



DeKalb County  
GEORGIA

# MEMORANDUM

This communication is confidential and protected by the attorney-client privilege and attorney work product rule. It is intended only for the individual or entity to which it is addressed and should not be given to persons or entities not directly involved with the subject matter on behalf of the County. It expresses the professional judgment of the attorney(s) rendering the opinion regarding the legal issues expressly addressed herein. By rendering an opinion, the attorney(s) does not insure or guarantee any particular result or outcome of any transaction or lawsuit.

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January 31, 2018

*by pdf and hand delivery*

**To:** Michael J. Thurmond, Chief Executive Officer  
Members, Board of Commissioners

**From:** Viviane H. Ernstes, Interim County Attorney *Twice*

**Subject:** **Consent to Amended Ground Leases (3) for the Spruill Arts Center**  
*(Law File No. 02-0892)*

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The Spruill Arts Center and property is located at 4681 Ashford Dunwoody Road, in the City of Dunwoody. The property includes the historic Spruill family house built in 1867 (the "Property"). Since 1991, the Spruill Arts Center has continued to operate as a non-profit arts center, but, with the County's consent, has also entered into leases with private developers to develop a portion of the Property with the proceeds to be used to fund the Spruill Arts Center.

All leases and development proposals require the consent of the County because of the County's contingent interest.<sup>1</sup> In 2007, the County initially consented to a ground lease to private developers. Due to the economic downturn, the 2007 proposed development did not proceed as planned. However, in October of 2013, the Spruill Arts Center entered into a 99-year ground lease with Hotel Development Partners' affiliated entity, HDP Spruill, LLC, the current tenant. As you may recall, the County gave a second consent for those actions as evidenced in the Consent to Ground Lease Agreement dated August 11, 2015.<sup>2</sup> That lease was for a portion of the Property for the development of a hotel, restaurant and retail spaces, all of which have since been constructed and are operating.

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<sup>1</sup> In 1991, the Spruill family conveyed the Property to the Spruill Center for the Arts, Inc. pursuant to a deed which provides a contingency that if the Arts Center ever ceases to exist as a non-profit corporation or cultural arts center, title to the Property shall automatically vest in the County for use solely as a park or recreational area.

<sup>2</sup> The 2015 Consent is recorded in Deed Book 25199, Page 358 of the DeKalb County real estate records.

For financing purposes, the tenant, HDP Spruill, LLC now seeks to amend and separate the original lease into three (3) separate leases, for the hotel, restaurant and retail uses, and includes the related lease documents. The amended lease documents require the County's consent.

Based upon the review by Ms. Battle, the County's outside counsel, the proposed lease documents are attached in their substantial final form. This item may be added to the February 6, 2018 Commission agenda by Commissioner Jester. While not required in this instance, you may also choose to discuss this item in Executive Session.

If you have any questions, please do not hesitate to contact me.

*Attachments*

cc: Zachary Williams, Chief Operating Officer  
Antwyn Brown, Chief of Staff, BOC  
La'Keitha Carlos, Chief of Staff, CEO  
Delores Crowell, Intergovernmental Affairs  
Ted Rhinehart, Deputy COO of Infrastructure  
Marvin Billups, Director of RPCA  
Terry G. Phillips, Supervising County Attorney  
Matt Welch, Supervising County Attorney  
Marian Adeimy, Assistant County Attorney  
Michele Battle, Esq.



# DeKalb County Government

Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030

## Agenda Item

File ID:

Walk-On Item

2/6/2018

Public Hearing: YES  NO

Department: Board of Commissioner - District 1

**SUBJECT:** Resolution consenting to amended leases for the Spruill Arts Center property, owned by Spruill Center for the Arts, Inc., and located at 4681 Ashford Dunwoody Road, Dunwoody, Georgia.

Commission District(s): All

Information Contact: Commissioner Nancy Jester (District 1)

Phone Number: 404-371-2844

**PURPOSE:**

To consider approving a consent to the amended leases for the Spruill Arts Center property.

**NEED/IMPACT:**

The County approved a resolution giving consent to lease the Spruill Arts Center property in 2007, and again in 2015. The property was developed accordingly. For financing purposes, the tenant, HDP Spruill, LLC now wishes to amend and separate the original lease into three (3) separate leases, for the existing hotel, restaurant and retail uses. The lease amendments also require the County's approval.

The Spruill Arts Center property is located at 4681 Ashford Dunwoody Road in the City of Dunwoody. The property includes the historic Spruill family house built in 1867 (the "Property"). In 1991, the Spruill family conveyed the Property to the Spruill Center for the Arts, Inc. pursuant to a deed which provides a contingency that if the Arts Center ever ceases to exist as a non-profit corporation or cultural arts center, title to the Property shall automatically vest in the County for use solely as a park or recreational area. Because of this contingent interest, the parties must obtain the County's consent prior to entering into the attached leases.

**FISCAL IMPACT:**

No cost to the County.

**RECOMMENDATION:**

To approve the resolution and authorize the chief executive officer to execute all necessary documents in substantially final form.

**AMENDED, RESTATED AND SPLIT LEASE**  
**(HOTEL PARCEL)**

**THIS INDENTURE OF LEASE** (this "Lease"), is dated, made and entered into as of the 30<sup>th</sup> day of November, 2017, but effective as of September 21, 2015 (the "Commencement Date"), by and between **SPRUILL CENTER FOR THE ARTS, INC.**, a Georgia non-profit corporation (hereinafter the "Landlord"), and **HDP SPRUILL, LLC**, a Georgia limited liability company (hereinafter called "Tenant").

**W I T N E S S E T H: T H A T**

Landlord and HDP Acquisitions LLC, a Georgia limited liability company ("Original Tenant") entered into a certain Lease dated October 31, 2013, as amended by that certain First Amendment to Lease dated March 14, 2014, as further amended by that certain Second Amendment to Lease dated October 23, 2014, and as assigned by Original Tenant to Tenant by Assignment and Assumption of Lease dated December, 2014, as further amended by that certain Third Amendment to Lease dated June 12, 2015, as further amended by that certain Fourth Amendment to Lease dated September 21, 2015 (as so amended and assigned, the "Original Lease").

Landlord and Tenant wish to amend, restate and split the Original Lease into three (3) separate leases, pursuant to which the leased premises shown as "Tract Two" on **Exhibit "A"** to the Original Lease shall be divided into three (3) separate leased premises, as more particularly depicted as Unit C (the "Hotel Parcel"), Unit A (the "Restaurant Parcel") and Unit B (the "Retail Parcel") on **Exhibit "A"** attached hereto and made a part hereof.

Landlord and Tenant acknowledge and agree that the Original Lease is hereby amended, restated and split pursuant to the terms and conditions of (i) this Lease, (ii) that certain Amended, Restated and Split Lease of even date herewith by and between Landlord and Tenant related to the "Restaurant Parcel" (the "Restaurant Parcel Lease"), and (iii) that certain Amended, Restated and Split Lease of even date herewith by and between Landlord and Tenant related to the "Retail Parcel" (the "Retail Parcel Lease").

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises more particularly depicted on **Exhibit "A"** attached hereto and made a part hereof, as the "Hotel Parcel", together with all easements and appurtenances thereof, and together with all buildings, structures, improvements, equipment, machinery and personal property located thereon (hereinafter referred to as the "Premises" and the improvements now or hereafter located thereon being hereinafter referred to as the "Improvements"), together with non-exclusive rights to all the tenements, rights, privileges, benefits, hereditaments, easements, appurtenances thereof and any right, title and interest of Landlord in and to any land lying in the bed of any street, road or highway in front of or adjoining said Premises, together with any strips and gores relating to said Premises.

This Lease shall be on the following terms and conditions:

## ARTICLE 1

### TERM

Section 1.01. Term of Lease. A term of ninety-nine (99) years beginning on the Commencement Date and expiring on September 20, 2114; therefore, Landlord and Tenant agree that the term of this Lease (the "Term") shall commence on the Commencement Date and shall expire on September 20, 2114 (the "Expiration Date"), unless sooner terminated as set forth in this Lease.

## ARTICLE 2

### RENT

Section 2.01. Minimum Rent. Landlord and Tenant acknowledge and agree that all rent required to be paid by Tenant under the Original Lease has been paid through November 30, 2017. Commencing December 1, 2017, Tenant shall pay to Landlord, on or before the first day of each month at Landlord's office (as the same may be changed by notice as provided herein from time to time), the following amounts as annual rental (the "Minimum Rent") (to be paid 1/12 each month during each and every calendar month during the Term):

Dates			Annual Minimum Rent	Monthly Installment
12/1/17	-	9/30/20	\$ 200,000.00	\$ 16,666.67
10/1/20	-	9/30/25	\$ 220,000.00	\$ 18,333.33
10/1/25	-	9/30/30	\$ 242,000.00	\$ 20,166.67
10/1/30	-	9/30/35	\$ 266,200.00	\$ 22,183.33
10/1/35	-	9/30/40	\$ 292,820.00	\$ 24,401.67
10/1/40	-	9/30/45	\$ 322,102.00	\$ 26,841.83
10/1/45	-	9/30/50	\$ 354,312.20	\$ 29,526.02
10/1/50	-	9/30/55	\$ 389,743.42	\$ 32,478.62
10/1/55	-	9/30/60	\$ 428,717.76	\$ 35,726.48
10/1/60	-	9/30/65	\$ 471,589.54	\$ 39,299.13
10/1/65	-	9/30/70	\$ 518,748.49	\$ 43,229.04
10/1/70	-	9/30/75	\$ 570,623.34	\$ 47,551.95
10/1/75	-	9/30/80	\$ 627,685.68	\$ 52,307.14
10/1/80	-	9/30/85	\$ 690,454.24	\$ 57,537.85
10/1/85	-	9/30/90	\$ 759,499.67	\$ 63,291.64
10/1/90	-	9/30/95	\$ 835,449.63	\$ 69,620.80
10/1/95	-	9/30/00	\$ 918,994.60	\$ 76,582.88
10/1/00	-	9/30/05	\$ 1,010,894.06	\$ 84,241.17
10/1/05	-	9/30/10	\$ 1,111,983.46	\$ 92,665.29
10/1/10	-	9/20/14	\$ 1,223,181.81	\$ 101,931.82

Notwithstanding the foregoing, Minimum Rent for the month of September, 2114 shall be prorated on a daily basis consistent with the Expiration Date of September 20, 2114. It is understood and agreed that the Minimum Rent shall be due and payable as provided herein.

without demand, setoff or deduction whatsoever. Minimum Rent and each and every other charge, fee, cost, or expense which Tenant is obligated or liable to pay to, refund to, or reimburse Landlord shall, for the purposes of the default provisions of this Lease, be deemed additional rental due from Tenant, and Tenant's failure to so pay, refund, or reimburse when due shall entitle Landlord to all the remedies provided for herein and at law or in equity on account of failure to pay rent.

Section 2.02. Additional Rent. Tenant shall also pay as "Additional Rent" (herein sometimes so called) all charges, costs, expenses and other payments which Tenant assumes or agrees to pay under any of the provisions of this Lease. Landlord and Tenant have agreed, and do hereby agree, that Tenant shall be responsible for and shall pay when due all costs and expenses attributable to the ownership and operation of the Premises, and that the Minimum Rent payable by Tenant to Landlord hereunder shall be absolutely net of all such costs and expenses (however, Tenant shall not be obligated to pay any management fees to Landlord). In the event of any non-payment of any such Additional Rent, Landlord shall have all of the rights and remedies it would have hereunder or by law in the case of non-payment of Minimum Rent.

Section 2.03. Late Fee. Tenant shall pay to Landlord a late fee in an amount equal to five (5%) percent of any Minimum Rent in the event that such payment is not received by the Landlord on or prior to the tenth (10th) day after such payment becomes due and payable in accordance with the terms of this Lease.

### ARTICLE 3

#### ENVIRONMENTAL /AS-IS PROVISION

Section 3.01. Hazardous Substances.

(a) The term "Hazardous Substances," as used in this Lease, shall mean pollutants, contaminants, toxic or hazardous substances or wastes, oil or petroleum products, flammables or any other substances whose nature and/or quantity of existence, use, release, manufacture or effect renders it subject to federal, state, or local environmental, health, community awareness or safety laws or regulations, now or hereafter enacted or promulgated by any governmental authority or court ruling, or any investigation, remediation or removal (collectively the "Environmental Laws").

(b) Tenant hereby agrees that (i) no activity will be conducted on, under or about the Premises by or through Tenant that will use, generate, release, store, dispose of or produce any Hazardous Substances except only those Hazardous Substances which are used or useful in Tenant's or Subtenant's businesses, in which event such Hazardous Substances shall be used, stored and disposed of in a safe and lawful manner in compliance with all Environmental Laws, and (ii) no portion of the Premises will be used by Tenant as a landfill or dump.

(c) Tenant agrees to indemnify, defend (through counsel designated by the Tenant and reasonably acceptable to the Landlord) and hold harmless the Landlord, its successors and assigns, from and against any and all claims, losses, liens, damages and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs

and expenses in connection therewith, arising out of (i) the presence on or under the Premises of any Hazardous Substances, or any releases or discharges of any Hazardous Substances on, under or from the Premises, which presence, release or discharge occurred during the Term, or (ii) any activity carried on or undertaken on or off the Premises by or through the Tenant in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances present in, on or under the Premises.

(d) Landlord warrants and represents to Tenant that Landlord has received no written notice from any governmental agency that Hazardous Substances exist on the Premises in violation of Environmental Laws. Landlord further warrants (without any investigation) that it has no actual knowledge whether any of such Hazardous Substances exist on the Premises. Should Landlord cause any Hazardous Substances to be released onto the Premises during the Term, Landlord shall be required to remove such Hazardous Substances and remediate the Premises in accordance with Environmental Laws.

(e) Landlord represents to Tenant that Landlord has provided copies of any environmental reports in Landlord's possession that have been performed in the past ten (10) years on the Premises. Other than any information which may be contained in such reports, Landlord represents that it has no actual knowledge of the violation of any Environmental Laws with respect to any Hazardous Substances at the Premises.

(f) BY ACCEPTING DELIVERY OF THE PREMISES, TENANT ACKNOWLEDGES AND AGREES THAT IT IS ACCEPTING AND HAS ACCEPTED THE PREMISES IN ITS "AS-IS, WHERE-IS" CONDITION. TENANT ACKNOWLEDGES AND AGREES THAT LANDLORD DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION CONTAINED IN THIRD PARTY REPORTS AND THAT LANDLORD SPECIFICALLY DEMANDS THAT TENANT CONDUCT ITS OWN DUE DILIGENCE. ANY RELIANCE BY TENANT ON SUCH MATERIALS SHALL BE DONE AT TENANT'S OWN RISK. TENANT HEREBY AFFIRMS THAT TENANT MADE A THOROUGH AND EXHAUSTIVE INVESTIGATION OF THE PREMISES PRIOR TO ACCEPTING DELIVERY THEREOF.

(g) The provisions of this Article 3 shall survive the expiration or termination of this Lease.

## ARTICLE 4

### FIXTURES, SIGNS, ALTERATIONS

Section 4.01. Improvements. The Premises are accepted by the Tenant in an "as is - where is" condition, without warranty of condition, merchantability or fitness for a particular use, expressed or implied.

Section 4.02. Alterations and Additions. Tenant, at Tenant's sole cost and expense, may erect all improvements permitted by the applicable zoning ordinances in order to construct a select service hotel branded by Marriott or Hilton containing approximately 128 rooms (not to exceed seven (7) stories) along with surface parking, one single-story retail space or restaurant

(without a drive-thru), curb cuts, signage and landscaping, together with such additional improvements upon the prior written approval by Landlord of a site plan therefor, such approval not to be unreasonably withheld, conditioned or delayed. Tenant may alter and modify, repair or add to any existing Improvements, all or any of the foregoing being hereinafter collectively called "Alterations," from time to time, provided, however, that (a) all Alterations shall be constructed in accordance with all applicable laws, (b) no Improvements or Alterations on the Premises shall be greater than seven (7) stories in height, and (c) any change in the location of any buildings or the common areas (such as, without limitation, the parking areas) shall require Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Landlord's approval hereunder shall not be deemed any warranty that such proposed work by Tenant is allowable under applicable laws (including but not limited to applicable zoning ordinances), it being understood that Tenant has the sole obligation to confirm that its proposed improvements comply with all applicable laws.

Section 4.03. Alterations Belong to Tenant Until Expiration or Termination of Lease. All alterations or improvements to the Premises shall remain the property of and for the benefit of the Tenant until expiration or termination of this Lease as set forth in Section 18.01, and Tenant alone shall be entitled to deduct all depreciation on Tenant's income tax return for the alterations and improvements.

Section 4.04. Fixtures. Landlord agrees to execute and deliver, upon request of the Tenant, a landlord's consent and/or subordination with reference to third-party fixture financing of the Tenant or its subtenants, in form reasonably required by such lenders. Notwithstanding the provisions of Section 18.01 hereof, Tenant shall have the right prior to the expiration of the Term to remove any fixtures, trade fixtures, signs and other personal property installed or placed in the Premises by Tenant or any subtenant or assignee, provided Tenant repairs any damage caused by such removal. Any fixtures, signs and other furnishings or equipment left in the Premises by Tenant after the expiration of this Lease shall be conclusively deemed abandoned by Tenant and shall be the property of the Landlord.

Section 4.05. Removal of Liens. During the Term, Tenant shall bond against or discharge all liens on the Premises arising by, through or under Tenant within sixty (60) calendar days after the earlier of (i) Tenant's receipt of actual notice that such a lien exists, or (ii) upon written request by Landlord.

Section 4.06. Signs. Tenant may, at Tenant's expense, install and display on the throughout the Premises any and all signs in compliance with applicable Laws and not in violation of the Prohibited Uses (as defined in Section 13.01).

## ARTICLE 5

### MAINTENANCE OF BUILDING

Section 5.01. Repairs by Tenant. Tenant shall at all times keep the Premises in good condition (including, without limitation in any way, the landscaping and the Improvements), working order and repair, normal wear and tear, casualty and condemnation excepted.



Section 5.02. No Repairs Required by Landlord. Landlord shall have absolutely no duty, obligation or liability whatsoever for construction, maintenance, replacement or repair of the Premises (except caused by the gross negligence or willful misconduct of Landlord or its employees or contractors). Landlord shall have absolutely no obligation to inspect the Premises.

Section 5.03. Failure of Tenant to Repair. Should Tenant fail to repair or maintain the Premises as required herein within sixty (60) days' prior written notice thereof to Tenant, or if Landlord should determine, in the exercise of its reasonable judgment, that emergency repairs for which Tenant is responsible are necessary, then within ten (10) days' prior written notice to Tenant (unless the emergency requires immediate action in which case Landlord shall give oral notice), Landlord may make such repairs or perform such maintenance without liability to Tenant for any resulting loss or damage that may accrue to Tenant's fixtures or other property, or to Tenant's business, whereupon Tenant shall, within thirty (30) days after receipt of an invoice from Landlord, pay to Landlord, as Additional Rent, the reasonable third party actual cost incurred of such maintenance or repair.

## ARTICLE 6

### INSURANCE

Section 6.01. Property Insurance. Tenant agrees, at its sole expense, to keep and maintain all risks and special perils insurance coverage, excluding flood and earthquake coverage (unless same becomes customary to obtain where the Premises is located), relating to the Premises and the Improvements located thereon in an amount equal to the full replacement value thereof, from time to time, during the Term, and any extension or renewal thereof. Tenant caused a policy or certificate evidencing such insurance to be delivered to Landlord prior to the Commencement Date, and Tenant shall cause renewals of each such policy to be delivered to Landlord at least fifteen (15) days prior to the expiration of such policy.

Section 6.02. Public Liability and Property Damage. Tenant shall protect, indemnify, and save harmless Landlord from and against any and all claims, demands, and causes of action of any nature whatsoever, and from and against any expense incident to the defense by Landlord of any such demand or action, for injury to or death of persons or loss of or damage to property occurring on or about the Premises or in any manner growing out of or connected with Tenant's use and occupancy of the Premises or the condition thereof, except as caused by the gross negligence or willful misconduct of Landlord or its employees or contractors, and at its own cost and expense procure and keep in force during the Term a policy of comprehensive public liability insurance with limits of not less \$1,000,000 per occurrence for bodily injury, death and property damage, and \$3,000,000 in the aggregate, and Tenant shall cause Landlord to be named as an additional insured thereunder, and Tenant caused a certificate of such insurance to be delivered to Landlord prior to the Commencement Date, and renewal certificates shall be delivered to Landlord not less than fifteen (15) days prior to the renewal date of any such insurance policies. Upon at least thirty (30) days' prior written notice from Landlord to Tenant, Landlord shall have the right to require Tenant to increase its liability insurance coverage one time every ten (10) years during the Term if the market liability coverage for similarly situated projects in the Atlanta, Georgia area has increased.

Section 6.03. Business Interruption Insurance. Tenant shall, at its sole expense, procure a business interruption insurance policy that, in the event of a casualty, condemnation or any other disruption at the Premises, insures Landlord will receive all amounts due under this Lease. Tenant acknowledges and agrees that the Minimum Rent and Additional Rent due under this Lease shall not abate during the period between any disruption and the completion of any such restoration, rebuilding, or replacement.

Section 6.04. Failure to Maintain Insurance. Should Tenant fail to obtain any insurance hereinabove described, then Landlord may procure the same and charge the cost thereof to Tenant as Additional Rent, which shall be due and payable to Landlord on demand or, in the absence of demand, with the installment of Minimum Rent next coming due.

Section 6.05. Landlord Insurance. Landlord shall maintain, or cause to be maintained, a comprehensive public liability insurance policy with limits of not less \$1,000,000 per occurrence for bodily injury, death and property damage, and \$3,000,000 in the aggregate (which may be included within any so-called "umbrella" coverage), with respect to the real property Landlord owns adjacent to the Premises (depicted as "Lot 2" on Exhibit "A" attached hereto and made a part hereof).

Section 6.06. Mutual Release for Matters Covered by Insurance. Each party hereby waives any and all rights of recovery against the other to the full extent that indemnification is covered by an insurance policy maintained by the waiving party.

## ARTICLE 7

### ESTOPPEL CERTIFICATES, ATTORNMENT AND SUBORDINATION

Section 7.01. Execution of Estoppel Certificates. At any time, and from time to time, upon the written request of either Landlord, Tenant or any mortgagee or any purchaser of the Premises, or any permitted subtenant or assignee of the Tenant, within twenty (20) days of the date of such written request, Landlord and Tenant shall execute and deliver to the requesting party, without charge and in a form satisfactory to Landlord, Tenant and/or such mortgagee and/or such purchaser, a written statement (to the extent such statements are factually accurate at such time): (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the Term; (c) certifying that Tenant is in occupancy of the Premises, and that this Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied or performed have been satisfied and performed except as shall be stated; (e) certifying that Landlord and Tenant are not in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by Landlord or Tenant or stating the defaults and/or defenses claimed by either such party; (f) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid; and (g) any other information which the requesting party shall reasonably require.

Section 7.02. Paramount Status to Mortgages obtained by Landlord. This Lease shall at all times during the Term, and any extension thereof, be and remain paramount to the lien and interest of any present or future "mortgage" (as defined below) relating to and placed upon the

Premises by Landlord and Landlord covenants and agrees that any mortgage obtained by Landlord shall be subject and subordinate to Tenant's rights under this Lease, including any development, construction, temporary, interim and permanent loans, mortgages, deeds to secure debt, or trust indentures made or to be made to Tenant for the purpose of developing or improving the Premises or any part thereof, or for the purpose of financing such development or improvement, or for the purpose of satisfying loans for the development or improvements of the Premises, or for the purpose of refinancing or re-casting loans made or to be made to Tenant for the improvement of the Premises, or for any reason whatsoever, as often as requested or required by Tenant. Landlord and Tenant both agree that, should Landlord ever obtain a mortgage on its fee interest in the Premises, each party shall use good faith commercially reasonable efforts to execute a so-called non-disturbance and attornment agreement (or a recognition agreement or similar document) upon the request of either of them or such mortgagee. The word "mortgage" as used herein includes mortgages, deeds to secure debt, deeds of trust and similar instruments and modifications, consolidations, extensions or renewals thereof.

Section 7.03. Mortgage of Leasehold. Tenant, at all times, and from time to time, shall have the right to convey or encumber by mortgage, security deed, deed of trust, or other instrument, Tenant's interest in this Lease and Tenant's right to use and occupy said Premises, together with its rights and interests in and to all existing buildings and improvements, and any building and improvements which may be placed on the Premises. If any such mortgagee, or grantee, shall notify Landlord in writing by certified or registered mail that any such mortgage has been so given and executed by Tenant, and shall at the same time furnish Landlord with the address to which it desires copies of notices to be mailed, Landlord hereby agrees that it will thereafter mail to such mortgagee at the address so given a duplicate copy of any and all notices in writing which Landlord may from time to time give to or serve upon Tenant under and pursuant to the terms and provisions of this Lease. Such mortgagee (if such mortgagee is not affiliated in any way with Tenant) may, at its option at any time, but in no event less than thirty (30) days, before the rights of Tenant shall have been forfeited to Landlord, as provided for herein, pay any of the rents due, or pay any taxes and assessments, or make any repairs and improvements, making or cause to be made any deposits, or do any other act or thing required of Tenant by the terms of this Lease, to prevent the forfeiture of this Lease; and all payments so made, and all things so done and performed by such mortgagee shall be as effective to prevent the forfeiture of the right of Tenant hereunder as the same would have been if done and performed by Tenant. Any such mortgage or other instrument so given by Tenant may, if Tenant so desires, be so conditioned as to provide that as between any such mortgagee and Tenant, said mortgagee on making good and performing any such default or defaults on the part of Tenant shall be thereby subrogated to any or all of the rights of Tenant under the terms and provisions of this Lease. A leasehold mortgagee shall not become personally liable for any of Tenant's obligations under this Lease unless and until such mortgagee becomes the owner of the leasehold estate by foreclosure, assignment in lieu of foreclosure, or otherwise, and thereafter such mortgagee may remain liable for such obligations only so long as the leasehold mortgagee remains the owner of the leasehold estate. If the leasehold mortgagee should become the owner of the leasehold estate, such mortgagee may assign the Lease one time without any consent on the part of the Landlord being required (it being understood however that such assignment shall be subject to all of the provisions of this Lease, including the use restrictions and the future assignment restrictions). Landlord and Tenant each covenant and agree to execute any and all other additional reasonable documents which may be desirable or required to further effect the

above provision; provided that nothing contained herein shall prohibit Landlord from exercising any of its remedies if Landlord does not receive all of the Minimum Rent and Additional Rent due under this Lease within the required time period (subject to any notice and cure periods required under this Lease).

## ARTICLE 8

### INDEMNITY AGAINST CLAIMS

Section 8.01. Protection of Landlord and Tenant. Tenant shall indemnify and save Landlord harmless, through counsel designated by Tenant, against and from any and all third-party claims, damages, costs and expenses, including reasonable attorney's fees, arising from the use or occupancy of the Premises by the Tenant and/or the operation of the business conducted by Tenant in the Premises or arising from any default by Tenant in the performance of any of the covenants, conditions or provisions of this Lease, or from or relating to any negligence or willful misconduct of Tenant, its agents, contractors, servants, employees, and permitted sublessees, concessionaires or licensees in the Premises or in connection with this Lease or any permitted sublease of the Premises. Landlord shall indemnify and save Tenant harmless, through counsel designated by Landlord, against and from any and all third-party claims, damages, costs and expenses, including reasonable attorney's fees, arising from the use or occupancy of the Premises by Landlord or arising from any default by Landlord in the performance of any of the covenants, conditions or provisions of this Lease, or from or relating to any negligence or willful misconduct of Landlord, its agents, contractors, servants, employees, concessionaires or licensees in the Premises or in connection with this Lease.

## ARTICLE 9

### WASTE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 9.01. Waste. Tenant shall not commit or suffer to be committed any waste upon the Premises.

Section 9.02. Governmental Regulations. Tenant, at Tenant's sole cost and expense, subject to the rights of Tenant as provided in Section 9.03, shall comply with all of the laws of all county, city, municipal, state, federal and all other applicable authorities (the "Governmental Authorities") now in force, or which may hereafter be in force, affecting the Premises in any way (extraordinary as well as ordinary, and whether structural or non-structural), including without limitation in any way, all Environmental Laws, and shall observe in the use of the Premises all municipal ordinances and state and federal Laws now in force or which may hereafter be in force.

Section 9.03. Legal Requirement. Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf or in the name of and on behalf of Landlord, in good faith, contest any legal requirement affecting the Premises and, in the event of any such contest, may permit such legal requirement so contested to remain unsatisfied during the period of such contest and any appeal therefrom; provided that notwithstanding any provision of this Lease to the contrary, Tenant's right so to contest any legal requirement affecting the Premises

shall not in any way affect its obligations to pay its share of the protested or contested legal requirement or taxes, if any. In the event of any such contest by Tenant, Tenant shall and does hereby indemnify and hold harmless Landlord from and against any loss or damage to Landlord, and Tenant shall take all reasonable steps as may be necessary to prevent any lien from being filed, or, in the case of tax liens or other liens which attach prior to the due date of a required payment, to remove any lien following the conclusion of any applicable appeal process, against the Premises or any loss or damage to Landlord in connection with any such contest.

Section 9.04. Notices. Tenant shall notify Landlord within thirty (30) days after receipt of correspondence from any Governmental Authority alleging any default or requiring that Tenant alter or repair the Premises to comply with any applicable laws, and Tenant shall comply with such demand in accordance with Section 9.02 above. Should Landlord receive any such notice (including without limitation, all notices (from governmental authorities or otherwise) relating to eminent domain, zoning, legal compliance, Environmental Laws, road widening, adjacent right-of-ways, moratoriums and any other matter affecting the Premises), Landlord shall endeavor to forward a copy to Tenant within ten (10) days after receipt (however, Landlord shall have no liability for failure to do so and Tenant shall have no liability nor be in default under this Lease as a result of Landlord's failure to deliver any such notice to Tenant).

