

LEASE AGREEMENT BETWEEN

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

AND

CITY OF BROOKHAVEN, GEORGIA

FOR

CITY OF BROOKHAVEN CITY HALL

AT

THE MARTA BROOKHAVEN – OGLETHORPE TRANSIT STATION

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STATE OF GEORGIA

COUNTY OF DEKALB

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of the ___ day of _____, 2022 (the "**Commencement Date**"), by and between METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY, a public body corporate created under Georgia Laws 1965, pp. 2243 et seq., as amended ("**MARTA**"), and the City of Brookhaven, Georgia, a body politic and corporate ("**Lessee**" or "**City**").

WITNESSETH:

WHEREAS, MARTA is the owner of the Leased Property (as hereinafter defined);

WHEREAS, the Leased Property is a portion of the transit rail station commonly known as the Brookhaven MARTA Station, which Lessee wishes to develop into a City Hall with Accessory Uses, parking and outdoor amenity space; and

WHEREAS, MARTA and Lessee desire to enter into this Lease Agreement reflecting the long-term utilization of the Leased Property, and improvements to be constructed thereon, adjacent to the Brookhaven MARTA Station and integrated with utilization of the Transit System.

NOW, THEREFORE, for and in consideration of the foregoing premises, the sum of TEN and NO/100 DOLLARS (\$10.00), and the covenants, representations, warranties, and agreements set forth herein, the receipt and legal sufficiency of which are hereby acknowledged by MARTA and Lessee, the parties hereto hereby agree as follows:

ARTICLE I

SCOPE, DEFINITIONS AND EXHIBITS

1.1 **Scope.** This Lease Agreement is intended to convey from MARTA to Lessee the Leasehold Estate, to provide for the development of Project Improvements, to specify rental obligations of Lessee, to specify terms and conditions for subleasing and mortgaging of all or portions of the Leased Property by Lessee, and other matters all as they may pertain to the use and development of the Leased Property.

1.2 **Definitions.** Unless otherwise expressly provided herein, when used in this Lease Agreement and in the Exhibits attached hereto, the following words, phrases, and terms shall mean and have reference to the definitions set forth hereinbelow:

"Access Easement" shall mean and have reference to that easement set forth in the certain Declaration defined herein.

"Accessory Use" shall mean any food and beverage establishments and retail establishments which are an accessory use to a municipal office building whether operated by the

City directly or indirectly. Such facilities shall not be on the exterior of the building, outward facing or be open except during the hours that City Hall is normally open to the public.

“**Appraisal**” shall mean that appraisal report dated August 11, 2021 performed by Valbridge Property Advisors for property located along the east side of Peachtree Road at the southeast corner of its intersection with Dresden Road identified via multiple tax parcel numbers and which divided a 4.955-acre or 215,840-square-foot parcel into Tract One-A containing 1.102 acres or forty-eight-thousand-three and twelve-hundredths square feet (48,003.12), and Tract One-B containing 3.835 acres, within which lies the Access Easement.

“**Appraised Value**” shall mean and have reference to: (a) for the period commencing on the Base Rent Commencement Date and ending on the last Day prior to the first Appraisal Reset Date, an amount equal to Two Million Nine Hundred Two Thousand Dollars (\$2,902,000) (being the figure allocable to the Leased Property and Access Easement); and (b) for each period commencing on an Appraisal Reset Date and ending on the Day immediately preceding the next Appraisal Reset Date (or the Expiration Date, as applicable), an amount determined in accordance with Section 3.4 hereof.

“**Appraisal Reset Dates**” shall mean and have reference to the twentieth (20th) and fortieth (40th) anniversaries of the Commencement Date.

“**Base Rent**” shall mean and have reference to the following:

(a) for the period from and including the Base Rent Commencement Date and through and including the last Day prior to the first CPI Adjustment Date after the Base Rent Commencement Date, an amount per annum equal to the Base Rent Initial Amount.

(b) effective on each CPI Adjustment Date after the Base Rent Commencement Date, an amount per annum equal to the Base Rent amount applicable on the Day prior to the applicable CPI Adjustment Date multiplied by the CPI Index Factor; provided, however, that on the CPI Adjustment Dates that are also Appraisal Reset Dates, the Base Rent shall be an amount per annum equal to six percent (6.0%) of the Appraised Value, as of the applicable Appraisal Reset Date, as determined in accordance with Section 3.4 hereof.

“**Base Rent Commencement Date**” shall mean and have reference to the earlier of first Day of the first full calendar month after the issuance of a (a) temporary certificate of occupancy, (b) permanent certificate of occupancy, (c) or reaching the Required Substantial Completion Date as set forth in the construction schedule for any portion of the Project Improvements.

“**Base Rent Initial Amount**” shall mean and have reference to an annual amount equal to six percent (6.0%) of the Appraised Value as of the Commencement Date, which amount, on the Base Rent Commencement Date shall be One Hundred Seventy-Four Thousand One Hundred Twenty Dollars (\$174,120).

“**Business Day**” shall mean and have reference to any Day, excluding any Saturday, any Sunday and any national holiday observed by the United States Government.

“**Calendar Year**” shall mean and have reference to each calendar year, or portion thereof, during the Lease Term.

“**City Hall**” shall mean the administration building, and related parking thereto, of the City of Brookhaven, where in the Mayor and administrative office shall conduct their day to day operations, Council meetings are held and is the principal place of business for the City of Brookhaven. No commercial activity shall take place on the premises other than as an amenity to be provided primarily for the use of City employees and visitors to City Hall and may include any Accessory Use.

“**Commencement Date**” shall mean and have reference to the date of execution of this Lease Agreement, as set forth above.

“**Conceptual Plan**” shall mean and have reference to the site plan attached hereto as Exhibit G.

“**Condemnation**” shall mean and have reference to (a) any taking or damaging of property by exercise of the power of eminent domain and (b) any sale or other transfer of property under threat of the exercise of the power of eminent domain.

“**Construction**” shall mean and have reference to any activity normally encompassed by any of the following terms: construction, reconstruction, demolition, excavation, building, rebuilding, renovation, or any similar term.

“**CPI Adjustment Dates**” shall mean and have reference to the first Day of each Lease Year commencing with the second Lease Year and of each subsequent Lease Year during the Lease Term.

“**CPI Index**” shall mean and have reference to the index published by the U.S. Department of Labor and now known as the United States Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, All Items, for Atlanta, Georgia MSA (1982-84=100). If the CPI Index shall be compiled at a different time or upon a different basis in the future, the Index published at the nearest convenient time, as reasonably determined by MARTA and Lessee, shall be used, so that adjustments shall be made to reflect the change in the cost of living that shall have occurred over the appropriate period of time. If the United States Department of Labor should no longer compile and publish such Index, the most similar Index compiled and published by said Department or any other branch or department of the federal government shall be used for the purpose of computing the adjustments provided for herein. If no such Index is compiled or published by any branch or department of the federal government, the statistics reflecting cost of living increases as compiled by an institution or organization or individual reasonably designated by MARTA and generally recognized as an authority by financial or insurance institutions shall be used as a basis for such adjustments.

“**CPI Index Factor**” shall, with respect to any CPI Adjustment Date, mean and have reference to the greater of (a) one hundred percent (100%) and (b) the following: the lesser of (A) a fraction the numerator of which shall be the most recent monthly CPI Index published at least thirty (30) days preceding such CPI Adjustment Date and the denominator of which shall be

the last monthly CPI Index published immediately preceding the previous CPI Adjustment Date, and (B) a percentage equal to one hundred two percent (102%).

“**Day**” shall mean and have reference to any one calendar day, unless specifically noted to the contrary.

“**Declaration**” shall mean and have reference to that certain Declaration of Covenants, Conditions, Reservations and Easements for the Project by Metropolitan Atlanta Rapid Transit Authority, dated as of [TBD], as amended from time to time.

“**Default**” shall mean and have reference to an occurrence of any act or omission which, with giving of notice or passage of time, or otherwise, may become an Event of Default.

“**Default Notice**” shall mean and have reference to any notice given to Lessee concerning the existence of a Default, delivered pursuant to Section 9.1 hereof.

“**Default Rate**” shall mean and have reference, with respect to each Day during any applicable period of time, to a rate per annum equal to the Prime Rate (as hereinafter defined) plus eight percent (8.0%). “**Prime Rate**” shall mean, with respect to each Day during any applicable period of time, the rate per annum published as the “PRIME RATE” in the “Money Rates” column of The Wall Street Journal edition published on such Day (or of the last edition thereof prior to such Day if no edition thereof is published on such Day); provided, however, that if there shall at any time no longer exist such publication of such rate, “Prime Rate” shall mean, with respect to each Day during any applicable period of time, the rate per annum reasonably determined by MARTA to be the base rate on such Day for corporate loans posted by three (3) or more major domestic commercial banks with offices in Atlanta, Georgia.

“**Disposition**” shall mean and have reference to a sale, transfer, conveyance, or other disposition, in a bona fide, arm’s length transaction, of more than 25% of the direct or indirect equity or other beneficial ownership interests in Lessee, provided, however, that a Disposition shall not include any of the following: (i) any Leasehold Mortgage or the initial debt and equity capitalization of Lessee for purposes of construction, development and financing of the Project Improvements and transfers of beneficial interests in the Lessee or Lessee Affiliate in connection therewith, (ii) the conveyance of fee title to the Leased Property from MARTA to Lessee pursuant to the Lessee Purchase Option in Section 2.16 hereof;

“**E-Verify**” shall mean and have reference to the meaning set forth in Section 4.7(m) hereof.

“**Environmental Law**” shall mean and have reference to: (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 5101, et seq.) the Resource Compensation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.) and any amendments thereto or orders, regulations, directions, or requirements thereunder; or (B) any other applicable county, municipal, state or federal law, rule, ordinance, direction, or regulation or any other similar law, rules, regulation or statute concerning the protection of the environment (collectively identified in this Lease Agreement as “**Environmental Laws**”).

“Event of Default” shall mean and have reference to any Event of Default as defined in Section 9.1(a) hereof and shall include both any Monetary Event of Default and/or any Non-Monetary Event of Default.

“Execute” and **“execution”** shall mean and have reference to sign(ed)(ing), seal(ed)(ing), and deliver(ed) (ing) and, where appropriate, acknowledge(ed)(ing).

“Expiration Date” shall mean and have reference to the date upon which the Leasehold Estate conveyed and demised by this Lease Agreement terminates and expires.

“Hazardous Materials” shall mean and have reference to: (A) any hazardous or toxic substance, material or waste, including those listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances in 40 CFR Part 302 and amendments thereto and replacements therefor; and (B) such hazardous or toxic substances, materials or wastes that are or may become regulated under any Environmental Law.

“Herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar term shall mean and have reference to this Lease Agreement as a whole.

“Including” shall mean and have reference to “including without limitation”.

“Interim Rent” shall mean and have reference initially to an annual amount equal to Twenty Five Percent (25%) of Base Rent from Commencement Date until start of Major Construction, then Fifty Percent (50%) of Base Rent during Construction and then One Hundred Percent (100%) of Base Rent on the Base Rent Commencement Date.

“Project Improvements” shall mean and have reference to the Project Improvements required to be constructed, equipped, and installed by Lessee pursuant to this Lease Agreement, which Project Improvements shall include a City Hall with no less than 8,000 square feet of occupiable space, tenant build-out improvements to the occupiable space, parking with an adequate number of spaces to park cars on the Leased Premises for City Hall and passive park facilities including landscaping, hardscaping, signage, bike facilities and other facilities generally consistent with that of a park within the City of Brookhaven.

“Interference” shall mean and have reference to any or all of the following: (a) a direct and physical encroachment or other incursion by any Project Improvements upon the Transit Facilities in a material manner; (b) any condition, act or omission which occurs on the Leased Property or the Project Improvements and which, in a material manner, (i) obstructs, impairs or interrupts, or endangers the safety of, the operation of the Transit Facilities, or (ii) endangers the safety of MARTA’s patrons; or (c) a condition or activity on the Leased Property which constitutes a public or private nuisance.

“Law(s)” shall mean and have reference to any and all present and future statutes, ordinances, rules, regulations, or binding determinations by the United States Government, the State of Georgia, the City of Brookhaven, the County of DeKalb, or any other governmental authority having power or jurisdiction over Lessee and the Leased Property, or any of them.

“**Lease**” or “**Lease Agreement**” shall mean and have reference to this document, all exhibits attached hereto, and all amendments, modifications or supplements as may from time to time be made hereto.

“**Lease Assets**” shall mean and have reference to the Leased Property and the Project Improvements.

“**Lease Term**” shall mean and have reference to the term of the Leasehold Estate (subject to earlier termination in accordance with the terms and conditions of this Lease Agreement) as set forth in Section 2.1 hereof.

“**Lease Year**” shall mean and have reference to (i) if the Commencement Date is the first Day of a Calendar Year, the period commencing on the Commencement Date and ending on the last Day of such Calendar Year, and each succeeding Calendar Year thereafter during the Lease Term, or (ii) if the Commencement Date is other than the first Day of a Calendar Year, the first (1st) Lease Year shall be the period commencing on the Commencement Date and ending on the last Day of the Calendar Year in which the Commencement Date occurs, and the second (2nd) Lease Year through the fiftieth (50th) Lease Year shall be each succeeding Calendar Year thereafter during the Lease Term.

“**Leased Property**” shall mean and have reference to those certain parcels of real property lying and being in the City of Brookhaven, in Land Lot 239 of the 18th District of DeKalb County, Georgia, which real property is more particularly described in Exhibit B attached hereto, containing approximately 1.102 acres, together with all easements (including the Access Easement) and rights appurtenant thereto and together with MARTA’s right, title and interest in and to all streets, public or private alleys and public or private ways adjoining or crossing said land. The term “Leased Property” does not include Project Improvements.

“**Leasehold Estate**” shall mean and have reference to: (a) the leasehold estate granted by this Lease Agreement in the Leased Property; (b) any and all rights, title, interest, powers, privileges, benefits and options of Lessee under this Lease Agreement; (c) any and all of the right, title and interest of Lessee in and to the Leased Property and the other Lease Assets under this Lease Agreement; and (d) any and all of the right, title and interest of Lessee in and to the buildings, structures and other improvements located on the Leased Property.

“**Lessee Affiliate**” shall mean and have reference to Lessee, or any entity (a) which, directly or indirectly controls, is controlled by, or is under common control with, Lessee or Guarantor ; (b) in which greater than fifty percent (50%) of the ultimate beneficial ownership interests are owned or held, directly or indirectly, by Lessee, or the ultimate beneficial owners of Lessee or a related Development Authority or Quasi-Governmental entity created by action of Lessee. For purposes of this definition, “controlled” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

“**Lessee Appraiser**” shall mean and have reference to the meaning of such term set forth in Section 3.4(b) hereof.

“**Lessee Purchase Option**” shall mean and have reference to the meaning of such term set forth in Section 2.16 hereof

“Major Construction Activity” shall mean and have reference to any Construction work within or upon the Leased Property which constitutes Construction of any Project Improvements and which has a projected cost in excess of Five Hundred Thousand Dollars (\$500,000.00) (which amount shall be adjusted annually from the date of this Lease Agreement by the CPI Index).

“MARTA” shall mean and have reference to the Metropolitan Atlanta Rapid Transit Authority, a public body corporate created under the MARTA Act.

“MARTA Act” shall mean and have reference to the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. Laws 1965, pp. 2243, et seq., as now or hereafter amended.

“MARTA Appraiser” shall mean and have reference to the meaning of such term set forth in Section 3.4(b) hereof

“Monetary Event of Default” shall mean and have reference to any Event of Default arising from a Default that can be cured solely by the payment of money.

“Non-Monetary Event of Default” shall mean and have reference to any Event of Default other than a Monetary Event of Default.

“Permitted Assignee” shall have the meaning ascribed thereto in Section 8.1(e) of this Lease.

“Person” shall mean and have reference to any natural person, corporation, partnership, limited liability company, business trust, or other legal entity.

“Pre-Approved Entity” shall mean any Authority or Board created by or under the control of the City of Brookhaven.

“Project” shall mean and have reference to the construction and operation of the Brookhaven City Hall and associated parking.

“Project Improvements” shall mean and have reference to any and all buildings, structures, and improvements constructed on the Leased Property by or on behalf of Lessee, together with all fixtures and appurtenances attached or affixed to said improvements or to the Leased Property.

“Purchase Option Amount ” shall mean TEN and NO/100 DOLLARS (\$10.00).

“Registered Mortgagee” shall mean and have reference to any Leasehold Mortgagee who has registered with MARTA pursuant to Section 7.3 of this Lease Agreement.

“Rent” shall mean and have reference to the Interim Rent, Base Rent, and Capital Event Participation Rent to be paid by Lessee to MARTA in accordance with Article III of this Lease Agreement, together with all other sums due and payable by Lessee in accordance with or pursuant to this Lease Agreement.

“Required Substantial Completion Date” shall mean and have reference to the date upon which Substantial Completion of Construction of the Project Improvements is required to have

occurred pursuant to this Lease Agreement, which date shall be the last Day of the twenty-fourth (24th) full calendar month after the Scheduled Construction Commencement Date, subject to extension for the period of any Unavoidable Delays.

“**SAVE**” shall mean and have reference to the meaning set forth in Section 4.7(m) hereof.

“**Scheduled Construction Commencement Date**” shall mean and have reference to the meaning set forth in Section 4.3(a) hereof

“**Sublease**” shall mean and have reference to a sublease under this Lease Agreement which conveys to such sublessee all of Lessee’s interest in and to the Leased Property, together with fee simple title (subject to this Lease Agreement) to the improvements located or to be located within the Leased Property.

“**Space Tenant**” shall mean and have reference to a lease which conveys to such sublessee permission to operate a permitted amenity which conducts operations completely contained inside of the Project Improvements, during hours that the City Hall is open to the public and its sole purpose is as an amenity to be for the use of City employees and visitors to City Hall during that time.

