PERSONAL PROPERTY LEASE AGREEMENT
(NIKE TN, INC. – PART OF 3100 NEW FRAYSER BOULEVARD)

This Personal Property Lease Agreement (this “Lease”) is made and entered into as of December 31, 2016 (“Effective Date”), by and between ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public not-for-profit corporation of the State of Tennessee, with an office in Memphis, Tennessee (“Lessor”), and NIKE TN, INC., a corporation organized under the laws of the State of Oregon (“Lessee” and “Applicant”).

RECITALS

A. Lessor owns or will acquire that certain personal property described in Exhibit “A” (the “Personal Property”), which Personal Property is currently located at the property described in Exhibit “B” hereto (the “Real Property”), subject to the permitted encumbrances described in Exhibit “C” (the “Permitted Encumbrances”).

B. Lessor is organized pursuant to the provisions of Sections 7-53-101 to 7-53-316, inclusive, of the Tennessee Code Annotated, as amended (the “Act”), and is authorized thereunder and shall, in order to fulfill its public purpose of contributing to increased employment and increasing manufacturing in Memphis and Shelby County, Tennessee, proceed as expeditiously as practicable to acquire, install, and furnish the Personal Property, acting by and through Lessee as its agent for such work, to the end that Lessee may obtain full use and possession thereof at the earliest practicable date.

C. Pursuant to the provisions of Tennessee Code Annotated Section 7-53-305(b), Lessor has found, and does hereby find, that the PILOT (hereinafter defined) payments provided for herein are in furtherance of Lessor’s public purposes as defined in said section.

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, the sufficiency of which is acknowledged and agreed, intending to be legally bound, LESSOR AND LESSEE AGREE AS FOLLOWS:
AGREEMENT

The Recitals are included herein as if copied verbatim. Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and covenants and agreements hereinafter contained and to be kept and performed by Lessee, does hereby, by these premises, lease and let unto Lessee, for the Term and upon the conditions stated herein, the Personal Property, as more particularly described hereinafter.

ARTICLE I

DEFINITIONS

In addition to words and terms elsewhere defined in this Lease, the following words and terms used in this Lease shall have the following meanings, unless some other meaning is plainly intended or unless defined in the Policies and Procedures, as defined below. In any conflict between the definitions contained in the Policies and Procedures and this Lease, the Lease definitions shall control.


Additional Rent: Defined in Section 4.02 hereof.

Annual Report: The annual performance report required to be filed with Lessor by Applicant in substantially the form attached hereto as Exhibit “F”, as such form may be revised from time to time by Lessor, which report is described in more detail in Section 5.04(b) hereof.

Applicant: NIKE TN, INC., a corporation organized under the laws of the State of Oregon, as identified in the Application.

Application: The application filed by Applicant with Lessor on or about October 8, 2012. Upon reasonable request by Lessor, Applicant shall add or correct an omission in the Application.

Benefit to Cost Ratio: The ratio of the public benefit to the citizens of the County, as measured by new local tax revenues generated for the City and the County as a result of the Project, to the public cost to the citizens of the County, as measured by the City and County ad valorem property tax revenues foregone as a PILOT incentive to the Applicant, as set forth in Exhibit “H”.

Board Counsel: Mark E. Beutelschies, the office of which is located at 999 S. Shady Grove Road, Suite 500, Memphis, Tennessee 38120, or such other person as Lessor may hereafter designate in writing to Lessee.

City: The City of Memphis, Tennessee.
Completion of the Installation of the Personal Property: That day upon which the installation of the Personal Property in the Premises has been completed in accordance with Lessee’s plans and specifications, as certified by Lessee.

County: Shelby County, Tennessee.

Diversity Plan: Applicant’s diversity plan attached hereto and incorporated herein as Exhibit “G” or as otherwise approved by Lessor.

Improvements: Improvements to be constructed upon the Real Property and affixed thereto as part of the realty so as to become real property fixtures, as provided for in the Application.

Jobs, Wages and Capital Investments: The following items used in the Project, as otherwise reflected in the Resolution: (i) net new jobs: 250, retained jobs: 1,662, (ii) average wage: $35,000 (includes regular wages, overtime, paid holidays and paid vacations, but no other benefits); and (iii) capital investment: $301,000,000 (includes $167,000,000 in real property improvements and $134,000,000 in tangible personal property additions).

Lender: Any lending institution which has loaned money or extended credit to Lessee which indebtedness or obligations of Lessee are secured by a pledge or other security instrument encumbering the Personal Property or Lessee’s leasehold interest therein, and written notice of the name and address of such Lender has been received by Lessor.

Lessee: The legal entity or natural person identified in the first paragraph of this Lease, or any permitted transferee or assignee pursuant to Section 3.06 below.

Mayors’ Letter: The letter from the Mayor of the County and, if applicable, the Mayor of the City, a copy of which is attached hereto as Exhibit “D”.

Municipality: Any incorporated city or town located in Shelby County, Tennessee, including the City.

Permitted Encumbrances: The encumbrances on the Personal Property, as described in Exhibit “C” attached hereto and incorporated herein.

Personal Property: The personal property described in Exhibit “A” attached to this Lease.

PILOT: The “payment in lieu of taxes” benefits awarded to Applicant by Lessor at a meeting of the board of directors of Lessor, as reflected in the Resolution, the payments for which will be made in accordance with the provisions of Section 6.02 hereof.

Policies and Procedures: Lessor’s Policies and Procedures, in effect on the date of approval of the PILOT evidenced by this Lease, a copy of the criteria and matrix contained therein are
attached hereto as Exhibit “E”.

Premises: The Real Property, together with the Improvements thereupon at the time of the execution of this Lease, or at any time thereafter.

Project: The purchase of the Personal Property, the conveyance of the Personal Property to Lessor, the leasing of the Personal Property by Lessee from Lessor, and the work of installing the Personal Property on the Premises, as well as the expenditure of the Capital Investment, and the creation and maintenance or retention of the Jobs and the Wages and the compliance with all Special Conditions pursuant to the terms of this Lease, as more particularly set out in the Application.

Ramp-Up Period: The period commencing on the effective date of that certain Real Property Lease Agreement by and between Lessor and Lessee, dated as of December 31, 2013 and ending 4 years or 1 year after issuance of final certificate of occupancy or final phase of the Project thereafter, whichever comes first, at the end of which period Applicant or Lessee shall be responsible for compliance with the Jobs, Wages and Capital Improvements requirements and any Special Conditions set forth in the Resolution.

Real Property: The parcels of real property described in Exhibit “A” attached to this Lease, collectively, which parcels are municipally known as: (i) 5151 Shelby Drive, Memphis, Tennessee 38118 (Tax Parcel No. 0942000065C); and (ii) 3100 New Frayser Boulevard, Memphis, Tennessee 38128 (Tax Parcel No. 0900780023).

Resolution: The portion of the minutes of the meeting of the board of directors of Lessor held on October 17, 2012, including the resolution contained therein, in which the PILOT was referenced, authorized and awarded to Applicant, including all amendments thereto and extensions thereof.

Special Circumstances: Any Special Conditions for which points are granted in Lessor’s matrix.

Special Conditions: The conditions of Lessor’s approval of the Application as identified in the Resolution.

Term: The term of this Lease, as set out in Article III hereof.

ARTICLE II

ACQUISITION AND INSTALLATION

Section 2.01. Acquisition and Installation of Personal Property.

(a) Lessee shall cause the Project to be undertaken and the Personal Property to be installed in the Premises in accordance with Lessee’s plans and specifications, the Application
and the Resolution. In order to accomplish the acquisition and installation of the Personal Property, Lessee is hereby authorized to execute in its own name, without reference to Lessor, all necessary contracts, agreements, purchase orders and related documents. In no event shall Lessor be liable upon any such contracts, agreements, purchase orders or other related documents.

(b) Any development or construction signs located at or on the Real Property shall read: "The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, has provided financial incentives and other assistance for this project."

Section 2.02. Rights against Contractors, Etc.

(a) Lessee covenants and agrees that it will use commercially reasonable efforts to insure that the Personal Property is installed in the Premises in a good and workmanlike manner. Upon the Completion of the Installation of the Personal Property, upon the request of Lessee, if any of the following inure to the benefit of Lessor, Lessor will assign to Lessee (i) all warranties and guaranties of any and all contractors, subcontractors or suppliers for the furnishing or installation of the Personal Property or any part thereof, and (ii) any and all rights or causes of action against any of the foregoing.

(b) In the event of default of any contractor, subcontractor or supplier under any contract made by Lessee in connection with the Personal Property, Lessee may, at its expense, either in its own name or in the name of Lessor, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor or supplier which Lessee deems reasonably necessary, and in such event Lessor hereby agrees to cooperate fully with Lessee and, at Lessee's expense, to take all action necessary to effect the substitution of Lessee for Lessor in such action or proceeding. Lessee shall indemnify Lessor from all claims, damages, liability, attorney's fees, and court costs if Lessee shall prosecute or defend any such action or proceeding or take any other action in Lessor's name. Any net amounts recovered by Lessor as damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to Lessee.

Section 2.03. Completion at Lessee's Expense. Subject to the provisions of Section 9.02 hereof, Lessee agrees to cause the Personal Property to be acquired and installed in or at the Premises and to pay all of the costs thereof and Lessee agrees to complete the acquisition and installation of the Personal Property no later than the time provided in the Application unless the time to complete the acquisition or installation is extended in writing by Lessor, which extension will not be unreasonably withheld or delayed.

ARTICLE III
TERM AND CONCURRENT AGREEMENTS

Section 3.01. Term. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, at the rent set forth herein, the Personal Property. Subject to the terms and provisions
herein contained, this Lease shall be and remain in full force and effect for a term of 15 years from the date hereof ("Term").

Section 3.02. Use of Project and Compliance with Laws. Lessee shall promptly comply or cause compliance with or obtain waivers of all laws, ordinances, orders, rules, regulations, and requirements of duly constituted public authorities applicable to the Project, at no expense to Lessor, whether or not the same are foreseen or unforeseen, ordinary or extraordinary. Lessee shall throughout the term of this Lease cause the Personal Property to be used in a manner that will constitute a "project" within the meaning of Section 7-53-101 of the Act. Applicant has represented to Lessor in the Application that Applicant will use and operate the Personal Property for the purposes set forth in the Application, create or retain the Jobs at the Wages and make the Capital Investment as approved in the Resolution. Any proposed changes in such use and operation of the Project or the Personal Property must be submitted to Lessor for advance written approval. Pursuant and subject to the provisions of Article IX of this Lease, Lessor reserves the right to terminate this Lease if the use of the Personal Property becomes materially inconsistent with the representations summarized above and as stated in the Application. All such representations in the Application shall be deemed warranties under this Lease and are incorporated herein by reference.

