

**GROUND LEASE AGREEMENT FOR  
GATEWAY PLAZA, SILVER PLAZA  
AND INTERIOR ELLSWORTH DRIVE**

**BETWEEN**

**MONTGOMERY COUNTY, MARYLAND**

**AND**

**PFA SILVER SPRING LC**

**Dated September 5, 2002**

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	2
2. LEASED PREMISES.....	8
2.1. .... Demise.....	8
2.2. .... Warranty of Title.....	8
2.3. .... Quiet Enjoyment.....	8
3. TERM OF LEASE.....	8
3.1. .... Term.....	8
3.2. .... Landlord’s Surrender of Possession.....	8
4. RENT.....	9
4.1. .... Annual Base Rent.....	9
4.2. .... Net Rent.....	9
4.3. .... All Sums Rent.....	9
4.4. .... Intentionally Omitted.....	9
4.5. .... Impositions.....	9
4.6. .... Right to Contest Impositions.....	10
4.7. .... Prorations.....	10
4.8. .... Utilities.....	10
5. USE AND DEVELOPMENT.....	11
5.1. .... Compliance with Law.....	11
5.2. .... Licenses and Permits.....	11
5.3. .... Use.....	11
6. IMPROVEMENTS.....	12
6.1. .... Repairs and Alterations.....	12
6.2. .... Title to Improvements.....	13
6.3. .... Mechanics’ Liens; Compliance with Laws.....	13
7. COOPERATION OF LANDLORD.....	13
7.1. .... Cooperation in Obtaining Approvals.....	13
8. ASSIGNMENT AND SUBLEASING.....	14
8.1. .... Assignment.....	14
8.2. .... Effect of Assignment.....	14

8.3. .... Intentionally Omitted. ....	14
9. ENCUMBRANCES. ....	14
9.1. .... Tenant’s Power to Encumber. ....	14
9.2. .... Protection of Leasehold Mortgagees. ....	15
9.3. .... Leasehold Mortgagee’s Right to New Lease. ....	17
9.4. .... Additional Protection for Leasehold Mortgagees. ....	19
9.5. .... No Landlord Subordination. ....	19
10. INSURANCE. ....	19
10.1. ... All Risk Builders Risk Insurance. ....	19
10.2. ... Business Automobile Liability Insurance. ....	19
10.3. ... Workers’ Compensation. ....	20
10.4. ... Subcontractors and Consultants. ....	20
10.5. ... Insurance Following Construction of the Project. ....	20
10.6. ... Certificate Requirements. ....	21
10.7. ... Deficiencies in Coverage and Failure to Maintain Insurance. ....	21
10.8. ... Additional Insured - Notice of Cancellation. ....	21
10.9. ... Insurance Does Not Waive Obligations. ....	21
10.10. . Property Insurance Proceeds. ....	22
10.11. . Waiver of Subrogation. ....	22
11. TAKING. ....	22
11.1. ... Total Taking. ....	22
11.2. ... Partial Taking. ....	23
11.3. ... Substantial Taking. ....	23
11.4. ... Temporary Taking. ....	23
11.5. ... Allocation of Award. ....	23
11.6. ... Notice of Taking. ....	24
11.7. ... Condemnation Proceedings. ....	24
12. TENANT’S DEFAULT; LANDLORD’S REMEDIES. ....	24
12.1. ... Tenant’s Default. ....	24
12.2. ... Notice of Default; Cure Period. ....	25
12.3. ... Remedies. ....	26
12.4. ... Tenant to Quit Upon Termination. ....	27
12.5. ... Landlord’s Waiver of Distraint. ....	27

12.6. ... Intentionally Omitted. ....	27
12.7. ... Intentionally Omitted. ....	27
12.8. ... Additional Cure Rights of Leasehold Mortgagees. ....	27
12.9. ... Intentionally Omitted. ....	27
12.10. . Intentionally Omitted. ....	27
13. LANDLORD’S DEFAULTS. ....	27
13.1. ... Events of Landlord’s Default. ....	27
13.2. ... Landlord Powers. ....	28
13.3. ... Notice of Landlord’s Default; Cure Period. ....	28
13.4. ... Tenant’s Remedies. ....	28
13.5. ... No Waiver. ....	28
14. INDEMNIFICATION. ....	29
15. ENVIRONMENTAL MATTERS. ....	29
15.1. ... Environmental Tests and Reports. ....	29
15.2. ... Environmental Remediation. ....	29
15.3. ... Tenant’s Obligations. ....	30
16. FORCE MAJEURE. ....	30
17. REPRESENTATIONS, WARRANTIES AND COVENANTS. ....	31
17.1. ... Tenant’s Representations, Warranties and Covenants. ....	31
17.2. ... Landlord Representations and Warranties. ....	32
18. GENERAL CONDITIONS. ....	33
18.1. ... Disputes. ....	33
18.2. ... Use of Words and Phrases. ....	33
18.3. ... Landlord Approvals. ....	33
18.4. ... Construction of Document. ....	33
18.5. ... No Discrimination. ....	34
18.6. ... No Partnership or Joint Venture. ....	34
18.7. ... Notice. ....	34
18.8. ... Conflicts of Interest. ....	36
18.9. ... Performance on Saturday, Sunday, or Holiday. ....	36
18.10. . State Law. ....	36
18.11. . No Brokers. ....	36
18.12. . Estoppel Certificate from Landlord. ....	36

18.13. . Memorandum of Lease.....	37
18.14. . Entire Agreement. ....	37
18.15. . No Merger. ....	37
18.16. . Severability.....	38
18.17. . Obligations to Run With Land. ....	38
18.18. . Gender; Number; Multiple Parties. ....	38
18.19. . Captions for Convenience. ....	38
18.20. . Counterparts. ....	38
18.21. . Consents Not To Be Unreasonably Withheld. ....	38
18.22. . Waiver of Jury Trial. ....	39
18.23. . Liability of Tenant.....	39
18.24. . Liability of Landlord. ....	39
18.25. . Intentionally Omitted. ....	39
18.26. . Construction of Project.....	40

## LIST OF EXHIBITS

EXHIBIT A-1	Ellsworth Premises
EXHIBIT A-2	Gateway Plaza Premises
EXHIBIT A-3	Silver Plaza Premises
EXHIBIT B	Permitted Encumbrances
EXHIBIT C	Intentionally Omitted
EXHIBIT D	Development Plan (Final Site Plan) for Leased Premises
EXHIBIT E-1	List of Public Improvements for Ellsworth
EXHIBIT E-2	List of Public Improvements for Gateway Plaza
EXHIBIT E-3	List of Public Improvements for Silver Plaza
EXHIBIT F	Section Development Schedule
EXHIBIT G	List of Use Restrictions/Items Applicable to Particular Premises
EXHIBIT H	List of Private Improvements

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Lease") is made and entered into as of September 5, 2002, by and between MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland ("Landlord"), located at 101 Monroe Street, Rockville, Maryland 20850, and PFA SILVER SPRING LC, a Maryland limited liability company ("Tenant"), having its principal office at 9600 Blackwell Road, Suite 200, Rockville, Maryland 20850.

### RECITALS:

- R-1. Landlord and Tenant have entered into a certain General Development Agreement for the Redevelopment of Downtown Silver Spring dated as of April 20, 1998 as amended by that certain First Amendment to General Development Agreement dated July 22, 2002, (together, the "Development Agreement").
- R-2. The terms of the Development Agreement contemplate the entry into a ground lease between Landlord and Tenant or its Affiliates for the development, construction and operation of the Downtown Silver Spring Project in multiple Sections upon the satisfaction of certain conditions precedent to lease for such Section.
- R-3. The Downtown Silver Spring Project includes certain public space areas more particularly defined herein as the Silver Plaza, the Gateway Plaza and Interior Ellsworth Drive. The Silver Plaza, Gateway Plaza and Interior Ellsworth Drive are subject to certain public use easements as more particularly set forth in that certain Declaration of Easements for Section C Downtown Silver Spring ("Declaration") and recorded among the Land Records of Montgomery County, Maryland immediately prior to the recordation of a memorandum of this Lease.
- R-4. The Leased Premises are part of an Urban Renewal Area as defined in Montgomery County Council Resolution 13-816 and pursuant to the Landlord's powers as contained in Montgomery County Code (1994 ed., as amended) Sections 56-10 et seq. the Landlord desires to cause the Urban Renewal Area to be redeveloped in order to cure the blighted conditions which led to the creation of the Urban Renewal Area.
- R-5. Landlord and Tenant hereby acknowledge and agree that all conditions precedent to the entry into this Lease for the Leased Premises have been satisfied or waived in writing by the parties and Landlord and Tenant desire therefore to enter into this Lease in accordance with and subject to the terms and conditions more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

## 1. DEFINITIONS.

For purposes of this Lease, the following terms shall have the meanings indicated:

A. "Affiliate" means any person or entity which directly or indirectly controls, or is controlled by, or is under common control with, the Tenant or its members, or any of them, or which directly or indirectly owns or holds a two percent (2%) or more interest in the Tenant or members of Tenant.

B. "Annual Base Rent" shall have the meaning described in Section 4.1 hereof.

C. "Applicable Law" means any federal, state or local law or regulation, or bond covenants for Federal, County Government or State bonds, applicable to the parties and this Agreement. Applicable Law includes orders of court or administrative agencies having jurisdiction over any of the parties hereto with respect to or affecting the Leased Premises.

D. "Best Efforts" means that whenever in this Lease either party is required to use its "best efforts," such party shall endeavor in good faith to employ all commercially reasonable measures available to that party and within that party's power, with promptness and due diligence, to bring about the event, occurrence, or result to which the "best efforts" obligation refers. Such obligation shall include a requirement that the party make affirmative efforts to accomplish the objective in question, including (where applicable) through consultations or negotiations with persons or entities not parties to this Lease. Notwithstanding the foregoing, a party required to use its best efforts shall not be required to take any action that is contrary to Applicable Law, outside of its corporate power or legal authority, or that would have the effect of restricting that party's express rights and remedies under this Lease. Best Efforts includes the obligation to exercise any and all rights and remedies available to Tenant to enforce the terms of any contract including without limitation the filing of a suit for damages or specific performance.

E. "County Government" means Montgomery County, Maryland, acting in its regulatory capacity in which it issues licenses, permits and approvals, adopts laws, rules and regulations, and exercises its police powers, and not as Landlord.

F. "Default Rate" means the so-called "prime rate" of interest as published in the Wall Street Journal (or any similar successor publication if the Wall Street Journal ceases to publish) from time to time, plus two (2) percentage points. If a range of rates is published, then the average of such rates shall apply.

G. "Development Approvals" means: as defined under Applicable Law, preliminary plan of subdivision approval, project plan approval, site plan approval, record plat approval and recordation, site plan enforcement agreements, building permits, storm water management approvals, sediment control permits, utility connections and any other permit or governmental or quasi governmental approval which is necessary to commence



and duly and diligently construct to completion, reconstruct, operate, repair and maintain the Project.

H. "Development Plan" means the project to be developed on the Leased Premises as described on the Final Site Plan for Downtown Silver Spring, a copy of which is attached to and made a part of this Lease as Exhibit "D", as the same may be amended from time to time with the consent of the Landlord, which may be withheld in its sole discretion.

I. "Downtown Silver Spring Project" means the Public Improvements and Private Improvements shown as Sections A, B, C, D and the retail portions of Sections H and O on the development plan attached as Exhibit "A" to the Development Agreement.

J. "Evening, Weekend and Holiday Parking" means that period of time during which the County intends to provide free parking to the general public, including without limitation, all customers, invitees and employees of Tenant during the following times: (i) 5:00 PM on Friday until 3:00 AM Saturday, (ii) 9:00 AM on Saturday until 3:00 AM the next morning, (iii) 9:00 AM on Sundays and County Holidays until 2:00 AM the next morning and (iv) after 6:00 PM on Monday through Thursday until 2:00 AM the following morning.

K. "Force Majeure" means the following events or circumstances, to the extent that they cause the delay of performance of any obligation hereunder incurred by the claiming party and such delay is beyond the reasonable control of and could not be reasonably anticipated or accommodated by the party claiming the Force Majeure:

- Strikes or lockouts (excluding the general contractor's workforce) or inability to procure materials or suitable substitute materials or failure of utilities necessary for performance;
- Changes in law applicable to the development and/or construction of the Project;
- Delays in obtaining Development Approvals for the Project;
- Landlord Delays;
- Acts of God, tornadoes, hurricanes, floods, sinkholes, fires and other casualties, landslides, earthquakes, and abnormally inclement weather for the area;
- Acts of war, terrorism, blockades, insurrection, riots, civil disturbances, or national calamities; and
- Other acts or circumstances to the extent they would otherwise customarily constitute a Force Majeure event.
- Force Majeure shall not include matters which increase cost but do not cause delay.

L. "Foreclosure Sale" means a foreclosure sale, deed in lieu of foreclosure or other non-consensual transfer made or undertaken for or on behalf of a Mortgagee.

M. "Gateway Plaza" means the land and any improvements thereon, now or any time hereafter, as shown on the Development Plan and labeled "Gateway Plaza".

N. "Governmental Authorities" means public officials or agencies having jurisdictions in respect of the Leased Premises including officials of Montgomery County in their official capacity and not as Landlord hereunder.

O. "Hazardous Substances" means (i) hazardous or toxic substances, wastes, materials, pollutants and contaminants which are included in or regulated by any federal, state or local law, regulation, rule or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resources Conservation and Recovery Act, and the Toxic Substances Control Act, as any of the foregoing may be amended from time to time; (ii) petroleum products; (iii) asbestos containing materials; (iv) radon; and, (v) all other regulated chemicals and materials.

P. "Impositions" means all real estate taxes, governmental levies, and obligations for any and all other governmental, quasi-governmental, utility and similar charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, which shall during the Term hereof, be made, assessed, levied or imposed upon, or become due and payable in connection with, or a lien upon, the Leased Premises, or any part thereof, any Improvements, or upon this Lease but excluding assessments or special assessments to pay the initial cost of construction of any Public Improvements. Notwithstanding the foregoing and to the extent applicable, in no event shall the term "Impositions" be deemed or construed to include, and Tenant shall not be obligated to pay, any (i) income, profits, earnings, inheritance, devolution, gift, franchise, corporate, gross or other receipts, excise, capital levy, or estate taxes, or any other taxes with similar effect, which are attributable to or chargeable to Landlord, or (ii) tax on the rental paid to Landlord under any existing or future laws of the United States of America, or of any other country, or of any jurisdiction therein.

Q. "Landlord" means Montgomery County, Maryland in its capacity as property owner and signatory to this Ground Lease and not in its regulatory capacity in which it issues licenses, permits and approvals.

R. "Landlord's Default" means a failure by Landlord to perform or comply with the Landlord's covenants, agreements or obligations in this Lease, as more specifically set forth in Section 13.