## ARTICLE 10

### UTILITIES

Section 10.01. Payment of Charges and Interruption of Services. Tenant shall pay, on or before the due date(s) thereof, all fees and charges for water, gas, electricity and all other utilities, including fees and charges for removal of trash and all other charges, incurred by Tenant in connection with its use and enjoyment of the Premises. Such utility and other charges, and operating income and expense items, were prorated for the first (if applicable) and shall be prorated for the last (if applicable) fractional months of the Term as of midnight preceding (i) the Commencement Date and (ii) the Expiration Date (or the date of earlier termination of this Lease, if applicable). It is understood that the use by Tenant of the Premises may require that the parties enter into contracts or agreements with local, county, state or other governmental agencies or bodies or with public utilities with reference to storm sewer, sanitary sewer, gas, water, electric, telephone or other utility lines or connections, stormwater management or easement agreements. Landlord agrees to execute and/or consent to the execution of, as applicable, such written contracts, agreements, easement agreements, and consents as are reasonably required for Tenant's use of the Premises; provided, however, that nothing shall cause Landlord to incur any monetary or other obligations hereunder. Tenant shall and does hereby indemnify and hold harmless Landlord from and against any loss or damage arising out of the failure of Tenant to pay any utility charges or similar expenses as and when due. Landlord has no knowledge of accessibility of utilities to the Premises or the costs to obtain same (it being agreed that this is solely the responsibility of Tenant). Landlord shall not be liable for any interruption of utility services to the Premises unless caused by the gross negligence or willful act of Landlord or Landlord's employees, contractors, subcontractors or agents acting specifically at the request of Landlord.

Section 10.02. Intentionally deleted.

## ARTICLE 11

### EASEMENTS/RESERVATIONS

Section 11.01. Master Declaration. Tenant acknowledges and agrees that the Premises is subject to that certain Master Declaration, dated September 1, 2015, made by Landlord as Declarant, recorded at Deed Book 25348, Page 676, of the Records of the Clerk of Superior Court of DeKalb County, Georgia, as the same may hereafter be amended, modified, restated, supplemented or substituted.

Section 11.02. Tenant's Requirement to Provide Certain Benefits to Landlord During the Term.

(a) Tenant acknowledges and agrees that, once Tenant has constructed a building on the Premises containing a conference room or meeting space (it being agreed that a hotel will be built having a conference room of at least 540 square feet), Tenant shall cause Landlord to receive a donation of such room for use in connection with its non-profit operations at least three (3) times per calendar year for a period of between one (1) and three (3) days.

(b) Once the building referenced in subsection (a) above is open for business to the public, Tenant agrees to provide the space for a permanent display of local art from Landlord during the Term for so long as Landlord elects. The display shall be a rotating exhibit and both Landlord and Tenant must approve the actual exhibits, such approval not to be unreasonably withheld, conditioned or delayed. Landlord shall be responsible for providing, delivering and erecting the local art display to/on the Premises.

(c) The foregoing may be placed in a memorandum of lease and Tenant agrees to cause the foregoing to be included in any assignment or sublease of such building to any third party.

## ARTICLE 12

### REAL PROPERTY TAXES AND ASSESSMENTS OR CHARGES MADE UNDER ANY BETTERMENT OR IMPROVEMENT LAW

Section 12.01. Taxes and Assessments.

(a) "Taxes and Assessments" shall mean any and all of the following levied, assessed or imposed upon, against or with respect to any part of the Premises or the use and occupancy of the Premises at any time during the Term: real property ad valorem taxes, assessments, charges made by any public or quasi-public authority for improvements or betterments related directly or indirectly to the Premises, sanitary taxes or charges, sewer or water taxes or charges, rent taxes (if any are levied in the future) and any other governmental or quasi-governmental impositions, charges, encumbrances, levies, assessments or taxes of any nature whatsoever, whether general or special, whether ordinary or extraordinary, whether foreseen or unforeseen and whether payable in installments or not. In no event shall Taxes and Assessments include, and Tenant shall not be required to pay any inheritance, estate, succession, transfer, gift, gross receipts, revenue, margin, franchise, corporation, net income or profit tax or capital levy imposed upon Landlord.

(b) Tenant shall pay all Taxes and Assessments for each calendar year during the Term and any extension thereof for and relating to the Improvements and Premises, on or before the due date(s) thereof. Tenant may take the benefit of any law permitting any Taxes and Assessments to be paid over time or in installments. Tenant agrees to deliver to Landlord, upon demand, receipts evidencing payment of all such taxes and assessments, promptly following payment thereof by Tenant.

(c) The prorated portion of Taxes and Assessments during the Term for the calendar years during which the Expiration Date (or date of earlier termination of the Lease) occurs shall be paid by Tenant, it being acknowledged and agreed that Tenant shall only pay Taxes and Assessments during the Term.

(d) Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf, or in the name and on behalf of Landlord, in good faith, contest any Taxes and Assessments and, in the event of any such contest, may permit the Taxes and Assessments so contested to remain unpaid during the period of such contest and any appeal therefrom. Landlord, at no cost and expense to Landlord, shall cooperate fully with Tenant in any such contest. Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf, apply for any tax exemption allowed by the State in which the Premises are located or any political or taxing subdivision thereof under any existing or future provision of law which grants or may grant any such tax exemption. In the event of any such contest by Tenant, Tenant shall and does hereby indemnify and hold harmless Landlord from and against any loss or damage to Landlord, and Tenant shall pay any such tax, assessment, or claim under protest, or take such other steps as may be necessary, to prevent any sale of the Premises or any loss or damage to Landlord in connection with any such contest.

## ARTICLE 13

### USE

Section 13.01. Use. The Premises shall be used for (a) construction, operation and use of a select service hotel branded by Marriott or Hilton containing approximately 128 rooms (not to exceed seven (7) stories) along with surface parking, and (b) such additional legal purposes and such other additional improvements upon the approval by Landlord of a site plan therefor, such approval not to be unreasonably withheld, conditioned or delayed, all in accordance with existing codes, laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Premises. Tenant must obtain Landlord's prior written approval to use the Premises for any other purpose, such approval not to be unreasonably withheld, conditioned or delayed. In any event, the Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance on and relating to the Premises. Tenant may at any time discontinue the use of and vacate the Premises, provided such action, or omission, shall not interfere with or affect the Tenant's obligations hereunder (including Tenant's obligation to maintain the Premises in good working condition). Notwithstanding the foregoing, the Premises shall not be used at any time for any of the following (collectively, the "Prohibited Uses"):

- (a) The operation of a so-called "head shop" or other business devoted to the sale of articles or merchandise normally used or associated with illegal or unlawful activities such as, but not limited to, the sale of paraphernalia used in connection with marijuana or controlled drugs or substances. Even if marijuana is legalized in the state where the Premises is located, this use restriction shall remain in place.
- (b) A gun shop, shooting gallery or firearms range.
- (c) A so-called "massage parlor", a business which allows nudity or topless people on the Premises, or any business which sells, rents or permits the viewing of so-called "adult" or pornographic materials such as, but not limited to, adult magazines, books, movies, photographs, sexual aids, sexual articles and sex paraphernalia.
- (d) Any use involving the sale or distribution of any flammable liquids, gases or other Hazardous Substances.
- (e) An off-track betting parlor or arcade.
- (f) A liquor store or other establishment whose primary business is the sale of alcoholic beverages for off-site consumption.
- (g) A burlesque or strip club.
- (h) Any business containing a drive-thru facility.
- (i) Any illegal activity.

Section 13.02. Name of Project. Tenant acknowledges that it is very important to Landlord to have the name of the overall project, of which the Premises is a part, include the "Spruill" name. Tenant agrees to include the "Spruill" name in the overall project or center (but not outparcels or individual businesses) and further agrees that Landlord shall have the right to approve the initial name of the overall project or center of which the Premises is a part; provided that such approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not change the name of the project during the Term without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE 14

### DESTRUCTION OF OR DAMAGE TO BUILDINGS

Section 14.01. Repair and Reconstruction. If the Improvements located in or upon the Premises should be damaged or destroyed during the term hereof by any casualty, then the Tenant, subject to the availability of the insurance proceeds as herein provided, shall repair or restore said damages or destruction to the interior of the Premises substantially to a condition that existed prior to such damage or destruction. Landlord shall have absolutely no obligation to repair or restore the Premises. This Lease shall remain in full force and effect in the event of a



casualty and the parties waive the provisions of any law to the contrary. All proceeds from the insurance policy or policies as described in Section 6.01 of this Lease shall be made available to the Tenant for such repair and/or restoration, and all additional costs for such repair and/or restoration, if any, shall be paid by the Tenant. If Tenant does not repair the Premises, or if Tenant elects to terminate this Lease as set forth in Section 14.02 below, then the insurance proceeds shall be paid to Landlord after payment is made to any bona-fide mortgage lender (a lender unaffiliated with Tenant) on the Premises. The Minimum Rent and the Additional Rent shall not abate during the period of any restoration.

Section 14.02. Termination. Anything contained in this Lease to the contrary notwithstanding, in the event fifty (50%) percent or more of the improvements constructed by the Tenant in and upon the Premises should be damaged or destroyed during the last three (3) years of the Term, the Tenant shall have the right to terminate this Lease upon written notice to the Landlord within sixty (60) days from the date of such casualty. In the event that Tenant exercises the foregoing right to terminate this Lease, then the proceeds from such insurance policy or policies described in Section 6.01 of this Lease, after payment and discharge of all outstanding indebtedness of the Tenant, including mortgages placed upon the Premises by the Tenant, shall be paid in accordance with Section 14.01 above.

## ARTICLE 15

### EMINENT DOMAIN

Section 15.01. Termination of Lease. If the whole of the Premises, or such portion thereof as shall render the remainder of the Premises unsuitable for the use by the Tenant for Tenant's intended purpose as reasonably determined by Tenant, shall be taken by any public authority under the power of eminent domain (or sale by the Landlord in lieu thereof), then at Tenant's election the Term shall cease as of the day possession is taken by such public authority, and all rentals shall be paid up to that date. Unless this Lease shall be terminated as herein provided, this Lease shall continue in full force and effect as to the remainder of said Premises, and the Minimum Rent shall be equitably adjusted within thirty (30) days after such taking; in the event the Landlord and Tenant cannot agree upon such equitable adjustment, the Minimum Rent shall be determined by the American Arbitration Association ("AAA") upon application by either party, which determination shall be binding upon Landlord and Tenant, and the costs of AAA shall be divided between and paid by Landlord and Tenant. Each party shall be entitled to make a claim for its damages in connection with any condemnation and each party shall be entitled to retain any condemnation proceeds awarded to it; provided, however, it is understood that Tenant shall have the right to make a separate claim for an Improvements constructed by Tenant.

Section 15.02. Damages. The termination of this Lease (if this Lease is terminated due to a condemnation) shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damages caused by condemnation from the condemning party. Tenant shall have the right to file and pursue any claim for the value of the Tenant's leasehold estate and Landlord shall have the right to file and pursue any claim for the value of Landlord's interest in this Lease. Neither Landlord, nor Tenant, shall have any rights in any award made to the other by any condemnation authority notwithstanding the termination of this Lease as herein provided.

## ARTICLE 16

### ASSIGNMENT AND SUBLETTING

#### Assignment and Subletting.

Section 16.01. Assignment and Subletting. Tenant may, without the consent of Landlord but subject to the Prohibited Uses and all other requirements set forth in this Lease, (a) sublet the Premises or any part thereof, or permit the use of the Premises by any party or entity, or (b) assign this Lease to any party or entity affiliated or related to Tenant, or into which Tenant is hereafter merged or consolidated, or any entity owned or controlled by the principals of Tenant; provided, however, any change of control of Tenant shall require Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed. As used herein, "control" shall mean either (i) the direct or indirect ownership of more than fifty percent (50%) of all equity interests in Tenant or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Tenant, through the ownership of voting securities, by contract or otherwise. Tenant may, with the prior written consent of the Landlord (such consent not to be unreasonably withheld, conditioned or delayed) assign this Lease, or any interest hereunder, to any non-affiliated party or entity. Without limitation of the generality of the foregoing, any sublessee or assignee of Tenant pursuant to this Section 16.01 shall be bound by the terms and conditions of that certain Amended, Restated and Split Non-Disturbance, Recognition and Attornment Agreement and Consent to Ground Lease Agreement, dated on or about even date with this Lease, by and among Landlord, Tenant and DeKalb County, Georgia. Notwithstanding any such assignment or sublease, Tenant shall remain primarily liable under this Lease. Tenant shall provide Landlord with a copy of any assignment or sublease made under subsection (a) or (b) above within ten (10) days after any such assignment or sublease.

Section 16.02. Intentionally deleted.

## ARTICLE 17

### DEFAULT

Section 17.01. Tenant Default. In the event of (i) any failure of Tenant to pay any Minimum Rent or Additional Rent due hereunder as and when it is due and fails to cure the same within ten (10) days following Tenant's receipt of notice of nonpayment and demand for payment, or (ii) any failure to perform any other of the terms, conditions, or covenants of this Lease to be observed or performed by Tenant for more than thirty (30) calendar days after written notice of such default (except for a default in the payment of rent and other monetary obligations) shall have been received by Tenant (unless curative action cannot reasonably be accomplished within such period in which event said period to cure such default shall be automatically extended as long as Tenant promptly commences such cure and diligently prosecutes curative action, not to exceed ninety (90) days), or (iii) if Tenant shall be adjudicated a bankrupt or insolvent, or have a receiver appointed for all or substantially all of its business or assets, or have a trustee appointed for it after a petition has been filed for the reorganization of Tenant under any bankruptcy law of the United States, or make an assignment for the benefit of

its creditors, or abandon the Premises or allow the same to become abandoned for a period of ninety consecutive (90) days, or (iv) if Tenant or an affiliate of Tenant is the tenant under any of the Restaurant Parcel Lease or the Retail Parcel Lease, if a default by Tenant or such affiliate occurs under any of the Restaurant Parcel Lease or the Retail Parcel Lease and continues beyond the expiration of any applicable notice or cure period, then any such happenings shall be a default by Tenant, and Landlord may, as Landlord's remedies: (a) perform, on Tenant's behalf, any unperformed covenant or obligation under this Lease constituting such Tenant default (after giving Tenant written notice of Landlord's intention to do so except in the case of emergency), in which event Tenant shall reimburse Landlord for all expenses reasonably incurred by Landlord in doing so, which expenses shall be payable by Tenant within thirty (30) days after written demand therefor by Landlord; and/or (b) terminate this Lease and collect liquidated damages from Tenant in an amount equal to (w) the sum of all amounts due under this Lease to the date of termination, plus (x) the aggregate Minimum Rent remaining over the unexpired portion of the Term, all reduced to present value using a discount rate equal to the interest rate of a governmental security having a maturity closest to the then current expiration of the Term, less (y) the aggregate fair net rental value of the Premises over the remaining portion of the Term (provided, however, a reasonable period of time, not to exceed eighteen (18) months, may be considered as a leasing period by which the Premises would not be leased and therefor no income would be realized for such period) reduced to present value, plus (z) Landlord's costs and expenses incurred in the enforcement of this Lease including reasonable attorneys' fees actually incurred; and/or (c) Landlord shall have the right, without terminating this Lease, to enter into and upon and take possession of the Premises or any part thereof and at the option of Landlord to remove all persons and property therefrom (and such property, if any, may be removed and stored in a public or private warehouse or elsewhere at the cost of and for the account of Tenant), all without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may rent the Premises as the agent of Tenant, with or without advertisement, and by private negotiation, and for any term and upon such terms and conditions as Landlord in its sole discretion may deem proper, and Landlord may clean the Premises and make such alterations and repairs as Landlord may deem necessary or desirable in order to re-let the Premises (it being understood and agreed that Landlord shall in no way be responsible or liable for any failure to rent the Premises or any part thereof, or for any failure to collect rent due upon such re-letting). Upon each such re-letting under subparagraph (c) above, all rentals received by Landlord from such re-letting shall be applied first to the payment of any Additional Rent due from Tenant to Landlord, and second to the payment of any costs and expenses of such re-letting, including brokerage fees and attorneys' fees and costs of such alterations and repairs, and third to the payment of Minimum Rent and other charges then due and unpaid hereunder, and the residue, if any, shall be held by Landlord to the extent of and for application in payment of future rent as the same may become due and payable hereunder (it being understood and agreed that if such rentals received from such re-letting shall at any time or from time to time be less than sufficient to pay to Landlord the sums then due from Tenant hereunder, then Tenant shall pay any such deficiency to Landlord on demand, which deficiency shall, at Landlord's option, be calculated and paid monthly); and/or (d) Landlord may allow the Premises to remain unoccupied and collect Minimum Rent and other charges from Tenant as the same become due; and/or (e) Landlord may exercise any other remedies allowed by law. Landlord's pursuit of any one or more of the remedies set forth above shall not preclude pursuit of any other remedy or remedies provided for in this Lease or any other remedy or remedies

provided by law or in equity, separately or concurrently or in any combination, and Landlord's pursuit of any one or more of the remedies available to Landlord shall not constitute an election of remedies by Landlord, such that Landlord is precluded from electing any other remedy or remedies. Landlord shall have no obligation to mitigate damages hereunder. Anything contained in this Paragraph or Lease to the contrary notwithstanding, Landlord shall have no obligation to give written notice to Tenant of any monetary default more than two (2) times during any 12-month period during the Term. Any amounts owing by Tenant to Landlord under the terms of this Lease shall bear interest from the date the same become due until paid at 12% per annum. Said interest shall be considered as additional rent payable under this Lease.

Section 17.02. Landlord Default. Landlord's failure to perform or observe any of its obligations under this Lease after a period of thirty (30) days, or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure, after receiving notice from Tenant, is a Landlord default hereunder. The notice from Tenant shall give in reasonable detail the nature and extent of the failure. If Landlord commits a Landlord default, Tenant's sole remedy shall be to either (i) cure the Landlord default or (ii) sue Landlord for specific performance. Under no circumstances whatsoever may Tenant terminate this Lease due to a Landlord default. If Tenant elects option (i) above, Landlord shall pay Tenant, upon demand, all reasonable and actual costs, expenses, and disbursements incurred by Tenant to cure the Landlord default. If such payment is not rendered within thirty (30) days of demand, Tenant may deduct all such costs and expenses from the rent next coming due.

## ARTICLE 18

### SURRENDER OF LEASE AND HOLDING OVER

Section 18.01. Surrender Upon Termination. At the expiration of this Lease, Tenant shall surrender the Premises to Landlord along with all keys for the Premises at the place then fixed for the payment of rent and shall inform Landlord about all combinations on locks, safes and vaults, if any, in the Premises if owned by and under the control of Tenant. On such day, all alterations, additions and improvements located on the Premises as of such date, except equipment, fixtures and trade fixtures, including, all hard surface bonded on adhesively affixed flooring, and except as provided in Article 5, shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof.

Section 18.02. Holding Over. Any holding over after the expiration of the Term shall be construed to be a tenancy from month to month at the rent provided in this Lease and on the terms and conditions specified in this Lease, so far as applicable.

## ARTICLE 19

### ATTORNEY FEES

Section 19.01. Attorney Fees. If Landlord or Tenant shall, without fault, be made a party to any litigation by or against the other arising out of the occupancy of the Premises or any act of the other concerning the Premises or this Lease, or if successful litigation shall be brought by Landlord or Tenant against the other for recovery for possession of the Premises, for the

recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant in this Lease to be kept or performed hereunder, and a breach shall be established, Landlord or Tenant (as the case may be) shall be entitled to collect from the other all expenses incurred in connection therewith, including its attorney's fees and court costs.

## ARTICLE 20

### NOTICES

Section 20.01. Notices. Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be delivered in person, or transmitted by facsimile or internet communication (i.e., via email) or sent by U.S. Registered or Certified Mail, Return Receipt Requested, postage prepaid, or by Federal Express, Express Mail, or other reputable overnight delivery service, to the addresses set forth below or at such other addresses as or specified by written notice delivered in accordance herewith:

LANDLORD: Spruill Center for the Arts, Inc.  
5339 Chamblee Dunwoody Road, Suite B  
Dunwoody, Georgia 30338  
Attn: Robert Kinsey, CEO  
Telephone: (770) 394-3447  
Facsimile: (770) 394-6179  
Email: [rk Kinsey@spruillarts.org](mailto:rk Kinsey@spruillarts.org)

With a copy to: McClure & Kornheiser, LLC  
6400 Powers Ferry Road, NW Suite 150  
Atlanta, Georgia 30338  
Attn: Michael P. Kornheiser, Esq.  
Telephone: (678) 388-2680  
Facsimile: (678) 388-2690  
E-mail: [mkornheiser@mcclurelegal.com](mailto:mkornheiser@mcclurelegal.com)

TENANT: HDP Spruill, LLC  
c/o Hotel Development Partners, LLC  
3414 Peachtree Road  
Suite 1075  
Atlanta, Georgia 30326  
Attn: Steve Smith  
Telephone: (404) 842-1422  
Facsimile: (404) 842-1522  
E-mail: [ssmith@hdpfunds.com](mailto:ssmith@hdpfunds.com)

with a copy to: Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich, Esq.  
Telephone: (404) 853-8000

Facsimile: (404) 853-8806  
E-mail: [mikevoynich@eversheds-sutherland.com](mailto:mikevoynich@eversheds-sutherland.com)

Notices emailed, faxed or mailed as hereinabove provided shall be deemed effectively given on the date of email confirmation, postmarked date of such notice if mailed, on the date delivered to the reputable overnight delivery service if sent by overnight delivery, the date delivered to a commercial courier service if personal delivery is made by a commercial courier, and, otherwise, on the date actually received at the address or facsimile number provided above. A duplicate of any notice sent by email or facsimile shall also be sent by overnight courier or certified mail. Each party shall have the right to specify as its proper address any other address within the continental United States of America by giving to the other party at least fifteen (15) days prior written notice thereof.

## ARTICLE 21

### QUIET POSSESSION

Section 21.01. Covenant of Title, Authority and Quiet Possession. Landlord represents and warrants that Landlord has full right, power and lawful authority to enter into and to perform Landlord's obligations under this Lease; that Landlord has fee simple title to the Premises, free and clear of all contracts, leases, tenancies, agreements, restrictions, violations, mortgages and other liens and encumbrances affecting the Premises or the rights granted Tenant in this Lease, except for (a) real estate taxes which are liens but not yet due and payable, (b) utility easements which do not interfere with the proposed use and operation of the Premises, in Tenant's reasonable determination, (c) zoning ordinances and governmental requirements, (d) matters which would be disclosed by an accurate survey of the Premises and (e) all matters of public record as of the date hereof (the "Permitted Exceptions"). Provided Tenant performs all its covenants, agreements and obligations hereunder, Landlord covenants that Tenant shall have the peaceful and quiet enjoyment of the Premises, subject to the Permitted Exceptions, against any and all claims of all persons claiming by, through or under Landlord, on and subject to all of the terms and conditions of this Lease. By accepting the Premises, Tenant agrees to comply with any and all restrictions set forth in the Landlord's vesting deed (which must be strictly obeyed).

## ARTICLE 22

### TAXES ON TENANT'S PROPERTY

Section 22.01. Tenant to Pay. Tenant shall be responsible for and shall pay before delinquency all municipal, state or county taxes assessed during the Term against the Tenant by reason of the conduct of its business in the Premises or with respect to personal property of any kind owned by or placed in, upon or about the Premises by and/or at the expense of Tenant. Landlord shall have no obligation to pay any taxes related to the Improvements on or at the Premises, the Premises, Tenant's conduct of its business in the Premises, or Tenant's personal property at the Premises.

**ARTICLE 23**

**RELATIONSHIP OF PARTIES**

Section 23.01. No Partnership Intended. It is expressly understood that, under this Lease, Landlord does not become a partner of or joint venturer with Tenant.

**ARTICLE 24**

**FORCE MAJEURE**

Section 24.01. Performance Excused. If either party to this Lease shall be delayed or hindered in or prevented from the performance of any non-monetary obligation required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period equivalent to the period of such delay. For the avoidance of doubt, it is understood and agreed that this provision shall not affect the monetary obligations of Tenant under this Lease.

**ARTICLE 25**

**BROKERS**

Section 25.01. Brokers. Landlord has agreed to pay a real estate commission to JWB Realty Services, LLC pursuant to the terms of a separate commission agreement. Tenant shall have no obligation with reference to the payment of any real estate commission in connection with the Premises or the Lease. Landlord and Tenant each warrant and represent to the other that it has had no dealings with any other real estate agent or broker other than the broker identified above with reference to the Premises or the Lease, and each agrees to indemnify and hold harmless the other, including attorneys' fees and costs, arising out of its breach of the foregoing warranty and representation, which obligation shall survive the expiration or termination of the Lease.

**ARTICLE 26**

**[INTENTIONALLY DELETED]**

**ARTICLE 27**

**GENERAL**

Section 27.01. Waiver of Jury Trial and Counterclaims. The parties to this Lease waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matter arising out of or in any way connected with this Lease, the relationship of

Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage, pursuant to any right granted under State or Federal laws.

Section 27.02. Withholding of U. S. Income Tax. Landlord hereby represents and warrants to Tenant that Landlord is not a foreign partnership, joint venture, corporation, or other foreign entity, as the same is defined by applicable provisions of the Internal Revenue Code of the United States. Tenant hereby represents and warrants to Landlord that Tenant is not a foreign partnership, joint venture, corporation, or other foreign entity, as the same is defined by applicable provisions of the Internal Revenue Code of the United States.

Section 27.03. LIMITATION OF LIABILITY: LANDLORD'S OBLIGATIONS AND LIABILITY TO TENANT WITH RESPECT TO THIS LEASE SHALL BE LIMITED SOLELY TO LANDLORD'S INTEREST IN THE PREMISES, AND NEITHER LANDLORD NOR ANY OF THE MEMBERS OF LANDLORD, NOR ANY AGENT, OFFICER, DIRECTOR, MANAGER OR SHAREHOLDER OF LANDLORD SHALL HAVE ANY PERSONAL LIABILITY WHATSOEVER WITH RESPECT TO THIS LEASE. TENANT ACKNOWLEDGES THAT LANDLORD IS A NON-PROFIT ENTITY AND LANDLORD SHALL HAVE NO INDEMNIFICATION OBLIGATIONS UNDER THIS LEASE OR OTHERWISE TO TENANT.

Section 27.04. Miscellaneous Matters.

(a) Severability. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remaining terms, covenants and conditions of this Lease shall not be affected thereby and each such term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(b) Integration. This Lease contains the entire agreement between the parties, and any agreement hereafter made shall be ineffective to change this Lease unless such agreement is in writing and signed by the party against whom enforcement of the change modification, discharge or abandonment is sought.

(c) Governing Law. This Lease shall be governed by and construed according to the laws of the State in which the Premises are located.

(d) Captions. The captions of the several article or sections titles contained in this Lease are for convenience only and do not define, limit, describe or construe the contents of this Lease.

(e) Successors and Assigns. Subject to the restrictions contained above, the covenants and conditions herein contained shall bind and inure to the benefit of the respective permitted heirs, successors, executors, administrators and assigns of the parties hereto; and in any case where there shall be more than one Tenant, each Tenant shall be jointly severally liable hereunder.

(f) Time of Essence. Time is of the essence under any and all provisions of this Lease.



(g) Recording. The parties agree to execute and deliver upon execution of this Lease a memorandum of lease (the "Short Form Lease"), in the form attached hereto as Exhibit "B" and incorporated herein by reference. Tenant may record the Short Form Lease at its election at any time at its sole expense.

(h) Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing signed by Landlord or as otherwise provided herein.

(i) Knowledge. Any reference to Landlord's knowledge, Landlord's actual knowledge, or words of similar import shall mean and refer only to the actual knowledge, without investigation or inquiry, as of the date of this Lease, to Robert Kinsey, the CEO of Landlord, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any other party. Tenant acknowledges and agrees that, under no circumstances shall Robert Kinsey have any personal liability hereunder.

(j) Title Insurance. Should Tenant desire to obtain leasehold title insurance in connection with this Lease, Landlord shall sign (i) a customary owner's affidavit upon Tenant's request in a form customarily acceptable to the title company, which affidavit shall be in a form acceptable to Landlord and shall be limited to the actual knowledge of the representative signing on behalf of Landlord (without personal liability to such representative). There shall be no indemnity contained in such affidavit; (ii) such other documents as shall be required by the title company as a condition to insuring Tenant's title to the leasehold estate in the Premises, free of exceptions, except for the Permitted Exceptions; and (iii) a release of the Premises from the holder of any security interest in the fee interest of Landlord in the Premises if incurred by Landlord ("Fee Mortgagee") or a complete subordination of such security interest of Fee Mortgagee to this Lease and the leasehold estate of Tenant, together with commercially reasonable notices of defaults and rights to cure as set forth in Article 7 hereof.

Section 27.05. Landlord Representation, Warranty and Covenant of Authority. Landlord hereby warrants and represents to Tenant that Landlord has the authority to enter into this Lease and to perform its obligations hereunder, and covenants and agrees that such representation and warranty shall be and remain true as of the date of execution of this Lease and during the Term.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals the day and year first above written.

**LANDLORD.**

**SPRUILL CENTER FOR THE ARTS, INC.**

By: Robert G. Kinsey  
Print Name: ROBERT G. KINSEY  
Title: CEO

[CORPORATE SEAL]

**TENANT:**

**HDP SPRUILL, LLC**

By: \_\_\_\_\_ [SEAL]  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Consented to by:

**HDP ACQUISITIONS, LLC**

By: \_\_\_\_\_ [SEAL]  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals the day and year first above written.

