

**CALLED MEETING OF COASTLANDS PRESBYTERY**  
via Zoom Videoconference

October 25, 2022

**AGENDA**

- 6:30 pm **Call to Order** ..... Rev. Wendi Werner, Moderator
- 6:35 pm **Opening Prayer** .....Rev. Wendi Werner, Rev. Sue Krummel, Rev. David Torrey
- 6:50 pm **Declaration of a Quorum** ..... Rev. David Torrey, Acting Stated Clerk  
Adoption of Enabling Motion & Standing Rules for this Electronic Meeting - p.1..... Rev. Wendi Werner  
Seating of Corresponding Members
- 6:55 pm **Orientation to the Meeting**..... Rev. Wendi Werner
- 7:00 pm **Adoption of the Agenda**..... Rev. Wendi Werner
- 7:05 pm **Report of the Session of First Presbyterian Church, Trenton, NJ - p.3**
- 7:15 pm **Questions about the Session Report**
- 7:25 pm **Report of the Board of Trustees of Coastlands Presbytery - p.36** .....Rev. Fred Garry, Moderator
- 7:35 pm **Questions about the Board of Trustees Report**
- 7:45 pm **Review of Actions for Presbytery to Consider** ..... Rev. Wendi Werner
- 7:50 pm **Prayer**
- 7:55 pm **Consideration of the reports by the Presbytery of the Coastlands**
- 8:55 pm **Adjournment with Prayer**..... Rev. Wendi Werner

**The next Stated Meeting of Coastlands Presbytery Will Be Held**

**Tuesday, November 29, 2022**

beginning at 6:30 pm

## ENABLING MOTION & PROCEDURES FOR ELECTRONIC MEETING

- MOTION:** That for the purpose of this electronic meeting, the Presbytery of Coastlands approve these special rules of order and suspend any standing rules that interfere with them:
- a. All information about this meeting of the Presbytery is available through the Commissioner's Handbook (previously distributed), and access for voting participants, will be through Zoom.
  - b. Online meeting service availability shall begin at least fifteen minutes before the start of the meeting.
  - c. The presence of a quorum shall be established by sign-in to Zoom at the beginning of the meeting. Thereafter, the continued presence of a quorum shall be determined by the online list of participating members.
  - d. While every effort will be made to provide stable access to the platforms, each member is responsible for his or her audio and internet connections; no action shall be invalidated on the grounds that the loss of, or poor quality of, a member's individual connection prevented participation in the meeting.
  - e. In order to be enrolled as participants with voice and/or vote, Commissioners, Minister Members, and Corresponding Members must register through the Presbytery office for the meeting.

## **SIMPLIFIED SPECIAL RULES OF ORDER AND STANDING RULES**

### For Electronic Meetings Using Video-conferencing Technology

The Following Special and Standing Rules are applicable to meetings of Coastlands Presbytery when holding meetings utilizing video-conferencing electronic meeting technology:

1. All meetings are recorded.
2. Unless the meeting is an otherwise in person meeting to which one or more participants are joined electronically, participants are expected to join the meeting on individual devices (one person, one device). Should joining on individual devices not be possible, participants may make arrangements to join the meeting as a group.
3. Participants are encouraged to join the meeting on a desktop or laptop computer. The following are requirements for such computers:
  - a. High speed internet access.
  - b. Sound output device. While speakers are allowed, this will preferably be a headset, earbuds, or Bluetooth device that delivers the sound directly to the participant's ear rather than into an open room; except for group gatherings.
  - c. A microphone device other than a built-in microphone.
  - d. A separate webcam (preferred, but optional).
4. If joining by computer is not possible, a tablet may be used, using the video-conferencing app, available from the device's app store. Regarding audio/visual devices, the same requirements and preferences exist as for computers.
5. To gain recognition, the preferred method is to use the 'Raise Hand' 🙋 function under the 'Reactions' panel.
  - a. When called upon by the Moderator, they should unmute their microphones and, if their video feed is turned off, they should click on the camera icon to turn on their webcams.
6. The staff will be renaming guests.  
'ZV-' will be placed at the beginning of your name if you have voice and no vote.

'Z-' will be placed at the beginning of your name if you do not have voice or vote.

Please do not remove the ZV- or Z- from your name.

7. The "chat" feature will NOT be available for the meeting.
  - a. When multiple participants are seeking recognition, once the Moderator has called on someone, all other participants will be handled as the Moderator deems appropriate.
  - b. If you have an "interrupting motion" (a point of order, a request for preference in recognition, etc.), Text "Interrupt" to the special text phone# and the Moderator will recognize you.
8. If you have a motion to make other than a procedural motion, the motion should be made by seeking recognition from the Moderator by speaking "Moderator". When called upon, you should move the motion, and once a second is received, the host(s) will put the motion up in the screen share feature for everyone to see, and then discussion/voting may follow.
9. If you want to speak to a motion, raise your zoom participant hand 🙋 (found when clicking on the Reactions button), and wait for the Moderator to recognize you. You will be prompted to unmute yourself. Please make sure your video is on if you wish to speak.
10. The Moderator will repeat the motion prior to the vote.
11. Votes will be taken using the Zoom polling feature for the purpose of recording votes, rather than the green checkmark ✅ and the red ❌ in the Reactions button. Therefore, you must be connected to the meeting using a tablet or computer.

## First Presbyterian Church of Trenton Statement to the Presbytery of the Coastlands

October 25, 2022

### Summary

First Presbyterian Church has played an important role in the history of Trenton, NJ, this country, and the Presbyterian Church while operating successfully and responsibly as a religious non-profit since its founding over 300 years ago. The congregation of FPCT is small, but strong, resilient, and dedicated. However, we are severely tested in our efforts to maintain historic properties that are several times larger than we may ever need. We feel that this burden, which we cannot ignore, is inevitably detracting from what we see as our primary mission. This mission is to find ways to connect with our neighbors, and help heal decades of systemic, structural, and institutionalized racism through creating an organization that invites people of all colors and backgrounds in for programs, social services, community engagement and opportunities to find their voice.

For this reason, FPCT decided in early 2022 to create a non-religious, non-profit organization that could obtain public funding for historic buildings such as our 1839 sanctuary (National and State Historic Landmark), and so repurpose these properties for use by the broader community. FPCT strongly wishes to steward these legacy assets with representation on the board of this non-profit and to relocate its sanctuary to 123 E Hanover Street, a building owned by FPCT situated on land contiguous to our main sanctuary. In so doing, we hope to create a space that allows us to stretch our arms of Christianity beyond our doors, and to help our brothers and sisters feel God's love and compassion. God calls us to be a shelter from the storm and a beacon of hope for those who have lost their way, or those who just want to help, connect, and find a stronger sense of community.

FPCT Session looks forward to the day that it can free itself from the always present responsibilities of maintaining large buildings, and refocus on this mission, that we believe will sustain the light and hope of this blessed congregation, for the glory of God, through fellowship in service, to the people of Trenton. We seek your understanding in this endeavor.

### Early History and Cemetery

First Presbyterian Church of Trenton was formed in 1712 and incorporated in 1759 under charter from King George II. History of the early church is practically synonymous with the history of Trenton, this state, this country, and the Presbyterian church in the United States.

FPCT's early pastors were directly engaged in the formation of thought and action in the early American Presbyterian church and in colonial America. FPCT's first Pastor, David Cowell (1736-1760), while pastor of FPC and Trustee of the College of New Jersey, worked to move the college to Princeton, and served as acting President in 1757-58 after Aaron Burr Sr. He played an important role in recruiting Jonathan Edwards and Samuel Davies as next Presidents. FPCT's second pastor, William Kirkpatrick left FPCT to become chaplain in the French and Indian War and later served on the Princeton Board. FPCT's third Pastor, Elihu Spencer, was a missionary to the Oneida people and chaplain in the French and Indian War before becoming FPCT Pastor and Trustee of Princeton University. Because of his work to promote the Revolutionary cause a bounty was placed on his head. FPCT's fourth Pastor, James Francis Armstrong, graduated from Princeton and boarded in the house of John Witherspoon along with Aaron Burr Jr. Armstrong was chaplain of the Sullivan regiment during the battle of Trenton and later chaplain of the Maryland Second Brigade. In 1779, Armstrong delivered a sermon to Washington's troops while

camped outside New York City. The original text is stored at the Presbyterian Historical Society along with many other FPCT documents.

FPCT pastors, Elihu Spencer, James Armstrong, James Waddel Alexander (son of Archibald Alexander) and others also helped to establish and manage Princeton Theological Seminary as Board members or in other ways.

One goal of the early pastors and FPCT Session was the establishment of a school. This was achieved in the 1781 establishment of The Trenton Academy located behind FPCT on land now occupied by the Trenton Public Library. This area is now called “The Academy District”, an area of several square blocks. Many FPCT Trustees served on the board of this school, and space at FPCT was leased to the school, which operated until 1884. In 1974 FPCT re-established “Trenton Academy” as a preschool in properties owned by FPCT at 111-115 E Hanover Street. This school was supported by funding from FPCT and public sources but closed in 2010 after reaching a student population of about 100.

FPCT has many noted and un-noted members and family in its churchyard, including Revolutionary War veterans, a general, mayors of Trenton, a congressman, judiciary officials, Revolutionary War medical doctors, Trenton’s first postmaster, business leaders, artists, and clergy including David Cowell, Elihu Spencer, and perhaps John Rosborough. The last burial was in 1868. A list of names appears in “The History of the Presbyterian Church in Trenton. NJ”, a book written in 1859 by Rev. John Hall, FPCT pastor (1841-1883). They include 16 Revolutionary War veterans commemorated in a plaque presented by the DAR in 1933 (DAR report in FPCT archives). There is also a plaque marking the resting place of Colonel Raul, the Hessian commander killed at the Battle of Trenton, and a monument to Rev. John Rosborough, killed by the British in Trenton several days later. The monument was dedicated in 1919 in a ceremony at FPCT by the New Brunswick Presbytery (address in FPCT archives). The total number buried in the FPCT churchyard is thought to be about 4,000 as confirmed by work funded by a NJ Historic Trust grant. Graves are located on both sides and under the sanctuary (built 1839), under Fellowship Hall (built 1950), and under the parking lot (constructed 1968).

### Buildings and Parking Facilities

FPCT owns its main sanctuary with seating for over 500, Fellowship Hall which is connected to the main sanctuary with space for 150-200 in folding chairs, and 6 buildings immediately behind the sanctuary on East Hanover Street. The main sanctuary is located at 120 East State Street, a 10-minute walk to the NJ State Senate Building. The main sanctuary was officially declared a National Historic and NJ Historic Landmark in 2005. The Hanover Street buildings (111, 113, 115, 117, 121, and 123) were acquired by FPC between 1959 and 1972. These buildings were most recently used as the Trenton Academy preschool (111-115 E Hanover), as FPC’s Sunday school (117 E Hanover), and leased to ArmlnArm/Crisis Ministry (121-123 E Hanover). ArmlnArm’s lease with FPCT expired on October 1 2022, and was not renewed. Total floor-space of all buildings is 47,000 square feet. The parking lot adjacent and behind the main sanctuary has 38 parking spaces.

### Mission Activities

The following itemizes mission activities identified in the historic documents of FPCT and more recently in the activities of current church members and Session.

- Helps establish Trenton Academy as one of the first schools in Trenton (1781).
- FPC petitions State legislature for abolition of slavery (1792).

- Supporter of missionaries to Liberia of Thomas Wilson in 1839 and Elymas P. Rogers as an ordained Presbyterian minister in 1845.
- Supported the establishment of other Presbyterian Churches in Trenton (2<sup>nd</sup> Church 1842, 3<sup>rd</sup> church 1849, 4<sup>th</sup> church 1874, 5<sup>th</sup> church 1875, Bethany Church 1886, and East Trenton Presbyterian 1887). All these churches have ceased to exist.
- Supports construction of a school for freed slaves in Carthage, NC 1888.
- Presbyterian minister Baird and wife sent as missionaries to Korea under the full support of FPCT 1923.
- Saturday afternoon motion picture show program initiated for area children 1948.
- Re-establishment of Trenton Academy as a preschool on church property (1974-2010).
- Hosting of activities during annual "Patriots Week" (Dec 26-Jan 1) begun 2001.
- Trenton Children's Chorus hosted (2004-2010).
- Weekly Saturday breakfast (3 times each month) served to 100-150 sojourners in Fellowship Hall with support from Morrisville Presbyterian, Hightstown Presbyterian, and Anchor Presbyterian (2000 until Covid 3/2020).
- Jeremiah Lunch Program serving sojourners paper bag lunches and beverages every Tuesday and Thursday with over 900 servings monthly (2015 started and expanded since Covid 3/2022 - now operating). Morrisville Presbyterian provides financial support of this program. FPCT members pick up food donations from 4 area Wawa stores every Tuesday, Wednesday, Thursday, and Friday and store this food in freezers until it is distributed. Other members along with some of the members that do food pickups bag the food along with beverages purchased by a different FPCT member every Tuesday and Thursday and handout at the Community room door of FPCT from 9:30 through 11AM. Eight FPCT members operate the program. The Jeremiah Program will relocate to 123 E Hanover Street when preparations for FPCT occupancy are complete.
- Provision of financial support to charitable non-profits in Trenton, and certain individuals for medical care and families victimized by violent crime. In 2021 FPCT provided \$20,000 of such support.