Section 3.03. Contesting Laws. Lessee shall not be required to comply or cause compliance with applicable laws, ordinances, orders, rules, regulations or requirements, so long as Lessee shall give written notice to Lessor and, at Lessee's expense, shall be contesting the same or the validity thereof in good faith and in accordance with applicable law. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, provided notice is first given to Lessor if the contest is made in the name of Lessor. Lessor agrees that it will, at Lessee's expense, cooperate with Lessee therein as Lessee may reasonably request. At Lessor's option, Lessee shall provide Lessor with such security reasonably satisfactory to Lessor to indemnify Lessor from all claims, damages, liability, attorney's fees and court costs if Lessee shall pursue any claim or right in Lessor's name.

Section 3.04. Lessor's Title to Personal Property. Lessor has or will acquire title to the Personal Property subject to the Permitted Encumbrances. Provided that no uncured Event of Default (as defined in Section 9.01 hereof) exists under this Lease, Lessor will not, without the prior written consent of Lessee, directly or indirectly create or consent to the creation or existence of any lien or encumbrance (other than as requested by Lessee in writing) upon the Personal Property or Lessor's interest therein or convey title to the Personal Property in any manner whatsoever, except as otherwise provided herein or as requested or approved by Lessee in writing.

Section 3.05. Additional Encumbrances; Subordination; Estoppel.

(a) Provided that no uncured Event of Default exists under this Lease and Lessor is notified in writing of the details of any proposed transaction prior to the closing of such transaction, Lessee shall, at all times, have the right to encumber by pledge and security agreement or other proper instrument in the nature thereof its leasehold interest in and to the
Personal Property, or portions thereof, provided that any and all such encumbrances of Lessee’s leasehold interest shall, at all times be subject to the interest of Lessor (unless subordinated to such encumbrances as hereinafter provided) and shall impose no personal liability on Lessor and further provided that Lessee shall indemnify Lessor against any losses, costs or expenses which Lessor may incur as a result of executing any such encumbrance or subordination agreement requested by Lessee. Upon execution and recordation of any such pledge, security agreement, financing statement or other instrument, Lessor shall be notified in writing that such pledge, security agreement, financing statement or other instrument has been executed and delivered by Lessee and Lessor shall also be furnished with the address of the Lender involved in such encumbrance to which copies of notices are to be mailed. Lessor hereby covenants that it will thereafter contemporaneously mail to such Lender a duplicate copy of any and all notices in writing which Lessor may, from time to time, give or serve upon Lessee under and pursuant to the terms and provisions of this Lease. Unless and until such notice is mailed to such Lender, no action shall be taken by Lessor which would be prejudicial to such pledge, security agreement, financing statement or other instrument in the nature thereof or to the rights of the Lender thereunder. If a Lender requires Lessor to execute any certificate or other closing documents, Lessee shall be responsible to reimburse Lessor’s actual expenses, costs and reasonable attorney fees incurred in reviewing closing documents or otherwise expended by Lessor as a result of Lessee’s transactions.

(b) Such Lender may, at its option, during the Term hereof, pay any of the rent due hereunder or do any other act or thing required of Lessee by the terms hereof, or do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions hereof, in order to prevent the termination of this Lease. All payments so made and all things so done and performed, by any such Lender shall be as effective to prevent a termination of the rights of Lessee hereunder as the same would have been if done and performed by Lessee instead of by the Lender. The Lender shall in no event, however, be required to pay the Basic Rent.

(c) If requested by Lessee, Lessor shall subordinate its interest in the Personal Property to any encumbrances placed on the Personal Property in favor of any Lender, and to the rights, title and interest of any Lender in and to the Personal Property, such subordination to be in form and content reasonably requested by Lessee on behalf of such Lender. Additionally, Lessor agrees to execute a pledge or security agreement in favor of such Lender encumbering the interest of Lessor if required by Lessee. However, in the event of Lessor’s execution of any such subordination, pledge, security agreement or other document, Lessee agrees to pay the reasonable cost and expense of Lessor in connection therewith, including, without limitation, reasonable attorney fees, and to indemnify Lessor against any losses, costs or expenses which Lessor may incur as a result of executing any such document or instrument. Any such encumbrances shall impose no personal liability on Lessor.

Lessor acknowledges that the interests of any Lender in the Personal Property shall take priority at all times to the extent necessary to protect and preserve the existence and priority of the collateral or security interest or other lien rights of such Lender in and to the Personal Property, while at the same time preserving unto such Lender the rights set forth herein and in
Section 9.03 of Article IX hereof to cure any defaults of Lessee hereunder in order to keep this Lease, and the PILOT, from being terminated.

Section 3.06. Subletting and Assignment

(a) Except as provided in Section 3.05, Lessee or Applicant may not assign, sublet or otherwise transfer any of its rights or duties hereunder without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Any such transfer is subject to the Policies and Procedures, including, without limitation, the payment of any transfer fee. A change in the use and operation of the Personal Property from that, which is approved in the Resolution shall be deemed a transfer of the interest, for which Lessor’s prior consent shall be required. Notwithstanding anything to the contrary set forth in this Section 3.06 or any other provision of this Lease, if, as a result of any proposed sublease or assignment, or other transfer, the beneficiary of the PILOT program would be a party other than Applicant, then the consent of Lessor shall be required.

(b) In the event of the termination of this Lease pursuant to the provisions of Article IX hereof, Lessor expressly agrees that such termination shall be subject to all the rights and privileges of any and all permitted sublessees of Lessee under the terms and provisions of their respective subleases so long as each such sublease shall be approved in writing by Lessor and so long as the sublessee under such sublease shall keep and perform all of the covenants and provisions of their respective subleases and shall agree to attorn to Lessor as lessor under the direct lease from Lessor, as hereinafter provided. It is agreed that, in the event of the termination of this Lease pursuant to Article IX hereof, Lessor will thereupon enter into a direct lease of the Personal Property to and for the benefit of such permitted sublessee, upon all of the same terms and provisions herein set forth and contained (including, but not limited to, the use provisions set forth in Section 3.02 hereof, and the payment in lieu of taxes provisions set forth in Section 6.02 hereof) for the balance of the Term of this Lease which would have remained, but for such termination; provided, however, Lessor’s obligation to enter into such direct lease with such permitted sublessee shall be subject to the following conditions: (i) the termination of this Lease shall not have resulted from the failure of such permitted sublessee, as Applicant or otherwise, to perform any of its undertakings and obligations as provided in this Lease or in the Resolution; (ii) no material uncured breach or event of default shall then be existing on the part of such permitted sublessee, under the sublease, as to which notice has been given and the time for curing (as provided in such sublease) has then expired; (iii) the use of the Personal Property shall be for the purposes set forth and provided in this Lease and as approved in the Resolution; and (iv) the Personal Property and the Project will continue to be used in a manner that will constitute a “project” within the meaning of Section 7-53-101 of the Act.

(c) If Applicant is a general partnership, a change during the Term of this Lease in the identity of any partner from one existing on the date this Lease is executed shall be deemed a change in the identity of Applicant. If Applicant is a limited partnership, a change during the Term of this Lease in the identity of any general partner, or limited partners with, in the aggregate, interests greater than twenty percent (20%) of the partnership, from those existing on the date this Lease is executed shall be deemed a change in the identity of Applicant. If
Applicant is a closely held corporation at the time this Lease is executed, a change in the identity of the shareholders who in the aggregate own more than twenty percent (20%) of any class of stock of the corporation from those existing on the date this Lease is executed shall be deemed a change in the identity of Applicant. If Applicant is a limited liability company, a change during the term of this Lease in the identity of members with, in the aggregate, interest greater than twenty percent (20%) of the limited liability company from those existing on the date this Lease is executed shall constitute a change in the identity of Applicant. If Applicant is an entity whose shares are sold or traded publicly at the time this Lease is executed, a change in the identity of the shareholders shall not be deemed a change in the identity of Applicant unless ownership of more than 50% of the interest in such entity shall change ownership in one or a series of transactions. Applicant shall provide Lessor with written evidence of the assumption by such assignee of Applicant’s obligations under the sublease and the agreement by such assignee to be bound by the terms and conditions of this Lease, in form and substance reasonably satisfactory to Lessor.

(d) Lessor hereby covenants that it will contemporaneously mail to any permitted sublessee of Lessee, at the address provided for in Section 15.08 below, or otherwise, a duplicate copy of any and all notices in writing which Lessor may, from time to time, give or serve upon Lessee under and pursuant to the terms and provisions of this Lease. Unless and until such notice is mailed to such sublessees, no action shall be taken by Lessor which would be prejudicial to any such sublease, or to the rights of the sublessee thereunder. If any sublessee requests that Lessor execute any certificate or other documents, such sublessee shall be responsible to reimburse Lessor’s expenses, costs, and reasonable attorney fees incurred in reviewing documents or otherwise expended by Lessor as a result of such sublessee’s transactions.

(e) Any permitted sublessee may, at its option and to the extent permitted by its sublease, at any time before the rights of Lessee shall have been terminated, as provided for herein, pay any of the rent due hereunder or do any other act or thing which may be necessary and proper to be done in the observance of the covenants and conditions hereof, so as to prevent the termination of this Lease. All payments so made and all things so done and performed by such sublessee shall be as effective to prevent a termination of the rights of Lessee hereunder as the same would have been if done and performed by Lessee instead of by such sublessee.

ARTICLE IV

RENT

Section 4.01. Basic Rent. Lessee shall pay to Lessor at its offices at 100 Peabody Place, Suite 1100, Memphis, Tennessee 38103, or to an agent or trustee designated by Lessor, without notice or demand, as absolutely net basic rental (herein called “Basic Rent”) for the entire Term of this Lease, the sum of One Thousand Five Hundred and No/100 Dollars ($1,500.00), which shall be payable in advance prior to the commencement of the term of this Lease.
Section 4.02. Additional Rent. Lessee shall also pay, as additional rent, those amounts set out in ARTICLE VI hereof and all other reasonable sums which Lessee shall be obligated to pay hereunder, whether or not such sums are specifically designated as additional rent (collectively, the “Additional Rent”). Lessee shall also pay, as Additional Rent, all closing fees and expenses in accordance with the Policies and Procedures, all sums advanced by Lessor for or on behalf of Lessee hereunder. The Additional Rent shall be due by Lessee in accordance with the applicable provisions of this Lease and, if no date is specified, then on demand. If such sums are advanced by a sublessee, such sums shall be credited against any amounts due to Lessee by any such sublessee. Any sums advanced by Lessor for or on behalf of Lessee after an Event of Default hereunder shall bear interest at the highest lawful rate existing on the date of advance.