“**Substantial Completion of Construction**” shall mean and have reference to such completion of Construction of the Project Improvements or structures as will make the improvements or structures sufficient, suitable, and ready for immediate occupancy for the use intended, which completion shall be deemed to have occurred when all necessary certificates of occupancy (including temporary certificates of occupancy) or similar permits related to the use and occupancy of the applicable Project Improvements have been issued.

“**Tax**” or “**Taxes**” shall mean and have reference to any and all taxes, assessments, license fees, exacts, imposts, fees and charges (collectively, “**Impositions**”) of every sort, nature, or kind (other than MARTA’s income taxes, capital gain taxes, or estate or inheritance taxes, if any) that are levied, assessed, charged, or imposed by the United States, State of Georgia, City of Brookhaven, County of DeKalb, or any other governmental or quasi-governmental authority, and that are allocable and attributable to periods of time during the Lease Term, with respect to Lessee (or any person claiming any right, title, or interest by, through, or under Lessee), or with respect to any right, title, or interest of Lessee under this Lease Agreement (or any right, title, or interest of any person claiming same by, through, or under Lessee); provided, however, that (a) Taxes shall also include any Impositions levied, assessed, charged, or imposed upon MARTA if and to the extent such Impositions are specifically in lieu of Impositions which would otherwise be Taxes hereunder (sometimes known as “payments in lieu of taxes”), and (b) Taxes shall not include (i) Impositions (other than those described in the “provided, however” phrase of the immediately foregoing clause (a)) levied, assessed, charged, or imposed upon MARTA or its fee title to or reversionary interest in the Lease Assets, or (ii) Impositions levied, assessed, charged, or imposed with respect to Lessee (or any person claiming any right, title, or interest by, through, or under Lessee) or with respect to any right, title, or interest of Lessee under this Lease Agreement (or any right, title or interest of any person claiming same by, through, or under Lessee) that are either (A) specifically and uniquely levied, assessed or imposed in respect of property as to which fee title thereto, or a reversionary interest therein, is owned by MARTA, transit agencies similar to

MARTA, public or quasi-public agencies or authorities, or governmental or quasi-governmental entities, or (B) otherwise specifically and uniquely attributable to MARTA's ownership of fee title to, or a reversionary interest in, the Lease Assets.

“Total Brookhaven Oglethorpe Station Property” shall mean and have reference to that certain parcel of real property lying and being in Land 239 of the 18th District of DeKalb County, Georgia, which real property is more particularly described in Exhibit A attached hereto.

“Transit Easement Areas” shall mean and have reference to those portions, if any, of the Leased Property which are described in Exhibit E attached hereto.

“Transit Facilities” shall mean and have reference to the Transit Station, Transit Easement Areas and Transit Station Bus Intermodal.

“Transit Facility Areas” shall mean and have reference to those portions of the Total Brookhaven-Oglethorpe Station Property on which any Transit Facilities are currently or hereafter located.

“Transit Station” shall mean and have reference to all of the improvements, structures, equipment, and facilities, including rapid transit vehicles, located within the Transit Station Area at any time.

“Transit Station Area” shall mean and have reference to the geographic area defined and described on Exhibit F attached hereto.

“Transit Station Bus Intermodal” shall mean and have reference to the meaning ascribed to such term in the Infrastructure Agreement, if any.

“Transit Station Modifications” shall mean and have reference to the Transit Station Modifications as defined in the Infrastructure Agreement, if any.

“Transit System” shall mean and have reference to any activity conducted in connection with MARTA's Rapid Transit System and Project, as said “Rapid Transit System and Project” are defined in Section 2 of the MARTA Act.

“Unavoidable Delays” shall mean and have reference to delays due to causes beyond the reasonable control of Lessee, including, but not be limited to, delays due to: strikes, labor disputes, or work stoppages (legal or illegal); adverse weather conditions not reasonably anticipatable; acts of God; floods, fires or other casualty; epidemics; freight embargoes; delays of contractors, subcontractors, and suppliers for reasons set forth in this definition; unusual delay in transportation; unavailability of, or inability to obtain, labor; unavailability of, or unusual delay in the delivery of, fuel, power, supplies or materials; governmental actions, restrictions, regulation or moratorium; enemy action; riot, civil commotion, insurrection and war; sabotage; actions of MARTA not permitted by the express terms of this Lease Agreement; any failure by MARTA to act under circumstances when MARTA has a duty or obligation to do so; restraint or other act by court or public authority; the passage or reasonably unexpected interpretation or application of any statute, law or regulation; and the presence or existence on the Leased Property of any Hazardous Materials, or any subsurface condition not anticipated by or known to Lessee. Notwithstanding

anything to the contrary contained in this Lease Agreement, Lessee agrees that it shall give MARTA written notice of such delay within ten (10) days from the date on which Lessee first becomes aware of such delay.

“*Utility*” and “*Utilities*” shall mean and have reference to all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity and light, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities or services, including publicly owned fire and police signal systems, which directly or indirectly serve the Leased Property or any part thereof.

1.3 **Exhibits.** Each exhibit referred to in this Lease Agreement has been examined and approved by the parties and forms an essential part of this document. Any exhibits not physically attached hereto but referenced herein shall nonetheless be treated as if such exhibits were a part of the typed language of this Lease Agreement. Attached hereto and made a part hereof are Exhibits A through J.

ARTICLE II

GRANT OF LEASEHOLD INTEREST AND ESTATE

2.1 **Lease Term.**

(a) For and in consideration of the Rent and the covenants, terms and conditions contained in this Lease Agreement, MARTA hereby bargains, sells, grants and conveys to Lessee the Leasehold Estate in and to the Leased Property for the term defined in this Section 2.1, subject to the terms and conditions contained in this Lease Agreement. Lessee hereby accepts said grant of the Leasehold Estate upon the terms and conditions contained in this Lease Agreement, and Lessee hereby agrees to perform and comply fully with and diligently perform all terms and conditions contained in this Lease Agreement.

(b) Subject to Section 11.23 below, the Lease Term shall be a period of Fifty (50) Lease Years commencing on the Commencement Date and terminating and expiring at 11:59 p.m. on the last Day of the fiftieth (50th) Lease Year, unless the term of the Leasehold Estate is sooner terminated in accordance with this Lease Agreement. At the end of the Lease Term, and so long as Lessee has tendered all Rent payments, Lessee shall have the unqualified right but not the obligation to purchase the Leased Area from MARTA in fee simple, for the Purchase Option Amount as the entire consideration due under the Purchase Option, provided however, the transfer of fee simple title shall not release the Lessee from the obligation to timely make other payments which have accrued.

(c) Lessee acknowledges that the Leased Property is subject to, and the Leasehold Estate that is demised by this Lease Agreement is subject and subordinate to, the Declaration. Lessee shall pay and perform the duties, obligations, liabilities and responsibilities imposed upon the Lease Assets under the Declaration.

(d) Lessee shall comply with the duties, obligations, liabilities and responsibilities imposed upon Lessee and the Lease Assets under the Declaration.

(e) If, after the Commencement Date, but prior to the commencement of Construction of the Project Improvements, Lessee is unable to secure all required permits, suitable financing (or to appropriate and encumber funds for the Project), Lessee may terminate this Lease by written notice to MARTA upon which the parties shall have no further liabilities or obligations, except that in the event of such termination: (a) Lessee (including any assignee of Lessee) shall have no recourse against MARTA; and (b) MARTA shall be entitled to require Lessee, at MARTA's option, to restore the Leased Property either to a condition substantially similar to that existing as of the Commencement Date or to a graded "construction ready" site. The Scheduled Construction Commencement Date may be extended by mutual written agreement of the parties.

2.2 **FTA Approval.** The Parties acknowledge and agree that the Federal Transit Administration has concurred to this Lease as set forth in Exhibit J attached hereto and incorporated herein by this reference.

2.3 **Quiet Enjoyment.** Subject to Section 2.4 hereof, MARTA covenants and agrees that Lessee, its successors and permitted assigns, shall peacefully and quietly have, hold and enjoy the Leased Property for the Lease Term, without hindrance or interruption by MARTA or anyone claiming by, through or under MARTA, subject to the full and timely performance of all of the covenants and conditions of this Lease Agreement on Lessee's part to be performed hereunder.

2.4 **Transit Station.** MARTA and Lessee acknowledge and agree that MARTA has retained unencumbered fee simple title to the Transit Station Area and that MARTA shall at all times and in all respects have sole and complete control over the Transit Station, any and all activities and operations within the Transit Station, and access to and from the Transit Station, subject to Lessee's rights hereunder.

2.5 **Acceptance of Leased Property.**

(a) Except as may be explicitly set forth in this Lease Agreement, Lessee and MARTA acknowledge that MARTA expressly disclaims any representation or warranty of any kind or nature whatsoever with respect to the Leased Property or to the condition thereof. Lessee acknowledges: (i) that it has fully inspected the Leased Property or has been afforded the opportunity to have fully inspected the Leased Property; (ii) that MARTA leases and Lessee accepts the Leased Property and each fixture and other item constituting a portion of the Leased Property "as is" and "where is"; (iii) that MARTA may, but has no obligation to, conduct rapid transit system operations to, in, and from the Transit Station; and (iv) that any such rapid transit system operations in connection with the Transit Station and the Transit System, and the present (as of the date of this Lease Agreement) manner, method, mode or means of operation of the Transit Station or the Transit System or the equipment or facilities used therein, may cause noise, vibration, traffic, and congestion, which noise, vibration, traffic, and congestion may affect the Leased Property and may cause inconvenience, loss or damage to Lessee and Space Tenants. Without limiting the generality of the foregoing provisions of this Section 2.5(a), MARTA: (A) specifically disclaims any representation or warranty that the Leased Property is fit for the use intended by Lessee or for any other particular use; and (B) specifically disclaims any representation or warranty with respect to zoning or other restrictions affecting the use or occupancy of the Leased Property. Except as may be explicitly set forth in this Lease Agreement, Lessee hereby accepts the Leased Property in its present condition and subject to any and all

defects, infirmities and unsafe conditions in or on the Leased Property and any and all other conditions adversely affecting the value or use of the Leased Property, which conditions may be related to the Transit Station or the Transit System, whether such defects, infirmities, or other conditions are patent or latent and would or would not be disclosed by reasonable inspection. Without limiting the generality of the foregoing provisions of this Section 2.5(a), Lessee acknowledges that no representation or warranty as to the title to or the condition of the Leased Property has been made to Lessee by MARTA or by any agent, employee, representative, or attorney of MARTA, except as may be expressly and specifically stated in this Lease Agreement. From and after the date of this Lease Agreement, except as may be expressly and specifically stated in this Lease Agreement, MARTA shall have no obligation, express or implied, to make any repair or alteration to the Leased Property, to supply in any manner any services, utilities, maintenance, or insurance to or for the Leased Property or any improvements located thereon or therein, or to make any expenditure of funds for any purpose whatsoever in connection with the Leased Property.

(b) Notwithstanding anything to the contrary set forth in this Lease Agreement, in no event shall Lessee have any claim, cause of action, right or remedy against MARTA at law or in equity (and without reference to this Lease Agreement) on account of noise, vibration, traffic or congestion caused by the operation of the Transit Station Bus Intermodal or Transit System, either (i) within the Transit Facilities as they exist as of the date of this Lease Agreement and as they will be modified by the Transit Station Modifications, or (ii) in connection with any future expansion of the Transit Facilities beyond the Transit Station Modifications; and provided further, that Lessee shall not have any such claim, cause of action, right or remedy for any circumstance or condition (including, without limitation, any such physical damage) to the extent arising out of or by reason of (A) the general increase in patronage of the Transit System, or (B) the increase in the scope and frequency of the rapid rail system operated by MARTA at the Transit Station as of the Commencement Date to trains of not more than eight (8) cars at a “headway” frequency of not less than ninety (90) seconds, (C) the introduction of the operation of a “light rail” train system within the right-of-way for the Transit System as it exists as of the Commencement Date, (D) express rail service, (E) increased bus service, (F) expansion of the Transit System to include heavy rail and bus rapid transit, or (G) maximizing the number of passengers utilizing the transit facilities at the Transit Station or any other MARTA facility.

2.6 **Permissible and Required Uses of Leased Property.** Lessee may only use the Leased Property for a City Hall and any Accessory Use, parking and amenity exterior spaces.

2.7 **Encroachments, Adverse Uses, and Occupancies Other Than Lawful Uses.** Lessee shall not do any act or thing or permit any act or thing to be done in or on the Leased Property that constitutes a public or private nuisance. Lessee accepts the Leased Property subject to any and all encroachments in, to, and upon the Leased Property or any part thereof existing as of the Commencement Date. In the event Lessee cannot use and enjoy the Leased Property or any portion thereof in the manner contemplated hereby due to the existence of any encroachment, then: (a) this Lease Agreement shall not be void or voidable by Lessee and Lessee (with MARTA’s prior written consent, which may be granted or denied in MARTA’s discretion which shall be exercised reasonably) is authorized to take any action available at law or equity to remove the encroachment; (b) MARTA shall not be liable to Lessee for any loss or damage resulting therefrom; and (c) the duties and obligations of Lessee shall not be affected, modified, or changed

thereby. MARTA and Lessee understand and agree that, if and when any such encroachment shall have been removed by judicial proceedings or otherwise, the use of those portions of the Leased Property previously subject thereto shall inure to the benefit of the Lessee to the same extent as the other portions of the Leased Property.

2.8 **Payment of Taxes and Assessments.** The Parties acknowledge and agree that Lessee is a municipal corporation and is currently exempt from Taxes. Lessee shall bear, and shall pay or cause to be paid, to the public officer charged with the collection thereof, all Taxes before the same shall become delinquent. In the event any such Taxes may be paid in installments, Lessee shall be entitled to pay such amounts in installments; provided, however, that any such Taxes which are assessed during the Lease Term shall be fully discharged by Lessee prior to the expiration or termination of this Lease Agreement, either in installments or by a lump sum payment. Lessee shall also bear the prospective risk of any incremental costs attributable to legal requirements enacted in the future applicable to Lessee, the Leased Property, or the Project Improvements because of the Leased Property's proximity to the Transit Station..

2.9 **Contest of Tax.** The Parties acknowledge and agree that Lessee is a municipal corporation and is currently exempt from Taxes. However, if the imposition of any Tax shall be deemed by Lessee to be improper, illegal, or excessive, Lessee may, at its sole cost and expense and in its own name, dispute and contest said Tax, and in such event any such Tax need not be paid until adjudged to be valid, unless applicable law provides that such Tax must be paid prior to the determination of its validity. Lessee must notify MARTA in writing of such dispute and contest prior to filing the same. If requested by Lessee, MARTA shall reasonably cooperate in connection with such contest at no cost or expense to MARTA. Unless so contested, Lessee shall pay any Tax prior to delinquency, and if contested, Lessee shall pay any such Tax before the issuance of an execution on a final judgment with respect thereto.

2.10 **Payment of Utilities and Services.** Lessee shall be responsible for and shall pay for (or shall cause to be paid) all Utilities and services of whatever type, kind, or nature supplied to the Project Improvements during the Lease Term, including, without limitation, any and all costs of installing, maintaining, repairing or replacing such Utilities.

2.11 **Compliance with Conceptual Plan, Laws and Ordinances .**

(a) Lessee shall conform to, obey, and comply with the Conceptual Plan and all present and future Laws, easements, restrictions, conditions, and real covenants that in any way affect the Leased Property, the use of the Leased Property, or any Construction being done on or to the Leased Property or in any way affecting this Lease Agreement, including, without limitation 49 CFR Section 23.7 (as the same may be amended from time to time), 49 CFR Section 26.7 (as the same may be amended from time to time), 49 CFR Sections 27.7, 27.9, 37 (as the same may be amended from time to time) and Subparagraph b of Section 3 of the Federal Transit Administration Master Agreement (21), dated October 1, 2014 (as the same may be amended from time to time), with Lessee constituting the "Recipient" for purposes of said Subparagraph. Lessee shall not use, or suffer or permit to be used, the Leased Property or any portion thereof in violation of the Conceptual Plan or any Law. At its sole cost and expense, Lessee shall obtain all necessary building, Construction, zoning, and occupancy permits or licenses in connection with the occupation or use of the Leased Property or with the performance of any work or Construction by

Lessee pursuant to this Lease Agreement or otherwise on the Leased Property, and Lessee shall comply with all Laws and provisions of the Conceptual Plan affecting the same. Lessee shall be responsible for any and all permit, license, and impact fees imposed in connection with Construction of any Project Improvements.

(b) At its sole cost and expense, Lessee shall diligently and expeditiously pursue and obtain all necessary building, Construction, zoning, and occupancy permits or licenses (including, without limitation, land disturbance permits, building permits, and state-mandated soil and erosion control measures) in connection with the Construction, occupation or use of the Leased Property or the Project Improvements or with the performance of any work or Construction by Lessee pursuant to this Lease Agreement or otherwise on the Leased Property, and Lessee shall comply with all provisions of this Lease Agreement, the Infrastructure Agreement, the Declaration, and all Laws affecting the same. Lessee shall be responsible for any and all permit, license, and impact fees imposed in connection with Construction of any Project Improvements.

(c) Lessee shall be responsible for obtaining all necessary approvals from any third-party entities, including, without limitation, Georgia Power for the modification, relocation or encroaching on the Georgia Power Utilities. Pursuant to current agreements between Georgia Power and Lessor, all costs of the relocation, modifying or encroaching on the utility shall be invoiced to Lessor. Lessee shall reimburse Lessor for the costs incurred by Georgia Power and any costs incurred by Lessor during the process.

(d) Reserved.

(e) Lessee's commencement of any Construction of the Project Improvements shall constitute Lessee's representation and warranty to MARTA that the Leased Property has been properly zoned and otherwise entitled for its intended purposes.

2.12 **Contest of Laws by Lessee.** Lessee, in its own name and at its own cost and expense, shall have the right to contest the validity of any Law contemplated under Section 2.11 of this Lease Agreement; provided, however, that Lessee shall pursue such contest in good faith and in accordance with the Lease Agreement, applicable Laws and that Lessee shall give MARTA at least thirty (30) days' prior written notice of such contest in a timely manner to avoid any prejudice to the interests of MARTA. If requested by Lessee, MARTA shall reasonably cooperate with Lessee in connection with such contest and, if necessary, MARTA will join therein for the purpose of permitting Lessee to pursue such contest so long as Lessee promptly pays or reimburses MARTA for any costs reasonably incurred by MARTA in connection with such cooperation or joinder.

