

AMENDMENT NO. 1
TO
RESOLUTION NO. RS2019-1685

Mr. President –

I move to amend Resolution No. RS2019-1685 as follows:

I. By replacing the Exhibit A attached to the Resolution with the Exhibit A attached hereto.

INTRODUCED BY:

Member of Council

Exhibit A

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY, TENNESSEE**

(a Tennessee public nonprofit corporation)

TO

OLIVERMCMILLAN SPECTRUM EMERY, LLC

A Delaware limited liability company

LEASE

EFFECTIVE AS OF _____, 2019

This instrument prepared by:
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219

LEASE

This Lease (this "Lease") is made and entered into and effective as of _____, 2019 by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE**, a public nonprofit corporation organized and existing under the laws of the State of Tennessee ("Lessor"), and **OLIVERMCMILLAN SPECTRUM EMERY, LLC**, a Delaware limited liability company ("Lessee").

W I T N E S S E T H :

WHEREAS, Lessor is a public nonprofit corporation and a public instrumentality of the Metropolitan Government of Nashville and Davidson County, Tennessee, and is authorized under Sections 7-53-101, et. seq., Tennessee Code Annotated, as amended (the "Act"), to acquire, whether by purchase, exchange, gift, lease, or otherwise, and to own, lease and dispose of properties for certain purposes identified in the Act; and

WHEREAS, in order to encourage Lessee to construct the core and shell of the facility that will become a museum project dedicated to the history of African American music (the "Project") in Nashville, Davidson County, Tennessee, thereby furthering the purposes of the Act, Lessor desires to lease to Lessee and Lessee desires to rent from Lessor certain real property hereinafter more particularly described, on the terms and conditions set forth herein; and

WHEREAS, Lessee has entered into, or will enter into, a sublease of such real property to The Metropolitan Government of Nashville and Davidson County, Tennessee ("Subtenant"), as subtenant thereunder, for the purpose of completing the construction of, and furnishing and operating, the Project (the "Sublease"); and

WHEREAS, the Lessor and The African American History Foundation of Nashville, Inc., a Tennessee nonprofit corporation, predecessor to The National Museum of African American Music (the "Museum") are parties to that certain Agreement with Respect to the Development and Operation of The Museum of African American Music, Art and Culture dated December 1, 2008, as amended by that certain Amendment to Agreement with Respect to the Development and Operation of the Museum of African American Music, Art and Culture dated as of February 21, 2017.

NOW, THEREFORE, Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and the covenants and agreements hereinafter contained to be kept and performed by Lessee, does by these presents demise, lease and let unto Lessee, and Lessee does by these presents hire, lease and rent from Lessor, for the Term (as defined below) and upon the conditions hereinafter stated, the real property consisting of the condominium unit described in **Exhibit A** attached hereto, together with all facilities and improvements now existing or hereafter constructed thereon by Lessee or otherwise and the Equipment (as defined below);

UNDER AND SUBJECT, however, to deed restrictions, covenants, easements, reservations, rights of way and other encumbrances applicable to the real property and equipment

to be leased and existing as of the date hereof and any other encumbrance hereafter existing that is not created by Lessor; and

UNDER AND SUBJECT to the following terms and conditions:

ARTICLE I

Definitions

In addition to the words, terms and phrases elsewhere defined in this Lease, the following words, terms and phrases as used in this Lease shall have the following respective meanings:

“Basic Rent” shall mean the amounts described in Section 4.01.

“Building” shall mean all of the improvements constructed or to be constructed on the Leased Property by the Lessee.

“City” shall mean the Metropolitan Government of Nashville and Davidson County, Tennessee.

“Equipment” shall mean the machinery, equipment and other tangible personal property now or hereafter located within the Leased Property.

“Lease” shall mean this instrument as originally executed or as it may from time to time be supplemented or amended by one or more instruments supplemental hereto.

“Leased Property” shall mean real property described on Exhibit A attached hereto, together with the Building and improvements or fixtures constructed or to be constructed thereon by Lessee, to the extent subject to this Lease at the applicable point in time.

“Standard Tax” shall mean, with respect to any portion of the Leased Property, the amount of ad valorem tax that Lessee would be required to pay to the City with respect to such portion if Lessee owned such property rather than Lessor.

“Tax Year” shall mean each annual period beginning on January 1 of each year and ending on December 31 of each year.

“Term” shall mean the term described in Article III.

ARTICLE II

Representations and Warranties

Section 2.01 Lessee’s Representations and Warranties. Lessee hereby represents and warrants to Lessor that:

(a) (i) Lessee is a Delaware limited liability company duly formed, existing and in good standing under the laws of the State of Delaware, and has all requisite power and

authority to enter into this Lease, (ii) this Lease and the transactions contemplated hereby have been duly and validly authorized by all necessary action on its part and (iii) this Lease constitutes the valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms hereof.

(b) Neither the execution and delivery of this Lease, nor the consummation of the transactions contemplated herein by Lessee, nor the fulfillment of or compliance with the terms and conditions of this Lease by Lessee, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of Lessee or any agreement or instrument to which Lessee is now a party or by which it is bound, or any existing law, rule, regulation, judgment, order or decree to which it is subject, or constitutes a default under any of the foregoing or, except as contemplated hereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessee under the terms of any instrument or agreement.

