

## OFFICE LEASE

THIS OFFICE LEASE (the "**Lease**") is made and entered into as of March 29<sup>th</sup>, 2019, by and between Landlord and Tenant. "**Date of this Lease**" shall mean the date on which the last one of the Landlord and Tenant has signed this Lease.

## WITNESSETH

Subject to and on the terms and conditions of this Lease, Landlord leases to Tenant and Tenant hires from Landlord the Premises.

1. **BASIC LEASE INFORMATION AND DEFINED TERMS.** The key business terms of this Lease and the defined terms used in this Lease are as follows:

1.1 **Landlord.** Menlo Group, a Delaware limited liability company authorized to transact business in Arizona.

1.2 **Tenant.** Shorebucks LLC

1.3 **Building.** The building containing the Premises located at 1564 E Broadway Rd, Tempe, Arizona 85282. The Building is located within the Project.

1.4 **Project.** The parcel of land and the buildings and improvements located on such land known as Shorebucks Office 6 located at 1564 E Broadway Rd, Tempe, Arizona 85282. The Project is legally described in **EXHIBIT "A"** to this Lease.

1.5 **Premises.** Suite No. 600 on the 6<sup>th</sup> floor of the Building. The Premises are depicted in the sketch attached as **EXHIBIT "B"**. Landlord reserves the right to install, maintain, use, repair, and replace pipes, ducts, conduits, risers, chases, wires, and structural elements leading through the Premises in locations that will not materially interfere with Tenant's use of the Premises.

1.6 **Rentable Area of the Premises.** 16,159 square feet. This square footage figure includes an add-on factor for Common Areas in the Building and has been agreed upon by the parties as final and correct and is not subject to challenge or dispute by either party.

1.7 **Permitted Use of the Premises.** General, administrative, and executive office purposes only including shared office spaces, conference rooms, internal lounges, pantry facilities, break out rooms, recreational areas, reception areas, and other common space, including a café (collectively limited for use of Tenant's licensees or "members" and their guests) (see the Use article).

1.8 **Commencement Date.** The earlier to occur of (a) the date when Tenant takes possession of any part of the Premises for the conduct of its business, or (b) the date of substantial completion of the Tenant Improvements. "**Substantial Completion**" or "**substantially complete**" shall mean the date that a Certificate of Occupancy or its equivalent, including a Temporary or Conditional Certificate of Occupancy, a Certificate of Completion or Certificate of Final Inspection, is issued by the appropriate local government entity concerning the Tenant Improvements, or, if no such Certificate will be issued for the Tenant Improvements, the date on which the Tenant Improvements are substantially completed so that Tenant may use the Premises for their intended purpose, notwithstanding that punch list items or insubstantial details concerning construction, decoration, or mechanical adjustment remain to be performed.

1.9 **Lease Term.** A term commencing on the Commencement Date and continuing for 96 full calendar months (plus any partial calendar month in which the Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Commencement Date falls on a day other than the first day of a month, then for purposes of calculating the length of the Lease Term, the first month of the Lease Term shall be the month immediately following the month in which the Commencement Date occurs. Tenant shall pay prorated Rent calculated on a per diem basis for the partial month in which the Commencement Date occurs at the rate in effect for the first month of the Lease Term for which Rent has not been abated or reduced (i.e., \$26.99 per square foot).

1.10 **Base Rent.** The following amounts:

Period	Rate P/S/F Per Annum	Monthly Base Rent	Period Base Rent
Months 1 – 12	\$26.99	\$36,344.28	\$436,131.41
Months 13 – 24	\$27.80	\$22,594.21	\$271,130.47
Months 25 – 36	\$28.63	\$23,272.03	\$279,264.39
Months 37 – 48	\$29.49	\$23,970.19	\$287,642.32
Months 49 – 60	\$30.38	\$24,689.30	\$296,271.59
Months 61 – 72	\$31.29	\$25,429.98	\$305,159.74
Months 73 – 84	\$32.23	\$26,192.88	\$314,314.53
Months 85 – 96	\$33.19	\$26,978.66	\$323,743.97

**\*Gross Rent Credit.** The “**Rent Credit Period**” shall be the first nine full calendar months of the Lease Term. Provided that Tenant is not in default of this Lease beyond any applicable grace period at any time during the Rent Credit Period, Tenant shall have a Rent credit in the amount of the Base Rent and Percentage Rent, which credit shall be applied to the installments of Base Rent and Percentage Rent due for those months. Accordingly, if the Commencement Date occurs on a day other than the first day of the month, the prorated Rent for the first partial month of the Lease Term shall be due on the Commencement Date and the Rent Credit Period shall commence on the first day of the first full calendar month of the Lease Term and shall expire on the last day of the ninth full calendar month of the Lease Term. If a default occurs, the Rent credit shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent concession. In such case, the abated rent subject to the above credit shall be calculated based on the full initial Base Rent payable under this Lease. If this Lease is terminated as a result of a default by Tenant, then in addition to all other damages and remedies herein provided, Landlord shall be entitled to recover the entire dollar amount of such Rent credit previously granted to Tenant.

Base Rent amounts shown above do not include applicable sales tax, which shall be paid by Tenant together with payments of Base Rent as set forth in the Rent article.

1.11 **Percentage Rent.**

(a) 55% of Gross Revenue to Landlord until Landlord receives Percentage Rent in an amount equal to the Annual Market Rent Hurdle (as escalated); and

(b) 15% of Gross Revenue to Landlord in excess of the Annual Market Rent Hurdle (as escalated).

1.12 **Security Deposit.** As of the Date of this Lease, there is no Security Deposit.

1.13 **Letter of Credit.** Upon Tenant's execution of this Lease, Tenant shall deliver to Landlord a Letter of Credit in the amount of \$100,000.00 in accordance with the Letter of Credit article.

1.14 **Prepaid Rent.** \$39,978.71 (Base Rent and sales tax for the first month of the Lease Term for which rent is due and not credited), to be paid to Landlord upon execution of this Lease by Tenant.

1.15 **Tenant's Notice Address.** All notices to Tenant under this Lease should be sent to:

1.16 **Landlord's Notice Address.** Menlo Group, Suite 101, 1564 E Broadway Rd, Tempe, Arizona 85282, with a copy to the Building Management Office at the Project, Attention: On-Site Property Manager.

1.17 **Tenant Improvement Allowance.** \$1,350,000.00 (\$100.00/sf), to be paid in accordance with **EXHIBIT “E”** of this Lease.

1.18 **Landlord's Broker.** Momentum Realty LLC.

1.19 **Tenant's Broker.** CW of Arizona, LLC.

1.20 **Guarantor.** Momentum Realty LLC and any party who subsequently guarantees all or any part of Tenant's obligations under this Lease (see **EXHIBIT "C"**).

1.21 **Parking Spaces.** 25 free unreserved space, 80 reserved spaces at \$50.00 per space, per month, plus applicable sales tax (see Parking article).

1.22 **Additional Definitions:**

1.22.1 **Building Standard.** The minimum or exclusive type, brand, grade, or quality of materials, services, charges, or other terms, that Landlord designates from time to time to be used, required, or applied in or for the Building.

1.22.2 **Business Days.** All days other than Saturdays, Sundays, or Legal Holidays.

1.22.3 **Comparable Buildings.** City Office Tower, Shorebucks Park Place.

1.22.4 **Landlord Parties.** Landlord and Landlord's directors, officers, partners, members, shareholders, managers, employees, agents, affiliates, subsidiaries, mortgagee, managing agent, contractors, successors, and assigns.

1.22.5 **Legal Holidays.** New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

1.22.6 **Normal Business Hours.** Monday through Friday from 8:00 a.m. to 6:00 p.m., and Saturdays from 8:00 a.m. to 1:00 p.m., Legal Holidays excluded.

1.22.7 **Parties.** The Landlord Parties or Tenant Parties, or both, as the context so permits.

1.22.8 **Tenant Parties.** Tenant and Tenant's directors, officers, partners, members, shareholders, managers, employees, agents, contractors, guests, and invitees.

## 2. **LEASE TERM.**

2.1 **General.** This Lease shall constitute a legally binding and enforceable agreement as of the Date of this Lease. Tenant shall have and hold the Premises for the Lease Term. The Lease Term shall commence on the Commencement Date. Landlord shall determine the Commencement Date as provided in the Basic Lease Information and Defined Terms article of this Lease, and shall notify Tenant of the date so determined. Tenant shall, if Landlord so requests, thereafter execute and return within 10 days a letter confirming the Commencement Date and the expiration date of this Lease.