**LANDLORD.**


**SPRUILL CENTER FOR THE ARTS, INC.**

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

[CORPORATE SEAL]


**TENANT:**

**HDP SPRUILL, LLC**

By:  [SEAL]  
Print Name: Allen T. O'Brien  
Title: President / manager

Consented to by:

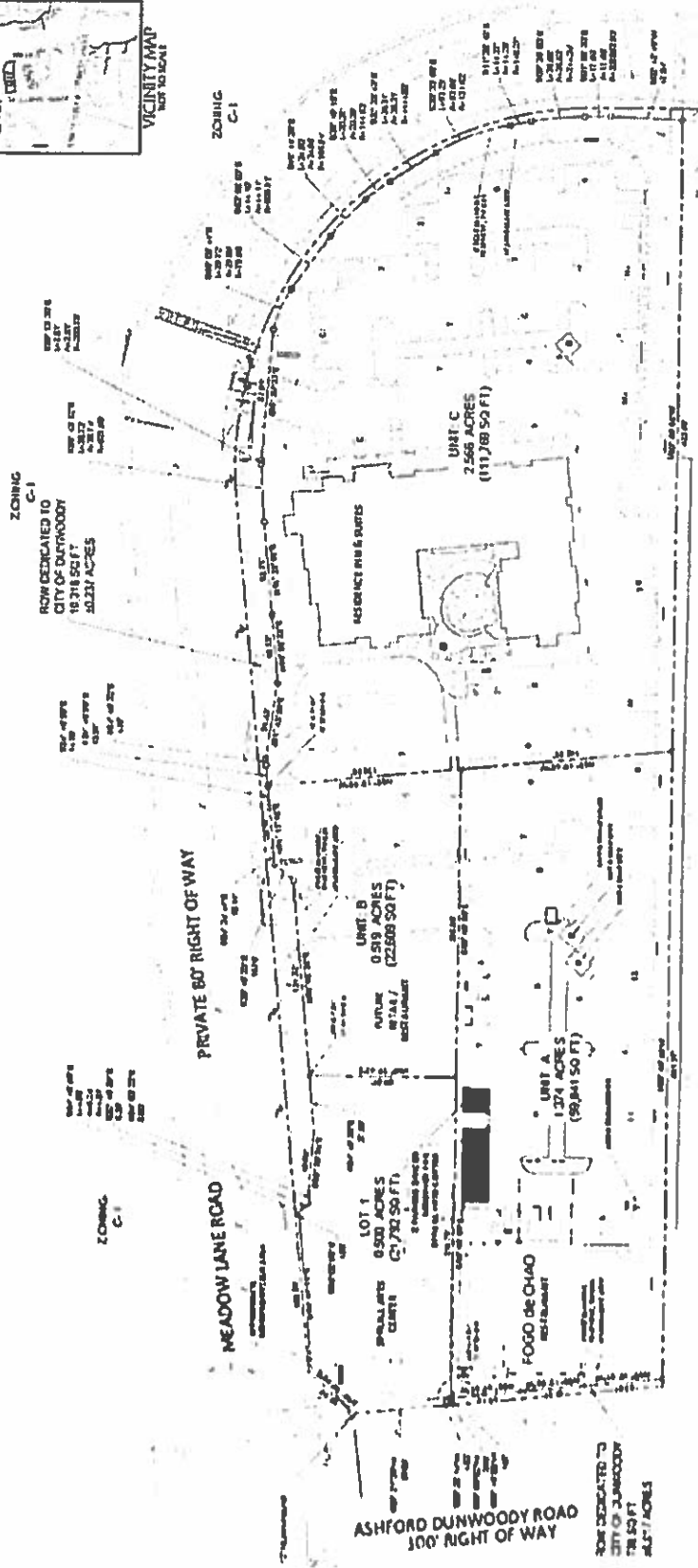
**HDP ACQUISITIONS, LLC**

By:  [SEAL]  
Print Name: Allen T. O'Brien  
Title: President / manager

**EXHIBIT "A"**

**Depiction of Leased Property**

The Hotel Parcel is depicted as "Unit C" on the attached Lease Parcel Layout Exhibit.



CARLOS APARTMENTS  
CARLOS METEOROLITAI  
ZONING: C-1



**SPRUILL CENTER - LEASE PARCEL LAYOUT EXHIBIT**  
 HOTEL DEVELOPMENT PARTNERS  
 SIX CONCOURSE PARKWAY, SUITE 2075  
 Atlanta, Georgia 30328



**EXHIBIT "B"**

RECORDING REQUESTED BY AND  
AFTER RECORDING RETURN TO:

Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich

STATE OF GEORGIA

COUNTY OF DEKALB

Cross-Reference:  
Deed Book 25348, Page 670  
DeKalb County, Georgia

**AMENDED, RESTATED AND SPLIT MEMORANDUM OF LEASE  
(HOTEL PARCEL)**

**THIS AMENDED, RESTATED AND SPLIT MEMORANDUM OF LEASE (HOTEL PARCEL)** is made by and between **Spruill Center for the Arts, Inc.**, a Georgia non-profit corporation (hereinafter, collectively "Landlord"), and **HDP Spruill, LLC**, a Georgia limited liability company (hereinafter "Tenant").

**WITNESSETH:**

Landlord and Tenant agree that that certain Memorandum of Lease, by and between Landlord and Tenant, recorded in Deed Book 25348, Page 670, Records of the Clerk of Superior Court of DeKalb County, Georgia, is hereby amended, restated, split and superseded as follows:

That by that certain Amended, Restated and Split Lease (Hotel Parcel) dated as of November 30, 2017, but effective as of September 21, 2015, by and between Landlord and Tenant (the "Lease"), the Landlord has demised and leased to Tenant, the premises described as follows:

## UNIT C

### HOTEL PARCEL

ALL THAT TRACT OR PARCEL OF land lying and being in Land Lot 350 of the 18<sup>th</sup> District, City of Dunwoody, DeKalb County, Georgia, as shown on ALTA/ACSM Land Title Survey for HDP Spruill, LLC, Branch Banking and Trust Company and Chicago Title Insurance Company by McFarland-Dyer and Associates, Inc., dated November 19, 2015, last revised November 27, 2017, and being more particularly described as follows:

COMMENCING at the southwesterly end of the mitered intersection formed by the intersection of the easterly right-of-way of Ashford Dunwoody Road (right-of-way varies) with the southerly right-of-way of Meadow Lane Road (an 80-foot right-of-way); thence along said mitered intersection North 39°52'43" East a distance of 35.50 feet to a ½" rebar found on the southerly right-of-way Meadow Lane Road; thence along said right-of-way North 84°41'11" East a distance of 105.34 feet to a point; thence continuing along said right-of-way South 06°02'58" East a distance of 1.88 feet to a point; thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 5.24 feet to a point (said curve having a radius of 4.81 feet, and being subtended by a chord line having a bearing of South 64°48'58" East and a chord length of 4.98 feet); thence continuing along said right-of-way South 32°46'29" East a distance of 6.35 feet to a point; thence continuing along said right-of-way North 84°03'22" East a distance of 8.00 feet to a point; thence continuing along said right-of-way South 85°20'04" East a distance of 40.60 feet to a point; thence continuing along said right-of-way North 84°45'20" East a distance of 37.59 feet to a point; thence continuing along said right-of-way North 84°45'20" East a distance of 131.32 feet to a point; thence continuing along said right-of-way thence North 39°45'20" East a distance of 16.76 feet to a point; thence continuing along said right-of-way North 84°24'41" East a distance of 10.11 feet to a point; thence continuing along said right-of-way North 84°17'45" East a distance of 28.19 feet to a point; thence continuing along said right-of-way North 84°46'55" East a distance of 14.76 feet to a point, said point being the TRUE POINT OF BEGINNING; thence continuing along said right-of-way thence North 84°46'55" East a distance of 13.97 feet to a point; thence continuing along said right-of-way North 84°45'22" East a distance of 4.15 feet to a point; thence continuing along said right-of-way South 81°43'59" East a distance of 51.40 feet to a point; thence continuing along said right-of-way North 84°50'23" East a distance of 46.19 feet to a point; thence continuing along said right-of-way North 84°37'00" East a distance of 62.76 feet to a point; thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 38.74 feet to a point (said curve having a radius of 527.58 feet, and being subtended by a chord line having a bearing of North 86°43'12" East and a chord length of 38.73 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 2.81 feet to a point (said curve having a radius of 200.78 feet, and being subtended by a chord line having a bearing of North 89°13'30" East and a chord length of 2.81); thence continuing along said right-of-way South 85°29'23" East a distance of 87.91 feet to a point; thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 29.89 feet to a point (said curve having a radius of 79.56 feet, and being subtended by a chord line having a bearing of South 66°00'44" East and a chord length of 29.72 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 44.11 feet to a point (said curve having a radius of 985.91 feet, and being

subtended by a chord line having a bearing of South 53°58'00" East and a chord length of 44.10 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance 34.56 feet to a point (said curve having a radius of 166.54 feet, and being subtended by a chord line having a bearing of South 46°44'26" East and a chord length of 34.50 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 20.39 feet to a point (said curve having a radius of 144.53 feet, and being subtended by a chord line having a bearing of South 36°45'15" East and a chord length of 20.37 feet); thence continuing along said right-of-way along the arc of a curve to the right and arc distance of 36.31 feet to a point (said curve having a radius of 4,444.88 feet, and being subtended by a chord line having a bearing of South 32°28'43" East and a chord length of 36.31 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 53.66 feet to a point (said curve having a radius of 131.62 feet, and being subtended by a chord line having a bearing of South 20°33'58" East and a chord length of 53.29 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 14.28 feet to a point (said curve having a radius of 148.27 feet, and being subtended by a chord line having a bearing of South 11°38'48" East and a chord length of 14.27 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 36.62 feet to a point (said curve having a radius of 244.34 feet, and being subtended by a chord line having a bearing of South 05°26'03" East and a chord length of 36.58 feet); thence continuing along said right-of-way along the arc of a curve to the left and arc distance of 17.66 feet to point (said curve having a radius of 307,852.93 feet, and being subtended by a chord line having a bearing of South 01°08'33" East and a chord length of 17.66 feet); thence continuing along said right-of-way South 02°42'46" West a distance of 47.94 feet to a point; thence leaving said right-of-way North 89°40'08" West a distance of 423.96 feet to a point; thence North 05°18'49" West a distance of 142.69 feet to a point; thence North 05°18'49" West a distance of 130.85 feet to a point located on the southerly right-of-way of Meadow Lane Road, and the TRUE POINT OF BEGINNING.

Said tract contains 2.566 acres or 111,772 square feet.

Together with all easements and appurtenances thereof, and together with all buildings, structures, improvements, equipment, machinery and personal property located thereon (hereinafter referred to as the "Premises"), together with non-exclusive rights to all the tenements, rights, privileges, benefits, hereditaments, easements, appurtenances thereof and any right, title and interest of Landlord in and to any land lying in the bed of any street, road or highway in front of or adjoining said Premises, and together with any strips and gores relating to said Premises.

To have and to hold unto Tenant for a term from the Commencement Date of September 21, 2015 until September 20, 2114.

Tenant acknowledges and agrees that, once Tenant has constructed a building on the Premises containing a conference room or meeting space (it being agreed that a hotel will be built having a conference room of at least 540 square feet), Tenant shall cause Landlord to receive a donation of such room for use in connection with its non-profit operations at least three (3) times per calendar year for a period of between one (1) and three (3) days.



Once the building referenced in subsection (a) above is open for business to the public, Tenant agrees to provide the space for a permanent display of local art from Landlord during the Term for so long as Landlord elects. The display shall be a rotating exhibit and both Landlord and Tenant must approve the actual exhibits, such approval not to be unreasonably withheld, conditioned or delayed. Landlord shall be responsible for providing, delivering and erecting the local art display to/on the Premises.

The Amended, Restated and Split Lease (Hotel Parcel) and this Memorandum of Lease are and shall be affected by and subject to the terms and provisions of that certain Consent and Agreement Regarding Ground Lease dated November 30, 2015, by and between Landlord and Tenant, as modified and amended by that certain First Modification to Consent and Agreement Regarding Ground Lease dated November 30, 2017 by and between Landlord and Tenant, each for the benefit of Branch Banking and Trust Company and its successors and/or assigns.

The terms are more fully set forth in the Lease, and this Memorandum of Lease is subject to all the covenants, conditions and terms set forth in the Lease, which is hereby incorporated herein and made a part hereof by reference to the same full extent as if all the covenants, conditions and terms thereof were copied in full herein.

This Memorandum of Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single agreement.

[SIGNATURES ON FOLLOWING PAGE]

Executed effective as of the Commencement Date of September 21, 2015.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Commission Expiration Date: \_\_\_\_\_

(NOTARIAL SEAL)

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Commission Expiration Date: \_\_\_\_\_

(NOTARIAL SEAL)

LANDLORD:

**SPRUILL CENTER FOR THE ARTS, INC.,**  
a Georgia non-profit corporation

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Corporate Seal]

TENANT:

**HDP SPRUILL, LLC,** a Georgia limited  
liability company

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Seal]

**AMENDED, RESTATED AND SPLIT LEASE**  
**(RESTAURANT PARCEL)**

**THIS INDENTURE OF LEASE** (this "Lease"), is dated, made and entered into as of the 30<sup>th</sup> day of November, 2017, but effective as of September 21, 2015 (the "Commencement Date"), by and between **SPRUILL CENTER FOR THE ARTS, INC.**, a Georgia non-profit corporation (hereinafter the "Landlord"), and **HDP SPRUILL, LLC**, a Georgia limited liability company (hereinafter called "Tenant").

**W I T N E S S E T H: T H A T**

Landlord and HDP Acquisitions LLC, a Georgia limited liability company ("Original Tenant") entered into a certain Lease dated October 31, 2013, as amended by that certain First Amendment to Lease dated March 14, 2014, as further amended by that certain Second Amendment to Lease dated October 23, 2014, and as assigned by Original Tenant to Tenant by Assignment and Assumption of Lease dated December, 2014, as further amended by that certain Third Amendment to Lease dated June 12, 2015, as further amended by that certain Fourth Amendment to Lease dated September 21, 2015 (as so amended and assigned, the "Original Lease").

Landlord and Tenant wish to amend, restate and split the Original Lease into three (3) separate leases, pursuant to which the leased premises shown as "Tract Two" on Exhibit "A" to the Original Lease shall be divided into three (3) separate leased premises, as more particularly depicted as Unit C (the "Hotel Parcel"), Unit A (the "Restaurant Parcel") and Unit B (the "Retail Parcel") on Exhibit "A" attached hereto and made a part hereof.

Landlord and Tenant acknowledge and agree that the Original Lease is hereby amended, restated and split pursuant to the terms and conditions of (i) this Lease, (ii) that certain Amended, Restated and Split Lease of even date herewith by and between Landlord and Tenant related to the "Hotel Parcel" (the "Hotel Parcel Lease"), and (iii) that certain Amended, Restated and Split Lease of even date herewith by and between Landlord and Tenant related to the "Retail Parcel" (the "Retail Parcel Lease").

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises more particularly depicted on Exhibit "A" attached hereto and made a part hereof, as the "Restaurant Parcel", together with all easements and appurtenances thereof, and together with all buildings, structures, improvements, equipment, machinery and personal property located thereon (hereinafter referred to as the "Premises" and the improvements now or hereafter located thereon being hereinafter referred to as the "Improvements"), together with non-exclusive rights to all the tenements, rights, privileges, benefits, hereditaments, easements, appurtenances thereof and any right, title and interest of Landlord in and to any land lying in the bed of any street, road or highway in front of or adjoining said Premises, together with any strips and gores relating to said Premises.

This Lease shall be on the following terms and conditions:

## ARTICLE 1

### TERM

Section 1.01. Term of Lease. A term of ninety-nine (99) years beginning on the Commencement Date and expiring on September 20, 2114; therefore, Landlord and Tenant agree that the term of this Lease (the "Term") shall commence on the Commencement Date and shall expire on September 20, 2114 (the "Expiration Date"), unless sooner terminated as set forth in this Lease.

## ARTICLE 2

### RENT

Section 2.01. Minimum Rent. Landlord and Tenant acknowledge and agree that all rent required to be paid by Tenant under the Original Lease has been paid through November 30, 2017. Commencing December 1, 2017, Tenant shall pay to Landlord, on or before the first day of each month at Landlord's office (as the same may be changed by notice as provided herein from time to time), the following amounts as annual rental (the "Minimum Rent") (to be paid 1/12 each month during each and every calendar month during the Term):

Dates			Annual Minimum Rent	Monthly Installment
12/1/17	-	9/30/20	\$ 100,000.00	\$ 8,333.33
10/1/20	-	9/30/25	\$ 110,000.00	\$ 9,166.67
10/1/25	-	9/30/30	\$ 121,000.00	\$ 10,083.33
10/1/30	-	9/30/35	\$ 133,100.00	\$ 11,091.67
10/1/35	-	9/30/40	\$ 146,410.00	\$ 12,200.83
10/1/40	-	9/30/45	\$ 161,051.00	\$ 13,420.92
10/1/45	-	9/30/50	\$ 177,156.10	\$ 14,763.01
10/1/50	-	9/30/55	\$ 194,871.71	\$ 16,239.31
10/1/55	-	9/30/60	\$ 214,358.88	\$ 17,863.24
10/1/60	-	9/30/65	\$ 235,794.77	\$ 19,649.56
10/1/65	-	9/30/70	\$ 259,374.25	\$ 21,614.52
10/1/70	-	9/30/75	\$ 285,311.67	\$ 23,775.97
10/1/75	-	9/30/80	\$ 313,842.84	\$ 26,153.57
10/1/80	-	9/30/85	\$ 345,227.12	\$ 28,768.93
10/1/85	-	9/30/90	\$ 379,749.83	\$ 31,645.82
10/1/90	-	9/30/95	\$ 417,724.82	\$ 34,810.40
10/1/95	-	9/30/00	\$ 459,497.30	\$ 38,291.44
10/1/00	-	9/30/05	\$ 505,447.03	\$ 42,120.59
10/1/05	-	9/30/10	\$ 555,991.73	\$ 46,332.64
10/1/10	-	9/20/14	\$ 611,590.90	\$ 50,965.91

Notwithstanding the foregoing, Minimum Rent for the month of September, 2114 shall be prorated on a daily basis consistent with the Expiration Date of September 20, 2114. It is understood and agreed that the Minimum Rent shall be due and payable as provided herein.

without demand, setoff or deduction whatsoever. Minimum Rent and each and every other charge, fee, cost, or expense which Tenant is obligated or liable to pay to, refund to, or reimburse Landlord shall, for the purposes of the default provisions of this Lease, be deemed additional rental due from Tenant, and Tenant's failure to so pay, refund, or reimburse when due shall entitle Landlord to all the remedies provided for herein and at law or in equity on account of failure to pay rent.

Section 2.02. Additional Rent. Tenant shall also pay as "Additional Rent" (herein sometimes so called) all charges, costs, expenses and other payments which Tenant assumes or agrees to pay under any of the provisions of this Lease. Landlord and Tenant have agreed, and do hereby agree, that Tenant shall be responsible for and shall pay when due all costs and expenses attributable to the ownership and operation of the Premises, and that the Minimum Rent payable by Tenant to Landlord hereunder shall be absolutely net of all such costs and expenses (however, Tenant shall not be obligated to pay any management fees to Landlord). In the event of any non-payment of any such Additional Rent, Landlord shall have all of the rights and remedies it would have hereunder or by law in the case of non-payment of Minimum Rent.

Section 2.03. Late Fee. Tenant shall pay to Landlord a late fee in an amount equal to five (5%) percent of any Minimum Rent in the event that such payment is not received by the Landlord on or prior to the tenth (10th) day after such payment becomes due and payable in accordance with the terms of this Lease.

### ARTICLE 3

#### ENVIRONMENTAL /AS-IS PROVISION

Section 3.01. Hazardous Substances.

(a) The term "Hazardous Substances," as used in this Lease, shall mean pollutants, contaminants, toxic or hazardous substances or wastes, oil or petroleum products, flammables or any other substances whose nature and/or quantity of existence, use, release, manufacture or effect renders it subject to federal, state, or local environmental, health, community awareness or safety laws or regulations, now or hereafter enacted or promulgated by any governmental authority or court ruling, or any investigation, remediation or removal (collectively the "Environmental Laws").

(b) Tenant hereby agrees that (i) no activity will be conducted on, under or about the Premises by or through Tenant that will use, generate, release, store, dispose of or produce any Hazardous Substances except only those Hazardous Substances which are used or useful in Tenant's or Subtenant's businesses, in which event such Hazardous Substances shall be used, stored and disposed of in a safe and lawful manner in compliance with all Environmental Laws, and (ii) no portion of the Premises will be used by Tenant as a landfill or dump.

(c) Tenant agrees to indemnify, defend (through counsel designated by the Tenant and reasonably acceptable to the Landlord) and hold harmless the Landlord, its successors and assigns, from and against any and all claims, losses, liens, damages and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs

and expenses in connection therewith, arising out of (i) the presence on or under the Premises of any Hazardous Substances, or any releases or discharges of any Hazardous Substances on, under or from the Premises, which presence, release or discharge occurred during the Term, or (ii) any activity carried on or undertaken on or off the Premises by or through the Tenant in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances present in, on or under the Premises.

(d) Landlord warrants and represents to Tenant that Landlord has received no written notice from any governmental agency that Hazardous Substances exist on the Premises in violation of Environmental Laws. Landlord further warrants (without any investigation) that it has no actual knowledge whether any of such Hazardous Substances exist on the Premises. Should Landlord cause any Hazardous Substances to be released onto the Premises during the Term, Landlord shall be required to remove such Hazardous Substances and remediate the Premises in accordance with Environmental Laws.

(e) Landlord represents to Tenant that Landlord has provided copies of any environmental reports in Landlord's possession that have been performed in the past ten (10) years on the Premises. Other than any information which may be contained in such reports, Landlord represents that it has no actual knowledge of the violation of any Environmental Laws with respect to any Hazardous Substances at the Premises.

(f) BY ACCEPTING DELIVERY OF THE PREMISES, TENANT ACKNOWLEDGES AND AGREES THAT IT IS ACCEPTING AND HAS ACCEPTED THE PREMISES IN ITS "AS-IS, WHERE-IS" CONDITION. TENANT ACKNOWLEDGES AND AGREES THAT LANDLORD DOES NOT WARRANTY THE ACCURACY OF ANY INFORMATION CONTAINED IN THIRD PARTY REPORTS AND THAT LANDLORD SPECIFICALLY DEMANDS THAT TENANT CONDUCT ITS OWN DUE DILIGENCE. ANY RELIANCE BY TENANT ON SUCH MATERIALS SHALL BE DONE AT TENANT'S OWN RISK. TENANT HEREBY AFFIRMS THAT TENANT MADE A THOROUGH AND EXHAUSTIVE INVESTIGATION OF THE PREMISES PRIOR TO ACCEPTING DELIVERY THEREOF.

(g) The provisions of this Article 3 shall survive the expiration or termination of this Lease.

#### ARTICLE 4

##### FIXTURES, SIGNS, ALTERATIONS

Section 4.01. Improvements. The Premises are accepted by the Tenant in an "as is - where is" condition, without warranty of condition, merchantability or fitness for a particular use, expressed or implied.

Section 4.02. Alterations and Additions. Tenant, at Tenant's sole cost and expense, may erect all improvements permitted by the applicable zoning ordinances in order to construct a single story retail space or restaurant (without a drive-thru), curb cuts, signage and landscaping, such approval not to be unreasonably withheld, conditioned or delayed. Tenant may alter and

modify, repair or add to any existing Improvements, all or any of the foregoing being hereinafter collectively called "Alterations," from time to time, provided, however, that (a) all Alterations shall be constructed in accordance with all applicable laws, (b) no Improvements or Alterations on the Premises shall be greater than one (1) story in height, and (c) any change in the location of any buildings or the common areas (such as, without limitation, the parking areas) shall require Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Landlord's approval hereunder shall not be deemed any warranty that such proposed work by Tenant is allowable under applicable laws (including but not limited to applicable zoning ordinances), it being understood that Tenant has the sole obligation to confirm that its proposed improvements comply with all applicable laws.

Section 4.03. Alterations Belong to Tenant Until Expiration or Termination of Lease. All alterations or improvements to the Premises shall remain the property of and for the benefit of the Tenant until expiration or termination of this Lease as set forth in Section 18.01, and Tenant alone shall be entitled to deduct all depreciation on Tenant's income tax return for the alterations and improvements.

Section 4.04. Fixtures. Landlord agrees to execute and deliver, upon request of the Tenant, a landlord's consent and/or subordination with reference to third-party fixture financing of the Tenant or its subtenants, in form reasonably required by such lenders. Notwithstanding the provisions of Section 18.01 hereof, Tenant shall have the right prior to the expiration of the Term to remove any fixtures, trade fixtures, signs and other personal property installed or placed in the Premises by Tenant or any subtenant or assignee, provided Tenant repairs any damage caused by such removal. Any fixtures, signs and other furnishings or equipment left in the Premises by Tenant after the expiration of this Lease shall be conclusively deemed abandoned by Tenant and shall be the property of the Landlord.

Section 4.05. Removal of Liens. During the Term, Tenant shall bond against or discharge all liens on the Premises arising by, through or under Tenant within sixty (60) calendar days after the earlier of (i) Tenant's receipt of actual notice that such a lien exists, or (ii) upon written request by Landlord.

Section 4.06. Signs. Tenant may, at Tenant's expense, install and display on the throughout the Premises any and all signs in compliance with applicable Laws and not in violation of the Prohibited Uses (as defined in Section 13.01).

## ARTICLE 5

### MAINTENANCE OF BUILDING

Section 5.01. Repairs by Tenant. Tenant shall at all times keep the Premises in good condition (including, without limitation in any way, the landscaping and the Improvements), working order and repair, normal wear and tear, casualty and condemnation excepted.

Section 5.02. No Repairs Required by Landlord. Landlord shall have absolutely no duty, obligation or liability whatsoever for construction, maintenance, replacement or repair of

the Premises (except caused by the gross negligence or willful misconduct of Landlord or its employees or contractors). Landlord shall have absolutely no obligation to inspect the Premises.

Section 5.03. Failure of Tenant to Repair. Should Tenant fail to repair or maintain the Premises as required herein within sixty (60) days' prior written notice thereof to Tenant, or if Landlord should determine, in the exercise of its reasonable judgment, that emergency repairs for which Tenant is responsible are necessary, then within ten (10) days' prior written notice to Tenant (unless the emergency requires immediate action in which case Landlord shall give oral notice), Landlord may make such repairs or perform such maintenance without liability to Tenant for any resulting loss or damage that may accrue to Tenant's fixtures or other property, or to Tenant's business, whereupon Tenant shall, within thirty (30) days after receipt of an invoice from Landlord, pay to Landlord, as Additional Rent, the reasonable third party actual cost incurred of such maintenance or repair.

## ARTICLE 6

### INSURANCE

Section 6.01. Property Insurance. Tenant agrees, at its sole expense, to keep and maintain all risks and special perils insurance coverage, excluding flood and earthquake coverage (unless same becomes customary to obtain where the Premises is located), relating to the Premises and the Improvements located thereon in an amount equal to the full replacement value thereof, from time to time, during the Term, and any extension or renewal thereof. Tenant caused a policy or certificate evidencing such insurance to be delivered to Landlord prior to the Commencement Date, and Tenant shall cause renewals of each such policy to be delivered to Landlord at least fifteen (15) days prior to the expiration of such policy.

Section 6.02. Public Liability and Property Damage. Tenant shall protect, indemnify, and save harmless Landlord from and against any and all claims, demands, and causes of action of any nature whatsoever, and from and against any expense incident to the defense by Landlord of any such demand or action, for injury to or death of persons or loss of or damage to property occurring on or about the Premises or in any manner growing out of or connected with Tenant's use and occupancy of the Premises or the condition thereof, except as caused by the gross negligence or willful misconduct of Landlord or its employees or contractors, and at its own cost and expense procure and keep in force during the Term a policy of comprehensive public liability insurance with limits of not less \$1,000,000 per occurrence for bodily injury, death and property damage, and \$3,000,000 in the aggregate, and Tenant shall cause Landlord to be named as an additional insured thereunder, and Tenant caused a certificate of such insurance to be delivered to Landlord prior to the Commencement Date, and renewal certificates shall be delivered to Landlord not less that fifteen (15) days prior to the renewal date of any such insurance policies. Upon at least thirty (30) days' prior written notice from Landlord to Tenant, Landlord shall have the right to require Tenant to increase its liability insurance coverage one time every ten (10) years during the Term if the market liability coverage for similarly situated projects in the Atlanta, Georgia area has increased.

Section 6.03. Business Interruption Insurance. Tenant shall, at its sole expense, procure a business interruption insurance policy that, in the event of a casualty, condemnation or



any other disruption at the Premises, insures Landlord will receive all amounts due under this Lease. Tenant acknowledges and agrees that the Minimum Rent and Additional Rent due under this Lease shall not abate during the period between any disruption and the completion of any such restoration, rebuilding, or replacement.

Section 6.04. Failure to Maintain Insurance. Should Tenant fail to obtain any insurance hereinabove described, then Landlord may procure the same and charge the cost thereof to Tenant as Additional Rent, which shall be due and payable to Landlord on demand or, in the absence of demand, with the installment of Minimum Rent next coming due.

Section 6.05. Landlord Insurance. Landlord shall maintain, or cause to be maintained, a comprehensive public liability insurance policy with limits of not less \$1,000,000 per occurrence for bodily injury, death and property damage, and \$3,000,000 in the aggregate (which may be included within any so-called "umbrella" coverage), with respect to the real property Landlord owns adjacent to the Premises (depicted as "Lot 2" on Exhibit "A" attached hereto and made a part hereof).