(c) There are no proceedings pending or, to the knowledge of Lessee, threatened against or affecting Lessee in any court or before any governmental authority, arbitration board or tribunal that are reasonably likely to materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Lessee or the ability of Lessee to perform its obligations under this Lease. Lessee is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(d) No event has occurred and no condition exists with respect to Lessee that would constitute an Event of Default (as defined in Article XIV) under this Lease or that, with the lapse of time or with the giving of notice, or both, would become such an Event of Default.

(e) Lessee has subleased, or will sublease, the Project to Subtenant pursuant and subject to the terms and conditions of the Sublease.

Section 2.02 Lessor's Representations and Warranties. Lessor hereby represents and warrants to Lessee that (i) Lessor is a public nonprofit corporation duly organized and validly existing under the laws of the State of Tennessee and has all requisite corporate, governmental and other power and authority to enter into this Lease, (ii) this Lease and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate, governmental or other action on its part and (iii) this Lease constitutes the valid and binding obligation of Lessor enforceable against Lessor in accordance with the terms hereof.

ARTICLE III

Lease Term

Subject to the provisions contained in this Lease, including, without limitation, the release of certain portions of the Leased Property from time to time, this Lease shall be in full force and effect for a term commencing on the date hereof and ending on the date that is the later of twenty (20) full Tax Years (including any extension to account for the first partial Tax Year) from the substantial completion of the Building, unless previously terminated as provided herein or extended pursuant to the provisions hereof (the "Term").

ARTICLE IV

Rent

Section 4.01 Basic Rent. Lessee will pay to Lessor without notice or demand, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, as Basic Rent on each January 1 during the Term, the sum of \$1.00.

Section 4.02 Additional Rent. Lessee agrees to pay, as additional rent, all other amounts, liabilities and obligations which Lessee herein assumes or agrees to pay. In the event of any failure on the part of Lessee to pay any amounts, liabilities or obligations described in this paragraph, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of the Basic Rent.

ARTICLE V

Compliance with Laws; Permitted Contests;

Lessee's Acceptance of Leased Property; Lease of Equipment; Reports; Net Lease

Section 5.01 Compliance with Laws. Lessee shall throughout the Term and at no expense to Lessor promptly cure any violations under all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which are or shall become applicable to the Leased Property, the repair and alteration thereof, and the use or manner of use of the Leased Property, whether or not such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not they shall involve any change of governmental policy or shall require structural or extraordinary repairs, alterations or additions, irrespective of the cost thereof.

Section 5.02 Permitted Contests. Lessee shall not be required to comply or cause compliance with the laws, ordinances, orders, rules, regulations or requirements referenced in Section 5.01, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

Section 5.03 Acceptance of Leased Property. Lessee acknowledges that it has examined the Leased Property and the state of Lessor's title thereto prior to the making of this Lease and knows the condition and state thereof, and that in entering into this Lease, Lessee is relying solely upon its own examination thereof.

Section 5.04 Net Lease. This is a "net lease" and the Basic Rent, additional rent and all other sums payable hereunder to or for the account of Lessor shall be paid promptly and without

set off, counterclaim, abatement, suspension, deduction, diminution or defense, and Lessor shall not be responsible for the payment of any fees or dues under any condominium declaration applicable to the Leased Property.

ARTICLE VI

Title and Tax Benefits

Section 6.01 No Conveyance of Title by Lessor. Lessor covenants and agrees that, except as set forth herein, during the Term of this Lease, it will not convey, or suffer or permit the conveyance of, by any voluntary act on its part, its title to the Leased Property to any person, firm, corporation, or other entity whatsoever, irrespective of whether any such conveyance or attempted conveyance shall recite that it is expressly subject to the terms of this Lease, unless such conveyance is consented to by Lessee. Lessor will not create any lien, encumbrance or charge upon its interest in the Leased Property except for any such lien, encumbrance or charge otherwise created by this Lease or consented to by Lessee.

Section 6.02 Tax Benefits. During the Term, Lessee shall be entitled to all benefits under federal and state tax laws attributable to the ownership of the Leased Property, including, without limitation, the right to claim deductions for depreciation. In furtherance of the foregoing, Lessor will cooperate with Lessee to allow Lessee to obtain any applicable investment tax or other credits available under federal and/or state tax laws.

ARTICLE VII

Taxes and Other Charges

Section 7.01 Taxes and Other Governmental Charges. Lessee agrees, subject to the provisions of Section 7.03, to pay and discharge, as additional rent, punctually as and when the same shall become due and payable without penalty, all ad valorem taxes that at any time during the Term shall be or become due and payable by Lessor or Lessee and that shall be levied, assessed or imposed upon, or that shall be or become liens upon, the Leased Property or any portion thereof or any interest of Lessor or Lessee therein, under and by virtue of any present or future law, statute, regulation or other requirement of any governmental authority.