2.2 **Early Access.** Tenant shall have the right to enter the Premises 14 days prior to the Commencement Date for the purpose of installing telecommunications wiring, fixtures, furniture, and equipment provided that (a) such entry will not delay or hamper the completion of the Tenant Improvements, (b) Tenant and its vendors and contractors have obtained all governmentally required permits separate from any permits obtained by Landlord as to work to be performed by Landlord, if any, (c) Landlord may revoke or restrict Tenant's or its contractors' early access to the Premises if such access interferes with, hampers, or prevents completion of the Tenant Improvements at the earliest possible date, (d) Tenant's access to the Premises shall be subject to all of the terms and provisions of this Lease, except as to the payment of Rent, (e) any entry by Tenant in the Premises prior to the Commencement Date shall be at Tenant's sole risk and subject to Tenant coordination with Landlord's Project or property manager, (f) all work by Tenant's contractors is subject to the administrative supervision of Landlord and its contractor, and (g) Tenant has delivered all required certificates of insurance to Landlord. Landlord assumes no responsibility or liability for injury to persons or damage to property caused by the Tenant's exercise of the rights and privileges granted in this section, and Tenant shall indemnify, defend, and hold Landlord harmless from and against any loss, cost, damage, liability, or expense suffered or incurred by Landlord as a result thereof. Tenant shall adopt a schedule for its work in conformance with Landlord's schedule for the Tenant Improvements and shall conduct its work in such a manner as to maintain harmonious labor relations. All delays to the Tenant Improvements caused by Tenant's early access shall be deemed a Tenant Delay under this Lease.

### 3. USE.

3.1 **General.** Tenant shall continuously use and occupy the Premises only for the Permitted Use of the Premises to the extent not prohibited by the Rules and Regulations. Tenant shall not use or permit or suffer the use of the Premises for any other business or purpose. Tenant shall conform to the Rules and Regulations. "**Rules and Regulations**" shall mean the rules and regulations for the Project promulgated by Landlord from time to time. The Rules and Regulations which apply as of the Date of this Lease are attached as **EXHIBIT "D"**.

3.2 **Restricted Uses.** Tenant expressly acknowledges that Landlord has advised it of restricted, prohibited, and exclusive uses (collectively, "**Restricted Uses**") applicable to the Premises. Restricted Uses are set forth on **EXHIBIT "F"**. Tenant shall not use or permit or suffer the use of the Premises for any of the Restricted Uses. Tenant further acknowledges that the provisions in the agreements granting exclusive use rights to other tenants in the Project and the provisions of this Lease concerning the Restricted Uses are in the nature of restrictive covenants running with the land.

3.3 **Master Covenants.** "**Master Covenants**" means that certain Declaration of Master Covenants, Easements & Restrictions and Master Deed for the Building. The parties to the Master Covenants shall be Landlord or its successors and the collective ownership of the "**Condominium Parcel**", which Condominium Parcel constitutes floors 18 through 20 for the Building. The purpose of the Master Covenants shall be to provide for the operation, maintenance, cleaning, repairs, replacement and regulation of use of those features and elements of the Building which are utilized and enjoyed by the Condominium Parcel owners, the Landlord and the tenants of the "**Office Parcel**", which Office Parcel constitutes floors 1 through 17 of the Building.

### 3.4 Exclusive Use.

3.4.1 **Restriction.** If and for as long as Tenant is not in default under this Lease beyond any applicable grace period and is not holding over beyond the expiration of the Lease Term, Landlord shall not (i) lease any space in the Building to any tenant who will engage in the primary business of coworking office space (i.e., shared or private office space available for a fee to members which includes ancillary amenities and support services) as operated by Tenant ("**Exclusive Use**"); or (ii) engage in the Exclusive Use at the Project. Notwithstanding the foregoing, Landlord may construct speculative office suites. The rights granted in this section are personal to the original named Tenant in this Lease (and any Permitted Assignee) and shall be subject to the satisfaction of the following conditions: (a) no portion of the Premises is sublet to anyone (other than a Permitted Transferee) at the time Landlord would otherwise seek to lease space in violation of this restriction; and (b) this Lease has not been assigned to anyone (other than a Permitted Assignee) at the time Landlord would otherwise seek to lease space in violation of this restriction. Landlord's obligations under this section shall automatically cease and terminate and Landlord may lease space in the Building free and clear of the restrictions imposed by this section should the Premises cease to be used primarily for the Exclusive Use or if Tenant has ceased operating the Premises for more than 90 consecutive days (except due to casualty, condemnation, or as a result of Alterations by Tenant). The rights granted in this section shall not apply to leases in existence as of the Date of this Lease (or any replacement for such leases or expansion of the premises leased under them, whether by right of first refusal, right of first offer, or other expansion right or similar right previously granted by Landlord, or otherwise, or by any of the successors, assigns, sublessees, or transferees of the tenants under such existing leases), which lease(s) currently permit the premises leased under them to be used for the Exclusive Use or for any lawful use.

3.4.2 **Limitation of Remedies.** If Landlord violates this section by leasing space in the Building for a use that includes the Exclusive Use, and Landlord does not cure such violation within 90 days after receipt of Tenant's notice of the violation, Tenant shall have all remedies provided by law; provided that, Tenant expressly waives any right to terminate this Lease as a result of such violation. If another tenant of the Building violates a provision in its lease by engaging in the Exclusive Use, upon Tenant's request, Landlord will notify such tenant of its default and demand in writing that it cease and desist from such unauthorized use. This will be Landlord's sole liability for any such use by another tenant except that, at Tenant's request, Landlord will assign to Tenant all of Landlord's rights to enforce the defaulting tenant's lease so as to preclude the use in violation of the Exclusive Use.

3.4.3 **Enforceability.** Landlord's obligations under this section have been assumed as an accommodation to Tenant and as an inducement to Tenant to enter into this Lease. It is Landlord's and Tenant's belief that the use restriction granted to Tenant in this section is reasonable in territory, time, and person and otherwise meets applicable legal criteria so as to be enforceable under antitrust laws. However, Landlord makes no representations, express or implied, as to the enforceability of the foregoing use restriction, or whether such restrictions violate any applicable state or federal laws. If this use restriction is found to be in violation of any state or federal antitrust laws by final judgment of a court of competent jurisdiction, Landlord will be absolved from liability for breach of this use restriction.

3.4.4 **Waiver on Extension.** Notwithstanding any other provisions in this Lease to the contrary, if Tenant exercises an option to extend the Lease Term at any time when Landlord is concurrently in violation of this section, and, at the time of Tenant's election of its option to extend Tenant has failed to enforce its rights under this section for Landlord's breach of its obligations within 90 days from the date Tenant notifies Landlord of the violation, in either of such events, Tenant shall be deemed to have waived its rights and remedies available under this section. Further, Tenant shall have no remedy for a violation of this section if another tenant or occupant in the Building violates the Exclusive Use by manner or use of its premises and (i) Landlord provides notice of the lease violation to such other tenant or occupant in the Building; and (ii) either the other tenant or occupant ceases the violation within 90 days, or Landlord commences an action (or arbitration, if required by such lease) against such other tenant or occupant in the Building, and thereafter uses good-faith efforts to enforce its rights under such lease.

3.4.5 **No Solicitation.** During the Lease Term, Tenant shall not directly solicit by phone, in person contact, mail, e-mail, direct message, or other form of communication directed to a specific recipient any of Landlord's Customers (as defined below) for lease, use, or occupancy of space in the Premises in connection with Tenant's business. "**Solicit**" shall mean touring, or offering to tour, the Premises; offering or proposing terms to lease a suite in the Premises; entering into a letter of intent or proposal to lease a suite in the Premises; or providing a copy of Tenant's membership agreement. "**Landlord's Customers**" shall mean any person or entity who shall at that time be a tenant, subtenant, or other occupant of any part of the Building. This section shall not prohibit Tenant from advertising generally to the public, such as by newspaper, magazine, website, TV, radio, social media, and other forms of non-direct general advertisement.

4. **RENT.** Tenant shall pay Rent to Landlord in lawful United States currency, together with any sales, use, or other tax (excluding state and federal income tax) now or hereafter imposed on any Rent due under this Lease. All Base Rent shall be payable in monthly installments, in advance, beginning on the Commencement Date, and continuing on the first day of each and every calendar month thereafter during the Lease Term. Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Base Rent and Percentage Rent, shall be "**Additional Rent**". Except as otherwise provided, all Additional Rent payments are due 10 days after delivery of an invoice. The term "**Rent**" when used in this Lease includes Base Rent, Percentage Rent, and all forms of Additional Rent. All Rent shall be paid to Landlord without demand, setoff, or deduction whatsoever, except as specifically provided in this Lease, by wire transfer (via Fedwire), automated clearinghouse (ACH), or electronic funds transfer (EFT) of immediately available funds to Landlord's Address for Payments, or at such other place as Landlord designates in writing to Tenant. Tenant's obligations to pay Rent are covenants independent of the Landlord's obligations under this Lease.

