

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) made, entered into and made effective as of [___], 2020 (“Effective Date”), by and between FLEMINGTON CENTER URBAN RENEWAL, LLC, a New Jersey limited liability company with an address at 5 Bartles Corner Road, Flemington, New Jersey 08822 (“Landlord”) and the BOROUGH OF FLEMINGTON, a municipal corporation of the State of New Jersey with an address at 38 Park Avenue, Flemington, New Jersey 08822 (“Tenant”). Each of Landlord and Tenant are sometimes referred to as a “Party” and collectively as the “Parties”.

Recitals

A. Tenant acting under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”), has declared Block 22, Lots 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 and Block 23, Lots 1 and 7, and Block 24, Lots 1, 2, 3 and 5 as an area in need of redevelopment (“Redevelopment Area”).

~~B.~~ Tenant acting under the Redevelopment Law adopted a redevelopment plan for the Redevelopment Area known as the Union Hotel Redevelopment Plan (“Redevelopment Plan”) and entered into a Redeveloper’s Agreement (the “Redeveloper’s Agreement”) with Landlord.

~~C.B.~~ Landlord is the redeveloper of the Redevelopment Area.

~~C.~~ As a condition of the Redevelopment Plan and Redeveloper’s Agreement, Tenant agreed to sell Landlord certain parcels of real property in the Redevelopment Area: Block 22, Lots 8 and 7/CL as set forth on the Tax Map of the Borough of Flemington, which is commonly known as the police lot (the “Property”).

~~D.~~ A portion of the building located on the Property is currently occupied by the Flemington Borough Police Department as its headquarters.

~~E.~~ After negotiations between the Tenant and Landlord, on October 13, 2020, the Borough Council adopted an ordinance approving the Amended Union Hotel Redevelopment Area Plan (the “**Amended Redevelopment Plan**”) and the Tenant and Landlord executed a Second Amended and Restated Redevelopment Agreement (the “**Amended Redevelopment Agreement**”); and

~~F.~~ At the request of Tenant, one of the conditions of the Amended Redevelopment Plan and Amended Redevelopment Agreement was to allow the Borough Police Department to continue to occupy a portion of the Property subject to a lease agreement with Landlord; and

~~D.F.~~ Landlord is now the owner ~~of the Property of certain parcels of real property in the Redevelopment Area, and as pertains to this Lease, is the owner of Block 22, Lots 8 and 7/CL as set forth on the Tax Map of the Borough of Flemington, which is commonly known as the police lot (the "Property").~~

~~E.G.~~ Tenant desires to lease the Property as described on Exhibit A attached to this Lease from Landlord and Landlord desires to lease the same to Tenant upon the terms and conditions contained herein.

The Parties, intending to be legally bound, and in consideration of the mutual promises set forth herein, do hereby agree as follows:

1. Incorporation of Recitals. The Recitals are true and correct and are hereby incorporated by this reference as if fully set forth in the body of this Lease.

2. Leased Premises. The Leased Premises consist of all the land and improvements on the Property (the "Leased Premises").

3. Term of Lease; Landlord Payment. The term ("Term") of this Lease shall commence upon the Effective Date and shall automatically terminate in the event the Leased Premises is no longer used by the Borough Police Department for its primary police business, or upon written agreement of the Landlord and Tenant. Within 30 days of termination of this Lease, Landlord shall pay to Tenant the sum of One Hundred Sixty-Nine Thousand Three Hundred Ninety-Three Dollars (\$169,393.00).

4. Rent. Tenant shall pay rent in the amount of \$1.00 per year, Additional Rent (as defined below) and shall observe and perform all obligations of Tenant under this Lease.

As additional consideration for the lease of the Property, the Tenant agrees to waive any application fees due to the Tenant from the Landlord for applications to the Borough of Flemington Planning Board for site plan approval associated with the Amended Redevelopment Plan. Such waiver shall not affect the requirement that the Landlord pay escrow fees for professional and inspection fees.