S. "Landlord Delays" shall mean delays caused by Landlord in achieving milestones under the Section Development Schedule (as defined below) by failing to timely (as provided in the Development Agreement) approve, disapprove or comment on any submitted plans or by requiring changes or modifications which are inconsistent with changes or modifications previously requested by the Landlord with respect to the Public Improvements in the Project being performed by Tenant or an Affiliate of Tenant; or by failing to approve changes or modifications which were the subject of previous requests

by Landlord which have been properly responded to by Tenant or its Affiliate performing such work; or by failing or delaying in providing the Tenant or its Affiliate performing such work with any required information or response or in entering into a Public Improvement Contract (provided that the parties shall have agreed on the terms of such Public Improvement Contract) or issuance of any Notice to Proceed thereunder, as to which all conditions precedent to the entry into such Public Improvement Contract or issuance of such Notice to Proceed have been satisfied.

T. "Landlord Representative" means the person or persons designated or to be designated in writing by the Chief Administrative Officer to meet with the Tenant regularly to discuss the progress of the Project and who must coordinate reviews by Landlord staff necessary to make decisions regarding requested approvals and grant required Landlord approvals under this Agreement. The Tenant shall be entitled to rely on written approvals and written representations made by any Landlord Representative.

U. "Lease" means this Ground Lease Agreement or the leasehold estate created thereby, as the context requires.

V. "Lease Commencement Date" means the date of execution of this Lease as set forth on Page 1.

W. "Lease Year" means with respect to the first Lease Year, the period from the Lease Commencement Date through the day prior to the first anniversary thereof. Each successive twelve month period shall also be a Lease Year. If the Lease Commencement Date is other than the first day of a calendar month, the first Lease Year shall include the partial month in which the Lease Commencement Date falls plus the next twelve (12) full calendar months.

X. "Leased Premises" means, collectively, the land comprising the Public Use Spaces and consisting of the following:

(i) the land consisting of approximately 0.4860 acres of land, as more particularly described on Exhibit "A-1" attached hereto and made a part hereof and known as Parcel D, Block B as shown on a plat thereof known as "Downtown Silver Spring" as recorded in Plat Book 196 at Plat 21283 among the Land Records of Montgomery County, Maryland (the "Interior Ellsworth Drive Premises").

(ii) the land consisting of approximately 0.5349 acres of land, as more particularly described on Exhibit "A-2" attached hereto and made a part hereof and known as Parcel C, Block C, as shown on a plat thereof known as "Downtown Silver Spring" as recorded at Plat No. 22271 among the Land Records of Montgomery County, Maryland (the "Gateway Plaza Premises").

(iii) the land consisting of approximately 0.2127 acres of land, as more particularly described on Exhibit "A-3" attached hereto and made a part hereof and known as Parcel D, Block C as shown on a plat thereof known as "Downtown Silver Spring" as recorded at Plat No. 22271 among the Land Records of Montgomery County, Maryland (the "Silver Plaza Premises").

(iv) The rights and incidents of ownership demised by Landlord to Tenant are described in Section 2.1 and incorporated into this definition. "Leasehold Mortgage" means one or more Mortgages securing a Mortgagee and encumbering Tenant's leasehold interest or estate in the Leased Premises and the Private Improvements.

Y. "Leasehold Mortgagee" means the Mortgagee under any Leasehold Mortgage.

Z. "Mortgage" means a mortgage, deed of trust, indemnity deed of trust or other security instrument commonly given to secure loans (or guarantees thereof) from a Mortgagee or advances on, real estate and leasehold estates in Montgomery County, Maryland, and the note, credit instrument, guaranty or other evidence of indebtedness secured thereby. The term Mortgage shall include a Leasehold Mortgage.

AA. "Mortgagee" means a bona fide financial institution reasonably acceptable to the Landlord, which, as a part of its primary business, regularly engages in the making of commercial loans to finance acquisition, construction and development of commercial projects, its trustee or beneficiary under, or the party secured by, any Mortgage, and its successors and assigns. A Mortgagee does not include Tenant or an Affiliate of Tenant unless a Mortgagee succeeds to the interest of Tenant hereunder or under a New Lease.

BB. "New Lease" means a lease of the Leased Premises entered into by Landlord with a Leasehold Mortgagee or its designee after a termination of this Lease, in accordance with Section 9.3.

CC. "Notice of Landlord's Default" means a written notice given in accordance with Section 13.3.

DD. "Notice of Tenant's Default" means a written notice in accordance with Section 12.2.

EE. "Notice of Termination" means a written notice given in accordance with Section 12.3(A).

FF. "Permitted Encumbrances" means the permissible encumbrances on the Leased Premises as of the Lease Commencement Date, as shown on Exhibit "B."

GG. "Private Improvements" means all improvements which do not constitute Public Improvements and which are now or hereafter constructed on the Leased Premises either (i) in accordance with the Development Plan, as the same may be amended, with respect to the Leased Premises, or (ii) as listed on Exhibit H attached to and made a part of this Lease, or (iii) to the extent not otherwise included in (i) or (ii) above, as may constructed from time to time with the consent of the Landlord, which such consent may be withheld by Landlord in its sole discretion.

HH. "Project" means the Public Improvements and Private Improvements to be developed on the Leased Premises and as shown on the Development Plan.

II. "Public Improvement Contract" means a sole source contract to be entered into between Tenant or its Affiliate and the Landlord for design services, development and/or construction of the Public Improvements (as hereinafter defined).

JJ. "Public Improvements" means all the public improvements to be constructed in connection with the Leased Premises and which are (i) listed on Exhibit E attached and made a part of this Lease and (ii) to be constructed in accordance with a Public Improvement Contract.

KK. "Section" means and refers to one or more of Sections A, B, C, D and the retail portions of Sections H and O, as described in the development plan attached to the Development Agreement.

LL. "Section Development Schedule" means that certain schedule for the development and construction of the Project and attached to and made a part of this Lease as Exhibit "F", as the same may be amended from time to time with the approval of the County.

MM. "Silver Plaza" means the land and improvements thereon, now or any time hereafter, as shown on the Development Plan and labeled "Silver Plaza".

NN. "Taking" means the acquisition by authority of any governmental or quasi-governmental body or entity by condemnation or in the exercise of its power of eminent domain or by purchase in lieu thereof.

OO. "Tenant" means the Tenant or lessee under this Lease from time to time. The initial Tenant is identified on page 1 hereof.

PP. "Tenant's Default" means any of the events set forth in Section 12 hereof.

QQ. "Tenant Representative" means the person or persons designated or to be designated in writing by the Tenant to meet with the Landlord regularly to discuss the progress of the Project and who must coordinate Tenant activities under this Agreement. The Landlord shall be entitled to rely on written approvals and written representations made by any Tenant Representative.

RR. "Term" means the term of this Lease, as set forth in Section 3.1, and any extensions thereto.

SS. "Utility Easements" means the easements described in Section 7.1.

## **2. LEASED PREMISES.**

### **2.1. Demise.**

For and in consideration of the rental herein promised to be paid by Tenant and the covenants, conditions and agreements herein contained on the part of Tenant to be kept and performed, Landlord does hereby let and rent to Tenant and Tenant does hereby take and hire as tenant from Landlord, for the Term, at the rental, and upon the terms and conditions all as hereinafter stated, the Leased Premises, together with all rights, advantages, privileges, ways, easements and appurtenances to the same belonging or in any way appertaining. It is intended hereby that all present and future rights relating to the Leased Premises are hereby granted to the Tenant during the Term, subject to all of the requirements and limitations set forth in this Lease.

### **2.2. Warranty of Title.**

Landlord leases the Leased Premises to Tenant free of all encumbrances, restrictions, or liens of any kind, except for the Permitted Encumbrances. Landlord represents and warrants that Landlord has full right and power to enter into and implement this Lease without the consent, agreement or action of any other person or entity.

### **2.3. Quiet Enjoyment.**

Landlord covenants that if and so long as Tenant is not in default beyond applicable grace periods under the terms hereof, Tenant shall be entitled to quietly hold, occupy and enjoy the Leased Premises and all rights relating thereto during the Term without hindrance, ejection or molestation by Landlord or by any other party. Landlord covenants to make the Leased Premises available to Tenant on the Lease Commencement Date in the condition as required by this Lease.

## **3. TERM OF LEASE.**

### **3.1. Term.**

The Term of this Lease shall commence on the Lease Commencement Date and shall continue through the last day of the ninety-ninth (99<sup>th</sup>) Lease Year unless sooner terminated in accordance with the provisions of this Lease. Tenant acknowledges and agrees that by virtue of the term of this Lease Tenant shall not be deemed to have acquired fee simple title to the Leased Premises and the Tenant expressly waives any right of redemption to the Leased Premises, whether statutory or otherwise.

### **3.2. Landlord's Surrender of Possession.**

Subject to the terms of this Lease, Landlord shall peaceably and quietly leave, surrender and yield up to Tenant sole and exclusive possession of the Leased Premises on the Lease Commencement Date. Landlord warrants that the entire Leased Premises shall be free and clear of all tenants and other occupiers except for Tenant as of

the Lease Commencement Date and in the condition as required by this Lease. Tenant accepts the Leased Premises "as is" and "where is", except for the representations, warranties and covenants as are expressly set forth in this Lease.

#### 4. RENT.

##### 4.1. Annual Base Rent.

Tenant covenants and agrees to pay unto Landlord, in legal tender of the United States of America, the Annual Base Rent, which shall be in the amount of One Dollar (\$1.00) per Lease Year.

##### 4.2. Net Rent.

It is the purpose and intent of Landlord and Tenant that the rent payable hereunder shall be net to Landlord and that except as expressly provided herein, all costs, expenses and charges of every kind and nature directly relating to the Leased Premises which may be attributed to, or become due, during the Term shall be paid by Tenant, excluding, however, assessments or special assessments to pay the initial construction cost of any Public Improvements.

##### 4.3. All Sums Rent.

All sums payable by Tenant under this Lease, whether or not stated to be Annual Base Rent, shall be paid to Landlord in legal tender of the United States, at the address for notices to Landlord. Such sums shall be considered "Rent" for all purposes hereunder however described or denominated. The foregoing notwithstanding, Impositions paid to Landlord in its capacity as a taxing authority shall not be deemed to constitute Rent hereunder. In addition to the foregoing, during the ten (10) year period commencing on the date of closing of the initial permanent financing encumbering Section C of the Project (as permanent financing is defined in the ground lease for Section C between Landlord and Tenant's Affiliates of even date herewith), (i) Tenant shall not be entitled to file for or claim any tax credits or abatements (other than Enterprise Zone credits) on account of any Public Improvements; and (ii) if Tenant receives any monetary credits or reimbursements under the "Maryland Brownfields Program" or any historic tax credits or any other tax credit for improvements paid for by the Landlord, upon receipt thereof Tenant shall promptly remit such sums to the Landlord as additional rent hereunder.

##### 4.4. Intentionally Omitted.

##### 4.5. Impositions.

Landlord promptly shall send to Tenant copies of any notices received by Landlord in respect of any Impositions. As part of the consideration for this Lease, and subject to all of the provisions hereof, at Tenant's own cost and expense, Tenant shall pay all Impositions as the same become due and payable during the Term, and before the assessment of any fine, penalty, interest or other charge which may be added thereto for

the nonpayment thereof; except that any Impositions (and/or installments thereof) properly allocable to periods before or after the Term shall not be payable by Tenant and shall be paid by Landlord. Tenant shall have the right to receive directly any and all notices of Impositions, and to pay such Impositions directly. Tenant shall make prompt application for a separate tax bill for the Leased Premises in the name of Tenant. Tenant shall furnish to Landlord, upon specific request in each instance, copies of tax bills and official receipts of the proper governmental authorities or other proof reasonably satisfactory to Landlord, evidencing the full payment of any and all such Impositions payable by Tenant hereunder. Notwithstanding the foregoing, if by law any Imposition may be paid, at the option of the taxpayer, in installments, then Tenant may pay the same in installments whether or not interest accrues thereon, and Tenant shall only be responsible for such installments (and/or portions thereof) properly allocable to the Term. Any rebate made on account of any Imposition paid by Tenant shall belong to and be paid to Tenant, for Tenant's account.

#### 4.6. Right to Contest Impositions.

If Tenant disputes the amount or validity of any Impositions payable by Tenant hereunder, then Tenant shall have the right, at its sole cost and expense, to contest and defend against the same, and in good faith to diligently conduct any necessary proceedings to prevent and avoid the same. In such event Tenant may postpone or defer payment of such Impositions and such postponement or deferral shall not be deemed a default hereunder; provided, however, that, during any such contest, Tenant shall (by the payment or bonding off of such disputed Imposition, including potential interest and penalties thereon, if necessary) prevent any foreclosure of or any divesting thereby of Landlord's title, reversion or other interest in or to the Leased Premises, and will further (by the payment or bonding off of such disputed Imposition, including potential interest and penalties thereon, if necessary) prevent the public sale or foreclosure of any lien for any such Impositions. Tenant's right to contest Impositions shall not be exercised in such a manner as to expose Landlord to any civil penalties. Tenant shall prosecute such contest or defense diligently and expeditiously. Tenant shall have the right, if permitted by law, to pay under protest any Impositions. Any rebate made on account of any Imposition paid by Tenant shall belong to and be paid to Tenant, for Tenant's account.

#### 4.7. Prorations.

Except as otherwise expressly provided herein, appropriate adjustments and prorations shall be made if the Lease Commencement Date or date of termination of this Lease is not on the first day of a calendar month; or if any payment of rent or any other amount hereunder by either Landlord or Tenant covers periods for which the party making such payment is not responsible under this Lease.

4.8. Utilities. Tenant shall pay all charges for gas, electricity, water, sewage, telephone and other utilities used upon or in connection with the Project during the Term ("Utilities"). The foregoing notwithstanding, the Landlord shall be responsible, at its sole cost and expense, for any utility relocation costs for which it has agreed to pay under any Public Improvement Contract entered into.



## **5. USE AND DEVELOPMENT.**

### **5.1. Compliance with Law.**

Landlord and Tenant shall each promptly give notice to the other of any notice received from Governmental Authorities in respect of the Leased Premises. During the Term, Tenant shall comply with all Applicable Laws in respect of the Leased Premises. Tenant may dispute in good faith the validity of any complaint or action taken pursuant to or under color of any of the foregoing, defend against the same, and, in good faith, diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Tenant shall prosecute such contest diligently and expeditiously.

### **5.2. Licenses and Permits.**

Tenant shall be solely responsible for securing, obtaining and maintaining in good standing all necessary permits and licenses from the applicable Governmental Authorities for the continued use, operation, repair, replacement, construction and/ or reconstruction of the Project.

### **5.3. Use.**

A. During the Term, Tenant shall use the Leased Premises for the development, construction, operation, maintenance, repair and replacement of the Project, consistent with the Declaration and in accordance with the Development Plan and the terms of this Lease. The use of the Leased Premises shall be subject to the terms, conditions and restrictions set forth on Exhibit G attached to and made a part of this Lease.

B. Promptly after the Lease Commencement Date, Landlord and Tenant shall negotiate in good faith an agreement regarding the allocation of parking management and enforcement responsibilities with respect to the Gateway Plaza and Interior Ellsworth Drive. In the event the parties are unable to agree on such allocation of responsibilities, Tenant shall retain the parking management and enforcement responsibility for the Gateway Plaza, and Landlord shall maintain the parking management and enforcement responsibility for Interior Ellsworth Drive.

