

NET GROUND LEASE

for

400 SNELLING AVENUE NORTH

SAINT PAUL, MN 55104-3822

METROPOLITAN COUNCIL,

Landlord

and

CITY OF SAINT PAUL,

Tenant

_____, 2022

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NET GROUND LEASE

THIS NET GROUND LEASE (this “Lease”) is made effective as of _____, 2022 (“Commencement Date”), and is entered into by and between the METROPOLITAN COUNCIL, a Minnesota public corporation and political subdivision, as landlord (“Landlord”) and the CITY OF SAINT PAUL, a municipal corporation of the State of Minnesota, as tenant (“Tenant”). The Landlord and Tenant are sometimes referred to individually and collectively as a “Party” or the “Parties.”

1. Definitions. As used in this Lease, the following terms shall have the following definitions:

- a. “Applicable Laws” means all applicable laws, ordinances and governmental regulations.
- b. “City Council” is the council of the City of Saint Paul.
- c. “Commencement Date” is _____, 2022; for avoidance of any doubt, the Commencement Date is the effective date of this Lease and the date that rent begins to accrue.
- d. “Condemning Authority” is defined in Section 27 hereof.
- e. “Contingency” is defined in Section 3 hereof.
- f. “Environmental Law” and “Environmental Laws” shall mean all Applicable Laws, including any consent decrees, settlement agreements, judgments, or orders issued by or entered into with a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Regulated Substances; or (e) the protection of endangered or threatened species.
- g. “Environmental Liability Assurances” shall mean such no further action letters, no association letters, and other assurances issued by the MPCA and other applicable regulatory authorities.
- h. “Event of Default” is defined in Section 28(a) hereof.
- i. “Existing Environmental Conditions” means environmental claims, conditions or Regulated Substances that occurred or came into existence on the Property prior to the Commencement Date.
- j. “Expiration Date” is defined in Section 5 hereof.

- k. “Facility” and “Facilities” shall mean the buildings and structures located or constructed on the Property consistent with any applicable master plan and the site plan for the development as approved by the City of St. Paul.
- l. “FTA” is the Federal Transit Administration, an agency within the United States Department of Transportation.
- m. “Governmental Authority” or “Governmental Authorities” shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof.
- n. “Initial Rent Payment Date” shall mean the date that is _____ () days following the Commencement Date.
- o. “Landlord” is the Metropolitan Council, a Minnesota public corporation and political subdivision under the laws of the State of Minnesota.
- p. “Lease” is the entirety of this Net Ground Lease.
- q. “MPCA” means the Minnesota Pollution Control Agency and any successor agency.
- r. “MPCA Covenants” means all covenants, directives, orders, assurances and restrictions imposed by or obtained from the MPCA or other Governmental Authority under Environmental Laws with respect to the Property, including but not limited no further action letters and no association letters applicable to the Property.
- s. “Parties” are the Landlord and Tenant, collectively.
- t. “Party” is the Landlord and Tenant, individually.
- u. “Permitted Sublease” means a Tenant’s Sublease with MUSC Holdings, LLC, a Minnesota limited liability company.
- v. “Plans” are (i) the site plan for the Property, and any material alterations to the site plan, and (ii) building plans for the initial construction of a Facility, and material alterations to a Facility.
- w. “Prime Rate” for interest accruing during any month shall mean the rate that is 300 basis points over the federal funds rate on the first business day of such calendar month.
- x. “Property” is the real property located at _____, City of Saint Paul, County of Ramsey, State of Minnesota, legally described on the attached Exhibit A, including any and all licenses, easements or other appurtenant rights and is subject to any and all easements, covenants,

restrictions or other encumbrances of record. **[NOTE: PROPERTY TO INCLUDE AIR RIGHTS OVER THE CENTRAL EASEMENT BUT NOT THE RIGHT TO CONSTRUCT IMPROVEMENTS ON THE CENTRAL EASEMENT]**

- y. “Real Estate Taxes” is defined in Section 8 hereof.
- z. “RAP” shall mean the Response Action Plan for the Property and certain adjoining properties dated March 18, 2016, as amended.
- aa. “Regulated Substances” shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “hazardous waste,” “toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “solid waste,” “industrial waste,” “residual waste,” “municipal waste,” “special handling waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “regulated substance,” “pollutant” or “contaminant” or any other substance, material or waste, regardless of its form or nature that otherwise is regulated by Environmental Laws
- bb. “Remediation” means remediation of Regulated Substances that are present at the Property as required by a Governmental Authority.
- cc. “Rent” is rent owed by Tenant to Landlord as defined and set forth in Section 7 hereof.
- dd. “SNDA” shall mean a customary subordination and attornment agreement mutually agreed to by Landlord, a Sublessee and its Lender, as applicable.
- ee. “Sublease” means a sublease or agreement for use for any portion of the Property.
- ff. “Sublessee” and “Sublessees” shall mean the sublessee or sublessees pursuant to Subleases for any portion of the Property that have been approved by Landlord or the approval by Landlord is not required in accordance with this Lease.
- gg. ~~“~~“Surviving Obligations” are those obligations that survive expiration or earlier termination of this Lease.
- hh. “Tenant” is the City of Saint Paul, a political subdivision under the laws of the State of Minnesota.
- ii. “Tenant Taxes” is defined in Section 8 hereof.
- jj. “Term” is defined in Section 5 hereof.

2. **Lease.** Landlord leases to Tenant and Tenant leases from Landlord the Property subject to the terms and conditions set forth in this Lease. Tenant acknowledges that as of the Commencement Date of this Lease, the Tenant has inspected the Property and completed all investigations and testing of the Property it deems necessary prior to entering into this Lease. Tenant is leasing the Property in an "AS-IS" condition and not in reliance on any representations of Landlord or of Landlord's employees or agents concerning the physical condition of the Property. The Parties acknowledge that at the present time the Property is unimproved.

3. **Contingency.** This Lease is contingent upon the existence of a valid and in effect Permitted Sublease between Tenant and MUSC Holdings LLC, or such other sublease pursuant to Section 21 below (the "Sublease Contingency"). The Permitted Sublease will be executed between Tenant and MUSC Holdings LLC contemporaneous with the execution and delivery of this Lease. Upon the failure of the Sublease Contingency, Tenant may terminate this Lease by written notice to Landlord no later than thirty (30) days following the failure of such Contingency. Upon termination of this Lease for failure of the Contingency, this Lease will be automatically null and void and the Parties will not have further obligations under this Lease.

4. **Reserved.**

5. **Term.** In consideration of Tenant's performance of Tenant's obligations under this Lease, Landlord leases the Property to Tenant for the term of approximately forty-six (46) years (the "Term"). The Term shall commence on the Commencement Date and continue for a period through December 31, 2068 (the "Expiration Date").

