

## LEASE

**THIS LEASE** (this "Lease") is entered into as of \_\_\_\_\_, 2016 (the "**Effective Date**"), between **ELKS TEMPLE PROPERTIES, LLC**, a Washington limited liability company ("**Landlord**") and **MCMENAMIN'S BREW PUBS, INC.**, a Washington corporation ("**Tenant**").

A. Tenant wishes to lease from Landlord the real property located in the City of Tacoma, Pierce County, Washington and described on attached Exhibit A, including the buildings and other improvements (collectively, "**Buildings**") located thereon (the "**Property**").

B. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Property on the terms and conditions set forth in this Lease.

## TERMS AND CONDITIONS

### 1. TERM; POSSESSION.

1.1 **Term.** The term of this Lease shall commence on the earlier of (i) the date Tenant opens for business on the Property, and (ii) 60 days after the date Landlord delivers the Property to Tenant with Landlord's Work substantially completed (the "**Commencement Date**"), and continue for twenty (20) years (plus the partial month, if any, in which this Lease commences), unless sooner properly terminated as hereinafter provided in this Lease. Notwithstanding the provisions of this Section establishing the Commencement Date to be on a date later than the date of mutual execution of this Lease, the parties acknowledge that they are bound to each other in accordance with the terms of this Lease from and after the date of mutual execution of this Lease, subject to the conditions set forth in this Lease. Landlord and Tenant will execute a supplemental memorandum promptly after the start of the lease term stating the actual Commencement Date.

1.2 **Landlord's Work.** Landlord shall perform the work described on the attached Exhibit B ("**Landlord's Work**"). Landlord will notify Tenant when Landlord's Work is substantially completed. Landlord's Work shall be deemed to have been substantially completed for all purposes under this Lease upon the date (i) Landlord's Work has been completed in accordance with the Plans (described in Exhibit B) except for minor and insubstantial details of construction or mechanical adjustment, the non-completion of which will not unreasonably interfere with Tenant's use of the Property, and (ii) a valid and effective certificate of occupancy permitting the use of the Property for the purposes for which the Property is intended has been issued by the City of Tacoma. Landlord will promptly cause all "punchlist" items to be completed, at no expense to Tenant.

Landlord shall contribute up to Landlord's Maximum (defined below) towards the cost of the Landlord's Work, inclusive of all of the Project Costs described in Section 2.1 below. To the extent the acquisition cost and the cost of Landlord's Work, including construction costs and soft costs, exceed Landlord's Maximum, the cost of Landlord's Work that exceeds this amount shall be Tenant's sole obligation. If the cost of acquiring the Property and completing Landlord's Work exceeds Landlord's Maximum, then Tenant shall pay to Landlord the amount of such

excess within ten (10) days after receipt of an invoice from Landlord for such amount. Within a reasonable period following final completion of Landlord's Work, Landlord shall provide Tenant with an accounting of the total acquisition costs and cost of Landlord's Work. Following such accounting, Landlord will credit Tenant, against its next due payments under this Lease, with any overpayment by Tenant on account of the Landlord's Work, or Tenant will pay Landlord, within thirty (30) days of billing therefore, any underpayment by Tenant on account of Landlord's Work. The term "**Landlord's Maximum**" means the sum of the equity capital collected by Landlord in the sale of Class A membership units in Landlord prior to the Commencement Date, plus any cash received by Landlord prior to the Commencement Date as a result of tax credits monetized, plus the principal loan amount of any construction or permanent loans obtained by Landlord prior to the Commencement Date and secured by the Property, less Landlord's reasonable costs of obtaining the equity capital, monetizing tax credits, or obtaining loans (e.g., reserves required by lender, loan fees, appraisal fees, title insurance costs, attorneys' fees, and other transaction costs).

1.3 **Acceptance of Property.** Subject to Landlord's performance of Landlord's Work, Tenant accepts the Property in its present condition, AS IS, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Property. Except for Landlord's Work, Landlord shall not be required to perform any work to ready the Property for Tenant's occupancy. Tenant acknowledges that neither Landlord nor Landlord's agent, if any, has made any representation or warranty as to the suitability of the Property for the conduct of Tenant's business.

1.4 **Renewal Option.** Tenant shall have the option to renew this Lease for two (2) additional terms, as provided below, so long as Tenant is not in default at the time the option is exercised and at the time the renewal term is to commence. The renewal terms will be for ten (10) years each, commencing on the day following expiration of the prior term. The other terms and conditions of this Lease will remain the same during the renewal term, except that base rent for the renewal term shall be determined in accordance with Section 2.3 below and except that Tenant shall no longer have any option to renew this Lease that has been exercised. Exercise of the renewal option shall be by notice given at least 365 days prior to expiration of the current term.

## 2. **RENTAL.**

2.1 **Initial Rent.** During the first twelve (12) months of the term of this Lease plus any partial month in which the term of this Lease commences, Tenant shall pay to Landlord as base rent for the Property an amount per month equal to one-twelfth (1/12th) of the product which results from multiplying the Project Costs (defined below) by seven and one-half percent (7.5%). The "**Project Costs**" on which base rent is based shall be the sum of the following components:

- (a) **Acquisition Costs.** Landlord's costs to acquire the Property.
- (b) **Construction Costs.** The amount of all on-site improvement and building construction costs Landlord incurs in connection with completing Landlord's Work, including,

without limitation, all costs of materials, supplies, labor, permits, and other costs and expenses paid to contractors and subcontractors in connection with construction of Landlord's Work.

(c) **Soft Costs.** The amount of all soft and other indirect costs incurred by Landlord with respect to Landlord's Work.

Project Costs shall not exceed Landlord's Maximum. Prior to the Commencement Date, the parties will execute a supplemental memorandum to this Lease establishing the final total Project Costs, and the initial monthly base rent for the Property taking into account the final Project Costs.