ARTICLE V

REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNIFICATION OF LESSOR

Section 5.01. Acceptance of Personal Property; No Warranties. Lessee acknowledges and agrees that it has examined and is fully familiar with the Personal Property and recognizes that, because the plans and specifications for the acquisition and installation of the Personal Property have been prepared at its direction and the Personal Property is to be acquired and installed under its supervision, Lessor makes no representation or warranty, either express or implied, and offers no assurance to anyone as to the condition or title of the Personal Property, that the Personal Property will be suitable for Lessee's purposes or needs or that the funds presently available for the Project will be sufficient to pay in full the cost of the Project. As to Lessor, Lessee accepts the Personal Property in its condition as of the date of the commencement of the Term of this Lease, and assumes all risks, if any, resulting from the failure of the Completion of the Installation of the Personal Property, or the failure to comply with all legal requirements applicable thereto.

Section 5.02. Failure or Defect in Title. Lessor shall not be liable to Lessee or to anyone for any damages resulting from failure or any defect in Lessor's title which interferes with, prevents or renders burdensome the use or possession of the Personal Property or the compliance by Lessee with any of the terms of this Lease, or from delay in obtaining possession of all or any part thereof, from any cause whatsoever. No such failure of or defect in Lessor's title or delay in possession shall terminate this Lease or entitle Lessee to any abatement, in whole or in part, of Basic Rent, Additional Rent, or any other sums provided to be paid by Lessee pursuant to any of the terms of this Lease.

Section 5.03. Release and Indemnification.

(a) Lessee, for itself, its successors and assigns, hereby releases and forever discharges Lessor, including any incorporator, member, director, officer, employee, counsel or agent of Lessor, its successors and assigns from any claims, demands, causes of action, accounting or any other matter arising in connection with Lessee's possession and use or operation of the Personal
Property or the Project; provided, however, that nothing contained herein shall be deemed to release Lessor from its undertakings pursuant to this Lease.

(b) Lessee covenants and agrees, at Lessee’s expense, to pay, and to indemnify and save Lessor, and any incorporator, officer, director, agent, counsel or employee of Lessor, harmless, against and from any and all claims by or on behalf of any person, firm, corporation or governmental authority, arising from (i) the use, possession, conduct, or management of or from any work done to or with the Personal Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances or regulations affecting the Personal Property or the use of the Personal Property, (ii) any condition of the Personal Property, (iii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iv) any act or negligence of Lessee, or any of its agents, contractors, servants, employees or licensees, (v) any accident, injury or damage whatsoever caused to any person, firm or corporation, by the Personal Property, (vi) Lessor’s ownership of the Personal Property, (vii) the making of this Lease or any transactions related hereto, and from and against all costs, reasonable counsel fees, expenses, and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section.

(c) Upon notice from Lessor, Lessee shall defend Lessor or any of its incorporators, officers, directors, agents, counsel, or employees (collectively, “Lessor’s Agents”), in any action or proceeding brought in connection with any of the above. Lessor shall be entitled to provide its own defense and charge Lessee with its expenses incurred in connection therewith, including, without limitation, reasonable attorneys’ fees.

(d) The provisions of this Section shall survive the termination of this Lease.

Section 5.04. Application Representations; Reports.

(a) Lessee and Applicant warrant and represent that they and their sublessee, if any, will comply with all terms and conditions applicable to them in the Resolution, the Mayors’ Letter and the Special Conditions, including without limitation the creation or maintenance of the Jobs at the Wages represented in the Application, the timely completion and use of the Project, the Capital Investment in the Project and the timely compliance with the Special Conditions, all as approved by in the Resolution; provided, however, that Lessee and Applicant shall not be deemed to have breached those warranties and representations as to Jobs, Wages, Capital Investment or Special Conditions unless an uncured Event of Default exists pursuant to Section 9.01(b). Lessee acknowledges that, as provided in the Application and the Resolution, the Jobs, Wages, Capital Investment and Special Conditions in and for the Project are to be commenced by Applicant in the County by the end of the Ramp-Up Period, after which Lessee shall maintain the requirements of the Project for the duration of the Term; provided, also, however, that any jobs derived from merger, loss of contract, significant loss of business or cessation of Applicant’s current operations in the County shall not be counted as new Jobs unless mutually agreed upon by Lessor and Applicant. In order to qualify as new Jobs for the Project, no existing jobs shifted to the Project from another location in the County without Lessor’s approval will be
included, nor shall any Job be counted toward the job creation of more than one PILOT project at a time, regardless of whether such Job was shifted to the Project with Lessor’s permission. If Applicant loses any significant contract and notifies Lessor of that fact, Lessor may, in Lessor’s sole discretion, discuss the same with Applicant, and Lessor may allow deductions in Jobs if Applicant can show that the Jobs were lost due to lost written contracts.

(b) On or before January 31 of each year during the Term of this Lease (the “Report Due Date”), Applicant or Sponsor shall, without any additional notice from Lessor, file or cause to be filed with Lessor an Annual Report substantially in the form attached hereto as Exhibit “F” or in such other form as shall be requested from time to time by Lessor upon notice to Applicant containing all information required therein in order for Lessor to determine compliance of Applicant with the terms and requirements of this Lease, the Resolution and the Mayors’ Letter as well as any other information reasonably requested by Lessor to determine such compliance. Each Annual Report shall contain a statement that the Annual Report is after due inquiry true and accurate to the best of their knowledge, information and belief and shall be sworn to and executed under oath by an authorized representative of Applicant before a notary public or other official authorized to administer oaths. Any Lessee or Applicant utilizing a third party vendor to provide the workforce for the Project shall provide a certified report form from the vendor in substantially the form attached hereto as Exhibit “T”. The vendor report shall be in a form approved by Lessor and shall include statements that the agreement with the third party vendor is in writing and is at least one (1) year in duration, that the vendor is in material compliance with all civil rights, labor and immigration laws, and any other information reasonably requested by Lessor. The vendor report shall be filed with the Annual Report.

(c) Lessee and Applicant agree that Lessor shall have the right during business hours, upon reasonable advance notice to Lessee or Applicant, to inspect the Personal Property and to require information, including but not limited to the necessary books, records and accounts related to the Project of either or both of Applicant and Sponsor, to determine compliance with the provisions of Section 5.04 hereof and the accuracy of any Annual Report.

Applicant and Sponsor hereby authorizes Lessor, its agents, servants, employees and representatives, to inspect the Project and the Personal Property at any time during normal business hours. Applicant further authorizes Lessor to obtain copies of any and all reports filed by Applicant or Sponsor with the State of Tennessee or any other governmental entity, including, without limitation, reports concerning the employees or business operations of the Project.

(d) If Applicant or Sponsor fails to file the Annual Report by the Report Due Date, Lessee shall also pay, as Additional Rent a late fee of Fifty Dollars ($50.00) for each day the Annual Report is late (February 1 or later) until the Annual Report is filed, subject to a maximum fee of Three Thousand Dollars ($3,000) which will accrue interest at the rate of 1.5% per month or the maximum rate allowed by law. Late Annual Reports shall be accompanied by the payment of the late fee when filed.

(e) Lessee shall comply with any now or hereafter enacted reporting requirement of the Act, including, without limitation, the report required by Tennessee Code Annotated Section
7-53-305(f). Lessee shall provide a copy of the compliance report filed with the Tennessee State Board of Equalization (due on October 1) by October 15 of each year.

Section 5.05. Authorized Use. The Personal Property shall be used for the purposes set forth in the Application and the Resolution. Lessee hereby covenants and agrees that the Personal Property shall, during the Term, be used only and exclusively for lawful and moral purposes, and no part of the Personal Property shall be used in any manner whatsoever for any purpose in violation of the laws of the United States, the State of Tennessee, or the ordinances and laws of the City and the County.

Section 5.06. Minimum Wages and Benefits. All persons working on the Project must make at least Ten and No/100 Dollars ($10.00) per hour. Additionally all Project workers must at a minimum receive medical benefits where Applicant pays at least fifty percent (50%) of the cost of the insurance program. Applicant shall certify its compliance with this Section 5.07 in its Annual Report.

Section 5.07. Title VI Compliance. Applicant shall materially comply with all obligations applicable to Applicant contained in Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000 d) and the rules and regulations related thereto.

Section 5.08. Shelby County Ethics Code Compliance. Applicant shall comply with all obligations applicable to Applicant contained in the Shelby County Ethics Code, as amended from time to time after written notice from Lessor of any modifications.

Section 5.09. Diversity Plan. Applicant shall comply with all obligations contained in the Diversity Plan, as approved by Lessor.

Section 5.10. Benefit to Cost Ratio. Applicant represents that, to the best of its knowledge, the information utilized in the Benefit to Cost Ratio analysis performed by Lessor, as set forth in Exhibit “H” hereto, specifically including any such information taken from the Application, is based on true and accurate data consistent with the intentions of Applicant with respect to the Project.

ARTICLE VI

TAXES, OTHER CHARGES AND EXPENSES OF LESSOR

Section 6.01. Agreement to Pay Additional Rent. Lessee agrees to pay and discharge, as Additional Rent, during the Term hereof, punctually, as and when the same shall become due and payable:

(a) Each and every cost, expense, and obligation of every kind and nature, foreseen or unforeseen, for the payment of which Lessor or Lessee is or shall become liable by reason of their interests in the Personal Property or any portion thereof, by reason of any right or interest of Lessor or Lessee in or under this Lease, or by reason of or in any manner connected with or
arising out of the possession, operation, maintenance, alteration, repair, rebuilding or use of the Personal Property or the requirements of this Lease.

(b) All taxes of every type and description, utility charges, assessments (including, but not limited to, assessments for public improvements or benefits), payments in lieu of taxes and all other impositions and charges of every kind and nature, extraordinary or ordinary, general or special, which at any time during the Term shall be or become due and payable by Lessor or Lessee which shall be levied, assessed or imposed in connection with the Personal Property or the Project.

(c) All charges for gas, water, sewer, electricity, light, heat, power, telephone and other utilities and services used, rendered or supplied to or in connection with the Personal Property.

(d) The reasonable post closing costs of Lessor and reasonable out of pocket expenses, including without limitation reasonable attorneys’ fees, which are incurred by Lessor in connection with administering the Personal Property and the Project or performing any act which it is required to do or deems necessary under this Lease, all of which shall not exceed Two Thousand Dollars ($2,000) per annum without the prior written consent of Applicant.

(e) All of Lessor’s closing costs and reasonable expenses incurred, if any, in connection with the acquisition of the Personal Property by Lessor.

Lessee covenants to furnish to Lessor, promptly upon request, proof of the payment of any amount or charge required to be paid by Lessee hereunder. Furthermore, Applicant shall pay all fees and charges as required by the Resolution and the Policies and Procedures.

