



OFFICE OF THE EXECUTIVE VICE PRESIDENT FOR  
BUSINESS AND FINANCE, TREASURER

September 17, 2013

The Honorable Michael R. Pence  
Governor of the State of Indiana  
State House  
Indianapolis, IN 46204

Dear Governor Pence:

In accordance with its bylaws, the Purdue University Board of Trustees approved the lease agreement, "Land Lease for CVS Out Lots", of approximately 1.1 acres of land, owned by the Trustees of Purdue University and Indiana University, located in Fort Wayne, Indiana.

The lease of land to RCI Development will allow for the further development of a retail and commercial complex benefiting the adjacent Waterfield Campus student housing and campus community. The land will be developed into an 8,000 sq. ft. building with parking to ultimately accommodate up to four retail vendors to provide a variety of food service options to IPFW students, staff, and surrounding neighborhood residents. IPFW student housing does not provide food service, therefore the project will provide a valuable service to the IPFW community.

The lease will run concurrently with the separate lease agreement between the Trustees and RCI Development for 2.5 acres of land for the CVS development, approved by the Budget Director and Governor effective December 4, 2012.

Term:	24 years with three (3) renewals of five (5) years each
Land Area:	1.09 Acres adjacent to the IPFW Student Housing
Annual Rent:	\$8,000 with a 10 percent escalation factor every five years

Pursuant to I.C. 21-31-4-2, we request your approval and that of the Budget Agency to proceed with this lease. We will be happy to answer any questions you or your staff may have or to provide any additional information you may wish.

Sincerely,

A handwritten signature in black ink, appearing to read "A. V. Diaz".

A. V. Diaz  
Executive Vice President for  
Business and Finance, Treasurer

Attachment (LEASE)

c: Brian Bailey, State Budget Director  
Mary Catherine Gaisbauer, Comptroller  
Kevin Green, Assistant Director of Capital Planning



**GROUND LEASE**

**by and between**

**THE TRUSTEES OF PURDUE UNIVERSITY  
(Acting with respect to Indiana University-Purdue University, Fort Wayne)**

**as Landlord**

**and**

**RCI DEVELOPMENT, LLC**

**as Tenant**

**dated: September \_\_\_, 2013**

**Commercial Development  
Southwest Corner of Crescent Avenue  
and Hobson Road, Ft. Wayne, IN  
(Outlot 1)**

<b>Section 1.</b>	Leasehold Estate.....	3
<b>Section 2.</b>	Evaluation Period; Delivery of Lease Premises; Term. ....	6
<b>Section 3.</b>	Rent.....	10
<b>Section 4.</b>	Rent to be Net to Landlord. ....	11
<b>Section 5.</b>	Use of Lease Premises. ....	11
<b>Section 6.</b>	Taxes and Utility Expenses. ....	13
<b>Section 7.</b>	Improvements, Alterations, Surrender. ....	15
<b>Section 8.</b>	Requirements of Public Authority.....	18
<b>Section 9.</b>	Covenant Against Liens. ....	18
<b>Section 10.</b>	Access to Lease Premises.....	19
<b>Section 11.</b>	Assignment, Transfer and Subletting. ....	19
<b>Section 12.</b>	Mortgaging of Leasehold Estate and Reversionary Estate.....	19
<b>Section 13.</b>	Warranties and Representations. ....	24
<b>Section 14.</b>	Confidentiality.....	27
<b>Section 15.</b>	Indemnity.....	28
<b>Section 16.</b>	Insurance.....	29
<b>Section 17.</b>	Condemnation.....	30
<b>Section 18.</b>	Defaults.....	31
<b>Section 19.</b>	Waivers; Remedies.....	33
<b>Section 20.</b>	Limitation of Liability. ....	34
<b>Section 21.</b>	Force Majeure.....	35
<b>Section 22.</b>	Notices. ....	35
<b>Section 23.</b>	Certificates.....	36
<b>Section 24.</b>	Governing Law.....	37
<b>Section 25.</b>	Holdover. ....	37
<b>Section 26.</b>	Waiver of Landlord’s Lien. ....	37
<b>Section 27.</b>	Waiver of Jury Trial. ....	37
<b>Section 28.</b>	Severability.....	37
<b>Section 29.</b>	Memorandum of Lease.....	37
<b>Section 30.</b>	[Intentionally left blank.].....	38
<b>Section 31.</b>	Interpretation. ....	38
<b>Section 32.</b>	Entire Agreement.....	38
<b>Section 33.</b>	Parties. ....	38
<b>Section 34.</b>	Brokers’ Commissions. ....	38
<b>Section 35.</b>	[Intentionally left blank.].....	38
<b>Section 36.</b>	Attorneys’ Fees.....	38
<b>Section 37.</b>	Rent Payments. ....	39
<b>Section 38.</b>	Notice of Landlord Transfers. ....	39
<b>EXHIBIT A</b>	Legal Description of Lease Land	
<b>EXHIBIT A-1</b>	Site Plan of Development Land and Adjacent Land	
<b>EXHIBIT A-2</b>	Legal Description of Adjacent Land	
<b>EXHIBIT A-3</b>	Legal Description of Access Easement	
<b>EXHIBIT A-4</b>	Drainage Plan	
<b>EXHIBIT B</b>	Subordination and Non-Disturbance Agreement	
<b>EXHIBIT C</b>	Notice of Transfer	

## GROUND LEASE

This Ground Lease (this “Lease”), dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between RCI Development, LLC, an Indiana limited liability company (the “Tenant”), and The Trustees of Purdue University on behalf of itself and The Trustees of Indiana University (the “Landlord”).

All exhibits hereto are incorporated herein by this reference.

### WITNESSETH

1. The Trustees of Purdue University and The Trustees of Indiana University are the owners of record as tenants in common of certain land consisting of approximately 1.017 +/- acres, situated at the southwest corner of Crescent Avenue (S.R. 37) and Hobson Road in Ft. Wayne, Allen County, Indiana, as more fully described in the legal description attached hereto as **Exhibit A**, and depicted as “Proposed Outlot” on the site plan attached hereto as **Exhibit A-1** (the “Site Plan”), both such exhibits being incorporated by reference herein (the “Lease Land”). Tenant has agreed to lease and develop the Lease Land.

2. The Trustees of Purdue University, under the authority of an agreement with the Trustees of Indiana University, manage and administer Indiana University-Purdue University Fort Wayne in Fort Wayne, Indiana (“IPFW”), on behalf of itself and the Trustees of Indiana University (hereinafter the term “Trustees” when not followed by a specific designation shall mean collectively The Trustees of Purdue University and The Trustees of Indiana University). Pursuant to its agreement with The Trustees of Indiana University, The Trustees of Purdue University is authorized to and has executed this Lease on behalf of itself and The Trustees of Indiana University.

3. IPFW is located on, and the Trustees own, certain tracts of land in Ft. Wayne, Indiana, which include but are not limited to, the Development Land (as defined below) and the Adjacent Land (as defined below). Landlord has determined that the Lease Land is suitable for development and operation of certain types of commercial and retail use for the benefit of students in IPFW student housing and the broader IPFW community.

4. Landlord has previously leased from the Landlord another parcel of land located on Crescent Avenue, adjacent to the east of the Lease Land, shown as “CVS Land” on the Site Plan (the “CVS Land”). The Lease Land and the CVS Land are referred to herein collectively as the “Development Land”.

5. Also included in the tracts of land on which IPFW is located is a tract of land located adjacent to the south of the Development Land, shown as “Adjacent Land” on the Site

Plan and legally described on **Exhibit A-2** attached hereto (the “Adjacent Land”), which is also owned by the Trustees.

6. Tenant desires to lease the Lease Land, and Landlord desires to lease such land to Tenant, subject to the terms and conditions of this Lease.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), other good and valuable consideration, and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

**Section 1. Leasehold Estate.**

A. Lease Premises. Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, the Lease Land, together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto and existing improvements, but specifically excluding any underground storage tanks and any Hazardous Substances (as hereinafter defined) which were released into, became a part of, or were located upon such land prior to the Commencement Date (as hereinafter defined) (all the foregoing hereinafter referred to as the “Lease Premises”).

B. Rights in Development Land and Certain Portions of Adjacent Land.

(i) Access Easements. Landlord hereby grants to Tenant and any current or future subtenants or other legal occupants, from time to time, of the Lease Premises (collectively, “Subtenant(s)”), including pursuant to one or more subleases between Tenant, as Sublandlord, and any Subtenants (the “Sublease(s)”) of the Lease Premises and all persons claiming under each of them, including, without limitation, each of their respective employees, vendors, customers and other invitees and each of their respective successors and assigns (collectively, “Subtenant Parties”), during the Term of this Lease (including any extensions thereof), a non-exclusive right and easement, for pedestrian and vehicular (both commercial and non-commercial) passage in, on, over and across the portions of the Adjacent Land shown as “Access Easement” on the Site Plan and legally described in **Exhibit A-3** attached hereto and incorporated by reference herein (the “Access Easement”) for access to Hobson Road. Landlord agrees that neither the Access Easement, nor those points of connection with Hobson Road and/or the Lease Premises shall be relocated or modified by Landlord without the written consent of Tenant, and in no case unless the modified location continues to provide equivalent access between the Lease Premises and Hobson Road, as reasonably acceptable to Tenant. At all times during the Term of this Lease, Tenant shall be responsible for the maintenance of the Access Easement, and for paying, or causing to be paid, all taxes associated with improvements to the Access Easement made by, for or for the benefit of Tenant, Subtenant or any Subtenant Party. In the event of any damage or disturbance to the Adjacent Land as a result of Tenant’s, a Subtenant’s, or a Subtenant Party’s exercise of any of the foregoing access easement rights, Tenant shall, in a prompt and workmanlike manner, repair and restore or cause to be repaired and restored by such Subtenant or Subtenant Party, such damage or disturbance as nearly as practicable to the condition that existed prior to such damage or disturbance (except in case of Tenant’s or any Subtenant’s construction of the access driveway and related improvements).

(ii) Utility Easements. Landlord further hereby grants to Tenant, and any Subtenants and Subtenant Parties of the Lease Premises and each of their contractors, subcontractors, agents, vendors, licensees, or employees, during the Term of this Lease (including any extensions thereof), a non-exclusive right and easement in, to, over, under, along and across those portions of the CVS Land or Adjacent Land (exclusive of any portion upon which any buildings currently exist or are planned to be located as shown on the Site Plan) where any Utility Lines serving the Lease Premises or any other portion of the Development Land currently exist, or where any future new Utility Lines or relocated Utility Lines to serve the Lease Premises or any other portion of the Development Land are reasonably necessary or desirable, and including the right and easement to enter onto other areas of the Development Land or Adjacent Land to install, operate, repair, replace, repair, connect, relocate, or remove any such Utility Lines (as and to the extent reasonably necessary for purposes of same). Provided, however, that the location of such Utility Lines on the CVS Land or Adjacent Land shall be subject to the written approval of Landlord prior to installation or relocation, which approval shall not be unreasonably withheld, delayed or conditioned. Provided further, the location of such Utility Line on the CVS Land also shall be subject to the written approval of the tenant and the subtenant of the CVS Land. Upon prior notice to Landlord which specifically describes the access and use needed, Landlord agrees to provide Tenant with reasonable access and a temporary easement to use portions of the Adjacent Land (excluding buildings thereon) the access and use to which is reasonably necessary to install, operate, repair, replace, connect, relocate, or remove Utility Lines serving the Lease Premises or other portions of the Development Land. At all times during the Term of this Lease, Tenant shall be responsible for the maintenance of the Utility Lines on the Lease Premises and any connections within the CVS Land or Adjacent Land that enable the Utility Lines to provide service to the Lease Premises. The term "Utility Lines" shall mean and include, without limitation, all lines, pipes, conduits, facilities, systems, and all appurtenances thereto in connection with all utilities serving the Lease Premises or any other parcel or portion of the Development Land and/or necessary for Tenant's or any Subtenant's use and operation thereof, including, without limitation, electricity, water, gas, sewer or sanitary waste disposal, stormwater drainage and storage, telephone, and cable television. In the event of any damage or disturbance to the Development Land or to Adjacent Land as a result of Tenant's, a Subtenant's, or a Subtenant Party's exercise of any of the foregoing utility easement rights, Tenant shall, in a prompt and workmanlike manner, repair and restore or cause to be repaired and restored by such Subtenant, such damage or disturbance as nearly as practicable to the condition that existed prior to such damage or disturbance.