2.13 **Discharge of Liens.** Lessee shall in a timely manner remove and shall promptly discharge, by filing of bond pursuant to the Official Code of Georgia or by other lawful means, and shall satisfy of record at Lessee's sole cost and expense, any recorded lien, claim of lien, or other encumbrance affecting the Leased Property or any portion thereof and arising by reason of any labor, service, or materials furnished or claimed to have been furnished (a) to the Leased Property or any portion thereof during the Lease Term, (b) pursuant to this Lease Agreement or (c) to or on behalf of Lessee for any Construction or other work by or on behalf of Lessee, regardless of where such alleged work occurred; provided, however, that the foregoing covenant

shall be inapplicable to any lien, claim of lien, or encumbrance arising out of any work or alleged work by or on behalf of MARTA. Lessee agrees that MARTA is not responsible for any and all losses, claims, or damages resulting from the recording or foreclosure of any such liens or claims of lien, as a result of work being completed by or at the direction of Lessee (or Lessee's contractors, agents, subtenants and/or assigns). Notwithstanding any foregoing provisions to the contrary in this Section 2.12, Lessee shall have the right to contest in good faith any such lien, claim or encumbrance so long as it does so diligently and by appropriate proceedings and without prejudice to MARTA and so long as neither the Leased Property nor any Project Improvements nor any interest in either thereof would be in any imminent danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Lessee shall contest any such lien, claim or encumbrance, Lessee shall promptly notify MARTA of such contest and thereafter shall, upon MARTA's request, promptly provide a bond, cash deposit or other security reasonably satisfactory to MARTA to protect MARTA's interest should the contest be unsuccessful. If Lessee shall fail to promptly discharge or provide security against any such claim or demand as aforesaid, MARTA may do so and any and all expenses incurred by MARTA shall be immediately paid by Lessee on demand.

2.14 **Subordinate Nature of Liens**. Except as MARTA may hereafter expressly covenant to the contrary, Lessee's rights, as well as the rights of anyone else or any other entity whomsoever (including any architect, engineer, surveyor, contractor, assignee, tenant, sublessee, subcontractor of any tier, independent contractor, prime or general contractor, mechanic, laborer, materialman, or other lien or claim holder) shall always be and remain subordinate, inferior, and junior to MARTA's fee simple title to the Leased Property, MARTA's reversionary title, interest, and estate in the Leased Property, and all other rights, title, and interest retained by MARTA in the Leased Property pursuant to this Lease Agreement.

2.15 **Assignment by MARTA**. MARTA may transfer or assign any rights it may have in the Lease Assets and/or the Leased Property, or any portion thereof or any rights or interest therein, at any time provided that any such transfer or assignment shall be expressly made subject to all the terms and conditions of this Lease Agreement and any and all rights of Lessee, specifically including Lessee's right to purchase the Leased Property, and Lessee will be given prompt notice of such transfer or assignment. To the extent of any such transfer or assignment, the transferee or assignee of MARTA shall succeed to any and all rights of MARTA under this Lease Agreement.

2.16 **Purchase Option** At the end of the Lease Term, Lessee shall have the option to purchase the Leased Property for the Purchase Option Price and shall be presumed to have chosen to exercise the right to complete the Lessee Purchase Option unless MARTA has been given written notice that Lessee will not exercise its Lease Purchase Option. MARTA and Lessee agree that the sale shall be closed within the ninety (90) days prior to the end of the Lease Term (the "***Purchase Option Closing***") but not later than thirty (30) days before the end of the Lease Term. At the time of the Purchase Option Closing, MARTA shall convey fee simple title to the Leased Property to Lessee and release any claims against the Project Improvement, Lessee shall pay the purchase price to MARTA and this Lease Agreement shall automatically terminate by the merger of the fee title with and into the leasehold title.

ARTICLE III

RENT

3.1 **Rent.** Lessee covenants and agrees to pay to MARTA certain Rent as set forth in this Article III.

3.2 **Interim Rent.** For the period commencing on the Commencement Date and ending on the Day immediately preceding the Base Rent Commencement Date, Lessee shall pay to MARTA Interim Rent, which sum shall be due and payable in equal quarterly installments in advance, commencing on the Commencement Date and continuing thereafter on the first Day of each Calendar Year quarter (or portion thereof) during the Lease Term prior to the occurrence of the Initial Base Rent Commencement Date. Any installment of Interim Rent for a partial Calendar Year quarter shall be prorated for the number of Days of such partial Calendar Year quarter.

3.3 **Base Rent.**

(a) Commencing on the Base Rent Commencement Date, Lessee shall pay MARTA the Base Rent, which sum shall be paid in quarterly installments due and payable in advance on the Base Rent Commencement Date and thereafter on the first Day of each Calendar Year quarter (or portion thereof) during the Lease Term. Any installment of Base Rent for a partial Calendar Year quarter shall be prorated for the number of Days of such partial Calendar Year quarter. No Base Rent shall be due with respect to that period of the Lease Term prior to the Base Rent Commencement Date in that all of Lessee's rent obligations shall be satisfied by the payment of Interim Rent.

3.4 **Appraisal Reset for Base Rent.**

(a) On each of the Appraisal Reset Dates, the Base Rent shall reset (either increase or decrease) to an amount equal to the product of 6.0% multiplied by the then Appraised Value but in no event shall the Base Rent be decreased below the then current Base Rent before the Appraisal Reset Date.

(b) The Appraised Value shall be determined as of the first Appraisal Reset Date and on each Appraisal Reset Date thereafter in accordance with this Section 3.4, by an independent real estate appraiser or appraisers (who is a member or are members of the American Institute of Real Estate Appraisers (MAI)) with at least ten (10) years of full-time commercial appraisal experience in the metropolitan area in which the Leased Property is located and selected by MARTA (the "***MARTA Appraiser***").

(c) On or prior to the first (1st) Day of the sixth (6th) calendar month immediately preceding an Appraisal Reset Date, MARTA shall deliver to Lessee an appraisal of the Leased Property performed by the MARTA Appraiser based on the fair market value of the unimproved land (encumbered by this Lease Agreement and based upon the assumption that the use of the land will be its use as Brookhaven's City Hall and the parking to be provided) Lessee shall, on or prior to the twentieth (20th) day following the date of receipt of such appraisal, give written notice to MARTA (i) of Lessee's approval of the appraisal or (ii) objecting to the appraisal and identifying another independent real estate appraiser meeting the qualifications of

Section 3.4(a) (the “*Lessee Appraiser*”). In the event Lessee fails to give such notice to MARTA on or prior to such twentieth (20th) Day, Lessee shall be deemed to have approved the appraisal. In the event Lessee approves or is deemed to have approved the appraisal, the fair market value of the Leased Property set forth in such appraisal shall be deemed to be the Appraised Value as of the next Appraisal Reset Date. In the event Lessee gives MARTA written notice objecting to the appraisal and identifying the Lessee Appraiser on or prior to such twentieth (20) Day, then the Appraised Value for such Appraisal Reset Date shall be determined as provided in Section 3.4(d).

(d) If the Appraised Value is to be determined pursuant to this Section 3.4(d), the Lessee Appraiser shall appraise the Leased Property based on the fair market value of the unimproved land (encumbered by this Lease Agreement) and based upon the assumption that the use of the land will be its continued use (i.e., Brookhaven City Hall and for parking to service the same) in accordance with this Section 3.4 and shall deliver to MARTA and Lessee a copy of such appraisal no later than the first (1st) Day of the fourth (4th) month immediately preceding such Appraisal Reset Date. If the higher of the appraisals of the MARTA Appraiser and the Lessee Appraiser is not more than ten percent (10%) higher than the lower of such appraisals, then the Appraised Value for the next Appraisal Reset Date shall be the average of the two appraisals. If the higher of the two appraisals is more than ten percent (10%) higher than the lower of such appraisals, then the two appraisers shall designate a third appraiser meeting the qualifications of Section 3.4(a) no later than the fifteenth (15th) Day of the fourth (4th) month immediately preceding such Appraisal Reset Date. Within thirty (30) Days after the designation of the third appraiser, such appraiser shall also appraise the Leased Property based on the fair market value of the unimproved land (encumbered by this Lease Agreement) and based upon the assumption that the use of the land will be its continued use (i.e., Brookhaven City Hall and for parking to service the same) in accordance with this Section 3.4 and shall deliver to MARTA and Lessee a copy of the appraisal. If the third appraisal is required as contemplated hereby, then, for the purposes of such Appraisal Reset Date, the Appraised Value, as of the next Appraisal Reset Date, shall be the average of the three appraisals; provided, however, that (A) if the highest of the three appraisals is more than ten percent (10%) higher than the intermediate appraisal, the highest appraisal shall be disregarded, and the Appraised Value shall be the average of the other two appraisals, (B) if the lowest of the three appraisals is more than ten percent (10%) lower than the intermediate appraisal, the lowest appraisal shall be disregarded, and the Appraised Value shall be the average of the other two appraisals, and (C) if both the highest and lowest appraisals are to be disregarded pursuant to clauses (A) and (B), then the Appraised Value shall be the intermediate appraisal.

(e) In the event Lessee approves or is deemed to have approved the appraisal of the MARTA Appraiser pursuant to Section 3.4(b), MARTA shall pay all of the costs and expenses of such appraisal made by the MARTA Appraiser. In the event an appraisal is required to be made by the MARTA Appraiser, and the Lessee Appraiser pursuant to this Section 3.4, MARTA shall pay the costs and expenses of the appraisal made by the MARTA Appraiser, and Lessee shall pay the costs and expenses of the appraisal made by the Lessee Appraiser. In the event a third appraiser is required to be used pursuant to Section 3.4(c), MARTA and Lessee shall each pay one-half of the costs and expenses of the appraisal made by such third appraiser.

3.5 **Reserved**.

3.6 **Intentionally Omitted**.

3.7 **Common Area Expenses.** Lessee shall pay and all common area expenses, assessments or other fees, charges and expenses assessed pursuant to the Declaration.

3.8 **Rent and Other Sums Payable to MARTA.** The payment of all Rent and all other sums owed to MARTA under this Lease Agreement shall be net to MARTA of all amounts in respect of the Leased Property required to be paid by Lessee pursuant to the terms and provisions of this Lease Agreement. The payment of all Rent and all other sums owed to MARTA under this Lease Agreement shall be made by wire transfer pursuant to the following wire instructions, or pursuant to other wire instructions subsequently provided to Lessee in writing by MARTA:

Bank:	Bank of America
Bank ABA No.:	026009593
Account Name:	Metropolitan Atlanta Rapid Transit Authority (MARTA)
Account No.:	003270591359

The payment of all Rent shall be without notice or demand, and without counterclaim, setoff, deduction, defense, abatement, suspension, deferment or diminution of any kind.

3.9 **Interest on Unpaid Amounts.** Any sums that are payable to MARTA by Lessee under this Lease Agreement, which sums are not paid when due, shall bear interest at the Default Rate from the due date thereof to the date of payment of same. If MARTA successfully brings suit for collection of any liquidated sum stipulated in this Lease Agreement to be paid by Lessee to MARTA, Lessee hereby agrees to pay any and all such expenses and costs as MARTA may incur, including actual attorneys' fees reasonably incurred and all costs of litigation.

3.10 **Records and Reports.** Lessee shall maintain records and provide reports with respect to the Project Improvements in accordance with the following terms and conditions (all of which shall be kept confidential by MARTA to the extent permitted by federal, state and local laws, including, without limitation, the Georgia Open Records Act):

(a) Lessee shall maintain complete and accurate books and records with respect to the performance of the Project Improvements, including, without limitation, the status of construction, occupancy, and all forms of revenue and income with respect to the Project Improvements, all costs and expenses, and investments (both equity and debt), all in accordance with generally accepted accounting principles and other sound accounting principles and procedures approved in advance by MARTA.

(b) To the extent necessary to ensure compliance with the terms hereof, Lessee shall permit representatives of MARTA to inspect and examine and make abstracts from any of Lessee's books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, and financial and other conditions of Lessee with Lessee's independent certified public accountants and shall provide MARTA with such other financial information and reports related to the Project Improvements or Lessee as MARTA may reasonably request.

(c) Lessee shall provide a report to MARTA of the construction schedules for the Project Improvements within ten (10) calendar days after the close of each calendar quarter until such time as the construction of the Project Improvements has been fully achieved.

ARTICLE IV

PROJECT IMPROVEMENTS AND CONSTRUCTION

4.1 **Obligation of Lessee for Project Improvements.** As a material part of the consideration for the leasing of the Leased Property by MARTA pursuant to the terms and conditions of this Lease Agreement, Lessee shall commence and prosecute to completion, with due diligence, all Construction of the Project Improvements in accordance with the terms and conditions of this Lease Agreement.

4.2 **Title to Leased Property and Project Improvements.** Fee title to the Leased Property shall continue to vest in MARTA or its successors at all times during the term of this Lease Agreement, subject to the Leasehold Estate and any additional rights expressly and specifically granted in this Lease Agreement to Lessee. Nothing contained in this Lease Agreement shall be construed to convey any legal or equitable title in the Leased Property to Lessee other than the Leasehold Estate until such title is conveyed pursuant to the terms and conditions of this Lease Agreement. Lessee's Construction of the Project Improvements and Lessee's payment of the full cost of said Construction of the Project Improvements shall constitute a material part of the consideration rendered to MARTA under this Lease Agreement. Title to the Project Improvements shall (a) at all times during the Lease Term vest in Lessee. In the event that Lessee fails or elects not to take title to the Leased Property upon the expiration of the Lease Term then title to the Project Improvements shall automatically vest in MARTA without the necessity of any other writing.

4.3 **Commencement and Substantial Completion of Project Improvements.**

(a) Lessee shall commence and diligently prosecute Construction of the Project Improvements on or before the date which is the last Day prior to the second (2nd) anniversary of the Commencement Date, subject to extension for Unavoidable Delays (such date, including any such extension thereof, being the "***Scheduled Construction Commencement Date***"). In the event that, in MARTA's sole and reasonable judgment, Lessee fails to cause meaningful and material vertical Construction of the Project Improvements to be commenced by the Scheduled Construction Commencement Date and such failure continues uncured for ninety (90) after notice, MARTA shall have the right to terminate this Lease Agreement at any time thereafter by delivering notice of such termination to Lessee. In the event of such termination: (a) Lessee (including any assignee of Lessee) shall have no recourse against MARTA; and (b) MARTA shall be entitled to require Lessee, at MARTA's option, to restore the Leased Property either to a condition substantially similar to that existing as of the Commencement Date or to a graded "construction ready" site. The Scheduled Construction Commencement Date may be extended by mutual written agreement of the parties.

(b) Lessee shall cause Substantial Completion of Construction of the Project Improvements to be achieved on or before the Required Substantial Completion Date. In the event that Substantial Completion of Construction of the Project Improvements is not achieved on or before the Required Substantial Completion Date, MARTA may deliver written notice of such failure to Lessee, and Lessee shall have ninety (90) Days to cure such failure. In the event that Lessee fails to cure such failure within such ninety (90) Day period, MARTA shall have the right,

subject to Section 9.3 hereof, to terminate this Lease Agreement at any time following the expiration of such period by delivering notice of such termination to Lessee, in which event all right, title and interest of Lessee in the Leased Property shall automatically, and without further act or documentation, revert to MARTA. In the event of such termination: (i) Lessee (including any assignee of Lessee) shall have no recourse against MARTA; and (ii) MARTA shall be entitled, at MARTA's option, to require Lessee to restore the Leased Property either to a condition substantially similar to that existing as of the Commencement Date or to a graded "construction ready" site.

(c) Reserved.

(d) MARTA shall provide, at the expense of Lessee, all flagging, traffic services, track allocation and coordination prior to, during or after completion of Construction.

4.4 **Security for Completion and Payment.**

(a) Lessee shall cause the Project Improvements to be constructed by one or more reputable contractors which have a performance record of successfully and timely constructing projects similar to the Project Improvements and shall ensure that all major subcontractors are contractors eligible for one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety approved on MARTA's Department of Treasurer's List of Approved Sureties. MARTA shall determine, in MARTA's reasonable discretion, whether such surety bonds shall be required in connection with the Project Improvements. In the event that MARTA requires such surety bonds (or in the event that they are otherwise obtained):

(i) the performance bond shall: (A) name MARTA as an additional obligee; (B) guarantee the full performance of the Construction contract and the completion of Construction contract in an amount equal to at least One Hundred Percent (100%) of the Construction contract price; and (C) be issued in form and substance reasonably acceptable to MARTA, provided, however, MARTA shall not reject the form and substance of such bond so long as such bond contains terms and conditions which are commercially acceptable based upon industry standards;

(ii) the payment bond shall: (A) name MARTA as an additional obligee; (B) guarantee payment of all labor or materials incorporated in Construction of the Project Improvements and payment of all fees and other costs and expenses incurred in connection with said construction; and (C) be issued in form and substance reasonably acceptable to MARTA and in amount at least equal to One Hundred Percent (100%) of the Construction contract price, provided, however, MARTA shall not reject the form and substance of such bonds so long as such bonds contain terms and conditions which are commercially acceptable based upon industry standards.

(b) At least thirty (30) days prior to commencement of Construction of any part of the Project Improvements, as a material part of the consideration for the leasing of the Leased Property to Lessee:

(i) Lessee shall deliver to MARTA evidence reasonably satisfactory to MARTA that the requirements of Section 4.4(a) have been complied with (including, without limitation, delivery of the payment and performance bonds described therein to the extent required by MARTA);

(ii) Lessee shall deliver to MARTA documentary evidence reasonably acceptable to MARTA that full and final completion of Construction of such part of the Project Improvements and payment of all fees and other costs and expenses incurred in connection with said Construction will be achieved on a timely basis in accordance with the terms of this Lease Agreement; and

(iii) Reserved.