Section 6.02. Payments in Lieu of Taxes.

(a) Each year during the Term hereof, Lessee shall make PILOT payments as Additional Rent, in lieu of County and City ad valorem taxes, in amounts computed as indicated below:

<table>
<thead>
<tr>
<th>Period</th>
<th>Basis of Computation/Proportion of Taxes Otherwise Due and Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>From the effective date of this Lease until the 15th anniversary of said effective date</td>
<td>(i) For the PILOT payment in lieu of County taxes, One Hundred and No/100 Dollars ($100.00); plus twenty-five percent (25%) of the then current tax assessment for each year which would exist if the Personal Property were owned by a tax paying entity, times the then current millage rate. (ii) For the PILOT payment in lieu of City taxes,</td>
</tr>
</tbody>
</table>
One Hundred and No/100 Dollars ($100.00); plus ten percent (10%) of the then current tax assessment for each year which would exist if the Personal Property were owned by a tax paying entity, times the then current millage rate.

From the 15th anniversary of the effective date of this Lease until termination of this Lease and the reconveyance of the Personal Property to Lessee pursuant to the provisions of this Lease. For the PILOT payment in lieu of both County and City taxes, the then current tax assessment that would exist if the Personal Property were owned by a tax paying entity, times the then current millage rates.

(b) In no event shall such PILOT payments be less than the amount of ad valorem taxes that were due and payable on the Personal Property for the period immediately preceding the date of acquisition by Lessor, except in the event of a Corporate Headquarters (as defined in the Policies and Procedures) project or a partial assessment. The PILOT payments shall be paid in the same manner and to the same tax collectors as are ad valorem taxes paid in the County, the City or any other Municipality. Lessee shall have the right, in the name of Lessor, at its sole expense and without any expense to Lessor, to seek and prosecute an adjustment, by appeal or otherwise, of any tax assessment that is made by the tax assessor, and is applicable to the Personal Property. Notwithstanding the foregoing or any other provisions of this Lease, however, it is the express intention of the parties hereto that, pursuant to the provisions of Tennessee Code Annotated Section 7-53-305, the Personal Property and the leasehold interests therein of Lessee, or any sublessee, shall be exempt from all taxation in the state of Tennessee, and that the PILOT payments as provided for in this Section 6.02 shall be made by and accepted from Lessee in lieu of all ad valorem taxes which are or may be assessed against the Personal Property and the leasehold interests therein of Lessee or any sublessee for and during the term of this Lease. If, following an Event of Default, the Personal Property should legally be placed on the ad valorem tax rolls of the County, the City or any other Municipality, the payment in lieu of taxes shall terminate and Lessee shall pay ad valorem taxes as required of a tax-paying entity. In the event Lessee's leasehold interest, but not Lessor's fee interest, shall become subject to ad valorem taxation, the payment in lieu of taxes called for hereunder shall continue, but shall be reduced on a cumulative basis by the amount of ad valorem taxes paid by Lessee with regard to its leasehold interest in the Personal Property. In the event the payment in lieu of taxes obligation terminates, Lessee shall still have the right to exercise its option set forth in Section 11.01 hereof. In such event, the provisions of Sections 11.01 and 11.03 shall apply and Lessor shall reconvey the Personal Property to Lessee, subject to any then existing indebtedness created or incurred by or at the request of Lessee; and Lessee shall pay e Lessor, as consideration therefor, the payment provided for in Section 11.01 hereof.

(c) All tax bills for payments in lieu of taxes as provided for in Section 6.02 shall be sent to Lessee at Nike, Inc., Attn: Al Logan, Tax Manager, One Bowerman Drive, Beaverton, Oregon 97005, or to such other entity or address as Lessee may hereafter designate and provide to the tax collectors.
(d) In the event that the Premises is not, at the commencement of the Term hereof, situated within the City or some other Municipality so as to cause the Personal Property to be subject to ad valorem taxation as a part of a Municipality, but subsequently, by annexation, incorporation or otherwise, becomes part of a Municipality during the Term, then Lessee shall make additional payments in lieu of taxes, as Additional Rent, in lieu of the ad valorem taxes of the Municipality from and after the effective date of the annexation or incorporation of the Premises into the Municipality, such payments to be billed to Lessee, and paid by Lessee to the appropriate tax collector for the Municipality, upon the same terms and conditions and in the same manner as provided for the PILOT payments provided in Section (a) above as to PILOT payments in lieu of Municipality taxes. Notwithstanding the above, this Lease shall not provide benefits binding any Municipality for any Premises located in an unincorporated area of the County that is in an annexation reserve area of a Municipality. However, upon annexation, any portion of the Premises located in a City annexation reserve area shall automatically be included in the PILOT program of Lessor pursuant to the terms of this Lease with an additional closing fee assessed.

(e) The PILOT payments shall be due and payable on the same dates as ad valorem tax payments are due to the County, the City or any other applicable Municipality (as the case may be). If any such PILOT payments are not paid by the applicable delinquency dates for payment of the corresponding County, City or other applicable Municipality ad valorem taxes (as the case may be), then Lessee shall pay a penalty with respect to such delinquent PILOT payment from and after the delinquency date in the same amount as the penalty and all other charges which would be due on the corresponding County, City or other applicable Municipality ad valorem taxes.

(f) The PILOT payments shall be a lien on the Personal Property, which lien and PILOT obligation shall be enforceable in the same manner as ad valorem taxes.

(g) Lessee has the affirmative obligation to pay the PILOT payments due under this Lease. Lessor shall have no obligation to notify Lessee of any PILOT payments due under this Lease, the non-payment or delinquency of such payments or any interest or penalties resulting from the delinquency or non-payment of any such payments. Lessor shall also have no obligation to notify Lessee of any assessment or reassessment of the Personal Property, or any appeal of such assessment or the results thereof.

Section 6.03. Other Taxes, Assessments, or Other Charges. Except as provided for in Section 6.02, but subject to Lessee's right to reduce its payments in lieu of taxes pursuant to Section 6.02 hereof in the event Lessee's leasehold interest becomes subject to ad valorem taxation, in the event any local, state, or national governmental body or agency enacts or imposes any tax, assessment, or other charge on personality or leasehold interests which are not in existence or collected as of the date of this Lease, Lessee shall pay said tax, assessment, or other charge as Additional Rent under this Lease and said tax, assessment, or other charge, if based on the assessment assigned to personality, shall be calculated on an assessment determined as though the Personal Property were owned by a tax-paying entity.
Section 6.04. Survival. The obligations of Lessee to pay any amount due at the termination of this Lease pursuant to this Article VI, shall survive the termination of this Lease.

ARTICLE VII

INSURANCE

Section 7.01. General Requirements. All insurance required hereby shall (i) be placed with responsible insurance companies qualified to do insurance business in Tennessee and against which Lessor has no reasonable objection, (ii) be evidenced by certificates filed with Lessor, (iii) be in form and substance reasonably acceptable to Lessor, (iv) contain an undertaking by the respective insurers that such policies shall not be modified or canceled without prior written notice given to Lessor, (v) provide that the proceeds of such insurance shall be payable to Lessor and Lessee as their respective interests may appear, and (vi) to the extent obtainable, provide that any loss shall be payable to Lessor notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance. It is understood that, at Lessee’s option, such proceeds shall either be made available for the repair or restoration of the Personal Property, or paid to Lessee upon its exercise of its option to purchase the Personal Property set forth in Article XI hereof. Notwithstanding the foregoing, Lessor’s or Lessee’s entitlement to insurance proceeds shall be subject to the rights of any Lender holding any encumbrance upon, or security interest in, the Personal Property or Lessee’s interest in the Personal Property and to the rights of any sublessee under a permitted sublease pursuant to Section 3.06.

Section 7.02. Fire and Extended Coverage. Lessee shall at its expense and as the payment of Additional Rent keep the Personal Property insured against loss or damage by fire and earthquake, with an extended coverage endorsement for such other hazards as are normally covered by such endorsement at the full insurable value of the Personal Property.

Section 7.03. Public Liability Insurance. Lessee shall, at its expense and as the payment of Additional Rent, maintain comprehensive general public liability insurance naming Lessor as an additional insured against claims for bodily injury, death, or property damage occurring on, in or about the Premises in an amount of not less than $5,000,000.00 for injury or death of a single person, $5,000,000.00 for a single accident, and $5,000,000.00 for property damage combined single limit coverage. This requirement may be met by furnishing more than one policy provided that the total coverage is in the amounts specified. Lessor shall be furnished with certificates of such insurance as well as evidence of payment of the premiums therefor.

Section 7.04. Renewal. Not less than ten (10) days prior to the expiration dates of the policies, certificates of the renewal thereof, reasonably satisfactory to Lessor shall be deposited with Lessor.
Section 7.05. **Blanket Insurance Coverage.** Lessee may maintain the insurance required under this Lease through a blanket insurance policy or policies acceptable to Lessor. Lessee will furnish to Lessor certificates of such insurance coverage acceptable to Lessor.

**ARTICLE VIII**

**MAINTENANCE, REPAIR AND REPLACEMENT**

Section 8.01. **Lessee's Agreement to Maintain and Repair.** Lessee acknowledges it received the Personal Property in good order and condition and agrees that, at its expense, Lessee will keep and maintain the Personal Property in good repair and condition, reasonable wear and tear and damage by fire or other casualty being expressly excepted. Lessee shall promptly make or cause to be made all ordinary and extraordinary, foreseen and unforeseen, repairs, including the maintenance, repair and replacement necessary to keep the Personal Property in good repair and operating condition to the end that the Personal Property is kept in good and lawful order and condition, wear and tear from reasonable use and damage by fire or other casualty expressly excepted, whether or not such repairs are due to any laws, rules, regulations or ordinances hereinafter enacted which involve a change of policy on the part of the governmental body enacting the same. All permanent replacements, renewals, attachments and accessories made to, placed on or affixed to any part of the Personal Property shall become a part of the Personal Property and the property of Lessor as made; provided, however, that in the event that the Personal Property is transferred to Lessee, whether as a result of the exercise by Lessee of its right to purchase pursuant to Article XI hereof, or otherwise, any bill of sale, deed or instrument of transfer shall include not only the Personal Property, but also all such replacements, renewals, attachments and accessories as aforesaid.

Section 8.02. **Lessor's Repairs.** Upon an Event of Default, Lessor may, but shall not be required to, make any repairs, replacements or renewals of any nature or description in connection with this Lease or maintain the Personal Property in any way. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor. If Lessor shall (in its sole discretion) advance funds with which to make such repairs, replacements, renewals, or other expenditures, such sums shall be payable by Lessee as Additional Rent hereunder pursuant to Section 4.02 above.

