



UNION COUNTY IMPROVEMENT AUTHORITY

1499 US Highway One, North, 3rd Floor
 Rahway, New Jersey, 07065
 www.ucimprovementauthority.org
 (732) 382-9400 (732) 382-5862 fax

Resolution No. 51-2017

Date: July 12, 2017

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
 AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A NON-
 DISTURBANCE AND REGONITION AGREEMENT WITH AST PARK
 MADISON URBAN DEVELOPMENT, LLC AND DOLGENCORP LLC T/A PNC
 BANK, A NATIONAL BANKING ASSOCIATION**

APPROVED AS TO FORM:
 Lisa M. da Silva, RMC
 Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
 UNION COUNTY IMPROVEMENT AUTHORITY

Lisa M. da Silva

M. W. B. [Signature]

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Bornstad, Treasurer</i>	✓		✓				
<i>D'Elia</i>	✓		✓				
<i>Hockaday</i>	✓		✓				
<i>Huff</i>	✓		✓				
<i>Lattimore</i>		✓					
<i>Salerno, Secretary</i>	✓		✓			✓	
<i>Szpond</i>	✓		✓				
<i>Rountree, Vice Chairwoman</i>	✓		✓				✓
<i>Scutari, Chairman</i>	✓		✓				

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PNC BANK, A NATIONAL BANKING ASSOCIATION**

WHEREAS, the Union County Improvement Authority (the “Authority”) has been duly created by ordinance of the Union County Board of Chosen Freeholders as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authorities Law, N.J.S.A. 40: 37A-44 et seq.; and

WHEREAS, pursuant to N.J.S.A. 40:37A-55(t), the Authority is empowered to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts and things necessary, convenient or desirable for the purposes of the Authority, subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; and

WHEREAS, the Authority is the fee simple owner of certain property located at 211-215 West Front Street, Plainfield, Union County, New Jersey 07060; and

WHEREAS, the Authority and AST Park Madison Urban Renewal LLC entered into a Lease Agreement date March 1, 2013; and

WHEREAS, AST Park Madison Urban Renewal LLC entered into a lease agreement with Dolgencorp, LLC (“PNC Bank”) to lease a portion of the premises; and

WHEREAS, the Authority consents to and approves the PNC Bank Lease and all of the rights and privileges granted to the tenant during the term of the lease and any extensions thereof; and

WHEREAS, the Authority desires to enter into a Non-Disturbance and Recognition Agreement with AST Park Madison Urban Renewal LLC and Dolgencorp ,LLC (“PNC Bank”) in substantially the form annexed hereto and made a part hereof ;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE MEMBERS OF THE UNION COUNTY IMPROVEMENT AUTHORITY AS FOLLOWS:

1. The Authority hereby approves the execution of the Non-Disturbance and Recognition Agreement with AST Park Madison Urban Renewal LLC and PNC Bank.
2. The Authority authorizes the Executive Director to approve and execute the Non-Disturbance and Recognition Agreement similar to a forms attached hereto, with AST Park Madison Urban Renewal LLC and PNC Bank setting forth the terms of the agreement. Such approval and execution by the Executive Director shall be deemed approval by the Authority and no further action or approval shall be required.
3. This resolution shall take effect immediately.

NON-DISTURBANCE AND RECOGNITION AGREEMENT

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "Agreement") is made as of the ___ day of _____, 2017, by and among UNION COUNTY IMPROVEMENT AUTHORITY, a _____ ("Prime Lessor"), AST PARK MADISON URBAN RENEWAL, LLC, a New Jersey limited liability company ("Landlord") and DOLGENCORP, LLC, a national banking association ("Tenant").

Preliminary Statements

The following statements are a material part of this Agreement.

A. Prime Lessor is the fee simple owner of certain real property located at 211-215 West Front Street, Plainfield, Union County, New Jersey 07060, as more particularly described in Exhibit "A" (the "Shopping Center") attached hereto and incorporated herein by reference.