6. **Use.** Use of the Property is subject to the following terms and conditions:

a. **Design and Construction Requirements.** Any Facility constructed on any portion of the Property, and major alterations to any Facility, shall be subject to Landlord's approval in accordance with the design and construction criteria set forth in Exhibit D. Landlord's approval of a Facility is solely limited to the criteria set forth in Exhibit D. Subject to the preceding requirements, if a Facility is not substantially completed within fifteen (15) years after the Commencement Date, Section 14 (Option to Extend Term) shall be void and of no further force or effect. SAC/WAC charges imposed in connection with development of the Property, if any, shall be paid by Tenant or its Sublessee.

b. **Permitted Uses.** Subject to local zoning regulations, Tenant is permitted to use the Property for _____ (the "Permitted Uses"). Any use other than a Permitted Use shall be subject to Landlord's approval, which Landlord approval is limited to the requirements in Exhibits C and D. Tenant is permitted to design, construct, maintain, repair, replace, and operate any and all structures, Facilities, signage, and amenities consistent with and in furtherance of the Permitted Uses and such other uses approved by Landlord pursuant to the second sentence of this Section 6(b), subject to the transit design review set forth in Exhibit D. Any other use of the Property shall be subject to Landlord's consent, which consent (i) shall not be withheld if the proposed use will not conflict with the terms of Exhibit C and any alterations required in connection with such use are approved pursuant to the transit design review process set forth in

Exhibit D, and (ii) shall be deemed given if, within thirty (30) days of Tenant's written request for Landlord's written consent, Landlord has failed to notify Tenant that its consent is being withheld and the grounds for withholding its consent.

c. **Compliance with Applicable Laws, MPCA Covenants, and Environmental Liability Assurances.** Tenant shall at all times comply with all Applicable Laws, MPCA Covenants, and the Environmental Liability Assurances affecting the Property. Tenant shall not violate any Environmental Liability Assurances or MPCA Covenants.

d. **Prohibited Uses.** Except for the customary use, storage, handling and transportation or disposal of petroleum and Regulated Substances associated with the normal and regular use, operation, and maintenance of the Property or the Facility in accordance with Applicable Laws, Tenant may not use the Property or any improvements on the Property (or permit the Property or Facility to be used) for the use, storage, handling, transportation or disposal of any Regulated Substances without Landlord's prior consent. Notwithstanding anything to the contrary in this Lease, Tenant shall not take any action in conflict with any MPCA Covenants, Environmental Liability Assurances, or otherwise introduce, or authorize the introduction, of any Regulated Substances to the Property that would cause a violation of any MPCA Covenants or Environmental Liability Assurances.

e. **Transit Provisions.** The Parties desire to ensure that (a) the development and use of the Property as contemplated by this Lease will cause the Property to remain available and accessible for public transportation purposes, and (b) this Lease complies with the FTA's leasing requirements. In furtherance of these goals, the provisions set forth on the attached Exhibit C and Exhibit D are incorporated into this Lease.

7. Rent.

a. **Annual Rent.** Annual Rent through the Term shall be \$_____ per year payable annually in advance. **[NOTE: ANNUAL RENT TO BE DETERMINED UPON COMPLETION OF SURVEY]**

b. **Initial Rent Payment Date and Payment Schedule.** Rent will accrue from the Commencement Date. Accrued rent from the Commencement Date through December 31, 2022 shall be paid to Landlord on or before the Initial Rent Payment Date. Thereafter Tenant shall pay the Annual Rent to the Landlord for each calendar year on or before January 31 of such calendar year. Rent shall be payable in advance annually and shall be prorated for any partial year.

c. **Net Lease.** Tenant acknowledges that this is a "net" lease and that Tenant will be responsible for (and Landlord shall have no responsibility for) all costs and expenses relating to the Property including, but not limited to those relating to Rent, Real Estate Taxes, Tenant Taxes, Utilities, insurance, construction, improvements, maintenance, repair and replacement.

8. Real Estate Taxes and Taxes in Lieu of Real Estate Taxes.

a. The term "Real Estate Taxes" shall mean real estate taxes, special and annual assessments, similar governmental impositions which are a lien against the Property, and any interest

or penalty assessed for failure to pay any such amounts when due, which are due and payable in any year during the term of this Lease regardless of whether they are due and payable prior to the Commencement Date, after the Expiration Date, or after the termination of this Lease prior to the Expiration Date.

b. If the Commencement Date falls on a date other than January 1st or if the Expiration Date or date of termination of this Lease falls on a date other than December 31st, Landlord and Tenant shall prorate the Real Estate Taxes due and payable in the year in which the Lease commences or the year in which the Lease expires or terminates.

c. The term "Tenant Taxes" shall mean taxes Ramsey County assesses against or imposes on Tenant in lieu of real estate taxes pursuant to Minn. Stat. § 272.01, Subd. 2 or Minn. Stat. § 273.19 and any interest or penalty assessed for failure to pay such amounts when due, and any other taxes of every kind and description which may be imposed on or with respect to the use of the Facility.

d. Subject to the provisions of subsection b above, Tenant shall pay all Real Estate Taxes and all Tenant Taxes on or before the due date and provide Landlord with evidence of such payment.

9. Tax Appeals. Tenant shall have the right and option, at any time, but solely at its own expense, to pay any taxes or assessments under protest or in a similar manner and contest the levy or amount of the same in appropriate legal or other proceedings, so long as Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the taxes or assessments so contested. Any such contest shall be prosecuted with due diligence and Tenant shall promptly after final determination thereof pay the amount of any such taxes or assessments so determined, together with all interest and penalties which may be payable in connection therewith. Notwithstanding the provisions of this section, Tenant shall (and if Tenant fails to, the Landlord may but shall not be required to) pay any such taxes or assessments notwithstanding such contest if, in the opinion of the Landlord, the Property is in jeopardy or in danger of being forfeited or foreclosed. Any such payment made by the Landlord shall be "Additional Rent" immediately be due and payable on demand by the Landlord to Tenant. This provision shall not, however, permit Tenant to allow any taxes, assessments, fees or other charges to become delinquent.

10. Utilities. Tenant shall pay, when due, all charges for water and sewer, garbage and refuse removal, electricity, natural gas, fuel oil, telephone service and any other utility services furnished to the Property during the term of the Lease (collectively "Utilities").

11. Tenant's Maintenance and Repair of the Property and the Facility. Tenant shall, at all times throughout the Term of this Lease, and at its sole expense, keep, repair, maintain, and replace the Property and any Facility to ensure that it is in a clean, safe, sanitary and good working condition and in compliance with all applicable statutes, laws, ordinances and regulations subject to the provisions of Section 17 and Section 19.

12. Landlord's Right to Perform Tenant's Obligations. Landlord shall have no obligation to maintain the Property or to keep, repair, maintain, or replace any Facility on the Property or make any payments relating to the Property; provided, however, Landlord shall have the right, but

not the obligation, to perform required maintenance or to make repairs and replacements that are the obligation of Tenant or to make any payments required to be made by Tenant. In connection with any such work performed or payments made, Landlord shall notify Tenant of the cost of such work or the amount of any payment made, including any reasonable overhead charge for Landlord not to exceed 10% of such expense, and Tenant shall promptly pay such amount within 15 days of receiving such notice.