### Resources

FPCT believes its financial resources are sufficient to fund operations well out into the future if it can transfer the financial burden of maintaining, operating and rehabilitating assets subject of the proposed lease, and if it continues to operate and manage its affairs responsibly.

FPCT has financial assets in various accounts under its direct control, and assets not under its control in other accounts, some of which provide income only, and some of which do not currently provide income or principal. Based on the latest available data, assets in these accounts are:

Internally managed cash in bank accounts:	\$45,067
Assets externally managed by TIAA CREF:	\$2,706,634
Chime Debit Card for Jeremiah Program:	\$161
<b>Financial Assets Directly Under FPCT Control and Usable Now</b>	<b>\$2,751,862</b>
Assets externally managed by Presbyterian Foundation	\$986,139
<u>Assets externally managed by Wells Fargo (Mae Dunkle Trust)</u>	<u>\$1,017,569</u>
<b>Financial Assets not Under FPCT Control and not Usable Now</b>	<b>\$2,003,708</b>

## Notes:

- 1) Balance of cash in bank accounts is as of 10/18/22
- 2) Assets under FPCT control managed by TIAA CREF is as of 10/17/2022. Asset allocation is 52% bonds, 46% equity, and 3% cash.
- 3) Assets not under FPCT control managed by PF generate income received as quarterly distributions equal to about 4% of the moving average of monthly balances over the past 10 years. Recent quarterly distributions are about \$9,000.
- 4) Assets not under FPCT control managed by Wells Fargo are in a trust that generates neither income nor principal. The primary beneficiary of this trust is an individual. FPCT is the secondary beneficiary.
- 5) Balances of all externally managed accounts not under FPCT control (PF and WF accounts) are taken from the latest available quarterly statements as of June 30, 2022.

Financial assets directly under FPCT control and immediately usable have declined since the end of 2021 due to declines in the value of bonds and equities, and donations to the non-profit recently established by FPCT. Contributions to the non-profit include \$86,608 for purposes of establishment (accounting and legal fees, architect fees, surveyor fees, etc.) and a donation of \$1,000,000 made on July 18. Donations to the non-profit were drawn from the TIAA account.

Aside from the above financial assets, FPCT owns the buildings and land discussed above with total floor space of 47,000 square feet (main sanctuary, Fellowship Hall, the parking lot, and 6 residential properties immediately behind and adjacent to the main sanctuary). FPCT has no debt. Of the 6 residential properties not subject to the lease under discussion (111, 113, 115, 117, 121, and 123 E Hanover St), it is FPCT's strong desire and intention to use 123 E Hanover Street and possibly 121 E Hanover Street for future worship activities and mission. FPCT now uses a chapel leased from St. Michael's in Trenton for worship until it can prepare 123 E Hanover St. and complete the transfer of its possessions from 120 East State St to 123 East Hanover St. FPCT will fund the maintenance of all the Hanover St properties including those which it does not intend to use for the time- being, or until it can obtain certification of historic eligibility for the Academy District where they are located. If such eligibility can be obtained (at FPCT's expense or with grant funding), it is currently FPCT's intention to seek permission to lease these spaces (111, 113, 115, and 117) to the non-profit for their development using Historic Trust funding and proceeds from the sale of Historic Tax Credits. If such eligibility cannot be obtained FPCT will determine at some future date whether to retain or sell these properties.

Aside from the above financial assets, FPCT is a beneficiary of the estate of a former member whose estate is now in probate. FPCT believes that it will likely receive its share of these assets in the next 12 months.

Respectfully submitted by the Session of First Presbyterian Church, Trenton NJ  
October 19, 2022

**Requested Presbytery Action  
in Support of First Presbyterian Church of Trenton  
and  
Key Issues for Decision-making**

We write this as the Session of the First Presbyterian Church of Trenton (FPCT) to provide important information to the Presbytery in the matter of the approval of a lease that will allow the redevelopment, renovation and repurposing of our facilities toward a new mission in the City of Trenton.

**Action.** We move that the Presbytery consider the following action:

Motion:

*The Presbytery approves the leasing of FPCT property to the 501c3 organization 120 East State for its preservation, stewardship and operation for community benefit and the continuation of its historic ministry, for the term 65 years, in order that 120 East State may procure publicly available funds for this work.*

Individually and as a group, the FPCT Session, our ministry colleagues on the Commission on Ministry, and many others have spent untold resources of our time, and our congregation's resources (in addition to much staff time, we have to date devoted over \$1 million of our church's resources to the project). We are a small congregation, eager to invest our time, talent, and treasure in the city, knowing that God calls us into a future filled with possibility in our urban, multi-ethnic, multi-racial neighborhood in downtown Trenton. For us, our neighborhood is the "other side of the lake" to which Jesus invites us to go.

We support the following statement written by some of our partners in the Presbytery. We believe it helps clarify the decision that needs to be made.

**The key issue: whether a mission project vetted and supported by the New Brunswick Presbytery should require conformity to a future plan for mission of the Coastlands Presbytery.** The memo sent to the Session of First Presbyterian Church of Trenton by the Trustees has as its main concern the fact that the Presbytery of the Coastlands has not yet had time or means to determine its mission and ministry within the geographical area of the Presbytery. It's "no" vote seems largely dependent on this factor.

**FPCT is a viable congregation that looks to future redevelopment.** FPCT has 38 members, worships every Sunday, and has a session that has worked carefully with the Commission on Ministry for over four years in making plans for its future mission. It has sufficient funding for a full-time pastor and wishes to call such a person to help redevelop its ministry. The Session and Congregation have determined that this redevelopment project is an extension of the church's



future mission. The Commission on Ministry of Coastlands Presbytery has formally commended its redevelopment plans.

**The leasing arrangement is legal.** The Book of Order allows any church to “sell, mortgage, or otherwise encumber” (G-4.0206a) its property in any way that extends its mission, as long as the Presbytery approves it. The lease is within the scope of the constitution, given that it is an attempt to further the congregation’s mission and ministry through creative re-use of its properties. Such leasing arrangements are not unusual; a similar leasing arrangement exists between the Ewing Covenant Church, the presbytery, and a group that operates its historic sanctuary. Obviously, a congregation selling its buildings even for non-ecclesial purposes is common.

**Coastlands Presbytery’s mission strategy process should not delay a project that had been carefully planned under New Brunswick Presbytery.** A covenant that was part of the creation of Coastlands Presbytery involved the promise that mission that was ongoing in each Presbytery would not be impeded by the formation of the new Presbytery. It would not be fair or reasonable to expect that a four-year planning process by New Brunswick Presbytery should be nullified (because delaying the project would effectively kill it) because Coastlands Presbytery has not yet determined its mission. The web of relationships and commitments that created the Presbytery of the Coastlands is more like a new marriage than like a new baby.

**120 East State is a non-profit designed to require a controlling interest by Presbyterians.** The bylaws of 120 East State prescribe four Presbyterians from Coastlands Presbytery will serve on its board. It also requires a majority of Trenton stakeholders. This is both the means for the Presbytery’s mission and fiduciary interests to be carried forward, while creating the conditions for a real partnership with the Trenton community.

**The Trustees have raised a question about conflict of interest.** This objection has not been made clear by the trustees but seems to rest on the notion that some persons active with the congregation and COM serve on the board of 120 East State. This is not a conflict of interest but a stated intention of the governance design; namely for persons serving “ex officio,” according to their role, to fulfill the requirement that a certain number of board members be from the church and presbytery. 120 East State’s bylaws contain a clear process for dealing with conflicts of interest. No individual’s personal or congregational interest is served by their role in any organization or decision-making process.

**120 East State and First Presbyterian Church represent an important “hub” for urban ministry.** FPCT is one of two Presbyterian congregations that remain in Trenton. For many years, FPCT has been part of a conversation among urban pastors and those involved in mission in Trenton as an important part of our future ministry in Trenton.

**The redevelopment project already has achieved significant funding; returning it would mean the demise of the project.** As mentioned above, 120 East State has been granted \$825,000 for its initial redevelopment work; another application for state tax credit funding has moved

through the legal and DEP, labor and taxation review and is moving through the scoring and underwriting process. To return these funds would essentially doom any future funding approaches, effectively killing the project.

## LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between FIRST PRESBYTERIAN CHURCH OF TRENTON, a not for profit corporation organized and existing under the laws of New Jersey, having an address of P.O. Box 871, Trenton, NJ 08608, (the "**Landlord**"), and 120 EAST STATE, INC., a not for profit corporation organized and existing under the laws of the State of New Jersey, having an address of 120 E State St, Trenton, NJ 08608 (the "**Tenant**"). Landlord and Tenant may sometimes hereinafter be referred to as the "**Parties.**"

### W I T N E S S E T H

In consideration of the mutual covenants herein set forth, and intending to be legally bound, the parties hereto covenant and agree as follows:

#### 1. BASIC LEASE TERMS SUMMARY; DEFINITIONS AND RELEVANT DATES

1.1 Basic Lease Summary. The following Lease Terms are agreed to by the parties hereto.

- A. Landlord: FIRST PRESBYTERIAN CHURCH OF TRENTON
- B. Tenant: 120 EAST STATE, INC.
- C. Guarantor(s): NONE.
- D. Broker: NONE.
- E. Tenant's NAICS Number: 712120
- F. Building: The buildings located at 120 East State Street, Trenton, New Jersey, which include but are not limited to the buildings known as the 1839/Sanctuary Building and the adjacent Fellowship Hall.
- G. Premises: The Premises is described and shown on **Exhibit A** attached hereto and made a part hereof.
- H. Preliminary Concept Plan: The Preliminary Concept Plan for the Premises is shown on **Exhibit B** attached hereto and made a part hereof.
- I. Term: Sixty-five (65) years; provided, however, that if the Possession Date is not the first day of a calendar month, the Term of the Lease shall be extended to include the number of days from the Possession Date through the end of the month in which the Possession Date occurs.
- J. Possession Date: The date Landlord delivers possession of the Premises to Tenant, which is anticipated to be July 1, 2022.
- K. Term Commencement Date: The Possession Date.
- L. Base Rent: \$1.00.
- M. Tenant's Proportionate Share shall be 100%. Tenant's Proportionate Share of the insurance premiums described in Section 6 below, shall be that portion of the premium for the policy(ies) that covers the Premises. Such amount shall be

determined by the underwriters of the Landlord's insurance company and adjusted on each policy renewal and change in coverage. For periods of less than one year, the proportionate shall be prorated.

N. Security Deposit: NONE.

O. INTENTIONALLY LEFT BLANK

P. Permitted Use: To preserve, steward, maintain and operate the Premises to benefit and serve the community and improve and preserve the historical nature of the Premises through implementation of the Preliminary Concept Plan attached hereto as Exhibit B and as such Plan may be hereafter amended pursuant to Article 2.1.1 below. Tenant shall not do anything that shall cause the real property tax exemption designation for the Premises to be revoked, changed, modified or suspended.

1.2 The following terms, whenever used in this Lease, shall have the meanings indicated below and as may be further defined herein, unless the context requires otherwise:

- A. "Additional Rent" shall mean all payments to be made by Tenant under this Lease, whether to Landlord or a third party (such as but not limited to a utility provider) Additional Rent shall be due and payable commencing the Possession Date, with the exception of insurance premiums which Tenant may owe to Landlord under Articles 3 and 6 of this Lease, which obligation to pay for same commences July 1, 2023.
- B. "Insurance Requirements" shall mean the rules, regulations, orders and other requirements of the National and any local Board of Fire Underwriters, or other body having the same or similar functions and having jurisdiction of, and which are applicable to, the Premises and of any liability, fire or other insurance policy which Tenant or Landlord is required to maintain under this Lease.
- . "Lease Commencement Date" shall mean and refer to the date this Lease is fully executed.
- D. "Legal Requirements" shall mean the requirements of every statute, law, ordinance, regulation, rule, requirement, order or directive, now or hereafter made by any federal, state, city or county government or any department, political subdivision, bureau, agency, office or officer thereof, or of any other governmental authority having jurisdiction with respect to and applicable to (i) the Premises, (ii) the condition, equipment, maintenance, use or occupation of the Premises, including, without limitation, such of the foregoing applicable to the making of any alteration or addition in or to any structure appurtenant thereto and to pollution and environmental control; and (iii) the tenants or subtenants thereof.
- E. "NAICS" or "NAICS Number" shall mean and refer to Tenant's North American Industry Classification System number as defined by the most recent edition of the North American Industry Classification System

Manual published by the Federal Executive Office of the President, Office of Management and Budget.

- F. "Unavoidable Delays" shall mean any and all delays beyond the reasonable control of the party otherwise responsible, including delays caused by the other party, governmental restrictions, governmental preemption, strikes, labor disputes, lockouts, shortage of labor or materials, acts of God, enemy action, civil commotion, riot or insurrection, fire, holdover tenancies or other unavoidable casualty or any other cause beyond the responsible party's control, but shall not include delays occasioned by lack of money.

## 2. DEMISE AND TERM OF DEMISE

2.1 Landlord demises and leases unto Tenant, and Tenant hereby leases from the Landlord, in consideration of the rents to be paid and the covenants, agreements and conditions to be performed, observed and fulfilled by Tenant, the Premises. The Premises are further described or shown on **Exhibits A and B**.