Landlord specifically reserves unto itself and for any tenant or subtenant of the CVS Land, a right and easement in, to, over, under, along and across those portions of the Lease Land (exclusive of any portion upon which buildings are located or planned to be located as shown on the Site Plan) where any Utility Lines serving the CVS Land currently exist, or where any future new Utility Lines or relocated Utility Lines to serve the CVS Land are reasonably necessary or desirable, and including the right and easement to enter onto the Lease Land to install, operate, repair, replace, connect, relocate, or remove any such Utility Lines (as and to the extent reasonably necessary for purposes of same). Provided, however, that the location of such Utility Lines on the Lease Land shall be subject to the written approval of Tenant and any Subtenant prior to installation or relocation, which approval shall not be unreasonably withheld, delayed or conditioned. In the event of any damage or disturbance to the Lease Premises as a result of Landlord's exercise of any of the foregoing utility easement rights, Landlord shall, in a prompt and workmanlike manner, repair and restore or cause to be repaired and restored by such party,

such damage or disturbance as nearly as practicable to the condition that existed prior to such damage or disturbance.

(iii) Drainage Easement. Landlord further grants to Tenant, and any Subtenants and Subtenant Parties of the Lease Premises, and each of their contractors, subcontractors, agents, vendors, licensees, or employees, during the Term of this Lease (including any extensions thereof), a non-exclusive right and easement in, upon, over, through, and across the Adjacent Land for purposes of draining stormwater from the Lease Premises (as such parcel of land may be improved and developed or redeveloped from time to time), and to connect to and/or install and utilize Drainage Facilities on the Adjacent Land for purposes of transferring stormwater from the Lease Premises to existing and future stormwater retention facilities and other Drainage Facilities within the Adjacent Land (the "Drainage Easement"). Without limitation of the generality of the foregoing, Tenant and any Subtenants of the Development Land have the right and easement to connect to and use the Drainage Facilities existing and/or to be constructed as shown on the drainage plan attached hereto as **Exhibit A-4**. During any development activities upon the Adjacent Land, the Landlord shall ensure that the Drainage Facilities and stormwater retention remain adequate and uninterrupted as to the Lease Premises and the CVS Land. "Drainage Facilities" shall mean all stormwater detention ponds and basins, and all pipes, lines, conduits connections, drains and any other structures and improvements for stormwater management. Landlord shall not remove or relocate the Drainage Facilities, or allow any further connections to or use thereof for the benefit of any other parcels of land, without the prior written consent of the Tenant and the Subtenants, and in no case unless: (i) any alternate location will provide uninterrupted storm water drainage and storm water retention comparable to that which existed prior to such relocation; (ii) the relocation will not cause disruption of the operations conducted on the Lease Premises or any other parcels or portions of the Development Land; (iii) any relocation or new connections are made or performed without cost or expense to the Tenant or any Subtenants, and the work is performed in a good and workmanlike manner and in accordance with applicable law; and (v) in the case of any new connections, it has been determined that the Drainage Facilities have sufficient capacity (after accounting for existing, and reasonably foreseeable future, requirements of the Lease Premises and of any other portion or parcel of the Development Land) to safely handle and accommodate the additional flows from the new connections. In the event of any damage or disturbance to the Development Land or to Adjacent Land as a result of Tenant's, a Subtenant's, or a Subtenant party's exercise of any of the foregoing drainage easement rights, Tenant shall, in a prompt and workmanlike manner, repair and restore or cause to be repaired and restored by such Subtenant or Subtenant Party, such damage or disturbance as nearly as practicable to the condition that existed prior to such damage or disturbance. To the extent that the Tenant or any Subtenant intends to use the Adjacent Land for drainage purposes other than connection to and use of the existing Drainage Facilities thereon (as the same may be relocated by Landlord as provided above), such alternative drainage use shall be subject to the prior written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

The rights granted to Tenant under this Lease are referred to herein as the "Leasehold Estate." The rights of Landlord in the Lease Premises after giving effect to the Leasehold Estate are referred to herein as the "Reversionary Estate." The Reversionary Estate includes all of Landlord's rights pursuant to this Lease.



C. Sublease Obligations. Tenant shall specifically provide in each Sublease that the Sublease is subject and subordinate to this Lease.

D. Subdivision. Tenant may, at Tenant's expense, take such legal measures as necessary under applicable laws to subdivide the Development Land in order to make the Lease Land a separate legal lot from the CVS Land and the Adjacent Land, but the form of the subdivision plan and any related easements, covenants or restrictions created thereby or established therewith (collectively, the "Subdivision Plan") affecting the Adjacent Land shall be subject to the prior review and approval of Landlord (whose approval shall not be unreasonably withheld, conditioned or delayed) prior to final approval and recording. If Landlord approves of the Subdivision Plan, Landlord agrees to cooperate with Tenant in efforts to have the Subdivision Plan approved by appropriate governmental authorities; provided, however, that such cooperation shall not involve the execution of documents that increase Landlord's obligation or extend its liability beyond those express obligations and liabilities set forth in this Lease, and shall not result in any additional cost or liability to Landlord.

## **Section 2. Evaluation Period; Delivery of Lease Premises; Term.**

### **Subsection 2.1 Evaluation Period.**

(a) "Evaluation Period" shall mean the period of time commencing on the Date of this Lease, and ending on the later to occur of (x) one hundred eighty (180) days after the Date of this Lease. Tenant shall have the right to extend the Evaluation Period for up to three (3) successive extension periods of thirty (30) days each. Tenant shall notify Landlord in writing of its election to extend the Evaluation Period, prior to the end of the original term of the Evaluation Period, or prior to the end of any prior extension thereof (as applicable).

During the Evaluation Period, Tenant (and any Subtenant) may enter upon the Lease Land and conduct tests, inspections, surveys and studies (including, without limitation, soil, environmental, physical, mechanical and structural) which Tenant or any Subtenant may deem appropriate to determine the suitability of the Lease Premises for Tenant's or Subtenant's use; conduct a title search and order a title commitment with respect to the Lease Premises; and review applicable zoning and land use laws.

In the event any Subtenant of the Lease Premises gives notice of its election to terminate a Sublease as to the Lease Premises, Tenant shall have the unequivocal right to terminate this Lease upon written notice to Landlord. Whether or not this Lease is terminated pursuant to this Subsection, Tenant shall have no liability with respect to any Hazardous Substances (as defined in Section 13(n)) or underground storage tanks discovered as a result of any tests, inspections or studies performed by Tenant or Subtenant hereunder, or as a result of any performance by Landlord of its obligations as described in this Lease.

(b) Notwithstanding anything to the contrary in this Lease, in no event shall Tenant be obligated to accept possession of the Lease Premises until all "Permits" have been issued to Tenant or to any Subtenants. "Permits" shall mean any Subtenant's building permit and any other licenses, permits or approvals issued by any governmental or quasi-governmental authority necessary to enable such Subtenant to perform any necessary alteration or demolition of existing

buildings or improvements and to perform its initial construction pursuant to Subsection 2.2 of this Lease and relevant Exhibits hereto. In addition, “Permits” shall include any zoning variance, special use permit, street or alley abandonment, or the like necessary for a Subtenant to operate its desired business upon the Lease Premises.

The “Outside Government Permits Date” shall mean the last day of the Evaluation Period. Unless, on or before the Outside Government Permits Date, Tenant or a Subtenant shall have obtained its Permits, and all appeal periods with respect thereto have expired with no appeals having been taken, at any time thereafter (but prior to the acquisition by Tenant or such Subtenant of said Permits and the expiration of all appeal periods with respect thereto, with no appeals having been taken), Landlord or Tenant may terminate this Lease upon thirty (30) days’ notice to the other party, and this Lease will so terminate unless, prior to the expiration of said thirty (30) days, the Tenant or the Subtenant shall obtain such Permits and such appeal periods shall have expired with no appeals having been taken. Tenant may exercise the right of termination described in this Subsection 2.1(b) only if Tenant or its Subtenant has used commercially reasonable good faith efforts to acquire said Permits. Tenant shall have the right to extend the Outside Government Permits Date in the event site plan approval, zoning variances, special use permits, street or alley abandonments or similar relief is necessary for any Subtenant’s project for a period of up to an additional ninety (90) days. Tenant shall notify Landlord, in writing, of its election to extend the Outside Government Permits Date prior to the original Outside Government Permits Date.

Notwithstanding the foregoing, Tenant shall also have the right to terminate this Lease by giving notice to Landlord, if at any time prior to the Outside Government Permits Date Tenant is advised by any governmental agency or by its Subtenant that any of such Permits have been or shall be denied or the issuance thereof conditioned on changes to **Exhibit A-1**, any proposed Building design, or its proposed business operations which are unacceptable to such Tenant, and such Tenant is unwilling to revise **Exhibit A-1**, its proposed Building design, or its proposed business operations to satisfy the condition of such governmental agency.

(c) [Intentionally omitted.]

(d) The “Outside Delivery Date” shall mean \_\_\_\_\_, 2013. If, on or before the Outside Delivery Date, possession of the Lease Premises has not been delivered to Tenant in accordance with Subsection 2.2 below, then, at any time thereafter (until such possession is so delivered), Tenant may terminate this Lease upon thirty (30) days’ notice to Landlord, and this Lease will so terminate unless, prior to the expiration of said thirty (30) days, Landlord shall deliver possession of the Lease Premises to Tenant in accordance with the terms hereof. Said right to terminate shall be Tenant’s sole remedy if Landlord shall have used commercially reasonable good faith efforts to deliver the Lease Premises to Tenant in accordance with the terms hereof.

(e) Notwithstanding anything to the contrary in this Lease, in no event shall Tenant be obligated to accept possession of the Lease Premises, and the Commencement Date shall not occur, until Tenant shall have:

(i) received a leasehold policy of title insurance with respect to the Lease Premises, which policy shall be satisfactory to Tenant; provided, however, exceptions contained in the leasehold policy of title insurance shall be deemed to be satisfactory unless Tenant has provided to Landlord a written objection to such exception prior to the expiration of the Evaluation Period; and

(ii) received and recorded a Memorandum of Lease pursuant to Section 29;  
and

(iii) approved the form and substance of all easements providing utilities, access or parking for any Tenant's Building, which approval shall not be unreasonably withheld, and received and recorded same.

(f) Landlord shall deliver to Tenant within ten (10) days after receipt of Tenant's request therefor:

(i) any documents reasonably required by the Tenant's title insurance company to remove the standard title exceptions from the Tenant's title commitment and subsequent title policy, including, without limitation, an Owner's Title Affidavit in customary form sufficient to delete any exceptions for parties in possession and mechanics' or materialmen's liens; provided, however that Tenant shall be responsible for any and all costs associated with any survey required by the title insurance company to delete any exception; and

(ii) any documents reasonably required by Tenant's title company evidencing Landlord's authority to enter into this Lease, including, without limitation, certifications, votes and other documentation relating to Landlord's organizational structure; and

(iii) any other documentation listed in the "Requirements" section of Schedule B or B-1 of the Tenant's title commitment.

### **Subsection 2.2 Delivery of Lease Premises.**

(a) If this Lease shall not be terminated pursuant to Subsection 2.1 above, then Landlord shall deliver possession of the Lease Premises to Tenant free of all tenants and occupants, and otherwise in an "as is" condition. Landlord agrees to give at least twenty (20) days' prior notice to Tenant of the date when such possession will be available to Tenant, and Landlord shall not deliver said notice until all rights to terminate this Lease pursuant to Subsection 2.1 shall have expired and all conditions to the enforcement of this Lease have been satisfied and/or waived. Upon delivery of possession of the Lease Premises to Tenant with all conditions to delivery satisfied, Tenant shall immediately give notice to Landlord of its acceptance and the date of acceptance.

Tenant shall not be obligated to accept delivery of the Lease Premises unless, at the time of such delivery, all utilities shall be available at the Lease Premises and adequate for Tenant's or any Subtenant's purposes, without the need for any easements or approvals, there shall be no moratorium in effect with respect thereto, and all Permits have been issued to Tenant or its Subtenant.

(b) The term “Building” shall mean a building on the Lease Premises which may be constructed by Tenant thereof, subject to Landlord’s approval under Section 7(a)(i) below). The parties hereby acknowledging the Tenant of the Lease Premises will prepare more specific building and signage plans for the Lease Premises following the execution of a Sublease, that those plans may be subject to modifications requested by governmental permitting authorities in connection with seeking permits and approvals for the redevelopment of the Lease Premises.

(c) Upon acceptance of delivery of possession of the Lease Premises, Tenant or any Subtenant may do any demolition which it may desire and shall perform its initial construction, which shall result in a Building with paved parking areas and related improvements, including, without limitation, pylon sign structures and other signs, lighting poles and curbs. Such demolition and initial construction shall not require the approval of Landlord, but in doing its work, Tenant shall comply with Section 7 hereof. At Tenant’s sole cost, Landlord promptly shall cooperate with Tenant and/or its Subtenant (including the prompt signing of applications or petitions) in obtaining any necessary Permits (as defined in Subsection 2.1) and join in any grants or easements for any public utilities and facilities, or access roads, or other facilities useful or necessary to the operation of the Building and other improvements or the construction thereof; provided, however, that such cooperation shall not involve the execution of documents that increase Landlord’s obligation or extend its liability beyond those express obligations and liabilities set forth in this Lease, and shall not result in any additional cost or liability to Landlord. For purposes of this provision “promptly” or “prompt” shall mean at least three (3) business days after Landlord has been provided all information for review.