Section 8.03. **Replacements/Additions to Personal Property.** Subject to Sections 2.01 and 3.02 hereinabove, Lessee shall have the right to make replacements of, additions to, alterations of, and improvements to the Personal Property, and to modify all of the above at its expense, as it in its discretion may determine appropriate, provided, however, that the same shall not materially decrease the value of the Personal Property or materially change the use thereof and further provided that any replacement, addition or alteration which increases the value of the Personal Property in excess of One Hundred Ten Percent (110%) of the value of the Personal Property conveyed to Lessor immediately prior to the effective date of this Lease must be approved by Lessor. All work done in connection with such additions, alterations or improvements shall be done promptly and in good workmanlike manner. Lessee shall have no obligation to restore or return the Personal Property to its original condition. The cost of such
replacements, additions, alterations or improvements shall be paid for by or through Lessee. In the event Lessee determines to replace any item of Personal Property, Lessee shall deliver to Lessor a bill of sale conveying title to the replacement item to Lessor and, upon receipt thereof, Lessor shall deliver to Lessee (or to Lessee's designee) a bill of sale (as provided for in Section 11.03 hereof) for the item being replaced. Upon the expiration or termination of this Lease, all such replacements, additions, alterations or improvements shall remain and shall belong to and be the property of Lessor, subject, however, to Lessee's option to purchase under Section 11.01 hereof:

Section 8.04. Lessee's Other Personal Property. Lessee or its permitted sublessee may at any time or times during the Term hereof install or commence the installation of any machinery, equipment, furnishings, trade fixtures, and other personal property owned by Lessee or its permitted sublessee, to such extent as Lessee may deem desirable, provided, however, that such installation shall not be permitted to interfere with the use and operation of the Project as set forth in the Application and approved in the Resolution.

Section 8.05. Removal of Other Personal Property. In the event Lessee or its permitted sublessee determines that any items of Personal Property installed pursuant to Section 8.04 have become inadequate, obsolete or worn out and that the removal thereof will not interfere with the operation or substantially decrease the use of the Project for the purposes of this Lease, Lessee may remove such items of Personal Property from the Premises and sell, trade in, exchange or otherwise dispose of the same.

ARTICLE IX

DEFAULT; REMEDIES

Section 9.01. Events of Default. If any one or more of the following events (herein called "Events of Default") shall happen, this Lease may, subject to the provisions of Section 9.04(d), be terminated, at the option of Lessor without demand or notice except as provided herein:

(a) If default shall be made in the due and punctual payment of Basic Rent or Additional Rent for more than thirty (30) days after written notice to Lessee from Lessor that such rent has become due and payable and is unpaid.

(b) If default (to the extent provided in the following subsections (i), (ii), (iii) and (iv) of this Section 9.01(b)) shall be made by Applicant in its representations and warranties contained in the Application or in Section 5.04(a) of this Lease dealing with the creation or maintenance of Jobs, Wages and Capital Investment or the compliance with the Special Conditions, and such default is not cured within the cure period as set out hereinafter, to-wit:

(i) If Lessee or Applicant shall fail, within the Ramp-Up Period, to create or maintain the number of Jobs required by the Resolution to be created or retained by the Project or such Jobs are not maintained thereafter from year to year during the entire Lease Term; or
(ii) If Lessee or Applicant shall fail, within the Ramp-Up Period, to achieve and to pay the total Wages for the Jobs required by the Resolution to be created or retained in conjunction with the Project or to maintain thereafter that level of Wages throughout the Term; or

(iii) If Lessee or Applicant shall fail, within the Ramp-Up Period, to contribute the total Capital Investment to the Project, or cause such contribution to be made, as required by the Resolution; or

(iv) If Lessee or Applicant shall fail, within the Ramp-Up Period, to comply with any of the Special Conditions.

Upon determination by Lessor that Lessee or Applicant is in default as specified in this Section 9.01(b), Lessor shall give written notice of such default to Lessee and to Applicant and Lessee and Applicant shall have a period thereafter of sixty (60) days in which to cure such default, except in the case where a Lessee has been in default pursuant to Section 9.01(f) within the same calendar year in which case the cure period for this Section 9.01(b) shall be for thirty (30) days from the written notice of the 9.01(b) default. No Event of Default shall be deemed to have occurred under this Subsection 9.01(b) so long as the Project would, under the Policies and Procedures, qualify for PILOT incentives no less than those provided in Section 6.02 of this Lease, as the same would be determined taking into consideration the totality of the Jobs, Wages, Capital Investment and Special Conditions then actually created or being maintained or contributed (as the case may be) by Lessee and Applicant. Notwithstanding the above, the rescoring of Wages for this Subparagraph 9.01(b) shall be scored using the current Shelby County per capita income ("PCI") at the time of the Event of Default. If Lessor determines that Lessee or Applicant is diligently pursuing cure of a default under this Section 9.01(b), Lessor may, in its sole but reasonable discretion, extend the time to cure such default or defaults.

(c) If any material representation or warranty made by Lessee or Applicant herein or in the Application, or in any statement or certificate furnished by Lessee or Applicant either required hereby or in connection with the execution and delivery of the Application or this Lease, is untrue in any material respect as of the date of the issuance or making thereof, this Lease may be terminated by Lessor upon five (5) days written notice. A statement by Applicant of the Jobs, Wages or Capital Investment to be included in the Project set forth in the Application shall not be considered a violation of this Section 9.01(c) if such statement is a statement of the reasonable expectations of Applicant on the date of the Application and on the date of this Lease.

(d) If Lessee or Applicant shall fail to occupy the Premises, or shall abandon the Premises or shall cease substantial operations at the Premises, or shall abandon the Personal Property and such acts or omissions shall remain uncured for more than thirty (30) days or Lessee or Applicant shall cease to operate the Project or abandon same for a period of thirty (30) days in which event Lessor may cancel this Lease on a thirty (30) days written notice to Lessee or Applicant. Lessee and Applicant shall give Lessor at least thirty (30) days written notice of its intention to abandon or terminate the Project or cease operations at the Premises.
(e) Lessee’s or Applicant’s failure to complete installation of the Personal Property by the expiration of the Ramp-up Period or other time required by the Resolution.

(f) Failure of Lessee or Applicant to file on time any Annual Report required under Section 5.04 hereof and the continuance of any such failure for more than thirty (30) days after written notice by Lessor to Lessee and to Applicant and Sponsor; or if any information contained in any such Annual Report is untrue in any material respect.

(g) The occurrence of a default or an Event of Default (including, in any case, the expiration of any permitted period for the curing of any such default) under any other agreement between Lessor and Lessee, Applicant or any sublessee of the Personal Property, or any default under any document executed by Lessee related to the Project or the Personal Property, including, without limitation, any pledges or other security documents encumbering the Personal Property, any of which such default or Event of Default causes the Project to be disqualified as, or cease to constitute, a “project” within the meaning of Section 7-53-101 of the Act.

(h) Any material change in the use or operation of the Personal Property or the Project from that set forth in the Application, as approved in the Resolution, without the prior written consent of Lessor.

(i) The failure of Lessee or Applicant to continuously operate a going business on the Premises in such a manner as to cause an uncured Event of Default pursuant to Section 9.01(b)(i), (ii), (iii) and (iv).

(j) The failure of Lessee and Applicant to maintain a Benefit to Cost Ratio of at least 1:1 at any time during the Term.

(k) The appointment by any court or under any law of a receiver, trustee or other custodian of the Personal Property, assets or business of Lessee, Applicant or Sponsor and the failure to have the same released or terminated within sixty (60) days after such appointment.

(l) The assignment by Lessee of all or any substantial part of its property or assets for the benefit of creditors and the failure to have such assignment released or terminated within sixty (60) days after such assignment.

(m) The levy of execution, attachment or other taking of a substantial part of the property or assets of Lessee or Applicant, or of the leasehold interest of Lessee or Applicant in the Personal Property by process of law or otherwise in satisfaction of any judgment, debt or claim, and the failure to have the same released or terminated within thirty (30) days after such levy of execution, attachment or other taking.

(n) Subject to the provisions of Article XI of this Lease, Lessee’s failure to surrender immediate possession of the Personal Property to Lessor or Lessor’s designee, upon expiration of the Term or such earlier termination as may be provided hereunder.
(o) The filing by or against (which involuntary filing is not dismissed within sixty (60) days of filing) Lessee, Applicant, or Sponsor of a petition for relief under the United States Bankruptcy Code or any proceeding for debtor or creditor relief.

(p) Failure to comply with Section 15.17, National Corporate Headquarters Termination, if applicable, and the continuance of any such failure for more than thirty (30) days after receipt of written notice thereof, if applicable.

(q) Failure to give any notice required under this Lease or the Resolution to be given to Lessor by Lessee or Applicant.

(r) Lessee or Applicant shall be in default under any lease or agreement with Lessor concerning or relating to the Project.

(s) If default shall be made by Lessee or Applicant in the due performance of or compliance with any of the terms of this Lease, and such default shall continue for thirty (30) days after Lessor shall have given Lessee or Applicant written notice of such default unless another cure period is specifically provided herein; or, in the case of any such default which cannot with due diligence be cured within such thirty (30) day period, if Lessee or Applicant or Sponsor shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any default not susceptible of being cured with due diligence within the thirty (30) days that the time of Lessee or Applicant within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with due diligence as determined by Lessor in its sole discretion.

Section 9.02. Force Majeure. The provisions of Sections 9.01 and 2.03 are subject to the limitation that, if by reason of force majeure, as defined below, either Lessee or Applicant is unable, in whole or in part, to carry out its agreements and covenants herein contained, other than its obligation to pay Basic Rent, Additional Rent, payments in lieu of taxes as provided in Section 6.02 hereof and any other monetary obligations under this Lease, then neither Lessee nor Applicant shall not be deemed in default during the continuance of such inability.

The term “force majeure” as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, order of any kind of the government of the United States or the State of Tennessee, or any of their departments, agencies, or officials, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbance, explosions, breakage or accident to machinery, transmission pipes, or canals, partial or entire failure of utilities or any other cause or event not reasonably within the control of Lessee or Applicant.

Lessee and Applicant, respectively, agree, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee and Applicant from carrying out their respective agreements and covenants, provided that the settlement of strikes, lockouts and other
disturbances shall be entirely within the discretion of Lessee, Applicant or Sponsor (as the case may be) and they shall not be required to make settlement of strikes, lockouts and other disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of Lessee, Applicant or Sponsor (as the case may be) unfavorable to them.

