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**HISTORIC COURTHOUSE  
LEASE**

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**Dated as of \_\_\_\_\_, 2016**

DRAFT

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## LEASE

THIS LEASE (this "Lease") is made and entered into as of \_\_\_\_\_, 2016 by and between **HISTORIC COURTHOUSE, LLLP**, a Kentucky limited liability limited partnership ("Tenant"), and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT PUBLIC FACILITIES CORPORATION**, a Kentucky non-profit corporation ("Landlord").

## RECITALS

WHEREAS, Landlord is the owner of the building located at 215 W. Main Street in Lexington, Fayette County, Kentucky 40507 and commonly known as the Historic Fayette County Courthouse (the "Building"), which Building Tenant intends to rehabilitate and lease; and

WHEREAS, Landlord is the owner of the certain tract(s) of land upon which the Building is located, which land is legally described in Exhibit A attached hereto and made a part hereof, together with certain other improvements and all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining thereto or to the Building (collectively, the "Land" and, together with the Building, the "Property"); and

WHEREAS, Tenant intends to rehabilitate the Building in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure" (the "Federal Historic Tax Credits") pursuant to Section 47 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "Code") and the state historic rehabilitation tax credit (the "State Historic Tax Credits", and together with the Federal Historic Tax Credits, collectively the "Historic Tax Credits") pursuant to Sections 171.396 and 171.397 of the Kentucky Revised Statutes, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "KRS"); and

WHEREAS, Tenant has received or may receive mortgage financing, together with any modifications or refinancing thereof for the Property (collectively, the "Loans") from certain lenders or their successors or assigns (the "Lenders"); and

WHEREAS, Tenant has been formed to lease and rehabilitate the Property including the Building pursuant to the terms hereof, and to hold, maintain, operate, and sell or otherwise dispose of its interest in the Property hereunder (the "Leasehold Interest").

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

## ARTICLE I. DEFINED TERMS

In addition to the defined terms set forth in the Recitals to this Lease, the following defined terms used herein shall have the meanings specified below:

“Additional Rent” has the meaning set forth in Section 3.3.

“Base Rent” has the meaning set forth in Section 3.1.

“Bankrupt” or “Bankruptcy” means, as the context may require, a person or entity subject to a proceeding under Title 11 of the United States Code entitled “Bankruptcy”, as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditor’s rights.

“Closing” means the date on which this Lease is fully executed and delivered by both Landlord and Tenant.

“Collateral” has the meaning set forth in Section 11.1(a).

“Commencement Date” means the date of the Closing.

“Condemnation Award” means the aggregate amount of any condemnation award or awards payable with respect to a Taking, whether by agreement or pursuant to a judgment or otherwise, including consequential damages, with any interest on such amount, net of any unreimbursed costs and expenses of collecting the same.

“Designated Prime Rate” means the prime commercial rate of interest as published from time to time in The Wall Street Journal, or such other source as the parties may agree, adjusted as such rate adjusts.

“Environmental Laws” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances and/or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term “Environmental Laws” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including, but not limited to, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; the River and Harbors Appropriation Act; and those relating to Lead Based Paint. The term “Environmental Laws” also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property; requiring notification or disclosure of releases of Hazardous Substances or other environmental condition of a property to any governmental authority or other person, whether or not in connection with any transfer of title to or interest in

such property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury or property or other damage in connection with any physical condition or use of the Property.

“Environmental Reports” means those documents and reports, if any, as set forth in Exhibit C.

“Event of Default” has the meaning set forth in Section 9.1.

“Force Majeure” means acts of God, fire, storm, strikes, blackouts, labor disputes, riot or civil insurrection, inability to obtain materials, equipment or labor, or unusual weather conditions.

“Foreclosure” has the meaning set forth in Section 10.4.

“Lease Payment” has the meaning set forth in Section 3.2.

“Hazardous Substances” includes, but is not limited to, any and all substances (whether solid, liquid or gas) defined, listed or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, Lead Based Paint and Toxic Mold. Notwithstanding anything to the contrary contained herein, the term “Hazardous Substances” will not include substances which otherwise would be included in such definition but which are of kinds and in amounts ordinarily and customarily used or stored in similar properties, including, without limitation substances used for the purposes of cleaning, maintenance, or operations, substances typically used in construction, and typical products used in properties like the Property, and which are otherwise in compliance with all Environmental Laws. Furthermore, the term “Hazardous Substances” will not include substances which otherwise would be included in such definition but which are of kinds and in amounts ordinarily and customarily stocked and sold by tenants operating businesses of the types operated by the Tenant and which are otherwise in compliance with all Environmental Laws.

“HTC Value” has the meaning set forth in Section 7.6.

“Impositions” has the meaning set forth in Section 4.2.

“Investor Partner” shall mean any investor limited partner that may be admitted as a limited partner of the Tenant in accordance with the Partnership Agreement.

“Insurance Proceeds” means the proceeds obtained under any insurance policy Tenant maintains with respect to the Property, net of the unreimbursed costs and expanses incurred in the collection of such proceeds.

“Landlord’s Percentage” has the meaning set forth in Section 7.6(b).

“Lease Year” means, in the case of the first lease year, the period from the Commencement Date through December 31st of the year which includes the Commencement Date; thereafter, each successive twelve-calendar month period following the expiration of the first lease year of the Term; except that in the event of the termination of this Ground Lease on any day other than the last day of the last Lease Year, then such Lease Year shall be the period commencing with the day following the end of the preceding Lease Year through and including the date of termination.

“Leasehold Interest” has the meaning set forth in the Recitals.

“Leasehold Interest Value” has the meaning set forth in Section 7.6.

“Leasehold Mortgage” means any mortgage or deed of trust granted by Tenant and secured in whole or in part by the Leasehold Interest.

“Leasehold Mortgagee” means the holder of a Leasehold Mortgage.

“Legal Requirements” shall mean all laws, statutes, ordinances, orders, rules, regulations and requirements of all Federal, state and local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities and the appropriate officers, departments, and boards thereof applicable to the Property.

“Lenders” has the meaning set forth in the Recitals.

“Loan” has the meaning set forth in the Recitals.

“Operating Contracts” has the meaning set forth in Section 2.2(a).

“Operating Documents” means the Partnership Agreement along with any other documents relating to the Property by which Tenant is bound.

“Partial Taking” has the meaning set forth in Section 7.6.

“Partnership Agreement” means that certain Agreement of Limited Partnership of Tenant dated as of \_\_\_\_\_, 2016, as may be amended, restated, modified or supplemented from time to time.

“Permitted Encumbrances” means the encumbrances and exceptions set forth in the Title Policy.

“Permitted Mortgages” means any Leasehold Mortgage approved in writing by the Landlord.

“Permitted Mortgagee” means the holder of any of the Permitted Mortgages.

“Plans and Specifications” means the plans and specifications for the Rehabilitation of the Property, as such plans and specifications may be changed from time to time with the approval of the Lender, and any applicable governmental entities, if such approval shall be required; provided, however, that Landlord or Tenant shall not authorize any change to the Plans and Specifications without the Secretary’s Approval, if the Secretary’s Approval has been obtained with respect to such Plans and Specifications.

“Property” has the meaning set forth in the Recitals.

“Recapture Period” means the period of time set forth in Code Section 50.

“Rehabilitation” shall have the meaning given the term “Certified Rehabilitation” in Code Section 47(c)(2)(C).

“Repairs” means all necessary or customary maintenance, replacements, renewals, alterations, additions and betterments made in the ordinary course of the operation of the Property, both interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description.

“Residual Value” has the meaning set forth in Section 7.6(b).

“Restoration Criteria” has the meaning set forth in Section 7.6(c)(1).

“Restoration Work” has the meaning set forth in Section 7.1.

“Secretary’s Approval” shall mean the approval of the Secretary of the Interior, if and to the extent such approval is required Title 36 of the Code of Federal Regulations, Part 67.6 (or any successor provisions thereto).

“State” shall mean the Commonwealth of Kentucky.

“Sublease” shall mean a lease between Tenant and a Subtenant.

“Subtenant” means any tenant or subtenant, under a Sublease with Tenant, in lawful occupancy of any unit(s) or spaces located on the Property.

“Taking” means any taking of the title to, access to, or use of all or any part of the Property and/or the Building, or any interest therein or right accruing thereto, as a result of the exercise of the right of condemnation or eminent domain affecting the Property or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking. A Taking may be total or partial, permanent or temporary.



“Temporary Taking” means a Taking that does not extend beyond the Term, so that Landlord’s reversionary interest hereunder is unaffected by such Taking.

“Tenant’s Percentage” has the meaning set forth in Section 7.6(b).

“Tenant’s Personal Property” shall mean any personal property of Tenant located upon or used by Tenant in connection with the Property, including without limitation:

- (i) all fixtures and other tangible personal property located at or on or intended to be used in connection with the Property; all articles of personal property now or hereafter attached to or intended to be used in or about or in connection with the Property; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Property;
- (ii) All contracts, contract rights, accounts, warranties, and agreements, including rights to return of deposits, prepaid premiums or other payments; receivables, rents, chattel paper and instruments, property rights, trade names, plans and specifications, permits, approvals and general intangibles and all other choses in action now or hereafter existing with respect to the Leasehold Interest, and all proceeds from the foregoing;
- (iii) all insurance proceeds, including interest, payable in connection with any damage or loss to the Leasehold Interest; all eminent domain awards made with respect to the Leasehold Interest; and
- (iv) all books and records maintained by Tenant and relating to the operation of the Property.

