

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



November 2, 2015

Jemal's Tony, LLC  
c/o Douglas Development Corporation  
702 H Street, N.W.  
Suite 400  
Washington, D.C. 20001

**Re: Letter of Intent for the lease of premises at 2266 25<sup>th</sup> Place, N.E.**

The Department of General Services ("DGS") on behalf of the District of Columbia presents this letter of intent ("LOI") to Jemal's Tony, LLC for the lease of certain premises located at 2266 25<sup>th</sup> Place, NE, Washington, DC ("the Premises"). Outlined below are the principal terms and conditions that would serve as the basis for a lease agreement for premises at the Building (the "Lease").

**TENANT**

District of Columbia, a municipal corporation, acting by and through its Department of General Services (the "District" or "Tenant").

The District of Columbia agency initially occupying the Premises (defined below) will be Department of Human Services ("DHS"). Subject to the provisions of the "Use" section below, the District shall have the right to substitute another District agency as occupant of the Premises without such substitution constituting a sublease of the Premises or an assignment of the Lease and shall not require the consent of Landlord (defined below).

**LANDLORD**

Jemal's Tony, LLC ("Landlord").

**PREMISES**

The leased premises will consist of a renovated existing building with approximately 52,587 rentable square feet ("RSF") containing not less than 50 units ("Units") and other ancillary space as described in **Exhibit A** (the "Building"), and the land upon which the Building is located. The 50 Units will consist of varying sized units of two beds minimum and four beds (excluding trundles) maximum. In addition to the Units, the Leased Premises shall include other space and amenities as defined in Landlord's Work below.

For informational purposes, the RSF of the Building shall be subject to verification, in accordance with BOMA *standards for measurement*, upon completion of the Tenant Improvements (defined below). Such final determination of the RSF of the Building, which shall not result in an adjustment of the

Annual Rent set forth below, shall be set forth in a declaration of delivery for the Premises, the form of which shall be an exhibit to the Lease, signed by Landlord and the District (the "**Declaration**").

### USE

The Premises is currently zoned C-M-2. Landlord and the District acknowledge and agree that (a) the District's intended use of the Premises is as follows: housing for District of Columbia families for a stay between 30 to 90 days (with the Premises having a minimum of 50 Units), the provision of meals (not prepared at the Premises) by the District to such persons and a resident operator provided by the District (the final terms of use to be set forth in the Lease), and (b) Landlord shall, at its sole cost and expense, seek such zoning use variance or other zoning exception as may be required for such use of the Premises (the "**Zoning Approval**"), and shall obtain a certificate of occupancy for a "boarding house" or any other type of use that shall permit the District's intended use of the Premises (collectively, the "**Zoning/Certificate Approvals**"). The District may use the Premises for any lawful use that is in compliance with the Zoning/Certificate Approvals; provided, however, that Landlord's prior approval, which shall not be unreasonably withheld, conditioned or delayed, shall be required for any change of use subsequent to the initial use. The District shall comply with all rules and regulations promulgated for the Building which are reasonable, in accordance with applicable law, and do not discriminate against the District.

For purposes of this LOI and the Lease, a resident of the Premises is referred to herein as an "**Occupant**."

### RENT COMMENCEMENT DATE

The Rent Commencement Date for the Premises shall be the date upon which Landlord has delivered the Premises to Tenant substantially completed (conditions of delivery and definition of substantial completion to be defined and set forth in the Lease). The foregoing shall be subject to the provisions contained below in the section entitled "Outside Delivery Date".

### LEASE TERM

The initial term of the Lease shall be fifteen (15) Lease Years, beginning on the Rent Commencement Date (the "**Initial Term**"), and as may be extended below, the "**Lease Term**"). The term "**Lease Year**" shall mean each twelve (12) month period during the Lease Term, beginning on the Rent Commencement Date; provided, however, that if the Rent Commencement Date occurs on a day other than the first of a month, the first Lease Year shall begin on the first day of the month following the Rent Commencement Date.