Section 7.02 Lessee Subrogated to Lessor's Rights. To the extent of any payments of additional rent by Lessee under this Article VII, Lessee shall be subrogated to Lessor's rights in respect to the proceedings or matters relating to such payments, and any recovery in such proceedings or matter shall be used to reimburse Lessee for the amount of such additional rent so paid by Lessee.

Section 7.03 Payments in Lieu of Taxes.

(a) Recognition of Tax Status. Lessee recognizes that under present law, including specifically Section 7-53-305 of the Act, the properties owned by Lessor, including the Leased Property, are exempt from all taxation in the State of Tennessee. However, as long as this Lease is in effect, Lessee agrees to make payments in lieu of taxes to the City, in accordance with the provisions of this Section 7.03.

(b) Payments in Lieu of Taxes. In addition to Basic Rent and other additional rent payable hereunder, Lessee and Lessor agree that Lessee shall make the following payments in lieu of taxes: zero percent (0%) of Standard Tax.

Lessor and Lessee acknowledge and agree that the Lessee shall pay, when due, the ad valorem taxes with respect to any Leased Property previously owned by Lessee that accrued prior to the date of this Lease.

(c) Credit for Taxes Paid. Nothing contained in this Section 7.03 is intended or shall be construed to require the payment by Lessee of any greater amounts in lieu of taxes than would be payable as taxes if the Leased Property were owned by Lessee. It is accordingly understood and agreed that the amount payable by Lessee in any year under the provisions of this Section 7.03 shall be reduced by the amount of any ad valorem taxes lawfully levied upon the Leased Property or any part thereof, or upon Lessee's leasehold estate therein, and actually paid by Lessee pursuant to the requirements of Section 7.01 hereof to the City, and to the extent that any such tax payments paid by Lessee pursuant to the requirements of Section 7.01 hereof for any year shall exceed the in-lieu-of-tax payments for such year otherwise provided in this Section 7.03 the amount payable by Lessee in any subsequent year under the provisions of this Section 7.03 shall be reduced by such excess amount.

(d) Timing and Manner of Payments. Each payment in lieu of taxes required by this Section 7.03 with respect to any Tax Year or partial Tax Year shall be paid not later than the last day on which ad valorem taxes are payable to the City, with respect to such Tax Year or partial Tax Year, and shall be paid in the manner otherwise required by the City.

(e) Reports. On behalf of Lessor, Lessee shall, during the term of this Lease, submit on or before October 1 of each year the annual report required to be submitted by Lessor pursuant to Section 7-53-305 of the Act and shall also submit such other reports that may be required by applicable law relating to this Lease.

(f) Pro Ration. If the calculation of any payment in lieu of tax is required for any reason hereunder with respect to only a portion of a Tax Year, a prorated amount shall be determined based upon the proportion that the period for which such payment relates bears to the entire Tax Year.

(g) Cessation of Business or Foreclosure. In the event Subtenant permanently ceases the active operation of its business at the Leased Property as a "Permitted Use" (as defined in the Sublease and following the expiration of the "Permitted Cure Period", as defined therein), and notwithstanding any provision herein to the contrary, Lessee shall make payments in lieu of taxes beginning as of the date Lessee ceases such operation equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee. Subject to Article XIII, upon the foreclosure of Lessee's leasehold interest in this Lease, any successor to Lessee's interest hereunder shall, notwithstanding any provisions herein to the contrary, make payments in lieu of taxes beginning as of the date such successor acquires Lessee's leasehold interest hereunder equal to the ad valorem taxes that such successor otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by such successor.

(h) Lessee's Right to Contest. For the avoidance of doubt, and notwithstanding any provision herein to the contrary, the right to contest the validity or amount of any assessment of the Leased Property or a portion thereof is reserved to Lessee to the same extent as if Lessee were the owner thereof, with such right being applicable to any period of time during which Lessee is required to pay ad valorem taxes or make payments in lieu thereof based on such actual ad valorem taxes with respect to such property.

(i) Nature of Payments. The payments in lieu of taxes payable hereunder shall be paid by Lessee in lieu of all ad valorem, real and personal property taxes, whether presently in effect or hereafter imposed on any portion of the Leased Property or any component thereof (including, without limitation, any tax on the real property, enhancements, additions, expansions, improvements, buildings, equipment, replacement equipment and any other tangible real or personal property from time to time subject to this Lease, whether or not constituting a Building or Equipment) during the Term, by or on behalf of the City, any school district located within the City or any subdivision or instrumentality of any of them or any of their respective successors. The payments in lieu of taxes payable hereunder will relate to the Leased Property in its scope and configuration as of the effective date of this Lease and to all replacements, expansions, additions, enhancements and improvements subject to this Lease during the Term hereof.

Section 7.04 Permitted Contests. Lessee shall not be required to pay any tax or assessment against the Leased Property or any part thereof, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings which shall operate to prevent the collection of the tax or assessment so contested or resulting from such contest and the sale of the Leased Property or any part thereof to satisfy the same. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

ARTICLE VIII

Maintenance and Repair

Lessor shall not be required to rebuild or to make any repairs, replacements or renewals of any nature or description to the Leased Property or to make any expenditures whatsoever in connection with this Lease or to maintain the Leased Property in any way. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor.