“Tenant’s Work” means the rehabilitation and development of the Property in accordance with (i) all applicable requirements of the Loans and the Operating Documents, (ii) all Legal Requirements, (iii) the Historic Preservation Certification Applications (Part I and II); and (iv) the Plans and Specifications.

“Term” means the term commencing on the Commencement Date and ending on the last day of 2091, unless sooner terminated as provided for herein.

“Utility Charges” has the meaning set forth in Section 4.3.

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**ARTICLE II.**  
**PROPERTY, TERM AND SUBORDINATION**

2.1. Lease of Property.

Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the Property for the Term.

2.2. Assignment of Operating Contracts

(a) Landlord represents to Tenant that prior to the date hereof Landlord has entered into various contracts relating to the operation and development of the Property, (the “Operating Contracts”), said Operating Contracts being listed on Exhibit B hereto, if any. Landlord hereby represents to Tenant that, to the knowledge of Landlord, no defaults exist under any of such Operating Contracts if any and that all consents and notices necessary for the assignment and assumption described in this Section 2.2 have been obtained. Landlord further represents to Tenant that Landlord is not a party to any leases or contracts or agreements relating to the operation of the Property exist with respect to the Property other than those listed on Exhibit B hereto.

(b) Landlord hereby assigns to Tenant all its right, title and interest in and to each of such Operating Contracts and Tenant hereby assumes all of the obligations of Landlord under each of those Operating Contracts, in each case effective as of the date Tenant takes possession of the Property. Landlord hereby represents to Tenant that no defaults exist under any of such Operating Contracts and that all consents and notices necessary for the assignment and assumption described in this paragraph have been obtained.

(c) Tenant hereby releases Landlord from any and all claims of Tenant and liabilities to Tenant whatsoever with respect to the representations and warranties of Landlord contained in this Article, unless determined pursuant to a final and unappealable order of a court having proper jurisdiction to have been intentionally falsely made by Landlord.

(d) To the extent permitted by law, Tenant covenants and agrees to indemnify, save and hold harmless Landlord from and against any and all loss or liability arising out of or related to Tenant’s failure to perform any of the obligations of Landlord under any of the Operating Contracts from and after the date hereof.

(e) Landlord and Tenant hereby agree that upon termination of the Lease as provided hereunder or expiration of the Term, all assignments of Operating Contracts then in effect shall automatically terminate.

2.3. Delivery; Title.

Landlord shall deliver possession of the Property to Tenant on the Commencement Date, in the same condition as it now is and shall convey the Leasehold Interest free of all title defects and encumbrances except the Permitted Encumbrances.

2.4. Subordination.

Tenant hereby subordinates its interest in this Lease to the Permitted Mortgages and to any and all advances made thereunder and to the interest thereon. In addition, if requested by any Lender (provided Landlord has consented to such Lender), Landlord will subordinate its interest in this Lease and the Property to said Lender's Mortgage, and to any and all advances made thereunder and to the interest thereon, and Landlord will promptly execute and deliver such agreement or agreements as may be reasonably required by said Lender to evidence such subordination.

2.5. Liability of Holder of Mortgage; Attornment.

It is further agreed that (a) if any Permitted Mortgage shall be foreclosed, (i) the Permitted Mortgagee (or its grantee) or purchaser at any foreclosure sale (or grantee in a deed in lieu of foreclosure), as the case may be, shall not be (x) liable for any act or omission of any prior landlord (including Landlord), (y) subject to any offsets or counterclaims which Tenant may have against a prior landlord (including Landlord), unless expressly provided for herein, or (z) bound by any prepayment of Base Rent which Tenant may have made in excess of the amounts then due for the next succeeding month unless such Mortgagee, Grantee or Purchaser has written notice of such prepayment; (ii) the liability of the Permitted Mortgagee or the purchaser at such foreclosure sale or the liability of a subsequent owner designated as Landlord under this Lease shall exist only so long as such mortgagee, purchaser or owner is the owner of the Property, and such liability shall not continue or survive with respect to claims accruing after further transfer of ownership; and (iii) upon request, Tenant will attorn, as tenant under this Lease, to the purchaser at any foreclosure sale under any Mortgage, and Tenant will execute such instruments as may be necessary or appropriate to evidence such attornment; and (b) this Lease may not be modified or amended so as to reduce the Lease Payment or shorten the Term or so as to adversely affect in any other respect to any material extent the rights of Landlord, nor shall this Lease be canceled or surrendered, without the consent, in each instance, of any Permitted Mortgagee.

2.6. Tenant Protections.

Unless otherwise consented to by Tenant, with respect to any fee mortgage granted by Landlord to which Tenant's interest under this Lease shall be subordinate (provided Tenant has consented to such Lender), Landlord shall cause the Lender to agree to recognize and not disturb the interest of Tenant in the event of a default by Landlord under such mortgage; to agree to cause any notice of default under such mortgage for the financing related thereto to be promptly given to Tenant; and to agree that Tenant shall have a right to cure any default by Landlord under such mortgage.

2.7. Limitation Rights to Refinance.

At no time during the Term shall Landlord or Tenant mortgage or otherwise encumber, without the consent of the other party hereto, the Property or any portion thereof other than with respect to any Permitted Mortgage.

2.8. Notice to Lenders; Right to Cure.

So long as any Lender shall hold a lien on the Property, Tenant and Landlord each agree, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to such Lender. Any Lender may, during the periods given to a Permitted Mortgagee under Section 10.1 hereof for remedying a Tenant default, itself remedy any Landlord default or cause the same to be remedied, and Tenant agrees to accept such performance on the part of such Lender as though the same had been done or performed by Landlord.

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**ARTICLE III.**  
**LEASE PAYMENT**

3.1. Base Rent.

Tenant shall owe annual base rent (hereinafter referred to as "Base Rent") to Landlord for the Property for each Lease Year in the amount of \$1.00 per year for the Term of the Lease.

3.2. Manner of Payment.

Base Rent and all other amounts becoming due from Tenant to Landlord hereunder (the "Lease Payment") shall be paid in lawful money of the United States to Landlord at the office of Landlord, or as otherwise designated from time to time by written notice from Landlord to Tenant.

3.3. Additional Rent.

This Lease is what is commonly called a "net lease," it being understood that Landlord shall receive the Lease Payment set forth in Paragraph 3.2 hereof free and clear of any and all expenses for which Tenant is responsible pursuant to Article IV hereof. During the Term, all of such charges, costs and expenses when due shall constitute additional rent hereunder ("Additional Rent"), even though not necessarily payable to Landlord, and upon the failure of Tenant to pay any of such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to make any Lease Payment. Any Lease Payment, Additional Rent and all other sums payable hereunder by Tenant shall be paid (except as otherwise provided for herein) without notice or demand. Nothing herein contained shall obligate Tenant for the payment of any expenses payable by Landlord pursuant hereto or any income or franchise taxes payable by Landlord of the type described in Section 4.1.

3.4. Off-Set.

Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall Tenant have any right to terminate this Lease, nor shall Tenant be entitled to any abatement or reduction of any Lease Payment hereunder, nor shall the obligations of Tenant hereunder be affected, by reason of any default on the part of Landlord under this Lease, or under any other agreement to which Landlord and Tenant may be parties. It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the Lease Payment, and all other sums payable by Tenant hereunder shall continue to be payable in all events and that the obligations of Tenant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease. Nothing herein shall preclude Tenant from pursuing or realizing upon its other remedies at law or in equity by reason of any default hereunder by Landlord.

3.5. Default Rate of Interest.

Lease Payments not paid within ten (10) days from the date when due shall bear interest from the date due until paid at the annual rate of one percent (1%) in excess of the Designated Prime Rate.

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**ARTICLE IV.**  
**TAXES AND OPERATING EXPENSES**

4.1. Operating Expenses Generally.

Tenant covenants and agrees to pay all Impositions, Utility Charges, Repairs, liens, insurance required to be obtained by Tenant, and all other Operating Expenses, if any, which are due and payable during the Term hereof; provided, however, that nothing in this Lease shall obligate Tenant to pay any income tax, capital levy, estate, succession, inheritance, transfer or similar taxes of Landlord or any franchise tax imposed upon Landlord or any income, profits or revenue tax, assessment or charge imposed upon the Lease Payment or any other payment or other benefit received by Landlord under this Lease by any governmental authority. Landlord and Tenant agree that to the extent that reserves for replacements or escrows for insurance and taxes are required by a Permitted Mortgagee to be held by Landlord or such Permitted Mortgagee, Landlord agrees to make such amounts available to Tenant for such expenses, provided that nothing herein shall affect the Tenant's obligation to pay such expenses hereunder. It is specifically acknowledged and agreed that Tenant or its sublessees and not Landlord shall be responsible for paying all amounts payable to the manager under any Property management agreement.

Tenant will furnish to Landlord, upon request, a proof of payment of all items referred to in this Section 4.1, including, without limitation, proof of payment of any Impositions and proof of payment of insurance premiums promptly after demand therefor.

4.2. Impositions.

Tenant shall pay, directly to the authority charged with the collection thereof, all real estate taxes, betterment assessments, and all other impositions, ordinary and extraordinary, general and special, of every kind and nature whatsoever, as well as any payments in lieu of taxes, which may be levied, assessed, charged or imposed during the Term of this Lease upon the Property, or any part thereof, or upon any improvements at any time situated thereon (such taxes and installments of assessments being hereinafter together referred to as "Impositions") for each tax or installment period wholly included in the Term, all such payments to be made not later than the last date on which the same may be paid without interest or penalty.

Tenant, at its sole cost and expense, in its own name or in the name of Landlord, may contest the validity or amount of any Impositions relating to all or any portion of the Property, in which event Tenant may (i) make such payment under protest or (ii) if postponement of such payment will not jeopardize Landlord's title to the Property or subject Landlord or Tenant to the risk of any criminal liability or civil penalty, Tenant may postpone the same.