## 5. **PERCENTAGE RENT.**

### 5.1 **Definitions.**

(a) The term "**Gross Revenue**" shall mean all of Tenant's revenue related to the Premises, whether received directly or indirectly through an affiliated or related entity, whether for cash, credit, by gift certificate redeemed, or other consideration (other consideration to be determined at fair market value and include reward points and barter exchanges, and vending machines, but excluding (a) any write-offs, bad debts, (b) any costs for items other than for use of the Premises which are passed on to licensees of the Premises ("**Licensees**"), such as parking, telephone, and printing fees, (c) any sums collected and paid out for sales or excise tax imposed by any governmental authority, and (d) the amount of any cash or credit refund made upon any transaction included in Gross Revenue.

(b) The term "**Lease Year**" shall mean each and every consecutive twelve (12) month period during the Lease Term, with the first such twelve (12) month period commencing on the Commencement Date; provided, however, if the Commencement Date occurs other than on the first day of a calendar month, the first Lease Year shall be that partial month plus the first full twelve (12) months thereafter.

(c) The term "**Annual Market Rent Threshold**" shall mean (i) for the initial Lease Year ("**Year 1**") \$2,239,748.00 per year (i.e., the product of the Rentable Area of the Premises multiplied by \$82.00) (the "**Year 1 Market Rent Hurdle**"); (ii) for the Lease Year thereafter, one hundred three percent (103%) of the Year 1 Market Rent Hurdle, and (iii) for each Lease Year thereafter until the termination or expiration of this Lease, the Annual Market Rent Threshold shall be one hundred three percent (103%) of the Annual Market Rent Threshold for the immediately prior Lease Year.

**5.2 General.** Tenant shall pay to Landlord Percentage Rent as provided in this section. The Percentage Rent for each Lease Year shall be paid in monthly installments on or before the 30th day of each succeeding month during said Lease Year.

On or before the thirtieth (30<sup>th</sup>) day of each calendar month during the Term, together with the payment of Percentage Rent, Tenant shall prepare and deliver to Landlord a statement of Gross Revenue made during the preceding calendar month. In addition, within ninety (90) days after the expiration of each Lease Year and within ninety (90) days after the termination of this Lease, Tenant shall prepare and deliver to Landlord a statement in reasonable detail and by month of Gross Revenue during the preceding Lease Year. Tenant shall maintain an accurate and complete set of books and records of all Gross Revenue conducted in the Premises in accordance with Generally Accepted Accounting Principles (GAAP), and all supporting records such as tax reports and banking records necessary to determine and verify Gross Revenue. All such books and records shall be retained and preserved for at least thirty-six (36) months after the end of the Lease Year to which they relate. Landlord shall have the right, but not more than once in any twelve (12) consecutive month period (unless Tenant is in default), from time to time, to make or cause to be made an audit of all books and records, electronically or at the Premises, pertaining to the business conducted in or from the Premises upon reasonable prior written notice to Tenant. If such audit shall disclose that any statements provided to Landlord misstate Gross Revenue made during the reporting period of the statement by more than three percent (3%), or if Tenant shall have failed to provide Landlord with any required statements, then Tenant shall pay to Landlord on demand, as Additional Rent, the cost of such audit. Tenant shall promptly pay to Landlord any deficiency or Landlord shall promptly refund to Tenant any overpayment, as the case may be, which is established by such audit.

**5.3 Independent Claims.** Any claims by Landlord for Base Rent and any claims by Landlord for Percentage Rent may be regarded by Landlord, if it so elects, as two independent claims capable of being presented separately. In the event of any default on the part of Tenant under this Lease, Landlord shall have the privilege of splitting its cause of action so as to permit the institution of a separate suit for Base Rent; neither the institution of a separate suit, nor the entry of judgment in the suit, shall bar Landlord from bringing a subsequent suit for Percentage Rent, it being the purpose of this agreement expressly to provide that the forbearance on the part of Landlord in the institution of any suit or in the entry of judgment for any part of the rent reserved to Landlord in this Lease, or to sue for, or to include in any judgment, Percentage Rent then due, shall in no way serve as a defense against, nor prejudice a subsequent action for, Percentage Rent. Neither this Lease, nor the method set forth in this Lease for the computation of Percentage Rent, nor any one or more of the agreements contained in this Lease, is intended, nor shall the same ever be construed, so as to (a) create a partnership between Landlord and Tenant, (b) make Landlord and Tenant joint venturers, or (c) make Landlord in any way responsible for the obligations, liabilities, debts, or losses of Tenant. Tenant waives any right to claim in any suit for Percentage Rent that merger or res judicata exists as to any previous suit or any judgment entered in any previous suit. Notwithstanding anything to the contrary contained in this Lease, Percentage Rent shall be deemed earned by Landlord and the property of Landlord upon receipt by Tenant of Gross Revenue representing Percentage Rent, as calculated in accordance with the terms of this Lease. All accrued Percentage Rent shall be held by Tenant in trust for Landlord and promptly paid to Landlord in accordance with the schedule set forth in this section.

## **6. ASSIGNMENT OR SUBLETTING.**

**6.1 General; Definition of Transfer.** Neither Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise shall transfer this Lease except as provided in this article. For purposes of this article, a "transfer" shall mean any of the following: (a) an assignment of this Lease; (b) a collateral assignment, mortgage, or other encumbrance involving this Lease; (c) a sublease, license agreement, or other agreement permitting all or any portion of the Premises to be used by others; (d) a reduction of Tenant's assets to the point that this Lease is substantially Tenant's only asset; (e) a change or conversion in the form of entity of Tenant or any transferee or any entity controlling any of them which has the effect of limiting the liability of any of the partners, members, or other owners of the entity; (f) the agreement by a third party to assume, take over, or reimburse Tenant for any of Tenant's obligations under this Lease in order to induce Tenant to lease space from the third party; or (g) any transfer of direct or indirect control of Tenant, which shall be defined as any issuance or transfer of stock in any corporate tenant or subtenant or any interest in any non-corporation entity tenant or subtenant, by sale, exchange, merger, consolidation, operation of law, or otherwise, or creation of new stock or interests, by which an aggregate of 50% or more of Tenant's stock or equity interests shall be vested in one or more parties who are not stockholders or interest holders as of the Date of this Lease, or any transfer of the power to direct the operations of any entity (by equity ownership, contract, or otherwise), to one or more parties who are not stockholders or interest holders as of the Date of this Lease, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions. This section shall not apply to sales of stock by persons other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934 as amended, which sales are effected through any recognized securities exchange. Any modification or amendment to any sublease of any portion of the Premises shall be deemed a further sublease of this Lease. As used in this article, the term "transferee" shall include any assignee or subtenant of Tenant or any other party involved in any of the other transactions or events constituting a transfer. Consent by Landlord to a transfer shall not relieve Tenant from the obligation to obtain Landlord's written consent to any further transfer. Any transfer by Tenant in violation of this article shall be void and shall constitute a default under this Lease.

6.2 **Request for Consent.** If Tenant requests Landlord's consent to a transfer, it shall submit in writing to Landlord, not later than 30 days before any anticipated transfer, (a) the name and address of the proposed transferee, (b) a duly executed counterpart of the proposed transfer agreement, (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, as to the nature and character of its proposed use of the space, and otherwise responsive to the criteria set forth in the Reasonable Consent section of this article, and (d) banking, financial, or other credit information relating to the proposed transferee reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed transferee, including balance sheets and profit and loss statements for the transferee covering the three years before the transfer, certified by the transferee, and a list of personal, banking, business, and credit references for the transferee.

6.3 **Recapture.** Landlord shall have the following options to be exercised within 15 Business Days from submission of Tenant's request for Landlord's consent to a specific transfer: (i) If Tenant proposes to assign this Lease or sublet all or substantially all of the Premises, Landlord shall have the option to cancel and terminate this Lease as of the proposed commencement date for the transfer, and (ii) If Tenant proposes to sublet less than all or substantially all of the Premises or if a proposed sublease shall be for less than the balance of the Lease Term, Landlord shall have the option of canceling and terminating this Lease only as to the applicable portion of the Premises and the applicable portion of the Lease Term covered by the proposed sublease, effective as of the proposed commencement date of the sublease. If Landlord exercises this option, all Rent for the Premises shall be equitably apportioned as of the commencement date of the sublease and Landlord, at Tenant's expense, shall perform all work and make all alterations as may be required to physically separate the applicable portion of the Premises from the remainder of the Premises and to permit lawful occupancy of the separated portion.

