if the terms of the applicable insurance policy require periodic disbursement by such insurance company.

“Event of Default” as defined in Section 19.1.

“Existing Environmental Condition” means the presence on the Property of any Hazardous Material caused by the Landlord, the removal or remediation of which is required by any federal, state, or local government agency, authority or unit, to the extent that the condition has not been exacerbated by the negligent or wrongful acts or omissions of Tenant or any agents, contractors, representatives or employees of Tenant.

“Fee Estate” means Landlord’s interest in the Property and this Lease.

“Force Majeure” means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party to this Lease (or a subdivision thereof) or other causes not reasonably within the control of the party claiming such inability (except that in no event shall Force Majeure include (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a Force Majeure event described above, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof).

“Governmental Authority” means any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“**Guarantor**” means CIM Fund III, L.P., a Delaware limited partnership.

“**Hazardous Materials**” mean any substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Legal Requirements or common law, as “hazardous substance,” “hazardous material,” “hazardous waste,” “acutely hazardous,” “extremely hazardous waste,” infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) or derivatives thereof. “**Hazardous Materials**” also include, without limitation, those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended).

“**Hazardous Materials Activity**” means any activity relating to such Hazardous Materials.

“**Improvements**” means

*** [POWER PLANT PROPERTY: the redevelopment of the existing power plant building into a “**Class A**” retail facility.]***

[OFFICE PROPERTY: a “**Class A**” office building together with an underground parking garage containing * _____ spaces; provided however, such square footage may change in accordance with Section 3.1(d)(ii) of the MDA.]

The term “**Improvements**” does not include the Offsite Parking Garage.

“**Landlord Caused Delay**” means any actual delay caused solely by the Landlord (a) with respect to its obligations which *are not specified* hereunder in its capacity as a governmental entity (such as building permit issuance or plat approval), by its unlawful action or inaction; provided however, if Tenant is obligated under this Agreement to perform an action within a specified time period, and that time period is shorter than the specific time frame established by Legal Requirements for a related regulatory action by the Landlord acting in its governmental capacity, then the time for Tenant’s performance will be extended beyond the contractual time period at least to the date of the related Landlord regulatory action, (b) with respect to its obligations which *are specified* hereunder in its capacity as a governmental entity (such as providing a dedicated review team), by its unreasonable delay in such action or inaction, or (c) in its capacity as a landowner (such as design approval, and financial approvals), by its failure to meet the specific timeframes for action set forth herein.

“**Landlord Mortgagee**” means a lender, agent or trustee who is the holder a Mortgage which secures the monetary obligations of Landlord.

“**Landlord’s Actual Knowledge**”, or similar language, means the actual, current, conscious knowledge of (a) the current or any future Director of the City of Austin’s Economic Growth & Redevelopment Services Office as to knowledge of that person

while he/she serves as Director, and (b) the current or any future internal legal counsel specifically assigned to the Property as to knowledge of that person while he/she serves as such counsel, without any duty of inquiry or investigation, and does not include constructive, imputed or inquiry knowledge.

“Lease Year” means (a) the period that commences with the Commencement Date and terminates on December 31st of the same calendar year and (b) thereafter, each successive 12 calendar month period (but if this Lease terminates on a day other than December 31, then the last Lease Year will end on the date of termination of this Lease).

“Leasehold Estate” means the Tenant’s interest in the Property and its interest in this Lease and subleases for space in the Improvements.

“Legal Requirements” mean the MDA, the Declaration, all other applicable title encumbrances, zoning ordinances, and building codes, access, disabilities, health, safety, environmental, and natural resource protection laws and regulations, and all other applicable federal, state, and local laws, statutes, ordinances, rules, common law, design criteria, regulations, orders, determinations and court decisions

“Mortgage” means a mortgage, deed of trust, security agreement, indenture or similar security agreement (including public financing and bond security instruments) which secures sums owed to a Mortgagee or Landlord Mortgagee, as applicable; provided however, no Mortgage for the benefit of a Mortgagee may secure sums other than for the acquisition, development and refinance of solely the Property; provided further however, no Mortgage shall encumber more than the relevant parties’ interest in the Property (e.g., in the case of a Tenant Mortgage, the tenant’s leasehold estate in this Lease).

“Mortgagee” means a lender, agent or trustee who is the holder a Mortgage which secures the monetary obligations of Tenant; provided however, no Affiliate of Tenant will be deemed to be a Mortgagee unless such Affiliate is the only lender to Tenant (i.e., if an Affiliate is a secondary lender to Tenant with respect to the Property through a transaction which is an equity investment documented as a loan, such arrangement will not be characterized as a lending transaction and the lender thereof will not be entitled to receive the special Mortgagee protections hereunder).

“Nondisturbance Sublease” means a sublease which;

- (a) leases more than 10,000 square feet in the Improvements, or
- (b) the subtenant thereunder is an investment grade national tenant (i.e., the subtenant has a credit rating of at least BBB as determined by Standard and Poor's or a credit rating of at least Baa as determined by Moody's);
- (c) the subtenant thereunder is not an Affiliate of Tenant in any respect,
- (d) does not exempt the owner of the applicable building from the

payment of real estate taxes,

(e) has an term which is shorter than the Term,

(f) the rent payable thereunder is generally at market rates (i.e., arms length, fair market, annual, nonrenewal rental rate per rentable square foot entered into on or about the relevant date for space comparable to the applicable premises and buildings comparable to the applicable building), and

(g) the subtenant thereunder subleased the applicable premises primarily to conduct its business with the general public (as opposed to a party which leases space to sublease to other parties).

“Offsite Parking Garage” means a to be constructed approximately 315 space structured parking facility located on the Offsite Parking Garage Land.

“Offsite Parking Garage Land” means the land described on Exhibit C attached hereto, which is currently owned by the Landlord.

“Permitted Encumbrances” mean (a) general real estate taxes, if any, (b) the Declaration, (c) the **“Permitted Encumbrances”** as defined in the MDA, (d) all matters shown on the subdivision plat for the applicable portion of the Property approved by Tenant, which approval will not be unreasonably withheld, conditional or delayed and (e) any other encumbrances approved, or caused, by Tenant.

“Permitted Use” means all uses permitted in the zoning ordinance for the Property except those prohibited as set forth in the Declaration.

“Person” means an individual, corporation, partnership, limited liability company, unincorporated organization, association, joint stock company, joint venture, trust, estate, real estate investment trust, government, agency or political subdivision thereof or other entity, whether acting in an individual, fiduciary or other capacity.

“Potential Event of Default” means any condition or event which after notice and/or the lapse of time would constitute an Event of Default.

“Property” means the Land and the Improvements. ***[NOTE: WITH RESPECT TO THE POWER PLANT PROPERTY, NEED TO CARVE OUT AREA OF UNCERTAIN TITLE. POTENTIALLY RESOLVED WITH UP EASEMENT TERMINATION]***

“Real Property Records” means the real property records of Travis County, Texas, including, without limitation, the Official Public Records of Travis County, Texas.

“Remedial Work” means any investigation, monitoring, response, remediation, removal, restoration, abatement, repair, cleanup, detoxification or other ameliorative work related to the Property required by Legal Requirements and relating to Hazardous Materials or Hazardous Materials Activity, except that relating to an Existing

Environmental Condition.

“Rent” means

[OFFICE PROPERTY: the sum of \$915,000 for the first year and \$1 per year thereafter (i.e., a total of \$915,098).]

[POWER PLANT PROPERTY: the sum of \$1.00 for the first year and \$1 per year thereafter (i.e., a total of \$99.00).]

“Retainage” as defined in Section 17.1(c)(ii).

“Subleases” means all written or oral leases, subleases, rental agreements, licenses, concessions, occupancies and other agreements or arrangements granted to Subtenants for the use or occupancy of all or any portion of the Property.

“Subtenant” means any subtenant or occupant (other than Tenant) of the Property, claiming by, through or under Tenant.

“Taxes” means all taxes, general and special assessments, and other charges of every description which are levied on or assessed against the Property by a Governmental Authority during the Term. If at any time a Governmental Authority levies or assesses a tax or excise on rents against Landlord or the compensation payable or performable by Tenant as a substitution in whole or in part for taxes assessed or imposed on the Property, the same will be deemed to be included within the term “Taxes”, and Tenant shall pay and discharge such tax or excise in accordance with ARTICLE XII.

“Term” as defined in Section 3.1.

“Termination Price” means

(a) prior to a conveyance of this Lease by foreclosure or an assignment in lieu of foreclosure, the amount of architectural, engineering and “hard” construction costs concerning the Property incurred and paid by Tenant for which Tenant has received a lien release reasonably acceptable to Landlord, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the Landlord by Tenant under any agreement related to the Property (but without duplication); or

(b) following the conveyance of this Lease by foreclosure in which an independent third party purchases Tenant’s interest in this Lease (i.e., not the Tenant, Mortgagee or an affiliate thereof), the sum of (i) the amount paid by such purchaser at the foreclosure sale *plus* (ii) the amount of architectural, engineering and “hard” construction costs concerning the Property incurred and paid by such

purchaser for which such purchaser has received a lien release reasonably acceptable to Landlord, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the Landlord by such purchaser under any agreement related to the Property (but without duplication); or

(c) following the conveyance of this Lease by foreclosure or an assignment in lieu of foreclosure in which the Mortgagee (or its affiliate) acquires Tenant's interest in this Lease, the sum of (i) amount of the outstanding principal balance of the loan to such Mortgagee together with all accrued interest thereon (excluding however, any late charges, default interest, exit fees or prepayment premiums), *plus* (ii) the amount of architectural, engineering and "hard" construction costs concerning the Property incurred and paid by Mortgagee (or its affiliate) for which Mortgagee (or its affiliate) has received a lien release reasonably acceptable to Landlord, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the Landlord by Mortgagee (or its affiliate) under any agreement related to the Property (but without duplication).

"Trade Fixtures" means any and all items of property used by Tenant or any Subtenant in, upon or about the Property for the carrying on of its business and which may or may not be annexed to the realty by Tenant but in any event can be removed by hand tools without any material injury or damage to the Property, including but not limited to moveable furniture, equipment, shelves, bins and machinery; provided, however, that the term Trade Fixtures will not include the following: any machinery or equipment used in the operation of the building; i.e. elevators, gates, meters, lighting devices, air conditioners, or any permanent leasehold improvements, including but not limited to any floor, wall or ceiling coverings, any interior walls, any lighting fixtures, track lights or any property a part of or associated with any electrical, plumbing, heating and air conditioning or mechanical equipment or systems, notwithstanding that the same may have been installed in, upon or about the Property.

1.2 Modification of Defined Terms. Unless the context clearly otherwise requires or unless otherwise expressly provided herein, the terms defined in this Lease which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, supplements, modifications, amendments and restatements of such agreement, instrument or document; provided that nothing contained in this Section will be construed to authorize any such renewal, extension, supplement, modification, amendment or restatement.

1.3 References and Titles. All references in this Lease to exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions refer

to the exhibits, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Lease unless expressly provided otherwise. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and will be disregarded in construing the language contained in such subdivisions. The words “this Lease”, “herein”, “hereof”, “hereby”, “hereunder” and words of similar import refer to this Lease as a whole and not to any particular subdivision unless expressly so limited. The phrases “this paragraph” and “this subparagraph” and similar phrases refer only to the paragraphs or subparagraphs hereof in which such phrases occur. The word “or” is not exclusive, and the word “including” (in its various forms) means “including without limitation.” Pronouns in masculine, feminine and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context clearly otherwise requires. References to any constitutional, statutory or regulatory provision means such provision as it exists on the Commencement Date and any future amendments thereto or successor provisions thereof.

1.4 Nature of Lease. As the Term of this Lease will span many generations, specific references herein such as the names of City of Austin departments, street names, laws and regulations may cease to exist prior to the expiration or earlier termination hereof. It is the intent of the Landlord and Tenant that, notwithstanding the fact that such references may no longer be correct, the spirit and intent of this Lease be given effect as close as possible with respect to the relevant affected term or provision hereof.

ARTICLE II. GROUND LEASE

2.1 Lease. In consideration of the mutual covenants and agreements set forth in this Lease, and other good and valuable consideration, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Property, together with all rights, privileges, improvements, easements, appurtenances, and immunities belonging to or in any way appertaining to the Property, including, but not limited to, any and all easements, rights, title, and privileges of Landlord, existing now or in existence at any time during the Term in, to, or under the Property, adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Land and reversions which may later accrue to Landlord as owner of the Property by reason of the closing of any street, sidewalk, or alley.

2.2 ***[POWER PLANT ONLY: Use of Events Center. Landlord is given the right to utilize, at no charge, the approximate 5,000 square foot events center on the entry level of the Improvements (the “**Events Center**”) up to 20 days per calendar year, subject to availability, booking no more than 90 days in advance, and limited to no more than 3 consecutive days. Specific excluded dates are New Year’s Eve, Mother’s Day, Easter Sunday, Thanksgiving, and dates during which the following take place: the South by Southwest Conference, Austin City Limits Music Festival, and City-wide conventions with over 5,000 room peak-night attendance. The use of the Events Center space at no charge will only include the Events Center space and no additional products such as food or beverages, set-up, audio visual, or other services or space unless the Landlord pays the prevailing charges applicable thereto. Reservations by Landlord must be made or confirmed in writing with Tenant, and exceptions thereto made or approved through Tenant or Tenant’s management company.]***

2.3 Ownership of Improvements. The Improvements (other than Trade Fixtures owned by Subtenants in the Improvements) will be owned by Tenant during the Term. Upon termination of this Lease for any reason, the Improvements (other than the Trade Fixtures owned by Subtenants and those Trade Fixtures of Tenant which Tenant elects to remove without material damage to the Property) will (in their then “AS-IS, WHERE IS” condition) become the property of Landlord without necessity of further action by Tenant or any other party.