C. The parties acknowledge and agree that construction of the Gateway Plaza Public Improvements (including the historic restoration of the shopping center façade which shall be subject to a façade easement in favor of either the County or the Montgomery Historic Preservation Commission) is to commence and be constructed in accordance with a Public Improvements Contract that will require construction to begin no later than August 29, 2002 with the Gateway Plaza parking area and fountain substantially completed no later than March 31, 2003, provided that the Gateway Plaza Public Improvements PIC is signed by both the Landlord and the Tenant not later than August 15, 2002. Commencing no later than March 31, 2003, the Gateway Plaza area must not be used as construction staging area and all trailers located thereon must be removed. Tenant agrees that its Affiliate will schedule the work on the Section C historic

façade so that such work, along with any other work on the Private Improvements in Section C that will require entry on and use of the Gateway Plaza area, will be completed by September 30, 2003. Upon completion of the Gateway Plaza Public Improvements (e.g., March 31, 2003) and until opening for business of the first tenant in the Section C Private Improvements, the Landlord shall have exclusive use of the Gateway Plaza Public Improvements for parking in connection with the AFI Silver Theatre and the Round House Theater during Evening and Weekend and Holiday Parking hours. During hours other than Evening and Weekend and Holiday Parking hours, the Landlord and Tenant shall cooperate in good faith to schedule parking required in connection with the AFI Silver Theatre and the Round House Theater so as to enable the Tenant to use and access the Gateway Plaza to enable the construction of the Section C Private Improvements in a timely and efficient manner in accordance with the Section C Development Schedule. The parties acknowledge that in the event of a scheduling conflict during non-Evening, Weekend and Holiday Parking hours the parties interest in causing the prompt completion of the Section C Private Improvements shall have priority; provided, however, that the Tenant shall use commercially reasonable efforts to minimize the construction impact on the Gateway Plaza Premises during such non-Evening and Weekend and Holiday Parking Hour.

## **6. IMPROVEMENTS.**

### **6.1. Repairs and Alterations.**

A. Landlord shall have no obligation hereunder to make any repairs or replacements to the Leased Premises or the Project, which obligations shall be the sole responsibility of Tenant throughout the Term.

B. Throughout the Term, Tenant shall perform all necessary repairs, replacements and maintenance of the Project and shall keep the same in good condition and repair, ordinary wear and tear excepted and in condition comparable to similar type projects in the Washington, D.C. metropolitan area. Tenant shall keep and maintain the Project in a clean and orderly condition, free of dirt, rubbish, snow, ice and obstructions.

C. The foregoing notwithstanding, in the event Tenant fails to maintain the Project in the manner contemplated pursuant to Section 6.1(B) above, and such failure gives rise to a risk to public health or safety, Landlord shall provide written notice of such failure to Tenant (except in the event of a public health or safety emergency in which event no such notice shall be required). If Tenant fails to promptly commence and thereafter diligently pursue the correction of such problem within ten (10) days after receipt of such notice (except in the event of a public health or safety emergency in which event no such cure period shall be required), Landlord shall have the right to exercise self help in accordance with the provisions of Section 12.3(B) of this Lease.

## 6.2. Title to Improvements.

Leasehold title to the Project shall be in and remain in Tenant for and during the entire Term, but upon the expiration or termination of the Term shall vest in Landlord.

## 6.3. Mechanics' Liens; Compliance with Laws.

A. Subject to the terms of Section 5.1 hereof, Tenant shall comply promptly and fully with all Applicable Laws, ordinances, rules regulations and requirements of all Governmental Authorities but shall have the right, in its sole discretion, to contest in good faith any such laws, ordinances, rules, regulations and requirements.

B. Tenant shall not create or permit to be created, and if created shall bond off, or contest and place reasonable security, or discharge, any mechanics' or materialmens' lien, tax lien, or judgment lien arising while this Lease is in effect whereby Landlord's estate, right and interest in any or all of the Leased Premises might be impaired. Tenant shall be obligated to bond off any such lien or liens where the aggregate amount outstanding at any one time exceeds Fifty Thousand Dollars (\$50,000) (the "Threshold Amount"). Tenant shall not be required to bond off any such lien or liens aggregating less than the Threshold Amount, but Tenant shall remain solely responsible for the payment thereof.

## 7. COOPERATION OF LANDLORD.

### 7.1. Cooperation in Obtaining Approvals.

Tenant may from time to time, at its sole cost and expense, and subject to the Development Plan and the Public Use Easements, apply for and seek to obtain additional Development Approvals necessary or appropriate, as determined by Tenant from time to time in its sole and absolute discretion. Subject to Applicable Law, Landlord agrees to join in any easements, rights of way or other agreements for land owned by Landlord and relating to the provision of utility service to the Project ("Utility Easements"), and to join in recordable agreements with Governmental Authorities and utility providers. Landlord shall cooperate fully with Tenant in assisting Tenant to obtain Development Approvals and Utility Easements. To this end, within thirty (30) days after written request from time to time from Tenant, Landlord shall, without requiring any additional consideration therefor, execute and return to Tenant, or otherwise join in any such documents as are required for obtaining Development Approvals or Utility Easements. Landlord recognizes that Tenant shall have the right, in its own behalf and not as agent for Landlord, to undertake any and all of the actions in which Landlord has agreed to cooperate. The foregoing notwithstanding, any instruments or agreements required of Landlord hereunder shall be in form reasonably acceptable to Landlord and shall not impose any additional expense or liability on Landlord except as may otherwise be set forth in any applicable Public Improvement Contract.

## **8. ASSIGNMENT AND SUBLEASING.**

### **8.1. Assignment.**

A. For a period of ten (10) years following the Lease Commencement Date, the Leased Premises may not be sold, assigned, transferred or conveyed (other than to an Affiliate), nor may any controlling interest in the Tenant be sold, assigned, transferred or conveyed (other than to an Affiliate) without the consent of the Landlord. Landlord consent is not required for (i) Mortgages; and, (ii) a Foreclosure Sale pursuant to any Mortgage.

B. From and after the expiration of ten (10) years following the Lease Commencement Date, Tenant shall have the right to assign its right, title and interest in and to this Lease, in whole or in part, without the consent of Landlord, (i) to an Affiliate, or (ii) to a third party, together with a sale (or assignment of the Ground Lease) of Section B and/or C, whereupon Tenant shall be released of all further liability under this Lease for all matters arising or accruing after the date of such assignment. Any such assignment shall at all times be subject to this Lease, and the assignee shall agree, from and after date of assignment, to assume and be bound by the terms of this Lease. Landlord shall not be entitled to any compensation in connection with any assignment of this Lease.

### **8.2. Effect of Assignment.**

Subject to the terms of Section 8.1 above, effective on the date of an assignment by Tenant, the assignee shall be substituted for and as the "Tenant" in this Lease; the term "Tenant," as used in this Lease, shall mean the assignee and not the assignor; and if the assignee is an Affiliate then in such event the assignor shall be relieved of any obligation or responsibility hereunder relating to any period after the date of assignment. Tenant shall not be relieved of any obligation or responsibility hereunder which accrued before the date of its assignment.

### **8.3. Intentionally Omitted.**

## **9. ENCUMBRANCES.**

### **9.1. Tenant's Power to Encumber.**

In order to secure Construction Financing and/or Permanent Financing, Tenant and every successor and assign of Tenant shall have the absolute right, exercisable at any time and from time to time, without the necessity of securing Landlord's permission or consent, to grant a Mortgage (including without limitation by way of an indemnity deed of trust securing a Mortgagee pursuant to the terms of which this Lease and the Private Improvements may serve as collateral) of its interests in the Lease and in the Leased Premises and the Project under one or more Leasehold Mortgages, to assign this Lease and all of its right, title and interest thereunder as collateral security for such Leasehold Mortgage(s), and to enter into any and all extensions, modifications, amendments, replacements and refinancings of such Leasehold Mortgages as Tenant may desire, upon

the condition that all rights acquired under such Leasehold Mortgage(s) shall be subject to the terms and conditions of this Lease. Tenant shall also have the absolute and unqualified power to grant a purchase-money Leasehold Mortgage and become a Leasehold Mortgagee in connection with Tenant's arms length sale to a third party of its interest in the Leased Premises and the Project. Each Leasehold Mortgagee shall have the unrestricted right to assign, sell, participate, securitize and otherwise deal with its interest in the Leasehold Mortgage without restriction and without Landlord's permission or consent.

## 9.2. Protection of Leasehold Mortgagees.

For each Leasehold Mortgage, if Landlord is given a copy thereof and a written notice specifying the name and address of the Leasehold Mortgagee(s) thereunder and the recording data pertaining to such Leasehold Mortgage, then the following provisions shall apply with respect to such Leasehold Mortgage for so long as it shall remain unsatisfied of record:

A. There shall be no material modification or voluntary surrender of this Lease without the prior written consent of the Leasehold Mortgagee(s).

B. Landlord shall, concurrently with the delivery to Tenant of any notice required or permitted hereunder, deliver to each Leasehold Mortgagee a true copy of any Notice of Tenant's Default, Notice of Termination, or other notices given to Tenant as provided for herein, and no such notice to Tenant shall be effective as to a Leasehold Mortgagee, until a copy of such notice is sent to such Leasehold Mortgagee. Except as otherwise provided in Section 6.1(C) of this Lease as to which no additional notice and cure right shall be permitted, each Leasehold Mortgagee shall thereupon have the period set forth below, after receipt of such notice by it or them, to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such remedy by or at the instigation of any such Leasehold Mortgagee as if the same had been done by Tenant. Landlord and Tenant authorize the Leasehold Mortgagee to take any such action at the Leasehold Mortgagee's option and do hereby authorize entry upon the Leased Premises by the Leasehold Mortgagee for such purposes. If there is more than one Leasehold Mortgagee, the Leasehold Mortgagee under the Mortgage which is prior in lien shall have the prior right to remedy or cure any such default; and the period within which such other Leasehold Mortgagee(s) may remedy such defaults shall be extended for a single additional period of thirty (30) days for such subordinate Leasehold Mortgagees, collectively, within which to effect such remedy or cure. The foregoing notwithstanding, nothing contained in this subsection (B) shall (i) relieve Tenant of its responsibilities or liabilities hereunder, or (ii) obligate the Landlord to recognize more than one Leasehold Mortgagee at any time; which such recognized Leasehold Mortgagee shall be entitled to all of the rights of a Leasehold Mortgagee hereunder.

C. Notwithstanding any other provision of this Lease, if, before the expiration of thirty (30) days following receipt of Notice of Termination, any Leasehold Mortgagee shall have (1) notified Landlord in writing of its desire to nullify such Notice of Termination; (2) paid to Landlord all rent, late charges and other payments then due

from Tenant hereunder but unpaid; and (3) complied or in good faith and with reasonable diligence and continuity, commence to comply within such thirty (30) days following receipt of the Notice of Termination with all of the other non-monetary requirements of this Lease as to which Tenant then is in default, and (4) shall continue to pursue such compliance to completion with reasonable diligence, then Landlord shall not be entitled to terminate this Lease, and any Notice of Termination theretofore given shall be void and of no further force and effect, provided, however, that the Leasehold Mortgagee shall not be required during such thirty (30) day period to cure or discharge any lien, charge or encumbrance against the Tenant's interest in the Lease or the Leased Premises junior in priority to the lien of the Leasehold Mortgagee; subject however to the terms of Section 6.3 hereof.

D. In addition to the rights of Leasehold Mortgagees set forth in subsection (C) above, each Leasehold Mortgagee shall have the right to postpone the date for the termination of this Lease as specified by Landlord in any Notice of Termination, for a period of not more than a total of six (6) additional months from the date specified in such Notice if, before the expiration of thirty (30) days following receipt of such Notice of Termination, such Leasehold Mortgagee (1) shall have notified Landlord in writing of its desire to postpone said termination date, (2) shall have paid to Landlord all rent, late charges and other payments then due from Tenant hereunder but unpaid, (3) shall have agreed to comply with and perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed, other than past non-monetary obligations that are in default and are not reasonably susceptible of being cured by the Leasehold Mortgagee (for example, but not by way of limitation, default under Section 8 [Assignment] or Sections 12.1.2, 12.1.3, or 12.1.5 of this Lease); and (4) shall, promptly, and if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure or otherwise and shall prosecute the same to completion with reasonable diligence and in the exercise of which Mortgagee may exercise any and all remedies available to it under the loan documents evidencing or securing the Leasehold Mortgage. If at the end of said six (6) month period any Leasehold Mortgagee shall be actively engaged in steps to acquire or sell Tenant's interest herein and shall have promptly commenced and complied with the requirements of the preceding sentence and such Leasehold Mortgagee is delayed or impeded in its efforts to acquire or sell Tenant's interest herein due to the pending nature of any proceeding brought by, for or against Tenant, including without limitation a voluntary or involuntary bankruptcy proceeding, then the time for completion by the Leasehold Mortgagee of its proceedings shall continue thereafter for so long as the Leasehold Mortgagee diligently and continuously proceeds to complete steps to acquire or sell Tenant's interest in the Lease by foreclosure of the Leasehold Mortgage or by other appropriate means. Nothing in this subsection (D), however, shall be construed to extend the Lease beyond the original Term thereof in accordance with the Lease, nor to require the Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, the Lease shall continue in full force and effect as if Lessee had not defaulted under the Lease.

E. If the Leasehold Mortgagee is complying with Section 9.2(D), upon the acquisition of the Lease by the Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise and the discharge of any lien, charge or encumbrance against the Tenant's interest in the Lease or the Leased Premises which is junior in priority to the lien of the Leasehold Mortgage and which the Tenant is obligated to satisfy and discharge by reason of the terms of the Lease, the Lease shall continue in full force and effect as if Tenant had not defaulted under the Lease.

F. For the purposes of this Section 9.2, the granting of the Leasehold Mortgage by the Tenant shall not be deemed to constitute an assignment or transfer of the Lease, nor shall the Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of the Lease so as to require the Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed under the Lease. However, the purchaser at any sale of the Lease in any proceedings for the foreclosure of the Leasehold Mortgage, or the assignee or assignment or transfer in lieu of the foreclosure of the Leasehold Mortgagee shall be deemed to be an assignee or transferee, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed under the Lease from and after the date of such purchase and assignment, (and such purchaser shall have no liability for the performance of the same arising prior to such date) but only for so long as such purchaser or assignee is the owner of the Lease.

G. The Leasehold Mortgagee pursuant to a Foreclosure Sale or other proceedings may, upon acquiring the Lease, without further consent of Landlord, sell and assign the Lease in connection with a Foreclosure Sale of Section B and/or Section C on such terms and to such persons and organizations as are acceptable to the Leasehold Mortgagee and thereafter the Leasehold Mortgagee shall be relieved of all obligations under the Lease; provided that such assignee has delivered to Landlord its written agreement to be bound by all the provisions of the Lease.

H. Notwithstanding anything to the contrary set forth in this Article 9, the Mortgagee shall only foreclose on the Leased Premises in conjunction with the foreclosure of the Mortgage encumbering the Leased Premises for Section B and/or Section C.