### **Subsection 2.3 Term.**

(a) The term of this Lease shall commence on the date on which possession of the Lease Premises is delivered to Tenant in the manner and condition provided in Subsection 2.2 above, and Tenant accepts possession in accordance with the terms and conditions of this Lease (the “Commencement Date”), and shall expire twenty-four (24) years after the Commencement Date, plus any months and days necessary to have the term expire on the next January 31st, subject to all terms and conditions of this Lease (the “Initial Term”) (the Initial Term and the Initial Term as the same may have been extended pursuant to paragraph (b) below, is also sometimes hereinafter referred to as the “Term”).

(b) Tenant may extend the Term of this Lease for Three (3) extension periods of Five (5) years each (each, a “Renewal Period”), upon all of the terms set forth in this Lease. Tenant may do so only if a Tenant’s Default shall not exist under this Lease at the time of any such election, and by giving Landlord notice of each such election (“Extension Notice”) not later than Five (5) months prior to the expiration of the then current Term, as the same may be extended by a Renewal Period. Tenant shall not be entitled to extend the Term of this Lease for any Renewal Period unless Tenant shall have extended the Term of this Lease for the preceding Renewal Period, if any. Notwithstanding anything to the contrary contained herein, including, without limitation, the preceding provisions of this Subsection 2.3(b), Tenant’s right to extend the Term of this Lease hereunder shall not terminate or be extinguished due to Tenant’s failure to give Landlord an Extension Notice as herein provided unless and until (i) Landlord shall have notified any Leasehold Mortgagee (as hereinafter defined), if any, of such failure; and (ii) each Leasehold

Mortgagee shall have failed to exercise the Renewal Option on behalf of Tenant within thirty (30) days of such notice from Landlord.

(c) Landlord shall have the right to terminate this Lease by written notice to Tenant if a Building is not constructed and capable of operation by the second (2<sup>nd</sup>) anniversary of the Commencement Date.

(d) If prior to delivery of possession of the Lease Premises to Tenant or prior to Rent Commencement Date, whichever is later, there is found to be Hazardous Substances on the Lease Premises, and the estimated costs (as determined by a qualified third party consultant reasonably acceptable to Landlord and Tenant) to remediate or remove such Hazardous Substances exceeds an amount equal to Two Hundred Thousand Dollars (\$200,000.00) less all estimated and actual costs to remediate Hazardous Substances on the CVS Land ("Remediation Amount"), then Landlord may, in lieu of performing such work, notify Tenant in writing, within fifteen (15) days after receipt of Tenant's consultant's estimate, of Landlord's intent to terminate this Lease effective thirty (30) days thereafter ("Landlord's Environmental Termination Notice"). Within thirty (30) days after receipt of Landlord's Environmental Termination Notice, Tenant shall have the right (but not the obligation) to elect, by written notice to Landlord ("Tenant's Assumption Notice") to assume all costs of said remediation work over and above the Remediation Amount. If Tenant timely delivers Tenant's Assumption Notice to Landlord prior to the expiration of said 30-day period, the Landlord's Environmental Termination Notice shall be deemed null and void, and Tenant shall be responsible for paying, and/or reimbursing Landlord for, all costs of said remediation work that exceed the Remediation Amount within thirty (30) days after invoice therefor; if Tenant does not timely deliver Tenant's Assumption Notice, this Lease shall automatically terminate upon the expiration of said 30-day period.

### **Section 3. Rent.**

(a) Commencing as of the Commencement Date, Tenant shall pay to Landlord, at the business address of Landlord specified on Page 1 hereof, or at such other address as Landlord shall have designated, from time to time, by notice to Subtenant, the Fixed Rent set forth below, payable to Landlord no later than the tenth (10th) day of each month in advance, without demand or set-off, except as otherwise expressly provided in this Lease.

(b) Commencement Date shall be on any day other than the first day of a calendar month, Fixed Rent and other charges for such month shall be prorated on a per diem basis. The foregoing notwithstanding, Tenant's obligation to provide insurance pursuant to Section 16 shall commence upon the Commencement Date of the Term.

Notwithstanding any other provision of this Lease, from and after day on which Tenant shall accept possession of the Lease Premises, and from and after the date on which Tenant or any Subtenant commences any demolition or construction activity on the Lease Premises, and before Tenant or any Subtenant shall commence any occupancy or use of any building on the Lease Premises, Tenant shall be responsible for payment of utilities, maintenance, taxes, and insurance used or applicable to the Lease Premises, and all such obligations of Tenant or a Subtenant under this Lease (and indemnification obligations) shall be in full force and effect.

<u>PERIOD</u>	<u>ANNUAL FIXED RENT</u>	<u>MONTHLY INSTALLMENTS</u>
First Five (5) years of the Term	\$8,000.00	\$666.66
Second Five (5) years of the Term	\$8,800.00	\$733.33
Third Five (5) years of the Term	\$9,680.00	\$806.66
Fourth Five (5) years of the Term	\$10,648.00	\$887.33
Fifth Four (4) years of the Term	\$11,712.00	\$976.00

Thereafter, rent shall automatically increase at the commencement of every Five (5) years of the Term by an amount equal to Ten Percent (10%) of the amount of rent payable for the last month preceding commencement of the new Five (5) year period, including through all Renewal Periods.

**Section 4. Rent to be Net to Landlord.**

The rent payable hereunder shall be net to Landlord, so that this Lease shall yield to Landlord the net annual rent specified herein during the Term of this Lease, except pursuant to the express provisions and limitations of this Lease. The Fixed Rent stated in this Lease is in addition to all other obligations of Tenant and any Subtenant under this Lease.

**Section 5. Use of Lease Premises.**

(a) Except for the performance of Work in accordance with Section 2.2(c) above and, the Landlord’s termination right contained in Section 2.3(c) above, the Landlord’s recapture right contained in Section 5(d) below, nothing contained in this Lease shall be deemed to impose upon Tenant, either directly, indirectly, constructively or implicitly, an obligation to construct improvements upon the Lease Premises, open for business, or remain open and/or to operate for any period or in accordance with any operating schedule, procedure or method. Tenant shall not burn any trash or garbage at any time on the Lease Premises. Tenant shall not commit or suffer to be committed any waste upon the Lease Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenants, or which may disturb the quiet enjoyment of occupants of adjoining properties.

(b) The Lease Premises may be used for any store or business if: (i) the primary use thereof would serve the students or community of IPFW on the IPFW campus and surrounding area; (ii) the use is permitted by the applicable zoning ordinance; and (iii) the use is not a Restricted Use (defined below) or a Prohibited Use (defined below). Without limiting the generality of the foregoing, the sale primarily of merchandise promoting a college or university other than IPFW, Indiana University or Purdue University shall be prohibited. Any other use of the Lease Premises shall require the prior written consent of the Landlord. Except as otherwise provided herein, the Subtenant shall not use, or permit others to use, the Lease Premises for any

other purpose, or in any way that would be contrary to this Lease, to any applicable laws or Permits, or that would constitute a nuisance.

(c) Landlord agreed with Tenant to restrict uses on the property owned by Landlord within a one quarter (1/4) mile radius of the CVS Land, and, accordingly, the Lease Premises may not be used for the following uses ("Restricted Use"): a health and beauty aids store, a greeting card and gift store, a candy store, a store offering one-hour or other on-site photo processing, a vitamin store, a pharmacy mail order facility, a drug store, a pharmacy prescription department, a retail health center, a discount, 99 cents store or "dollar" store which sells general merchandise (a "Dollar Store"). Examples of a Dollar Store (without limiting such Dollar Stores only to those listed) are stores such as Fred's, Dollar Store, Dollar General or Family Dollar. As used herein, the term "pharmacy prescription department" shall include the dispensing of prescription drugs by physicians, dentists or other health care practitioners, or entities such as health maintenance organizations, where such dispensing is for profit (but shall not preclude such practitioners or organizations from providing free samples to their patients in connection with medical treatment. As used herein, a "health and beauty aids store" shall mean a store which devotes more than Five Percent (5%) of its retail selling space to the display and sale of health and beauty aids.

(d) The Lease Premises also may not be used for the following uses ("Prohibited Use"): sale of beer, wine or other alcoholic beverages; gambling or betting offices (other than sale of lottery tickets); massage parlor; a cinema, theater, gift store, video store or bookstore that sells, rents or exhibits primarily material of a pornographic or adult nature; bar, tavern or night club; a bowling alley; a roller skating rink; a firearms shooting range or any other use which creates or causes excessive noise; a cinema or theater; a flea market; a warehouse; a facility which performs on-site dry cleaning; a gas station; a facility that performs on-site auto repair; pet store, animal hospital, kennel, animal obedience school, or animal grooming operation; child and/or adult care center; church, synagogue, or other religious building or facility used for religious assembly; correctional services facility, funeral home; group residential facility; billiard or pool hall; bingo establishment; book store that sells new or used college text books; business or trade school; cigarette/tobacco/cigar store (sale of such products incidental to another allowable use is not a Prohibited Use); consignment shop, fireworks store; gas/service station; live bait business; use primarily as a parking lot or parking structure; recycling collection point; tattoo establishment; bail bonds; sale of guns and firearms; sale or storage of new or used automobiles; junk yard; landfill; political party or campaign office; use offering or promoting services or goods of a controversial nature or by an organization for use in promoting an ideology or agenda that is controversial in nature.

(e) In the event that Tenant after having completed construction of its original Building and opened for business on the Lease Premises, thereafter ceases operation of its business or any other business permitted to be operated on the Lease Premises, and does not resume operation of a permissible business for a period of thirty (30) consecutive months (excluding any periods of time where business is ceased for purposes of maintenance, repairs, renovation or reconstruction, or due to Force Majeure), Landlord shall have the right to terminate this Lease upon six (6) months prior written notice to Tenant (the "Recapture Notice"). Unless Tenant (or any Subtenant) commences or resumes operation of a permissible business on the Lease Premises within the six (6) month period following the date of service of the Landlord's

Recapture Notice, this Lease shall terminate as of the end of said six (6) month period; if, however, Tenant (or any Subtenant) commences or resumes operation of a permissible business on the Lease Premises prior to the expiration of such six (6) month period, this Lease shall not terminate and the Landlord's Recapture Notice shall become void and of no force or effect.

#### **Section 6. Taxes and Utility Expenses.**

(a) Tenant shall, commencing as of the Date of Rent Commencement and thereafter during the Term of this Lease, and subject to the limitations and conditions set forth in Section 3(c) above, as additional rent, pay and discharge punctually, as and when the same shall become due and payable, all taxes, special and general assessments, water rents, rates and charges and sewer rents and any and all similar charges and assessments (hereinafter referred to as "Taxes") and each and every installment thereof which shall or may become due and payable after the Date of Rent Commencement, or liens upon or for or with respect to the Lease Premises or any part thereof, or any buildings, appurtenances or equipment owned by Tenant or any Subtenant thereon or therein or any part thereof, together with all interest and penalties thereon (all of which shall also be included in the term "Taxes" as heretofore defined) and all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, and other service or services, and any and all similar charges and assessments, furnished to the Lease Premises or the occupants thereof during the Term of this Lease (hereinafter referred to as "Utility Expenses"). Tenant shall be deemed to have complied with the covenants of this paragraph (a) if payment of such Taxes shall have been made either within any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty or interest, and Tenant shall produce and exhibit to Landlord satisfactory evidence of such payment, if Landlord shall demand the same in writing. For the first partial tax fiscal year of the Term, to the extent that Landlord has paid Taxes which would otherwise be Tenant's obligation hereunder, then Tenant shall reimburse such amount of Tenant's obligation to Landlord, within thirty (30) days after demand therefor by Landlord, accompanied by copies of receipted bills showing the payment of such Taxes, which shall include a computation of Tenant's Pro Rata Share of the Taxes for the tax fiscal year. Tenant's Pro Rata Share of the Taxes shall be the total taxes for the entire tax fiscal year multiplied by a fraction, the numerator of which shall be the number of days in the tax fiscal year subsequent to the Date of Rent Commencement and the denominator of which shall be 365.

(b) Tenant or its designees or any Subtenant shall have the right to contest or review all Taxes by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees or Subtenant shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents necessary to accomplish the foregoing). Landlord's obligation of cooperation and execution of documents for any such proceedings shall be limited to Landlord's response to a notice from Tenant or any Subtenant to Landlord, which response Landlord shall deliver within a reasonable time of at least fifteen (15) days after such notice. Notwithstanding the foregoing, Tenant shall promptly pay all Taxes if at any time the Lease Premises or any part thereof shall then be immediately subject to forfeiture, or if Landlord shall be subject to any criminal liability, arising out of the nonpayment thereof. The legal proceedings referred to in this subparagraph (b) shall include appropriate proceedings and appeals from orders therein and appeals from any judgments, decrees or orders. In the event of any reduction, cancellation or discharge, Tenant shall pay the amount finally levied or



assessed against the Lease Premises or adjudicated to be due and payable on any such contested Taxes.