2.4 Quiet Enjoyment. As long as Tenant performs its obligations under this Lease, Tenant shall lawfully and quietly hold, occupy, and enjoy the Property during the Term without hindrance or molestation by Landlord or any person claiming by, through, and under Landlord, except such portion of the Property, if any, as shall be taken under the power of eminent domain, and the Permitted Encumbrances. Landlord is executing and encumbering, or has executed and encumbered, the Property with the Declaration. The execution and encumbrance of the Property pursuant to the Declaration is also deemed to be pursuant to a reservation of such rights hereunder and will be superior to any vendor’s lien, deed of trust, mortgage, assignment and/or security interest which burdens the Property.

ARTICLE III. GROUND LEASE TERM AND RENT

3.1 Term. The term of this Lease (the “**Term**”) will commence on the Commencement Date and will continue until the date which is 99 years following the Commencement Date.

3.2 Rent. Contemporaneously with the execution hereof, Tenant shall pay Landlord the Rent.

3.3 Net Lease. This Lease will constitute a net lease, and the obligations of Tenant hereunder are absolute and unconditional. Tenant shall pay all operating expenses arising out of the use, operation and/or occupancy of the Property, including without limitation, those expenses set forth in Sections 9.4(a), 9.4(c), 12.1 and 12.3.

ARTICLE IV. DESIGN AND CONSTRUCTION OF IMPROVEMENTS

4.1 Design Review and Approval. Tenant acknowledges that Landlord has reserved certain design approval as set forth in the Declaration.

4.2 Standards of Construction. All Improvements constructed on the Land at any time during the Term and any and all alterations, rebuilding, restoration, renovations, repairs, refurbishments, or other work with regard to any Improvement will be performed in accordance with the following “**Construction Standards**” (herein so called):

(a) All such construction or work will be performed in a good and workmanlike manner utilizing good industry practice for the type of work in question.

(b) All such construction or work will be done in compliance with the Legal Requirements.

(c) No such construction or work done will be commenced until all applicable approvals, licenses, permits, and authorizations required by this Lease have been issued for the commencement of such construction.

4.3 Construction Contract. Tenant shall require that all construction contracts for the construction of Improvements contain the following provisions:

(a) The general contractor shall obtain and maintain insurance as required by this Lease.

(b) The construction of the Improvements is being completed for and on behalf of Tenant, and not for or on behalf of Landlord.

(c) The general contractor does not have, and will not assert or claim, any lien against the fee title to the Land, and any lien with respect to the construction of the Improvements shall be subordinate and inferior to the right, title and interest of Landlord in and to the Improvements.

ARTICLE V. FAILURE TO COMMENCE AND COMPLETE CONSTRUCTION OF THE IMPROVEMENTS

5.1 Termination Right – Failure to Commence Construction. Landlord reserves the right (but not obligation), subject to Article 13 hereof, to terminate this Lease (the “**Termination Right - Commencement of Construction**”) if Tenant has not Commenced Construction of the Improvements on the Property on or before _____, 200__ [30 months following the MDA Commencement Date] (the “**Construction Commencement Date**”). Such event will be deemed an Event of Default hereunder and Landlord will be entitled to exercise its Termination Right - Commencement of Construction at any time prior to Commencement of Construction by written notice delivered to Tenant and any Mortgagee. At the termination of this Lease under the Termination Right – Commencement of Construction, Landlord will deliver to Tenant the prorated amount of the Rent concerning the remaining Term. The Construction Commencement Date will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure or Landlord Caused Delays.

5.2 Liquidated Damages – Work Stoppage. Upon Commencement of Construction, Tenant agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition. If, following Commencement of Construction, the good faith and bona-fide construction of the Improvements ceases for a period of 45 or more consecutive days (a “**Delay Period**”), such event will be deemed an Event of Default hereunder and Tenant will pay to Landlord as liquidated damages the sum of \$1,000 per day for each day past the Delay Period which bona-fide construction does not occur (such amount, “**Liquidated Damages - Work Stoppage**”). The calculation of each potential Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and Landlord Caused Delays which would otherwise be within such Delay Period. Landlord and Tenant agree that the Liquidated Damages - Work Stoppage has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated

Damages - Work Stoppage will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Work Stoppage which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate. Upon termination of this Liquidated Damages – Work Stoppage provision (including payment of any Liquidated Damages – Work Stoppage) and receipt of a written request from the Tenant, Landlord will execute and deliver in recordable form a notice of termination of the Liquidated Damages – Work Stoppage. This Section will automatically terminate upon Dry-In Condition being achieved (except for any accrued but unpaid Liquidated Damages – Work Stoppage) or the Landlord’s election to exercise the Termination Right – Work Stoppage. Any amounts due to Landlord under this paragraph will be deemed additional Rent.

5.3 Termination Right – Work Stoppage. In addition to the Liquidated Damages - Work Stoppage set forth in the previous section and the Liquidated Damages – Completion set forth in the following section, Landlord hereby reserves the right (but not obligation), subject to Article 13 hereof, to terminate this Lease (the “**Termination Right - Work Stoppage**”) if the Tenant Commences Construction, but such construction is ceased for a period of 90 or more consecutive days for any reason (such 90-day period, a “**Substantial Delay Period**”). Landlord will be entitled to exercise its Termination Right - Work Stoppage if the Tenant does not, in good faith, recommence such construction on or before the date which is 30 days following written notice by the Landlord to Tenant and any Mortgagee of the Landlord’s intent to exercise its Termination Right – Work Stoppage and such event will be deemed an Event of Default hereunder. The calculation of each potential Substantial Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and Landlord Caused Delays which would otherwise be within such Substantial Delay Period. It is the intention of the Landlord and Tenant that this Termination Right – Work Stoppage be exercisable if Tenant fails to diligently and in good faith proceed to achieve Dry-In Condition of the Improvements on the Property. Accordingly, actions by Tenant to continue construction on an intermittent basis (e.g., one day a week or one week every 90 days) to prevent exercise of the Termination Right – Work Stoppage will not prevent such exercise. At the termination of this Lease under the Termination Right – Work Stoppage, Landlord will deliver to Tenant the prorated amount of the Rent concerning the remaining Term *plus* the Termination Price. Upon termination of this Termination Right - Work Stoppage provision for any reason described herein and receipt of a written request from the Tenant, Landlord will execute and deliver in recordable form a notice of termination of the Termination Right - Work Stoppage. The Termination Right - Work Stoppage automatically terminate upon Dry-In Condition.

5.4 Liquidated Damages - Completion. Upon Commencement of Construction, Tenant agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition on or before the date which is _____ [54 months following the MDA Commencement Date] (such date, the “**Dry-In Condition Date**”). If the Dry-In Condition has not been achieved on or before the Dry-In Condition Date and the Landlord has not exercised the Termination Right – Work Stoppage, such event will be deemed an Event of Default hereunder and Tenant will pay to Landlord, the sum of \$1,000 (the “**Liquidated Damages - Completion**”) per day past the Dry-In Condition Date in which Dry-In Condition has not been achieved. The Dry-In Condition Date will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and Landlord Caused Delays. Landlord and Tenant agree that the

Liquidated Damages - Completion has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Completion will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Completion which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate. Upon termination of this Liquidated Damages – Completion provision (including payment of any Liquidated Damages – Completion) and receipt of a written request from the Tenant, Landlord will execute and deliver in recordable form a notice of termination of the Liquidated Damages – Completion. This Section 5.4 will automatically terminate upon Dry-In Condition being achieved (except for any accrued but unpaid Liquidated Damages – Completion). Any amounts due to Landlord under this paragraph will be deemed additional Rent.

If prior to achieving the Dry-In Condition, a Mortgagee acquires title to the Property through a foreclosure sale or deed in lieu of foreclosure, and in the reasonable judgment of such Mortgagee, the Dry-In Condition cannot be achieved by the Dry-In Condition Date, such Mortgagee shall propose in writing to Landlord a new Dry-In Condition Date (together with evidence supporting such new date). If the proposed replacement Dry-In Condition Date is not approved by Landlord (in its reasonable discretion) within 10 days following such written request, Mortgagee and Landlord shall work together during the following 10 days to agree upon the Dry-In Condition Date. If at the expiration of such second 10 day period, the parties still do not agree on the Dry-In Condition Date, Mortgagee or Landlord may request in writing (the “Arbitration Demand”) that such issue (“Issue”) be resolved by an Arbitrator through a binding arbitration process.

The arbitrator (whether one or three, the “Arbitrator”) must be a professional with at least ten (10) years’ experience in commercial construction related matters in the Austin, Texas area. If the parties do not agree upon the Arbitrator within 10 days of the Arbitration Demand, each party shall appoint its own Arbitrator, the two Arbitrators shall appoint a third Arbitrator and the decision of the majority of the Arbitrators shall be binding. The parties shall share equally in the cost of the Arbitrator.

Within 15 days of an Arbitration Demand, each party shall submit to the Arbitrator its proposed Dry-In Condition Date and the materials that such party believes will be useful for the Arbitrator in deciding the Issue (the “Decision Materials”). The Arbitrator will make a determination in writing to both Landlord and Mortgagee within 10 days of its receipt of the Decision Materials.

ARTICLE VI. MODIFICATION OF IMPROVEMENTS

Tenant, at its sole cost and expense, at any time and from time to time without the consent of Landlord may make modifications, alterations, renovations, improvements and additions to the completed Improvements or any part thereof and substitutions and replacements therefor (collectively, “**Modifications**”), and Tenant shall make any and all Modifications required to be made pursuant to all Legal Requirements; provided, that: (i) no completed Modification will have a substantial adverse effect on the value, utility or useful life of the

Improvements as a whole from those Improvements which existed immediately prior to such Modification (assuming the Improvements were in the condition required by this Lease); (ii) each Modification will be done expeditiously and in a good and workmanlike manner; (iii) no Modification will adversely and materially affect the structural integrity of the Improvements; (iv) to the extent required by this Lease, Tenant will maintain builders' risk insurance at all times when a Modification is in progress; (v) subject to the terms of ARTICLE VIII relating to permitted contests, Tenant will pay all costs and expenses and discharge any liens arising with respect to any Modification; and (vi) each Modification will comply with the requirements of this Lease and all Legal Requirements.

ARTICLE VII. CONDITION

For specific and valuable consideration of Landlord's entering into this Lease and as an inducement to Landlord to lease the Property to Tenant, Tenant makes the following covenants, representations and warranties, each of which is material and is being relied upon by Landlord:

7.1 Condition of Land. IT IS UNDERSTOOD AND AGREED THAT , EXCEPT AS OTHERWISE SET FORTH HEREIN, THE PROPERTY IS BEING LEASED HEREUNDER "AS IS" WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY LANDLORD. EXCEPT AS OTHERWISE SET FORTH HEREIN, LANDLORD HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY AND THE OFFSITE PARKING GARAGE, THEIR CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY AND/OR THE OFFSITE PARKING GARAGE, AND LANDLORD HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. TENANT ACKNOWLEDGES AND AGREES THAT IT IS ENTERING INTO THIS LEASE WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY LANDLORD OR ANY REPRESENTATIVE OF LANDLORD OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF LANDLORD WITH RESPECT TO THE PROPERTY AND/OR THE OFFSITE PARKING GARAGE BUT RATHER IS RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY AND THE OFFSITE PARKING GARAGE. TENANT REPRESENTS THAT IT IS A KNOWLEDGEABLE DEVELOPER OF REAL ESTATE AND THAT IT IS RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN DEVELOPING THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION WILL

EXPRESSLY SURVIVE THE TERMINATION OF THIS LEASE. TENANT FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN LANDLORD'S DETERMINATION OF THE CONSIDERATION FOR ENTERING INTO THIS LEASE.

7.2 Landlord's Representations. Notwithstanding the provisions of Section 7.1 above, Landlord hereby represents that as of the Commencement Date,

(a) The Landlord's performance under this Lease are within the Landlord's powers and have been duly authorized by all requisite municipal action. This Lease constitutes the legal, valid and binding obligation of the Landlord enforceable in accordance with its terms, subject to the principles of equity.

(b) There is no pending or, to the Landlord's Actual Knowledge, threatened condemnation or similar proceeding or special assessment affecting the Property or any part thereof (except with respect to this representation made as of the Commencement Date, any condemnation legislation then filed in the Legislature of the State of Texas).

(c) To the Landlord's Actual Knowledge, Landlord has received no service of process or other written notification of any litigation or administrative proceedings which would materially and adversely affect title to the Property or the ability of the Landlord to perform any of its obligations hereunder.

(d) There are no parties in possession of all or any portion of the property as tenants or otherwise.