ARTICLE IX

Condemnation

If during the Term, all or any part of the Leased Property be taken by the exercise of the power of eminent domain or condemnation, Lessee shall be entitled to and shall receive the

entire award for the taking. If title to or control of all of the Leased Property shall be taken by the exercise of the power of eminent domain or condemnation, or if such use or control of a substantial part of the Leased Property shall be taken as to result in rendering the Leased Property untenable to Lessee, Lessee may terminate this Lease by giving written notice to the Lessor and thereafter shall have no further liability hereunder except as specifically provided herein.

ARTICLE X

Insurance and Indemnification

Section 10.01 Insurance. Lessee shall carry commercial public liability insurance covering the Leased Property and the use and occupancy of the same in a company or companies licensed to do business in Tennessee under a policy reasonably satisfactory to Lessor both as to amount and coverage and shall provide evidence of same to Lessor. Lessor shall be listed as an additional insured on such policy. Lessee shall also insure the Building at its full replacement value, and Lessee shall provide evidence of same to Lessor. Each policy described above shall contain a provision that it may not be canceled without first giving Lessor not less than ten (10) days prior written notice.

Section 10.02 Indemnification. Lessee covenants and agrees, at its expense, to pay, and to indemnify and save Lessor and its directors, agents and employees (collectively, the "Indemnified Parties") harmless against and from any and all claims by or on behalf of any person, firm, corporation, or governmental authority, arising from the occupation, use, possession, conduct or management of or from any work or activity done in or about the Leased Property, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Leased Property or the occupancy or use thereof. Lessee also covenants and agrees, at its expense, to pay, and to indemnify and save the Indemnified Parties harmless against and from, any and all claims, costs or expenses arising from (i) any condition, including any environmental condition, now existing or hereafter arising, on the Leased Property, (ii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iii) any act or negligence of Lessee, or any of its agents, contractors, servants, employees or licensees, or (iv) any accident, injury or damage whatever caused to any person, firm or corporation in or about the Leased Property and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section 10.02, except to the extent caused by the gross negligence or misconduct of the Indemnified Parties. In the event that any action or proceeding is brought against any Indemnified Party by reason of any such claims, Lessee, upon notice from such Indemnified Party, covenants to resist or defend such action or proceeding. The indemnification provided in this Section 10.02 shall survive termination of this Lease.

ARTICLE XI

Construction of Buildings; Alterations

Lessee shall have the right to construct the Building and other improvements on the Leased Property from time to time and to make additions to and alterations of any such Building and improvements and any existing buildings and improvements. All work done in connection with such additions, alterations, improvements or construction shall be done promptly, and in good and workmanlike manner, and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and offices thereof. Lessee shall maintain or cause to be maintained, at all times when any work is in process in connection with such additions, alterations, improvements or construction, workmen's compensation insurance covering all persons employed in connection with such work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the Leased Property.

Lessee covenants and agrees at its expense to construct the Premises within the Leased Property, in accordance with the requirements applicable to Lessee as sublandlord under the sublease. It is understood and agreed that the Building, together with all other improvements or fixtures from time to time placed on the Leased Property, shall become the property of Lessor and part of the Leased Property. The cost of the acquisition and construction of the Building and the acquisition of the Equipment borne by Lessee shall be treated as additional rent payable by Lessee under this Lease.

ARTICLE XII

Subletting, Assignments and Mortgaging

Section 12.01 Assignment and Subletting. Lessee shall not have the right to sublet the Leased Premises or any part thereof or assign or otherwise transfer its rights and interest hereunder except with the prior written consent of Lessor; provided, however, Lessee may assign this Lease to any affiliate of Lessee without the prior written consent of Lessor, and Lessee may sublet the Leased Premises or any part thereof as otherwise provided in Section 2.01(e) of this Lease without the prior written consent of Lessor. Further, and notwithstanding any provision herein to the contrary, Lessee shall not be required to obtain Lessor's consent in connection with, and Lessor shall not be permitted to terminate this Agreement as a result of, the following transfers or the assignment of this Lease pursuant thereto: (i) the sale, exchange, issuance or redemption of any stock of Lessee or its parent that is listed on a public exchange; (ii) transfers of less than a controlling interest in Lessee or its parent, (iii) transfers of interests in either the Project or Lessee to an affiliate of Lessee; (iv) changes in the organizational form of Lessee; (v) transfers of the operational responsibilities of the Project to a third party; (vi) subletting or licensing of the Project including pursuant to the Sublease; (vii) transfers made in connection with any financing of the Project, including, without limitation, the granting of any lien, security interest or other encumbrance upon the Project or the interests of Lessee in the Project; or (viii) any use of the Project by a third party.