2.2 **Adjustments to Rent During the Original Term.** On each annual anniversary date of the Commencement Date (or on each annual anniversary date of the first day of the first month following the Commencement Date if the Commencement Date does not occur on the first day of a month) (each such anniversary date shall be referred to as the "**Anniversary Date**") during the original term of this Lease the base rent shall be increased as follows:

(a) On the first Anniversary Date of the Commencement Date, and on each Anniversary Date thereafter through the ninth Anniversary Date, monthly base rent shall increase by two percent (2.0%).

(b) On the tenth Anniversary Date of the original term of this Lease, monthly base rent for the Property will be adjusted to an amount equal to the greater of (i) one-twelfth (1/12th) of the fair market rental value of the Property for the twelve (12) month period beginning on the tenth Anniversary Date, or (ii) the monthly base rent payable in the month immediately preceding the tenth Anniversary Date. The parties shall discuss and attempt to agree upon the fair market rental value of the Property for twelve (12) month period beginning on the tenth Anniversary Date. If the parties are unable to reach agreement before the 120th day prior to the tenth Anniversary Date, the fair market rental value of the Property for the twelve (12) month period beginning on the tenth Anniversary Date shall be determined by arbitration.

(c) On the eleventh Anniversary Date of the original term of this Lease, and on each Anniversary Date thereafter through the end of the original term of this Lease, monthly base rent shall increase by two percent (2.0%).

2.3 **Base Rent During Renewal Term.** During the first twelve (12) months of any renewal term of this Lease, Tenant shall pay to Landlord as monthly base rent for the Property an amount equal to the greater of (i) one-twelfth (1/12th) of the fair market rental value of the Property for the first twelve (12) months of the renewal term, or (ii) the base rent payable in the month immediately preceding the commencement of the renewal term. On each annual anniversary date of the commencement of any renewal term of this Lease, the monthly base rent shall be increased by an amount to be determined by the parties. After exercise of Tenant's option to renew the lease, the parties shall discuss and attempt to agree upon the fair market rental value of the Property for the first twelve (12) months of the renewal term in question. If the parties are unable to reach agreement before the 120th day prior to the commencement of the renewal term, the fair market rental value of the Property for the first twelve (12) months of the renewal term in question shall be determined by arbitration.

2.4 **Procedure for Rent Arbitration.** If rent arbitration is required under Section 2.2 or Section 2.3, each party shall select an independent appraiser having at least five (5) years' full-time commercial appraisal experience in the Tacoma, Washington metropolitan area and who is a member of the Appraisal Institute or comparable organization. The two persons so chosen shall submit their appraisal to Landlord and Tenant within 60 days after their appointment. If the two appraisers so chosen cannot agree on the fair market rental value of the Property for the twelve (12) month period in question, they shall select a third independent appraiser having the above qualifications to serve as arbitrator, or if they cannot agree, the presiding judge of the Superior Court of the State of Washington for the County of Pierce shall select the arbitrator. Within 30 days after this appointment, the arbitrator shall determine the fair market rental value of the Property for the twelve (12) month period in question, which determination will be binding on the parties and establish the fair market rental value of the Property for such twelve (12) month period and the monthly base rent for such twelve (12) month period shall equal the greater of (a) one-twelfth (1/12th) of the fair market rental value of the Property for such twelve (12) month period, or (b) the base rent payable in the month immediately preceding the commencement of such twelve (12) month period. If the arbitrator does not reach a decision prior to commencement of the twelve (12) month period in question, base rent shall continue to be payable in the manner and at the rate previously in effect, and retroactive adjustment shall be made, if necessary, when the arbitrator reaches a decision. The parties will each bear the cost of the appraiser selected by that party and one-half (½) of the cost of appointing the third appraiser and of payment of the third appraiser's fee. The fair market rent will be determined exclusive of any value (positive or negative) attributable to improvements made and paid for by Tenant. The arbitration shall be conducted according to the procedures of the arbitration statutes of the state in which the Property is located.

2.5 **Time and Place of Payment.** Rent will be paid in advance on the first day of each month at the address for Landlord set forth in this Lease, or such other address as Landlord may designate in writing to Tenant. Rent is uniformly apportionable day to day. Rent for the partial month (if any) in which the Lease commenced shall be prorated and paid at commencement of the lease term.

2.6 **Interest and Late Charges.** All rent and other payments not paid within ten days after it is due shall bear interest from the due date until fully paid at the same rate as specified in Section 11.4 below. In addition, if Tenant fails to make any rent payment within 10 days after it is due, Landlord may elect to impose a late charge of one-half of one percent (0.5%) of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

2.7 **Partial or Delinquent Payments.** Payment by Tenant or receipt by Landlord of any amount less than the full monthly rental or other charges due from Tenant, or any endorsement or statement on any check or letter accompanying any check or rent payment, shall not in any event be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rental or pursue any other remedy provided in this Lease. Any payments required under this Lease which are not

paid on or before the date for payment in this Lease (subject to any permitted grace period specified in this Lease) shall be considered delinquent and in default.

2.8 **Net Lease Provision.** All payments required to be paid by Tenant under this Lease, other than base rent, will constitute additional rent. This is intended to be a net lease, meaning, except as otherwise expressly provided in this Lease, that Tenant shall pay all expenses of every type relating to the Property after commencement of the lease term, and all rentals shall be received by Landlord without set-off, offset, abatement, or deduction of any kind.

2.9 **Historic Tax Credits.** Unless otherwise agreed in writing between Landlord and Tenant, in the event the Property qualifies for and receives any historic tax credits, Landlord will receive the sole benefit of those tax credits.

### 3. **USE OF PROPERTY.**

3.1 **Permitted Use; Public Benefits Agreement.** Tenant may use the Property only for conducting the following business and for no other purpose without Landlord's written consent: a lodging, dining, and community facility featuring 46 hotel rooms with private baths; space for live music events, weddings, and meetings; a ballroom featuring a tiny indoor city with "cabins," gardens, and terraces; three restaurants; small bars; a McMenamins brewery; and onsite food gardens. From and after the Commencement Date, Tenant shall operate the Property as required by, and subject to the terms and conditions of, any historic tax credits received in connection with the Property and all covenants, conditions, restrictions, and encumbrances of record.