B. Prime Lessor and Landlord entered into that certain Lease dated March 1, 2013 wherein Prime Lessor leased the Premises to Landlord, a memorandum of which is of record with the Union County, New Jersey Recorder's Office as Doc No. _____ (the "Prime Lease").

C. Landlord and Tenant entered into that certain Lease Agreement (the "PNC Bank Lease"), dated _____, 2017, whereby Landlord leased to Tenant and Tenant leased from Landlord a portion of the Shopping Center (the "Premises") as more particularly described in the PNC Bank Lease.

D. The parties hereto now desire to enter into this Agreement so as to clarify their rights, duties and obligations under the Prime Lease and the PNC Bank Lease and to further provide for various contingencies as hereinafter set forth.

Agreement:

NOW, THEREFORE, in consideration of the foregoing, the mutual agreement of Prime Lessor, Landlord and Tenant to the terms and conditions of this Agreement and other good and valuable consideration, Prime Lessor, Landlord and Tenant agree as follows:

1. Prime Lessor hereby consents to and approves the PNC Bank Lease and all of the rights and privileges granted to Tenant thereunder and agrees that, for and during the term of the PNC Bank Lease and any extensions thereof as provided in the PNC Bank Lease, Prime Lessor shall not take any action, directly or indirectly, to disturb or otherwise affect Tenant's occupancy or possession of the Premises, and/or any other rights and privileges of Tenant with respect to the Premises or the Shopping Center as set forth in the PNC Bank Lease, so long as Tenant is not in default under the PNC Bank Lease beyond any applicable notice and cure period provided therein of such a nature as

would permit Landlord to terminate the Lease, nor shall Tenant's exercise of any rights or privileges under the PNC Bank Lease constitute a default under the Prime Lease. In addition to the proceeding provisions, Prime Lessor expressly agrees to permit insurance, eminent domain, condemnation, and similar proceeds and/or awards relating to the Shopping Center, including the Premises, to be used as required or permitted by the provisions of the PNC Bank Lease.

2. In the event Landlord shall default in the payment of any sum or performance of any covenant or condition of the Prime Lease which results in the termination of the Prime Lease or of Landlord's right of possession to the Shopping Center, or in the event of any termination of the Prime Lease for any reason whatsoever prior to the expiration of the term of the PNC Bank Lease and any extensions thereof as provided in the PNC Bank Lease or if Prime Lessor shall come into possession of all or any part of the Shopping Center, including the Premises described in the PNC Bank Lease, prior to the expiration of the term of the PNC Bank Lease and any extensions thereof as provided in the PNC Bank Lease, then Prime Lessor, Landlord and Tenant do hereby agree that (a) Tenant shall not be made a party to any proceeding relating to any default under the Prime Lease or the termination of the Prime Lease or Landlord's right of possession to any portion of the Shopping Center, and (b) the PNC Bank Lease and, except as provided in Paragraph 3 below, all terms, provisions, covenants and agreements of the PNC Bank Lease, shall survive any such default in or termination of the Prime Lease, and the PNC Bank Lease and Tenant's rights of occupancy and possession of the Premises, and/or any other rights and privileges of Tenant with respect to the Premises and the Shopping Center, shall not be disturbed and shall continue in full force and effect in accordance with and subject to all of the terms, provisions, agreements and covenants of the PNC Bank Lease which shall thereafter operate as a direct lease with Prime Lessor, as landlord, and Tenant, as tenant. Tenant agrees, in such event, to attorn to Prime Lessor and to recognize Prime Lessor as the Landlord under the PNC Bank Lease. Subject to Paragraph 3 below, Prime Lessor shall recognize Tenant as tenant of the Premises for the balance of the term of the PNC Bank Lease, as extended, and Prime Lessor shall, in such event, exercise and undertake all of the rights, obligations and duties of Landlord in and under said PNC Bank Lease, including, but not limited to, completing the Landlord's Work described in Section 4.1 of the PNC Bank Lease, and thereafter shall be entitled to collect all rents and payments due and payable under said PNC Bank Lease.

