
1 **2020-57 (1ST READING): AN ORDINANCE APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF**
2 **MYRTLE BEACH, SOUTH CAROLINA, OF A GROUND LEASE BETWEEN THE CITY, AS LESSOR, AND 9TH AVENUE**
3 **OWNER, LLC, AS LESSEE, WITH RESPECT TO HISTORIC BUILDINGS LOCATED AT 505, 507 AND 509 NINTH**
4 **AVENUE IN THE CITY OF MYRTLE BEACH, TOGETHER WITH A SUB-LEASE BETWEEN 9TH AVENUE OWNER, LLC,**
5 **AS LESSOR, AND THE CITY OF MYRTLE BEACH, AS LESSEE, WITH RESECT TO THE HISTORIC BUILDINGS; AND**
6 **OTHER MATTERS RELATING THERETO.**

7 **Applicant/Purpose:** Finance / to provide for the City to lease the properties it owns at 505, 507, and 509
8 9th North to the 9th Avenue Owner, LLC, for redevelopment using historic tax credits.

9
10 **Brief:**

- 11 • City purchased the properties from DRC last year and engaged Rogers & Lewis law firm to assist in
12 bringing in tax credit investors.
- 13 • The investors will form a limited liability corporation to use tax credits to finance a portion of the
14 redevelopment costs of the properties.
- 15 • The City, which cannot use tax credits itself, will lease the property to the 9th Avenue Owners, LLC,
16 the membership of which will consist of
 - 17 ○ Federal Tax Credit Investor (96% member)
 - 18 ○ State Tax Credit Investor (3% member), &
 - 19 ○ A managing member, 9th Avenue Manager, LLC (1% member).
 - 20 ○ DRC will be the sole member of the 9th Avenue Manager, LLC.

21
22 **Changes since 1st reading:**

- 23 • Filled in blank as to maximum lease amount—\$340,000 in 2027-2030 should the City continue to own
24 the property rather than dispose of it. Rental through 2026 is estimated at \$122,000 per year.

25
26 **Issues:**

- 27 • The 9th Avenue owner achieves owner status by virtue of a long-term ground lease.
- 28 • Tax Credit investors contribute capital which is paid in increments as the developer completes the
29 project.
- 30 • The capital investment offsets ~ \$775k or more of total project costs of roughly \$1.9 million (41.4%).
- 31 • The City has a term sheet from a proposed lender for the infrastructure improvements and financing
32 costs, most of which will be retired as the tax credit's investors contribute funds.
- 33 • Remaining costs will be amortized or retired with proceeds from lease of the properties.

34
35 **Public Notification:** Normal notification for 1st reading.

36
37 **Alternatives:**

- 38 • Do not do the project. Sell the properties for current value if an investor can be found.

39
40 **Financial Impact:**

- 41 • Negligible net impact to City for some administrative costs.
- 42 • Increases property taxes and other taxes to support other projects and City services in the Oceanfront
43 TIF District, & County/ School District needs.
- 44 • Increases property values throughout the District.
- 45 • Further encourages private investment in the District.

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47 **Manager's Recommendation:**

- 48 • I recommend 1st reading (12/12/20).
- 49 • I recommend approval (1/12/21).

50
51 **Attachment(s):** Proposed ordinance.

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5 CITY OF MYRTLE BEACH
6 COUNTY OF HORRY
7 STATE OF SOUTH CAROLINA

8 AN ORDINANCE APPROVING THE EXECUTION
9 AND DELIVERY BY THE CITY OF MYRTLE
10 BEACH, SOUTH CAROLINA, OF A GROUND
11 LEASE BETWEEN THE CITY, AS LESSOR, AND
12 9TH AVENUE OWNER, LLC, AS LESSEE, WITH
13 RESPECT TO HISTORIC BUILDINGS LOCATED AT
14 505, 507 AND 509 NINTH AVENUE IN THE CITY
15 OF MYRTLE BEACH, TOGETHER WITH A SUB-
16 LEASE BETWEEN 9TH AVENUE OWNER, LLC, AS
17 LESSOR, AND THE CITY OF MYRTLE BEACH, AS
18 LESSEE, WITH RESECT TO THE HISTORIC
19 BUILDINGS; AND OTHER MATTERS RELATING
20 THERETO.

21 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MYRTLE BEACH, SOUTH
22 CAROLINA, IN COUNCIL DULY ASSEMBLED, AS FOLLOWS:

23 SECTION 1. Findings. The City Council of the City of Myrtle Beach, South Carolina (the
24 "Council"), hereby finds and determines:

25 (a) The City of Myrtle Beach, South Carolina (the "City"), is an incorporated
26 municipality located in Horry County, South Carolina (the "County"), and as such has all powers
27 granted to municipalities by the Constitution and general laws of this State.

28 (b) Section 5-7-40 of the Code of Laws of South Carolina 1976, as amended,
29 empowers all municipalities to own and possess real and personal property and such
30 municipalities may lease any such property.

31 (c) The City is the fee owner of certain historic buildings (the "Buildings") located at
32 505, 507 and 509 9th Avenue, in the City of Myrtle Beach. The Buildings are on the National
33 Historic Register and are vacant.

34 (d) Due to their ages and vacancy, certain renovation expenditures made with
35 respect to the Buildings are eligible for various federal and state tax credits (the "Tax Credits").

36 (e) The City is not an eligible recipient of the Tax Credits.

37 (f) The City desires to enter into a Ground Lease (the "Ground Lease") with 9th
38 Avenue Owner, LLC, a South Carolina limited liability company (the "Tax Credit Developer"), for
39 the purposes of leasing the Buildings and related land to the Tax Credit Developer for the
40 rehabilitation and renovation of the Buildings (the "Project"). The Tax Credit Developer is an
41 eligible recipient of Tax Credits.

42 (g) The City also desires to enter into a Sub-Lease (the "Sub-Lease," and together
43 with the Ground Lease, the "Leases") with the Tax Credit Developer for the purposes of leasing
44 the Project to allow the City to utilize the Buildings, as rehabilitated and renovated, in
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1 connection with its program of downtown redevelopment.

2
3 (h) It is in the best interest of the City to enter into the Leases in order to further the
4 City's program of downtown redevelopment.

5
6 SECTION 2. Approval of Transaction. The Council does hereby approve the sub-leasing of
7 the Buildings from the Tax Credit Developer pursuant to the Leases. The forms of the Ground
8 Lease and the Sub-Lease are attached to this Ordinance as Exhibits A and B, respectively, and
9 are incorporated herein by reference.

10
11 SECTION 3. Approval of Leases. The form, terms and provisions of the Leases, together
12 with such changes as the officers of the City authorized to execute and deliver the Lease shall
13 approve, are hereby approved. The City Manager and Deputy City Manager, or either one of
14 them, acting alone, are hereby authorized and directed to execute, acknowledge and deliver,
15 and the City Clerk is hereby authorized and directed to attest, the Leases in the name and on
16 behalf of the City. The Leases are to be in substantially the forms attached to this Ordinance as
17 Exhibits A and B, with such changes to the forms thereof as shall be approved by the City
18 Manager or Deputy City Manager, or either one of them, acting alone, such person's or persons'
19 execution and delivery thereof to constitute conclusive evidence of approval of any and all
20 changes or revisions therein from the form of Leases now before this meeting; provided that the
21 Base Rent (as defined in the Sub-Lease) payable by the City under the Sub-Lease in any fiscal
22 year of the City shall not exceed \$340,000.

23
24 SECTION 4. Authorization. The Mayor, the City Manager, the Deputy City Manager, the
25 Chief Financial Officer, the City Attorney and the City Clerk, for and on behalf of the City, are
26 fully empowered and authorized to take such further action and to execute and deliver such
27 additional documents as may be necessary to effect the execution and delivery of the Leases in
28 accordance with the terms and conditions therein set forth, and the transactions contemplated
29 hereby and thereby, and the action of such officers in executing and delivering any of such
30 documents is hereby fully authorized.

31
32 SECTION 5. Effective Date. The provisions of this Ordinance shall be effective upon its
33 adoption.

34
35 ENACTED by the City Council of the City of Myrtle Beach, South Carolina, this 12th day of
36 January 2021.

37
38
39 _____
Mayor, City of Myrtle Beach, South Carolina

40 (SEAL)

41
42
43 _____
44 Clerk, City Council of the City
45 of Myrtle Beach, South Carolina

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47 Date of First Reading: December 12, 2020

48 Date of Second Reading: January 12, 2021

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EXHIBIT A
FORM OF GROUND LEASE

GROUND LEASE

between

CITY OF MYRTLE BEACH, SOUTH CAROLINA

(the “Landlord”)

and

**9th AVENUE OWNER, LLC,
a South Carolina limited liability company,**

(the “Tenant”)

Dated as of [_____], 2021

GROUND LEASE

505, 507 and 509 Ninth Avenue

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Exhibits

- A Property Description
- B Notice Addresses
- C Insurance Requirements

Rider

- A Leasehold Mortgage Rider

GROUND LEASE

THIS GROUND LEASE (together with Exhibits and Rider A hereto, which are incorporated herein by this reference, "*this Lease*") is made effective as of [_____], 2021, by and between the CITY OF MYRTLE BEACH, SOUTH CAROLINA (the "*Landlord*"), and 9th AVENUE OWNER, LLC, a South Carolina limited liability company ("*Tenant*").

RECITALS

WHEREAS, Landlord is the owner in fee simple title of certain Land (as defined herein), which it has agreed to lease under the terms and conditions hereof to Tenant for Tenant's development and rehabilitation of the historic buildings (collective, the "*Building*") upon the Land, as more specifically described in Section 4.1 (the "*Project*"), intended to satisfy the requirements of Section 47 of the Code (as defined herein) throughout the recapture period specified in Section 50(a)(1) of the Code (the "*HTC Compliance Period*").

NOW THEREFORE, IN CONSIDERATION of the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of that tract of land (the "*Land*"), in the City of Myrtle Beach, South Carolina, which is more particularly described in Exhibit A attached hereto,

TOGETHER WITH any and all rights, alleys, ways, waters, privileges, roads, appurtenances and advantages, to the same belonging or in any way appertaining (all of which, together with the Land, are hereinafter referred to collectively as the "*Premises*"), including the Building and other existing and future Improvements (as defined herein) on or under the Land,

TO HAVE AND TO HOLD the Premises unto Tenant, its successors and permitted assigns, for and during the Term set forth herein,

ON THE TERMS AND SUBJECT TO THE CONDITIONS which are hereinafter set forth:

Section 1. DEFINITIONS.

1.1. Specific. As used herein, the following terms have the following meanings:

"*Annual Rent*" has the meaning given it in subsection 3.1.

"*Business Day*" means any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Myrtle Beach, South Carolina.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Commencement Date*" has the meaning given it in paragraph 2.1.1.

“Environmental Laws” means any and all Federal, State or local laws, pertaining to health, safety, or the environment now or at any time hereafter in effect and any judicial or administrative interpretation thereof (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or hazardous substances (as such term is defined in any such law), or exposure to hazardous substances) including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reorganization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, the federal Clean Water Act of 1977, all regulations and laws adopted by the Occupational Safety and Health Administration, and any other environmental or health conservation or protection laws.

“Event of Default” has the meaning given it in subsection 13.1.

“Force Majeure” means any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, (c) failure or shortage of materials, electrical power, gas, water, fuel oil, or other utility or service, (d) riot, war, insurrection or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather condition, (g) other act of God, or (h) other cause similar or dissimilar to any of the foregoing and beyond the reasonable control of the person in question.

“Fee Estate” means Landlord’s fee simple interest in all the Land and the appurtenances included with the Land.

“Improvements” means the Building located on the Land, and all fixtures and personal property, all off-street parking areas on the Property; all common areas at the Property, and all replacements, additions and alterations thereto.

“Landlord” means, the City of Myrtle Beach, South Carolina and its successors and assigns as holder of the Fee Estate.

“Land Records” means the Land Records of the County of Horry, South Carolina.

“Lease” means this Ground Lease, including amendments thereto and extensions thereof, if any.

“Lease Year” means (a) the period commencing on the Commencement Date and terminating on the first (1st) anniversary of the last day of the calendar month containing the Commencement Date, and (b) each successive period of twelve (12) calendar months thereafter during the Term.

“Leasehold Estate” means the leasehold estate in the Premises held by Tenant under this Lease and its fee interest in the Improvements and any fee or other interest in the Property acquired by Tenant hereafter.

“Legal Requirements” has the meaning given it in subsection 4.3.8.

“**Mortgage**” means any mortgage or deed of trust at any time encumbering any or all of the Property, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Property (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein.

“**Mortgagee**” means the Person secured by a Mortgage.

“**Permitted Encumbrances**” means any and all encumbrances of record existing as of the date hereof.

“**Person**” means a natural person(s), a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity.

“**Premises**” means the Land more particularly described on Exhibit A attached hereto and incorporated herein by this reference and all appurtenances, easements and rights of way related to the Land.

“**Project**” or “**Property**” means collectively the Premises and the Improvements.

“**Rent**” means all Annual Rent.

“**Tenant**” means 9th Avenue Owner, LLC, a South Carolina limited liability company, and its successors and permitted assigns as holder of the Leasehold Estate.

“**Term**” has the meaning given it in subsection 2.1.1.

“**Termination Date**” has the meaning given it in subsection 2.1.1.

1.2. General. Any other term to which meaning is expressly given in this Lease shall have such meaning.

Section 2. TERM.

2.1. Lease. Landlord agrees to lease the Premises to Tenant on the terms and conditions set forth in this Lease.

2.1.1. Original Term. This Lease shall be for a term (“**Term**”) commencing on the date hereof (“**Commencement Date**”), and (b) terminating on the fiftieth (50th) anniversary of the Commencement Date (the “**Termination Date**”, except that if the date of such termination is hereafter advanced to an earlier date or postponed pursuant to paragraph 2.2.1 or any other provision of this Lease, or by express, written agreement of

the parties hereto, or by operation of law, the date to which it is advanced or postponed shall thereafter be the "**Termination Date**" for all purposes of this Lease). Possession shall be delivered on the Commencement Date.

2.1.2. Surrender. Tenant shall, at its expense, at the expiration of the Term or any earlier termination of this Lease, promptly yield up to Landlord the Premises, any of the Improvements and personal property which remains at the Premises as of the Termination Date, in reasonable order and repair, ordinary wear and tear and damage by casualty, or condemnation excepted. Upon such expiration or termination (whether by reason of an Event of Default or otherwise), Tenant shall thereafter have no right at law or in equity in or to any or all of the Property (including the Improvements) and shall be conclusively deemed to have abandoned same, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of Tenant (but subject to the rights of any person then holding any lien, right, title or interest in or to the Fee Estate and to the lien of all Permitted Encumbrances then outstanding).