(iv) Lessee shall deliver to MARTA documentary evidence reasonably acceptable to MARTA that Lessee, its contractors and subcontractors have made a good faith effort to meet the Disadvantage Business Entity requirements set forth by the FTA for construction projects and MARTA's DBE policies and goals for this Construction project.

4.5 **Subsequent Construction Within Leased Property.** Subsequent (but not prior) to the Substantial Completion of Construction of the Project Improvements, Lessee may undertake Construction of additional Project Improvements, subject to the provisions of this Article IV ("**Subsequent Construction**"). Subsequent Construction shall mean and improvements that result in an increase in size of the Project by more than 10% over what was approved in the Conceptual Plan and will trigger a review and amendment to the Conceptual Plan for the Project. MARTA and Lessee acknowledge and agree that this Lease Agreement is entered into on behalf of MARTA as part of a program designed to create the Project as partners with another Governmental Agency.

4.6 **No Interference with Transit Facilities.**

(a) Lessee hereby agrees that the Construction of Project Improvements, and any work or activity connected therewith undertaken by or on behalf of Lessee or any sublessee thereof, or any prime or general contractors, any subcontractors, any independent contractors, and any agents or employees of Lessee, shall be performed in such a manner so as not to constitute an Interference. Should any Construction or any activity whatsoever upon the Leased Property performed by or on behalf of Lessee or any sublessee constitute an Interference, MARTA shall have the right to enter the Leased Property and undertake remedial activity to the extent reasonably necessary to allow the safe and efficient operation of the Transit Facilities to continue. Said remedial activity shall be in the name of, for the account of, and at the sole cost and expense of, Lessee. Lessee shall fully reimburse MARTA for all reasonably necessary costs and expenses (including, without limitation, actual attorneys' fees reasonably incurred and all costs of litigation) incurred by MARTA in connection with said remedial activity within thirty (30) Days after Lessee's receipt of MARTA's written demand for reimbursement.

(b) Prior to exercising any right under Section 4.6(a) to cure or correct any Interference (except in the case of any Interference which results, as reasonably determined by MARTA, in an emergency condition), MARTA shall give written notice to Lessee (and all Registered Mortgagees, if any), which notice shall briefly describe the Interference with

reasonable specificity as to the nature of the problem and requested remedies (such notice being hereinafter referred to as the “*Notice of Noncompliance*”). Except as may be otherwise provided in this Lease Agreement, Lessee shall be responsible for curing or correcting the Interference within a period of three (3) Days following Lessee’s receipt of such Notice of Noncompliance; provided, however, that if such cure or correction cannot reasonably be effected within said three (3) Day period, then Lessee shall be required to commence within said three (3) Day period action to effect such cure or correction and thereafter to prosecute diligently and continuously such action until such cure or correction has been effected. In the event that Lessee so effects such cure or correction following any Notice of Noncompliance, then MARTA shall not be entitled to cure or correct the Interference pursuant to such Notice of Noncompliance. Notwithstanding the foregoing, MARTA, acting in the name of and for the account of Lessee, may perform such work as is reasonably necessary to cure or correct such Interference if Lessee refuses or fails to timely undertake such actions as are required to be taken in accordance with this Section 4.6(b) to effect such cure or correction.

(c) The Construction of the Project Improvements shall be conducted only by use of Construction methods and techniques that do not endanger the safety of any persons using, operating or maintaining the Transit Facilities in any manner not inherent in such Construction. In the event that MARTA serves upon Lessee written notice, signed by MARTA’s General Manager (or his duly authorized designee), that any Construction activity, method, or technique constitutes threat of immediate danger to persons using, operating, or maintaining the Transit Facilities, all Construction work that was the cause of the specified threat of danger shall be halted immediately at no cost or expense to MARTA and shall not be continued until Lessee and MARTA have reached an agreement regarding the elimination of said threat of danger. The Required Substantial Completion Date shall be extended by the period of work stoppage(s) declared pursuant to this Section 4.6(c).

(d) Prior to the commencement and throughout the duration of any Construction, which may or will directly affect the Transit Station, Lessee shall engage as needed a qualified land surveyor registered with the State of Georgia to survey and check the location of the Project Improvements to ensure that all portions of the Project Improvements will be located completely within the Leased Property and appurtenant easements, and will not encroach upon the Transit Station Area or any other property outside the Leased Property. Lessee acknowledges and agrees that MARTA or its contractors or subcontractors may survey and check the location of the Project Improvements during the course of Construction thereof. MARTA and Lessee each hereby agree to allow the other’s surveyor to enter upon the Leased Property and the Transit Station Area to the extent reasonably necessary in order to survey and check the location of the Project Improvements prior to and during Construction. Any survey work conducted by MARTA shall be completed, at MARTA’s sole expense, in a timely manner so as not to impede Lessee’s ability to continue with the Construction of the Project Improvements. In the event MARTA determines that the Project Improvements encroach upon the Transit Station, MARTA shall promptly send written notice to Lessee (and all Registered Mortgagees, if any) of said encroachment. Nothing in this Lease Agreement shall be deemed to constitute a waiver by MARTA of any rights or remedies that it may have at law or in equity with respect to any such encroachment or to impose upon MARTA, or constitute an assumption by MARTA of, any liability or responsibility in connection therewith.

4.7 **Construction of Project Improvements.** Lessee agrees that it shall submit to MARTA, in advance of any Major Construction Activities, plans and specifications for such Major Construction Activities. Such plans and specifications shall be submitted as soon as they are available, but in any event at least sixty (60) Days in advance of commencement of such Major Construction Activities. MARTA shall have the right to notify Lessee in writing, within fifteen (15) Days after receipt of such plans and specifications, of MARTA's objection(s) to the plans and specifications for such Major Construction Activities; provided, however, MARTA may only object to such plans and specifications (i) if in MARTA's reasonable judgment the Project Improvements described in such plans would require MARTA to make alterations, enhancements or additions to the existing Transit System; (ii) if in MARTA's reasonable judgment the plans reflect Project Improvements of materially inferior quality to that of other similar developments in the Atlanta metropolitan area; or (iii) if such plans and specifications do not conform to the requirements of this Article IV. Lessee shall not commence any Major Construction Activities for which it receives such written notice of objection from MARTA. If MARTA does not deliver objections within fifteen (15) Days of Lessee's delivery of plans and specifications, MARTA shall be deemed to have approved same. Lessee shall comply with the following covenants in connection with any Construction:

(a) Lessee shall construct Project Improvements in full compliance with all applicable fire and building codes and all other Laws, including the Building Code of the County of DeKalb, as the same may be amended from time to time.

(b) All Project Improvements shall be constructed of new and first-class materials or other high-quality architectural materials and in a first-class workmanlike manner and shall be constructed in compliance with the approved plans and specifications and Conceptual Plan.

(c) Lessee shall deliver (electronically is acceptable) to MARTA four (4) photocopies of the contract(s) between Lessee and its general or prime contractor(s) for any Major Construction Activities. Lessee shall deliver to MARTA four photocopies of any or all subcontracts relating to Major Construction Activities upon request by MARTA.

(d) Notwithstanding any other provision of this Lease Agreement to the contrary, Lessee shall not commence or perform, or cause to be commenced or performed, any Major Construction Activities whatsoever upon or within the Leased Property unless and until written evidence has been delivered by Lessee to MARTA that the City has appropriated sufficient funds for Lessee to complete such Major Construction Activities.

(e) Any and all Project Improvements shall be constructed at the sole cost and expense of Lessee and persons other than MARTA, and MARTA shall have no obligation to Lessee or to any third party to construct, repair, maintain, or operate any Project Improvements.

(f) Lessee hereby agrees to keep MARTA notified of Construction scheduled for the Leased Property and to allow MARTA and MARTA's authorized representatives, agents, and employees to inspect, in a reasonable manner, any Construction upon the Leased Property in order to determine whether Lessee is complying with Lessee's undertakings, duties, and obligations under this Lease Agreement. Such inspection shall not unreasonably interfere with

any Construction being done by or on behalf of Lessee. No such inspection shall be deemed or construed as a waiver or approval of any Event of Default which exists at the time of such inspection and about which MARTA does not complain or give notice to Lessee.

As soon as practical and in all events within six (6) calendar months after the Substantial Completion of Construction of any Major Construction Activities, Lessee shall furnish to MARTA, at Lessee's sole cost and expense, (a) six (6) complete sets of final "As-Built" plans and specifications of the completed improvements, (b) six (6) duplicates of a current, accurate, properly labeled, and certified plat of survey, prepared by a land surveyor qualified and registered with the State of Georgia and reasonably acceptable to MARTA, depicting to scale the exact location of the Project Improvements and any other structures located in, on, or above the Leased Property, as the same has been constructed, and (c) a surveyor's inspection report properly prepared, executed, and sealed by the surveying surveyor as to the Leased Property on the form of surveyor's report required by the title insurer or insurers issuing MARTA's owner's title insurance policy on the Leased Property.

(i) the construction of the Brookhaven City Hall may be exempt from disclosure in response to a request to made under the Open Records Act in O.C.G.A. § 50-18-25(a)(25)(A) (iv) which provides an exemption against the disclosure of "any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts."

(g) Upon Substantial Completion of Construction of the Project Improvements and as soon as the same may be obtained, but in any event prior to the Required Substantial Completion Date, Lessee shall deliver to MARTA a Certificate of Substantial Completion executed by Lessee's architect and a Certificate of Occupancy issued by the City of Brookhaven for such Project Improvements. MARTA and Lessee agree that delivery of such Certificate of Occupancy or temporary Certificate of Occupancy shall constitute conclusive evidence of Substantial Completion of Construction of such Project Improvements for the sole purpose of determining whether the Required Substantial Completion Date has been met, but shall not constitute conclusive evidence or preponderant evidence of the conformity of said Construction with the other express requirements of this Agreement.

(h) Lessee agrees that all necessary soil and rock tests and other appropriate environmental studies performed on the Leased Property shall be conducted at Lessee's sole cost and expense. Lessee acknowledges that MARTA makes no representations or warranties concerning the suitability or capacity of the Leased Property to provide adequate support for any improvements to be constructed upon or within the Leased Property. Lessee hereby fully assumes any and all risk of the suitability and capacity of the Leased Property for providing said adequate support.

(i) Lessee's Construction obligations shall include restoring and landscaping in a manner reasonably acceptable to MARTA, subject to any requirements of the local jurisdiction, any and all portions of the grade level of the Leased Property that are not occupied by structural improvements. Lessee's Construction obligations shall also include the provision of

parking facilities sufficient to comply with any minimum parking requirements then imposed by applicable Laws.

(j) Any subsequent material modifications to the design and engineering plans and specifications for the Project Improvements shall be subject to MARTA's prior approval, which shall not be unreasonably withheld or delayed. Lessee acknowledges that, among other factors, it shall be reasonable for MARTA to consider in evaluating such modifications whether, in MARTA's determination, the modified design of the Project Improvements are oriented in a manner to encourage the use of MARTA transit facilities complies with the provisions of this Section 4.7. Lessee shall submit all such modified plans and specifications to MARTA for its approval, and MARTA shall have the right to notify Lessee in writing, within fifteen (15) Business Days after receipt of such plans and specifications, of MARTA's objections thereto. In the event that MARTA fails to provide any such objections to the modified plans and specifications during such fifteen (15) Business Day period, such plans and specifications shall be deemed approved. Notwithstanding anything to the contrary contained in this Section 4.7(l), no approval from MARTA shall be required for any subsequent changes to the plans and specifications previously approved by MARTA that do not, in the aggregate, increase or decrease the construction costs of the Project Improvements by more than ten percent (10%).

(k) Lessee must cause compliance with all requirements of the Illegal Immigration Reform and Enforcement Act, O.C.G.A. § 13-10-90, et seq. ("*E-Verify*") and the Systematic Alien Verification for Entitlements Act, O.C.G.A. § 50-36-1 ("*SAVE*"). Lessee, and any contractor or subcontractor of Lessee, shall provide MARTA with affidavits and any other necessary documentation to evidence compliance with the requirements of E-Verify and SAVE.

4.8 **Utility Services for Leased Property.** Lessee hereby agrees that all appurtenant water, sewer, gas, telephone, electrical and other wires, pipes, equipment, facilities, and conductors of any kind shall be connected to and constructed in, upon, or above the Leased Property and appurtenant easements so as not to constitute an Interference.

4.9 **Payment of Bills for Construction.** Lessee shall pay, or cause to be paid, as they become due and payable, all bills for labor, materials, insurance, and bonds, and all fees of architects, engineers, contractors, subcontractors, surveyors, and all other costs and expenses incident to any Construction in or on the Leased Property or the Construction of the Project Improvements pursuant to this Lease Agreement. Notwithstanding the foregoing provisions of this Section 4.9, Lessee may, in good faith, at its sole cost and expense, and in its own name, dispute and contest any such bill, fee, cost or expense and in such event, any such item need not be paid until adjudged to be valid. Unless so contested, all such items shall be paid, and if contested, any such item shall be paid before the issuance of an execution on a final judgment with respect thereto; provided, however, that any lien or claim of lien shall be contested only in accordance with Section 2.13.

4.10 **Zoning and Building Permits.** Lessee shall obtain any and all zoning or building permits, certificates of occupancy, licenses, or other permits required by any Law, for the Construction, occupancy, and operation of the Project Improvements. MARTA agrees to cooperate with Lessee in efforts to obtain such permits, certificates, or licenses, provided any

expenses reasonably incurred by MARTA by such cooperation (including, without limitation, reasonable attorneys' fees and all costs of litigation) are promptly reimbursed by Lessee.

4.11 **Environmental Matters.** MARTA hereby assumes no responsibility or obligation with respect to Hazardous Materials, if any, upon or proximate to the Leased Property and has made no warranty or representation with respect to the existence (or non-existence) of Hazardous Materials. Lessee acknowledges that, prior to execution of this Lease Agreement, Lessee has performed all prudent and customary environmental diligence and/or has relied upon its agent or contractor therefor, that MARTA has afforded Lessee reasonable access rights for work relating to such diligence and has made MARTA's environmental reports on the Leased Property available to Lessee, and that any arrangements and expenses necessary to entitle Lessee to rely upon such reports are Lessee's responsibility and not MARTA's responsibility.

4.12 **Permitted Uses for Project Improvements.** Any and all Project Improvements within the Leased Property shall be developed, constructed, occupied, operated and maintained as a City Hall pursuant to this Lease Agreement and in compliance with MARTA design standards for projects of similar scope and nature. A project of "similar scope and nature" is agreed to be a building and related parking which serves as the principal place of business for the government of the City of Brookhaven. The use of this building as a City Hall of Brookhaven may include, without limitation, the offices of elected and appointed officials, meeting rooms including public meetings of boards and commission and at least one place of public assembly of sufficient size to accommodate large public meetings, such as City Council meetings, offices and work areas for governmental employees and contractors to perform administrative and operational functions in the conduct the day to day business of the City. In addition to parking for City personnel and the general public, the parking areas may include the parking and storage of City vehicles of various types, including trucks, which are necessary and convenient for government operations. As an amenity to be provided primarily for the use of City employees and visitors to City Hall, limited commercial activity is permitted and may include without limitation, any Accessory Use.

4.13 **Parking for Project Improvements.** Parking for the Project Improvements shall be contained to Lessee's property only and shall not exceed a parking ratio of 2.5 parking spaces per 1,000 rentable square feet. Prior to commencement of any Construction by Lessee on the Leased Property, Lessee shall relocate the current MARTA long-term parking area as shown on Exhibit K attached hereto consisting of approximately one hundred sixty-nine (169) parking spaces to the area on the east side of the Transit Station in the location as generally shown and depicted on Exhibit K (the "***Replacement MARTA Long-Term Parking Area***"), which relocation shall include, among other things, the Construction and installation by Lessee in the Replacement MARTA Long-Term Parking Area of lighting, a police call box, security cameras, fencing, fiber optics, islands, repaving and striping of the Replacement MARTA Long-Term Parking Area, [and Construction and installation of elevators at the west edge of the Transit Station in substantially the location as shown on Exhibit K,¹] all in accordance with plans and specifications to be pre-approved in writing by MARTA. Once completed, the Replacement MARTA Long-Term Parking Area shall remain operational at all times during any Construction by Lessee on the Leased Property. The costs associated with such long-term parking relocation are hereinafter referred to as the "***Long-Term Parking Relocation Costs.***" Lessee shall pay a maximum of up to

¹ To be discussed.

\$ _____ of the Long-Term Parking Relocation Costs, and MARTA shall pay the balance of the Long-Term Parking Relocation Costs.

ARTICLE V

INDEMNIFICATION AND INSURANCE PROTECTION

5.1 Indemnification.

(a) As a material part of the consideration for this Lease Agreement, Lessee shall, to the extent permitted by law, indemnify and hold harmless MARTA, its directors, officers, agents, employees, successors and assigns, if any, from and against any and all liability, loss, cost, claim, demand, damage, or expense of any kind or nature whatsoever (including, without limitation, all attorneys' fees and costs of litigation incurred in defense of such claims) for (i) any loss of life, bodily injury or personal injury to any persons whomsoever, and (ii) any loss, damage or destruction of or to any property of any kind or nature whatsoever owned, leased, or controlled by any persons or entities whomsoever, other than the Leased Property, the Project Improvements and the Transit Facilities (each and every such liability, loss, cost, claim, demand, damage, or expense being referred to collectively as "**Loss**"), (a) to the extent such Loss arises from, or in any manner grows out of or occurs in connection with, any act, omission, or neglect on or about the Lease Assets during the Lease Term by Lessee, by any Space Tenant's assigns, contractors and subcontractors, partners, agents, and employees, or their partners, representatives, agents or employees, or (b) which Loss is suffered or incurred by any of the aforesaid persons or entities during the Lease Term and which Loss arises from, or in any manner grows out of or occurs in connection with, any latent or patent defect in any Construction undertaken by Lessee pursuant to or in connection with any Construction contemplated by this Lease Agreement.