Section 9.03. Rights to Cure. Except with respect to the matters set forth in Section 9.01(b) above (as to which matters the rights set forth in Section 9.04(d) shall solely govern and apply), if Lessee, Applicant or Sponsor at any time shall fail to make any other payment or perform any other act on its part to be made or performed under this Lease such that an Event of Default (as defined in Section 9.01) shall have occurred and then be uncured, Lessor (or Lender or any permitted sublessee) may (but shall not be obligated to), upon five (5) days prior written notice to Lessee, Applicant and Sponsor and without waiving or releasing them from any obligations or defaults hereunder, make any such payment or perform any such act for their account and at their expense, and may enter upon the Premises for that purpose and take all such action thereon as may be reasonably necessary therefor. No such entry shall be deemed an eviction of Lessee. All sums so paid by Lessor (or by Lender or any permitted sublessee) and all necessary and incidental costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the performance of any such act by Lessor (or by Lender or any permitted sublessee), together with interest at the highest legal rate per annum from the date of the making of such payment or the incurring of such costs and expenses by Lessor (or by Lender or any permitted sublessee), shall be deemed Additional Rent hereunder and shall be payable by Lessee, Applicant or Sponsor (as the case may be) to Lessor or to Lender on demand or credited against any sums due to Lessee from such permitted sublessee (as the case may be), and Lessee, Applicant or Sponsor (as the case may be) covenant to pay any such sum or sums with interest at the rate stated above.

Section 9.04. Lessor's Rights Upon Default.

(a) Except as herein expressly otherwise provided, if an Event of Default occurs and shall be continuing for a period beyond the time allowed hereunder for curing said default, Lessor may exercise its right to terminate this Lease under Section 9.01 and without further notice may repossess the Personal Property; provided, however, that such remedies shall be exercised lawfully and in a manner which is not in contravention of the laws of the State of Tennessee.

(b) Except as herein expressly otherwise provided, if an Event of Default occurs and shall be continuing for a period beyond the time allowed hereunder for curing said default, Lessor shall also, prior to the expiration of the Term of this Lease and without any obligation on the part of Lessor to terminate this Lease, have the right of repossession and removal, after not less than fifteen (15) business days prior written notice to Lessee, Applicant and Sponsor of its intent to exercise such right and specifying the nature of the Event of Default, provided that such right shall be exercised lawfully and shall not be exercised in any manner in contravention of the laws of the State of Tennessee. In the event of the exercise of such right, without termination of this Lease, the Lease shall continue in full force and effect for the balance of its Term except that Lessee shall have no right of possession from the date of the exercise of such right; provided that
the exercise of such right shall not preclude the subsequent exercise of any other right under this Lease, including the right of termination pursuant to Section 9.01 hereof. Lessor shall be under no liability for or by reason of any such lawful repossession or removal.

(c) Lessee covenants and agrees to pay, and to indemnify Lessor from and against, all costs and charges, including reasonable counsel fees, lawfully and reasonably incurred in obtaining possession of the Personal Property after default by Lessee or upon expiration or earlier termination of the Term hereof, or enforcing any covenant or agreement of Lessee contained in this Lease.

(d) In the event of the occurrence of an Event of Default described in Section 9.01(b) hereof, this Lease shall not be terminated, so long as Lessee or Applicant complies with the provisions of this Section 9.04(d), but Lessor shall have the option, as hereinafter provided, to make a re-evaluation and adjustment (a "PILOT Adjustment") of the PILOT incentives provided in Section 6.02 of this Lease, and to amend Section 6.02 hereof accordingly. Any PILOT Adjustment, if made by Lessor, shall be based only upon the criteria of Jobs, Wages, Capital Investment and Special Conditions actually created, paid or made with respect to the Project. Notwithstanding the above, any Special Condition that is not a Special Circumstance shall be considered on a case by case basis for any PILOT Adjustment; but, in no event shall the PILOT Adjustment for a Special Condition that is not a Special Circumstance be for more than a two (2) year adjustment more than the total rescoring of the other rescoring items. Additionally, the rescoring of Wages for this Subparagraph 9.04(d) shall be scored using the current PCI at the time of the Event of Default. Any such PILOT Adjustment shall be made so as to produce and reflect from and after the effective date of the Event of Default (which includes any period allowed hereunder for the curing of any such default) the maximum PILOT Incentive (the "Adjusted PILOT Incentive") for which the Project would have been qualified or entitled under Lessor’s Policies and Procedures. In the event Lessor determines to make a PILOT Adjustment, Lessor shall notify Lessee, Applicant and Sponsor and afford Lessee, Applicant and Sponsor the opportunity to present such additional information with respect to the Project and to the proposed PILOT Adjustment, as may be appropriate to the determination, and Lessee, Applicant or Sponsor (as the case may be) shall promptly furnish such information as Lessor may request in connection with the making of such determination. Subject to the foregoing provisions, the decision of Lessor as to the Adjusted PILOT Incentive shall be in the sole discretion of Lessor. In the event that any PILOT Adjustment results in a determination that the PILOT incentives provided in Section 6.02 of this Lease are greater (with respect to the length of the Term of this Lease) than the Adjusted PILOT Incentive, then Lessor and Lessee shall enter into an amendment of this Lease to reflect such adjustment. In addition, Applicant shall thereupon pay (or cause to be paid) to the appropriate tax collectors, as an additional payment in lieu of taxes under Section 6.02 hereof, an amount (hereinafter called the "Recapture Payment") equal to the difference, if any, between (i) the total amount of the payments in lieu of taxes actually paid by or for the account of Lessee under Section 6.02 hereof for the period (hereinafter called the "Recapture Period") following the occurrence of such Event of Default and until the amendment of this Lease, as aforesaid, and (ii) the total amount of the payments in lieu of taxes for which Lessee would be obligated under the Adjusted PILOT Incentive for the Recapture Period (it being acknowledged that from and after the amendment of this Lease pursuant to the foregoing
provisions, Lessee will be making payments in lieu of taxes based upon the Adjusted PILOT Incentive). It is the intention of the parties, by the foregoing provisions, to provide that, after the effective date of the Event of Default, Lessee and Applicant shall not receive any greater PILOT incentives than they are entitled to as aforesaid. The obligation for any Recapture Payment required pursuant to this Section 9.04(d) shall survive the termination of this Lease and such obligation shall be a lien on the Personal Property and enforceable by any and all remedies available to enforce the payment of personal property taxes. Applicant and Sponsor hereby consents and agrees that any action or proceeding to enforce any of their obligations or to collect any payments due from them may be brought in the courts of the State of Tennessee in Shelby County, Tennessee, or in the courts of the United States of America for the Western District of Tennessee.

(e) If Applicant fails to exercise good faith in its attempt to satisfy the goals of its Diversity Plan, Lessor shall determine, in its reasonable discretion, if the Term of the Project should be adjusted to reflect said lack of good faith. In the case of any default attributable to a failure to satisfy the goals of the Diversity Plan, Applicant shall be given written notice of the default followed by sixty (60) days in which to cure the default pursuant to Section 9.01(s) hereof before further action is taken by Lessor.

(f) All of Lessor’s rights under this Section 9.04 are subject and subordinate to Lessee’s purchase option set forth in Article XI.

Section 9.05. Reletting. Except as otherwise provided herein, at any time or from time to time after the expiration of the Term pursuant to Section 9.01, Lessor may, (but shall be under no obligation to) relet the Personal Property or any part thereof for the account of Lessee, in the name of Lessee or Lessor, or otherwise without notice to Lessee, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), on such conditions and for such uses as Lessor in its discretion may determine; and Lessor may collect and receive the rents therefor. Lessor shall have the same right to relet if it shall exercise its right of repossession or removal without termination of this Lease as provided in Section 9.04(b) hereof. Lessor shall not be responsible or liable for any failure to relet the Personal Property or any part thereof, or for any failure to collect any rent due upon any such reletting. Any such reletting pursuant to this Section 9.05 shall, in all events, be subject to and expire upon the exercise of Lessee’s purchase option set forth in Article XI hereof.

Section 9.06. Survival of Lessee’s and Applicant’s Obligations. No termination of this Lease pursuant to Section 9.01 hereof or repossession of the Personal Property pursuant to Section 9.04 hereof, or otherwise, shall relieve Lessee and Applicant of their respective liability and obligations hereunder due or accrued on the date of such termination or repossession or of any liabilities or obligations which are expressly provided in this Lease to survive any such termination or repossession, all of which shall survive any such termination or repossession. In the event of the termination of this Lease pursuant to Section 9.01 or in the event that Lessor shall exercise its right of repossession without termination of the Lease as provided in Section 9.04(b), Lessee shall pay to Lessor the Basic Rent and all Additional Rent and other charges required to be paid, and not theretofore paid, under this Lease or otherwise, by Lessee up to the
time of such termination or repossession; and thereafter Lessee, until the end of what would have been the Term of this Lease in the absence of such termination or repossession and whether or not the Personal Property or any part thereof shall have been relet, shall be liable for and shall pay to Lessor as and for liquidated and agreed current damages for Lessee’s default:

(a) The Basic Rent, Additional Rent, and other charges which would be payable under this Lease by Lessee if the Term of this Lease had not been terminated or the Personal Property repossessed less:

(b) The net proceeds, if any, of any reletting effected for the account of Lessee pursuant to the provisions of Section 9.05, after deducting all of Lessor’s necessary and incidental expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys’ fees and expenses, employees’ expenses, reasonable alteration costs and expenses of preparation for such reletting. Lessee shall pay such current damages on the days on which the Basic Rent would have been payable under this Lease if the Term hereof had not been terminated or the Personal Property repossessed, and Lessor shall be entitled to recover the same from Lessee on each such day.

Section 9.07. Additional Remedies. In addition to such right to terminate this Lease and any other remedies provided for herein, whenever any Event of Default shall have happened and be continuing for a period beyond the time provided herein for curing the default, Lessor may (subject to the provisions of Section 9.04(d) hereof) take whatever other action at law or in equity may appear necessary or desirable to collect the Basic Rent, Additional Rent, and any other monetary obligation of Lessee hereunder when due, or to enforce any obligation, covenant, or agreement of Lessee, Applicant or Sponsor under this Lease. If Lessor elects to terminate this Lease after Lessee’s default, Lessor’s remedies also include, but are not limited to, Lessor’s right to convey the Personal Property to Lessee retaining a vendor’s lien for all sums due and payable to Lessor by Lessee at the time of the conveyance. However, this Section 9.07 shall not apply with respect to Lessee if Lessee exercises its option to purchase pursuant to Article XI, in which case the rights of Lessor and Lessee shall be governed by the provisions of Article XI. Any such conveyance to Lessee by Lessor shall not relieve or otherwise affect any liability of Applicant or Sponsor to Lessor.

Section 9.08. Lessor’s Rights Upon Default Due to Abandonment.