ARTICLE VIII. MECHANICS' LIENS

Neither Tenant nor anyone claiming any interest in the Property by, through, or under Tenant will have the authority to create any lien or other charge encumbering the Fee Estate. Tenant shall not cause or permit any liens to be filed against the Fee Estate by reason of any work, labor, services, or materials supplied or claimed to have been supplied to or for Tenant or any Subtenant. If any such lien is filed, Tenant shall either cause the same to be removed or if Tenant in good faith desires to contest the lien and no Event of Default exists, take timely action to do so by appropriate procedures, at Tenant's sole expense. If Tenant contests the lien, Tenant agrees to indemnify and hold Landlord harmless from all liability for damages occasioned by the lien and/or the lien contest and shall, if there is a judgment of foreclosure on the lien, cause the lien to be discharged and removed prior to execution of the judgment. Should any such lien arise out of the construction of the Improvements or any other improvements, Tenant shall bond against or discharge the same within 30 days after written request by Landlord, and shall defend, indemnify, reimburse and hold Landlord and the Property and the Fee Estate owner harmless therefrom.

ARTICLE IX. OPERATION, REPAIR, AND MAINTENANCE

9.1 Permitted Uses. Tenant will have the right to use the Property only for the

Permitted Use.

9.2 Operations. Tenant shall obey, perform and comply in all material respects with any and all Legal Requirements existing at any time during the Term in any way affecting the Property or the use or condition thereof. Tenant shall not permit or suffer the Property to be used in any manner which violates applicable Legal Requirements in any material manner. Tenant shall at its own expense obtain any and all licenses and permits necessary for its use of the Property. Landlord will join in the applications for any such licenses and permits or otherwise as necessary to comply with the Legal Requirements where the signature of Landlord as owner of the Land is required, provided Tenant pays all reasonable costs and expenses of Landlord associated therewith, if any, and Landlord incurs no additional liability.

9.3 Waste; Nuisance. Tenant shall not occupy or use the Property in any manner that will constitute waste or a nuisance, or permit any portion of the Property to be occupied or used for any purpose other than as expressly permitted herein, or which is unlawful or reasonably deemed by Landlord to be extra hazardous on account of fire, nor permit anything to be done that will in any way invalidate the insurance on the Property.

9.4 Maintenance and Repair; Utilities.

(a) Tenant. Tenant, at its sole cost and expense, shall maintain the Property in good condition, repair and working order in accordance with this Lease and the Declaration (excepting (i) ordinary wear and tear and (ii) each Casualty which is addressed in accordance with the terms of this Lease), and make all necessary repairs thereto and replacements thereof, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen and on a basis generally consistent with the operation and maintenance of properties or equipment by the Tenant comparable in type and function to the Property. All components which are added to the Property will become the property of (and title thereto will vest in) Landlord immediately upon termination of this Lease to the extent provided in Section 2.3 above, but will be deemed incorporated in the Property and subject to the terms of this Lease as if originally leased hereunder. Upon reasonable advance notice, Landlord and its agents shall have the right to inspect the Property and maintenance records (to the extent available) with respect thereto at any reasonable time during normal business hours but will not, in the absence of the occurrence and continuance of an Event of Default, materially or unreasonably disrupt the business of Tenant or End Users. If an Event of Default has occurred and is continuing, any such inspection will be at the sole cost and expense of Tenant.

(b) Landlord. Landlord shall under no circumstances be required by this Lease to build any improvements or install any equipment on the Property or the Offsite Parking Garage Land, make any repairs, replacements, alterations or renewals of any nature to the Property or the Offsite Parking Garage, make any expenditure whatsoever in connection with this Lease or maintain the Property or Offsite Parking Garage in any way. Landlord shall not be required by this Lease to maintain, repair or rebuild all or any part of the Property or the Offsite Parking Garage, and Tenant waives any right which might arise by virtue of this Lease to (i) require Landlord to maintain, repair, or rebuild all or any part of the Property or the Offsite Parking Garage, or (ii) make repairs to the Property or the Offsite Parking Garage at the expense

of Landlord pursuant to the terms of any Legal Requirement, contract, agreement, covenant, condition or restriction.

(c) Utilities. Tenant shall pay, or cause to be paid, prior to delinquency, charges for all utilities, and services furnished to, or used by, the Property. Landlord, in its capacity as the owner of the Land, will not be obligated under this Lease to furnish any utility to the Property or the Offsite Parking Garage.

ARTICLE X. INTENTIONALLY OMITTED

ARTICLE XI. HAZARDOUS MATERIALS

11.1 Prohibition. Neither Tenant nor any Subtenants may bring on the Property or the Offsite Parking Garage Land any Hazardous Materials, except in reasonable quantities required for Tenant's or Subtenant's uses of the Property and operation thereon, that are acquired, kept, stored, maintained, transported and disposed of in strict accordance with this Lease and all Legal Requirements.

11.2 Remedial Work. If Remedial Work is required, Tenant shall within 30 days after written demand for performance thereof by Landlord or any such agency (or such shorter period of time as may be required under any applicable Legal Requirements), promptly commence, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work, but only with respect to matters occurring or conditions existing during the Term. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Landlord, and, if required by Landlord, under the supervision of a consulting engineer approved in advance in writing by Landlord, Landlord agrees not to unreasonably withhold any such approvals. All Environmental Costs related to such Remedial Work shall be paid by Tenant including, without limitation, Environmental Costs incurred by Landlord in connection with oversight, monitoring or review of such Remedial Work. If Tenant shall fail to promptly commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Landlord may, but will not be required to, cause such Remedial Work to be performed and all Environmental Costs will become an Environmental Claim hereunder.

11.3 Other Rights. Nothing contained in this Lease will prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Landlord may have against Tenant under any Legal Requirements, all such rights being hereby expressly reserved.

11.4 Notice of Actions. Landlord and Tenant each agrees to give the other prompt written notice of the receipt of any notice or discovery of any information regarding any actual, alleged or potential Environmental Claim relating to the Property, and to deliver to the other copies of any and all orders, notices, permits, reports, and other communications, documents and instruments which the notifying party receives pertaining to such Environmental Claim.

ARTICLE XII.

TAXES, INSURANCE, AND REIMBURSEMENT OBLIGATIONS

12.1 Taxes. Beginning on the Commencement Date and continuing throughout the remainder of the Term, Tenant shall pay, prior to delinquency, all Taxes on the Property directly to the appropriate Person. Where any Tax that Tenant is obligated to pay may be paid pursuant to law in installments, Tenant may pay such Tax in installments as and when such installments become due. Beginning on the Commencement Date, Tenant shall render the Property for each Governmental Authority imposing Tax thereon and may, if Tenant shall so desire, endeavor at any time or times to obtain a lowering of the valuation of the Property for any year for the purpose of reducing ad valorem taxes thereon and, in such event, Landlord will, at the request of Tenant, cooperate in effecting such a reduction, provided the Landlord shall not be required to incur any expense or incur any obligations in connection therewith without its prior written consent.

12.2 Tenant's Right to Contest Taxes. Tenant shall not be required to pay, discharge or remove any Tax so long as Tenant shall contest in good faith the amount or validity of such Tax by appropriate proceeding(s) which shall operate to prevent or stay the collection of the Tax so contested, in which event the payment thereof may be deferred, as permitted by law, during the pendency of such contest, if diligently prosecuted by appropriate proceedings. Fifteen (15) days prior to the date any contested Tax shall become due, Tenant shall deposit with Landlord or an Escrow Agent (if required by a senior Mortgagee) the amount so contested and unpaid, together with a sum to cover all interest and penalties in connection therewith and all charges that may be assessed or become a charge against the Property in such proceeding, which deposit must first be used to pay any unpaid Taxes (and associated costs and expenses) prior to payment of any other sum. During such contest, Landlord shall have no right to pay the Tax contested except as provided herein. Upon the termination of such proceeding, Tenant shall deliver to Landlord proof of the amount of the Tax as finally determined and thereupon Landlord shall, out of the sum so deposited with it by Tenant, pay such Tax and shall refund any balance to Tenant. If the sum deposited with Landlord is insufficient to pay the full amount of such Tax and the interest, penalties and other charges, Tenant shall forthwith pay any deficiency. If during such proceeding Landlord shall deem (in its reasonable judgment) the sums deposited with it insufficient, Tenant shall upon demand deposit with Landlord such additional sums as Landlord may reasonably request and upon failure of Tenant so to do, the amount theretofor deposited may be applied by Landlord to the payment, removal and discharge of such Tax, and the interest and penalties in connection therewith and any costs, fees or other liability accruing in any such proceedings, and the balance, if any, shall be returned to Tenant. Tenant shall give Landlord written notice of any such contest and Landlord, at Tenant's sole expense, shall join in any such proceeding if any law, rule or regulation at the time in effect shall so require. Any proceeding for contesting the validity or amount of any Tax, or to recover any Tax paid by Tenant, may be brought by Tenant in the name of Landlord or in the name of Tenant, or both, as Tenant may deem advisable. Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any proceedings and Tenant will indemnify and save Landlord harmless from any such costs and expenses.

12.3 Insurance.

(a) Property Insurance.

(i) By Tenant. Commencing as of the completion of construction of any Improvements, Tenant shall maintain property insurance covering the Improvements caused by perils now or hereafter embraced by or defined in an “all risk” policy (or any successor to such policy), including at least such perils as customarily insured for similar properties in Austin, Texas, in an amount equal to the full replacement value of the Property. The policy will contain an agreed value endorsement and a laws and ordinances endorsement. Such insurance will name Landlord and Tenant jointly as loss payees, as their respective interests may appear. Tenant may, at its option, maintain insurance covering its personal property located in or on the Property.

(ii) By Contractor. During construction of any Improvements, Tenant shall require the contractor to purchase and maintain (or at Tenant’s option, Tenant may purchase and maintain) Builder’s Risk Insurance concerning such work to be written on a completed value form and in an amount equal to construction contract amount plus reasonable compensation for architect’s services and expenses made necessary by an insured loss. Insured property will include portions of the work located away from the site but intended for use at the site, and will also cover portions of the work in transit. The policy will include as insured property scaffolding, false work, and temporary buildings located at the site. The policy will cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation. Coverage will be no less broad than that provided by the special causes of loss form CP 10 30 10 91 as promulgated by Insurance Services Office, except that collapse will be covered as a cause of loss. Such insurance will be non-cancelable with respect to Landlord. Such builder’s risk insurance will name Landlord and such parties as Landlord may reasonably designate as additional insureds, and such endorsement will be without exceptions for the acts or omissions of any additional insured (including negligence).

(b) Liability Insurance.

(i) By Tenant. Commencing on the Commencement Date, Tenant shall maintain a standard policy of commercial general liability insurance against injury or death to Persons or damage to property arising out of occurrences on or about the Property (“CGL Insurance”) in the amount of \$2,000,000 per occurrence, \$5,000,000 annual aggregate, \$1,000,000 property damage. The CGL Insurance policy will (i) state that it is primary with regard to any other insurance carried by Landlord (and any insurance carried by Landlord will be excess, secondary, and noncontributing), (ii) name Landlord and such parties as Landlord may reasonably designate as additional insureds, and such endorsement will be without exceptions for the acts or omissions of any additional insured (including negligence), (iii) be endorsed, if necessary, to provide cross-liability coverage, and (iv) will not have a deductible or self-insured retention in excess of \$10,000. Landlord may require Tenant to increase the amount of liability insurance from time to time (but not more often than once every three years) if the amount of liability insurance generally carried by owners of similar buildings in

Austin, Texas increases above the amount of insurance required to be carried by this Lease. Any dispute will be resolved by a third party insurance consultant that (x) has at least ten years of experience in Texas, (y) is unrelated to Landlord or Tenant, and (z) is chosen by Landlord. The cost of any such insurance consultant will be split between the parties.

(ii) By Contractor. Tenant will cause the general contractor to obtain and maintain CGL Insurance complying with all provisions of subsection (1) immediately above. Furthermore, if such insurance is subject to a general aggregate, then \$5,000,000 will be dedicated to this project by Specific Job Limit Endorsement. The products-completed operations coverage will be maintained in effect for the benefit of the insured and additional insureds for a period of two years following completion of the work and will be at least two times its each occurrence limit.

(c) Other Insurance. Tenant will cause the general contractor to obtain and maintain business auto liability and, if necessary, commercial umbrella liability insurance with limits reasonably acceptable to Landlord, which policy will be endorsed to include Landlord and parties reasonably designated by Landlord as additional insureds (without exceptions for acts or omissions of the additional insureds, including negligence). Tenant will cause the general contractor to obtain and maintain workers' compensation insurance as required by Legal Requirements.

(d) Insurance Carriers. All of the insurance policies required hereunder will be issued by corporate insurers licensed to do business in the state of Texas and rated Policyholder's Rating of "A" and a Financial Size Rating of "VIII" or better by A. M. Best Company.

(e) Insurance Certificates. To the extent insurance is required hereunder, Tenant shall provide or cause to be provided to Landlord certificates of insurance evidencing all insurance required to be carried hereunder, (i) prior to the Commencement Date (or the date of completion of the Improvements, with respect to Tenant's property insurance) and (ii) at least 15 days prior to the expiration or renewal of any such insurance policy. All such certificates of insurance will be on an ACORD Form 27 (or any equivalent successor form); provided, however, with the prior review and approval of Landlord, an ACORD Form 25-S (or any equivalent successor form) may be used for CGL Insurance provided Landlord has been provided with a certified copy of all insurance policies, including all required endorsements, and provided (a) there is attached to the Certificate of Insurance a valid and binding Revised Cancellation Endorsement specifying the requirement of the carriers to give 30 day advance notice of cancellation or material change in the policies and the words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" will be deleted from the certificate form's cancellation provision and (b) Landlord is authorized to contact the issuing insurance agency and the insurance carriers to confirm the existence of the coverages. Furthermore, if requested in writing by Landlord, Tenant, general contractor, and any Subtenant will provide to Landlord a copy of any or all insurance policies or endorsements required by the Lease.