2.2. Holding Over.

2.2.1. Nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Premises after the expiration of the Term or any earlier termination of this Lease. If and only if Tenant continues to occupy the Premises after such expiration or termination after obtaining Landlord's express, written consent thereto:

(a) such occupancy shall (unless the parties hereto otherwise agree in writing) be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, by at least thirty (30) days before the end of any calendar month, that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate; and

(b) subject to the provisions of subsection 2.2.2, but anything in the remaining provisions of this Section to the contrary notwithstanding, the monthly rent payable with respect to each such monthly period shall equal one-twelfth (1/12) of the Annual Rent (such amount being the "**Monthly Rent**") for the Lease Year during which such expiration or termination occurred, as aforesaid.

2.2.2. If Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease without having obtained Landlord's express, written consent thereto, then without altering or impairing any of Landlord's rights under this Lease or applicable law, Tenant hereby agrees to pay a sum equaling One Hundred and 00/100 Dollars (\$100.00) per each day of such holdover occupancy to Landlord immediately on demand by Landlord as monthly rent for the Premises, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease, as aforesaid, until Tenant surrenders possession of the Premises to Landlord. Nothing in this Lease shall be deemed in any way to give Tenant any right to remain in

possession of the Premises after such expiration or termination, regardless of whether Tenant has paid any such Rent to Landlord.

2.3. Title to and Alterations of Improvements. Notwithstanding any provision in this Lease to the contrary, at all times during the Term of this Lease, the Improvements and all alterations and additions shall be owned by Tenant for tax purposes and Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the federal historic rehabilitation tax credits pursuant to Section 47 of the Code and the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Improvements. Landlord makes no representation or warranty of any kind with respect to tax attributes of ownership, including but not limited to the availability of federal or state historic tax rehabilitation credits. At the expiration or earlier termination of the Term of this Lease, or any portion thereof, in accordance herewith, Tenant shall peaceably leave, quit and surrender the Premises in the manner required under paragraph 2.1.2. Upon such expiration or termination, the Premises and any Improvements remaining (other than personal property and equipment owned by tenants) shall become the sole property of Landlord at no cost to Landlord in "as is" condition, and subject to all matters of record.

Section 3. RENT.

3.1. Amount. As rent for the Premises, Tenant shall pay to Landlord annual installments of One Dollar (\$1.00) ("*Annual Rent*") for a period of fifty (50) years payable on the Commencement Date.

3.2. Security Deposit. None.

3.3. Leasehold Obligations.

3.3.1. Net Lease. Other than as is expressly set forth in this Lease, all costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of Tenant's Leasehold Estate in the Property, or this Lease generally shall be the sole responsibility of and payable by Tenant.

3.3.2. Property Tax Exemption. The Tenant shall be solely responsible for, and shall pay, all general and special ad valorem property taxes, assessments and user or impact fees, if any.

Section 4. USE OF PROPERTY.

4.1. Nature of Use. Tenant shall throughout the Term continuously use and operate the Premises and the Improvements for the following uses and such other uses as are reasonably and customarily attendant to such uses: rehabilitation, construction, development of the Property as commercial and/or retail space.

4.2. Compliance with Environmental Laws. Tenant, throughout the Term and at its sole expense, in its rehabilitation, possession and use of the Improvements, shall use commercially reasonable efforts not to (a) cause or permit the escape, disposal or release of any biologically or

chemically active or other Hazardous Substances brought onto the Property by Tenant or its agents or contractors in violation of any applicable laws, or (b) allow the storage or use of such Hazardous Substances in any manner not sanctioned by law or by the standards prevailing in the industry for the storage and use of such substances or materials, or (c) allow any Hazardous Substances to be brought onto the Property except to use in the ordinary course of Tenant's business. For purposes of this Lease, "**Hazardous Substances**" shall include those substances and materials subject to regulation under any applicable Environmental Law.

4.3. Representations, Warranties and Covenants of Landlord. As an inducement to Tenant to enter into and proceed under this Lease, Landlord warrants and represents to Tenant as follows, which warranties, representations and covenants are true and correct as of the date of this Lease:

4.3.1. Landlord has good and marketable, fee simple title to the Premises, subject only to Permitted Encumbrances, and has the right, power and authority to enter into this Lease, to lease the Land to Tenant in accordance with the terms, provisions and conditions contained in this Lease, and has received all applicable governmental consents and approvals in connection therewith, and no other party has any right or option to or in connection with the Premises;

4.3.2. There is no litigation proceeding, or other action pending or, to the best knowledge and belief of Landlord, threatened, affecting the Property or Landlord's estate therein;

4.3.3. Landlord has received no written notice, and has no actual knowledge, nor has Landlord been otherwise advised, of any pending or threatened condemnation, building or zoning code violation relating to all or any part of the Property;

4.3.4. Landlord has received no written notice and has no actual 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);

4.3.5. The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreement relating to the Property to which Landlord is a party or by which it is bound;

4.3.6. The Property is unoccupied and vacant, and there is no tenant, lessee or other occupant of the Property having any right or claim to possession or use of the Premises; and possession of the Premises is hereby delivered free of the rights or claims of any tenants, occupants or other parties in possession of, or claiming any right to possession or use of the Premises;

4.3.7. There are no unpaid special assessments of which Landlord has received notice for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Property;

4.3.8. [Except as disclosed in writing to Tenant,] there are no outstanding notices of, nor, to Landlord's actual knowledge, any violations of any applicable laws, ordinances, notices, orders, rules, regulations and requirements of applicable federal, state and municipal governments, public or quasi-public authorities and all departments, commissions, bureaus boards and officers thereof affecting any portion of the Property (collectively the "**Legal Requirements**");

4.3.9. To the best of Landlord's actual knowledge, neither the Property nor any part thereof has been used for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, transportation or disposal of any Hazardous Substances and no Hazardous Substances have been installed, used, stored, handled or located on or beneath the Property, which Hazardous Substances, if found on or beneath the Premises, or improperly disposed of off of the Premises, would subject Tenant, any subtenant, the owner or occupant of the Property to damages, penalties, liabilities or an obligation to perform any work, cleanup, removal, repair, construction, alteration, demolition, renovation or installation in or in connection with the Property ("**Environmental Cleanup Work**") in order to comply with any environmental law or Legal Requirements applicable to Hazardous Substances. No notice from any governmental authority or any Person has ever been served upon Landlord, its agents or employees, claiming any violation of any Legal Requirement pertaining to Hazardous Substances or any liability thereunder, or requiring or calling any attention to the need for any Environmental Cleanup Work on or in connection with the Premises, and neither Landlord, its agents or employees has ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order; and

Section 5. OPERATING EXPENSES.

5.1. Operating Expenses.

5.1.1. Tenant's Obligation. Tenant will pay (or cause to be paid) directly to the providers of such services all costs and expenses attributable to or incurred in connection with the development, construction, completion, marketing, leasing and occupancy of the Premises and the Improvements (collectively, "**Operating Expenses**") including without limitation (a) all energy sources for the Improvements, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer and trash disposal services; (c) all rehabilitation, maintenance, repair, replacement and rebuilding of the Improvements, without limitation, (d) all landscaping, maintenance, repair and striping of all parking areas; (e) all insurance premiums relating to the Premises and the Improvements, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; and (f) the cost and expenses of all capital improvements or repairs (whether structural or non-structural) required by any governmental or quasi-governmental authority having jurisdiction over the Premises or the Improvements.

5.1.2. Permits and Licenses. Tenant shall procure, or cause to be procured, at Tenant's sole cost and expense, any and all necessary permits, licenses, or other authorizations required for the rehabilitation, construction and occupancy of the Improvements and the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such service to the Improvements and upon the Premises. Landlord agrees to use Landlord's best reasonable efforts, at Tenant's sole cost and expense, to cooperate with Tenant in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authority with respect to any construction or other work to be performed on the Premises and grant (or cooperate in processing as regards third party providers), all permits, licenses, easements and other governmental authorizations that are necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Landlord shall use Landlord's reasonable efforts, at Tenant's sole cost and expense, to cooperate in the relocation or termination of easements currently encumbering the Premises to the extent that same may be reasonably necessary or desirable in connection with the Improvements. Tenant shall be entitled, without payment to Landlord, for tap or connection fees, to tap into the existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Premises. Landlord agrees to use Landlord's reasonable efforts to assist Tenant to obtain waiver, reduction or deferral, as applicable, of all fees and other charges otherwise payable in connection with obtaining any permits, licenses, easements and other authorizations required by any governmental authority with respect to any construction or other work to be performed on the Premises in connection with the Improvements.

Section 6. INSURANCE AND INDEMNIFICATION.

6.1. Insurance to be maintained by Tenant. Tenant shall maintain or cause to be maintained throughout the Term of this Lease casualty (including flood and earthquake) and commercial general liability insurance as set forth in the attached Exhibit C. Proof of insurance shall be filed with the Landlord at the inception and any renewal of any policy¹.

6.2. Insureds. Each such policy shall name Landlord as an additional insured thereon.

6.3. Insurer. All insurance required and all renewals of insurance shall be issued by the South Carolina Insurance Reserve Fund or companies of recognized responsibility licensed to issue such policies and otherwise transact business in the State of South Carolina. All insurance policies will expressly provide that such policies will not be cancelled or altered without thirty (30) days' prior written notice to Landlord.

6.4. Indemnification. Beginning on the commencement date, the Tenant agrees to pay and to defend, indemnify and hold harmless the 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

¹ Note to draft: to discuss insurance provisions with City.

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 other persons serving in an advisory capacity to any of them 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 to the extent arising out of the acts or omissions of Tenant or any subtenant; violation by the 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, the Tenant shall not have any liability to Landlord for any loss or damage arising out of the existence of any hazardous substance at the Property as of the date hereof, or 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. The foregoing indemnification shall not be construed as creating any rights in or conferring any rights to any third parties.

Section 7. IMPROVEMENTS TO PREMISES.

7.1. Rehabilitation of Improvements.

7.1.1. Alterations. Landlord agrees that Tenant owns the Improvements for tax purposes and shall have the right to make such alterations, additions and changes thereto as Tenant deems necessary or appropriate, including, without limitation, and replacement thereof.

7.1.2. Estoppel Certificates. Landlord and Tenant agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from a permitted assignee or other interested party, Landlord or Tenant will execute, acknowledge and deliver to the other party a statement in writing certifying: (a) that this Lease is unmodified (or if modified, stating such modifications) and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certified (if such be the case), there is no default, set-off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any such persons.

7.1.3. Mortgage of Landlord's Fee Estate. Landlord shall not sell, transfer, assign, convey, or otherwise encumber all or any portion of its interest in the Property, without the prior written consent of the Tenant.

7.2. Joinder. Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals or certificates of dedication thereon, public works or other agreements and permits for sewer, water or other utility services, other instruments of

dedication or other permits or approvals, the granting of or entry into which by any governmental or quasi-governmental authority having jurisdiction over the Property is necessary to permit (a) the development, rehabilitation, improvement, use and occupancy of the Property for the purposes permitted by this Lease, without violating applicable law; and (b) the dedication to the City of Myrtle Beach, South Carolina and/or the State of South Carolina after the Commencement Date of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are, in Tenant's opinion, necessary or desirable in connection therewith.

Section 8. REPAIRS AND MAINTENANCE.

8.1. Repairs. Tenant shall, throughout the Term and at its expense,

(a) keep the Premises in good order and condition (ordinary wear and tear excepted) and in compliance with applicable building and health and safety codes; and

(b) promptly make any and all repairs, ordinary or extraordinary, foreseen or unforeseen, to the Property (including but not limited to the landscaping thereon) as are necessary to maintain it in good condition, subject, in the event of casualty or condemnation to receipt of applicable insurance and/or condemnation proceeds therefor, and Landlord shall have no obligation hereunder as to the same.

8.2. Maintenance. Tenant shall keep and maintain all of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice.

Section 9. LANDLORD'S RIGHT OF ENTRY.

9.1. Inspection and Repair. Subject to the rights of any tenant under any lease of space in the Premises, Landlord shall be entitled to enter the Property during Tenant's normal business hours to (a) inspect the Property at any time, upon forty-eight (48) hours' advance written notice and (b) make any repairs thereto and/or take any other action therein which is required by applicable law, or which Landlord is permitted to make by any provision of this Lease, after giving Tenant at least twenty (20) Business Days' prior written notice of Landlord's intention to take such action; provided that Tenant doesn't timely cure same. Landlord may, while taking any such action upon the Property, store therein any and all necessary materials, tools and equipment, and Tenant shall have no liability to Landlord for any damage to or destruction of any such materials, tools and equipment, except if and to the extent that such damage or destruction is proximately caused by the negligence of Tenant. Landlord shall use its best efforts to not disrupt the rights of tenants at the Property.

Section 10. FIRE AND OTHER CASUALTIES.

10.1. Damages or Destruction to Premises. Tenant shall give prompt notice to Landlord after the occurrence of any fire, earthquake, flood, act of God or other casualty to or in connection with the Premises, the Improvements or any portion thereof (hereinafter sometimes referred to as a "*Casualty*"). Subject to Section 10.2 below, if during the Term the Improvements shall be damaged or destroyed by Casualty, Tenant shall repair or restore the Improvements, so long as Tenant reasonably determines that it is feasible to do so and provided that sufficient insurance

proceeds are available to do so. In the event that Tenant shall determine by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice.²

10.2. Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to Section 10.1 hereof, to the extent required by any Mortgagee or leasehold mortgagee of the Tenant's interest in this Lease, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, to the Mortgagee or any such leasehold mortgagee, and (b) second, the balance, if any, of such insurance proceeds shall be paid to Landlord.

Section 11. CONDEMNATION.