### 9.3. Leasehold Mortgagee's Right to New Lease.

In the event of the termination of this Lease, or any succeeding Lease made pursuant to this Lease, including a New Lease, prior to its stated expiration date, as a result of Tenant's default or as a result of a rejection of the Lease by Tenant, including without limitation a rejection in any state or federal insolvency or bankruptcy proceedings, Landlord shall, in addition to providing the applicable notices of default and termination as required by Section 9.2, provide the Leasehold Mortgagee with written notice (the "New Lease Notice") that the Lease has been terminated, together with a statement of all known unpaid sums which would at that time be due under the Lease as of the date of such notice but for such termination, and of all other defaults, if any, then known to Landlord. Landlord shall, upon the written request of a Leasehold Mortgagee

or its nominee, enter into a new lease of the Leased Premises with such Leasehold Mortgagee or its nominee, for the remainder of the Term, effective as of the date of such termination, at the rent and upon the same terms, provisions, covenants and agreement as herein contained and provided however that the Lease including without limitation Section 17.1(A) and (B) shall be revised as appropriate to reflect the composition and existence of the new Tenant (the "New Lease"). The New Lease shall be subject only to the same Permitted Encumbrances to title to which this Lease is subject on the Lease Commencement Date and to any other encumbrances created pursuant to the terms hereof (and Landlord shall have no obligation to cure or remove any encumbrance to title of the Leased Premises created or consented to in writing by Tenant), and to the rights, if any, of any parties then entitled to possession of all or part of the Leased Premises (but excluding Tenant); provided, however, that a grant of the New Lease shall be subject to the following conditions:

A. Said Leasehold Mortgagee or its nominee shall have made written request upon Landlord for such New Lease, within sixty (60) days after the date of its receipt of the New Lease Notice and such written request shall have been accompanied by tender of payment to Landlord of all sums then due to Landlord as specified in the New Lease Notice.

B. Said Leasehold Mortgagee or its nominee shall pay to Landlord at the time of the execution and delivery of said New Lease, any and all Rent which would, at the time of execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, all reasonable expenses (including reasonable attorney's fees), which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under the Lease (but expressly excluding any and all damages including punitive and consequential damages), less the net income (on a cash basis and excluding depreciation and other non-cash adjustments) received by Landlord in respect of the Leased Premises after the termination of this Lease but prior to the execution and delivery of the New Lease.

C. Said Leasehold Mortgagee or its nominee shall perform all of Tenant's monetary obligations contained in this Lease.

D. Upon execution and delivery of such New Lease, in accordance with the provisions of this Section 9.3, the tenant under the New Lease shall accept the Lease Premises in its "as is" condition subject to the terms of the New Lease and any Space Leases which theretofore may have been assigned and transferred to Landlord shall thereupon be assigned and transferred by Landlord to the tenant under the New Lease.

Notwithstanding anything to the contrary contained in this Section 9.3, a Leasehold Mortgagee shall not have the right to assign a New Lease to the Tenant or to any Affiliate of such Tenant, provided that the foregoing shall not be deemed to prohibit the Leasehold Mortgagee from assigning a New Lease to an Affiliate of the Leasehold Mortgagee.



#### 9.4. Additional Protection for Leasehold Mortgagees.

The following additional matters are included herein for the express protection of any Leasehold Mortgagee, as an intended third party beneficiary of this Lease.

A. The proceeds or award from any of Tenant's insurance policies may be held by any Leasehold Mortgagee(s) and distributed or applied pursuant to the provisions of the applicable Leasehold Mortgage; subject, however to the terms of this Lease including, without limitation Section 10.10.

B. From time to time, and within thirty (30) days of request, Landlord and Tenant shall execute, acknowledge and deliver to any or all Leasehold Mortgagees, an agreement among Landlord, Tenant and such Leasehold Mortgagee(s), prepared at the sole expense of Tenant, in form satisfactory to such Leasehold Mortgagee(s) and the Landlord, reaffirming the applicability of the provisions of Section 9.1 through 9.5 to a particular Leasehold Mortgagee.

#### 9.5. No Landlord Subordination.

A. The Landlord will not subordinate its interest in the Project to any Mortgage.

### 10. INSURANCE.

During the development and construction of the Project, Tenant shall procure and maintain and cause the contractor(s) (and, to the extent applicable, each of the subcontractors), to procure and maintain the following insurance as follows with respect to the Leased Premises and the Project:

#### 10.1. All Risk Builders Risk Insurance.

All Risk Builders Risk Insurance with limits equal to one hundred percent (100%) of the initial budget for construction of the Project, and any amendment to such budget that affects the cost of construction, on a "replacement cost" basis. Such insurance shall include the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse, difference in condition, earthquake (subject to a \$10,000,000.00 sublimit), cost of construction, and coverage for flood insurance if required under the Flood Disaster Protection Act of 1973. The All Risk Builders Risk Insurance may not have a deductible or self-insurance retention level that exceeds the lesser of twenty percent (20%) of such budget or Twenty-Five Thousand Dollars (\$25,000). The deductible shall not limit or apply to the Tenant's, its contractor's or subcontractor's liability to the Landlord and shall be the sole responsibility of the Tenant.

#### 10.2. Business Automobile Liability Insurance.

Business Automobile Liability Insurance of not less than \$2,000,000 combined single limit per occurrence to include coverage for owned, non-owned, hired motor vehicles, Uninsured Motorists insurance, and automobile contractual liability.

### 10.3. Workers' Compensation.

Statutory workers compensation coverage, including Maryland benefits and employers liability with limits of not less than \$100,000 per person, \$500,000 combined aggregate and \$100,000 disease protection.

### 10.4. Subcontractors and Consultants.

The Tenant shall provide and shall cause its contractor(s), subcontractors, architect and consultants to provide the Landlord with certificates of insurance, and if requested by either, copies of all policies of insurance reflecting the foregoing coverages.

### 10.5. Insurance Following Construction of the Project.

Following completion of the Project and during the Term, Tenant shall carry (or cause to be carried) the following insurance in respect of the Project:

A. Insurance, as may be applicable, against loss or damage by fire, windstorm, tornado and hail and all other hazards covered by the usual extended coverage and "all special causes of loss" endorsements of whatsoever kind ("Property Insurance"), including, without limitation, coverage for loss or damage by water, flood and subsidence, and excluding from such coverage normal settling only. Such Property Insurance shall be in the amount set forth in the "replacement cost" endorsement to the policy in question, which endorsement shall be attached to the policy, provided that such amount, in all events, shall be (i) sufficient to prevent Landlord and Tenant from becoming co-insurers under provisions of applicable policies of insurance, and (ii) in the amount not less than one hundred percent (100%) of the replacement cost of the Project (net of footers, foundations and excavation), such net replacement cost to be determined by the insurers from time to time, but not less frequently than required by the standard "replacement cost" endorsement, and no omission on the part of Landlord to request any such determination shall relieve Tenant of its obligation to have such net replacement cost determined as aforesaid. Such Property Insurance shall also include a demolition and clearing clause and extra expense and loss of use coverages with a sublimit of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

B. General comprehensive public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars (\$1,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and Three Million Dollars (\$3,000,000.00) from the aggregate of all occurrences within each policy year, with excess coverage or umbrella coverage of at least Five Million Dollars (\$5,000,000.00), and shall include the Project and all sidewalks adjoining or appurtenant to the Project, shall contain blanket contractual coverage and shall also provide the following protection:

- (1) completed operations;
- (2) personal injury protection; and

- (3) sprinkler leakage/water damage legal liability.

C. Workers' compensation providing statutory benefits for all persons employed by Tenant at or in connection with the Premises.

The Liability Insurance required under this Section 10 may be provided under Tenant or an Affiliate's umbrella liability policy.

10.6. Certificate Requirements.

All of the above-prescribed insurance shall (a) be procured from financially sound and reputable insurers qualified to transact an insurance business in the State of Maryland and have an A.M. Best rating of at least "A-X", (b) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, and (c) be evidenced by certificates of insurance delivered to the Landlord upon the issuance of any policies (and subsequent changes in such policies). Any insurance required to be carried by Tenant under Article 10 may be carried under a blanket policy covering the Leased Premises and other locations.

10.7. Deficiencies in Coverage and Failure to Maintain Insurance.

If Tenant or the Landlord becomes aware of any reduction in the coverage provided under any insurance required under this Article, or in the protection afforded thereunder, Tenant or the Landlord as the case may be, shall promptly notify the other. In the event Landlord reasonably determines, based on uses of the Project, that additional types of coverages may be required and to the extent that such additional coverages are customarily required in connection with similar type projects to the Project, Tenant shall promptly obtain, to the extent generally available, such additional coverage, including, without limitation, if required by then existing facts and circumstances, environmental impairment insurance, such requirement being expressly subject to the obligations of Landlord contained in Section 15.2 hereof.

10.8. Additional Insured - Notice of Cancellation.

All policies of liability insurance described herein shall name the Landlord and any Mortgagee as additional insureds and shall not be cancelled, modified or terminated upon less than sixty (60) days prior written notice to Landlord. The liability coverage shall further expressly provide for contractual liability coverage associated with the Tenant's indemnification obligations under this Lease.

10.9. Insurance Does Not Waive Obligations.

No acceptance or approval of any insurance agreement or agreements shall (a) relieve or release or be construed to relieve or release the Tenant or other person from any liability, duty, or obligation assumed by, or imposed upon it, or, (b) impose any obligation upon the additional insured(s)/loss payees.

#### 10.10. Property Insurance Proceeds.

During the Term, all sums payable for loss and damage to the Project arising out of casualties covered by the fire and extended coverage policies shall be used for the reconstruction, repair, or replacement of the damage (hereinafter referred to as "Reconstruction Work"), to a condition substantially comparable to its condition prior to the loss or damage and shall be payable directly to Tenant or its Mortgagee, provided that the proceeds must be used to rebuild the Project.

#### 10.11. Waiver of Subrogation.

Each of Landlord and Tenant hereby waives any and every claim for recovery from the other for any and all loss or damage to the Leased Premises and/or the Project or to the contents thereof, whether such loss or damage is due to the negligence of Landlord or Tenant or their respective agents or employees, which loss or damage is insured pursuant to this Lease by valid and collectible insurance policies and then only to the extent of the proceeds collected or collectible under such insurance policies; provided, however, that the foregoing waiver shall not be operative in any case where the effect thereof is to invalidate any insurance coverage of the waiving party or increase the cost of such insurance coverage; provided further, that Landlord and Tenant each agree to give written notice of the terms of this mutual waiver to each insurance company which has issued, or in the future may issue, policies of physical damage to it, and to have said insurance policies properly endorsed to prevent the invalidation of said insurance coverage by reason of said waiver and provided further that such insurance company waives all rights of subrogation which it might have against Landlord or Tenant, as the case may be.

#### 10.12 Landlord's Obligations.

Nothing contained herein shall be deemed to impose any insurance obligations or requirements on Landlord.

### 11. **TAKING.**

#### 11.1. Total Taking.

In the event of a Taking of the entire Leased Premises, including the entire fee simple title to the Leased Premises, as well as the right, title and interest of Tenant therein, then the rights and obligations of the parties hereunder (except rights and obligations arising prior to such Taking and except rights and obligations provided in this Section) shall terminate as of the date of such Taking; the parties hereby agree to look solely to the condemnation awards or proceeds for compensation in the proportions hereinafter provided for their respective interests in the Leased Premises and/or the Project as such interest is set forth in Section 11.5 hereof. The Taking shall be considered to take place upon the earlier of acquisition of title by the condemning authority, or acquisition of possession by the condemning authority.

### 11.2. Partial Taking.

In the event of a Taking of any portion of the Leased Premises and/or the Project, and if Section 11.1 does not apply thereto, the Taking award or proceeds shall first be applied to restoration of the portion of the Leased Premises remaining after the Taking, to the extent restorable. The balance of such proceeds shall be apportioned in accordance with Section 11.5.

### 11.3. Substantial Taking.

In the event of a Taking of a substantial portion, but less than the entire Leased Premises and/or the Project, such that it shall no longer be reasonably economical or practical for Tenant, in Tenant's sole judgment, to continue its business on the Leased Premises, then Tenant shall have the right, at its option, to terminate this Lease by notice in writing to Landlord within ninety (90) days after Tenant actually receives notice that such Taking has occurred in which event this Lease shall be terminated except that Tenant's interest hereunder shall continue for purposes of the apportionment of the Taking award or proceeds in accordance with Section 11.5.

### 11.4. Temporary Taking.

In the event of a temporary Taking of the right to possession and use of all or part of the Leased Premises as to which Sections 11.1, 11.2 and 11.3 are not applicable, then the entire Taking award or proceeds shall be apportioned in accordance with Section 11.5.

### 11.5. Allocation of Award.

In the event of a Taking as described in Section 11.1, the net Taking award or proceeds, including damages or interest (after deduction of all expenses, including fees of attorneys, appraisers and expert witnesses), shall be paid as follows in the following order of priority (and, in the event of a Taking as described in Sections 11.2 or 11.3, the apportionment of the Taking award or proceeds shall take into account these priorities to the extent applicable):

A. To secure and make safe the Leased Premises to the extent necessary or required by Applicable Law.

B. Any remaining balance of the Taking award or proceeds shall be payable to Landlord. Tenant shall be entitled to any separately allocated award or proceeds in respect of moving expenses, or loss of good will or profit or in respect of fixtures and other property of Tenant, and/or the cost or expense for the repair and removal of such fixtures and other property.

11.6. Notice of Taking.

Landlord and Tenant shall each give to the other and to any Leasehold Mortgagees immediate written notice of any pending or threatened Taking of which it has knowledge.

11.7. Condemnation Proceedings.

The respective rights of Landlord and Tenant in the condemnation award shall be determined pursuant to this Lease under the procedures established herein. Nothing herein shall diminish Tenant's rights to received a separate award for value of fixtures, personal property and relocation costs.

**12. TENANT'S DEFAULT; LANDLORD'S REMEDIES.**

12.1. Tenant's Default.

12.1.1. Failure to Observe Agreement.

A. The Tenant shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement; or

B. The Section B Ground Lease and the Section C Ground Lease, shall be terminated on account of default by the tenants thereunder; or

12.1.2. Accuracy of Representation and Warranties.

Any representation or warranty made herein shall prove to have been incorrect as of the date made or deemed made; and which shall have a material adverse affect on Tenant's ability to perform its obligations hereunder; or

12.1.3. Abandonment.

Tenant abandons the Leased Premises; or

12.1.4. Intentionally Omitted; or

12.1.5. Bankruptcy.

The Tenant shall generally fail to pay its debts as such debts become due or shall admit in writing its inability to pay its debts as such debts become due or shall make a general assignment for the benefit of creditors; the Tenant shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property; or any case, proceeding or other action against the Tenant shall be commenced seeking to have an order for relief entered against the Tenant, as debtor, or

seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Tenant or its principals or Affiliates or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, liquidation, assignee, trustee, custodian, sequestrator or other similar official for the Tenant, or for all or any substantial part of their respective properties, and (i) the Tenant, shall by any act or omission, indicate its consent or approval of, or acquiescence in such case, proceeding or action, (ii) such case, proceeding or action results in the entry of an order for relief which is not fully stayed within thirty (30) days after the entry thereof, or (iii) such case, proceeding or action remains undismissed for a period of sixty (60) days or more or is dismissed or suspended only pursuant to Section 305 of the United States Bankruptcy Code or any corresponding provision of any future United States bankruptcy law.