5. Grant of Lease; Permitted Use by Tenant.

(a) Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises for the sole purpose of operating Borough Police Department business, (the "Permitted Use"). Tenant acknowledges and agrees that, Landlord makes no representations that the Permitted Use is lawful and assumes no responsibility or liability in connection with the operation of the Permitted Use on the Leased Premises.

(b) Tenant is prohibited from subleasing all, or a portion of, the Leased Premises to other entities.

6. Landlord Representations/ No Responsibilities.

(a) Landlord shall have absolutely no responsibility to maintain, repair, operate, monitor or otherwise oversee the operation of the Permitted Use or use of the Leased Premises. Any and all costs associated with the approval, operation, maintenance, management, or oversight of the Permitted Use same shall be borne solely by Tenant. Landlord shall have no responsibility for the conformity of the Permitted Use with any provision of any applicable law, rule, regulation or ordinance.

(b) Quiet Enjoyment. Subject to the terms of this Lease and Tenant's performance of its obligations under this Lease during the Term, the Landlord covenants that Tenant may lawfully and peaceably use and occupy the Leased Premises without hindrance or ejection by any persons lawfully claiming under Landlord to have title to the Leased Premises (or right to use and occupy the Leased Premises) superior to Tenant.

7. Tenant Representations/Responsibilities.

(a) Tenant shall, at all times and at its sole cost and expense, operate the Permitted Use and Leased Premises in conformance with all applicable laws, rules and regulations;

(b) Abide by all terms and conditions of this Lease applicable to Tenant; and

(c) Pay when due as "Additional Rent" or at Landlord's option, reimburse Landlord within thirty (30) days following request therefore for all charges for utilities supplied to or consumed on the Leased Premises including without limitation, water and sewer charges and the cost of electricity and gas.

8. Maintenance and Repairs; Liens.

(a) With the exception of insurance maintained by the Landlord pursuant to Section 9 hereunder, Tenant shall, at Tenant's sole cost and expense, be responsible for the management, maintenance, repair and replacement of the Leased Premises throughout the Term, including without limitation, all ordinary, extraordinary, structural, and non-structural repairs and replacements and including lighting, fencing, sidewalks, cleaning, removal of refuse and debris, grass cutting, drainage, and snow removal, such that same are at all times operated in an attractive, clean and safe condition (collectively, "Tenant Maintenance Obligations"). In the event of any casualty, damage, personal injury or death at the Leased Premises coming to the attention of the Tenant, Tenant shall immediately contact Landlord and provide detailed information of such incident.

(b) Tenant shall keep the Leased Premises at all times free and clear of any and all liens under the New Jersey Construction Lien Law arising out of the construction, repair, maintenance or operation of the Leased Premises or otherwise and shall not permit any Notices of Unpaid Balance to be filed against the Leased Premises and if any are filed, Tenant shall cause any lien or claim which could give rise to a lien to be discharged within twenty (20) days after receiving notice of same. In the event that the Borough of Flemington or any other governmental authority imposes any tax, assessment, fee or cost upon the use or operation of the Leased Premises, Tenant shall be solely responsible for payment of same.

(c) Tenant shall not use, handle, store, treat or transport any materials or substances on, at, to or under the Leased Premises that are deemed to be hazardous under any federal, state, or local laws, rules, regulations, ordinances or directives (hereinafter “Environmental Laws”). In the event of a “discharge” (as same is defined under applicable Environmental Laws) of a hazardous material or substance on, at, under or emanating from the Leased Premises, or other violation of Environmental Laws not caused by Landlord’s acts, Tenant shall, at its sole cost and expense, promptly remediate all environmental contamination or other violation of Environmental Laws resulting from such discharge in accordance with all applicable Environmental Laws such that any affected areas can be used for residential purposes without institutional or engineering controls and without any requirement for monitoring, maintenance or reporting. Tenant shall indemnify Landlord against all liability, expense and cost associated with Tenant’s obligations to comply with Environmental Laws.