(c) Landlord covenants and agrees that if there shall be any refunds or rebates on account of the Taxes paid by Tenant or its designee or Subtenant under the provisions of this Lease, such refund or rebate shall belong to Tenant. Any refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and paid to Tenant forthwith. Landlord shall, upon the request of Tenant, sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant such refund or rebate as received by Landlord.

(d) Landlord further covenants and agrees to cooperate with tenant, at no cost to Landlord, if Tenant desires to make application individually (including joining in Tenant's application, if legally required) for separate tax assessments for and/or subdivision of the Lease Premises and the remaining portion of the tax parcel of which the Lease Premises are part (the "Remaining Premises") to the extent necessary to create the legal result that failure by Landlord to pay the Taxes due on the Remaining Premises will not result in the imposition of a tax lien or any other encumbrance on the Lease Premises by any taxing authority, or a right to impose such lien or encumbrance, or vice versa. Landlord hereby agrees upon request of Tenant to execute such instruments and to give Tenant such assistance in connection with such applications as shall reasonably be required by Tenant. Landlord's obligation of cooperation and execution of documents for any such proceedings or applications shall be limited to Landlord's response to a notice from Tenant or any Subtenant to Landlord, which response Landlord shall deliver within a reasonable time of at least fifteen (15) days after such notice.

(e) Landlord shall be solely responsible for the payment of all Taxes (if any) due with respect to the Remaining Premises (except for Taxes attributable to Tenant's improvements to the Access Easement area pursuant to Section 1(B) above), punctually as and when the same shall become due and payable, and shall be responsible for promptly removing any lien or other encumbrance, if any, which may be imposed on the Lease Premises by reason of any failure or delay in the payment of such Taxes.

Landlord agrees to cooperate, at no expense to Landlord, with Tenant or any Subtenant by executing any applications or other documents that may be required by the governing body or regulatory authority for any of the foregoing (herein the "Tax Parcel Approvals") on the following conditions. After notice and request from Tenant or any Subtenant to Landlord (a "Consent Request Notice" described below), Landlord shall, as provided herein, promptly sign any petition, application or approval required of the owner of record of the applicable real estate in connection with such Tax Parcel Approvals for the Tenant's proposed assessment parcels or subdivision and shall otherwise cooperate, as provided herein, to expedite the filing and prosecution of such Tax Parcel Approvals. Such notice ("Consent Request Notice") to Landlord shall include at least the following: 1) fifteen (15) days between the date of such Consent Request Notice to Landlord and the date of Landlord's delivery of such signature, 2) a complete copy of any such petition, application or approval or similar document for signature by Seller (the "Tax Parcel Approval Consent Document"), 3) complete copies of any and all attachments and exhibits (including without limitation the subject petition, application or approval) referred to in such Tax Parcel Approval Consent Document, and 4) the signature of Tenant or any

Subtenant, or either of their authorized agents on such Consent Request Notice to Landlord and on such Tax Parcel Approval petition, application or other document to which Tenant or any Subtenant requests Landlord's consent and signature.

**Section 7. Improvements, Alterations, Surrender.**

(a) (i) Tenant shall have the right, at its own cost and expense, to construct or to grant to its Subtenants the right to construct on any part or all of the Lease Premises, at any time and from time to time, such buildings, parking areas, fences, driveways, walks and other similar and dissimilar improvements as Tenant (or any Subtenant) shall from time to time determine, including, without limitation, a Building; provided that the same shall be in compliance with all then applicable building codes and ordinances; and shall be subject to review and approval by Landlord to ensure that the Building and other improvements are consistent with Landlord's reasonable expectations regarding the aesthetics of the Building and the other improvements and the compatibility of the Building and such improvements with other structures and facilities on the IPFW campus. Landlord will not unreasonably withhold, delay, or condition its approval of Tenant's or its Subtenant's plans submitted under this Section 7.

(ii) Tenant or its Subtenant shall submit to Landlord its plans for construction of any Building in accordance with the following process: (y) Tenant or its Subtenant shall deliver to Landlord (i) plans to demolish and remove existing improvements on the Lease Premises; (ii) plans to provide access and egress to and from public roadways to the Lease Premises and the Development Land, including construction of any appropriate roads or driveways, curb cuts, and similar improvements, (iii) exterior architectural elevation plans of the proposed Building, and (iii) a site plan showing the proposed location and dimensions of the footprint of the Building (the "Building Plans") ; and (z) within fifteen (15) days after submission of such plans, including the Building Plans, Landlord shall notify Tenant and its Subtenant in writing of its approval or disapproval of same (and in the event of disapproval, such notice shall specify with particularity the aspects of the Building Plans or other plans that Landlord contends do not satisfy the criteria set forth herein). In the event Landlord does not timely submit such notice of disapproval conforming to the foregoing within such 15 day period, Landlord shall be deemed to have approved such plans.

(iii) Without limiting the generality of Tenant's or Subtenant's rights under subparagraph (a)(i) above, Tenant or its Subtenant also shall have the right to install, maintain and replace in, on or over or in front of the Lease Premises or in any part thereof such signs and advertising matter as may be consistent with any applicable requirements of governmental authorities having jurisdiction, and shall obtain any necessary permits for such purposes, provided the same are consistent with the approved Building Plans. Tenant or its Subtenant shall also have the right to install, maintain and replace in the Lease Premises temporary paper signs in its windows, consistent with Tenant's or its Subtenant's usual practice. As used in this Section 7(a)(ii), the word "sign" shall be construed to include any placard, light or other advertising symbol or object, irrespective of whether same be temporary or permanent. Notwithstanding the foregoing, if all such signs are not part of the approved Building Plans, all exterior signs shall be subject to review and approval by Landlord to ensure the same are consistent with Landlord's reasonable expectations regarding the aesthetics and the compatibility

of the Leased Premises with other structures and facilities on the IPFW campus, which approval shall not be unreasonably withheld, delayed, or conditioned.

(iv) Without limiting the generality of Tenant's rights under subparagraph (a)(i) above, Tenant or its Subtenant also shall have the right to install, maintain and replace in, on or over or in front of the Lease Premises or in any part thereof such satellite dishes and equipment as may be consistent with any applicable requirements of governmental authorities having jurisdiction, and shall obtain any necessary permits for such purposes, provided the same are consistent with the approved Building Plans. Notwithstanding the foregoing, if all such dishes and equipment are not part of the approved Building Plans, any such satellite dishes and equipment shall be subject to review and approval by Landlord to ensure the same is consistent with Landlord's reasonable expectations regarding the aesthetics and the compatibility of the Leased Premises with other structures and facilities on the IPFW campus, which approval shall not be unreasonably withheld, delayed, or conditioned.

(v) Without limiting the generality of Tenant's or its Subtenant's rights under subparagraph (a)(i) above, Tenant or its Subtenant also may, at its option and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements, improvements and additions in and to the Lease Premises, and the buildings and improvements thereon, as it may deem desirable, including, without limitation, the demolition of any buildings(s) and improvement(s) and/or structure(s) that now or hereafter may be situated or erected on the Lease Premises, provided the same are consistent with the Building Plans. Notwithstanding the foregoing, if the alterations, changes, replacements, improvements or additions are inconsistent with the approved Building Plans, they shall be subject to review and approval by Landlord to ensure the same are consistent with Landlord's reasonable expectations regarding the aesthetics and the compatibility of the Leased Premises with other structures and facilities on the IPFW campus, which approval shall not be unreasonably withheld, delayed, or conditioned.

(vi) At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including, without limitation, by signing applications) in obtaining any necessary Permits for any work (including, without limitation, sign installation) which Tenant or its Subtenant is permitted to perform pursuant to this Lease.

Landlord hereby grants to Tenant and any Subtenant the right to and consents that Tenant or any Subtenant may apply to the proper authority for variances, exceptions or other relief from building, construction and development codes; and to make application to the proper governmental authority for the issuance of permits, licenses, certificates and other authority for the demolition and removal from the Lease Premises of any improvement presently on the Lease Premises and for the construction by Tenant or by any Subtenant of any buildings and improvements on the Lease Premises. Landlord agrees to cooperate, at no expense to Landlord, with Tenant and any Subtenant by executing any applications or other documents that may be required by the governing body for any of the foregoing (herein the "Development Approvals") on the following conditions. After notice and request from Tenant or any Subtenant to Landlord (a "Consent Request Notice" described below), Landlord shall, as provided herein, promptly sign any petition, application or approval required of the owner of record of the real estate in connection with such Development Approvals for the tenant's improvements and shall otherwise

cooperate, as provided herein, to expedite the filing and prosecution of such Development Approvals. Such notice ("Consent Request Notice") to Landlord shall include at least the following: 1) fifteen (15) days between the date of such Consent Request Notice to Landlord and the date of Landlord's delivery of such signature, 2) a complete copy of any such petition, application or approval or similar document for signature by Seller (the "Development Approval Consent Document"), 3) complete copies of any and all attachments and exhibits (including without limitation the subject petition, application or approval) referred to in such Development Approval Consent Document, and 4) the signature of Tenant or any Subtenant or either of their authorized agents on such Consent Request Notice to Landlord and on such Development Approval petition, application or other document to which Tenant and any Subtenant requests Landlord's consent and signature.

(b) Tenant shall at all times during the Term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear and damage by fire or other casualty and taking by eminent domain excepted), all buildings and improvements at any time erected on the Lease Premises, and shall use all reasonable precaution to prevent waste, damage or injury.

(i) If the Building is damaged or destroyed by fire or other casualty and Tenant does not promptly restore or rebuild the same, Tenant shall, at its expense, remove all debris and remnants of the Building (or such damaged portions thereof) from the Lease Premises, and Landlord shall be entitled to terminate this Lease.

(ii) If the Building is damaged or destroyed by fire or other casualty and Tenant determines to rebuild or restore the Building, Tenant shall promptly repair or rebuild the same at Tenant's expense, so as to make the Building presentable and of similar character to the Building that existed prior to such occurrence, as shall be practicable and reasonable. The terms of Section 7(a) above shall apply to such repairs or restoration as if they constituted original construction or alterations to the Building.

(c) On the last day or sooner termination of the Term of this Lease, Tenant shall quit and surrender the Lease Premises, and the buildings and permanent improvements then thereon, ordinary wear and tear and damage by fire or other casualty and taking by eminent domain excepted.

(d) From the commencement of erection, construction, installation or placement of the Building by Tenant, all right, title and interest in and to said Building on the Lease Premises shall be vested in and held by Tenant during the Term of this Lease and may be conveyed or mortgaged by Tenant, subject to the provisions of this Lease. Upon the expiration or sooner termination of the Term of this Lease (subject to the rights of a Leasehold Mortgagee, as provided in Subsection 12.1(j) hereof), all right, title and interest in and to the Building on the Lease Premises shall revert to Landlord, and upon such expiration or termination of this Lease (subject to the rights of a Leasehold Mortgagee, as provided in Subsection 12.1(j) hereof), Tenant grants to Landlord, without further documentation, all of its right, title and interest in and to the Building on the Lease Premises.

## **Section 8. Requirements of Public Authority.**

(a) During the Term of this Lease, Tenant shall, and shall require its Subtenants to, at their own cost and expense, to promptly observe and comply with all laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county and municipal governments and of all other governmental authorities affecting the Lease Premises or any part thereof, whether the same are in force at the commencement of the Term of this Lease or may in the future be passed, enacted or directed, and Tenant shall pay or cause its Subtenant to pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Tenant or Subtenant to comply with the covenants of this Section 8; provided, however, that nothing in this Section 8 shall impose any liability on Tenant in connection with any costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of any failure by Landlord to comply with its obligations under this Lease or because of any conditions in existence prior to the Commencement Date.

(b) Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of the Tenant or Landlord (if legally required), without cost or expense to Landlord, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (a) of this Section 8 and, if by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Tenant may delay such compliance therewith until the final determination of such proceeding.

(c) Landlord agrees to execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement and to fully cooperate with Tenant in such contest. Landlord's obligation of cooperation and execution of documents for any such contest or proceedings or applications shall be limited to Landlord's response to a notice from Tenant or any Subtenant to Landlord, which response Landlord shall deliver within a reasonable time of at least fifteen (15) days after such notice.

## **Section 9. Covenant Against Liens.**

(a) If, because of any act or omission of Tenant or its Subtenant or any Subtenant Party, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Landlord or any portion of the Lease Premises, Tenant shall cause, or Tenant shall require its Subtenant to cause the same to be discharged of record or bonded within thirty (30) days after notice from Landlord to Tenant of the filing thereof; and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Tenant or its designees shall have the right to contest any such liens by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord). Notwithstanding the foregoing, Tenant shall promptly pay and remove or shall require its Subtenant to pay and remove all such liens if, at any

time, the Lease Premises or any part thereof shall then be subject to immediate forfeiture as a result of the nonpayment thereof.