6.4 **Reasonable Consent.** If Landlord does not elect either of the options provided in the Recapture section of this article, Landlord shall not unreasonably withhold or delay its consent to a proposed transfer. It shall be deemed reasonable for Landlord to withhold consent to any proposed transfer if any of the following conditions have not been established to Landlord's satisfaction:

6.4.1 The proposed transferee has sufficient financial wherewithal to discharge its obligations under this Lease as determined by Landlord's criteria for selecting Project tenants and has a tangible net worth, experience, and reputation that is not less than the tangible net worth, experience, and reputation of Tenant on the Date of this Lease or the date of the transfer, whichever is greater. "**Tangible net worth**" shall mean the excess of the value of tangible assets (i.e. assets excluding those which are intangible such as goodwill, patents and trademarks) over liabilities.

6.4.2 The use, nature, business, activities, or reputation in the business community of the proposed transferee will not cause physical harm to the Project or harm to the reputation of the Project that would result in an impairment of Landlord's ability to lease space in the Project or a diminution in the rental value of space in the Project.

6.4.3 The proposed use of the Premises by the proposed transferee will be the Permitted Use and not prohibited by the Rules and Regulations, and will not violate any restrictive covenants or exclusive use provisions applicable to Landlord, cause a violation of another lease for space in the Project, or give an occupant of the Project a right to cancel its lease.

6.4.4 The proposed transferee shall not be any person or entity who shall at that time be a tenant, subtenant, or other occupant of any part of the Project, or an affiliate of any of them, or who dealt with Landlord or Landlord's agent (directly or through a broker) as to space in the Project during the six months immediately preceding Tenant's request for Landlord's consent.

6.4.5 The proposed use of the Premises by the proposed transferee will not require alterations or additions to the Premises or the Project to comply with applicable law or governmental requirements and will not negatively affect insurance requirements or involve the introduction of materials to the Premises that are not in compliance with applicable environmental laws.

6.4.6 Any mortgagee of the Project will consent to the proposed transfer if such consent is required under the relevant loan documents.

6.4.7 The proposed use of the Premises will not materially increase the operating costs for the Project or the burden on Project services, or generate excessive foot traffic, elevator usage, Parking Area usage, or security concerns in the Project, or compromise or reduce the comfort or safety, or both, of Landlord and the other occupants of the Project.

6.4.8 The proposed transferee shall not be, and shall not be affiliated with, anyone with whom Landlord or any of its affiliates or mortgagees has been involved with in litigation or who has defaulted under any agreement with Landlord or any of its affiliates.

6.4.9 There shall be no default by Tenant, beyond any applicable grace period, under any of the terms, covenants, and conditions of this Lease at the time that Landlord's consent to a transfer is requested and on the date of the commencement of the term of the proposed transfer.

6.4.10 If the resulting tenant entity does not have equal or greater tangible net worth and creditworthiness as Tenant as of the Date of this Lease or the date of transfer, whichever is greater, Landlord, at its option, may approve the transfer subject to an increase in the Security Deposit, or receipt of new personal guarantees acceptable to Landlord, or both.

6.4.11 Any Guarantor will consent to the transfer and to execute a written agreement reaffirming the Guaranty.

6.4.12 If the transfer is an assignment, the proposed assignee will assume in writing all of the obligations of Tenant under this Lease.

Tenant acknowledges that the foregoing is not intended to be an exclusive list of the reasons for which Landlord may reasonably withhold its consent to a proposed transfer.

6.5 **Tenant's Remedies.** Tenant waives any remedy for money damages (nor shall Tenant claim any money damages by way of setoff, counterclaim, or defense) based on any claim that Landlord has unreasonably withheld, delayed, or conditioned its consent to a proposed transfer under this Lease. Tenant's sole remedy in such an event shall be to institute an action or proceeding seeking specific performance, injunctive relief, or declaratory judgment.

6.6 **Transfer Documents.** Any sublease shall provide that: (a) the subtenant shall comply with all applicable terms and conditions of this Lease to be performed by Tenant; (b) the sublease is expressly subject to all of the terms and provisions of this Lease; and (c) unless Landlord elects otherwise, the sublease will not survive a termination of this Lease (whether voluntary or involuntary) or resumption of possession of the Premises by Landlord following a default by Tenant. The sublease shall further provide that if Landlord elects that the sublease shall survive a termination of this Lease or resumption of possession of the Premises by Landlord following a default by Tenant, the subtenant will, at the election of the Landlord, attorn to the Landlord and continue to perform its obligations under its sublease as if this Lease had not been terminated and the sublease were a direct lease between the Landlord and the subtenant. Any assignment of lease shall contain an assumption by the assignee of all of the obligations of Tenant under this Lease.

6.7 **No Advertising.** Tenant shall not advertise (but may list with brokers) its space for sublease at a rental rate lower than the greater of the then Project Rental rate for the space or the rental rate then being paid by Tenant to Landlord.

6.8 **Consideration for Consent.** If Tenant effects any transfer, then Tenant shall pay to Landlord a sum equal to (a) the net Rent or other consideration paid to Tenant by any transferee that is in excess of the Rent then being paid by Tenant to Landlord under this Lease for the portion of the Premises so transferred (on a prorated, square footage basis), and (b) any other profit or gain realized by Tenant from the transfer. The net Rent or other consideration paid to Tenant as provided in subsection (a) and the profit or gain as provided in subsection (b) shall be calculated by deducting from the gross Rent or other consideration or profit or gain reasonable and customary real estate brokerage commissions actually paid by Tenant to unaffiliated third parties, tenant improvement allowances, Rent concessions, the actual cost of improvements to the Premises made by Tenant for the transferee, and other direct out-of-pocket costs actually paid by Tenant in connection with the transfer (as long as the costs are commercially reasonable and are commonly incurred by landlords in leasing similar space). Should the transaction involving an assignment of Tenant's interest under this Lease be a sale of multiple assets of Tenant, Landlord shall not be bound by any allocation of the purchase price for such assets which may be included in an agreement between Tenant and the transferee. Rather, the profit or gain on the transfer of Tenant's interest under this Lease as defined in subsection (b) above shall be the fair market value of Tenant's interest under this Lease as of the date of the transfer less the costs of the transaction as generally described above. Upon reasonable notice, Landlord shall have the right to audit Tenant's books and records to determine the amount payable to Landlord under this section. All sums payable by Tenant under this section shall be payable to Landlord immediately on receipt by Tenant.



6.9 **Permitted Transfers.** Notwithstanding anything to the contrary in this Lease, Landlord's consent will not be required as to any of the following transfers (each a "**Permitted Transfer**"): a transfer to an entity which controls, is controlled by, or is under common control of Tenant, or to any entity into or with which Tenant may be merged or consolidated or by which it is acquired, provided that (a) in the event of acquisition, the resulting entity shall own all or substantially all of the assets of Tenant, (b) the form of any agreement of assignment or any sublease shall otherwise comply with the terms and conditions of this article, (c) Landlord is provided written notice of the transfer and the identity of the transferee prior to the effective date of the transfer, (d) the resulting tenant entity shall have equal or greater tangible net worth and creditworthiness as Tenant as of the Date of this Lease, (e) a significant purpose of any such transfer is not to avoid the restrictions on transfer otherwise imposed under this article, (f) if a Guaranty of this Lease is then in effect, the Guarantor consents to the transfer and executes a written agreement reaffirming the Guaranty, (g) the transferee is not a governmental entity, (h) Tenant shall not then be in default under this Lease beyond any applicable grace period, (i) the proposed use of the Premises by the proposed transferee will be the Permitted Use and not prohibited by the Rules and Regulations, and will not violate any restrictive covenants or exclusive use provisions applicable to Landlord, cause a violation of another lease for space in the Project, or give an occupant of the Project a right to cancel its lease, and (g) at Landlord's request, a replacement Letter of Credit shall be issued with the Permitted Assignee as the applicant. Any transferee under a Permitted Transfer may be referred to as a "**Permitted Transferee**" and any transferee under a Permitted Transfer that is an assignment may be referred to as a "**Permitted Assignee**".

6.10 **Acceptance of Payments.** If this Lease is nevertheless assigned, or the Premises are sublet or occupied by anyone other than Tenant, Landlord may accept Rent from the assignee, subtenant, or occupant and apply the net amount received to the Rent reserved in this Lease, but no such assignment, subletting, occupancy, or acceptance of Rent shall be deemed a waiver of the requirement for Landlord's consent as contained in this article or constitute a novation or otherwise release Tenant from its obligations under this Lease.