11.1. Notice of Taking. Forthwith upon receipt by either Landlord or Tenant of notice of the institution of any proceedings for the taking or condemnation of all or a portion of the Property or Improvements by the government of the United States, State of South Carolina, City of Myrtle Beach, South Carolina or any other governmental authority, or any corporation under the right of eminent domain (a "**Taking**"), the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

11.2. Special Account. If a Total Taking (as defined in Section 11.3), the full amount of any award for any Taking (the "**Award**"), shall, notwithstanding any allocation made by the awarding authority, be paid, and allocated as set forth below provided that there shall first be deducted from the Award in the order stated (A) first, any outstanding amounts secured by any Mortgage or leasehold mortgage of the Tenant's interest in this Lease; and (B) second, any Rent outstanding prior to the Taking owed by the Tenant, which shall be paid to the Landlord. If a Total Taking, or a Partial Taking (pursuant to Section 11.4), the remainder of the Award (the "**Remainder**") shall be allocated (x) to the Landlord, an amount equal to the product of the amount allocated to the Property multiplied by the Landlord's Percentage (hereafter defined), and (v) to the Tenant, an amount equal to the product of the amount allocated to the Premises multiplied by the Tenant's Percentage (hereafter defined). The "**Landlord's Percentage**" shall equal the fair market value, at the time of the Taking of the Premises encumbered by this Lease, plus the residual fair market value of the Improvements as of the expiration of the Term (the "**Land Value**") divided by the sum of the Land Value and the Improvements Value. The "**Improvements Value**" shall be the fair market value of the Improvements, as of the date of the Taking, taking into account the then remaining Term of this Lease. The "**Tenant's Percentage**" shall equal the Improvements Value divided by the sum of the Land Value and the Improvements Value. The portion of the Award so allocated to the Landlord shall be known herein as the "**Landlord's Award,**" and the portion so allocated to the Tenant shall be known herein as the "**Tenant's Award.**"

11.3. Total Taking. In the event of a permanent Taking of the fee title to or of control of the Premises or of the entire Leasehold Estate hereunder (a "**Total Taking**"), this Lease shall

² NTD: In event of a casualty, Tenant must have opportunity to restore property if insurance proceeds allow. Failure to restore would cause a recapture of the tax credits and require repayment of some/all of the tax credit equity.

thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any Rent payable or obligations owed by the Tenant to the Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full.

11.4. Partial Taking; Procedures and Criteria for Course of Action. In the event of a permanent Taking of all or less than all of the Premises (a “*Partial Taking*”),

(a) if Tenant reasonably determines that the continued use and occupancy of the remainder of the Premises by the Tenant is or can reasonably be made to be economically viable, structurally sound, and otherwise feasible based upon the amount of eminent domain proceeds available for the purpose of paying for such restoration (the “*Restoration Criteria*”), then, the entire Award shall be applied to restoration of the Premises and the Premises shall be restored pursuant to Section 10.1; or

(b) if the continued use and occupancy of the remainder of the Premises by the Tenant is not or cannot, in Tenant’s reasonable judgment, be made to be economically viable, structurally sound, and otherwise feasible, then this Lease may be terminated by Tenant pursuant to Section 10.1 and the Award applied pursuant to Section 11.2.

11.5. Restoration. If a decision is made pursuant to Section 10.1 to restore the remainder of the Premises following receipt of the Award, the Tenant shall promptly proceed, at its expense, to commence and complete the restoration pursuant to the provisions of Section 10, using the Award for such restoration, with any excess remaining after the completion of the restoration being payable to Tenant and Landlord, using the calculation set forth in such Section 11.2. If Tenant has decided pursuant to Section 10.1 to restore the remainder of the Premises, and if the cost of the restoration shall exceed the amount of the entire Award, the deficiency shall be paid by the Tenant.

11.6. Termination upon Non-Restoration. Following a Partial Taking, if a decision is made pursuant to Section 11.4(b) that the remaining portion of the Premises is not to be restored, the Tenant shall surrender the Premises to the Landlord and this Lease shall thereupon be terminated without liability or further recourse to the parties hereto.

11.7. No Waiver. No provisions in this Lease limit the rights of either the Landlord or Tenant to seek compensation from a condemning authority as provided by statute, common law, or the United States Constitution.

Section 12. ASSIGNMENT AND SUBLETTING.

12.1. Transfer by Tenant.

12.1.1. Tenant shall have the right to assign, sublet and encumber its interest under this Lease, from time to time, in full or in part, subject to the approval of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant shall not enter into any sublease of any portion of the Premises whose occupancy thereof would, singularly, or in the aggregate with other tenants or subtenants of the Premises, cause the Premises to be

deemed to be “tax-exempt use property” under Sections 47(c)(2)(B)(v) or 168(h) of the Code (or any corresponding or related provision of the Code).

12.1.2. Tenant shall perform all of its obligations under all subleases, if any.

12.2. Transfer by Landlord.

12.2.1. Subject to the provisions of Section 12.2.2 below, Landlord may assign this Lease or Landlord’s reversion hereunder without the necessity of obtaining Tenant’s consent or permission.

12.2.2. Notwithstanding anything herein to the contrary, Landlord (a) shall not assign or transfer this Lease to a person or entity that would cause a recapture or loss of all or any portion of the Historic Tax Credits; and (b) for itself and for each and every succeeding owner of Landlord’s interest in the Premises, agrees that, prior to termination of the HTC Compliance Period, upon any Event of Default, Landlord’s remedies shall be limited such that in no event shall Landlord have any right or remedy to terminate this Lease or Tenant’s right to possession of the Premises hereunder.

Section 13. DEFAULT.

13.1. Definition. As used in this Lease, each of the following events shall constitute an “Event of Default” by Tenant or Landlord, as applicable, unless such Event of Default is caused, in full or in part, by Force Majeure:

(a) if Tenant fails (a) to pay any Annual Rent, when and as it is due and payable hereunder, or (b) to perform any of its material obligations under this Lease, in each case not cured within the grace period set forth below; or

(b) if Landlord (a) fails to pay any sum which it is obligated to pay under this Lease when and as it is due and payable hereunder, or (b) if Landlord fails to perform any of its obligations under this Lease, in each case not cured within the grace period set forth below.

13.2. Notice; Grace Period. Anything in this Section to the contrary notwithstanding, if an Event of Default occurs neither Landlord nor Tenant shall exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until:

(a) The non-defaulting party gives written notice thereof to the defaulting party;

(b) If such Event of Default consists of a failure to pay money, within ten (10) days after the non-defaulting party gives such written notice, the defaulting party fails to pay all of such money, or if such Event of Default consists of something other than a failure to pay money, within sixty (60) days after the non-defaulting party gives such written notice such Event of Default is not cured, or if such Event of Default is not reasonably curable within such period, the defaulting party has not commenced to proceed within such period actively, diligently and in

good faith to begin to cure such Event of Default and to continue thereafter to do so until it is fully cured; and

(c) Following the grace periods set forth in this Section 13.2, the non-defaulting party shall be entitled, upon notice to the defaulting party, to pursue its available remedies at law or in equity; provided, that if the default is a default by Tenant and is caused, directly or indirectly, by a default by a subtenant of Tenant, Tenant shall be given such additional grace period as reasonably necessary to cause its subtenants to cure such default.

Section 14. CONDITION OF TITLE AND PREMISES.

14.1. Quiet Enjoyment. Landlord hereby

(a) covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (i) is the owner of a fee simple estate in and to the Premises, subject to the operation and effect of and only of the Permitted Encumbrances, and (ii) has the full right, power and authority to enter into this Lease and, thereby to lease the Premises; and

(b) warrants that Tenant will have quiet and peaceful possession of the Premises during the Term so long as all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to Sections 10, 11 or 13 or any other provision of this Lease.

Section 15. NOTICES.

15.1. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (1) forty-eight (48) hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (2) the next Business Day after having been deposited (in time for delivery by such service on such Business Day) with Federal Express or another national courier service, or (3) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telefax or another means of immediate electronic communication, in each case to the address of such party set forth hereinabove or to such other address in the United States of America as such party may designate from time to time by notice to each other party hereto, or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party.

15.2. All notices required or permitted to be given under this Lease shall be deemed given in accordance with the foregoing paragraph of this Section 15, and addressed as set forth in Exhibit B. Any party may change its address by timely notice to the other party.

Section 16. GENERAL.

16.1. Effectiveness. This Lease shall become effective on and only on its execution and delivery by each party hereto.

16.2. Complete understanding. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof.

16.3. Amendment. This Lease may be amended by and only by an instrument executed and delivered by each party hereto. Notwithstanding the foregoing, any such amendment shall require the consent of Tenant's members.

16.4. Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

16.5. Applicable law. This Lease shall be given effect and construed by application of the law of the State of South Carolina, and any action or proceeding arising hereunder shall be brought in the State courts of Horry County, South Carolina.

16.6. Time of essence. Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

16.7. Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

16.8. Construction. As used herein, all references made (a) in the neutral, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, subsection, paragraph or subparagraph of this Lease.

16.9. Exhibits and Rider A. Each writing or plat referred to herein as being attached hereto as an exhibit, rider or otherwise designated herein as an exhibit or rider hereto is hereby incorporated herein and made a part hereof. Without limiting the generality of the foregoing, Rider A to Ground Lease attached hereto is hereby incorporated herein and made a part hereof.

16.10. Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

16.11. Disclaimer of Partnership Status. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

16.12. Prevailing Party. In the event either party hereunder initiates judicial action against the other in order to enforce the terms, covenants and provisions of this Lease, the non-prevailing party in such judicial action shall reimburse the prevailing party in such judicial action for all expenses, fees, costs, including reasonable attorneys' fees incurred by the prevailing party in connection with such judicial action.

16.13. Benefit and Burden. This Lease shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

[SIGNATURES – NEXT PAGE]

IN WITNESS WHEREOF, each party hereto has caused this Lease to be executed on its behalf by its duly authorized representatives, the day and year first above written.

LANDLORD:

Witnesses:

CITY OF MYRTLE BEACH, SOUTH CAROLINA

By: _____
Name: _____
Title: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, the undersigned Notary Public in and for said County in said State, do hereby certify that _____, as _____ of the City of Myrtle Beach, South Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing Lease.

GIVEN UNDER MY HAND AND OFFICIAL, NOTARIAL SEAL this day of _____, 2021.

[SEAL]

Notary Public for South Carolina
Notary Name
(Printed): _____
My commission expires: _____

TENANT:

Witnesses:

9th AVENUE OWNER, LLC, a South Carolina limited liability company

By: 9th Avenue Manager, LLC
Its: Managing Member

By: _____
Name: Michelle Shumpert
Title: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, the undersigned Notary Public in and for said County in said State, do hereby certify that Michelle Shumpert, as Manager of 9th Avenue Manager, LLC, the Managing Member of 9th Avenue Owner, LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing Lease.

GIVEN UNDER MY HAND AND OFFICIAL, NOTARIAL SEAL this day of _____, 2021.

[SEAL]

Notary Public for South Carolina
Notary Name
(Printed): _____
My commission expires: _____

EXHIBIT B

Notice Addresses

LANDLORD: City of Myrtle Beach, South Carolina
PO Drawer 2468
Myrtle Beach, South Carolina 29578
Attn.: Michelle Shumpert, CPA
Email: mshumpert@cityofmyrtlebeach.com

With copies to: Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street, Suite 1200
Columbia, South Carolina 29201
Attn.: Chris Rogers, Esq.
Email: crogers@rogerslewis.com

TENANT: 9th Avenue Owner, LLC
PO Drawer 2468
Myrtle Beach, South Carolina 29578
Attn.: Michelle Shumpert, CPA
Email: mshumpert@cityofmyrtlebeach.com

With copies to: Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street, Suite 1200
Columbia, South Carolina 29201
Attn.: Chris Rogers, Esq.
Email: crogers@rogerslewis.com

EXHIBIT C

INSURANCE REQUIREMENTS

The insurance requirements of Tenant with regard to the Property is set forth below. All insurance policies shall be underwritten by companies licensed to write such insurance in the state in which the Property is located, and shall be rated in the latest A.M. Best's Insurance Rating Guide with a rating of at least A- , and be in a financial category of at least IX. If an insurance policy is not available when required, then Certificates of Insurance detailing the policy terms and conditions as noted above shall be provided, but the policies must then be provided within sixty (60) days. All such policies shall include endorsements requiring at least thirty (30) days' prior written notice to Landlord of any cancellation, termination, or reduction of coverage therein. Notice of the renewal of any policy shall be made at least ten (10) days prior to the scheduled date of such renewal, and shall be in the form of endorsement to the policy. Notice to Landlord of any replacement of any policy shall be made at least ten (10) days prior to such replacement, and shall be in the form of a copy of the replacement policy, or by certificate, as noted above. Evidence of insurance may be provided on a Certificate of Insurance issued to Landlord and Tenant.

(i) Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies including fire, lightning, flood, earthquake, vandalism, and malicious mischief, boiler and machinery and, if available, coverage for damage or destruction caused by "War", if available the "certified" (as defined in the Terrorism Risk Insurance Act of 2002) acts of terrorists (or such policies shall have no exclusion from coverage with respect thereto) and such other insurable hazards as, under good insurance practices in South Carolina, from time to time are insured against for other property and buildings similar to the Premises in nature, use, location, height, and type of construction. Such insurance policy shall also insure costs of demolition and increased cost of construction (which insurance for demolition and increased cost of construction may contain a sub-limit satisfactory to Mortgagee). Each such insurance policy shall (a) be in an amount equal to the greater of (1) one hundred percent (100%) of the then replacement cost of the Improvements without deduction for physical depreciation, and (2) such amount as is necessary so that the insurer would not deem Mortgagor a co-insurer under such policies, (b) have deductibles no greater than the lesser of \$100,000 or five percent (5%) of Net Operating Income per occurrence, and (c) contain an agreed amount replacement cost endorsement with a waiver of depreciation, and shall cover, without limitation, all tenant improvements and betterments that Mortgagor is required to insure pursuant to the Ground Lease. If the insurance required under this subparagraph is not obtained by blanket insurance policies, the insurance policy shall be endorsed to also provide guaranteed building replacement cost to the Improvements and such tenant improvements in an amount to be subject to the consent of Mortgagee, which consent shall not be unreasonably withheld, but in all events, not less than would be required to restore the Premises following a

casualty. Mortgagee shall be named "Lender Loss Payee" on a standard mortgagee endorsement.

(ii) Flood insurance if any part of the Land on which vertical improvements are to be constructed is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, in an amount at least equal to the lesser of: (a) the greater of (1) the then full replacement cost of the Property without deduction for physical depreciation and (2) the unpaid Principal and (b) the maximum limit of coverage available under the National Flood Insurance Plan with respect to the Property.

(iii) Public liability insurance, including (a) "Commercial General Liability Insurance", (b) "Owned", "Hired" and "Non Owned Auto Liability"; and (c) umbrella liability coverage for personal injury, bodily injury, death, accident and property damage, such insurance providing in combination no less than \$5,000,000 per occurrence and in the annual aggregate on per location basis, if aggregate limits are shared with other locations the amount of umbrella liability insurance to be provided shall be not less than the greater of (i) \$10,000,000 or (ii) the amount required by the Franchisor under the Franchise License Agreement. The policies described in this subsection shall also include coverage for elevators, escalators, independent contractors, "Contractual Liability" (covering, to the maximum extent permitted by law, Mortgagor's obligation to indemnify Mortgagee as required under the Loan Agreement of near or even date herewith between the Tenant and the Mortgagee (the "Loan Agreement"), "Products" and "Completed Operations Liability" coverage.

