

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (“**Lease**”) is made as of this 23rd day of February, 2024 (the “**Lease Date**”) by and between **EH III RECREATIONAL CENTER LLC**, a Maryland limited liability company (“**Landlord**”) and **MONTGOMERY COUNTY MARYLAND**, a body corporate and politic (“**Tenant**”; Landlord and Tenant are sometimes hereinafter individually referred to as a “**Party**” or collectively as the “**Parties**”).

### **RECITALS**

**A.** Alexander House Development Corporation (“**AHDC**”) by Declaration of Condominium dated January 11, 2017 and recorded among the Land Records of Montgomery County, Maryland (the “Land Records”) in Book 53553, page 388 et seq., as amended by that certain First Amendment to Declaration of Condominium for Alexander House Commercial Condominium by AHDC and Alexander House Apartments Limited Partnership (“**AHLP**”) dated October 28, 2019 and recorded in the Land Records in Book 58380, pg. 478 et seq. (collectively, the “**Condominium Declaration**”), subjected certain property, described in Exhibit A to the Condominium Declaration, to a condominium regime known as “Alexander House Commercial Condominium” (the “**Condominium**”) pursuant to Section 11-101, et seq. of the Real Property Article of the Annotated Code of Maryland (the “**Maryland Condominium Act**”).

**B.** In connection with the Condominium Declaration, the AHDC and AHLP filed that certain amended condominium plat entitled “Amended Condominium Plat of Condominium for Alexander House Commercial Condominium”, consisting of 38 sheets, dated October 2019 and recorded among the Plat Records of Montgomery County as Plat Nos. 12102 – 12139 (the “**Condominium Plat**”).

**C.** Landlord owns in fee simple that certain “Public Use Unit No. 2” of the Condominium as further described in Exhibit A (“**Public Use Unit No. 2**”).

**D.** Tenant desires to lease Public Use Unit No. 2 from Landlord, and Landlord agrees to lease the Public Use Unit No. 2 to Tenant, subject to the terms and conditions of this Lease.

**NOW, THEREFORE**, in consideration of the agreements, terms, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

### **ARTICLE 1 DEFINITIONS**

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

“**ADA**” means Titles II and III of the Americans With Disabilities Act, 42 U.S.C. §12101, *et. seq.*, as amended, and any regulations promulgated thereunder.

**“Affiliate”** means, with respect to any Person, any other Person, which, directly or indirectly, controls or is controlled by, or is under common control with, the first-mentioned Person (“control,” including with correlative meanings, the terms “controlled by” and “under common control with,” shall have the meaning given to the term “Control” in this Section).

**“Base Rent”** is defined in Section 4.2.1.

**“Business Days”** means Monday through Friday, inclusive, other than holidays recognized by the Montgomery County, Maryland government.

**“Calendar Year”** means each period January 1 through December 31 during the Term.

**“Commercially Reasonable Best Efforts”** means the diligent and timely satisfaction of the following standards in the context of a Parties’ responsibilities: (a) undertaking all actions (including, without limitation, payment and performance obligations) that would usually and customarily be undertaken or performed by a diligent and experienced real estate developer and construction manager in performance of the terms of this Lease and (b) undertaking such additional commercially reasonable actions as are appropriate in the context of unanticipated or unusual events, circumstances or obstacles to lawfully achieve such Parties’ responsibilities hereunder.

**“Condominium”** is defined in the Recitals.

**“Condominium Declaration”** is defined in the Recitals.

**“Condominium Documents”** means the Condominium Declaration, the Covenants, Conditions and Restrictions and the Condominium Plat.

**“Condominium Plat”** is defined in the Recitals.

**“Control”** means (a) the legal or beneficial ownership of more than fifty percent (50%) of the voting stock, limited liability company membership interests, partnership interests, capital or profits of the Person in question; or (b) the possession, directly or indirectly, of the right or ability, whether or not exercised, to direct or cause the direction of the management and policies of the Person in question, whether through the ownership of voting stock, limited liability company membership interests, partnership interests, capital or profits or by contract or otherwise. A Person shall be deemed to control another person if such Persons are under common control. Two (2) or more Persons shall be under common control if fifty percent (50%) or more of the capital, voting or profits interests in each Person are held by a single Person or a single group of two (2) or more Persons.

**“Covenants, Conditions and Restrictions”** or **“REA”** means (i) that certain Declaration of Easements, Covenants, Restrictions and Agreements recorded among the Land Records in Book 53724, Page 49, as amended by that certain First Amendment to Declaration of Easements, Covenants, Restrictions and Agreements recorded among the Land Records in Book

58380, Page 499, that is binding on the Condominium, including the Public Use Unit No. 2, (ii) that certain Elizabeth Square Project Declaration of Covenants, Conditions, Easements and Restrictions recorded at Book 58380, page 421 in the Land Records, and (iii) that certain Declaration of Condominium for Elizabeth Square Land Condominium dated October 28, 2019, and recorded among the Land Records of Montgomery County, Maryland at, Book 58380, Page 375, each as subsequently amended.

**“Day” or “day”** means a “calendar day” except when stated to be a “Business Day.”

**“Default Rate”** means the legal rate of interest provided in Article 3, §57 of the Maryland Constitution.

**“Disposition”** is defined in Section 13.1.1.

**“Environmental Laws”** means all environmental or health and safety-related laws, regulations, rules, ordinances, orders or determination of any governmental or judicial authority at the federal, state, or local level, relating to Hazardous Materials, to the extent applicable to the Public Use Unit No. 2.

**“Equipment”** means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter located in the Public Use Unit No. 2 and necessary for the proper operation and maintenance of the Improvements to the extent that they are located in the Public Use Unit No. 2 or are Limited Common Elements of the Public Use Unit No. 2: any and all shades, screens and blinds; floor coverings, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; furnaces, and boilers; air cooling and air conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools, building supplies, swimming pool, recreational furniture and equipment; refrigerators, dishwashers, disposals, ranges and other kitchen appliances; and, all additions thereto and replacements thereof.

**“Event of Default”** is defined in Article 14.

**“Existing Approvals”** means those certain approvals received from Montgomery County, Maryland government or other governmental or quasi-governmental authority having jurisdiction necessary for the construction of the project known as “Elizabeth Square” more particularly described in **Exhibit C** attached hereto and made a part hereof.

**“Hazardous Materials”** means all substances, materials or wastes that are or become regulated by any local governmental authority, any state having jurisdiction over the Public Use Unit No. 2 or any portion thereof or the United States Government or otherwise pose a material threat to human health, safety or the environment. Without limiting the generality of the foregoing, the term “Hazardous Materials” includes, without limitation, any and all materials, substances and wastes that are: (a) defined as a “hazardous waste”, “hazardous material”, “hazardous substance”, “extremely hazardous waste” or “restricted hazardous waste” under any provision of local, state or federal law, or (b) petroleum, or (c) asbestos, or (d) polychlorinated

biphenyls, or (e) radioactive materials, or (f) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), or (g) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, (42 U.S.C. § 6903), or (h) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601), as any of the same may be amended.

**“Impositions”** means all real estate taxes and assessments, fees and other charges, which are required to be paid by the Landlord, or the Landlord’s affiliates, with respect to the units in the Condominium.

**“Improvements”** means all improvements now or hereafter located in the Public Use Unit No. 2; all fixtures and equipment of every kind and description hereafter located in, or attached to, the Public Use Unit No. 2 which by the nature of their attachment to the Public Use Unit No. 2 become real property under Legal Requirements, and all renewals or replacements thereof or articles in substitution therefore, it being agreed that, to the fullest extent permitted by Legal Requirements, the equipment shall be deemed to be fixtures and a part of the Improvements.

**“Land Records”** means the land records of Montgomery County, Maryland.

**“Landlord Event of Default”** is defined in Section 14.5.

**“Lease”** means this Lease Agreement, as the same may be amended from time to time.

**“Lease Date”** means the date on which this Lease becomes effective, which shall occur upon the date of the last signature to this Lease.

**“Legal Requirements”** means all federal, state or local constitutions, judicial or administrative decisions, orders, judgments, decrees, injunctions, decisions, laws, statutes, codes, rulings, rules, regulations, permits, building codes, ordinances or other rules of law, of any governmental or quasi-governmental authority that relate in any way or are applicable to the Public Use Unit No. 2, or the ownership, use or occupancy thereof, including, without limitation, Environmental Laws, the ADA and the Existing Approvals.

**“Notice”** or **“notice”** means any written notice, demand, consent, approval, request, or other communication or document required to be provided or provided to Landlord, Tenant, or any other Person, pursuant to any provision of this Lease.

**“Partial Taking”** is defined in Section 18.4.

**“Permitted Exceptions”** is defined in Section 2.3.

**“Person”** or **“person”** means a natural person, a trust, a corporation, a partnership, joint venture, a limited liability company, association, or government or any agency or political subdivision thereof, and any other form of legal entity.

“**Public Use Unit No. 2**” is defined in the Recitals.

“**PUU Lease**” means that certain Sublease Agreement by and between Landlord, as landlord thereunder, and Montgomery County, Maryland, as tenant thereunder, dated as of the date of this Lease.

“**Rent**” is defined in Section 4.2.

“**Rent Commencement Date**” is defined in Section 4.2.1.

“**Repair**” and “**Repairs**” are defined in Section 15.1.1.

“**Secure**” is defined in Section 15.1.1.

“**Taking**” means either a Partial Taking or a Total Taking.

“**Tenant Event of Default**” is defined in Section 14.1.

“**Tenant Interests**” is defined in Section 13.1.1.

“**Term**” is defined in Section 2.5.1.

“**Total Taking**” is defined in Section 18.3.

**1.2 Other Definitions.** Any other term to which meaning is expressly given in another section of this Lease shall have such meaning; provided, however, that in the event of any conflict or ambiguity regarding terms defined in multiple sections in this Lease, the definition contained in Section 1.1 hereof shall apply.

### **1.3 Rules of Construction.**

1.3.1 Except as specifically provided in this Lease, any approval, consent, permission, submittal or authorization contemplated under this Lease shall require that such approval, consent, permission, submittal or authorization shall be given in advance and in writing and any consent, approval, permission or authorization shall apply only in the instance given.

1.3.2 Except as specifically provided in this Lease, any and all approvals, consents, permission or authorization contemplated in this Lease by Landlord and/or Tenant shall not be unreasonably withheld, delayed or conditioned and shall be subject to any reasonable conditions contained in the consent or approval given.

1.3.3 The above stated Recitals are made part of this Lease.

1.3.4 A term defined in this Lease which includes one or more items, when used, shall mean all or one or more of those items, as applicable in the context.

1.3.5 A term defined in this Lease which means or refers to an agreement, writing or statute shall mean and refer to that agreement, writing or statute as duly amended, modified, substituted for or replaced from time to time.

1.3.6 A term defined in this Lease which means or refers to real or tangible personal property shall mean and refer to renewals or replacements, or substitutions therefor, but only as permitted under and in accordance with this Lease, if applicable, provided however, that if at any time any portion of that property becomes no longer subject to this Lease, the defined term shall mean and refer to so much of the property in question as remains subject to this Lease.

1.3.7 In this Lease, use of the word “including” shall mean “including but not limited to” unless specifically provided otherwise.

## **ARTICLE 2 PUBLIC USE UNIT NO. 2 AND TERM**

### **2.1 Public Use Unit No. 2.**

2.1.1 **Leasehold Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Public Use Unit No. 2, for the Term and for the Rent set forth herein, in accordance with the terms and conditions of this Lease.

2.1.2 **Condition of Public Use Unit No. 2.** Landlord shall deliver the Public Use Unit No. 2 in the manner required under the Guaranteed Maximum Price Design-Build Contract, dated December 30, 2019, by and between the Housing Opportunities Commission and Montgomery County, Maryland for the construction of the Public Use Unit No. 2.

2.2 **Landlord’s Unsubordinated Leasehold Rights.** Landlord’s leasehold right, title, and interest in the Public Use Unit No. 2 shall be and remain in Landlord for and during the Term, and shall always remain unsubordinated with respect to the rights of Tenant in the leasehold estate created by this Lease.

2.3 **Title.** This Lease shall convey to Tenant good and marketable leasehold title to the Public Use Unit No. 2, insurable by an A.L.T.A leasehold title insurance policy at customary rates, free and clear of all liens, encumbrances, restrictions, covenants, and defects in title, and further subject only to: (a) those covenants, conditions, easements, restrictions, rights of way, reservations, and similar matters on or affecting the Public Use Unit No. 2 that are set forth on **Exhibit 2.3** attached hereto and made a part hereof, including, without limitation, this Lease pursuant to Section 26.4 hereof, the Condominium Documents, the REA and any Taxes not yet due and payable (the “**Permitted Exceptions**”); and (b) any other easements or encumbrances to which Landlord and Tenant consent in writing.

2.4 **Expiration or Earlier Termination of Term.** At the expiration or earlier termination of the Term of this Lease, title to and ownership of the Public Use Unit No. 2 shall automatically and immediately revert, convey and vest in Landlord, for no consideration and free and clear of all mortgages and liens, any Impositions accruing during the Term of this Lease, any

defects in title, and any leases or occupancy agreements, subject only to (a) title and survey encumbrances reasonably acceptable to Landlord, (b) encumbrances on title existing as of the Lease Date and (c) encumbrances expressly permitted by Landlord during the Term of this Lease, at the time of reversion, conveyance and vesting without the necessity of any further action being taken by the Landlord or Tenant. At the expiration or earlier termination of the Term of this Lease pursuant to this Section, the Public Use Unit No. 2 shall be free and clear of any Hazardous Materials.

## **2.5 Term.**

2.5.1 **Term & Extension.** Unless sooner terminated in accordance with the provisions of this Lease, the initial term (the “**Initial Term**”) of this Lease shall commence on the Lease Date and end on September 30, 2115. If the term of the PUU Lease is extended beyond September 30, 2115 (in accordance with its terms or otherwise), the Tenant may require the Landlord to extend the Term hereof for the same period of time that the term of the PUU Lease was extended (“**Extended Term**”) by providing a Notice to the Landlord within ninety (90) days after Tenant’s receipt of Notice of such extension, and thereafter, this Lease shall automatically extend for such Extended Term. The Initial Term, whether or not it is extended by the Extended Term, is referred to as the “**Term**”.

2.5.2 **Termination Filings.** At the expiration or earlier termination of the Term, Tenant, at Landlord’s request, shall execute a termination of Lease and deliver same to Landlord to evidence the termination of this Lease and the Tenant’s rights and interests in the Public Use Unit No. 2 under this Lease.