Section 12.02 Permitted Mortgagees. Notwithstanding Section 12.01 hereof, Lessee is hereby given the right, at any time and from time to time, to mortgage its leasehold estate in the Leased Property, provided that any such leasehold mortgage shall be subject and subordinate to the rights of Lessor hereunder. As used in this Section 12.02 and throughout this Lease, the noun “mortgage” shall include a deed of trust, the verb “mortgage” shall include the creation of a deed of trust, the word “mortgagee” shall include the beneficiary under a deed of trust, and the terms “foreclose” or “foreclosure” shall include a trustee’s sale under a deed of trust as well as a foreclosure by judicial process. Lessor acknowledges that any such mortgagee may require certain interpretations and modifications to this Lease, and Lessor agrees, upon request, from time to time, to meet with representatives of Lessee and such mortgagee(s) to negotiate in good faith any such request for interpretation or modification. Lessor will not unreasonably withhold, condition or delay its consent to any such requested interpretation or modification, provided that such interpretation or modification is consistent with the intent and purposes of this Lease.

Section 12.03 Notice of Defaults. If a mortgagee shall have given Lessor, before any Event of Default shall have occurred hereunder, a written notice specifying the name and mailing address of the mortgagee, then Lessor shall not terminate this Lease by reason of the occurrence of any Event of Default hereunder unless Lessor shall have given the mortgagee a copy of its notice to Lessee of such Event of Default addressed to the mailing address last furnished by the mortgagee, and such Event of Default shall not have been cured by said mortgagee as provided in Sections 12.04 and/or 12.05 hereof.

Section 12.04 Performance by Mortgagee. Lessee irrevocably directs that Lessor accept, and Lessor agrees to accept, performance by any such mortgagee (though, for the avoidance of doubt, such mortgagee shall have no obligation with respect to such performance) of any term, covenant, agreement, provision, condition or limitation on Lessee’s part to be performed or observed as though performed or observed by Lessee (including, without limitation, exercise of the option to purchase the Leased Property granted to Lessee by Section 14.01 hereof), irrespective of whether an Event of Default has occurred, provided such performance by said mortgagee shall occur within the time prescribed therefor in this Lease, plus an additional grace period of thirty (30) days thereafter or, if said Event of Default is curable but not within said thirty (30)-day period, then within such additional time as may be necessary to cure the same provided the mortgagee commences the curing thereof within such thirty (30)-day period and thereafter prosecutes the curing of such Event of Default to completion with all due diligence; provided, however, (i) with respect to any Event of Default hereunder which cannot be cured by said mortgagee until it obtains possession of the Leased Property, the provisions of Section 12.05 shall apply and (ii) if Lessee fails to maintain commercial public liability insurance required by Section 10.01 hereof, the mortgagee shall only have ten (10) days to cure such Event of Default.

Section 12.05 Cure After Foreclosure. If an Event of Default occurs under this Lease that cannot be cured by a mortgagee without first obtaining possession of the Leased Property (which shall not include an Event of Default relating to the maintenance of liability insurance), then, and notwithstanding any other provision contained in this Lease, Lessor shall not terminate this Lease by reason of such Event of Default if (i) said mortgagee, within the thirty (30)-day grace period set forth in Section 12.04 above, shall have commenced, and thereafter diligently proceeds with, an appropriate proceeding to foreclose such mortgage or otherwise obtains possession of the Leased Property, and (ii) said mortgagee shall have cured such Event of

Default within thirty (30) days following its obtaining possession of the Leased Property (or, if said Event of Default is curable but not within said thirty (30)-day period, then within such additional time as maybe necessary to cure the same provided the mortgagee commences the curing thereof within such thirty (30)-day period and thereafter prosecutes the curing of such Event of Default to completion with all due diligence).

Section 12.06 Effect of Foreclosure. During the pendency of any foreclosure proceedings, mortgagee shall fully perform all the obligations of Lessee under this Lease that can be performed by such mortgagee without possession of the Leased Property (including, but not limited to, payment of all Basic Rent, all additional rent, maintenance of insurance, and any and all other monies due and payable by Lessee hereunder); provided, however, that if such mortgagee obtains possession of the Leased Property during the time that it is enforcing its foreclosure remedy or as a result thereof, then such mortgagee shall perform fully all of Lessee's obligations under this Lease. In the event such mortgagee or any purchaser at a judicial or non-judicial foreclosure sale (a "purchaser") acquires title to the leasehold estate through such a foreclosure proceeding or otherwise, it shall thereupon become subrogated to all the rights of the Lessee under this Lease whereupon:

- (1) Lessee shall have no further rights hereunder; and
- (2) Such mortgagee or purchaser shall forthwith be obligated to assume and perform each and all of Lessee's obligations and covenants hereunder.

Section 12.07 Estoppel Certificate. Upon the written request of Lessee or any mortgagee or prospective mortgagee, and for the benefit of said mortgagee or its nominee, Lessor will promptly deliver to Lessee or said mortgagee or prospective mortgagee a certificate certifying (i) that this Lease is a binding obligation on Lessor and, to the knowledge of Lessor, this Lease is in full force and effect, (ii) that this Lease has not been amended, or if amended, the identity of each such amendment, (iii) that Lessor is not in default hereunder and, to the knowledge of Lessor, Lessee is not in default hereunder and (iv) the accuracy of any other factual matters reasonably requested. Lessor's failure to execute and deliver to Lessee or said mortgagee or prospective mortgagee such certificate within fifteen (15) days after request therefor shall be conclusive evidence that (x) this Lease is in full force and effect without modification in accordance with the terms set forth in the request and (y) there are no breaches or defaults thereunder by Lessee.