2.1.1 The Parties hereto acknowledge that Tenant is applying for grants from the New Jersey Historic Trust, New Jersey and Federal Historic Tax Credits and other grants or funding in connection with the Permitted Use. The Parties hereto acknowledge and agree that subsequent to the Lease Commencement Date the boundary and scope of the Premises may change as a result of any applications made or approvals granted with respect to the historic tax credits and any other grants or funding in connection with the Permitted Use. Accordingly, the Parties hereto agree to cooperate together in good faith and, if necessary or required, will amend **Exhibit A and or Exhibit B**, subject to approval, so as to qualify for and satisfy any requirements for any historic tax credits and any other grants or funding in connection with the Permitted Use.

2.2 The term of the Lease (the "Term") shall be for a period of years as set forth in **Section 1.1(I)**, above, commencing on the Term Commencement Date; provided, however, that if the Possession Date is not the first day of a calendar month, the Term of the Lease shall be extended to include the number of days from the Possession Date through the end of the month in which the Possession Date occurs.

2.3 Delivery of possession of the Premises shall be deemed to have been made when Landlord provides possession of the Premises to Tenant.

2.4 Prior to the Possession Date, Landlord will change all the exterior door locks and provide to Tenant keys for same. Landlord will retain copies of such keys and agrees to limit distribution of same. The Tenant shall not make any changes to the locks except through the Landlord's locksmith so that any new locks match the Landlord's master key, or a new master key will be provided to Landlord. The Tenant shall notify the Landlord in advance of changing any locks.

## 3. UTILITIES, TAXES, ASSESSMENTS, AND OTHER CHARGES

3.1 Tenant shall cause all utilities servicing the Premises to be in Tenant's name and shall promptly pay when due all such utility charges, and provide proof of prompt payment to Landlord upon request therefore.

3.2 Triple Net Lease. Landlord and Tenant agree that this Lease shall be "triple net" to the Landlord. Notwithstanding any provision in this Lease to the contrary, Tenant shall pay to Landlord, monthly, or as Landlord may otherwise demand, as additional rent, Tenant's Proportionate Share of all insurance premiums described in Section 6 below and of all deductibles imposed for claims made on such policies, real estate taxes (if any), all special assessments, all Landlord's operating and other expenses associate with the Premises, all general assessments, all water and sewer charges, rates and rents, water meter charges, and all such other taxes, levies and charges of any kind, general and special, extraordinary as well as ordinary, and each and every installment thereof which shall or may during the Term be charged, levied, laid, assessed, imposed, become due and payable, or liens upon or for or with respect to the Premises or by reason of the use or occupancy of or any transaction or activity carried on or conducted in the Premises, together with all interest and penalties thereon (but not for any interest or penalty if Tenant timely pays Tenant's Proportionate Share of any such imposition).

3.3 Tenant shall pay to Landlord, at the address set forth above or at such other place of which Landlord shall have given Tenant written notice, all Additional Rent due hereunder. Whenever under the terms of this Lease any sum of money is required to be paid by Tenant, and said additional amount so to be paid is not designated as "additional rent," then said amount shall nevertheless be deemed "additional rent" and collectible as such.

3.4 Nothing contained in this Lease shall require Tenant to pay any federal, state, municipal or other income, gross receipts or excess profits taxes assessed against Landlord, or any franchise, corporation, capital levy, estate, succession, inheritance, devolution, payroll, stamp, gift or transfer taxes of Landlord, or any similar tax, or any tax imposed solely because of the nature of the entity of Landlord, or any tax imposed on rent received by Landlord under this Lease.

3.5 If Tenant shall fail to pay, within ten (10) business days of the date when the same is due and payable, any rent or other charge pursuant to this Lease, Tenant shall upon demand pay Landlord a late charge of five (5%) percent of the amount past due, or, if such late charge shall exceed the maximum late charge permitted by law, the Tenant shall pay the maximum late charge permitted by law.

#### **4. USE OF PREMISES; COMPLIANCE WITH LAWS**

4.1 The Premises may be used only for the Permitted Use and such other additional ancillary uses as may be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, Tenant shall not be permitted to store, warehouse, or transport to the Premises any hazardous wastes or substances.

4.2 Tenant shall obtain a Certificate of Occupancy at its own cost and expense for its use of the Premises, if required.

4.3 Tenant shall not use or occupy or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way (a) violate any certificate of occupancy affecting the Premises, (b) make void or voidable any insurance then in force with respect thereto, or which may make it more costly or impossible to obtain fire or other insurance thereon, (c) cause or be apt to cause structural injury to the Building or any part thereof, (d) constitute a public or private nuisance, (d) which may violate any present or future foreseen or unforeseen Legal Requirements or Insurance Requirements, as hereinafter defined, or (e) cause the tax exempt status of the Premises to be changed, revoked, terminated or re-classified in any manner. In addition, Tenant shall not allow any animals to be kept on the Premises or use or allow the Premises to be used for residential or dwelling purposes.

4.4 Tenant shall, at its sole cost and expense, promptly comply or cause compliance with, and not jeopardize or make more costly Landlord's compliance with, all Legal Requirements and Insurance Requirements.

## **5. NO REPRESENTATIONS BY LANDLORD**

5.1 Tenant covenants and agrees that it will accept the Premises in their existing "as is" state or condition as of the date of delivery of possession and without any further representation or warranty, express or implied, in fact or by law, by Landlord or its agents and without recourse to Landlord or its agents, as to the nature, condition, or usability thereof, the title thereto, or the use or occupancy which may be made thereof, except as specifically provided in this Lease.

## **6. INSURANCE**

6.1 Landlord shall maintain the following types of insurance in the amounts specified, and Tenant shall pay to Landlord, monthly, or as Landlord may otherwise demand, Tenant's Proportionate Share of the premiums therefor:

6.1.1 Insurance against damage to the Building by special form "all risk" of direct physical loss, including insurance against physical loss or damage by fire, lightening and other risks and supplementary perils from time to time included under an "all risk" policy (at Landlord's option to include earthquake and flood), with standard and extended coverage and "all risk" endorsement, including insurance against vandalism and malicious mischief and boiler and machinery insurance, in amounts sufficient to prevent Landlord from becoming a co-insurer, but in no event less than one hundred (100%) percent of the Building's then full replacement value, and with a contingent liability endorsement and/or demolition and increased cost of construction endorsement in order for the Building to be constructed in accordance with all Legal Requirements which may be applicable at the time of loss or damage.

6.1.2 Rent insurance, with "all risk" coverage, against the loss of basic annual rental and additional rent for the Building for no less than one (1) year.

6.1.3 INTENTIONALLY DELETED.

6.1.4 Such other insurance, and in such amounts, as deemed necessary by Landlord, from time to time, as are then commonly insured against for premises similarly situated,

including, without limitation, commercial general liability insurance, flood hazard insurance and contractual liability insurance.

6.1.5 Landlord shall have the right to provide any insurance maintained or caused to be maintained by it under blanket insurance policies or a program of self-insurance.

6.2 Throughout the term of this Lease, the Tenant shall obtain and maintain the following insurance coverages written with companies with an A.M. Best A-VI or better rating:

6.2.1 Commercial General Liability insurance (written on an occurrence basis) with limits not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence, Fifty Thousand Dollars (\$100,000.00) for damage legal liability, and Five Thousand Dollars (\$5,000.00) medical payments. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 96 (or a substitute form providing equivalent or broader coverage) and shall cover liability arising from the Premises, operations, and personal injury.

6.2.2 Workers Compensation insurance as required by the applicable state law, and Employers Liability insurance with limits not less than One Million Dollars (\$1,000,000.00) for each accident, One Million Dollars (\$1,000,000.00) disease-policy limit, and One Million Dollars (\$1,000,000.00) disease-each employee.

6.2.3 All Risk Property Insurance covering the Tenant's property, improvements, and equipment located at the Premises. If the Tenant is responsible for any machinery, the Tenant shall maintain boiler and machinery insurance.

6.2.4 Builder's Risk (or Building Constructions) insurance during the course of construction of any alteration to the Premises. Such insurance shall be on a form covering the Landlord, the Landlord's architects, the Landlord's contractor or subcontractors, the Tenant, the Tenant's architects, the Tenant's contractor or subcontractors, as their interest may appear, against loss or damage by fire, vandalism, and malicious mischief and other such risks as are customarily covered by the so-called "broad form extended coverage endorsement" upon all Alterations or the Tenant's Work in place and all materials stored at the Premises, and all materials, equipment supplies and temporary structures of all kinds incident to Alterations or the Tenant's Work and building machinery, tools and equipment, all while forming a part of or on the Premises, or when adjacent thereto, while on drives, sidewalks, streets or alleys, all on a completed value basis for the full insurable value at all times. Said Builder's Risk Insurance shall contain an express waiver of any right of subrogation by the insurer against the Landlord, its agents, employees and contractors.

6.2.5 Such other insurance and in such amounts as may, from time to time, be reasonably required by Landlord, or any mortgagee, wherein Landlord, and the holder of any mortgage to which this Lease is subject, are named as an additional named insured, against such other hazards as at the time or normally insured against in cases of premises similarly situated and similarly used.

6.3 The Landlord shall be endorsed on each policy as an additional insured as it pertains to the commercial general liability insurance policy, and coverage shall be primary and noncontributory. The Landlord shall be a loss payee on the Property policy in respect of the Tenant's improvements. All insurance shall:



(i) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured may have waived its right of action against any party prior to the occurrence of a loss (the Tenant hereby waiving its right of action and recovery against and releasing the Landlord from any and all liabilities, claims and losses for which they may otherwise be liable to the extent the Tenant is covered by insurance carried or required to be carried under this Lease); and

(ii) provide that the insurer thereunder waives all right of recovery by way of subrogation against the Landlord in connection with any loss or damage covered by such policy. The Tenant hereby agrees that it will not cancel, fail to renew, reduce the amount of insurance, or change the amount or type of insurance coverage without having first provided at least thirty (30) days prior written notice to the Landlord of any such proposed action. The Tenant shall be responsible for any deductible or retention contained within its insurance programs. The Tenant shall deliver an Accord 25 certificate with respect to all liability and personal property insurance and an Accord 28 certificate with respect to all commercial property insurance and receipts evidencing payment therefor (and, upon request, copies of all required insurance policies, including endorsements and declarations) to the Landlord on or before January 1<sup>st</sup> of each year during the term of this Lease, which certificates shall evidence that the Tenant has obtained the required insurance.

6.4 Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be furnished pursuant to Section 6.1 unless such additional insurance is written on an excess or contingency basis and does not reduce the amounts payable in the event of loss covered by the insurance maintained pursuant to Section 6.1.

6.5 If Tenant takes out any such separate insurance, it shall immediately notify Landlord thereof and shall deliver copies of the policies to Landlord.

6.6 All policies of insurance provided for in Section 6.1 shall name Landlord and any fee mortgagee as the insureds as their respective interests may appear, as to any such mortgagee, by standard mortgagee clause without contribution, but with proceeds payable to Landlord or as such fee mortgagee may require. Any loss under such policy shall be adjusted with the insurance company solely by Landlord. All policies of insurance provided for in Section 6.1 shall name Landlord as the insured with proceeds payable to, and to be adjusted by, Landlord.

6.7 With respect to the policies of insurance required to be maintained by Tenant under this Lease:

6.7.1 No such insurance shall be invalidated by any action or inaction of Tenant and shall insure Landlord and the Additional Insureds regardless of any breach or violation of warranties, declarations, conditions or exclusions by Tenant.

6.7.2 All provisions of each such insurance policy, except for the limits of liability, shall operate in the same manner as if a separate policy had been issued to each person or entity insured thereunder.

6.7.3 The insurance provided thereunder is a primary insurance without any right of contribution from any other insurance which may be carried by or for the benefit of Landlord or the Additional Insureds.

6.7.4 Shall recognize the indemnification set forth in Article 13 of this Lease.

6.7.5 Any such insurance may be covered under a blanket policy or policies of insurance provided that (i) the coverage afforded Landlord will not be reduced or diminished, and (ii) the requirements set forth in this Lease are otherwise satisfied by such blanket policy or policies.

6.7.6 Shall not have a deductible amount in excess of \$10,000.00, nor shall Tenant be self-insured for any portion of the coverages to be provided hereunder.

6.8 Landlord and Tenant hereby release each other and each other's officers, directors, employees and agents, from liability or responsibility for any loss or damage to property covered by valid and collectible fire insurance with standard extended coverage endorsement. This release shall apply not only to liability and responsibility of the parties to each other, but shall also extend to liability and responsibility for anyone claiming through or under the parties by way of subrogation or otherwise. This release shall apply even if the fire or other casualty shall have been caused by the fault or negligence of a party or anyone for whom a party may be responsible. However, this release shall apply only with respect to loss or damage actually recovered from an insurance company. This release shall not apply to loss or damage of property of a party unless the loss or damage occurs during the times the fire or extended coverage insurance policies of a party contain a clause or endorsement to the effect that any release shall not adversely affect or impair the policies or prejudice the right of the party to recover thereunder. Landlord and Tenant each agree that any fire and extended coverage insurance policies covering the Premises or contents shall include this clause or endorsement as long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party pays the extra cost. If extra cost shall be chargeable, the party whose policy is subject to the extra cost shall advise the other thereof, and of the amount of the extra cost.

## **7. DAMAGE OR DESTRUCTION**

7.1 In every case of fire, explosion, damage by the elements or other casualty, Tenant shall immediately give notice to Landlord.

7.2 In the event the Premises or the Building is damaged by fire or other casualty and the Premises are thereby rendered wholly unusable, Landlord shall have the right to terminate this Lease as of the date of such fire, damage or casualty.