## **ARTICLE 3 USE OF PUBLIC USE UNIT NO. 2**

3.1 **Use.** Tenant shall use and shall employ Commercially Reasonable Best Efforts to cause its invitees, guests and users to use the Public Use Unit No. 2, solely for public recreational and aquatic uses and any uses ancillary or related thereto; provided, however, that a change in such use may be permitted in accordance with the provisions of Article 12 hereof.

3.2 **Music.** In connection with the permitted uses of the Public Use Unit No. 2, the Tenant may play amplified music in the Public Use Unit No. 2 during regular business hours, which are currently 6:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 9:00 p.m. on Saturdays and Sundays. Amplified music may also be played during special events and/or third-party events, provided that the music played during such events must end by midnight. Any proposed use by the Tenant of music outside such hours shall require the prior approval of Landlord, not to be unreasonably withheld, conditioned or delayed. Tenant acknowledges that the Condominium consists of a mixed-use project and that the upper floors of the project contain multifamily apartment units. The Tenant shall use Commercially Reasonable Best Efforts to prevent such amplified music from emanating into other portions of the Condominium. If issues arise concerning music or other noise emanating from the Public Use Unit No. 2, Tenant shall comply with Landlord’s direction regarding such issues, which direction may include, for example, revised hours during which music is played in the Public Use Unit

No. 2 or a physical alteration to the Public Use Unit No. 2 such as sound proofing and vibration reducing measures.

#### **ARTICLE 4**

##### **RENT, FINANCIAL STATEMENTS, AND AUDITS**

**4.1 Payments.** Except as expressly set forth in this Lease, all Rent and other sums owed to Landlord shall be paid by Tenant without demand, deduction, setoff or counterclaim, when and as the same shall be due and payable hereunder. Payments shall be sent to the following address, or to such other address specified in a written notice given pursuant to Article 19:

Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, Maryland 20895

**4.2 Rent.** “Rent” or “rent” shall include all amounts payable by Tenant to Landlord pursuant to this Lease, including but not limited to the “Base Rent”, and Landlord shall have the same rights and remedies to collect such monies, howsoever designated in this Lease, as “Rent” or “rent”.

**4.2.1 Base Rent.** Commencing on the first day of the calendar month following the Lease Date (the “**Rent Commencement Date**”), Tenant shall pay Landlord in immediately available and appropriated funds, annual base rent in the amount of Ten Dollars (\$10.00).

#### **ARTICLE 5**

##### **TRIPLE NET LEASE; ADDITIONAL RENT**

**5.1 Triple Net Lease.** This Lease is intended to yield to Landlord irrevocably and unconditionally the Rent due hereunder absolutely net to Landlord with respect to the construction, development, operation, financing, insurance, maintenance and repair of the Public Use Unit No. 2. In addition to the Rent, Tenant agrees to pay all costs pertaining to the Public Use Unit No. 2 and any improvements therein and to the ownership, operation, and use thereof during the Term, it being the agreement between Landlord and Tenant that this is a triple net lease, and Landlord shall not pay any costs or expenses pertaining to the Public Use Unit No. 2 during the Term. The Parties acknowledge and agree that the “**Responsibility Matrix**” attached hereto and made a part hereof as **Exhibit D**, sets forth the allocation of the Landlord and the Tenant’s costs related to the Condominium and the Public Use Unit No. 2.

**5.2 Additional Rent.** All sums payable to Landlord by Tenant pursuant to this Lease are “Rent” or “rent” and Landlord shall have the same remedies for collecting any sum due hereunder as is available under Maryland law for the collection of rent or for sums specifically designated as “additional rent.”



## **ARTICLE 6 PAYMENT OF IMPOSITIONS, CONTESTS**

**6.1 Payment of Impositions.** Nothing in this Lease is intended to or shall be construed to require Landlord to make any payments to any taxing authority for the Public Use Unit No. 2 under this Lease. Further, no payments by Tenant under this Lease are intended to or shall be construed to require Tenant to contribute to, or make any payments to, any taxing authority for the benefit of any of the other units in the Condominium.

## **ARTICLE 7 COMPLIANCE WITH LAWS AND ORDINANCES**

**7.1 Tenant's General Compliance with Legal Requirements.** Tenant, at its sole cost, risk, and expense, shall comply with Legal Requirements, and shall exercise Commercially Reasonable Best Efforts in accordance with Legal Requirements and customary business practices for operating a public recreational and aquatic center. If Tenant fails to comply with any Legal Requirements (or fails to exercise Commercially Reasonable Best Efforts in accordance with Legal Requirements and customary business practices for operating a public recreational and aquatic center), such failure could result in a Tenant Event of Default.

**7.2 Cooperation of Parties Regarding Compliance with Legal Requirements.** Subject to Section 7.3, below, if Tenant's compliance with Legal Requirements requires the cooperation and participation of Landlord, Landlord agrees to cooperate and participate, but at no additional cost or expense to Landlord. The Landlord's cooperation and participation shall include the right, but not the obligation, of Landlord to cause or attempt to cause the applicable governmental or quasi-governmental authorities to waive or revoke a request for a specific action, as well as the obligation of Landlord to execute applications for governmental or quasi-governmental permits, licenses or approvals which are necessary in order for Tenant to comply with Legal Requirements.

### **7.3 Right to Contest.**

**7.3.1 By Landlord.** Landlord shall have the right but not the obligation, at its sole cost, to contest the application or validity, in whole or in part, of any Legal Requirement purported to be applied to the Condominium, including the Public Use Unit No. 2, during the Term, by appropriate proceedings diligently conducted in good faith, and Tenant may participate therein. No such contest shall diminish, abrogate or affect to the detriment of Tenant any of Landlord's obligations under this Lease.

**7.3.2 By Tenant.** Tenant shall have the right but not the obligation, at its sole cost, to contest the application or validity, in whole or in part, of any Legal Requirement purported to be applied to the Public Use Unit No. 2 during the Term, by appropriate proceedings diligently conducted in good faith, and Landlord, at Tenant's request, may participate therein. No such contest shall diminish, abrogate or affect to the detriment of Landlord any of Tenant's obligations under this Lease.

7.3.3 **Notices.** From and after the Lease Date, each Party shall use Commercially Reasonable Best Efforts to deliver to the other within five (5) business days of receipt any notices it receives from any governmental or quasi-governmental authority or any Person concerning material violations of Legal Requirements for any units in the Condominium, including the Public Use Unit No. 2, which notices include (but are not limited to) those received pursuant to Section 8.1 hereof. In no event shall the failure to deliver such notices constitute a default or be the basis of an Event of Default hereunder.

## **ARTICLE 8 ENVIRONMENTAL MATTERS**

**8.1 Landlord's Notices to Tenant and Tenant's Notices to Landlord.** During the Term, Landlord shall notify Tenant promptly upon Landlord's receipt of a notice alleging the release of Hazardous Material on or from Public Use Unit No. 2. Likewise, Tenant shall notify Landlord promptly upon Tenant's receipt of a notice alleging the release of Hazardous Material on or from the Public Use Unit No. 2.

**8.2 Hazardous Materials.** During the Term, Tenant shall not cause or permit Hazardous Materials to be used, generated, stored or disposed of, on or from the Public Use Unit No. 2; provided, however, that the foregoing prohibition shall not apply to any materials which are used in the ordinary course of development of property and construction of Improvements, or in the operation of Tenant's business or of any typical commercial products used in connection with operating and maintaining a public recreational and aquatic center, provided that the same are used, generated, stored and disposed of in accordance with all Legal Requirements. Tenant, at Tenant's sole cost and expense, shall remediate any and all Hazardous Materials located on, in, or emitting from the Public Use Unit No. 2 during the Term to the extent the presence of such Hazardous Materials is caused by Tenant, or its contractors or agents, and such obligation of Tenant shall survive any termination of this Lease, and shall be binding upon the Tenant's successors and assigns.

## **ARTICLE 9 INSURANCE**

**9.1 Self-Insurance.** Tenant shall self-insure, either through the SIP Program (as defined below) or, at Tenant's option, through another program reasonably acceptable to Landlord. The Tenant is a member of the Montgomery County Self-Insurance Program ("**SIP Program**") and the Tenant agrees to provide certificates of insurance evidencing general liability coverage in the amounts of \$800,000 in the aggregate and \$400,000 per occurrence. These are the maximum limits of liability for which the SIP Program is responsible, as provided by the LGTCA (defined below). Additionally, Tenant shall have the right to self-insure the first \$250,000 of any claim under such property insurance policy through the Montgomery County Self-Insurance Program (established and regulated by Article 20-37 of the Montgomery County Code). If the Montgomery County Self-Insurance Program increases the maximum available limit on the self-insurance portion of Tenant's property insurance, Tenant shall have the right to increase the amount of self-insurance hereunder accordingly and shall promptly notify Landlord of such increase in the portion of such property insurance covered under the Montgomery County Self-Insurance Program.

Landlord and Tenant acknowledge that, as of the date hereof, a waiver of subrogation is not available under the self-insurance portion of Tenant's property insurance but is available for the balance of Tenant's property insurance.

**9.2 Insurance Does Not Waive Tenant's Obligations.** No acceptance or approval of any insurance by Landlord shall (a) relieve or release, or be construed to relieve or release, Tenant from any liability, duty, or obligation assumed by, or imposed upon, it by the provisions of this Lease or (b) impose any obligation upon Landlord; provided, however, that Landlord waives any rights of recovery against Tenant and its trustees, officers, directors, employees, agents, and contractors for injury or loss on account of hazards covered by and actually paid under the Landlord's insurance.

**9.3 Deficiencies in Coverage and Failure to Maintain Insurance.** The insurance policies required by this Article 9 shall not be cancelled, terminated or modified (except to increase the amount of coverage) without at least thirty (30) calendar days prior written notice from the Tenant to Landlord. If Tenant fails to maintain any insurance policies as provided in this Lease, Landlord may, upon at least fifteen (15) calendar days prior written notice to Tenant (during which period Tenant may obtain insurance), purchase reasonably necessary insurance and Tenant will reimburse the Landlord for the expense, subject to appropriations. Landlord shall notify Tenant in writing of the date, purposes, and amounts of any such payments made by it for the insurance, and any amounts of money paid therefor by Landlord shall be repaid to Landlord, if appropriated, within thirty (30) calendar days after written demand. If the required insurance policies are not reinstated or replaced by Tenant on or before the date the insurance policies renew (irrespective of any other notice, default, discussion or cure provisions or procedures in this Lease), then such failure to replace or reinstate shall constitute a Tenant Event of Default. This provision is not intended to contract away the budgetary discretion of the County Executive or the Montgomery County Council.

**9.4 Primary and Noncontributory** Tenant's insurance coverage shall be primary and noncontributory insurance with respect to Landlord, its trustees, officials, employees, agents, and representatives.

**9.5 Commercial Insurance.** Notwithstanding the foregoing, Tenant shall have the right during the Term of this Lease to obtain commercial insurance in conjunction with self-insuring under the SIP Program. In the event that Tenant elects to obtain commercial insurance, it shall obtain and maintain commercial general liability, property, business interruption, automobile liability, professional liability, and employment practices liability in amounts and on terms reasonably acceptable to Landlord in all respects; workers compensation (including employer's liability) and pollution liability/environmental impairment liability insurance will remain under the SIP Program. All such insurance shall (a) be procured from financially sound and reputable insurers licensed to do business in the State of Maryland and rated by A.M. Best as an A-X or above or the equivalent, (b) provide a waiver of subrogation that includes a clause or endorsement stating, in essence, that in the event of any payment by the insurer under the policy, the insurer waives its right of recovery against any person or entity with respect to which the insured has waived its right of recovery, and stating that the coverage will not be prejudiced in any way by any such waiver by Tenant, and (c) be evidenced by an initial certificate of insurance and annual

renewal certificates of insurance delivered to Landlord stating that Landlord (and such others as Landlord may reasonably determine) is/are additional insureds or loss payees (as their interest may appear) on applicable policies. Further, Tenant waives any rights of recovery against Landlord and its trustees, officers, directors, employees, agents, and contractors for injury or loss on account of hazards covered by the insurance required to be carried (with the exception of the property coverage deductible, which remains the responsibility of Tenant). At any time during the Term, but not more frequently, than once every twelve (12) months, upon the request by Landlord and the showing of a reasonable basis for such request, Tenant shall make available for Landlord's review copies of all policies of insurance required by this Lease. The below include minimum requirements for commercial insurance that may be procured to fulfill the coverage needs of this Lease:

<b>TYPE</b>	<b>LIMIT NOT TO BE LESS THAN</b>
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 in the annual aggregate for bodily injury, personal injury, and broad form property damage, including the following coverages: Contractual Liability, Premises and Operations; Products & Completed Operations; Assault & Battery; Independent Contractors & Subcontractors; Sexual Molestation and Abuse. Coverage shall be endorsed to apply on a per project or per contract basis.
Umbrella/Excess Liability	Umbrella/Excess Liability insurance coverage with a limit of liability of at least \$10,000,000 with no exclusions that limit the coverages required under the Commercial General Liability, and Automobile Liability.
Professional / Management Liability/Errors and Omissions	\$1,000,000 per claim and \$2,000,000 in the annual aggregate that covers professional errors and omissions, negligent acts, contingent bodily injury, vicarious liability, and misconduct or lack of ordinary skill during the term of the Agreement.
Automobile Liability	\$1,000,000 combined single limit for bodily injury and property damage coverage per occurrence including the following: owned automobiles, hired automobiles, non-owned automobiles, and loading and unloading.
Property Insurance	With a limit equal to the actual replacement value of real property (physical building), improvements & betterments and business income.
Employment Practices Liability	A minimum limit of \$1,000,000 covering wrongful acts arising from Tenant's employment processes such as wrongful termination, discrimination, sexual harassment, and retaliation.

## ARTICLE 10 INDEMNIFICATION AND TENANT LIABILITY

### 10.1 Indemnification.

10.1.1 Neither Landlord, the Housing Opportunities Commission of Montgomery County (“**HOC**”), or their respective partners, members, directors, officers, Commissioners, agents, servants, or employees (together, the “**Landlord Parties**”), shall be liable to Tenant for any loss, injury, or damage to Tenant or to any other person, or to its or their property, unless caused by or resulting from the gross negligence or willful misconduct of Landlord in the operation or maintenance of the Condominium, excluding the Public Use Unit No. 2. Tenant will indemnify, defend, and hold harmless the Landlord Parties from and against any and all claims, actions, losses, liens, costs, demands, judgments, damages, injuries (including death, personal injury, and damage to property), expenses (including reasonable attorneys’ fees and litigation expenses), and liabilities (“**Claims**”) asserted against or incurred by the Landlord Parties arising from or in any way related to Tenant’s negligent acts or omissions, willful misconduct, failure to perform any obligations under this Lease, or its use, occupancy, management, and operation of the Public Use Unit No. 2. Subject to appropriations, Tenant shall also indemnify Landlord and HOC against any penalty, damage, loss, cost, expense, or charge incurred or imposed by reason of Tenant’s violation of any Legal Requirements. Upon written notice from Landlord, Tenant shall defend and pay all Claims and penalties incurred by or on behalf of the Landlord Parties to defend against any Claims, including but not limited to Claims brought by or related to Vendors (as defined below) or users, guests, invitees, subtenants, and licensees of the Public Use Unit No. 2.