As may be necessary or desirable, each of Tenant or Landlord, as applicable, upon the request of the other, shall use its best reasonable efforts to assist in any such proceeding to contest the validity or amount of any Impositions. Either party paying Impositions shall be entitled to recover, receive and retain for its own benefit all abatements and refunds of such Impositions unless previously reimbursed by the other party with respect thereto.

Nothing contained in this Section 4.2, however, shall be construed to allow any such contested Impositions to remain unpaid for a length of time which shall permit the Property, or any part thereof, to be sold by any governmental authorities for the non-payment of such Impositions. Tenant shall promptly furnish Landlord with copies of all notices, appeals, pleadings, motions and orders in any proceedings commenced with respect to such contested Impositions.

Tenant agrees to save Landlord harmless from all costs and expenses incurred on account of Tenant's participation in such proceedings or as a result of Tenant's failure to pay any Impositions or other related charges with respect to the Property. Landlord shall promptly furnish to Tenant a copy of any notice of any Impositions received by Landlord. If Tenant fails to make any payment referred to in this Section 4.2 when due pursuant to the terms hereof, Landlord shall have the right after fifteen (15) days notice to Tenant to make any such payment on behalf of Tenant and charge Tenant therefor.

4.3. Utilities.

Tenant shall pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat or power, telephone or other service used, rendered or supplied to Tenant in connection with the Property ("Utility Charges") and shall not contract for the same in Landlord's name; provided, however, that Tenant shall have no responsibility hereunder for the payment of utilities supplied by the respective providers directly to individual Subtenants for such Subtenant's use in connection with the occupancy of its individual units or its subleased portion of the Property.

4.4. Other.

Tenant covenants to pay and discharge, when the same shall become due, all other amounts, liabilities and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added for nonpayment or late payment thereof and which payment Tenant has failed to make when due.

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**ARTICLE V.**  
**INDEMNITY, LIENS AND INSURANCE**

5.1. Indemnification.

To the extent permitted by law, Tenant agrees to pay and to defend, indemnify and hold harmless Landlord from and against any and all liabilities, losses, damages, causes of action, suits, claims, demands, judgments, costs and expenses of any kind or any nature whatsoever (including, without limitation, remediation costs, environmental assessment costs, governmental compliance costs, and reasonable expert's and attorneys' fees and expenses), known or unknown, foreseen or unforeseen, which may at any time be imposed upon, incurred by, or asserted or awarded against Landlord, its employees, agents, members, or managing members, or against the Property or any portion thereof, arising from: any injury to or death of or claim of injury to or death of any person, or any damage to or loss of or claim of damage to or loss of property on the Property, in each case arising out of the use, possession, ownership, condition or occupation of the Property, the Building or any part thereof (but not of any other property) from and after the date hereof, provided, however, that notwithstanding the foregoing, Tenant shall not have any liability to Landlord for any loss or damage arising out of acts of Landlord or persons under the control or direction of Landlord. Landlord shall give Tenant prompt and timely notice of any claim made or suit instituted against it or any other party of which it has knowledge, relating to any matter which in any way may result in indemnification pursuant to this Section 5.1. The obligations of Tenant under this Section 5.1 shall survive the Term. The foregoing indemnification shall not be construed as creating any rights in or conferring any rights to any third parties.

5.2. Repairs to the Property.

At its sole cost and expense throughout the Term, Tenant shall (a) take good care of the Property; (b) keep the same in good order and condition; and (c) make and perform all Repairs. All Repairs made by Tenant shall be at least equal in quality and cost to the original improvements and during the Recapture Period, subject to the Secretary's Approval, and shall be made by Tenant in accordance with all Legal Requirements. The necessity for or adequacy of Repairs shall be measured by the standards which are appropriate for improvements of similar construction and class, provided that Tenant shall in any event make all Repairs reasonably necessary to avoid any structural damage or other damage or injury to the Building.

The foregoing notwithstanding, any Repairs which are capital expenditures under the Code and which are made during the last three (3) years of the Term shall not be required to be made, unless Landlord and Tenant agree to an allocation of the costs thereof. If the parties cannot so agree, Landlord shall have the right to cause such Repairs to be made and the cost thereof shall be amortized over the useful life thereof, as determined and in accordance with the Code, and Tenant shall pay as Additional Rent its share of the costs thereof relating to the remainder of the Term. Tenant shall be entitled to the tax benefits (including depreciation) attributable to Repairs or capital expenditures made by it hereunder.

Except as otherwise provided herein, Landlord shall not be required to furnish any services or facilities or to make any Repairs in, about or to the Property or any improvements hereafter erected thereon. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, and management of the Property hereafter erected thereon.

Tenant shall not do or suffer any waste or damage, disfigurement or injury to the Property, or to the fixtures or equipment therein, or permit or suffer any overloading of the floors or other use of the improvements that would place an undue stress on the same or any portion thereof beyond that for which the same was designed.

### 5.3. Alterations.

Except for Repairs and the Tenant's Work, Tenant shall not, without the consent of Landlord (which shall not be unreasonably withheld, delayed or conditioned) make any alterations, additions or improvements to the Property which shall cost more than \$50,000 per occurrence. Any such Tenant work (i) must be completed in a good and workmanlike manner, with new first-class materials and equipment, and in conformity with all applicable Legal Requirements, and (ii) shall not give rise to or cause a recapture of any Historic Tax Credits. Any and all buildings, fixtures and improvements placed in, on, or upon the Property shall vest in Tenant until the expiration or earlier termination of the Term of this Lease, at which time said buildings, fixtures and improvements shall vest in the Landlord subject to the rights of Tenant in Tenant's Personal Property.

Before commencement of any work for which Landlord's consent is required, Tenant shall furnish to the Landlord for approval plans and specifications, names and addresses of contractors, copies of contracts, necessary permits and licenses, and instruments of indemnification against any and all claims, costs, expenses, damages and liabilities which may arise in connection with such work, all in such form, substance and amount as may be reasonably satisfactory to Landlord.

In addition, for any work which shall cost, in any one occurrence, in excess of \$100,000, prior to commencement of any such work or delivery of any materials into the Property, Landlord shall have the right to approve material contracts entered into by Tenant with respect to the Property, which approval shall not be unreasonably withheld, conditioned or delayed. Except as otherwise provided in Section 6.7, Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to Tenant or any of its contractors or subcontractors in connection with the reconstruction, furnishing, repair, or operation of the Property, and in all events will bond or cause to be bonded, with surety companies reasonably satisfactory to Landlord, or pay or cause to be paid in full forthwith, any mechanic's, materialmen's or other lien or encumbrance that arises, whether due to the actions of Tenant or any person under the control of Tenant, against the Property.

Tenant shall have the right to contest any such lien or encumbrance by appropriate proceedings which shall prevent the collection of or other realization upon such lien or encumbrance so contested, and the sale, forfeiture or loss of the Property to satisfy the same,

provided that such contest shall not subject Landlord to the risk of any criminal liability or civil penalty, and provided further that Tenant shall give such reasonable security as may be requested by Landlord to insure payment of such lien or encumbrance and to prevent any sale or forfeiture of the Property by reason of such nonpayment, and, to the extent permitted by law, Tenant hereby indemnifies Landlord for any such liability or penalty. Upon the termination after final appeal of any proceeding relating to any amount contested pursuant to this Section 5.3, Tenant shall immediately pay any amount determined in such proceeding to be due, and in the event Tenant fails to make such payment, Landlord shall have the right after giving fifteen (15) days notice to Tenant to make any such payment on behalf of Tenant and charge Tenant therefor.

5.4. Insurance.

Landlord and Tenant shall maintain insurance coverages with respect to their insurable interests in form and amount satisfactory to the Investor Partner, the Landlord and the Lenders, and in form and amount consistent with the requirements, if any, of the Operating Documents.

Each of Landlord and Tenant waive any right of recovery against the other party and release all claims arising in any manner in its (the "Injured Party's") favor and against the other party for any loss of business income and extra expense and loss or damage to the Injured Party's property (real or personal) located within or constituting a part of or all of the Building to the extent the loss or damage is covered by the Injured Party's insurance or the insurance the Injured Party is required to carry under this Lease, whichever is greater. Such waiver and release also applies to each party's directors, officers, employees, shareholders, and agents but does not apply to claims caused by a party's willful misconduct or gross negligence. Landlord and Tenant agree to have their respective insurers waive any rights of subrogation that such insurers may have against the other party.

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**ARTICLE VI.**  
**USE AND ASSIGNMENT**

6.1. Use.

Tenant shall use and occupy the Property only for purposes of operation of a commercial property, which may include retail, restaurant, tourism, event, and/or office spaces for rent or use, or other lawful uses, and for incidental uses thereto, and for no other use or purpose. Tenant shall not use any Hazardous Substances, except to the extent reasonable or appropriate in connection with the lawful use of the Property in the ordinary course of Tenant's business, and Tenant shall comply with all Environmental Laws in connection with such use.

6.2. Transfer or Assignment.

Tenant shall have the right, subject to the Legal Requirements, to sublease the Property or spaces therein, including any sublease to subtenants under residential or commercial Subleases, without Landlord's approval (but subject to the requirements of any Lender); provided, however, that a copy of each executed commercial Sublease shall be supplied upon request to Landlord and, provided further, that during the Recapture Period no part of the Property may be subleased pursuant to a "disqualified lease", as that term is used in Section 168(h) of the Code, without the consent of Landlord. Tenant may not sell or assign its interest in, to and under this Lease without the consent of Landlord.