Section 12.08 Further Assignment by Mortgagee. Notwithstanding anything to the contrary contained in this Article XII, a mortgagee, on or after acquiring ownership of Lessee's leasehold estate, may assign this Lease without the necessity of obtaining Lessor's consent and, upon any such assignment, provided such assignee shall assume and agree to perform and be bound by all of the terms hereof, such mortgagee shall be released from all liability hereunder except for obligations occurring during its ownership of said leasehold estate.

Section 12.09 New Lease. If this Lease is terminated as to any portion of the Leased Property by reason of an Event of Default or as a result of a bankruptcy proceeding of Lessee, or if this Lease is disaffirmed by a receiver, liquidator or trustee for Lessee or its property, Lessor, if requested by a mortgagee of Lessee with respect to such portion of the Leased Property, shall

negotiate in good faith with such mortgagee for a new lease as to such portion of the Leased Property with such mortgagee (or, if more than one mortgagee makes such request, the most senior such mortgagee).

ARTICLE XIII

Events of Default: Termination

If any one or more of the following events (each, an “Event of Default”) shall happen:

(a) if Lessee fails to maintain the commercial public liability insurance required by Section 10.01; or

(b) if default shall be made in the due and punctual payment of any payment due pursuant to Section 7.04 hereof, and such default shall continue for more than thirty (30) days after receipt of written notice of such default to Lessee from Lessor; or

(c) if default shall be made by Lessee in the due performance of or compliance with any of the terms hereof, other than that referred to in the foregoing subparagraphs (a) and (b), and such default shall continue for sixty (60) days after Lessor shall have given Lessee written notice of such default (or in the case of any such default which cannot with due diligence be cured within such sixty (60)-day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any such default not susceptible of being cured with due diligence within the sixty (60) days that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence);

then in any such event Lessor at any time thereafter and while such Event of Default shall continue may give a written termination notice to Lessee, which notice shall specify the nature of the Event of Default and a date of termination of this Lease not less than thirty (30) days after the giving of such notice. Upon such termination, Lessor shall have the right, but not the obligation, to enter upon the Leased Property and repossess the Leased Property. This termination right is subject to Lessee’s right to purchase the Leased Property pursuant to Section 15.01, and, at any time prior to the termination of this Lease, Lessee may exercise its right in Section 15.01 to purchase the Leased Property.

ARTICLE XIV

Purchases; Purchase Prices

Section 14.01 Option to Purchase. Lessee shall have an option to purchase the Leased Property at any time during the Term or upon termination of the Lease for the amount provided in Section 14.02. To exercise such option Lessee shall (i) give Lessor at least ten (10) days’ prior written notice of its intent to exercise any option granted pursuant to this Section 14.01, which notice shall state the purchase date, and (ii) comply with the provisions of Section 14.02 hereof. The option to be exercised by Lessee hereunder may be exercised whether or not a default or Event of Default has occurred hereunder. Lessee shall also have the option to purchase any item

of Equipment upon ten (10) days' prior written notice of its intent to exercise its option to purchase such item and upon compliance with Section 14.02. Notwithstanding the foregoing, Lessee may not exercise the foregoing termination right so long as the Sublease remains in effect, unless Subtenant consents thereto in writing.

Section 14.02 Exercise of Option.

(a) To exercise any option contained in Section 14.01, Lessee shall pay, or cause to be paid, on or prior to the purchase date, as the purchase price the sum of \$100.00, plus, any other amounts that are then due or that have accrued under this Lease.

(b) On the purchase date for the purchase of the Leased Property pursuant to Section 14.01, Lessor shall convey the Leased Property to Lessee by bill of sale and/or quitclaim deed, as appropriate, without warranty of any type, conveying Lessor's interest in the Leased Property being conveyed, each of which instruments shall be in substantially the form of Exhibit B, attached hereto. Lessee shall pay all expenses relating to any such conveyance.

ARTICLE XV

Granting of Easements, Etc.

From time to time during the Term, Lessee shall have the right, at Lessee's expense, to cause Lessor (i) to grant easements affecting the Leased Property, (ii) to dedicate or convey, as required, portions of the Leased Property for road, highway and utilities and other public purposes, (iii) to execute petitions to have the Leased Property or portions thereof annexed to any municipality or included within any utility, highway or other improvement or service district, and (iv) to execute amendments or modifications to any condominium declaration(s) relating to the Leased Property.

ARTICLE XVI

Miscellaneous

Section 16.01 Applicable Law. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee.

Section 16.02 Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 16.03 Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Lease shall be in writing, and shall be deemed to have been properly given and received if sent by United States certified or registered mail, postage prepaid, or nationally-recognized overnight courier service (a) if to Lessee addressed to Lessee, at OliverMcMillan Spectrum Emery, LLC, 733 8th Avenue, San Diego, California 92101, Attn: Legal Department, with a copy to Arnall Golden Gregory LLP, 171 17th Street, NW, Suite 2100, Atlanta, Georgia 30363; Attn: Jonathon L. Neville, Esq., or at such other address as Lessee from time to time may have designated by written notice to Lessor;

and (b) if to Lessor addressed to Lessor, at [_____], Attention: _____], or at such other address as Lessor may from time to time have designated by written notice to Lessee.