(f) Failure to Carry Insurance. If Tenant does not keep or cause to be kept insurance required in this Lease in full force and effect, Landlord may notify Tenant of this failure, and if Tenant or its Subtenant does not deliver to Landlord certificates showing all such insurance to be in full force and effect within 5 days after this notice, Landlord may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Tenant's obligations under the provisions of this Article. Upon demand from Landlord, Tenant shall reimburse Landlord the full amount of any insurance premiums paid by Landlord pursuant to this section, with interest at the Delinquency Interest Rate.

(g) Waiver of Subrogation. Landlord and Tenant release each other from any losses for injury or death to Persons or damage to property that is caused by or which results from risks insured against under insurance carried or required to be carried hereunder, **EVEN IF SUCH LOSS ARISES OUT OF THE NEGLIGENCE OF THE RELEASED PARTY OR ANY MATTER FOR WHICH THE RELEASED PARTY WOULD OTHERWISE BE STRICTLY LIABLE UNDER LEGAL REQUIREMENTS.** All policies of insurance required hereunder will contain provisions to evidence the waiver of all rights of subrogation of the insurer against Landlord and its successors, assigns, directors, officers, employees, and agents.

12.4 Indemnity. Except as otherwise provided in the MDA, Tenant assumes liability for, and shall indemnify, protect, save and keep harmless the Landlord and its respective officers, directors, contractors, employees and agents (each an "**Indemnitee**") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including reasonable legal expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against any Indemnitee (a "**Claim**"), in any way arising out of (a) this Lease, (b) the use of the Offsite Parking Garage, (c) Tenant's acts or omissions, (d) except as otherwise specifically provided herein, the use, ownership, possession, delivery, lease, sublease, operation or condition of the Property, the Offsite Parking Garage or any part thereof (including, without limitation, latent or other defects, whether or not discoverable by Tenant or any other Person, any claim in tort for strict liability and any claim for patent, trademark or copyright infringement), **EVEN IF CAUSED BY THE NEGLIGENCE OR ALLEGED NEGLIGENCE OF AN INDEMNITEE (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE) OR IF AN INDEMNITEE WOULD OTHERWISE BE STRICTLY LIABLE UNDER LEGAL REQUIREMENTS. NOTWITHSTANDING THE FOREGOING, TENANT SHALL NOT BE REQUIRED TO INDEMNIFY LANDLORD UNDER THIS SECTION 12.4 WITH RESPECT TO CLAIMS AGAINST LANDLORD RESULTING FROM ANY EXISTING ENVIRONMENTAL CONDITION UNLESS SUCH EXISTING ENVIRONMENTAL CONDITION IS COVERED BY INSURANCE CARRIED BY TENANT.** The provisions of this paragraph will survive the expiration or earlier termination of this Lease.

12.5 Indemnity Procedures. With respect to all the indemnity obligations in this Lease, if an Indemnitee notifies Tenant of any claim, demand, action, administrative or legal proceeding, investigation or allegation as to which the indemnity provided for in this Section applies, Tenant shall assume on behalf of the Indemnitee and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel reasonably satisfactory to the Indemnitee; provided, that the Indemnitee shall have the right to be

represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such claim, demand, action, proceeding, investigation or allegation involves both Tenant and the Indemnatee and the Indemnatee shall have been advised in writing by reputable counsel that there may be legal defenses available to it which are inconsistent with those available to Tenant, then the Indemnatee shall have the right to select separate counsel to participate in the investigation and defense of and response to such claim, demand, action, proceeding, investigation or allegation on its own behalf, and Tenant shall pay or reimburse the Indemnatee for all attorney's fees incurred by the Indemnatee because of the selection of such separate counsel. If any claim, demand, action, proceeding, investigation or allegation arises as to which the indemnity provided for in this Section applies, and Tenant fails to assume promptly (and in any event within 20 days after being notified of the claim, demand, action, proceeding, investigation or allegation) the defense of the Indemnatee, then the Indemnatee may contest (or settle, with the prior consent of Tenant, which consent will not be unreasonably withheld) the claim, demand, action, proceeding, investigation or allegation at Tenant's expense using counsel selected by the Indemnatee; provided, that after any such failure by Tenant which continues for 60 days or more no such contest need be made or continued by the Indemnatee and settlement or full payment of any claim may be made by the Indemnatee without Tenant's consent and without releasing Tenant from any obligations to the Indemnatee under this Section if, in the written opinion of reputable counsel to the Indemnatee, the settlement or payment in full is clearly advisable. In no event, however will Tenant be required to indemnify any Indemnatee for loss or liability arising from acts or events which occur after the Property has been returned to Landlord in accordance with this Lease, or for loss or liability resulting to the extent of the willful misconduct or gross negligence of such Indemnatee or resulting from any transfer, sale or assignment of such Indemnatee's interest in the Property or Lease prior to an Event of Default. Landlord shall (i) use commercially reasonable efforts to provide prompt written notice to Seaholm of a Claim, and (ii) reasonably cooperate with Seaholm in the investigation and defense of a Claim. If Landlord breaches its obligations contained in the previous sentence, the liability of Seaholm under this Section shall be reduced by the amount such breach directly caused a material impairment of the defense of the Claim. Other than to the extent caused by a City Event of Default, Seaholm hereby releases Landlord with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of Landlord or any agents, contractors, representatives or employees of Landlord, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF LANDLORD.** The provisions of this paragraph will survive the expiration or earlier termination of this Lease.

12.6 Release. Other than to the extent caused by a Landlord Event of Default, Tenant hereby releases Landlord with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of Landlord or any agents, contractors, representatives or employees of Landlord, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF LANDLORD.**

ARTICLE XIII. TENANT'S RIGHT TO FINANCE AND MORTGAGEE PROTECTION

13.1 Tenant's Right to Finance; Subordination. Tenant may finance a portion of its

cost to acquire the Property and construct , alter and/or remove the Improvements as hereinafter specified, and shall have the right to Mortgage the Leasehold Estate; provided that, such financing and mortgage(s) meet the requirements of this Article. Without the prior written consent of Landlord, Tenant covenants to Landlord that it will not enter into any financing arrangement with a Mortgagee concerning financing the acquisition, development, renovation, repair, maintenance, operation or refinance of the Property (a “**Financing**”). Landlord will not unreasonably withhold such consent if Tenant’s Financing is:

(a) Amount. In a total principal amount not to exceed eighty percent (80%) of the appraised fair market value (as determined by an MAI appraisal reasonably satisfactory to Landlord) of Tenant’s interest in the Property, provided however, nothing herein shall prohibit or restrict a Mortgagee from making additional loans or advances to (i) protect such Mortgagee’s interest in the Property (i.e., advances to pay insurance, taxes, Property maintenance, attorney’s fees) or (ii) pay unanticipated costs to complete construction (i.e., costs to comply with applicable Legal Requirements and cost overruns).

(b) Rate. Contains commercially reasonable fixed or variable rates of interest consistent with then current market rates.

(c) Mortgage. Provided by a Mortgagee.

(d) Equity Kicker. Not structured to contain an “equity kicker” or similar financing arrangement which shares with the lender any “equity” in the Property.

Any Financing may be evidenced by one or more promissory notes and may be (but shall not be required to be) secured by one or more Mortgages. If any Financing is secured by a Mortgage, the Mortgage shall be subject to all of the terms and conditions set forth herein.

13.2 Limitation of Liability. Landlord shall not be liable for the payment of the sum secured by any Mortgage, nor for any expenses in connection with the same, and neither the Mortgage nor any document related thereto shall contain any covenant or other obligation on Landlord’s part to pay such debt, or any part thereof, or to take any affirmative action of any kind whatsoever with respect to the payment of such debt, except as Landlord may deem necessary or desirable to protect its interest hereunder. Furthermore, such Mortgage shall expressly provide that the Mortgagee thereunder shall not seek a judgment against Landlord for the payment of such debt based upon such Mortgage or any instrument or document related thereto.

13.3 Use of Loan Proceeds. Tenant covenants and agrees with Landlord that the sums advanced under any Mortgage loan shall be applied exclusively with respect to the Property and the Mortgage must not be “cross collateralized” with any other property or “cross defaulted” with any other transaction.

13.4 Refinancing. Tenant may refinance any debt secured by the Mortgage(s) without the consent of Landlord, provided that such new Mortgage, or Mortgages, meets the requirements of this Section.

13.5 Mortgagee Protection. The execution and delivery by Tenant of any Mortgage, in and of itself, shall not be deemed to constitute a transfer or assignment under ARTICLE XVIII of this Lease, nor a Mortgage, as such, be deemed a transferee or assignee of this Lease so as to require such Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. Notwithstanding any provision of this Lease to the contrary, the following terms and provisions shall apply regarding any Mortgage with respect to Tenant's interest in this Lease:

(a) Termination. Landlord shall not terminate or accept the termination or surrender of, this Lease without Mortgagee's prior written consent, except as otherwise required by Legal Requirements or permitted by the terms hereof.

(b) Notice. If any Mortgagee shall have delivered to Landlord prior written notice of the address of such Mortgagee, Landlord shall simultaneously send duplicate copies of all notices of Tenant's Events of Default to Mortgagee at such address. Such notices shall be given in the manner prescribed in Section 21.5 hereof.

(c) Cure Right. Mortgagee has no duty to cure any defaults under this Lease by Tenant, but Landlord shall accept cure by Mortgagee and for such purpose Landlord and Tenant hereby authorize such Mortgagee to enter upon the Property and to exercise any of such Mortgagee's rights and powers under this Lease. The time for Mortgagee's cure of any Tenant Event of Default shall be extended for 60 days beyond the later to occur of (i) the period of cure granted to Tenant and (ii) the date notice of such default is received by Mortgagee; provided however, if a Tenant Event of Default is not susceptible of cure within such 60 day period, Mortgagee shall have such additional time as is necessary to cure such Tenant Event of Default, but in no event longer than a total of 120 days. If a Tenant Event of Default exists, Mortgagee may, at its election, acquire title to Tenant's estate in the Property or Tenant's interest in this Lease diligently, in good faith by appropriate proceedings, including foreclosure (or deed-in-lieu) of a Mortgage, and the time period for Mortgagee's cure shall be tolled during the pendency of such title acquisition proceedings; provided, however, that if Mortgagee elects to foreclose or take a deed-in-lieu of foreclosure in order to obtain title and cure, Mortgagee shall first give revocable written notice thereof to Landlord of such intent. Mortgagee shall not be required to cure or commence to cure any default that is personal to Tenant (e.g., bankruptcy). Additionally, if a default exists under the Mortgage at a time when no Tenant Event of Default exists and Mortgagee is exercising its rights under the Mortgage to acquire title to Tenant's estate in the Property or Tenant's interest in this Lease diligently and in good faith by appropriate proceedings, including foreclosure (or deed-in-lieu) of its Mortgage, then Mortgagee shall have the same rights to cure any Tenant Event of Default as contained in this section. Mortgagee shall not be required to cure or commence to cure any default that is personal to Tenant (e.g., bankruptcy). Landlord will not exercise its remedies for an Event of Default under this Lease so long as Mortgagee has a right to cure such Event of Default under this Section.

(d) Bankruptcy. If Tenant's interest hereunder is terminated because of a rejection of this Lease by a trustee in bankruptcy (and provided an unsatisfied Mortgage in favor of a Mortgagee then is of record), upon written request of Mortgagee delivered to

Landlord within 15 days following such rejection, Landlord will execute and deliver a new agreement with such Mortgagee or a Replacement Developer (as defined in the MDA) for the remainder of the Term with the same agreements, covenants, representations, warranties and conditions (except for any requirements that have been fulfilled by Tenant prior to termination and any requirements that are personal to Tenant) as were contained herein; provided, however, that such Mortgagee or the Replacement Developer must immediately cure any default of Tenant hereunder. Mortgagee shall not be required to cure or commence to cure any default that is personal to Tenant (e.g., bankruptcy).

(e) Multiple Mortgagees. If at any time there shall be more than one Mortgagee, the holder of the Mortgage prior in lien shall be vested with the rights of this Section to the exclusion of the holder of any junior Mortgagee and Landlord's obligations hereunder only extend to such senior Mortgagee.

13.6 Default Under Loan Documents. Mortgagee shall furnish to Landlord copies of all default notices which Tenant is entitled to receive from Mortgagee under any note, mortgage, deed of trust, loan agreement, instrument or document (collectively, the "**Loan Documents**") contemporaneously as when sent to Tenant. Upon request by Landlord (not to be given more than twice per 12 month period), Mortgagee shall certify in writing to Landlord whether or not, to Mortgagee's actual knowledge without inquiry, any default on the part of Tenant exists under the Loan Documents and the nature of any such default. Failure by Mortgagee to identify any such default shall not impact any of its rights or remedies under the Loan Documents or under this Lease.

13.7 Fee Estate. Mortgagee shall have no lien, security interest or other interest in the Fee Estate. Mortgagee shall not acquire any lien, security interest or other interest in the Fee Estate in connection with any foreclosure action or acceptance of a deed in lieu thereof from Tenant.