6.3. Compliance with Law.

Tenant shall, at its expense, perform all its activities on the Property in compliance, and shall use its best efforts to cause all Subtenants of any portion thereof to comply, with the Legal Requirements, as the same may be administered by authorized governmental officials, and, to the extent that it should fail to do so beyond any applicable grace or cure period, Landlord shall have the right to cause such requirements to remain in compliance and the amount expended or advanced on behalf of Tenant by Landlord on account thereof shall constitute Additional Rent.

6.4. Mechanics' Liens.

Tenant shall use its best efforts throughout the Term to prevent any mechanic's liens or other liens for its work, labor, services or materials from being filed or recorded against the Property or any portion thereof; in the event that any such lien shall be filed, the Tenant shall procure the release or discharge thereof within ninety (90) days either by payment or in such other manner as may be prescribed by law, and hereby holds the Landlord harmless from and indemnified against any loss or damage related thereto, to the extent permitted by law.

6.5. Surrender of Property.

At the termination of this Lease or any portion thereof, Tenant shall peaceably leave, quit and surrender the Property or the portion thereof so terminated, subject to the rights of Subtenants in possession, provided that such Subtenants are not in default thereunder and attorn to Landlord as their Landlord. Upon such termination the Property or portion thereof so

terminated shall become the sole property of Landlord at no cost to Landlord and shall be free of all liens and encumbrances and in “as-is, where-is” condition, and, in the event of a casualty, shall be subject to the provisions of Article VII hereof.

6.6. Easements; Annexation.

Landlord agrees that it shall not unreasonably withhold or delay its consent, and shall join with Tenant from time to time during the Term in the following: (a) the granting of easements affecting the Property which are for the purpose of providing utility services for the Building; and (b) the dedication or conveyance, as required, of portions of the Land for road, highway and other public purposes to provide access to the Building or to permit widening of existing roads or highways. If any monetary consideration is received by Tenant as a result of the granting of any such easement or the dedication or conveyance of any portion of the Property as provided, such consideration shall be apportioned as provided for in Section 7.6(b)(ii). As a condition precedent to the exercise by Tenant of any of the powers granted to Tenant in this Section, Tenant shall give notice to Landlord of the action to be taken, shall certify to Landlord, that in Tenant’s opinion such action will not adversely affect either the value or the use of the Property for the Building, and shall deliver all instruments required of Tenant by any Permitted Mortgagee.

6.7. Tenant’s Work.

The Tenant represents, warrants and covenants that, at Tenant’s sole cost and expense:

(a) It will complete Tenant’s Work and comply with all requirements necessary to obtain all necessary certificates of occupancy for the Building, or cause the same to be completed, in a good and workmanlike manner, free and clear of all mechanics’, materialman’s or similar liens, and shall equip the Building or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, all in accordance with such Plans and Specifications not later than December 31, 2018, unless such date is extended with the consent of the Landlord, not to be unreasonably withheld, conditioned or delayed; provided, however, that the foregoing shall not apply to so-called “tenant finishes” or “tenant build out” for tenants or Subtenants of Tenant or other expenses to complete the spaces within the Building intended for sublease to tenants under commercial Subleases.

(b) Landlord shall have the right to inspect such work and Tenant shall facilitate the efficiency and effectiveness of the inspection process by coordinating inspections among the interested parties (as well as assuring the correction of any deficiencies that may arise). Notwithstanding the foregoing, Landlord shall have no obligation to make or have its representative make any such inspection of Tenant’s Work. Such inspections are for Landlord’s information only and Tenant shall not be relieved of its obligation to complete Tenant’s Work in accordance with this Agreement. In no event shall Landlord’s inspection of the work be deemed acceptance of all or any of the work, equipment, or materials, or a waiver of any right of Landlord under this Lease and/or subsequent documents for the applicable phase. Landlord shall receive notice of and have the right to attend construction meetings.

(c) Tenant’s environmental responsibilities with respect to Tenant’s Work are as follows:

(i) Tenant, its agents, employees, and contractors shall not, and shall use diligent efforts not to permit any other person, including, but not limited to, third parties with whom Tenant contracts, to bring onto the Property any Hazardous Substance or incorporate any Hazardous Substance into the improvements constructed on the Property. For purposes of this Section 6.7, the term Hazardous Substance shall not include construction materials in reasonable quantities for lawful and customary use in the construction of Tenant's Work, so long as such material is used, held, stored, and disposed of in accordance with applicable Environmental Laws. Tenant shall be liable for the consequences of and is responsible for removal of any Hazardous Substance on the Property in violation of this provision;

(ii) Tenant represents that it will comply, and shall use diligent efforts to cause its contractors and subcontractors to comply, with all Environmental Laws with respect to Tenant's Work; and

(iii) except as disclosed in writing to Tenant prior to Closing or as disclosed in any Environmental Reports, Landlord has not received notification from any federal, state or other governmental authority of (x) any potential, known, or threat of release of any Hazardous Substance from the Property or (y) the incurrence of any expense or loss by any such governmental authority or by any other Person in connection with the assessment, containment or removal of any release or threat of release of any Hazardous Substances from the Property, and to the knowledge of Landlord, no Hazardous Substance was ever or is now stored on, transported, or disposed of on the Property except to the extent any such storage, transport or disposition was at all times in compliance with all laws, ordinances, and regulations pertaining thereto. Any actions recommended to be taken which were contained in any environmental assessment reports prepared in conjunction with the development of the Property shall be appropriately completed in a manner that fully complies with such recommendations and all laws, regulations, ordinances, orders or decrees pertaining thereto.

(d) Prior to the inception and through the completion of Tenant's Work, the following types of insurance shall be maintained or caused to be maintained by Tenant and Landlord with respect to their insurable interests in form and amounts satisfactory to Tenant, Landlord and any Lender:

(i) General Contractor's Commercial General Liability and Property Damage Insurance; Automobile/Hired and Non-Owned Liability; and Workers Compensation and Employer's Liability Insurance;

(ii) Architect's Errors and Omissions Professional Liability Insurance; Commercial General Liability; Automobile/Hired and Non-Owned Liability; and Workers' Compensation and Employer's Liability Insurance; and

(iii) All-Risk Builder's Risk Insurance.

Insurance coverage must be provided to Landlord and be evidenced by certificates of insurance and properly endorsed policies certified as true and correct by the insurance agent. All

evidence of insurance must satisfy the following requirements: (a) Landlord, Tenant and/or the Investor Partner should be named as an additional insured where indicated and applicable; (b) policies must be written with an A.M. Best rated company of “A-” or better and a financial size category rating by A.M. Best of VIII or higher; (c) all binders and policies should contain a cancellation clause stating that the policy will not be canceled or non-renewed without at least thirty (30) days prior written notice to Landlord and the Investor Partner except for non-payment of premium where ten (10) days notice will be given; (d) certificates must document the amount of all deductibles; and (e) all binders and policies must be accompanied by evidence of premium payment; and

(e) As soon as practicable, Tenant shall deliver to Landlord: (i) a certificate of substantial completion as certified by the Architect; (ii) all necessary certificates of occupancy from the applicable governmental jurisdiction(s) or authority(ies) for one hundred percent (100%) of the improvements therein; and (iii) any other documentation necessary to establish placement in service for purposes of Section 47(b) of the Code.

#### 6.8. Tax Attributes.

Landlord expressly waives and relinquishes in favor of Tenant any rights to claim the benefit of or to use any federal or state investment tax credits or depreciation benefits that are currently or may become, available during the Term as a result of the improvements constituting part of the Property, or any equipment, furniture or fixtures installed by Tenant on the Property whether or not such items become a part of the realty, and Landlord agrees to execute and deliver to Tenant any election form required to evidence Tenant’s right to claim federal or state investment tax credits or depreciation benefits on improvements made or property installed by Tenant; provided, however, that in connection with any claim or use of such other credits or benefits, Landlord shall not take any position inconsistent with the Historic Tax Credit to be earned by Tenant. Landlord and Tenant agree that Tenant shall be entitled to any investment tax credits or depreciation attributable to improvements made by or property installed by Tenant and paid for by Tenant following the Commencement Date, it being the intent of the Landlord and Tenant that the Tenant be the “owner” of the Property for federal income tax purposes and that if any provision of this Lease should cause a result that is inconsistent with this intent, such provision shall be invalid and the parties will amend this Lease to correct such inconsistency.

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**ARTICLE VII.**  
**CASUALTY AND TAKING**

7.1. Casualty.

If any improvements from time to time constructed on the Land are damaged or destroyed by fire or other casualty, Landlord and Tenant shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. Landlord and Tenant, using the Insurance Proceeds, shall within 180 days after the Insurance Proceeds become available, repair, restore, replace or rebuild the Building to substantially the same condition as existed immediately prior to the damage or destruction and substantially in accordance with the originally approved Operating Documents for the Building (the "Restoration Work"). Notwithstanding the foregoing, in the event of substantial damage or destruction by casualty (i) which damage Tenant and Landlord in good faith determine is such that the reconstruction of an economically viable Building is not practicable, either because (a) the Insurance Proceeds made available to Landlord are not sufficient to repair such loss or damage (provided that in all events Landlord shall have been in compliance with the insurance requirements set forth in Section 6.7(e) of this Lease), or (b) such reconstruction cannot be carried out under applicable laws, including then current building or zoning laws, or (ii) which damage occurs during the last three (3) years of the Term, then Landlord, subject to the rights of any Permitted Mortgagee, shall have the right to terminate this Lease upon thirty (30) days' written notice to Tenant; provided, however, that Landlord cannot terminate this Lease during the Recapture Period without the prior consent of the Investor Partner.