Section 16.04 Headings and References. The headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof. All references in this Lease to particular Articles or Sections are references to Articles or Sections of this Lease, unless otherwise indicated.

Section 16.05 Successors and Assigns. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 16.06 Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 16.07 Expenses upon Default. In the event that either party hereto shall be required to engage legal counsel for the enforcement of any of the terms of this Lease, whether or not such employment shall require institution of suit or other legal services required to secure compliance on the part of the other party, and the party seeking such enforcement prevails, the party against which such enforcement is sought shall be responsible for and shall promptly pay to the party seeking such enforcement the reasonable value of said attorneys' fees, and any other expenses incurred by such party as a result of such default.

Section 16.08 No Liability of Officers, Etc. No recourse under or upon any obligation, covenant or agreement contained in this Lease shall be had against any incorporator, members, director or officer, as such, past, present or future, of Lessor, either directly or through the Lessor. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer is hereby expressly waived and released by Lessee as a condition of and consideration for the execution of this Lease.

Section 16.09 No Liability of City, Officers, Etc. The City and its officers and agents, shall not in any event be liable for the performance of any obligation or agreement of any kind whatsoever herein, and none of the agreements or obligations of Lessor contained in this Lease or otherwise shall be construed to constitute an indebtedness of the City, or its officers or agents, within the meaning of any constitutional or statutory provision whatsoever.

Section 16.10 Limitation of Liability. Notwithstanding any other provision hereof, Lessor's liability hereunder shall be limited to its interest in the Leased Property, the rents derived from the Leased Property and the payments to be made pursuant to this Lease, and Lessee shall not have any recourse against any other assets of Lessor.

Section 16.11 Cost Benefit Analysis. Attached hereto as **Exhibit C** is the analysis of the costs and benefits of the payment-in-lieu of tax provisions of this Lease required Section 7-53-305(b) of the Act.

Section 16.12 Interest. In addition to all other amounts payable under this Lease, Lessee shall also pay interest on any payment due hereunder that is not paid on the date such payment is due until paid at the interest rate, as it may vary from time to time, that the City would impose on a delinquent tax payment during the period such payment was due.

Section 16.13 Recording of Lease. This Lease shall not be recorded. A short form or memorandum of this Lease (which Lessor shall execute and deliver to Lessee promptly upon Lessee's request) may, at Lessee's option, be prepared by Lessee, at Lessee's expense, and recorded by Lessee, at Lessee's expense. Upon Lessor's request, Lessee shall provide Lessor evidence of the recordation of such short form or memorandum of lease within a reasonable time.

Section 16.14 Governmental Approvals and/or Determinations. To the extent that the entry into and/or performance of this Lease or any provision hereof requires any governmental approval and/or determination, including, without limitation, pursuant to Section 7-53-305(b)(1)(B) of the Act, Lessor shall be responsible for timely pursuing and obtaining such approval and/or determination.

[signatures follow]

IN WITNESS WHEREOF, THE INDUSTRIAL DEVELOPMENT BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY TENNESSEE has executed this Lease by causing its name to be hereunder subscribed by its Chairman and attested by its Secretary; and OLIVERMCMILLAN SPECTRUM EMERY, LLC has executed this Lease by causing its name to be hereunto subscribed by one of its duly authorized officers, all being done as of the date and year first above written.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
TENNESSEE,
a Tennessee public nonprofit corporation

By: _____
Name: _____
Title: Chairman

ATTEST:

Secretary

OLIVERMCMILLAN SPECTRUM EMERY,
LLC,
a Delaware limited liability company

By: OliverMcMillan/Brookfield Residential
Nashville, LLC
a Delaware limited liability
company
Its: Manager

By: Brookfield Residential OM Holdings,
LLC
a Delaware limited liability company
Its: Manager

By: _____
Name: _____
Title: _____

Exhibit A
Leased Property

The Museum Unit of the Fifth + Broadway Retail Condominium described in the Declaration Establishing Fifth + Broadway Retail Condominium of record as Instrument No. 20181115-0112635, Register's Office for Davidson County, Tennessee, together with the undivided percentage interest in the Common Elements appurtenant to said Unit as set forth in Exhibit E of the Declaration Establishing Fifth + Broadway Retail Condominium. The Fifth + Broadway Retail Condominium constitutes the Retail Unit in the Fifth + Broadway Master Condominium, as established by the Declaration Establishing Fifth + Broadway Master Condominium, of record as Instrument No. 20181115-0112634, said Register's Office, as amended by First Amendment to Declaration Establishing Fifth + Broadway Master Declaration, of record as Instrument No. 20181121-0114644, said Register's Office. Reference is hereby made to the plat of Fifth + Broadway Master Condominium of record as Exhibit D to the Declaration Establishing Fifth + Broadway Master Condominium, as amended, for a more complete identification and description of the Retail Unit of Fifth + Broadway Master Condominium, and the plat of Fifth + Broadway Retail Condominium of record as Exhibit D to the Declaration Establishing Fifth + Broadway Retail Condominium, for a more complete identification and description of the Museum Unit.