10.1.2 If Tenant invites third-party contractors, subcontractors or service providers (collectively, the “**Vendors**”) into the Public Use Unit No. 2 to perform services therein, and which are not covered by the foregoing insurance or indemnity requirements, then Tenant shall require a contract with the Vendor that includes the following: (1) that Vendor is required to defend, indemnify, and hold Tenant, Landlord and HOC harmless from and against any and all claims, liability, injury, and costs (including attorney’s fees and litigation expenses) arising out of Vendor’s breach of such contract, failure to perform any obligations under such contract, or Vendor’s negligent acts or omissions, gross negligence, fraud, or willful misconduct; (2) that Vendor is required to carry sufficient insurance, to be determined by Tenant, and, if applicable, to list Landlord and HOC as additional insureds, as their interests may appear, under any such insurance policies; (3) require that Vendor is responsible for the acts and omissions of their subcontractors; (4) require that the Vendor’s insurance is primary and non-contributory; and (5) require the Vendor, if requested, to provide to Tenant with certificates of insurance evidencing their insurance coverage before they enter onto the Public Use Unit No. 2. Notwithstanding the foregoing, Tenant shall require that each Vendor carry at least \$1,000,000 in commercial general liability coverage, \$1,000,000 in excess/umbrella coverage, \$1,000,000 in automobile coverage, and statutorily required workers’ compensation coverage; provided, however, if the Vendor cannot meet such insurance requirements, Tenant will contact Landlord who will determine, in its sole discretion, whether to accept lower insurance amounts and/or to waive the insurance requirement.

**10.2 Limitations.** Any obligation of the Tenant arising from this Lease, including maintenance and insurance, is subject to, limited by, and contingent upon the appropriation and

availability of funds. Reference is hereby made to the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. §§ 5-301, et seq. (the “**LGTC**”) and Md. Code Ann., Cts. & Jud. Proc. §5-5A-02 (together with the LGTC, the “**County Tort Claims Statutes**”), each as amended from time to time. The liability of Tenant shall be limited by the County Tort Claims Statutes for any claims against or with respect to Tenant and which are within the scope of the County Tort Claims Statutes. Any indemnification given by Tenant in this Lease is not intended to create any rights or causes of action in any third parties, excluding Landlord, HOC and their respective Affiliates. Any increases in any caps shall apply to this Lease automatically.

**10.3 Payment Obligations.** The indemnifying party shall promptly pay, or cause to be promptly paid, any and all damages, losses, costs, and judgments of every kind and nature that may be incurred by, or rendered against, one or more of the indemnified parties to whom payment is owed pursuant to Section 10.1 above provided that the indemnified party tendered its defense.

**10.4 Survival.** The provisions of this Article 10 shall survive for a period of one year following the earlier of (1) the expiration or (ii) the termination of this Lease.

## **ARTICLE 11**

### **OPERATIONAL STANDARDS; CONDOMINIUM MATTERS**

**11.1 Covenants, Conditions and Restrictions and Application of Record Documents to the Public Use Unit No. 2.** The parties acknowledge and agree that the Landlord and other parties recorded the REA among the Land Records against the Condominium, including the Public Use Unit No. 2. Landlord and Tenant, and their respective successors and assigns, shall comply with the terms and provisions of the REA.

**11.2** Landlord and Tenant acknowledge and agree that for the limited purposes of the allocation of maintenance responsibilities and costs between Landlord and Tenant with respect to the Public Use Unit No. 2 only, this Lease, including **Exhibit D** attached hereto, will control over any conflicts between this Lease and any of (a) the Amended and Restated Declaration of Condominium for Alexander House Commercial Condominium, (b) Amended Condominium Plat of Alexander House Commercial Condominium, and (c) REA, all as amended from time to time in accordance with their terms. Landlord will obtain the written approval of AHDC and AHLP to this provision after the date hereof.

#### **11.3 Maintenance.**

**11.3.1** Tenant shall, during the Term hereof, at its sole cost and expense, repair, keep and maintain the Public Use Unit No. 2 in compliance with all Legal Requirements and in good order and repair, and shall not permit any nuisance to exist or be maintained in the Public Use Unit No. 2. Landlord shall have no obligation whatsoever for the repair, alteration, maintenance and replacement of any portion of the Public Use Unit No. 2.

**11.3.2** Tenant shall have the right, to be exercised in its sole and absolute discretion, to engage and pay a reputable property manager to fulfill Tenant’s obligations under this Lease and to otherwise operate and maintain the Public Use Unit No. 2.

11.3.3 Tenant shall keep all garbage, trash, rubbish or refuse in rat-proof containers in the trash room of the Premises, and Tenant shall, at its sole cost and expense, cause such trash to be placed in trash dumpsters or other containers provided by Landlord and located within the common trash room located on level B1 of the Condominium. Tenant shall use only those dumpsters and recycling areas specifically provided and/or approved by Landlord as depicted on Exhibit E attached to the PUU Lease, and shall use Commercially Reasonable Best Efforts to keep the area around the dumpsters free from debris for which it is responsible at all times.

**11.4 Landlord Inspection Rights.** Notwithstanding anything to the contrary in the REA, Landlord shall have the right to inspect the Public Use Unit No. 2 no more than once each calendar year upon prior written notice to Tenant. At the end of the fifteenth (15<sup>th</sup>) anniversary of the Rent Commencement Date of this Lease, and every tenth (10<sup>th</sup>) year anniversary thereafter, Landlord, at its sole cost and expense, shall have the right to retain a third-party consultant to conduct a property condition assessment of the Public Use Unit No. 2. If the property condition assessment identifies life safety issues, Tenant shall repair such items, at Tenant's sole cost and expense. Landlord may include Prime Landlord in its inspection of the Public Use Unit No. 2 pursuant to this Section. The purpose of these inspection rights is to protect Landlord's and Prime Landlord's respective interests in the Property upon the expiration or earlier termination of this Lease. Any inspections allowed hereunder may not unreasonably interfere with the normal operations of the Public Use Unit No. 2 and evidence of insurance reasonably acceptable to the Tenant must be provided by Landlord and Prime Landlord to the Tenant prior to such inspections.

#### **11.5 Condominium Matters.**

11.5.1 **Common Elements.** The Landlord hereby grants to Tenant, for the Term of this Lease, access to and use of the common elements of the Condominium to the same extent that the Landlord has such rights to use and access such common elements pursuant to and in accordance with the Condominium Documents; provided, however, that Tenant shall exercise such rights to use and access such common elements in strict accordance with the Condominium Documents and Legal Requirements.

11.5.2 **Annual Budget.** Section 11.5.2 of the PUU Lease provides for an annual budgeting process with respect to certain common expense and maintenance costs. Such sections 11.5.2 is included herein as Exhibit 11.5.2 and is hereby incorporated by reference.

**11.6 Security.** Tenant acknowledges and agrees that, while Landlord may (but shall not be obligated to) provide security services with respect to portions of the Elizabeth Square project, of which the Public Use Unit No. 2 is a part, Landlord is not providing any security services with respect to the Public Use Unit No. 2 and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Public Use Unit No. 2. Tenant shall be obligated, at its sole cost and expense, to provide commercially reasonable and adequate safety and security measures with respect to the Public Use Unit No. 2, which may include but shall not be limited to onsite camera monitoring and dispatch, onsite rovers, uniformed security guards, security alarm installation and monitoring and other similar measures. Within thirty (30) days after the Lease

Date, Landlord and Tenant shall each designate a point of contact for security and emergency maintenance purposes and shall advise the other party of such point of contact and his/her contact information. Each party shall have the right to change such point of contact upon ten (10) days' prior written notice to the other party.

#### **11.7 Intentionally Omitted.**

**11.8 Responsibility Matrix.** The Parties acknowledge and agree that the Responsibility Matrix (Exhibit D) sets forth the allocation of the Landlord and the Tenant's maintenance obligations hereunder, and the costs associated therewith. The Responsibility Matrix is to be used, read, reviewed, understood and interpreted together with that certain lease maintenance exhibit consisting of 169 plan sheets and which, due to file size, is not attached hereto but is available in the files of both Landlord and Tenant.

### **ARTICLE 12 CHANGES AND ALTERATIONS BY TENANT**

#### **12.1 Preconditions.**

12.1.1 On or after the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date, Tenant shall have the right at any time, and at Tenant's sole cost, expense, and risk, to modify, remodel, rebuild, alter, and/or totally reconstruct (each, a "**Reconstruction Activity**") the interior of the Public Use Unit No. 2, including its Improvements (or any portion thereof), provided that any Reconstruction Activity shall not have a material adverse effect upon any other units in the Condominium and shall be (i) consistent with the permitted use of the Public Use Unit No. 2 as described in Section 3.1 hereof, or (ii) required by Legal Requirements, or (iii) related to a casualty or Taking (and then, incident to a rebuilding of the Public Use Unit No. 2 and the Improvements), or (iv) related to the demolition of the interior of the Public Use Unit No. 2 (or any portion thereof) which have become obsolete, unsafe, unused, or uneconomical, or (v) otherwise necessary or desirable in Tenant's good faith business judgment and provided that Tenant has not otherwise previously been in default beyond applicable notice and cure periods under this Lease for failure to maintain the Public Use Unit No. 2.

12.1.2 **Compliance with Laws.** All Reconstruction Activities shall be in accordance with Legal Requirements, including applicable zoning laws and condominium laws, as then in effect, and the Covenants, Conditions and Restrictions. In furtherance of the foregoing, Landlord and Tenant shall reasonably cooperate with one another, and with Prime Landlord, in order to amend the Condominium Documents and/or the Covenants, Conditions and Restrictions if required in connection with a Reconstruction Activity.

#### **12.1.3 Prior Review.**

(a) A Reconstruction Activity shall not require the prior approval of the Landlord if the Reconstruction Activity (i) subject to the further provisions of this subsection, does not alter the public recreational and aquatic use of the Public Use Unit No. 2, (ii) does not adversely affect the general common elements or the structural integrity of the Condominium, (iii) does not



require an amendment to this Lease, the Condominium Documents or the REA, (iv) does not materially or adversely affect the residential and garage units of the Condominium and their use and occupancy, and (v) does not require any modifications to the Existing Approvals and otherwise complies with all Legal Requirements. Notwithstanding anything herein to the contrary, the Tenant shall not be permitted to change the permitted use of the Public Use Unit No. 2, as described in Section 3.1, until the twentieth (20<sup>th</sup>) anniversary of the Rent Commencement Date. Following such date, any such request for a change in the permitted use shall be subject to the provisions of this Article 12.

(b) Any Reconstruction Activity shall require the Tenant to comply with the provisions of this Section 12.1.3(b), whether approval of the Reconstruction Activity is required or not required by Section 12.1.3(a) above. For any Reconstruction Activity, Tenant shall submit to Landlord (i) a description of the Reconstruction Activity, (ii) any proposed revisions to this Lease, the Condominium Documents, and the REA, or Legal Requirements, (iii) the methods, schedules, plans and drawings for the Reconstruction Activity, and (iv) any other information reasonably requested by Landlord (“**Submission**”).

(c) If Landlord approval is required pursuant to Section 12.1.3(a) above, such approval shall not be unreasonably withheld, delayed or conditioned and, within thirty (30) Business Days of Landlord’s receipt of the Submission, Landlord shall deliver written notice to Tenant (i) rejecting the Reconstruction Activity, (ii) approving the Reconstruction Activity with no comments, or (iii) conditionally approving the Reconstruction Activity, subject to Landlord’s detailed comments. If the Tenant disagrees with the Landlord’s determination concerning the Reconstruction Activity, the Parties shall negotiate the Landlord’s determination and shall finalize any negotiations with respect to the Reconstruction Activity within sixty (60) days from Tenant’s initial Submission. If necessary, the Parties shall modify the Existing Approvals and/or execute an amendment to this Lease, the Condominium Documents and/or the REA to reflect the results of such negotiations, in each case with the Prime Landlord’s written consent. To the extent that Landlord’s comments include revisions to plans and drawings, Tenant shall incorporate into the drawings such changes as are reasonably necessary to satisfy the detailed comments from Landlord and Landlord shall be included in any and all processing of the plans and drawings with the applicable governmental authorities. Upon receiving an unconditional approval from Landlord of the Reconstruction Activity the Submission shall not be modified without the prior written review and approval of Landlord, which approval shall not be unreasonably withheld. A Reconstruction Activity shall not begin until Tenant has received the prior written approval of Landlord, if required, in accordance with the provisions of Section 12.1.3(a) above.

**12.1.4 Inspection by Landlord.** Landlord shall have access to the construction site for any Reconstruction Activity for inspections solely for the purpose of determining whether the work or improvements are being performed in accordance with the terms of this Lease and the Landlord’s approval of the Reconstruction Activity, provided that Landlord inspections shall not unduly disrupt or delay Tenant’s work and shall be scheduled in advance with the active cooperation of the construction supervisor of Tenant. Landlord shall have the right to include the Prime Landlord in any inspections pursuant to this Section 12.1.4. By inspecting, having the right to inspect, or requiring the correction of any construction, Landlord accepts no liability for any construction defects, flaws, or mistakes, and waives none of its legal rights. No

inspection conducted by Landlord shall be construed to be a warranty, guarantee, or assurance of the adequacy of Tenant's or any contractor's work, or of the improvements constructed. The inspection conducted is for Landlord's sole benefit, and is for no other party's benefit, including but not limited to, Tenant's.

12.1.5 **Disclaimer of Liability.** Landlord accepts no liability and waives no rights under this Lease by reason of its approval of the method, schedule, plans, and construction drawings or specifications for any Reconstruction Activity, nor shall its approval be construed to be a warranty regarding the quality or means of construction.