7.2. Insurance Proceeds: Deficits or Excess.

If Landlord and Tenant elect or are required to reconstruct the Building as provided for in Section 7.1 above, and if the Insurance Proceeds received by Landlord and Tenant are insufficient to pay the entire cost of the Restoration Work, then the amount of any such deficiency shall be apportioned between Landlord and Tenant as provided for in this Section 7.2. If the Insurance Proceeds received by Landlord and Tenant shall exceed the entire cost of the Restoration Work, then such excess proceeds shall be apportioned as provided for in this Section 7.2. If Landlord elects to terminate the Lease in accordance with Section 7.1, the Insurance Proceeds shall be allocated as provided for in this Section 7.2. Subject to the requirements of any Permitted Mortgagee and the Operating Documents, any apportionment provided for in this Section 7.2 shall be made as follows: to Landlord and Tenant in accordance with the value of their respective estates in the Property determined as of the date of the casualty, but without regard to the termination of the Lease, the values of Landlord's and Tenant's estates to be determined by appraisal.

7.3. Taking.

If a Taking occurs at any time during the Term, then the provisions of this Article VII shall apply to the condemnation proceedings and the distribution of any Condemnation Award pertaining to such Taking.



7.4. Apportionment of Condemnation Award.

Whether or not separate awards are made to Landlord and Tenant, any Condemnation Award attributable to the respective interest of Landlord and Tenant in the Property shall be apportioned between Landlord and Tenant as provided in Subsections 7.6(b) and 7.6(c), as applicable.

7.5. Requests for Separate Awards by Court.

The court in such condemnation proceedings shall, if not prohibited by law, be requested by Landlord and Tenant to make separate Condemnation Awards to Landlord and Tenant apportioned in accordance with Subsections 7.6(b) and 7.6(c) hereof. The provisions of Subsections 7.6(b) and 7.6(c) concerning termination of the Term and receipt and payment of the award shall also apply to circumstances governed by this Section 7.5 and the court shall be requested to take such matters into account in rendering separate awards.

7.6. Single Award by Court.

(a) General. If the court in such condemnation proceedings is prohibited by law from making separate Condemnation Awards to Landlord and Tenant, or declines to do so, then the provisions of this Section 7.6 shall apply to the distribution of the single Condemnation Award made by such court.

(b) Total Taking. If a Taking of all of the Property (other than a Temporary Taking) occurs, then the Lease Payment shall be prorated between Landlord and Tenant as of the date of Taking, and this Lease shall be terminated as of the date of Taking. The following provisions shall apply to the apportionment of any Condemnation Award for such Taking:

(i) All sums, including damages and interest, constituting the Condemnation Award shall be deposited promptly with a mutually agreeable escrow agent, and shall be apportioned pursuant to the terms of this Subsection 7.6(b); and

(ii) Subject to the Operating Documents and the rights of any Permitted Mortgagee, the Condemnation Award, after the payment of all reasonable fees and expenses related thereto, shall be apportioned and disbursed in the following amounts and priority:

(A) To Landlord, a sum equal to the product of the Condemnation Award multiplied by Landlord's Percentage (as hereafter defined); and

(B) To Tenant, a sum equal to the product of the Condemnation Award multiplied by Tenant's Percentage (as hereafter defined).

"Landlord's Percentage" shall equal the fair market value, at the time of the Taking, of the fee simple title to the Property computed as though it remained subject to this Lease for the remainder of the scheduled Term (the "Residual Value") divided by the sum of the Residual

Value, the Leasehold Interest Value and the HTC Value. The “Leasehold Interest Value” shall be the fair market value of the Leasehold Interest as of the date of the Taking (not including the Residual Value). The “HTC Value” shall equal the value of the Historic Tax Credit associated with the Property lost or recaptured by reason of the Taking. “Tenant’s Percentage” shall equal the sum of the Leasehold Interest Value and the HTC Value divided by the sum of the Residual Value, the Leasehold Interest Value and the HTC Value.

(c) Partial Taking: Procedures and Criteria for Course of Action. In the event of a permanent Taking of less than all of the Property (a “Partial Taking”),

(i) if Landlord and Tenant reasonably determine that the continued use and occupancy of the remainder of the Property by Tenant is or can reasonably be made to be economically viable, structurally sound, consistent with any Permitted Mortgage, then this Lease shall remain in effect as to the remainder of the Property, and, if otherwise feasible based upon the amount of the Condemnation Award and any other funds of Landlord as are available for the purpose of paying for such restoration (the “Restoration Criteria”), then the Property shall be restored pursuant to Section 7.9 hereof,

(ii) if the continued use and occupancy of the remainder of the Property by Tenant is not or cannot reasonably be made to be economically viable, structurally sound, consistent with any Permitted Mortgage, and otherwise feasible, then this Lease may be terminated and the Condemnation Award shall be applied in accordance with Subsection 7.6(b).

(d) Temporary Taking. If a Temporary Taking occurs, then the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Lease Payment, without reduction or abatement, in the manner and at the times specified in this Lease. Except only to the extent that Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such Taking had not occurred. Upon any such Temporary Taking, Tenant shall be entitled to receive the entire amount of any Condemnation Award made for such Temporary Taking whether such award is paid by way of damages, Lease Payment or otherwise; provided, however, if the period of temporary use or occupancy shall extend beyond the date of the expiration or termination of the Term, then such Condemnation Award shall be prorated by Landlord and Tenant as of such date of expiration.

#### 7.7. Condemnation Proceedings.

Tenant, Landlord and each Permitted Mortgagee or Leasehold Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all negotiations, hearings, trials and appeals in such proceeding.

7.8. Notice of Condemnation.

If Landlord or Tenant receives notification of any proposed or pending condemnation proceeding affecting the Property, then the party receiving such notification shall promptly give notice to the other party.

7.9. Restoration.

If a decision is made pursuant to Subsection 7.6(c) following a Partial Taking to restore the remainder of the Property, and/or Building, as applicable, Tenant and Landlord shall reasonably agree upon and approve plans and specifications for doing so. Upon approval of said plans and specifications, Tenant shall promptly proceed to commence and complete the restoration pursuant to the approved plans and specifications. Landlord shall make available to Tenant the entire Condemnation Award for such restoration; provided, however, any portion of the Condemnation Award remaining after the completion of the restoration shall be applied in accordance with Subsection 7.6(b). If Landlord has decided pursuant to Subsection 7.6(c) to restore the remainder of the Property and/or Building, as applicable, said restoration shall be at Landlord's expense, and if the cost of the restoration shall exceed the amount of the Condemnation Award, the deficiency shall be paid by Landlord, except if said deficiency exists by virtue of the failure or refusal of any Permitted Mortgagee to release all or any portion of the Condemnation Award to Landlord to pay for said restoration.

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**ARTICLE VIII.**  
**CONDITION OF PROPERTY**

8.1. Condition; Title.

Except for the obligations of Tenant regarding Tenant's Work or as specifically provided for elsewhere herein, the Property is demised and let in an "as is" condition as of the Closing. The Property is demised and let to Tenant subject to:

- (a) zoning regulations, restrictions, rules, laws and ordinances now in effect or hereafter adopted by any governmental authority;
- (b) use of the Property which is consistent with the terms of this Lease; and
- (c) all Permitted Encumbrances.

8.2. No Encumbrances.

Landlord covenants that it has good and marketable fee simple title to the Property, subject to the provisions of Section 8.1, and that Landlord has full right and lawful authority to enter into this Lease in accordance with the terms hereof and to grant the estate demised hereby, and that no other party has any right, lease or option to or in connection with the Property. Landlord covenants that it will not encumber the title of the Property or cause or permit said title to be encumbered in any manner whatsoever after the date of the Lease without the consent of Tenant, and Tenant may reduce or discharge any such encumbrance or lien by payment or otherwise at any time after giving fifteen (15) days' written notice thereof to Landlord and recover or recoup all costs and expenses thereof from Landlord. Landlord further covenants that the Landlord has received no written notice and has no knowledge of the intention of any party holding an easement affecting the Property or any part thereof to expand the exercise of any such easement beyond the scope of the present exercise thereof (as by replacing, or expanding existing facilities, conduits (including underground or overhead wires, cables or pipes) or systems for sewers, water, electric, gas, cable and other utilities). None of the Permitted Encumbrances has or will have a material adverse effect upon the Rehabilitation or operation of the Property.

8.3. Quiet Enjoyment.

Landlord covenants and warrants that Tenant, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Property during the Term, subject only to the provisions of this Lease and all applicable Legal Requirements, including, without limitation, the use restrictions set forth in Section 6.1. With respect to the Permitted Encumbrances, Landlord agrees to warrant and forever defend the title to the Property against the claims of any and all persons whomsoever lawfully claiming by, through or under Landlord, but not otherwise, subject only to the provisions of this Lease (including Section 2.2(e) hereof) and all applicable Legal Requirements. Notwithstanding the foregoing, Landlord in person or through its agents, upon reasonable prior

notice to Tenant, shall have the right to enter upon the Property for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Tenant with its obligations under this Lease. To the extent permitted by law, Landlord hereby agrees to indemnify Tenant from any and all loss, damage, or claim incurred by it as a result of any negligence, misfeasance, malfeasance on the part of Landlord, its employees, agents, or contractors in connection with such activities on the Property. No provision of this Lease is intended to act as a waiver of any sovereign immunity protection that may be available to Landlord. Landlord shall provide such insurance as may be necessary with respect to any activity to be undertaken on the site by Landlord under said right of entry.