(b) MARTA agrees to cooperate with Lessee in the defense of any litigation filed against MARTA. Lessee's obligation to indemnify MARTA under this Section 5.1 shall not be limited to the scope and amount of coverage provided by any insurance maintained by Lessee, including, without limitation, the insurance required to be maintained by Lessee pursuant to Section 5.2 of this Lease Agreement. Lessee's obligation to indemnify MARTA under this Section 5.1 shall be independent of any insurance coverage maintained by Lessee or maintained by or otherwise available to MARTA; and under no circumstances shall MARTA be required to elect to proceed either by seeking benefits under any such insurance coverage or by seeking recourse under the protection of this indemnification, but MARTA shall in all events have the right to enforce this indemnification without first seeking the benefit of any such insurance coverage.

(c) Notwithstanding any provision to the contrary contained in this Lease Agreement, MARTA agrees and acknowledges that Lessee's obligations to indemnify and hold harmless MARTA and related parties under this Section 5.1 shall in no event extend to or include any Loss to the extent arising out of any negligent, willful, unlawful or other tortious act or omission on the part of MARTA, its directors, officers, attorneys, MARTA's contractors or subcontractors of any tier, MARTA's agents, or employees, or the agents or employees of MARTA's contractors or subcontractors of any tier or successors or assigns of any of such parties. The terms and provisions of this Section 5.1 shall survive for a period of one (1) year from the expiration, or earlier termination of this Lease Agreement.

5.2 **Liability Insurance Protection.**

(a) **Prior to Substantial Completion of Construction.** Prior to Substantial Completion of Construction, at Lessee's sole cost and expense, Lessee shall obtain and maintain insurance coverage in the amount herein specified under a policy or policies of commercial general liability insurance with a responsible insurance company or companies which are reasonably acceptable to MARTA. Such insurance policy or policies shall have total combined single limits of One Million and No/100 Dollars (\$1,000,000.00) per occurrence, and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate, with deductibles reasonably acceptable to MARTA, for all damages arising out of personal or bodily injuries to or the death of one or more persons or arising out of damage to or destruction of property and occasioned by or in connection with any activities of Lessee, its contractors or subcontractors of any tier, any Space Tenant, any agents, employees, guests, licensees, or invitees of Lessee or any Space Tenant, or any of them in, on, over, across, or beneath the Leased Property, or any portion thereof. Said insurance policy or policies shall cover MARTA as an additional insured thereunder and shall include, without limitation, a contractual indemnity endorsement covering the indemnification set forth in Section 5.1 of this Lease Agreement and products liability and completed operations liability coverage.

(b) **After Substantial Completion of Construction.** After Substantial Completion of Construction, the term of this Lease Agreement, at Lessee's sole cost and expense, Lessee shall obtain and maintain insurance coverage in the amount herein specified under a policy or policies of commercial general liability insurance with a responsible insurance company or companies which are reasonably acceptable to MARTA. Such insurance policy or policies shall have total combined single limits of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) per occurrence, with deductibles not in excess of the amount of Ten Thousand and No/100 Dollars (\$10,000.00) per occurrence, for all damages arising out of personal or bodily injuries to or the death of one or more persons or arising out of damage to or destruction of property and occasioned by or in connection with any activities of Lessee, its contractors or subcontractors of any tier, any agents, employees, guests, licensees, or invitees of Lessee, or any of them in, on, over, across, or beneath the Leased Property, or any portion thereof. Said insurance policy or policies shall cover MARTA as an additional insured thereunder and shall include, without limitation, a contractual indemnity endorsement covering the indemnification set forth in Section 5.1 of this Lease Agreement and products liability and completed operations liability coverage. Umbrella/Excess Liability Insurance may be used to achieve required Commercial General Liability limits. The policy(ies) will be endorsed to include a waiver of subrogation in MARTA's favor.

5.3 **"All Risk" Property Insurance.** Throughout the Lease Term, at Lessee's sole cost and expense, Lessee shall obtain and maintain, or cause to be obtained and maintained, a policy or policies of "all risk" property insurance (naming MARTA as an additional insured, as its interest may appear), covering the Lease Assets and the Project Improvements against loss (including business interruption coverage in an amount satisfactory to MARTA) or damage by fire, collapse, earthquake, and other risks now or hereafter customarily embraced by an "all risk" policy, in an amount not less than one hundred (100%) percent of full replacement cost. For the period of Construction of any Project Improvements, the insurance on such Project Improvements required by this Section 5.3 shall be in "All-Risk" Builder's Risk Completed Value Form or other comparable coverage during construction of such Project Improvements. Subject to reasonable

prior notification to MARTA, Lessee shall have the sole and exclusive authority to adjust all claims under the insurance required by this Section 5.3.

5.4 **Boiler and Pressure Insurance.** In the event the Project Improvements contain a boiler or other pressure vessel or pressure pipes, Lessee shall obtain and maintain, or cause to be obtained and maintained, at Lessee's sole cost and expense, boiler, air conditioning, and pressure vessel (including, but not limited to, pressure pipes, steam pipes, and condensation return pipes) insurance providing coverage in a commercially reasonable amount throughout the Lease Term. All policies of such insurance shall contain a clause expressly waiving the insurer's right of subrogation against MARTA and its contractors, subcontractors of any tier, agents, employees, and invitees.

5.5 **Worker's Compensation Insurance.** Lessee must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the Lease and/or with respect to the Leased Property:

Workers' Compensation: **State of Georgia Statutory Coverage**

Employer's Liability:

Bodily Injury by Accident/Disease **\$1,000,000 each accident**

Bodily Injury by Accident/Disease **\$1,000,000 each employee**

Bodily Injury by Accident/Disease **\$1,000,000 policy limit**

The policy will be endorsed to provide a waiver of subrogation in favor of MARTA.

5.6 **Railroad Protective Liability Insurance; Contractor's Pollution Liability.** Lessee shall cause all contractors to provide Railroad Protective Liability Insurance ("RRP Policy") for contracted work within 50 feet of railroad tracks or the railroad right-of-way with limits of \$10,000,000/\$10,000,000, naming MARTA as the named insured on the RRP Policy. In addition, Lessee shall cause all contractors to maintain Contractor's Pollution Liability ("CPL") coverage on an "Occurrence" basis covering construction operations, transit and use on non-owned disposal sites. The CPL policy will feature limits of \$5,000,000 per occurrence and \$5,000,000 annual aggregate.

5.7 **Commercial Automobile Liability Insurance.** Lessee must procure and maintain Automobile Liability Insurance in an amount not less than \$1,000,000 Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided: (i) Owned, Non-owned and Hired Vehicles; and (ii) waiver of Subrogation in favor of MARTA.

5.8 **No Invalidation of Insurance.** Lessee shall at no time whatsoever do or permit to be done any act or thing in, to, or about the Leased Property or otherwise which would or could have the effect of invalidating, in whole or in part, or increasing the premium for (unless Lessee pays in full the amount of any such increase, including such increases with respect to all renewals of such insurance) or reducing the scope or amount of coverage provided by (i) any insurance maintained or required to be maintained by MARTA with respect to any of MARTA's property or

operations, (ii) any insurance pertaining to any buildings, other structures, or improvements now located or hereafter constructed and located upon or in the Leased Property, or (iii) any insurance pertaining to any Construction or other activities occurring on or in connection with the Leased Property. Lessee shall not permit any buildings, other structures, or improvements at any time to be put, kept, or maintained on the Leased Property in such condition that the same cannot be insured in the amount of the full insurable replacement value thereof. Within fifteen (15) Business Days after MARTA's receipt thereof, MARTA shall deliver to Lessee copies of notices, if any, received by MARTA relating to premium increases, cancellation of coverage, or other adverse impact on MARTA's insurance coverage if the cause of such increase, cancellation, or impact is related to any act or omission of Lessee in violation of this Lease Agreement; provided that MARTA's failure to make such timely delivery shall not limit MARTA's rights or Lessee's obligations under this Lease Agreement except to any extent that such failure shall have actually prejudiced Lessee.

5.9 **Delivery of Insurance Policies.** Lessee shall, promptly after the Commencement Date and thereafter annually upon insurance policy renewal, deliver to MARTA valid counterparts of all insurance policies and all endorsements thereto, or, at Lessee's option, certificates of such insurance, required to be obtained and maintained by Lessee under this Lease Agreement. Said valid counterparts or certificates shall show that: (i) such insurance is in full force and effect in accordance with the provisions of this Lease Agreement; (ii) such insurance is non-cancelable without at least thirty (30) Days' (or at least 10 Days' with respect to any nonpayment of premium) prior written notice to MARTA sent to the attention of MARTA's Director of Risk Management; and (iii) written notice shall be sent to MARTA to the attention of MARTA's Director of Risk Management at least thirty (30) Days prior to any non-renewal of the applicable coverage. Nothing contained in this Article V shall prevent Lessee from taking out insurance of the kind and in the amounts provided for in this Article V under a blanket insurance policy or policies that may cover other properties owned or operated by Lessee or Lessee's Affiliates.

5.10 **Self-Insurance.** With respect to any and all insurance coverage required to be obtained and maintained by Lessee under this Lease Agreement, no self-insurance in an amount in excess of Fifty Thousand and No/100 Dollars (\$50,000.00), and, except for any policies described in Section 5.2 hereof, no policies with deductibles in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence, shall be permitted unless approved by MARTA, which approval shall not be unreasonably withheld, conditioned or delayed. Lessee may submit to MARTA written requests for an increase in said self-insurance and deductibles, together with all information that MARTA may reasonably request from Lessee regarding the financial condition and capability of the person or entity proposing to provide such self-insurance. As to all amounts self-insured, including any deductible amounts, the party providing such self-insurance shall provide MARTA with all rights and benefits to which MARTA would be entitled under the insurance policies contemplated to be obtained by Lessee pursuant to this Lease Agreement, including, without limitation, the defense of MARTA against any and all claims and demands.

5.11 **Insurance Policy Limits.** The insurance policy limits provided for in this Lease Agreement shall be applicable through the year 2022 and thereafter, except for increases required pursuant to this Section 5.11. Upon written notice to Lessee, MARTA may, at MARTA's option and in MARTA's reasonable discretion, at any time, and from time to time, after 2018 increase said insurance policy limits; provided, however, that (i) no such increase may be required unless

the value of the United States dollar has declined ten percent (10%) or more, as determined by the CPI Index, below its purchasing power as of January 1, 2022 (as to the initial increase) or as of the date of the last increase (as to subsequent increases), (ii) each increase in policy limits shall be in approximate proportion to fifty percent (50%) of such decline in dollar value, (iii) any such increases may occur no more frequently than once in any five (5) Lease Year period, and (iv) Lessee shall be obligated to obtain and maintain increased limits of insurance pursuant to this Section 5.11 only to the extent that such increased limits of insurance are reasonably available at commercially reasonable rates in the national or international insurance markets.

5.12 **Waiver of Claims.** All policies of insurance described in Section 5.3 or 5.4 hereof obtained by either party covering any or all of the Leased Property or Project Improvements shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss. With respect to the Lease Assets, (i) MARTA hereby waives any rights of subrogation or recovery against Lessee, any Space Tenant, and their respective agents, employees and other representatives, and (ii) Lessee hereby waives any rights of subrogation or recovery against MARTA and its agents, employees and other representatives, for damage or loss to their respective property due to hazards covered (or which should be covered) by policies of insurance, to the extent of the injury or loss covered (or which should have been covered) thereby, assuming that any deductible amount shall be deemed to be covered by insurance; provided, however, that the foregoing waiver shall not be effective to the extent that the existence or enforcement thereof would impair (a) the enforceability or collectability of any insurance coverage applicable to the loss in question, or (b) the enforceability of Section 5.1 hereof.

5.13 **Total or Partial Destruction Due to Casualty.**

(a) In case of damage to the Project Improvements by fire or other casualty, Lessee shall give prompt notice to MARTA, and Lessee shall cause the damage to be repaired, with reasonable speed at the expense of Lessee, subject to delays which may arise by reason of adjustment of loss under insurance policies. In the event proceeds from insurance free from collection by Leasehold Mortgagees are insufficient or unavailable to repair or restore the damage to the Project Improvements and Lessee does not elect to restore or repair the damage from other funds which may be available to it for such purposes, Lessee shall, with reasonable speed, cause the damaged Project Improvements to be demolished to ground level or otherwise secured and rendered safe, to the reasonable satisfaction of MARTA, and this Lease Agreement shall continue in full force and effect.

(b) In the event (i) Lessee does not elect to restore or repair any damaged or destroyed Project Improvements and (ii) Lessee has not commenced construction of replacement improvements on the Leased Property within one hundred twenty (120) Days after the date of the fire or other casualty and thereafter continuously prosecuted such construction to completion with due diligence, MARTA shall have the option to terminate this Lease Agreement (upon written notice to Lessee given within sixty (60) Days after the expiration of the one hundred twenty (120) Day period following such fire or other casualty) with respect to the portion of the Leased Property previously occupied by such damaged or destroyed Project Improvements.

(c) Except as provided in Section 5.13(b), MARTA and Lessee hereby agree that damage to or destruction of all or any portion of the Project Improvements at any time by fire, collapse, earthquake, or any other casualty whatsoever shall not cause a termination of this Lease Agreement and shall not entitle Lessee to any abatement of Rent.

(d) MARTA and Lessee further agree and acknowledge that any right of MARTA in and to the insurance proceeds of any other property insurance applicable to the Project Improvements or any portion thereof shall be and remain subordinate and inferior to the interests in such proceeds held by any Leasehold Mortgagee. Under no circumstances whatsoever shall MARTA maintain that it has any right or claim of any kind or nature in and to any proceeds of any all-risk or other property insurance policies applicable to the Project Improvements or any portion thereof which right or claim is of equal priority or superior to the interest in such proceeds held by any Leasehold Mortgagee.

(e) In the event proceeds from insurance free from collection by Leasehold Mortgagees are insufficient or unavailable to repair or restore the Project Improvements and Lessee does not elect to repair or restore the Project Improvements, such proceeds shall be allocated ratably between Lessee and MARTA based on the value of the following respective interests (determined as of the date immediately prior to the fire or casualty):

(i) value of MARTA's reversionary interests ("**MARTA's Interest**") in the Leased Property upon termination of this Lease Agreement; and

(ii) value of Lessee's ownership ("**Lessee's Interest**") in fee simple of the Project Improvements (subject to the reversionary interest of MARTA upon the termination of this Lease Agreement).

For example, if (aa) the available insurance proceeds are \$100.00, (bb) the value of the Lessee's Interest is \$150.00, and (cc) the value of MARTA's Interest is \$10.00, the available insurance proceeds would be allocated as follows:

MARTA (10/160 x 100)	=	6.25
Lessee (150/160 x 100)	=	<u>\$ 93.75</u>
		\$100.00

(f) In the event MARTA and Lessee are unable to mutually agree on the value of both Lessee's Interest and MARTA's Interest, either MARTA or Lessee shall give the other party notice designating the first appraiser ("**First Appraiser**"). Within thirty (30) Days after receipt of notification of the identity of the First Appraiser, the other party shall give written notice to the other designating their appraiser ("**Second Appraiser**"). If the Second Appraiser is not designated within the thirty (30) Day period specified above, the First Appraiser shall determine the value of the Lessee's Interest and MARTA's Interest. If the Second Appraiser is timely appointed, the First Appraiser and the Second Appraiser shall meet within ten (10) Days of the appointment of the Second Appraiser and, if within thirty (30) Days of the appointment of the Second Appraiser, the First Appraiser and the Second Appraiser do not agree upon the value of the Lessee's Interest and MARTA's Interest, the First Appraiser and the Second Appraiser shall

appoint a third appraiser (“**Third Appraiser**”) within ten (10) Days thereafter. If the First Appraiser and the Second Appraiser cannot agree on the Third Appraiser within such ten (10) Day period, the Third Appraiser shall be selected by the presiding judge of the Superior Court of Fulton County, Georgia. In the event of the appointment of the Third Appraiser, his conclusion as to the value of the Lessee’s Interest and MARTA’s Interest shall be deemed such for purposes of this Section 5.11. In the event of a failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner hereinbefore provided for the appointment of such appraiser so failing, refusing or unable to act. Each party shall pay the fees and expenses of the appraiser appointed by such party; and the fees and expenses of the Third Appraiser, if any, shall be borne equally by both parties. Any appraiser designated to serve in accordance with the provisions of this Section 5.13 shall (i) be independent (*i.e.*, not employed by either party) and shall be qualified to appraise real estate similar to the Project Improvements situated in the vicinity of the Leased Property, (ii) be a MAI appraiser (or any successor association or body of comparable standing if such institution is not then in existence) and (iii) shall have been actively engaged in the appraisal of comparable real estate for a period of not less than five (5) years immediately preceding his appointment.

(g) Upon determination of the Lessee’s Value and MARTA’s Value pursuant to this Section 5.13, that portion of the available insurance proceeds allocable to Lessee shall immediately be distributed to Lessee, and that portion of the available insurance proceeds allocable to MARTA (“**MARTA Proceeds**”) shall be placed in a trust account with a financial institution reasonably acceptable to Lessee and MARTA. All interest earned on the MARTA Proceeds shall be added to the MARTA Proceeds and held in trust as aforesaid.

(i) In the event Lessee elects to construct new Project Improvements pursuant to this Lease Agreement, the MARTA Proceeds shall be paid to Lessee upon Substantial Completion of the new Project Improvements.

(ii) In the event MARTA elects to terminate this Lease Agreement pursuant to Section 5.13(b), the MARTA Proceeds shall be immediately delivered to Lessee.

(iii) In the event that neither (i) or (ii) above have occurred, the MARTA Proceeds shall be delivered to MARTA upon the termination of this Lease Agreement.