3.2 **Compliance with Laws.** In connection with its use, Tenant shall comply and cause the Property and the Building to comply, at Tenant's expense, with all applicable laws, regulations and requirements of any public authority, including those regarding maintenance, operation, and use of the Property and equipment and appliances on the Property (including signs), including, without limitation, the Americans with Disabilities Act and any other act, law or regulation pertaining to persons with disabilities, except that Tenant may withhold compliance in connection with a good faith dispute so long as Landlord's property interest is not jeopardized. In the event such dispute by Tenant proves unsuccessful, Tenant shall promptly comply with such contested law, regulation or requirement.

#### 3.3 **Hazardous Substances.**

(a) **Compliance.** During the lease term, Tenant shall comply fully with and cause the Property and the Building to comply fully with all applicable laws pertaining to the protection of human health and the environment, including, but not limited to, employee and community right-to-know laws and all laws regarding the use, generation, storage, transportation, treatment, disposal or other handling of hazardous substances on the Property, including, but not limited to, with respect to any hazardous substances located in, on, under, or about the Property on the Effective Date or the Commencement Date. Tenant shall promptly advise Landlord in writing of any hazardous substances regulated by such laws that are used, generated, manufactured, stored, transported or otherwise handled on the Property. Tenant shall exercise extreme care in handling any hazardous substances and shall not cause, or permit its

employees, agents, contractors, licensees or invitees to cause, hazardous substances to be spilled, leaked, disposed of or otherwise released on or about the Property. The term “hazardous substances” is used in its very broadest sense, and refers to materials which because of their quantity, concentration, or physical, chemical, or infectious characteristics may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of, or otherwise managed. The term shall include, but is not limited to, all hazardous substances, hazardous materials and hazardous wastes listed by the U.S. Environmental Protection Agency and the state in which the Property is located under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), and the Federal Water Pollution Control Act (FWPCA), and comparable state statutes.

(b) **Indemnity.** Tenant shall indemnify and hold harmless Landlord and Landlord’s members, managers, officers, directors, employees, agents, contractors, successors and assigns for, from and against any and all claims, demands, liabilities, damages, fines, losses (including diminution in value), costs (including the cost of compliance with any governmental order) and expenses (including attorneys’ fees at trial, on appeal and in connection with any petition for review) arising out of or in any way relating to Tenant’s breach of any covenant or warranty in this Section 3.3. In the event any action is brought against Landlord by reason of any such claim, Tenant shall resist or defend such action or proceeding by counsel satisfactory to Landlord upon Landlord’s demand. Tenant’s obligations under this Section 3.3(b) shall survive the expiration or termination of the Lease for any reason.

3.4 **No Offensive Activities.** Tenant shall not conduct or permit any activities on the Property that create a nuisance or damage the reputation of the Property, or are reasonably offensive to Landlord, or other owners or users of adjoining property.

3.5 **Insurance Coverage.** Tenant shall refrain from any use of the Property that would invalidate or impair the coverages afforded by any insurance maintained with respect to the Property and shall not allow the condition of the Property or Building to decline to a degree that would result in any insurance required under this Lease to be maintained by Tenant or any insurance maintained by Landlord to no longer be available.

3.6 **Removal of Snow, Ice, and Debris.** Tenant shall keep the sidewalks (if any) abutting the Property and Building entrances free and clear of snow, ice, debris, and obstructions of every kind. Tenant shall keep the roof and drains leading from the roof of any buildings on the Property free and clear of snow, ice, debris, or other obstruction which might overload or endanger the roof or adjoining premises, sidewalks, or streets. In performing such work, Tenant shall take all reasonable precautions to avoid damage to the roof.

3.7 **Signs.** Tenant shall obtain Landlord’s prior approval of the location, design, size, color, materials, and other details of any signs to be located on the Property, which approval shall not be unreasonably withheld but may be subject to approval of Landlord’s architect and Landlord’s historic tax credit consultant. Signs must be designed and constructed in compliance with city and county sign codes.

3.8 **Historic Tax Credits.** Tenant shall refrain from any action or activity that could invalidate the historic tax credits that are available in connection with the Building. In this regard, any change to the exterior of the Building, including signs, must be approved by Landlord's architect and Landlord's historic tax credit consultant in addition to Landlord.

#### 4. **MAINTENANCE AND ALTERATIONS.**

4.1 **Tenant's Obligations.** Tenant, at its expense, shall keep the Property (including the land, any sidewalks, driveways, curbs, parking areas, landscaping, Buildings, improvements, roof, gutters, exterior walls, load bearing walls, structural members, floor slabs, foundations, HVAC system, electrical systems, sewer systems, water systems, natural gas systems, fixtures, and all personal property, trade fixtures and equipment) in good repair, operating condition, working order and appearance, and shall make all exterior and interior repairs, renewals, and replacements necessary to that end. All repair and maintenance work shall be done in a good and workmanlike manner, in compliance with all applicable laws and building codes. Tenant shall be obligated to make any repairs necessitated by the negligence of Tenant, its employees, contractors, agents, guests, licenses, or invitees, at Tenant's cost, except as provided in Section 7.4 dealing with waiver of subrogation.

4.2 **Landlord's Obligations.** Landlord shall be under no obligation to make any repairs, alterations, or improvements or perform any maintenance on the Property at any time, except as expressly required in this Lease, and then only after Landlord has received written notice from Tenant that such performance is due and owing and Landlord fails to commence such performance within 30 days after receipt of such notice.

4.3 **Alterations.** Tenant shall not make any alterations or additions to the Property without Landlord's prior consent, which consent may require the alterations to be removed and the Property restored on termination of this Lease. Landlord will not unreasonably withhold its consent, subject to the following conditions:

(a) Any alteration or addition shall be done in a good and workmanlike manner and in compliance with applicable laws and building codes and the Americans with Disabilities Act, and in accordance with the orders, rules and regulations of the National Board of Fire Underwriters or any other body exercising similar functions.