Section 6.06. Mutual Release for Matters Covered by Insurance. Each party hereby waives any and all rights of recovery against the other to the full extent that indemnification is covered by an insurance policy maintained by the waiving party.

## ARTICLE 7

### ESTOPPEL CERTIFICATES, ATTORNMENT AND SUBORDINATION

Section 7.01. Execution of Estoppel Certificates. At any time, and from time to time, upon the written request of either Landlord, Tenant or any mortgagee or any purchaser of the Premises, or any permitted subtenant or assignee of the Tenant, within twenty (20) days of the date of such written request, Landlord and Tenant shall execute and deliver to the requesting party, without charge and in a form satisfactory to Landlord, Tenant and/or such mortgagee and/or such purchaser, a written statement (to the extent such statements are factually accurate at such time): (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the Term; (c) certifying that Tenant is in occupancy of the Premises, and that this Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied or performed have been satisfied and performed except as shall be stated; (e) certifying that Landlord and Tenant are not in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by Landlord or Tenant or stating the defaults and/or defenses claimed by either such party; (f) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid; and (g) any other information which the requesting party shall reasonably require.

Section 7.02. Paramount Status to Mortgages obtained by Landlord. This Lease shall at all times during the Term, and any extension thereof, be and remain paramount to the lien and interest of any present or future "mortgage" (as defined below) relating to and placed upon the Premises by Landlord and Landlord covenants and agrees that any mortgage obtained by Landlord shall be subject and subordinate to Tenant's rights under this Lease, including any

development, construction, temporary, interim and permanent loans, mortgages, deeds to secure debt, or trust indentures made or to be made to Tenant for the purpose of developing or improving the Premises or any part thereof, or for the purpose of financing such development or improvement, or for the purpose of satisfying loans for the development or improvements of the Premises, or for the purpose of refinancing or re-casting loans made or to be made to Tenant for the improvement of the Premises, or for any reason whatsoever, as often as requested or required by Tenant. Landlord and Tenant both agree that, should Landlord ever obtain a mortgage on its fee interest in the Premises, each party shall use good faith commercially reasonable efforts to execute a so-called non-disturbance and attornment agreement (or a recognition agreement or similar document) upon the request of either of them or such mortgagee. The word "mortgage" as used herein includes mortgages, deeds to secure debt, deeds of trust and similar instruments and modifications, consolidations, extensions or renewals thereof.

Section 7.03. Mortgage of Leasehold. Tenant, at all times, and from time to time, shall have the right to convey or encumber by mortgage, security deed, deed of trust, or other instrument, Tenant's interest in this Lease and Tenant's right to use and occupy said Premises, together with its rights and interests in and to all existing buildings and improvements, and any building and improvements which may be placed on the Premises. If any such mortgagee, or grantee, shall notify Landlord in writing by certified or registered mail that any such mortgage has been so given and executed by Tenant, and shall at the same time furnish Landlord with the address to which it desires copies of notices to be mailed, Landlord hereby agrees that it will thereafter mail to such mortgagee at the address so given a duplicate copy of any and all notices in writing which Landlord may from time to time give to or serve upon Tenant under and pursuant to the terms and provisions of this Lease. Such mortgagee (if such mortgagee is not affiliated in any way with Tenant) may, at its option at any time, but in no event less than thirty (30) days, before the rights of Tenant shall have been forfeited to Landlord, as provided for herein, pay any of the rents due, or pay any taxes and assessments, or make any repairs and improvements, making or cause to be made any deposits, or do any other act or thing required of Tenant by the terms of this Lease, to prevent the forfeiture of this Lease; and all payments so made, and all things so done and performed by such mortgagee shall be as effective to prevent the forfeiture of the right of Tenant hereunder as the same would have been if done and performed by Tenant. Any such mortgage or other instrument so given by Tenant may, if Tenant so desires, be so conditioned as to provide that as between any such mortgagee and Tenant, said mortgagee on making good and performing any such default or defaults on the part of Tenant shall be thereby subrogated to any or all of the rights of Tenant under the terms and provisions of this Lease. A leasehold mortgagee shall not become personally liable for any of Tenant's obligations under this Lease unless and until such mortgagee becomes the owner of the leasehold estate by foreclosure, assignment in lieu of foreclosure, or otherwise, and thereafter such mortgagee may remain liable for such obligations only so long as the leasehold mortgagee remains the owner of the leasehold estate. If the leasehold mortgagee should become the owner of the leasehold estate, such mortgagee may assign the Lease one time without any consent on the part of the Landlord being required (it being understood however that such assignment shall be subject to all of the provisions of this Lease, including the use restrictions and the future assignment restrictions). Landlord and Tenant each covenant and agree to execute any and all other additional reasonable documents which may be desirable or required to further effect the above provision; provided that nothing contained herein shall prohibit Landlord from exercising any of its remedies if Landlord does not receive all of the Minimum Rent and Additional Rent

due under this Lease within the required time period (subject to any notice and cure periods required under this Lease).

## ARTICLE 8

### INDEMNITY AGAINST CLAIMS

Section 8.01. Protection of Landlord and Tenant. Tenant shall indemnify and save Landlord harmless, through counsel designated by Tenant, against and from any and all third-party claims, damages, costs and expenses, including reasonable attorney's fees, arising from the use or occupancy of the Premises by the Tenant and/or the operation of the business conducted by Tenant in the Premises or arising from any default by Tenant in the performance of any of the covenants, conditions or provisions of this Lease, or from or relating to any negligence or willful misconduct of Tenant, its agents, contractors, servants, employees, and permitted sublessees, concessionaires or licensees in the Premises or in connection with this Lease or any permitted sublease of the Premises. Landlord shall indemnify and save Tenant harmless, through counsel designated by Landlord, against and from any and all third-party claims, damages, costs and expenses, including reasonable attorney's fees, arising from the use or occupancy of the Premises by Landlord or arising from any default by Landlord in the performance of any of the covenants, conditions or provisions of this Lease, or from or relating to any negligence or willful misconduct of Landlord, its agents, contractors, servants, employees, concessionaires or licensees in the Premises or in connection with this Lease.

## ARTICLE 9

### WASTE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 9.01. Waste. Tenant shall not commit or suffer to be committed any waste upon the Premises.

Section 9.02. Governmental Regulations. Tenant, at Tenant's sole cost and expense, subject to the rights of Tenant as provided in Section 9.03, shall comply with all of the laws of all county, city, municipal, state, federal and all other applicable authorities (the "Governmental Authorities") now in force, or which may hereafter be in force, affecting the Premises in any way (extraordinary as well as ordinary, and whether structural or non-structural), including without limitation in any way, all Environmental Laws, and shall observe in the use of the Premises all municipal ordinances and state and federal Laws now in force or which may hereafter be in force.

Section 9.03. Legal Requirement. Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf or in the name of and on behalf of Landlord, in good faith, contest any legal requirement affecting the Premises and, in the event of any such contest, may permit such legal requirement so contested to remain unsatisfied during the period of such contest and any appeal therefrom; provided that notwithstanding any provision of this Lease to the contrary, Tenant's right so to contest any legal requirement affecting the Premises shall not in any way affect its obligations to pay its share of the protested or contested legal requirement or taxes, if any. In the event of any such contest by Tenant, Tenant shall and does

hereby indemnify and hold harmless Landlord from and against any loss or damage to Landlord, and Tenant shall take all reasonable steps as may be necessary to prevent any lien from being filed, or, in the case of tax liens or other liens which attach prior to the due date of a required payment, to remove any lien following the conclusion of any applicable appeal process, against the Premises or any loss or damage to Landlord in connection with any such contest.

Section 9.04. Notices. Tenant shall notify Landlord within thirty (30) days after receipt of correspondence from any Governmental Authority alleging any default or requiring that Tenant alter or repair the Premises to comply with any applicable laws, and Tenant shall comply with such demand in accordance with Section 9.02 above. Should Landlord receive any such notice (including without limitation, all notices (from governmental authorities or otherwise) relating to eminent domain, zoning, legal compliance, Environmental Laws, road widening, adjacent right-of-ways, moratoriums and any other matter affecting the Premises), Landlord shall endeavor to forward a copy to Tenant within ten (10) days after receipt (however, Landlord shall have no liability for failure to do so and Tenant shall have no liability nor be in default under this Lease as a result of Landlord's failure to deliver any such notice to Tenant).

## ARTICLE 10

### UTILITIES

Section 10.01. Payment of Charges and Interruption of Services. Tenant shall pay, on or before the due date(s) thereof, all fees and charges for water, gas, electricity and all other utilities, including fees and charges for removal of trash and all other charges, incurred by Tenant in connection with its use and enjoyment of the Premises. Such utility and other charges, and operating income and expense items, were prorated for the first (if applicable) and shall be prorated for the last (if applicable) fractional months of the Term as of midnight preceding (i) the Commencement Date and (ii) the Expiration Date (or the date of earlier termination of this Lease, if applicable). It is understood that the use by Tenant of the Premises may require that the parties enter into contracts or agreements with local, county, state or other governmental agencies or bodies or with public utilities with reference to storm sewer, sanitary sewer, gas, water, electric, telephone or other utility lines or connections, stormwater management or easement agreements. Landlord agrees to execute and/or consent to the execution of, as applicable, such written contracts, agreements, easement agreements, and consents as are reasonably required for Tenant's use of the Premises; provided, however, that nothing shall cause Landlord to incur any monetary or other obligations hereunder. Tenant shall and does hereby indemnify and hold harmless Landlord from and against any loss or damage arising out of the failure of Tenant to pay any utility charges or similar expenses as and when due. Landlord has no knowledge of accessibility of utilities to the Premises or the costs to obtain same (it being agreed that this is solely the responsibility of Tenant). Landlord shall not be liable for any interruption of utility services to the Premises unless caused by the gross negligence or willful act of Landlord or Landlord's employees, contractors, subcontractors or agents acting specifically at the request of Landlord.

Section 10.02. Sewer Services to Landlord's Adjacent Parcel. Landlord has disclosed to Tenant that a portion of the Premises is current used as a septic drainfield to provide sewer services to Landlord's adjacent parcel, depicted as "Lot 2" on Exhibit "A" attached hereto and

made a part hereof (the "Spruill Farmhouse Property"). In connection with Tenant's construction on the Premises, Landlord agrees that Tenant shall have the right, at Tenant's expense, (provided Tenant complies with all applicable laws) to temporarily relocate the septic drainfield or provide alternative sewer drainage facilities to the Spruill Farmhouse Property. Landlord and Tenant agree that Tenant shall cause a public sanitary sewer line to be constructed and connected to the Premises. In addition, in connection with Tenant's construction of Improvements on the Premises, Tenant shall, at Tenant's expense, cause such public sanitary sewer line to be brought and connected to the farmhouse on the Spruill Farmhouse Property. Once such line is operational, Landlord shall be responsible for the usage charges incurred on the Spruill Farmhouse Property, including any tap-in charges or fees solely caused by Landlord's tapping into and using the line (it being understood that Tenant shall bear the cost of construction and installation of such line).

## ARTICLE 11

### EASEMENTS/RESERVATIONS

Section 11.01. Master Declaration. Tenant acknowledges and agrees that the Premises is subject to that certain Master Declaration, dated September 1, 2015, made by Landlord as Declarant, recorded at Deed Book 25348, Page 676, of the Records of the Clerk of Superior Court of DeKalb County, Georgia, as the same may hereafter be amended, modified, restated, supplemented or substituted.

## ARTICLE 12

### REAL PROPERTY TAXES AND ASSESSMENTS OR CHARGES MADE UNDER ANY BETTERMENT OR IMPROVEMENT LAW

Section 12.01. Taxes and Assessments.

(a) "Taxes and Assessments" shall mean any and all of the following levied, assessed or imposed upon, against or with respect to any part of the Premises or the use and occupancy of the Premises at any time during the Term: real property ad valorem taxes, assessments, charges made by any public or quasi-public authority for improvements or betterments related directly or indirectly to the Premises, sanitary taxes or charges, sewer or water taxes or charges, rent taxes (if any are levied in the future) and any other governmental or quasi-governmental impositions, charges, encumbrances, levies, assessments or taxes of any nature whatsoever, whether general or special, whether ordinary or extraordinary, whether foreseen or unforeseen and whether payable in installments or not. In no event shall Taxes and Assessments include, and Tenant shall not be required to pay any inheritance, estate, succession, transfer, gift, gross receipts, revenue, margin, franchise, corporation, net income or profit tax or capital levy imposed upon Landlord.

(b) Tenant shall pay all Taxes and Assessments for each calendar year during the Term and any extension thereof for and relating to the Improvements and Premises, on or before the due date(s) thereof. Tenant may take the benefit of any law permitting any Taxes and Assessments to be paid over time or in installments. Tenant agrees to deliver to Landlord, upon

demand, receipts evidencing payment of all such taxes and assessments, promptly following payment thereof by Tenant.

(c) The prorated portion of Taxes and Assessments during the Term for the calendar years during which the Expiration Date (or date of earlier termination of the Lease) occurs shall be paid by Tenant, it being acknowledged and agreed that Tenant shall only pay Taxes and Assessments during the Term.

(d) Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf, or in the name and on behalf of Landlord, in good faith, contest any Taxes and Assessments and, in the event of any such contest, may permit the Taxes and Assessments so contested to remain unpaid during the period of such contest and any appeal therefrom. Landlord, at no cost and expense to Landlord, shall cooperate fully with Tenant in any such contest. Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf, apply for any tax exemption allowed by the State in which the Premises are located or any political or taxing subdivision thereof under any existing or future provision of law which grants or may grant any such tax exemption. In the event of any such contest by Tenant, Tenant shall and does hereby indemnify and hold harmless Landlord from and against any loss or damage to Landlord, and Tenant shall pay any such tax, assessment, or claim under protest, or take such other steps as may be necessary, to prevent any sale of the Premises or any loss or damage to Landlord in connection with any such contest.

## ARTICLE 13

### USE

Section 13.01. Use. The Premises shall be used for (a) a single story retail space or restaurant (without a drive-thru), curb cuts, signage and landscaping, and (b) such additional legal purposes and such other additional improvements upon the approval by Landlord of a site plan therefor, such approval not to be unreasonably withheld, conditioned or delayed, all in accordance with existing codes, laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Premises. Tenant must obtain Landlord's prior written approval to use the Premises for any other purpose, such approval not to be unreasonably withheld, conditioned or delayed. In any event, the Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance on and relating to the Premises. Tenant may at any time discontinue the use of and vacate the Premises, provided such action, or omission, shall not interfere with or affect the Tenant's obligations hereunder (including Tenant's obligation to maintain the Premises in good working condition). Notwithstanding the foregoing, the Premises shall not be used at any time for any of the following (collectively, the "Prohibited Uses"):

- (a) The operation of a so-called "head shop" or other business devoted to the sale of articles or merchandise normally used or associated with illegal or unlawful activities such as, but not limited to, the sale of paraphernalia used in connection with marijuana or controlled drugs or substances. Even if marijuana is legalized in the state where the Premises is located, this use restriction shall remain in place.

- (b) A gun shop, shooting gallery or firearms range.
- (c) A so-called "massage parlor", a business which allows nudity or topless people on the Premises, or any business which sells, rents or permits the viewing of so-called "adult" or pornographic materials such as, but not limited to, adult magazines, books, movies, photographs, sexual aids, sexual articles and sex paraphernalia.
- (d) Any use involving the sale or distribution of any flammable liquids, gases or other Hazardous Substances.
- (e) An off-track betting parlor or arcade.
- (f) A liquor store or other establishment whose primary business is the sale of alcoholic beverages for off-site consumption.
- (g) A burlesque or strip club.
- (h) Any business containing a drive-thru facility.
- (i) Any illegal activity.

Section 13.02. Name of Project. Tenant acknowledges that it is very important to Landlord to have the name of the overall project, of which the Premises is a part, include the "Spruill" name. Tenant agrees to include the "Spruill" name in the overall project or center (but not outparcels or individual businesses) and further agrees that Landlord shall have the right to approve the initial name of the overall project or center of which the Premises is a part; provided that such approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not change the name of the project during the Term without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE 14

### DESTRUCTION OF OR DAMAGE TO BUILDINGS

Section 14.01. Repair and Reconstruction. If the Improvements located in or upon the Premises should be damaged or destroyed during the term hereof by any casualty, then the Tenant, subject to the availability of the insurance proceeds as herein provided, shall repair or restore said damages or destruction to the interior of the Premises substantially to a condition that existed prior to such damage or destruction. Landlord shall have absolutely no obligation to repair or restore the Premises. This Lease shall remain in full force and effect in the event of a casualty and the parties waive the provisions of any law to the contrary. All proceeds from the insurance policy or policies as described in Section 6.01 of this Lease shall be made available to the Tenant for such repair and/or restoration, and all additional costs for such repair and/or restoration, if any, shall be paid by the Tenant. If Tenant does not repair the Premises, or if Tenant elects to terminate this Lease as set forth in Section 14.02 below, then the insurance proceeds shall be paid to Landlord after payment is made to any bona-fide mortgage lender (a

lender unaffiliated with Tenant) on the Premises. The Minimum Rent and the Additional Rent shall not abate during the period of any restoration.

Section 14.02. Termination. Anything contained in this Lease to the contrary notwithstanding, in the event fifty (50%) percent or more of the improvements constructed by the Tenant in and upon the Premises should be damaged or destroyed during the last three (3) years of the Term, the Tenant shall have the right to terminate this Lease upon written notice to the Landlord within sixty (60) days from the date of such casualty. In the event that Tenant exercises the foregoing right to terminate this Lease, then the proceeds from such insurance policy or policies described in Section 6.01 of this Lease, after payment and discharge of all outstanding indebtedness of the Tenant, including mortgages placed upon the Premises by the Tenant, shall be paid in accordance with Section 14.01 above.

## ARTICLE 15

### EMINENT DOMAIN

Section 15.01. Termination of Lease. If the whole of the Premises, or such portion thereof as shall render the remainder of the Premises unsuitable for the use by the Tenant for Tenant's intended purpose as reasonably determined by Tenant, shall be taken by any public authority under the power of eminent domain (or sale by the Landlord in lieu thereof), then at Tenant's election the Term shall cease as of the day possession is taken by such public authority, and all rentals shall be paid up to that date. Unless this Lease shall be terminated as herein provided, this Lease shall continue in full force and effect as to the remainder of said Premises, and the Minimum Rent shall be equitably adjusted within thirty (30) days after such taking; in the event the Landlord and Tenant cannot agree upon such equitable adjustment, the Minimum Rent shall be determined by the American Arbitration Association ("AAA") upon application by either party, which determination shall be binding upon Landlord and Tenant, and the costs of AAA shall be divided between and paid by Landlord and Tenant. Each party shall be entitled to make a claim for its damages in connection with any condemnation and each party shall be entitled to retain any condemnation proceeds awarded to it; provided, however, it is understood that Tenant shall have the right to make a separate claim for an Improvements constructed by Tenant.

Section 15.02. Damages. The termination of this Lease (if this Lease is terminated due to a condemnation) shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damages caused by condemnation from the condemning party. Tenant shall have the right to file and pursue any claim for the value of the Tenant's leasehold estate and Landlord shall have the right to file and pursue any claim for the value of Landlord's interest in this Lease. Neither Landlord, nor Tenant, shall have any rights in any award made to the other by any condemnation authority notwithstanding the termination of this Lease as herein provided.

## ARTICLE 16

### ASSIGNMENT AND SUBLETTING

#### Assignment and Subletting.



Section 16.01. Assignment and Subletting. Tenant may, without the consent of Landlord but subject to the Prohibited Uses and all other requirements set forth in this Lease, (a) sublet the Premises or any part thereof, or permit the use of the Premises by any party or entity, or (b) assign this Lease to any party or entity affiliated or related to Tenant, or into which Tenant is hereafter merged or consolidated, or any entity owned or controlled by the principals of Tenant; provided, however, any change of control of Tenant shall require Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed. As used herein, "control" shall mean either (i) the direct or indirect ownership of more than fifty percent (50%) of all equity interests in Tenant or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Tenant, through the ownership of Tenant's voting securities, by contract or otherwise. Tenant may, with the prior written consent of the Landlord (such consent not to be unreasonably withheld, conditioned or delayed) assign this Lease, or any interest hereunder, to any non-affiliated party or entity; provided, however, that upon any such assignment to any party or entity not affiliated with Tenant, Tenant shall pay to Landlord, from sale closing proceeds, an assignment fee of \$75,000.00. Without limitation of the generality of the foregoing, any sublessee or assignee of Tenant pursuant to this Section 16.01 shall be bound by the terms and conditions of that certain Amended, Restated and Split Non-Disturbance, Recognition and Attornment Agreement and Consent to Ground Lease Agreement, dated on or about even date with this Lease, by and among Landlord, Tenant and DeKalb County, Georgia. Notwithstanding any such assignment or sublease, Tenant shall remain primarily liable under this Lease. Tenant shall provide Landlord with a copy of any assignment or sublease made under subsection (a) or (b) above within ten (10) days after any such assignment or sublease.

Section 16.02. Intentionally deleted.

## ARTICLE 17

### DEFAULT

Section 17.01. Tenant Default. In the event of (i) any failure of Tenant to pay any Minimum Rent or Additional Rent due hereunder as and when it is due and fails to cure the same within ten (10) days following Tenant's receipt of notice of nonpayment and demand for payment, or (ii) any failure to perform any other of the terms, conditions, or covenants of this Lease to be observed or performed by Tenant for more than thirty (30) calendar days after written notice of such default (except for a default in the payment of rent and other monetary obligations) shall have been received by Tenant (unless curative action cannot reasonably be accomplished within such period in which event said period to cure such default shall be automatically extended as long as Tenant promptly commences such cure and diligently prosecutes curative action, not to exceed ninety (90) days), or (iii) if Tenant shall be adjudicated a bankrupt or insolvent, or have a receiver appointed for all or substantially all of its business or assets, or have a trustee appointed for it after a petition has been filed for the reorganization of Tenant under any bankruptcy law of the United States, or make an assignment for the benefit of its creditors, or abandon the Premises or allow the same to become abandoned for a period of ninety consecutive (90) days, or (iv) if Tenant or an affiliate of Tenant is the tenant under any of the Hotel Parcel Lease or the Retail Parcel Lease, if a default by Tenant or such affiliate occurs under any of the Hotel Parcel Lease or the Retail Parcel Lease and continues beyond the

expiration of any applicable notice or cure period, then any such happenings shall be a default by Tenant, and Landlord may, as Landlord's remedies: (a) perform, on Tenant's behalf, any unperformed covenant or obligation under this Lease constituting such Tenant default (after giving Tenant written notice of Landlord's intention to do so except in the case of emergency), in which event Tenant shall reimburse Landlord for all expenses reasonably incurred by Landlord in doing so, which expenses shall be payable by Tenant within thirty (30) days after written demand therefor by Landlord; and/or (b) terminate this Lease and collect liquidated damages from Tenant in an amount equal to (w) the sum of all amounts due under this Lease to the date of termination, plus (x) the aggregate Minimum Rent remaining over the unexpired portion of the Term, all reduced to present value using a discount rate equal to the interest rate of a governmental security having a maturity closest to the then current expiration of the Term, less (y) the aggregate fair net rental value of the Premises over the remaining portion of the Term (provided, however, a reasonable period of time, not to exceed eighteen (18) months, may be considered as a leasing period by which the Premises would not be leased and therefor no income would be realized for such period) reduced to present value, plus (z) Landlord's costs and expenses incurred in the enforcement of this Lease including reasonable attorneys' fees actually incurred; and/or (c) Landlord shall have the right, without terminating this Lease, to enter into and upon and take possession of the Premises or any part thereof and at the option of Landlord to remove all persons and property therefrom (and such property, if any, may be removed and stored in a public or private warehouse or elsewhere at the cost of and for the account of Tenant), all without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may rent the Premises as the agent of Tenant, with or without advertisement, and by private negotiation, and for any term and upon such terms and conditions as Landlord in its sole discretion may deem proper, and Landlord may clean the Premises and make such alterations and repairs as Landlord may deem necessary or desirable in order to re-let the Premises (it being understood and agreed that Landlord shall in no way be responsible or liable for any failure to rent the Premises or any part thereof, or for any failure to collect rent due upon such re-letting). Upon each such re-letting under subparagraph (c) above, all rentals received by Landlord from such re-letting shall be applied first to the payment of any Additional Rent due from Tenant to Landlord, and second to the payment of any costs and expenses of such re-letting, including brokerage fees and attorneys' fees and costs of such alterations and repairs, and third to the payment of Minimum Rent and other charges then due and unpaid hereunder, and the residue, if any, shall be held by Landlord to the extent of and for application in payment of future rent as the same may become due and payable hereunder (it being understood and agreed that if such rentals received from such re-letting shall at any time or from time to time be less than sufficient to pay to Landlord the sums then due from Tenant hereunder, then Tenant shall pay any such deficiency to Landlord on demand, which deficiency shall, at Landlord's option, be calculated and paid monthly); and/or (d) Landlord may allow the Premises to remain unoccupied and collect Minimum Rent and other charges from Tenant as the same become due; and/or (e) Landlord may exercise any other remedies allowed by law. Landlord's pursuit of any one or more of the remedies set forth above shall not preclude pursuit of any other remedy or remedies provided for in this Lease or any other remedy or remedies provided by law or in equity, separately or concurrently or in any combination, and Landlord's pursuit of any one or more of the remedies available to Landlord shall not constitute an election of remedies by Landlord, such that Landlord is precluded from electing any other remedy or remedies. Landlord shall have no obligation to mitigate damages hereunder. Anything contained

in this Paragraph or Lease to the contrary notwithstanding, Landlord shall have no obligation to give written notice to Tenant of any monetary default more than two (2) times during any 12-month period during the Term. Any amounts owing by Tenant to Landlord under the terms of this Lease shall bear interest from the date the same become due until paid at 12% per annum. Said interest shall be considered as additional rent payable under this Lease.

Section 17.02. Landlord Default. Landlord's failure to perform or observe any of its obligations under this Lease after a period of thirty (30) days, or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure, after receiving notice from Tenant, is a Landlord default hereunder. The notice from Tenant shall give in reasonable detail the nature and extent of the failure. If Landlord commits a Landlord default, Tenant's sole remedy shall be to either (i) cure the Landlord default or (ii) sue Landlord for specific performance. Under no circumstances whatsoever may Tenant terminate this Lease due to a Landlord default. If Tenant elects option (i) above, Landlord shall pay Tenant, upon demand, all reasonable and actual costs, expenses, and disbursements incurred by Tenant to cure the Landlord default. If such payment is not rendered within thirty (30) days of demand, Tenant may deduct all such costs and expenses from the rent next coming due.

## ARTICLE 18

### SURRENDER OF LEASE AND HOLDING OVER

Section 18.01. Surrender Upon Termination. At the expiration of this Lease, Tenant shall surrender the Premises to Landlord along with all keys for the Premises at the place then fixed for the payment of rent and shall inform Landlord about all combinations on locks, safes and vaults, if any, in the Premises if owned by and under the control of Tenant. On such day, all alterations, additions and improvements located on the Premises as of such date, except equipment, fixtures and trade fixtures, including, all hard surface bonded on adhesively affixed flooring, and except as provided in Article 5, shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof.

Section 18.02. Holding Over. Any holding over after the expiration of the Term shall be construed to be a tenancy from month to month at the rent provided in this Lease and on the terms and conditions specified in this Lease, so far as applicable.

## ARTICLE 19

### ATTORNEY FEES

Section 19.01. Attorney Fees. If Landlord or Tenant shall, without fault, be made a party to any litigation by or against the other arising out of the occupancy of the Premises or any act of the other concerning the Premises or this Lease, or if successful litigation shall be brought by Landlord or Tenant against the other for recovery for possession of the Premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant in this Lease to be kept or performed hereunder, and a breach shall be established, Landlord or Tenant (as the case may be) shall be entitled to collect from the other all expenses incurred in connection therewith, including its attorney's fees and court costs.

## ARTICLE 20

### NOTICES

Section 20.01. Notices. Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be delivered in person, or transmitted by facsimile or internet communication (i.e., via email) or sent by U.S. Registered or Certified Mail, Return Receipt Requested, postage prepaid, or by Federal Express, Express Mail, or other reputable overnight delivery service, to the addresses set forth below or at such other addresses as or specified by written notice delivered in accordance herewith:

LANDLORD: Spruill Center for the Arts, Inc.  
5339 Chamblee Dunwoody Road, Suite B  
Dunwoody, Georgia 30338  
Attn: Robert Kinsey, CEO  
Telephone: (770) 394-3447  
Facsimile: (770) 394-6179  
Email: [rkinsey@spruillarts.org](mailto:rkinsey@spruillarts.org)

With a copy to: McClure & Kornheiser, LLC  
6400 Powers Ferry Road, NW Suite 150  
Atlanta, Georgia 30338  
Attn: Michael P. Kornheiser, Esq.  
Telephone: (678) 388-2680  
Facsimile: (678) 388-2690  
E-mail: [mkornheiser@mcclurelegal.com](mailto:mkornheiser@mcclurelegal.com)

TENANT: HDP Spruill, LLC  
c/o Hotel Development Partners, LLC  
3414 Peachtree Road  
Suite 1075  
Atlanta, Georgia 30326  
Attn: Steve Smith  
Telephone: (404) 842-1422  
Facsimile: (404) 842-1522  
E-mail: [ssmith@hdpfunds.com](mailto:ssmith@hdpfunds.com)

with a copy to: Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich, Esq.  
Telephone: (404) 853-8000  
Facsimile: (404) 853-8806  
E-mail: [mikevoynich@eversheds-sutherland.com](mailto:mikevoynich@eversheds-sutherland.com)

Notices emailed, faxed or mailed as hereinabove provided shall be deemed effectively given on the date of email confirmation, postmarked date of such notice if mailed, on the date

delivered to the reputable overnight delivery service if sent by overnight delivery, the date delivered to a commercial courier service if personal delivery is made by a commercial courier, and, otherwise, on the date actually received at the address or facsimile number provided above. A duplicate of any notice sent by email or facsimile shall also be sent by overnight courier or certified mail. Each party shall have the right to specify as its proper address any other address within the continental United States of America by giving to the other party at least fifteen (15) days prior written notice thereof.