9. Insurance.

(a) Landlord represents that the use of the Leased Premises as a police department does not violate any conditions imposed by the Landlord’s insurance policies and that the Landlord’s insurance rates are based upon the use of the Lease Premises being used as a police department. Tenant shall not at any time use or occupy, or suffer or permit anyone to use or occupy, the Leased Premises or do or permit anything to be done at the Leased Premises which would (i) violate the requirements of any insurance rating association, (ii) violate any condition imposed by then-effective insurance policies, (iii) result in an increase in insurance rates, or (iv) result in insurance companies of good standing refusing to insure the Leased Premises in amounts reasonably satisfactory to Landlord and Tenant or as required under this Lease.

(b) Throughout the Term, Tenant shall, at Tenant’s cost and expense, provide and cause to be maintained the insurance listed below. Tenant may, at its option, elect to provide the insurance described below as part of a comprehensive policy covering other property owned or leased by Tenant or operations of Tenant, so long as the level and amounts of coverage available thereunder are not diminished below the standards set forth herein and the requirements hereof are met.

(1) comprehensive general public liability insurance (including blanket contractual liability coverage) insuring against losses on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, ~~the condition,~~ use or occupancy of, the Leased Premises by Tenant, and its agents, contractors, employees, licenses, customers, invitees and members of the public. Said insurance shall be carried by a reputable insurance company or companies or a Joint Insurance Fund qualified to do business in New Jersey and having limits of not less than \$2,000,000.00 combined single limit per occurrence and of not less than \$4,000,000.00 in the aggregate;

(2) “special form” insurance (formerly known as “all-risk”) insurance covering the improvements to the Leased Premises and/or the Tenant’s respective equipment and all other items of personal property of Tenant located on, in or about the Leased Premises;

(3) Worker's Compensation Insurance, Employer's Liability Insurance ~~and all other insurance coverage of similar character applicable or relating to the employment of Tenant's officers, employees, agents or independent contractors; providing Statutory benefits.~~ and

~~(c) All insurance policies required to be carried by Tenant pursuant to this Lease shall include the following provisions: (a) that the policy may not be cancelled or materially reduced in amount or coverage without endeavoring to provide at least thirty (30) days' prior written notice by the insurer to each insured and any additional insureds.~~

(d) Tenant shall provide to the Landlord certificates, and any other evidence reasonably requested, of the policies required to be maintained pursuant to this Lease. Such certificate(s) shall adequately describe and evidence all the provisions set forth in this Section. All policies and certificates of insurance provided for under this Lease shall name the Landlord as an additional insured. Landlord acknowledges and agrees that nothing contained herein shall be deemed a waiver of Tenant's immunities at common law and under N.J.S.A. 59:1-1 et seq. (the "Tort Claims Act") as to persons other than Landlord. With respect to Tenant's obligations to Landlord, tenant waives any such rights of immunity granted by statute or common law.

(e) If Tenant fails to maintain the insurance as required herein, the same may be purchased by the Landlord at the expense of the Tenant, and the expense therefor incurred shall be deemed to be Additional Rent and shall be paid within ten (10) days after rendition of a bill or statement therefor.

(f) Tenant hereby waives any right that it may have against, and hereby releases Landlord and its affiliates, partners, principals, managers, members, officers, agents, employees, stockholders, and servants (collectively referred to herein as the "Landlord Parties") from any and all liability for loss, damage or injury in or about the Leased Premises except for ~~gross~~ negligence or intentional misconduct of the Landlord Parties.

~~(g) Whenever any loss, damage, cost or expense is incurred by Tenant and Tenant is covered or required to be covered by insurance. Tenant releases Landlord from any liability it may have and waives any right of subrogation, against Landlord which may otherwise exist~~

(h) Casualty. In the event that the Leased Premises are damaged by fire or other casualty, either Party shall have the option to terminate this Lease (which election to terminate shall be made within 30 days after the casualty giving rise to such right to terminate). In the event neither Tenant nor Landlord elects to terminate this Lease, Tenant shall repair, rebuild and restore the damaged portions of the improvements located on the Leased Premises as soon as practicable using commercially reasonable efforts after the casualty and Tenant's obligations under this Lease shall continue in full force and effect, without modification.