### OPTIONS

So long as Tenant is not in monetary default beyond any applicable notice and cure periods, Landlord will provide the Tenant one (1) five year (5 year) option to renew the Lease. The Annual Rent will increase by two and one-half percent (2.5%) upon the commencement of the renewal term and each year thereafter. The Tenant shall provide no less than eighteen (18) months' notice of its exercise of the renewal term.

### RENT AND OTHER ECONOMIC TERMS

The Annual Rent with respect to the Premises shall be \$38.84 per RSF of the Premises, per annum, payable in equal monthly installments in arrears. Based on the foregoing, the total annual amount of Annual Rent shall be \$2,042,529.90, the monthly amount of Annual Rent shall be \$170,210.83 and the monthly per unit cost shall be \$3,404.22.

The Annual Rent shall be full service subject to certain Tenant costs described below, which costs shall include utilities, cleaning and janitorial, trash removal, and security, and which Tenant costs shall be payable by Tenant directly to the service provider. Commencing one year following the Rent Commencement Date, and continuing on each anniversary thereafter, Annual Rent shall be increased by two and one-half percent (2.5%) of the previous year's Annual Rent, as escalated.

### ADDITIONAL RENT

"Additional Rent" means any sum other than Annual Rent, or the components thereof; payable by the District to Landlord under the Lease. "Real Estate Taxes" means the Premises' total real estate taxes (and BID Taxes if any) for the Lease Year, which shall be paid by Tenant to Landlord as Additional Rent, based upon actual paid receipts from the Landlord, as more specifically set forth in the Lease

Notwithstanding the above, Tenant shall not be responsible for the following services or costs:

- Replacement of the roof or structure, unless said replacement is due to Tenant's work, equipment or roof penetrations or if said replacement is due to Tenant's or Tenant's clients, residents, guests, contractors, invitees or staff's negligence.
- Replacement of the HVAC system(s) servicing the Property.
- Replacement of the exterior walls or structure unless said replacement is due to Tenant's negligence.
- Replacement of the base building electrical, mechanical and plumbing systems, unless said replacement is due to Tenant's or Tenant's clients, residents, guests, contractors, invitees or staff's negligence or willful misconduct.

### PARKING

Landlord shall provide the District with the use of approximately twenty four (24) on-site parking spaces for its residents and employees. Parking costs will be included in the Annual Rent.

### BUILDING MANAGEMENT

Subject to the Turnover (defined below) provisions and the Maintenance and Repair section below, Landlord shall maintain the Premises in good order, condition and repair and in compliance with all laws (with the exception that Tenant shall be responsible for the compliance of the use of the Premises with the Zoning/Certificate Approvals). Subject to the Turnover provisions and the Maintenance and Repair section below, in no event shall Tenant be responsible for any construction, maintenance or repair of the Premises, except as caused by the negligence or willful misconduct of Tenant, its employees, or agents or by Occupants, as determined by the judgment of a court of competent jurisdiction and subject to the appropriation of certified funds for such purpose (in which event please see the Maintenance and Repair section below). Subject to the Turnover provisions and the Maintenance and Repair section below, Landlord shall be responsible for maintaining the units in rentable condition. Tenant shall provide its own janitorial and cleaning services to the Premises (including trash removal from the Premises).

LL

Janitorial  
trash  
cleaning

“Turnover” means when a Unit is vacated by all Occupants for reoccupancy. Subject to the Maintenance and Repair section below, Landlord shall be responsible, as part of the Annual Rent, for general repair (not to include cleaning) of a Unit upon Turnover (“Turnover Services”). Landlord shall provide Turnover Services for up to four (4) Turnovers per Unit per Lease Year. For example, if there are 50 Units in the Premises, Landlord would provide Turnover Services for no more than 200 Turnovers per Lease Year.

#### **PROPERTY MANAGEMENT SERVICES**

Landlord shall provide property management services, to include call number for after-hours.

Landlord shall not be responsible for responding to requests made by any person or entity other than Tenant or an agent authorized by Tenant in writing to act on Tenant’s behalf under the Lease.

#### **BUILDING HOURS, OVERTIME HVAC AND ACCESS**

The Building’s standard operating hours for heating, ventilation and air conditioning (“HVAC”) shall be 24 hours per day, 7 days per week.