## ARTICLE 21

### QUIET POSSESSION

Section 21.01. Covenant of Title, Authority and Quiet Possession. Landlord represents and warrants that Landlord has full right, power and lawful authority to enter into and to perform Landlord's obligations under this Lease; that Landlord has fee simple title to the Premises, free and clear of all contracts, leases, tenancies, agreements, restrictions, violations, mortgages and other liens and encumbrances affecting the Premises or the rights granted Tenant in this Lease, except for (a) real estate taxes which are liens but not yet due and payable, (b) utility easements which do not interfere with the proposed use and operation of the Premises, in Tenant's reasonable determination, (c) zoning ordinances and governmental requirements, (d) matters which would be disclosed by an accurate survey of the Premises and (e) all matters of public record as of the date hereof (the "Permitted Exceptions"). Provided Tenant performs all its covenants, agreements and obligations hereunder, Landlord covenants that Tenant shall have the peaceful and quiet enjoyment of the Premises, subject to the Permitted Exceptions, against any and all claims of all persons claiming by, through or under Landlord, on and subject to all of the terms and conditions of this Lease. By accepting the Premises, Tenant agrees to comply with any and all restrictions set forth in the Landlord's vesting deed (which must be strictly obeyed).

## ARTICLE 22

### TAXES ON TENANT'S PROPERTY

Section 22.01. Tenant to Pay. Tenant shall be responsible for and shall pay before delinquency all municipal, state or county taxes assessed during the Term against the Tenant by reason of the conduct of its business in the Premises or with respect to personal property of any kind owned by or placed in, upon or about the Premises by and/or at the expense of Tenant. Landlord shall have no obligation to pay any taxes related to the Improvements on or at the Premises, the Premises, Tenant's conduct of its business in the Premises, or Tenant's personal property at the Premises.

## ARTICLE 23

### RELATIONSHIP OF PARTIES

Section 23.01. No Partnership Intended. It is expressly understood that, under this Lease, Landlord does not become a partner of or joint venturer with Tenant.

## ARTICLE 24

### FORCE MAJEURE

Section 24.01. Performance Excused. If either party to this Lease shall be delayed or hindered in or prevented from the performance of any non-monetary obligation required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period equivalent to the period of such delay. For the avoidance of doubt, it is understood and agreed that this provision shall not affect the monetary obligations of Tenant under this Lease.

## ARTICLE 25

### BROKERS

Section 25.01. Brokers. Landlord has agreed to pay a real estate commission to JWB Realty Services, LLC pursuant to the terms of a separate commission agreement. Tenant shall have no obligation with reference to the payment of any real estate commission in connection with the Premises or the Lease. Landlord and Tenant each warrant and represent to the other that it has had no dealings with any other real estate agent or broker other than the broker identified above with reference to the Premises or the Lease, and each agrees to indemnify and hold harmless the other, including attorneys' fees and costs, arising out of its breach of the foregoing warranty and representation, which obligation shall survive the expiration or termination of the Lease.

## ARTICLE 26

### [INTENTIONALLY DELETED]

## ARTICLE 27

### GENERAL

Section 27.01. Waiver of Jury Trial and Counterclaims. The parties to this Lease waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage, pursuant to any right granted under State or Federal laws.

Section 27.02. Withholding of U. S. Income Tax. Landlord hereby represents and warrants to Tenant that Landlord is not a foreign partnership, joint venture, corporation, or other foreign entity, as the same is defined by applicable provisions of the Internal Revenue Code of the United States. Tenant hereby represents and warrants to Landlord that Tenant is not a foreign

partnership, joint venture, corporation, or other foreign entity, as the same is defined by applicable provisions of the Internal Revenue Code of the United States.

Section 27.03. LIMITATION OF LIABILITY: LANDLORD'S OBLIGATIONS AND LIABILITY TO TENANT WITH RESPECT TO THIS LEASE SHALL BE LIMITED SOLELY TO LANDLORD'S INTEREST IN THE PREMISES, AND NEITHER LANDLORD NOR ANY OF THE MEMBERS OF LANDLORD, NOR ANY AGENT, OFFICER, DIRECTOR, MANAGER OR SHAREHOLDER OF LANDLORD SHALL HAVE ANY PERSONAL LIABILITY WHATSOEVER WITH RESPECT TO THIS LEASE. TENANT ACKNOWLEDGES THAT LANDLORD IS A NON-PROFIT ENTITY AND LANDLORD SHALL HAVE NO INDEMNIFICATION OBLIGATIONS UNDER THIS LEASE OR OTHERWISE TO TENANT.

Section 27.04. Miscellaneous Matters.

(a) Severability. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remaining terms, covenants and conditions of this Lease shall not be affected thereby and each such term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(b) Integration. This Lease contains the entire agreement between the parties, and any agreement hereafter made shall be ineffective to change this Lease unless such agreement is in writing and signed by the party against whom enforcement of the change modification, discharge or abandonment is sought.

(c) Governing Law. This Lease shall be governed by and construed according to the laws of the State in which the Premises are located.

(d) Captions. The captions of the several article or sections titles contained in this Lease are for convenience only and do not define, limit, describe or construe the contents of this Lease.

(e) Successors and Assigns. Subject to the restrictions contained above, the covenants and conditions herein contained shall bind and inure to the benefit of the respective permitted heirs, successors, executors, administrators and assigns of the parties hereto; and in any case where there shall be more than one Tenant, each Tenant shall be jointly severally liable hereunder.

(f) Time of Essence. Time is of the essence under any and all provisions of this Lease.

(g) Recording. The parties agree to execute and deliver upon execution of this Lease a memorandum of lease (the "Short Form Lease"), in the form attached hereto as Exhibit "B" and incorporated herein by reference. Tenant may record the Short Form Lease at its election at any time at its sole expense.

(h) Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing signed by Landlord or as otherwise provided herein.

(i) Knowledge. Any reference to Landlord's knowledge, Landlord's actual knowledge, or words of similar import shall mean and refer only to the actual knowledge, without investigation or inquiry, as of the date of this Lease, to Robert Kinsey, the CEO of Landlord, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any other party. Tenant acknowledges and agrees that, under no circumstances shall Robert Kinsey have any personal liability hereunder.

(j) Title Insurance. Should Tenant desire to obtain leasehold title insurance in connection with this Lease, Landlord shall sign (i) a customary owner's affidavit upon Tenant's request in a form customarily acceptable to the title company, which affidavit shall be in a form acceptable to Landlord and shall be limited to the actual knowledge of the representative signing on behalf of Landlord (without personal liability to such representative). There shall be no indemnity contained in such affidavit; (ii) such other documents as shall be required by the title company as a condition to insuring Tenant's title to the leasehold estate in the Premises, free of exceptions, except for the Permitted Exceptions; and (iii) a release of the Premises from the holder of any security interest in the fee interest of Landlord in the Premises if incurred by Landlord ("Fee Mortgagee") or a complete subordination of such security interest of Fee Mortgagee to this Lease and the leasehold estate of Tenant, together with commercially reasonable notices of defaults and rights to cure as set forth in Article 7 hereof.

Section 27.05. Landlord Representation, Warranty and Covenant of Authority. Landlord hereby warrants and represents to Tenant that Landlord has the authority to enter into this Lease and to perform its obligations hereunder, and covenants and agrees that such representation and warranty shall be and remain true as of the date of execution of this Lease and during the Term.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals the day and year first above written.

**LANDLORD.**

**SPRUILL CENTER FOR THE ARTS, INC.**

By: Robert G. Kinsey  
Print Name: ROBERT G. KINSEY  
Title: CEO

[CORPORATE SEAL]

**TENANT:**

**HDP SPRUILL, LLC**

By: \_\_\_\_\_ [SEAL]  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Consented to by:

**HDP ACQUISITIONS, LLC**

By: \_\_\_\_\_ [SEAL]  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals the day and year first above written.

LANDLORD.


SPRUILL CENTER FOR THE ARTS, INC.

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

[CORPORATE SEAL]


TENANT:

HDP SPRUILL, LLC

By:  [SEAL]  
Print Name: Allen T. O'Brien  
Title: President / manager

Consented to by:

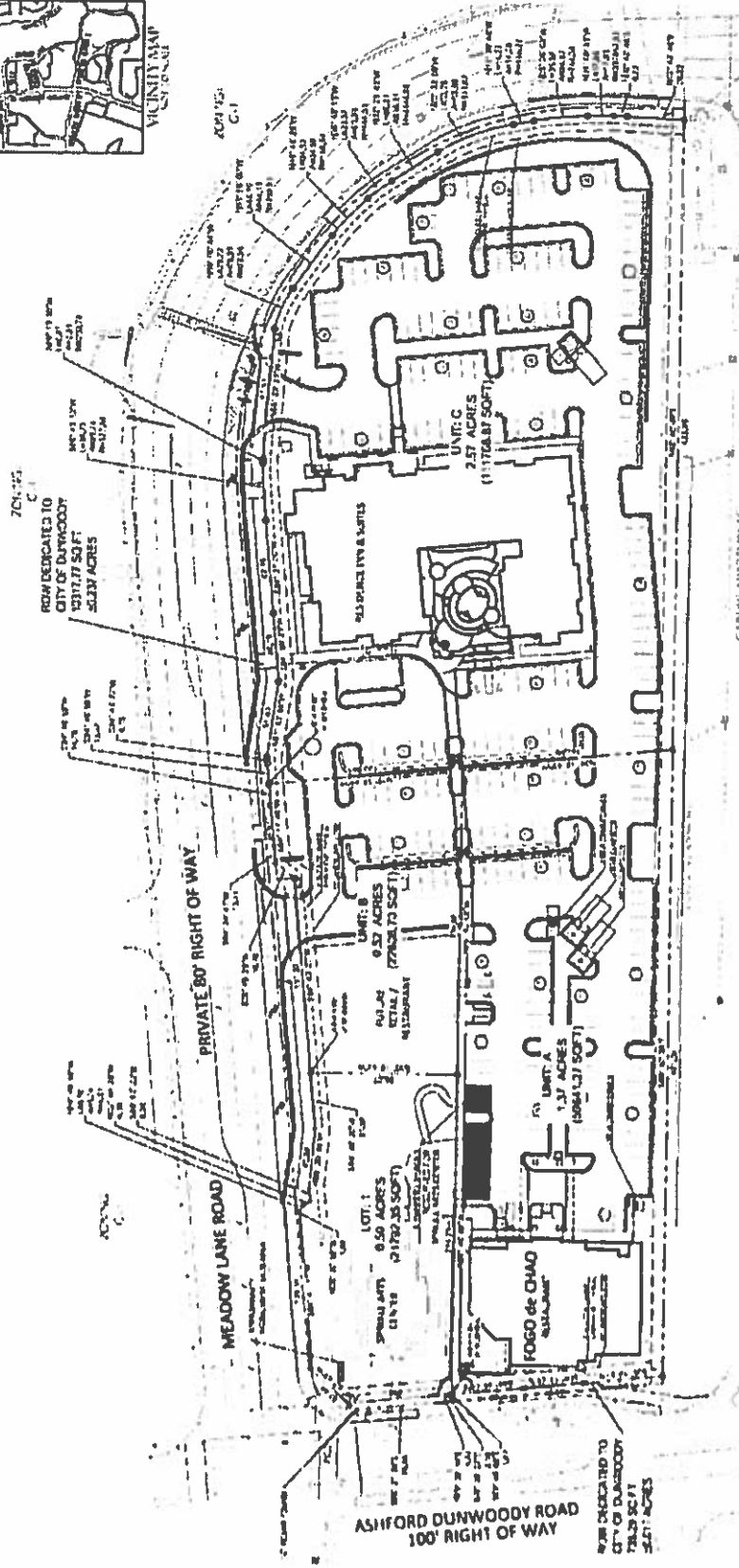
HDP ACQUISITIONS, LLC

By:  [SEAL]  
Print Name: Allen T. O'Brien  
Title: President / manager

**EXHIBIT "A"**

**Depiction of Leased Property**

The Restaurant Parcel is depicted as "Unit A" on the attached Lease Parcel Layout Exhibit.



NO.	DESCRIPTION	AREA	PERCENTAGE
1	LOT 1	0.26	1.1
2	SPRINKLERS UNIT	0.52	2.2
3	UNIT A	1.37	5.5
4	UNIT B	2.57	10.7
5	UNIT C	2.57	10.7
6	RESTAURANT	0.15	0.6
7	SPRINKLERS & UTILS	0.15	0.6
8	PARKING	1.00	4.0
9	LANDSCAPING	0.10	0.4
10	TOTAL	10.00	40.0

**SPRUILL CENTER - LEASE PARCEL LAYOUT EXHIBIT**  
 HOTEL DEVELOPMENT PARTNERS  
 SIX CONCOURSE PARKWAY, SUITE 2075  
 Atlanta, Georgia 30328



**EXHIBIT "B"**

RECORDING REQUESTED BY AND  
AFTER RECORDING RETURN TO:

Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich

STATE OF GEORGIA

COUNTY OF DEKALB

Cross-Reference:  
Deed Book 25348, Page 670  
DeKalb County, Georgia

**AMENDED, RESTATED AND SPLIT MEMORANDUM OF LEASE**  
**(RESTAURANT PARCEL)**

**THIS AMENDED, RESTATED AND SPLIT MEMORANDUM OF LEASE (RESTAURANT PARCEL)** is made by and between **Spruill Center for the Arts, Inc.**, a Georgia non-profit corporation (hereinafter, collectively "Landlord"), and **HDP Spruill, LLC**, a Georgia limited liability company (hereinafter "Tenant").

**WITNESSETH:**

Landlord and Tenant agree that that certain Memorandum of Lease, by and between Landlord and Tenant, recorded in Deed Book 25348, Page 670, Records of the Clerk of Superior Court of DeKalb County, Georgia, is hereby amended, restated, split and superseded as follows:

That by that certain Amended, Restated and Split Lease (Restaurant Parcel) dated as of November 30, 2017, but effective as of September 21, 2015, by and between Landlord and Tenant (the "Lease"), the Landlord has demised and leased to Tenant, the premises described as follows:

**UNIT A**

## RESTAURANT PARCEL

ALL THAT TRACT OR PARCEL OF land lying and being in Land Lot 350 of the 18<sup>th</sup> District, City of Dunwoody, DeKalb County, Georgia, as shown on ALTA/ACSM Land Title Survey for HDP Spruill, LLC, Branch Banking and Trust Company and Chicago Title Insurance Company by McFarland-Dyer and Associates, Inc., dated November 19, 2015, last revised November 27, 2017, and being more particularly described as follows:

COMMENCING at the southwesterly end of the mitered intersection formed by the intersection of the easterly right-of-way of Ashford Dunwoody Road (right-of-way varies) with the southerly right-of-way of Meadow Lane Road (an 80 foot right-of-way); thence along the right-of-way of Ashford Dunwoody Road South 05°15'18" East, a distance of 69.49 feet to a point, said point being the TRUE POINT OF BEGINNING; thence leaving said right-of-way South 89°40'08" East a distance of 214.75 feet to a point; thence South 89°40'08" East a distance of 206.96 feet to a point; thence South 05°18'49" East a distance of 142.69 feet to a point; thence North 89°40'08" West a distance of 421.37 feet to a point located on the easterly right-of-way of Ashford Dunwoody Road; thence along said right-of-way North 05°19'51" West a distance of 53.61 feet to a point; thence continuing along said right-of-way North 05°13'05" West a distance of 40.97 feet to a point; thence continuing along said right-of-way North 05°46'08" West a distance of 48.14 feet to a point, and the TRUE POINT OF BEGINNING.

Said tract contains 1.374 acres or 59,841 square feet.

Together with all easements and appurtenances thereof, and together with all buildings, structures, improvements, equipment, machinery and personal property located thereon (hereinafter referred to as the "Premises"), together with non-exclusive rights to all the tenements, rights, privileges, benefits, hereditaments, easements, appurtenances thereof and any right, title and interest of Landlord in and to any land lying in the bed of any street, road or highway in front of or adjoining said Premises, and together with any strips and gores relating to said Premises.

To have and to hold unto Tenant for a term from the Commencement Date of September 21, 2015 until September 20, 2114.

The Amended, Restated and Split Lease (Restaurant Parcel) and this Memorandum of Lease are and shall be affected by and subject to the terms and provisions of that certain Consent and Agreement Regarding Ground Lease dated November 30, 2015, by and between Landlord and Tenant, as modified and amended by that certain First Modification to Consent and Agreement Regarding Ground Lease dated November 30, 2017 by and between Landlord and Tenant, each for the benefit of Branch Banking and Trust Company and its successors and/or assigns.

The terms are more fully set forth in the Lease, and this Memorandum of Lease is subject to all the covenants, conditions and terms set forth in the Lease, which is hereby incorporated

herein and made a part hereof by reference to the same full extent as if all the covenants, conditions and terms thereof were copied in full herein.

This Memorandum of Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single agreement.

[SIGNATURES ON FOLLOWING PAGE]

Executed effective as of the Commencement Date of September 21, 2015.

Signed, sealed and delivered  
in the presence of:

LANDLORD:

**SPRUILL CENTER FOR THE ARTS, INC.,**  
a Georgia non-profit corporation

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

Commission Expiration Date: \_\_\_\_\_

Title: \_\_\_\_\_

(NOTARIAL SEAL)

[Corporate Seal]

Signed, sealed and delivered  
in the presence of:

TENANT:

**HDP SPRUILL, LLC,** a Georgia limited  
liability company

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

Commission Expiration Date: \_\_\_\_\_

Title: \_\_\_\_\_

(NOTARIAL SEAL)

[Seal]



AFTER RECORDING RETURN TO:  
Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich

Execution Version

Cross Reference:  
Deed Book 25199, Page 358  
DeKalb County, Georgia

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**AMENDED, RESTATED AND SPLIT**  
**NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT**  
**AND CONSENT TO GROUND LEASE AGREEMENT**  
**(RESTAURANT PARCEL)**

This **AMENDED, RESTATED AND SPLIT NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT AND CONSENT TO GROUND LEASE AGREEMENT (RESTAURANT PARCEL)** (this "Agreement") is made and entered into as of as of the 30<sup>th</sup> day of November, 2017, but effective as of September 21, 2015, by and among DEKALB COUNTY, GEORGIA (the "County"), Spruill Center for the Arts, Inc., a Georgia non-profit corporation f/k/a North Arts Center, Inc. ("Landlord"), and HDP Spruill, LLC, a Georgia limited liability company ("Tenant").

**BACKGROUND**

A. Landlord is the owner of the real property described on Exhibit "A" attached hereto and hereby incorporated herein (the "Property"), by virtue of that certain Warranty Deed dated August 23, 1991, from Ethel Warren Spruill and Onnie Mae Spruill and recorded in Deed Book 7134, Page 776, DeKalb County, Georgia, records (the "Spruill Deed").

B. The Spruill Deed includes certain language that would purport to vest in DeKalb County title to a portion of the Property under certain circumstances set forth in the Spruill Deed.

C. Landlord entered into that certain Amended, Restated and Split Lease (Restaurant Parcel) with Tenant dated and effective of even date with this Agreement (as the same may be assigned and as amended from time to time, the "Lease"), which Lease pertains to the portion of

the Property described on Exhibit "B" attached hereto and hereby incorporated herein (the "Leased Premises"). The Lease, together with those certain other Amended, Restated and Split Leases between Landlord and Tenant dated of even date with the Lease (collectively, the "Other Leases"), supersedes that certain lease dated October 31, 2013 between Landlord and HDP Acquisitions LLC, as amended and assigned.

D. In connection with the execution and delivery of the Lease by Landlord and Tenant, County, Landlord and Tenant desire to agree and confirm that should County become the owner of any portion of the Leased Premises by virtue of the operation of any provision of the Spruill Deed the County will recognize and be bound by the Lease as if such Lease were a direct lease between County and Tenant (except that County will not be bound by any indemnity obligations in the Lease). This Agreement, together with those certain other Amended, Restated and Split Non-Disturbance, Recognition and Attornment Agreements and Consent to Ground Lease Agreements among Landlord, Tenant and County dated and effective of even date with this Agreement, supersedes that certain Non-Disturbance, Recognition and Attornment Agreement and Consent to Ground Lease Agreement among Landlord, Tenant and County, dated as of August 11, 2015, recorded in Deed Book 25199, Page 358, Records of the Clerk of Superior Court of DeKalb County, Georgia.

**IN CONSIDERATION OF TEN AND NO/100 DOLLARS** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The parties confirm their agreement to the Background statements set forth above.
2. County hereby consents to the Lease.
3. If County becomes the owner of any portion of the Leased Premises by virtue of the operation of any provision of the Spruill Deed, County hereby agrees (i) to recognize the Lease as a direct lease between County, as landlord, and the Tenant, as tenant, from and after the date County becomes the owner of any portion of the Leased Premises, without the necessity for any additional act or deed and with the same full force and effect, and upon the same terms and provisions as if such parties had actually executed the Lease as a direct lease between them (except that County will not be bound by any indemnity obligations), and (ii) to accept the attornment of Tenant under the Lease, as tenant from and after the date County becomes the owner of any portion of the Leased Premises, without the necessity for any additional act or deed; provided, however, County shall not be: (i) liable for any act or omission of any prior landlord (including Landlord); (ii) liable for the retention, application or return of any security deposit to the extent not paid over to County; (iii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); (iv) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); (v) bound by any amendment or modification of the Lease made without County's prior written consent; or (vi) obligated to cure any defaults of any prior landlord under the Lease which occurred prior to the date on which County succeeded to Landlord's interest under the Lease. Nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord.

4. If County shall succeed to the interest of Landlord under the Lease in any manner, Tenant shall attorn to County, as landlord, and shall recognize County as the landlord under the Lease and the Lease shall thereupon remain in full force and effect and shall inure to the benefit of County, as landlord, and Tenant, as tenant. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto; provided, however, that Tenant will, upon request by County, execute a written agreement attorning to County, affirming Tenant's obligations under the Lease, and agreeing to pay all rent and other sums due or to become due to County. From and after the date County becomes the owner of any portion of the Leased Premises, County shall be bound to Tenant under all the terms, covenants and conditions of the Lease. From and after the date County becomes the owner of any portion of the Leased Premises, Tenant shall be bound to County under all the terms, covenants and conditions of the Lease. **Notwithstanding the anything to the contrary herein, if County shall succeed to the interest of Landlord under the Lease in any manner, County will not be bound by any indemnity obligations in the Lease, and Tenant shall have no right to proceed in the name of and/or on behalf of County as set forth in Section 9.03 of the Lease.** Tenant agrees that County shall be liable only for the performance of the obligations of the landlord under the Lease which arise during the period of its ownership of the Leased Premises and shall not be liable for any obligations of the landlord under the Lease which arise prior to or subsequent to such ownership. Tenant further agrees that any such liability shall be limited to the interest of County in the Leased Premises, and Tenant shall not be able to enforce any such liability against any other assets of County.

5. Each party (the "Representing Party") represents and warrants to each other party that the Representing Party has the authority to enter into and perform all of the Representing Party's obligations under this Agreement.

6. This Agreement shall bind and inure to the benefit of successors in interest of the parties hereto.

7. This instrument shall be governed by the laws of the State of Georgia.

[signatures located on following page]

**IN WITNESS WHEREOF**, the undersigned have caused this **AMENDED, RESTATED AND SPLIT NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT** to be executed as of the day and year first above written.

Signed, sealed and delivered in the presence of: **COUNTY**

**DEKALB COUNTY, GEORGIA**

\_\_\_\_\_  
Unofficial Witness

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[Notarial Seal]

\_\_\_\_\_  
Clerk to the Board of Commissioners and  
Chief Executive Office of DeKalb County,  
Georgia

[SIGNATURES CONTINUED ON IMMEDIATELY FOLLOWING PAGE]

Signed, sealed and delivered in the presence of: **LANDLORD**

*Melissa C. Jones*  
Unofficial Witness

*Kent H. H.*  
Notary Public  
My Commission Expires: 04-21-19  
[Notarial Seal]

SPRUILL CENTER FOR THE ARTS, INC., a  
Georgia non-profit corporation

By: *Robert G. Kinsey*  
Name: ROBERT G. KINSEY  
Title: CEO



[SIGNATURES CONTINUED ON IMMEDIATELY FOLLOWING PAGE]

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

All that tract or parcel of land lying and being in Land Lot 350 of the 18th District, DeKalb County, Georgia and being more particularly described as follows:

Beginning at a ½" rebar at the south westerly end of the mitered intersection of the easterly right of way of Ashford Dunwoody Road (100 foot right of way) and the southerly right of way of Meadow Lane Road (80 foot right of way); thence along said mitered intersection North 39°52'43" East, a distance of 42.44 feet to a point located on the right of way Meadow Lane Road (80 foot right of way); thence along said right of way North 84°41'11" East, a distance of 588.43 feet to a point; thence continuing along said right of way 283.64 feet along a curve to the right, said curve having a chord South 61°45'32" East 267.68 feet and a radius of 242 feet to a point; thence continuing along said right of way 120.43 feet along a curve to the right, said curve having a chord South 13°55'32" East 119.19 feet and a radius of 242.00 feet to a point; thence along said right of way South 00°19'51" West, a distance of 55.59 feet to a point; thence leaving said right of way North 89°40'08" West, a distance of 857.99 feet to a point on the eastern right of way of Ashford Dunwoody Road (100 foot right of way); thence along said right of way North 05°21'26" West, a distance of 206.83 feet to a ½" rebar, said point being the POINT OF BEGINNING.

Said tract contains 5.213 acres or 227,067 square feet more or less.

**EXHIBIT B**  
**LEGAL DESCRIPTION OF LEASED PREMISES**

ALL THAT TRACT OR PARCEL OF land lying and being in Land Lot 350 of the 18<sup>th</sup> District, City of Dunwoody, DeKalb County, Georgia, as shown on ALTA/ACSM Land Title Survey for HDP Spruill, LLC, Branch Banking and Trust Company and Chicago Title Insurance Company by McFarland-Dyer and Associates, Inc., dated November 19, 2015, last revised November 27, 2017, and being more particularly described as follows:

COMMENCING at the southwesterly end of the mitered intersection formed by the intersection of the easterly right-of-way of Ashford Dunwoody Road (right-of-way varies) with the southerly right-of-way of Meadow Lane Road (an 80 foot right-of-way); thence along the right-of-way of Ashford Dunwoody Road South 05°15'18" East, a distance of 69.49 feet to a point, said point being the TRUE POINT OF BEGINNING; thence leaving said right-of-way South 89°40'08" East a distance of 214.75 feet to a point; thence South 89°40'08" East a distance of 206.96 feet to a point; thence South 05°18'49" East a distance of 142.69 feet to a point; thence North 89°40'08" West a distance of 421.37 feet to a point located on the easterly right-of-way of Ashford Dunwoody Road; thence along said right-of-way North 05°19'51" West a distance of 53.61 feet to a point; thence continuing along said right-of-way North 05°13'05" West a distance of 40.97 feet to a point; thence continuing along said right-of-way North 05°46'08" West a distance of 48.14 feet to a point, and the TRUE POINT OF BEGINNING.

Said tract contains 1.374 acres or 59,841 square feet.

**AMENDED, RESTATED AND SPLIT LEASE**  
**(RETAIL PARCEL)**

**THIS INDENTURE OF LEASE** (this "Lease"), is dated, made and entered into as of the 30<sup>th</sup> day of November, 2017, but effective as of September 21, 2015 (the "Commencement Date"), by and between **SPRUILL CENTER FOR THE ARTS, INC.**, a Georgia non-profit corporation (hereinafter the "Landlord"), and **HDP SPRUILL, LLC**, a Georgia limited liability company (hereinafter called "Tenant").

**W I T N E S S E T H: T H A T**

Landlord and HDP Acquisitions LLC, a Georgia limited liability company ("Original Tenant") entered into a certain Lease dated October 31, 2013, as amended by that certain First Amendment to Lease dated March 14, 2014, as further amended by that certain Second Amendment to Lease dated October 23, 2014, and as assigned by Original Tenant to Tenant by Assignment and Assumption of Lease dated December, 2014, as further amended by that certain Third Amendment to Lease dated June 12, 2015, as further amended by that certain Fourth Amendment to Lease dated September 21, 2015 (as so amended and assigned, the "Original Lease").

Landlord and Tenant wish to amend, restate and split the Original Lease into three (3) separate leases, pursuant to which the leased premises shown as "Tract Two" on **Exhibit "A"** to the Original Lease shall be divided into three (3) separate leased premises, as more particularly depicted as Unit C (the "Hotel Parcel"), Unit A (the "Restaurant Parcel") and Unit B (the "Retail Parcel") on **Exhibit "A"** attached hereto and made a part hereof.

Landlord and Tenant acknowledge and agree that the Original Lease is hereby amended, restated and split pursuant to the terms and conditions of (i) this Lease, (ii) that certain Amended, Restated and Split Lease of even date herewith by and between Landlord and Tenant related to the "Hotel Parcel" (the "Hotel Parcel Lease"), and (iii) that certain Amended, Restated and Split Lease of even date herewith by and between Landlord and Tenant related to the "Restaurant Parcel" (the "Restaurant Parcel Lease").