(iv) Following substantial completion of the Improvements, rental loss and/or business interruption insurance (a) with Mortgagee being named as "Lender Loss Payee", (b) in an amount equal to one hundred percent (100%) of the projected Rents from the Premises during the period of restoration; and (c) containing an extended period of indemnity endorsement which provides that after the physical loss to the Premises has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Premises is damaged, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such insurance shall be increased from time to time during the term of the Loan as and when the estimated or actual Rents increase.

(v) To the extent such equipment is located at the Premises, comprehensive boiler and machinery insurance covering all mechanical and equipment against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Mortgagor is required to insure pursuant to this Lease.

(vi) Worker's compensation and disability insurance with respect to any employees of Mortgagor, if any, as required by any Legal Requirement (as defined in the Loan Agreement).

(vii) During construction of the Project, or any period of construction, repair or restoration, builder's "all-risk" insurance in an amount equal to not less than the full insurable value of the Premises, against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Mortgagee may request, in form and substance acceptable to Mortgagee, and coverage to compensate for the cost of demolition and the increased cost of construction in an amount satisfactory to Mortgagee.

(viii) Such other insurance (including environmental liability insurance, earthquake insurance and windstorm insurance) as may from time to time be reasonably required by Mortgagee in order to protect its interests.

RIDER A TO GROUND LEASE

LEASEHOLD MORTGAGE RIDER

In the event the Tenant grants a Leasehold Mortgage (hereafter defined) of its Leasehold Estate (hereafter defined), the following provisions shall be applicable:

Section R-1. For the purposes of this Rider, the term "Leasehold Mortgage" shall mean any collateral assignment, mortgage, deed of trust, security agreement or other document given for the purpose of granting a mortgage lien and/or security interest in the leasehold estate (the "Leasehold Estate") created by the Lease, and the term "Leasehold Mortgagee" shall mean the holder of any Leasehold Mortgage.

Section R-2.

(a) Notwithstanding anything in this Lease to the contrary, the Tenant has the right, without the consent of the Landlord, to grant a Leasehold Mortgage in the Leasehold Estate, including an assignment or security interest in: (A) any personal property included within this Lease, (B) the rents, income, receipts, revenues and profits of the leased premises, and (C) any subleases of all or any part of the Premises.

(b) Notwithstanding anything to the contrary contained in this Lease, the Tenant shall have the right to assign this Lease and any or all of the collateral described in this Section R-2 to any Leasehold Mortgagee, its designee or nominee, or to any purchaser of the Leasehold Estate at a foreclosure sale, without the consent of the Landlord, if the Leasehold Mortgagee, its designee or nominee, or such purchaser shall acquire ownership of the Leasehold Estate, either following foreclosure of such Leasehold Mortgage or by assignment of the Tenant's interest under this Lease in lieu of foreclosure. In such event, the Leasehold Mortgagee, its designee or nominee, or any such purchaser (and their respective successors and assigns) shall have the right, without the consent of the Landlord, (i) to further assign this Lease and such collateral to any person (and upon such assignment the assignor shall be released from the obligations of the Tenant under this Lease thereafter arising), and (ii) to sublet all or any part of the Premises to any Person.

Section R-3. After the execution of any Leasehold Mortgage, the Tenant or the Leasehold Mortgagee shall deliver to the Landlord a true copy thereof and a written notice containing the name and address of the Leasehold Mortgagee. Until such time that such Leasehold Mortgage shall be satisfied of record or the Leasehold Mortgagee thereunder shall give the Landlord written notice that such Leasehold Mortgage has been satisfied:

(a) No termination, surrender, acceptance of surrender, amendment or modification of this Lease or merger of the interests of the Landlord and the Tenant hereunder shall be binding upon the Leasehold Mortgagee or affect the lien of the Leasehold Mortgage, without the prior written consent of the Leasehold Mortgagee.

(b) If the Landlord shall give any notice, demand, consent, request, election or other communication (hereinafter in this subsection (b) called "notices") to the Tenant, the Landlord shall at the same time give a copy of such notice to the Leasehold Mortgagee at the address designated in accordance with this Section R-3, or such other address(es) as may be designated by

notice to the Landlord. Such copies of notices shall be sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed given on the third (3rd) business day after mailing. No notice given by the Landlord to the Tenant shall be binding upon or affect the Leasehold Mortgagee unless a copy of such notice shall be given to the Leasehold Mortgagee pursuant to this subsection (b). In the case of an assignment of such Leasehold Mortgage or change of address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to the Landlord, may change the address to which copies of notices are to be sent.

(c) The Leasehold Mortgagee shall have the right to perform any term, covenant, condition or agreement and to remedy any default by the Tenant under this Lease, and the Landlord shall accept such performance by the Leasehold Mortgagee with the same force and effect as if performed by the Tenant, and the Leasehold Mortgagee shall be entitled to all of the rights of the Tenant under this Lease.

(d) Notwithstanding anything to the contrary contained in this Lease, before giving any notice of election to terminate this Lease, the Landlord shall give a notice of default to the Tenant and the Leasehold Mortgagee. If such default is not remedied within the applicable grace period provided for herein and the Landlord shall become entitled to terminate this Lease, then, before giving any notice of election to terminate this Lease, the Landlord shall give to the Leasehold Mortgagee written notice of the Tenant's failure to cure such default, and shall allow the Leasehold Mortgagee an additional thirty (30) days within which to cure the default, or, in the case of a default which cannot in the exercise of diligence be cured within such thirty (30) day period, shall allow the Leasehold Mortgagee an additional ninety (90) days to commence the curing of the default, in which event the Landlord shall not give such notice of election to terminate this Lease so long as the Leasehold Mortgagee, or the Tenant, is diligently engaged in curing the default. The rights of the Leasehold Mortgagee under this subsection (d) are in addition to the rights provided to the Leasehold Mortgagee under subsection (f) of this Section R-3 and under Section R-5.

(e) The Tenant may delegate to the Leasehold Mortgagee the authority to exercise any or all of the Tenant's rights hereunder, but no such delegation shall be binding upon the Landlord unless and until either the Tenant or the Leasehold Mortgagee shall give to the Landlord a copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the Leasehold Mortgagee itself, in which case the delivery to the Landlord of a copy of the Leasehold Mortgage shall be sufficient to give the Landlord notice of such delegation.

(f) In the event of a default by the Tenant in the performance of any term, covenant, condition or agreement on the Tenant's part to be performed under this Lease of a nature that it cannot practicably be cured by the Leasehold Mortgagee without taking possession of the leased premises, or of a nature that it is not susceptible of being cured by the Leasehold Mortgagee, the Landlord shall not terminate this Lease by reason of such default, if and so long as:

(1) in the case of a default which cannot practicably be cured by the Leasehold Mortgagee without taking possession of the leased premises, the Leasehold Mortgagee shall deliver to the Landlord, prior to the date on which the Landlord shall be entitled to terminate this Lease, a written instrument in which the Leasehold Mortgagee agrees to commence foreclosure proceedings or take any

other steps or actions to obtain possession of the Leasehold Estate, and the Leasehold Mortgagee thereafter commences such proceedings or actions within a reasonable time, diligently prosecutes the same to completion (unless in the meantime the Leasehold Mortgagee acquires the Tenant's interest under this Lease, either in its own name or through a nominee, by assignment in lieu of foreclosure or otherwise), and upon obtaining possession of the leased premises (including possession by a receiver, nominee or purchaser at a foreclosure or other sale), diligently proceeds to cure such default; or

(2) in the case of a default which is not susceptible of being cured by the Leasehold Mortgagee, the Leasehold Mortgagee shall, within a reasonable time, institute foreclosure proceedings or take any other steps or actions to obtain possession of the Leasehold Estate, and diligently prosecute the same to completion (unless in the meantime the Leasehold Mortgagee acquires the Tenant's interest under this Lease, either in its own name or through a nominee, by assignment in lieu of foreclosure or otherwise).

The Leasehold Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession of the leased premises pursuant to clause (1) above, or continue to prosecute foreclosure proceedings or any other action pursuant to clause (2) above, if and when such default shall be cured. If the Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure or other sale shall acquire title to the Leasehold Estate and shall cure all of the Tenant's defaults under this Lease which are susceptible of being cured by such Leasehold Mortgagee or by such nominee or purchaser, as the case may be, within the time reasonably required therefor, then the defaults of any prior holder of the Leasehold Estate which are not susceptible of being cured by such Leasehold Mortgagee (or by such nominee or purchaser) shall not be deemed to be defaults under this Lease as between the Landlord and the Leasehold Mortgagee, its nominee or such purchaser.

(g) The Landlord acknowledges that as between the Landlord and any Leasehold Mortgagee, its nominee or a purchaser at a foreclosure or other sale, this Lease shall not be deemed to be terminated notwithstanding the rejection of this Lease by the Tenant or its representative in any proceeding under the Bankruptcy Reform Act of 1978 (the "Bankruptcy Code") or any other insolvency law. The Leasehold Mortgagee shall be deemed to have satisfied its obligation to commence foreclosure proceedings by asserting a claim in a proceeding under the Bankruptcy Code or other insolvency proceeding, and the Leasehold Mortgagee shall not be deemed to have failed to satisfy such obligation if the Leasehold Mortgagee is unable to do so as a result of the provisions of Section 362 of the Bankruptcy Code or similar provisions of any other insolvency law.

Section R-4. No Leasehold Mortgagee or other party entitled to the benefits of Section R-2(b) hereof shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the Leasehold Estate, and such liability shall be limited to such party's interest in the Leasehold Estate.

Section R-5.

(a) In case of termination of this Lease by reason of any default or for any other reason, the Landlord shall give prompt notice thereof to each Leasehold Mortgagee in the manner provided in Section R-3 hereof. The Landlord, on written request of any such Leasehold Mortgagee made any time within sixty (60) days after the receipt of such notice by such Leasehold Mortgagee, shall execute and deliver a new lease of the Premises to the Leasehold Mortgagee, or its nominee, for the remainder of the term of this Lease had this Lease not been terminated, upon all of the terms, covenants and conditions contained in this Lease as modified in accordance with Section R-14 below, provided that the prospective tenant thereunder agrees to comply with the requirements of this subsection (a). The Tenant under such new lease shall (i) simultaneously with the delivery of such new lease, pay to the Landlord all unpaid rental and any other amounts of money due under this Lease as if this Lease had continued in effect up to and including the date of the commencement of the term of such new lease, and all reasonable expenses incurred by the Landlord in connection with any defaults by the Tenant under this Lease, the termination of this Lease and the preparation of the new lease, less any amounts collected by the Landlord from any subtenants or other occupants of the Leasehold Estate, and (ii) cure all defaults existing under this Lease as modified in accordance with Section R-14 below which are susceptible of being cured by such Tenant under the new lease within the time reasonably required therefor.

(b) Any such new lease shall maintain the same priority as this Lease with regard to any mortgage affecting the Premises or any part thereof or any other rights, liens or encumbrances thereon. The provisions of the immediately preceding sentence shall be self-executing, and the Landlord shall have no obligation to do anything, other than to execute and deliver such new lease, to assure to the Tenant under such new lease good title to the leasehold estate created thereby. Concurrently with the delivery of such new lease, the Landlord shall pay to such Tenant any rentals, fees and other amounts (less costs and expenses of collection) received by the Landlord between the date of termination of this Lease and the date of delivery of such new lease from subtenants or other occupants of the Leasehold Estate, which shall not theretofore have been applied by the Landlord towards the payment of rental or any other sum of money payable by the Tenant hereunder or towards the cost of operating the leased premises or performing the obligations of the Tenant hereunder, and any other sums of money in its possession that the Tenant would have been entitled to receive but for the termination of this Lease, and shall assign to such Tenant under the new lease all of its right, title and interest in any amounts that would be payable to the Tenant had this Lease remained in effect.

(c) If more than one Leasehold Mortgagee requests a new lease pursuant to this Section R-5, the Landlord shall recognize as the Leasehold Mortgagee entitled to receive such new lease the holder of the Leasehold Mortgage with the highest priority.

Section R-6. Each Leasehold Mortgagee shall be given notice of any litigation or other proceeding relating to this Lease and any dispute between the parties hereto, and shall have the right to intervene in any such litigation or other proceeding. In any event, each Leasehold Mortgagee shall receive a copy of any award or decision made in such litigation, or other proceeding.

Section R-7. The name of the first Leasehold Mortgagee shall be added to the loss payable clause or endorsement of any and all fire and other casualty insurance policies to be carried by the Landlord or the Tenant with respect to the Leasehold Estate, and all such policies shall state that the insurance proceeds are to be paid to the first Leasehold Mortgagee pursuant to a standard noncontributing mortgagee endorsement. Whichever party is required to maintain casualty insurance on the improvements at the Premises shall keep the same insured with financially sound and reputable insurance companies satisfactory to the first Leasehold Mortgagee against loss or damage by fire, theft, lightning, windstorm, hail, explosion, riot and civil commotion, aircraft and vehicles, smoke and such other hazards as may now or hereafter be included in so-called extended coverage, and flood (if the leased premises are susceptible to damage caused by floods). Casualty insurance shall be maintained in an amount not less than the actual replacement cost of the improvements at the leased premises(exclusive of excavation and foundation costs), without deduction for depreciation. No separate insurance contributing in the event of loss shall be obtained with respect to the leased premises unless (a) such insurance complies with the requirements of this Lease, (b) the first Leasehold Mortgagee is given the rights of a mortgagee under a standard mortgagee clause and (c) the first Leasehold Mortgagee is given notice of such separate insurance at least thirty (30) days prior to the effective date of the policy or policies.

Section R-8. Any condemnation award or casualty insurance proceeds with respect to the Premises shall be paid to the first Leasehold Mortgagee to be applied in the manner specified in the first Leasehold Mortgage. No casualty loss claims shall be settled and no agreement concerning condemnation of the leased premises shall be made without the prior written consent of the first Leasehold Mortgagee in each instance.

Section R-9. The Landlord shall, at any time and from time to time, as requested by the Tenant, any Leasehold Mortgagee or prospective Leasehold Mortgagee upon not less than ten (10) days' prior written notice, execute and deliver to the Tenant, such Leasehold Mortgagee or prospective Leasehold Mortgagee a statement, in a form satisfactory to the person requesting such statement, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) whether there are any other documents ancillary to the Lease, and, if so, identifying the same, (iii) the dates to which the rent and any additional rent or other charges under this Lease have been paid, (iv) the amount of rent payable under this Lease at the time of the statement and a calculation showing in reasonable detail how such amount was derived, (v) whether either party is in default in the performance of any of its obligations under this Lease, and, if so, specifying each such default, and (vi) whether any event has occurred which with the giving of notice or the passage of time, or both, would constitute such a default, and, if so, specifying each such event. Any such statement delivered pursuant to this Section R-9 shall be deemed a representation and warranty which may be relied upon by the Tenant, such Leasehold Mortgagee or prospective Leasehold Mortgagee and by others with whom the Tenant, such Leasehold Mortgagee or prospective Leasehold Mortgagee may be dealing, regardless of independent investigation. The Landlord also shall include in any such statement such other information concerning this Lease as the Tenant, such Leasehold Mortgagee or prospective Leasehold Mortgagee may reasonably request.