7.3 The Landlord shall have the option, to be exercised by written notice to Tenant within 30 days of the casualty event, to (i) replace, repair and rebuild any and all damaged or destroyed improvements (with the exception of any improvements made or owned by Tenant), or (ii) to terminate this Lease as of a specified date, in which latter event this Lease shall terminate as of the specified date. In the event Landlord proceeds to replace, repair and rebuild, this Lease

shall not terminate, Landlord shall cause the Premises to be repaired or restored to the extent insurance proceeds are available to the Landlord, as speedily as its good faith efforts will allow.

7.4 Tenant agrees that the foregoing provisions are in lieu of any other rights or remedies that Tenant may have pursuant to N.J.S.A. 46:8-6 or 46:8-7.

## **8. CONDEMNATION**

8.1 If the whole of the Premises shall be taken under the power of eminent domain by any public or private authority or in the event of sale to such authority in lieu of formal proceedings of eminent domain, then this Lease shall cease and terminate as of the date of such taking or sale, which date is defined, for all purposes of this Article 8, as the date the public or private authority has the right to possession of the property being taken or sold.

8.2 In the event of any taking or sale of all or any part of the Premises, the entire proceeds of the award or sale shall be paid to Landlord, and Tenant shall have no right to any part thereof; provided, however, that nothing contained herein shall be construed to prevent Tenant from recovering any allowance for its personal property or for moving expenses which the law permits to be made to tenants, so long as such allowance does not diminish the award paid to Landlord.

## **9. SUBORDINATION, ATTORNMENT, ESTOPPEL**

9.1 This Lease is and shall be subject and subordinate in all respects to all bona fide institutional mortgages which may now or hereafter affect the Premises, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, consolidations, replacements, and extensions of such mortgages irrespective of the date of recording thereof. This Section 9.1 shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant agrees, without payment to Tenant of any consideration therefor, to promptly (but in any event, within ten (10) days of request) execute and deliver any instrument that Landlord or the holder of any such mortgage or any of their respective successors in interest may request to evidence such subordination, and Tenant hereby irrevocably appoints Landlord its attorney in fact to execute such instrument on behalf of Tenant, should Tenant refuse or fail to do so promptly after request. The mortgages to which this Lease is, at the time referred to, subject and subordinate shall sometimes be collectively called "superior mortgages".

9.2 If the holder of a superior mortgage shall succeed to the rights of Landlord, then at the request of such party so succeeding to Landlord's rights (herein sometimes called successor-landlord) and upon such successor-landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize such successor-landlord as Tenant's landlord under this Lease and shall promptly, without payment to Tenant of any consideration therefor, execute and deliver any instrument that such successor-landlord may request to evidence such attornment. Tenant hereby irrevocably appoints Landlord or the successor-landlord the attorney-in-fact of Tenant to execute and deliver such instrument on behalf of Tenant, should Tenant refuse or fail to do so promptly after request. Upon such attornment, this Lease shall continue in full force and effect as, or as if it were, a direct lease between the successor-landlord

and Tenant upon all of the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment, except that the successor-landlord shall not: (i) be obligated to repair, restore, replace, or rebuild the Premises, in case of total or substantially total damage or destruction, beyond such repair, restoration or rebuilding as can reasonably be accomplished with the net proceeds of insurance actually received by, or made available to, the successor-landlord; (ii) be liable for any previous act or omission of Landlord; (iii) be subject to any prior defenses or offsets; (iv) be bound by any modification of this Lease not expressly provided for in this Lease or by any previous prepayment of more than one month's rent, unless such modification or prepayment shall have been expressly approved in writing by the holder of the superior mortgage through or by reason of which the successor landlord shall have succeeded to the rights of Landlord; or (v) be liable for the performance of Landlord's covenants and agreements contained in this Lease to any extent other than to the successor landlord's ownership in the Premises, and no other property of such successor-landlord shall be subject to levy, attachment, execution or other enforcement procedure for the satisfaction of Tenant's remedies.

9.4 In the event that a bona fide institutional lender shall request reasonable modifications to this Lease, then Tenant shall not unreasonably withhold or delay its written consent to such modifications provided that the same do not (and Tenant shall not demand the payment to Tenant of any consideration for consent thereto), increase in any material manner the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's use and enjoyment of the Premises.

9.5 Tenant agrees, without payment to Tenant of any consideration therefor, to promptly (but in any event, within ten (10) days of request) execute and deliver any statement that Landlord or the holder of any such mortgage or any of their respective successors in interest may request certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the Rent has been paid, stating such other information concerning this Lease and Tenant's tenancy as Landlord reasonably shall request, and stating whether or not there exists any default in the performance by Landlord of any term, covenant or condition contained in this Lease and, if so, specifying each such default, it being intended that any such statement delivered pursuant to this Section 9.5 may be relied upon by Landlord and by any mortgagee or prospective mortgagee of any mortgage affecting the Premises or any purchaser or prospective purchaser of the Premises. When so requested by Landlord, such statement shall be submitted in writing under oath by a person or persons having knowledge of the statements made therein, and Tenant hereby irrevocably appoints Landlord its attorney in fact to execute such statement on behalf of Tenant, should Tenant refuse or fail to do so within ten (10) days of written request therefore.

## **10. REPAIRS, MAINTENANCE, ALTERATIONS**

10.1 Tenant at its cost shall maintain, in good condition, and shall improve, restore, repair, maintain and replace, as necessary, all portions of the Premises, including, without limitation, all fixtures contained within the Premises, the HVAC system, and all of Tenant's personal property. Landlord shall not be required to furnish any services or facilities or to make any repairs, replacements or alterations in or to the Premises. Throughout the Term of the Lease, Tenant shall be required to maintain a full-fledged HVAC service contract in form and substance

reasonably acceptable to Landlord. Furthermore, Tenant shall keep the sidewalks up to the curbs adjacent to the Premises free and clear from rubbish, ice and snow and Tenant shall not encumber or obstruct the same or allow the same to be encumbered or obstructed in any manner. It is Tenant's sole and exclusive responsibility to ensure that all sidewalks and pathways from Tenant's entryway to the parking lot remain free and clear from any snow, ice, hazards, objects, obstacles, or conditions which may encumber, enjoin, or make hazardous said sidewalks and pathways.

10.2 Tenant shall be responsible for repairs to the roof, exterior walls, steel structures, and all systems servicing the Premises.

10.3 Maintenance of grounds, driveways and parking areas adjacent to the Premises (including removal of ice and snow from the parking areas) shall be the responsibility of the Tenant.

10.4 Landlord shall not be liable for any failure of water supply, gas or electric current or of any utility or for any injury or damage to person or property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewers, gas mains or any sub-surface area or from any part of the Building, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, or for interference with light or other incorporeal hereditaments by anyone, or caused by operations by or of any public or quasi-public work.

10.5 Tenant shall have the right to make, at its sole cost and expense, improvements, restorations, additions, alterations and changes (collectively, "**Alterations**") in or to the Premises, provided Tenant shall not then be in default in the performance of any of the covenants in this Lease, subject, however, in all cases to the Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned. Landlord's consent shall not be required for usual, ordinary, routine or customary maintenance or repairs, or for any Alterations the cost of which does not exceed \$5,000.00.

10.5.1 No Alterations shall be commenced except after thirty (30) days' prior written notice, which shall include reasonably detailed final plans and specifications and working drawings of the proposed Alterations and the name of the contractor, to Landlord. If Landlord has not rejected or requires changes and fails to notify Tenant within thirty (30) days of Landlord's receipt of such plans and specifications, then Landlord's consent shall be deemed automatically provided.

10.5.2 No Alterations shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all governmental authorities having jurisdiction.

10.5.3 All Alterations shall be made in a good and workmanlike manner and in compliance with all applicable permits, authorizations and all Legal Requirements and all Insurance Requirements.

10.5.4 Before commencing the Alterations and at all times during construction, Tenant's contractor shall maintain builder's risk insurance coverage satisfactory to Landlord.

10.5.5 If the estimated cost of the Alterations exceeds \$20,000.00, before the commencement of the Alterations Tenant at its cost shall furnish to Landlord a performance and completion bond issued by an insurance company qualified to do business in New Jersey in a sum equal to (i) the cost of the Alterations (as determined by the construction contract between Tenant and its contractor) guaranteeing the completion of the Alterations free and clear of all liens and other charges, and in accordance with the plans and specifications, and (ii) the estimated cost to restore and/or repair the Premises at the end of the Lease Term. In the event performance or completion bonds are separately required by any grant or other outside funding source, in which case such requirements shall control.

10.6 All Alterations, whether temporary or permanent in character, which may be made upon the Premises either by Landlord or Tenant, except furniture or nonattached trade fixtures or equipment installed at the expense of Tenant, shall be the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the expiration or any termination of this Lease, without compensation to Tenant; provided, however, Landlord may elect within 30 days before the expiration of the Term, or within five days after termination of the Term, to require Tenant, at Tenant's cost, to remove any Alterations that Tenant has made to the Premises. If Landlord so elects, Tenant at its cost shall restore the Premises to the condition designated by Landlord in its election, and repair any damage caused by the removal of Alterations, before the last day of the Term, or within 30 days after notice of election is given, whichever is later. This Section shall survive the expiration or termination of this Lease.

10.7 Tenant shall remove from the Premises prior to expiration of the Term any trade equipment (not including any building equipment) affixed to the Premises by Tenant, at Tenant's sole cost and expense. Tenant shall be responsible and hereby indemnifies Landlord for any damage to the Premises arising out of removal of any of Tenant's property, equipment, or trade fixtures from the Premises. Tenant shall, at its sole cost, promptly restore, repair and/or replace any damage caused by the removal of Tenant's property, equipment, and trade fixtures.

## **11. SECURITY DEPOSIT**

NONE.

## **12. ASSIGNMENTS, SUBLETTING AND MORTGAGING**

12.1 Neither Tenant, nor Tenant's successors or assigns, shall assign, sublet this Lease or the Premises, in whole or in part, or permit the same or any portion thereof to be used or occupied by others, without the prior consent in writing of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed provided that the proposed use is a Permitted Use.

12.2 Tenant shall not be permitted to mortgage, pledge or encumber this Lease or the Premises.

### 13. INDEMNITY

13.1 Notwithstanding that joint or concurrent liability may be imposed upon Landlord by statute, ordinance, rule, regulation, order, or court decision, Tenant shall, notwithstanding any insurance furnished pursuant hereto or otherwise, indemnify, protect, defend and hold harmless Landlord from and against any and all liability, fines, suits, claims, obligations, damages, losses, penalties, demands, actions and judgments, and costs and reasonable expenses of any kind or nature (including reasonable attorneys' fees), by anyone whomsoever, due to or arising out of:

13.1.1 any work or thing done in, on or about the Premises or any area of Tenant's responsibility (including but not limited to sidewalks up to the curbs adjacent to the Premises which Tenant is to keep free and clear from rubbish, ice and snow, etc.) or any part thereof by Tenant or anyone claiming through or under Tenant or the respective employees, agents, licensees, contractors, servants or subtenants of Tenant or any such person;

13.1.2 any use, possession, occupation, condition, operation, maintenance or management of the Premises or any area of Tenant's responsibility (including but not limited to sidewalks up to the curbs adjacent to the Premises which Tenant is to keep free and clear from rubbish, ice and snow, etc.) or any part thereof, including, without limitation, any air, land, water or other pollution caused by Tenant;

13.1.3 any negligence or wrongful act or omission on the part of Tenant or any person claiming through or under Tenant or the respective employees, agents, licensees, invitees, contractors, servants or subtenants of Tenant or any such person;

13.1.4 any accident or injury to any person (including death) or damage to property (including loss of property) occurring in or on the Premises or any area of Tenant's responsibility (including but not limited to sidewalks up to the curbs adjacent to the Premises which Tenant is to keep free and clear from rubbish, ice and snow, etc.) or any part thereof;

13.1.5 any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with; and

13.1.6 any failure on the part of Tenant to perform or comply with Legal Requirements or Insurance Requirements.

In case any action or proceeding is brought against Landlord by reason of any of the foregoing, Tenant, upon written notice from Landlord shall, at Tenant's expense, resist or defend or cause to be resisted or defended such action or proceeding. Tenant or its counsel shall keep Landlord apprised at all times of the status of the action or proceeding. At the request of Tenant, Landlord will cooperate with Tenant in any such action or proceeding, and will execute any documents and pleadings reasonably required for such purpose, Tenant hereby agreeing to save Landlord harmless from all cost, expense (excluding attorneys' fees), loss and damage on account of, growing out of, or resulting from, such cooperation. The establishment of limits of coverage for the insurance required by Article 6 shall not serve in any way to limit Tenant's obligations

pursuant to this Article 13. The provisions of this Section shall survive the expiration or termination of this Lease.