(a) Notwithstanding any other provision of this Lease to the contrary, in the event of an Event of Default under Section 9.01(d) of this Lease, after the expiration of any applicable notice and right to cure period contained in this Lease, in addition to the other rights and remedies provided for in this Lease, Lessee shall thereupon pay (or cause to be paid) to the appropriate tax collectors as an additional payment in lieu of taxes under Section 6.02 of this Lease, the Recapture Payment equal to the difference, if any, between (i) the total amount of the payments in lieu of taxes actually paid by or for the account of Lessee under Section 6.02 of this Lease for the Recapture Period following the date of abandonment as determined by Lessor (the “Abandonment Date”), and (ii) the total amount of taxes which would have been payable for the Recapture Period as if the Personal Property were then owned by a taxing entity. It is the
intention of the parties, by the foregoing provisions, to provide that, after the Abandonment Date, Applicant shall not receive any greater PILOT incentives than it is entitled to as determined by Lessor in its sole discretion. The obligation for any Recapture Payment required to be paid by Lessee (any other provision of this Lease to the contrary notwithstanding) shall constitute a lien upon the Personal Property and enforceable by any and all remedies as are available to enforce the payment of personal property taxes. Lessee hereby consents and agrees that any action or proceeding to enforce any of its obligations or to collect any payments due from it may be brought in the courts of the State of Tennessee in Shelby County, Tennessee, or in the courts of the United States of America for the Western District of Tennessee. In the event of any conflict between this Section 9.08 and any other provision of this Lease, this Section 9.08 shall control.

ARTICLE X

CONDEMNATION AND CASUALTY

Section 10.01. Condemnation Proceeds. If, during the Term, all or any part of the Personal Property is taken by the exercise of the power of eminent domain or condemnation, Lessee shall receive the entire award for the taking. If the award is disbursed by the condemning authorities to Lessor, Lessor shall immediately pay the award to Lessee. Lessee shall be entitled to the proceeds of any condemnation award or portion thereof separately awarded for damages to or takings of Lessee’s property or for damages on account of the taking or an interference with Lessee’s right to possession or use of the Personal Property.

Section 10.02. Termination of Lease Upon Condemnation. If title to, or the use or control of, all or substantially all of the Personal Property shall be taken by the exercise of the power of eminent domain or condemnation, or if such title, use, or control of a substantial part of the Personal Property shall be so taken as results in rendering same unsatisfactory to Lessee for the purposes for which the same was used immediately prior to such taking or condemnation or similar use (to be determined in the sole judgment of Lessee), Lessee shall have the right to either acquire the Personal Property pursuant to the provisions of Section 11.01 or terminate this Lease. Until the purchase or termination has taken place, this Lease shall continue in full force and effect without abatement of rent.

Section 10.03. Continuation of Lease Upon Condemnation. If a lesser portion of the Personal Property be taken by exercise of the power of eminent domain or condemnation, this Lease shall nevertheless continue in full force and effect without abatement of rent. If such taking shall have caused damage to, or necessitated restoration or repair of, any of the Personal Property, Lessee, at its sole cost and expense, shall promptly and diligently restore and repair to such condition as it shall deem reasonable in view of the nature of the taking and the then intended use of the Personal Property by Lessee.

Section 10.04. Minor Casualty. If a minor part of the Personal Property shall be destroyed or damaged, Lessee shall promptly notify Lessor and at Lessee’s expense, Lessee shall promptly and diligently restore, replace, and repair the same to such condition as it shall deem
reasonable in view of the nature of the damage and the then intended use of the Personal Property by Lessee.

Section 10.05. Substantial or Complete Casualty. If, during the Term, the entire Personal Property, or substantial part thereof, shall be damaged or destroyed to such an extent that restoration thereof cannot be accomplished within ninety (90) working days from the date of damage (to be determined in the sole judgment of Lessee), Lessee shall have the right to either restore the Personal Property as provided in Section 10.04, acquire the Personal Property pursuant to the provisions of Section 11.01, or terminate this Lease; provided, however, that in the event Lessee acquires the Personal Property pursuant to the provisions of Section 11.01, Lessor shall then assign to Lessee (to the extent not previously paid to Lessor) and shall then pay to Lessee (to the extent the same have previously been paid to Lessor but not applied to the repair or restoration of the Personal Property) all insurance proceeds arising out of such damage or destruction. The foregoing shall in no way, however, supersede or modify the rights of Lessee and any permitted sublessee (under a permitted sublease pursuant to the provisions of Section 3.06 hereof), as between themselves, as provided in any such permitted sublease.
ARTICLE XI

OPTION TO PURCHASE, INVESTMENT TAX CREDIT AND LIMITATIONS

Section 11.01. Option to Purchase. It is the intent of the parties hereto that the Lessee repurchase the Personal Property from the Lessor either (i) through the Purchase Option (as herein defined), (ii) upon expiration of the PILOT Term, or (iii) upon termination of this Lease for any other reason whatsoever. The repurchase shall be governed by the following provisions.

(a) Lessee shall have the option, at any time during the Term of this Lease and within ninety (90) days after the expiration or termination of this Lease, for any reason whatsoever, including without limitation a Lessee Event of Default, to purchase the Personal Property, subject to any then existing indebtedness created by or for the account of Lessee, as permitted or provided for in this Lease, for the sum of One Thousand and No/100 Dollars ($1,000.00) which shall be prepaid by Lessee at the time of execution of this Lease, but which prepayment shall not be deemed an exercise of Lessee’s option (the “Purchase Option”). Lessee shall notify Lessor in writing at least ten (10) days before the proposed date of purchase that Lessee desires to exercise the Purchase Option.

(b) Upon expiration of the PILOT Term or if the Lease is otherwise terminated for any reason and Lessee has not exercised the Purchase Option, Lessor shall provide written notice thereof within thirty (30) days after termination of the Lease. If Lessee fails to provide the necessary documentation to repurchase the Personal Property from Lessor within ninety (90) days of the notice, a fee equal to Two Thousand and No/100 Dollars ($2,000.00) per month, or any portion of a month, after the initial ninety (90) day period shall be charged until the Personal Property is reconveyed unless the delay is caused solely by Lessor. Such fee shall be assessed as Additional Rent until the reconveyance of the Personal Property to Lessee.

(c) In the event Lessee elects to purchase certain items, but less than all, of the Personal Property at separate times, Lessee shall pay the asforesaid purchase price of One Thousand and No/100 Dollars ($1,000.00) at the time the first item of Personal Property are conveyed to Lessee pursuant to the exercise of such option. Thereafter, upon each subsequent exercise of Lessee’s purchase option as to the remaining items of Personal Property which are then subject to this Lease, Lessee shall pay to Lessor, as additional purchase price for all items purchased upon each such subsequent exercise of the purchase option, the additional sum of Ten and No/100 Dollars ($10.00).

(d) The exercise of the Purchase Option by Lessee or termination of this Lease for any other reason whatsoever shall not relieve Lessee from the payment of any monetary obligations which shall be due and payable by Lessee (including, without limitation, any such amounts that shall have accrued) under this Lease as of the date of conveyance pursuant to such exercise, all of which shall be paid by Lessee. Lessee shall notify Lessor in writing at least ten (10) days before the proposed date of purchase that Lessee desires to exercise its option to purchase hereunder. Upon payment by Lessee of all expenses related thereto and any other sums
due and payable hereunder, Lessor shall convey the Personal Property to Lessee, subject to the liens of any Permitted Encumbrances, any bona fide encumbrance (as described in Section 3.05 hereof) and any other existing indebtedness incurred by or with the approval of Lessee and the rights of Lenders thereunder.

Section 11.02. Investment Tax Credit. Lessor and Lessee hereby elect and agree that Lessee shall be entitled to any investment tax or similar credit, or grants, with respect to the Personal Property now or hereafter authorized by the Internal Revenue Code, or other legislation, and Lessor agrees to take all reasonable action necessary to make such investment tax election and obtain the benefits for same for Lessee at Lessee's request and expense, and to obtain such grants.

Section 11.03. Conveyance of Title. In the event of any purchase of the Personal Property or any portion thereof by Lessee pursuant to any provision of this Lease, Lessor shall sell, transfer and convey title by a bill of sale thereto to Lessee subject to the Permitted Encumbrances and as thereafter created by or for the account of Lessee, as permitted or provided for in this Lease, but without making any warranties relating to title, fitness for a particular use, merchantability or any other express or implied warranties; and Lessor shall not otherwise be obligated to give or assign any better title to Lessee than existed on the first day of the Term of this Lease; provided, however, that Lessor acknowledges and agrees that Lessor has no authority or right to encumber the Personal Property or Lessor's interest therein by any encumbrances other than (i) the Permitted Encumbrances, (ii) those which Lessee has subsequently requested to be placed or caused to be placed against the Personal Property, (iii) those which Lessee has subsequently approved in writing to be placed against the Personal Property, or (iv) those for which Lessee is responsible under the terms and provisions of this Lease and which arise out of any default by Lessee in the performance of its obligations under this Lease. Any other conveyance or encumbrance (other than those described in clauses (i) through (iv) inclusive of the preceding sentence) by or for the account of Lessor shall in all respects be subject and subordinate to Lessee's leasehold interest as created under this Lease and to Lessee's right to acquire title to the Personal Property, free and clear of any such other conveyances or encumbrances, pursuant to Lessee's exercise of its option to purchase the Personal Property pursuant to this Article XI; and any such other conveyance or encumbrance, and any rights, liens or security interests created thereunder or arising therefrom shall be automatically terminated, released and extinguished by the transfer and conveyance of the Personal Property to Lessee by Lessor by a bill of sale as provided for in this Section 11.03, and thereafter all such conveyances, encumbrances, rights, liens or security interests shall be void and of no further effect. Subject to the foregoing, Lessee shall accept such title, subject, however, to (i) any liens, encumbrances, charges, exceptions, and restrictions not created or caused by Lessor or Lessor's Agents, and (ii) any laws, regulations, and ordinances.

Section 11.04. Survival of Rights. All provisions of this Article XI shall survive the expiration of the Term of this Lease (including any extensions thereof) or the termination of this Lease pursuant to any provision hereof (including, but not limited to, any termination pursuant to Article IX or Article X hereof).
ARTICLE XII

ENVIRONMENTAL MATTERS

Section 12.01 Lessee's Environmental Covenants. Lessee shall not cause or allow any Hazardous Materials to be used, generated, stored, or disposed of in connection with its possession, use or operation of the Personal Property to the extent that any such use, generation, storage or disposal is in violation of any applicable federal, state, county or local statute, law, regulation, rule, ordinance, code, license or permit. As used herein, “Hazardous Materials” shall include, but not be limited to, hazardous, toxic and radioactive materials and those substances defined as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances” or other similar designations in any federal, state, or local law, regulation, or ordinance. Lessor shall have the right at all reasonable times upon reasonable notice to inspect the Personal Property and (if the presence of Hazardous Materials in violation of any applicable law, regulation or ordinance is reasonably suspected) to conduct tests and investigations to determine whether Lessee is in compliance with the foregoing provision.