## **ARTICLE 13 ASSIGNMENTS, LEASES**

### **13.1 Assignments by Tenant.**

13.1.1 **Approval Required.** Tenant shall deliver to Landlord prior notice (a **"Disposition Notice"**) of any proposed transfer or assignment of this Lease to a third party (collectively, the **"Tenant Interests"**) (each such assignment of Tenant Interests shall be referred to as a **"Disposition"**). A proposed transfer or assignment to another governmental authority, agency or entity of Montgomery County, Maryland shall not be considered a Disposition under this Lease, provided that (i) any such transferee or assignee shall be bound by all of the terms of this Lease, including but not limited to the terms of Article 12, and (ii) Tenant shall remain liable for the performance of each and every obligation hereunder subsequent to such Disposition, subject to the availability of funds and/or the Montgomery County Council's appropriation of funds.. In connection with any Disposition, (a) Landlord's approval of any such Disposition shall either be granted or denied within twenty (20) Business Days following Tenant's written request therefor, (b) such approval shall not be unreasonably withheld, conditioned or delayed, (c) such approval may be conditioned upon an amendment to this Lease which, among other things, shall modify the provisions of Articles 6, 9, 10, 12, 13 and 14 hereof, and (d) any purported Disposition in violation of this prohibition shall be null and void.

13.1.2 **Conditions to Tenant Assignment.** Each assignment by Tenant of any of the Tenant Interests that is approved in writing by Landlord, shall be made expressly subject to the terms and conditions of this Lease, and shall require:

(a) That the assignment of this Lease shall not be binding on Landlord until a duly executed copy of the assignment and in the case of a non-governmental assignee, an amendment to this Lease in form reasonably acceptable to Landlord reflecting normal and customary commercial lease provisions, is delivered to Landlord. The assignment and the amendment shall designate the name of the assignee and the address to which all notices required by this Lease shall be sent.

(b) That the assignee of this Lease shall, for itself, its successors and assigns, and expressly for the benefit of Landlord, assume by a written instrument in form and content reasonably satisfactory to Landlord, all rights and obligations of Tenant under this Lease for the then unexpired Term, as the same may be amended pursuant to this Article 13, including without

limitation all obligations of Tenant not previously performed under this Lease (as amended) required to be performed by Tenant prior to the expiration of the Lease (as amended), and shall have agreed to be subject to all of the agreements, conditions, and restrictions to which Tenant is subject under this Lease (as amended). However, such assignment shall not relieve Tenant of any liabilities and obligations previously accrued under this Lease prior to the date of the assignment and amendment.

**13.2 Non-Subordination.** Nothing contained in this Article 13 or in any other section of this Lease shall be deemed to constitute or allow a subordination of Landlord's leasehold interest in the Public Use Unit No. 2 at the expiration or earlier termination of the Term pursuant to Section 2.4 hereof.

**13.3 No Right to Mortgage or Sublease.** Tenant shall not have the right to mortgage its interest (or any portion thereof) in the Public Use Unit No. 2. Tenant shall not have the right to sublease all or any portion of the Public Use Unit No. 2 without the Landlord's prior written consent, not to be unreasonably withheld, conditioned or delayed, but which approval may be conditioned upon some or all of the requirements of Section 13.1 hereof. Notwithstanding the foregoing, Tenant shall have the right, without the prior written consent of Landlord, to sublease all or any portion of the Public Use Unit No. 2 to another governmental authority, agency or entity of Montgomery County, Maryland, provided that (i) any such sublessee shall be bound by all of the terms of this Lease, including but not limited to the terms of Article 12 and (ii) that the Tenant shall remain liable for the performance of each and every obligation hereunder subsequent to such Lease.

**13.4 Landlord's Right to Assign.** Landlord reserves the right to assign its leasehold interest under this Lease to any entity, public or private, which succeeds to Landlord's leasehold interest in the Public Use Unit No. 2.

**13.4.1 Assignee's Name and Address.** Landlord's assignment shall not be binding on Tenant until a duly executed copy of the assignment is delivered to Tenant, designating the name and address of the assignee to which all notices required by this Lease are to be sent.

**13.4.2 Assignee's Obligations.** Landlord's assignment shall require the assignee to assume all obligations of Landlord under this Lease after the date of assignment up to and including the expiration or sooner termination of the Term, subject to Tenant's performance of all duties and obligations under this Lease.

**13.4.3 Effect on Landlord.** Upon such assignment, Landlord shall be deemed relieved of all future obligations under this Lease; however, such assignment shall not relieve Landlord of any then accrued liabilities and obligations under this Lease prior to the date of the assignment.

## **ARTICLE 14**

### **TERMINATION AND DEFAULT PROVISIONS**

**14.1 Default and Event of Default by Tenant under this Lease.** Subject to the provisions of Section 14.2 hereof, the following shall constitute an event of default by Tenant (“**Tenant Event of Default**”):

14.1.1 Tenant shall fail to make any payment to Landlord as and when due under this Lease subject to any applicable notice and cure provisions;

14.1.2 Tenant shall fail to perform any other obligation contained in this Lease subject to any applicable notice and cure provisions;

14.1.3 Any willful and material misrepresentation by Tenant in (a) this Lease or (b) any other material submission to Landlord or (c) made by Tenant on behalf of Landlord to any governmental authority;

14.1.4 Except for remodeling or Reconstruction Activities in the event of a casualty, the Public Use Unit No. 2 is abandoned for a period of 365 days or more (“**Goes Dark**”); or

14.1.5 Tenant’s failure to meet its repair and maintenance obligations under the Responsibility Matrix (Exhibit D).

**14.2 Tenant Event of Default; Notice and Cure.** No Tenant Event of Default shall be deemed to have occurred unless notice of such default is delivered to Tenant and Tenant fails to cure such default within thirty (30) Days after delivery of the notice of the default to the extent such a cure is reasonably able to be effected within said 30-Day period, and if a longer time is necessary, Tenant shall commence the cure within said 30-Day period and use reasonable and diligent efforts to pursue the same thereafter. For the avoidance of doubt, the lack of immediately available funds and/or Tenant’s failure to receive appropriations from the Montgomery County Council to meet its obligations under this Lease will not excuse or otherwise bar a Tenant Event of Default.

**14.3 Cure of Tenant’s Default by Landlord.** Without prejudice to any other right or remedy of Landlord, if there shall be a Tenant Event of Default, Landlord may cure the same at the expense of Tenant immediately and with simultaneous notice to Tenant in the case of (a) emergency; (b) where such Tenant Event of Default shall result in a violation of Legal Requirements (unless such violation does not need to be cured immediately in order to avoid incurring any fines, penalties or other sanctions) or the cancellation of any insurance policy maintained by Landlord; (c) where the health and safety of employees, invitees, guests or users in the Public Use Unit No. 2 is at risk; or (d) where Tenant or any of its contractors, subcontractors, employees or agents interferes with Landlord activities or operations other than on a temporary basis and in a *de minimis* manner. All reasonable costs incurred by Landlord in curing such Tenant Event of Default, including, without limitation, reasonable attorneys’ fees, shall be reimbursable by Tenant within thirty (30) Days after Landlord’s delivery to Tenant of a written demand therefor,

together with interest thereon, as additional rent, from the date such costs were paid by Landlord, at the Default Rate. Tenant's obligations under this Section 14.3 shall survive the expiration or termination of this Lease if Landlord has provided a notice of a Tenant Event of Default prior to such expiration or termination and/or provides a notice of a Tenant Event of Default within ninety (90) days of such expiration or termination.

**14.4 Remedies Available to Landlord.** The Landlord and the Tenant wish to encourage the amicable resolution of matters constituting a Tenant default without the burden or financial cost of litigation. Accordingly, the Landlord and the Tenant agree not to file suit in any court, or to otherwise commence any action or proceeding, unless and until appointed representatives from the Housing Opportunities Commission and Montgomery County Maryland's Executive Branch ("**Appointed Representatives**") meet and attempt to negotiate a resolution of any Tenant Event of Default. If the Appointed Representatives are unable to reach a consensus and issue a joint, written decision specifying the mutually agreeable resolution of the Parties with respect to the Tenant Event of Default within sixty (60) days of their initial meeting, then the Parties shall be free to pursue resolution by any lawful means, whether at law or in equity. The Appointed Representatives shall not commence an initial meeting until such time as Tenant has been provided notice of a Tenant Event of Default and the applicable cure period has expired.

If the Appointed Representatives do not reach a mutually agreeable resolution of a Tenant Event of Default as described above, the Landlord shall have the right to:

- (a) recover from Tenant any sums accrued but unpaid to Landlord under this Lease,
- (b) obtain specific performance with respect to any obligation of Tenant under this Lease where Landlord's remedy at law would otherwise be inadequate or unavailable,
- (c) seek monetary damages, except for special, consequential or punitive damages, and
- (d) in the event the Public Use Unit No. 2 Goes Dark, terminate this Lease.

If this Lease is terminated pursuant to Section 14.4(d) above, both Parties shall be relieved of any future liability under this Lease except for any obligations or liabilities that expressly survive the termination of this Lease.

**14.5 Default by Landlord.** The following shall constitute an event of default by Landlord ("**Landlord Event of Default**"):

14.5.1 Failure by Landlord to perform any material obligation of Landlord under this Lease, including but not limited to:

- (a) Landlord's failure to maintain the Condominium in a manner that Adversely Impacts Tenant's or Tenant's employees, invitees, guests, or users.

(b) Landlord's failure to meet its repair and maintenance obligations under the Responsibility Matrix (Exhibit D) and such failure Adversely Impacts Tenant or Tenant's employees, invitees, guests, or users.

(c) Landlord's violation of any Legal Requirements that Adversely Impacts Tenant's or Tenant's employees, invitees, guests, or users.

14.5.2 Landlord's interference with Tenant's business operations at the Public Use Unit No. 2 (it being understood that Landlord's disapproval of a Reconstruction Activity in accordance with Article 12 hereof shall not be deemed to constitute interference with Tenant's business operations at the Public Use Unit No. 2).

14.5.3 Any willful and material misrepresentation by Landlord in this Lease.

For purposes of this Section 14.5, the term "**Adverse Impact**" or "**Adversely Impacts**" shall mean a Landlord Event of Default which would (i) materially and adversely affect the use of the Public Use Unit No. 2 by Tenant or its employees, invitees, guests, or users, (ii) be materially and adversely inconsistent with the rights and obligations of Landlord and Tenant under this Lease, or (iii) materially and adversely increase Tenant's costs of operating its business from the Public Use Unit No. 2.

**14.6 Notice and Cure; Remedies Available to Tenant.** No Landlord Event of Default shall have been deemed to have occurred unless notice of such default is delivered to Landlord, and Landlord fails to cure such default within thirty (30) days after delivery of such notice, to the extent such a cure is reasonably able to be effected within said 30-day period, and if a longer time is necessary (including, without limitation, in order to obtain the approval of the Housing Opportunities Commission for such remedial action, if necessary), Landlord shall commence the cure within said 30-day period and use reasonable and diligent efforts to pursue the same thereafter. Notwithstanding the foregoing, in the case of any Landlord Event of Default under Section 22.1 hereof, such cure period shall be ten (10) Business Days after delivery of such notice of default. Upon the occurrence of a Landlord Event of Default, Tenant shall be entitled (a) to terminate this Lease by written notice to Landlord, in which event both parties shall be relieved of any further liability under this Lease except for any obligations or liabilities that expressly survive the termination of this Lease, (b) to obtain a decree of specific performance to enforce the obligations of Landlord under this Lease where Tenant's remedy at law would otherwise be inadequate or unavailable, or (c) to seek actual monetary damages provided, however, that in no event shall Landlord be liable for any consequential, special or punitive damages in connection with this Lease or any of Landlord's obligations hereunder. Nothing contained herein shall be deemed to limit the right of Tenant to enforce the indemnification obligations of Landlord established under this Lease, all of which such obligations shall survive any termination of this Lease.

**14.7 Cure of Landlord's Default by Tenant.** Without prejudice to any other right or remedy of Tenant provided for herein, if there shall be a Landlord Event of Default which has not been cured by Landlord within the time period provided for in Section 14.6, Tenant shall deliver to Landlord a second notice of such default and, if Landlord has not cured or commenced cure of such Landlord Event of Default within ten (10) days after delivery of such second notice, then

Tenant may cure the same at the expense of Landlord immediately and with simultaneous notice to Landlord, but only in the case of (a) Emergency or (b) where such Landlord Event of Default shall result in a violation of Legal Requirements (unless such violation does not need to be cured immediately in order to avoid incurring any fines, penalties or other sanctions) or the cancellation of any insurance policy maintained by Tenant. All reasonable costs incurred by Tenant in curing such Landlord Event of Default, including, without limitation, reasonable attorneys' fees, shall be reimbursable by Landlord within thirty (30) days after Tenant's delivery to Landlord of a written demand therefor, together with interest thereon from the date such costs were paid by Tenant, at the Default Rate. Notwithstanding the foregoing, in the exercise of its rights under this Section 14.7, Tenant shall not affect the general common elements, the structural integrity of the Condominium or the façade of the building; shall not affect the residential and garage units of the Condominium and/or their use and occupancy, and shall not pursue any remedy or cure which would require any modifications to the Existing Approvals, it being the express agreement of the parties that Tenant's self-help remedies be limited in the foregoing manner. For purposes of this Section 14.7, the term "Emergency" shall mean a situation in which immediate action is necessary to avoid imminent personal injury, imminent material property damage or suspension of any necessary services to the Public Use Unit No. 2.

**14.8 No Waiver of Breach.** No failure by Landlord or by Tenant to insist upon the strict performance by the other of any of the terms of this Lease, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by Landlord or by Tenant and no breach thereof, shall be waived except by a written instrument executed by Landlord or by Tenant, whichever the case may be. No waiver of any default of Landlord or Tenant shall be implied from any omission by the other to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition by the other.

## **ARTICLE 15 DAMAGE AND DESTRUCTION**

**15.1 Tenant's Rights, Duties, and Obligations.** The following provisions of this Article 15 apply to a fire or other casualty with respect to the Public Use Unit No. 2.

**15.1.1 General.** If the Public Use Unit No. 2, or any part thereof, becomes damaged or destroyed by fire or other casualty, Tenant, at its option, may (a) repair, alter, change, substitute for, restore, replace, or rebuild the same, to such extent, condition, and character as Tenant shall determine, in its reasonably exercised business judgment, taking into account then existing market conditions (individually "**Repair**", and collectively, "**Repairs**"), or (b) make safe and secure, and sightly, the damaged or destroyed Public Use Unit No. 2, removing any of the Improvements as Tenant shall reasonably determine ("**Secure**") until such time as Tenant may elect to proceed under clause (a). Tenant shall proceed expeditiously to effect a Repair, subject to Tenant's rights under this Article 15 and in compliance with the Landlord approval and inspection rights under Article 12. Such approvals as may be required by Landlord shall not be unreasonably

withheld, conditioned or delayed. All costs to Repair and Secure shall be borne by Tenant, regardless of whether such casualty loss is covered by insurance and whether the insurance proceeds are sufficient to cover Tenant's expenses. All Repairs shall be made in conformity with the provisions of this Lease.