#### **14. DEFAULT PROVISIONS; LANDLORD'S REMEDIES**

14.1 Any of the following events ("**Events of Default**") shall constitute a default under this Lease:

14.1.1 Tenant's default in the payment of any installment of Additional Rent, on any day upon which the same shall be due and payable and such default shall continue for five (5) days after the date on which the same was due and payable (the "**Rent Grace Period**");

14.1.2 Tenant's doing or permitting anything to be done, whether by action or inaction, contrary to any of Tenant's obligations pursuant to this Lease and, except as to the payment of Additional Rent as set forth in Section 14.1.1 above, such situation shall continue and shall not be remedied by Tenant within thirty (30) days after Landlord shall have given to Tenant notice specifying the same; or, in the case of a happening or default which cannot with due diligence be cured within a period of thirty (30) days and the continuance of which for the period required for cure will not subject Landlord (or any of its directors, officers, shareholders, partners, agents or employees) to the risk of criminal or civil liability or foreclosure of any superior mortgage or any other lien on the Premises, if Tenant shall not duly institute within such thirty (30) day period and promptly and diligently prosecute to completion all steps necessary to remedy the same (but in all events, such completion must be effected not later than ninety (90) days after the notice to Tenant specifying the default); or

14.1.3 Tenant's abandonment of the Premises;

14.1.4 Tenant's purposeful and willful failure to abide by any Legal Requirements or Insurance Requirements;

14.1.5 Tenant fails to secure unconditional grants and/or fails to secure private funding in an amount at least equal to \$7.5 million, to be used to make improvements to the Premises on or before June 30, 2025, or

14.1.6 Tenant fails to make application for unconditional grants and/or private funding to be used to make improvements to the Premises as required per this Lease, on or before June 30, 2026, and fails to diligently pursue such unconditional grants and/or private funding, or

14.1.7 Tenant fails to commence the required improvements to the Premises within a reasonable time after securing such unconditional grants and/or private funding and fails to diligently complete said improvements.

14.2 Upon the occurrence of any Event of Default, the Landlord may exercise any one or more of the following remedies, in addition to all other remedies provided in this Lease and by law or in equity:



14.2.1 The Landlord may give the Tenant a notice (the "**Termination Notice**") of its intention to terminate this Lease specifying a day not less than five (5) days thereafter, and, upon the day specified in the Termination Notice, this Lease and the term and estate hereby granted shall expire and terminate and all rights of the Tenant under this Lease shall expire and terminate, but the Tenant shall remain liable for damages as hereinafter set forth.

14.3 Upon any such termination or expiration of this Lease, or other termination of Tenant's possession under this Lease, the Tenant shall peaceably quit and surrender the Premises to the Landlord, and the Landlord or Landlord's agents and employees may without further notice immediately or at any time thereafter enter upon or re-enter the Premises, or any part thereof, and possess or repossess itself or themselves thereof either by summary dispossession proceedings, ejectment, any suitable action or proceeding at law, agreement, force or otherwise, and may dispossess and remove Tenant and all other persons and property from the Premises without being liable to indictment, prosecution, or damages therefor, and may repossess the same, and may remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Premises again.

14.4 In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or provided in this Lease.

14.5 Each right and remedy of the Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Landlord of any one or more of the rights of 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 Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

## **15. BANKRUPTCY AND INSOLVENCY**

15.1 Neither Tenant's interest in this Lease, nor any estate hereby created in Tenant nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided pursuant to the United States Bankruptcy Code.

15.2 In the event the interest or estate created in Tenant hereby shall be taken in execution or by other process of law, or if Tenant is adjudicated insolvent by a court of competent jurisdiction other than the United States Bankruptcy Court, or if a receiver or trustee of the property of Tenant shall be appointed by reason of the insolvency or inability of Tenant to pay its debts, or if Tenant shall file a voluntary petition or proceeding under any federal or state law dealing with bankruptcy, insolvency, reorganization or any other adjustment of its debts, or if any assignment shall be made of the property of Tenant for the benefit of creditors, then and in any such event, this Lease and all rights of Tenant hereunder shall automatically cease and terminate with the same force and effect as though the date of such event were the date originally set forth herein and fixed

for the expiration of the Term, and Tenant shall vacate and surrender the Premises but shall remain liable as herein provided.

15.3 Tenant shall not cause or give cause for the appointment of a trustee or receiver of the assets of Tenant and shall not make any assignment for the benefit of creditors or become or be adjudicated insolvent, or file any voluntary petition or commence any voluntary proceeding in respect thereto. The allowance of any petition under any insolvency law except under the Bankruptcy Code or the appointment of a trustee or receiver of Tenant or of its assets, shall be conclusive evidence that Tenant caused, or gave cause therefor, unless such allowance of the petition, or the appointment of a trustee or receiver, is vacated within thirty (30) days after such allowance or appointment. Any act described in this Section 15.3 shall be deemed a material breach of Tenant's obligations hereunder, and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or by law or in equity.

15.4 Upon the filing of a petition by or against Tenant under the United States Bankruptcy Code:

15.4.1 Tenant, as debtor and as debtor in possession, and any trustee who may be appointed agree as follows: (a) to perform each and every obligation of Tenant under this Lease, until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; and (b) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy on the Premises an amount equal to all rent, additional rent and other charges otherwise due pursuant to this Lease; and (c) to reject or assume this Lease within 60 days of the filing of such petition under Chapter 7 of the Bankruptcy Code or within 120 days (or such shorter term as Landlord, in its sole discretion, may deem reasonable so long as notice of such period is given) of the filing of a petition under any other Chapter; and (d) to give Landlord at least 45 days' prior written notice of any proceeding relating to any assumption of this Lease; and (e) to give Landlord at least 30 days' prior written notice of any abandonment of the Premises; any such abandonment to be deemed a rejection of this Lease; and (f) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; and (g) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (h) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

15.4.2 No Event of Default or default of this Lease by Tenant, either prior to or subsequent to the filing of such a petition, shall be deemed to have been waived unless expressly done so in writing by Landlord.

15.4.3 Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment are the following: (a) the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than 30 days of assumption and/or assignment; and (b) the deposit of an additional sum equal to three months' Base Rent to be held pursuant to the terms of Article 11 of this Lease; and (c) the use of the Premises is limited to the Permitted Use and as set forth in Article 4 of this Lease; and (d) the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and (e) the Premises, at all times, remains a single leasehold structure and

no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

## **16. ENTRY BY LANDLORD, ETC**

16.1 Tenant shall permit Landlord and its authorized representatives to enter the Premises, or any part thereof, at all reasonable times for the purpose of curing defaults of Tenant in accordance with, and after such notice (if any) as may be required by, the provisions of Article 14. In addition, Tenant, after reasonable prior notice, shall permit Landlord and fee mortgagees and their respective authorized representatives, to enter the Premises, or any part thereof, at all reasonable times during usual business hours for the purpose of inspecting the same.

16.2 Landlord shall also have the right, after reasonable prior notice, to enter the Premises, or any part thereof, at all reasonable times during usual business hours for the purpose of showing the same to appraisers, prospective lenders and prospective purchasers or fee mortgagees thereof and, at any time within nine (9) months prior to the expiration of this Lease, for the purpose of showing the same to prospective tenants.

16.3 If, at any time during which Landlord or any fee mortgagee shall have the right to enter the Premises, admission to the Premises for the purposes aforesaid cannot be obtained, they, or their respective agents, servants, employees, contractors and representatives, may (on such notice, if any, as may be reasonable under the circumstances, which notice need not be in writing if an emergency exists in respect of the protection of the Premises) enter the Premises and accomplish such purpose. Any entry on the Premises by Landlord or a fee mortgagee shall be at such times and by such methods (other than in the event of such an emergency) as will cause as little inconvenience, annoyance, disturbance, loss of business or other damage to Tenant as may be reasonably practicable in the circumstances.

16.4 Tenant hereby grants to Landlord an irrevocable license for access to and use of ten (10) parking spaces in the parking lot for Landlord and its tenants in other properties owned by Landlord (as designated by Landlord). Such access and use is subject to use or access to the parking lot for construction equipment. The Tenant shall provide 24 hours' notice to the Landlord when access to the parking lot is restricted.

## **17. COVENANT OF QUIET ENJOYMENT**

17.1 Landlord covenants that Tenant, on paying the rents and performing and observing all the covenants and conditions contained in this Lease, shall and may peaceably and quietly have, hold and enjoy the Premises during the Term, subject, however, to the terms of this Lease and to the matters to which this Lease is subject.

## **18. LIMITS OF LIABILITY OF LANDLORD**

18.1 It is specifically understood and agreed that in the event of a breach by Landlord of any of the terms, covenants or conditions of this Lease to be performed by Landlord, the monetary liability of Landlord in relation to any such breach shall be limited to the equity of Landlord in the Premises. Tenant shall look only to Landlord's equity in the Premises for the performance and observance of the terms, covenants and conditions of this Lease to be performed

or observed by Landlord and for the satisfaction of Tenant's remedies for the collection of any award, judgment or other judicial process requiring the payment of money by Landlord in the event of a default in the full and prompt payment and performance of any of Landlord's obligations hereunder. No property or assets of Landlord, other than Landlord's equity in the Premises, shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies in any matter whatsoever arising out of or in any way connected with this Lease or any of its provisions, any negotiations in connection therewith, the relationship of Landlord and Tenant hereunder or the use and occupancy of the Premises; and in confirmation of the foregoing, if any such lien, levy, execution or other enforcement procedure so arising shall be on or in respect of any property or assets of Landlord, other than Landlord's equity in the Premises, Tenant shall promptly release any property or assets of Landlord, other than Landlord's equity in the Premises, from such lien, levy, execution or other enforcement procedure by executing and delivering, at Tenant's expense and without charge to Landlord, any instrument or instruments, in recordable form, to that effect prepared by Landlord (but any such instrument of release shall not release any such lien, levy, execution or other endorsement procedure on or in respect of Landlord's equity in the Premises). Tenant hereby appoints Landlord its attorney-in-fact for the purposes of executing such instrument or instruments of release if Tenant fails or refuses to do so promptly after written request.

## **19. SURRENDER**

19.1 On the expiration or termination of this Lease, Tenant shall peaceably and quietly leave, surrender and deliver to Landlord the Premises, together with all Alterations which may have been made upon the Premises and tangible personal property of any kind or nature which Tenant may have installed or affixed on, in or to the Premises, whether or not the same be deemed to be fixtures, all of the foregoing to be surrendered in good, substantial and sufficient repair, order and condition, reasonable use, wear and tear excepted and free of occupants. If as a result of or in the course of the removal of Tenant's property any damage occurs to the Premises, Tenant shall pay to Landlord the reasonable cost of repairing such damage. If Tenant fails to quit and surrender the Premises upon the expiration or termination of this Lease, it shall be liable to Landlord for the damages caused to Landlord by reason of such holdover.

## **20. CURING DEFAULTS; FEES AND EXPENSES**

20.1 If Tenant shall fail to pay any imposition or to make any other payment required hereunder or shall otherwise default in the full and prompt performance of any covenant contained herein and to be performed on Tenant's part, Landlord, without being under any obligation to do so and without thereby waiving such default, may, after 15 days' written notice to Tenant, or such notice (which may be oral) as may be reasonable in the circumstances if any emergency exists in respect of the protection of the Premises (however, no notice shall be required in the event of any default by Tenant), make such payment or perform such covenant for the account and at the expense of Tenant and may enter upon the Premises for any such purpose and take all action thereon as may be necessary therefor.

20.2 All sums so paid by Landlord in connection with the payment or performance by it of any of the obligations of Tenant hereunder and all actual and reasonable costs, expenses and disbursements paid in connection therewith or enforcing or endeavoring to enforce

any right under or in connection with this Lease, or pursuant to law, together with interest thereon at the rate of 15% per annum (or, if lower, the maximum rate permitted by law) from the respective dates of the making of each such payment shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord within 15 days after demand by Landlord.

20.3 The provisions of this Article 20 shall survive the expiration or termination of this Lease.

## **21. MECHANICS' AND OTHER LIENS**

21.1 If any mechanic's, construction, laborer's or materialman's lien shall at any time be filed against the Premises or any part thereof with respect to any work done, or labor or materials furnished, or caused to be furnished, by Tenant or anyone claiming through or under Tenant, or any judgment, attachment or levy is filed or recorded against the Premises or any part thereof by anyone claiming through or under Tenant, Tenant, within 30 days after the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien, judgment, attachment or levy to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same by bonding proceedings, if permitted by law (and if not so permitted, by deposit in court). Any amount so paid by Landlord, including all costs and expenses paid by Landlord in connection therewith, together with interest thereon at the rate of 15% per annum (or, if lower, the maximum rate permitted by law) from the respective dates of Landlord's so paying any such amount, cost or expense, shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

## **22. PERSONAL PROPERTY.**

22.1 Landlord agrees to provide to Tenant for Tenant's use certain personal property as designated on **Exhibit C** attached hereto and made a part hereof (the "**Landlord's Personal Property**"). Tenant may use the Landlord's Property, but will take reasonable care of same, reasonable wear and tear excepted. If at any time Tenant no longer wishes to use the Landlord's Personal Property, or the same shall be worn out, Tenant shall notify Landlord. Landlord shall have the right to remove such Landlord Personal Property as Tenant no longer wishes to use. In the event Landlord does not wish to remove such Landlord Personal Property as Tenant no longer wishes to use, Tenant is free to discard same in any manner Tenant shall determine.

22.2 Any Landlord Personal Property remaining at the end of the Lease Term shall be returned to the Landlord.

## **23. NOTICES**

23.1 Any statement, demand, election, request, notice, approval, consent or other communication, (collectively, "notice") authorized or required by this Lease must be in writing and shall be deemed given when delivered by telecopier, facsimile, confirmed email, by special courier, by hand, against receipt, or sent postage prepaid by United States registered or certified mail, return receipt requested, in a prepaid wrapper, addressed to the Clerk of Session for the

Landlord intended recipient at the address provided at the head of this Lease (except that after the commencement of the Term any notice to Tenant shall be addressed to Tenant at the Premises). Any notices by a party signed by counsel to such party shall be deemed a notice signed by such party. Notice shall be deemed given on the date of delivery or the date delivery is refused.