13. Alteration, Additions or Improvement; Surrender of the Property.

a. **Alterations, Additions or Improvements.** Subject to the requirements set forth in Exhibits C and D, Tenant may make any alterations, additions, or improvements in or to the Property or add or in any way change the Property. Tenant shall comply with all Applicable Laws affecting the Property and such work, and Tenant shall warrant to Landlord that all such alterations, additions, or improvements shall be in material compliance with all Applicable Laws and insurance requirements. Tenant may commence the construction of such alterations or additions only after obtaining the requisite approvals, licenses and permits. Tenant shall be responsible for all alterations, installations, physical additions or improvements to the Property. Tenant shall keep the Property free of mechanics' liens arising from such alterations, additions or improvements and shall require any general contractor making such alterations, additions or improvements to maintain insurance with the coverages and amounts required of Tenant in Section 18(c) this Lease with respect to such work; provided, that if a Sublessee causes any alterations, additions or improvements to be constructed and the aggregate cost of such alterations, additions or improvements is \$5,000,000 or less, then the Sublessee shall require its general contractor to maintain insurance with the coverages and amounts required of Tenant in Section 18 (c), except that (i) the requirement for Commercial General Liability insurance coverage in Section 18 (c)(i) shall be \$2,000,000 per occurrence and \$4,000,000 in the aggregate, and (ii) the Automobile Liability insurance coverage in Section 18 (c)(iii) shall have a limit of no less than \$2,000,000 each accident.

b. **Surrender of the Property.** Tenant shall surrender the Property to Landlord upon the termination of this Lease with all alterations, installations, physical additions or improvements to the Property in the condition that such improvements are required to be maintained in accordance with this Lease, free of waste and debris and, if applicable, shall promptly surrender all keys for the Property to Landlord at the place then fixed for payment of Rent and shall inform Landlord of the combinations of any locks and safes on the Property; provided, however, Landlord can, by notice to Tenant at the times such alterations are made or reasonably prior to the expiration of the Lease, require that any or all of the Facilities and all alterations, installations, physical additions or improvements on the Property be removed by Tenant and filled to grade level at Tenant's expense prior to the expiration of the Lease. If the same is not removed by Tenant prior to the end of the expiration of the Lease, in addition to any and all other remedies of Landlord hereunder, Landlord shall have the right to recover any and all costs that Landlord incurs in removing the Facility and such alterations, installations, physical additions or improvements, and Tenant hereby consents to Landlord taking control of such items and physically removing the same from the Property. Landlord must exercise its right to remove within twelve (12) months after termination of the Lease. It is the further right of Landlord to sell or dispose of such items in any way that Landlord determines in its sole discretion is reasonable.

c. **Removal of Personal Property.** On or before the Expiration Date or within 24 hours of Landlord's termination of this Lease, Tenant shall, at its expense, remove all Personal Property from the Property, and Tenant shall be conclusively deemed to have abandoned any Personal Property not removed within the 24 hour time period.

14. Option to Extend Term. Subject to Section 6 (a) above, Tenant shall have an option to extend the Term (the "Option to Extend Term") for forty-nine years, thereby extended the Expiration date to December 31, 2117 (the "Extension Term"). The Term, as extended for the Extension Term, is referred to as the "Term." Subject to Tenant's valid exercise of the Option to Extend Term, the Term shall be extended on the same terms and conditions of this Lease except that Rent for the Extension Term shall be determined in accordance with Section 14 (b)below.

a. **Exercise of Option to Extend Term.** Provided that (i) no Event of Default exists at the time of exercise, Tenant may exercise the Option to Extend Term by providing Landlord written notice (the "Extension Intent Notice") of its intent to extend the Term for the Extension Term no earlier than January 1, 2058 and no later than December 31, 20622063. Upon Tenant's timely delivery of the Extension Intent Notice the parties shall proceed with the appraisal process described in Section 14 (b) below to determine annual Rent for the Extension Term. Within one hundred eighty (180) days following a determination of annual Rent for the Extension Term pursuant to Section 14(b), Tenant shall provide a formal written notice of exercise of the Extension Option (the "Extension Notice") or a written notice to decline exercise of the Extension Option (the "Declination Notice") to Landlord. If Tenant timely provides the Extension Notice, the parties shall amend this Lease to reflect extension of the Term, the new Expiration Date, and annual Rent payable during the Extension Term. This Section 14 shall be void and of no further force or effect if Tenant does not timely exercise the Option to Extend Term or provides the Declination Notice.

b. **Determination of Rent for Extension Terms.** Subject to Sections 14(a) above, annual Rent for the Extension Term shall be determined pursuant to the appraisal process described in this Section 14 (b) based on fair market value of the Property based on the highest and best use of the Property only and not taking into account the value of the improvements to the Property (the "Property's FMV"). The Property's FMV for the Extension Term shall be determined as of the time of providing the Extension Intent Notice and as projected to the end of the Initial Term (the "Valuation Criteria").

(i) Within thirty (30) days after Landlord receives Tenant's Extension Intent Notice, Landlord and Tenant shall each appoint an independent real estate appraiser familiar with long-term land leases in the Minneapolis/Saint Paul metropolitan area to render an appraisal of the Property's FMV based on the Valuation Criteria. The appraisers shall render their appraisal reports no later than ninety (90) days after Landlord received the Extension Intent Notice, and within ten (10) days thereafter each party shall provide the other and the City the complete appraisal report of its appointed appraiser. If the lower of such appraisals is within ten percent (10%) (based on the lower appraisal) of the higher of such appraisals, then the Property's FMV shall be the average of the two appraisals and such amount shall be used to determine the annual Rent during the Extension Term; otherwise the two appraisers shall, within twenty (20) days thereafter, mutually appoint a third independent real estate appraiser familiar with long-term land leases in the Minneapolis/Saint Paul metropolitan area to render an appraisal of the Property's FMV based on the Valuation Criteria. Within 30 days after appointment, the third appraiser shall render its

appraisal report of the Property's FMV and the average of such third appraiser's determination of the Property's FMV and the closest of the two other appraiser's determination to the third appraiser's determination shall be used to determine the annual Rent during the Extension Term. Each party shall pay for its own appraisal and the parties shall share equally the cost of any third appraisal.

(ii) Annual Rent during the Extension Term shall be a fixed amount equal to (1) the Property's FMV as determined in accordance with Section 14 (b)(i), multiplied by (2) the Rate Factor plus 200 basis point. The Rate Factor shall be the five (5) year average (using the rate as of the last day of each calendar quarter during such five (5) year period) of the effective annual interest rate on the thirty year US Treasury bonds prior to the date of the Intent Notice.

c. **Sublessee Request.** If requested by a Sublessee, Landlord and Tenant will reasonably consider the Sublessee's request that extension term bring the total lease term to 99 years. If there is a demonstrated need at time of exercise of the extension for a longer term, e.g., in the case of an affordable housing development, Landlord and Tenant will reasonably consider that need at that time, based on the specifics of the needed financing. In addition, the Council and the City will reasonably consider the request of the Sublessee before it commences development to modify the Option to Extend Term so as to provide Sublessee an aggregate of 99 years from substantial completion of the development if the extension option is exercised to enable the Sublessee to obtain construction and take-out financing for the development project.

d. **Extension Meeting.** Upon Tenant's request, the Parties agree to meet to discuss further extension of the Term based on Tenant's demonstrated need, in alignment with the Transit Goals, for a further extension of the Term; provided that, notwithstanding any such meeting, neither Party shall be obligated to agree to a further extension of the Term.

15. **Right of First Refusal.** If prior to the Expiration Date, Landlord receives a bona fide offer from an unrelated third party (a "Third Party Offeror") to purchase the Property which Landlord intends to accept or does accept (a "Third Party Offer"), then the Landlord shall (i) require that the Third Party Offer be in writing, and (ii) require that the Third Party Offeror agree that its rights under the Third Party Offer are subject to the Tenant's rights under this Agreement. Landlord shall forward the entire Third Party Offer to Tenant, and Tenant shall have the right to purchase the Property for the same purchase price and on the same terms contained in the Third Party Offer (the "Right of First Refusal"); provided that (i) Tenant notifies Landlord of its exercise of the Right of First Refusal within thirty (30) days of Tenant's receipt of the Third Party Offer and (ii) Tenant closes its purchase of the Property sixty (60) days from Tenant's receipt of the Third Party Offer or the closing date set forth in the Third Party Offer, whichever is later. If Tenant does not comply with either of the conditions in the preceding sentence Tenant's Right of First Refusal is waived and of no further force or effect.