3. Notwithstanding anything contained in Paragraph 2 above to the contrary, Prime Lessor shall not be liable in any way or to any extent to Tenant under the PNC Bank Lease:

(a) For any past act or default on the part of the original or any prior Landlord under the PNC Bank Lease, provided, however, that the foregoing will not prevent Tenant from exercising any self-help and resulting set off rights and remedies set forth in the PNC Bank Lease, if any.

(b) For any prepayment of rent or any other sum deposited with the original or any prior Landlord under the PNC Bank Lease and not delivered to Prime Lessor, other

than the current month's PNC Bank Lease rental paid in advance, including CAM Contribution (as defined in the PNC Bank Lease).

4. For and during the term of the PNC Bank Lease, Prime Lessor agrees that, prior to terminating the Prime Lease or taking any proceedings to enforce any such termination thereof for any reason other than the expiration of the term of the Prime Lease as provided therein, Prime Lessor shall deliver written notice to Tenant at least thirty (30) days prior to the effective date of such termination or the taking of any proceedings, specifying the reason for such termination or proceedings. Any notices given to another party under this Agreement shall be in writing, and shall be deemed to be given if sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight courier service providing for delivery upon receipt, and addressed to the address of such party as provided below:

Prime Lessor: Union County Improvement Authority
1499 US Highway One, North
Rahway, NJ 07065
Attn: Daniel P. Sullivan, Executive Director

Landlord: AST Park Madison Urban Renewal, LLC
c/o AST Development Corporation
111 Magee Avenue
Lavallette, New Jersey 08735
Attn: Shane Soranno

With a copy to: Mandelbaum Salsburg
Mandelbaum Salsburg, PC
3 Becker Farm Road, Suite 105
Roseland, New Jersey 07068
Attn: Owen T. Hughes, Esq.

Tenant: PNC Bank, National Association
c/o PNC Realty Services
The Tower at PNC Plaza - 22nd Floor
300 Fifth Avenue
Mail Stop: PT-PTWR-22-1
Pittsburgh, PA 15222-2401
Attn.: Transaction Manager

with a copy to:

PNC Bank, National Association
Legal Division
1600 Market Street – 28th Floor
Philadelphia, PA 19103
Attn: Michael G. Balent, Esq.,
Chief Counsel

5. Subject to the terms and conditions of Paragraph 3 above, no provision contained in this Agreement shall be deemed an amendment or modification of any provisions contained in the PNC Bank Lease, including, without limiting the generality of the foregoing, any rights given thereunder to Tenant to terminate the PNC Bank Lease.

6. No amendment or modification of this Agreement shall be valid or binding unless in writing, executed by the party or parties to be bound thereby.

7. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns (including, without limitation, any lender having a lien on the fee interest in and to the Premises and any person or entity acquiring title to the Premises by foreclosure or otherwise).

8. This Agreement may be executed in one or more counterparts, each of which when exchanged shall be considered an original document.

9. Prime Lessor does hereby warrant and represent to Tenant that Prime Lessor is the sole owner and holder of fee simple interest in the Shopping Center, that the Prime Lease has not been amended and is valid and in full force and effect as of the date hereof, that the term of the Prime Lease as heretofore commenced, that there are no defaults by either party thereunder, that Landlord is, as of the date hereof, the tenant under the Prime Lease and that nothing in the Prime Lease contained prohibits or restricts the execution and delivery of the PNC Bank Lease or any term or condition contained in the PNC Bank Lease.

TENANT:

PNC Bank, National Association

By: _____

Name:

Its:

STATE OF _____)

_____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, acting in her capacity as _____ of PNC Bank, National Association, and that she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by herself as _____, on behalf of the company.

Notary Public

Printed Name: _____

My Commission Expires: _____

Exhibit "A"

Legal Description of the Shopping Center