6.11 **Continuing Liability.** Except as provided in the Recapture section of this article, following any transfer, Tenant and Guarantor shall remain liable to Landlord for the payment of all Rent payable under this Lease and all other obligations of the party holding the interest of Tenant under this Lease following the transfer. The joint and several liability of Tenant, Guarantor, and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not in any way be discharged, released, or impaired by any (a) agreement that modifies any of the rights or obligations of the parties under this Lease, (b) stipulation that extends the time within which an obligation under this Lease is to be performed, (c) waiver of the performance of an obligation required under this Lease, or (d) failure to enforce any of the obligations set forth in this Lease.

6.12 **Administrative Fee.** Tenant shall pay to Landlord, on demand, an administrative fee of \$5,000, plus all reasonable attorneys' fees and actual costs associated with Landlord's consideration of Tenant's transfer request and the review and preparation of all documents associated therewith.

6.13 **Landlord Transfer.** Landlord may assign or encumber its interest under this Lease. If any portion of the Premises is sold, transferred, or leased, or if Landlord's interest in any underlying lease of the Premises is transferred or sold, Landlord shall be relieved of all existing and future obligations and liabilities under this Lease, provided that the purchaser, transferee, or tenant of the Premises assumes in writing those obligations and liabilities.

6.14 **Membership Agreements.** Notwithstanding the provisions of this article, Tenant may enter into license agreements or subleases for office suites without the prior consent of Landlord provided the terms and conditions of this subsection are satisfied, and such license agreements or subleases shall not be considered "transfers" under this section. In licensing or subleasing the Premises, Tenant shall not hold itself out to be a representative of Landlord. The right of Tenant to license or sublease the Premises under this subsection shall in no manner be construed as a waiver of Landlord's rights under this section concerning an assignment of this Lease or sublease of the Premises, or any part of the Premises, for purposes other than the Permitted Use. The form of license agreement or sublease to be used by Tenant shall be subject to Landlord's prior approval and, at a minimum, shall provide that: (a) the office suite user shall comply with all applicable terms and conditions of this Lease as to use of the Premises, including all Rules and Regulations; (b) the license agreement or sublease is expressly subject and subordinate to all of the terms and provisions of this Lease; and (c) unless Landlord elects otherwise, the license agreement or sublease will not survive a termination of this Lease (whether voluntary or involuntary) or resumption of possession of the Premises by Landlord following a default by Tenant. However, the license agreement or sublease shall further provide that if Landlord elects that the license agreement or sublease shall survive a termination of this Lease or resumption of possession of the Premises by Landlord following a default by Tenant, then the transferee will, at the election of the Landlord, attorn to the Landlord and continue to perform its obligations under its license agreement or sublease as if this Lease had not been terminated and the license agreement or sublease were a direct lease between the Landlord and the transferee.

## 7. INSURANCE.

7.1 **Tenant's Insurance.** Tenant shall obtain and keep in full force and effect the following insurance coverages: (i) commercial general liability insurance, including unmodified contractual liability coverage, on an occurrence basis, on the then most current Insurance Services Office ("ISO") form or its equivalent in the minimum amounts of \$1 million per occurrence, \$2 million general aggregate, including Designated Location(s) General Aggregate Limit; (ii) commercial automobile liability insurance, on an occurrence basis on the then most current ISO form, including coverage for owned, non-owned, leased, and hired automobiles, in the minimum amount of \$1 million combined single limit for bodily injury and property damage; (iii) excess liability insurance as to the commercial general liability, commercial automobile liability, and employers' liability policies in the minimum amount of \$5 million which shall be excess over and no less broad than the underlying coverages; (iv) Causes of Loss -- Special Form property insurance (ISO CP 10 30 or equivalent) and windstorm insurance, in an amount adequate to cover 100% of the replacement costs, without co-insurance, of all of Tenant's property at the Premises; (v) workers' compensation insurance and employer's liability insurance; (vi) business income and extra expense insurance covering the risks to be insured by the property insurance described above, on an actual loss sustained basis, but in all events in an amount sufficient to prevent Tenant from being a co-insurer of any loss covered under the applicable policy or policies, including income coverage for a minimum 12 month period; and (vii) such other insurance as may be reasonably required by Landlord. Tenant's insurance shall provide primary and non-contributory coverage to the Landlord Parties when any policy issued to, or any self-insured program of, any Landlord Parties provides duplicate or similar coverage. Tenant's insurance shall include a Primary and Non-Contributory endorsement (ISO CG 20 01 04 13 or equivalent). Tenant's commercial general liability and commercial automobile liability policies may not have any self-insured retentions. The coverage limits provided in this Lease will not limit Tenant's liability to Landlord under this Lease. Notwithstanding the coverage limits listed above, if Tenant carries insurance coverage with limits higher than the limits required in this Lease, the additional insureds required under this Lease will each be an additional insured as to the full coverage limits actually carried by the Tenant.

7.2 **Insurance Requirements.** All insurance policies shall be written with insurance companies acceptable to Landlord having coverage limits required by this article, and having a policyholder rating of at least "A-" and a financial size category of at least "Class "XII" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies. The commercial general liability, commercial automobile liability, and excess liability insurance policies shall name the Landlord Parties as additional insureds (on ISO CG 20 11 04 13 or equivalent for the commercial general liability policy) and require prior notice of cancellation to be delivered in writing to Landlord within the time period applicable to the first named insured. The commercial general liability, commercial automobile liability, and excess liability policies shall include an unmodified Separation of Insureds provision. The following exclusions/limitations or their equivalent(s) are prohibited: Contractual Liability Limitation CG 21 39; Amendment of Insured Contract Definition CG 24 26; any endorsement modifying the Employer's Liability exclusion or deleting the exception to it; any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured; and any Punitive, Exemplary, or Multiplied Damages exclusion. Tenant shall furnish evidence that it maintains all insurance coverages required under this Lease (ACORD 25 for liability insurance and the ACORD 28 for Commercial Property Insurance, with copies of declaration pages, schedule of forms, and endorsement pages for each required policy) at least ten days before entering the Premises for any reason. The ACORD 25 Form Certificate of Insurance for the liability insurance policies shall specify the policy form number and edition date and shall have attached to it a copy of the additional insureds endorsement listing the Landlord Parties. Coverage amounts for the liability insurance may be increased periodically in accordance with industry standards for similar properties.

7.3 **Waiver of Subrogation.** Except as otherwise provided in the penultimate sentence of this Section, Landlord and Tenant each expressly, knowingly, and voluntarily waive and release their respective rights of recovery that they may have against the other or the other's Parties and against every other tenant in the Project who shall have executed a waiver similar to this one for loss or damage to its property, and property of third parties in the care, custody, and control of Tenant, and loss of business (specifically including loss of Rent by Landlord and business interruption by Tenant) directly or by way of subrogation or otherwise as a result of the acts or omissions of the other party or the other party's Parties (specifically including the negligence of either party or its Parties and the intentional misconduct of the Parties of either party), to the extent any such claims are covered under a so-called "special perils" or "Causes of Loss -- Special Form" property insurance policy including windstorm coverage or under a so-called "contents" insurance policy (whether or not actually carried). Tenant assumes all risk of damage to and loss of Tenant's property wherever located, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of any other tenant, or from any other cause. Landlord and Tenant shall each, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurer concerning the commercial general liability, commercial automobile liability, workers' compensation, employer's liability, property, rental income, and business interruption insurance maintained by it for the Project and the property located in the Premises. The release by Landlord in favor of Tenant shall not apply, and shall be void and of no force or effect, if Landlord's insurance coverage is denied, invalidated, or nullified.

by reason of any act or failure to act of any of the Tenant Parties. This Section shall control over any other provisions of this Lease in conflict with it and shall survive the expiration or sooner termination of this Lease.

## 8. DEFAULT.

8.1 **Events of Default.** Each of the following shall be an event of default under this Lease: (a) Tenant fails to make any payment of Rent when due; (b) Tenant or any Guarantor for Tenant's obligations under this Lease becomes bankrupt or insolvent or makes an assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings are taken by or against Tenant or any Guarantor, or any Guarantor dies; (c) Tenant abandons the Premises; (d) Tenant transfers this Lease in violation of the Assignment or Subletting article; (e) Tenant fails to deliver an estoppel certificate or subordination agreement or maintain required insurance coverages within the time periods required by this Lease; (f) Tenant does not comply with its obligations to vacate the Premises under the End of Term article of this Lease; or (g) Tenant fails to perform any other obligation under this Lease.