#### 8.4. Environmental Indemnity.

To the extent permitted by law, Tenant covenants and agrees to indemnify, protect, defend (by counsel reasonably satisfactory to Landlord), and save Landlord, its employees, agents, managing member and members, and any successor thereof, harmless against and from any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, without limitation, remediation costs, environmental assessment costs, governmental compliance costs, and reasonable attorneys' and experts' fees and disbursements), known or unknown, foreseen or unforeseen, which may at any time be imposed upon, incurred by or asserted or awarded against Landlord, its employees, agents, managing member and members, or the Property or any portion thereof and arising directly or indirectly, in whole or in part, from or out of any: (a) Hazardous Substances on, in, under or affecting all or any portion of the Property, (i) from and after the Commencement Date of this Lease, or (ii) which migrate off of the Property hereafter, except that any increase in scope or exacerbation of any such release or threat of release covered in clauses (i) and (ii) above is excluded from the forgoing indemnity if said increase in scope or exacerbation arises out of Landlord's negligence or willful misconduct; or (b) violation by Tenant, its employees, agents or members, or invitees of any of them, of any Environmental Law affecting the Property or the Building or any part thereof or the ownership, occupancy or use thereof, from and after the date hereof; provided, however, that notwithstanding the foregoing, Tenant shall not have any liability to Landlord for any loss or damage arising out of acts of Landlord or persons under the control or direction of Landlord or out of any release or threat of release of Hazardous Substance for which Landlord is responsible under this Section 8.4.

To the extent permitted by law, Landlord covenants and agrees to indemnify, protect, defend (by counsel reasonably satisfactory to Tenant), and save Tenant, its employees, agents, managing member and members, and any successor thereof, harmless against and from any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, without limitation, remediation costs, environmental assessment costs, governmental compliance costs, and reasonable attorneys' and experts' fees and disbursements), known or unknown, foreseen or unforeseen, which may at any time be imposed upon, incurred by or asserted or awarded against Tenant, its employees, agents, managing member and members, or the Property or any portion thereof and arising directly or indirectly, in whole or in part, from or out of: (a) any Hazardous

Substances on, in, under or affecting all or any portion of the Property, (i) which exist in violation of the requirements of Subsection 6.7; or (ii) which migrate onto the Property hereafter from any other property owned by Landlord, except that any increase in scope or exacerbation of any such release or threat of release covered above is excluded from the forgoing indemnity if said increase in scope or exacerbation arises out of Tenant's negligence or willful misconduct; or (b) violation by Landlord, its employees, agents or members, or invitees, or any of them, of any Environmental Law affecting the Property or the Building or any part thereof or the ownership, occupancy or use thereof, prior to the date hereof.

8.5. Representations, Warranties and Covenants of Landlord.

Landlord hereby represents, warrants and covenants to Tenant as follows:

(a) To the best knowledge of Landlord, Landlord has delivered to Tenant copies of all material documents in its possession with respect to the acquisition, construction, rehabilitation, financing, ownership, leasing, maintenance and operation of the Property and the factual statements contained in such documents, taken as a whole, are not materially misleading in light of the circumstances under which they are made. Such documents have been furnished to Tenant for Tenant to rely upon in connection with the transactions contemplated by this Lease;

(b) The execution and delivery of this Lease and the performance of all acts heretofore or hereafter made or taken or to be made or taken, pertaining to Landlord or the Property by Landlord have been or will be duly authorized by all necessary company or other action, and the consummation of any such transactions with or on behalf of Landlord will not constitute a breach or violation of, or a default under, the charter or by-laws or other governing documents of Landlord or any agreement by which Landlord or Landlord's managing member is bound, nor constitute a violation of any law, administrative regulation or court decree;

(c) The Property is not subject to any pending or, to the best of Landlord's knowledge, threatened Taking;

(d) The Property is not (and will not be) (i) subject to any right of first refusal or option to acquire in favor of any person, (ii) subject to any reversion of title or (iii) subject to any restrictions on use other than the matters referenced in this Lease;

(e) All material licenses, permits and authorizations necessary for the conduct of Landlord's business as it is being conducted at the Property as of the date of this Lease have been issued and are in full force and effect, and Landlord has not received any notice of any pending proceedings to change, re-zone or down-zone the existing zoning classifications as to any portion of the Property and Landlord has no knowledge of the threat of any such action;

(f) No "common area" assessments or assessments for public improvements have been made against the Property which remain unpaid and all bills and claims for labor performed and services and materials furnished for the Property are or will be timely paid in full and the Property is or will be timely free from mechanic's or materialman's liens;

(g) The execution and delivery of this Lease, the incurrence of the obligations set forth in this Agreement, and the consummation of the transactions contemplated by this Agreement do not violate or conflict with any provision of any federal, state, municipal or local laws, ordinances, rules, regulations, requirements, or any order, judgment, decree, determination, or award of any court binding on either Landlord or Landlord's managing member, or their assets including the Property; nor do they conflict with, result in a breach of, constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel, or require any notice (which notice has not been furnished) under any agreement, contract, lease, license, instrument, or other arrangement to which either Landlord or Landlord's managing member is a party or by which either is bound or to which any of its assets is subject;

(h) There is no delinquent tax or any actual or threatened assessment of deficiency or additional tax or other governmental charge or a basis for such a claim with respect to the Property. There are no tax liens on the Property other than liens for real property taxes that are not yet due and payable; and

(i) To the knowledge of Landlord, (i) all appropriate public utilities, including sanitary and storm sewers, water, gas and electricity, are currently or will be available to the Property and will be operating properly for all relevant portions of the Property at the time of first occupancy, and (ii) the Property has direct access to a public street or highway.

#### 8.6. Brokers' Commissions.

In connection with the transactions contemplated hereby, neither Landlord nor Tenant has retained or incurred any obligation to any broker. Each of Landlord and Tenant shall be solely responsible for and shall indemnify and hold each other harmless from any amounts payable to any broker with respect to such transactions arising from a contractual relationship or alleged contractual relationship between such broker and the indemnifying party or otherwise arising from any dealing with the indemnifying party, to the extent permitted by law.

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**ARTICLE IX.**  
**DEFAULTS**

9.1. Default.

The occurrence of any of the following events shall constitute an event of default (each an “Event of Default”) hereunder, subject to the provisions of the Leasehold Mortgages that secure the Loans:

- (a) if Tenant fails to pay when due any Base Rent or Additional Rent, or any other amount due hereunder, and any such default shall continue for ten (10) days after the receipt of written notice thereof from the Landlord; or
- (b) if Tenant fails in any material respect to observe or perform any covenant, condition, agreement or obligation hereunder not addressed by any other event described in this Section 9.1, and, to the extent such failure is susceptible to cure, Tenant shall fail to cure, correct or remedy such failure within thirty (30) days after the receipt of notice thereof; provided, however, if such failure cannot reasonably be cured within such thirty (30)-day period, no Event of Default shall exist hereunder so long as Tenant commences to cure the failure and diligently completes the curing thereof within a reasonable period of time; or
- (c) if Tenant abandons the Property or any substantial portion thereof and such abandonment is not cured within twenty (20) days following notice from Landlord; or
- (d) if Tenant becomes Bankrupt.

Notwithstanding anything herein to the contrary, there shall be no Event of Default by Tenant where such Event of Default is solely the result of a default by a Subtenant and Tenant is diligently pursuing the cure thereof.

9.2. Rights and Remedies.

(a) Upon the occurrence of any Event of Default that remains and is continuing after the expiration of any and all applicable grace periods, Landlord, subject in all respects to the provisions of this Lease with respect to Landlord’s rights to cure defaults by Tenant and with respect to the rights of any holder of a Permitted Mortgage or the Investor Partner, shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Landlord of any other right or remedy allowed it by law:

- (i) Landlord may terminate this Lease by giving to Tenant notice of Landlord’s election to do so, in which event the Term of this Lease shall end, and all right, title and interest of Tenant hereunder shall expire on the date stated in such notice;
- (ii) Landlord may terminate the right of Tenant to possession of the Property without terminating this Lease by giving notice to Tenant that Tenant’s right of possession shall end on the date stated in such notice, whereupon the right of Tenant to



possession of the Property or any part thereof shall cease on the date stated in such notice;

(iii) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease;

(iv) Landlord may apply any security deposit or any portion thereof to cure any default; and

(v) Landlord may proceed against any collateral under any security interest and take any and all actions permitted to a secured party under the laws of the State, including the Uniform Commercial Code as in effect in the State.

(b) No default in the performance of the terms, covenants or conditions of this Lease on the part of Tenant or Landlord (other than in the payment of any Base Rent or Additional Rent) shall be deemed to continue if and so long as Landlord or Tenant, as the case may be, shall be delayed in or prevented from remedying the same due to Force Majeure; but if and when the occurrence or condition which delayed or prevented the remedying of such default shall cease or be removed, it shall be the obligation of Landlord or Tenant, as the case may be, without further delay, to commence the correction of such default or to continue and complete the correction thereof.

### 9.3. Termination of Lease for Tenant's Default.

Upon a termination of this Lease pursuant to Section 9.2(a), the Leasehold Interest shall automatically revert to Landlord, Tenant shall promptly quit and surrender the Property to Landlord, without cost to Landlord, and Landlord may, without demand and further notice, reenter and take possession of the Property, or any part thereof, and repossess the same as Landlord's former estate by summary proceedings, ejectment or otherwise without being deemed guilty of any manner of trespass and without prejudice to any remedies which Landlord might otherwise have for arrearages of any Lease Payment or for a prior breach of the provisions of this Lease. The obligations of Tenant under this Lease which arose prior to termination shall survive such termination.