(b) If, because of any act or omission of Landlord, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Tenant or any portion of the Lease Premises, Landlord shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice from Tenant to Landlord of the filing thereof; and Landlord shall indemnify and save harmless Tenant and its Subtenant against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Landlord or its designees shall have the right to contest any such liens by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Landlord or its designees shall conduct promptly at its own cost and expense, and free of any expense to Tenant or its Subtenant). Notwithstanding the foregoing, Landlord shall promptly pay and remove all such liens if, at any time, the Lease Premises or any part thereof shall then be subject to immediate forfeiture as a result of the nonpayment thereof.

#### **Section 10. Access to Lease Premises.**

Landlord or Landlord's agents and designees shall have the right to enter upon the Lease Premises at all reasonable times upon reasonable notice to examine same and to exhibit the Lease Premises to prospective purchasers and prospective tenants, but in the latter case only during the last six (6) months of the Term of this Lease, as the same may have been extended; and provided that no such entry shall unreasonably interfere with the conduct of Subtenant's business on the Lease Premises.

#### **Section 11. Assignment, Transfer and Subletting.**

Landlord's consent shall not be required for Tenant's sublease of all or part of the Lease Premises in one or more separate subleases to a Subtenant which will operate its business within the Lease Premises, provided such business does not constitute a Restricted Use, a Prohibited Use or otherwise is prohibited by this Lease. Tenant shall promptly notify Landlord of any and all assignment, transfer, license or sublease of any interest in the Lease Premises with or without Landlord's consent.

#### **Section 12. Mortgaging of Leasehold Estate and Reversionary Estate.**

##### **Subsection 12.1 Mortgaging of Leasehold Estate.**

Tenant may, without the consent of Landlord, mortgage or otherwise encumber the Leasehold Estate (which mortgage or other encumbrance is hereinafter referred to as the "Leasehold Mortgage"). The mortgagee under the Leasehold Mortgage or the other holders of the indebtedness secured by the Leasehold Mortgage (the "Leasehold Mortgagee") shall notify Landlord (and any Fee Mortgagee, as hereinafter defined), in the manner provided in Section 22 for the giving of notice, of the execution of such Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee. Upon such notification of Landlord that Tenant has entered, or is about to enter, into a Leasehold Mortgage, Landlord hereby agrees for the benefit of such Leasehold Mortgagee, as follows:

(a) Landlord does hereby assent to such Leasehold Mortgage, any assignment of Tenant's rights in and to the Lease Premises in connection with such Leasehold Mortgage, and to any subsequent sale or transfer of any estate or interest in the Lease Premises as permitted in such Leasehold Mortgage; provided that any subsequent sale or transfer shall be subject to the terms, conditions, restrictions and limitations of this Lease.

(b) Until all obligations of Tenant to Leasehold Mortgagee (the "Loan Obligations") shall have been completely paid and performed, and the Leasehold Mortgage shall have been discharged, Landlord shall not take any action to terminate this Lease or to exercise any other remedy for default in the obligations of Tenant thereunder without first complying with the requirements of this Subsection 12.1.

(c) Until the Loan Obligations shall have been completely paid and performed, and the Leasehold Mortgage shall have been discharged, neither Landlord nor Tenant shall terminate, amend or modify this Lease, or exclude any parcel from this Lease, without Leasehold Mortgagee's prior written consent. Any such termination, amendment, modification or exclusion without Leasehold Mortgagee's prior written consent shall not be binding upon Leasehold Mortgagee, its successors or assigns.

(d) In the event the ownership of the fee and leasehold interests of the Leasehold become vested in the same person or entity, then as long as the Leasehold Mortgage shall remain outstanding, such occurrence shall not result in a merger of title. Rather, the Lease and the Leasehold Mortgage lien thereon shall remain in full force and effect.

(e) Landlord shall send to Leasehold Mortgagee, in the manner provided in Section 22, a true, correct and complete copy of any notice to Tenant of a default by Tenant under this Lease at the same time as and whenever any such notice of default shall be given by Landlord to Tenant, addressed to Leasehold Mortgagee at the address last furnished to Landlord by such Leasehold Mortgagee. No notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Leasehold Mortgagee. Tenant irrevocably directs that Landlord accept, and Landlord agrees to accept, performance and compliance by Leasehold Mortgagee of and with any term, covenant, agreement, provision, condition or limitation on Tenant's part to be kept, observed or performed under this Lease with the same force and effect as though kept, observed or performed by Tenant.

(f) Notwithstanding anything provided to the contrary in this Lease, this Lease shall not be terminated because of a default or breach hereunder on the part of Tenant until and unless:

(i) Notice of any such default or breach shall have been delivered to Leasehold Mortgagee in accordance with the provisions of Subsection 12.1(e) above;

(ii) With respect to a default or breach that is curable solely by the payment of money, Leasehold Mortgagee has not cured such default or breach within sixty (60) days following the expiration of any of Tenant's notice and cure period set forth in this Lease; and

(iii) With respect to a default or breach that is not curable solely by the payment of money, Leasehold Mortgagee has not cured such default or breach within ninety (90) days following the expiration of any of Tenant's notice and cure periods set forth in this Lease,

or, if such default or breach is curable but cannot be cured within such time period, (aa) Leasehold Mortgagee has not notified Landlord within such time period that it intends to cure such default or breach, (bb) Leasehold Mortgagee has not diligently commenced to cure such default or breach, or (cc) Leasehold Mortgagee does not prosecute such cure to completion.

(iv) Furthermore, notwithstanding anything to the contrary contained herein, if Leasehold Mortgagee determines to foreclose or cause its designee to foreclose the Leasehold Mortgage or to acquire or cause its designee to acquire the Leasehold Estate or to succeed or cause its designee to succeed to Tenant's or Subtenant's possessory rights with respect to the Leasehold Estate or to appoint a receiver before it effectuates the cure of any non-monetary breach or default by Tenant hereunder, the cure periods set forth above shall be tolled for any period during which foreclosure proceedings, or legal proceedings to succeed to Tenant's possessory rights, or proceedings to appoint the receiver are conducted, as the case may be. Any such proceedings shall be commenced promptly after the notice of default is delivered to Leasehold Mortgagee and shall be diligently prosecuted. Promptly after Leasehold Mortgagee or a designee of Leasehold Mortgagee acquires the Leasehold Estate pursuant to foreclosure proceedings or otherwise or succeeds to Tenant's possessory rights or promptly after a receiver is appointed, as the case may be, Leasehold Mortgagee or its designee shall cure said breach or default.

(v) Notwithstanding anything provided to the contrary in this Lease, this Lease shall not be terminated because of a default or breach hereunder on the part of Tenant which cannot be cured (it being agreed that non-payment of rent is not an incurable default).

(g) Without the written consent of Leasehold Mortgagee, Landlord agrees not to accept a cancellation or voluntary surrender of this Lease at any time while the Leasehold Mortgage shall remain a lien on the Leasehold Estate; and any such attempted cancellation or surrender of this Lease without the written consent of Leasehold Mortgagee shall be null and void and of no force or effect. Landlord and Tenant further agree for the benefit of Leasehold Mortgagee that, so long as any such Leasehold Mortgage shall remain a lien on said Leasehold Estate, Landlord and Tenant will not subordinate this Lease, or any New Lease entered into pursuant to Subsection 12.1(j) below, to any mortgage or deed of trust that may hereafter be placed on Landlord's Reversionary Estate unless the Fee Mortgagee shall have entered into the Subordination and Non-Disturbance Agreement required by Subsection 12.2, or consent to any prepayment of any rent, without securing the prior written consent of such Leasehold Mortgagee.

(h) It is acknowledged that the Leasehold Mortgage may be assigned by Leasehold Mortgagee in accordance with its terms, provided, however, the assignee assumes or agrees to keep, observe and perform all of the terms and provisions of this Lease applicable to Tenant or to Subtenant. Notwithstanding anything stated to the contrary in this Lease, the following transfers shall be permitted and shall not require the approval or consent of Sublandlord:

(i) A transfer of the Leasehold Estate at foreclosure sale under the Leasehold Mortgage, whether pursuant to the power of sale contained therein or a judicial foreclosure decree, or by an assignment in lieu of foreclosure, or



(ii) Any subsequent transfer by Leasehold Mortgagee or its nominee or designee if Leasehold Mortgagee, or such nominee or designee, is the purchaser at such foreclosure sale or under such assignment in lieu of foreclosure.

(iii) Any such transferee shall be liable to perform the obligations of Tenant under this Lease only so long as such transferee holds title to the Leasehold Estate, provided that upon any conveyance of title, such transferee's transferee expressly assumes and agrees to perform all of the obligations under this Lease; provided further, that the liability of any Leasehold Mortgagee that obtains title to the Leasehold Estate shall be limited to Leasehold Mortgagee's interest in the Leasehold Estate.

(iv) Following any transfer described in Subsection 12.1(h)(i) above, all non-curable defaults existing under this Lease prior to such transfer shall be deemed waived without further notice or action of any party.

(i) Any policy of hazard insurance relating to the Lease Premises, if any, insuring Landlord shall contain an endorsement waiving the insurer's right of subrogation as against Leasehold Mortgagee and Tenant.

(j) If this Lease is terminated because of Tenant's default hereunder or for any other reason or is extinguished for any reason (including, without limitation, rejection of this Lease by a trustee in bankruptcy), then Leasehold Mortgagee may elect to demand a new lease of the Leasehold Estate (the "New Lease") by notice to Landlord within thirty (30) days after such termination. Upon any such election, the following provisions shall apply:

(i) The New Lease shall be for the remainder of the Term of this Lease (including the right to thereafter extend the Term for any then-unexercised Renewal Periods), effective on the date of termination, at the same rent and shall contain the same covenants, agreements, conditions, provisions, restrictions and limitations as were then contained in this Lease. Such New Lease shall be subject to all then-existing subleases demising space within the Lease Premises.

(ii) The New Lease shall be executed by Landlord within thirty (30) days after receipt by Landlord of notice of Leasehold Mortgagee's or such other acquiring person's election to enter into a New Lease.

(iii) Any New Lease and the leasehold estate created thereby shall, subject to the same conditions contained in this Lease, continue to maintain the same priority as this Lease with regard to any Leasehold Mortgage or any other lien, charge or encumbrance affecting the Lease Premises. Concurrently with the execution and delivery of the New Lease, Landlord shall assign to the tenant named therein all of its right, title and interest in and to moneys, if any, then held by or payable to Landlord which Tenant would have been entitled to receive but for the termination of this Lease.

(iv) If Tenant refuses to surrender possession of the Leasehold Estate, Landlord shall, at the request of Leasehold Mortgagee or such other acquiring person, institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove Subtenant and all subtenants actually occupying the Leasehold Estate or any part thereof who are

not authorized to remain in possession hereunder. Any such action taken by Landlord at the request of Leasehold Mortgagee or such other acquiring person shall be at Leasehold Mortgagee's or such other acquiring person's sole expense.

(k) The provisions of this Subsection 12.1 shall be binding upon and inure to the benefit of Leasehold Mortgagee's successors and assigns. To the extent of any inconsistency between the terms and provisions contained in other sections of this Lease and the terms and conditions set forth in this Subsection 12.1, the terms and conditions set forth in this Subsection 12.1 shall govern and control.

(l) The terms of this Subsection 12.1, and the rights of Leasehold Mortgagee, and the obligations of Landlord and Tenant arising hereunder shall not be affected, modified or impaired in any manner or to any extent by (a) any renewal, replacement, amendment, extension, substitution, revision, consolidation, modification or termination of any of the Loan Obligations; (b) the validity or enforceability of any document evidencing or securing the Loan Obligations; (c) the release, sale, exchange for surrender, in whole or in part, of any collateral security, now or hereafter existing, for any of the Loan Obligations; (d) any exercise or nonexercise of any right, power or remedy under or in respect of the Loan Obligations; or (e) any waiver, consent, release, indulgence, extension, renewal, modification, delay or other action, inaction or omission in respect of the Loan Obligations, all whether or not Landlord shall have had notice or knowledge of any of the foregoing and whether or not it shall have consented thereto.

(m) Any and all buildings and improvements owned by Tenant prior to any termination of this Lease after a Default of Tenant shall automatically pass to, vest in and belong to Leasehold Mortgagee, and shall not become the property of Landlord unless and until the final expiration or sooner termination of this Lease not followed by a New Lease as provided in Subsection 12.1(j).

### **Subsection 12.2 Mortgaging of Lease Land and Reversionary Estate.**

(a) In the event that, at any time prior to the execution of this Lease and the recordation of the Memorandum of Lease in accordance with Section 29 hereof, Landlord has mortgaged or otherwise encumbered its fee title interest in the Lease Land, Landlord shall deliver to Tenant and its Subtenants a Subordination and Non-Disturbance Agreement ("Fee SNDA") containing terms substantially identical to the terms of the document so entitled annexed hereto as **Exhibit B** and incorporated herein by this reference, duly executed by the holder of any such mortgage or encumbrance (the "Fee Mortgagee").