#### 12.1.6. Attachment, Garnishment.

The issuance of any attachment or garnishment against the Tenant if the Tenant is the debtor and the failure to discharge the same (by bond or otherwise) within thirty (30) days from the issuance thereto and the impact of which shall materially and adversely affect the Tenant's ability to perform its obligations hereunder.

#### 12.1.7. Judgments.

One or more judgments or decrees shall be entered against the Tenant involving an aggregate liability in excess of One Hundred Thousand Dollars (\$100,000) or more, and such judgments and decrees shall not have been vacated, discharged, reduced to below an aggregate of One Hundred Thousand Dollars (\$100,000), stayed or bonded pending an appeal within sixty (60) days from the entry to this Lease and the impact of which shall materially and adversely affect the Tenant's ability to perform its obligations hereunder.

#### 12.2. Notice of Default; Cure Period.

Upon the occurrence of a Tenant's Default, other than a default under Section 12.1.1(B) as to which no notice shall be required, Landlord shall, prior to exercising any remedies hereunder, give to Tenant, pursuant to the notice provisions hereof, a Notice of Tenant's Default, which Notice of Tenant's Default shall at the same time be given to any Leasehold Mortgagees of which Landlord has been notified in writing, and which shall provide in the case of a Tenant's Default described in Section 12.1. that Tenant shall cure such default within a period of fifteen (15) days from the date of such Notice of Tenant's Default for a monetary default and thirty (30) days for a nonmonetary default. With respect to any Tenant's Default other than a default in the payment of money or a default under Section 12.1.1(B), which default is of such nature that it cannot, by due diligence, be cured within the foregoing periods of time, if Tenant shall promptly commence the curing of such default and so long as Tenant is employing Best Efforts to cure such default, then Tenant shall be entitled to a period not to exceed eighteen (18) months to cure such default. There shall exist an Event of Tenant's Default if a Tenant's Default remains uncured after the giving of a Notice of Tenant's Default

and the expiration of the foregoing periods to cure. Any Leasehold Mortgagees shall have the rights and periods of time within which to cure or commence to cure any Tenant's Default as are set forth in Section 9 hereof.

### 12.3. Remedies.

If an Event of Tenant's Default exists and Landlord gives Tenant and any Leasehold Mortgagee a Notice of Tenant's Default in accordance with Section 12.2, and Tenant and any Leasehold Mortgagees fail to cure the specified default within the time allowed by this Lease, then Landlord shall have the following rights:

A. Landlord may give to Tenant, pursuant to the notice provisions hereof, a notice ("Notice of Termination") which shall at the same time be given to any Leasehold Mortgagee and which shall provide that unless the default specified in the Notice of Tenant's Default (and again specified in the Notice of Termination) is cured (or a cure is commenced) within thirty (30) days following the giving of the Notice of Termination, then, upon the expiration of such thirty (30) day period, the term of this Lease shall expire and terminate. Upon the occurrence of all of the foregoing events, including the expiration of such thirty (30) day period, then unless such Tenant's Default shall have been cured and subject to the Leasehold Mortgagee's rights under Section 9 hereof, including, without limitation, its right to a New Lease under Section 9.3 hereof, the Term of this Lease shall expire and terminate with the same force and effect as though the date so specified were the date herein originally fixed as the expiration date of the Term. The provisions of this subsection shall operate as a notice to quit, any other notice to quit or of Landlord's intention to re-enter the Leased Premises being hereby expressly waived. If necessary, Landlord may proceed to recover possession of the Leased Premises under applicable laws. If Landlord elects to terminate this Lease and/or elects to terminate Tenant's right of possession, everything in this Lease to be done and performed by Landlord shall cease without prejudice, and Tenant shall remain liable for (i) all rent and other sums accrued through the later of termination of this Lease or Landlord's recovery of possession and (ii) direct damages incurred by Landlord on account of such default.

B. If Tenant shall fail to cure Tenant's Default within the required cure period Landlord may exercise any or all of its available rights and remedies, at law or in equity. In addition, if Tenant defaults in the making of any payment or in the doing of any act herein required to be made or done by Tenant, then Landlord may, but shall not be required to, make such payment or do such act, in which event the amount of the expense thereof, with interest thereon at the Default Rate from the date of written notice to Tenant of such expenditure, and together with interest or other financing charges or expenses (including assignable overhead) incurred by Landlord in curing such default, may be recovered by Landlord from Tenant as Additional Rent. The foregoing notwithstanding, the exercise by Landlord of "self help" under Section 6.1(C) of this Lease where no notice to Landlord or the Mortgagee is required shall not constitute a Tenant Default.



C. No delay or failure by Landlord to exercise or enforce any of Landlord's rights or remedies or Tenant's obligations shall constitute a waiver of any such rights, remedies or obligations. Landlord shall not be deemed to have waived any default by Tenant unless such waiver expressly is set forth in a written instrument signed by Landlord. If Landlord waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

12.4. Tenant to Quit Upon Termination.

Except in the event Tenant exercises its right of first refusal to purchase Gateway Plaza and Silver Plaza pursuant to the terms of Exhibit "G" of this Lease, upon the expiration or termination of this Lease, Tenant shall quit and peaceably surrender the Leased Premises, without further notice, any and all notices to quit, notices of intention to re-enter or any other notices and any institution of legal proceedings hereby being waived. If Tenant exercises the right of first refusal, upon expiration of the termination under this Lease, Tenant shall quit and surrender all of the Leased Premises except Gateway Plaza and Silver Plaza in accordance with the foregoing sentence.

12.5. Landlord's Waiver of Distraint.

Landlord hereby waives any and all rights Landlord now has or hereafter may have by reason of this Lease (or by reason of statute or common law) to distraint for rent upon the Leased Premises, or upon any property upon the Leased Premises, whether such property is the property of Tenant or is the property of any other person or entity.

12.6. Intentionally Omitted.

12.7. Intentionally Omitted.

12.8. Additional Cure Rights of Leasehold Mortgagees.

The rights of any Leasehold Mortgagees and other provisions regarding default and termination as set forth in Section 9 shall apply in addition to any rights to cure set forth in this Section.

12.9. Intentionally Omitted.

12.10. Intentionally Omitted.

13. **LANDLORD'S DEFAULTS.**

13.1. Events of Landlord's Default.

Any failure by the Landlord to perform, or to comply with, within the applicable time periods any of the covenants, agreements or conditions contained in this Lease to be performed or complied with by Landlord shall constitute a Landlord's Default.

### 13.2. Landlord Powers.

The Landlord is a political subdivision of the State and can exercise only those powers granted it by Applicable Law. In the event the Landlord is prevented, restricted, or delayed in any of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this Lease as a result of any legal proceedings, unless instituted by the Landlord in derogation of its responsibilities and obligations hereunder or as a result of the Landlord's failure to comply with this Lease or any federal, state, or local law, ordinance, or regulation, it shall not be liable for any costs, damages, injuries, or liabilities caused to or suffered or incurred by Tenant, its successors or assigns in connection with, or as a result of any such legal proceedings or any such prevention, restriction, or delay.

### 13.3. Notice of Landlord's Default; Cure Period.

Tenant shall, prior to exercising any remedies hereunder, give to Landlord, pursuant to the notice provisions hereof, a Notice of Landlord's Default, and which shall provide that Landlord shall cure such default within thirty (30) days from the date of such Notice of Landlord's Default. With respect to any Landlord's Default, if Landlord shall commence the curing of such default within the period specified in the Notice of Landlord's Default, then Landlord shall be entitled to as long a period to cure such default as may be required by Landlord in the exercise of due diligence in endeavoring to cure such default.

### 13.4. Tenant's Remedies.

If Landlord shall fail to cure Landlord's Default within the required time period, an "Event of Landlord's Default" shall exist. In such event, Tenant may exercise any or all of its available rights and remedies, at law or in equity. In addition, if Landlord defaults in the making of any payment or in the doing of any act herein required to be made or done by Landlord, then Tenant may, but shall not be required to, make such payment or do such act, in which event the amount of the expense thereof, with interest thereon at the Default Rate from the date of written notice to Landlord of such expenditure, interest or other financing charges or expenses incurred by Tenant in curing such default, may be recovered by Tenant from Landlord.

### 13.5. No Waiver.

No failure by Landlord or Tenant to insist upon the performance of any covenant, agreement, provisions or condition of this Lease or to exercise any right or remedy consequent upon a default by either party hereunder, and no acceptance of full or partial rent during the continuance of any Tenant default shall constitute a waiver of any such default or of such covenant, agreement, provision or condition. No waiver of any default shall affect or alter this Lease, but each and every covenant, agreement, provision and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent default hereunder.

#### 14. INDEMNIFICATION.

Tenant hereby agrees, covenants, and warrants to protect, indemnify, and hold the Landlord and its respective officers, members, employees and agents (the "Indemnified Parties") harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, liens, encumbrances, suits or actions and reasonable attorneys' fees, and the cost of the defense of the Indemnified Parties in any suit, including appeals, arising out of, or relating in any manner to (i) all work undertaken by Tenant pursuant hereto, activities resulting therefrom and/or as a result of the Tenant's, or its contractors, subcontractors, agents, employees or invitees presence on, access to, or activities on or about the Leased Premises (excluding any work done in connection with the Public Improvements governed by a Public Improvement Contract) and excepting only the Landlord's negligence and intentional misconduct to the extent of such Landlord negligence or intentional misconduct on a comparative negligence basis, and (ii) direct damages incurred as a result of Tenant's Default hereunder.

#### 15. ENVIRONMENTAL MATTERS.

##### 15.1. Environmental Tests and Reports.

A. The Landlord shall cooperate with Tenant, and any Mortgagee, and any of their environmental consultants and/or contractors to assure reasonable access to the Leased Premises for the purpose of permitting the performance of all environmental tests or studies Tenant desires to undertake. Copies of all reports prepared in connection with the studies shall be provided to the Landlord.

B. The Landlord shall cooperate in all reasonable respects with Tenant in Tenant's efforts to secure any and all environmental approvals, closure (or similar) letters, or any other actions from any governmental agencies, including but not limited to "Brownfields" or voluntary remediation program approvals, grants, or other benefits (except for Brownfields tax credits which if received by Tenant during the ten (10) year period commencing on the date of closing of the Permanent Financing, will be paid over to Landlord as additional rent) (collectively, "Environmental Approvals"). The Landlord shall join in any application or other document that may be reasonably required in order to obtain any such Environmental Approvals; provided that such joinder shall impose no financial burden on Landlord beyond what is required under Section 15.2 hereof.

##### 15.2. Environmental Remediation.

For a period of five (5) years following the commencement of construction on the Leased Premises, in the event environmental remediation is required to be performed upon the Leased Premises due to the presence of any Hazardous Substance in excess of permissible concentrations pursuant to any Federal, State and local laws, regulations or ordinances, and such remediation can be clearly demonstrated to be the result of a condition which existed prior to execution of this Lease for such Section, the Landlord shall be responsible for the costs of required remediation in accordance with Applicable Law, provided that such condition was not caused by the

actions of the Tenant, its agents, employees, contractors or invitees. If appropriated funds are inadequate to cover such remediation, the Landlord shall promptly request and diligently pursue a supplemental appropriation to cover the costs of such remediation and any delay in obtaining supplemental appropriation shall be deemed a Landlord Delay but not a Landlord default. Any such remediation will be performed (i) by environmental consultants and contractors reasonably acceptable to Landlord, (ii) in accordance with all Applicable Laws, and (iii) upon terms reasonably acceptable to Landlord.

### 15.3. Tenant's Obligations.

Tenant shall not knowingly (a) cause or permit the escape, disposal or release of any biologically or chemically active or other "Hazardous Substances", or (b) allow the storage or use of Hazardous Substances in any manner not sanctioned by law or by the standards prevailing in the industry for the storage and use of such substances, waste or materials, or (c) allow any Hazardous Materials to be brought onto the Leased Premises except as are customarily used in similar projects; provided, however, that all such uses, and the storage and disposal of any Hazardous Substances shall be in strict accordance with all Legal Requirements. Except as provided in Section 15.2 above, Tenant shall defend, indemnify and hold harmless Landlord against and from any liability, claim of liability or expense (including attorneys' fees, court costs and experts' fees) arising out of any Hazardous Substances on the Leased Premises while Tenant is in possession thereof, or while this Lease is in effect or at any time thereafter if caused by Tenant or any person acting under or through Tenant. Without limiting the foregoing, if the presence of any Hazardous Substances caused or permitted by Tenant or any person acting under Tenant results in any contamination of the Leased Premises, or if any contamination occurs either knowingly or unknowingly while this Lease is in effect or while Tenant is in possession of the Leased Premises, then subject to any required payment by Landlord as provided in Section 15.2 above, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of any such Hazardous Substances to the Leased Premises or as may be required under Applicable Law.

### 16. FORCE MAJEURE.

Notwithstanding anything to the contrary contained in this Lease, all of the parties' obligations hereunder including, without limitation, the Section Development Schedule, shall be subject to Force Majeure. For any Force Majeure resulting in a delay in either party's performance, provided that the claiming party is duly and diligently working to end the Force Majeure and minimize the impact of the Force Majeure, the performance of the party claiming Force Majeure shall be extended by one day for each day of delay in such party's performance attributable to the Force Majeure event. Any party claiming Force Majeure must provide the other party with immediate notice of the Force Majeure once the party knows of (or should have known of) the Force Majeure event. The notice must describe the Force Majeure event, the anticipated duration of the Force Majeure, and actions to be taken by the claiming party to end the Force Majeure and minimize its impact. The foregoing notwithstanding, the maximum period for any

Force Majeure delay shall not exceed eighteen (18) months, except with respect to Landlord Delays.

**17. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**17.1. Tenant's Representations, Warranties and Covenants.**

To induce the Landlord to enter into this Lease, the Tenant represents, warrants, and covenants and agrees with the Landlord that:

A. Tenant is a limited liability corporation duly organized and validly existing and in good standing under the laws of Maryland and is duly qualified to enter into this Agreement and undertake the obligations provided for herein.

B. The sole members of Tenant are Silver Triangle L.C., a Maryland limited liability company, which is an Affiliate of The Peterson Companies, and FP-Argo Silver Spring, LC, a Maryland limited liability company, which is an Affiliate of the Foulger-Pratt Companies and Argo Investment Company.

C. Tenant has the full and unrestricted lawful power and authority to enter into and carry out the terms of this Lease or other agreement contemplated herein. The execution, delivery and performance of this Lease and any other agreement contemplated herein and the consummation of the transactions contemplated hereby and thereby have been or will be as of the Lease Commencement Date, duly authorized and approved by all requisite action, as the case may be, and this Lease and all other agreements contemplated herein, documents contemplated hereby or thereby, when duly executed and delivered, will each constitute a valid and binding agreement of the Tenant and, as applicable, its Affiliates, enforceable in accordance with its terms.

D. Except for the Development Approvals, and approvals required in this Agreement, no consent, approval or authorization of any other person or entity is required to be obtained by the Tenant in connection with the execution, delivery or performance of this Lease or any other agreement contemplated herein.