(b) The cost of any such alteration or addition shall be paid in cash, or its equivalent, so that the Property and all portions thereof shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Property. At least 15 days before commencing any work or delivery of any materials relating to any alterations, improvements, or additions to the Property, Tenant shall notify Landlord of the expected date of commencement of such work or the delivery of any such materials. Landlord shall have the right at any time and from time to time to post and maintain on the Property such notices as Landlord reasonably deems necessary to protect the Property from construction liens, materialmen's liens, and any other liens.

(c) Tenant shall maintain, at Tenant's sole cost and expense, Workers Compensation Insurance covering all persons employed in connection with the work, with

respect to whom death or bodily injury claims could be asserted against Landlord or its successors in interest when any work is in process in connection with any such alteration or addition. Such insurance shall be in a company or companies of recognized responsibility, licensed to do business in the state where the Property is located, and true copies of all policies or certificates therefor, issued by the respective insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payment, shall be delivered to Landlord.

(d) Except as otherwise provided in the consent, all alterations, additions, improvements, and fixtures (including trade fixtures that cannot be removed without damaging the Property or any improvements thereto) installed by Tenant (other than trade fixtures, equipment, and personal property that can be removed without damaging the Property or any improvements thereto), shall become a part of the Property at the expiration of the term of the Lease and belong to Landlord.

(e) The value of the Property upon completion of such alterations shall equal or exceed the value of the Property prior to such work.

(f) Tenant will not permit any "visual art," as defined in the Visual Artists Protection Act, to be constructed or installed at the Property without Landlord's prior written consent, which consent may be conditioned upon the artist executing a waiver of rights in form satisfactory to Landlord.

(g) Any change to the exterior of the Building, including signs, must be approved by Landlord's architect and Landlord's historic tax credit consultant.

## 5. **TAXES; UTILITIES.**

5.1 **Personal Property Taxes.** Tenant shall pay when due all personal property taxes assessed against its personal property, equipment or trade fixtures on the Property.

5.2 **Taxes and Assessments.** From the Effective Date of this Lease through the expiration or earlier termination of this Lease, Tenant shall pay when due all real property taxes and assessments on the Property. Taxes and assessments for any partial year shall be prorated between Landlord and Tenant on the basis of the portion of the tax year for which Tenant is obligated to pay taxes and assessments. Tenant shall furnish to Landlord receipts or other proof of payment of taxes and assessments within 15 days after Tenant pays such taxes and assessments. Tenant may use any available installment payment plans for special assessments and in such case shall be obligated to pay only those installments coming due after the Effective Date and before the termination or expiration of this Lease. To the extent permitted by applicable law, Landlord or Tenant shall have the right to apply for and seek to cause the Property to be classified and specially assessed as historic property. Landlord agrees, at no cost to Landlord, to join in executing any application reasonably required by Tenant in connection with its attempts to obtain such classification and special assessment. In the event such classification and special assessment is obtained but is later disqualified during the term of this Lease, Tenant shall be responsible for that portion of the additional taxes and any interest resulting from disqualification and attributable to the lease term.



5.3 **Allocation to Property.** If the Property is assessed with other property of Landlord as part of a larger tax lot, Landlord shall allocate the real property taxes and assessments affecting the property covered by the tax statement to the Property leased by Tenant on an equitable basis giving consideration to the assessed value of the Property, Buildings, and appurtenant improvements. Landlord's reasonable determination of such allocation, in good faith, shall be conclusive. Tenant will pay its proportionate share within 30 days after demand by Landlord, which demand shall be accompanied by a copy of the applicable tax bill or other billings.

5.4 **Taxes in Lieu of Ad Valorem Tax.** If a tax is assessed upon Landlord's interest under this Lease which is in lieu of the ad valorem real property tax, then to the extent permitted by law, Tenant shall pay such tax. Tenant, however, shall have no obligation to pay any income, profits, or franchise tax levied upon the net income derived by Landlord from this Lease.

5.5 **Contest of Taxes.** Tenant may in good faith contest the validity and amount of any property tax, assessment or public charge provided (a) that the interest of Landlord and that of any mortgagee or beneficiary of any deed of trust upon the Property is not jeopardized, and (b) that Tenant pays the tax, assessment or public charge or deposits with Landlord cash or a sufficient corporate surety bond or other security satisfactory to Landlord in an amount sufficient to discharge the obligation plus any costs, attorneys' fees, and other charges that could accrue as a result of a foreclosure or a sale on account thereof. In the event Tenant pays the tax, assessment or charge and a refund is issued, Tenant shall be entitled to receive that portion of the refund attributable to the lease term.

5.6 **Payment of Utilities Charges.** From the Effective Date through the expiration or earlier termination of this Lease, Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Property, including (but not limited to) all charges for water, gas, electricity, sewage disposal, power, air conditioning and telephone services.

## 6. **LIABILITY TO THIRD PERSONS.**

6.1 **Liens.** Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Property (other than claims for work done on or for services rendered or materials furnished to the Property by or for Landlord), and shall keep the Property free from any liens other than liens created by Landlord, except that Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Landlord's property interest is not jeopardized. If Tenant fails to pay such claim or to discharge any lien, Landlord may do so and collect such amount as additional rent. Amounts paid by Landlord hereunder shall bear interest and be repaid by Tenant as provided in Section 11.4 below. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

6.2 **Contest by Tenant.** If Tenant withholds payment of a claim and a lien is filed as a result of nonpayment, Tenant shall (within 10 days after knowledge of the filing) secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other security satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs,

attorneys' fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

6.3 **Indemnification of Landlord.** Tenant shall indemnify and defend Landlord for, from and against any claim, loss, or liability arising out of or related to any action, inaction or negligence of Tenant or its employees, contractors, agents, guests, licensees or invitees, or any condition of the Property. In the event any action is brought against Landlord by reason of any such claim, Tenant shall resist or defend such action or proceeding by counsel satisfactory to Landlord upon Landlord's demand.