15.1.2 **Proof of Loss.** Whenever any part of the Public Use Unit No. 2 is damaged or destroyed, Tenant shall promptly make proof of loss and shall proceed promptly to endeavor to collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction.

15.1.3 **Application of Fire and Extended Coverage Insurance Proceeds and Obligation to Reconstruct.** Except as otherwise provided in this Article 15, all sums payable for loss and damage arising out of the casualties covered by the fire and extended coverage policies shall be used to restore and, if necessary, rebuild the Public Use Unit No. 2 existing or being constructed prior to such casualty.

All amounts for the Public Use Unit No. 2 received upon such policies – whether Landlord's or Tenant's policies, as applicable – and any interest thereon, shall be used, to the extent required, for the Repair of the damaged Public Use Unit No. 2 so that such Public Use Unit No. 2 shall be restored to a condition comparable to the condition prior to the loss or damage (or, upon agreement by Landlord and or Tenant, as the case may be), replaced or partially replaced with new property of a design and density which are consistent with the former Public Use Unit No. 2, the use set forth in Section 3.1 and Legal Requirements. If the Public Use Unit No. 2 is completely destroyed (or is damaged to a degree that Tenant determines that it is not practicable to restore same), Tenant may construct new improvements as if the same is a Reconstruction Activity requiring Landlord approval and inspections, subject to the requirements of Article 12 hereof.

15.1.4 **Covenant for Commencement and Completion of Reconstruction.** Tenant covenants and agrees to commence the Repair, if at all, as required by this Article 15, and to thereafter complete fully such Repair as expeditiously as possible.

**15.2 Performance of Work.** Except as otherwise provided in this Article 15, the conditions under which any work is to be performed, and the Landlord approval and inspection rights, and methods of proceeding with and performing the same, shall be governed by the provisions of Article 12 hereof. All Repairs by Tenant shall be completed free and clear of mechanics' and materialmen's liens, in compliance with this Lease.

**15.3 Surrender of Lease.** Except as otherwise provided in this Article 15, no destruction or damage to the Public Use Unit No. 2, or any part thereof, by fire or any other casualty, shall permit Tenant to surrender this Lease or shall relieve Tenant from its obligations under this Lease.



## **ARTICLE 16 LIENS**

**16.1** Tenant shall keep the Public Use Unit No. 2 free and clear of all liens, and if a lien originating with or otherwise relating to the use, occupancy, construction, or Reconstruction Activity with respect to the Public Use Unit No. 2 is imposed on any remaining portions of the Condominium, Tenant shall cause any such lien to be removed within thirty (30) days of written notice thereof.

## **ARTICLE 17 QUIET ENJOYMENT**

**17.1** Provided Tenant is not in default under this Lease, then, upon paying the Rent herein and complying with all other terms and conditions of this Lease to be met and complied with by Tenant, Tenant shall quietly and peaceably enjoy the Public Use Unit No. 2 without hindrance or molestation by Landlord or by anyone claiming by, under, or through Landlord.

## **ARTICLE 18 CONDEMNATION**

**18.1 Notice of Taking.** 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 Condominium, including the Public Use Unit No. 2 by the government of the United States, State of Maryland, Montgomery County 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 each Party may also appear in such proceeding and be represented by counsel

**18.2 Special Account.** Subject to Section 18.4 below, the full amount of any award for any Taking of the Public Use Unit No. 2 (the “**Tenant’s Award**”) shall be paid to the Tenant.

**18.3 Total Taking.** In the event of a permanent Taking of (a) the fee title to the Prime Landlord Land on which the Condominium is constructed, or (b) the entire leasehold estate under the Condominium regime, (c) the Condominium building, or (d) the Public Use Unit No. 2 (each event shall be referred to as a “**Total Taking**”), this Lease shall 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 Landlord on or before the date of the Total Taking shall be paid in full.

**18.4 Partial Taking; Procedures and Criteria for Course of Action.** In the event of a permanent Taking that is less than a Total Taking and which adversely affects the Public Use Unit No. 2 (a “**Partial Taking**”):

18.4.1 if Tenant reasonably determines that the continued use and occupancy of the remainder of the Public Use Unit No. 2 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 and any other Tenant funds as are demonstrably available for the purpose of paying for such restoration (the “**Restoration Criteria**”), then, at Tenant’s option, the Public Use Unit No. 2 shall be restored.

18.4.2 if Tenant reasonably determines that the continued use and occupancy of the remainder of the Public Use Unit No. 2 by Tenant is not or cannot be made to be economically viable, structurally sound, and otherwise feasible, then this Lease may be terminated pursuant to subsection 18.6.

**18.5 Restoration.** If a decision is made pursuant to subsection 18.4 to restore the remainder of the Public Use Unit No. 2, Tenant shall promptly proceed, at its expense, to commence and complete the restoration. Tenant may use the entire Tenant’s Award for such restoration, and may retain for its own use any portion of the Tenant’s Award remaining after the completion of the restoration. If Tenant has decided pursuant to subsection 18.4 to restore the remainder of the Public Use Unit No. 2, and if the cost of the restoration shall exceed the amount of the Tenant’s Award, the deficiency shall be paid by Tenant. Any restoration shall be performed in accordance with the Article 12 hereof.

**18.6 Termination upon Non-Restoration.** Following a Partial Taking, if a decision is made pursuant to subsection 18.4 that the remaining portion of the Public Use Unit No. 2 is not to be restored, Tenant may surrender the Public Use Unit No. 2 to Landlord and, if so surrendered, this Lease shall thereupon be terminated without liability or further recourse to the parties hereto.

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

## **ARTICLE 19 NOTICES**

**19.1 Service to Tenant.** All notices, demands, submissions or requests to Tenant shall be deemed to have been properly given if they meet the requirements of Section 19.3 below and are addressed as follows:

If to Tenant, to:           Montgomery County, Maryland  
                                      101 Monroe Street, 2<sup>nd</sup> Floor  
                                      Rockville, MD 20850  
                                      Attention: Chief Administrative Officer  
                                      *and*  
                                      Montgomery County, Maryland  
                                      Department of General Services  
                                      101 Monroe Street, 9th Floor  
                                      Rockville, MD 20850  
                                      Attention: Director

With a copy to: Office of County Attorney  
101 Monroe Street  
Executive Office Building, 3rd Floor  
Rockville, Maryland 20850-2419

and to such other addresses and to the attention of such other parties as Tenant may designate by notice to Landlord. If any of the foregoing parties changes its office address as herein stated, such party shall promptly give notice thereof to Landlord.

**19.2 Service to Landlord.** All notices, demands, submissions or requests to Landlord shall be deemed to have been properly given if they meet the requirements of Section 19.3, below, and are addressed as follows:

If to Landlord, to: EH III Recreational Center LLC  
c/o Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, MD 20895  
Attention: President/Executive Director

With copies to: Office of General Counsel  
Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, Maryland 20895  
Attention: General Counsel

Gallagher Evelius & Jones LLP  
218 N. Charles Street, Suite 400  
Baltimore, Maryland 21201  
Attention: Mark P. Keener, Esquire  
Email: mkeener@gejlaw.com

and to such other addresses and to the attention of such other parties as Landlord may designate by notice to Tenant. If Landlord changes its office address as herein stated, Landlord promptly shall give notice to Tenant.

**19.3 Service Procedures.** All notices, demands, or requests shall be in writing and shall be: (a) personally delivered; (b) sent prepaid for next business day delivery by a nationally recognized overnight courier service; or (c) sent via electronic e-mail provided such notice, demand or request is also sent in the manner set forth in either subclause (a) or (b) above. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or on the first Business Day upon which delivery is attempted but cannot be made due to refusal of, or failure by the addressee to accept, such attempted delivery, or in the case of electronic mail on the date sent (provided such notice is also delivered as otherwise provided in subclauses (a) and (b) above).

## **ARTICLE 20 GOVERNING LAW**

**20.1** This Lease will be governed by and construed pursuant to the laws of the State of Maryland (without reference to choice of law principles). Any action or proceeding arising hereunder shall be brought in the courts of Montgomery County, Maryland.

## **ARTICLE 21 SURRENDER**

**21.1 Surrender of Public Use Unit No. 2.** On the expiration of the Term, Tenant shall surrender the Public Use Unit No. 2 to Landlord without delay.

**21.2 Removal of Personal Property, Trade Fixtures.** Tenant may remove any of the Improvements at or prior to the termination or expiration of this Lease.

**21.3 Personal Property and Trade Fixtures Not Removed.** Any Improvements and personal property of Tenant which shall remain in the Public Use Unit No. 2 thirty (30) Days after the termination or expiration of the Term of this Lease shall be deemed to have been abandoned and either may be retained by Landlord as its property or disposed of without accountability in such manner as Landlord may see fit. In no event shall Landlord be responsible for any loss or damage occurring to any property owned by Tenant which is not removed within thirty (30) days after the termination or the expiration of the Term of this Lease.

**21.4 Survival of Article.** The provisions of this Article 21 shall survive for a period of one year following the earlier of (i) the termination or (ii) the expiration of this Lease.

## **ARTICLE 22 CERTIFICATES BY LANDLORD AND TENANT**

**22.1 Certificate by Landlord.** Landlord agrees, upon not less than ten (10) Business Days' prior notice from Tenant, to execute, acknowledge and deliver a written statement or estoppel certificate to Tenant, or to any of Tenant's security rating agencies, auditors, purchasers, or such other person or entity as Tenant may specify or to any governmental entity, if required by such governmental entity, indicating whether: (a) this Lease is unmodified and in full force and effect (or if modified whether this Lease is in full force and effect as modified and states the modifications); (b) states to the best knowledge of Landlord whether Tenant is in default in keeping, observing and performing any of the terms of this Lease, and, if in default, specifies each such default of which Landlord has knowledge; (c) certifies to the best knowledge of Landlord as to the existence of any offsets, counterclaims or defenses to this Lease on the part of Tenant or Landlord; and (d) sets forth any other matters which reasonably may be requested except as to proprietary or confidential information. It is intended that any such statement delivered pursuant to this Section 22.1 may be relied upon by any prospective assignee of Tenant's interest in this Lease, but reliance on such certificate may not extend to any default of Tenant as to which Landlord shall have no actual knowledge. Tenant may also request a recognition certificate from

Landlord for any subtenant and Landlord agrees to execute the same so long as it is on a form reasonably acceptable to Landlord that is consistent in all respects with the terms of this Lease.

**22.2 Certificate by Tenant.** Tenant agrees, upon not less than ten (10) Business Days' prior notice from Landlord, to execute, acknowledge and deliver to Landlord and/or to any person or governmental entity (if required by such governmental entity) designated by Landlord, a written statement or estoppel certificate indicating whether: (a) this Lease is unmodified and in full force and effect (or if modified, whether this Lease is in full force and effect as modified and states the modifications); (b) states to the best knowledge of Tenant whether Landlord is in default in keeping, observing and performing any of the terms of this Lease and, if in default, specifies each such default of which Tenant has knowledge; (c) certifies to the best knowledge of Tenant as to the existence of any offsets, counterclaims or defenses to this Lease on the part of Landlord or Tenant; and (d) sets forth any other matters which reasonably may be requested except as to proprietary or confidential information. It is intended that any such statement delivered pursuant to this Section 22.2 may be relied upon by Landlord or any prospective successor to Landlord's interest in the Public Use Unit No. 2 or the Condominium, or any person or governmental entity, if required by such person or governmental entity but reliance on such certificate may not extend to any default of Landlord as to which Tenant shall have no actual knowledge.

## **ARTICLE 23 REPRESENTATIONS AND WARRANTIES**

**23.1 Landlord's Representations and Warranties.** Landlord hereby represents and warrants that:

23.1.1 Landlord is a limited liability company and is in good standing under the laws of the State of Maryland, and is authorized to conduct the business in which it is engaged.

23.1.2 Landlord has power and authority to enter into this Lease with Tenant.

23.1.3 Landlord has not received any written notice of any actions, suits, arbitrations, governmental investigations or pending proceedings to which Landlord is a party which might adversely affect Landlord's right to enter into or perform under this Lease.

23.1.4 Landlord has not received any written notice of any condemnation proceedings pending or threatened with respect to the Condominium or the Public Use Unit No. 2.

23.1.5 Landlord has not received any written notice of the imposition of any special taxes or assessments to be levied against the Condominium or the Public Use Unit No. 2.

23.1.6 Landlord has not received any written notice that it is in violation of the order of any court or governmental authority or any contract to which it is a party by entering into this Lease.

**23.2 Tenant's Representations and Warranties.** Tenant represents and warrants that:

23.2.1 Tenant is a political subdivision of the State of Maryland and is authorized to conduct the business in which it is engaged.

23.2.2 Tenant is authorized to execute, deliver and perform under this Lease.

23.2.3 Tenant has not received any written notice that it is in violation of the order of any court or governmental authority or any contract to which Tenant is a party by entering into this Lease.

23.2.4 Tenant has not received written notice of any actions, suits, arbitrations, government investigations or pending proceedings to which Tenant is a party which might adversely affect Tenant's right to enter into or perform under this Lease.

23.2.5 Tenant shall perform its obligations under this Lease diligently and in good faith.

**23.3 Notices of Changes in Representations and Warranties.** Each party shall give the other prompt notice of the occurrence of any event or the receipt of any notice or knowledge the effect of which would be to make any representation or warranty of the first party untrue or misleading in any material respect.

**23.4 Survival.** The representations and warranties of the parties, whether contained in this Article or elsewhere in this Lease, shall survive the execution and delivery of this Lease for a period of one (1) year after the Lease Date.

## **ARTICLE 24 RESERVED**

## **ARTICLE 25 INTENTIONALLY OMITTED**

## **ARTICLE 26 CONSTRUCTION OF TERMS AND MISCELLANEOUS**

**26.1 Invalid or Unenforceable Terms.** If any provision of this Lease or the application of such provision to any person or situation shall be held invalid or unenforceable, the remainder of this Lease and the application of such provision to persons or situations other than those held invalid or unenforceable shall not be affected and shall continue valid and be enforced to the fullest extent permitted by law. Any such invalid or unenforceable provision shall be deemed automatically reformed to render same as close in meaning and effect as the original provision but still valid and enforceable.

**26.2 Headings, Captions, Etc.** Article headings, subheadings and captions of this Lease and the Table of Contents contained in this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

**26.3 Relationship of Parties.** This Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association or agency between Landlord and Tenant, the sole relationship between these Parties being that of landlord and tenant with respect to the Public Use Unit No. 2.