16. **Tenant's Regulatory, Compliance and Use Responsibilities.** Tenant is solely and entirely responsible for possession and use of the Property and ancillary and adjoining impacts and effects, including responsibility to the City, the County, the State, and adjoining property owners and neighbors, and Tenant shall promptly provide to Landlord copies of notices that Tenant delivers to, or receives from, any such party with respect to violations of law which do or may materially impact the use, possession, or occupancy of the Property. Landlord is not responsible in any manner for the acts or inactions of the Tenant, its Sublessees or Assignees.

17. Indemnification Covenants to Defend and Hold Harmless; Environmental Matters.

a. **General.** Tenant shall save and protect, hold harmless, indemnify, and defend the Landlord and its agents and employees against any and all claims or actions for expenses (including attorneys' fees), losses, damages, injury, or for injunctive relief, declaratory relief or other equitable relief, relating to, arising out of, or resulting from this Lease, including but not limited to the acts or omissions of Tenant's employees, subcontractors, representatives, Sublessees, agents, guests or invitees, successors, and assigns. All property kept, maintained or stored on the Property shall be kept, maintained or stored at the sole risk of Tenant. Tenant agrees to pay all sums of money in respect of any labor, service, materials, supplies or equipment furnished or alleged to have been furnished to Tenant or a Sublessee in or about the Property, and not furnished on order of Landlord, which may be secured by any Mechanic's, Materialmen's or other lien, provided that Tenant may contest such lien, but if such lien is reduced to final judgment and if such judgment or process thereon is not stayed, or if stayed and said stay expires, then and in each such event, Tenant shall forthwith pay and discharge and judgment. Landlord shall have the right to post and maintain on the Property, notices of non-responsibility as provided for under the laws of the State of Minnesota.

b. **Existing Environmental Conditions.** Tenant acknowledges that Landlord has completed Remediation of the Property in accordance with the RAP. From and after the Commencement Date Tenant shall (1) be solely responsible, at Tenant's sole expense, for any additional Remediation of Existing Environmental Conditions required under Environmental Laws and for compliance with Environmental Liability Assurances and MPCA Covenants relating to any Existing Environmental Conditions of the Property as a result of the development of the Property by Tenant; and (2) save and protect, hold harmless, indemnify, and defend Landlord against any and all claims or actions for expenses (including attorneys' fees), losses, damages, injury, or for injunctive relief, declaratory relief or other equitable relief, relating to, arising out of, or resulting out of Tenant's failure to comply with any Environmental Liability Assurances and MPCA Covenants relating to any Existing Environmental Conditions applicable to the Property.

c. **Future Environmental Conditions.** Tenant shall undertake, cause to be performed, and be solely responsible for any and all costs and expenses related to environmental inspections, test, and audits, and environmental Remediation and mitigation, required by a Governmental Authority in connection with Regulated Substances present at the Property based on the acts or omissions of Tenant, its employees, subcontractors, representatives, Sublessees, agents, guests, invitees, successors and assigns, and Tenant shall hold Landlord harmless from and indemnify and defend Landlord against any claims brought by any party under Environmental Law with respect to the same.

d. **Survival.** Landlord and Tenant acknowledge that notwithstanding any language herein to the contrary, the indemnification provisions under this Section shall survive the expiration or earlier termination of this Lease and shall be in addition to any and all other rights and remedies of the Parties under this Lease including the right of Landlord for Tenant's failure to pay Rent.

18. Insurance, Indemnification and Waiver of Claims.

a. Tenant shall, at all times during the term of this Lease, or longer if required elsewhere in this Lease, maintain the following insurance:

i. General Liability insurance, or self-insurance, in an amount no less than provided by Minn. Stat. Chap. 466.

ii. Property insurance insuring the Property against loss or damage by fire, explosion and other hazards, including Terrorism, under an "all risk" form of policy on a replacement cost basis. Any deductible shall be the responsibility of Tenant. Such insurance shall name Landlord as the loss payee, as their interests may appear. Tenant shall immediately inform Landlord in writing when and if each such policy of insurance is cancelled or modified in non-compliance with this Lease.

b. Tenant shall in any sublease require sublessee to maintain, during the term of the sublease (or longer if required elsewhere in this Lease), the following insurance and indemnification:

i. Commercial General Liability insurance that provides coverage at least as broad in all material respects as that provided under a standard Insurance Services Office (ISO) form CG 00 01. Such policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Advertising Injury, Contractual Liability (applying to this Lease), Independent Contractors, and Products-Completed Operations Liability, and shall not exclude coverage for Explosion, Collapse & Underground ("XC&U") Hazards. Unless unavailable on commercially reasonable terms, such policy shall also include terrorism coverage to the extent provided under the Terrorism Risk Insurance Act or an extension thereof. Such insurance shall provide limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Landlord shall be listed as an additional insured, on a primary and non-contributory basis, utilizing ISO CG 20 26 04 13 and ISO CG 20 37 04 13.

ii. Automobile Liability Insurance covering liability arising out of the ownership, maintenance, or use of any vehicle with a limit no less than \$1,000,000 each Accident.

iii. Workers' Compensation insurance, as required by Statute, and Employers Liability Insurance with limits no less than \$500,000.

iv. Property Insurance insuring improvements, Stadium Personalty and Personal Property located on the Property, on an "all-risk" basis, for the full replacement value of any fixtures or personal property which Sublessee may bring upon the Property or any additional improvements Sublessee may construct or install on the Property. Policy must provide business interruption coverage.

v. Liquor Liability Insurance affording coverage in at least the following amounts. "\$1,000,000 per person, Bodily Injury; \$1,000,000 per accident, Bodily Injury; \$1,000,000 per accident, Property Damage; and \$1,000,000 Loss of Means of Support. In the event that such coverage is provided on a "combined limit" rather than on a "split limits" basis, coverage shall be in the amount of at least \$2,000,000 Bodily Injury and Property Damage combined Each Common Cause. If such Liquor Liability Insurance, whether provided on a "split

limits” or “combined limit” basis, is subject to an aggregate limit, such aggregate limit shall be at least \$2,000,000. In the event that the Liquor Liability Insurance is provided under the same policy as the insured’s Commercial General Liability Insurance, with a combined aggregate limit applying to both types of coverage, then such combined aggregate limit shall be at least \$5,000,000. This clause (v) is only applicable if a liquor license has been issued for any part of the Facility on the Property.

vi. Excess or Umbrella liability providing coverage for the policies required in this section, with a limit no less than \$20,000,000 each occurrence and in the aggregate.

vii. Except for Workers’ Compensation, Landlord shall be listed as an additional insured under the above policies on a primary and non-contributory basis (CGL forms noted above).

viii. Sublessee shall, and shall cause its insurers to, waive any right of subrogation or recovery that may exist against Landlord.

ix. To the fullest extent allowed by law, the Sublessee agrees that it will save and protect, hold harmless, indemnify, and defend Landlord and its members, agents, and employees against any and all claims, expenses (including, but not limited to, legal expense paid or incurred to enforce the provisions of this section), losses, damages, or lawsuits for damage or injury that are alleged to arise out of, result from, or attributable to, whether in whole or in part, Sublessee’s operations, including acts or omissions of its employees, subcontractors, representatives, or agents, or anyone else for whom Sublessee may be liable.