6.4 **Landlord's Liability.** Landlord shall have no liability to Tenant for acts of any third party, or for any defect in the Property, or for any interruption or failure in the supply of utilities or services to the Property.

6.5 **Security.** Tenant acknowledges that the rental payable to Landlord under this Lease does not include the cost of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide such services or security measures. Tenant assumes all responsibility for the protection of Tenant, its officers, employees, agents and invitees, from the acts of third parties.

## 7. **INSURANCE AND DAMAGE.**

7.1 **Liability Insurance.** From the Effective Date through the expiration or earlier termination of this Lease, Tenant shall continuously maintain at its expense (a) commercial general liability insurance, written on an occurrence basis, covering claims and liability for personal injury, death, or property damage with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, for the period from the date Tenant enters onto or takes possession of the Property through the expiration or earlier termination of this Lease, (b) liquor liability insurance in amounts of not less than \$1,000,000, during the term of this Lease, and (c) umbrella coverage in excess of Tenant's commercial general liability and liquor liability insurance with such commercially reasonable limits as Tenant may establish from time to time. All such insurance shall name Landlord as additional insured. The policies shall be in form, amounts, and with companies reasonably acceptable to Landlord. Certificates evidencing such insurance and bearing endorsements requiring 30 days' written notice to Landlord prior to any material change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the Property. From time to time during the lease term, but not more frequently than annually, Landlord may require Tenant to obtain additional coverage or higher coverage limits, provided that Landlord reasonably determines such requirement is commercially reasonable.

7.2 **Property Damage Insurance.** From the Effective Date through the expiration or earlier termination of this Lease, Tenant shall be responsible for insuring the Property, Buildings, and all personal property, equipment, and trade fixtures located on the Property. The Buildings and improvements will be covered by property damage insurance covering all risks included under Causes of Loss - "Special Form" coverage, on a replacement cost basis and in an amount sufficient to avoid the application of any coinsurance clause. Landlord shall be responsible for carrying builders risk insurance during the course of Landlords work to the premises.

7.3 **Policies.** All policies shall be in a form, amount, and with companies reasonably acceptable to Landlord. Landlord shall be shown on Tenant's policies described in Section 7.1 as an additional insured. Landlord shall be shown on Tenant's policy described in Section 7.2 as a loss payee and such policy shall be issued with a Lender's loss payable endorsement satisfactory to the holder of any mortgage or trust deed on the Property ("**Lender**") and any loss shall be payable to Landlord or otherwise as required by any such mortgage or trust deed. Tenant's insurance shall provide primary coverage to Landlord when any policy issued to Landlord provides duplicate or similar coverage, and in such circumstance Landlord's policy will be excess over Tenant's policy. Tenant may carry such insurance under blanket policies; provided, however, such insurance by Tenant shall have a Landlord's protective liability endorsement attached thereto. Certificates evidencing such insurance and bearing endorsements requiring 30 days' written notice to Landlord and any Lender prior to any material change or cancellation shall be furnished to Landlord prior to commencement of the lease term. At least 30 days before expiration of any policy required by this Lease, Tenant shall furnish to Landlord proof of issuance of a policy or policies continuing the required coverages. Tenant shall furnish to Landlord receipts for the payment of premiums on such policies or other evidence of such payment reasonably satisfactory to Landlord.

7.4 **Waiver of Subrogation.** Neither party shall be liable to the other for any loss or damage which (a) would be insured against under the terms of any property insurance required to be carried under this Lease, or (b) is insured against under the terms of any property insurance actually carried, regardless of whether it is required under this Lease, and neither party's insurance company shall have a subrogated claim against the other party. Such waiver shall apply regardless of whether the claim is due to the negligence of a party or that party's agents, officers, subtenants, employees or contractors. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

7.5 **Damage or Destruction.**

(a) **Partial Damage-Insured.** If the Property is damaged and the provisions of Sections 7.5(b), 7.5(c), or 7.5(d) do not apply, Landlord shall (at Landlord's expense) repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect, but Landlord shall not be required to repair or replace Tenant's trade fixtures or equipment or any improvements made by Tenant (all of which shall be the responsibility of Tenant to repair or replace).

(b) **Partial Damage-Uninsured.** If at any time during the term hereof the Property is damaged, the provisions of Sections 7.5(c) or 7.5(d) do not apply, and Landlord reasonably estimates that the cost of restoration of the Property will not be fully covered under an insurance policy required to be maintained by Tenant pursuant to Section 7.2, Landlord may at Landlord's option either (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, except that Landlord shall not be required to repair or replace Tenant's trade fixtures or equipment or any improvements made by Tenant (all of which shall be the responsibility of Tenant to repair or replace), or (ii) give written notice to Tenant within thirty (30) days after the date of the occurrence of such damage of Landlord's intention to cancel and terminate this Lease as of the

date of the occurrence of such damage. In the event Landlord elects to give such notice of Landlord's intention to cancel and terminate this Lease, Tenant shall have the right within ten (10) days after the receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect, Tenant shall proceed to make such repairs as soon as reasonably possible, and Landlord will make available to Tenant any insurance proceeds delivered to Landlord as a result of such damage to the Property, subject to rights of any lender of Landlord to receive such insurance proceeds. If Tenant does not give such notice within such 10-day period this Lease shall be canceled and terminated as of the date of the occurrence of such damage. Notwithstanding the foregoing, if the damage is partially or wholly uninsured and was caused by a negligent or willful act of Tenant or its employees, contractors, agents, guests, licensees, or invitees, subject to the terms of Section 7.4, Landlord may elect to (i) require Tenant to make the repairs at its expense, without reimbursement from Landlord, and Landlord will make available to Tenant any insurance proceeds delivered to Landlord as a result of such damage to the Property, subject to rights of any lender of Landlord to receive such insurance proceeds, or (ii) require Tenant to reimburse Landlord for any costs and expenses of restoration not fully covered by insurance.