#### **LANDLORD’S WORK**

Landlord shall furnish all labor and materials to design, construct, furnish and complete all of the Tenant Improvements in the Premises, in accordance with a work agreement to be attached to the Lease (the “Work Agreement”). “Landlord’s Work” shall mean the *turnkey* build-out of the Premises, including, but not limited to the construction of:

- 50 Units
- 2<sup>nd</sup> Floor Addition
- Clinic (Five Exam Rooms)
- Six Offices
- Open workstations for 10 people
- Case Management Offices (2)
- Quiet Lounge
- Homework Lounge
- Computer Lab
- Quiet Lounge/Library
- Dining/Vending Facility
- Phone Rooms
- TV/Community Rooms
- Conference Room
- Multi-Purpose Room
- Monitor Station
- Security Stations
- Courtyard (Interior)
- Playground ( Exterior)
- Tot Lot (Exterior)
- On-site Landry Facility
- Exterior Shed

The Work Agreement will contain mutually agreed upon project milestones for the Landlord's Work and delivery of the Premises.

All final design plans and construction drawings prepared by the Landlord's architect will be reviewed and approved by the Tenant prior to the Landlord commencing any work on the premises.

The Work Agreement and Landlord's Work thereunder shall be subject to the requirements of D.C. Code Section 2-218.46 regarding the use of Small Business Enterprises and Certified Business Enterprises (as such are defined under D.C. Code Section 2-218.02). Landlord shall provide such evidence of its compliance with the foregoing requirement as the District may reasonably require. The Work Agreement shall set forth the forgoing requirements.

#### **DELIVERY**

Is estimated to be 8 months from the date Landlord obtains the Zoning Approval, but delivery of the Premises shall be conditioned upon the Substantial Completion of all Tenant Improvements which shall be defined in the Lease and will include final approvals by the Tenant, (including but not limited to delivery of tenant approved furniture and completion of tenant approved interior design finishes) the receipt of all required permits, and a Certificate of Occupancy of the Premises.

#### **OUTSIDE DELIVERY DATE**

In the event the Landlord's work is not completed by 14 months from the date Landlord obtains the Zoning Approval, the Landlord will grant to Tenant an abatement (on a per diem basis) of the Annual Rent payable for each day of Landlord's failure to deliver possession of the Premises to the Tenant by the Outside Delivery Date, provided such failure is not the result of a Tenant Delay or Force Majeure Event.

#### **CONDITION OF PREMISES**

The Premises, including all HVAC, plumbing, electrical and other mechanical systems, shall be in good working order and condition, with all of the Tenant Improvements substantially completed and in compliance with all applicable federal and District of Columbia codes, laws and regulations, on or before the Delivery Date.

#### **SECURITY**

The District will provide onsite security personnel as required and will provide Landlord with security requirements as part of the Landlord's Work. Landlord will comply with all security requirements and requests of the District with respect to entries into the Building by Landlord's personnel, agents or contractors.

#### **STANDARD LEASE TERMS OF DISTRICT**

Set forth below are the District's standard lease terms, which are not subject to negotiation.

#### **LEASE FORM**

The Lease shall be on the District's standard form lease.

### **MAINTENANCE AND REPAIR**

Subject to the Turnover provisions and the following provisions of this Maintenance and Repair section, Landlord, at its sole cost and expense (meaning that such costs and expenses are already included in Annual Rent and shall not be billed as Additional Rent), shall promptly make all repairs, perform all maintenance, and make all replacements in and to the Premises and the Tenant Improvements constituting fixtures, that are necessary or desirable to keep the same: (a) in good condition and repair; (b) in a clean, safe and tenantable condition, and (c) otherwise in accordance with all laws and the requirements of the Lease (provided that the District shall be responsible for the compliance of the use of the Premises with the Zoning/Certificate Approvals). Subject to the following provisions of this Maintenance and Repair section, Tenant shall be responsible for any needed repair or replacement within the Premises caused by the negligence or willful misconduct of Tenant, its employees, or agents or by Occupants (as determined by the judgment of a court of competent jurisdiction in the event Tenant disputes that Tenant, its employees, its agents or Occupants were negligent or engaged in willful misconduct; referred to below as "Occupant Negligence"), subject to the appropriation of certified funds for such purpose.