### 9.4. Rights Upon Termination.

In addition to any other rights Landlord may have hereunder or under applicable law, upon termination of this Lease pursuant to Section 9.3, Landlord may:

(a) at the time of such termination, collect any unpaid Lease Payment due hereunder, without any deduction, offset or recoupment whatsoever; and

(b) enforce its rights under any bond outstanding at the time of such termination; and

(c) require Tenant to deliver to Landlord, or otherwise effectively transfer to Landlord any and all security deposits, governmental approvals and permits, and any and all rights of possession, ownership or control Tenant may have in or to, any and all financing arrangements, plans, specifications, and other technical documents or materials related to the Property.

9.5. Performance by Landlord.

During the occurrence of an Event of Default, if Tenant shall fail to make any payment or perform any act required under this Lease within the time periods set forth in Section 9.1, Landlord may (but need not) after giving not less than fifteen (15) additional days' notice (except in case of emergencies and except where a shorter time period is specified elsewhere in this Lease) to Tenant and without waiving any default or releasing Tenant from any obligations, cure such default for the account of Tenant. Tenant shall promptly pay Landlord the amount of such charges, costs and expenses as Landlord shall have incurred in curing such default, together with interest at the rate of twelve percent (12%) per annum.

In addition to any other remedies of Landlord under this Lease, Tenant agrees to reimburse Landlord for any and all actual expenditures incurred by Landlord by reason of such failure, whether or not such failure shall constitute an Event of Default or termination, however caused, including all costs, claims, losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by Landlord as a result thereof.

9.6. Remedies Cumulative.

Unless otherwise specifically provided in this Lease, no remedy herein shall be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and in addition to every other remedy; and every power and remedy given by this Lease may be exercised from time to time and as often as may be deemed expedient by either party. No delay or omission by Landlord to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein.

9.7. Default by Landlord.

Landlord shall be in default of this Lease if it fails to perform any provision of this Lease any other Operating Document that it is obligated to perform or if any of Landlord's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within thirty (30) days after notice of the default has been given to Landlord. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within such thirty (30) day period and diligently and in good faith continues to cure the default until completion within a reasonable period of time, but in no event shall such period exceed ninety (90) days. In the event of Landlord's default hereunder that remains uncured within the time periods set forth herein, Tenant shall have the right, but not the obligation, without waiving any default or releasing Landlord from any obligations, to cure such default for the account of Landlord. Landlord shall promptly pay Tenant the amount of such

charges, costs and expenses as Tenant shall have incurred in curing such default, together with interest at the rate of twelve percent (12%) per annum, or at Tenant's discretion, Tenant may offset Base Rent or Additional Rent hereunder by the amount of such charges, costs and expenses, plus interest at the above described rate.

9.8. Default Notices.

Notices given by Landlord or by Tenant under this Article IX shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant or Landlord, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice and in accordance with this Lease.

9.9. Limitation of Liability.

Notwithstanding anything in this Lease to the contrary, (i) no Member of Landlord nor any Affiliate thereof shall have any personal liability hereunder, and (ii) no limited partner of Tenant nor any Affiliate thereof shall have any personal liability hereunder, including for any Lease Payment hereunder.

9.10. Notice to Investor Partner.

Tenant shall provide Landlord the name and notice address of any Investor Partner admitted to Tenant in accordance with the Partnership Agreement within five (5) days following such admission. So long as any Investor Partner is a partner of Tenant, Landlord agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to the Investor Partner, and no such notice shall be effective until after the Investor Partner receives such duplicate copy of the notice. The Investor Partner may, during the periods given to a Permitted Mortgagee under Section 10.4 hereof for remedying a default, itself remedy the default or cause the same to be remedied, and Landlord agrees to accept such performance on the part of the Investor Partner as though the same had been done or performed by Tenant.

9.11. Investor Partner's Right to Replace Tenant's General Partner.

Landlord agrees that it will take no action to effect a termination of this Lease without first giving to the Investor Partner reasonable time, not to exceed ninety (90) days from the date of the Investor Partner's receipt of notice pursuant to Section 9.10 hereof, to replace Tenant's General Partner in accordance with any such rights of the Investor Partner, as provided in the Partnership Agreement, and cause the successor General Partner to cure any Event of Default; provided, however, that (i) as a condition of such forbearance, Landlord must receive notice of the substitution of a new General Partner of Tenant within sixty (60) days following notice to the Investor Partner, and (ii) Tenant, following such substitution of General Partner, shall thereupon proceed with due diligence to cure such default. The rights of the Investor Partner under this Section 9.11 are in addition to such rights as are given to the Investor Partner under Section 9.10.

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**ARTICLE X.**  
**LEASEHOLD MORTGAGEE'S RIGHTS**

10.1. Leasehold Mortgages.

Except as otherwise provided for herein, Tenant may not assign or encumber its leasehold interest hereunder without the consent of Landlord, which consent may be withheld by Landlord in its reasonable discretion.

10.2. No Subordination of Fee.

At no time shall Landlord's fee title in the Property, or Landlord's interest in the Lease be subordinated in any manner to the interest of any holder of a Leasehold Mortgage or any person claiming by or through Tenant without the consent of the Landlord.

10.3. Leasehold Mortgage Not An Assignment.

The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the Leasehold Interest, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Interest so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, but the purchaser at any Foreclosure of any Leasehold Mortgage, or the assignee or transferee under any assignment or transfer in lieu of the Foreclosure, shall be deemed to be an assignee or transferee within the meaning of this Section, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment or transferee, but only for so long as such purchaser or assignee or transferee is the owner of the Leasehold Interest.

10.4. Rights of Permitted Mortgagee.

(a) In connection with any Permitted Mortgage, Landlord agrees with and for the benefit of each Permitted Mortgagee as follows:

(i) When delivering any notice, demand, election or other communication (any of the same being referred below in this Article as a "notice") to Tenant with respect to this Lease or any exercise of any right to terminate this Lease, the Landlord will also deliver a copy of any such notice by certified mail to any Permitted Mortgagee of which it has notice;

(ii) Should Tenant default in respect of any of the provisions of this Lease, any Permitted Mortgagee shall have the right, but not the obligation, to cure such default, and Landlord shall accept performance by or on behalf of such Permitted Mortgagee as though, and with the same effect as if, it had been done or performed by Tenant. Each Permitted Mortgagee will have a period of time after the service of such notice upon it within which to cure the default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given to Tenant under this Lease in

respect of the specified default after the giving of such notice to Tenant. In the event of a default under this Lease which cannot reasonably be cured within said periods, the periods of time for cure shall be extended for so long as such Permitted Mortgagee has initiated and is diligently proceeding to cure such default, or, in the case of a default under this Lease, if such default, by its nature, is not susceptible of being cured by such Permitted Mortgagee until it has taken lawful possession of the Leasehold Interest, then such Permitted Mortgagee shall have the right to obtain possession of the Leasehold Interests by itself by foreclosure or other enforcement proceedings, or by obtaining an assignment of this Lease or the Leasehold Interest in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (collectively, "Foreclosure"), without Landlord's consent, subject to the applicable terms and provisions of this Lease, including Landlord's right to cure any subsequent defaults, and such Permitted Mortgagee may assign this Lease without Landlord's consent to any assignee at any time thereafter, provided it obtains the consent of any Lender, if required, and provided such assignee expressly assumes the obligations of Tenant hereunder;

(iii) In case of a default by Tenant in the performance or observance of any term, covenant, condition or agreement on Tenant's part to be performed under this Lease, if Landlord shall elect, in lieu of any other remedy available to Landlord under this Lease, to bring a proceeding to dispossess Tenant and/or other occupants of the Property or to re-enter the Property or to terminate this Lease, by reason of such default, pursuant to any statute now or hereafter enacted, then Landlord shall, before commencing such proceeding, give to each Permitted Mortgagee thirty (30) days notice of such default and shall allow each Leasehold Mortgagee such thirty (30) day period within which to cure such default. If the default cannot reasonably be cured within thirty (30) days, the Permitted Mortgagee shall have more time for such cure provided that the Permitted Mortgagee commences to cure the default within such thirty (30) day period and diligently and in good faith continues to cure the default until completion within a reasonable period of time. The rights of each Permitted Mortgagee hereunder are in addition to such rights as are given to each Permitted Mortgagee under any other section or subsection of this Lease; and

(iv) Landlord shall not, in the event of the Bankruptcy of Tenant or Landlord, (x) surrender its estate, or any portion thereof, nor terminate, cancel or acquiesce in the rejection of this Lease; or (y) modify, change, supplement, alter or amend this Lease in any respect, either orally or in writing.

#### 10.5. Requirements for Notice.

Any notice or other communication which Landlord shall desire or is required to give to or serve upon each Permitted Mortgagee shall be in writing and shall be served by certified mail, addressed to each Permitted Mortgagee at its address as set forth in its Permitted Mortgage, or at such other address as shall be designated from time to time by each Permitted Mortgagee by notice in writing given to Landlord by certified mail. Any notice or other communication which each Permitted Mortgagee shall desire or is required to give to or serve upon Landlord shall be deemed to have been given or served if sent by certified mail addressed to Landlord at

Landlord's address as set forth in Section 12.9 below, or at such other address as shall be designated from time to time by Landlord by notice in writing given to each Permitted Mortgagee by certified mail. Any such notice or communication shall be effective on the date such notice or communication is delivered to the party to whom it is given.