**24. COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**

24.1 All of the terms, covenants and conditions of this Lease shall apply to and inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties, except as expressly otherwise herein provided. If there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein contained. No rights, however, shall inure to the benefit of any assignee or subtenant of Tenant unless the assignment or subletting, as the case may be, has been made in accordance with the provisions set forth in Article 12.

**25. RESOLUTION OF DISPUTES**

25.1 In the event that Landlord shall commence any summary or other proceedings or action for nonpayment of Rent hereunder, Tenant shall not interpose any counterclaim of any nature or description in such proceeding or action, unless such non-interposition would affect a waiver of Tenant's right to assert such claim against Landlord in a separate action or proceeding. The parties hereto waive a trial by jury (to the extent permitted by law) on any and all issues arising in any action or proceeding between them or their successors under or in any way connected with this Lease or any of its provisions, any negotiations in connection therewith, the relationship of Landlord and Tenant, or Tenant's use or occupation of the Premises.

**26. INTENTIONALLY OMITTED**

**27. FORCE MAJEURE**

28.1 Whenever the performance of any obligation of either party hereunder shall be delayed, hindered or prevented due to Unavoidable Delays, the time for performance of such obligation, unless other provision is expressly made therefor in this Lease, shall be extended, subject to and limited by the following conditions:

28.1.1 The extension shall be for no longer a period than the delay actually so occasioned;

28.1.2 The party delayed shall promptly notify the other party of the cessation of such Unavoidable Delay and of the extent of the delay which the party delayed claims was occasioned thereby;

28.1.3 No statement of fact contained in any such notice shall be binding on the party receiving such notice; and

28.1.4 In no event shall lack of funds be deemed a matter beyond either party's control.

## **28. BROKERAGE**

29.1 Landlord and Tenant each warrant and represent to the other that no broker was instrumental in bringing about this Lease. Each party (the "breaching party") hereto agrees to indemnify, defend and hold the other party (the "non-breaching party") harmless with respect to any judgments, damages, legal fees, court costs and any and all liabilities of any nature whatsoever incurred by the non-breaching party arising from a breach of the applicable warranty and representation by the breaching party. The provisions of the foregoing representation and indemnity shall survive the expiration or termination of this Lease.

## **29. MISCELLANEOUS PROVISIONS**

29.1 This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises. There are no oral agreements or understandings between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matters hereof, and none thereof shall be used to interpret or construe this Lease. Except as otherwise herein expressly provided, no subsequent alteration, amendment, change, waiver or addition to or of any provision of this Lease, nor any surrender of the Term, shall be binding upon Landlord or Tenant unless reduced to writing and signed by the party against whom the same is charged or such party's successors in interest.

29.2 This Lease shall not be recorded by either party.

29.3 This Lease shall be governed in all respects by the laws of the State of New Jersey.

29.4 This Lease may be executed in multiple counterparts, each of which shall be treated as an original of this Lease for all purposes, and all of which shall constitute one (1) agreement binding upon all of the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart. Transmission of a facsimile or by email of a pdf copy of the signed counterpart of this Lease (an "**Electronic Signature**") shall be deemed the equivalent of the delivery of the original. Each party agrees that the Electronic Signatures, whether digital or encrypted, of the parties included in this Lease are intended to authenticate this writing and to have the same force and effect as manual signatures.

29.5 If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## **30. COMPLIANCE WITH ENVIRONMENTAL LAWS**

30.1 With respect to the requirements of any Federal, state, county, municipal or other governmental law, ordinance, rule, regulation, requirement and/or directive pertaining to the

environment (an "**Environmental Law**" or "**Environmental Laws**"), including, but not limited to, the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.); the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the Worker and Community Right To Know Act (N.J.S.A. 34:5A-1 et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.); and the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.) ("ISRA"), Tenant shall, at Tenant's sole cost and expense, comply with the requirements of such Environmental Laws. As used herein, "Hazardous Substances" means any substance that is toxic ignitable, reactive, or corrosive and that is regulated by any local government, the State of New Jersey or the United States government, any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to state, federal, or local government law, and any asbestos, polychlorobiphenyls (PCBs), hydraulic or lubricating oils, and petroleum. Tenant's obligations pursuant to this Section shall arise whenever required by any appropriate governmental agency, including, but not limited to, any closing, terminating or transferring of operations at the Premises.

30.2 Promptly upon the written request of Landlord, from time to time, Tenant shall provide Landlord, at Tenant's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to Landlord to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup, or removal of any Hazardous Substances found on, under, at, within or about the Premises. Tenant shall permit Landlord and Landlord's agents, servants and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the Premises for the purposes of environmental inspection and sampling during regular business hours, or during other hours either by agreement of the parties or in the event of any environmental emergency. Tenant shall not restrict access to any part of the Premises, and Tenant shall not impose any conditions to access. In the event that Landlord's environmental inspection shall include sampling and testing of the Premises, Landlord shall use reasonable efforts to avoid unreasonably interfering with Tenant's use of the Premises.

30.4 Tenant shall at all times indemnify, defend (with counsel selected by Landlord) and hold harmless Landlord against and from any and all claims, suits, liabilities, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, including sums paid in settlement of claims, of, any nature whatsoever suffered or incurred by Landlord that are based on Tenant's operation of the Premises, Tenant's negligence, Tenant's willful misconduct, or on other acts or omissions of Tenant with respect to:

30.4.1 Any actual or suspected discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the actual or suspected presence of any Hazardous Substances on, in, upon, under, or affecting the Premises, whether or not the same originates or emanates from the Premises, or any other real estate, including any loss of value of the Premises as a result of any of the foregoing;

30.4.2 Any costs of removal or remedial action incurred by any governmental authority, any response costs incurred by any other person or damages from injury



to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss, incurred pursuant to any Environmental Laws;

30.4.3 Liability for personal injury or property damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Premises; and/or

30.4.4 Any other environmental matter affecting the Premises within the jurisdiction any other federal agency, or any state or local environmental agency or political subdivision or any court, administrative panel or tribunal.

Tenant's obligations pursuant to this Section 31.4 of this Lease shall arise upon the discovery of, or the threat or suspected presence of any Hazardous Substance, whether or not any other federal agency or any state or local environmental agency or political subdivision or any court, administrative panel, or tribunal has taken or threatened any action in connection with the presence of any Hazardous Substances.

30.5 In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substance affecting the Premises, whether or not the same originates or emanates from the Premises or any other real estate, and/or if Tenant shall fail to comply with any of the requirements of the Environmental Laws, Landlord may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Premises and/or take any and all other actions as Landlord shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure Tenant's noncompliance.

30.6 If Landlord, or someone on Landlord's behalf, retains the services of attorneys in connection with Article 31 of this Lease, Tenant shall pay Landlord's reasonable costs, expenses, and actual attorney fees (including consultant fees) thereby incurred. By way of clarification and not limitation, Tenant hereby expressly acknowledges that Tenant shall pay the reasonable costs, expenses, and fees of Landlord incurred in connection with Landlord's evaluation or interpretation of any environmental audits, investigations, or site assessments obtained pursuant to the terms hereof. Landlord may employ attorneys of Landlord's own choice.

30.7 This Article 31 shall survive the expiration or earlier termination of this Lease. Tenant's failure to abide by the terms of this Article 31 shall be restrainable by injunction.

## 31. **EXHIBITS**

31.1 The following are the exhibits to this Lease:

- Exhibit A Premises
- Exhibit B Preliminary Concept Plan
- Exhibit C Landlord's Personal Property [TBD]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, or caused these present to be signed by their proper corporate officers and their proper corporate seals to be hereto affixed, the day and year first above written.

WITNESS:

LANDLORD

\_\_\_\_\_

\_\_\_\_\_

Name:

Title:

TENANT

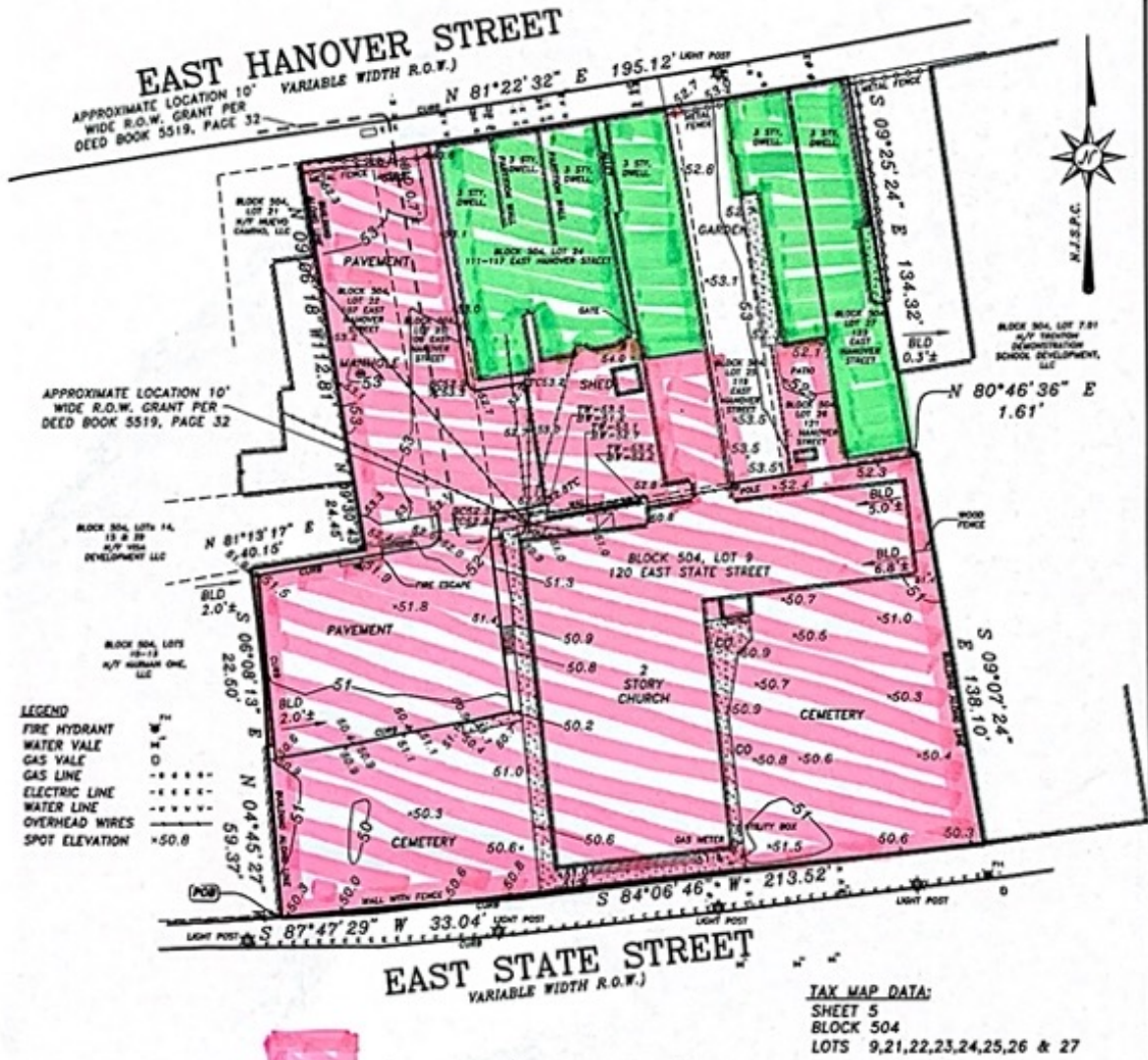
\_\_\_\_\_

\_\_\_\_\_

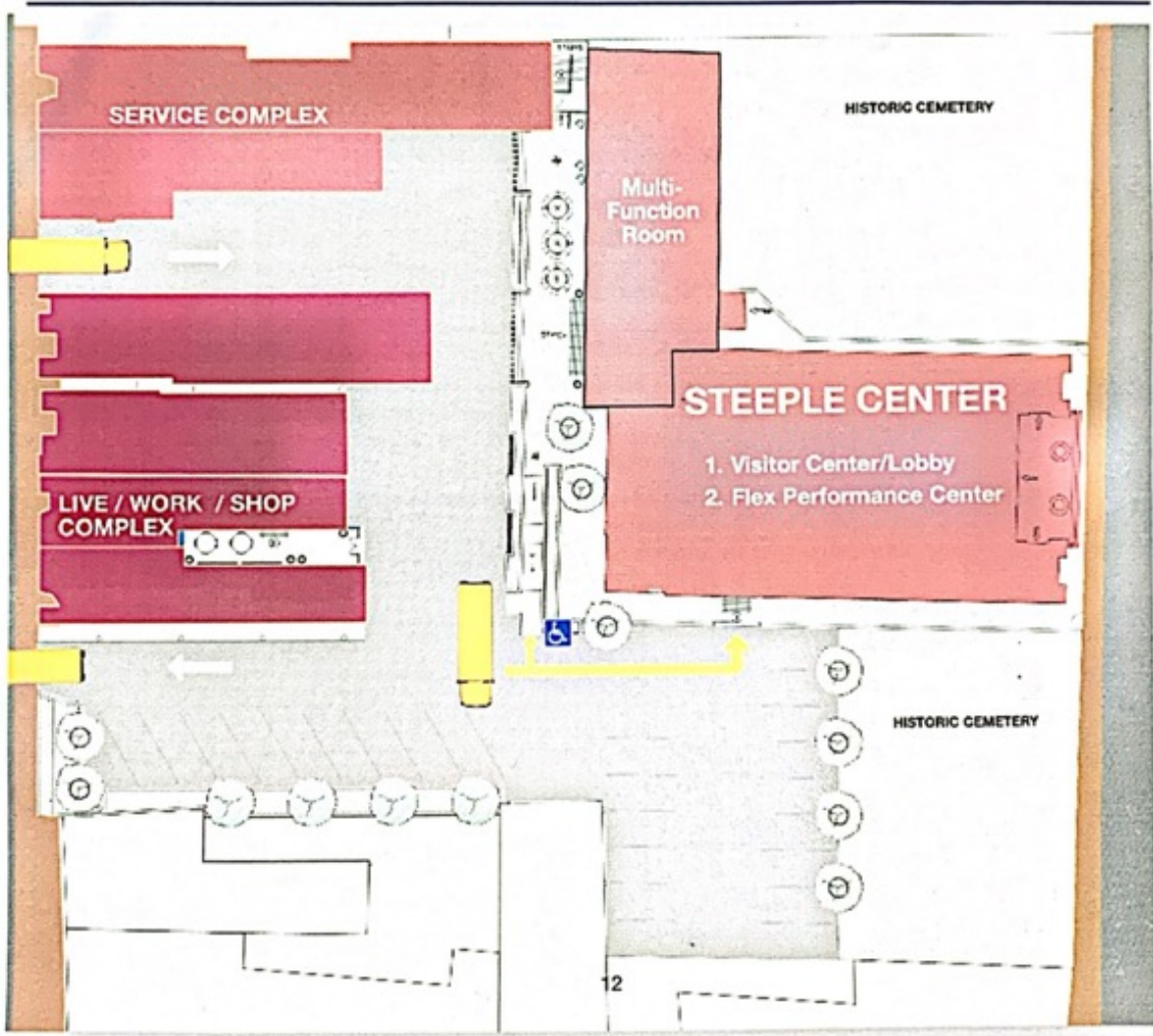
Name:

Title:

# Exhibit A Version 2.0



# Exhibit B Preliminary Site Plan



To: The Presbytery of the Coastlands  
 From: The Trustees of the Presbytery of the Coastlands  
 RE: Special Meeting of the Presbytery Regarding the First Presbyterian Church of Trenton  
 Date: October 20, 2022

The Trustees of the Presbytery of the Coastlands are providing the following information relating to their interactions, communications and deliberations with respect to the matter coming before the October 25 Special Meeting of the Presbytery. The Trustees' involvement has been informed by their role and authority to receive, hold, encumber, manage, and transfer property, real or personal, for and at the direction of the Presbytery.

### **Background and Timeline:**

December 10, 2021, the President of the Trustees received a telephone call from the Temporary Pastor for Property Development at the First Presbyterian Church of Trenton (FPCT) regarding a redevelopment project that included an invitation to the Trustees to attend a presentation on Tuesday, December 21. No Trustees were available but one reviewed the presentation materials and exchanged emails with the pastor regarding the project. The December presentation materials included a copy of FPCT's 2020 annual report and a PowerPoint presentation about a Vision Workshop held on June 27, 2020. The 2020 annual report indicated the church membership was about 40, and that "members and friends" contributed less than \$40,000 of the \$350,000 annual church budget, with the bulk of the operating revenue coming from investment income and grants. The annual report also indicated the church leaders had been discussing restoration and preservation of church-owned properties since 2019.

January of 2022, the Trustees received a white paper dated January 9, 2021 and titled "Next Steps for FPCT Redevelopment," describing the proposed \$22.4 million redevelopment project. Transforming FPCT's sanctuary building and fellowship hall into a visitor/arts complex titled the "Steeple Center" is the first phase; followed by redevelopment of 111-117 Hanover Street into a "live/work/shop complex" and 121-123 Hanover Street into a "service complex." The Trustees identified elements of the proposals that would involve them:

- A life-time lease of 65 years,
- a \$2.2 million Presbyterian Investment & Loan Program PILP loan, and
- the transfer of \$4,000,000 from the church's endowment to a soon-to-be-formed non-profit.

February of 2022, the Trustees reviewed the documents received in December and January. Because Presbytery had approved a Special Administrative Review Commission (SARC) at its June 20, 2021 meeting and the SARC had not reported back to Presbytery yet, the Trustees' written response to the pastor of FPCT affirmed the boldness of the redevelopment plan, advised waiting until the SARC's work was complete, and noted the project was being presented while the new presbytery was still developing policies and procedures and parties were still learning to gain trust in each other. The Trustees asked about any donor restrictions on funds and noted they looked forward to receiving an appraisal of the property from FPCT.

March of 2022, four Trustees attended a virtual meeting with the FPCT project team. Those representing the FPCT session confirmed they can no longer use the buildings due to safety issues

and are contacting other churches about worship space. The Trustees asked about selling the property to the non-profit and the project team replied this is not possible. The Trustees raised their concerns about

- the legality of transferring assets outside the denomination,
- the proposed lease which would encumber the presbytery until 2080s,
- the potential constitutional issues regarding property “held in trust,” and
- the potential conflict of interest that might arise since members of the Committee on Ministry who work with the session of FPCT also intended to serve on the non-profit board.

April of 2022, a small meeting with Trustee leadership, FPCT Project leadership, and a denominational lawyer was held related to the issue of FPCT’s proposed transfer of part of its endowment to a non-profit. The lawyer explained the question is whether a church needs the approval of the Presbytery to divest a church-held endowment (give the church’s endowment as a “gift.”) There was a lack of clarity about who was responsible for following up with the Office of the General Assembly (OGA) and seeking a legal opinion specific to New Jersey.

Also in April of 2022, the redevelopment project team sent the Trustees a draft lease between FPCT and the non-profit, naming the non-profit as “120 East State.” During the regular Trustees meeting, the Trustees expressed concern that the lease appeared to be not merely uncommon but possibly irregular. The Trustees

- discussed the lease’s lack of clarity as to the tenant,
- questioned why the lease term is 65 years instead of 20, 50, 99, etc.,
- noted that, per Lease Paragraph P, the lease appears to benefit the City of Trenton rather than FPCT, and
- wondered how the lease will benefit the FPCT if the church will receive no base rent.

The Trustees agreed to follow up with “120 East State” leadership about these issues and ask the COM about the health and viability of the church.

May of 2022, in response to the Trustees’ request to the COM about the health and viability of FPCT, the Trustees received a letter of endorsement from the COM and the SARC for the redevelopment project. The Trustees docketed time for members of FPCT at their regular meeting on May 18. Ten people attended as representatives of FPCT, 120 East State, COM, SARC, or “supporters” of the project, but offered no new information. Later that week, the Trustees sent a letter to the FPCT Clerk of Session expressing the concerns discussed in April. Gap Presbyter Rev. Dee Cooper informed the Trustees she had learned some members of the COM wanted to “bring this to the floor of the presbytery” as a COM recommendation instead of a Trustee recommendation, and she had discussed this with the COM.

June of 2022, the Trustees agreed to seek an appraisal of the FPCT properties. The Trustees also agreed to seek the advice of the OGA around three issues discussed during the April meeting with the denominational lawyer:

1. how property is “held in trust,”
2. the role of the Trustees in setting missional objectives of the Presbytery, and
3. potential conflict of interest.



The Trustees were made aware of FPCT project discussions held at Presbytery COM and Council meetings. The FPCT project team sought the help of the Presbytery Moderator to draft a Memorandum of Understanding and assemble a “working group” of FPCT and Trustee representatives who would “establish the terms and conditions under which the 65-year lease will receive provisional approval.”

July of 2022, this Working Group held an initial meeting convened by the Presbytery Moderator with two Trustees, one member of FPCT, and one member of the SARC. The Trustees present asked about FPCT’s plan for growth and were told one person had recently joined the church. The Trustees present stated the Trustees had asked the OGA for advice; the SARC representative said “not to worry” about them. The Working Group also learned the MOU had not been signed by all parties. The Working Group has not met since that initial meeting.

Later in July the Trustees found an appraiser willing to tour the FPCT properties in order to prepare a proposal.

August of 2022, the Trustees accepted the proposal from Trenton native Jay Ricigliano of Jay Robert Realtors to provide an appraisal of the FPCT properties. Also, the Trustees received a response from the OGA, clarifying that the OGA can offer “advice” rather than an “opinion” and which addressed the concerns raised by the Trustees from June.

September of 2022, the Trustees reviewed the OGA advice at their regular meeting and voted unanimously not to support the 65-year proposed lease. The Trustees communicated their decision to the Clerk of Session for FPCT, noting that the decision was based upon the advice of the OGA.

Throughout the Trustees’ research and review process, the FPCT project group did not express willingness to rethink or substitute other financing in place of the 65-year lease, PILP loan, or the asset transfer to the non-profit. The choice was consistently presented as “vote yes or no” with strong pressure to vote for approval despite the Trustees’ concerns regarding polity, the law, and financial risk.

### **Trustees’ Rationale for Rejecting Proposed 65-Year Lease**

1. A 65-year lease is not necessary: A 65-year lease amounts to a lifetime lease, which is the path of building acquisition or development when there is no available option to sell the property. If a building is restricted by a bequest or would be very costly and time intensive to sell (public land), then a lifetime lease is a good option. The FPCT property meets neither of these restrictions. Another aspect of a lifetime lease is the restriction of sale. A lifetime lease doesn’t allow a property that is a gift to be liquidated. Lastly, if grant money were received by the holder of a lifetime lease, the restrictions of grants would limit what FPCT or the Presbytery could do if the proposed project were unsuccessful.
2. The lease does not provide a benefit to the congregation: The usual form of a lease is mutual benefit. A congregation will lease its education building to a school, lease its sanctuary to another church, or lease a ballfield to a city for programs. The church then receives a financial benefit to further their ministry. As an example, the Presbytery currently owns property that is leased on a short-term basis for \$3,000 a month in rent. A not-for-

profit is provided space for its mission and the Presbytery receives funds to aid its own mission. The proposed FPCT lease has no benefit for the church and, by extension, the Presbytery being asked to approve it nor the Presbyterian Church (U.S.A.).

3. Potential conflict of “held in trust” principle: When a congregation no longer uses a building as a church, the property is still held for the use and benefit of the Presbyterian Church (U.S.A.). The Trustees’ initial concern was that the lifetime lease constitutes a transfer of asset outside the denomination. If the proposed lease is a transfer of asset, the Trustees believe it is necessary to know the value of what is being given. On numerous occasions the Trustees asked the project group to provide an appraisal. That such a fundamental step was not done was a red flag that gave the impression of a lack of familiarity with the requirements of a large-scale project.
4. No religious services for 65 years: A provision of the lease is the restriction of worship in the sanctuary of the church for duration of the lifetime lease. This restriction, if grant funds are applied with the above restrictions, would mean the sanctuary of the church could not again be a sanctuary. At the end of the lease, FPCT or its successor, will hold a visitor/art center.
5. Encumbrance of the Presbytery: The Presbytery of the Coastland is not yet two years old. The Trustees do not have precedence or legacy to guide an interpretation of the Presbytery’s mission. The Trustees believe that encumbering the Presbytery with a lease for 65 years would define Presbytery mission by example and exceed the normal role of trustees.

### **Trustees’ Concerns Regarding the 120 East State Not-for-Profit Organization**

1. Conflicts of interest: One of the key questions that was asked of the OGA was in regard to conflicts of interest around the FPCT project. While it is not uncommon for people to wear multiple “hats” in a presbytery, this situation appears to have multiple individuals in multiple, possibly conflicting, roles. There were times when the Trustees didn’t know if someone was speaking on behalf of the COM, the church, the SARC, or the not-for-profit. Moreover, the Trustees believe such confusion inhibited the work of all four.
2. PILP Loan request appears to be for 120 East State, Inc.: The project proposal calls for the Trustees to endorse a PILP loan of \$2,200,000. The loan would be “transferred” to the not-for-profit. This request raised the question: can the not-for-profit be considered an entity of the church, the presbytery, or the denomination? Should congregations of the presbytery seek debt for another organization?
3. Divestment of Endowment: The Trustees are concerned that the endowment of FPCT is being divested. While a gift can be given from an endowment, the assets of a church cannot be transferred outside of the denomination. This is another aspect of “held in trust” that precludes the principle of assets being transferred outside of the Presbyterian Church (U.S.A.).
4. 28-million-dollar project without precedence or legacy: The Trustees are concerned that FPCT is undertaking a project of this scale without clearly identified leadership experience or a legacy of similar mission within FPCT. Every church engages in renovation or remodeling



of its property from time to time. This project represents a massive undertaking by a separate organization with no constitutional line of accountability to the Presbytery or the denomination.

To serve as a trustee of an organization is a fiduciary responsibility best understood as those who ask: What is in the best interest of the organization? For the better part of a year, the Gap Trustees of the Presbytery of the Coastlands have been guided by this question. While we have been intrigued by the scope and scale of the FPCT redevelopment project our role was to ask, “Is the proposed 65-year lease in the best interest of the Presbytery?” Our conclusion after many meetings, discussion, research, and advice was, “This is not in the best interest of the Presbytery.” We appreciate the vision and dreams of those seeking to bless the city of Trenton with a visitor center. We hope such a goal is realized. Yet, we do not believe the Presbytery can fulfill the role as requested.