**26.4 Recordation of Lease.** Tenant shall record this Lease at Tenant's sole cost and expense. Upon the expiration or sooner termination of this Lease, Tenant covenants that it will, at the request of Landlord, execute, acknowledge and deliver an instrument terminating this Lease, which termination shall be recorded among the Land Records at Landlord's sole cost and expense.

**26.5 Gender, Number and Persons.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders. Unless the context shall otherwise indicate, the word "person" or any word having a similar meaning shall have the definition provided in Section 1.1.

**26.6 Accounting Terms.** Accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in effect in the United States from time to time.

**26.7 Entire Lease; Amendment.** This Lease and the Exhibits hereto contain the entire agreement between the Parties with respect to the subject hereof, and all other prior communications and agreements, written or oral, are superseded hereby. This Lease may be amended or modified only by an instrument in writing, executed by the Parties and consented to by the Prime Landlord.

**26.8 Successors and Assigns.** The terms herein contained shall bind and inure to the benefit of the Parties and their successors and permitted assigns, except as otherwise provided herein.

**26.9 Duplicates.** This Lease may be executed in one or more duplicates, each of which shall be deemed an original.

**26.10 Construction of Lease.** In no event shall this Lease be construed more strongly against any one person solely because such person or its representative acted as draftsman hereof, it being acknowledged by the Parties hereto that both have been represented by competent legal counsel, that this Lease has been subject to substantial negotiation, and that all parties have contributed substantially to the preparation of this Lease.

**26.11 Exhibits.** Each Exhibit to this Lease is incorporated into this Lease by reference and forms an essential part of this Lease.

**26.12 No Commissions.** Each Party represents to the other that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Lease by such Party, and each Party agrees to indemnify, and hold harmless the other with respect to such representation and warranty.

**26.13 Computation of Time.** In the computation of any period of time provided for by this Lease or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next Business Day.

**26.14 Landlord's Approvals and Consents.** Except as otherwise specified in this Lease with respect to approvals deemed to have been given by Landlord, wherever an approval or consent is required by Landlord under this Lease, such approval or consent shall be deemed to have been validly given only if given by the President/Executive Director of HOC or his/her authorized designee.

**26.15 Time of the Essence.** Time is of the essence with respect to each party's performance of its obligations under this Lease.

**26.16 Patents, Trademarks, and Royalties.** All payments for royalties and patent rights, registered designs, trademarks or names, copyright and other protected rights, and all fees which are or became payable for or in connection with any matter or thing used or required to be used in Tenant's performance under this Lease or to be supplied by Tenant under this Lease, shall be the responsibility of Tenant and shall be paid by Tenant to those to whom and at the time of which they become payable.

**26.17 No Merger.** The Parties expressly agree that absent the express written agreement of Landlord and Tenant, Landlord's leasehold interest in the Public Use Unit No. 2 shall not merge with this Lease during the Term of this Lease regardless of whether the same Person is the owner of more than one estate.

**26.18 No Liability for Officials and Others.** Landlord and Tenant agree, notwithstanding any provision of this Lease to the contrary, no director, officer, agent, official, representative, member, partner or employee acting on behalf of Landlord or Tenant, shall have any personal or individual liability for the performance of any covenant, term or condition under this Lease, or for the cure of any breach under this Lease.

**26.19 Effective Date of Lease.** The Lease Date of this Lease is the date set forth in the preamble hereto.

**26.20 County as Tenant.** The County's obligations under this Lease are as a Tenant. Nothing in this Agreement is intended to be, and shall not be construed as, a limitation of the police powers of Montgomery County, Maryland.

**26.21 Intentionally Deleted.**

**26.22 Amendments to the Condominium Documents, the Condominium Plat, and the Covenants, Conditions and Restrictions/Rules.** An amendment the Condominium Documents, the Condominium Plat and the Covenants, Conditions and Restriction shall not require the prior approval of the Tenant if the amendment (i) does not adversely affect Tenant's use and occupancy of the Public Use Unit No. 2, (ii) does not adversely affect the general common



elements or the structural integrity of the Condominium, and (iii) does not require any modifications to the Existing Approvals and otherwise complies with all Legal Requirements. Rules imposed under the Condominium Documents shall not apply to the Public Use Unit No. 2 without the Tenant's prior written approval.

**26.23 Lease of a Portion of Elizabeth Square.** Landlord and Tenant acknowledge and agree that, simultaneously with Tenant's Lease of the Public Use Unit No. 2, Tenant is also leasing from Landlord the Public Use Unit, which is a unit located within the Elizabeth House III Commercial Condominium (as created by that certain Declaration of Condominium for Elizabeth House III Commercial Condominium recorded among the Land Records at Book 58410, Page 154, as amended, and those certain Condominium Plats of Elizabeth House III Commercial Condominium recorded among the Plat Records of Montgomery County as Plat Nos. 12144 – 12157, as amended) and located directly adjacent to, and with direct access, to the Public Use Unit No. 2. This Lease for the Public Use Unit No. 2 and the PUU Lease are coterminous and both the Public Use Unit No. 2 and the Public Use Unit are designed to function as one continuous space. Thus, to fully understand the entire contractual relationship between Landlord and Tenant, the PUU Lease must be reviewed in connection with this Lease. Once executed both this Lease and the PUU Lease shall be recorded among the land records at Tenant's cost.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as an instrument under seal, as of the Lease Date.

WITNESS:

LANDLORD:

**EH III RECREATIONAL CENTER LLC,  
a Maryland limited liability company**

By: Housing Opportunities Commission of  
Montgomery County, its Sole Member

*Morgan Tucker*

By: *Kayrine Brown*

Kayrine Brown  
Acting in the capacity of  
President/Executive Director

Date: *23<sup>rd</sup> Feb. 2024*

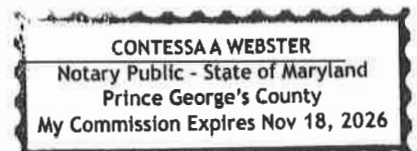
STATE OF MARYLAND  
COUNTY OF MONTGOMERY, TO WIT:

On this *23* day of *February*, 2024, before me the undersigned officer, personally appeared Kayrine Brown, known to me or satisfactorily proven to me to be the person set forth herein, who acknowledged herself to be acting in the capacity of President/Executive Director of the Housing Opportunities Commission of Montgomery County, a body corporate and politic, established pursuant to the provisions of Titles 12 and 16 of the Housing and Community Development Article of the Annotated Code of Maryland, as amended, which entity is the sole member of EH III Recreational Center LLC, and, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said entity, as the act and deed of said entity.

AS WITNESS my hand and Notarial Seal.

*CW*  
Notary Public

My Commission Expires:



IN WITNESS WHEREOF, the parties have caused this Lease to be executed as an instrument under seal, as of the Lease Date.

WITNESS:

TENANT:

MONTGOMERY COUNTY, MARYLAND

[Signature]

By: [Signature]  
Fariba Kassiri  
Deputy Chief Administrative Officer

Date: 2/23/24

STATE OF MARYLAND  
COUNTY OF MONTGOMERY, TO WIT:

On this the 23 day of February, 2024, before me the undersigned officer, personally appeared Fariba Kassiri, known to me to be the Deputy Chief Administrative Officer for Montgomery County, Maryland, and that she, as such Deputy Chief Administrative Officer, being authorized to do so, acknowledged that she executed the foregoing instrument for the purposes therein stated, by signing the name of Montgomery County, Maryland by herself as the authorized representative of Montgomery County, Maryland.

AS WITNESS my hand and Notarial Seal.



[Signature]  
Notary Public

My Commission Expires: April 2, 2026

Approved as to form and legality by the Office of  
the County Attorney

By: \_\_\_\_\_

Associate County Attorney

Date: \_\_\_\_\_

## **SCHEDULE OF EXHIBITS**

Exhibit A	-	Legal Description of the Public Use Unit No. 2
Exhibit B	-	Intentionally Omitted
Exhibit C	-	Existing Approvals
Exhibit D	-	Responsibility Matrix
Exhibit E	-	Intentionally Omitted
Exhibit 2.3	-	Permitted Exceptions

**EXHIBIT A**

**Legal Description of the Public Use Unit No. 2**

[attached behind]

BEING KNOWN AND DESIGNATED as Public Use Unit No. 2, as established pursuant to that certain First Amendment to Declaration of Condominium for Alexander House Commercial Condominium (the "Declaration of Condominium") made by Alexander House Development Corporation and Alexander House Apartments Limited Partnership dated as of the date hereof and recorded among the Land Records of Montgomery County, Maryland immediately prior hereto, together with an undivided interest in the general common elements of the Alexander House Commercial Condominium, and as shown on a plat entitled "Amended Plat of Condominium for Alexander House Commercial Condominium" consisting of thirty-eight (38) sheets, dated October, 2019 and recorded among the Plat Records of Montgomery County, Maryland immediately prior hereto.

TOGETHER WITH the improvements on the Property, if any, and all the rights, ways, alleys, privileges, and appurtenances thereto belonging or in anywise appertaining.

AND TOGETHER WITH all of the benefits of easements granted by, and subject to the terms and conditions of, that certain Declaration of Covenants dated June 29, 1994, made by Housing Opportunities Commission of Montgomery County and recorded among the Land Records of Montgomery County, Maryland in Liber 12989, folio 542.

AND TOGETHER WITH all of the benefits of easements granted by, and subject to the terms and conditions of, that certain Cross Easement Agreement dated January 28, 1997 by and between Housing Opportunities Commission of Montgomery County and Alexander House Development Corporation and recorded among the Land Records of Montgomery County, Maryland in Liber 14693, folio 506.

AND TOGETHER WITH all of the benefits of easements granted by, and subject to the terms and conditions of, that certain Elizabeth Square Project Declaration of Covenants, Conditions, Easements and Restrictions dated as of the date hereof by and among Acorn Storage No. 1, LLC, Housing Opportunities Commission of Montgomery County, Alexander House Development Corporation and Alexander House Apartments Limited Partnership and recorded among the Land Records of Montgomery County, Maryland immediately prior hereto.

TAX PARCEL 13-03790865

## **EXHIBIT B**

**Intentionally Omitted**

**EXHIBIT C**  
**Existing Approvals**

[attached behind]



Elizabeth Square - Plan / Permit Tracking Log

Last Update 2024.02.22

PUBLIC IMPROVEMENT PLANS			
Agency	Plan Type	A/P #	Approval Date
M-NCP&PC	NRI / FSD		
APPROVED	Natural Resource Inventory / Forest Stand Delineation	420141320	04-11-2014
M-NCP&PC	NRI / FSD - Supplemental ( Abandonment Area )		
APPROVED	Natural Resource Inventory / Forest Stand Delineation	420180402	09-28-2017
M-NCP&PC	FINAL FOREST CONSERVATION PLAN		
APPROVED	Final Forest Conservation Plan CBD	820160160	2017.11.01
APPROVED	Forest Bank		2018.01.19
M-NCP&PC	PROJECT PLAN - CBD Zone		
APPROVED	Elizabeth Square - Project Plan CBD	920150010	07-28-2015
REPLACED BY SKETCH PLAN 320170090			
M-NCP&PC	SKETCH PLAN - CR Zone		
APPROVED	Elizabeth Square - Sketch Plan	320170090	2017.12.07
M-NCP&PC	PRELIMINARY PLAN - CBD Zone		
APPROVED	Elizabeth Square - Preliminary Plan ( CBD )	120150030	07-28-2015
M-NCP&PC	PRELIMINARY PLAN AMENDMENT A - CBD Zone		
APPROVED	Elizabeth Square - Preliminary Plan Amendment A ( CBD )	12015003A	2018.03.23
M-NCP&PC	PRELIMINARY PLAN AMENDMENT B - CR Zone		
APPROVED	Elizabeth Square - Preliminary Plan Amendment B	12015003B	07-17-2018
APPROVED	Elizabeth Square - Preliminary Plan Amendment B ( Certified Set )	12015003B	9/7/17/18
M-NCP&PC	SITE PLAN -AH / EH 3 - CBD Zone		
APPROVED	Alexander House - Site Plan Amendment A - CBD	81989071A	06-09-2015
APPROVED	Alexander House - Site Plan Amendment B - CBD	81989071B	12-12-2016
APPROVED	Elizabeth House III - Site Plan Resolution CBD	820160160	11-03-2016
APPROVED	Elizabeth House III - Certified Site Plan CBD	820160160	11-01-2017
REPLACED BY SITE PLAN 820170140			
M-NCP&PC	SITE PLAN - CR Zone		
APPROVED	Elizabeth Square - Site Plan	820170140	12-07-2017
APPROVED	Elizabeth Square - Site Plan ( Certified Set )	820170140	07-24-2018
APPROVED	Elizabeth Square - Site Plan ( Surety Estimates )	820170140	07-24-2018
APPROVED	Elizabeth Square - Site Plan	82017014A	01-09-2023
APPROVED	Elizabeth Square - Site Plan ( Certified Set )	82017014A	02-23-2023

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PUBLIC IMPROVEMENT PLANS			
Agency	Plan Type	A/P #	Approval Date
M-NCP&PC / MCDOT	RECORD PLAT		
APPROVED	E Brooke Lee's Addition to SS (consolidation plat)	220180380	10-24-2019
APPROVED	Elizabeth Square Land Condominium	12101	10-28-2019
APPROVED	Elizabeth House III Commercial Condominium	11554 thru 11584	10-11-2016
APPROVED	Alexander House Commercial Condominium	11679 thru 11716	01-11-2017
MCDPS - WR	SWM Stage I		
APPROVED	SWM Concept	SM File#: 266615	07-02-2015
MCDPS - WR	SWM Stage 2		
APPROVED	SWM Concept/Site Development Plan - Phase I Only (EH3)	SM File#: 266615	09-07-2016
APPROVED	SWM Concept/Site Development Plan - CR Zone	SM File#: 266615	07-07-2017
MCDPS - WR	SEC-DEMO		
APPROVED	Sediment Control - Rough Grading Only for Demolition	SEC No. 288918	07-13-2023
MCDPS - WR	SWM FINAL - Phase One		
APPROVED	SESC/SWM Final	SEC No. 283077	2018.05.18
APPROVED	SWM Fee		09-17-2018
RECORDED	Greenroof Easements		
MCDPS - RW	TEMPORARY CONSTRUCTION ENTRANCE		
APPROVED	Constr. Access Permit - Apple Avenue	358511	08-01-2017
APPROVED	Constr. Access Permit - Fenwick Avenue	358512	08-01-2017
APPROVED	Driveway Permit - 2nd Avenue	393054	06-27-2023