c. Should Tenant, or its Sublessee, engage in any construction activities, then Tenant, or in its discretion, Sublessee, shall maintain the following insurance and indemnification, or shall require of the following from the general contractor:

i. Commercial General Liability insurance, and excess insurance if necessary, that provides coverage at least as broad in all material respects as that provided under a standard Insurance Services Office (ISO) form CG 00 01. Such policy shall include coverage for Bodily Injury, Property Damage, Personal Injury, Advertising Injury, Contractual Liability (applying to this Contract) subject to policy terms and conditions, Independent Contractors, and Products-Completed Operations Liability, and shall not exclude coverage for Explosion, Collapse & Underground ("XC&U") Hazards. Such insurance shall provide limits no less than \$50,000,000 per occurrence and \$50,000,000 in the aggregate, with such total limits being achieved through any combination of primary and excess policies. Landlord shall be listed as an additional insured, on a primary and non-contributory basis, utilizing ISO CG 20 26 07 04 and ISO CG 20 37 07 04.

ii. Workers’ Compensation insurance, as required by Statute, and Employers Liability Insurance with limits no less than \$500,000.

iii. Automobile Liability Insurance covering liability arising out of the ownership, maintenance, or use of any vehicle with a limit no less than \$5,000,000 each Accident, with excess insurance if necessary.

iv. Property insurance written on a builder's risk "all-risk" or equivalent policy in the amount of the construction values, providing coverage, on a replacement cost basis, for loss or damage to project (including materials, temporary buildings, falsework), equipment stored off-site or in transit. Landlord shall be an additional insured on the policy. Tenant, sublessee, and the general contractor shall cooperate in adjusting any losses and the insurance shall pay claims to Landlord, as its interests may appear.

v. Should any construction involve excavation or boring, Contractor's Pollution Liability with limits not less than \$5,000,000 each claim and \$5,000,000 annual aggregate. Coverage shall include bodily injury, property damage, including loss of use of property, clean-up costs, defense (including costs and expenses incurred in the investigation, defense, or settlement of claims), products and/or completed operations, and contractual liability. Coverage shall also be provided for transport of waste and non-owned disposal sites, if general contractor is disposing of waste. Landlord shall be an additional insured. If policy is written on a claims-made basis, then the retroactive date must precede the date work begins, and policy shall provide an extended reporting period, or if general contractor carries the policy then general contractor agrees to continuously renew the coverage for a period of ten (10) years.

vi. General contractor's policies shall provide waiver of subrogation and waiver of claims in favor of Landlord, its members, agents and employees. All policies provided by general contractor, except Workers' Compensation, shall be primary and non-contributory to any insurance maintained by Landlord.

vii. To the fullest extent allowed by law, the general contractor agrees that it will save and protect, hold harmless, indemnify, and defend Landlord and its members, agents, and employees against any and all claims, expenses (including, but not limited to, legal expense paid or incurred to enforce the provisions of this section), losses, damages, or lawsuits for damage or injury that are alleged to arise out of, result from, or attributable to, whether in whole or in part, general contractor's operations, including acts or omissions of its employees, subcontractors, representatives, or agents, or anyone else for whom general contractor may be liable.

d. **Other Insurance Provisions.**

i. Nothing in this Lease shall be construed to waive the municipal immunities or liability limits provided in the Minnesota Municipal Tort Claims Act or other applicable state or federal law.

ii. At Landlord's option, the insurance requirements set forth in this Lease shall be subject to reasonable review and revision as needed, not less often than every five years, to take into account changes in the law applicable to Landlord or Tenant, changes in the insurance markets, changes needed to maintain equivalent protections, or if increases or changes are necessary to reflect inflation or changes in the nature or degree of risks insured.

iii. Tenant shall furnish Landlord with certificates of insurance and with copies of additional insured endorsements evidencing coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by

that insurer to bind coverage on its behalf. Landlord is not obligated to review certificates or other evidence of insurance, or to advise Tenant of any deficiencies in such documents, and receipt thereof will not relieve the Tenant from, nor be deemed a waiver of the Landlord's right to enforce, the terms of the Tenant's obligations hereunder.

iv. Tenant may request exceptions to the insurance and indemnification provisions required in this Section by submitting, in writing, such request to Landlord's Director of Risk Management & Claims.

v. In the event Tenant, or its Sublessee, is unable, after exercising reasonable commercial efforts to do so, to secure the specific edition dates for required insurance endorsements specified above, the most current version of such endorsements will be acceptable.

19. Destruction/Restoration. Landlord shall have no liability to Tenant if a Facility or the Property is partially or wholly destroyed, or if a Facility or any portion of the Property cannot be used because of a valid governmental order prohibiting the use. In the event of any damage to a Facility, Tenant shall (a) give immediate written notice of the damage to Landlord, which notice shall include a description of the damage and, as far as known to Tenant, the cause of the damage, (b) promptly enforce all provisions pertaining to such damage in the Sublease covering such Facility or portion of the Property, and (c) take such action as may be required under Applicable Laws with respect to any such damage. Tenant shall also be obligated to act promptly to take all actions necessary to place the Property in a neat, safe condition. If Tenant fails to take such actions as necessary to place the Property in a neat, safe condition within a reasonable time following such damage (and in all events prior to the expiration of any applicable time period established by Applicable Law) Landlord shall have the right (but not the obligation) to do so and Tenant shall be liable to pay Landlord, upon demand, the cost and expense incurred by Landlord. The failure by Tenant to make such payment to Landlord may be treated by Landlord as a default in the payment of Rent owed by Tenant under this Lease.

20. Quiet Enjoyment. Landlord warrants that it has full right to execute and to perform this Lease and to grant the estate demised, and that Tenant, upon payment of the Rent and other amounts due and Tenant's performance of all of the terms, conditions, covenants and agreements on Tenant's part to be observed and performed under this Lease, may peaceably and quietly enjoy the Property without interruption by Landlord or anyone acting through or on behalf of Landlord subject to the terms and conditions of this Lease.

21. Assignments or Subleases. Landlord approves the Permitted Sublease. All other Assignments and Subleases shall be subject to Landlord's prior written approval, which approval shall not be withheld if the Landlord determines that the sublease or assignment will not conflict with the terms of Exhibit C. The Permitted Sublease and any other assignment or Sublease authorized under this Lease shall not relieve Tenant of its obligations under this Lease. The Permitted Sublease and each approved Sublease shall be subject and subordinate to this Lease, and shall provide that: **[NOTE: MET COUNCIL NEEDS TO REVIEW THE PROPOSED "PERMITTED SUBLEASE" PRIOR TO EXECUTION OF THIS LEASE OR REVISE**

THIS PROVISION TO STATE THAT THE FORM OF THE PERMITTED SUBLEASE IS SUBJECT TO LANDLORD'S APPROVAL AND THE FTA'S CONCURRENCE]

a. all terms, covenants, and provisions of the Sublease and all rights, remedies, and options under the Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease;

b. if the Lease and the Tenant's leasehold estate terminate, then the Sublease shall terminate subject to any applicable SNDA.

Tenant may not transfer or assign this Lease or sublease all or any portion of the Property without obtaining the prior written consent of Landlord, which approval will not be unreasonably withheld and which Landlord approval is limited to the requirements in Exhibits C and D; provided that no Sublease shall expand Landlord's obligations under this Lease. Tenant's assignment of this Lease or sublease of the Property shall not (without Landlord's consent) relieve Tenant from any of Tenant's obligations under this Lease unless Landlord explicitly agrees to release Tenant. Landlord's right to assign this Lease is and shall remain unqualified. Landlord consent for a transfer or assignment shall not be unreasonably withheld.

Tenant shall not enter into any agreement that grants rights that Tenant does not possess under the terms of this Lease.