**Note:** Presbytery elected Interim Trustees on July 27, 2021. After February 28, 2022, the Presbytery has referred to the Trustees as “Gap Trustees” as the Presbytery continues the work of putting its permanent structure in place. The Interim Trustees elected on July 27, 2021 served during all or part of the discernment process.

- Elder Tim Brown
- Elder Robert Carson
- Rev. David Davis
- Rev. Fred Garry
- Elder Kurt Kaboth
- Rev. Jyung In (Jenny) Lee
- Rev. Robert Louer
- Rev. Andrew Scales
- Rev. Theresa Swenson
- Elder Jean Woodman

Hello Rev. Garry,

Thank you so much for your questions, I want to affirm your commitment to the mission and ministry of the Presbyterian Church (U.S.A.) in your geographic region.

You mention and we are aware that the presbytery is a recently formed presbytery (from a consolidation of previous presbyteries) in the New Jersey geographic region and that the members of the presbytery are still learning about each other and reviewing all committees and commissions and decisions that the presbytery makes in light of the mission and ministry of the Presbyterian Church (U.S.A.) in the geographic region.

I affirm your ongoing ministry together and appreciate the seriousness with which you have come to the particular task in your function as interim trustees of the presbytery.

## **Role of the OGA**

First, the Office of the General Assembly is not empowered to issue Authoritative Interpretations of the Book of Order.

Authoritative Interpretations of the Book of Order can happen by the General Assembly responding to a question after the General Assembly has received advice from the Advisory Committee on the Constitution, or by the General Assembly Permanent Judicial Commission through a Remedial or Disciplinary Case.

The Office of the General Assembly through the Stated Clerk has offered Advisory Opinions and Constitutional Musings in the past to help mid councils and congregations make decisions about their mission and ministry.

The Advisory Opinions are topical and point to existing Authoritative Interpretations so that persons making decisions may have guidance as to the way in which the Presbyterian Church (U.S.A.) has chosen to order itself through the Constitution of the Presbyterian Church.

Constitutional Musings are topical on issues which do not have clear Authoritative Interpretations, but are designed to help mid councils and congregations take into account questions which are relevant to their mission and ministry decision making in a particular area.

I have attached the Advisory Opinion regarding the Trust Clause which I think you will find helpful in your evaluation.

Second, the Office of the General Assembly is not intending to offer an opinion about the mission and ministry in your geographic area nor about the value of the mission and ministry of the particular project.

But rather, we are trying to point to resources to help and support you in your role as temporary trustees of the Presbytery as well as others in the Presbytery as you make decisions about mission and ministry in your geographic area in this particular project.

Third, should the conflict rise to the level of unconstitutional actions by the presbytery, there are a couple of ways to address it...

First, if the presbytery takes action or fails to take an action in violation of the PCUSA constitution, it is possible for a member of the presbytery to file a remedial complaint against the presbytery with the Synod Stated Clerk alleging that the presbytery has taken an unconstitutional action (irregularity) or failed to take an action (delinquency) which the presbytery has a duty to take under the constitution.

This remedial case would go before the Synod Permanent Judicial Commission.

Remedial Cases must be brought within 90 days of the alleged irregularity or delinquency and may be accompanied by Request for a Stay of Enforcement on the particular action.

I recommend that anyone contemplating filing a remedial complaint should speak with Flor Velez-Diaz, Manager for Judicial Process and Social Witness for the details.

A second means of resolving a conflict which the presbytery is unable to resolve itself, is to request that the Synod appoint an Administrative Commission or Special Administrative Committee to support the ongoing mission and ministry of the presbytery through the conflict.

A commission may be empowered to take original jurisdiction of certain or all powers of the presbytery and a special administrative committee may help guide the presbytery through their conflict without making decisions on the presbytery's behalf.

Ok, to your questions about the responsibilities of the session and the congregation in the issue above: I am going to first respond broadly to the content of the memo and then to the specific questions.

## **Leasing**

You are correct that the presbytery has the right and responsibility to review any lease entered into by a congregation for property owned by the congregation for over 5 years.

The congregation does not have the power to enter into the lease without the presbytery approval of said lease.

The trustees of the presbytery have the power to receive, hold, encumber, manage and transfer property, real or personal, for and at the direction of the presbytery.

Some councils delegate the presbytery power to review and approve any lease for over 5 years which a congregation is seeking to enter into to the trustees.

If that power has not been delegated, the trustees may make a recommendation to the presbytery for presbytery action.

## Mission of the Presbytery

You are also correct that the presbytery determines the mission and ministry in the geographic regions of the presbytery and, based upon that mission and ministry, makes decisions about organizing, congregations, dissolving congregations, merging two or more congregations, dismissing congregations to another reformed denomination or forming joint congregational witness with other denominations.

Because most of the decision making around property, congregational vitality, and mission will be based around this determination by the presbytery of the mission and ministry in the geographic region, it seems that any decisions that relate to the new project, however time-sensitive in may feel to those involved, would be best left until after that discernment was finished by the presbytery and the presbytery felt like it had some parameters around which to make a decision.

All property, whether held by a congregation or council, is held in trust for the Presbyterian Church (U.S.A.).

This trust is not separate from our polity but rather is a reflection of how we choose to order ourselves with decisions made about property for the accomplishment of ministry of Jesus Christ in the world.

Whenever property of, or held for, a congregation of the Presbyterian Church (U.S.A.) ceases to be used by that congregation as a congregation of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.

Similarly, whenever a congregation is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of the Presbyterian Church (U.S.A.).

These concepts came together in a GAPJC case (Chesterbrook Taiwanese PC v National Capital Psby: attached) in which a conflict arose between the ministry and mission of a congregation which was in the process of being dissolved by a presbytery and the mission and ministry of the presbytery in the process of dissolving the congregation.

The GAPJC confirmed that as long as the congregation existed as a congregation of the PC(U.S.A.) it had the right to determine the use of its property, however that right was bounded by the fact that the property was held in trust the Presbyterian Church (U.S.A.), that **once the congregation ceased to exist, the presbytery had exclusive power to determine the use and disposition of the church property, and that the presbytery had the power to approve (or not approve) any sale, encumbrance or lease over 5 years.**

The GAPJC held that these powers taken together meant that **the dissolving congregation could only dispose of the property as the presbytery directed.**

The facts as set forth in your memo seem to align with the facts of the Chesterbrook Taiwanese PC v National Capital Psby in that a very small congregation which may or may not be viable (to be determined by the presbytery in the future) is seeking to bind the use of its property in a lease for 65 years to a non-congregational use and is also seeking to significantly encumber the property without control over the use of the property.

The presbytery has the power to determine whether the mission and ministry in this geographic region includes this particular mission and ministry.

It is possible that since the congregation is contemplating ceasing to use the property as a congregation of the PC(U.S.A.) in the proposal, the property will shall be held, used, applied, transferred, or sold as provided by the presbytery.

If that occurs, the presbytery will be responsible for any encumbrance placed upon the property.

It is also possible that if the congregation ceases to function as congregation or is formally dissolved by the presbytery, the property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct.

Again, if this occurs, the presbytery will be responsible under the Book of Order for any encumbrance upon the property.

## **Conflicts of Interest**

You also mention that members of the congregation and persons who have in interest in the outcome of the decision to enter into the project sit on decision making bodies of the presbytery which may have the power to evaluate, recommend or make decisions on behalf of the presbytery regarding this project and the mission and ministry of the presbytery.

This is a complicated question about whether they would be in a conflict of interest.

We know that the presbyteries are made up of minister members who serve congregations in a variety of functions, temporary or called and installed, and of ruling elders from the congregations within the presbytery.

So that all presbytery committees, commissions and the presbytery itself will have voting members which will vote on items regarding their congregations.

This has not been determined in the past to be a conflict per se although a review by a higher body could determine that the particular facts did show a conflict of interest.

If a member of the congregation or a minister serving the congregation serve on a Permanent Judicial Commission which is deciding an issue in which the congregation is a party, that would

be considered a conflict and that person would have to recuse themselves from participating in the particular PJC case.

We also know that when the presbytery is determining issues around property when discerning mission and ministry in a geographic area that may result in organization of a congregation, dissolution of a congregation, dismissal of a congregation to another reformed denomination, or merging of two or more congregations, that the presbytery has a fiduciary duty to the Presbyterian Church (U.S.A.) regarding the property and property use and must take into account all information available on a case by case basis prior to making a decision that may result in gifting or selling property to another entity.

This overall fiduciary requirement to make each decision on a case by case basis would be used by a higher PJC or council to see if the presbytery delegated the responsibility of such review or decision to persons who have an interest in the outcome of the decision.

If the persons delegated by the presbytery to make the decision or make recommendation regarding the decision have an interest in the outcome of the decision, or were the persons who created and brought the proposal to the presbytery, this would seem to show that the presbytery did not fully or properly utilize its fiduciary responsibility to evaluate this proposal involving property and mission and ministry.

When evaluating the actual project, the presbytery could look to the Foundations as it determines whether the nature of the project and how the project relates to the mission and ministry of the congregation and the mission and ministry of the presbytery (or the former presbytery if Coastlands does not have a mission and ministry yet).

For whom or what would the church building be serving?

Is the service to the identified group in the way that the building would serve consistent with the mission and ministry other PC(U.S.A.) in that region.

What commitments has Coastlands made about interests, equity and God's mission and ministry and whose interests and values are being served with this project and whose interests and which values are not being served by this project.

## Conclusion

**Again, we recommend that because most of the decision making around property, congregational vitality, and mission will be based around this determination by the presbytery of the mission and ministry in the geographic region, it seems that any decisions that relate to the new project, however time-sensitive it may feel to those involved, would be best left until after that discernment was finished by the presbytery and the presbytery felt like it had some parameters around which to make a decision.**

1. *A congregation is seeking to enter a lease agreement for use of their property by a non-profit corporation established by the congregation for the purpose of seeking public funds to establish a new vision for the life of the congregation. We are concerned that such a lease is improper and violates the Book of Order (G-4.02) with the subsequent effect of unduly obligating the Presbytery. Therefore, we request clarification from the Office of the General Assembly/Constitutional Interpretation Office.*

There is no Authoritative Interpretation on point.

This question includes a fact not included above which states that the purpose of the non-profit corporation is to seek public funds to establish a new vision for the life of a congregation.

This opens lots of questions ... is the non-profit corporation under the control of the congregation and/or session?

Is it separate from the congregation in fact?

Is the seeking of public funds for the mission of the congregation or the mission of the non-profit corporation?

Is this a means for the congregation to seek funding that would ordinarily not be available to a religious congregation?

Is it seeking funding only for the purpose of the non-profit which is different from the mission and ministry of the congregation (not inclusive of the constitutional duties of the session to provide that the Word of God is truly preached and heard, make sure that the Sacraments are rightly administered and received, and nurture the covenant community of the disciples of Christ)?

I would think these are only a few of the questions that the presbytery will be asking when reviewing this as a mission and ministry of the congregation and a potential mission and ministry of the presbytery should the congregation cease to use the property as a congregation of the PC(U.S.A.) or cease to exist as a congregation of the PC(U.S.A.).

We agree that the main question is whether this is in line with Trust Clause and whether the property is being held for the use and benefit of the PC(U.S.A.).

There are processes to challenge seemingly irregular or delinquent actions by the presbytery through the Judicial Process to determine whether there is/was a conflict of interest in the decision-making process.

2. *The lease agreement the congregation seeks to enter into would preclude the congregation or any religious organization from use of the property. Such a lease would be improper based on G-4.0206. Therefore, we request clarification from the Office of the General Assembly/Constitutional Interpretation Office.*

There is no Authoritative Interpretation on point, however, it would seem under that provision, the property would cease to be used by the congregation as a congregation of the PC(U.S.A.) which may have implications as to who then controls the property under the constitution, although it may be used as income producing property for the congregation.

Such an income producing property may have tax implications for the congregation and any subsequent denominational owner of the property.

I highly recommend that the congregation and the presbytery seek advice from a tax specialist on whether any such income will have an effect the standing of the congregation in the group ruling as a religious congregation in the Presbyterian Church (U.S.A.).

This also raises the question of why the congregation would seek a PILP loan to support property and functions that would (presumably) not be aligned with any church interests (considering that no religious activity is able to happen in that space under the terms of the lease as they have been shared).

We would suggest that the presbytery officials seek advise from PILP as to those matters as well.

3. *Members of the Committee on Ministry of the Presbytery represent the congregation (as Moderator, Liaison, Special Administrative Review Committee Moderator, etc.) and the proposed lessee for the property. Such actions constitute an irregularity - as a failure to report a conflict of interest in the situation - and would represent a delinquency should the proposed property action move forward. Therefore, we request clarification from the Office of the General Assembly/Constitutional Interpretation Office.*

We are unable to give an opinion about whether the particular persons involved in decision making constitute a conflict of interest.

However, as iterated above, it is the Presbytery's overarching fiduciary responsibility to the Presbyterian Church (U.S.A.) to provide care that adequate discernment happens and the conditions that create the opportunity for adequate discernment.

In the interest of better clarity and transparency in any recommendations made to the Presbytery for their decision/determination, it would make sense for the presbytery to think about who is playing each role and how that relates to other's functions in decision making capacity or recommendations for decision.

If the entity delegated to review this project is the COM and representatives from COM also are representatives of the entity seeking to benefit from the lease itself, that would most likely be impermissible from the discernment standpoint and fiduciary duty responsibilities laid out in the property/trust clause cases.