10. Condemnation. In the event all or part of the Leased Premises is taken by eminent domain or conveyed in lieu thereof such that the remainder of the Leased Premises cannot reasonably be used for the Permitted Use, either Party shall have the right to terminate this Lease, and Tenant shall not be entitled to share in any award or compensation paid in

connection therewith, provided that, Tenant shall be entitled to relocation costs and related costs provided that same shall not reduce or affect the Landlord's award.

11. Gym Memberships. The police department currently uses the basement of the building on the property as a fitness center. Landlord requires use of said space. As an accommodation to the Tenant, Landlord will provide, without cost to the Borough, a membership to Healthquest to active duty officers of the police department during the term of this Lease.

11.12. Events of Default; Remedies.

(a) Any one or more of the following shall constitute an "Event of Default" under this Lease:

(1) Failure by Tenant to maintain the insurance required hereby.

(2) Failure by Tenant to perform or observe any provision, covenant or condition contained in this Lease which failure shall continue for a period of ten (10) days after written notice thereof; provided, however, that if the obligation (other than the payment of money when due) is of such nature that more than ten (10) days are required for its performance, then there shall not be deemed to be an Event of Default hereunder if the Tenant shall commence such performance within said ten (10) day period and diligently pursues such cure to completion, but in no event shall such cure period exceed ninety (90) days.

(3) Institution of bankruptcy proceedings by or against Tenant which are not withdrawn or dismissed within ninety (90) days after the institution of said proceedings.

(4) Any transfer of Tenant's rights under this Lease by assignment, sublease or other means.

(b) In the event that Tenant commits, or allows to occur, an Event of Default which is not cured, the Landlord shall have the right to immediately terminate this Lease and shall also have all rights and remedies provided herein and at law and in equity. All remedies herein set forth (or provided by law) shall be cumulative and not exclusive and may be pursued simultaneously or separately and in such order or combination as Landlord so elects.

12.13. Indemnification.

(a) Tenant shall indemnify, hold harmless, and defend Landlord and the Landlord Parties against all claims, losses, actions, suits or liabilities for injury or death to any person or for damage to or loss of use of any property, including the Leased Premises (collectively "Claims") arising out of any occurrence in, on, near or about the Leased Premises and/or the use of the Leased Premises (including the coming and going of employees and/or invitees of Tenant), unless caused solely by the ~~gross~~ negligence or intentional misconduct of the Landlord and/or a Landlord Party. Such indemnification shall include and apply to reasonable attorneys' fees and other reasonable costs actually incurred by Landlord. Tenant shall further indemnify, defend and hold harmless Landlord and the Landlord Parties from and against any and all Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease. This Lease is made on the express

condition that Landlord shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause, in any way connected with the condition, use, safety or occupancy of the Leased Premises unless caused solely by the ~~gross~~ negligence or intentional misconduct of the Landlord and/or a Landlord Party, ~~unless and until such gross negligence or intentional misconduct on the part of Landlord or a Landlord's Party is established by a final and unappealable judgment of a court of competent jurisdiction, Tenant's indemnity obligations shall remain in full force and effect.~~

(b) As to any matter for which Tenant is required to defend and/or indemnify Landlord and as to any party required herein to be named as an additional insured, any insurance maintained or provided by Tenant ~~(i) shall be primary in relation to any other insurance maintained by or available to Landlord, (ii) shall not require Landlord to tender any claim to its own insurance or to any other insurance available to Landlord, and (iii) shall provide that the insurer will not seek contribution from any other insurance available to Landlord.~~

13.14. Subordination/Estoppel.

(a) This Lease is subject and subordinate to any mortgage or deed of trust that may now or hereafter encumber the Property, and to all renewals, modifications, consolidations, replacements and extensions thereof. Although not a condition precedent to the effectiveness of this Section, Tenant, upon request from Landlord shall execute and deliver documentation evidencing that this Lease is in fact subordinate to any specific mortgage or deed of trust which might hereafter encumber the Property.