ARTICLE XIV. LANDLORD'S RIGHT TO FINANCE

14.1 Right to Encumber. Landlord shall have the right, from time to time, to encumber the Fee Estate with a Mortgage, subject to the provisions of this Article. The Mortgage shall not encumber the Leasehold Estate. Landlord confirms that there currently exists no Mortgage. The parties hereby acknowledge and agree that this Lease shall therefore be prior in time and superior to the lien of any future Mortgage.

14.2 Protective Provisions. If Landlord encumbers its Fee Estate with a Mortgage in compliance with this Article, then Landlord shall provide Tenant written notice thereof, providing with such notice the name and mailing address of the Landlord Mortgagee in question, and Tenant shall, upon request, acknowledge receipt of such notice, and, for so long as the Mortgage in question remains in effect, the following shall apply:

(a) Tenant shall give to any Landlord Mortgagee of which it has been given notice as provided above, a duplicate copy of any notices to Landlord which are required

to be given prior to Tenant exercising any right or remedy as a result of a default by Landlord under this Lease, and no such notice shall be effective as to the Landlord Mortgagee until such duplicate copy is actually received by such Landlord Mortgagee.

(b) No Landlord Mortgagee shall be or become liable to Tenant as an assignee of this Lease until such time as such Landlord Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Landlord under this Lease and upon such Landlord Mortgagee's assigning such rights and interests to another party, such Landlord Mortgagee shall have no further such liability thereafter arising under this Lease.

(c) Nothing contained in this Article shall prevent Tenant's pursuing monetary damages or injunctive relief relating to Landlord's default as permitted under this Lease.

(d) The provisions of this Article are solely for the benefit of and enforceable by the Landlord Mortgagee and are not for the benefit of, and may not be enforced by, Landlord.

ARTICLE XV. OTHER COVENANTS AND AGREEMENTS

15.1 Estoppel Certificates. Upon 30 days' prior written notice not more than twice in any 12-month period, the Landlord and the Tenant each agree to sign and deliver to the other party a statement certifying (a) that this Lease is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding party's knowledge, the requesting party is not in breach of this Lease (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Lease. Any such certificate from Landlord shall be in form and content acceptable to Landlord, Tenant and any Mortgagee requesting same. This certificate may only be relied upon by the party requesting the certificate and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any Person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.

ARTICLE XVI. SURRENDER

No act by Landlord will be an acceptance of a surrender of the Property, and no agreement to accept a surrender of the Property will be valid unless it is in writing and signed by Landlord. At the end of the Term or the termination of Tenant's right to possess the Property, Tenant shall: (a) deliver to Landlord the Property with all improvements located thereon in good repair and condition, reasonable wear and tear (subject however to Tenant's maintenance obligations) and damage by Casualty (subject to Section 17.1), and (b) deliver to Landlord all keys to the Property in Tenant's possession or control. Provided that there is then no Event of Default hereunder, Tenant may remove all personal property and Trade Fixtures in the Property

installed by Tenant. Notwithstanding the previous sentence, Tenant, without notice from Landlord, shall remove all Hazardous Materials and all additions, alterations, improvements, machinery and movable and nonmovable fixtures relating to the use, testing or storage of such Hazardous Materials in compliance with all Legal Requirements prior to the expiration of the Term. All items required to be removed hereunder and not so removed will, at the option of Landlord, be deemed abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord on reasonable notice to Tenant and without any obligation to account for such items, and Tenant shall pay for the actual and reasonable costs incurred by Landlord in connection therewith. All work required of Tenant under this Article will be done in a good and workmanlike manner, in accordance with all Legal Requirements, and so as not to damage the Property in any material respect. Tenant shall, at its expense, repair all damage caused by any work performed by Tenant under this Article.

ARTICLE XVII. CASUALTY AND CONDEMNATION

17.1 Damage or Destruction.

(a) Damage or Destruction.

(i) Notice of Damage or Destruction. Tenant shall give Landlord immediate written notice if any portion of the Property is damaged or destroyed by fire, casualty, or other cause ("Casualty"). Tenant shall appear in any proceeding or action to defend, negotiate, prosecute, or adjust any claim for any insurance payment on account of any Casualty and shall take all appropriate action in connection with any such Casualty. No settlement of any such proceeding or action will be made by Tenant or Landlord without the prior written consent of the other party hereto, which consent will not be unreasonably withheld.

(ii) Tenant's Obligation to Repair. In the event of a Casualty, whether partial or total, and whether or not such Casualty is covered by insurance, Tenant shall repair, restore, and rebuild the Property to substantially the same or better condition as existed immediately prior to such Casualty, all in accordance with Legal Requirements. Tenant shall be solely responsible for and shall pay the balance, if any, of the costs to so restore the Property.

(iii) Casualty During Last 7 Lease Years. Notwithstanding the foregoing, if a Casualty occurs during the last 7 years of the Term, Tenant shall have the following options:

(A) Lease Termination. Tenant may elect not to repair and restore the Property, but instead terminate this Lease by giving written notice of termination to Landlord within 150 days after the date of the Casualty. If Tenant elects to so terminate this Lease, Tenant shall, at Tenant's expense, raze the Improvements and level, clear, clean, and otherwise put the Land in good order and in a safe condition and the

insurance proceeds shall be available to pay for or reimburse Tenant for the cost of such work, with the balance of the remaining insurance proceeds being distributed to the Mortgagees for application on the Mortgages, and then the balance of the proceeds are to be distributed to Landlord.

(B) Lease Continuance. If Tenant does not elect to terminate this Lease as provided herein and repairs and restores the Property, the Term shall be extended for a period equal to the time reasonably required for Tenant to so repair and restore the Property.

(b) Conditions Precedent to Restoration by Tenant. If Tenant is required or elects to repair or restore the Property after a Casualty, the insurance proceeds, after deduction therefrom of all reasonable expenses actually incurred in settling or adjusting the claim, including attorneys' fees, will be available to Tenant for the repair and restoration of the Property on and subject to the following terms and conditions:

(i) Event of Default. No Tenant Event of Default Exists.

(ii) Construction Costs Covered. Tenant furnishes to Landlord an estimate of the cost to fully restore the Property, and Landlord is satisfied that the insurance proceeds actually available to Tenant hereunder, plus any additional amount supplied by Tenant from other sources (which additional amount will be escrowed with the funds described in section (c)(i) below and used prior to the insurance proceeds) are sufficient to pay all of the costs of such restoration.

(iii) Construction Quality and Compliance. Prior to commencement of construction of the restoration work, Tenant obtains all necessary permits from all Governmental Authorities.

(iv) Construction Contract Terms. Tenant has furnished Landlord a copy of the construction contract(s) for such restoration complying with the provisions of this Lease.

(c) Disbursal of Proceeds. If the conditions set forth immediately above are satisfied, then Landlord and Tenant shall execute an escrow agreement with an Escrow Agent, which shall contain the following provisions:

(i) Deposit of Funds. Landlord and Tenant shall cause the insurance company to deposit with the Escrow Agent the available insurance proceeds and Tenant shall deposit with the Escrow Agent the amount of the estimated costs in excess of the available insurance proceeds (unless Tenant has made arrangements reasonably acceptable to Landlord for the financing and funding of such amount as provided above).

(ii) Construction Draws. The Escrow Agent shall disburse such funds, within 10 days after written request of Tenant and provided the Escrow Agent does not receive written objection by Landlord to any or all of such requested

disbursement within said 10 day period (provided Landlord shall have no right to object in the event Tenant is restoring the Property in accordance with the terms of this Lease), upon delivery by Tenant to the Escrow Agent (with a copy to Landlord) of draw requests for the amount of the restoration costs then incurred by Tenant (together with bills paid affidavits, releases of liens and other evidence of the payment of such costs as Landlord may reasonably request) and a certificate from Tenant's architect certifying that the work for which such reimbursement is requested has been completed in accordance with the plans; provided an amount equal to 10% of such costs (the "Retainage") shall be retained from each reimbursement payment. The Retainage shall be paid to Tenant 35 days after the date of the completion of the restoration, as evidenced by an affidavit of completion executed by Tenant, Tenant's architect and the general contractor, subject to Tenant's delivery to Landlord and the Escrow Agent of a final certificate of occupancy issued by the applicable Governmental Authority and all bills paid affidavits and releases of liens from the general contractor and all subcontractors furnishing labor or materials.

(iii) Disposition of Remainder of Insurance Proceeds. Subject to the terms of any Mortgage (which shall govern and control over this subsection), any and all insurance proceeds remaining after deduction of all reasonable expenses incurred by Landlord and Tenant in settling or adjusting the claim (including reasonable attorneys' fees) in excess of the cost of such repairs and restoration of the Property or clearance shall be paid to Tenant.

17.2 Condemnation.

(a) Action. Tenant shall appear in any proceeding or action to defend, negotiate, prosecute, or adjust any claim for any award or compensation on account of any actual or threatened condemnation or eminent domain proceedings or other action by any Person having the power of eminent domain or condemnation (each, a "**Condemnation**") and shall take all appropriate action in connection with any such Condemnation.

(b) Total Taking. During the Term, if title to and possession of all of the Property is taken by Condemnation, then this Lease shall terminate on the day of the earlier to occur of the vesting of legal title to the Property in the entity exercising the power of Condemnation and the taking of actual physical possession of the Property by the entity exercising such power. After such termination, both Landlord and Tenant are released from all obligations under this Lease; except for the provisions of this Lease that expressly survive termination of this Lease. Any compensation or damages awarded or payable under this Section will be distributed as provided in Section 17.1(c).

(c) Partial Taking.

(i) Partial Taking Only and No Adverse Effect on Operations. If a partial taking shall occur by the taking of a portion of the Property only which is unencumbered by the Improvements (a "Property Taking") and the Property Taking does not materially and adversely affect the operations of the

Improvements, then in that event, this Lease will not terminate and Landlord will be entitled to all Condemnation awards payable as a result of the Property Taking.

(ii) Partial Taking Only with Adverse Effect on Operations or Partial Taking of Property and Improvements. In the event that (A) a partial taking of the Property occurs which has a material adverse effect on the operations of the Improvements or (B) a material portion (but not all) of the Property shall be taken or condemned, then, Tenant may terminate this Lease by providing Landlord written notice of same within 60 days after Tenant has received written notice of the institution of a Condemnation action under this Section. Thereafter, this Lease shall terminate as of the effective date of the taking. On termination of this Lease pursuant to this Section, both Landlord and Tenant shall be released from all obligations under this Lease, except for the provisions of this Lease that expressly survive termination or expiration of this Lease. As used in this paragraph, the phrase "material portion" means (AA) a taking that results in the inability to qualify for all necessary licenses or permits from any Governmental Authority needed to rebuild, restore or renovate the remaining Improvements, (BB) a taking that causes access to the Property to be materially and permanently impaired, or (CC) a taking that reduces the parking available at the Property by 5% or more. Any compensation or damages awarded or payable under this Section shall be distributed as provided in Section 17.1(c).

(d) Participation by Tenant's Mortgage. Any Mortgagee shall be entitled to participate in any Condemnation proceedings.

(e) Voluntary Conveyance in Lieu of Condemnation. Nothing in this Article prohibits Landlord from voluntarily conveying all or part of the Property to a public utility, agency, or authority under threat of a taking under the power of condemnation. Any such voluntary conveyance shall be treated as a taking within the meaning of this Article.

(f) Temporary Taking. If the whole or any portion of the Property shall be taken for temporary use or occupancy, (i) the Term shall not be reduced, (ii) Tenant shall continue to satisfy all monetary obligations under this Lease, (iii) except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all non-monetary obligations under this Lease, and (iv) Tenant shall be entitled to receive the entire award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award shall be apportioned between Landlord and Tenant in the same ratio that the part of the period for which such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.

17.3 Distribution of Award. In any Condemnation proceeding that will or may potentially affect the Improvements, the parties will request that the condemning authority grant separate awards for the Fee Estate and the Leasehold Estate.

(a) Separate Awards. If separate awards are obtained, then Landlord shall be entitled to the award for the Fee Estate and Tenant shall be entitled to the award for the

Leasehold Estate (but without duplication). As between Tenant and any Mortgagee, the Mortgage shall govern distribution of the Tenant's award; provided that no Mortgagee shall have any claim to an award made for the Fee Estate.

(b) Combined Award. If separate awards are not obtained, then the parties shall have the Property that is being taken appraised. Such appraisal process will determine the percentage of any award that should be attributed to the Fee Estate (the "**Fee Estate Percentage**") and the percentage of any award that should be attributed to the Leasehold Estate excluding the Tenant's Fixtures (the "**Leasehold Estate Percentage**") (and the aggregate of such percentages must equal 100%). Landlord shall be entitled to the Fee Estate Percentage of any award and Tenant (or Mortgagee, if applicable) shall be entitled to the Leasehold Estate Percentage of any award. As between Tenant and any Mortgagee, the Mortgage shall govern distribution of the Leasehold Estate Percentage; provided that no Mortgagee shall have any claim to the Fee Estate Percentage.

(c) Use of Condemnation Award. If this Lease is not terminated by Tenant as a result of the condemnation as expressly permitted above, any condemnation awards received by Tenant shall be used to restore the Improvements to an architecturally whole unit, and, to the extent possible given the nature of the taking, to substantially the same or better condition as existed immediately prior to such taking. Any Condemnation awards payable to Tenant for restoration or repair of the Property will be held and disbursed as set forth in Section 17.1(c)(i).