(b) In the event that, at any time after the execution of this Lease and the recordation of the Memorandum of Lease in accordance with Section 29 hereof, Landlord mortgages or otherwise encumbers the Lease Land, Landlord shall be required to deliver to Tenant a Subordination and Non-Disturbance Agreement containing terms substantially identical to the terms of the document so entitled annexed hereto as **Exhibit B**, duly executed by the Fee Mortgagee .

### **Section 13. Warranties and Representations.**

A. Landlord Representations and Warranties. Landlord represents and warrants to Tenant as follows:

(i) Tenant shall, upon paying the rent reserved hereunder and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed, peaceably and quietly have and hold, the Lease Premises, without hindrance or molestation by any person or persons, subject, however, to the terms of this Lease;

(ii) Landlord has full right and authority to enter into this Lease and perform Landlord's obligations under this Lease, and, together with The Trustees of Indiana University, holds the primary and enforceable leasehold right and interest in and to the Lease Land (including the Lease Premises), free and clear of any other leases, tenancies, and occupancy rights, and of all restrictions and easements except as disclosed in this Lease, the CVS Ground Lease, or the Leasehold title policy provided to Tenant or obtained by Tenant, or which are otherwise known to Tenant; and Landlord has not entered into, and the Lease Premises is not subject to, any leases, licenses, possessory rights, options or rights to purchase, lease or occupy or sale contracts or agreements other than this Lease or as may be contained in the CVS Ground Lease. All conditions required to be satisfied in order to make this Lease binding and effective upon Landlord and the Lease Premises have been satisfied or waived prior to execution of this Lease by and on behalf of Landlord;

(iii) Other than as caused, allowed or permitted by Tenant, the Lease Premises is not subject to any existing claim for mechanics' liens, nor are there any third parties in or entitled to possession thereof;

(iv) Landlord has not received any notice, nor is it aware of any pending action to take by condemnation all or any portion of the Lease Premises;

(v) To Landlord's knowledge, the Lease Premises has access to and from Crescent Avenue and Hobson Road and to Landlord's knowledge there is no pending or threatened action which would impair or alter such access, other than those impairments or alterations to access that Tenant or Subtenant are aware or which have been disclosed to Tenant or Subtenant as of the date this Lease was signed;

(vi) To Landlord's knowledge, the Lease Premises has not been classified under any designation authorized by law to obtain a special low ad valorem tax rate or receive either an abatement or deferment of ad valorem taxes which, in such case, will result in additional, catch-up ad valorem taxes in the future in order to recover the amounts previously abated or deferred, nor is the Lease Premises subject to any agreement, contract or commitment regarding valuation and/or minimum valuation;

(vii) Landlord has received no notice and is not otherwise aware that either the Lease Premises or its proposed use is, or will be, in violation of any local governmental rule, ordinance, regulation or building code, nor has Landlord received notice of any pending or threatened investigation regarding a possible violation of any of the foregoing;

(viii) There is no litigation and no other proceedings are pending or, to Landlord's knowledge, threatened relating to the Lease Premises or their use;

(ix) This Lease is and shall be binding upon and enforceable against Landlord in accordance with its terms, and the transaction contemplated hereby will not result in a breach of, or constitute a default or permit acceleration and maturity under any indenture, mortgage, deed of trust, loan agreement or other agreement to which Landlord or the Lease Premises are subject or by which Landlord or the Lease Premises are bound.

(x) Except for a first Fee Mortgage as to which the Subordination and Non-Disturbance Agreement required by Subsection 12.2 has been delivered to Tenant and/or its Subtenant and except for any lien authorized, permitted or allowed by Tenant, any lien now in existence or hereafter placed upon the Lease Premises by Landlord shall be subordinate and junior to this Lease and to all rights of Tenant hereunder. Landlord shall promptly remove any such lien arising as a result of the actions of Landlord.

(xi) Landlord has received a copy of the Underground Storage Tank Closure Report dated August 7, 1995 prepared for IUPU-Fort Wayne by Soil Exploration Services, Inc., Phase I Environmental Site Assessment for Proposed CVS Store #6737 (Project No. 12FW0035) dated August 15, 2012 prepared by Alt & Witzig Consulting Services, and Limited Asbestos Survey for Proposed CVS Store #6737 (Project No. 12FW0036) dated July 31, 2012 prepared by Alt & Witzig Consulting Services ("Reports"). Landlord acknowledges that the Reports identify certain environmental conditions with respect to the Lease Premises and Landlord accepts responsibility for any and all actions required under Environmental Laws (as defined below) in connection with such conditions (the "Known Conditions").

(xii) Except as described in (xi) above or in other assessments, studies, evaluations, or reports disclosed by Landlord to Tenant, Landlord is aware of no Release (defined below) that has occurred, nor that any Hazardous Substance (defined below) are located on, in, or under the Lease Premises.

(a) Except as described in (xi) above or in other assessments, studies, evaluations, or reports disclosed by Landlord to Tenant, there is not now nor has there been during the time Landlord has owned an interest in the Leased Premises, any investigation, administrative proceeding, litigation, regulatory hearing or other action proposed, threatened or pending, relating to the Lease Premises and/or alleging non-compliance with or the violation of any Environmental Law (defined below).

(b) Except as described in (xi) above, in Schedules attached hereto, or in other assessments, studies, evaluations, or reports disclosed by Landlord to Tenant, Landlord has not used the Lease Premises for the storage, manufacture, disposal, handling, transportation or use of any Hazardous Substance, nor, to Landlord's knowledge, has the Lease Premises ever been used for the storage, manufacture, disposal, handling, transportation or use of any Hazardous Substance.

(c) Landlord has disclosed to Tenant, or will within the Evaluation Period disclose to Tenant, all assessments, studies, sampling results, evaluations, reports and

investigations commissioned by Landlord or known by officers of Landlord to be within Landlord's possession or control relating to the environmental condition of the Lease Premises and has delivered or will deliver true and correct copies thereof to Tenant.

(xii) Except as described in (xi) above, in Schedules attached hereto, or in other assessments, studies, evaluations, or reports disclosed by Landlord to Tenant, there are not now and were not at any time during which Landlord had any interest in the Lease Premises, nor to Landlord's knowledge, have there ever been, any above-ground or underground storage tanks located in, on or under the Lease Premises. With respect to any storage tanks removed from the Lease Premises before Landlord had any interest in the Lease Premises, to the best of Landlord's knowledge, any contaminated soil was removed from the Lease Premises. With respect to any storage tanks removed from the Lease Premises at a time during which Landlord had any interest in the Lease Premises, any contaminated soil was removed from the Lease Premises. Any storage tanks located above or under the Lease Premises have been properly registered with all appropriate regulatory and governmental bodies and are otherwise in compliance with applicable federal, state and local statutes, regulations, ordinances and other regulatory requirements, and Landlord has delivered to Tenant copies of any such tank registrations, quantity (or volume) reconciliation records, tightness test results and cathodic protection test results within Landlord's possession or control.

For purposes of this Lease:

The term "Environmental Law" shall mean any federal, state, county, municipal, local or other statute, ordinance, rule, regulation, permit, judgment, order, writ, decree, award or injunction which relates to or deals with the protection of the environment or wildlife and/or human health and safety, including all regulations promulgated by a regulatory body pursuant to any such statute, ordinance, or regulation, including, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §9601 et. seq., the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6901, et. seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et. seq., and the Clean Air Act, as amended, 42 U.S.C. §7401 et. seq.

The term "Hazardous Substance" shall mean and refer to asbestos, urea formaldehyde, lead, lead paint, polychlorinated biphenyls, nuclear fuel or materials, radioactive materials, explosives, known carcinogens, petroleum products and by-products (including crude oil or any fraction thereof), and any pollutant, contaminant, chemical, material, substance or waste, defined as hazardous, toxic or dangerous or as a pollutant or a contaminant in, or the use, manufacture, generation, storage, treatment, transportation, release or disposal of which is regulated by any Environmental Law.

The term "Release" shall mean and refer to any spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, drums, containers, tanks, or other receptacles containing or previously containing any Hazardous Substance.

The foregoing representations, warranties and indemnity of Landlord contained in this Section 13 shall survive the expiration or sooner termination of this Lease, but for a period no longer than three (3) years from the Date of Rent Commencement.

**B. Additional Provisions Relating to Representations and Environmental Matters**

(i) The foregoing representations and warranties of Landlord set forth in this Section 13 are express representations and warranties which both Tenant and its Subtenants shall be entitled to rely regardless of any investigation or inquiry made by, or any knowledge of, Tenant or Subtenant. Landlord shall (subject to the terms of Section 2.3(d) above, including, without limitation, Landlord's right to terminate this Lease if the estimated cost to remediate Hazardous Substances exceeds the Remediation Amount) indemnify, protect, defend and hold both Tenant and its Subtenants forever harmless from and against any and all claims, actions, judgments, liabilities, liens, damages, penalties, fines, costs and expenses, including but not limited to attorneys' fees, costs of defense and expert/consultant fees, and increased costs of construction, asserted against, imposed on, or suffered or incurred by Tenant or its Subtenant (or the Lease Premises) directly or indirectly arising out of or in connection with (i) any Hazardous Substances that have been introduced at any time to the Lease Premises by any party other than Tenant or Subtenant (or those acting under Tenant or Subtenant), and (ii) any breach of the foregoing representations and warranties, and (iii) the Known Conditions. Notwithstanding anything to the contrary herein, Landlord's liability to indemnify Tenant and its Subtenants under this provision shall be limited to a maximum of \$200,000, which amount shall include any costs and expenses incurred by Landlord to remediate or remove Hazardous Substances from the CVS Land and/or from the Lease Land between the date of this Lease and delivery of possession of the Lease Premises to Tenant or Commencement Date, whichever is later.

(ii) If, prior to the Commencement Date, any Hazardous Substances are found in or on the Lease Premises, and, as a result thereof, Tenant or its Subtenant is interfered with in doing its work in the Lease Premises or from opening for business, then notwithstanding anything to the contrary herein, the Commencement Date will be delayed for a number of days equal to the number of days that Tenant or its Subtenant is interfered with from opening for business in the Lease Premises, subject to the other provisions of this Lease. If the Commencement Date shall be so delayed for 6 months, then at any time thereafter until such delay shall cease, Tenant may terminate this Lease upon fifteen (15) days' notice to Landlord.

(iii) If, on or after the Commencement Date, Tenant or its Subtenant is interfered with from operating its business as a result of the existence of such Hazardous Substances not caused by Tenant or its Subtenant, then Tenant's rent and all other charges due hereunder shall abate, until Tenant or its Subtenant is able to resume the operation of its business without such interference, subject to the other provisions of this Lease. If Tenant's rent and other charges shall be so abated for 6 months, then at any time thereafter until such abatement shall cease, Tenant may terminate this Lease upon fifteen (15) days' notice to Landlord.

**Section 14. Confidentiality.**

Tenant and Landlord covenant and agree not to disclose to any third party: (i) any financial or other material business or legal terms of this Lease, (ii) materials submitted from any

Subtenant designated as confidential, and/or (iii) physical aspects of the design or operation of the Lease Premises identified by any Subtenant as proprietary; except only to the extent that (A) such information is subject to disclosure under "Freedom of Information" or similar laws, rules or regulations applicable to Landlord, (B) such information is a matter of public record, (C) disclosure of such information is necessary to obtain approval from any governmental authorities for Landlord to enter into this Lease, (D) such disclosure is made on a comparably confidential basis to Landlord's or Tenant's attorneys, accountants, architects, engineers and/or brokers or an existing or prospective purchaser, mortgagee, on a need to know basis (any of the foregoing, a "Permitted Party"), or (E) disclosure is compelled by law or regulatory or judicial process, in which latter case Tenant and/or Master Landlord (as applicable) shall first notify Subtenant in writing and, if requested by Subtenant, shall use all commercially reasonable efforts to preserve the confidentiality of the information in question to the greatest possible extent.