E. Neither the execution or delivery of this Lease, or any other agreement contemplated herein, nor the consummation of the transactions contemplated hereby or thereby, will, as to the Tenant, its principals or Affiliates, where applicable: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under its or their organizational documents (including without limitation articles of incorporation, bylaws, certificates of limited partnership or partnership agreements) or any agreement or instrument to which it is a party or is subject; (ii) violate any agreement, restriction, easement, restrictive covenant, or instrument to which it is a party or to which it or any of its assets is subject; or, (iii) to its knowledge, constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree or order.

F. There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Tenant, threatened against or affecting the Tenant, its members or

Affiliates which question the validity of this Lease or any agreement, instrument or document delivered or to be delivered pursuant hereto or thereto, or any action taken in, under or in connection with any of the provisions of hereof or thereof, at law or in equity, before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality; and the Tenant has no reason to believe that any such action, suit, proceeding or investigation may be brought or threatened against the Tenant and subject to the satisfaction of all terms and conditions of this Lease.

G. Tenant has not retained any person or entity to solicit or secure this Lease from the Landlord upon an agreement or understanding for a commission, percentage or brokerage fee, other than bona fide employees or bona fide established commercial selling agencies retained by the Tenant for the purpose of securing business, and other than attorneys rendering legal services.

H. Tenant shall use its best efforts to take, or cause to be taken, all actions necessary or desirable to cause the representations and warranties of the Tenant set forth herein to be true and correct during the term of this Lease. The Tenant shall refrain from taking any action which would cause, or threaten to cause, any such representation or warranty to become untrue or incorrect at any time during such period.

I. Tenant has (i) satisfied or waived all conditions precedent to the execution of this Lease as set forth in Section 14 of the Development Agreement, to the extent the satisfaction or waiver of such conditions precedent is within Tenant's control, and (ii) not caused any Hazardous Substances to be deposited on the Leased Premises prior to the date hereof.

#### 17.2. Landlord Representations and Warranties.

To induce the Tenant to enter into this Lease, the Landlord represents and warrants to, and covenants and agrees with, the Tenant as follows:

A. Landlord is a political subdivision of the State of Maryland and has the full and unrestricted lawful power and authority to enter into and carry out the terms of this Lease. The execution, delivery and performance of this Lease and the consummation of the transactions contemplated hereby and thereby have, been duly authorized and approved, and this Lease and all other agreements, documents and instruments contemplated hereby or thereby, each will constitute a valid and binding agreement of the Landlord, enforceable in accordance with its terms.

B. Neither the execution and delivery of this Lease, nor the consummation of the transactions contemplated hereby or thereby will (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, Landlord's charter or the Montgomery County Code, or any agreement or instrument to which it is a party; or (ii) constitute a violation of any applicable judgment, decree or order or, to Landlord's knowledge, any applicable code, resolution, law, statute, regulation, ordinance or rule.

C. Subject to the terms of this Lease, Landlord shall reasonably cooperate with the Tenant to facilitate the processing of such plans, permit applications and easements for the benefit of public utilities as are necessary for the development of the Private Improvements.

D. In the event that the Mortgagee or Mortgagees providing Construction and/or Permanent Financing so require, Landlord will provide (i) an appropriate legal opinion from the Landlord Attorney's Office concerning the matters referred to in this Section 17; and (ii) estoppel certificates certifying as to the status of this Lease.

## 18. GENERAL CONDITIONS.

### 18.1. Disputes.

Tenant hereby consents and submits to the jurisdiction of the courts of the Circuit Court of Montgomery County, Maryland for all purposes in connection with the resolution of controversies or disputes hereunder. Tenant irrevocably consents to the service of process or notice of motion or other application to any of the aforementioned courts, and any papers in connection with any proceedings before any of such courts, by the mailing of copies thereof by certified or registered mail, postage prepaid, to Tenant at its address designated in Section 18.7 of this Agreement. The Tenant's resident agent is Clayton F. Foulger with an address c/o Foulger-Pratt Companies, 9600 Blackwell Road, Suite 200, Rockville, Maryland 20850, or any such other address as Tenant may designate in writing.

### 18.2. Use of Words and Phrases.

Use of the singular shall include the plural and use of the plural shall include the singular as appropriate. Where this Agreement requires the performance of obligations, such performance, unless otherwise stated, may be performed by the party or its contractor or agent on its behalf.

### 18.3. Landlord Approvals.

Approvals and consents required from Landlord in this Lease do not substitute for regulatory approvals required under Applicable Law. Regulatory approvals by Landlord required by law or regulation do not substitute for approvals and consents required from the Landlord in this Lease. Any time Tenant or Landlord's approval or permission is required by this Lease, such approval must be in writing.

### 18.4. Construction of Document.

Both parties to this Lease are represented by counsel and this Agreement reflects input from both parties. Therefore, in the event of a dispute over, or any ambiguity of, the terms of this Lease, the parties agree that common law rules of construction in favor of one party or against another party shall not apply.

18.5. No Discrimination.

No covenant, agreement, lease, rental contract, conveyance, or other instrument shall be effected or executed by the Tenant, or any of its successors or assigns, whereby the Leased Premises, or any portion of the Project is restricted upon the basis of race, sex, sexual orientation, religious creed, color, national origin, marital status, age or disability in the sale, lease, rental, use, or occupancy thereof. Tenant will comply with Federal, State, and local laws prohibiting discrimination upon the basis of race, sex, sexual orientation, religious creed, color, national origin, marital status, age, or disability in the development and operation of the Project.

18.6. No Partnership or Joint Venture.

It is mutually understood and agreed that nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of partners or creating or establishing the relationship of a joint venture between the Landlord and the Tenant or as constituting Tenant as the agent or representative of the Landlord for any purpose or in any manner under this Lease, it being understood that Tenant is a separate entity.

18.7. Notice.

Any notice or communication under this Lease by the Landlord to Tenant or by Tenant to the Landlord must be in writing and shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service, or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed:

(a) in the case of a notice or communication to Tenant, as follows:

PFA SILVER SPRING LC  
c/o Foulger Pratt Companies  
9600 Blackwell Road, Suite 200  
Rockville, Maryland 20850  
Attention: Clayton F. Foulger  
Richard Perlmutter

with a copy to:

Richard M. Zeidman, Esquire  
Linowes and Blocher LLP  
1010 Wayne Avenue  
Silver Spring, Maryland 20910



with a copy to:

The Peterson Companies  
12500 Fair Lakes Circle  
Suite 400  
Fairfax, Virginia 22033  
Attention: General Counsel-Retail

(b)in the case of a notice or communication to the Landlord, as follows:

Montgomery County Government  
Office of the County Executive  
101 Monroe Street, Second Floor  
Rockville, Maryland 20850  
Attention: Chief Administrative Officer

with a copy to:

Montgomery County Government  
Silver Spring Redevelopment Program  
962 Wayne Avenue  
Silver Spring, Maryland 20910  
Attention: Director, Silver Spring Redevelopment Program

with copy to:

Montgomery County Government  
Department of Public Works and Transportation  
101 Monroe Street  
Rockville, Maryland 20850  
Attention: Director

with copy to:

Montgomery County Government  
Office of the County Attorney  
101 Monroe Street, Third Floor  
Rockville, Maryland 20850  
Attention: County Attorney

with copy to :

Montgomery County Office of Leasing Management  
Department of Public Works and Transportation  
110 North Washington Street  
Rockville, Maryland 20850

or addressed to such other address in respect to any of the foregoing parties as that party may, from time to time, designate in writing, dispatched as provided in this Section.

All notices and approvals required in this Lease must be in writing to bind the submitting or receiving party.

18.8. Conflicts of Interest.

No member, official, representative, or employee of the Landlord or the Tenant shall take any action regarding this Lease or any agreements relating to either which conflicts with, or is prohibited by, any ethical requirements to which they are subject.

18.9. Performance on Saturday, Sunday, or Holiday.

Whenever the provisions of this Lease call for the performance of any act on or by a date that is not a Landlord business day, including the expiration date of any cure periods provided herein, then such payment or such performance shall be required on or by the immediately succeeding Landlord business day.

18.10. State Law.

This Lease shall be interpreted in accordance with the laws of the State of Maryland.

18.11. No Brokers.

Landlord and Tenant each warrant to the other that no broker or agent has been employed with respect to this Lease and each agrees to indemnify and hold the other harmless from any claim by any broker or agent claiming compensation in respect of this Lease based on an alleged agreement by Landlord or Tenant, as the case may be.

18.12. Estoppel Certificate from Landlord.

Upon thirty (30) days' prior written notice by Tenant or any Mortgagee, from time to time, Landlord shall execute, acknowledge and deliver to Tenant or to any person designated by Tenant, a statement in writing certifying whether this Lease has been modified (and, if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), whether any Notice of Default or Notice of Termination of this Lease has been given to Tenant, whether to the knowledge of Landlord any Event of Tenant's Default exists hereunder, whether Landlord has any specific knowledge of any claims against Tenant hereunder, the Lease Commencement Date, expiration date, the then-current amount of Annual Base Rent and the date to which the Annual Base Rent has been paid by Tenant, that this Lease is in full force and effect and that to the best of Landlord's knowledge there are no conditions existing which, with the passage of time or the giving of notice or both, would constitute a Tenant's Default, and that the contemplated transfer or financing, if any, does not constitute an Event of Default under this Lease and that no consent of the party so certifying is required for such transfer or financing.

18.13. Memorandum of Lease.

Concurrently with the execution of this Lease, Landlord and Tenant shall execute in recordable form for purposes of recordation, a short form of this Lease containing the names of the parties, a description of this Leased Premises, the Term of the Lease, a statement of the permitted uses hereunder of the Leased Premises, and such other provisions as Tenant may reasonably require. The parties shall also execute in recordable form additional memoranda reflecting any other date or matter pertaining to this Lease reasonably requested by Tenant. All costs of recording such memoranda shall be borne by Tenant.

18.14. Entire Agreement.

A. This Lease cannot be changed or terminated orally. This Lease and the Exhibits attached hereto contain the entire agreement between the parties and is intended by the parties to be an integration of all agreements between the parties concerning the terms of this Lease, including, without limitation (except as otherwise expressly and particularly set forth herein), the Development Agreement as it relates to the Section of which the Leased Premises form a part. Any agreement hereafter made shall be ineffective to change, modify or discharge this Lease in whole or in part, unless such agreement is in writing and signed by the parties hereto.

B. In the event of any inconsistency between the terms and provisions of the Lease and the terms and provisions of the Development Agreement, the terms and provisions of this Lease shall govern.

18.15. No Merger.

The fee title of Landlord and the leasehold estate of Tenant shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease or the leasehold estate created hereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in the Leased Premises or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any equity or secured financing interest of record in this Lease or the leasehold estate, shall join in the execution of a written instrument effecting such merger or estates and record such instrument among the land records of Montgomery County, Maryland or alternatively until such time as this Lease and any New Lease entered into shall terminate in accordance with the terms hereof or thereof.

18.16. Severability.

If any provisions of this Lease or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue to be valid and shall be enforced to the fullest extent permitted by law.

18.17. Obligations to Run With Land.

The parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals in this Lease contained, shall be construed as covenants running with the land, and as extending to, inuring to the benefit of, and being binding upon Landlord and Tenant and their successors and assigns, to the same extent as if the said successors and assigns were herein named as original parties hereto, all to the end that this Lease shall always bind the owner and holder of any interest whatsoever in or to the Leased Premises and/or the Project. All provisions of this Lease shall be construed to be "conditions" and "covenants" as though language specifically expressing or importing covenants and conditions were used in each separate provision of this Lease.

18.18. Gender; Number; Multiple Parties.

Words of any gender used in this Lease shall be held to include any other gender; words in the singular number shall be held to include the plural; and words in the plural shall be held to include the singular; all when the sense requires. If Landlord or Tenant is composed of more than one person or entity, then such person(s) or entity(ies) shall be jointly and severally liable for all obligations of Landlord or Tenant hereunder, as the case may be.

18.19. Captions for Convenience.

The captions and titles, and the Section and Paragraph headings (including the index and table of contents) are inserted only for convenience, and are in no way to be construed as part of this Lease, or as a limitation on the scope of the particular provisions to which they refer.

18.20. Counterparts.

This Lease shall be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one agreement. The cover sheet of each such counterpart shall indicate the total number of counterparts executed by the parties, and the recipient of such counterpart.

18.21. Consents Not To Be Unreasonably Withheld.

Wherever it is provided in this Lease that anything or matter is subject to the judgment or satisfaction of Landlord or that the consent, approval, action or permission

of Landlord is required, Landlord covenants and agrees that the term "judgment" or "satisfaction", as the case may be, shall be deemed to mean "reasonable judgment" or "reasonable satisfaction" and that any such consent, approval, action or permission shall not be unreasonably withheld, conditioned or delayed.

18.22. Waiver of Jury Trial.

Landlord and Tenant waive trial by jury in any action or proceeding brought by either of them against the other or on any claim, cross-claim or counterclaim in respect thereof on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Leased Premises, and/or any claim, injury or damage under or in connection with this Lease.

18.23. Liability of Tenant.

Notwithstanding anything to the contrary provided in this Lease, there shall be absolutely no personal liability on the part of Tenant (including any successor in interest or any mortgagee or any individual, joint venture, tenancy-in-common, firm or partnership, general or limited, or any general or limited partner thereof) with respect to any of the terms, covenants and conditions of this Lease and any party claiming hereunder shall look solely to the equity of Tenant or its successor in interest in the Leased Premises for the satisfaction of each and every remedy of Landlord in the event of any breach by Tenant or its successor in interest of any of the terms, covenants and conditions of this Lease to be performed by them, such exculpation of personal liability to be absolute and without any exception whatsoever.

18.24. Liability of Landlord.

Notwithstanding anything to the contrary provided in this Lease, there shall be absolutely no personal liability on the part of Landlord (including any successor in interest or any mortgagee or any individual, joint venture, tenancy-in-common, firm or partnership, general or limited, or any general or limited partner thereof) with respect to any of the terms, covenants and conditions of this Lease and any party claiming hereunder shall look solely to the equity of Landlord or its successor in interest in the Leased Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by the Landlord or its successor in interest of any of the terms, covenants and conditions of this Lease to be performed by them, such exculpation of personal liability to be absolute and without any exception whatsoever.

18.25. Intentionally Omitted.

18.26. Construction of Project.

Tenant covenants and agrees to use commercially reasonable efforts to minimize disruptions and impacts to the surrounding business and residential communities during construction of the Project and shall, by the date set forth in the Section Development Schedule, provide Landlord with a plan demonstrating how the Tenant will minimize disruptions to and impacts upon the surrounding business and residential communities during construction of the Project.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed as of the date first above written.

PFA SILVER SPRING, LC  
a Maryland limited liability company

By: [Signature]  
Name: Richard Portier  
Title: Manager  
Date: 9-8-02

MONTGOMERY COUNTY,  
MARYLAND

By: [Signature]  
Douglas M. Duncan,  
County Executive  
Date: 9/5/02

RECOMMENDED BY:

By: [Signature]  
Date: 9/5/02

APPROVED AS TO FORM AND  
LEGALITY:

OFFICE OF THE COUNTY  
ATTORNEY

By: [Signature]  
Date: 9/5/2002

EXHIBIT A-1 - Ellsworth Premises

Parcel lettered "D" in Block lettered "B" in the subdivision known as and called "DOWNTOWN SILVER SPRING" per plat thereof recorded in Plat Book 196 at Plat No. 21283 among the Land Records of Montgomery County, Maryland.