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises more particularly depicted on **Exhibit "A"** attached hereto and made a part hereof, as the "Retail Parcel", together with all easements and appurtenances thereof, and together with all buildings, structures, improvements, equipment, machinery and personal property located thereon (hereinafter referred to as the "Premises" and the improvements now or hereafter located thereon being hereinafter referred to as the "Improvements"), together with non-exclusive rights to all the tenements, rights, privileges, benefits, hereditaments, easements, appurtenances thereof and any right, title and interest of Landlord in and to any land lying in the bed of any street, road or highway in front of or adjoining said Premises, together with any strips and gores relating to said Premises.

This Lease shall be on the following terms and conditions:



**ARTICLE 1**

**TERM**

Section 1.01. Term of Lease. A term of ninety-nine (99) years beginning on the Commencement Date and expiring on September 20, 2114; therefore, Landlord and Tenant agree that the term of this Lease (the "Term") shall commence on the Commencement Date and shall expire on September 20, 2114 (the "Expiration Date"), unless sooner terminated as set forth in this Lease.

**ARTICLE 2**

**RENT**

Section 2.01. Minimum Rent. Landlord and Tenant acknowledge and agree that all rent required to be paid by Tenant under the Original Lease has been paid through November 30, 2017. Commencing December 1, 2017, Tenant shall pay to Landlord, on or before the first day of each month at Landlord's office (as the same may be changed by notice as provided herein from time to time), the following amounts as annual rental (the "Minimum Rent") (to be paid 1/12 each month during each and every calendar month during the Term):

Dates			Annual Minimum Rent	Monthly Installment
12/1/17	-	9/30/20	\$ 60,000.00	\$ 5,000.00
10/1/20	-	9/30/25	\$ 66,000.00	\$ 5,500.00
10/1/25	-	9/30/30	\$ 72,600.00	\$ 6,050.00
10/1/30	-	9/30/35	\$ 79,860.00	\$ 6,655.00
10/1/35	-	9/30/40	\$ 87,846.00	\$ 7,320.50
10/1/40	-	9/30/45	\$ 96,630.60	\$ 8,052.55
10/1/45	-	9/30/50	\$ 106,293.66	\$ 8,857.81
10/1/50	-	9/30/55	\$ 116,923.03	\$ 9,743.59
10/1/55	-	9/30/60	\$ 128,615.33	\$ 10,717.94
10/1/60	-	9/30/65	\$ 141,476.86	\$ 11,789.74
10/1/65	-	9/30/70	\$ 155,624.55	\$ 12,968.71
10/1/70	-	9/30/75	\$ 171,187.00	\$ 14,265.58
10/1/75	-	9/30/80	\$ 188,305.70	\$ 15,692.14
10/1/80	-	9/30/85	\$ 207,136.27	\$ 17,261.36
10/1/85	-	9/30/90	\$ 227,849.90	\$ 18,987.49
10/1/90	-	9/30/95	\$ 250,634.89	\$ 20,886.24
10/1/95	-	9/30/00	\$ 275,698.38	\$ 22,974.86
10/1/00	-	9/30/05	\$ 303,268.22	\$ 25,272.35
10/1/05	-	9/30/10	\$ 333,595.04	\$ 27,799.59
10/1/10	-	9/20/14	\$ 366,954.54	\$ 30,579.55

Notwithstanding the foregoing, Minimum Rent for the month of September, 2114 shall be prorated on a daily basis consistent with the Expiration Date of September 20, 2114. It is understood and agreed that the Minimum Rent shall be due and payable as provided herein.

without demand, setoff or deduction whatsoever. Minimum Rent and each and every other charge, fee, cost, or expense which Tenant is obligated or liable to pay to, refund to, or reimburse Landlord shall, for the purposes of the default provisions of this Lease, be deemed additional rental due from Tenant, and Tenant's failure to so pay, refund, or reimburse when due shall entitle Landlord to all the remedies provided for herein and at law or in equity on account of failure to pay rent.

Section 2.02. Additional Rent. Tenant shall also pay as "Additional Rent" (herein sometimes so called) all charges, costs, expenses and other payments which Tenant assumes or agrees to pay under any of the provisions of this Lease. Landlord and Tenant have agreed, and do hereby agree, that Tenant shall be responsible for and shall pay when due all costs and expenses attributable to the ownership and operation of the Premises, and that the Minimum Rent payable by Tenant to Landlord hereunder shall be absolutely net of all such costs and expenses (however, Tenant shall not be obligated to pay any management fees to Landlord). In the event of any non-payment of any such Additional Rent, Landlord shall have all of the rights and remedies it would have hereunder or by law in the case of non-payment of Minimum Rent.

Section 2.03. Late Fee. Tenant shall pay to Landlord a late fee in an amount equal to five (5%) percent of any Minimum Rent in the event that such payment is not received by the Landlord on or prior to the tenth (10th) day after such payment becomes due and payable in accordance with the terms of this Lease.

### ARTICLE 3

#### ENVIRONMENTAL /AS-IS PROVISION

Section 3.01. Hazardous Substances.

(a) The term "Hazardous Substances," as used in this Lease, shall mean pollutants, contaminants, toxic or hazardous substances or wastes, oil or petroleum products, flammables or any other substances whose nature and/or quantity of existence, use, release, manufacture or effect renders it subject to federal, state, or local environmental, health, community awareness or safety laws or regulations, now or hereafter enacted or promulgated by any governmental authority or court ruling, or any investigation, remediation or removal (collectively the "Environmental Laws").

(b) Tenant hereby agrees that (i) no activity will be conducted on, under or about the Premises by or through Tenant that will use, generate, release, store, dispose of or produce any Hazardous Substances except only those Hazardous Substances which are used or useful in Tenant's or Subtenant's businesses, in which event such Hazardous Substances shall be used, stored and disposed of in a safe and lawful manner in compliance with all Environmental Laws, and (ii) no portion of the Premises will be used by Tenant as a landfill or dump.

(c) Tenant agrees to indemnify, defend (through counsel designated by the Tenant and reasonably acceptable to the Landlord) and hold harmless the Landlord, its successors and assigns, from and against any and all claims, losses, liens, damages and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs

and expenses in connection therewith, arising out of (i) the presence on or under the Premises of any Hazardous Substances, or any releases or discharges of any Hazardous Substances on, under or from the Premises, which presence, release or discharge occurred during the Term, or (ii) any activity carried on or undertaken on or off the Premises by or through the Tenant in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances present in, on or under the Premises.

(d) Landlord warrants and represents to Tenant that Landlord has received no written notice from any governmental agency that Hazardous Substances exist on the Premises in violation of Environmental Laws. Landlord further warrants (without any investigation) that it has no actual knowledge whether any of such Hazardous Substances exist on the Premises. Should Landlord cause any Hazardous Substances to be released onto the Premises during the Term, Landlord shall be required to remove such Hazardous Substances and remediate the Premises in accordance with Environmental Laws.

(e) Landlord represents to Tenant that Landlord has provided copies of any environmental reports in Landlord's possession that have been performed in the past ten (10) years on the Premises. Other than any information which may be contained in such reports, Landlord represents that it has no actual knowledge of the violation of any Environmental Laws with respect to any Hazardous Substances at the Premises.

(f) BY ACCEPTING DELIVERY OF THE PREMISES, TENANT ACKNOWLEDGES AND AGREES THAT IT IS ACCEPTING AND HAS ACCEPTED THE PREMISES IN ITS "AS-IS, WHERE-IS" CONDITION. TENANT ACKNOWLEDGES AND AGREES THAT LANDLORD DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION CONTAINED IN THIRD PARTY REPORTS AND THAT LANDLORD SPECIFICALLY DEMANDS THAT TENANT CONDUCT ITS OWN DUE DILIGENCE. ANY RELIANCE BY TENANT ON SUCH MATERIALS SHALL BE DONE AT TENANT'S OWN RISK. TENANT HEREBY AFFIRMS THAT TENANT MADE A THOROUGH AND EXHAUSTIVE INVESTIGATION OF THE PREMISES PRIOR TO ACCEPTING DELIVERY THEREOF.

(g) The provisions of this Article 3 shall survive the expiration or termination of this Lease.

## ARTICLE 4

### FIXTURES, SIGNS, ALTERATIONS

Section 4.01. Improvements. The Premises are accepted by the Tenant in an "as is - where is" condition, without warranty of condition, merchantability or fitness for a particular use, expressed or implied.

Section 4.02. Alterations and Additions. Tenant, at Tenant's sole cost and expense, may erect all improvements permitted by the applicable zoning ordinances in order to construct RETAIL PARCEL LEASE ONLY: a singly story building containing approximately 6,000 square feet to be used for retail purposes, such approval not to be unreasonably withheld.

conditioned or delayed. Tenant may alter and modify, repair or add to any existing Improvements, all or any of the foregoing being hereinafter collectively called "Alterations," from time to time, provided, however, that (a) all Alterations shall be constructed in accordance with all applicable laws, (b) no Improvements or Alterations on the Premises shall be greater than one (1) story in height, and (c) any change in the location of any buildings or the common areas (such as, without limitation, the parking areas) shall require Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Landlord's approval hereunder shall not be deemed any warranty that such proposed work by Tenant is allowable under applicable laws (including but not limited to applicable zoning ordinances), it being understood that Tenant has the sole obligation to confirm that its proposed improvements comply with all applicable laws.

Section 4.03. Alterations Belong to Tenant Until Expiration or Termination of Lease. All alterations or improvements to the Premises shall remain the property of and for the benefit of the Tenant until expiration or termination of this Lease as set forth in Section 18.01, and Tenant alone shall be entitled to deduct all depreciation on Tenant's income tax return for the alterations and improvements.

Section 4.04. Fixtures. Landlord agrees to execute and deliver, upon request of the Tenant, a landlord's consent and/or subordination with reference to third-party fixture financing of the Tenant or its subtenants, in form reasonably required by such lenders. Notwithstanding the provisions of Section 18.01 hereof, Tenant shall have the right prior to the expiration of the Term to remove any fixtures, trade fixtures, signs and other personal property installed or placed in the Premises by Tenant or any subtenant or assignee, provided Tenant repairs any damage caused by such removal. Any fixtures, signs and other furnishings or equipment left in the Premises by Tenant after the expiration of this Lease shall be conclusively deemed abandoned by Tenant and shall be the property of the Landlord.

Section 4.05. Removal of Liens. During the Term, Tenant shall bond against or discharge all liens on the Premises arising by, through or under Tenant within sixty (60) calendar days after the earlier of (i) Tenant's receipt of actual notice that such a lien exists, or (ii) upon written request by Landlord.

Section 4.06. Signs. Tenant may, at Tenant's expense, install and display on the throughout the Premises any and all signs in compliance with applicable Laws and not in violation of the Prohibited Uses (as defined in Section 13.01).

## ARTICLE 5

### MAINTENANCE OF BUILDING

Section 5.01. Repairs by Tenant. Tenant shall at all times keep the Premises in good condition (including, without limitation in any way, the landscaping and the Improvements), working order and repair, normal wear and tear, casualty and condemnation excepted.

Section 5.02. No Repairs Required by Landlord. Landlord shall have absolutely no duty, obligation or liability whatsoever for construction, maintenance, replacement or repair of

the Premises (except caused by the gross negligence or willful misconduct of Landlord or its employees or contractors). Landlord shall have absolutely no obligation to inspect the Premises.

Section 5.03. Failure of Tenant to Repair. Should Tenant fail to repair or maintain the Premises as required herein within sixty (60) days' prior written notice thereof to Tenant, or if Landlord should determine, in the exercise of its reasonable judgment, that emergency repairs for which Tenant is responsible are necessary, then within ten (10) days' prior written notice to Tenant (unless the emergency requires immediate action in which case Landlord shall give oral notice), Landlord may make such repairs or perform such maintenance without liability to Tenant for any resulting loss or damage that may accrue to Tenant's fixtures or other property, or to Tenant's business, whereupon Tenant shall, within thirty (30) days after receipt of an invoice from Landlord, pay to Landlord, as Additional Rent, the reasonable third party actual cost incurred of such maintenance or repair.

## ARTICLE 6

### INSURANCE

Section 6.01. Property Insurance. Tenant agrees, at its sole expense, to keep and maintain all risks and special perils insurance coverage, excluding flood and earthquake coverage (unless same becomes customary to obtain where the Premises is located), relating to the Premises and the Improvements located thereon in an amount equal to the full replacement value thereof, from time to time, during the Term, and any extension or renewal thereof. Tenant caused a policy or certificate evidencing such insurance to be delivered to Landlord prior to the Commencement Date, and Tenant shall cause renewals of each such policy to be delivered to Landlord at least fifteen (15) days prior to the expiration of such policy.

Section 6.02. Public Liability and Property Damage. Tenant shall protect, indemnify, and save harmless Landlord from and against any and all claims, demands, and causes of action of any nature whatsoever, and from and against any expense incident to the defense by Landlord of any such demand or action, for injury to or death of persons or loss of or damage to property occurring on or about the Premises or in any manner growing out of or connected with Tenant's use and occupancy of the Premises or the condition thereof, except as caused by the gross negligence or willful misconduct of Landlord or its employees or contractors, and at its own cost and expense procure and keep in force during the Term a policy of comprehensive public liability insurance with limits of not less \$1,000,000 per occurrence for bodily injury, death and property damage, and \$3,000,000 in the aggregate, and Tenant shall cause Landlord to be named as an additional insured thereunder, and Tenant caused a certificate of such insurance to be delivered to Landlord prior to the Commencement Date, and renewal certificates shall be delivered to Landlord not less than fifteen (15) days prior to the renewal date of any such insurance policies. Upon at least thirty (30) days' prior written notice from Landlord to Tenant, Landlord shall have the right to require Tenant to increase its liability insurance coverage one time every ten (10) years during the Term if the market liability coverage for similarly situated projects in the Atlanta, Georgia area has increased.

Section 6.03. Business Interruption Insurance. Tenant shall, at its sole expense, procure a business interruption insurance policy that, in the event of a casualty, condemnation or

any other disruption at the Premises, insures Landlord will receive all amounts due under this Lease. Tenant acknowledges and agrees that the Minimum Rent and Additional Rent due under this Lease shall not abate during the period between any disruption and the completion of any such restoration, rebuilding, or replacement.

Section 6.04. Failure to Maintain Insurance. Should Tenant fail to obtain any insurance hereinabove described, then Landlord may procure the same and charge the cost thereof to Tenant as Additional Rent, which shall be due and payable to Landlord on demand or, in the absence of demand, with the installment of Minimum Rent next coming due.

Section 6.05. Landlord Insurance. Landlord shall maintain, or cause to be maintained, a comprehensive public liability insurance policy with limits of not less \$1,000,000 per occurrence for bodily injury, death and property damage, and \$3,000,000 in the aggregate (which may be included within any so-called "umbrella" coverage), with respect to the real property Landlord owns adjacent to the Premises (depicted as "Lot 2" on Exhibit "A" attached hereto and made a part hereof).

Section 6.06. Mutual Release for Matters Covered by Insurance. Each party hereby waives any and all rights of recovery against the other to the full extent that indemnification is covered by an insurance policy maintained by the waiving party.

## ARTICLE 7

### ESTOPPEL CERTIFICATES, ATTORNMENT AND SUBORDINATION

Section 7.01. Execution of Estoppel Certificates. At any time, and from time to time, upon the written request of either Landlord, Tenant or any mortgagee or any purchaser of the Premises, or any permitted subtenant or assignee of the Tenant, within twenty (20) days of the date of such written request, Landlord and Tenant shall execute and deliver to the requesting party, without charge and in a form satisfactory to Landlord, Tenant and/or such mortgagee and/or such purchaser, a written statement (to the extent such statements are factually accurate at such time): (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the Term; (c) certifying that Tenant is in occupancy of the Premises, and that this Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied or performed have been satisfied and performed except as shall be stated; (e) certifying that Landlord and Tenant are not in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by Landlord or Tenant or stating the defaults and/or defenses claimed by either such party; (f) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid; and (g) any other information which the requesting party shall reasonably require.

Section 7.02. Paramount Status to Mortgages obtained by Landlord. This Lease shall at all times during the Term, and any extension thereof, be and remain paramount to the lien and interest of any present or future "mortgage" (as defined below) relating to and placed upon the Premises by Landlord and Landlord covenants and agrees that any mortgage obtained by Landlord shall be subject and subordinate to Tenant's rights under this Lease, including any

development, construction, temporary, interim and permanent loans, mortgages, deeds to secure debt, or trust indentures made or to be made to Tenant for the purpose of developing or improving the Premises or any part thereof, or for the purpose of financing such development or improvement, or for the purpose of satisfying loans for the development or improvements of the Premises, or for the purpose of refinancing or re-casting loans made or to be made to Tenant for the improvement of the Premises, or for any reason whatsoever, as often as requested or required by Tenant. Landlord and Tenant both agree that, should Landlord ever obtain a mortgage on its fee interest in the Premises, each party shall use good faith commercially reasonable efforts to execute a so-called non-disturbance and attornment agreement (or a recognition agreement or similar document) upon the request of either of them or such mortgagee. The word "mortgage" as used herein includes mortgages, deeds to secure debt, deeds of trust and similar instruments and modifications, consolidations, extensions or renewals thereof.

Section 7.03. Mortgage of Leasehold. Tenant, at all times, and from time to time, shall have the right to convey or encumber by mortgage, security deed, deed of trust, or other instrument, Tenant's interest in this Lease and Tenant's right to use and occupy said Premises, together with its rights and interests in and to all existing buildings and improvements, and any building and improvements which may be placed on the Premises. If any such mortgagee, or grantee, shall notify Landlord in writing by certified or registered mail that any such mortgage has been so given and executed by Tenant, and shall at the same time furnish Landlord with the address to which it desires copies of notices to be mailed, Landlord hereby agrees that it will thereafter mail to such mortgagee at the address so given a duplicate copy of any and all notices in writing which Landlord may from time to time give to or serve upon Tenant under and pursuant to the terms and provisions of this Lease. Such mortgagee (if such mortgagee is not affiliated in any way with Tenant) may, at its option at any time, but in no event less than thirty (30) days, before the rights of Tenant shall have been forfeited to Landlord, as provided for herein, pay any of the rents due, or pay any taxes and assessments, or make any repairs and improvements, making or cause to be made any deposits, or do any other act or thing required of Tenant by the terms of this Lease, to prevent the forfeiture of this Lease; and all payments so made, and all things so done and performed by such mortgagee shall be as effective to prevent the forfeiture of the right of Tenant hereunder as the same would have been if done and performed by Tenant. Any such mortgage or other instrument so given by Tenant may, if Tenant so desires, be so conditioned as to provide that as between any such mortgagee and Tenant, said mortgagee on making good and performing any such default or defaults on the part of Tenant shall be thereby subrogated to any or all of the rights of Tenant under the terms and provisions of this Lease. A leasehold mortgagee shall not become personally liable for any of Tenant's obligations under this Lease unless and until such mortgagee becomes the owner of the leasehold estate by foreclosure, assignment in lieu of foreclosure, or otherwise, and thereafter such mortgagee may remain liable for such obligations only so long as the leasehold mortgagee remains the owner of the leasehold estate. If the leasehold mortgagee should become the owner of the leasehold estate, such mortgagee may assign the Lease one time without any consent on the part of the Landlord being required (it being understood however that such assignment shall be subject to all of the provisions of this Lease, including the use restrictions and the future assignment restrictions). Landlord and Tenant each covenant and agree to execute any and all other additional reasonable documents which may be desirable or required to further effect the above provision; provided that nothing contained herein shall prohibit Landlord from exercising any of its remedies if Landlord does not receive all of the Minimum Rent and Additional Rent

due under this Lease within the required time period (subject to any notice and cure periods required under this Lease).

## ARTICLE 8

### INDEMNITY AGAINST CLAIMS

Section 8.01. Protection of Landlord and Tenant. Tenant shall indemnify and save Landlord harmless, through counsel designated by Tenant, against and from any and all third-party claims, damages, costs and expenses, including reasonable attorney's fees, arising from the use or occupancy of the Premises by the Tenant and/or the operation of the business conducted by Tenant in the Premises or arising from any default by Tenant in the performance of any of the covenants, conditions or provisions of this Lease, or from or relating to any negligence or willful misconduct of Tenant, its agents, contractors, servants, employees, and permitted sublessees, concessionaires or licensees in the Premises or in connection with this Lease or any permitted sublease of the Premises. Landlord shall indemnify and save Tenant harmless, through counsel designated by Landlord, against and from any and all third-party claims, damages, costs and expenses, including reasonable attorney's fees, arising from the use or occupancy of the Premises by Landlord or arising from any default by Landlord in the performance of any of the covenants, conditions or provisions of this Lease, or from or relating to any negligence or willful misconduct of Landlord, its agents, contractors, servants, employees, concessionaires or licensees in the Premises or in connection with this Lease.

## ARTICLE 9

### WASTE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 9.01. Waste. Tenant shall not commit or suffer to be committed any waste upon the Premises.

Section 9.02. Governmental Regulations. Tenant, at Tenant's sole cost and expense, subject to the rights of Tenant as provided in Section 9.03, shall comply with all of the laws of all county, city, municipal, state, federal and all other applicable authorities (the "Governmental Authorities") now in force, or which may hereafter be in force, affecting the Premises in any way (extraordinary as well as ordinary, and whether structural or non-structural), including without limitation in any way, all Environmental Laws, and shall observe in the use of the Premises all municipal ordinances and state and federal Laws now in force or which may hereafter be in force.

Section 9.03. Legal Requirement. Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf or in the name of and on behalf of Landlord, in good faith, contest any legal requirement affecting the Premises and, in the event of any such contest, may permit such legal requirement so contested to remain unsatisfied during the period of such contest and any appeal therefrom; provided that notwithstanding any provision of this Lease to the contrary, Tenant's right so to contest any legal requirement affecting the Premises shall not in any way affect its obligations to pay its share of the protested or contested legal requirement or taxes, if any. In the event of any such contest by Tenant, Tenant shall and does



hereby indemnify and hold harmless Landlord from and against any loss or damage to Landlord, and Tenant shall take all reasonable steps as may be necessary to prevent any lien from being filed, or, in the case of tax liens or other liens which attach prior to the due date of a required payment, to remove any lien following the conclusion of any applicable appeal process, against the Premises or any loss or damage to Landlord in connection with any such contest.

Section 9.04. Notices. Tenant shall notify Landlord within thirty (30) days after receipt of correspondence from any Governmental Authority alleging any default or requiring that Tenant alter or repair the Premises to comply with any applicable laws, and Tenant shall comply with such demand in accordance with Section 9.02 above. Should Landlord receive any such notice (including without limitation, all notices (from governmental authorities or otherwise) relating to eminent domain, zoning, legal compliance, Environmental Laws, road widening, adjacent right-of-ways, moratoriums and any other matter affecting the Premises), Landlord shall endeavor to forward a copy to Tenant within ten (10) days after receipt (however, Landlord shall have no liability for failure to do so and Tenant shall have no liability nor be in default under this Lease as a result of Landlord's failure to deliver any such notice to Tenant).

## ARTICLE 10

### UTILITIES

Section 10.01. Payment of Charges and Interruption of Services. Tenant shall pay, on or before the due date(s) thereof, all fees and charges for water, gas, electricity and all other utilities, including fees and charges for removal of trash and all other charges, incurred by Tenant in connection with its use and enjoyment of the Premises. Such utility and other charges, and operating income and expense items, were prorated for the first (if applicable) and shall be prorated for the last (if applicable) fractional months of the Term as of midnight preceding (i) the Commencement Date and (ii) the Expiration Date (or the date of earlier termination of this Lease, if applicable). It is understood that the use by Tenant of the Premises may require that the parties enter into contracts or agreements with local, county, state or other governmental agencies or bodies or with public utilities with reference to storm sewer, sanitary sewer, gas, water, electric, telephone or other utility lines or connections, stormwater management or easement agreements. Landlord agrees to execute and/or consent to the execution of, as applicable, such written contracts, agreements, easement agreements, and consents as are reasonably required for Tenant's use of the Premises; provided, however, that nothing shall cause Landlord to incur any monetary or other obligations hereunder. Tenant shall and does hereby indemnify and hold harmless Landlord from and against any loss or damage arising out of the failure of Tenant to pay any utility charges or similar expenses as and when due. Landlord has no knowledge of accessibility of utilities to the Premises or the costs to obtain same (it being agreed that this is solely the responsibility of Tenant). Landlord shall not be liable for any interruption of utility services to the Premises unless caused by the gross negligence or willful act of Landlord or Landlord's employees, contractors, subcontractors or agents acting specifically at the request of Landlord.

Section 10.02. Intentionally deleted.

## ARTICLE 11

### EASEMENTS/RESERVATIONS

Section 11.01. Master Declaration. Tenant acknowledges and agrees that the Premises is subject to that certain Master Declaration, dated September 1, 2015, made by Landlord as Declarant, recorded at Deed Book 25348, Page 676, of the Records of the Clerk of Superior Court of DeKalb County, Georgia, as the same may hereafter be amended, modified, restated, supplemented or substituted.

Section 11.02. Intentionally deleted.

## ARTICLE 12

### REAL PROPERTY TAXES AND ASSESSMENTS OR CHARGES MADE UNDER ANY BETTERMENT OR IMPROVEMENT LAW

Section 12.01. Taxes and Assessments.

(a) "Taxes and Assessments" shall mean any and all of the following levied, assessed or imposed upon, against or with respect to any part of the Premises or the use and occupancy of the Premises at any time during the Term: real property ad valorem taxes, assessments, charges made by any public or quasi-public authority for improvements or betterments related directly or indirectly to the Premises, sanitary taxes or charges, sewer or water taxes or charges, rent taxes (if any are levied in the future) and any other governmental or quasi-governmental impositions, charges, encumbrances, levies, assessments or taxes of any nature whatsoever, whether general or special, whether ordinary or extraordinary, whether foreseen or unforeseen and whether payable in installments or not. In no event shall Taxes and Assessments include, and Tenant shall not be required to pay any inheritance, estate, succession, transfer, gift, gross receipts, revenue, margin, franchise, corporation, net income or profit tax or capital levy imposed upon Landlord.

(b) Tenant shall pay all Taxes and Assessments for each calendar year during the Term and any extension thereof for and relating to the Improvements and Premises, on or before the due date(s) thereof. Tenant may take the benefit of any law permitting any Taxes and Assessments to be paid over time or in installments. Tenant agrees to deliver to Landlord, upon demand, receipts evidencing payment of all such taxes and assessments, promptly following payment thereof by Tenant.

(c) The prorated portion of Taxes and Assessments during the Term for the calendar years during which the Expiration Date (or date of earlier termination of the Lease) occurs shall be paid by Tenant, it being acknowledged and agreed that Tenant shall only pay Taxes and Assessments during the Term.

(d) Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf, or in the name and on behalf of Landlord, in good faith, contest any Taxes and Assessments and, in the event of any such contest, may permit the Taxes and Assessments so contested to remain unpaid during the period of such contest and any appeal therefrom. Landlord, at no cost and expense to Landlord, shall cooperate fully with Tenant in any such

contest. Tenant may, at Tenant's sole cost and expense, in Tenant's own name and on Tenant's own behalf, apply for any tax exemption allowed by the State in which the Premises are located or any political or taxing subdivision thereof under any existing or future provision of law which grants or may grant any such tax exemption. In the event of any such contest by Tenant, Tenant shall and does hereby indemnify and hold harmless Landlord from and against any loss or damage to Landlord, and Tenant shall pay any such tax, assessment, or claim under protest, or take such other steps as may be necessary, to prevent any sale of the Premises or any loss or damage to Landlord in connection with any such contest.

## ARTICLE 13

### USE

Section 13.01. Use. The Premises shall be used for (a) a single story-building containing approximately 6,000 square feet to be used for retail purposes, and (b) such additional legal purposes and such other additional improvements upon the approval by Landlord of a site plan therefor, such approval not to be unreasonably withheld, conditioned or delayed, all in accordance with existing codes, laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Premises. Tenant must obtain Landlord's prior written approval to use the Premises for any other purpose, such approval not to be unreasonably withheld, conditioned or delayed. In any event, the Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance on and relating to the Premises. Tenant may at any time discontinue the use of and vacate the Premises, provided such action, or omission, shall not interfere with or affect the Tenant's obligations hereunder (including Tenant's obligation to maintain the Premises in good working condition). Notwithstanding the foregoing, the Premises shall not be used at any time for any of the following (collectively, the "Prohibited Uses"):

- (a) The operation of a so-called "head shop" or other business devoted to the sale of articles or merchandise normally used or associated with illegal or unlawful activities such as, but not limited to, the sale of paraphernalia used in connection with marijuana or controlled drugs or substances. Even if marijuana is legalized in the state where the Premises is located, this use restriction shall remain in place.
- (b) A gun shop, shooting gallery or firearms range.
- (c) A so-called "massage parlor", a business which allows nudity or topless people on the Premises, or any business which sells, rents or permits the viewing of so-called "adult" or pornographic materials such as, but not limited to, adult magazines, books, movies, photographs, sexual aids, sexual articles and sex paraphernalia.
- (d) Any use involving the sale or distribution of any flammable liquids, gases or other Hazardous Substances.
- (e) An off-track betting parlor or arcade.

- (f) A liquor store or other establishment whose primary business is the sale of alcoholic beverages for off-site consumption.
- (g) A burlesque or strip club.
- (h) Any business containing a drive-thru facility.
- (i) Any illegal activity.