ARTICLE XVIII. ASSIGNMENTS AND SUBLEASES

18.1 Prior to Permitted Assignment Date. Without Landlord's prior written consent (which consent may be withheld in Landlord's sole discretion), Tenant may not assign this Lease or sublet a portion of the Property to anyone other than an End User prior to the date on which leases covering 75% of the net rentable square feet of the Improvements are occupied by End Users paying market rent (i.e., the rent for similar premises that would be charged in an arm's length transaction between unaffiliated, informed and willing tenants and landlords) (such date, the "**Permitted Assignment Date**"). The 75% End User threshold in this section will not include any sublease with an Affiliate of Tenant if such lease(s) causes more than 15% of the applicable square footage of the Improvement to be leased to Affiliates of Tenant. This section shall apply to the hypothecation (except for financing covered by ARTICLE XIII hereof) of any of Tenant's interest in the Leasehold Estate (except for financing covered by ARTICLE XIII hereof), including, but not limited to, the transfer of more than a majority of the ownership interests in Tenant or Tenant's controlling entities.

18.2 Following Permitted Assignment Date.

(a) Following the Permitted Assignment Date, without Landlord's prior written consent (which consent shall not be unreasonably withheld), Tenant may not assign this Lease or sublet a portion of the Property (a "**Transfer**") to anyone other than an End User. This section shall apply to the hypothecation of any of Tenant's interest in the Leasehold Estate (except for financing covered by ARTICLE XIII hereof), including,

but not limited to, the transfer of more than a majority of the [or controlling] ownership interests in Tenant or Tenant's controlling entities. Landlord will be deemed to have reasonably withheld its consent to any proposed assignment or subletting upon the existence of any of the following: (i) Landlord's determination (in its sole discretion) that such subtenant or assignee is not of the character or quality of a tenant to whom Landlord would have originally leased the Property, (ii) the fact that such sublease or assignment is not in form and of substance reasonably satisfactory to Landlord, (iii) such sublease or assignment conflicts in any manner with this Lease, (iv) the proposed subtenant or assignee is a governmental entity, (v) such sublessee or assignee has a net worth less than that of Tenant at the time of the requested transfer, or (vi) the sublessee or assignee does not have extensive and relevant experience in the ownership of mixed use, urban retail developments.

(b) Any request for a Transfer by Tenant must be in writing (a "**Transfer Request**") and include (i) the proposed effective date of the Transfer, (ii) the proposed form of all Transfer documentation, (iii) all of the terms of the proposed Transfer, (iv) identity of the proposed transferee (including principals and development/management experience), (v) current financial statements of the proposed transferee, (vi) business, credit and personal references and business history of the proposed transferee, (vii) proposed development/management plan for the Property, and (viii) any other information reasonably required by the Landlord which will enable the Landlord to determine the financial responsibility, experience, character, and reputation of the proposed transferee. If the Landlord fails to notify Tenant in writing of its approval, disapproval or comments to the complete Transfer Request within 60 days of the Landlord's deemed receipt thereof, Tenant may provide the Landlord a second written Transfer Request (containing a statement in all bold and capital letters that reads "**FAILURE TO RESPOND TO THIS TRANSFER REQUEST WITHIN 30 DAYS SHALL CONSTITUTE DEEMED APPROVAL OF THIS TRANSFER REQUEST**") which if not responded to by the Landlord within 30 days after deemed receipt will be deemed approval of the Transfer Request. In such event and on Tenant's written request to the Landlord, the Landlord will provide written confirmation to Tenant of such deemed approval. The Landlord will notify the applicant in writing of any materials that the Landlord believes are missing to make a Transfer Request complete. The Landlord may: (x) approve the Transfer Request with or without conditions; (xi) approve a portion of the Transfer Request and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (xii) disapprove the Transfer Request.

18.3 Subletting to End Users; Nondisturbance. Nothing in this Article will prevent Tenant from subleasing a portion of the Improvements to End Users. Upon Tenant's written request, the Landlord will enter into a nondisturbance agreement concerning a Nondisturbance Sublease which will be in form and content reasonably satisfactory to Landlord, Tenant and the affected End User.

18.4 Assignments and Subletting Generally. Without limiting Landlord's consent rights and as a condition to obtaining Landlord's consent, (i) each assignee must assume all obligations under this Lease and (ii) each sublessee must confirm that its sublease is subject and

subordinate to this Lease. No assignee or sublessee of the Property or any portion thereof may assign or sublet the Property or any portion thereof without the prior written consent of Landlord, which consent may not be unreasonably withheld (provided nothing herein shall require Landlord's consent to any subleasing or assignment of any portion of the Improvements by End Users to subsequent End Users). Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and/or sublettings. Tenant shall deliver to Landlord, at least thirty (30) days prior to the date Tenant desires to consummate a proposed assignment or subletting, written notice of the intended assignment or subletting, naming the proposed assignee or subtenant, as the case may be, together with a current balance sheet and income statement for the proposed subtenant or assignee, a copy of the proposed assignment and assumption agreement, and such other information as Landlord may reasonably request in writing. Tenant shall deliver to Landlord a copy of each assignment or sublease entered into by Tenant promptly after the execution thereof, whether or not Landlord's consent is required in connection therewith. All reasonable legal fees and expenses incurred by Landlord in connection with any assignment or sublease proposed by Tenant will be the responsibility of Tenant and will be paid by Tenant within ten (10) days of receipt of an invoice from Landlord. Nothing in this Article will prevent Tenant from pledging its interests to a Mortgagee pursuant to ARTICLE XIII hereof or any succession of rights provided for in ARTICLE XIII, nor shall any such pledging or Mortgagee's succession, whether by foreclosure or by conveyance or assignment in lieu thereof, or otherwise, constitute a Potential Event of Default or an Event of Default hereunder, and Landlord acknowledges that such Mortgagee may succeed to the interest of the Tenant hereunder and in and to the Leasehold Estate in the manner, and to the extent, provided for in ARTICLE XIII hereof. ***[POWER PLANT ONLY: If the Tenant is also the manager of the Offsite Parking Garage under a management agreement between the Landlord and the Tenant, a permitted assignment of this Lease to a third party will also constitute an assignment of such management agreement to such third party.]***

18.5 Assignments after Bankruptcy. If, pursuant to Applicable Bankruptcy Law, Tenant (or its successor in interest hereunder) is permitted to assign this Lease in disregard of the restrictions contained in this Article (or if this Lease shall be assumed by a trustee for such person), the trustee or assignee shall cure any Event of Default under this Lease and shall provide adequate assurance of future performance by the trustee or assignee, including (a) the source of performance of Tenant's obligations under this Lease (for which adequate assurance shall mean the deposit of cash security with Landlord in an amount equal to the sum of one (1) year's of operating expenses, then reserved hereunder for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord, without interest, for the balance of the Term as security for the full and faithful performance of all of the obligations under this Lease on the part of Tenant yet to be performed and that any such assignee of this Lease shall have a net worth exclusive of good will, computed in accordance with the generally accepted accounting principles, equal to at least ten (10) times the aggregate of the operating expenses under this Lease); and (b) that the use of the Property shall be in accordance with the terms hereof and, further, shall in no way diminish the reputation of the Property as a "Class A" mixed use urban development or impose any additional burden upon the Property or increase the services to be provided by Landlord. If all Events of Defaults are not cured and such adequate assurance is not provided within sixty (60) days after there has been an order for relief under Applicable Bankruptcy Law, then this Lease shall be deemed rejected,

Tenant or any other person in possession shall immediately vacate the Property, and Landlord shall be entitled to retain any Rent, together with any security deposit previously received from the Tenant, and shall have no further liability to Tenant or any person claiming through Tenant or any trustee.

18.6 Bankruptcy of Assignee. If Tenant assigns this Lease to any party and such party or its successors or representatives causes termination or rejection of this Lease pursuant to Applicable Bankruptcy Law, then, notwithstanding any such termination or rejection, Tenant (a) shall remain fully liable for the performance of all covenants, agreements, terms, provisions and conditions contained in this Lease, as though the assignment never occurred and (b) shall, without in any way limiting the foregoing, in writing ratify the terms of this Lease, as same existed immediately prior to the termination or rejection.

ARTICLE XIX. DEFAULT AND REMEDIES

19.1 Default. Each of the following events is an “**Event of Default**” by Tenant under this Lease:

(a) Monetary Defaults. Failure by Tenant to pay any sums of money stipulated in this Lease to be paid by Tenant, and such failure continues for a period of 30 days after written notice thereof has been delivered to Tenant.

(b) Non-Monetary Defaults. Failure by Tenant to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease (other than as set forth in subsection (a) above) and such failure continues for a period of 90 days after notice has been delivered to Tenant; provided however, that if any such failure (other than a failure involving payment of liquidated sums of money) cannot reasonably be cured within the 90-day period, then such failure will not be an Event of Default so long as Tenant has commenced to cure such failure after the effective date of the notice and within the 90-day period and proceeds in good faith, continuously, and with due diligence to remedy and correct any such failure.

(c) Other Agreements. An event of default occurs after any applicable grace, notice and/or cure periods under the MDA or the Declaration.

(d) Levy or Attachment. The initiation of any proceeding whereupon the Leasehold Estate, or any portion thereof, or in this Lease is levied upon or attached if such proceeding is not vacated, discharged or bonded within 60 days after the date of such levy or attachment.

(e) Bankruptcy, Receivership, Etc. The entry of any decree or order for relief by a court having jurisdiction in respect of Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of the assets of Tenant, or the entry of any decree or order with respect to winding-up or liquidation of the affairs of Tenant, if any such decree or order continues unstayed and in

effect for a period of 60 consecutive days

(f) Voluntary Proceedings. The commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Tenant to the appointment of or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or for any substantial part of the assets of Tenant, or any assignment made by Tenant for the benefit of creditors.

19.2 Remedies. During the existence of an Event of Default, Landlord will have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity or by this Lease:

(a) Landlord may terminate this Lease by giving written notice thereof to Tenant, in which event this Lease and the Leasehold Estate and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon the effective date of such notice and Tenant shall immediately surrender the Property to Landlord. If Tenant fails to immediately surrender the Property to Landlord, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Property and expel or remove Tenant and any other person who may be occupying the Property, or any part thereof, by force, if necessary, without having any civil or criminal liability therefor, to the extent permitted by Legal Requirements, and Tenant hereby agrees to pay to Landlord on demand the amount of all actual loss and damage which Landlord may suffer by reason of such termination, specifically including, but not limited to any increase in insurance premiums caused by the vacancy of the Property. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

(b) Landlord may enter upon and take possession of the Property and expel or remove Tenant or any other person who may be occupying the Property, or any part thereof, by force, if necessary, without being liable for prosecution or any claim for damages therefor; and without terminating this Lease, Landlord may (but shall be under no obligation to) lease, manage, and operate the Property and collect the rents, issues, and profits therefrom all for the account of Tenant, in the name of Tenant or Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such uses as Landlord in its absolute discretion may determine and Landlord may collect and receive any rents payable by reason of such reletting and credit to the satisfaction of Tenant's obligations hereunder the net rental thus received (after deducting therefrom all reasonable and actual costs and expense of repossessing, leasing, managing and operating the Property). No such re entry or taking of possession of the Property by Landlord shall be construed as an election on

Landlord's part to terminate this Lease unless a written notice of such termination is given to Tenant in accordance with the terms of this Lease. No repossession of or reentering on the Property or any part thereof pursuant to this subparagraph or otherwise and no reletting of the Property or any part thereof pursuant to this subparagraph shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such repossession or reentering.

(c) Enter upon the Property, by force if necessary, without having any civil or criminal liability therefor, and, with or without such entry upon the Property, do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease with interest from demand until payment at the Delinquency Interest Rate and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, **WHETHER CAUSED BY THE NEGLIGENCE OF LANDLORD OR OTHERWISE** (except such damages as are caused by the gross negligence or willful misconduct of Landlord).

19.3 Payment by Tenant. Tenant shall pay to Landlord all costs and expenses incurred by Landlord as a result of an Event of Default, including court costs and reasonable attorney's fees in (i) retaking or otherwise obtaining possession of the Property under this Lease, (ii) removing and storing Tenant's or any other occupant's personal property, (iii) repairing or restoring the Improvements to the condition in which Tenant is required to deliver the Improvements at the end of the Term, (iv) paying or performing the underlying obligation that gave rise to the subject default and that Tenant failed to pay or perform and (v) enforcing any of Landlord's rights under this Lease arising as a consequence of the Event of Default.

19.4 Other Remedies. Any termination of this Lease as provided in this Article will not relieve Tenant from the payment of any sum or sums that are due and payable to Landlord under the Lease at the time of termination, or any claim for damages then or previously accruing against Tenant under this Lease, and any such termination will not prevent Landlord from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Tenant for any Event of Default under the Lease. All rights, options, and remedies of either party contained in this Lease will be construed and held to be cumulative, and no one of them will be exclusive of the other, and the non-defaulting party will have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

19.5 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Lease will impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party will be in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, and any such waiver will not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

ARTICLE XX.