Being part of the property conveyed to OliverMcMillan Spectrum Emery, LLC, a Delaware limited liability company, by deed from The Metropolitan Government of Nashville and Davidson County, Tennessee, of record as Instrument No. 20161110-0119299, said Register's Office.

This is property known as 115 Opry Place, Nashville, Tennessee 37219.

Exhibit B
Form of Quitclaim Deed from Lessor to Lessee

THIS INSTRUMENT PREPARED BY:

Field Code Changed

Address New Owner(s):

Send Tax Bills to:

SAME

Tax-Parcel No(s):

QUITCLAIM DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, THE INDUSTRIAL DEVELOPMENT BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, a public nonprofit corporation organized and existing under the laws of the State of Tennessee (hereinafter, "Grantor"), does hereby quitclaim and convey unto OLIVERMCMILLAN SPECTRUM EMERY, LLC, a Delaware limited liability company (hereinafter, "Grantee"), its successors and assigns, all of Grantor's right, title and interest in and to that certain following described tract or parcel of land located in Davidson County, Tennessee, and the improvements located thereon, if any (hereinafter, the "Property"), to-wit:

Tract or parcel of land located in Davidson County, Tennessee and being more particularly described on **Exhibit A** attached hereto.

This is improved property located at _____, Nashville, Tennessee.

The Property is conveyed subject to such limitations, restrictions and encumbrances as may affect it. Grantor makes no representations or warranties whatsoever with regard to the Property or Grantor's interest therein.

[signature page follows]

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed as of the ____ day of _____, _____.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY,
TENNESSEE,
a Tennessee public nonprofit corporation

By: _____
Name: _____
Title: Chairman

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself/herself to be the Chairman of THE INDUSTRIAL DEVELOPMENT BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, the within named bargainer, a Tennessee public nonprofit corporation, and that he/she as such Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as Chairman.

Witness my hand and seal at my office in _____, Tennessee, this the ____ day of _____, _____.

Notary Public

My Commission Expires:

STATE OF _____)
COUNTY OF _____)

Field Code Changed

The actual consideration for this transfer is \$1.00.

AFFIANT

Subscribed and sworn to before me
this ____ day of _____, _____.

Notary Public

My Commission Expires: _____

[EXHIBIT A TO BE ATTACHED]

Exhibit C
Analysis of Costs and Benefits of Payment-in-Lieu of Tax Provisions

[to be inserted]

Appendix C: Cost Benefit Analysis for PILOTs

Cost Versus Benefit Analysis for Payment In Lieu of Ad Valorem Tax									
Date: <input type="text" value="4/10/2019"/>		Person Completing Form: <input type="text" value="H. Beecher Hicks"/>							
		Title: <input type="text" value="President and CEO"/>							
Lessor: <input type="text" value="Metro"/>			Lessee: <input type="text" value="NMAAM"/>						
Lease Term	Term Beginning Date	5/2020	Total Term Ending Date	5/2090					
Step 1		x	\$	=	\$ 1,700,000	x	2.0	=	\$ 3,400,000
	Number of New Jobs	40	Average Annual Company	\$42,500	Direct Income	See Note 1	Direct & Indirect Income		
Step 2	\$ 1,700,000	+	\$ 41,978.00	=	40.5				
	Indirect Income		See Note 1		Number Indirect Jobs				
Step 3	\$ 3,400,000	x	0.097	=	\$ 329,800	x	0.6	=	\$ 197,880
	Direct & Indirect Income		See Note 1		New Total Annual State Tax	See Note 1	New Annual State Sales Tax	See Note 1	\$ 57,385 New Annual Local Sales Tax
Calculation Summary: Additional comments and information about costs or benefits associated with the project may be attached.									
Total of New and Indirect Jobs	<input type="text" value="80.5"/>	First Year PILOT Payment County:		<input type="text" value="\$0"/>					
Total of Direct and Indirect Income	<input type="text" value="3,400,000"/>	First Year PILOT Payment City:		<input type="text" value="\$0"/>					
Total of New Annual State Sales Tax and New Annual Local Sales Tax	<input type="text" value="255,185"/>	Total First Year PILOT:		<input type="text" value="\$0"/>					
<i>To be completed by Comptroller of Treasury</i>									
		Tax Year		2011		Est Property Taxes		EqTR x Assessed Value	
		Co. Tax Rate		\$0.00				\$0	
		City Tax Rate		\$0.00				Eq TR = Total Rate x Appraisal Ratio	
		Other Rate(s)		\$0.00					
		Total Tax Rate		\$0.00					
		Legal Ratio		NA					
		Appraisal Ratio		1.0000					
		Eff Tax Rate		0.00%					
								(New Local Sales tax plus PILOT) Less Estimated Property Tax	
Total Appraised Value:	<input type="text" value="\$0"/>								
Total Assessed Value:	<input type="text" value="\$0"/>								
Note 1 Economic factors and multipliers provided by University of Tennessee for Business and Economic Research									