Section 13.02. Name of Project. Tenant acknowledges that it is very important to Landlord to have the name of the overall project, of which the Premises is a part, include the "Spruill" name. Tenant agrees to include the "Spruill" name in the overall project or center (but not outparcels or individual businesses) and further agrees that Landlord shall have the right to approve the initial name of the overall project or center of which the Premises is a part; provided that such approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not change the name of the project during the Term without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE 14

### DESTRUCTION OF OR DAMAGE TO BUILDINGS

Section 14.01. Repair and Reconstruction. If the Improvements located in or upon the Premises should be damaged or destroyed during the term hereof by any casualty, then the Tenant, subject to the availability of the insurance proceeds as herein provided, shall repair or restore said damages or destruction to the interior of the Premises substantially to a condition that existed prior to such damage or destruction. Landlord shall have absolutely no obligation to repair or restore the Premises. This Lease shall remain in full force and effect in the event of a casualty and the parties waive the provisions of any law to the contrary. All proceeds from the insurance policy or policies as described in Section 6.01 of this Lease shall be made available to the Tenant for such repair and/or restoration, and all additional costs for such repair and/or restoration, if any, shall be paid by the Tenant. If Tenant does not repair the Premises, or if Tenant elects to terminate this Lease as set forth in Section 14.02 below, then the insurance proceeds shall be paid to Landlord after payment is made to any bona-fide mortgage lender (a lender unaffiliated with Tenant) on the Premises. The Minimum Rent and the Additional Rent shall not abate during the period of any restoration.

Section 14.02. Termination. Anything contained in this Lease to the contrary notwithstanding, in the event fifty (50%) percent or more of the improvements constructed by the Tenant in and upon the Premises should be damaged or destroyed during the last three (3) years of the Term, the Tenant shall have the right to terminate this Lease upon written notice to the Landlord within sixty (60) days from the date of such casualty. In the event that Tenant exercises the foregoing right to terminate this Lease, then the proceeds from such insurance policy or policies described in Section 6.01 of this Lease, after payment and discharge of all outstanding indebtedness of the Tenant, including mortgages placed upon the Premises by the Tenant, shall be paid in accordance with Section 14.01 above.

## ARTICLE 15

### EMINENT DOMAIN

Section 15.01. Termination of Lease. If the whole of the Premises, or such portion thereof as shall render the remainder of the Premises unsuitable for the use by the Tenant for Tenant's intended purpose as reasonably determined by Tenant, shall be taken by any public authority under the power of eminent domain (or sale by the Landlord in lieu thereof), then at Tenant's election the Term shall cease as of the day possession is taken by such public authority, and all rentals shall be paid up to that date. Unless this Lease shall be terminated as herein provided, this Lease shall continue in full force and effect as to the remainder of said Premises, and the Minimum Rent shall be equitably adjusted within thirty (30) days after such taking; in the event the Landlord and Tenant cannot agree upon such equitable adjustment, the Minimum Rent shall be determined by the American Arbitration Association ("AAA") upon application by either party, which determination shall be binding upon Landlord and Tenant, and the costs of AAA shall be divided between and paid by Landlord and Tenant. Each party shall be entitled to make a claim for its damages in connection with any condemnation and each party shall be entitled to retain any condemnation proceeds awarded to it; provided, however, it is understood that Tenant shall have the right to make a separate claim for an Improvements constructed by Tenant.

Section 15.02. Damages. The termination of this Lease (if this Lease is terminated due to a condemnation) shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damages caused by condemnation from the condemning party. Tenant shall have the right to file and pursue any claim for the value of the Tenant's leasehold estate and Landlord shall have the right to file and pursue any claim for the value of Landlord's interest in this Lease. Neither Landlord, nor Tenant, shall have any rights in any award made to the other by any condemnation authority notwithstanding the termination of this Lease as herein provided.

## ARTICLE 16

### ASSIGNMENT AND SUBLETTING

#### Assignment and Subletting.

Section 16.01. Assignment and Subletting. Tenant may, without the consent of Landlord but subject to the Prohibited Uses and all other requirements set forth in this Lease, (a) sublet the Premises or any part thereof, or permit the use of the Premises by any party or entity, or (b) assign this Lease to any party or entity affiliated or related to Tenant, or into which Tenant is hereafter merged or consolidated, or any entity owned or controlled by the principals of Tenant; provided, however, any change of control of Tenant shall require Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed. As used herein, "control" shall mean either (i) the direct or indirect ownership of more than fifty percent (50%) of all equity interests in Tenant or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Tenant, through the ownership of voting securities, by contract or otherwise. Tenant may, with the prior written consent of the Landlord (such consent not to be unreasonably withheld, conditioned or delayed) assign this

Lease, or any interest hereunder, to any non-affiliated party or entity; provided, however, that upon any such assignment to any party or entity not affiliated with Tenant, Tenant shall pay to Landlord, from sale closing proceeds, an assignment fee of \$25,000.00; further provided, however, that in no event shall Tenant assign this Lease or any interest hereunder prior to issuance of a certificate of occupancy with respect to the improvements on the Retail Parcel or prior to the leasing of at least fifty percent (50%) of the leasable square footage located in such improvements; further provided, however, that any such assignment of this Lease by Tenant shall be subject to the provisions of Section 16.02 below. Without limitation of the generality of the foregoing, any sublessee or assignee of Tenant pursuant to this Section 16.01 shall be bound by the terms and conditions of that certain Amended, Restated and Split Non-Disturbance, Recognition and Attornment Agreement and Consent to Ground Lease Agreement, dated on or about even date with this Lease, by and among Landlord, Tenant and DeKalb County, Georgia. Notwithstanding any such assignment or sublease, Tenant shall remain primarily liable under this Lease. Tenant shall provide Landlord with a copy of any assignment or sublease made under subsection (a) or (b) above within ten (10) days after any such assignment or sublease.

Section 16.02. Right of First Offer. Notwithstanding any provisions of this Lease to the contrary, in the event Tenant desires to transfer or assign this Lease or to lease any portion of the Retail Parcel to a third party not affiliated with Tenant, Tenant shall first offer the same to Landlord, in writing, which offer shall contain the price, terms and conditions upon which Tenant intends to transfer or assign this Lease or lease any portion of the Retail Parcel. Landlord shall have a period of thirty (30) days from and after the receipt of Tenant's notice of such desired assignment of this Lease or proposed lease to accept or reject such offer. If Landlord fails to advise Tenant of the acceptance or rejection of such offer within such thirty (30) day period then, in such event, Landlord shall be deemed to have rejected the same. If Landlord accepts such offer, then Landlord and Tenant shall enter into a binding agreement in accordance with the price, terms and conditions set forth in the notice from Tenant to Landlord. If Landlord rejects or is deemed to have rejected such offer then, in such event, Tenant may extend such offer to one or more such third parties and upon terms and conditions not materially more favorable to any such third party than those offered to Landlord for a period of three hundred and sixty-five (365) days after the rejection of such offer by Landlord (or upon the expiration of the notice period if Landlord is deemed to have rejected such offer as provided above), including but not limited to a price not less than 95% of the price offered to Landlord. If Tenant does not enter into an agreement for the assignment or transfer of this Lease or for the lease of any portion of the Retail Parcel within such three-hundred and sixty-five (365) day period in accordance with the foregoing then, in such event, the provisions of this Section 16.02 shall again apply to any proposed assignment of this Lease or the lease of any portion of the Retail Parcel and Landlord shall again have the right of "first offering" as set forth herein. Landlord's right of first offer as set forth herein shall not be applicable to the financing of Lease or to any sale, transfer or conveyance of this Lease at a public foreclosure sale or other conveyance conducted by reason of the foreclosure (or conveyance in lieu thereof) of any mortgage or security instrument encumbering Tenant's leasehold title to the Premises.

## ARTICLE 17

### DEFAULT

Section 17.01. Tenant Default. In the event of (i) any failure of Tenant to pay any Minimum Rent or Additional Rent due hereunder as and when it is due and fails to cure the same within ten (10) days following Tenant's receipt of notice of nonpayment and demand for payment, or (ii) any failure to perform any other of the terms, conditions, or covenants of this Lease to be observed or performed by Tenant for more than thirty (30) calendar days after written notice of such default (except for a default in the payment of rent and other monetary obligations) shall have been received by Tenant (unless curative action cannot reasonably be accomplished within such period in which event said period to cure such default shall be automatically extended as long as Tenant promptly commences such cure and diligently prosecutes curative action, not to exceed ninety (90) days), or (iii) if Tenant shall be adjudicated a bankrupt or insolvent, or have a receiver appointed for all or substantially all of its business or assets, or have a trustee appointed for it after a petition has been filed for the reorganization of Tenant under any bankruptcy law of the United States, or make an assignment for the benefit of its creditors, or abandon the Premises or allow the same to become abandoned for a period of ninety consecutive (90) days, or (iv) if Tenant or an affiliate of Tenant is the tenant under any of the Restaurant Parcel Lease or the Hotel Parcel Lease, if a default by Tenant or such affiliate occurs under any of the Restaurant Parcel Lease or the Hotel Parcel Lease and continues beyond the expiration of any applicable notice or cure period, then any such happenings shall be a default by Tenant, and Landlord may, as Landlord's remedies: (a) perform, on Tenant's behalf, any unperformed covenant or obligation under this Lease constituting such Tenant default (after giving Tenant written notice of Landlord's intention to do so except in the case of emergency), in which event Tenant shall reimburse Landlord for all expenses reasonably incurred by Landlord in doing so, which expenses shall be payable by Tenant within thirty (30) days after written demand therefor by Landlord; and/or (b) terminate this Lease and collect liquidated damages from Tenant in an amount equal to (w) the sum of all amounts due under this Lease to the date of termination, plus (x) the aggregate Minimum Rent remaining over the unexpired portion of the Term, all reduced to present value using a discount rate equal to the interest rate of a governmental security having a maturity closest to the then current expiration of the Term, less (y) the aggregate fair net rental value of the Premises over the remaining portion of the Term (provided, however, a reasonable period of time, not to exceed eighteen (18) months, may be considered as a leasing period by which the Premises would not be leased and therefor no income would be realized for such period) reduced to present value, plus (z) Landlord's costs and expenses incurred in the enforcement of this Lease including reasonable attorneys' fees actually incurred; and/or (c) Landlord shall have the right, without terminating this Lease, to enter into and upon and take possession of the Premises or any part thereof and at the option of Landlord to remove all persons and property therefrom (and such property, if any, may be removed and stored in a public or private warehouse or elsewhere at the cost of and for the account of Tenant), all without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may rent the Premises as the agent of Tenant, with or without advertisement, and by private negotiation, and for any term and upon such terms and conditions as Landlord in its sole discretion may deem proper, and Landlord may clean the Premises and make such alterations and repairs as Landlord may deem necessary or desirable in order to re-let the Premises (it being understood and agreed that Landlord shall in no

way be responsible or liable for any failure to rent the Premises or any part thereof, or for any failure to collect rent due upon such re-letting). Upon each such re-letting under subparagraph (c) above, all rentals received by Landlord from such re-letting shall be applied first to the payment of any Additional Rent due from Tenant to Landlord, and second to the payment of any costs and expenses of such re-letting, including brokerage fees and attorneys' fees and costs of such alterations and repairs, and third to the payment of Minimum Rent and other charges then due and unpaid hereunder, and the residue, if any, shall be held by Landlord to the extent of and for application in payment of future rent as the same may become due and payable hereunder (it being understood and agreed that if such rentals received from such re-letting shall at any time or from time to time be less than sufficient to pay to Landlord the sums then due from Tenant hereunder, then Tenant shall pay any such deficiency to Landlord on demand, which deficiency shall, at Landlord's option, be calculated and paid monthly); and/or (d) Landlord may allow the Premises to remain unoccupied and collect Minimum Rent and other charges from Tenant as the same become due; and/or (e) Landlord may exercise any other remedies allowed by law. Landlord's pursuit of any one or more of the remedies set forth above shall not preclude pursuit of any other remedy or remedies provided for in this Lease or any other remedy or remedies provided by law or in equity, separately or concurrently or in any combination, and Landlord's pursuit of any one or more of the remedies available to Landlord shall not constitute an election of remedies by Landlord, such that Landlord is precluded from electing any other remedy or remedies. Landlord shall have no obligation to mitigate damages hereunder. Anything contained in this Paragraph or Lease to the contrary notwithstanding, Landlord shall have no obligation to give written notice to Tenant of any monetary default more than two (2) times during any 12-month period during the Term. Any amounts owing by Tenant to Landlord under the terms of this Lease shall bear interest from the date the same become due until paid at 12% per annum. Said interest shall be considered as additional rent payable under this Lease.

Section 17.02. Landlord Default. Landlord's failure to perform or observe any of its obligations under this Lease after a period of thirty (30) days, or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure, after receiving notice from Tenant, is a Landlord default hereunder. The notice from Tenant shall give in reasonable detail the nature and extent of the failure. If Landlord commits a Landlord default, Tenant's sole remedy shall be to either (i) cure the Landlord default or (ii) sue Landlord for specific performance. Under no circumstances whatsoever may Tenant terminate this Lease due to a Landlord default. If Tenant elects option (i) above, Landlord shall pay Tenant, upon demand, all reasonable and actual costs, expenses, and disbursements incurred by Tenant to cure the Landlord default. If such payment is not rendered within thirty (30) days of demand, Tenant may deduct all such costs and expenses from the rent next coming due.

## ARTICLE 18

### SURRENDER OF LEASE AND HOLDING OVER

Section 18.01. Surrender Upon Termination. At the expiration of this Lease, Tenant shall surrender the Premises to Landlord along with all keys for the Premises at the place then fixed for the payment of rent and shall inform Landlord about all combinations on locks, safes and vaults, if any, in the Premises if owned by and under the control of Tenant. On such day, all alterations, additions and improvements located on the Premises as of such date, except



equipment, fixtures and trade fixtures, including, all hard surface bonded on adhesively affixed flooring, and except as provided in Article 5, shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof.

Section 18.02. Holding Over. Any holding over after the expiration of the Term shall be construed to be a tenancy from month to month at the rent provided in this Lease and on the terms and conditions specified in this Lease, so far as applicable.

## ARTICLE 19

### ATTORNEY FEES

Section 19.01. Attorney Fees. If Landlord or Tenant shall, without fault, be made a party to any litigation by or against the other arising out of the occupancy of the Premises or any act of the other concerning the Premises or this Lease, or if successful litigation shall be brought by Landlord or Tenant against the other for recovery for possession of the Premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant in this Lease to be kept or performed hereunder, and a breach shall be established, Landlord or Tenant (as the case may be) shall be entitled to collect from the other all expenses incurred in connection therewith, including its attorney's fees and court costs.

## ARTICLE 20

### NOTICES

Section 20.01. Notices. Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be delivered in person, or transmitted by facsimile or internet communication (i.e., via email) or sent by U.S. Registered or Certified Mail, Return Receipt Requested, postage prepaid, or by Federal Express, Express Mail, or other reputable overnight delivery service, to the addresses set forth below or at such other addresses as or specified by written notice delivered in accordance herewith:

LANDLORD: Spruill Center for the Arts, Inc.  
5339 Chamblee Dunwoody Road, Suite B  
Dunwoody, Georgia 30338  
Attn: Robert Kinsey, CEO  
Telephone: (770) 394-3447  
Facsimile: (770) 394-6179  
Email: [rkinsey@spruillarts.org](mailto:rkinsey@spruillarts.org)

With a copy to: McClure & Kornheiser, LLC  
6400 Powers Ferry Road, NW Suite 150  
Atlanta, Georgia 30338  
Attn: Michael P. Kornheiser, Esq.  
Telephone: (678) 388-2680  
Facsimile: (678) 388-2690  
E-mail: [mikornheiser@mcclurelegal.com](mailto:mikornheiser@mcclurelegal.com)

TENANT: HDP Spruill, LLC  
c/o Hotel Development Partners, LLC  
3414 Peachtree Road  
Suite 1075  
Atlanta, Georgia 30326  
Attn: Steve Smith  
Telephone: (404) 842-1422  
Facsimile: (404) 842-1522  
E-mail: [ssmith@hdpfunds.com](mailto:ssmith@hdpfunds.com)

with a copy to: Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich, Esq.  
Telephone: (404) 853-8000  
Facsimile: (404) 853-8806  
E-mail: [mikevoynich@eversheds-sutherland.com](mailto:mikevoynich@eversheds-sutherland.com)

Notices emailed, faxed or mailed as hereinabove provided shall be deemed effectively given on the date of email confirmation, postmarked date of such notice if mailed, on the date delivered to the reputable overnight delivery service if sent by overnight delivery, the date delivered to a commercial courier service if personal delivery is made by a commercial courier, and, otherwise, on the date actually received at the address or facsimile number provided above. A duplicate of any notice sent by email or facsimile shall also be sent by overnight courier or certified mail. Each party shall have the right to specify as its proper address any other address within the continental United States of America by giving to the other party at least fifteen (15) days prior written notice thereof.

## ARTICLE 21

### QUIET POSSESSION

Section 21.01. Covenant of Title, Authority and Quiet Possession. Landlord represents and warrants that Landlord has full right, power and lawful authority to enter into and to perform Landlord's obligations under this Lease; that Landlord has fee simple title to the Premises, free and clear of all contracts, leases, tenancies, agreements, restrictions, violations, mortgages and other liens and encumbrances affecting the Premises or the rights granted Tenant in this Lease, except for (a) real estate taxes which are liens but not yet due and payable, (b) utility easements which do not interfere with the proposed use and operation of the Premises, in Tenant's reasonable determination, (c) zoning ordinances and governmental requirements, (d) matters which would be disclosed by an accurate survey of the Premises and (e) all matters of public record as of the date hereof (the "Permitted Exceptions"). Provided Tenant performs all its covenants, agreements and obligations hereunder, Landlord covenants that Tenant shall have the peaceful and quiet enjoyment of the Premises, subject to the Permitted Exceptions, against any and all claims of all persons claiming by, through or under Landlord, on and subject to all of the

terms and conditions of this Lease. By accepting the Premises, Tenant agrees to comply with any and all restrictions set forth in the Landlord's vesting deed (which must be strictly obeyed).

## ARTICLE 22

### TAXES ON TENANT'S PROPERTY

Section 22.01. Tenant to Pay. Tenant shall be responsible for and shall pay before delinquency all municipal, state or county taxes assessed during the Term against the Tenant by reason of the conduct of its business in the Premises or with respect to personal property of any kind owned by or placed in, upon or about the Premises by and/or at the expense of Tenant. Landlord shall have no obligation to pay any taxes related to the Improvements on or at the Premises, the Premises, Tenant's conduct of its business in the Premises, or Tenant's personal property at the Premises.

## ARTICLE 23

### RELATIONSHIP OF PARTIES

Section 23.01. No Partnership Intended. It is expressly understood that, under this Lease, Landlord does not become a partner of or joint venturer with Tenant.

## ARTICLE 24

### FORCE MAJEURE

Section 24.01. Performance Excused. If either party to this Lease shall be delayed or hindered in or prevented from the performance of any non-monetary obligation required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period equivalent to the period of such delay. For the avoidance of doubt, it is understood and agreed that this provision shall not affect the monetary obligations of Tenant under this Lease.

## ARTICLE 25

### BROKERS

Section 25.01. Brokers. Landlord has agreed to pay a real estate commission to JWB Realty Services, LLC pursuant to the terms of a separate commission agreement. Tenant shall have no obligation with reference to the payment of any real estate commission in connection with the Premises or the Lease. Landlord and Tenant each warrant and represent to the other that it has had no dealings with any other real estate agent or broker other than the broker identified above with reference to the Premises or the Lease, and each agrees to indemnify and hold harmless the other, including attorneys' fees and costs, arising out of its breach of the foregoing

warranty and representation, which obligation shall survive the expiration or termination of the Lease.

## ARTICLE 26

**[INTENTIONALLY DELETED]**

## ARTICLE 27

### **GENERAL**

Section 27.01. Waiver of Jury Trial and Counterclaims. The parties to this Lease waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage, pursuant to any right granted under State or Federal laws.

Section 27.02. Withholding of U. S. Income Tax. Landlord hereby represents and warrants to Tenant that Landlord is not a foreign partnership, joint venture, corporation, or other foreign entity, as the same is defined by applicable provisions of the Internal Revenue Code of the United States. Tenant hereby represents and warrants to Landlord that Tenant is not a foreign partnership, joint venture, corporation, or other foreign entity, as the same is defined by applicable provisions of the Internal Revenue Code of the United States.

Section 27.03. LIMITATION OF LIABILITY: LANDLORD'S OBLIGATIONS AND LIABILITY TO TENANT WITH RESPECT TO THIS LEASE SHALL BE LIMITED SOLELY TO LANDLORD'S INTEREST IN THE PREMISES, AND NEITHER LANDLORD NOR ANY OF THE MEMBERS OF LANDLORD, NOR ANY AGENT, OFFICER, DIRECTOR, MANAGER OR SHAREHOLDER OF LANDLORD SHALL HAVE ANY PERSONAL LIABILITY WHATSOEVER WITH RESPECT TO THIS LEASE. TENANT ACKNOWLEDGES THAT LANDLORD IS A NON-PROFIT ENTITY AND LANDLORD SHALL HAVE NO INDEMNIFICATION OBLIGATIONS UNDER THIS LEASE OR OTHERWISE TO TENANT.

Section 27.04. Miscellaneous Matters.

(a) Severability. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remaining terms, covenants and conditions of this Lease shall not be affected thereby and each such term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(b) Integration. This Lease contains the entire agreement between the parties, and any agreement hereafter made shall be ineffective to change this Lease unless such agreement is in writing and signed by the party against whom enforcement of the change modification, discharge or abandonment is sought.

(c) Governing Law. This Lease shall be governed by and construed according to the laws of the State in which the Premises are located.

(d) Captions. The captions of the several article or sections titles contained in this Lease are for convenience only and do not define, limit, describe or construe the contents of this Lease.

(e) Successors and Assigns. Subject to the restrictions contained above, the covenants and conditions herein contained shall bind and inure to the benefit of the respective permitted heirs, successors, executors, administrators and assigns of the parties hereto; and in any case where there shall be more than one Tenant, each Tenant shall be jointly severally liable hereunder.

(f) Time of Essence. Time is of the essence under any and all provisions of this Lease.

(g) Recording. The parties agree to execute and deliver upon execution of this Lease a memorandum of lease (the "Short Form Lease"), in the form attached hereto as Exhibit "B" and incorporated herein by reference. Tenant may record the Short Form Lease at its election at any time at its sole expense.

(h) Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing signed by Landlord or as otherwise provided herein.

(i) Knowledge. Any reference to Landlord's knowledge, Landlord's actual knowledge, or words of similar import shall mean and refer only to the actual knowledge, without investigation or inquiry, as of the date of this Lease, to Robert Kinsey, the CEO of Landlord, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any other party. Tenant acknowledges and agrees that, under no circumstances shall Robert Kinsey have any personal liability hereunder.

(j) Title Insurance. Should Tenant desire to obtain leasehold title insurance in connection with this Lease, Landlord shall sign (i) a customary owner's affidavit upon Tenant's request in a form customarily acceptable to the title company, which affidavit shall be in a form acceptable to Landlord and shall be limited to the actual knowledge of the representative signing on behalf of Landlord (without personal liability to such representative). There shall be no indemnity contained in such affidavit; (ii) such other documents as shall be required by the title company as a condition to insuring Tenant's title to the leasehold estate in the Premises, free of exceptions, except for the Permitted Exceptions; and (iii) a release of the Premises from the holder of any security interest in the fee interest of Landlord in the Premises if incurred by Landlord ("Fee Mortgage") or a complete subordination of such security interest of Fee

Mortgagee to this Lease and the leasehold estate of Tenant, together with commercially reasonable notices of defaults and rights to cure as set forth in Article 7 hereof.

Section 27.05. Landlord Representation, Warranty and Covenant of Authority. Landlord hereby warrants and represents to Tenant that Landlord has the authority to enter into this Lease and to perform its obligations hereunder, and covenants and agrees that such representation and warranty shall be and remain true as of the date of execution of this Lease and during the Term.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals the day and year first above written.

**LANDLORD.**

**SPRUILL CENTER FOR THE ARTS, INC.**

By: Robert A. Kinsey  
Print Name: ROBERT G. KINSEY  
Title: CEO

[CORPORATE SEAL]

**TENANT:**

**HDP SPRUILL, LLC**

By: \_\_\_\_\_ [SEAL]  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Consented to by:

**HDP ACQUISITIONS, LLC**

By: \_\_\_\_\_ [SEAL]  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals the day and year first above written.

**LANDLORD.**


**SPRUILL CENTER FOR THE ARTS, INC.**

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

[CORPORATE SEAL]


**TENANT:**

**HDP SPRUILL, LLC**

By:  [SEAL]  
Print Name: Allen T. O'Brien  
Title: President / manager

Consented to by:

**HDP ACQUISITIONS, LLC**

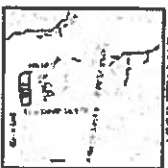
By:  [SEAL]  
Print Name: Allen T. O'Brien  
Title: President / manager



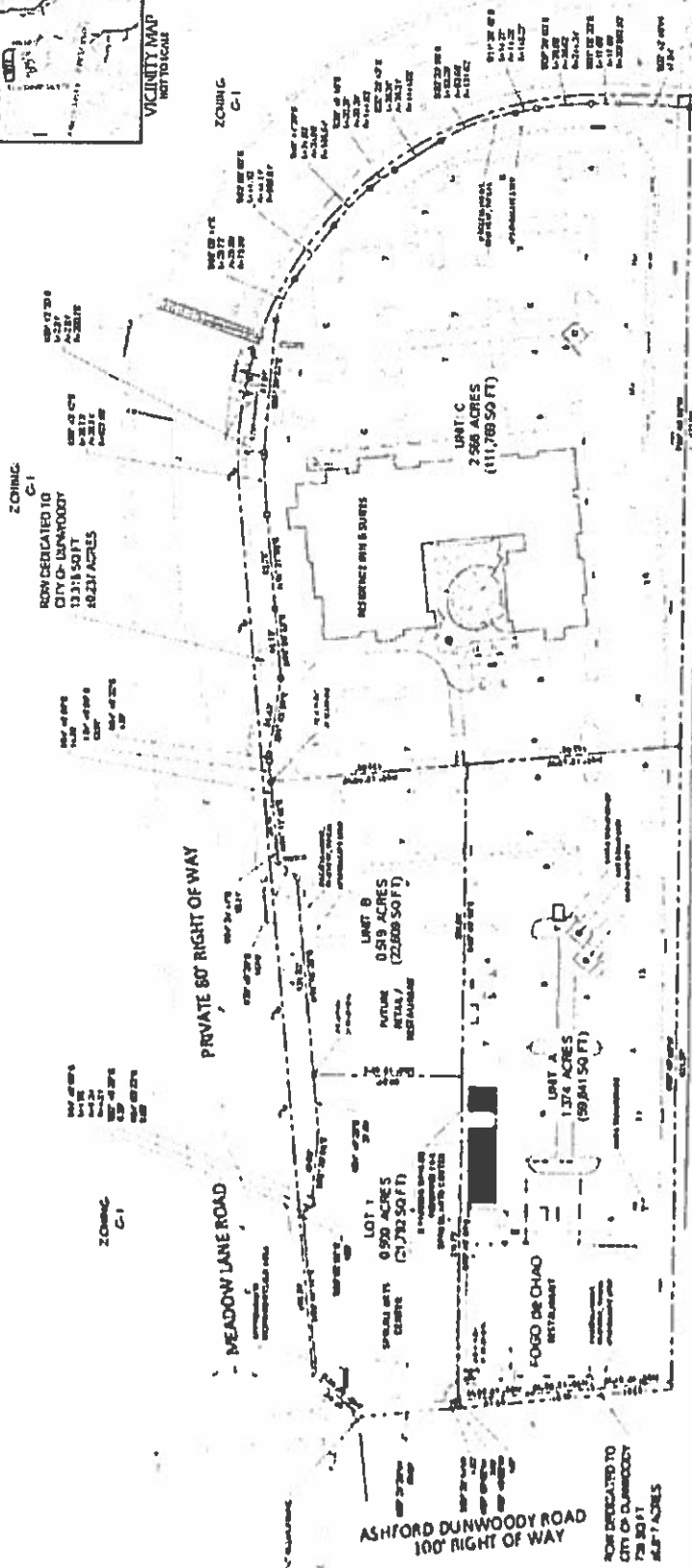
**EXHIBIT "A"**

**Depiction of Leased Property**

The Retail Parcel is depicted as "Unit B" on the attached Lease Parcel Layout Exhibit.



VICINITY MAP  
NOT TO SCALE



CABLES APARTMENTS  
CABLES METROPOLITAN  
ZONING: O1

NO.	DESCRIPTION	AREA	PERCENTAGE
1	LOT 1	37,811 SQ FT	0.970 ACRES
2	LOT 2	22,808 SQ FT	0.519 ACRES
3	LOT 3	59,841 SQ FT	1.374 ACRES
4	LOT 4	111,768 SQ FT	2.566 ACRES
<b>TOTAL</b>			
		<b>232,228 SQ FT</b>	<b>5.369 ACRES</b>

### SPRUILL CENTER - LEASE PARCEL LAYOUT EXHIBIT

FOR USE BY MDC & MEADOW LANE ROAD, DUNWOODY, GEORGIA

### HOTEL DEVELOPMENT PARTNERS

SIX CONCOURSE PARKWAY, SUITE 2075  
Atlanta, Georgia 30328



MDA  
METROPOLITAN DEVELOPMENT AUTHORITY  
14707 PHOENIX AVENUE, SUITE 200  
DUNWOODY, GEORGIA 30328  
PH: 770-391-1000  
WWW.MDA.GA.GOV

AFTER RECORDING RETURN TO:  
Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich

Execution Version

Cross Reference:  
Deed Book 25199, Page 358  
DeKalb County, Georgia

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**AMENDED, RESTATED AND SPLIT**  
**NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT**  
**AND CONSENT TO GROUND LEASE AGREEMENT**  
**(RETAIL PARCEL)**

This **AMENDED, RESTATED AND SPLIT NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT AND CONSENT TO GROUND LEASE AGREEMENT (RETAIL PARCEL)** (this "Agreement") is made and entered into as of as of the 30<sup>th</sup> day of November, 2017, but effective as of September 21, 2015, by and among **DEKALB COUNTY, GEORGIA** (the "County"), Spruill Center for the Arts, Inc., a Georgia non-profit corporation f/k/a North Arts Center, Inc. ("Landlord"), and HDP Spruill, LLC, a Georgia limited liability company ("Tenant").