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PUBLIC IMPROVEMENT PLANS

Agency		Plan Type	A/P #	Approval Date
MCDPS - RW	FENWICK LANE R/W			
APPROVED	Entrance Plan		PUBL- 361213	10-15-2018
APPROVED	Signage & Lane Markings		PUBL- 361213	05-16-2018
APPROVED	Street Lighting		PUBL- 361213	05-16-2018
APPROVED	Tree Protection Plan		PUBL- 361213	10-15-2018
APPROVED	Temporary Traffic Control - Fenwick Lane Improvements		PUBL- 361213	05-09-2018
APPROVED	Roadside Tree Permit		2018-0358	04-04-2018
APPROVED	Temporary Traffic Control - PEPCo Relocation		PUBL-361551	03-13-2018
APPROVED	Temporary Traffic Control - Verizon Relocation		PUBL-362486	05-02-2018
APPROVED	Support Of Excavation (SOE) Public Right -of-Way		PUBL-368041	06-11-2019
MCDPS - RW	APPLE AVENUE R/W			
APPROVED	Entrance Plan		PUBL- 361212	09-27-2018
APPROVED	Signage & Lane Markings		PUBL- 361212	04-10-2018
APPROVED	Street Lighting		PUBL- 361212	05-16-2018
APPROVED	Tree Protection Plan		PUBL- 361212	09-27-2018
APPROVED	Traffic Control / Pedestrian Control Plan - Apple Avenue		PUBL- 361212	05-09-2018
APPROVED	Roadside Tree Permit		2018-0358	04-04-2018
APPROVED	Traffic Control / Pedestrian Control Plan ( Alexander House )		PUBL-360942	
APPROVED	Washington Gas ( Replacement Line ) #802370		PUBL-361607	02-07-2018
APPROVED	Support Of Excavation (SOE) Public Right -of-Way		PUBL-368041	06-11-2019
MCDPS - RW	SECOND AVENUE R/W			
APPROVED	Tree Protection Plan			06-15-2018
APPROVED	Verizon Relocation - Temporary Traffic Control		PUBL-362486	05-02-2018
APPROVED	Traffic Control / Pedestrian Control Plan ( Alexander House )		PUBL-360942	
APPROVED	PEPCO / Crane & permanenet electric #3559958		PUBL-362975	10-24-2018
APPROVED	PEPCO / Remove overhead lines & install ug #3565006		PUBL-361551	03-13-2018
APPROVED	Comcast Relocation		PUBL-361493	03-12-2018
APPROVED	Tree Protection Plan		PUBL- 393054	06-27-2023
APPROVED	Temporary Traffic Control - 2nd Ave Demo		PUBL- 393054	06-15-2023
MCDPS - RW	CAMERON STREET R/W			
APPROVED	Sidewalk Improvements		PUBL- 380176	11-10-2021
APPROVED	Tree Protection Plan		PUBL- 380176	11-10-2021
APPROVED	Temporary Traffic Control - 2nd Ave Demo		PUBL- 380176	11-10-2021

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PUBLIC IMPROVEMENT PLANS			
Agency	Plan Type	A/P #	Approval Date
MCDPS - BP	BUILDING DEMOLITION-Existing		
APPROVED	Acorn Building - # 1414-1424 Fenwick Lane	821975	12-18-2017
APPROVED	Acorn Building - # 1426-1440 Fenwick Lane	821976	12-18-2017
APPROVED	Acorn Building - # 1315-1323 Apple Avenue	818648	12-18-2017
MCDPS - BP	BUILDING PERMIT		
APPROVED	Alexander House - Interior Improvemts	COMBUILD-769108	12-09-2016
APPROVED	Alexander House - Interior Public Use	COMBUILD-800177	07-13-2017
APPROVED	Alexander House - Interior Public Use	COMBUILD-800180	06-22-2017
APPROVED	Elizabeth House III / SCRRAC	COMBUILD-814359	10-25-2017
	Elizabeth House III		
	Elizabeth House III - Foundation to Grade		
	SCRRAC		
APPROVED	Elizabeth House III - Support of Excavation (SOE)	COMBUILD-840393	08-21-2019
MCDPS - FRS	FIRE ACCESS PLAN		
APPROVED	Fire Access Plan	920150010	07-01-2015
APPROVED	Interim Fire Access Plan	920150010	07-01-2015
MCDPS - SIGNAGE	SIGN CONCEPT PLAN		
APPROVED	Sign Concept Plan		
MCDOT	MCDOT Preliminary Plan Approval / Letter		
APPROVED	MCDOT - Preliminary Plan #120150030	120150030	06-16-2015
APPROVED	MCDOT - Sight Distance Evaluations - Prelim. Plan #120150030	120150030	06-16-2015
MCDOT	Fenwick Lane Abandonment		
PENDING	Abandonment Application	AB758	
MCDOT	FENWICK LANE R/W		
APPROVED	Lighting Plan		05-09-2018
APPROVED	Signage and Lane Marking Plan		05-16-2018
APPROVED	Temporary Traffic Control		05-09-2018
RECORDED	Declaration of Covenants		
APPROVED	Verizon Relocation - Temporary Traffic Control	PUBL-362486	
APPROVED	PEPCo Relocation - Temporary Traffic Control	PUBL-361551	03-13-2018
MCDOT	APPLE AVENUE R/W		
APPROVED	Lighting Plan		05-08-2018
APPROVED	Signage and Lane Marking Plan		04-10-2018
APPROVED	Temporary Traffic Control		05-09-2018
RECORDED	Declaration of Covenants		
MCDOT	SECOND AVENUE R/W		
APPROVED	Verizon Relocation - Temporary Traffic Control	PUBL-362486	05-02-2018
APPROVED	PEPCo Relocation - Temporary Traffic Control	PUBL-361551	03-13-2018
APPROVED	Comcast Relocation - Temporary Traffic Control	PUBL-361493	03-08-2018

Elizabeth Square - Plan / Permit Tracking Log			
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PUBLIC IMPROVEMENT PLANS			
Agency	Plan Type	A/P #	Approval Date
MCDOT	MCDOT Preliminary Plan Review - CR Zone		
APPROVED	MCDOT Preliminary Plan Review - Revision		06-07-2017
WSSC	GOV'T REVIEW - PRELIM. PLAN - CR Zone		
APPROVED	WSSC Preliminary Plan Government Review - Revision		06-16-2017
WSSC - HPA	HYDRAULIC PLANNING ANALYSIS		
APPROVED	Hydraulic Planning Analysis	DA5998Z16	10-31-2017
WSSC	MINOR SITE UTILITY PLAN		
APPROVED	Site Utility Plan, Alexander House Relocations	SU-0975-2018	04-06-2018
APPROVED	Minor Site Utility Plan, South County Regional Recreation Aquatic Center	MSU-1052-2018	08-10-2018
APPROVED	Minor Site Utility Elizabeth House III	MSU -1033-2018	08-10-2018
WSSC	SITE UTILITY PLAN		
APPROVED	Site Utility Plan		
WSSC	DRP-PLAN (SEWER RELOCATION)		
APPROVED	Elizabeth House IV Sewer Relocation Plan	DR6639A19	03-15-2019
WSSC	NON-DRP (FENWICK LANE FIRE HYDRANT)		
APPROVED		DRP-0779-2018	07-23-2018
MDE	NOTICE OF INTENT		
APPROVED	NOI-Sediment Control / SEC	MDRCP03GI	11-14-2017
MD DNR	ROADSIDE TREE PROJECT PERMIT		
APPROVED	Roadside Tree Permit - 2nd Ave and Fenwick Lane	2023-0218	03-28-2023
APPROVED	Roadside Tree Permit - Apple and Fenwick Lane	2018-0358	2018.04.04
APPROVED	Roadside Tree Permit - Second Avenue	2018.-0533	2018.06.15
FAA			
APPROVED	Notice of Obstruction	2019-AEA-198-OE	04-29-2019

**EXHIBIT D**  
**Responsibility Matrix**

[attached behind]

Number	Condominium EH3 or AH	Discipline	Description of Shared Element	Party Responsible for Completing Capital Repair and Replacement of Item	County's Pro-Rata Share of Capital Repair and Replacement Cost	HOC Pro-Rata Share of Capital Repair and Replacement Cost	Party Responsible for Completing Ordinary Maintenance of Item	County's Pro-Rata Share of Ordinary Maintenance Cost	HOC's Pro-Rata Share of Ordinary Maintenance Cost	Drawing References
001	AH	Plumbing	All plumbing that serves Alexander House that passes through Alexander House PUU2.	HOC	0%	100%	HOC	0%	100%	See drawings
002	EH3	Telecommunication	Cables, pathways and equipment in the SCRRAC area from B2 to 4th floor slab.	County	100%	0%	County	100%	0%	T400-T491-T402
003	EH3	Telecommunication	Phone lines for elevators and fire alarm system	HOC	50%	50%	HOC	50%	50%	
004	EH3	Telecommunication	Cables, pathways and equipment in the HOC and shared areas from B2 to 4th floor slab.	HOC	0%	100%	HOC	0%	100%	
005	EH3	Telecommunication	HOC Cables and pathways and equipment from 4th floor to roof	HOC	0%	100%	HOC	0%	100%	
006	EH3	Structural	Concrete Foundations, concrete retaining walls, concrete columns and beams and slabs BELOW the bottom of the 4th floor slab.	HOC / County	2) B1- 75% 3) Plaza- 75% 4) Plaza Level Upper Mechanical Room-	2) B1- 25% 3) Plaza- 25% 4) Plaza Level Upper Mechanical Room- 0%	HOC / County	2) B1- 75% 3) Plaza- 75% 4) Plaza Level Upper Mechanical Room- 100%	2) B1- 25% 3) Plaza- 25% 4) Plaza Level Upper Mechanical Room- 0%	A401, A402, A405, A406, A407, A408, A409, A410, and floor plans
007	EH3	Structural	Concrete slabs and beams from level B2 to BELOW the bottom of the 4th floor slab. HOC Spaces	HOC	0.000%	100.000%	HOC	0.000%	100.000%	A401, A402, A405, A406, A407, A408, A409, A410, and floor plans
008	EH3	Structural	Concrete slabs and beams from level B2 to BELOW the bottom of the 4th floor slab. County Spaces	County	100.000%	0.000%	HOC	100.000%	0.000%	A401, A402, A405, A406, A407, A408, A409, A410, and floor plans
009	EH3	Structural	Concrete slabs and beams from level B2 to BELOW the bottom of the 4th floor slab. Shared spaces	HOC	50.000%	50.000%	HOC	50.000%	50.000%	A401, A402, A405, A406, A407, A408, A409, A410, and floor plans
010	EH3	Structural	Concrete retaining walls below grade for entire building.	HOC	43.000%	57.000%	HOC	43.000%	57.000%	A401, A402, A405, A406, A407, A408, A409, A410, and floor plans
011	EH3	Structural	Concrete structure, concrete columns and beams and slabs ABOVE the bottom of the 4th floor slab.	HOC / County	1) 4th Floor - 25%	1) 4th Floor - 75%	HOC / County	1) 4th Floor - 25%	1) 4th Floor - 75%	A401, A402, A405, A406, A407, A408, A409, A410, and floor plans
012	EH3	Signage	All non-SCRRAC Interior and exterior signage.	HOC	0%	100%	HOC	0%	100%	GS02, GS03, GS04, GS05, GS06, GS07, GS08, GS09, GS10, GS11
013	EH3	Signage	SCRRAC Interior and exterior signage. window walls, banners mounted on street lamp posts, MCG Recreation monument sign	County	100%	0%	County	100%	0%	GS02, GS03, GS04, GS05, GS06, GS07, GS08, GS09, GS10, GS11
014	EH3	Plumbing	Under slab and basement foundation drainage and sanitary system.	HOC	50.000%	50.000%	HOC	50.000%	50.000%	
015	EH3	Plumbing	Plumbing system piping, pumps, drains and fixtures serving SCRRAC. See plans.	County	100%	0%	County	100%	0%	See plumbing drawings.

Number	Condominium EH3 or AH	Discipline	Description of Shared Element	Party Responsible for Completing Capital Repair and Replacement of Item	County's Pro-Rata Share of Capital Repair and Replacement Cost	HOC Pro-Rata Share of Capital Repair and Replacement Cost	Party Responsible for Completing Ordinary Maintenance of Item	County's Pro-Rata Share of Ordinary Maintenance Cost	HOC's Pro-Rata Share of Ordinary Maintenance Cost	Drawing References
016	EH3	Plumbing	Plumbing system piping, pumps, drains and fixtures serving EH III. <b>See plans.</b>	HOC	0%	100%	HOC	0%	100%	See plumbing drawings.
017	EH3	Plumbing	Plumbing system piping, pumps, drains and fixtures serving shared spaces.	HOC	43.000%	57.000%	HOC	43.000%	57.000%	See plumbing drawings.
018	EH3	Plumbing	Garage Drains	HOC	100%	0%	HOC	100%	0%	P711
019	EH3	Plumbing	All Sump pumps and ejector pumps except for SP8, SP9, SP14 and SP15.	HOC	33.000%	67.000%	HOC	33.000%	67.000%	
020	EH3	Plumbing	Sump pumps and ejector pumps SP8, SP9, SP14 and SP15.	County	100%	0%	County	100%	0%	
021	EH3	Mechanical	Mechanical ducts, piping, controls and equipment serving SCRRAC. See plans.	County	100%	0%	County	100%	0%	See mechanical drawings.
022	EH3	Mechanical	Mechanical ducts, piping, controls and equipment serving EH III and all other spaces.	HOC	0%	100%	HOC	0%	100%	See mechanical drawings.
023	EH3	Mechanical	Mechanical ducts, piping, controls and equipment serving shared spaces.	HOC	43.000%	57.000%	HOC	43.000%	57.000%	See mechanical drawings.
024	EH3	Landscaping/Architectural	Plaza waterproofing repair and replacement after 20 years from the effective date of the lease.	HOC	50.000%	50.000%	HOC	50.000%	50.000%	
025	EH3	Landscaping	Materials plan at exterior - plaza and perimeter area	HOC	50.000%	50.000%	HOC	50.000%	50.000%	L202, L203
026	EH3	Landscaping	Irrigation	NA	NA	NA	NA	NA	NA	
027	EH3	General - Stairs	Maintenance and cleaning of stairs A, B, and C below 4th floor.	HOC	50.000%	50.000%	HOC	50.000%	50.000%	
028	EH3	General - Stairs	Maintenance and cleaning of stairs A, B, and C 4th Floor and above.	HOC	0.000%	100.000%	HOC	0.000%	100.000%	
029	EH3	General - Stairs	Maintenance and cleaning of stairs D, E and F.	County	100%	0%	County	100%	0%	
030	EH3	General	HOC shall provide access to underside of SCRRAC spaces from HOC occupied spaces.	NA	NA	NA	NA	NA	NA	
031	EH3	General	Holy Cross space access. The County will provide access to the Holy Cross occupants during normal business hours. Access at all other times is prohibited.	NA	NA	NA	NA	NA	NA	