(c) **Substantial Destruction.** If the provisions of Section 7.5(d) do not apply and at any time during the term hereof the Property is damaged and (i) Landlord reasonably estimates that the cost of restoration of the Property will exceed 50 percent of the value of the improvements to the Property (excluding any improvements made by Tenant) immediately before the damage or destruction occurred, whether or not such damage or destruction is covered by the insurance required to be maintained by Tenant pursuant to Section 7.2 (including any total destruction required by any authorized public authority), or (ii) Landlord reasonably estimates that the restoration of the Property would take more than six (6) months to complete from the date of damage, Landlord may (x) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, except that Landlord shall not be required to repair or replace Tenant's trade fixtures or equipment or any improvements made by Tenant (all of which shall be the responsibility of Tenant to repair or replace), or (xi) give written notice to Tenant within sixty (60) days after the date of the occurrence of such damage of Landlord's election not to restore and intention to cancel and terminate this Lease as of the date of the occurrence of such damage. In the event Landlord elects to give such notice of Landlord's intention to cancel and terminate this Lease, Tenant shall have the right within ten (10) days after the receipt of such notice to give written notice to Landlord of Tenant's election and intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect, Tenant shall proceed to make such repairs as soon as reasonably possible, and Landlord will make available to Tenant any insurance proceeds delivered to Landlord as a result of such damage to the Property, subject to rights of any lender of Landlord to receive such insurance proceeds. If Tenant does not give such notice within such 10-day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

(d) **Damage Near End of Term.** If the Property is damaged during the last two (2) years of the original Lease term or during the last two years of any renewal term of this Lease, and, Landlord reasonably estimates that the cost of restoration of the Property will exceed 25 percent of the value of the improvements to the Property (excluding any improvements made

by Tenant) immediately before the damage occurred, either party may (at such party's option) cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to the other party of such party's election to terminate this Lease. Such termination notice must be delivered within thirty (30) days after the date of occurrence of such damage. If neither party timely elects to terminate this Lease pursuant to this Section 7.5(d), then the terms of this Section 7.5(d) shall be deemed to be inapplicable and the terms of Section 7.5(a), 7.5(b), or 7.5(c) shall apply instead; except that each timeline set forth in the applicable provisions of Section 7.5(a), 7.5(b), or 7.5(c) shall be extended by thirty (30) days.

(e) **Abatement of Rent; Tenant's Remedies.**

(1) If the Property is partially destroyed or damaged and Landlord or Tenant repairs or restores the Property pursuant to the provisions of this Section 7.5, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's use of the Property is impaired, except that there shall be no rent abatement where the damage occurred as the result of a negligent or willful act of Tenant or its employees, contractors, agents, guests, licensees, or invitees.

(2) If Landlord shall be obligated to repair or restore the Property under the provisions of this Section 7.5 and shall not commence such repair or restoration within 90 days after such obligations shall accrue, Tenant may at Tenant's option cancel and terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to Landlord's commencement of such repair or restoration. In such event this Lease shall terminate as of the date the damage occurred.

(f) **Termination.** Upon termination of this Lease pursuant to this Section 7.5, an equitable adjustment shall be made concerning advance rent and any advance payments made by Tenant to Landlord and Tenant shall be entitled to recover, in addition to Tenant's specific rights to recover any other insurance proceeds, an amount equal to that portion of the costs incurred by Tenant for improvements to the Property (excluding Landlord's Work) which remains unamortized on a straight-line basis for the then remainder of the initial term of this Lease, to the extent Landlord recovers insurance proceeds related to such improvements.

(g) **Tenant's Duty to Notify Landlord.** Tenant must promptly, but in no event later than one business day after the occurrence of damage to or destruction of the Property or any improvements thereto to which this Section 7.5 applies, notify Landlord of the occurrence of such damage or destruction.

8. **CONDEMNATION.** If the entire Property is condemned, or if a portion is taken which causes the remainder to be unsuited for the use permitted under this Lease, then this Lease shall terminate as of the date upon which possession of the Property is taken by the condemning authority. Otherwise, Landlord shall proceed to make necessary repairs and alterations to the Property to permit Tenant to continue its operations thereon. Rent shall be abated during the period of restoration and shall be reduced for the remainder of the lease term to the extent and in the same proportion as the reduction in the reasonable rental value of the Property for Tenant's use caused by the condemnation. All condemnation proceeds shall belong to Landlord, except for any award specifically made to Tenant for interruption of business, moving expenses, or the

taking of Tenant's trade fixtures and personal property. Sale of all or a part of the Property to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power shall be treated as a taking by condemnation. Landlord need not incur expenses for restoration in excess of the amount of condemnation proceeds received by Landlord after payment of all reasonable costs, expenses and attorneys' fees incurred by Landlord in connection therewith.

9. **TRANSFERS BY TENANT.**

9.1 **Prohibition of Transfer.** Tenant shall not assign, mortgage, pledge, hypothecate or encumber the Property or Tenant's leasehold estate, or sublet any portion of the Property, or license the use of any portion of the Property, or otherwise transfer any interest in the Property (whether voluntary, involuntary, by operation of law or otherwise), without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Any attempted transfer without consent shall be null and void and, at the option of Landlord, will cause termination of this Lease. The giving of such consent in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further transfers. The transferee shall execute an assumption of Tenant's obligations under this Lease in a form reasonably satisfactory to Landlord. The acceptance of rent by Landlord from any person other than Tenant shall not be deemed to be a waiver of any of the provisions of this Section 9 or to be a consent to any assignment, subletting or other transfer.

9.2 **Permitted Transfer.** Notwithstanding the foregoing, Tenant may assign this Lease or sublet all or a portion of the Property to any affiliate of Tenant, without prior written consent from Landlord.

9.3 **Obligations After Transfer.** If Tenant is permitted to make any assignment, mortgage, pledge, sublease, or other transfer, Tenant shall not be relieved of its obligations, but shall remain primarily liable to Landlord for performance of all such obligations.