Notwithstanding any provision in this LOI to the contrary, Landlord and Tenant agree to the following provisions regarding repair obligations for the Premises and the payment obligations therefor:

1. Turnover: As set forth above, Turnovers (i.e., general repair with no cleaning) are limited to 4 per Unit per Lease Year, resulting in no more than 200 Turnovers per Lease Year. Landlord's total costs for Turnovers shall not exceed \$60,000 in any Lease Year, which costs shall be applied towards any needed Turnover repair costs regardless of the cause of the damage. If a repair is needed in connection with a Turnover and the damage was caused by Occupant Negligence, Landlord shall be responsible for the cost of the repair (subject to the \$60,000 cap), and such Landlord costs shall not be applied towards the \$1,000/\$3,000 Caps (defined below). In other words, the District shall not be responsible in any given Lease Year for damage caused by Occupant Negligence that requires repair upon Turnover unless and until Landlord's total Turnover costs exceed \$60,000 in that Lease Year.
2. Non-Turnover Unit Work (i.e., repairs required to a Unit while an Occupant resides in the Unit): Landlord shall be responsible for repairs required to a Unit while an Occupant resides in the Unit, except for damage caused by Occupant Negligence, which will be the responsibility of the District; provided, that for damage caused by Occupant Negligence, if the cost of the repair is (a) equal to or less than \$1,000, Landlord shall make the repair at its sole cost and expense, and (b) over \$1,000, then Landlord shall pay \$1,000 of such cost and the District shall pay the excess over \$1,000; and provided further that Landlord's repair obligations for damage caused by Occupant Negligence to a Unit while the Occupant resides in the Unit (i.e., non-Turnover) shall not exceed \$3,000 in any calendar month (the Landlord caps are referred herein as the "\$1,000/\$3,000 Caps").
3. All areas of the Premises other than Units (referred to as "Common Areas" for purposes of this LOI): Landlord shall be responsible for repairs required to Common Areas, except for damage caused by Occupant Negligence, which will be the responsibility of the District; provided, that for damage to Common Areas caused by Occupant Negligence, if the cost of the repair is (a) equal to or less than \$1,000, Landlord shall make the repair at its sole cost and expense, and (b) over \$1,000, then Landlord shall pay \$1,000 of such cost and the District shall pay the excess

over \$1,000; and provided further that Landlord's repair obligations to the Common Areas for damage caused by Occupant Negligence shall be subject to the \$1,000/\$3,000 Caps.

The District shall provide written notice to Landlord of any known defect in or damage to the Premises (each, a "**Repair Item**"). Landlord shall inspect such condition and provide the District with an invoice for the reasonable cost of the Repair Item. The District's approval of the invoice shall be required if the District is to pay for the cost of the Repair Item in whole or in part pursuant to the provisions above in this Maintenance and Repair section. If such invoice is approved by the District, Landlord shall promptly effect the repair or replacement, and the District shall pay the applicable cost within 30 days as Additional Rent.

#### **SIGNAGE**

Landlord at its sole cost and expense, shall provide and install exterior signage as requested by the District as part of the Landlord's Work.

#### **INTERRUPTION OF SERVICES**

Upon any event or condition not caused by the negligence of willful misconduct of the District or its employees or agents and which results by reason of matters within Landlord's control that causes the Premises or a portion thereof to be unfit for its intended use or occupancy, and if as a result thereof the District shall be unable to and shall cease to use the Premises, then and in such event the District shall be entitled to an abatement of Annual Rent and Additional Rent on a per diem basis in the proportion which the affected area bears to the total Premises. Such abatement shall begin on the fourth (4<sup>th</sup>) business day of such interruption, and if such interruption continues for a total of fifteen (15) business days, Landlord shall deliver to the District a reasonably detailed plan to end the interruption. If Landlord fails to deliver the plan, then District shall have the right to immediately terminate the Lease. If such event or condition described above shall continue for a period of ninety (90) consecutive days, then and in such event the District shall have the right to immediately terminate the Lease prior to the cessation of such event or condition; subject to the right of Landlord's lender to cure the same within the 30-day period following the date of Tenant's notice exercising the District's termination right to Landlord.