5.14 **Total or Partial Condemnation.**

(a) This Section 5.14 shall not constitute an inference, an admission, or an acknowledgment or be construed as constituting an admission or an acknowledgment by MARTA or Lessee or either or both of them that MARTA’s rights as a public body corporate, created under the Laws of the State of Georgia, in and to the fee simple estate in the Leased Property are in any manner subject to any power of eminent domain vested in any government or other body. Nevertheless, in the event the Leased Property or any part thereof is condemned and taken by the United States or by any other body having power of eminent domain over such property, then:

(i) The court in such condemnation proceedings shall, if not prohibited by law, be requested to make separate awards to MARTA and Lessee, so that:

(A) MARTA receives the award for its fee simple interest in and to the Leased Property, or applicable part thereof (Including, the reversionary interest in the Project Improvements thereon), subject to the Leasehold Estate of Lessee therein; and (B) Lessee receives the award for the Leasehold Estate and its ownership in fee simple of the Project Improvements (subject to the reversionary interest of MARTA upon the expiration of the Lease Term). MARTA and Lessee hereby agree to request such action by the court. To the extent permitted by Law, this Section 5.14 shall be construed as superseding any statutory provisions now in force or hereafter enacted concerning condemnation proceedings.

(ii) If such court is prohibited by law from making separate awards to MARTA and Lessee, or declines to do so, then the award in such condemnation proceedings shall be divided between MARTA and Lessee so that each receives the amount it would have received if separate awards had been made.

(b) If all of the Leased Property, or so much thereof that the remainder is unsuitable, in Lessee's reasonable opinion, for use by Lessee for Lessee's uses and purposes, is taken for any public or quasi-public use or purpose by virtue of eminent domain or by private sale in lieu thereof, or if any portion of the Leased Property is taken pursuant to such proceedings at a time when the remaining Lease Term is so limited as, in Lessee's reasonable opinion, to render restoration or repair of the remainder uneconomical or unfeasible, then this Lease Agreement shall terminate (i) with respect to that portion of the Leased Property so taken, as of the date that title thereto is vested in the condemning authority, and the Rent attributable to that portion of the Leased Property so taken shall cease and be abated for the entire unexpired portion of the Lease Term, and (ii) with respect to that portion of the Leased Property not taken, on the date Lessee elects to terminate this Lease Agreement pursuant to this Section 5.14(b), and the Rent allocable to the portions of the Leased Property which are not taken shall, from the date of such vesting to the termination, be the amount which would be payable pursuant to Section 5.14(c) hereof; provided, however, that such termination of this Lease Agreement shall not prejudice the rights of MARTA and Lessee with respect to the awards for such taking as above provided. In the event that Lessee does not elect to terminate this Lease Agreement pursuant to this Section 5.14(b) within ninety (90) Days after any such taking, then the remainder of the Leased Property shall be deemed suitable for use by Lessee for Lessee's uses and purposes and Lessee shall be deemed to have waived any right to terminate this Lease Agreement pursuant to this Section 5.14(b) as a result of such taking.

(c) If only a part of the Leased Property is taken for any public or quasi-public use or purpose by virtue of eminent domain or by a private sale in lieu thereof and if the remainder is, in Lessee's reasonable opinion, suitable for use by Lessee for Lessee's uses and purposes, this Lease Agreement shall remain in full force and effect as to that portion of the Leased Property not taken, but the Rent shall be reduced during the unexpired portion of the Lease Term to such amount as may be fair and equitable under the circumstances, giving due consideration to the amount of Rent formerly payable hereunder, the portion of the Leased Property taken, and the value and utility of the remainder of the Leased Property (exclusive of any remaining Project Improvements but subject to the terms of this Lease Agreement).

(d) If the Project Improvements are damaged by condemnation or eminent domain, if this Lease Agreement is not terminated as a result thereof, and if the amount of

condemnation proceeds available to Lessee and free from collection by Leasehold Mortgagees are sufficient to pay the cost thereof, Lessee shall repair or restore the remainder of the Project Improvements to a functional unit to the extent physically and economically practical and feasible under the circumstances with reasonable speed at the expense of Lessee, subject to delays that may arise by reason of adjustment or collection of condemnation proceeds. If such proceeds are insufficient or circumstances do not reasonably permit restoration or repair of remaining Project Improvements, Lessee shall, with reasonable speed, cause the remaining Project Improvements to be demolished to ground level or otherwise secured and rendered safe and this Lease Agreement shall continue.

(e) As to any partial condemnation or eminent domain in the event (i) Lessee does not elect to restore or repair the Project Improvements, and (ii) Lessee has not, in accordance with Article IV, commenced Construction of new Project Improvements within eighteen (18) months after the date of the judgment, decree or other vesting event regarding the condemnation or eminent domain (subject to extension for Unavoidable Delays), MARTA shall have the option to terminate this Lease Agreement upon written notice to Lessee given within sixty (60) Days after the expiration of the eighteen (18) month period following the date of the judgment, decree or other vesting event regarding such condemnation or eminent domain (as extended for Unavoidable Delays).

(f) MARTA and Lessee further agree and acknowledge that any right of MARTA in and to condemnation proceeds applicable to the Leasehold Estate (but not the fee simple estate in the Lease Assets and MARTA's interest under this Lease Agreement) shall be and remain subordinate and inferior to the interests in such proceeds held by any Leasehold Mortgagee. Under no circumstances whatsoever shall MARTA maintain that it has any right or claim of any kind or nature in and to any condemnation proceeds applicable to the Leasehold Estate (but not the fee simple estate in the Lease Assets and MARTA's interest under this Lease Agreement) of equal priority or superior to the interest in such proceeds held by any Leasehold Mortgagee.

ARTICLE VI

MAINTENANCE AND OPERATION OF PROJECT IMPROVEMENTS

6.1 **No Interference.** Lessee shall construct, operate, and maintain the Project Improvements and the Leased Property so as not to constitute an Interference. All management contracts, service contracts, maintenance contracts, concession contracts, and other similar agreements made by Lessee with respect to the Leased Property shall contain the foregoing express covenant (made in favor of MARTA as a third-party beneficiary). No express covenant by any said Space Tenant, manager, concessionaire, or other contractor shall release Lessee from its full responsibility and liability to MARTA under this Lease Agreement.

6.2 **Maintenance of Leased Property.** Throughout the Lease Term, at Lessee's own cost and expense, Lessee shall keep and maintain the Leased Property (for avoidance of doubt, excluding the Transit Station Area), all appurtenances thereto, and any and all buildings, other structures, or improvements (excluding Transit Facilities) that may exist on, in, or be made a part of the Leased Property in good and sanitary order, condition, and repair, excepting reasonable or ordinary wear and tear, depreciation and obsolescence, and damage by casualty or condemnation

that Lessee is not required by the terms and conditions of this Lease Agreement to repair or restore. Lessee shall not prohibit access to MARTA to perform maintenance of any of its facilities if there is an overlap between the Lessor property and Lessee facilities.

6.3 **Maintenance of Utility Facilities.** Lessee shall maintain, in good and operating condition and repair, all Utility facilities (including, without limitation, the water, sewer, gas, and electrical facilities) that serve the Leased Property and that are located on, in, under or above the Leased Property or that are owned by Lessee and are located outside the Leased Property. Within thirty (30) Days after MARTA's written request therefor after the expiration or termination of the Lease, Lessee shall convey to MARTA, such right, title, and interest in real and personal property as will be necessary to enable MARTA to use and enjoy, at all times following expiration or termination of the Lease Term, any and all Utility facilities which are owned by Lessee and are located outside the Leased Property.

6.4 **Security.** Throughout the Lease Term, Lessee shall maintain at Lessee's sole cost and expense such security at the Leased Property as shall be reasonably necessary for the safe operation and maintenance of the Project Improvements and the safety of any persons using or maintaining the Project Improvements. This provision shall inure solely to the benefit of MARTA and shall in no way be construed to create any right or claim in any third party.

6.5 **Landscaping.** Throughout the Lease Term, Lessee shall maintain the landscaping and exterior grounds on the Leased Property surrounding the Project Improvements, if any, in a good and workmanlike manner.

6.6 **Notice of Inadequate Maintenance.** In the event MARTA submits to Lessee (and all Registered Mortgagees, if any) a written notice ("***Maintenance Notice***") of inadequate maintenance of the exterior of the Project Improvements (including, without limitation, the entrance areas and sidewalks), such Maintenance Notice shall specify with particularity the manner in which said maintenance is inadequate. Lessee shall comply with all reasonable requests of MARTA contained in said Maintenance Notice. Maintenance which complies with Sections 6.2, 6.3 and 6.5 of this Lease Agreement shall be deemed adequate. In the event that MARTA determines Lessee's actions within thirty (30) Days after the Maintenance Notice are insufficient in kind or unreasonably delayed, MARTA may (i) direct the performance of the maintenance work on such terms and conditions as it shall reasonably determine and in such event Lessee (or, at its option, any Registered Mortgagee) shall promptly cause the maintenance work to be accomplished at no expense to MARTA, or (ii) cause the necessary maintenance to be performed under its own auspices in the name of, for the account of, and at the sole cost and expense of Lessee, in which event Lessee shall fully reimburse MARTA for all reasonably necessary costs and expenses (including, without limitation, actual attorneys' fees reasonably incurred and costs of litigation) incurred by MARTA in connection with such maintenance work within thirty (30) Days after Lessee's receipt of MARTA's written demand for such reimbursement with invoices or other evidence of charges incurred.

6.7 **Conditions Endangering Transit Facilities.** In the event that any condition arises in or on any portion of the Leased Property, which condition MARTA determines in MARTA's reasonable judgment to be an emergency condition or an immediate threat of an Interference, MARTA shall have the right, which right shall be cumulative with all other rights vested in

MARTA by virtue of this Lease Agreement or otherwise, to enter the Leased Property and take action to remedy such condition. In such event, if such condition is a result of Lessee (or its agents, assigns or Space Tenants), Lessee shall reimburse MARTA, within thirty (30) Days after receipt of written demand for such reimbursement with invoices or other evidence of charges incurred, for any and all reasonable costs and expenses incurred by MARTA in connection with such remedial activities.

6.8 **Work Required by Government Regulation.** In the event that any alteration, demolition, renovation, repair, replacement, maintenance, or any other work of any nature whatsoever shall be required or becomes necessary in connection with the Leased Property or the Project Improvements on account of any Law now in effect or hereafter adopted (excluding Laws to the extent applying to MARTA's operation or MARTA's facilities, Lessee shall be solely liable for the entire cost and expense thereof, regardless of when the same shall be incurred or become due; and in no event shall MARTA be required to contribute thereto, participate therein, or do or pay for any work performed, materials furnished, or obligations incurred by Lessee. Lessee shall have the right to contest the validity of any such Law in accordance with Section 2.12 hereof.

ARTICLE VII

APPROVAL OF PLANS AND SPECIFICATIONS BY MARTA

7.1 **Approval of Plans & Specifications by MARTA.**

(a) Approval of Plans.

(i) Lessee has requested that MARTA provide plan input and approval of the plans and specifications for the Project Improvements that are in process such that, at the time the final plans and specifications are submitted to MARTA, MARTA's review of most aspects of the plans and specifications will have been completed. Accordingly, Lessee agrees to submit the plans and specifications at the following stages of document development: 30%, 60%, 90% and 100%. MARTA agrees to respond to each submittal within twenty-one (21) days of MARTA's receipt of such submittal. However, such twenty-one (21) day period will exclude all federal, state and local holidays. If MARTA has not provided written approval or objections to the plans by the day which is twenty-one (21) days after MARTA receives each set of plans and specifications, then MARTA shall be deemed to have approved the set of plans and specifications so submitted. The final plans and specifications for the Project Improvements as so approved, or deemed approved, by MARTA are the "**Plans**" as that term is used in this Agreement. The scope of MARTA's review and approval for purposes of this Section 7.1(a) will be to ensure that the proposed improvements (or any portion thereof) do not constitute an Interference or otherwise adversely impact the operation of the Transit Facilities. Any approval by MARTA shall be for MARTA's purposes only and shall not be deemed a representation or warranty by MARTA that such plans and specifications are in compliance with any Laws.

(ii) MARTA will provide a letter to the City advising the City that MARTA has approved the final Plans.

(iii) Lessee acknowledges that MARTA makes no representations or warranties concerning the suitability or capacity of the Leased Property or any easement area(s) to provide adequate support for any improvements to be constructed upon, within, above, below or abutting the remainder of MARTA's property or any public rights-of-way. Lessee hereby fully assumes any and all risk of the suitability and capacity of the Leased Property for providing adequate support for the Project Improvements.

(b) Any modification to the Plans that (i) requires a modification to the subsurface structural improvements or other improvements over, within, abutting or adjacent to the Transit Facility Areas (the "**Structural Improvements**") deviates from the approved Plans and (ii) impacts or may impact the Transit Facility Areas (a "**Substantial Plan Modification**"), must have prior written approval by MARTA. If Lessee desires to make a Substantial Plan Modification, Lessee shall submit any proposed Substantial Plan Modification to MARTA for MARTA's written approval. Approval of such requests shall not be unreasonably withheld, conditioned or delayed by MARTA. MARTA and Lessee acknowledge that any Substantial Plan Modification must be promptly reviewed and agreed upon in writing in order to facilitate ongoing Construction. Each Party agrees to meet within three (3) Business Days after receipt of a written request via electronic mail to (i) _____ (EMAIL), and _____ (EMAIL), for Lessee, and (ii) Mr. Larry Prescott (lprescott1@itsmarta.com) and _____ (EMAIL), for MARTA, for approval of a Substantial Plan Modification and to diligently respond to the request until the change is finalized. If MARTA does not respond to a request for approval of a Substantial Plan Modification within ten (10) business days after a second written notice is given by electronic mail to Mr. Larry Prescott (lprescott1@itsmarta.com) and _____, the change will be deemed approved. If the representatives of either MARTA or Lessee changes, a notice must be given pursuant to this Agreement identifying the new representative and the e-mail address to use. Notwithstanding anything to the contrary contained herein, MARTA acknowledges that any changes to the Plans that do not require a substantial modification to the Structural Improvements, including, but not limited to, non-structural changes to the Project, do not require approval by MARTA.

ARTICLE VIII

SUBLEASING AND ASSIGNMENT

8.1 Assignment or Sublease by Lessee.

(a) Except for sales, transfers, assignments or subleases of the Leasehold Estate, in whole or in part, to a Pre-Approved Entity which shall not require any consent from MARTA, Lessee shall not have the right to assign or sublease the Leasehold Estate (in whole or in part) without prior written approval by MARTA, which approval shall not be unreasonably withheld in MARTA's reasonable discretion. MARTA shall be entitled, without limitation, to withhold its approval upon MARTA's reasonable determination that the proposed Transferee (as defined in Section 8.1(g) hereof) (together with any proposed guarantor(s)) lacks the capability, financial or otherwise, fully to perform and comply with this Lease Agreement or the proposed sublease or assignment. Any assignment or sublease pursuant to this Section 8.1 shall be subject to MARTA's reasonable approval of the documentation effectuating such assignment or sublease and subject to the terms of this Lease Agreement, including payment to MARTA, prior to or

simultaneously with (and as a condition of) the consummation of any such assignment, of any and all Capital Event Participation Rent then due (or coming due) under this Lease Agreement. For the avoidance of doubt, the transfers and assignments restricted by this Section 8.1 shall not apply to a Space Tenant.

(b) The restrictions on assignment or sublease of the Leasehold Estate under this Section 8.1 shall also apply to (i) any transfer (whether by virtue of a single transaction or a series of transactions), of a majority of Lessee's equity interests (other than a transfer for gift or estate planning purposes, which transfer does not result in a change in control of Lessee) or any other change of control of Lessee and (ii) any sale, transfer, conveyance, or other disposition of any or all right, title, and interest in the Project Improvements (or any of them).

(c) No assignment or sublease of the Leasehold Estate (in whole or in part) shall be effective unless and until all the terms and conditions of this Section 8.1 are fully satisfied, and any attempted assignment or sublease of the Leasehold Estate (in whole or in part) in contravention of this Section 8.1 shall be null and void and of no legal force or effect whatsoever; provided, however, that any purported assignee or sublessee of the Leasehold Estate (in whole or in part) or any purported assignee or sublessee occupying the Leased Property or any portion thereof as a result of any attempted assignment or sublease in contravention of this Section 8.1 shall be bound by each duty, covenant, responsibility, and obligation of Lessee under this Lease Agreement, but shall not succeed to or benefit from the Leasehold Estate, in whole or in part.

(d) If any proposed assignment of the Leasehold Estate under this Lease Agreement or any making of a sublease requiring MARTA's approval is approved or deemed approved by MARTA in accordance with Section 8.1(g), MARTA shall promptly execute and deliver such documents and instruments as Lessee or any assignee or sublessee of the Leasehold Estate shall reasonably request to evidence the approval, or deemed approval, of such assignment or sublease of the Leasehold Estate.

(e) Any assignee of the Leasehold Estate under this Lease Agreement to which assignment is permitted pursuant to this Section 8.1 (a "***Permitted Assignee***") shall succeed to the Leasehold Estate under this Lease Agreement, subject, however, to all liabilities, duties, covenants, responsibilities, and obligations of Lessee under this Lease Agreement arising out of or in connection with events, conditions, and circumstances occurring on or after (but not before) the effective date of said permitted assignment. Upon a permitted assignment by Lessee (or upon any further permitted assignment by a Permitted Assignee) of the entire Leasehold Estate in accordance with the requirements of this Section 8.1, and upon such Permitted Assignee's due execution and delivery to MARTA of such Permitted Assignee's written assumption of all liabilities, duties, covenants, responsibilities, and obligations of Lessee under this Lease Agreement arising out of or in connection with events, conditions, and circumstances occurring on or after (but not before) the effective date of said permitted assignment, and upon such Permitted Assignee's due execution and delivery to MARTA of such Permitted Assignee's written representations and warranties (as of such effective date) corresponding to Lessee's representations and warranties under Section 10.2 hereof, Lessee (or said Permitted Assignee) shall be released from any liabilities, duties, covenants, responsibilities, or obligations under this Lease Agreement arising out of or in connection with events, conditions, and circumstances occurring on or after the effective date of said permitted assignment (but not from any liabilities, duties, covenants, responsibilities, or

obligations under this Lease Agreement arising out of or in connection with events, conditions, and circumstances occurring before the effective date of said permitted assignment) of the Leasehold Estate; provided, however, that the provisions of this Section 8.1(e) shall not apply to Leasehold Mortgagees, as to which the provisions of Section 7.4 shall govern.