10. **DEFAULT.**

10.1 **Default by Tenant.** The following shall be events of default by Tenant:

(a) **Payment Default.** Tenant fails to make any rent or other payment under this Lease within ten (10) days after written notice to Tenant that it is past due.

(b) **Unauthorized Transfer.** Tenant makes any transfer without Landlord's prior written consent as required under Section 9.1.

(c) **Abandonment of Property.** Tenant abandons the Property.

(d) **Default in Other Covenants.** Tenant fails to comply with any other term or condition or fulfill any other obligation of this Lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be remedied fully within the 30-day period, this requirement shall be satisfied if Tenant begins correction of the default within the 30-day period

and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

(e) **Insolvency Defaults.** Dissolution of Tenant; the commencement by Tenant of a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Tenant in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; the appointment of or the consent by Tenant to the appointment of a receiver, trustee, or custodian of Tenant or of any of Tenant's property; an assignment for the benefit of creditors by Tenant; concealment by Tenant of any of its property in fraud of creditors; the making or suffering by Tenant of a preference within the meaning of the federal bankruptcy law; or the imposition of a lien through legal proceedings or distraint upon any of the property of Tenant which is not discharged or bonded.

10.2 **Default by Landlord.** Landlord shall not be in default under this Lease unless Landlord fails to perform its obligations within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Property whose name and address shall have been furnished to Tenant in writing, specifying the nature of Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, then Landlord shall not be in default if Landlord commences performance within such 30-day period and, thereafter, diligently prosecutes the same to completion.

11. **REMEDIES ON DEFAULT.** Upon default by Tenant, Landlord may exercise any one or more of the following remedies, or any other remedy available under applicable law:

11.1 **Termination.** Landlord may terminate Tenant's right to possession of the Property and Tenant's rights under this Lease by giving written notice to Tenant of Landlord's election to terminate Tenant's right to possession of the Property, and this Lease will terminate as of the date of such notice or such later date specified by Landlord in the notice. In the event of such termination, Landlord may recover damages from Tenant as provided in Section 11.3 below.

11.2 **Retake Possession.** Landlord may re-enter and retake possession of the Property, without notice, either by summary proceedings, force, any other applicable action or proceeding, or otherwise. Landlord may use the Property for Landlord's own purposes or relet it upon any reasonable terms without prejudice to any other remedies that Landlord may have by reason of Tenant's default, including recovering damages from Tenant as provided in Section 11.3. None of these actions will be deemed an acceptance of surrender by Tenant.

11.3 **Damages for Default.** Whether or not Landlord retakes possession or relets the Property, Landlord may recover all damages caused by the default (including but not limited to collection costs, unpaid rent, reasonable attorneys' fees relating to the default, and reasonable costs of reletting). Landlord may sue periodically to recover damages as they accrue during the remainder of the lease term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages, together with interest thereon at the rate of 12 percent per annum, but not in any event at a rate greater than the maximum rate of interest

permitted by law, plus damages for the remaining lease term equal to the difference between the rent specified in this Lease and the reasonable rental value of the Property for the remainder of the term, discounted to the time of judgment at the rate of 1 percent per annum over the discount rate of the Federal Reserve Bank of San Francisco as of the date of such judgment.

11.4 **Cure of Tenant's Default.** Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The cost of performance, including attorneys' fees and all disbursements, shall immediately be repaid by Tenant upon demand, together with interest from the date of expenditure until fully paid at the rate of 12 percent per annum, but not in any event at a rate greater than the maximum rate of interest permitted by law.

## 12. **SURRENDER AT EXPIRATION.**

12.1 **Condition of Property.** Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Property in good condition, reasonable wear and tear, condemnation, and damage by casualty excepted. All repair, replacement and restoration for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

12.2 **Fixtures.** Tenant shall remove all of its furnishings, and furniture that remain the property of Tenant and restore all damage caused by such removal. If Tenant fails to do so, this shall be an abandonment of such property and Landlord may retain such property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within twenty (20) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, restoration, transportation to storage, and storage, with interest on all such expenses as provided in Section 11.4.

12.3 **Holdover.** If Tenant does not vacate the Property at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this Lease (except that the term will be month to month and the rent will be 125 percent of the amount of rent then being paid by Tenant), or to eject Tenant from the Property and recover damages caused by wrongful holdover. Failure of Tenant to remove furniture or furnishings which Tenant is required to remove under this Lease shall constitute a failure to vacate to which this Section shall apply if such property not removed substantially interferes with occupancy of the Property by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

13. **WARRANTY OF QUIET ENJOYMENT.** So long as Tenant complies with all terms of this Lease, Tenant shall be entitled to peaceable and undisturbed possession of the Property free from any interference by Landlord or those claiming through Landlord, excluding all covenants, restrictions, encumbrances, and liens of record.

## 14. **GENERAL PROVISIONS.**



14.1 **Time of Essence.** Time is of the essence of the performance of each of Tenant's and Landlord's obligations under this Lease.

14.2 **Modifications.** This Lease may not be modified except by an amendment in writing attached to this Lease, dated and signed by the parties.

14.3 **No Appurtenances.** This Lease does not create any rights to light and air, or any other rights, easements, or licenses, by implication or otherwise, except as expressly set forth in this Lease or its exhibits.

14.4 **Nonwaiver.** Waiver of performance of any provision of this Lease shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision.

14.5 **Succession.** Subject to the limitations on transfer of Tenant's interest, this Lease shall bind and inure to the benefit of the parties, their respective heirs, successors, and assigns.

14.6 **Landlord's Access.** Landlord and its authorized representatives may enter the Property with reasonable notice (but in no event shall more than 24 hour's notice be required) to determine Tenant's compliance with this Lease, to make necessary repairs, or to show the Property to any prospective tenants, purchasers or lenders. Landlord may enter the Property without notice by any means necessary in the case of an emergency. Landlord may at any time place on or about the Property any ordinary "for sale" signs and Landlord may at any time during the last one hundred twenty (120) days during the term of this Lease place on or about the Property any ordinary "for lease" signs.