### **Section 15. Indemnity.**

(a) Tenant shall, and will require each Subtenant to, indemnify and save harmless Landlord, and The Trustees of Indiana University from and against any and all liability, damage, penalties or judgments, any and all actions, suits, proceedings, claims, demands, assessments, costs and expenses, including, without limitation, legal fees and expenses, incurred in enforcing this indemnity, arising from: (i) injury to person or property sustained by anyone in and about the Lease Premises resulting from any act or acts or omission or omissions of Tenant or Subtenant, or Tenant's or Subtenant's officers, agents, servants, employees, contractors, or sublessees; or (ii) any Hazardous Substances that have been introduced after the date possession is delivered to Tenant by Tenant, by Subtenant, by Subtenant Parties, or by any person or entity acting under, by, or through Tenant or Subtenant or on Tenant's or Subtenant's behalf. Tenant shall, and will require that each Subtenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or The Trustees of Indiana University or in which Landlord or The Trustees of Indiana University may be impleaded with others upon any such above-mentioned matter, claim or claims, except as may result from the acts set forth in paragraph (b) of this Section 15, and subject to the provisions of Section 16(e). Tenant's or any Subtenant's obligation to indemnify hereunder shall be limited in substance by an equivalent extent that state and federal statutes and constitutional provisions designed to protect the exposure and liability of Landlord as an instrumentality of the State of Indiana or otherwise (e.g., actions and conditions as to which the Landlord is immunized by the Indiana Tort Claims Act, dollar limits stated in such Act, exemption from punitive damages, the 11<sup>th</sup> Amendment, and the continued ability to defeat a claim by reason of contributory negligence or fault of a claimant), such that Tenant's liability to indemnify and hold harmless hereunder shall not in any case exceed what might have been Tenant's liability if Tenant had, like Landlord, been an instrumentality of the State of Indiana or otherwise and Tenant had been sued directly by a claimant in Indiana and all appropriate defenses had been available and raised by Tenant as would have been available to Landlord in the same situation.

(b) Landlord shall indemnify and save harmless Tenant and each Subtenant from and against any and all liability, damage, penalties or judgments, any and all actions, suits, proceedings, claims, demands, assessments, costs and expenses, including, without limitation, legal fees and expenses, incurred in enforcing this indemnity, arising from injury to person or property sustained by anyone in and about the Lease Premises resulting from any act or acts or

omission or omissions of Landlord, or Landlord's officers, agents, servants, employees, contractors, or lessees. Landlord shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Tenant or any Subtenant or in which Tenant or any Subtenant may be impleaded with others upon any such above-mentioned matter, claim or claims, except as may result from the acts set forth in paragraph (a) of this Section 15, and subject to the provisions of Section 16(e). Landlord's obligation to indemnify hereunder shall be limited in substance by state and federal statutes and constitutional provisions designed to protect the exposure and liability of Landlord as an instrumentality of the State of Indiana or otherwise (e.g., actions and conditions as to which the Landlord is immunized by the Indiana Tort Claims Act, dollar limits stated in such Act, exemption from punitive damages, the 11<sup>th</sup> Amendment, and the continued ability to defeat a claim by reason of contributory negligence or fault of a claimant), so that Landlord's liability to indemnify and hold harmless hereunder shall not in any case exceed what might have been Landlord's liability to a claimant had Landlord been sued directly by the claimant in Indiana and all appropriate defenses had been raised by Landlord.

#### **Section 16. Insurance.**

(a) Tenant shall provide, and cause each of its Subtenants to provide, at its expense, and keep in force during the Term of this Lease, general liability insurance in an insurance company or companies selected by Tenant or its Subtenants, in the amount of at least two million dollars (\$2,000,000) per occurrence for bodily injury and for property damage with respect to the Lease Premises. Such policy or policies shall include both Tenant and Landlord as insureds or additional insureds. Tenant shall make available to Landlord (which may be accomplished by giving access to an internet web site) evidence of such insurance within thirty (30) days after the Commencement Date and thereafter before the expiration of each such insurance policy.

(b) During the Term of this Lease, Tenant shall and will require each Subtenant to keep all buildings and improvements erected or caused to be erected, at any time, by Tenant or Subtenant on the Lease Premises insured for the benefit of Landlord, Tenant, Subtenant and the holder of any Leasehold Mortgage, as their respective interests may appear, against loss or damage covered by a standard all risk insurance policy, in a minimum amount necessary to avoid the effect of co-insurance provisions of the applicable policies. All proceeds payable at any time and from time to time by any insurance company under such policies shall be payable to such Leasehold Mortgagee, as the Leasehold Mortgage or other loan documents pertaining to the Leasehold Mortgage ("Loan Documents") may provide, or, if none, to Subtenant. If any such proceeds are paid to such Leasehold Mortgagee, Tenant or Subtenant shall be entitled to receive the full amount thereof in accordance with the terms of such Leasehold Mortgage or Loan Documents, and Landlord shall not be entitled to, and shall have no interest in, such proceeds or any part thereof. Any proceeds paid directly to Tenant or Subtenant shall be retained by Tenant or Subtenant, and Landlord shall not be entitled to, and shall have no interest in, such proceeds or any part thereof. Landlord shall, at Tenant's or Subtenant's cost and expense, cooperate fully with Tenant and Subtenant in order to obtain the largest possible recovery and execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate the same and to cause such proceeds to be paid as hereinbefore provided, and Landlord shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Subtenant hereunder if the effect of such



separate insurance would be to reduce the protection or the payment to be made under Subtenant's insurance.

(c) Any insurance required to be provided by Tenant or Subtenant pursuant to this Lease may be provided by blanket insurance covering the Lease Premises and other locations of Tenant or Subtenant and affiliates of Tenant or Subtenant, provided such blanket insurance complies with all of the other requirements of this Lease with respect to the insurance involved and such blanket insurance is acceptable to any Leasehold Mortgagee.

(d) All insurance coverage required to be carried by Tenant or any Subtenant hereunder shall be carried with insurance companies licensed to do business in the state in which the Lease Premises is located; shall be rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better; and shall require the insured's insurance carrier to notify the other party hereto at least thirty (30) days prior to any cancellation or material modification of such insurance.

(e) Notwithstanding anything in this Lease to the contrary, Landlord, Tenant and Subtenant each waive any rights of action for negligence against the other parties, which may arise during the Term for damage to the Lease Premises or to the property therein, resulting from any fire or other casualty of the kind covered by All-Risk property insurance policies, regardless of whether or not, or in what amounts, such insurance is now, or may hereafter be, carried by the parties. All property insurance policies affecting all of any portion of the Lease Premises shall contain a waiver of subrogation by the insurer confirming that the foregoing waiver by Landlord, Tenant or Subtenant, as applicable, shall not invalidate any such property insurance policy.

#### **Section 17. Condemnation.**

(a) If the use, occupancy, or title of the Lease Premises or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain (a "Condemnation"), Tenant shall require that each Subtenant agree that any award or compensation on account thereof will be allocated as follows:

(i) Landlord shall be entitled to receive any Condemnation award or compensation from the Condemnor for the Lease Premises, which shall be held in trust and distributed in accordance with this Section 17;

(ii) If this Lease is terminated by Tenant in accordance with this Section 17, Landlord shall pay to Tenant a proportionate share of any part of such Condemnation award or compensation received by Landlord reasonably attributed to the value, if any, of Tenant's Building and site improvements on the Leased Premises, which proportionate share shall not include any value for the Land, and which proportionate share shall reflect the then fair market value of such Tenant improvements as a part of the then total value of the total property for which Landlord received the award or compensation;

(iii) If this Lease is not terminated by Tenant in accordance with this Section 17, then Landlord shall pay to Tenant a proportionate share of any part of such award or

compensation received by Landlord reasonably attributed to this Lease and, to the extent of the payments received by Tenant from Landlord, Landlord shall promptly repair and restore the Lease Premises to the same condition (as nearly as practical) as existed immediately before the Condemnation.

(iv) Subtenant shall not receive any portion of the Condemnation award or compensation received by Landlord and shall look solely to Tenant for its compensation or its sublease interest.

(v) Notwithstanding subsections (i) through (iv) of this Section 17, Tenant and any Subtenant shall be entitled, to the full extent authorized by law, to claim, prove and receive from the Condemnor in such Condemnation proceedings such award as may be allowed for Tenant's or Subtenant's relocation expenses, and for fixtures or other equipment and improvements installed by it and forming a part of the Lease Premises.

(b) If the entire Lease Premises, or the use or possession thereof, is taken by Condemnation, then this Lease shall terminate on the date when possession shall be taken by the condemnor, and rent and all other charges payable hereunder shall be apportioned and paid in full up to that date, and all prepaid unearned rent, and all other charges payable hereunder, shall promptly be repaid by Landlord to Tenant.

(c) If, due to a taking, there shall be an impediment with respect to any curbcut serving the Lease Premises, which impediment shall materially adversely affect any means of ingress or egress between the Lease Premises and any abutting street, then Tenant shall notify Landlord thereof. If, within ninety (90) days after Landlord's receipt of such notice, such impediment shall not be removed, then Tenant may, upon thirty (30) days' notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of fifty percent (50%) of Fixed Rent due under this Lease. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced until such time as said impediment shall be removed.

(d) If Tenant gives notice of its election to terminate this Lease pursuant to this Section 17, and if at the time of such notice, the interest of Tenant under this Lease or the interest of Subtenant under its Sublease shall then be encumbered by a Leasehold Mortgage, the holder of such Leasehold Mortgage must consent in writing to the giving of such notice.

(e) If a Condemnation of the Lease Premises or any part thereof shall occur but Tenant does not give notice of its intention to terminate this Lease as provided in this Section 17, then this Lease shall continue in full force and effect.

## **Section 18. Defaults.**

### **Subsection 18.1 Defaults of Subtenant.**

(a) Tenant shall be in "Default" if (i) Tenant shall not have paid Rent or any other amount payable by Tenant pursuant to this Lease within fifteen (15) days following Tenant's receipt of written notice from Landlord stating that such payment was not made prior to its due date (a "Monetary Default"); or (ii) Tenant shall not have performed any of the other covenants,

terms, conditions or provisions of this Lease within sixty (60) days after Tenant's receipt of written notice specifying such failure; provided, however, that with respect to those failures that cannot with due diligence be cured within such sixty (60) day period, Tenant shall not be deemed to be in default hereunder if Tenant commences to cure such default within such sixty (60) day period and thereafter continues the curing of such default with all due diligence (a "Non-Monetary Default"). If this Lease is assigned by Tenant or subleased to Subtenant, the fifteen (15) day period for Monetary Defaults shall be extended to twenty (20) days and the sixty (60) day period for Non-Monetary Defaults shall be extended to seventy-five (75) days. Any permitted assignee, lender or Subtenant may cure any default of Tenant hereunder.

(b) If Landlord shall claim that Tenant is in Default, Landlord shall have the right, subject to the provisions of Subsection 12.1, to institute from time to time an action or actions (i) to recover damages (exclusive of consequential or special damages), (ii) for injunctive and/or other equitable relief, or (iii) to recover possession of the Lease Premises and terminate this Lease.

Notwithstanding the foregoing, Landlord agrees that Tenant shall have thirty (30) days after commencement by Landlord of any proceedings to file an appropriate pleading in the action initiated by Landlord to contest the claim of Default or to cure such Default; no action shall be taken by Landlord during such thirty (30) day period to regain possession of the Lease Premises from Tenant or to terminate this Lease. If the Default is not cured, Landlord's rights and Tenant's obligations shall be resolved by the final determination made by the court in which Landlord's proceedings were initiated. For the purpose hereof, a "final determination" shall occur where the judgment or order entered can be enforced by execution, issuance of a writ of restitution, judicial sale or specific enforcement and no such judgment or order shall be considered final for purposes hereof during the pendency of a stay of execution in connection with an appeal. Notwithstanding anything herein to the contrary, if there is a Monetary Default which arises out of a dispute as to an amount owed or the amount of an offset, this Lease shall not terminate if Tenant pays to Landlord the amount the court determines to be owed within the period of time permitted by law, or ten (10) days after such determination if no such grace period is permitted.

(c) In the event of any termination of this Lease in accordance with the provisions of paragraph (b) above, Tenant shall pay to Landlord all Rent, and other sums required to be paid by Tenant to and including the date of such termination, reentry or repossession; and, thereafter, Tenant shall, until the end of what would have been the Term of this Lease in the absence of such termination, reentry or repossession, and whether or not the Lease Premises shall have been relet, be liable to Landlord for, and shall pay to Landlord, as agreed current damages: (i) all Rent and other sums that would be payable under this Lease by Tenant in the absence of such termination, reentry or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Tenant, after deducting from such proceeds all of Landlord's expenses in connection with such reletting (including, but not limited to, repossession costs, brokerage commissions, reasonable attorneys' fees and expenses, but expressly excluding any alteration costs or expenses of preparation for such reletting). Landlord shall use reasonable efforts to mitigate any such damages owed by Tenant. Tenant shall pay such current damages on the days on which Rent would be payable under this Lease in the absence of such termination, reentry or repossession, and Landlord shall be entitled to recover the same from Tenant on each such day.

Alternatively, at Tenant's option, Tenant shall, whether or not the Lease Premises shall have been relet, be liable to Landlord for, and shall pay to Landlord, as liquidated damages, an amount equal to the excess, if any, of (i) the Rent required herein during the period from the date of such expiration, termination, reentry or repossession to and including the end of what would have been the Term of this Lease in the absence of such termination, reentry or repossession, discounted at the current Prime Rate over (ii) the then fair market rental value of the Lease Premises for the same period, also discounted at the said Prime Rate. "Prime Rate" shall mean the rate (or the average of rates, if more than one rate appears) inserted in the blank of the "Money Rate" section of the Wall Street Journal (Eastern Edition) in the Section reading "Prime Rate \_\_\_\_%."