EXHIBIT A-2 - Gateway Plaza Premises

Parcel lettered "C" in Block lettered "C" in the subdivision known as and called "DOWNTOWN SILVER SPRING" per plat thereof recorded as Plat No. 22271 among the Land Records of Montgomery County, Maryland.

EXHIBIT A-3 - Silver Plaza Premises

Parcel lettered "D" in Block lettered "C" in the subdivision known as and called "DOWNTOWN SILVER SPRING" per plat thereof recorded as Plat No. 22271 among the Land Records of Montgomery County, Maryland.

TOGETHER WITH two easements for "overhanging areas of encroachment in to the right of way of Georgia Avenue (Maryland Route 97)", as more particularly set forth in a Deed from Montgomery County, Maryland to the State Highway Administration, dated December 29, 1999, recorded in Liber 17884 at folio 450 among the Land Records of Montgomery County, Maryland.

TOGETHER WITH the easement and right of way on and over the Fire Exiting and Service Easement Area located on part of Parcel "A", Block "C", Downtown Silver Spring subdivision (Plat No. 21647) as more particularly set forth in a Declaration of Easements, dated September \_\_\_\_, 2002, recorded in Liber \_\_\_\_\_, folio \_\_\_\_\_, among the Land Records of Montgomery County, Maryland.



EXHIBIT B

1. Taxes, State, County and Municipal and other public charges (including, but not limited to, assessments by any State, County, Municipality, Metropolitan District or Commission) payable on an annual basis have been paid through, to and including the fiscal year ending June 30, 2002.
2. Washington Suburban Sanitary Commission front foot benefit charges subsequent to December 31, 2001, - a lien but next installment not yet due and payable.
3. Rights or claims of parties to possession under unrecorded space leases.
4. Covenants, conditions, restrictions, easements, rights of way, building restriction lines; "WSSC Right of Way" in, on and under Parcel D, Block B; Ten foot (10') Public Utility Easement pursuant to the terms of the instruments recorded in Liber 3834 at folio 457 and in Liber \_\_\_\_\_ at folio \_\_\_\_\_ (No. 27 below); and other matters, if any, pursuant to Owner's Dedication, shown and/or noted on the following plats:
  - a. Plat Book 196, Plat No. 21283 (Parcel D, Block B).
  - b. Plat No. 21647 (Parcel A, Block C).
  - c. Plat No. 22271 (Parcels B, C & D, Block C).
5. Reciprocal Easement Agreement by Montgomery County, Maryland, PFA Silver Spring, LC, City Place Limited Partnership and Silver Spring Condo Corporation, dated July 22, 2002, recorded in Liber 21548, folio 326.
6. Right-of-Way to the Washington Suburban Sanitary Commission (for fire hydrants) recorded in Liber \_\_\_\_\_ at folio \_\_\_\_\_.
7. Declaration of Easements by Montgomery County, Maryland, dated \_\_\_\_\_, recorded in Liber \_\_\_\_\_, folio \_\_\_\_\_.
8. Ground Lease Agreement between Montgomery County, Maryland (landlord) and PFA Silver Spring, LC (tenant), dated \_\_\_\_\_, a Memorandum of which is recorded in Liber \_\_\_\_\_, folio \_\_\_\_\_ (as to Parcel D, Block B, and Parcels C & D, Block C).
9. Ground Lease Agreement between Montgomery County, Maryland (landlord) and PFA-C Silver Spring, LC (tenant), dated \_\_\_\_\_, a Memorandum of which is recorded in Liber \_\_\_\_\_, folio \_\_\_\_\_ (as to Parcel B, Block C).
10. Declaration of Covenants by Montgomery County, Maryland, dated \_\_\_\_\_, 2002, recorded in Liber \_\_\_\_\_, folio \_\_\_\_\_.

Exhibit C  
Intentionally Omitted

This Exhibit D is not included in the electronic version of the Ground Lease Agreement because of the size of the Exhibit.

Exhibit D

Development Plan (Final Site Plan) for Leased Premises

Exhibit E-1

List of Public Improvements for Ellsworth

IMANAGE:291973 v.8 05500.0165 Curr: 09/03/02 03:43pm  
Orig: 9/3/02 3:21:50 PM Ed: 9/3/02

Exhibit E-1 To Ground Lease  
List of Public Improvements for Ellsworth

Downtown Silver Spring  
Section C Ellsworth  
Drawing Document List

Landscape Drawings      Land Design Inc.      Construction Documents

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
SITE PLAN	L-1.1	5/15/02
LAYOUT PLAN – WEST QUADRANT	L-1.3	6/17/02
LAYOUT PLAN – CENTRAL QUADRANT	L-1.4	6/17/02
LAYOUT PLAN – EAST QUADRANT	L-1.5	6/17/02
LAYOUT PLAN – NORTHEAST QUADRANT	L-1.5A	5/15/02
PAVING DESIGNATION PLAN	L-1.6	6/17/02
PAVING PLAN – WEST QUADRANT	L-1.6B	5/15/02
PAVING PLAN – CENTRAL QUADRANT	L-1.6C	6/17/02
PAVING PLAN – EAST QUADRANT	L-1.6D	5/15/02
SILVER PLAZA FURNITURE LAYOUT PLAN	L-1.7	5/15/02
GRADING PLAN WEST QUADRANT	L-2.2	6/17/02
GRADING PLAN CENTRAL QUADRANT	L-2.3	6/17/02
GRADING PLAN EAST QUADRANT	L-2.4	6/17/02
PLANTING PLAN	L-3.0	5/12/02
PLANTING SOILS/SUBSURFACE DRAINAGE	L-3.1	6/17/02
IRRIGATION PLANS	L-3.2	5/15/02
IRRIGATION DETAILS	L-3.3	5/15/02
SITE DETAILS	L-4.0	5/15/02
SITE DETAILS	L-4.1	5/15/02
SITE DETAILS	L-4.2	6/17/02
PLANTING DETAILS	L-4.3	6/17/02
PLANTING DETAILS	L-4.3B	5/15/02
SITE FURNITURE DETAILS	L-4.4	6/17/02
LIGHTING FIXTURES	L-4.6	6/17/02
PAVEMENT MARKING/SIGNAGE DETAILS	L-4.7	5/15/02

Parcel B, C, & D, BLOCK C

Specifications    15-May-2002    Brown & Craig Architects Inc., for Land Design Inc.

Note: These plans to compliment the approved MNCPPC Signature Set

Exhibit E-1 To Ground Lease  
List of Public Improvements for Ellsworth

Downtown Silver Spring  
Section C Ellsworth  
Drawing Document List

Landscape Drawings      Land Design Inc.      MNCPPC Signature Set

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
COVER SHEET	CS.1-C	7/23/02
LAYOUT & PAVING PLAN – WEST QUADRANT	L-1.2-C	5/10/02
LAYOUT & PAVING PLAN – CENTRAL QUADRANT	L-1.3-C	7/23/02
LAYOUT & PAVING PLAN PLAN – EAST QUADRANT	L-1.4-C	7/23/02
LAYOUT & PAVING PLAN – NORTHEAST QUADRANT	L-1.4.A-C	5/10/02
LAYOUT & PAVING PLAN – NORTH QUADRANT	L-1.5-C	6/6/02
SILVER PLAZA FOUNTAIN DETAILS	L-2.1-C	7/23/02
LIGHTING FIXTURE	L-2.3-C	6/6/02
SITE DETAILS	L-2.4-C	7/23/02
GRADING PLAN WEST QUADRANT	L-3.2-C	5/10/02
GRADING PLAN CENTRAL QUADRANT	L-3.3-C	7/23/02
GRADING PLAN EAST QUADRANT	L-3.4-C	7/23/02
PLANTING PLAN	L-4.1-C	7/23/02
PLANTING DETAILS	L4.2-C	2/27/02
PLANTING SOILS & SUBSURFACE DRAINAGE PLAN	L-4.2.A-C	7/23/02
PLANTING DETAILS	L4.3-C	7/23/02
PHOTOMETRICS	L-8.1-C	6/6/02

Parcel B, C, & D, BLOCK C

Specifications    15-May-2002    Brown & Craig Architects Inc., for Land Design Inc.,

Note: These plans to compliment the Land Design Inc. Construction Documents

Exhibit E-1 To Ground Lease  
List of Public Improvements for Ellsworth

Downtown Silver Spring  
Section C Ellsworth  
Drawing Document List

Civil Engineering Drawings      Loiederman Associates      Construction Documents

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
EXISTING CONDITIONS & DEMOLITION PLAN	C-1	5/15/02
SEDIMENT & EROSION CONTROL PLAN	C-2	6/17/02
SEDIMENT & EROSION CONTROL DETAILS	C-3	5/15/02
SITE & GRADING PLAN	C-4	6/17/02
ON-SITE STORM DRAIN & PAVING PLAN	C-5	6/17/02
ELLSWORTH DRIVE PAVING PLAN	C-6	6/17/02
STORM DRAIN PROFILES	C-7	6/17/02
STORM DRAIN PROFILES & DETAILS	C-8	6/17/02
ON-SITE WATER & SEWER PLANS	C-11	6/17/02
ON-SITE WATER & SEWER PROFILES	C-12	6/17/02
ROAD IMPROVEMENT PLAN-GEORGIA AVE	C-14	6/17/02
ROAD IMPROVEMENT DETAILS	C-15	6/17/02

Parcel B, C, & D, BLOCK C

Specifications    15-May-2002    Brown & Craig Architects Inc., for Loiederman Associates

Note: These plans to compliment the approved MNCPPC Signature Set

Exhibit E-1 To Ground Lease  
List of Public Improvements for Ellsworth

Downtown Silver Spring  
Section C Ellsworth  
Drawing Document List

Civil Engineer Drawings

Loiederman Associates

MNCPPC Signature Set

Name

Drawing

Date

BLOCK C - UTILITY PLAN

C0.1

2/27/01

Parcel B, C, & D, BLOCK C

Specifications 15-May-2002 Brown & Craig Architects Inc., for Loiederman Associates

Note: These plans to compliment the Loiederman Associates Construction Documents



Exhibit E-2

List of Public Improvements for Gateway Plaza

IMANAGE:291973 v.8 05500.0165 Curr: 09/03/02 03:43pm  
Orig: 9/3/02 3:21:50 PM Ed: 9/3/02

Exhibit E-2 To Ground Lease  
List of Public Improvements for Gateway Plaza

Downtown Silver Spring  
Section C Gateway Plaza  
Drawing Document List

Landscape Drawings      Land Design Inc.      Construction Documents

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
SITE PLAN	L-1.1	5/15/02
LAYOUT PLAN – NORTHWEST QUADRANT	L-1.2	6/17/02
LAYOUT PLAN – NORTH QUADRANT	L-1.5.B	5/12/02
PAVING DESIGNATION PLAN	L-1.6	6/17/02
PAVING PLAN – NORTHWEST QUADRANT	L-1.6.A	5/12/02
PAVING PLAN – WEST QUADRANT	L-1.6B	5/15/02
PAVING PLAN – NORTH QUADRANT	L-1.6F	5/15/02
GRADING PLAN – NORTHWEST QUADRANT	L-2.1	6/17/02
GRADING PLAN WEST QUADRANT	L-2.2	6/17/02
PLANTING PLAN	L-3.0	5/12/02
PLANTING SOILS/SUBSURFACE DRAINAGE	L-3.1	6/17/02
IRRIGATION PLANS	L-3.2	5/15/02
IRRIGATION DETAILS	L-3.3	5/15/02
SITE DETAILS	L-4.0	5/15/02
SITE DETAILS	L-4.1	5/15/02
SITE DETAILS	L-4.2	6/17/02
PLANTING DETAILS	L-4.3	6/17/02
PLANTING DETAILS	L-4.3B	5/15/02
SITE FURNITURE DETAILS	L-4.4	6/17/02
GATEWAY PLAZA FOUNTAIN DETAILS	L-4.5B	6/17/02
GATEWAY PLAZA FOUNTAIN DETAILS	L-4.5C	5/15/02
GATEWAY PLAZA FOUNTAIN DETAILS	L-4.5D	6/17/02
LIGHTING FIXTURES	L-4.6	6/17/02
PAVEMENT MARKING/SIGNAGE DETAILS	L-4.7	5/15/02

Parcel B, C, & D, BLOCK C

Specifications    15-May-2002    Brown & Craig Architects Inc., for Land Design Inc.

Note: These plans to compliment the approved MNCPPC Signature Set

Exhibit E-2 To Ground Lease  
List of Public Improvements for Gateway Plaza

Downtown Silver Spring  
Section C Gateway Plaza  
Drawing Document List

Landscape Drawings      Land Design Inc.      MNCPPC Signature Set

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
COVER SHEET	CS.1-C	7/23/02
LAYOUT & PAVING PLAN – NORTHWEST QUADRANT	L-1.1C	6/6/02
LAYOUT & PAVING PLAN – WEST QUADRANT	L-1.2-C	5/10/02
LAYOUT & PAVING PLAN – NORTH QUADRANT	L-1.4.B-C	5/10/02
LAYOUT & PAVING PLAN – NORTH QUADRANT	L-1.5-C	6/6/02
SILVER PLAZA FOUNTAIN DETAILS	L-2.1-C	7/23/02
LIGHTING FIXTURE	L-2.3-C	6/6/02
SITE DETAILS	L-2.4-C	7/23/02
GRADING PLAN NORTH QUADRANT	L-3.1-C	6/6/02
GRADING PLAN WEST QUADRANT	L-3.2-C	5/10/02
PLANTING PLAN	L-4.1-C	7/23/02
PLANTING DETAILS	L4.2-C	2/27/02
PLANTING SOILS & SUBSURFACE DRAINAGE PLAN	L-4.2.A-C	7/23/02
PLANTING DETAILS	L4.3-C	7/23/02
PHOTOMETRICS	L-8.1-C	6/6/02

Parcel B, C, & D, BLOCK C

Specifications    15-May-2002    Brown & Craig Architects Inc., for Land Design Inc.