Section 12.02 Lessee's Remedial Covenants.

Provided that neither Lessor nor Lessor's Agents have created, or are otherwise responsible for the environmental problems or hazardous condition after taking possession of the Personal Property, Lessee covenants at its sole cost and expense, to remove or take remedial action with regard to any Hazardous Materials which Lessee has caused or allowed to be used, generated, stored or disposed of in connection with its possession, use or operation of the Personal Property in violation of any applicable law, regulation or ordinance or of this Lease during the Term of this Lease or any extension thereof for which any removal or remedial action is required pursuant to law, ordinance, order, rule, regulation or governmental action.

(a) No such removal or remedial action shall be taken except after reasonable advance written notice to Lessor; provided, however, that no notice shall be required if immediate action is required in order to comply with the requirements of any laws, rules, ordinances or regulations of any governmental entity or if immediate action would diminish the extent of any environmental problem or hazardous condition.

(b) Lessee shall indemnify Lessor for any action taken by Lessee, in accordance with Section 12.03 hereof to Lessor’s satisfaction.

Lessee shall at all times retain any and all liabilities arising from the handling, treatment, storage, transportation or disposal of any Hazardous Materials by Lessee or by any of Lessee’s contractors.

Section 12.03 Indemnification of Lessor.

(a) Lessee shall indemnify and hold Lessor and its officers, directors, agents, counsel and employees harmless from and against any and all liabilities, losses, claims, penalties, damages
(including, without limitation, consequential damages, interest, penalties, fines and monetary sanctions), and costs (collectively herein, “Loss”), and reasonable attorneys’ and consultants’ fees and expenses, court costs and all other out-of-pocket expenses (collectively herein, “Expense”) incurred or suffered by Lessor by reason of, resulting from, or in connection with, or arising in any manner whatsoever out of the breach of any warranty or covenant, or the inaccuracy of any representation, of Lessee contained or referred to in this Article XIII. Lessor shall be entitled to conduct its own investigation in connection therewith and provide its own defense and charge Lessee with its reasonable expense incurred in connection therewith, including any Loss or Expense.

(b) All covenants, agreements and indemnities of Lessee contained in this Article XIII shall survive the Term of this Lease or any extensions hereof and the consummation of the transactions contemplated in this Lease, and shall not be affected by an investigation by or on behalf of Lessee or by any information Lessee may have or obtain with respect thereof.

ARTICLE XIII

JOINDER OF APPLICANT

Applicant joins in this Lease for the purpose of making its representations, warranties, covenants and agreements as expressly set forth in the Application, the Resolution and this Lease, and acknowledging that the terms and provisions of any permitted sublease as provided under Section 3.06 hereof, are subject and subordinate to the terms and provisions of this Lease.

ARTICLE XIV

DIVERSITY PLAN

Applicant has submitted and Lessor has approved Applicant's Diversity Plan. Applicant shall comply with the Diversity Plan during the Term. Applicant shall submit to Lessor for review certified quarterly compliance reports for the three previous months by January 15, April 15, July 15 and October 15 of each year of the Term, or as otherwise required by Lessor. Applicant shall also include Diversity Plan compliance information in its Annual Report. If Applicant fails to comply with the approved Diversity Plan, Applicant may be subject to an adjustment of the Term or tax benefits granted herein, as set forth in Section 9.04(e) hereof.

ARTICLE XV

MISCELLANEOUS

Section 15.01. NO WARRANTIES BY LESSOR. LESSEE ACKNOWLEDGES AND AGREES (1) THAT THE PERSONAL PROPERTY IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY LESSEE; (2) THAT LESSEE IS SATISFIED THAT THE PERSONAL PROPERTY IS SUITABLE FOR LESSEE'S PURPOSES; (3) THAT LESSOR IS NOT A MANUFACTURER OR INSTALLER OF THE PERSONAL PROPERTY
NOR A DEALER IN PROPERTY OF SUCH KIND; (4) THAT LESSOR HAS NOT MADE ANY INSPECTION OF THE PERSONAL PROPERTY PRIOR TO ITS DELIVERY TO LESSEE; AND (5) THAT LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER WITH RESPECT TO THE PERSONAL PROPERTY OR THE DESIGN, VALUE, MERCHANTABILITY, FITNESS FOR LESSEE’S INTENDED USE OR ANY OTHER USE, CONDITION, DURABILITY, QUALITY OF MATERIAL OR WORKMANSHIP OR CONFORMITY OF THE PERSONAL PROPERTY TO THE SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO, DURABILITY OR SUITABILITY OF THE PERSONAL PROPERTY IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO. LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO LESSEE OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE FOLLOWING: (i) ANY LIABILITY (INCLUDING WITHOUT LIMITATION, STRICT OR ABSOLUTE LIABILITY IN TORT OR IMPOSED BY STATUTE), LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE PERSONAL PROPERTY OR BY ANY OTHER CIRCUMSTANCES IN CONNECTION THEREWITH; (ii) THE USE, OPERATION OR PERFORMANCE OF THE PERSONAL PROPERTY OR ANY RISKS RELATING THERETO; (iii) ANY DELAY IN OBTAINING THE PERSONAL PROPERTY, OR ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR CONSEQUENTIAL OR INCIDENTAL DAMAGES; (iv) THE DELIVERY OF THE PERSONAL PROPERTY TO LESSEE, THE INSTALLATION OF THE PERSONAL PROPERTY UPON THE PREMISES, THE SERVICING, MAINTENANCE, REPAIR, IMPROVEMENT OR REPLACEMENT OF THE PERSONAL PROPERTY; OR (v) ANY OTHER DAMAGES WHATSOEVER AND HOWSOEVER CAUSED.

Section 15.02. Waivers. No waiver of any breach shall affect or alter this Lease or constitute a waiver of any other then existing or subsequent breach.

Section 15.03. Remedies. Subject to the express provisions and limitations of this Lease, each right, power and remedy of Lessor, Lessee or Applicant provided for in this Lease shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise of any one or more of the rights, powers, or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor, Lessee or Applicant of any or all such other rights, powers, or remedies.

Section 15.04. No Claims Against Lessor. Except as provided herein, nothing contained in this Lease shall constitute any consent or request by Lessor, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Personal Property or any part thereof, nor give Lessee or Applicant any right,
power, or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any personal claim against Lessor.

Section 15.05. Quiet Enjoyment. Lessor does not make any representation or covenant that Lessee shall have quiet and peaceful possession of the Personal Property; however, Lessor agrees that it will not take any action to interfere with Lessee’s peaceful and quiet enjoyment of the Personal Property and that in the event the peaceful and quiet enjoyment of the Personal Property shall be denied to Lessee or contested by anyone, Lessor shall upon request of Lessee join where necessary in any proceeding to protect and defend the quiet enjoyment of Lessee, provided that Lessee shall pay the entire cost of any such proceeding and reimburse, indemnify, and hold harmless Lessor from any cost or liability whatsoever.

Section 15.06. Governing Law; Entire Agreement. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee and, together with the action taken by Lessor granting the PILOT incentives with respect to the Project set forth in the Resolution and the Application (collectively, the “Related Documents”), expresses the entire agreement of the parties hereto. Neither party hereto shall be bound by any agreement or representation to the other party which is not expressly set forth in this Lease, the Related Documents or the Annual Reports. Any lawsuit filed to enforce the terms of this Lease shall be filed in the appropriate state or federal court located in the County.

Section 15.07. Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 15.08. Notice. All notices, certificates, demands, requests, consents, approvals, and other similar instruments under this Lease shall be in writing and shall be deemed to have been properly given and received if delivered in person or if sent by United States certified or registered mail, postage prepaid, to Lessor, Lessee or Applicant, or if sent by a nationally recognized commercial overnight delivery service (including, but not limited to, FedEx, Airborne, or United Parcel Service) which provides proof of delivery, or electronic mail, addressed to Lessor, Lessee or Applicant at such addresses as they respectively may have designated from time to time in writing, and if to any Lenders under Section 3.05, or any permitted sublessee under Section 3.06, addressed to their principal offices, or at such addresses as said Lenders or said permitted sublessees shall have designated from time to time in writing to Lessor and Lessee. At the commencement of this Lease:

(a) Lessor’s address is 100 Peabody Place, Suite 1100, Memphis, Tennessee 38103, attn: President; with a copy to Board Counsel at 999 S. Shady Grove Road, Suite 500, Memphis, Tennessee 38120.

(b) Lessee’s address is c/o Al Logan, Tax Manager, One Bowerman Drive, Beaverton, Oregon 97005-6453; with a copy to Corporate Counsel, One Bowerman Drive, Beaverton, Oregon 97005-6453 and Phillip G. Kaminsky, 999 S. Shady Grove Road, Suite 300, Memphis,
Tennessee 38120.

Delivery in person shall be effective on the date of delivery. Delivery by mail shall be effective three (3) days from the date of posting in the United States Mail. Delivery by recognized commercial overnight delivery service shall be effective on the next business day following the date on which the notice is delivered to the recognized commercial overnight delivery service for delivery by it.

Section 15.09. No Default Certificates. Lessor and Lessee agree at any time and from time to time, upon not less than twenty (20) days prior written request by the other party or by any Lender, or by any permitted sublessee, to execute, acknowledge, and deliver a statement in writing certifying that this Lease is in full force and effect and that they know of no default (or if there is a default, the precise grounds therefor) and the date to which the Basic Rent and other charges have been paid in advance, if any.

Section 15.10. Headings. Headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof.

Section 15.11. Construction of Certain Words. Wherever the sense of this document requires it, the singular shall be construed to include the plural and the plural the singular, and wherever the masculine, feminine, or neuter gender is used, each shall be construed to include either or both of the others if the sense of this document so requires.

Section 15.12. Successors. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 15.13. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 15.14. Amendments. Except as set forth in Section 15.18 hereof, this Lease may be modified or amended only by an instrument in writing signed by the parties (or their respective successors or assigns).

Section 15.15. Performance by Lessee. Lessee may satisfy any or all of its undertakings and obligations provided for in this Lease by causing its permitted sublessee to perform the same.

Section 15.16. Lessor's Limitation of Liability - No Personal Liability. Anything in this Lease to the contrary notwithstanding, Lessee and Applicant agree that they shall look solely to the Personal Property for the collection of any judgment (or other judicial process) requiring the payment of money by Lessor in the event of any default or breach by Lessor with respect to any of the terms, covenants and conditions of this Lease to be observed and performed by Lessor and no other property or assets of Lessor shall be subject to levy, execution or other procedures for the satisfaction of Lessee's or Applicant's remedies hereunder.