#### **INSURANCE**

Landlord shall carry and maintain all-risk property insurance (with 100% replacement cost coverage with an agreed amount endorsement) covering the Building (including the Tenant Improvements constituting fixtures) and Landlord's property therein in an amount required by its insurance company to avoid the application of any coinsurance provision. Landlord shall also carry and maintain commercial general liability insurance with a minimum limit of liability in the amount of \$3,000,000 for personal injury or death of persons occurring in or about the Building (including the Premises). Landlord shall cause the "District of Columbia, as its interests may appear" to be added as an additional insured or additional loss payee (as applicable) on all insurance policies required to be carried by Landlord under the Lease. Landlord acknowledges that District does not maintain any insurance policy insuring against liability or loss, damage or injury to property applicable to the Lease and, therefore, waiver of subrogation does not apply to the District.

#### **LIABILITY**

Landlord shall be liable to the District, and shall indemnify, defend and hold the District harmless from, any damage, injury, loss or claim based on or arising out of the Lease or any agreement executed in

connection with the Lease if the same is due to the negligence or willful misconduct of Landlord or its agents or employees. Based upon the Anti-Deficiency Acts (defined below), the Lease shall not include any provision requiring the District to indemnify Landlord, reimburse Landlord or make any payment to Landlord other than Annual Rent and Additional Rent unless such obligation is subject to the Anti-Deficiency Acts).

### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT**

The Lease shall, by its terms, be subordinate to any existing mortgage or ground lease affecting the Land or the Building (a "**Mortgage**"), provided that Landlord causes the mortgagee or ground lessor (the "**Mortgagee**") to enter into a non-disturbance and attornment agreement, on the District's form, with the District (a "**Non-Disturbance Agreement**") within 60 days of the execution of the Lease. If the Non-Disturbance Agreement is not timely delivered to the District, the District shall have the right to terminate the Lease, effective immediately. The Lease shall, by its terms, be subordinate to any future Mortgage, provided that Landlord causes the Mortgagee to deliver a Non-Disturbance Agreement to the District. Upon Landlord's request, the District shall enter into a subordination, non-disturbance and attornment agreement, on the District's form, with a Mortgagee.

### **ASSIGNMENT AND SUBLETTING**

The District shall have the right, subject to Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, to assign the Lease or sublease all or any portion of the Premises. Any rent and other consideration accruing to the District as the result of any such assignment or sublease shall be equally divided between the District and Landlord. In no event shall any such assignment or subleasing release the District of its obligations under the Lease.

As stated above, subject to the provisions of the "Use" section above, the District shall have the right to substitute another District agency as occupant of the Premises without such substitution constituting a sublease of the Premises or an assignment of the Lease, and shall not require the consent of Landlord.

### **BROKERAGE**

Tenant has not been represented by any agent or broker with respect to this transaction. In the event Landlord is represented in this transaction by an agent or broker, Landlord shall pay such agent or broker its fees or commission pursuant to the terms of a separate written agreement between Landlord and its agent or broker. Landlord shall indemnify and hold Tenant harmless from and against all liabilities, obligations and damages arising, directly or indirectly, out of or in connection with a claim from a broker, finder or agent with respect to the Lease or the negotiation thereof, including costs and attorneys' fees incurred in the defense of any claim made by a broker alleging to have performed services on behalf of Landlord.

### **ANTI-DEFICIENCY**

The following limitations exist as to each and every purported obligation of the District set forth in the Lease, whether or not expressly conditioned:

The obligations of the District to fulfill any financial obligation pursuant to the Lease or any subsequent agreement entered into pursuant to the Lease or referenced therein (to which the District is a party) are and shall remain subject to the provisions of (a) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341,