**BACKGROUND**

A. Landlord is the owner of the real property described on Exhibit "A" attached hereto and hereby incorporated herein (the "Property"), by virtue of that certain Warranty Deed dated August 23, 1991, from Ethel Warren Spruill and Onnie Mae Spruill and recorded in Deed Book 7134, Page 776, DeKalb County, Georgia, records (the "Spruill Deed").

B. The Spruill Deed includes certain language that would purport to vest in DeKalb County title to a portion of the Property under certain circumstances set forth in the Spruill Deed.

C. Landlord entered into that certain Amended, Restated and Split Lease (Retail Parcel) with Tenant dated and effective of even date with this Agreement (as the same may be assigned and as amended from time to time, the "Lease"), which Lease pertains to the portion of

the Property described on Exhibit "B" attached hereto and hereby incorporated herein (the "Leased Premises"). The Lease, together with those certain other Amended, Restated and Split Leases between Landlord and Tenant dated of even date with the Lease (collectively, the "Other Leases"), supersedes that certain lease dated October 31, 2013 between Landlord and HDP Acquisitions LLC, as amended and assigned.

D. In connection with the execution and delivery of the Lease by Landlord and Tenant, County, Landlord and Tenant desire to agree and confirm that should County become the owner of any portion of the Leased Premises by virtue of the operation of any provision of the Spruill Deed the County will recognize and be bound by the Lease as if such Lease were a direct lease between County and Tenant (except that County will not be bound by any indemnity obligations in the Lease). This Agreement, together with those certain other Amended, Restated and Split Non-Disturbance, Recognition and Attornment Agreements and Consent to Ground Lease Agreements among Landlord, Tenant and County dated and effective of even date with this Agreement, supersedes that certain Non-Disturbance, Recognition and Attornment Agreement and Consent to Ground Lease Agreement among Landlord, Tenant and County, dated as of August 11, 2015, recorded in Deed Book 25199, Page 358, Records of the Clerk of Superior Court of DeKalb County, Georgia.

**IN CONSIDERATION OF TEN AND NO/100 DOLLARS** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The parties confirm their agreement to the Background statements set forth above.
2. County hereby consents to the Lease.
3. If County becomes the owner of any portion of the Leased Premises by virtue of the operation of any provision of the Spruill Deed, County hereby agrees (i) to recognize the Lease as a direct lease between County, as landlord, and the Tenant, as tenant, from and after the date County becomes the owner of any portion of the Leased Premises, without the necessity for any additional act or deed and with the same full force and effect, and upon the same terms and provisions as if such parties had actually executed the Lease as a direct lease between them (except that County will not be bound by any indemnity obligations), and (ii) to accept the attornment of Tenant under the Lease, as tenant from and after the date County becomes the owner of any portion of the Leased Premises, without the necessity for any additional act or deed; provided, however, County shall not be: (i) liable for any act or omission of any prior landlord (including Landlord); (ii) liable for the retention, application or return of any security deposit to the extent not paid over to County; (iii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); (iv) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); (v) bound by any amendment or modification of the Lease made without County's prior written consent; or (vi) obligated to cure any defaults of any prior landlord under the Lease which occurred prior to the date on which County succeeded to Landlord's interest under the Lease. Nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord.

4. If County shall succeed to the interest of Landlord under the Lease in any manner, Tenant shall attorn to County, as landlord, and shall recognize County as the landlord under the Lease and the Lease shall thereupon remain in full force and effect and shall inure to the benefit of County, as landlord, and Tenant, as tenant. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto; provided, however, that Tenant will, upon request by County, execute a written agreement attorning to County, affirming Tenant's obligations under the Lease, and agreeing to pay all rent and other sums due or to become due to County. From and after the date County becomes the owner of any portion of the Leased Premises, County shall be bound to Tenant under all the terms, covenants and conditions of the Lease. From and after the date County becomes the owner of any portion of the Leased Premises, Tenant shall be bound to County under all the terms, covenants and conditions of the Lease. **Notwithstanding the anything to the contrary herein, if County shall succeed to the interest of Landlord under the Lease in any manner, County will not be bound by any indemnity obligations in the Lease, and Tenant shall have no right to proceed in the name of and/or on behalf of County as set forth in Section 9.03 of the Lease.** Tenant agrees that County shall be liable only for the performance of the obligations of the landlord under the Lease which arise during the period of its ownership of the Leased Premises and shall not be liable for any obligations of the landlord under the Lease which arise prior to or subsequent to such ownership. Tenant further agrees that any such liability shall be limited to the interest of County in the Leased Premises, and Tenant shall not be able to enforce any such liability against any other assets of County.

5. Each party (the "Representing Party") represents and warrants to each other party that the Representing Party has the authority to enter into and perform all of the Representing Party's obligations under this Agreement.

6. This Agreement shall bind and inure to the benefit of successors in interest of the parties hereto.

7. This instrument shall be governed by the laws of the State of Georgia.

[signatures located on following page]

**IN WITNESS WHEREOF**, the undersigned have caused this **AMENDED, RESTATED AND SPLIT NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT** to be executed as of the day and year first above written.

Signed, sealed and delivered in the presence of: **COUNTY**

**DEKALB COUNTY, GEORGIA**

\_\_\_\_\_  
Unofficial Witness

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[Notarial Seal]

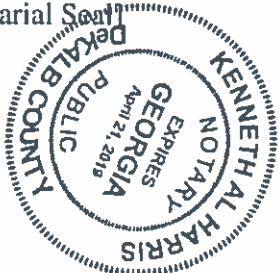
\_\_\_\_\_  
Clerk to the Board of Commissioners and  
Chief Executive Office of DeKalb County,  
Georgia

[SIGNATURES CONTINUED ON IMMEDIATELY FOLLOWING PAGE]

Signed, sealed and delivered in the presence of: **LANDLORD**

*William C. Judd*  
Unofficial Witness

*Henry A. [Signature]*  
Notary Public  
My Commission Expires: 04-21-19  
[Notarial Seal]



SPRULL CENTER FOR THE ARTS, INC., a  
Georgia non-profit corporation

By: *Robert G. Kinsey*  
Name: ROBERT G. KINSEY  
Title: CEO

[SIGNATURES CONTINUED ON IMMEDIATELY FOLLOWING PAGE]

Signed, sealed and delivered in the presence of: **TENANT**

Bette Jean  
Unofficial Witness

HDP SPRUILL, LLC, a Georgia limited liability company

By: [Signature]  
Name: Allen T. O'Brien  
Title: President / Manager

Bette Jean  
Notary Public  
My Commission Expires 1/22/19  
[Notarial Seal]





EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

All that tract or parcel of land lying and being in Land Lot 350 of the 18th District, DeKalb County, Georgia and being more particularly described as follows:

Beginning at a ½" rebar at the south westerly end of the mitered intersection of the easterly right of way of Ashford Dunwoody Road (100 foot right of way) and the southerly right of way of Meadow Lane Road (80 foot right of way); thence along said mitered intersection North 39°52'43" East, a distance of 42.44 feet to a point located on the right of way Meadow Lane Road (80 foot right of way); thence along said right of way North 84°41'11" East, a distance of 588.43 feet to a point; thence continuing along said right of way 283.64 feet along a curve to the right, said curve having a chord South 61°45'32" East 267.68 feet and a radius of 242 feet to a point; thence continuing along said right of way 120.43 feet along a curve to the right, said curve having a chord South 13°55'32" East 119.19 feet and a radius of 242.00 feet to a point; thence along said right of way South 00°19'51" West, a distance of 55.59 feet to a point; thence leaving said right of way North 89°40'08" West, a distance of 857.99 feet to a point on the eastern right of way of Ashford Dunwoody Road (100 foot right of way); thence along said right of way North 05°21'26" West, a distance of 206.83 feet to a ½" rebar, said point being the POINT OF BEGINNING.

Said tract contains 5.213 acres or 227,067 square feet more or less.

EXHIBIT B  
LEGAL DESCRIPTION OF LEASED PREMISES

ALL THAT TRACT OR PARCEL OF land lying and being in Land Lot 350 of the 18<sup>th</sup> District, City of Dunwoody, DeKalb County, Georgia, as shown on ALTA/ACSM Land Title Survey for HDP Spruill, LLC, Branch Banking and Trust Company and Chicago Title Insurance Company by McFarland-Dyer and Associates, Inc., dated November 19, 2015, last revised November 27, 2017, and being more particularly described as follows:

COMMENCING at the southwesterly end of the mitered intersection formed by the intersection of the easterly right-of-way of Ashford Dunwoody Road (right-of-way varies) with the southerly right-of-way of Meadow Lane Road (an 80-foot right-of-way); thence along said mitered intersection North 39°52'43" East a distance of 35.50 feet to a ½" rebar found on the southerly right-of-way Meadow Lane Road; thence along said right-of-way North 84°41'11" East a distance of 105.34 feet to a point; thence continuing along said right-of-way South 06°02'58" East a distance of 1.88 feet to a point; thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 5.24 feet to a point (said curve having a radius of 4.81 feet, and being subtended by a chord line having a bearing of South 64°48'58" East and a chord length of 4.98 feet); thence continuing along said right-of-way South 32°46'29" East a distance of 6.35 feet to a point; thence continuing along said right-of-way North 84°03'22" East a distance of 8.00 feet to a point; thence continuing along said right-of-way South 85°20'04" East a distance of 40.60 feet to a point; thence continuing along said right-of-way North 84°45'20" East a distance of 37.59 feet to a point, said point being the TRUE POINT OF BEGINNING; thence continuing along said right-of-way North 84°45'20" East a distance of 131.32 feet to a point; thence continuing along said right-of-way thence North 39°45'20" East a distance of 16.76 feet to a point; thence continuing along said right-of-way North 84°24'41" East a distance of 10.11 feet to a point; thence continuing along said right-of-way North 84°17'45" East a distance of 28.19 feet to a point; thence continuing along said right-of-way North 84°46'55" East a distance of 14.76 feet to a point; thence leaving said right-of-way South 05°18'49" East a distance of 130.85 feet to a point; thence North 89°40'08" West a distance of 206.96 feet to a point; thence North 00°18'43" East a distance of 99.07 feet to a point located on the southerly right-of-way of Meadow Lane Road, and the TRUE POINT OF BEGINNING.

Said tract contains 0.519 acres or 22,609 square feet.

AFTER RECORDING RETURN TO:  
Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich

Execution Version

Cross Reference:  
Deed Book 25199, Page 358  
DeKalb County, Georgia

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**AMENDED, RESTATED AND SPLIT  
NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT  
AND CONSENT TO GROUND LEASE AGREEMENT  
(HOTEL PARCEL)**

This **AMENDED, RESTATED AND SPLIT NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT AND CONSENT TO GROUND LEASE AGREEMENT (HOTEL PARCEL)** (this "Agreement") is made and entered into as of as of the 30<sup>th</sup> day of November, 2017, but effective as of September 21, 2015, by and among DEKALB COUNTY, GEORGIA (the "County"), Spruill Center for the Arts, Inc., a Georgia non-profit corporation f/k/a North Arts Center, Inc. ("Landlord"), and HDP Spruill, LLC, a Georgia limited liability company ("Tenant").

**BACKGROUND**

A. Landlord is the owner of the real property described on Exhibit "A" attached hereto and hereby incorporated herein (the "Property"), by virtue of that certain Warranty Deed dated August 23, 1991, from Ethel Warren Spruill and Onnie Mac Spruill and recorded in Deed Book 7134, Page 776, DeKalb County, Georgia, records (the "Spruill Deed").

B. The Spruill Deed includes certain language that would purport to vest in DeKalb County title to a portion of the Property under certain circumstances set forth in the Spruill Deed.

C. Landlord entered into that certain Amended, Restated and Split Lease (Hotel Parcel) with Tenant dated and effective of even date with this Agreement (as the same may be assigned and as amended from time to time, the "Lease"), which Lease pertains to the portion of

the Property described on Exhibit "B" attached hereto and hereby incorporated herein (the "Leased Premises"). The Lease, together with those certain other Amended, Restated and Split Leases between Landlord and Tenant dated of even date with the Lease (collectively, the "Other Leases"), supersedes that certain lease dated October 31, 2013 between Landlord and HDP Acquisitions LLC, as amended and assigned.

D. In connection with the execution and delivery of the Lease by Landlord and Tenant, County, Landlord and Tenant desire to agree and confirm that should County become the owner of any portion of the Leased Premises by virtue of the operation of any provision of the Spruill Deed the County will recognize and be bound by the Lease as if such Lease were a direct lease between County and Tenant (except that County will not be bound by any indemnity obligations in the Lease). This Agreement, together with those certain other Amended, Restated and Split Non-Disturbance, Recognition and Attornment Agreements and Consent to Ground Lease Agreements among Landlord, Tenant and County dated and effective of even date with this Agreement, supersedes that certain Non-Disturbance, Recognition and Attornment Agreement and Consent to Ground Lease Agreement among Landlord, Tenant and County, dated as of August 11, 2015, recorded in Deed Book 25199, Page 358, Records of the Clerk of Superior Court of DeKalb County, Georgia.

**IN CONSIDERATION OF TEN AND NO/100 DOLLARS** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The parties confirm their agreement to the Background statements set forth above.
2. County hereby consents to the Lease.
3. If County becomes the owner of any portion of the Leased Premises by virtue of the operation of any provision of the Spruill Deed, County hereby agrees (i) to recognize the Lease as a direct lease between County, as landlord, and the Tenant, as tenant, from and after the date County becomes the owner of any portion of the Leased Premises, without the necessity for any additional act or deed and with the same full force and effect, and upon the same terms and provisions as if such parties had actually executed the Lease as a direct lease between them (except that County will not be bound by any indemnity obligations), and (ii) to accept the attornment of Tenant under the Lease, as tenant from and after the date County becomes the owner of any portion of the Leased Premises, without the necessity for any additional act or deed; provided, however, County shall not be: (i) liable for any act or omission of any prior landlord (including Landlord); (ii) liable for the retention, application or return of any security deposit to the extent not paid over to County; (iii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); (iv) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); (v) bound by any amendment or modification of the Lease made without County's prior written consent; or (vi) obligated to cure any defaults of any prior landlord under the Lease which occurred prior to the date on which County succeeded to Landlord's interest under the Lease. Nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord.

4. If County shall succeed to the interest of Landlord under the Lease in any manner, Tenant shall attorn to County, as landlord, and shall recognize County as the landlord under the Lease and the Lease shall thereupon remain in full force and effect and shall inure to the benefit of County, as landlord, and Tenant, as tenant. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto; provided, however, that Tenant will, upon request by County, execute a written agreement attorning to County, affirming Tenant's obligations under the Lease, and agreeing to pay all rent and other sums due or to become due to County. From and after the date County becomes the owner of any portion of the Leased Premises, County shall be bound to Tenant under all the terms, covenants and conditions of the Lease. From and after the date County becomes the owner of any portion of the Leased Premises, Tenant shall be bound to County under all the terms, covenants and conditions of the Lease. **Notwithstanding the anything to the contrary herein, if County shall succeed to the interest of Landlord under the Lease in any manner, County will not be bound by any indemnity obligations in the Lease, and Tenant shall have no right to proceed in the name of and/or on behalf of County as set forth in Section 9.03 of the Lease.** Tenant agrees that County shall be liable only for the performance of the obligations of the landlord under the Lease which arise during the period of its ownership of the Leased Premises and shall not be liable for any obligations of the landlord under the Lease which arise prior to or subsequent to such ownership. Tenant further agrees that any such liability shall be limited to the interest of County in the Leased Premises, and Tenant shall not be able to enforce any such liability against any other assets of County.

5. Each party (the "Representing Party") represents and warrants to each other party that the Representing Party has the authority to enter into and perform all of the Representing Party's obligations under this Agreement.

6. This Agreement shall bind and inure to the benefit of successors in interest of the parties hereto.

7. This instrument shall be governed by the laws of the State of Georgia.

[signatures located on following page]

**IN WITNESS WHEREOF**, the undersigned have caused this **AMENDED, RESTATED AND SPLIT NON-DISTURBANCE, RECOGNITION AND ATTORNMENT AGREEMENT** to be executed as of the day and year first above written.

Signed, sealed and delivered in the presence of: **COUNTY**

**DEKALB COUNTY, GEORGIA**

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
[Notarial Seal]

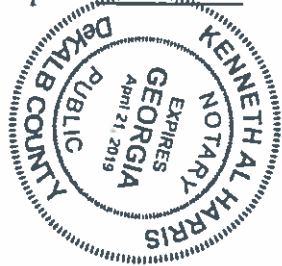
\_\_\_\_\_  
Clerk to the Board of Commissioners and  
Chief Executive Office of DeKalb County,  
Georgia

[SIGNATURES CONTINUED ON IMMEDIATELY FOLLOWING PAGE]

Signed, sealed and delivered in the presence of: **LANDLORD**

*Madison C. Fuller*  
Unofficial Witness

*Kenneth H. Harris*  
Notary Public  
My Commission Expires: 04/21/19  
[Notarial Seal]



SPRUILL CENTER FOR THE ARTS, INC., a  
Georgia non-profit corporation

By: *Robert H. Kinsey*  
Name: ROBERT G. KINSEY  
Title: CEO

[SIGNATURES CONTINUED ON IMMEDIATELY FOLLOWING PAGE]

Signed, sealed and delivered in the presence of: **TENANT**

*Bette Jean Cox*  
Unofficial Witness

*Bette Jean Cox*  
Notary Public  
My Commission Expires: *Jan 22, 2019*  
[Notarial Seal]



IIDP SPRUILL, LLC, a Georgia limited liability company

By: *[Signature]*  
Name: *Allen T. O'Brien*  
Title: *President/Manager*



EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

All that tract or parcel of land lying and being in Land Lot 350 of the 18th District, DeKalb County, Georgia and being more particularly described as follows:

Beginning at a ½" rebar at the south westerly end of the mitered intersection of the easterly right of way of Ashford Dunwoody Road (100 foot right of way) and the southerly right of way of Meadow Lane Road (80 foot right of way); thence along said mitered intersection North 39°52'43" East, a distance of 42.44 feet to a point located on the right of way Meadow Lane Road (80 foot right of way); thence along said right of way North 84°41'11" East, a distance of 588.43 feet to a point; thence continuing along said right of way 283.64 feet along a curve to the right, said curve having a chord South 61°45'32" East 267.68 feet and a radius of 242 feet to a point; thence continuing along said right of way 120.43 feet along a curve to the right, said curve having a chord South 13°55'32" East 119.19 feet and a radius of 242.00 feet to a point; thence along said right of way South 00°19'51" West, a distance of 55.59 feet to a point; thence leaving said right of way North 89°40'08" West, a distance of 857.99 feet to a point on the eastern right of way of Ashford Dunwoody Road (100 foot right of way); thence along said right of way North 05°21'26" West, a distance of 206.83 feet to a ½" rebar, said point being the POINT OF BEGINNING.

Said tract contains 5.213 acres or 227,067 square feet more or less.

**EXHIBIT B**  
**LEGAL DESCRIPTION OF LEASED PREMISES**

ALL THAT TRACT OR PARCEL OF land lying and being in Land Lot 350 of the 18<sup>th</sup> District, City of Dunwoody, DeKalb County, Georgia, as shown on ALTA/ACSM Land Title Survey for HDP Spruill, LLC, Branch Banking and Trust Company and Chicago Title Insurance Company by McFarland-Dyer and Associates, Inc., dated November 19, 2015, last revised November 27, 2017, and being more particularly described as follows:

COMMENCING at the southwesterly end of the mitered intersection formed by the intersection of the easterly right-of-way of Ashford Dunwoody Road (right-of-way varies) with the southerly right-of-way of Meadow Lane Road (an 80-foot right-of-way); thence along said mitered intersection North 39°52'43" East a distance of 35.50 feet to a ½" rebar found on the southerly right-of-way Meadow Lane Road; thence along said right-of-way North 84°41'11" East a distance of 105.34 feet to a point; thence continuing along said right-of-way South 06°02'58" East a distance of 1.88 feet to a point; thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 5.24 feet to a point (said curve having a radius of 4.81 feet, and being subtended by a chord line having a bearing of South 64°48'58" East and a chord length of 4.98 feet); thence continuing along said right-of-way South 32°46'29" East a distance of 6.35 feet to a point; thence continuing along said right-of-way North 84°03'22" East a distance of 8.00 feet to a point; thence continuing along said right-of-way South 85°20'04" East a distance of 40.60 feet to a point; thence continuing along said right-of-way North 84°45'20" East a distance of 37.59 feet to a point; thence continuing along said right-of-way North 84°45'20" East a distance of 131.32 feet to a point; thence continuing along said right-of-way thence North 39°45'20" East a distance of 16.76 feet to a point; thence continuing along said right-of-way North 84°24'41" East a distance of 10.11 feet to a point; thence continuing along said right-of-way North 84°17'45" East a distance of 28.19 feet to a point; thence continuing along said right-of-way North 84°46'55" East a distance of 14.76 feet to a point, said point being the TRUE POINT OF BEGINNING; thence continuing along said right-of-way thence North 84°46'55" East a distance of 13.97 feet to a point; thence continuing along said right-of-way North 84°45'22" East a distance of 4.15 feet to a point; thence continuing along said right-of-way South 81°43'59" East a distance of 51.40 feet to a point; thence continuing along said right-of-way North 84°50'23" East a distance of 46.19 feet to a point; thence continuing along said right-of-way North 84°37'00" East a distance of 62.76 feet to a point; thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 38.74 feet to a point (said curve having a radius of 527.58 feet, and being subtended by a chord line having a bearing of North 86°43'12" East and a chord length of 38.73 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 2.81 feet to a point (said curve having a radius of 200.78 feet, and being subtended by a chord line having a bearing of North 89°13'30" East and a chord length of 2.81); thence continuing along said right-of-way South 85°29'23" East a distance of 87.91 feet to a point; thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 29.89 feet to a point (said curve having a radius of 79.56 feet, and being subtended by a chord line having a bearing of South 66°00'44" East and a chord length of 29.72 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 44.11 feet to a point (said curve having a radius of 985.91 feet, and being subtended by a chord line having a bearing of South 53°58'00" East and a chord length of 44.10

feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance 34.56 feet to a point (said curve having a radius of 166.54 feet, and being subtended by a chord line having a bearing of South 46°44'26" East and a chord length of 34.50 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 20.39 feet to a point (said curve having a radius of 144.53 feet, and being subtended by a chord line having a bearing of South 36°45'15" East and a chord length of 20.37 feet); thence continuing along said right-of-way along the arc of a curve to the right and arc distance of 36.31 feet to a point (said curve having a radius of 4,444.88 feet, and being subtended by a chord line having a bearing of South 32°28'43" East and a chord length of 36.31 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 53.66 feet to a point (said curve having a radius of 131.62 feet, and being subtended by a chord line having a bearing of South 20°33'58" East and a chord length of 53.29 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 14.28 feet to a point (said curve having a radius of 148.27 feet, and being subtended by a chord line having a bearing of South 11°38'48" East and a chord length of 14.27 feet); thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 36.62 feet to a point (said curve having a radius of 244.34 feet, and being subtended by a chord line having a bearing of South 05°26'03" East and a chord length of 36.58 feet); thence continuing along said right-of-way along the arc of a curve to the left and arc distance of 17.66 feet to point (said curve having a radius of 307,852.93 feet, and being subtended by a chord line having a bearing of South 01°08'33" East and a chord length of 17.66 feet); thence continuing along said right-of-way South 02°42'46" West a distance of 47.94 feet to a point; thence leaving said right-of-way North 89°40'08" West a distance of 423.96 feet to a point; thence North 05°18'49" West a distance of 142.69 feet to a point; thence North 05°18'49" West a distance of 130.85 feet to a point located on the southerly right-of-way of Meadow Lane Road, and the TRUE POINT OF BEGINNING.

Said tract contains 2.566 acres or 111,772 square feet.

**EXHIBIT "B"**

RECORDING REQUESTED BY AND  
AFTER RECORDING RETURN TO:

Eversheds Sutherland (US) LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, Georgia 30309  
Attn: Michael J. Voynich

STATE OF GEORGIA

COUNTY OF DEKALB

Cross-Reference:  
Deed Book 25348, Page 670  
DeKalb County, Georgia

**AMENDED, RESTATED AND SPLIT MEMORANDUM OF LEASE**  
**(RETAIL PARCEL)**

**THIS AMENDED, RESTATED AND SPLIT MEMORANDUM OF LEASE (RETAIL PARCEL)** is made by and between **Spruill Center for the Arts, Inc.**, a Georgia non-profit corporation (hereinafter, collectively "Landlord"), and **HDP Spruill, LLC**, a Georgia limited liability company (hereinafter "Tenant").

**WITNESSETH:**

Landlord and Tenant agree that that certain Memorandum of Lease, by and between Landlord and Tenant, recorded in Deed Book 25348, Page 670, Records of the Clerk of Superior Court of DeKalb County, Georgia, is hereby amended, restated, split and superseded as follows:

That by that certain Amended, Restated and Split Lease (Retail Parcel) dated as of November 30, 2017, but effective as of September 21, 2015, by and between Landlord and Tenant (the "Lease"), the Landlord has demised and leased to Tenant, the premises described as follows:

## UNIT B

### RETAIL PARCEL

ALL THAT TRACT OR PARCEL OF land lying and being in Land Lot 350 of the 18<sup>th</sup> District, City of Dunwoody, DeKalb County, Georgia, as shown on ALTA/ACSM Land Title Survey for HDP Spruill, LLC, Branch Banking and Trust Company and Chicago Title Insurance Company by McFarland-Dyer and Associates, Inc., dated November 19, 2015, last revised November 27, 2017, and being more particularly described as follows:

COMMENCING at the southwesterly end of the mitered intersection formed by the intersection of the easterly right-of-way of Ashford Dunwoody Road (right-of-way varies) with the southerly right-of-way of Meadow Lane Road (an 80-foot right-of-way); thence along said mitered intersection North 39°52'43" East a distance of 35.50 feet to a ½" rebar found on the southerly right-of-way Meadow Lane Road; thence along said right-of-way North 84°41'11" East a distance of 105.34 feet to a point; thence continuing along said right-of-way South 06°02'58" East a distance of 1.88 feet to a point; thence continuing along said right-of-way along the arc of a curve to the right an arc distance of 5.24 feet to a point (said curve having a radius of 4.81 feet, and being subtended by a chord line having a bearing of South 64°48'58" East and a chord length of 4.98 feet); thence continuing along said right-of-way South 32°46'29" East a distance of 6.35 feet to a point; thence continuing along said right-of-way North 84°03'22" East a distance of 8.00 feet to a point; thence continuing along said right-of-way South 85°20'04" East a distance of 40.60 feet to a point; thence continuing along said right-of-way North 84°45'20" East a distance of 37.59 feet to a point, said point being the TRUE POINT OF BEGINNING; thence continuing along said right-of-way North 84°45'20" East a distance of 131.32 feet to a point; thence continuing along said right-of-way thence North 39°45'20" East a distance of 16.76 feet to a point; thence continuing along said right-of-way North 84°24'41" East a distance of 10.11 feet to a point; thence continuing along said right-of-way North 84°17'45" East a distance of 28.19 feet to a point; thence continuing along said right-of-way North 84°46'55" East a distance of 14.76 feet to a point; thence leaving said right-of-way South 05°18'49" East a distance of 130.85 feet to a point; thence North 89°40'08" West a distance of 206.96 feet to a point; thence North 00°18'43" East a distance of 99.07 feet to a point located on the southerly right-of-way of Meadow Lane Road, and the TRUE POINT OF BEGINNING.

Said tract contains 0.519 acres or 22,609 square feet.

Together with all easements and appurtenances thereof, and together with all buildings, structures, improvements, equipment, machinery and personal property located thereon (hereinafter referred to as the "Premises"), together with non-exclusive rights to all the tenements, rights, privileges, benefits, hereditaments, easements, appurtenances thereof and any right, title and interest of Landlord in and to any land lying in the bed of any street, road or highway in front of or adjoining said Premises, and together with any strips and gores relating to said Premises.

To have and to hold unto Tenant for a term from the Commencement Date of September 21, 2015 until September 20, 2114.

The Amended, Restated and Split Lease (Retail Parcel) and this Memorandum of Lease are and shall be affected by and subject to the terms and provisions of that certain Consent and Agreement Regarding Ground Lease dated November 30, 2015, by and between Landlord and Tenant, as modified and amended by that certain First Modification to Consent and Agreement Regarding Ground Lease dated November 30, 2017 by and between Landlord and Tenant, each for the benefit of Branch Banking and Trust Company and its successors and/or assigns.

The terms are more fully set forth in the Lease, and this Memorandum of Lease is subject to all the covenants, conditions and terms set forth in the Lease, which is hereby incorporated herein and made a part hereof by reference to the same full extent as if all the covenants, conditions and terms thereof were copied in full herein.

This Memorandum of Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single agreement.

[SIGNATURES ON FOLLOWING PAGE]

Executed effective as of the Commencement Date of September 21, 2015.

Signed, sealed and delivered  
in the presence of:

LANDLORD:

**SPRUILL CENTER FOR THE ARTS, INC.,**  
a Georgia non-profit corporation

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

Commission Expiration Date: \_\_\_\_\_

Title: \_\_\_\_\_

(NOTARIAL SEAL)

[Corporate Seal]

Signed, sealed and delivered  
in the presence of:

TENANT:

**HDP SPRUIILL, LLC,** a Georgia limited  
liability company

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

Commission Expiration Date: \_\_\_\_\_

Title: \_\_\_\_\_

(NOTARIAL SEAL)

[Seal]