Section R-10. If the Tenant shall fail to exercise any extension, renewal, expansion or purchase option or right of first refusal contained in this Lease in a timely manner, the Landlord

shall promptly send each Leasehold Mortgagee written notice thereof and any Leasehold Mortgagee shall be entitled to exercise any such option on behalf of the Tenant within thirty (30) days after receipt of such notice from the Landlord.

Section R-11. Notwithstanding anything to the contrary contained in this Lease, any mortgage, deed of trust, security agreement or other encumbrance of the Landlord's fee estate in the Premises shall be subject and subordinate to this Lease.

Section R-12. The Landlord and the Tenant shall cooperate to include in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or prospective Leasehold Mortgagee, including, without limitation, any amendment providing to a Leasehold Mortgagee or prospective Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default by the Tenant under this Lease; provided, however, that any such amendment shall not in any way affect the term of or rent payable under this Lease or otherwise adversely affect in any material respect the rights of the Landlord under this Lease. The Landlord and the Tenant each agree to execute, deliver and acknowledge any agreement or any other instrument which may be necessary in connection with any such amendment.

Section R-13. Notwithstanding anything to the contrary contained in this Lease, any provisions of this Lease requiring the Tenant to make any deposit or provide any other security to the Landlord in connection with (i) the making of repairs, alterations or the restoration of the leased premises, (ii) any contest of real estate taxes, assessments or other impositions or legal requirements, or (iii) any other obligation of the Tenant under this Lease, shall not apply to any Leasehold Mortgagee, its nominee or designee.

Section R-14. The Leasehold Mortgagee is a third-party beneficiary of this Lease. Immediately upon the foreclosure of the Leasehold Mortgage or the assignment of the Tenant's interest under this Lease in lieu of foreclosure and without further action by any Person, this Lease shall be amended as follows:

- (i) Section 4.1 is amended to read in its entirety as follows:

“4.1. Nature of Use. The Tenant may use the Premises and the Improvements for any lawful purpose.”

- (ii) Section 8 (including subsection 8.1 and 8.2) is amended to read in its entirety as follows:

“Section 8. [Reserved].”

- (iii) Section 9 (including subsection 9.1) is amended to read in its entirety as follows:

“Section 9. [Reserved].”

Section R-15. The Landlord and Tenant acknowledge and agree that as of the date of this Lease and for purposes hereof, (i) that certain the Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated as of the date of this Lease executed by the

Tenant in favor of Pinnacle Bank, a Tennessee banking corporation (“Pinnacle”) is a Leasehold Mortgage, and (ii) Pinnacle is a Leasehold Mortgagee.

Section R-16. All references to the Landlord shall include any subsequent owner of the real property described in Exhibit A.

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EXHIBIT B
FORM OF SUB-LEASE

SUB-LEASE

BETWEEN

**9TH AVENUE OWNER, LLC,
AS LANDLORD,**

AND

**CITY OF MYRTLE BEACH, SOUTH CAROLINA
AS TENANT,**

FOR

**THREE HISTORIC BUILDINGS AND LAND
LOCATED IN MYRTLE BEACH, SOUTH CAROLINA**

Dated as of [_____], 2021

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SUB-LEASE

THIS SUB-LEASE (this "*Lease*") is made and entered into as of [_____], 2021, by and between 9th AVENUE OWNER, LLC, a South Carolina limited liability company (the "*Landlord*"), and the CITY OF MYRTLE BEACH, SOUTH CAROLINA, a political subdivision of the State of South Carolina (the "*Tenant*").

RECITALS

WHEREAS, Landlord is the lessee of those certain historic buildings located at 505, 507 and 509 Ninth Avenue, Myrtle Beach, South Carolina (collectively, the "*Building*") pursuant to the terms of a Ground Lease of even date herewith by and between the Tenant, as lessor, and Landlord, as lessee (the "*Ground Lease*"), which Landlord intends to rehabilitate for use as commercial and/or retail space (the "*Project*"); and

WHEREAS, Landlord is the lessee, pursuant to the Ground Lease, 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, Landlord 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 "*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

WHEREAS, the Tenant intends to lease the Property (the "*Premises*"); and

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:

"*Base Rent*" has the meaning set forth in Section 3.1.

"*Business Days*" means Monday through Friday except for federal holidays or holidays recognized in the State of South Carolina.

"*Commencement Date*" means the day prior to the first date on which any portion of the Building is placed in service for purposes of the Historic Tax Credits.

“Completion Date” means the date upon which all conditions set forth in Section 2.1(e) have been satisfied.

“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.

“Construction Contracts” means that certain contract by and between Landlord and Contractor, pursuant to which the Contractor has agreed to furnish and perform services in connection with the construction of the Project.

“Contractor” means the contractor(s) set forth in the Construction Contracts.

“Date of Taking” means the date on which a Taking occurs.

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

“Developer” means [Myrtle Beach Downtown Redevelopment Corporation, a South Carolina non-profit corporation].

“Developer Entity” means, collectively, Landlord, Tenant, and Developer.

“Event of Default” has the meaning set forth in Section 8.1.

“Event of Nonappropriation” means a failure of the City Council of the Tenant to include in the annual budget of the Tenant an amount sufficient to make all payments of Lease Payments becoming due during Lease Year to which such annual budget relates; provided however, that such Event of Nonappropriation shall be deemed to occur on October 1 of such Lease Year; provided further, that an Event of Nonappropriation shall not occur on such October 1 if prior to such October 1 the Tenant shall amend its annual budget for such Lease Year to include therein an amount sufficient to make all payments of Lease Payments becoming due during such Lease Year.

“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” means obtaining possession of the Property by foreclosure or other enforcement proceedings, or obtaining an assignment of the Property in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding.

“Ground Lease” has the meaning set forth in the Recitals.

“Historic Tax Credits” has the meaning set forth in the Recitals.

“HTC Value” has the meaning set forth in Section 6.6.

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

“Landlord’s Investor Members” means any Person admitted to the Landlord as an Investor Member (as that term is defined in Landlord’s Operating Agreement), and their successors and permitted assigns. If there is more than one Investor Member of Landlord, the term **“Investor Member”** shall refer to each and every one of them.

“Landlord’s Operating Agreement” means the Amended and Restated Operating Agreement of the Landlord dated of near or even date herewith, as the same may be amended from time to time.

“Landlord’s Work” means the rehabilitation and development of the Property by the Landlord pursuant to Section 5.6 hereof in accordance with (i) all applicable requirements of the Rehabilitation Requirements (defined below), (ii) all Legal Requirements, (iii) the Secretary’s Standards, the Certification Application and the Part 2 Approval, and (iv) the Plans and Specifications.

“Lease Year” means, in the case of the first lease year, the period from the Commencement Date through June 30th of the year which includes the Commencement Date; thereafter, each successive twelve (12)-calendar month period following the expiration of the first lease year of the Term; except that in the event of the termination of this 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” means the leasehold estate in the Premises held by Tenant under this Lease.

“Leasehold Interest Value” has the meaning set forth in Section 6.6.

“Leasehold Mortgage” means any mortgage encumbering Landlord’s leasehold estate in the Property.

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

“Legal Requirements” means 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, including without limitation the Environmental Laws.

“Lender” means [_____].

“Lease Payment” has the meaning set forth in Article III.

“Operating Expenses” means all expenses of operation of the Property, including without limitation, the costs of utilities, maintenance, repairs and necessary replacements, real estate taxes,

insurance premiums, professional and management fees, miscellaneous expenses, and any deposit to cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, but excluding costs and expenses of the Landlord's Work and depreciation, amortization deductions and other non-cash items. For purposes of this definition, all expenses shall be deemed paid on the earlier of the stated due date or on a sixty (60)-day current basis.

"Partial Taking" has the meaning set forth in Section 6.6.

"Permitted Encumbrances" means the Schedule B title exceptions appearing on the Landlord's Leasehold Owner's Title Insurance Policy issued by [_____] Title Insurance Company.

"Placement in Service" means "placement in service", as such term is defined for purposes of Section 47 of the Code.

"Plans and Specifications" means the plans and specifications described in that certain Architect's Certificate from the Architect to the Landlord, 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 the Landlord shall not authorize any change to the Plans and Specifications unless the Secretary's approval of such change has been obtained, if and to the extent such approval is required pursuant to Title 36 of the Code of Federal Regulations, Part 67.6 (or any successor provisions thereto).

"Premises" has the meaning set forth in the Recitals.

"Project" has the meaning set forth in the Recitals.

"Property" has the meaning set forth in the Recitals.

"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 6.6(b).

"Restoration Criteria" has the meaning set forth in Section 6.6(c)(1).

"Subtenant" means any tenant or subtenant, under a sublease with the 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.

“**Term**” means the period commencing on the Commencement Date and ending on the day immediately preceding the nineteenth (19th) anniversary of the Completion Date, unless sooner terminated as provided for herein.

“**Total Taking**” means a Taking of all the Property.

ARTICLE II.¹
²PROPERTY, TERM AND SUBORDINATION

2.1. Rehabilitation of the Property.

(a) *Requirements.* Landlord shall cause the Property to be rehabilitated in accordance with the following (collectively, the “**Rehabilitation Requirements**”):

(i) the terms and conditions of the Construction Contracts, which (together with all change orders) have been delivered to Tenant and approved by Landlord’s Investor Member, and which Landlord represents and warrants constitute the entire agreement between Landlord and the Contractors with respect to the rehabilitation of the Project;

(ii) the Plans and Specifications described in the Construction Contracts and approved by Tenant, which may not be materially supplemented, modified or amended without the prior notice to and approval of Tenant and Landlord’s Investor Member, which approval shall not be unreasonably withheld provided that any changes that could affect or impair the Historic Requirements shall require the approval of Tenant and Landlord’s Investor Member in their respective sole discretion; and

(iii) (A) the United States Secretary of Interior’s Standards for Rehabilitation and the requirements of the designated State Historic Preservation Officer (as such term is defined in 36 C.F.R. Part 67) for the State of South Carolina (the “**SHPO**”); and the Part 2 Approvals (all of the foregoing are hereinafter referred to collectively as the “**Historic Requirements**”), and (B) the Legal Requirements including, without limitation, the requirements of applicable local building, fire health and safety codes and Americans with Disabilities Act requirements.

¹ Note to draft: should this be revised to reflect party to be responsible for construction?

² Construction is being completed by Landlord (9th Avenue Owner, LLC).

Tenant shall have the right to inspect such work and Landlord 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 forgoing, Tenant shall have no obligation to make or have its representative make any such inspection of Landlord's Work. Such inspections are for Tenant's information only and Landlord shall not be relieved of its obligation to complete Landlord's Work in accordance with this Lease. In no event shall Tenant'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 Tenant under this Lease. Each of Tenant and Landlord's Investor Member shall receive notice of and have the right to attend construction meetings, and receive copies of all draw requests and third party inspection reports with respect to the Landlord's Work.

(b) *Development Costs.* Landlord shall fund any and all amounts necessary: to complete Landlord's Work in accordance with the Rehabilitation Requirements pursuant to Section 2.1(a) above or otherwise necessary in order to achieve Completion, Placement in Service and to obtain the Part 3 Approvals for each portion of the Building; to pay any and all cost overruns payable under the Construction Contracts and any and all abatement contracts in connection with such rehabilitation and for which a budget contingency does not exist; to pay all sums necessary to remedy any construction defects in connection with such rehabilitation if such defects are not cured by the Contractors prior to Completion; and to pay any and all development and other costs in excess of amounts and contingencies therefor being financed by the proceeds of any loan and capital contributions to Landlord by its members, in any case arising during such rehabilitation through and including Completion and Placement in Service of each portion of the Project and receipt of the Part 3 Approvals.

(c) *Completion Date.* Landlord shall use its best efforts to achieve Completion of the entire Project on or before December 31, 2021 (the "**Target Completion Date**"), other than receipt of the final cost certification required pursuant to Section 2.1(e) and the Part 3 Approvals required pursuant to Section 2.1(e) (provided that all applications therefor have been filed) subject to extension upon the occurrence of any event constituting Force Majeure (and solely during the pendency thereof). Landlord shall keep Tenant informed as to the progress of rehabilitation and shall immediately notify Tenant in writing of any change to the Target Completion Date. Landlord shall use commercially reasonable efforts and all due diligence to cause the Project to reach Completion on or before the Target Completion Date.

(d) *Landlord's Agreements.* Landlord shall cause the Contractors to warrant that the Project will be free from defects in workmanship and materials for twelve (12) months after Completion. Landlord will assign to Tenant all assignable equipment and materials warranties and guaranties and shall fully enforce, at its cost and expense, for the benefit of Tenant, all of its rights under all construction and architectural agreements any and all documents evidencing the Rehabilitation Requirements, any payment and performance bonds, completion assurance agreements and all other warranties and guaranties applicable to the Project. Tenant will notify Landlord within the warranty period specified above of any physical defects at the Project of which Tenant becomes aware. Further, Landlord hereby agrees that it shall promptly apply for and use its best

efforts and all due diligence to obtain the Part 3 Historic Approvals within a reasonable period of time following the Commencement Date, and in all events not later than six (6) months following the Commencement Date.

(e) *Completion.* The term “**Completion**” shall mean the date upon which all of the Project is ready for occupancy, free from all mechanic’s and materialmens’ liens (provided, however, if any such mechanics’ and/or materialmens’ liens shall at any time be filed against the Project, then Landlord shall cause same to be removed, discharged or bonded over to the reasonable satisfaction of Landlord’s Investor Member within thirty (30) days thereafter; and in the event such mechanics’ and/or materialmens’ liens are so bonded over, for purposes of determining whether Completion has been achieved, such mechanics’ and/or materialmens’ liens shall be deemed not to exist), subject to non-material “punchlist” items that do not affect occupancy of the Building and that are acceptable to Tenant and shall be evidenced by delivery to Tenant and Landlord’s Investor Member of evidence (in form and substance acceptable to such parties) of all of the following:

(i) due issuance of an AIA certification of substantial completion issued by Landlord’s independent supervisory architect for the Project, certifying that the rehabilitation of the Project has been fully completed in accordance with the Plans and Specifications (as modified by any approved change orders), the requirements of applicable local building, fire, and health and safety codes and Americans with Disabilities Act requirements and the Rehabilitation Requirements;

(ii) issuance of an unqualified permanent certificate of occupancy (or a conditional certificate of occupancy which contains conditions or qualifications which are consented to by Tenant and Landlord’s Investor Member) for the leased portions of the Project, provided that funds are escrowed to fully complete same in an amount and with an escrow agent acceptable to Tenant and Landlord’s Investor Member [or] Landlord’s Investor Member receives evidence satisfactory to Landlord’s Investor Member in its reasonable discretion that sufficient funds are available to complete the Project, and all work described in or required under the Part 2 Applications and Part 2 Approvals;

(iii) final cost certification by Landlord’s independent certified public accountants of the qualified rehabilitation expenditures of the Project eligible for the Historic Tax Credits, and certifying to the Historic Tax Credits to be allocated to Landlord’s Investor Member on its Form K-1 for the taxable year in which the Project is “placed in service” under Section 47 of the Code; and

(iv) receipt of the Part 3 Approvals.