14.7 **Attornment.** In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or trust deed made by Landlord covering the Property, upon request Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

14.8 **Subordination to Mortgages.** This Lease, at Landlord's option, shall be subordinate to the lien of any trust deed or mortgage subsequently placed upon the Property, and to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements, and extensions thereof; provided, however, that as to the lien of any such trust deed or mortgage Tenant's right to quiet possession of the Property shall not be disturbed if Tenant is not in default and so long as Tenant pays the rent and observes and performs all of the provisions of this Lease. If requested by Landlord, Tenant shall promptly execute and deliver any document required to effectuate such subordination.

14.9 **Estoppel Certificates.** Within 20 days after written request by the other party, either party shall execute and deliver a certificate prepared by the other party stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. This certificate shall also state the amount of monthly rent, the dates to which rent has been paid in advance, and the amount of any prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified, except as may be represented by the party requesting the certificate.

14.10 **Conveyance by Landlord.** In the event Landlord sells its interest in the Property during the term of this Lease, Landlord shall be discharged from any obligations and responsibilities under this Lease from and after the effective date of the sale, except for those already accrued.

14.11 **Breach by Landlord.** In the event any damages are awarded to Tenant against Landlord for breach of this Lease, Tenant's sole recourse shall be against Landlord's interest in the Property, and Landlord shall have no personal liability therefor.

14.12 **Recording.** This Lease shall not be recorded without the consent in writing of Landlord.

14.13 **Financial Statements.** Upon written request of Landlord, Tenant shall furnish to Landlord Tenant's most current monthly and year-to-date financial statements prepared in the ordinary course of Tenant's business as well as financial statements for Tenant's most recent fiscal year ended. Landlord may make such financial statements available to any prospective lender or purchaser of the Property. Landlord shall otherwise keep such financial statements confidential and shall require any such prospective lender or purchaser to do the same.

14.14 **Notices.**

(a) All notices given pursuant to this Lease shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested or (ii) delivered in person or by nationally recognized overnight courier.

(b) Any notice (i) sent by mail in the manner specified in Section 14.14(a) shall be deemed served or given three (3) business days after deposit in the United States Postal Service and (ii) delivered by nationally recognized overnight courier shall be deemed served or given one business day after delivery to the courier, charges prepaid. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

(c) The address of each party to this Lease for purposes of notice shall be as follows:

**LANDLORD:** Elks Temple Properties, LLC  
430 N. Killingsworth  
Portland, OR 97217

**TENANT:** McMenamin's Brew Pubs, Inc.  
430 N. Killingsworth  
Portland, OR 97217

Each party may change its address for notice by giving not less than thirty (30) days' prior notice of such change to the other party in the manner set forth above.

14.15 **Attorneys' Fees; Disputes.** In the event suit or action is instituted to interpret or enforce the terms of this Lease or to rescind this Lease, the prevailing party shall be entitled to

recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal and on any petition for review, and in any proceeding in bankruptcy, in addition to all other sums provided by law. Disputes between the parties which are to be litigated shall be tried before a judge without a jury.

14.16 **Applicable Law.** This Lease shall be construed, applied and enforced in accordance with the laws of the State of Washington.

14.17 **Prior Agreements.** This Lease is the entire, final, and complete agreement of the parties with respect to the matters set forth in this Lease, and supersedes and replaces all prior written and oral agreements between the parties or their representatives with respect to such matters.

14.18 **Validity of Provisions.** If any provision in this Lease shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Lease shall not be affected and shall be enforced to the fullest extent permitted by law.

14.19 **Landlord's Consent.** Whenever Landlord's consent or approval is required under this Lease, except as otherwise expressly provided in this Lease, such consent or approval shall not be unreasonably withheld or delayed.

14.20 **Joint and Several Liability; Authority.** In the event Tenant now or hereafter consists of more than one person, firm or corporation, then all such persons, firms or corporations shall be jointly and severally liable as Tenant under this Lease. Each of the persons executing this Lease on behalf of Tenant warrants to Landlord that Tenant has all right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so.

14.21 **"Force Majeure" Delays.** In the event that either party hereto shall be delayed, or hindered in, or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, acts (or failure to act) of government or other reason of like nature not the fault of, or within the control of, the party delayed in performing work or doing acts required under the terms of this Lease (collectively referred to as "**force majeure**" delays), then performance of such work or act shall be excused for the period of the delay and the period of or the performance of any such work or act shall be extended for a period equivalent to the period of such delay. This provision shall not operate to excuse Tenant from prompt payment of rent or any other sum.

14.22 **Equipment Financing.** Tenant shall have the right from time to time to encumber or grant a security interest in its trade fixtures, equipment and personal property, in connection with financing and refinancing thereon by Tenant (the "**Equipment Financing**"). Landlord will promptly execute a waiver or subordination of lien rights and consent instrument in such form as may be reasonably required by the party providing Equipment Financing.

*[Signature Page Follows]*





**EXHIBIT A**

**Legal Description**

REVISED PARCEL B OF CITY OF TACOMA BOUNDARY LINE ADJUSTMENT NO. MPD2013-40000195319,  
RECORDED APRIL 23, 2013, UNDER RECORDING NO. 201304235002, IN PIERCE COUNTY,  
WASHINGTON.

## **EXHIBIT B**

### **Landlord's Work**

Landlord shall perform all work required to renovate the Property into a McMenamins lodging, dining, and community facility that includes 46 hotel rooms with private baths; space for live music events, weddings, and meetings; a ballroom featuring a tiny indoor city with "cabins," gardens, and terraces; three restaurants; small bars; a McMenamins brewery; and onsite food gardens, all in accordance with and as described in the plans and specifications prepared by Landlord's architect and previously provided to Tenant (the "**Plans**"). Landlord shall not make any material changes to the Plans without Tenant's prior written consent which shall not be unreasonably withheld. Landlord will obtain any permits required for such work and will diligently pursue such work to completion.