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032	EH3	General	Plaza maintenance, security, trash removal, pest control, and snow removal. Snow removal must be completed promptly to maintain SCRRAC operating hours.	HOC	50.000%	50.000%	HOC	50.000%	50.000%	
033	EH3	General	County will maintain FOGS system for the SCRRAC kitchen.	County	100%	0%	County	100%	0%	
034	EH3	General	HOC shall maintain and repair the entire trash chute system.	HOC	0%	100%	HOC	0%	100%	
035	eh3	General	County is responsible for any annual inspections/permits to maintain permits for the SCRRAC Spaces. HOC is repsonsible for any annual inspecitons/permits for HOC spaces.	NA	NA	NA	NA	NA	NA	
036	EH3	General	HOC shall provide keys and card readers to the County to access the following: all rooms on 3rd Floor, 2nd floor, Plaza B1, B2, stairs, roofs, and elevator 5.	NA	NA	NA	NA	NA	NA	
037	EH3	General	Facility operating hours will typically be 5:00 AM to 11:30PM. These operating hours can shift to 4:30 AM to 1:00 AM. The facility is open 7 days a week. HOC shall provide access to use the plaza for SCRRAC functions during these times. There is not any special access or privileges for EHII occupants into the SCRRAC.	NA	NA	NA	NA	NA	NA	
038	EH3	General	Green roof repair and maintenance	HOC	50%	50%	HOC	50%	50%	
039	EH3	General	Roof Membranes - HOC Responsible - Refer to plans for locations.	HOC	0%	100%	HOC	0%	100%	
040	EH3	General	Roof Membranes - County Resposible - Refer to plans for locations.	County	100%	0%	County	100%	0%	
041	EH3	Fire Protection	EHIII Fire protection system excluding risers, Level B2 to roof. Refer to plans for areas designated HOC.	HOC	0%	100%	HOC	0%	100%	FP001, FP098A, FP098B, FP099A, FP099B, FP099C, FP101A, FP101B, FP101C, FP102A, FP102B, FP102C, FP103A, FP103B, FP103C, FP701
042	EH3	Fire Protection	SCRRAC fire protection system from level B2 to Level 3 excluding risers.	County	100%	0%	County	100%	0%	FP001, FP098A, FP098B, FP099A, FP099B, FP099C, FP101A, FP101B, FP101C, FP102A, FP102B, FP102C, FP103A, FP103B, FP103C, FP701

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043	EH3	Fire Protection	Shared spaces, fire protection risers and stand pipes. Fire pump repair and replacement. Annual system maintenance and testing for entire system.	HOC	33.000%	67.000%	HOC	33.000%	67.000%	FP001, FP098A, FP098B, FP099A, FP099B, FP099C, FP101A, FP101B, FP101C, FP102A, FP102B, FP102C, FP103A, FP103B, FP103C, FP701
044	EH3	Fire Alarm	SCRRAC dedicated fire alarm risers, panels and devices as shown on in the drawings listed	County	100%	0%	County	100%	0%	FA198A-FA198B-A198C-AFA199A-FA199B-FA199C-FA201A-FA201B-FA201C-FA202A-FA202B-FA202C-FA203A-FA203B-FA203C-FA221-FA601
045	EH3	Fire Alarm	EHIII dedicated fire alarm risers, panels and devices as shown on the drawings listed	HOC	0%	100%	HOC	0%	100%	FA198A-FA198B-A198C-AFA199A-FA199B-FA199C-FA201A-FA201B-FA201C-FA202A-FA202B-FA202C-FA203A-FA203B-FA203C-FA221-FA601
046	EH3	Fire Alarm	Shared fire alarm risers, panels and devices as shown on in the drawings listed. Annual maintenance and testing of entire system.	HOC	43.000%	57.000%	HOC	43.000%	57.000%	FA198A-FA198B-A198C-AFA199A-FA199B-FA199C-FA201A-FA201B-FA201C-FA202A-FA202B-FA202C-FA203A-FA203B-FA203C-FA221-FA601
047	EH3	Elevators	EH3 Elevators 1 and 2 Cleaning, maintenance and inspection. (HOC to provide the phone line service for all elevators.)	County	100%	0%	County	100%	0%	
048	EH3	Elevators	EH3 Elevators 3 and 4 Cleaning, maintenance and inspection. (HOC to provide the phone line service for all elevators.)	HOC	0%	100%	HOC	0%	100%	
049	EH3	Elevators	EH3 Elevator 5 Cleaning, maintenance and inspection. (HOC to provide the phone line service for all elevators.)	HOC	43.000%	57.000%	HOC	43.000%	57.000%	
050	EH3	Electrical - Safety	Bi-directional Amplification System Head end unit	HOC	33.000%	67.000%	HOC	33.000%	67.000%	
051	EH3	Electrical - Power	SCRRAC Electrical System, service feeders from service entry, switchboards and distribution system to final devices. SCRRAC Underground electrical service feeder from Pepco vault to switchboards. SCRRAC Pepco service vault.	County	100%	0%	County	100%	0%	E198A to E204C, E701, E702

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052	EH3	Electrical - Power	All other electrical systems and Residential Unit Electrical System, service feeders from service entry, switchboards and distribution system to final devices. EHIII Underground electrical service feeder from Pepco vault to switchboards. All other PEPCO service vaults.	HOC	0%	100%	HOC	0%	100%	E198A to E204C, E701, E702
053	EH3	Electrical - Power	Shared power systems where indicated.	HOC	43.000%	57.000%	HOC	43.000%	57.000%	E198A to E204C, E701, E702
054	EH3	Electrical - Lighting	SCRRAC Lighting systems.	County	100%	0%	County	100%	0%	E098A to E103C, E799A to E703C, E050, E099B, E099C, E101A, E101C, E103A, E103C, E117A, E117B
055	EH3	Electrical - Lighting	EHIII and all other Lighting systems.	HOC	0%	100%	HOC	0%	100%	E098A to E103C, E799A to E703C, E050, E099B, E099C, E101A, E101C, E103A, E103C, E117A, E117B
056	EH3	Electrical - Lighting	Shared lighting systems where indicated.	HOC	43.000%	57.000%	HOC	43.000%	57.000%	E098A to E103C, E799A to E703C, E050, E099B, E099C, E101A, E101C, E103A, E103C, E117A, E117B
057	EH3	Electrical - Heat Trace	Heat trace on SCRRAC piping	County	100%	0%	County	100%	0%	
058	EH3	Electrical - Heat Trace	Heat trace on all other piping other than SCRRAC piping.	HOC	0%	100%	HOC	0%	100%	
059	EH3	Electrical - Generator	EHIII emergency Generator and Fuel	HOC	0%	100%	HOC	0%	100%	E198A
060	EH3	Electrical - Generator	SCRRAC emergency Generator and Standby Generator and Fuel	County	100%	0%	County	100%	0%	E198A
061	EH3	Civil	Stormwater management system on Grade this excludes the green roofs.	HOC	33.000%	67.000%	HOC	33.000%	67.000%	
062	EH3	Architectural	Façade repair and maintenance for HOC areas.	HOC	0%	100%	HOC	0%	100%	A301 to A304
063	EH3	Architectural	Façade repair and maintenance for SCRRAC areas.	County	100%	0%	County	100%	0%	A301 to A304
064	EH3	Architectural	Façade repair and maintenance for shared areas.	HOC	50.000%	50.000%	HOC	50.000%	50.000%	A301 to A304
065	EH3	Architectural	Curtainwall, window cleaning and exterior envelope cleaning for HOC Areas and half of shared areas.	NA	NA	NA	HOC	0.000%	100.000%	

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066	EH3	Architectural	Curtainwall, window cleaning and exterior envelope cleaning for SCRRAC Areas and half of shared areas.	NA	NA	NA	HOC	100.000%	0.000%	
067	EH3	Architectural	Below grade waterproofing excluding the plaza.	HOC	43.000%	57.000%	HOC	43.000%	57.000%	
068	EH3	Mechanical	Mechanical grease duct and access doors that serves the SCRRAC Kitchen on lobby level to roof.	County	100%	0%	County	100%	0%	See mechanical drawings.
069	EH3	Elevator lobbies on B1, level 2 and Level 3	The FSAE lobbies on these floors listed.	HOC	50.000%	50.000%	HOC	50.000%	50.000%	
070	EH3	General Common Elements	Any GCE not clarified above are included in this line item.	HOC / County	Refer to Lease Maintenance Exhibit 230908	Refer to Lease Maintenance Exhibit 230908	HOC / County	Refer to Lease Maintenance Exhibit 230908	Refer to Lease Maintenance Exhibit 230908	

## **EXHIBIT E**

**Intentionally Omitted**

## **EXHIBIT 2.3**

### **Permitted Exceptions**

#### **Chicago Title Insurance Company Commitment No. 2023-MD-2468 dated June 1, 2023 and issued by Integrity Title & Escrow Company, LLC**

1. Subject to the restrictions set forth in a Deed dated July 16, 1923, and recorded among the Land Records of Montgomery County, Maryland at Liber No. 334, folio 356 from The North Washington Realty Company, Incorporated unto Francie H. Burch and Ruby R. Burch, except if such restriction and/or covenant is intended to include, as if said language was set forth after each exception “omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin”, unless and only to the extent that said covenant: (A) is exempt under Chapter 42, Section 3607 of the United States Code, or (B) relates to handicap but does not discriminate against handicapped persons.

2. Subject to all matters affecting the property insured and described in the Schedule A legal description and noted on the Plat entitled, “LOT 17, Block “A” E. Brooke Lee’s 2nd Addition to Silver Spring”, which Plat is recorded among the Land Records of Montgomery County, Maryland as Plat No. 18112 inclusive of a 10' Slope Easement; inclusive of a Site Plan Enforcement Agreement with the Montgomery County Planning Board regarding limits of development and further agreement with Planning Board and Montgomery County regarding transportation system management program as noted on said plat.

3. Subject to the terms and conditions set forth in the Declaration of Covenants dated June 29, 1994, and recorded among the Land Records of Montgomery County, Maryland at Book No. 12989, Page 542 by the Housing Opportunities Commission of Montgomery County.

4. Subject to the legal operation and effect of a Cross Easement Agreement dated January 28, 1997, and recorded among the Land Records of Montgomery County, Maryland at Book No. 14693, Page 506 .

5. Subject to the matters affecting the Land insured and described in Schedule A legal description and/or noted on an ALTA/NSPS Land Title Survey entitled "Lot 17, Block A, "E Brooke Lee's 2nd Addition to Silver Spring shown on Plat 18112 in the land records of the Clerk of the Circuit Court, Montgomery County and the Alexander House Commercial Condominium recorded at Plats 11679-11716 in the land records of the Clerk of the Circuit Court, Montgomery County.

6. Subject to all notes, matters, setback lines, restrictions and easements, if any, as shown on Condominium Plat entitled "The Alexanders House Commercial Condominium" recorded at Plats 11679-11716 as amended by Plat 12102-12139 in the land records of the Clerk of the Circuit Court, Montgomery County.

7. Subject to the covenants, rights, and obligations of a Declaration of Easements, Covenants, Restrictions and Agreements recorded among the land records of Montgomery County, Maryland at, Book 53724, Page 49 .

8. Subject to the conditions, covenants, and restrictions outlined in a Declaration of Condominium of the Alexander House Commercial Condominium recorded at Book 53553, page 388 in the land records of the Clerk of the Circuit Court, Montgomery County, as amended at Book 58380, page 478 in the land records of the Clerk of the Circuit Court, Montgomery County.

9. Subject to the conditions, covenants and restrictions outlined in a Regulatory Agreement by and among Alexander House Development Corporation and Alexander House Apartments Limited Partnership recorded among the land records of Montgomery County, Maryland at Book 53723, Page 439 .

10. Terms and conditions of a Grant of Storm Water Management Easement and Right of Way to Montgomery County, Maryland, as filed at Book 57707, page 211 in the land records of the Clerk of the Circuit Court, Montgomery County.

11. Terms and condition of a Declaration of Public Improvements Easement dated June 14, 2019, and recorded at Book 57733, page 214 in the land records of the Clerk of the Circuit Court, Montgomery County and shown on the Survey.

12. Terms and conditions of a Crane Swing Easement and Agreement dated May 21, 2019, by and between Elizabeth House III Limited Partnership, EH III Recreational Center, LLC and Fenwick Station Venture, LLC, recorded among the Land Records of Montgomery County, Maryland at, Book 58029, Page 272 .

13. Terms and conditions of a Crane Swing Easement and Agreement dated May 17, 2019, by and between Elizabeth House III Limited Partnership, EH III Recreational Center, LLC and Housing Opportunities Commission of Montgomery County, recorded among the Land Records of Montgomery County, Maryland at Book 58029, Page 238 .

14. Terms and conditions of a Crane Swing Easement and Agreement dated May 17, 2019, by and between Elizabeth House III Limited Partnership, EH III Recreational Center, LLC and D&D Properties, a Maryland partnership, recorded among the Land Records of Montgomery County, Maryland at, Book 58073, Page 412 .

15. Subject to all notes, matters, setback lines as shown on that certain plat of subdivision entitled "LOT 18, BLOCK A, E. BROOK LEE'S ADDITION TO SILVER SPRING" recorded as Plat 25599 in the land records of the Clerk of the Circuit Court, Montgomery County.

16. Terms and conditions of a Crane Swing Easement and Agreement dated May 17, 2019, by and between Elizabeth House III Limited Partnership, EH III Recreational Center, LLC

and Alexander House Development Corporation and Alexander House Apartments Limited Partnership, recorded among the Land Records of Montgomery County, Maryland at, Book 58029, Page 254.

17. Subject to Elizabeth Square Project Declaration of Covenants, Conditions, Easements and Restrictions recorded at Book 58380, page 421 in the land records of the Clerk of the Circuit Court, Montgomery County.

18. Subject to a Land Condominium Regime as shown on a plat entitled “Condominium Plat for Elizabeth Square Land Condominium” recorded among the Plat Records of Montgomery County, Maryland as Condo Plat No. 12101.

19. Subject to a Declaration of Condominium for Elizabeth Square Land Condominium dated October 28, 2019, and recorded among the Land Records of Montgomery County, Maryland at, Book 58380, Page 375.

20. Subject to a First Amendment to Declaration of Easements, Covenants, Restrictions and Agreements (Alexander House Commercial Condominium) recorded at Book 58380, Page 499 in the land records of the Clerk of the Circuit Court, Montgomery County.