(f) Notwithstanding anything to the contrary set forth in this Section 8.1, unless MARTA gives its prior written consent to the contrary, which consent may be withheld by MARTA in its sole and absolute discretion, Lessee shall have no right to assign or sublease the Leasehold Estate (in whole or in part) to any person or entity that:

(i) has ever been disqualified or debarred from contracting with the governments of the United States, the State of Georgia, the City of Brookhaven, or any county or other political subdivision of the State of Georgia or with any agency, department, bureau, or instrumentality of any of the foregoing governments;

(ii) is the actual or purported government of any foreign nation or any agency, department, or political subdivision thereof;

(iii) has ever been convicted of a felony under the laws of the United States or of any state, commonwealth, territory, or local government thereof;

(iv) is competing with MARTA as a provider of mass transportation services within the scope of services that MARTA is authorized to provide under the MARTA Act, as in effect on the Commencement Date; or

(v) by virtue of being such assignee or sublessee may, in MARTA's sole, good faith judgment, (A) cause MARTA to be in violation of the MARTA Act, (B) cause MARTA to be ineligible to receive funds from any federal, state or local government or any agency, department, bureau or instrumentality of any thereof, or (C) impair MARTA's full exercise of the rights and powers of MARTA under the MARTA Act.

(g) Lessee shall give MARTA at least forty five (45) Days' prior written notice (a "**Transfer Notice**"), in advance of consummating any proposed assignment or sublease (in whole or in part) of the Leasehold Estate (a "**Transfer**"), which Transfer Notice shall identify the proposed assignee or sublessee, as the case may be (the "**Transferee**"). Except in the cases of a Transfer to a Pre-Approved Entity, within forty five (45) Days after its receipt of a Transfer Notice, MARTA shall give Lessee written notice (a "**Transfer Response Notice**") stating: (A) that MARTA approves or does not approve of the Transfer for the purposes of Section 8.1(a) hereof; and (B) that MARTA approves or does not approve of the Transferee for the purposes of Section 8.1(f) hereof. If MARTA does not give a Transfer Response Notice for the purposes of either Section 8.1(a) or Section 8.1(f) hereof within such thirty (30) Day period, MARTA shall be deemed to have given its approval for the purposes of the Section(s) as to which MARTA has not given a Transfer Response Notice. If MARTA does not approve under either Section 8.1(a) or Section 8.1(f) hereof, MARTA shall state with reasonable particularity in its Transfer Response Notice the reasons for its disapproval.

8.2 **Rights of Sublessees.** In the event Lessee's leasehold interest is terminated pursuant to Section 9 of this Lease Agreement prior to the expiration of the term of any approved sublease, each sublease approved by MARTA shall continue for the duration of the term of such sublease as a direct lease between MARTA and the sublessee under such sublease, with such sublessee attorning to MARTA under such sublease. Notwithstanding any other provisions of this Lease Agreement or of any sublease to the contrary, in no event shall MARTA have any greater obligations to any sublessee than Lessee has under the sublease in question.

8.3 **Primary Liability of Lessee.** Nothing contained in this Lease Agreement shall be construed to relieve Lessee of its primary liability and responsibility for the performance of all of Lessee's obligations under this Lease Agreement, including Lessee's affirmative obligation to develop, construct, occupy, operate and maintain the Project Improvements in accordance with Section 4.12 hereof. MARTA shall be entitled to exercise and enforce, in either Lessee's name or MARTA's name, any and all rights and remedies of Lessee under any sublease without regard to the timing and extent (if at all) to which MARTA exercises and enforces any of its rights and remedies against Lessee or any other person pursuant to Article IX.

ARTICLE IX

DEFAULTS

9.1 **Events of Default by Lessee.**

An Event of Default by Lessee shall be deemed to have occurred under this Lease Agreement if:

(i) Lessee shall fail to pay any Rent or other amount when due or within five (5) Days thereafter;

(ii) (A) Lessee shall fail or refuse to observe, perform, or comply with any of the other provisions of this Lease Agreement, or (B) any warranty or representation of Lessee contained in this Lease Agreement shall not be true and correct as of the Commencement Date hereof, and Lessee shall fail to cure completely and totally any such Default under this Section 9.1(b) within thirty (30) Days after written notice thereof is given by MARTA to Lessee; provided, however, that in the case of a Default which cannot be cured solely by the payment of money and which cannot reasonably be cured within the aforesaid thirty (30) Day period, no Event of Default shall be deemed to exist and MARTA may not exercise any of the remedies set forth in Section 9.2 hereof, unless and until Lessee shall have failed to (x) commence action to effect such cure within said thirty (30) Day period and (y) prosecute diligently and continuously such action until such Default has been cured (any notice given pursuant to this Section 9.1(b) shall identify the Default in question with reasonable particularity; provided, that MARTA shall not be entitled to exercise any remedies under this Lease Agreement as a result of a Non-Monetary Event of Default unless and until the notice required by this Section 9.1(b) shall have been given to Lessee; and provided further, however, that upon giving such notice at any time in the future and after the expiration of any applicable cure period, MARTA shall be permitted to exercise any and all rights and remedies as provided for in this Lease Agreement);

(iii) Lessee shall fail or refuse to observe, perform, or comply with any of the other provisions of this Lease Agreement, or (ii) any warranty or representation of Lessee contained in this Lease Agreement shall not be true and correct as of the date hereof, and Lessee shall fail to cure completely and totally any such Default under this Section 9.1(b) within thirty (30) Days after written notice thereof is given by MARTA to Lessee; provided, however, that in the case of a Default which cannot be cured solely by the payment of money and which cannot reasonably be cured within the aforesaid thirty (30) Day period, no Event of Default shall be deemed to exist and MARTA may not exercise any of the remedies set forth in Section 9.2 hereof, unless and until Lessee shall have failed to (A) commence action to effect such cure within said thirty (30) Day period and (B) prosecute diligently and continuously such action until such Default has been cured (any notice given pursuant to this Section 9.1(b) shall identify the Default in question with reasonable particularity; provided, that MARTA shall not be entitled to exercise any remedies under this Lease Agreement as a result of a Non-Monetary Event of Default unless and until the notice required by this Section 9.1(b) shall have been given to Lessee; and provided further, however, that upon giving such notice at any time in the future and after the expiration of any applicable cure period, MARTA shall be permitted to exercise any and all rights and remedies as provided for in this Lease Agreement);

(iv) Lessee shall (A) dissolve or terminate its existence, or (B) discontinue its usual business except as provided in Section 5.11 due to a casualty event and reconstruction, or (C) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of it or all or a substantial part of its property, (D) generally fail to pay its debts as they come due in the ordinary course of business, or (E) commence, or file an answer admitting the material allegations of or consenting to, petition filed against it, in any case, proceeding, or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief debtors, or seeking to have an order for relief entered with respect to it under the United States Bankruptcy Code 11 USC §101 et seq., or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or the similar relief with respect to it or its debt;

(v) A receiver, conservator, liquidator, custodian or trustee of Lessee or any of its property is appointed by the order or decree of any court or agency or supervisory authority having jurisdiction; or Lessee obtains an order for relief under the United States Bankruptcy Code 11 USC §101 et seq.; or any of the property of Lessee is sequestered by court order; or a petition is filed or a proceeding is commenced against Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such proceeding has not been answered and opposed within thirty (30) days after its commencement;

(vi) Any event or condition occurs which results in or permits the forfeiture by Lessee of its material rights, benefits or privileges under any indenture, mortgage, deed to secure debt, or deed of trust, which continues unremedied for any applicable cure period; or

(vii) The levy or execution of any attachment, execution or other process against any material interest in property of Lessee, which is not timely and completely stayed by appropriate proceedings and/or bonding requirements.

9.2 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter prior to any curing of such Event of Default, and subject to the provisions of Section 9.3 below:

(a) MARTA may elect to terminate this Lease Agreement by serving written notice of such termination on Lessee (and on all Registered Mortgagees, if any). Upon such termination by MARTA, Lessee shall surrender possession of the Lease Assets immediately, and MARTA shall have the unconditional right to enter the Leased Property and to remove from the Leased Property the Lessee and any other entity who may be occupying the Leased Property or any part thereof through Lessee, subject to the terms of this Lease, including Section 8.2. Any such entry by MARTA shall be made without waiving any other right MARTA may have against Lessee under this Lease Agreement at law, in equity or otherwise. No entry upon or repossession of the Leased Property by MARTA or any expulsion or removal of Lessee by MARTA, whether by direct act of MARTA or through legal proceedings, shall release Lessee from any liability for the payment of any Rent or other monetary obligations under this Lease Agreement through termination hereof or for the performance or fulfillment of any other term or condition provided in this Lease Agreement that may be performed while Lessee is not in possession of the Leased Property.

(b) Without terminating this Lease Agreement, MARTA may, but shall have no obligation to, relet the Leased Property, in whole or in part, with or without advertisement and by private negotiation or otherwise, to any tenant or tenants satisfactory to MARTA for any portion of or for the duration of the Lease Term at such rental or rentals and under such terms and conditions as MARTA in MARTA's sole discretion may deem proper and advisable. MARTA shall have the right to make alterations and repairs to the Leased Property in connection with such reletting. In the event that MARTA relets any Leased Property to another tenant:

(i) Lessee shall be immediately liable to pay to MARTA, in addition to any sums due under this Lease Agreement, the costs and expenses of such reletting and preparing the Leased Property for reletting (e.g., repairs, alterations, brokers fees, etc.) incurred by MARTA; and

(ii) Rents received by MARTA from such reletting shall be applied as follows: (A) *first*, to the payment of any costs and expenses of such reletting (including costs contemplated in Section 9.2(b)(i) above); (B) *second*, to the payment of Rent due and unpaid under this Lease Agreement; and (C) *the residue*, if any, shall be held by MARTA in escrow and applied to the payment of Rent as the same becomes due under this Lease Agreement and, if any balance then remains, the same shall be paid to Lessee at the termination of this Lease Agreement. MARTA shall in no event be liable to Lessee for any interest on said residue. No reletting of the Leased Property shall release Lessee from any liability for the payment of any Rent under this Lease Agreement or for the performance or fulfillment of any other term or condition provided in this Lease

Agreement; provided, however, that in no event shall Lessee's liability hereunder be increased or extended by reason of any action or inaction of any party in possession of the Leased Property by means of this Section 9.2. MARTA shall have no duty to mitigate damages arising from any Event of Default.

(c) If Lessee fails to procure any insurance required to be procured by Lessee under this Lease Agreement or fails to pay any premium for said insurance, any Tax, any utility charges, or any other sum required to be paid by Lessee under this Lease Agreement, and does not cure such failure within thirty (30) Days after MARTA gives Lessee written notice thereof, MARTA may, in MARTA's sole discretion, elect to procure on behalf of Lessee any such insurance and/or pay on behalf of Lessee any such payment or payments as MARTA may deem necessary. Any sum or sums so paid or expended by MARTA on behalf of Lessee shall be reimbursed and repaid by Lessee within thirty (30) Days after Lessee's receipt of demand for reimbursement and written evidence that such sum or sums have been paid. No provision of this Section 9.2(c) or of this Lease Agreement shall be construed so as (i) to impose upon MARTA any obligation to pay on behalf of Lessee any insurance premium, Tax, utility charges, or other sums, or (ii) to release or relieve Lessee from full liability to MARTA for full performance of Lessee's obligations and covenants under this Lease Agreement and for any and all loss, cost, damage, claim, demand, or expense of any kind or nature whatsoever (including, without limitation, attorneys' fees and costs of litigation) suffered or incurred by MARTA by reason of Lessee's failure to obtain any such insurance or make any such payment.

9.3 **No Waiver of Rights.** No failure by either party hereto to insist upon the strict performance of any of the terms of this Lease Agreement or to exercise any right or remedy upon a Default hereunder, no acceptance by such party of partial performance, and no custom or practice of the parties hereto at variance with the provisions hereof shall constitute a waiver of any such Default or of any of the terms of this Lease Agreement or a waiver of either party's right to demand exact compliance with the provisions contained in this Lease Agreement. None of the terms of this Lease Agreement to be kept, observed, or performed by either party and no breach thereof shall be waived, altered, or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease Agreement, but each of the terms of this Lease Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach hereunder. No waiver of any Default hereunder by either party shall be implied from any omission by the other party to take any action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. Moreover, MARTA waives no rights and accepts no liability by reason of MARTA's review and approval of any plans and specifications for Construction.

9.4 **Rights Are Cumulative.** All rights, powers, privileges, and remedies conferred by this Lease Agreement upon MARTA and Lessee shall be cumulative and shall be deemed additional to any and all of the remedies to which either party may be entitled in law, in equity, or otherwise, unless specifically and expressly limited by the provisions of this Lease Agreement. Either party shall have the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Lease Agreement and by decree to compel performance of any such terms, covenants, or conditions, it being agreed by Lessee and MARTA

that the remedy at law for any breach of such term, covenant or condition (except those requiring the payment of a liquidated sum or damages in accordance with express provisions of this Lease Agreement) is not adequate.

9.5 **Failure To Respond to Requests for Approval.** Except as expressly provided to the contrary in this Lease Agreement, MARTA and Lessee agree that in the event any approval, consent, authorization, certificate, grant, conveyance, or permission is requested or demanded by MARTA or Lessee pursuant to the express provisions of this Lease Agreement, and the party receiving such request or demand does not respond thereto within the specified period stated in the subject provision following the party's receipt of such demand or request, either by giving the item requested or by refusing to give the same and specifying specific reasons for such refusal, said failure to respond shall not be deemed to constitute the requested approval or consent. Except as expressly provided to the contrary in this Lease Agreement, the fact that the express time period set forth for responding to a request for a consent, authorization, approval, certificate, grant, conveyance, or permission shall have expired shall in no event be deemed to have excused or relieved the party to whom any such aforesaid request or demand is directed from such party's obligation to respond thereto, either by complying therewith and giving the item so requested or demanded if such party is so required under this Lease Agreement or by refusing such request or demand if this Lease Agreement so permits a refusal of such request or demand.

9.6 **Inspection of Leased Property by MARTA.** MARTA and its authorized representatives, agents, employees, and attorneys may, but shall be under no duty to, enter the Leased Property (but not the interior of the Project Improvements without Lessee's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed) at reasonable times and hours, subject to the rights of Space Tenants in possession, if any, to inspect the Leased Property in order to determine whether Lessee is complying with Lessee's undertakings, duties and obligations under this Lease Agreement; provided, however, that any such inspection shall not be deemed or construed as a waiver of or approval of any Event of Default under this Lease Agreement existing at the time of the inspection, about which Event of Default MARTA does not complain or give notice to Lessee; and provided further, however, that in no event shall any such inspection by MARTA be deemed or construed to be the assumption by MARTA of all or any of Lessee's obligations under this Lease Agreement, including, without limitation, the obligation to maintain the Leased Property in a safe and secure manner and in a state of good repair.

ARTICLE X

REPRESENTATIONS AND WARRANTIES

10.1 **Representations and Warranties of MARTA.** As material inducements to Lessee to enter into this Lease Agreement, MARTA represents and warrants to Lessee as follows as of the Commencement Date:

(a) MARTA has the requisite power and authority to enter into this Lease Agreement, to carry out its obligations hereunder, and to grant to Lessee a leasehold interest in the Leased Property in accordance with the terms and conditions hereof.

(b) This Lease Agreement has been duly executed by duly authorized officers of MARTA.

(c) MARTA is a public body corporate, validly existing under the laws of the State of Georgia.

(d) As of the date of this Lease Agreement, there are no actions, suits, or proceedings pending in any Court or before any governmental agency, domestic or foreign, which actions, suits, or proceedings, if adjudicated adversely to MARTA, would preclude MARTA's entering into the transactions required by this Lease Agreement.

(e) Neither the execution and delivery of this Lease Agreement nor performance by MARTA or by Lessee in compliance with the terms of this Lease Agreement will result in a violation of the MARTA Act, as presently constituted, or MARTA's Bylaws, as presently constituted, or a breach of the terms and conditions of or constitute a default under any agreement, instrument, undertaking, governmental order, or other restriction or obligation to which MARTA is a party or by which MARTA or its properties or assets are bound.

(f) No consent or approval (other than consents or approvals obtained prior to MARTA's execution of this Lease Agreement) is required by virtue of the execution hereof by MARTA or the consummation by MARTA of any of the transactions and obligations contemplated herein to avoid a violation of, or breach of or a default under, or the creation of a lien on the Leased Property pursuant to, the terms of any regulation, order, decree or award of any court or governmental agency or any lease, contract, mortgage, note or other instrument to which MARTA is a party or by which MARTA is bound or to which MARTA or any of its property is subject.

(g) To the best of MARTA's Knowledge (as hereinafter defined), MARTA has received no written notice from any governmental authority of any pending or threatened: (i) zoning, building, fire, or health code violations or violations of other governmental requirements or regulations with respect to the Leased Property that have not previously been corrected; (ii) condemnation of the Leased Property; (iii) violations of any ordinances, orders, regulations or requirements affecting any portion of the Leased Property; (iv) violations of any plan, study or effort of any governmental authority which in any way would materially affect Lessee's use of the Leased Property, or any portion thereof, for its intended uses or which will result in any charge being levied against, or any lien assessed upon the Leased Property; (v) special assessments or charges which have been levied against the Leased Property or which will result in a charge being levied against, or in the creation of any lien upon, the Leased Property or any portion thereof (with the exception of ad valorem taxes not yet due and payable).

(h) MARTA has received no written notice of currently pending actions, suits, or arbitrations, at law or in equity, materially adversely affecting all or any portion of the Leased Property.

(i) To the best of MARTA's Knowledge, there are no Hazardous Materials located on the Leased Property, other than disclosed by any environmental reports heretofore delivered to Lessee by MARTA or heretofore procured by or on behalf of Lessee, if any. To the best of MARTA's Knowledge, no portion of the Leased Property constitutes "jurisdictional

wetlands” as defined under the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.).