8.2 **Remedies.** If Tenant defaults, in addition to all remedies provided by law, including the right to terminate this Lease, Landlord may declare the entire balance of all Rent due under this Lease for the remainder of the Lease Term to be forthwith due and payable and may collect the then present value of the Rents (calculated using a discount rate equal to the discount rate of the branch of the Federal Reserve Bank closest to the Premises in effect as of the date of the default). Tenant waives all rights of redemption or to prevent a forfeiture that it has under applicable law after this Lease has been terminated or Tenant has surrendered or abandoned the Premises or has been evicted or otherwise dispossessed from the Premises.

8.3 **Landlord's Right to Perform.** If Tenant defaults, Landlord may, but shall have no obligation to, perform the obligations of Tenant, and if Landlord, in doing so, makes any expenditures or incurs any obligation for the payment of money, including reasonable attorneys' fees, the sums so paid or obligations incurred shall be paid by Tenant to Landlord upon receipt of a bill or statement to Tenant therefor.

8.4 **Late Charges, Interest, and Bad Checks.** If any payment due Landlord shall not be paid within five days of the date when due, Tenant shall pay, in addition to the payment then due, an administrative charge equal to the greater of (a) 5% of the past due payment; or (b) \$500. All payments due Landlord shall bear interest at the lesser of: (a) 18% per annum, or (b) the highest rate of interest permitted to be charged by applicable law, accruing from the date the obligation arose through the date payment is actually received by Landlord, including after the date of any judgment against Tenant. If any check given to Landlord for any payment is dishonored for any reason whatsoever not attributable to Landlord, in addition to all other remedies available to Landlord, upon demand, Tenant will reimburse Landlord for all insufficient funds, bank, or returned check fees, plus an administrative fee not to exceed the maximum amount prescribed by law. In addition, Landlord may require all future payments from Tenant to be made by ACH payments, or by Federal Reserve wire transfer to Landlord's account.

8.5 **Limitations.** None of the Landlord Parties shall ever have any personal liability to Tenant. No person holding Landlord's interest shall have any liability after such person ceases to hold such interest, except for any liability accruing while such person held such interest. **TENANT SHALL LOOK SOLELY TO LANDLORD'S ESTATE AND INTEREST IN THE BUILDING FOR THE SATISFACTION OF ANY CLAIMS BY TENANT OF ANY KIND WHATSOEVER ARISING FROM THE RELATIONSHIP BETWEEN THE PARTIES OR ANY RIGHTS AND OBLIGATIONS THEY MAY HAVE RELATING TO THE PROJECT, THIS LEASE, OR ANYTHING RELATED TO EITHER, AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION, OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT'S RIGHTS OR REMEDIES, OR ANY OTHER LIABILITY OF LANDLORD TO TENANT OF WHATEVER KIND OR NATURE.** No act or omission of Landlord or its agents shall constitute an actual or constructive eviction of Tenant or a default by Landlord as to any of its obligations under this Lease unless Landlord shall have first received written notice from Tenant of the claimed default and shall have failed to cure it after having been afforded reasonable time in which to do so, which in no event shall be less than 30 days. Further, Tenant waives any claims against Landlord that Tenant does not make in writing within 30 days of the onset of the cause of such claim.

8.6 **Presumption of Abandonment.** It shall be conclusively presumed that Tenant has abandoned the Premises if Tenant fails to keep the Premises open for business during regular business hours for ten consecutive days while in monetary default. Any grace periods set forth in this article shall not apply to the application of this presumption.

8.7 **Multiple Defaults.** Tenant acknowledges that any rights or options to extend the Lease Term, expand or contract the size of the Premises, terminate this Lease, have Building or monument signage, or other similar special rights or options, that have been granted to Tenant under this Lease are conditioned on the prompt and diligent performance of the terms of this Lease by

Tenant. Accordingly, should Tenant, on three or more occasions during any 12-month period or on four or more occasions during any 36-month period or on six or more occasions during the Lease Term (each of these cases being a “**Multiple Defaults Trigger**”), (a) fail to pay any installment of rent when due; or (b) otherwise default under this Lease in a non-monetary manner; in addition to all other remedies available to Landlord, then all such rights and options shall automatically, and without further action on the part of any party, expire and be deemed canceled and of no further force and effect. The total number of events under both (a) and (b) above cumulatively will be added together to determine whether Tenant has reached one of the three thresholds resulting in a loss of rights as provided in this section.

9. **ALTERATIONS.** “**Alterations**” shall mean any alteration, addition, or improvement in or on or to the Premises of any kind or nature, including any improvements made before Tenant's occupancy of the Premises. Tenant shall make no Alterations without the prior written consent of Landlord, which consent may be withheld or conditioned in Landlord's sole discretion. However, Landlord will not unreasonably withhold or delay consent to non-structural interior Alterations, provided that they do not involve demolition of improvements, affect utility services or Building systems, are not visible from outside the Premises, do not affect Landlord's insurance coverages for the Project, do not require a building permit, and do not require other alterations, additions, or improvements to areas outside the Premises. Tenant's Alterations shall comply with applicable governmental requirements and conform to Landlord's finish quality standards. Tenant shall reimburse Landlord, on demand, for the actual out-of-pocket costs for the services of any third party employed by Landlord to review or prepare any Alteration-related plan or other document for which Landlord's consent or approval is required. Landlord, or its agent or contractor, may supervise the performance of any Alterations, and, if so, Tenant shall pay to Landlord an amount equal to 5% of the cost of the work, as a supervisory fee. Except for work to be performed by Landlord, before any Alterations are undertaken by or on behalf of Tenant, Tenant shall obtain Landlord's approval of all contractors performing such Alterations, and shall deliver to Landlord any governmental permit required for the Alterations and shall require any contractor performing work on the Premises to obtain and maintain, at no expense to Landlord, workers' compensation and employer's liability insurance, builder's risk insurance in the amount of the replacement cost of the applicable Alterations (or such other amount reasonably required by Landlord), commercial general liability insurance, written on an occurrence basis with minimum limits of \$2 million per occurrence limit, \$2 million general aggregate limit, \$2 million personal and advertising limit, and \$2 million products/completed operations limit (including contractual liability, broad form property damage and contractor's protective liability coverage); commercial automobile liability insurance, on an occurrence basis on the then most current ISO form, including coverage for owned, non-owned, leased, and hired automobiles, in the minimum amount of \$1 million combined single limit for bodily injury and property damage; and excess liability insurance in the minimum amount of \$5 million. Contractor's insurance shall contain an endorsement insuring the Landlord Parties as additional insureds and shall be primary and non-contributory over any other coverage available to the Landlord. The contractor's insurance shall also comply with the requirement of the Insurance article. All Alterations by Tenant shall also comply with Landlord's rules and requirements for contractors performing work in the Project.

10. **LIENS.**

10.1 **No Lien Notice.** The interest of Landlord in the Premises shall not be subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. This exculpation is made with express reference to Section 713.10, Florida Statutes. Tenant represents to Landlord that any improvements that might be made by Tenant to the Premises are not required to be made under the terms of this Lease and that any improvements which may be made by Tenant do not constitute the “pith of the lease” under applicable Florida case law. Tenant shall notify every contractor making improvements to the Premises that the interest of the Landlord in the Premises shall not be subject to liens.

10.2 **Discharge of Liens.** If any lien is filed against the Premises for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond under Section 713.24, Florida Statutes, within 10 days after notice to Tenant. Further, Tenant shall indemnify, defend, and save Landlord harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in the Premises by or on behalf of Tenant.

11. **ACCESS TO PREMISES.** Landlord and persons authorized by Landlord, at all reasonable times, may enter the Premises to (a) inspect the Premises; or (b) to make such repairs, replacements, and alterations as Landlord deems necessary or desirable, with reasonable prior notice (which may be by telephone or e-mail), except in cases of emergency and for provision of any services, when no notice shall be required.