At such time as Landlord believes the Project to be complete, Landlord shall notify Tenant, and Landlord and Tenant, together with the Project independent inspecting architect and any inspection advisor of Tenant or Landlord’s Investor Member, shall jointly inspect the Project and list any items that remain to be completed, and Landlord shall diligently pursue completion of the same. In addition, Tenant shall have thirty (30) days after such inspection within which to notify

Landlord in writing of any other punchlist items that have not been properly completed, and Landlord shall also diligently pursue completion of any such items.

2.2. Term.

(i) The Premises is hereby leased unto the Tenant and its successors and assigns for the Term. In the event of any early termination of the Term in accordance with the terms of this Lease, the Landlord and the Tenant agree to execute and deliver, in form suitable for recording, a revised notice of lease reflecting such termination; provided, however, subject to subparagraph (ii) of this Section 2.2, the Term shall sooner terminate on the last day of the Lease Year immediately preceding the Lease Year for which an Event of Nonappropriation occurs. Except as specifically provided herein, including particularly subparagraph (ii) of this Section 2.2, termination of the Term of this Lease shall terminate all obligations of the Tenant hereunder, including its obligations to pay Lease Payments hereunder (except Lease Payments accruing during any period during which the Tenant was in possession of the Premises pursuant to this Lease), and shall terminate the Tenant's rights of possession under this Lease.

(ii) In the event the Tenant fails to deliver possession of the Premises or any part thereof at the time required under Section 5.5 hereof, the Tenant shall be liable for the payment of Lease Payments for successive six (6) month periods commencing on the July 1 or January 1 following the last due date of Lease Payments hereunder.

2.3. Delivery; Possession.

Landlord shall deliver possession of the Premises to Tenant on the Commencement Date, in the same condition as it now is (subject, however, to Landlord's obligation to complete Landlord's Work).

2.4. Modification of Lease.

It is further agreed that this Lease may not be modified or amended so as to reduce the Lease Payment or shorten the Term provided hereunder or so as to adversely affect in any other respect to any material extent the rights of Landlord.

2.5. Tenant Protections.

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

2.6. Limitation on Landlord's Rights to Refinance.

At no time during the Term shall Landlord mortgage or otherwise encumber, the Property or any portion thereof, except for a Leasehold Mortgage securing a mortgage loan, without the Consent of the Tenant.

ARTICLE III.
LEASE PAYMENT

3.1. Base Rent.

Commencing on the earlier of the first (1st) month following the Commencement Date or first day that a payment is due by Landlord on the loan secured by the Leasehold Mortgage (the “*Rent Commencement Date*”), the Tenant shall pay a base rent (hereinafter referred to as “*Base Rent*”) to the Landlord for the Premises for each Lease Year, in the amount and on or before the dates set forth on EXHIBIT B-1 attached hereto. In the event that the equity contributions required to be paid to Landlord by the Investor Members of Landlord pursuant to Landlord’s Operating Agreement are not received by Landlord on or before December 31, 2022, the amount of the Base Rent shall thereafter be due in the amount and on or before the dates set forth on EXHIBIT B-2 attached hereto. In the event the Base Rent shall be insufficient to pay all Operating Expenses incurred by the Landlord in the operation of the Property, the Landlord and the Tenant agree to work together in good faith to achieve a resolution of such shortfall. Prior to the Rent Commencement Date, Tenant shall not pay Base Rent to Landlord. The Base Rent for any partial period (including but not limited to the last month of the Term) shall be prorated based upon the actual number of days elapsed during such period. Landlord and Tenant acknowledge and agree that to the best of their knowledge, the Base Rent payable hereunder constitutes a reasonable fair market rent for the Project. Base Rent and all other payments required to be paid by Tenant under this Lease are absolute, unconditional and shall not be subject to any abatement, reduction, set-off, counterclaim, recoupment, defense or other right which Tenant may have against any other Person, including Landlord, subject however, to the termination provisions contained in Section 8.9.

3.2. Manner of Payment.

Base Rent and all other amounts becoming due from the Tenant to Landlord hereunder (hereinafter collectively referred to as the “*Lease Payment*”) shall be paid in lawful money of the United States of America to the Landlord at Landlord’s address set forth in Section 11.9 of this Lease, or as otherwise designated from time to time by written notice from the Landlord to the Tenant; provided, during such time that a Leasehold Mortgage is in effect, in the event of an Event of Default (as defined in the Leasehold Mortgage), all [Base Rent] payments shall be paid directly to the Leasehold Mortgagee.

3.3. 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.

ARTICLE IV.
INSURANCE

4.1. Insurance to be Maintained by Landlord.

Landlord shall maintain insurance at such times and in such amounts as specified on EXHIBIT C hereto.

ARTICLE V.
USE AND ASSIGNMENT

5.1. Use.

The Premises shall be used as commercial and/or retail space by Tenant and for no other use or purpose. The Tenant shall not use any Hazardous Substances, except to the extent reasonable or appropriate in connection with the lawful use of the Premises in the ordinary course of the Tenant's business, and the Tenant shall comply with all Environmental Laws in connection with such use.

5.2. Transfer or Assignment.

The Tenant shall have the right, subject to the Legal Requirements and Section 5.1 above, to sublease the Premises or spaces therein, without Landlord's approval (but subject to the requirements of any Lender and Leasehold Mortgagee); provided, however, that Tenant shall not be released from liability under this Lease, and further provided that a copy of each executed sublease shall be supplied upon request to Landlord and provided further that without the Consent of the Landlord no part of the Premises may be subleased during the Recapture Period to any Subtenant which is a "tax-exempt entity" or "tax-exempt controlled entity" as those terms are used in Section 168(h) of the Code under a "disqualified lease" as that term is defined in Section 168(h)(1)(B)(ii) of the Code. The Tenant may not sell or assign its interest in, to and under this Lease without the Consent of the Landlord; provided, however, the foregoing limitation shall not apply to any sale, assignment or other transfer of ownership interests in the Tenant.

5.3. Compliance with Law.

Each of the Landlord and the Tenant shall, at its respective expense, perform all of its respective activities on the Property in compliance, and shall 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 either party should fail to do so beyond any applicable grace or cure period, the other party shall have the right to cause such requirements to remain in compliance and the amount expended by or advanced on behalf of such party to the other on account thereof shall be payable by such party upon written demand.

5.4. Mechanics' Liens.

The Landlord and the Tenant shall prevent any mechanic's liens or other liens for their respective 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 party that commissioned the work, labor, services or materials in question, shall procure the release or discharge thereof within ninety (90) days either by payment or, if the lien is being disputed, by immediately posting a cash bond over such lien with the court having jurisdiction over the Property or with a title company in an amount sufficient to remove the mechanic's lien as a lien against the Property, or in such other manner as may be prescribed by law, and shall hold the other party harmless from and indemnified against any loss or damage related thereto.

5.5. Surrender of Premises.

At the termination of this Lease in whole or as to any portion of the Premises, and subject to subparagraph (ii) of Section 2.2, the Tenant shall peaceably leave, quit and surrender the Premises 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 Premises or portion thereof so terminated shall become the sole property of Landlord at no cost to the 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.

5.6. Landlord's Work.

The Landlord represents, warrants and covenants that, at Landlord's sole cost and expense:

(a) It will fully complete Landlord's Work and satisfaction of the Rehabilitation Requirements by the Target Completion Date 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, the Secretary's Standards and the Part 2 Approval. Further, the Landlord shall not install or perform any Landlord's Work that needs the approval of the Secretary until such approval has been obtained. Notwithstanding the foregoing, Landlord shall have no obligation to construct so-called "tenant finishes" or "tenant build out" for tenants or subtenants of the Tenant or other expenses to complete the spaces within the Building except to the extent such work is included in Landlord's Work.

(b) The Tenant shall have the right to inspect such work and Landlord 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 forgoing, the Tenant shall have no obligation to make or have its representative make any such inspection of Landlord's Work. Such inspections are for the Tenant's information only and the Landlord shall not be relieved of its obligation to complete Landlord's Work in accordance with this Lease. In no event shall the Tenant'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 the Tenant under this Lease. Each of the Tenant and Landlord's Investor Member shall receive notice of and have the right to attend construction meetings, and receive copies of all draw requests and third party inspection reports with respect to the Landlord's Work;

(c) Landlord's environmental responsibilities with respect to Landlord's Work are as follows:

(i) Landlord, its agents, employees, and contractors shall not, and shall not permit any other person, including, but not limited to, third parties with whom

Landlord 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 5.6, the term Hazardous Substance shall not include construction materials in reasonable quantities for lawful and customary use in the construction of Landlord's Work, so long as such material is used, held, stored, and disposed of in accordance with applicable Environmental Laws. Landlord 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) Landlord represents that it will comply, and shall cause its contractors and subcontractors to comply, with all Environmental Laws with respect to Landlord's Work;

(iii) Landlord, at its sole cost and expense, and as part of Landlord's Work, shall abate and encapsulate, in accordance with all Legal Requirements, all Hazardous Substances, if any, at, on, in, under or about the Property as of the date hereof; and

(iv) except as described in the Environmental Reports, no Developer Entity has ever 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 Developer Entity's knowledge, 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 the Environmental Reports or any other 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;

5.7. Tax Attributes.

The Tenant expressly waives and relinquishes in favor of Landlord 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 the Landlord on the Property whether or not such items become a part of the realty, and the Tenant agrees to execute and deliver to Landlord any election form required to evidence Landlord's right to claim investment tax credits or depreciation benefits on improvements made or property installed by Landlord; provided, however, that in connection with any claim or use of such other credits or benefits.

ARTICLE VI.
CASUALTY AND TAKING

6.1. Casualty.

If any improvements from time to time constructed on the Land are damaged or destroyed by fire or other casualty, the Landlord 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. Subject to the requirements of any Leasehold Mortgage or as otherwise set forth in the Ground Lease, the Landlord, using the Insurance Proceeds, shall within one hundred eighty (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 Plans and Specifications for the Building (the "*Work*"). Notwithstanding the foregoing, in the event of substantial damage or destruction by casualty (i) which damage the Tenant and the Landlord in good faith determine is such that the reconstruction of economically viable Building is not practicable because 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 the Landlord, subject to the rights of the Leasehold Mortgagee, shall have the right to terminate this Lease upon thirty (30) days' written notice to Tenant.

6.2. Insurance Proceeds: Deficits or Excess.

If the Landlord reconstructs the Building as provided for in Section 6.1 above, and if the Insurance Proceeds received by the Landlord are insufficient to pay the entire cost of the Work, then the amount of any such deficiency shall be paid by the Landlord as provided for herein unless such deficiency is the result of any failure to maintain the insurance required of such party under this Lease, in which case the deficiency shall be paid solely by such defaulting party, or if the casualty resulted from an event not required to be insured against hereunder, in which case no restoration will be undertaken unless and until the parties agree on the apportionment of costs of restoration. If the Insurance Proceeds received by the Landlord shall exceed the entire cost of the Work, then such excess proceeds shall be apportioned as provided for herein. If the Landlord elects to terminate the Lease in accordance with Section 6.1, the Insurance Proceeds shall be allocated as provided for herein. Subject to the requirements of any Leasehold Mortgagee or as otherwise set forth in the Ground Lease, any apportionment provided for in this Section 6.2 shall be made as follows: to Landlord and the 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 the Tenant's estates to be determined by appraisal.

6.3. Taking.

If a Taking occurs at any time during the Term, then the provisions of this Article VI shall apply to the condemnation proceedings and the distribution of any Condemnation Award pertaining to such Taking; provided, and notwithstanding anything to the contrary contained

elsewhere in this Article VI, the distribution of any Condemnation Award shall be subject to the requirements of any Leasehold Mortgagee or as otherwise set forth in the Ground Lease.

6.4. Apportionment of Condemnation Award.

Whether or not separate awards are made to the Landlord and the Tenant, any Condemnation Award attributable to the respective interests of the Landlord and the Tenant in the Property shall be apportioned between the Landlord and the Tenant as provided in Subsections 6.6(b) and 6.6(c), as applicable.

6.5. Requests for Separate Awards by Court.

The court in such condemnation proceedings shall, if not prohibited by law, be requested by Landlord and the Tenant to make separate Condemnation Awards to Landlord and the Tenant apportioned in accordance with Subsections 6.6(b) and 6.6(c) hereof. The provisions of Subsections 6.6(b) and 6.6(c) concerning termination of the Term and receipt and payment of the award shall also apply to circumstances governed by this Section 6.5 and the court shall be requested to take such matters into account in rendering separate awards.

6.6. 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 the Tenant, or declines to do so, then the provisions of this Section 6.6 shall apply to the distribution of the single Condemnation Award made by such court.

(b) Total Taking. If a Total Taking (other than a Temporary Taking) occurs, then the Lease Payment shall be prorated between Landlord and the 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 Total 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 6.6(b); and

(ii) Subject to the rights of any holder of a Leasehold 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 the Landlord's Percentage (as hereafter defined); and

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

The Landlord's Percentage shall equal the fair market value, at the time of the Taking, of its leasehold interest in 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 Credits associated with the Property lost or recaptured by reason of the Taking. The Tenant's Percentage shall equal the sum of the Leasehold Interest 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 the Landlord and the Tenant reasonably determine that the continued use and occupancy of the remainder of the Premises by the Tenant is or can reasonably be made to be economically viable, structurally sound, consistent Leasehold Mortgage, then this Lease shall remain in effect as to the remainder of the Premises, and, if otherwise feasible based upon the amount of the Condemnation Award and any other funds of the Landlord as are available for the purpose of paying for such restoration (the "**Restoration Criteria**"), and subject to the requirements of any Mortgage, then the Property shall be restored pursuant to Section 6.9 hereof, and

(ii) if the continued use and occupancy of the remainder of the Premises by the Tenant is not or cannot reasonably be made to be economically viable, structurally sound, consistent with any Leasehold Mortgage, and otherwise feasible, as reasonably determined by Landlord and Tenant, then this Lease may be terminated by either party and the Condemnation Award shall be applied in accordance with Subsection 6.6(b).