Notwithstanding anything to the contrary in this Section 21, upon completion of a Facility in accordance with Section 6, Landlord's consent shall not be required for any subleasing of the parts (as opposed to all) of the Property pursuant to subleases by the Sublessee, provided that each Sublessee adheres to the transit requirements in Exhibit C and provided that: (i) Tenant promptly delivers to Landlord (1) copies of all subleases, amendments and assignments promptly upon full execution of the same, (2) annual certified rent rolls listing subtenants, square footages, use, term and extension options, which rent rolls shall be deliver to Landlord no later than January 31 of each calendar year. For example purposes only, (i) Landlord's consent would not be required for a sublease by Sublessee of a retail or office premises within a Facility, or for subleasing one or more entire Facilities that do not comprise all Facilities on the Property, and (b) Landlord's consent would be required for a sublease by Sublessee of an entire Facility on the Property (for example, a master lease of Facility).

22. SNDA. Upon the request of Landlord or a Sublessee, Landlord, Tenant and the Sublessee will enter into an SNDA in the form attached to this Lease as Exhibit E or such other commercially reasonable form requested by them. Except as otherwise permitted in an SNDA executed by Landlord, no liens of any character whatsoever created or suffered by Tenant or any Sublessee shall in any way extend or attach to the fee title to the Property or affect the ownership rights of Landlord in the Property.

23. Conveyance of the Property; Estoppel Certificates.

a. **Conveyance of the Property.** If Landlord sells, assigns or otherwise voluntarily conveys the Property during the term of this Lease, Landlord shall be and hereby is relieved of all of Landlord's obligations under this Lease which accrue after the date of sale, and such sale shall result

automatically in the purchaser assuming and agreeing to carry out all of such obligations of Landlord. Tenant agrees to immediately and automatically attorn to such assignee.

b. **Estoppel Certificates.** If Landlord desires to sell or encumber the Property during the term of this Lease, Tenant shall, at the request of Landlord, provide Landlord or such other Party as Landlord may designate with an estoppel certificate in which Tenant:

i. states that the Lease is unmodified and in full force and effect or references or specifically describes any modifications and states that the Lease is in full force and effect as modified;

ii. states that Landlord is not currently in default under the terms of the Lease and that no event has occurred and is continuing which, with the giving of notice or the passage of time would constitute a default, or specifically describes all alleged defaults;

iii. states that Tenant is not currently in default under the terms of the Lease and that no event has occurred and is continuing which, with the giving of notice or the passage of time would constitute a default;

iv. states the amount of any prepaid Rent; and

v. provides such other information regarding the Lease or the Property as Landlord may reasonably request.

24. **Holding Over.** If Tenant remains in possession of the Property or fails to surrender the Property upon the expiration or termination of this Lease and without the execution of a new Lease and Landlord does not commence an unlawful detainer proceeding during the first month after such expiration or termination, Tenant shall be deemed to be occupying said Property as a tenant from month to month, subject to all the conditions, provisions and obligations of this Lease, provided however that the Rent required to be paid by Tenant during any holdover period shall be in the amount equal to 110% of the Rent set forth in this Lease and shall be paid, in equal monthly installments, on or before the first day of each calendar month during such month to month holdover tenancy.

25. **Abandonment.** If Tenant shall vacate the Property or any part thereof prior to the expiration or termination of this Lease (other than as a result of damage or casualty with respect to the Property or any Facility), then in any such event Tenant shall be deemed to have abandoned the Property and Tenant shall be in default under the terms of this Lease.

26. **Overdue Payments.** All amounts the Tenant is required to pay to the Landlord under the Lease, if not paid as and when due, shall bear interest from the date of such amounts were due until the date actually paid at the Prime Rate plus two percent (2%).

27. **Eminent Domain.** If an eminent domain proceeding is commenced or a private sale in lieu thereof occurs with respect to the Property during the term of this Lease, the following provisions shall apply:

a. If a public or private body with the power of eminent domain or condemnation other than Landlord (a "Condemning Authority") acquires all of the Property through the exercise of its power of eminent domain or condemnation or as a result of a sale in lieu thereof, this Lease shall cease and terminate as of the date the Condemning Authority acquires possession. Tenant shall pay all Rent up to that date.

b. If a Condemning Authority acquires only a part of the Property, and such acquisition materially affects the Property so as to render the Property unsuitable for the business of the Tenant, in the reasonable opinion of Tenant, then this Lease shall cease and terminate as of the date the Condemning Authority acquires possession. Tenant shall pay all Rent due up to the date of such termination.

c. If a Condemning Authority acquires only a part of the Property and such acquisition does not materially affect the Property so as to render the Property unsuitable for the business of the Tenant, in the reasonable opinion of Tenant, this Lease shall continue in full force and effect without any abatement of the Rent, and Landlord shall have no obligation to restore the Property to the condition it was in before such acquisition.

d. If a Condemning Authority acquires all of the Property, Tenant shall be entitled to any part of the award paid in any condemnation acquisition under power of eminent domain or any part of any of the proceeds of a sale in lieu thereof with respect to the value of the Facility and Landlord shall be entitled to any part of the award paid in any condemnation acquisition under power of eminent domain or any part of any of the proceeds of a sale in lieu thereof with respect to the value of the Property.

e. Tenant shall have the right to claim and recover from the Condemning Authority, but not from Landlord, such relocation benefits or other compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might incur in removing and moving Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

28. Default of Tenant.

a. **Events Of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default:"

i. Tenant's failure to pay Rent as due, which failure shall continue for thirty (30) days after Tenant's receipt of written notice from Landlord; or

ii. Tenant's failure to fully perform any of Tenant's obligations or to abide by any restrictions set forth in this Lease within thirty (30) days of Landlord's written notice to Tenant of Tenant's failure to perform or abide by such obligation or restriction; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if Tenant promptly advises Landlord of Tenant's intention to duly institute all steps necessary to cure

such default and the Tenant promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion.

Landlord shall deliver a copy of any notice under this Section 28(a) to the Permitted Sublessee when such notice is given to Tenant.

b. **Landlord's Remedies.** If an Event of Default occurs, Landlord shall have the following remedies subject to any applicable SNDA:

i. Landlord may, but shall not be obligated to, and without waiving or releasing the Tenant from any obligations of the Tenant under this Lease, pay or perform any obligations of Tenant; pay any cost or expense to be paid by Tenant; obtain any insurance coverage and pay premiums therefor; and make any other payment or perform any other act on the part of the Tenant to be made and performed as provided for in this Lease, in such manner and to such extent as the Landlord may deem desirable, and in exercising any such right, to also pay all necessary and incidental costs and expenses, employ counsel and incur and pay attorneys' fees. Tenant shall pay any and all such sum or sums to Landlord with interest and overhead as provided for in this Lease.

ii. Landlord may terminate this Lease by written notice to Tenant. Neither the passage of time after the occurrence of the Event of Default nor Landlord's exercise of any other remedy with regard to such Event of Default shall limit Landlord's right to terminate the Lease by written notice to Tenant.

iii. Landlord may, whether or not Landlord has elected to terminate this Lease, immediately commence summary proceedings in Unlawful Detainer to recover possession of the Property. Upon Landlord's reentry upon and repossession of the Property, Landlord may remove Tenant and all other persons from the Property. Landlord may, at Landlord's option, either remove and store in any public warehouse or elsewhere at Tenant's sole cost and expense, or store on the Property, any property of Tenant which is located on the Property at the time of Landlord's reentry upon and repossession thereof. Landlord may exercise Landlord's right to reenter upon and repossess the Property pursuant to this subsection without being guilty of trespass or conversion and without becoming liable to Tenant for any loss or damage Tenant may suffer as a result thereof. Landlord's reentry upon and repossession of the Property shall not be deemed to be an implied or express termination of the Lease.