12. **COMMON AREAS.** The “**Common Areas**” of the Project include such areas and facilities as delivery facilities, walkways, landscaped and planted areas, a conference center, a fitness center, and parking facilities and are those areas designated by Landlord for the general use in common of occupants of the Project, including Tenant. The Common Areas shall at all times be subject

to the exclusive control and management of Landlord. Landlord may charge Tenant a Building Standard fee for Tenant's exclusive temporary use of any Common Areas such as delivery facilities. Landlord may grant third parties specific rights concerning portions of the Common Areas. Landlord may, without it constituting an actual or constructive eviction, and without otherwise incurring any liability to Tenant, increase, reduce, improve, or otherwise alter the Common Areas, otherwise make improvements, alterations, additions, or reductions to the Project, and change the name or number by which the Building or Project is known. Landlord may also temporarily close the Common Areas to make repairs or improvements. Landlord has the right, but not the obligation, in its sole and absolute discretion, to temporarily close the Building or access to portions thereof, including any Common Area and the Premises, if there is any act or threat of any act of terrorism, war, violence, vandalism, civil unrest, riot, pandemic or health emergency, or other event that may pose a threat to the public health or safety or damage to the Building, including a hurricane warning, any advisory warning, directive, or notice from the Office of Homeland Security, the Center for Disease Control, or any other federal, state, or local governmental or enforcement agency (any of the foregoing, "**Civil Unrest**"). Tenant shall comply with any notice from Landlord or any governmental agency to close the Building or portions thereof and to immediately cause all of its employees, agents, contactors, and invitees to vacate the Building. Landlord will not be responsible for any loss or damage to Tenant's business as a result, and Tenant will not be entitled to any abatement in rent or other relief of its obligations under this Lease for any period of time when Tenant may not have access to the Premises or Building due to any Civil Unrest or Landlord's exercise of any of its other rights under this section. This Lease does not create, nor will Tenant have any express or implied easement for, or other rights to, air, light, or view over, from, or about the Project.

13. **SECURITY INTEREST.** As security for Tenant's obligations under this Lease, Tenant grants to Landlord a security interest in this Lease and all property of Tenant now or hereafter placed in or upon the Premises including, all fixtures, furniture, inventory, machinery, equipment, merchandise, furnishings, and other articles of personal property, and all insurance proceeds of or relating to Tenant's property and all accessions and additions to, substitutions for, and replacements, products, and proceeds of the Tenant's property. This Lease constitutes a security agreement under the Florida Uniform Commercial Code. This security interest shall survive the expiration or sooner termination of this Lease and Landlord may, at any time, file a financing statement with the appropriate state or governmental agency with respect to such interest.

14. **CASUALTY DAMAGE.** If the Project or any portion of it is damaged or destroyed by any casualty and: (a) the Building or Project or a material part of the Common Areas shall be so damaged that substantial alteration or reconstruction shall, in Landlord's opinion, be required (whether or not the Premises shall have been damaged by the casualty); or (b) Landlord is not permitted to rebuild the Building or Project or a material part of the Common Areas in substantially the same form as it existed before the damage; or (c) the Premises shall be materially damaged by casualty during the last two years of the Lease Term; or (d) any mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt; or (e) the damage is not fully covered by insurance maintained by Landlord; then Landlord may, within 90 days after the casualty, give notice to Tenant of Landlord's election to terminate this Lease, and the balance of the Lease Term shall automatically expire on the fifth day after the notice is delivered. If Landlord does not elect to terminate this Lease, provided that Tenant was operating from the Premises immediately prior to the casualty and will recommence operations after restoration of the Premises, Landlord shall proceed with reasonable diligence to restore the Building and the Premises to substantially the same condition they were in immediately before the casualty. However, Landlord shall not be required to restore any unleased premises in the Building or any portion of Tenant's property. Rent shall abate in proportion to the portion of the Premises not usable by Tenant as a result of any casualty resulting in damage to the Building which is covered by insurance carried or required to be carried by Landlord under this Lease, as of the date on which the Premises becomes unusable and the abatement shall continue until the date the Premises become tenantable again. Landlord shall not otherwise be liable to Tenant for any delay in restoring the Premises or any inconvenience or annoyance to Tenant or injury to Tenant's business resulting in any way from the damage or the repairs, Tenant's sole remedy being the right to an abatement of Rent.

15. **CONDEMNATION.** If the whole or any substantial part of the Premises shall be condemned by eminent domain or acquired by private purchase in lieu of condemnation, this Lease shall terminate on the date on which possession of the Premises is delivered to the condemning authority and Rent shall be apportioned and paid to that date. If no portion of the Premises is taken but a substantial portion of the Project is taken, at Landlord's option, this Lease shall terminate on the date on which possession of such portion of the Project is delivered to the condemning authority and Rent shall be apportioned and paid to that date. Tenant shall have no claim against Landlord, and assigns to Landlord any claims it may have otherwise had, for the value of any unexpired portion of the Lease Term, or any Alterations. Tenant shall not be entitled to any part of the condemnation award or private purchase price. If this Lease is not terminated as provided above, Rent shall abate in proportion to the portion of the Premises condemned.

16. **REPAIR AND MAINTENANCE.**

16.1 **General.** Landlord shall repair and maintain in good order and condition, ordinary wear and tear excepted, the Common Areas, mechanical and equipment rooms, the roof of the Building, the exterior walls of the Building, the exterior windows of the Building, the structural portions of the Building, the elevators, and the electrical, plumbing, mechanical, fire protection, life safety, and air conditioning, heating, and ventilation ("**HVAC**") systems servicing the Building. However, unless the Waiver of Subrogation section applies, Tenant shall pay the cost of any such repairs or maintenance resulting from acts or omissions of the Tenant Parties. Tenant waives the provisions of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord's expense or to withhold Rent or terminate this Lease based on any alleged failure of Landlord to make repairs. Except to the extent Landlord is obligated to repair and maintain the Premises as provided above, Tenant shall, at its sole cost, repair, replace, and maintain the Premises (including the walls, ceilings, and floors in the Premises, and any specialized or supplemental electrical, lighting, plumbing, mechanical, fire protection, life safety and HVAC systems exclusively for Tenant's use) in a clean, attractive, first-class condition. All replacements shall be of equal quality and class to the original items replaced. Tenant shall not commit or allow to be committed any waste on any portion of the Premises.

16.2 **Cosmetic Refurbishment.** After the fifth anniversary of the Commencement Date, and thereafter upon the fifth anniversary of the completion of any Alterations under this section, Tenant shall refurbish the Premises, which as a result of wear, normal depreciation, or any other cause are of a quality which in Landlord's reasonable judgment is not consistent with the level of quality of, or generally prevailing within, the Project. Any such worn or depreciated improvements will be replaced with materials and workmanship of a quality at least equal to the original installation for which replacement is made and subject to the Alterations article. Landlord shall contribute up to 85% of such costs, not to exceed \$600,000(\$1,230.55/sf), which payment shall be made within 30 days after substantial completion of the Alterations, and delivery to Landlord of final releases of lien from Tenant's general contractor and all lienors giving notice as defined in the Florida Construction Lien Law and a final contractor's affidavit from the general contractor in accordance with the Florida Construction Lien Law, and all other receipts and supporting information concerning payment for the work that Landlord may reasonably request.

17. **ESTOPPEL CERTIFICATES.** From time to time, Tenant, on not less than five days' prior notice, shall (i) execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and prospective purchasers and certified to all or any of Landlord, any mortgagee or prospective mortgagee, or prospective purchaser of the Building, and (ii) cause any Guarantor to deliver to Landlord any estoppel certificate required under the Guaranty.

## 18. **SUBORDINATION.**

18.1 **General.** This Lease is and shall be subject and subordinate to all mortgages and ground leases that may now or hereafter affect the Project, and to all renewals, modifications, consolidations, replacements, and extensions of the mortgages and leases. This article shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, Tenant shall execute any agreement that Landlord may request within 10 days after receipt from Landlord. If any ground or underlying lease is terminated, or if the interest of Landlord under this Lease is transferred by reason of or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if the holder of any mortgage acquires a lease in substitution for the mortgage, or if this Lease is terminated by termination of any lease or by foreclosure of any mortgage to which this Lease is or may be subordinate, then Tenant will, at the option to be exercised in writing by the landlord under any ground or underlying lease or the purchaser, assignee, or tenant, as the case may be (a) attorn to it and will perform for its benefit all the terms, covenants, and conditions of this Lease on Tenant's part to be performed with the same force and effect as if the landlord or the purchaser, assignee, or tenant were the landlord originally named in this Lease, or (b) enter into a new lease with the landlord or the purchaser, assignee, or tenant for the remainder of the Lease Term and otherwise on the same terms, conditions, and rents as provided in this Lease.

18.2 **SNDA.** Landlord will use commercially reasonable, good-faith efforts to obtain from the ground lessor or mortgagee of the Building and deliver to Tenant a subordination, non-disturbance, and attornment agreement substantially in the form attached as **EXHIBIT "H"** to this Lease, and containing such additional provisions as the ground lessor or mortgagee may require following its review of this Lease after it has been executed by Landlord and Tenant. In addition, Landlord will use commercially reasonable, good-faith efforts to obtain a non-disturbance agreement from any future ground lessor or the holder of any mortgage granted as to the Project subsequent to the Date of this Lease, on the lessor's or mortgagee's then current standard form of agreement. "**Commercially reasonable, good-faith efforts**" of Landlord shall not require Landlord to incur any cost, expense, or liability to obtain a non-disturbance agreement and Tenant shall be responsible for any fees or costs charged by the lessor or mortgagee and mortgagee's attorneys. Upon request of Landlord, Tenant will execute the lessor's or mortgagee's form of subordination, non-disturbance, and attornment agreement. The failure of Landlord to obtain a non-disturbance agreement shall not vitiate the automatic subordination granted under this article and shall have no effect on the rights, obligations, and liabilities of Landlord and Tenant or be considered a default by Landlord under this Lease.