(d) Temporary Taking. If a Temporary Taking occurs, then the Term shall not be reduced or affected in any way and the 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 the Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, the 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, the 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 the Temporary Taking shall extend beyond the date of the expiration or termination of the Term, then such Condemnation Award shall be prorated by the Landlord and the Tenant as of such date of expiration.

6.7. Condemnation Proceedings.

The Tenant and Landlord 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.

6.8. Notice of Condemnation.

If Landlord or the 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.

6.9. Restoration.

If a decision is made pursuant to Subsection 6.6(c) following a Partial Taking to restore the remainder of the Property, and/or Building, as applicable, the Tenant and the Landlord, shall reasonably agree upon and approve plans and specifications for doing so. Upon approval of said plans and specifications, the Tenant shall promptly proceed to commence and complete the restoration pursuant to the approved plans and specifications. The Landlord shall use 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 6.6(b). If the Landlord has decided pursuant to Subsection 6.6(c) to restore the remainder of the Property and/or Building, as applicable, said restoration shall be at the Landlord's expense, and if the cost of the restoration shall exceed the amount of the Condemnation Award, the deficiency shall be paid by the Landlord, except if said deficiency exists by virtue of the failure or refusal of any Leasehold Mortgagee to release all or any portion of the Condemnation Award to the Landlord to pay for said restoration, in which case the Condemnation Award shall be applied as though the Partial Taking were a Total Taking.

ARTICLE VII.
CONDITION OF PROPERTY

7.1. Condition; Title.

Except for the obligations of the Landlord regarding Landlord's Work or as specifically provided for elsewhere herein, the Premises is demised and let in an "as is" condition as of the date hereof. The Premises 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 Premises which is consistent with the terms of this Lease; and
- (c) all Permitted Encumbrances.

7.2. No Encumbrances.

The Landlord covenants that it has good and marketable leasehold title to the Property pursuant to the Ground Lease, subject to the provisions of Section 7.1, 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 Premises other than the Permitted Encumbrances. Landlord covenants that it will not encumber the title of the Premises or cause or permit said title to be encumbered in any manner whatsoever after the date of the Lease without the Consent of the Tenant, and the Tenant may reduce or discharge any such subsequent encumbrance or lien by payment or otherwise at any time after giving ten (10) days' written notice thereof to Landlord and recover or recoup all costs and expenses thereof from Landlord with interest thereon at the Designated Prime Rate plus five percent (5%). 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.

7.3. Quiet Enjoyment.

Landlord covenants and warrants that the 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 and exclusive use and enjoyment of, all of the Premises 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 5.1. Subject to the Permitted Encumbrances, Landlord agrees to warrant and forever defend its leasehold title to the Premises 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, Permitted Encumbrances 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 Premises for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Tenant with its obligations under this Lease. The Tenant shall provide the Landlord and the Landlord's contractors and their agents with a revocable license entitling them to full access to the Premises, including the Building, rights-of-way and easements for access thereto, subject to preexisting rights of other parties, if any, for purposes of performing Landlord's Work, until Landlord's Work is completed. The Landlord hereby agrees to indemnify the Tenant from any and all loss, damage, or claim incurred by it as a result of any negligence, misfeasance, malfeasance on the part of the Landlord, its employees, agents, invitees or contractors in connection with such activities on the Premises. Landlord shall provide such insurance as may be necessary with respect to any activity to be undertaken on the site by the Landlord under said license. Landlord shall keep the Ground Lease in full force and effect during the HTC Recapture Period, fully comply with its terms, and enforce its rights against the ground lessor thereunder.

7.4. Environmental Indemnity.

Landlord covenants and agrees to indemnify, protect, defend (by counsel reasonably satisfactory to Tenant), and save Tenant, its employees, agents, 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, members or the Premises or any portion thereof and arising directly or indirectly, in whole or in part, from or out of any Hazardous Substances on, in, under or affecting all or any portion of the Premises, (i) that exist prior to the Commencement Date, (ii) that exist in violation of the requirements of Section 5.7 or otherwise arise from the actions or omissions of Landlord, its employees, agents, managers, and/or members; or; or (iii) that migrate onto the Premises 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 solely out of Tenant's (but excluding the Tenant's managing member and its officers, directors and shareholders if the Tenant's manager is the same entity as the Landlord's managing member) negligence or willful misconduct.

7.5. Representations and Warranties of Landlord.

Landlord hereby represents and warrants 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 the Landlord or the Property by the 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 the Landlord will not constitute a breach or violation of, or a default under, the articles or certificate of organization, operating agreement or other governing documents of the 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) except as previously disclosed in writing to Tenant (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 and the Permitted Encumbrances;

(e) Upon completion of Landlord's Work, the Property will not be in violation of any law, ordinance, regulation or governmental requirement, including, without

limitation, matters relating to zoning or use of the Property for its intended purposes, nor with respect to construction, fire protection, building code, health code, housing code, traffic, flood control, Environmental Laws or fire safety;

(f) 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;

(g) No "common area" assessments or assessments for public improvements have been made against the Property which remain due and 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;

(h) The execution and delivery of this Lease, the incurrence of the obligations set forth in this Lease, and the consummation of the transactions contemplated by this Lease 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;

(i) 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;

(j) Landlord has or will obtain all building, zoning, and other applicable certificates, permits, and licenses necessary to permit the Rehabilitation, use and occupancy of the Property and will complete the Rehabilitation in full compliance with any conditions contained in the Certification Application and Part 2 Approval;

(k) The cost of Landlord's Work is anticipated to be reasonable for acquiring, constructing and/or renovating a project of this type, and was or will be established on the basis of third party arm's length contracts;

(l) At the time of commencement of construction of Landlord's Work, and as of the date hereof, the Land was and is properly zoned for the use contemplated herein, it has obtained, or will obtain at such time as the Landlord's Work permits or requires, all permits, consents, permissions and licenses required by all applicable governmental

entities, for the operation of the Property, and the Property conformed and conforms to all Legal Requirements;

(m) 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 units in the Property at the time of first occupancy. The Property has direct access to a public street or highway and will have adequate parking to make it viable;

(n) Landlord shall take all actions necessary or appropriate, at its sole cost and expense, so that no default by Landlord will occur under the Lease;

(o) As of the date hereof and continuing through the end of the HTC Recapture Period, neither Landlord nor any of its members, directly or indirectly, constitutes a "tax exempt entity" within the meaning of Section 168(h)(2) of the Code;

(p) No consent, authorization, approval or permit of or from, or notice to or filing with, any governmental body or any party to any contract, agreement or instrument to which Landlord is a party or by which Landlord is bound, is required for the execution, delivery or compliance with the terms of the Lease by Landlord; and

(q) In connection with the transactions contemplated hereby, Landlord has not retained or incurred any obligation to any broker. Landlord shall be solely responsible for and shall indemnify and hold Tenant 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 Landlord or otherwise arising from any dealing with Landlord.

7.6. Representations and Warranties of Tenant.

Tenant hereby represents and warrants to Landlord as follows:

(a) The execution and delivery of this Lease, the incurrence of the obligations set forth in this Lease, and the consummation of the transactions contemplated by this Lease 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 the Tenant or its manager, or their assets including the Leasehold Interest; 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 the Tenant or its manager is a party or by which it is bound or to which any of its assets is subject;

(b) No consent, authorization, approval or permit of or from, or notice to or filing with, any governmental body or any party to any contract, agreement or instrument to which Tenant is a party or by which Tenant is bound, is required for the execution, delivery or compliance with the terms of the Lease by Tenant;

(c) In connection with the transactions contemplated hereby, Tenant has not retained or incurred any obligation to any broker. Tenant shall be solely responsible for and shall indemnify and hold Landlord 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 Tenant or otherwise arising from any dealing with Tenant.

7.7. Additional Covenant of Tenant.

During the Term of this Lease, and in order to provide the Landlord evidence that a termination of this Lease by reason of the occurrence of an Event of Nonappropriation, pursuant to Section 2.2 hereof has not occurred, the Tenant shall file with the Landlord, within five (5) days after the adoption thereof, a certification to the effect that the budget for the following Lease Year has been adopted and that it contains an amount necessary to pay Lease Rentals during such following Lease Year. The Landlord may rely upon the validity and accuracy of any certificate delivered pursuant to this Section 7.7.

ARTICLE VIII.
DEFAULTS

8.1. Default.

The occurrence of any of the following events shall constitute an event of default ("***Event of Default***") hereunder:

(a) if the Tenant fails to pay when due any Base Rent, and any such default shall continue for fifteen (15) days after the receipt of written notice thereof from the Landlord; or

(b) if the 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 8.1, and, to the extent such failure is susceptible to cure, the Tenant shall fail to cure, correct or remedy such failure within thirty (30) days after the receipt of notice thereof, unless such failure is not monetary in nature such that it cannot be cured by the payment of a sum certain to Landlord (or other required payee), is, in the best judgment of Landlord, reasonably exercised, susceptible to cure, but cannot with due diligence be cured within such thirty (30) day period, in which case the time within which Tenant may cure such failure shall be extended so long as Tenant proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within a reasonable period of time; or

(c) if, after taking possession of the Premises or applicable portion thereof, the Tenant abandons the Premises or any substantial portion thereof and such abandonment is not cured within twenty (20) days following notice from Landlord; or

(d) if the Tenant becomes Bankrupt or permits or suffers foreclosure with respect to any mortgage on its leasehold interest.

8.2. Rights and Remedies.

(a) Upon the occurrence of any Event of Default hereunder (including the expiration of all applicable grace periods) Landlord shall have the right to petition any court of competent jurisdiction for appropriate relief including, without limitation, one or more of the following: preliminary or permanent injunction, specific performance or other equitable relief; actual (but not consequential or punitive) damages; and termination of this Lease. Landlord's rights hereunder shall be subject in all respects to the provisions of this Lease (including without limitation Subsection 8.2(f) below) with respect to Landlord's rights to cure defaults by the Tenant and with respect to the rights of any Leasehold Mortgagee.

(b) No default in the performance of the terms, covenants or conditions of this Lease on the part of the Tenant or the Landlord (other than in the payment of any Lease Payment) shall be deemed to continue if and so long as the Landlord or the 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 the Landlord or the Tenant, as the case may be, without further delay, to commence the correction of such default or to continue and complete the correction thereof.

(c) Upon a dissolution of the Landlord, the successor entity to Landlord shall assume the obligations of the Landlord pursuant to this Lease and shall execute any documents necessary to evidence such assumption of obligations, and this Lease shall remain in full force and effect.

(d) The defaulting party shall be liable for the reasonable legal expenses of the non-defaulting party in connection with any collection of funds owed under this Lease, the remedying of any Event of Default under this Lease or any termination of this Lease where such collection, remedying or termination results from an Event of Default, as finally determined by a court of competent jurisdiction. If a default is alleged and it shall be determined that no Event of Default exists the court may determine for just cause that the alleging party shall be liable for the legal costs and expenses of the other party in defending such claim.

(e) Notwithstanding anything to the contrary set forth in this Lease, Landlord, for itself and for each and every succeeding owner of Landlord's leasehold interest in the Property, agrees that it shall never be entitled to seek a personal judgment against Tenant's member(s), and that upon any Event of Default hereunder, the rights of Landlord to enforce the obligations of Tenant, its successors or assigns, or to collect any judgment, shall be limited to the termination of this Lease (subject to subsection (f) below) and/or to collection from the assets of Tenant and the enforcement of any other equitable rights and remedies specifically granted to Landlord hereunder; provided, however, that the limitations set forth in this paragraph shall not be applicable to fraud or other criminal action, or misappropriation of any condemnation award or insurance proceeds, for which Tenant shall be personally liable.

(f) Notwithstanding anything to the contrary set forth in this Lease, Landlord, for itself and for each and every succeeding owner of Landlord's leasehold interest in the Property, agrees that, prior to the end of the HTC Recapture Period, upon any Event of Default hereunder, Landlord's rights and remedies on account of such Event of Default shall be limited (regardless of whether such rights and remedies arise under the terms of this Lease, at law or in equity, Landlord hereby expressly and absolutely waives such rights and remedies for said period) such that in no event whatsoever shall Landlord have any right or remedy involving (i) the termination of this Lease or Tenant's right to possession of the Premises hereunder, or (ii) acceleration of rents hereunder.

(g) *Notwithstanding anything to the contrary set forth in this Lease, during such time that a Leasehold Mortgage is in effect, this Lease may not be terminated without the prior written consent of the Leasehold Mortgagee, except for a termination of this Lease in accordance with Section 8.9.*

(h) Each party hereto hereby waives any right that it may otherwise have at law or in equity to a trial by jury in connection with any suit or proceeding at law or in equity brought by the other against the waiving party or that otherwise relates to this Lease, as a result of an Event of Default or otherwise.

8.3. Termination of Lease for Tenant's Default.

Upon a termination of this Lease pursuant to Section 8.2(a), the Leasehold Interest shall automatically revert to the Landlord, the Tenant shall promptly quit and surrender the Premises to Landlord, without cost to Landlord, and Landlord may, without demand and further notice, reenter and take possession of the Premises, 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 the Tenant under this Lease which arose prior to termination shall survive such termination.

8.4. Rights Upon Termination.

Upon termination of this Lease pursuant to Section 8.2(a), the Landlord may:

(a) at the time of such termination, collect any unpaid Lease Payment due hereunder through the date of such termination, 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 governmental approvals and permits, and any and all rights of possession, ownership or control Tenant may have in any to, any and all financing arrangements, plans, specifications, and other technical documents or materials related to the Premises.

8.5. Performance by Landlord.

If Tenant shall fail to make any payment or perform any act required under this Lease, Landlord may (but need not) after giving not less than ten (10) 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 the Tenant. The Tenant shall promptly pay the Landlord the amount of such charges, costs and expenses as the Landlord shall have incurred in curing such default, together with interest at the rate of five percent (5%) per annum.

In addition to any other remedies of the Landlord under this Lease, the 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.

8.6. 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 the 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.

8.7. Default by Landlord.

(a) Default. Landlord shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Landlord's representations or warranties are untrue or become untrue in any material respect, or if Landlord's Work is not fully and timely completed 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.

(b) Right to Cure: Tenant's Remedies. If Landlord shall have failed to cure a default by Landlord after expiration of the applicable time for cure of such default, Tenant may, at its election, but without obligation (i) offset against the Lease Payment the amount of any loss resulting from Landlord's default, (ii) seek specific performance of any obligation of Landlord after which Tenant shall retain and may exercise and enforce any and all rights that Tenant may have against Landlord as a result of such default, (iii) from time to time without releasing Landlord in whole or in part from the obligations to be performed by Landlord hereunder, cure the default at Landlord's cost, or (iv) exercise any

other remedy given hereunder or now or hereafter existing at law or in equity. Any reasonable costs incurred by Tenant in order to cure such a default by Landlord, together with interest thereon at five percent (5%) per annum, shall be due immediately from Landlord, and may be offset against any amounts due from Tenant to Landlord.