iv. If Landlord reenters upon and repossesses the Property without terminating this Lease, each of Tenant's obligations under this Lease shall survive and continue, including Tenant's obligation to pay Rent, and Tenant shall fulfill such obligations within the time periods set forth in this Lease. Landlord may, but shall not be obligated to, attempt to relet the Property for such term or terms (which may be greater or less than the period which would otherwise have constituted the term of this Lease); on such terms and conditions (which may include concessions or free rent); and for such uses as Landlord, in its sole discretion, deems appropriate, and Landlord may collect and receive all rent payable on such reletting. Landlord shall apply any rent actually received, less all costs of such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, attorneys' fees, alteration costs, and expenses incurred in preparing the Property for such reletting, towards the payment of the amounts which Tenant owes under this Lease. Landlord shall not be responsible to

Tenant for any failure to collect rent due on such reletting. If the rent received as a result of such reletting, after reduction for all costs of such reletting exceeds the amount which Tenant owes under the Lease, all such excess shall accrue to Landlord.

v. If Landlord terminates this Lease, Landlord may elect to recover from Tenant, as damages for Tenant's default, either:

1. all amounts due under this Lease as of the date of termination plus periodic payments of amounts equal to the Rent due under this Lease which payments shall be due at such times as Rent would have been due under this Lease. The amounts due shall be reduced by an amount equal to the rent which Landlord actually receives upon any reletting of the Property, after deduction for all costs of such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, attorneys' fees, alteration costs, and expenses incurred in preparation for such reletting. Landlord shall not be responsible or liable to Tenant for any failure or inability to collect any rent due upon any reletting. Tenant shall pay such damages to Landlord monthly, without demand, deduction, set-off or counterclaim, on the days on which the Rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover such amount from Tenant on each such day; or

2. all amounts due under this Lease as of the date of termination plus an amount equal to the present value of the remaining Rent due for unexpired term of the Lease at the time of termination less the present value of the fair rental value of the Property for the same time period, after reduction for all estimated costs of reletting and estimated holding costs until a new tenant may be found. Said present value to be determined on the basis of a discount of four and a half percent (4.5%) per annum.

vi. In addition to all remedies hereunder dealing with failure of Tenant to pay Rent or abide by other covenants of this Lease, whether or not the Lease is terminated, Landlord shall have the right to enforce its rights under this Lease dealing with indemnification.

vii. In addition to all other remedies of Landlord, Landlord shall be entitled to reimbursement upon demand of all reasonable attorneys' fees and costs which Landlord incurs in connection with any Event of Default.

c. No remedy provided for herein or elsewhere in this Lease or otherwise available to Landlord by law, statute or equity, shall be exclusive of any other remedy, but all such remedies shall be cumulative and may be exercised from time to time and as often as the occasion may arise.

29. Default of Landlord.

a. **Events Of Default.** Landlord's failure to fully perform any of Landlord's obligations or to abide by any restrictions set forth in this Lease within thirty (30) days of Tenant's written notice to Landlord of Landlord's failure to perform or abide by such obligation or restriction shall be a Landlord "Event of Default;" provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure, but is not reasonably capable of being cured within such

thirty (30) day period, there shall exist no Event of Default if Landlord promptly advises Tenant of Landlord's intention to duly institute all steps necessary to cure such default and Landlord promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion, provided that such sure period shall not exceed ninety (90) days.

b. **Tenant's Remedies.** If an Event of Default occurs, Tenant shall have the following remedies:

i. Tenant may, but shall not be obligated to, and without notice to or demand upon the Landlord and without waiving or releasing the Landlord from any obligations of the Landlord in under this Lease, pay or perform any obligations of Landlord; pay any cost or expense to be paid by Landlord; obtain any insurance coverage and pay premiums therefor; and make any other payment or perform any other act on the part of the Landlord to be made and performed as provided for in this Lease, in such manner and to such extent as the Tenant may deem desirable, and in exercising any such right, to also pay all necessary and incidental costs and expenses, employ counsel and incur and pay attorneys' fees. Landlord shall pay any and all such sum or sums to Tenant with interest and overhead as provided for in this Lease.

ii. Tenant may terminate this Lease by written notice to Landlord. Neither the passage of time after the occurrence of the Event of Default nor Tenant's exercise of any other remedy with regard to such Event of Default shall limit Tenant's right to terminate the Lease by written notice to Landlord.

iii. If Tenant terminates this Lease, Tenant may elect to recover from Landlord, as damages for Landlord's default, all amounts due under this Lease as of the date of termination plus specific performance, plus damages including special and incidental damages.

iv. In addition, whether or not the Lease is terminated, Tenant shall have the right to enforce its rights under this Lease dealing with indemnification.

v. In addition to all other remedies of Tenant, Tenant shall be entitled to reimbursement upon demand of all reasonable attorneys' fees and costs which Tenant incurs in connection with any Event of Default.

c. No remedy provided for herein or elsewhere in this Lease or otherwise available to Tenant by law, statute or equity, shall be exclusive of any other remedy, but all such remedies shall be cumulative and may be exercised from time to time and as often as the occasion may arise.

30. General.

a. **Tenant's Inspection.** Tenant acknowledges that it has had full opportunity to investigate and make its own determination regarding the suitability of the Property for Tenant's intended use.

b. **Landlord's Disclaimer of Warranty.** Landlord disclaims any warranty that the Property is suitable for Tenant's use.

c. **Relationship of Landlord and Tenant.** The Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between the parties hereto being that of Landlord and Tenant.

d. **Waiver.** No waiver of Landlord's or Tenant's remedies upon the occurrence of an Event of Default shall be implied from any omission by Landlord or Tenant to take any action on account of such Event of Default, no waiver shall be effective unless such waiver is in writing. No express waiver shall affect any Event of Default other than the Event of Default specified in the express waiver and such an express waiver shall be effective only for the time and to the extent expressly stated. One or more waivers by Landlord or Tenant shall not then be construed as a waiver of a subsequent Event of Default.

e. **Consent.** Landlord's consent to or approval of any act requiring Landlord's consent or approval shall not waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. Whenever provision is made under this Lease for Tenant securing the consent or approval by Landlord, such consent or approval must be in writing executed by an authorized representative of Landlord and shall not be unreasonably withheld, conditioned, or delayed.

f. **Constructive Eviction.** No action required or permitted to be taken by or on behalf of Landlord under the terms or provisions of this Lease shall be deemed to constitute an eviction or disturbance of Tenant's possession of the Property.

g. **Merger.** All previous agreements, understanding, representations and warranties are merged into and incorporated in this Lease.

h. **Choice of Law.** The laws of the State of Minnesota shall govern the validity, performance and enforcement of this Lease.

i. **Time.** Time is of the essence in the performance of all obligations under this Lease.

j. **Entire Agreement and Amendment.** All Exhibits attached to this Lease are incorporated into this Lease by this reference. This Lease and the Exhibits hereto, if any, attached hereto and forming a part hereof, constitute the entire agreement between Landlord and Tenant affecting the Property and there are no other agreements, either oral or written, between them other than are herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and executed in the same form and manner in which this Lease is executed.

k. **Unenforceability.** If any agreement, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such agreement, 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 agreement, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

l. **Successors and Assigns.** The terms, covenants and conditions of this Lease shall be binding upon and inure to the successors and permitted assigns of the parties hereto.