10.6. No Modification without Leasehold Mortgagee's consent.

Except as otherwise provided herein, Landlord will not modify or amend or, except upon an Event of Default (after affording each Permitted Mortgagee the notice of and opportunity to cure such Event of Default as provided in Section 10.4), cancel, surrender or terminate this Lease without the consent of each Permitted Mortgagee. Any such modification, amendment, cancellation, surrender, or termination without the consent of each Permitted Mortgagee (if such consent shall be required) shall be void and of no force or effect. In the event on any occasions hereafter Tenant seeks to mortgage its Leasehold Interest (which mortgage shall be made expressly subject and subordinate to the terms of this Lease), Landlord agrees to amend this Lease from time to time to the extent reasonably requested by an institutional lender proposing to make Tenant a loan to be secured by a subordinate lien upon Tenant's Leasehold Interest, provided that such proposed amendments do not materially and adversely affect the rights of Landlord or its interest in the Property. All reasonable expenses incurred by Landlord in connection with any such amendment, including, without limitation, reasonable attorneys' fees, shall be paid by Tenant.

10.7. Estoppel Certificates.

Tenant agrees that, from time to time upon not less than ten (10) days' prior request by Landlord or any mortgagee of Landlord's interest in the Property, Tenant (or any permitted assignee, subtenant, licensee, concessionaire or other occupant of the Property claiming by, through or under Tenant) will deliver to Landlord, or to Landlord's mortgagee, a statement in writing signed by Tenant certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and identifying the modifications); (b) the date upon which Tenant began paying Base Rent and the dates to which the Base Rent and any other Lease Payment have been paid; (c) that Landlord is not in default under any provision of this Lease, or, if in default, the nature thereof in detail; (d) that (if applicable) the Property has been completed in accordance with the terms hereof and Tenant is in occupancy and paying Base Rent on a current basis with no Base Rent offsets or claims; (e) that there has been no prepayment of Base Rent other than that provided for in this Lease; (f) that there are no actions, whether voluntary or otherwise, pending against Tenant under the bankruptcy laws of the United States or any state thereof; and (g) such other matters as may be reasonably required by Landlord or Landlord's mortgagee. Landlord shall provide a statement of like tenor if and as requested by Tenant, the Investor Partner, the Lender or any Permitted Mortgagee.

10.8 Contravention of Terms.

In the event of any inconsistency between the provisions of this Article X and the Permitted Mortgages securing the Loans, the terms of such Permitted Mortgage shall apply.

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**ARTICLE XI.**  
**SECURITY INTEREST**

11.1. Grant of Security Interest by Tenant

(a) To secure its obligations under this Lease, Tenant hereby grants to Landlord a security interest in all of Tenant's right, title and interest in, to and under the following-described property, which security interest shall be subject to the prior security interests granted to the Lenders (the "Collateral"):

(i) All of Tenant's interest (whether presently existing or hereafter acquired) in Tenant's Personal Property which is or becomes attached to, installed in, or used on or in connection with the Property;

(ii) Tenant's replacement reserves;

(iii) Tenant's right, title and interest in and under the Operating Contracts, the Management Agreements, and any other contracts to the extent they may be pledged or assigned;

(iv) Tenant's revenues, incomes, proceeds, profits and other sums or benefits paid or payable to Tenant in connection with Tenant's operation of the Property; and

(v) All proceeds, including insurance or condemnation proceeds, that arise out of the sale, liquidation, or other transfer of, or damage to, condemnation of, or destruction of, or sale, use or enforcement of the above-described Collateral, or any proceeds thereof, including cash proceeds.

(b) Tenant shall execute and deliver to Landlord, in form and substance satisfactory to Landlord, such financing statements as Landlord may consider reasonably necessary to create, protect and preserve Landlord's security interest herein granted, and Landlord may cause such statements to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

(c) The security interest granted pursuant to this Section 11.1 is a collateral security interest only, and Tenant shall have full use of and control over the Collateral prior to the occurrence of any Event of Default that remains uncured by Tenant following any applicable cure period hereunder.

(d) If requested to do so by Landlord, Tenant shall enter into a separate security agreement with Landlord to provide in greater detail the details of the security interest in the Collateral.



11.2. Rights and Remedies of Landlord Upon Tenant Default

In addition to any remedies expressly set forth in this Lease, upon any Event of Default by Tenant hereunder that remains uncured following any applicable cure period, Landlord shall have all rights and remedies of a secured party under the Uniform Commercial Code in any jurisdiction in which enforcement is sought, subject to the prior security interests granted to the Lenders.

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**ARTICLE XII.**  
**MISCELLANEOUS**

12.1. Construction.

Landlord and Tenant agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section thereof.

12.2. Performance Under Protest.

In the event of a dispute or difference between Landlord and Tenant as to any obligation which either may assert the other is obligated to perform or do, then the party against whom such obligation is asserted shall have the right and privilege to carry out and perform the obligation so asserted against it without being considered a volunteer or deemed to have admitted the correctness of the claim, and shall have the right to bring an appropriate action at law, equity or otherwise against the other for the recovery of any sums expended in the performance thereof.

12.3. No Waiver.

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any other provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the cause of any subsequent occasion. In addition, Landlord acknowledges that pursuant to the Partnership Agreement, Tenant must obtain the consent of the Investor Partner prior to responding to any request for Tenant's consent, consent or approval hereunder. Except as expressly limited by the terms of this Lease, any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them whether exercised by said party or not, shall be deemed to be in exclusion of any other; and two or more or all of such rights and remedies may be exercised at the same time.

12.4. Headings.

The headings used for the various articles and sections of this Lease are used only as a matter of convenience for reference, and are not to be construed as part of this Lease or to be used in determining the intent of the parties of this Lease.

12.5. Partial Invalidity.

If any terms, covenant, provision or condition of this Lease or the application thereof to any person or circumstances shall be declared invalid or unenforceable by the final ruling of a

court of competent jurisdiction having final review, the remaining terms, covenants, provisions and conditions of this Lease and their application to persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties, and in the place of such invalid or unenforceable provision there shall be substituted a like, but valid and enforceable, provision mutually agreeable to Landlord and Tenant which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the parties.

12.6. Bind and Inure.

Unless repugnant to the context, the words “Landlord” and “Tenant” shall be construed to mean the original parties, their respective permitted successors and assigns and those claiming through or under them respectively. Subject to the provisions of Section 6.2, the agreements and conditions in this Lease contained on the part of Tenant to be performed and observed shall be binding upon Tenant and its permitted successors and assigns and shall inure to the benefit of Landlord and its permitted successors and assigns, and the agreements and conditions in this Lease contained on the part of Landlord to be performed and observed shall be binding upon Landlord and its permitted successors and assigns and shall inure to the benefit of Tenant and its successors and assigns. No holder of a Leasehold Mortgage shall be deemed to be the holder of said Leasehold Interest until such holder shall have acquired indefeasible title to said Leasehold Interest.

12.7. Time of Essence.

Time is of the essence of this Lease and of all provisions hereof.

12.8. Recordable Form of Lease.

Simultaneously with the delivery of this Lease the parties have delivered a notice or short form of this Lease which Tenant shall record in the public office in which required to put third parties on notice. If this Lease is terminated before the Term expires, Landlord and Tenant agree to execute and deliver, in form suitable for recording, a revised notice of lease reflecting such termination.

12.9. Notices.

Notices will be in writing and will be either given by U.S. certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or sent by telex or facsimile promptly confirmed in writing, or sent by personal delivery by a nationally recognized courier service for next day delivery. The current addresses and telecopy numbers of the parties to which any notice provided for herein shall be sent, are as follows:

<b>If to the Landlord:</b>
DIVISION

<b>MATTER</b>
DOC TYPE
<b>AUTHOR</b>
Frost Brown Todd LLC 400 W. Market Street, Suite 3200 Louisville, KY 40202 Attn: Amy Curry, Esq.
and
Reed Weitkamp Schell & Vice PLLC 500 W. Jefferson Street, Suite 2400 Louisville, KY 40202 Attn: Robert Vice, Esq.

Any party may designate another addressee (and/or change its address or telecopy number) for notices hereunder by a notice given pursuant to this Section 12.9. Notices delivered personally or by facsimile will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the Return Receipt Requested.

12.10. Entire Agreement.

This instrument contains all the agreements made between the parties hereto and may not be modified in any other manner than by an instrument in writing executed by the parties or their respective successors in interest and to which each Permitted Mortgagee has consented, if such consent is required pursuant to the terms of the applicable Permitted Mortgage.

12.11. Governing Law.

This Lease, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the substantive laws of the State. Any legal suit, action or proceeding against Landlord or Tenant arising out of or relating to this Lease may at Landlord's option be instituted in any federal or state court in the city of Lexington, County of Fayette, Kentucky and Tenant waives any objections which it may now or hereafter have based on venue and/or forum non conveniens or any such suit, action or proceeding, and Tenant hereby irrevocably submits to the exclusive jurisdiction of any such court in any suit, action or proceeding.

12.12. Relationship of Parties.

The parties acknowledge that no relationship exists between Landlord and Tenant hereunder other than as landlord and tenant. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither

partners nor joint venturers, nor does a debtor-creditor, principal-agent or any other relationship except as aforesaid, exist between them.

*[SIGNATURES APPEAR ON NEXT PAGE]*

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IN WITNESS WHEREOF, the parties have hereunto set their signatures and seals to this Lease as of the date first above written.

LANDLORD:

**LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT PUBLIC FACILITIES  
CORPORATION**, a Kentucky non-profit  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

**HISTORIC COURTHOUSE, LLLP**, a Kentucky  
limited liability limited partnership

By: **HISTORIC COURTHOUSE GP, INC.**,  
a Kentucky non-profit corporation,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBITS

Exhibit A: Description of Property

Exhibit B: Description of Operating Contracts

Exhibit C: Environmental Reports

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Exhibit A

Description of Property

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**Exhibit B**

**Description of Operating Contracts**

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**Exhibit C**

**Environmental Reports**

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