Note: These plans to compliment the Land Design Inc. Construction Documents

Exhibit E-2 To Ground Lease  
List of Public Improvements for Gateway Plaza

Downtown Silver Spring  
Section C Gateway Plaza  
Drawing Document List

Civil Engineering Drawings      Loiederman Associates      Construction Documents

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
EXISTING CONDITIONS & DEMOLITION PLAN	C-1	5/15/02
SEDIMENT & EROSION CONTROL PLAN	C-2	6/17/02
SEDIMENT & EROSION CONTROL DETAILS	C-3	5/15/02
SITE & GRADING PLAN	C-4	6/17/02
ON-SITE STORM DRAIN & PAVING PLAN	C-5	6/17/02
STORM DRAIN PROFILES	C-7	6/17/02
STORM DRAIN PROFILES & DETAILS	C-8	6/17/02
SWM PLAN & DETAIL SHEET	C-9	5/15/02
SWM PLAN & DETAIL SHEET	C-10	5/15/02
ON-SITE WATER & SEWER PLANS	C-11	6/17/02
ON-SITE WATER & SEWER PROFILES	C-12	6/17/02
ROAD IMPROVEMENT PLAN-GEORGIA AVE	C-13	6/17/02
ROAD IMPROVEMENT PLAN-GEORGIA AVE	C-14	6/17/02
ROAD IMPROVEMENT DETAILS	C-15	6/17/02
TRAFFIC CONTROL & SIDEWALK CLOSURE PLAN	C-16	5/15/02

Parcel B, C, & D, BLOCK C

Specifications    15-May-2002    Brown & Craig Architects Inc., for Loiederman Associates

Note: These plans to compliment the approved MNCPPC Signature Set

Exhibit E-2 To Ground Lease  
List of Public Improvements for Gateway Plaza

Downtown Silver Spring  
Section C Gateway Plaza  
Drawing Document List

Civil Engineer Drawings

Loiederman Associates

MNCPPC Signature Set

Name

Drawing

Date

BLOCK C - UTILITY PLAN

C0.1

2/27/01

Parcel B, C, & D, BLOCK C

Specifications 15-May-2002 Brown & Craig Architects Inc., for Loiederman Associates

Note: These plans to compliment the Loiederman Associates Construction Documents

Exhibit E-3  
List of Public Improvements for Silver Plaza

Exhibit E-3 To Ground Lease  
List of Public Improvements for Silver Plaza

Downtown Silver Spring  
Section C Silver Plaza  
Drawing Document List

Landscape Drawings      Land Design Inc.      Construction Documents

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
SITE PLAN	L-1.1	5/15/02
LAYOUT PLAN – CENTRAL QUADRANT	L-1.4	6/17/02
PAVING DESIGNATION PLAN	L-1.6	6/17/02
PAVING PLAN – WEST QUADRANT	L-1.6B	5/15/02
PAVING PLAN – CENTRAL QUADRANT	L-1.6C	6/17/02
PAVING PLAN – EAST QUADRANT	L-1.6D	5/15/02
SILVER PLAZA FURNITURE LAYOUT PLAN	L-1.7	5/15/02
GRADING PLAN WEST QUADRANT	L-2.2	6/17/02
GRADING PLAN CENTRAL QUADRANT	L-2.3	6/17/02
PLANTING PLAN	L-3.0	5/12/02
PLANTING SOILS/SUBSURFACE DRAINAGE	L-3.1	6/17/02
IRRIGATION PLANS	L-3.2	5/15/02
IRRIGATION DETAILS	L-3.3	5/15/02
SITE DETAILS	L-4.0	5/15/02
SITE DETAILS	L-4.1	5/15/02
SITE DETAILS	L-4.2	6/17/02
SITE DETAILS	L-4.2B	6/17/02
PLANTING DETAILS	L-4.3	6/17/02
PLANTING DETAILS	L-4.3B	5/15/02
SITE FURNITURE DETAILS	L-4.4	6/17/02
SILVER PLAZA FOUNTAIN DETAILS	L-4.5	6/17/02
SILVER PLAZA FOUNTAIN DETAILS	L-4.5A	6/17/02
SILVER PLAZA FOUNTAIN NOTES	L-4.5E	6/17/02
SILVER PLAZA FOUNTAIN DETAILS	L-4.5.1	6/17/02
SILVER PLAZA FOUNTAIN DETAILS	L-4.5.2	6/17/02
SILVER PLAZA FOUNTAIN DETAILS	L-4.5.3	6/17/02
LIGHTING FIXTURES	L-4.6	6/17/02
PAVEMENT MARKING/SIGNAGE DETAILS	L-4.7	5/15/02

Parcel B, C, & D, BLOCK C

Specifications    15-May-2002    Brown & Craig Architects Inc., for Land Design Inc.

Note: These plans to compliment the approved MNCPPC Signature Set

Exhibit E-3 To Ground Lease  
List of Public Improvements for Silver Plaza

Downtown Silver Spring  
Section C Silver Plaza  
Drawing Document List

Landscape Drawings      Land Design Inc.      MNCPPC Signature Set

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
COVER SHEET	CS.1-C	7/23/02
LAYOUT & PAVING PLAN – WEST QUADRANT	L-1.2-C	5/10/02
LAYOUT & PAVING PLAN – CENTRAL QUADRANT	L-1.3-C	7/23/02
LAYOUT & PAVING PLAN – NORTH QUADRANT	L-1.5-C	6/6/02
SILVER PLAZA FOUNTAIN DETAILS	L-2.1-C	7/23/02
SITE DETAILS	L-2.2-C	6/6/02
SILVER PLAZA FOUNTAIN DETAILS	L-2.2.A-C	5/10/02
LIGHTING FIXTURE	L-2.3-C	6/6/02
SITE DETAILS	L-2.4-C	7/23/02
GRADING PLAN WEST QUADRANT	L-3.2-C	5/10/02
GRADING PLAN CENTRAL QUADRANT	L-3.3-C	7/23/02
PLANTING PLAN	L-4.1-C	7/23/02
PLANTING DETAILS	L4.2-C	2/27/02
PLANTING SOILS & SUBSURFACE DRAINAGE PLAN	L-4.2.A-C	7/23/02
PLANTING DETAILS	L4.3-C	7/23/02
PHOTOMETRICS	L-8.1-C	6/6/02

Parcel B, C, & D, BLOCK C

Specifications    15-May-2002    Brown & Craig Architects Inc., for Land Design Inc.

Note: These plans to compliment the Land Design Inc. Construction Documents



Exhibit E-3 To Ground Lease  
List of Public Improvements for Silver Plaza

Downtown Silver Spring  
Section C Silver Plaza  
Drawing Document List

<u>Name</u>	<u>Drawing</u>	<u>Date</u>
EXISTING CONDITIONS & DEMOLITION PLAN	C-1	5/15/02
SEDIMENT & EROSION CONTROL PLAN	C-2	6/17/02
SEDIMENT & EROSION CONTROL DETAILS	C-3	5/15/02
SITE & GRADING PLAN	C-4	6/17/02
ON-SITE STORM DRAIN & PAVING PLAN	C-5	6/17/02
ELLSWORTH DRIVE PAVING PLAN	C-6	6/17/02
STORM DRAIN PROFILES	C-7	6/17/02
STORM DRAIN PROFILES & DETAILS	C-8	6/17/02
ON-SITE WATER & SEWER PLANS	C-11	6/17/02
ON-SITE WATER & SEWER PROFILES	C-12	6/17/02
ROAD IMPROVEMENT DETAILS	C-15	6/17/02

Parcel B, C, & D, BLOCK C

Specifications 15-May-2002 Brown & Craig Architects Inc., for Loiederman Associates

Note: These plans to compliment the approved MNCPPC Signature Set

Exhibit E-3 To Ground Lease  
List of Public Improvements for Silver Plaza

Downtown Silver Spring  
Section C Silver Plaza  
Drawing Document List

Civil Engineer Drawings	Loiederman Associates	MNCPPC Signature Set
<u>Name</u>	<u>Drawing</u>	<u>Date</u>
BLOCK C - UTILITY PLAN	C0.1	2/27/01

Parcel B, C, & D, BLOCK C

Specifications 15-May-2002 Brown & Craig Architects Inc., for Loiederman Associates

Note: These plans to compliment the Loiederman Associates Construction Documents

Exhibit F  
Section Development Schedule

IMANAGE:291973 v.8 05500.0165 Curr: 09/03/02 03:43pm

Orig: 9/3/02 3:21:50 PM Ed: 9/3/02

# EXHIBIT 'F'

## Section C – Development Schedule

	<u>Finish</u>
<b>Leasing:</b>	
60% pre-leasing (combined with Sect B)	6/28/02
stabilized leasing	fall '04
<b>A &amp; E / Permit:</b>	
Construction Drawings complete	5/02
Building permit issued	8/16
<b>Loan Closing:</b>	9/4/02
Ground lease executed	
Plazas & Ellsworth lease executed	
PIC II – facade, plazas & Ellsworth	
MHT façade easement	
Construction contract executed	

### Construction

#### Private Improvements:

	<u>Start</u>	<u>Finish</u>
Steel Shop Drawings/Fabrication	8/30/02	11/21/02
Mobilize	9/5/02	9/5/02
Demolition Existing Structure	10/7/02	11/7/02
Building pad Prep.	11/4/02	11/22/02
Footings & Foundations	10/28/02	11/29/02
Underslab MEP	11/4/02	11/15/02
Slabs on Grade	11/25/02	12/27/02
Erect Steel	11/18/02	1/17/03
Pour Elevated Floor Slabs	12/9/02	1/24/03
City Place Loading Dock	11/25/02	5/16/03
Roofing	1/23/03	3/5/03
Cementitious Fireproofing	1/6/03	3/12/03
Metal Stud Framing	3/3/03	4/18/03
Precast/Brick/Eifs/Storefront	3/17/03	5/16/03
MEP Rough In	1/20/03	4/28/03
Electrical Gear	3/17/03	5/30/03
HVAC Equipment	3/17/03	5/30/03
Finishes and MEP Fixtures	3/31/03	6/5/03
Systems Start-up and Punchlist	6/23/03	7/18/03

## Public Improvements

Mobilize	9/5/02	9/5/02
Historic Façade Bracing Shop Drawings	9/5/02	9/20/02
Brace Historic Façade	9/20/02	10/11/02
Construction Disruption Mitigation Plan	9/30/02	9/30/02
Dismantle Historic Façade	10/14/02	11/4/02
Demolition Existing Structure	10/7/02	11/7/02
Façade renovation/Storefront	3/17/03	7/31/03
Glass Elevator	3/10/03	7/31/03
Gateway Plaza Streetscapes	10/21/02	3/31/03
Silver Plaza Streetscapes	5/22/03	9/30/03
Silver Plaza Fountain Artwork	8/1/03	9/30/03
Glass Elevator Neon Artwork	8/1/03	9/30/03

## Tenant Improvements:

Tenant construction begins	6/30/03
Tenants open for business	fall '03 to spring '04

## EXHIBIT G

### List of Use Restrictions/Items Applicable to Particular Premises

A. The Landlord has the right up to four (4) times per year to close one or more of Interior Ellsworth Drive (which right shall not apply during the period of December 3 and 24 in any year, except as expressly provided below), Gateway Plaza and Silver Plaza for public festivals, provided that (i) at no time shall public drop-off and valet service be closed on Gateway Plaza without the express consent of Tenant, or its Affiliate leasing Section C, and (ii) no such closure shall restrict vehicular ingress and egress between Georgia Avenue and Interior Ellsworth Drive or into or out of the Wayne Avenue Garage. The Landlord agrees to exercise this right in a commercially reasonable manner and the Tenant agrees to reasonably cooperate with the Landlord or its Affiliates to facilitate such festivals in a manner that does not unreasonably, adversely impact the tenants in Sections B or C. Landlord hereby agrees, and covenants to (i) clean up and remove all rubbish, trash and debris resulting from such public festivals and/or holiday parade; (ii) promptly repair any and all damage to the Project caused thereby; and (iii) procure and maintain liability insurance under a "special events policy". Prior to any such event, Landlord shall deliver to Tenant an insurance certificate evidencing such coverage and naming Tenant and Mortgagee as additional insureds thereunder. Notwithstanding the restrictions on closure between December 3 and 24<sup>th</sup>, as set forth above, as one of its four (4) closures, each calendar year Landlord shall have a one time right to conduct a holiday parade between December 3<sup>rd</sup> and December 24<sup>th</sup>, provided that (X) such parade to last not longer than 4 hours, and (Y) Landlord shall provide at least 45 days prior written notice of the date and time of such holiday parade.

B. The Tenant may close Ellsworth Drive, Gateway Plaza and Silver Plaza to public vehicular access from time to time, provided that (i) at no time shall public drop-off and valet service be closed on Gateway Plaza without the Landlord's and the American Film Institute's express consent, not to be unreasonably withheld or delayed. Further, the Tenant may only close Ellsworth Drive, Gateway Plaza and Silver Plaza to public vehicular access after coordinating with the Landlord to ensure that the Landlord does not have any programs planned with which such closures would unreasonably conflict, and (ii) no such closure shall restrict vehicular ingress and egress between Georgia Avenue and Interior Ellsworth Drive or into or out of the Wayne Avenue Garage.

C. The foregoing notwithstanding, during such periods of time Interior Ellsworth Drive, the Gateway Plaza and or Silver Plaza may be closed by Tenant, as more particularly set forth above, Tenant shall have the right to locate kiosks, booths and permit pushcart, vendor sales and general retail activity in the Gateway Plaza, Silver Plaza and Interior Ellsworth Drive. At all other times, such retail activities shall not be

## Exhibit G

### List of Use Restrictions/Items Applicable to Particular Premises

permitted on Interior Ellsworth Drive nor shall it cover in excess of twenty percent (20%) of either of the Silver Plaza Premises or Gateway Plaza Premises. No other use may be made of the Leased Premises without Landlord's prior written approval.

D. Tenant or an Affiliate shall have the exclusive right to cause to be operated at reasonable market rates, terms and conditions, a valet parking service in the Gateway Plaza for the benefit of the Downtown Silver Spring Project including patrons of the AFI and Round House Theater. In the event such valet parking service is not being provided by Tenant or its Affiliate at the times needed by AFI or Round House, or similar occupant of the Silver Theatre and Annex Addition, the Landlord, AFI, and/or Round House (or similar occupant of the Silver Theatre and Annex Addition) shall be entitled to provide such service for their own benefit on a non-exclusive basis. If the Landlord, AFI or Round House, or other similar occupant of the Silver Theatre and Annex Addition provides such valet parking service at the Gateway Plaza, they may, at their respective sole discretion, provide such service during such periods to the entire Downtown Silver Spring Project, at reasonable market rates, terms and conditions. If AFI, Round House Theater or a similar occupant of the Silver Theatre and Annex Addition is providing such service, it shall be subject to customary insurance and reasonable indemnification requirements of Tenant or its Affiliate.

E. Tenant or its Affiliate as tenant under the Section C Ground Lease shall have a right of first refusal to purchase the Gateway Plaza and Silver Plaza from the Landlord at then current fair market value in the event the Landlord desires to sell or transfer one or both of the Plaza Areas to other than a public or quasi-public entity, business improvement district, or similar such entity or to the American Film Institute or Roundhouse Theater. Any such sale shall be subject to the terms of this Lease for the term of this Lease. This right shall survive any such transfer and apply to the transferee.

F. Subject to the terms of the Declaration and the terms of this Lease, Tenant shall have the sole and exclusive right to manage and program the uses of the Project and to impose and enforce such reasonable rules and regulations as Tenant deems necessary to maintain order and to promote the safety, security and economic success of the Downtown Silver Spring Project.

## **EXHIBIT H**

### **List of Private Improvements**

To include, without limitation:

- Escalator
- Signage
- Stairs
- ATM machine
- Theater ticket kiosks
- Music system (speakers and conduit)
- LED screen and support structure
- Freight elevator

**Exhibit H**

**List of Private Improvements**