m. **Recording.** Tenant shall not record this Lease without the written consent of Landlord. Upon the request of Landlord, Tenant shall join in the execution of a Memorandum Lease for the purposes of recordation. Said Memorandum Lease shall describe the parties, the Property and the term of the Lease and shall incorporate this Lease by reference.

n. **Notices.** Any notice required or permitted under this Lease shall be deemed sufficiently given or secured if sent by registered or certified return receipt mail to the parties at:

To Landlord: Metropolitan Council
390 Robert Street North
St. Paul, MN 55101
Attention: Regional Administrator

Copies to: Metropolitan Council
390 Robert Street North
St. Paul, MN 55101
Attn: Office of General Counsel

Metro Transit
560 6th Avenue North
Minneapolis, MN 55411
Attn: General Manager

To Tenant: City of Saint Paul
15 Kellogg Boulevard West
Saint Paul, MN 55102
Attention: Director of Financial Services

Copy to: Permitted Sublessee
[Address]

Either party may by written notice at any time designate a different address to which notices shall subsequently be sent or Rent to be paid.

o. **Captions.** The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

31. No Waiver of Immunity or Liability. Nothing contained in this Lease, including any provisions regarding a Party obtaining insurance or otherwise being insured, shall in any way affect or impair such Party's immunity or the immunity of their employees, consultants, or independent contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity, or otherwise. Nothing contained in this Agreement, including

any provisions regarding obtaining insurance or otherwise being insured, shall in any way affect or impair the limitations on a Party's liability or the liability of a Party's employees, consultants, or independent contractors set forth in Minnesota Statutes Chapter 466, as such statute may be amended, modified, or replaced from time to time. By entering into this Lease, a Party does not waive any rights, protections, or limitations provided to such Party or its employees, consultants, or independent contractors under the various rules of governmental immunity or under Minnesota Statutes Chapter 466, as such statute may be amended, modified, or replaced from time to time.

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{Signature Page Follows}

IN WITNESS WHEREOF, the Landlord and the Tenant have caused this Lease to be executed in form and manner sufficient to bind them at law, as of the Commencement Date.

LANDLORD:

METROPOLITAN COUNCIL

By_____

Its: Regional Administrator

TENANT:

CITY OF SAINT PAUL

By_____

Mayor

By_____

Director of Financial Services

Approved as to form.

Assistant City Attorney

EXHIBIT A

Legal Description

EXHIBIT B

Reserved

EXHIBIT C

Transit Provisions

1. Definitions.

“Transit Facilities” are the Landlord’s transit stations, bus stops, rail lines, and related facilities in the vicinity of the Property, whether currently existing or constructed in the future.

“Transit Goals” are to ensure utilization of the Property for public transportation purposes and includes (i) the convenient and practical access to the Transit Facilities, (ii) design of the Property to address the Property’s transit operational and safety needs, and (iii) encouraging Transit Oriented Development (TOD).

2. Use of the Property. The City of Saint Paul’s 2016 T4 zoning requirements satisfies 2016 TOD goals.

3. The Tenant shall ensure that:

(a) Use of the Property shall not materially interfere with the Transit Goals.

(b) The requirements 49 C.F.R. 26.(no discrimination based on race, color, national origin or sex) are met.

(c) The requirements of 49 C.F.R. 27.7, 27.9, 27.9(b), and 37 (no discrimination based on disability and compliance with the Americans with Disabilities Act with regard to any improvements constructed) are met.

(d) The ethics requirements set forth in the FTA’s then-current Master Agreement relating to conflicts of interest, debarment and suspension are met.

EXHIBIT D

Transit Design Review Requirements for Construction of Facilities and Alterations

1. **Landlord's Limited Approval Rights.** Facilities and alterations constructed on the Property must be designed and constructed consistent with the Transit Goals as reasonably determined by Landlord. Landlord's determination shall be based on current professional best practices in transit operations and Transit Oriented Development employed by Landlord. Examples of current professional best practices at the time of execution of this Lease are: Met Council's TOD Grant Handbook, APTA Standards: Design of On-Street Transit Stops and Access from Surrounding Areas, Metro Transit's Guidelines for the Review of Transit-Related Roadway Improvements, and Metro Transit's internal Site Plan Review Checklist.

2. **Initial Approval of Plans.** Tenant or its Sublessee shall submit Plans to Landlord for review and approval as provided in Exhibit C, including (i) the site plan for the Property, and any material alterations to the site plan, and (ii) building plans for the initial construction of a Facility (collectively "Plans"). If Landlord determines that any part of the Plans are inconsistent with the Transit Goals, Landlord shall notify Tenant and such Sublessee, in writing, within thirty (30) days of Landlord's receipt of the Plans, otherwise the Plans will be deemed approved. Such notice shall delineate discretely each objection, provide an explanation for the bases for each objection, and recommend revisions or changes for each revision or change. If Tenant or its Sublessee agrees, in writing, to all the suggested revisions or changes, then the Plans are automatically deemed approved.

3. **Approval of Changes.**

(a) If there are changes to the Plans that would result in exterior construction, in a change to the initial footprint of a Facility (whether at, above, or below grade level), or in a material change to the site plan for the Property, Tenant or its Sublessee shall deliver such updated Plans (the "Updated Plans") to Landlord for Landlord's determination that the Updated Plans do not: (i) affect the pedestrian paths between the Stadium and the LRT Station and/or the BRT station, (ii) affect the Transit Facilities, in terms of visibility, shelter, function, or maintenance access, (iii) affect the infrastructure supporting Transit Facilities, (iv) affect the staging and queuing of transit passengers for large events, or (v) adversely affect Transit Goals (each a "Change"). If Landlord determines that any Change materially adversely affects the Transit Facilities or the Transit Goals, Landlord shall notify Tenant and such Sublessee, in writing, within five (5) business days of Landlord's receipt of the Updated Plans, otherwise the Updated Plans will be deemed approved. Such notice shall delineate discretely each objection to the Updated Plans, provide an explanation for the bases for each objection, and recommend revisions or changes for each revision or change. If

Tenant or its Sublessee agrees, in writing, to all the suggested revisions or changes, then the Updated Plans are automatically deemed approved.

(b) If any proposed capital improvement to, or proposed alteration of, a Facility subsequent to the completion of such Facility requires Updated Plans, Tenant or its Sublessee shall submit the Updated Plans to Landlord (“Improvement/Alteration Plans”). If Landlord determines that any Change in the Improvement/Alteration Plans materially adversely affects the Transit Facilities or the Transit Goals, Landlord shall notify Tenant and such Sublessee, in writing, within ten (10) business days of Landlord’s receipt of the Improvement/Alteration Plans, otherwise the Improvement/Alteration Plans will be deemed approved. Such notice shall delineate discretely each objection to the Improvement/Alteration Plans, provide an explanation for the bases for each objection, and recommend revisions or changes for each revision or change. If Tenant or its Sublessee agrees, in writing, to all the suggested revisions or changes, then the Improvement/Alteration Plans are automatically deemed approved.

4. **Delivery of Final Plans.** Landlord will receive a copy of the as-built plans of the Facility when construction of the Facility is completed and from time to time as material alterations to a Facility are completed.

5. **Expedited Review.** Landlord is willing to use its commercially reasonable efforts to expedite its review and approval of Plans and Updated Plans. Landlord encourages Tenant and its Sublessees to engage Landlord in the design and review process at the earliest possible opportunity to accommodate expedited Landlord’s review and approval of Plans and Updated Plans.

EXHIBIT E

Form SNDA