TRANSFER OF FEE ESTATE

[OFFICE BUILDING ONLY]

20.1 Conditions to Transfer. Landlord shall transfer the Fee Estate to Tenant upon satisfaction of the following:

- (a) No Bankruptcy Event, Event of Default or Potential Event of Default exists.
- (b) Completion of Construction of the Improvements has occurred.
- (c) At least 75% of the net rentable square feet of the Improvements are occupied by End Users paying market rent (i.e., the rent for similar premises in an arm's length transaction between unaffiliated, informed and willing tenants and landlords).
- (d) The hotel portion of the Hotel/Condo Property (as defined in the MDA) is open for business to the general public.
- (e) All of "Seaholm's" obligations under the MDA have been completed to the extent completion is required as of such date.

20.2 Transfer Mechanism. The transfer of the Fee Estate will be accomplished by a Deed (as defined in the MDA) and will be subject to (a) the Permitted Encumbrances and (b) all matters consented to by Tenant, and (c) all other matters arising from an act or omission of Tenant. Tenant will pay all costs, fees and expenses associated with the transfer of the Fee Estate.

ARTICLE XXI. MISCELLANEOUS

21.1 Right of Entry and Inspection. Upon 24 hours prior written notice to Tenant, Tenant will permit Landlord or Landlord's agents to enter on the Property for the purposes of determining whether Tenant is in compliance with the terms of this Lease.

21.2 No Partnership or Joint Venture. The relationship between Landlord and Tenant at all times will remain solely that of landlord and tenant and will not be deemed a partnership or a joint venture.

21.3 Time Is of the Essence. Time is of the essence for each provision of this Lease for which time is an element.

21.4 Release of Landlord. If Landlord sells or transfers all or part of the Land and as a part of the transaction assigns its interest as Landlord in and to this Lease, then from and after the effective date of the sale, assignment, or transfer, Landlord will have no further liability under this Lease to Tenant, except as to matters of liability that have accrued and are unsatisfied as of that date, it being intended that the covenants and obligations of Landlord contained in this Lease will be binding on Landlord and its successors and assigns only during and in respect of their

respective successive periods of ownership of the fee. Nothing contained herein will release Landlord from any of its obligations under the MDA.

21.5 Delivery of Notices. Formal notices, demands and communications between the parties must be in writing and will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

Tenant: Seaholm Development, LLC
c/o Southwest Strategies Group
1214 W. 6th Street, Suite 220
Austin, TX 78703-5261
Attention: John Rosato

with a copy to: Seaholm Development, LLC
c/o Centro Partners LLC
823 Congress Avenue, Suite 800
Austin, TX 78701
Attention: Kent Collins

with a copy to: DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, Texas 78701
Attention: Rick Reed

Guarantor: CIM Fund III, LP
c/o CIM Group, Inc.
6922 Hollywood Boulevard
Ninth Floor
Los Angeles, CA 90028
Attention: Jeff Rosen

Landlord: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

with a copy to: City of Austin
Economic Growth and Redevelopment Services Office
301 West 2nd Street
Austin, Texas 78701
Attention: Director

and: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: City Attorney

and: Thompson & Knight L.L.P.
98 San Jacinto, Suite 1900
Austin, Texas 78701
Attention: James E. Cousar/Andrew A. Ingram

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of certified mail 2 Business Days following deposit of such instrument in the United States Mail.

21.6 Parties Bound. This Lease will be binding upon and inure to the benefit of the parties to the Lease and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

21.7 Severability. If any term(s) or provision(s) of this Lease or the application of any term(s) or provision(s) of this Lease to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Lease or the application of such term(s) or provision(s) of this Lease to other situations, will remain in full force and effect unless amended or modified by mutual consent of the parties; provided that, if the invalidation, voiding or unenforceability would deprive either the Landlord or the Tenant of material benefits derived from this Lease, or make performance under this Lease unreasonably difficult, then the Landlord and the Tenant will meet and confer and will make good faith efforts to amend or modify this Lease in a manner that is mutually acceptable to the Landlord and the Tenant.

21.8 Prior Agreements Superseded. Except for the MDA and the Declaration, this Lease constitutes the sole and only agreement of the parties to the Lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of the Lease.

21.9 Amendment. No amendment, modification, or alteration of the terms of this Lease will be binding unless it is in writing, dated subsequent to the date of this Lease, and duly executed by the parties to this Lease.

21.10 Merger. There will be no merger of this Lease or of the Leasehold Estate by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the Leasehold Estate or any interest in this Lease or such Leasehold Estate, or (b) any right, title or interest in the Property.

21.11 Attorney's Fees and Interest. Should any legal action be brought by either party because of a breach of this Lease or to enforce any provision of this Lease, the prevailing party will be entitled to reasonable attorney's fees and such other costs as may be found by the court or arbitrator. If any party hereto fails to pay any amount under this Lease when it is due, that amount will bear interest from the date it is due until the date it is paid at the Delinquency

Interest Rate.

21.12 Limitation on Liability. No member, shareholder, officer, director, manager, official, representative or employee of the Landlord or the Tenant will be personally liable to the other party to this Lease for any default or breach by the first party, or for any amount which may become due to the other party, or on any obligations under the terms of this Lease.

21.13 Construction of Agreement. This Lease has been reviewed and revised by legal counsel for both the Tenant and the Landlord, and no presumption or rule that ambiguities will be construed against the drafting party will apply to the interpretation or enforcement of this Lease.

21.14 No Third Party Beneficiaries. The Landlord and the Tenant hereby renounce the existence of any third party beneficiary to this Lease and agree that nothing contained herein will be construed as giving any other Person or entity third party beneficiary status.

21.15 Counterparts. This Lease may be executed by each party on a separate signature page, and when the executed signature pages are combined, will constitute one (1) single instrument.

21.16 Time of Performance. All performance dates (including cure dates) expire at 5:00 p.m. Central Standard or Daylight Time, as then applicable, on the performance or cure date. A performance or cure date which falls on a day other than a Business Day is deemed extended to the next Business Day.

21.17 Manner of Payment. All Rent and other sums payable to Landlord must be paid in the lawful money of the United States of America at the time of payment to Landlord at Landlord's address for notices as set forth herein, or at such other address as may be designated by Landlord.

21.18 Landlord Consents and Approvals. Unless expressly stated otherwise herein to the contrary, any approval, agreement, clarification, determination, consent, waiver, estoppel certificate, estimate or joinder by the Landlord required hereunder may be given by the City Manager of the City of Austin or its designee; provided however, except for clarifications, minor amendments or minor modifications, the City Manager does not have the authority to execute any substantial modification or amendment of this Lease without approval of the Austin City Council.

21.19 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the Landlord and the Tenant, errors are made in this Lease in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Lease or any of its exhibits or any other similar matters, the parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Lease.

21.20 Memorandum. Landlord and Tenant shall execute a Memorandum of this Lease at the same time as they execute this Lease in the form attached as Exhibit B. The Memorandum of Lease will be recorded in the Real Property Records. This Lease, and not the Memorandum of

Lease, is what creates the Leasehold Estate and whether the Lease is terminated or expires is governed by the terms of this Lease.

21.21 LANDLORD'S REGULATORY CAPACITY VERSUS LANDOWNER CAPACITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD IS EXECUTING THIS LEASE SOLELY IN ITS CAPACITY AS AN OWNER OF THE LAND (E.G., THE RIGHTS AND OBLIGATIONS OF LANDLORD WILL NOT BE MORE THAN THOSE OF A PRIVATE LANDOWNER) AND NOT IN ITS CAPACITY AS A REGULATORY BODY (E.G., REGULATORY APPROVALS OR IN ANY OTHER REGULATORY CAPACITY). FURTHER, TENANT SPECIFICALLY ACKNOWLEDGES THAT THE LANDLORD CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.

21.22 LIMITED WAIVER OF SOVEREIGN IMMUNITY. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, LANDLORD VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY TENANT SEEKING ONLY THE REMEDIES SPECIFIED IN THIS LEASE. LANDLORD DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS LEASE.

21.23 Brokers. Tenant warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Tenant agrees to indemnify Landlord and to hold Landlord harmless from and against any and all costs, expenses or liability for commissions or other compensations or charges claimed by any broker or agent with respect to this Lease, through such broker's or agent's dealings with Tenant. Landlord warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Landlord agrees to indemnify Tenant and to hold Tenant harmless from and against any and all costs, expenses or liability for commissions or other compensations or charges claimed by any broker or agent with respect to this Lease, through such broker's or agent's dealings with Landlord.

21.24 Landlord's Lien. The statutory landlord's lien granted to Landlord pursuant to the Texas Property Code will be subject and subordinate to any Mortgage. Landlord will execute additional documentation acceptable to Landlord and a Mortgagee evidencing such subordination.

[End of Text – Signatures on Following Pages]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Commencement Date.

LANDLORD:

THE CITY OF AUSTIN, a Texas home rule city
and municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form and content for the Landlord
by the Landlord's external legal counsel:

THOMPSON & KNIGHT L.L.P.

[Signature Block on Following Page]

TENANT:

SEAHOLM DEVELOPMENT, LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

**EXHIBIT A
TO GROUND LEASE**

Land

**EXHIBIT B
TO GROUND LEASE**

Memorandum of Ground Lease

**EXHIBIT C
TO GROUND LEASE**

Offsite Parking Garage Land

EXHIBIT H
TO MASTER DEVELOPMENT AGREEMENT

Form of Guaranty

GUARANTY

This Guaranty (this “**Guaranty**”) is made to be effective as of _____, 2008 by CIM FUND III, L.P., a Delaware limited partnership (the “**Guarantor**”) in favor of THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the “**City**”).

RECITALS:

A. SEAHOLM DEVELOPMENT, LLC, a Delaware limited liability company (“**Seaholm**”) has entered into that certain Master Development Agreement with the City dated of even date herewith (the “**MDA**”) and will enter into a Special Warranty Deed (the “**Deed**”) and one or more Ground Leases with the City (collectively the “**Ground Lease**”) as contemplated in the MDA.

B. Guarantor will benefit by the execution of each of the MDA and the Ground Lease.

C. As a condition to entering into each of the MDA and the Ground Lease, the City requires Guarantor to guaranty certain obligations of Seaholm to the City.

D. Capitalized terms used herein but not defined shall have the meanings assigned to such terms in the MDA.

For good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. Guarantor unconditionally guarantees unto the City the prompt and complete payment when due of:

(a) any and all liabilities, losses, costs, damages, expenses, claims, reasonable attorneys’ fees, experts’ fees, and consultants’ fees incurred by the City as a result of:

(i) Seaholm’s generation, handling, treatment, transportation, manufacture, processing, distribution, use, storage or disposal of any material classified by an environmental law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “acutely hazardous,” “extremely hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties (excluding, however, the environmental obligations that are the obligation of the City as specifically set forth in MDA, the Ground Lease and/or the Deed);

(ii) Seaholm’s commission of any criminal act, fraud or misrepresentation by, or for the benefit of, Seaholm in connection with the MDA

or the Ground Lease;

(iii) insurance proceeds which are received by or on behalf of Seaholm and which are not applied as required under the terms of the MDA or the Ground Lease;

(iv) Seaholm's failure to maintain the insurance required by the provisions of the MDA and the Ground Lease;

(v) the existence of any mechanic's, materialman's, tax or other similar lien filed against the Property as the result of an act or omission of Seaholm;

(vi) Seaholm's failure to pay any taxes or assessments concerning the Property;

(vii) the Property, or any part thereof, becoming an asset in a bankruptcy or insolvency proceeding regarding Seaholm; provided, however, that the guaranty obligation of Guarantor under this subsection shall only extend to reasonable attorneys' fees, expert witness fees and consultants' fees incurred by the City as a result thereof (and no other liabilities, losses, costs, damages, expenses or claims of any kind), and provided, further, that, this subsection shall not apply if an involuntary bankruptcy is filed by the City;

and, following the occurrence of a Major Event of Default, the performance of the following obligations:

(b) following Commencement of Construction by Seaholm, to complete and to pay the cost of Completion of Construction of the Improvements;

(c) following Commencement of Construction by Seaholm, to pay all expenses, charges, costs and fees of or relating to the requirements of (b) above, including, without limitation, all permitting fees, licensing fees, utility expenses, insurance expenses, penalties, charges and amounts payable to all architects, engineers, construction managers, contractors, subcontractors, tenants and material suppliers engaged in connection with any of the foregoing;

each in accordance with the terms of the MDA and the Ground Lease (the obligations in (b) and (c) above, collectively, the "**Completion Obligations**" and the obligations in (a), (b) and (c) above, collectively, the "**Guaranteed Obligations**"); provided, that, notwithstanding the foregoing or any provision express or implied of this Guaranty to the contrary, in no event may the City enforce the Completion Obligations at any time prior to the Commencement of Construction by Seaholm.

2. If a Major Event of Default occurs (taking into account any applicable grace, notice or cure period), then upon the earlier to occur of a written request of the City or at the written election of the Guarantor, the Guarantor shall have the right to elect by written notice to

the City (the “**Completion Election Notice**”) within 30 days following such written request to either:

(a) Perform the Completion Obligations. If, in the reasonable judgment of the Guarantor, the Dry-In Condition (as defined in the Deed and the Ground Lease, as applicable) cannot be achieved by the Guarantor on or before the Dry-In Condition Date (as defined in the Deed and the Ground Lease, as applicable), the Guarantor shall propose in writing to City a new Dry-In Condition Date (together with evidence reasonably substantiating such new date). If the proposed replacement Dry-In Condition Date is not approved by City (in its reasonable discretion) within 10 days following such written request, Guarantor and City shall work together during the following 10 days to agree upon the Dry-In Condition Date. If at the expiration of such second 10 day period, the parties still do not agree on the Dry-In Condition Date, Guarantor or City may make an Arbitration Demand that such Issue be resolved by an Arbitrator through a binding arbitration process (as the terms “Arbitration Demand” and “Issue” and as the arbitration process is provided for in the Deed and the Ground Lease, as applicable).