(b) Upon Landlord's request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) the Term; (ii) that this Lease is in full force and effect and unmodified (or if modified, stating the modifications); (iii) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating the nature of the default); and (iv) such other matters as may be reasonably required by Landlord, to the extent that Tenant has personal knowledge of such matters. Tenant shall deliver such statement to Landlord within ten (10) days after Landlord's request. Any such statement may be given to and relied upon by any prospective purchaser or lienor of the Leased Premises.

14.15. Entire Contract. This Lease and the Contract for Sale of Real Estate between the Parties dated [], contains the entire contract between the Parties hereto with respect to the subject matter hereof and there are no understandings, promises, representations or warranties, oral or written, relating to the subject matter of this Lease, which exist or bind any of the Parties hereto, their respective heirs, executors, administrators, successors or assigns, except as set forth herein. No amendment, change, addition to this Lease or approval required under this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both Parties.

15.16. Governing Law, Forum Selection, and Waiver of Jury Trial /No Presumption Against Draftsman. The Parties agree that this Lease shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably consents and submits to the jurisdiction of the Superior Court of New Jersey, Hunterdon County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Lease and the transactions contemplated

19.20. Cure. If either Party does not comply with and perform their obligations set forth herein, either Party may, if that Party so elects, upon reasonable notice to the other Party (except in the event of an emergency) carry out and perform such conditions and covenants at the cost and expense of the other Party and the expense therefor incurred shall be paid within ten (10) days after rendition of a bill or statement therefor.

20.21. Surrender of the Leased Premises. Upon the termination of the Lease, Tenant shall surrender the Leased Premises to Landlord in good order and condition, in compliance with Tenant's obligations hereunder, excepting only ordinary wear and tear. Tenant shall be unconditionally obligated to remove: (a) any temporary or permanent facilities installed by Tenant; (b) all above ground and underground utility connections leading to or from such facilities that were installed by, or on behalf of, Tenant; and (c) all debris, rubbish and waste. All property of Tenant remaining on the Leased Premises after Tenant's surrender of the Leased Premises shall be deemed abandoned and at Landlord's election may either be retained by Landlord or may be removed from the Leased Premises at Tenant's expense. If any locks are installed at the Leased Premises, Tenant shall deliver to Landlord all keys for same.

21.22. Captions. The headings of the various Sections of this Lease are inserted for reference only and shall not have the effect of modifying or amending the express terms and provisions of this Lease.

22.23. Representations and Warranties. (a) Tenant hereby makes the following representations and warranties: (i) Tenant has the legal power, right and authority to enter into this Lease, to consummate the transaction contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder; (ii) upon the approval by Tenant of this Lease, all requisite action will have been taken by Tenant and all requisite consents have been obtained in connection with the entering into this Lease, and the consummation of the transaction contemplated hereby; and (iii) this Lease is duly executed by Tenant, and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which Tenant is a party.

(b) Landlord hereby makes the following representations and warranties: (i) Landlord has the legal power, right and authority to enter into this Lease, to consummate the transaction contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder; (ii) upon the approval by Landlord of this Lease, all requisite action will have been taken by Landlord and all requisite consents have been obtained in connection with the entering into this Lease, and the consummation of the transaction contemplated hereby; and (iii) this Lease is duly executed by Landlord, and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which Landlord is a party.

23.24. Counterparts. This Lease may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Landlord and Tenant have executed this Lease effective as of the date of the Lease set forth above.

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LANDLORD:

**FLEMINGTON CENTER URBAN RENEWAL,
LLC**

Witness

By:

**John J. Cust, Jr., CPA
Managing Member**

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TENANT:

BOROUGH OF FLEMINGTON

Sallie Graziano, Borough Clerk

By: _____
Hon. Betsy Driver, Mayor

EXHIBIT A – The Property