8.8. 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.

8.9. Limitation of Tenant's Liability; Nonappropriation.

(a) Notwithstanding anything in this Lease to the contrary, the liability of the Tenant shall be limited to and enforceable solely out of the Leasehold Interest, the improvements and the rents, issues and profits therefrom which are unpaid or not yet due and payable at the time Landlord either terminates this Lease or executes on such rents, issues and profits pursuant to judgment, and neither the Tenant nor any of its Affiliates shall have any personal liability for any Lease Payment hereunder.

(b) IN THE EVENT OF AN EVENT OF NONAPPROPRIATION, THE TENANT MAY TERMINATE THIS LEASE AT THE END OF THE LEASE YEAR THROUGH WHICH LEASE PAYMENTS ARE PAID OR HAVE BEEN APPROPRIATED AND BUDGETED AND THE TENANT SHALL NOT BE OBLIGATED TO MAKE PAYMENT OF THE LEASE PAYMENTS PROVIDED FOR IN THIS LEASE BEYOND SUCH PERIOD; PROVIDED, HOWEVER, THAT THE TENANT'S OBLIGATIONS TO MAKE PAYMENTS PURSUANT TO SECTION 2.2(ii) HEREOF AND THE TENANT'S OBLIGATIONS TO MAKE PAYMENTS PURSUANT TO SECTION 2.2(ii) HEREOF THAT ACCRUE DURING ANY PERIOD DURING WHICH THE TENANT OCCUPIES THE PREMISES SHALL NOT BE AFFECTED BY THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION. Subject to the foregoing, the Tenant's obligation to make such payments shall be absolute and unconditional, payable from all legally available sources, without defense or set-off by reason of any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Premises, commercial frustration of purpose, or failure of the Landlord to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease, it being the intention of the parties that the payments required by this Lease will be paid in full when due without any delay or diminution whatsoever, SUBJECT ONLY TO THE SPECIAL AND LIMITED NATURE OF THE TENANT'S OBLIGATION TO MAKE LEASE RENTAL PAYMENTS HEREUNDER AS SET FORTH ABOVE, THE TENANT'S OBLIGATION TO MAKE SUCH PAYMENTS SHALL BE ABSOLUTE AND UNCONDITIONAL.

THE OBLIGATIONS OF THE TENANT UNDER THIS LEASE SHALL NOT CONSTITUTE A PLEDGE OF THE FULL FAITH, CREDIT OR TAXING POWER OF

THE TENANT WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL OR STATUTORY PROVISION.

The Tenant shall use its best efforts to give written notice to the Landlord of the failure to include in the Tenant's annual budget for any Lease Year an amount necessary to make all payments of Lease Payments becoming due during such Lease Year not later than the first day of the Lease Year with respect to which such budget relates; provided however, that the failure to give such notice shall not constitute an Event of Default hereunder.

ARTICLE IX.
SUBORDINATION AND ATTORNMENT

9.1. Subordination.

This Lease shall be subject and subordinate to any Leasehold Mortgagee at any time upon the Property.

9.2. Attornment; Successor Landlord.

If the holder of a Leasehold Mortgagee shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or otherwise, and this Lease is not extinguished by such foreclosure or other action, then, at the request of such party so succeeding to Landlord's rights (herein sometimes called "Successor Landlord") and upon such Successor Landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize such Successor Landlord as Tenant's Landlord under this Lease. Upon such attornment, this Lease shall continue in full force and effect as, or as if it were, a direct lease between the Successor Landlord and Tenant upon all of the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment. The foregoing subordination and attornment provisions shall be self-operative and no further instruments shall be required to effect such subordination and/or attornment; provided, however, that Tenant hereby agrees to execute within five (5) days, if the same is required, any and all instruments in writing which may be required by Landlord or a Leasehold Mortgagee to confirm such subordination and attornment provisions. In the event of such attornment, Tenant recognizes such Successor Landlord shall not be liable for, subject to, or bound by (a) any payment of the Rent more than one (1) rental period in advance, except prepayments in the nature of security for the performance by Tenant of its obligations under this Lease, but only to the extent such prepayments have been delivered to such Successor Landlord, (b) any amendment of this Lease made without the consent of the holder of each Leasehold Mortgage existing as of the date of such amendment, (c) damages for any breach, act or omission of any prior landlord, (d) any offsets or defenses which Tenant might have against any prior landlord, (e) any obligations with respect to construction or completion of any improvements for Tenant's use and occupancy, or following any fire or casualty, the restoration or repair of any improvement upon the demised Premises, (f) warranties of any nature whatsoever, including any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, title, authority, habitability, fitness for purpose or possession; or (g) any assignment or subletting by Tenant made in a manner not expressly permitted under this Lease, unless such assignment or sublease was made with the consent of the holder of each mortgage or deed of trust existing as of the date of such assignment or sublease.

ARTICLE X.
ESTOPPEL CERTIFICATE

The Tenant agrees that, from time to time upon not less than ten (10) days' prior request by Landlord or a Leasehold Mortgagee, the Tenant (and Tenant will request from any permitted assignee, subtenant, licensee, concessionaire or other occupant of the Premises claiming by, through or under the Tenant to so deliver) will deliver to Landlord, or to a Leasehold Mortgagee, a statement in writing signed by the 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 the Tenant began paying Base Rent and the dates to which the Base Rent and any other Lease Payment have been paid; (c) that, to its knowledge, 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 Premises has been completed in accordance with the terms hereof and the 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 the Tenant under the bankruptcy laws of the United States or any state thereof; and (g) such other matters as may reasonably be required by Landlord or a Leasehold Mortgagee. Landlord shall provide a statement of like tenor if and as requested by Tenant, Subtenant or a Leasehold Mortgagee.

ARTICLE XI.
MISCELLANEOUS

11.1. 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.

11.2. 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 and in any such action, the successful party shall be entitled to recover in addition to all other recoveries such reasonable attorneys' fees as may be awarded by the court.

11.3. 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. 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.

11.4. 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.

11.5. 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.

11.6. 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 5.2, 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 the 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.

11.7. Time of Essence.

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

11.8. Intentionally Deleted.

11.9. Notices.

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

If to Landlord: 9th Avenue Owner, LLC
PO Drawer 2468
Myrtle Beach, South Carolina 29578
Attn.: Michelle Shumpert, CPA
Email: mshumpert@cityofmyrtlebeach.com

with copies to: Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street, Suite 1200
Columbia, South Carolina 29201
Attn.: Chris Rogers, Esq.
Email: crogers@rogerslewis.com

If to Tenant: City of Myrtle Beach, South Carolina
PO Drawer 2468
Myrtle Beach, South Carolina 29578
Attn.: Michelle Shumpert, CPA
Email: mshumpert@cityofmyrtlebeach.com

with copies to: Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street, Suite 1200
Columbia, South Carolina 29201
Attn.: Chris Rogers, Esq.
Email: crogers@rogerslewis.com

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 11.9. 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.

11.10. Entire Agreement.

This instrument contains all the agreements made between the parties hereto with respect to the subject matter hereof 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 Leasehold Mortgagee, if applicable, has consented.

11.11. 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 of South Carolina without regards to its conflicts of law principles.

[SIGNATURES ON NEXT PAGE]

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

LANDLORD: 9th AVENUE OWNER, LLC, a South Carolina limited liability company

By: 9th Avenue Manager, LLC
Its: Managing Member

By: _____
Name: Michelle Shumpert
Title: Manager

TENANT: CITY OF MYRTLE BEACH, SOUTH CAROLINA

By: _____
Name: _____
Title: _____

EXHIBITS

- Exhibit A: Description of Property
- Exhibit B: Base Rent Schedule
- Exhibit C: Insurance Requirements

EXHIBIT A

Description of Property

EXHIBIT "A"

[to be inserted]

EXHIBIT B-1
BASE RENT SCHEDULE³

Lease Year Ending	Annual Amount
2021	[\$30,500]**
2022	[\$122,000]
2023	[\$122,000]
2024	[\$122,000]
2025	[\$122,000]
2026	[\$122,000]
2027	[\$330,000]
2028	[\$330,000]
2029	[\$330,000]
2030	[\$330,000]
2031	[\$330,000]
2032	[\$330,000]
2033	[\$330,000]
2034	[\$330,000]
2035	[\$330,000]
2036	[\$330,000]
2037	[\$330,000]
2038	[\$330,000]
2039	[\$330,000]
2040	[\$330,000]

** Pro-rated for short year.

³ NTD: Amounts will be updated to match actual amounts per financial projections.

EXHIBIT B-2
BASE RENT SCHEDULE⁴

Lease Year Ending	Annual Amount
2021	[\$82,500]**
2022	[\$330,000]
2023	[\$330,000]
2024	[\$330,000]
2025	[\$330,000]
2026	[\$330,000]
2027	[\$330,000]
2028	[\$330,000]
2029	[\$330,000]
2030	[\$330,000]
2031	[\$330,000]
2032	[\$330,000]
2033	[\$330,000]
2034	[\$330,000]
2035	[\$330,000]
2036	[\$330,000]
2037	[\$330,000]
2038	[\$330,000]
2039	[\$330,000]
2040	[\$330,000]

** Pro-rated for short year.

⁴ NTD: Amounts will be updated to match actual amounts per financial projections.

EXHIBIT C

INSURANCE REQUIREMENTS

The insurance requirements of Tenant with regard to the Property is set forth below. All insurance policies shall be underwritten by companies licensed to write such insurance in the state in which the Property is located, and shall be rated in the latest A.M. Best's Insurance Rating Guide with a rating of at least A- , and be in a financial category of at least IX. If an insurance policy is not available when required, then Certificates of Insurance detailing the policy terms and conditions as noted above shall be provided, but the policies must then be provided within sixty (60) days. All such policies shall include endorsements requiring at least thirty (30) days' prior written notice to Landlord of any cancellation, termination, or reduction of coverage therein. Notice of the renewal of any policy shall be made at least ten (10) days prior to the scheduled date of such renewal, and shall be in the form of endorsement to the policy. Notice to Landlord of any replacement of any policy shall be made at least ten (10) days prior to such replacement, and shall be in the form of a copy of the replacement policy, or by certificate, as noted above. Evidence of insurance may be provided on a Certificate of Insurance issued to Landlord and Tenant.

(i) Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies including fire, lightning, flood, earthquake, vandalism, and malicious mischief, boiler and machinery and, if available, coverage for damage or destruction caused by "War", if available the "certified" (as defined in the Terrorism Risk Insurance Act of 2002) acts of terrorists (or such policies shall have no exclusion from coverage with respect thereto) and such other insurable hazards as, under good insurance practices in South Carolina, from time to time are insured against for other property and buildings similar to the Premises in nature, use, location, height, and type of construction. Such insurance policy shall also insure costs of demolition and increased cost of construction (which insurance for demolition and increased cost of construction may contain a sub-limit satisfactory to Leasehold Mortgagee). Each such insurance policy shall (a) be in an amount equal to the greater of (1) one hundred percent (100%) of the then replacement cost of the Improvements without deduction for physical depreciation, and (2) such amount as is necessary so that the insurer would not deem Landlord a co-insurer under such policies, (b) have deductibles no greater than the lesser of \$100,000 or five percent (5%) of Net Operating Income per occurrence, and (c) contain an agreed amount replacement cost endorsement with a waiver of depreciation, and shall cover, without limitation, all tenant improvements and betterments that Landlord is required to insure pursuant to the Ground Lease. If the insurance required under this subparagraph is not obtained by blanket insurance policies, the insurance policy shall be endorsed to also provide guaranteed building replacement cost to the Improvements and such tenant improvements in an amount to be subject to the consent of Leasehold Mortgagee, which consent shall not be unreasonably withheld, but in all events, not less than would be required to restore the Premises following a casualty. Leasehold Mortgagee shall be named "Lender Loss Payee" on a standard mortgagee endorsement.

(ii) Flood insurance if any part of the Land on which vertical improvements are to be constructed is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, in an amount at least equal to the lesser of: (a) the greater of (1) the then full replacement cost of the Property without deduction for physical depreciation and (2) the unpaid Principal and (b) the maximum limit of coverage available under the National Flood Insurance Plan with respect to the Property.

(iii) Public liability insurance, including (a) "Commercial General Liability Insurance", (b) "Owned", "Hired" and "Non Owned Auto Liability"; and (c) umbrella liability coverage for personal injury, bodily injury, death, accident and property damage, such insurance providing in combination no less than \$5,000,000 per occurrence and in the annual aggregate on per location basis, if aggregate limits are shared with other locations the amount of umbrella liability insurance to be provided shall be not less than the greater of (i) \$10,000,000 or (ii) the amount required by the Franchisor under the Franchise License Agreement. The policies described in this subsection shall also include coverage for elevators, escalators, independent contractors, "Contractual Liability" (covering, to the maximum extent permitted by law, Landlord's obligation to indemnify Leasehold Mortgagee as required under the Loan Agreement of near or even date herewith between the Landlord and the Leasehold Mortgagee (the "Loan Agreement"), "Products" and "Completed Operations Liability" coverage.

(iv) Following substantial completion of the Improvements, rental loss and/or business interruption insurance (a) with Leasehold Mortgagee being named as "Lender Loss Payee", (b) in an amount equal to one hundred percent (100%) of the projected Rents from the Premises during the period of restoration; and (c) containing an extended period of indemnity endorsement which provides that after the physical loss to the Premises has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Premises is damaged, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such insurance shall be increased from time to time during the term of the Loan as and when the estimated or actual Rents increase.

(v) To the extent such equipment is located at the Premises, comprehensive boiler and machinery insurance covering all mechanical and equipment against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Landlord is required to insure pursuant to this Lease.

(vi) Worker's compensation and disability insurance with respect to any employees of Landlord, if any, as required by any Legal Requirement (as defined in the Loan Agreement).

(vii) During construction of the Project, or any period of construction, repair or restoration, builder's "all-risk" insurance in an amount equal to not less than the full insurable value of the Premises, against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Leasehold Mortgagee may request, in form and substance acceptable to Leasehold Mortgagee, and coverage to compensate for the cost of demolition and the increased cost of construction in an amount satisfactory to Leasehold Mortgagee.

(viii) Such other insurance (including environmental liability insurance, earthquake insurance and windstorm insurance) as may from time to time be reasonably required by Leasehold Mortgagee in order to protect its interests.