If Guarantor shall elect to perform the Completion Obligations pursuant to such Completion Election Notice, then the City shall not have the right to enforce (and shall be barred from enforcing) its remedy or right to:

- (i) repurchase the Property under the MDA or the Deed;
- (ii) seek to or to enforce its rights or remedies under MDA Sections 10.2(a), 10.2(e), 10.2(f), 10.2(g) (limited solely to construction/reimbursement obligations) and 10.2(h), or
- (iii) enforce the corresponding similar rights under the Deed and the Ground Lease,

notwithstanding the prior occurrence or continuance of any Event of Default or Major Event of Default under the MDA or any of the Exhibits to the MDA, provided, however, that:

(x) the City shall have and retain all other rights and remedies against Seaholm under MDA Sections 10.2(b), 10.2(c), 10.2(d), 10.2(g) (limited to nonconstruction/nonreimbursement obligations) and the exhibits to the MDA concerning any past and future Event of Default thereunder (excluding, however, rights and remedies attendant to any Major Event of Default that resulted in the Completion Election Notice), with the foregoing limitation and exclusion equally applicable to the rights of the City under MDA Section 9.2 solely with respect to the other provisions listed in this paragraph (e.g., the City may not enforce liquidated damages under MDA Sections 10.2(d) or 9.2 of the MDA), and

(xi) if Guarantor shall default in the performance of the Completion Obligations in accordance with the applicable terms of the MDA and the Exhibits to the MDA (subject to all grace periods, and notice and cure rights therein contained with respect to such terms), then the right of the City to so enforce such

barred rights and remedies thereupon shall be reinstituted (and no remedy will be limited) with respect to any such Event of Default, or

(xii) if Guarantor shall Transfer its interest in the Property, then the right of the City to so enforce such barred rights and remedies thereupon shall be reinstituted (and no remedy will be limited) with respect to any such Event of Default.

In furtherance and not in limitation of the foregoing, Guarantor shall have the right by any suit or action at law or in equity to stay any effort by the City to enforce any right or remedy barred by operation of this Section 2(a).

(b) Pay to the City a liquidated damages payment (the “**Liquidated Damages Payment**”) equal to the sum of: (i) the aggregate amount of all Incentives paid by the City to Seaholm or Guarantor, *plus* (ii) \$1,000,000. The Liquidated Damages Payment shall be paid to the City within 10 days following the date of the Completion Election Notice. The Liquidated Damages Payment shall be retained by the City as liquidated damages, and not as a penalty, the parties agreeing the estimation of the damages concerning a failure to complete construction would be difficult to compute. If Guarantor elects to pay the Liquidated Damages Payment, neither Seaholm nor Guarantor shall have any claim, right, title or interest to the value of any work completed on the Property (except for any Repurchase Price payable by the City under a repurchase of the Property as provided for in the Deed or the Termination Price payable by the City under a termination of the Ground Lease as provided in the Ground Lease).

If Guarantor fails to deliver the Completion Election Notice, Guarantor will be deemed to have elected option 2(b) and the Completion Election Notice will be deemed to be given on the date which the Completion Election Notice was due.

If Guarantor elects, or is deemed to elect, option 2(b) above and title to the Property is held by Seaholm or Guarantor, in lieu of receiving the \$1,000,000 payment in subsection 2(b)(ii) above, the City may elect in writing within 30 days following the date of the Completion Election Notice to have Guarantor raze (or caused to be razed) all existing improvements on the Property (other than the Power Plant Improvements) and level, clear, clean, and otherwise put the applicable portion of the Property in good order and in a safe condition, all of which must be completed within 180 days following the date of the Completion Election Notice. If the City fails to deliver the election required by this paragraph, the City will be deemed to elect NOT to have Guarantor raze the improvements.

If Guarantor elects or is deemed to elect option 2(b) above, then, upon full payment of the Liquidated Damages Payment (and, if applicable, the razing of such improvements):

(aa) the obligation of the Guarantor hereunder to perform the Completion Obligations thereupon shall terminate and expire, and

(bb) the City thereupon shall have no further rights or remedies against Seaholm under:

(i) Sections 9.2 (except with respect to Pending Claims) and 10.2 of the MDA, but specifically excluding the rights of indemnity/hold harmless with respect to Pending Claims, reconveyance, termination and assignment contained therein (and specific performance in connection with such rights),

(ii) the Deed, but specifically excluding the right of reconveyance (and specific performance in connection with such right), and

(iii) the Ground Lease but specifically excluding the rights of termination and indemnity/hold harmless with respect to Pending Claims (and specific performance in connection with such right).

The City expressly retains its rights and remedies under Section 1(a) hereof. As used in this Section 2(bb), the term "Pending Claims" means a third party "Claim" (i.e., a claim by a third party against "Indemnatee" for which Seaholm is obligated to indemnify and hold harmless such Indemnatee) under Section 9.2 of the MDA or Section 12.4 of a Ground Lease of which the City has received notification either by notice of a filed Claim or written notice of a threatened Claim on or before the payment date of the Liquidated Damages Payment.

The foregoing provisions of this Section 2 shall supersede any provision express or implied to the contrary of this Guaranty, the MDA (other than the Mortgagee protections and seniority provisions of the MDA Section 12.5), the Declaration, the Ground Lease or the Deed.

3. Subject to the limitations set forth in Sections 1 and 2 above, the obligations under this Guaranty are unconditional and absolute, and if for any reason all or any portion of the Guaranteed Obligations is not paid or performed promptly when due (follow the expiration of any applicable grace, notice or cure period), Guarantor will immediately pay the same to the City or commence performance, as the case may be, regardless of any defense, right of setoff or counterclaim which Seaholm may have or assert, and regardless of whether the City has taken any steps to enforce any rights against Seaholm or any other entity to collect such sum, and regardless of any other condition or contingency.

4. Subject to the limitations set forth in Sections 1 and 2 above, the obligations, covenants, agreements and duties of Guarantor under this Guaranty will in no way be affected or impaired by reason of: (a) the release or waiver, by operation of law or otherwise, of the performance or observance by Seaholm or any co-guarantor, surety, endorser or other obligor of any express or implied agreement, covenant, term or condition to be performed or observed by such party, (b) the extension of the time for the payment or performance of all or any portion of the Guaranteed Obligations, (c) the supplementing, modification or amendment (whether material or otherwise) of the obligations of Seaholm, Guarantor or any surety for Seaholm, (d) any failure, omission, delay or lack of diligence on the part of the City, or any other person or entity, to enforce, assert or exercise any right, privilege, power or remedy conferred on the City or any other person or entity, or any action on the part of the City or such other person or entity granting indulgence or extension of kind, (e) the release, modification, waiver or failure to enforce any guaranty, surety or indemnity agreement whatsoever, (f) the release, modification, waiver or failure to enforce any right, benefit, privilege or interest under any contract or

agreement at any time when Seaholm is the developer under the MDA, (g) the voluntary or involuntary liquidation, dissolution, sale of any collateral, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or deficiency readjustment of debt of, or other similar proceedings affecting Seaholm or any other surety for Seaholm or any of the assets of Seaholm, (h) any invalidity of or defect or deficiency in the MDA or a Ground Lease, (i) the settlement, compromise or subordination of any obligation guaranteed hereby or hereby incurred, (j) the bankruptcy, insolvency or dissolution of Seaholm (even though the same shall render the Guaranteed Obligations void or unenforceable or uncollectible, in whole or in part, as against Seaholm), or (k) any other circumstance that might otherwise constitute a defense available to, or discharge of Seaholm or Guarantor, except a City Event of Default and/or payment and performance of the Guaranteed Obligations.

5. This is an absolute guaranty of payment and not of collection, and Guarantor waives any right to require that any action be brought against Seaholm or any other person or entity. This Guaranty is an absolute and unconditional guaranty of the payment and performance of the Guaranteed Obligations, is irrevocable and will continue in full force and effect until payment and performance in full of the Guaranteed Obligations.

6. Guarantor represents and warrants to the City that: (a) Guarantor is duly organized, legally existing and in good standing under the laws of the state of its organization, (b) this Guaranty has been duly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles generally affecting creditors' rights); (c) the execution, delivery and performance of this Guaranty (i) do not and will not violate any agreement, certificate or instrument by which Guarantor or its property may be bound, (ii) to the knowledge of Guarantor, do not and will not violate or conflict with any law, governmental rule or regulation or any judgment, writ, order, injunction, award or decree of any court, arbitrator, administrative agency or other governmental authority applicable to Guarantor or any indenture, mortgage, contract, agreement or other undertaking to which Guarantor is a party, and (iii) do not and will not require any consent of any other person or entity or any consent, license, permit, authorization or other approval of, registration with, any giving of notice to or any exemption by, any court, arbitrator, administrative agency or other governmental authority, which has not been obtained, (d) there is no action, suit or proceeding pending or, to the knowledge of Guarantor, in writing threatened against or affecting Guarantor before any court or administrative agency which might result in any material adverse change in the business or financial condition of Guarantor, (e) all financial statements supplied to the City by or on behalf of Guarantor prior to the execution of this Guaranty are true and complete in all material respects and fairly represent the financial condition of the subject thereof as of the dates thereof and for the periods then ended, (f) all financial statements furnished to the City by or on behalf of Guarantor will be true and complete in all material respects and fairly represent the financial condition of the subject thereof as of the dates thereof and for the periods then ended, (g) no material adverse change has occurred in the financial condition reflected in such financial statements since the respective dates thereof, (h) Guarantor is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental authority, or in the payment of any indebtedness for borrowed money or under the terms or provisions of any agreement or instrument evidencing or securing

any such indebtedness, and (i) the execution and delivery of this Guaranty to the City will directly or indirectly benefit Guarantor.

7. At the request of the City, Guarantor shall deliver to an advisor designated by the City in writing (“**Advisor**”), the annual audited financial statement of Guarantor for any fiscal year of the Guarantor, provided, that the foregoing delivery obligation is subject to the condition precedent that such Advisor first enter into a confidentiality agreement respecting its receipt of any such financial statement, which confidentiality agreement shall prohibit further disclosure to any person (including without limitation the City) and otherwise shall be upon terms acceptable to the Guarantor in the exercise of its reasonable judgment.

8. The City shall provide Guarantor notice of an Event of Default under the MDA contemporaneously with providing such notice to Seaholm. Without limitation of Section 2(a) hereof, Guarantor shall have the same period of time as is given to Seaholm under the MDA to cure such Event of Default. The City shall accept any timely cure of such Event of Default by Guarantor as the cure of Seaholm.

9. Guarantor expressly subordinates its rights to payment of any indebtedness owing from Seaholm to Guarantor, whether now existing or arising at any time in the future, to the prior right of the City to receive or require payment or performance in full of the Guaranteed Obligations and until payment and performance in full of the Guaranteed Obligations (and including interest accruing after any petition under the Bankruptcy Code, which post-petition interest Guarantor agrees shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in proceedings under the Bankruptcy Code generally).

10. No delay on the part of the City in exercising any right hereunder or failure to exercise the same will operate as a waiver of such right, nor will any single or partial exercise of any right, power or privilege bar any further or subsequent exercise of the same or any other right, power or privilege.

11. This Guaranty will not be changed orally, but shall be changed only by agreement in writing signed by the person against whom enforcement of such change is sought.

12. Any notice, request or other communication required or permitted to be given hereunder will be given in accordance with the notice provisions of the MDA or the Ground Lease, as applicable. Guarantor’s address is set forth on the signature page hereof.

13. The masculine and neuter genders used herein will each include the masculine, feminine and neuter genders and the singular number used herein will include the plural number. The words “person” and “entity” will include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations, and governments and any agency or political subdivision thereof.

14. This Guaranty will be binding upon and will inure to the benefit of, and be enforceable by, Guarantor and its trustees, receivers, successors and assigns, and will be binding upon and will inure to the benefit of, and be enforceable by, the City and its successors and assigns. Guarantor shall not assign its obligations hereunder without the prior written consent of

the City. This Guaranty may be executed in multiple counterparts, and each counterpart executed by any party shall be deemed an original and shall be binding upon the person or entity executing the same, irrespective of whether any other Guarantor has executed that or any other counterpart of this Guaranty. Production of any counterpart other than the one to be enforced shall not be required.

15. This Guaranty and the rights and obligations of the parties hereunder will in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Texas. Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of any State or federal court sitting in the County of Travis, State of Texas, over any suit, action or proceeding arising out of or relating to this Guaranty.

16. If any other person or entity will, with respect to any of the Guaranteed Obligations at any time, execute and deliver any guaranty, or any other agreement or document with substantially the same effect as this Guaranty, then the obligations of the Guarantor hereunder shall not thereby be limited or impaired, but instead shall be deemed to be joint and several obligations with such other guaranty to the extent of the Guaranteed Obligations hereunder.

17. Nothing herein shall be construed to cancel, amend, discharge or limit any other guaranty or similar obligation executed by Guarantor (in the capacity as a guarantor) in favor of the City.

[END OF TEXT-SIGNATURE ON FOLLOWING PAGE]

Exhibit H – Page 9
015990 000006 DALLAS 03-23-08 Draft MDA- EXHIBITS (clean).DOC