1342, 1349-1351 and 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (b) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2006 Supp.) ((a) and (b) collectively, the “**Anti-Deficiency Acts**”); and (c) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2006 Supp.), as each may be amended from time to time and each to the extent applicable to the Lease. Pursuant to the Anti-Deficiency Acts, nothing in the Lease shall create an obligation of the District in anticipation of an appropriation by the United States Congress (“**Congress**”) for such purpose, and the District’s legal liability for the payment of any financial obligation, including but not limited to any Annual Rental or Additional Rent, under the Lease shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and the District of Columbia (references in this Section to “District of Columbia” shall mean the District of Columbia as a sovereign entity, and not as tenant). During the term of the Lease, the District of Columbia agency authorized and delegated by the Mayor of the District of Columbia to administer the Lease shall, for each corresponding District of Columbia fiscal period, include in the then-current services funding level package a request sufficient to fund the District’s known potential financial obligations under the Lease for such fiscal period.

If no appropriation is made by the District of Columbia or Congress to pay any financial obligation, including but not limited to any Annual Rental or Additional Rent, for any period after the District of Columbia fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District shall not be liable to make any payment under the Lease upon the expiration of any then-existing appropriation. In such case, the District shall promptly notify Landlord and the Lease shall immediately terminate upon the expiration of any then-existing appropriation as if such expiration were the expiration date of the Lease, and District shall immediately vacate the Premises.

Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District or the District of Columbia shall have any personal liability in connection with the breach of these provisions or in the event of a default by the District under the Lease.

The Lease shall not constitute an indebtedness of the District of Columbia nor shall it constitute an obligation for which the District of Columbia is obligated to levy or pledge any form of taxation or for which the District of Columbia has levied or pledged any form of taxation. No agent of the District is authorized to obligate or expend any amount under the Lease unless such amount has been appropriated by act of Congress and is lawfully available.

#### **AUTHORITY**

Execution of a lease or any other agreement between Landlord and the District may be subject to authorization by the Council of the District of Columbia pursuant to § 451 of the District of Columbia Home Rule Act (D.C. Official Code § 1-204.51 (2001)), as may be amended from time to time.

#### **COUNTERPARTS**

This LOI may be executed in multiple counterparts and delivered by e-mail .pdf transmission, each of which shall be deemed an original and all of which together shall constitute one and the same document.

#### **NON-BINDING PROVISIONS**

Notwithstanding any provision of this LOI to the contrary, this LOI constitutes a general, non-binding letter of intent and is not intended to, and does not, create a legal, binding commitment or obligation on the part of Landlord or the District or any of their affiliates to pursue the transaction contemplated by this LOI or any other transaction. Each of Landlord and the District understand and agree that neither of them is or shall be legally bound to the other by reason of this LOI, nor shall any rights, liabilities or obligations (including the obligation to negotiate in good faith) arise as a result of this LOI or any other written or oral communications between Landlord and the District, whether directly or through a broker. It is further understood that the only agreement binding upon Landlord and the District would be the Lease, subject to prior District of Columbia Council approval, if applicable.

**[SIGNATURE PAGES AND EXHIBIT FOLLOWS]**

If the terms and conditions set forth in this LOI are acceptable to you, please sign and date below and return one (1) original to my office.

Sincerely,

DISTRICT OF COLUMBIA,  
a municipal corporation,  
acting by and through its Department of General Services

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

Name: Jonathan Kayne

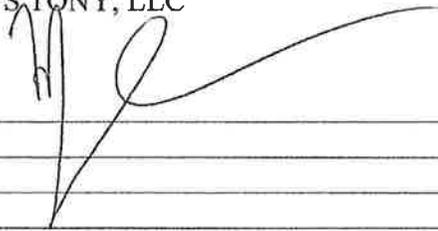
Title: Chief Operating Officer

**[LANDLORD SIGNATURE PAGE AND EXHIBITS FOLLOW]**

**AGREED AND ACCEPTED:**

JEMAL'S TONY, LLC

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

A handwritten signature in black ink is written over the signature line and extends upwards into the 'Name' line. The signature is stylized and appears to be 'Jemal's Tony'.

**[EXHIBIT FOLLOWS]**

EXHIBIT A TO LETTER OF INTENT  
SPACE PLAN

[To be provided by Landlord]

EXHIBIT A TO LETTER OF INTENT  
SPACE PLAN

[To be provided by Landlord]