### **Subsection 18.2 Defaults of Landlord.**

(a) If Landlord shall fail to observe or perform any provision hereof and such failure shall continue for forty-five (45) days after notice to Landlord of such failure, then a Default of Landlord shall exist under this Lease, provided, however, that in the case of any such failure which cannot with diligence be cured within such forty-five (45) day period, if Landlord shall commence promptly to cure the same and thereafter prosecute the curing thereof with diligence, the time within which such failure may be cured shall be extended for such period as is necessary to complete the curing thereof with diligence.

(b) If a Default of Landlord shall have occurred and be continuing, Tenant may terminate this Lease by giving Landlord notice of Tenant's intention to do so. Upon the fifteenth (15th) day next succeeding the giving of such notice, this Lease and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date herein fixed with the expiration of the Term of this Lease, all rights of Landlord and obligations of Tenant hereunder shall expire and terminate, and Rent shall be apportioned as of such date and Landlord shall promptly refund to Tenant any Rent theretofore paid which is allocable to the period subsequent to such date.

### **Subsection 18.3 Rights to Cure.**

Each party shall have the right, but shall not be required, to pay such sums or do any act which requires the expenditure of monies which may be necessary or appropriate by reason of the Default of the other party to perform any of the provisions of this Lease. In the event of the exercise of any such right by Landlord, Tenant agrees to pay to Landlord forthwith upon demand all such sums, as an additional charge. In the event of the exercise of such right by Tenant, Landlord agrees to pay to Tenant forthwith upon demand all such sums. Alternatively, Subtenant may, at its election, and upon notice to Landlord, deduct such sum from the next succeeding payment or payments of Rent, and such deduction shall in no way be considered a failure on the part of Tenant to pay such Rent.

### **Section 19. Waivers; Remedies.**

Failure of Landlord or Tenant to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or

implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but such payment shall only be deemed a partial payment on account.

Notwithstanding any remedies expressly set forth in this Lease (except as expressly set forth herein), all rights and remedies provided for in this Lease or otherwise existing at law or in equity are cumulative, and a party's exercise of any right or remedy under this Lease or under applicable law is not exclusive and shall not preclude such party from exercising any other right or remedy that may be available to it at law or in equity.

## **Section 20. Limitation of Liability.**

(a) Notwithstanding anything to the contrary herein provided, if Landlord or any successor in interest of Landlord shall be a mortgagee, or if Landlord or any successor in interest of Landlord shall be an individual, joint venture, tenancy in common, firm or partnership, general or limited, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of such mortgagee or such individual or on the part of the members of such firm, partnership or joint venture with respect to any of the terms, covenants and conditions of this Lease, and Tenant shall look solely to the Reversionary Estate for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord or by such successor in interest of any of the terms, covenants and conditions of this Lease to be performed by Landlord, such exculpation of personal liability to be absolute and without any exception whatsoever.

(b) Notwithstanding anything to the contrary herein provided, if Tenant or any successor in interest of Tenant shall be a mortgagee, or if Tenant or any successor in interest of Tenant shall be an individual, joint venture, tenancy in common, firm or partnership, general or limited, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of such mortgagee or such individual or on the part of the members of such firm, partnership or joint venture with respect to any of the terms, covenants and conditions of this Lease, and Landlord shall look solely to the Leasehold Estate for the satisfaction of each and every remedy of Landlord in the event of any breach by Tenant or by such successor in interest of any of the terms, covenants and conditions of this Lease to be performed by Tenant, such exculpation of personal liability to be absolute and without any exception whatsoever. Notwithstanding the foregoing, the provisions of this Section 20(b) shall not limit the liability of the Tenant named herein.

(c) The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be; provided that in the event of any transfer of title by Landlord of the Lease Land or the Lease Premises, any amount then due and payable to Tenant by Landlord (or the then grantor), and any other obligation then to be performed by Landlord (or the then grantor) under this Lease, either shall be paid or performed by Landlord (or the then grantor) or such payment or performance assumed by the transferee.

**Section 21. Force Majeure.**

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, but only to the extent such delay is beyond the control of the party whose performance is to be excused. The provisions of this Section 21 shall not be applicable with respect to payment of money and shall not apply to the obligations set forth in Subsection 2.1(d) hereof.

**Section 22. Notices.**

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to any other party any notice or demand with respect to this Lease or the Lease Premises, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally- recognized courier service provided a receipt is required, at its Notice Address set forth below, or at such other address as either party or the Subtenant may from time to time designate by notice given to the other parties. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

Notices shall be sent:

If to Tenant, to:

RCI Development, LLC  
301 Airport North Office Park  
Fort Wayne, Indiana 46815  
Attn: J. Andrew Norton  
Tel: 260-413-9525

with a copy to:

Faegre Baker Daniels LLP  
111 E. Wayne Street, Suite 800  
Fort Wayne, Indiana 46802  
Attn: Steven H. Hazelrigg

If to Landlord, to:

Vice Chancellor for Financial Affairs  
INDIANA UNIVERSITY-PURDUE

UNIVERSITY FORT WAYNE  
2101 East Coliseum Boulevard  
Fort Wayne, Indiana 46805-1499  
Telephone: 260-481-6804

with a copy to:

Al Diaz  
Executive Vice President and Treasurer  
Purdue University  
1032 Hovde Hall, Room 230  
West Lafayette, Indiana 47907-1032

### **Section 23. Certificates.**

Either party shall, without charge, at any time and from time to time hereafter, within fifteen (15) business days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended (and, if it shall have been supplemented or amended, specifying the manner in which it has been supplemented or amended); (b) as to whether this Lease is in full force and effect (and, if it is alleged that this Lease is not in full force and effect, specifying the reasons therefor); (c) as to the date to which Rent has been paid; (d) as to whether any condition exists which constitutes a default hereunder or which, but for the passage of time or the giving of notice or both, would result in a default by Landlord or Tenant hereunder (and, if such condition exists, specifying the nature thereof); (e) as to whether there exist any offsets, counterclaims or defenses thereto on the part of the other party; (f) as to the commencement and expiration dates of the Term of this Lease and the number of outstanding options to extend the Term of this Lease; (g) as to whether or not all work required to be performed by Landlord and/or Tenant with respect to the construction and development of any improvement(s) on the Lease Premises has been performed in accordance with the terms of this Lease; and (h) as to such other matters as reasonably may be requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same. Tenant reserves the right to impose a processing fee of \$150.00 for each estoppel certificate requested by Landlord, provided such request is received at least thirty (30) days prior to the date such estoppel certificate is to be delivered. In the event Landlord requests that such certificate be delivered in less than thirty (30) days, Tenant reserves the right to charge \$750.00 for each such certificate. Landlord reserves the right to impose a processing fee of \$150.00 for each estoppel certificate requested by Tenant or any Subtenant, provided such request is received at least thirty (30) days prior to the date such estoppel certificate is to be delivered. In the event Tenant or any Subtenant requests that such certificate be delivered in less than thirty (30) days, Landlord reserves the right to charge \$750.00 for each such certificate.

**Section 24. Governing Law.**

This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the substantive law (and not the law of conflicts) of the State of Indiana. Any legal action or proceeding commenced by either party or by Subtenant relating to this Lease shall be resolved in a court of competent jurisdiction in, or which includes, Allen County or Tippecanoe County, Indiana.

**Section 25. Holdover.**

If Tenant or any Subtenant shall hold the Lease Premises after the expiration of the Term hereof, such holding over shall, in the absence of written agreement on the subject, be deemed to have created a tenancy from month to month terminable on thirty (30) days' notice by either party to the other, at a monthly rental equal to the monthly rental payable during the last year of said Term.

**Section 26. Waiver of Landlord's Lien.**

Landlord hereby waives any right it may have to distrain trade fixtures, buildings, tenant improvements or any property of Tenant and any landlord's lien or similar lien upon trade fixtures, buildings, tenant improvements or any other property of Tenant, regardless of whether such lien is created otherwise.

**Section 27. Waiver of Jury Trial.**

Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connection with this Lease, Tenant's use or occupancy of the Lease Premises, and/or any claim of injury or damage.

**Section 28. Severability.**

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remaining terms, covenants, conditions and provisions shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 29. Memorandum of Lease.**

Each party shall at any time, at the request of the other party, promptly execute and deliver duplicate originals of an instrument, in recordable form, which will constitute a Memorandum of Lease, setting forth a description of the Lease Premises, the Term of this Lease and any other portions thereof, excepting the rental provisions, as such other party may request.



**Section 30. [Intentionally left blank.]**

**Section 31. Interpretation.**

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Lease Premises; and this Lease shall become effective and binding only upon proper execution and unconditional delivery thereof by Landlord and Tenant.

**Section 32. Entire Agreement.**

No oral statement or prior written matter shall have any force or effect. Landlord and Tenant agree that neither party is relying on any representations or agreements other than those contained in this Lease except to the extent they also appear in the Sublease. This Lease shall not be modified or canceled except by writing subscribed by all parties.

**Section 33. Parties.**

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant, and each of their respective heirs, successors, administrators and assigns.

**Section 34. Brokers' Commissions.**

Tenant and Landlord represent and warrant to each other that neither has had any negotiations, dealings or conversations with any broker or agent, licensed or otherwise in connection with this Lease, other than the Named Broker, if any. Landlord and Tenant each covenants to protect, defend, hold harmless and indemnify the other from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any other claim by any brokers or agents for brokerage commissions relating to this Lease alleged to be due because of negotiations, dealings or conversations with the indemnifying party. Landlord warrants and agrees that it shall be solely responsible for any and all brokerage commissions owing to said Named Broker as a result of the negotiation and execution of this Lease, and except as disclosed in Section 33(a), that no other brokerage commissions or finder's fees are being paid to said Named Broker or to any other party as a result of the negotiation and execution of this Lease.

**Section 35. [Intentionally left blank.]**

**Section 36. Attorneys' Fees.**

In the event of any suit, action, or other proceeding at law or in equity (collectively, "action"), by either party hereto against the other, by reason of any matter arising out of this Lease,

the prevailing party shall recover, not only its legal costs, but also reasonable attorneys' fees (to be fixed by the Court) for the maintenance or defense of said action, as the case may be.

**Section 37. Rent Payments.**

If Landlord's interest in this Lease shall pass to another, or if the rent hereunder shall be assigned, or if a party other than Landlord shall become entitled to collect the rent due hereunder, then notice thereof shall be given to Tenant by Landlord in writing, or, if Landlord is an individual and shall have died or become incapacitated, by Landlord's legal representative, accompanied by due proof of the appointment of such legal representative. Until such notice and proof shall be received by Tenant, Tenant may continue to pay the rent due hereunder to the one to whom, and in the manner in which, the last preceding installment of rent hereunder was paid, and each such payment shall fully discharge Tenant.

Tenant shall not be obligated to recognize any agent for the collection of rent or otherwise authorized to act with respect to the Lease Premises until notice of the appointment and the extent of the authority of such agent shall be given to Tenant by the one appointing such agent.

**Section 38. Notice of Landlord Transfers.**

Landlord may freely transfer the Lease Premises and this Lease without the consent of Tenant; however, Landlord shall give Tenant notice of the transfer of its interest in the Lease Premises by delivery of a Notice of Transfer in substantially the form attached to this Lease as **Exhibit C**; provided, that the failure to give such Notice of Transfer shall not be a default by Landlord under this Lease. Until Landlord gives Tenant notice in accordance with the terms of this Lease of a transfer of the Lease Premises by Landlord, Tenant may deal with Landlord as if it continued to be the owner of the Lease Premises.

**Section 39. Interest.**

For the purposes of this Lease, "Interest" shall mean the lesser of the Prime Rate plus 4% per annum, or the maximum rate allowed by law. In the event Landlord or Tenant or any Subtenant fails to pay any amount when due within ten (10) days after notice that payment is late, the defaulting party shall pay the non-defaulting party such amount plus Interest accruing from the original date such amount was due until such amount is ultimately paid.

*[Remainder of Page Intentionally Left Blank; Signatures on Following Page]*

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD:

THE TRUSTEES OF PURDUE  
UNIVERSITY (Acting with respect to  
Indiana University-Purdue University Fort  
Wayne)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

RCI DEVELOPMENT, LLC  
an Indiana limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBITS A**  
**LEGAL DESCRIPTION OF LEASE LAND**

**EXHIBIT A-1**  
**SITE PLAN OF DEVELOPMENT LAND AND ADJACENT LAND**

**EXHIBIT A-2**  
**LEGAL DESCRIPTION OF ADJACENT LAND**

**EXHIBIT A-3**  
**LEGAL DESCRIPTION OF ACCESS EASEMENT**

**EXHIBIT A-4  
DRAINAGE PLAN**



**EXHIBIT B**  
**SUBORDINATION AND NON-DISTURBANCE AGREEMENT**

**EXHIBIT C**  
**NOTICE OF TRANSFER**