As used in this Section 10.1, “MARTA’s Knowledge” (i) shall mean and apply to the current (as of the date of this Agreement) and actual knowledge of Debbie Frank (Senior Director of Transit-Oriented Development), (ii) shall mean such current and actual knowledge of such individual, without any duty of investigation or inquiry of any kind, (iii) shall not mean that such individual is charged with knowledge of the acts, omissions and/or knowledge of the predecessors in title to the Leased Property (or any portion thereof) or with knowledge of the acts, omissions and/or knowledge of MARTA’s other agents, employees, and contractors, and (iv) shall not apply to or be construed to apply to information or material which may be in the possession of MARTA generally or incidentally, but which is not actually known to said individual.

10.2 Representations and Warranties of Lessee. As material inducements to MARTA to enter into this Lease Agreement, Lessee represents and warrants to MARTA as follows as of the Commencement Date:

(a) Lessee has the requisite power and authority to enter into this Lease Agreement, to carry out its obligations hereunder, and to lease from MARTA the Leased Property in accordance with the terms and conditions hereof

(b) This Lease Agreement has been duly executed by Lessee pursuant to the authority of its Charter and Code.

(c) Lessee is a municipal corporation organized and existing under the laws of the State of Georgia (2012 Ga. Laws, p. 5527 et seq., as amended). There are no actions, suits, or proceedings pending against, by, or affecting Lessee in any court or before any governmental agency, domestic or foreign, that question the validity of this Lease Agreement or of any action to be taken by Lessee in connection with this Lease Agreement or that might prevent or impede Lessee’s consummation of the transactions contemplated by this Lease Agreement, except as have been disclosed to MARTA in writing on or prior to the date of this Lease Agreement.

(d) Neither the execution and delivery of this Lease Agreement nor performance by Lessee in compliance with the terms of this Lease Agreement will result in a breach of the terms and conditions of or constitute a default under the organizational documents of Lessee or of any agreement, instrument, undertaking, governmental order, or other restriction or obligation to which Lessee is a party or by which Lessee or its properties or assets are bound.

(e) No consent or approval which has not otherwise been obtained is required by virtue of the execution hereof by Lessee or the consummation by Lessee of any of the transactions and obligations contemplated herein to avoid a violation or breach of or a Default hereunder or the creation of a lien on assets of Lessee pursuant to the terms of any regulation, order, decree, or award of any court or governmental agency or any lease, contract, mortgage, note or any other instrument to which Lessee is a party or by which Lessee is bound or to which Lessee or any of its property is subject.

(f) Each and every representation and warranty set forth in this Section 10.2 of this Lease Agreement is true and correct as of the date hereof.

(g) The representations and warranties set forth in Sections 10.2(a), (b), (c), (e) and (f) shall be and remain true and correct throughout the Lease Term. Lessee agrees to provide MARTA with written notice if at any time the representation set forth in Section 10.2(d) shall no longer be true and correct.

ARTICLE XI

MISCELLANEOUS

11.1 **Estoppel Certificates.** MARTA and Lessee shall execute, acknowledge, and deliver to the other promptly upon written request a certificate certifying any of the following as requested:

(a) Validity of Lease Agreement: that this Lease Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Lease Agreement is in full force and effect, as modified, and stating the modifications);

(b) Leasehold Mortgages: (i) that each Leasehold Mortgagee, if any, in existence as of the date of said certificate has entered into an agreement with MARTA pursuant to Section 7.2 of this Lease Agreement, and (ii) as to a certificate from Lessee (a) the Leasehold Mortgage(s) is open and unsatisfied according to the Deed Records of DeKalb County, as of the date of said certificate, and (b) the then outstanding amount of indebtedness secured by each such Leasehold Mortgage; and

(c) Defaults: that no notice has been given by MARTA to Lessee or by Lessee to MARTA of any Default under this Lease Agreement that has not been cured and to the best of its knowledge and belief no Default exists (or, if such exists, describing the same).

Certificates from MARTA and Lessee pertaining to the aforesaid matters may be relied upon by any existing or prospective Leasehold Mortgagees and by any prospective assignee of any interest under this Lease Agreement. No certificate issued hereunder, however, shall be deemed to affect the rights and obligations of MARTA and Lessee between themselves (or their successors and permitted assignees) under this Lease Agreement.

11.2 **Reaffirmation.** MARTA and Lessee agree that upon the request of either party the other party shall execute and deliver such instruments, documents, and agreements as are reasonable to acknowledge, reaffirm, vest, or re-vest in MARTA or Lessee, or any permitted assignee or permitted transferee of either, in whole or in part, this Lease Agreement and any rights hereunder.

11.3 **Rights Not for Benefit of Public.** In no event and under no circumstances whatsoever shall the rights herein granted, or to be granted in the future pursuant to this Lease Agreement, to or for the benefit of MARTA or Lessee be deemed to be for the benefit of the public. Said rights and interests herein granted to or for the benefit of MARTA or Lessee may be altered, amended, modified, canceled, terminated, and otherwise dealt with by means of an instrument or instruments executed solely by MARTA and Lessee, their respective successors and assigns. Except as expressly provided for herein with respect to Registered Mortgagees, no individual or entity that is not a signatory to this Lease Agreement (other than successors and assigns of the

signatories of this Lease Agreement) shall have any rights or privileges under or arising out of this Lease Agreement, nor shall any person or entity that is not a signatory to this Lease Agreement otherwise be deemed a third party beneficiary of this Lease Agreement.

11.4 **Covenants and Easements Run With Land**. Subject to the assignment provisions elsewhere in this Lease Agreement: (a) each of the provisions of this Lease Agreement shall apply to, extend to, be binding upon and inure to the benefit or detriment of the parties hereto, their respective successors, successors-in-title, and assigns and shall be deemed and treated as real covenants running with the Leased Property; and (b) whenever a reference to MARTA or Lessee is made in this Lease Agreement, such reference shall be deemed to include the legal representatives, successors, successors-in-title, and assigns of said party, as if the same is in each case expressed.

11.5 **No Joint Venture or Partnership**. Nothing contained in this Lease Agreement shall be construed to create the relationship between MARTA and Lessee of principal and agent, of mortgagee and mortgagor, of partners, of joint venturers, or of any association with each other or, except as is expressly provided in this Lease Agreement, so as to render either of the parties liable for the debts or obligations of the other. Notwithstanding the foregoing, in the event the parties are at any time deemed principal and agent, mortgagee and mortgagor, joint venturers, or partners with respect to other persons, each party hereto shall indemnify and hold the other party harmless with respect to any loss, damage, liability, or expense (including, without limitation, attorneys' fees) incurred by such other party because of the acts and/or omissions of the party causing such loss, damage, liability, or expense.

11.6 **Effect of "Review", "Objection", "Failure to Object", "Approval", "Non-Approval", or "Consent"**. In no event shall any review, objection, failure to object, approval, non-approval, or consent by MARTA with respect to any act, plan, drawing, specification or proposal of Lessee made pursuant to any provision of this Lease Agreement or otherwise be deemed to (i) constitute an assumption by MARTA of responsibility or liability for the adequacy or suitability of any such act, plan, or proposal, (ii) constitute a waiver of any claim or right MARTA might have against Lessee as a result of any loss, damage, or expense (including, without limitation, attorneys' fees and costs of litigation) incurred by MARTA by reason of or in connection with any act or omission of Lessee pursuant to or in accordance with any act, plan, or proposal reviewed by MARTA, (iii) result in MARTA's being deemed a joint tortfeasor with Lessee, (iv) be an acknowledgement by MARTA of the compliance of any such act, plan, drawing, specification or proposal with applicable Laws, or (v) waive any claim or right that MARTA may otherwise have against Lessee under this Lease Agreement. Lessee shall be responsible to MARTA in accordance with the terms and provisions of this Lease Agreement for any act or omission of Lessee pursuant to any acts, plans, drawing, specification or proposals reviewed, objected to, not objected to, approved, not approved, or consented to by MARTA, including, without limitation, any such act, plan, or proposal that is altered or revised by Lessee in accordance with a suggestion or objection by MARTA.

Notices. Except as may be expressly set forth in this Lease Agreement to the contrary, every notice, demand, request, consent, approval or other communication required or to be given to any party hereto pursuant to the terms of this Lease Agreement must be in writing and shall be deemed to be given, delivered or received (i) when personally delivered, or (ii) three (3) Business

Days after the time the same shall have been deposited, postage prepaid, by certified United States mail, return receipt requested with all postage prepaid or (iii) one (1) Business Day after delivery to a nationally recognized commercial courier service (e.g., UPS, Federal Express, etc.), addressed as follows:

MARTA: Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road, N.E.
Atlanta, Georgia 30324-3330
Attention: AGM Legal Services/Chief Counsel

and

Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road
Atlanta, Georgia 30324-3330
Attention: Sr. Dir. of Corporate Law

Lessee: City of Brookhaven
4362 Peachtree Road, NE
Brookhaven, GA 30319
Attention: City Manager

With copies to: Christopher D. Balch
Balch Law Group
830 Glenwood Ave., SE
Suite 510-220
Atlanta, GA 30316

or to such other address as any such party may from time to, time designate by notice to the other Party.

11.7 **Entire Agreement.** In the making, execution, and delivery of this Lease Agreement, neither party has been induced by any representations, statements, covenants or warranties (including, without limitation, representations, statements or warranties with respect to title to the Leased Property or the Leased Property's condition or its suitability for Lessee's purposes) made by the other party or its agents except those expressly set forth herein. This Lease Agreement constitutes the full, complete, and entire lease agreement between and among the parties hereto. No agent, employee, officer, representative or attorney of the parties hereto has the authority to make, or has made, any statement, agreement, representation, or contemporaneous agreement, oral or written, in connection herewith modifying, adding to or changing the provisions of this Lease Agreement. No amendment of this Lease Agreement shall be binding or effective unless such amendment shall be in writing, signed by both MARTA and Lessee.

11.8 **Time is of Essence.** Time is of the essence in every provision of this Lease Agreement.

11.9 **No Further Obligations.** Except for the express obligations set forth in this Lease Agreement, nothing contained in this Lease Agreement shall be deemed or construed (i) to require either party hereto to do or to permit anything to be done, (ii) or to expose such party to any contractual liability to any party, person, or entity whatsoever, or (iii) to impose upon such party any contractual obligation or commitment of any kind whatsoever.

11.10 **Georgia Law Applied.** This Lease Agreement shall be governed, construed, performed, and enforced in accordance with the laws of the State of Georgia.

11.11 **Partial Invalidity.** In the event any provision or any portion of any provision of this Lease Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable, the remainder of this Lease Agreement, or the application of such remaining provisions or remaining portion of said provision, to any other person or circumstances shall not be affected thereby. Said remainder shall continue in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

11.12 **Section Captions Disregarded.** The captions of the numbered sections of this Lease Agreement are for purposes of identification and convenience only. Said captions shall not be considered or referred to in resolving questions of interpretation and construction of this Lease Agreement and shall not be deemed to add to or subtract from the meaning of the content of any section of this Lease Agreement.

11.13 **Multiple Counterparts.** This Lease Agreement may be executed in counterparts, each of which shall be deemed an original instrument, and all such counterparts taken together shall constitute one and the same instrument.

11.14 **All Genders and Numbers Included.** Whenever the singular or plural number or masculine, feminine, or neuter gender is used in this Lease Agreement, it shall equally apply to, extend to, and include the other.

11.15 **Survival of Provisions.** All of the covenants, agreements, representations, and warranties contained in this Lease Agreement that are, by their terms, intended to survive, shall, notwithstanding any inspections or investigations made by or on behalf of either party hereto, survive (a) the execution and delivery of this Lease Agreement and all other documents or agreements at any time executed or delivered under, pursuant to, or by reason of this Lease Agreement, (b) the payment of any and all sums of money made under, pursuant to, or by reason of this Lease Agreement, and (c) the termination or suspension of this Lease Agreement, in whole or in part, by reason of any breach or violation of or Default by either party.

11.16 **No Positions at Variance With This Lease Agreement.** MARTA and Lessee agree that as between themselves neither shall formally or officially adopt, espouse, adhere to, urge, or otherwise maintain any position or point of view, whether in litigation, administrative proceedings, or in any other form or context whatsoever, which is in any manner or to any extent contradictory to or in conflict with any term, covenant, provision, agreement, stipulation, warranty, representation, or fact set forth in this Lease Agreement.

11.17 **No Merger.** So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Leased

Property and the Leasehold Estate of Lessee therein created by this Lease Agreement shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by MARTA, by Lessee or by a third party whether by purchase, operation of Law or otherwise.

11.18 **Attorney's Fees.** In the event of any litigation arising under or in connection with this Lease Agreement, the prevailing party shall be entitled to recover from the other party the expenses of litigation (including reasonable attorneys' fees, expenses and disbursements) incurred by the prevailing party.

11.19 **Rights Are Cumulative.** All rights, powers, privileges, and remedies conferred by this Lease Agreement upon MARTA and Lessee shall be cumulative and shall be deemed additional to any and all of the rights, powers, privileges, and remedies to which either party may be entitled in law, in equity, or otherwise, unless specifically and expressly limited by the provisions of this Lease Agreement.

11.20 **HUD Funding.** Lessee represents that it will not seek HUD financing for this project.

11.21 **Memorandum of Lease.** On the Commencement Date, the parties agree to execute and deliver a memorandum of lease with respect to this Lease Agreement, in recordable form, which Lessee may record in the appropriate public records, with any recording or filing costs to be borne by Lessee.

11.22 **Limitation of MARTA's Liability.** The dollar amount of MARTA's obligations and liability to Lessee with respect to this Lease Agreement shall be limited to the then-current Appraised Value, and no officer, director, employee, or agent of MARTA shall have any personal liability whatsoever with respect to this Lease Agreement.

11.23 **Federal Transit Administration and Federal Interest.** Lessee acknowledges that MARTA is the recipient of federal grants through the Federal Transit Administration ("***FTA***"), which funded, in part, the purchase of the real property which included the Leased Property. Lessee further acknowledges that pursuant to FTA grant requirements, MARTA must demonstrate and retain satisfactory continuing control over the use of the Leased Property. Lessee agrees that it will not exercise any right permitted under this Lease in a manner which compromises or otherwise diminishes MARTA's obligation to retain satisfactory continuing control over the use of the Leased Property. Satisfactory continuing control is defined as the legal assurance that FTA funded property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition. Lessee acknowledges the federal interest in the Leased Property and agrees that it will take no action which compromises or otherwise diminishes such interest. Lessee acknowledges that the MARTA must comply with all applicable federal statutes, regulations, orders, certification and assurances, or other federal law (collectively referred to as "***Federal laws***"), including, but not limited to, those set forth in the current FTA Master Agreement governing transit projects supported with Federal assistance awarded through the FTA. The Lessee agrees that it will take no action seeking compliance with non-Federal laws to the extent such laws conflict with applicable Federal laws.

ARTICLE XII

MISCELLANEOUS

12.1 EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISES.

(a) Upon the Commencement Date of this Lease, Lessee agrees that it will use good faith efforts to comply with the terms, conditions and goals set forth in Exhibit I attached hereto and incorporated herein by this reference.

(b) Lessee agrees that it will not discriminate against any business owner because of the owner's race, color, religion, national origin, sex or physical handicap in connection with the award or performance of this Lessee. Lessee agrees to include the above statements in any subcontracts or subsequent agreements that it enters into and cause those businesses to similarly include the statements in subsequent agreements related to this Lessee.

(c) Lessee is required to submit with their Equal Employment Opportunity ("**EEO**") statistical data, as well as, Disadvantaged Business Enterprise ("**DBE**") utilization commitments. This requirement is pursuant to Title VII of the Civil Rights Act of 1964, Executive Order 11246 as implemented by the Department of Labor's Office of Contract Compliance, Executive Order 11625, Federal Transit Administration Circular 4716.1A, Federal Department of Transportation 49 CFR Part 23 and MARTA Board Policies on equal employment opportunity and DBE contracting goals.

[SIGNATURE PAGE FOLLOWS]

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, MARTA and Lessee have caused this Lease Agreement to be signed on their behalf by their duly authorized officers and have caused their corporate seals to be affixed hereto, effective as of the Effective Date.

MARTA:

METROPOLITAN ATLANTA RAPID TRANSIT
AUTHORITY

By: _____
Collie Greenwood
Interim General Manager/CEO

Attest: _____
Rebbie Ellisor-Taylor
Assistant Secretary

[MARTA SEAL]

Approved as to legal form:

By: _____
Counsel, Metropolitan Atlanta Rapid Transit Authority

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

LESSEE:

Brookhaven, Georgia,
a Georgia Municipal Corporation

By: _____

Print Name: John Arthur Ernst, Jr.

Title: Mayor

ATTEST:

Approved as to Form:

Susan Hiott
City Clerk

Christopher D. Balch
City Attorney

[SEAL]

[END OF SIGNATURES]

EXHIBIT A

LEGAL DESCRIPTION OF BROOKHAVEN – OGLETHORPE STATION

EXHIBIT B

LEGAL DESCRIPTION OF LEASED PROPERTY

EXHIBIT C
COPY OF INFRASTRUCTURE AGREEMENT

EXHIBIT D

**DESCRIPTION OF AND CONSTRUCTION SCHEDULE
FOR PROJECT IMPROVEMENTS**

EXHIBIT E

LEGAL DESCRIPTION OF TRANSIT EASEMENT AREAS

EXHIBIT F

LEGAL DESCRIPTION OF TRANSIT STATION AREA

EXHIBIT G
CONCEPTUAL PLAN

EXHIBIT H
FORM OF GUARANTY

EXHIBIT I

DBE GOALS

Lessee has established a disadvantaged business Enterprise (DBE) contract goal of 20% of the total dollar value of the bid total, including amendments, modifications, options and change orders. Credit towards the DBE goal for a contract shall be limited to the participation of firms performing within the designated NAICS code(s) for which the firms have been certified as a DBE.

Lessee will promptly notify MARTA's Office of Diversity and Inclusion, whenever a DBE subcontractor, performing work related to this contract, is being considered for termination or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Lessee may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MARTA's Executive Director of Diversity and Inclusion.

EXHIBIT J
FTA CONCURRENCE