19. **INDEMNIFICATION.** To the fullest extent permitted by law, Tenant shall indemnify, defend, and save harmless the Landlord Parties from and against any and all liability (including reasonable attorneys' fees) resulting from claims by third parties that arises out of the ownership, maintenance, or use of the Premises. Similarly, to the fullest extent permitted by law, Landlord shall indemnify, defend, and save harmless the Tenant Parties from and against any and all liability (including reasonable attorneys' fees) resulting from claims by third parties that arises out of the ownership, maintenance, or use of the Common Areas to the same extent that Tenant would have been covered had it been named as an additional insured on the commercial general liability insurance policy carried by Landlord for the Project. It is intended that the indemnitor indemnify the indemnitee, and its Parties against the consequences of their own negligence or fault, even when the indemnitee or its Parties is jointly, comparatively, contributively, or concurrently negligent with the indemnitor, and even though any such claim, cause of action, or suit is based upon or alleged to be based upon the strict liability of the indemnitee or its Parties, and the indemnitor waives and releases all claims against the indemnitee and its Parties for any claim covered by the indemnity obligations of the indemnitor under this article. This Indemnification article shall not be construed to restrict, limit, or modify either party's insurance obligations under this Lease, nor shall Landlord's or Tenant's indemnification obligations under this article be limited by the minimum amounts of insurance carried or required to be carried under the terms of this Lease by either party. Either party's compliance with the insurance requirements under this Lease shall not restrict, limit, or modify that party's obligations under this Indemnification article. Notwithstanding anything in this article to the contrary, if and to the extent that any loss occasioned by any of the events described in this article exceeds the greater of the coverage or amount of insurance required to be carried by the indemnitor or the coverage or amount of insurance actually carried by the indemnitor, or results from any event not required to be insured against and not actually insured against, the party at fault shall pay the amount not actually covered. These indemnification provisions shall survive the expiration or sooner termination of this Lease.

20. **NO WAIVER.** The failure of a party to insist on the strict performance of any provision of this Lease or to exercise any remedy for any default shall not be construed as a waiver. The waiver of any noncompliance with this Lease shall not prevent subsequent similar noncompliance from being a default. No waiver shall be effective unless expressed in writing and signed by the waiving party. No notice to or demand on a party shall of itself entitle the party to any other or further notice or demand in similar or other circumstances. The receipt by Landlord of any Rent after default on the part of Tenant (whether the Rent is due before or after the default) shall not excuse any delays as to future Rent payments and shall not be deemed to operate as a waiver of any then-existing default by Tenant or of the right of Landlord to pursue any available remedies. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Rent actually owed under the terms of this Lease shall be deemed to be anything other than a payment on account of the earliest stipulated Rent due. No endorsement or statement on any check or any letter accompanying any check or payment of Rent will be deemed an accord and satisfaction. Landlord may accept the check or payment without prejudice to Landlord's right to recover the balance of the Rent or to pursue any other remedy. It is the intention of the parties that this article will modify the common law rules of waiver and estoppel and the provisions of any statute that might dictate a contrary result.

21. **SERVICES AND UTILITIES.** Landlord shall have no obligation to provide any utilities or services to the Premises other than passenger elevator service to the Premises. Tenant shall be solely responsible for and shall promptly pay all charges for water, electricity, or any other utility used or consumed in the Premises, including all costs associated with separately metering for the Premises. Tenant shall be responsible for repairs and maintenance to exit lighting, emergency lighting, and fire extinguishers for the Premises. Tenant is responsible for interior janitorial, pest control, and waste removal services. Landlord may at any time change the electrical utility provider for the Building. Tenant's use of electrical, HVAC, or other services furnished by Landlord shall not exceed, either in voltage, rated capacity, use, or overall load, that which Landlord deems to be standard for the Building. In no event shall Landlord be liable for damages resulting from the failure to furnish any service, and any interruption or failure shall in no manner entitle Tenant to any remedies including abatement of Rent. If at any time during the Lease Term the Project has any type of card access system for the Parking Areas or the Building, Tenant shall purchase access cards for all occupants of the Premises from Landlord at a Building Standard charge and shall comply with Building Standard terms relating to access to the Parking Areas and the Building.

22. **SECURITY DEPOSIT.** The Security Deposit shall be held by Landlord as security for Tenant's full and faithful performance of this Lease including the payment of Rent. Tenant grants Landlord a security interest in the Security Deposit. The Security Deposit may be commingled with other funds of Landlord and Landlord shall have no liability for payment of any interest on the Security Deposit. Landlord may apply the Security Deposit to the extent required to cure any default by Tenant. If Landlord so applies the Security Deposit, Tenant shall deliver to Landlord the amount necessary to replenish the Security Deposit to its original sum within five days after notice from Landlord. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant, nor shall it be a defense to any action that Landlord may bring against Tenant.

23. **GOVERNMENTAL REGULATIONS.** Tenant, at Tenant's sole cost and expense, shall promptly comply (and shall cause all subtenants and licensees to comply) with all laws, codes, and ordinances of governmental authorities, including the Americans with Disabilities Act of 1990 as amended (the "ADA"), and all recorded covenants and restrictions affecting the Project, pertaining to

Tenant, its conduct of business, and its use and occupancy of the Premises, including the performance of any work to the Common Areas required because of Tenant's specific use (as opposed to general office use) of the Premises or Alterations to the Premises made by Tenant.

24. **SIGNS.** No signage shall be placed by Tenant on any portion of the Project. However, Tenant shall be permitted to place a sign bearing its name in a location approved by Landlord near the entrance to the Premises (at Tenant's cost) and will be furnished a single listing of its name in the Building's directory (at Landlord's cost), all in accordance with the criteria adopted from time to time by Landlord for the Project. Any changes or additional listings in the directory shall be furnished (subject to availability of space) for the then Building Standard charge.

25. **BROKER.** Landlord and Tenant each represent and warrant that they have neither consulted nor negotiated with any broker or finder regarding the Premises, except the Landlord's Broker and Tenant's Broker. Tenant shall indemnify, defend, and hold Landlord harmless from and against any claims for commissions from any real estate broker other than Landlord's Broker and Tenant's Broker with whom Tenant has dealt in connection with this Lease. Landlord shall indemnify, defend, and hold Tenant harmless from and against payment of any leasing commission due Landlord's Broker and Tenant's Broker in connection with this Lease and any claims for commissions from any real estate broker other than Landlord's Broker and Tenant's Broker with whom Landlord has dealt in connection with this Lease. The terms of this article shall survive the expiration or earlier termination of this Lease.

26. **END OF TERM.** Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease or Tenant's right of possession in good order and condition, broom-clean, except for reasonable wear and tear. All Alterations made by Landlord or Tenant to the Premises shall become Landlord's property on the expiration or sooner termination of the Lease Term. On the expiration or sooner termination of the Lease Term, Tenant, at its expense, shall remove from the Premises all of Tenant's personal property, all computer and telecommunications wiring, and all Alterations that Landlord designates by notice to Tenant. Tenant shall also repair any damage to the Premises caused by the removal. Any items of Tenant's property that shall remain in the Premises after the expiration or sooner termination of the Lease Term, may, at the option of Landlord and without notice, be deemed to have been abandoned, and in that case, those items may be retained by Landlord as its property to be disposed of by Landlord, without accountability or notice to Tenant or any other party, in the manner Landlord shall determine, at Tenant's expense.

27. **ATTORNEYS' FEES.** Except as otherwise provided in this Lease, the prevailing party in any litigation or other dispute resolution proceeding, including arbitration, arising out of or in any manner based on or relating to this Lease, including tort actions and actions for injunctive, declaratory, and provisional relief, shall be entitled to recover from the losing party actual attorneys' fees and costs, including fees for litigating the entitlement to or amount of fees or costs owed under this provision, and fees in connection with bankruptcy, appellate, or collection proceedings. No person or entity other than Landlord or Tenant has any right to recover fees under this paragraph. In addition, if Landlord becomes a party to any suit or proceeding affecting the Premises or involving this Lease or Tenant's interest under this Lease, other than a suit between Landlord and Tenant, or if Landlord engages counsel to collect any of the amounts owed under this Lease, or to enforce performance of any of the agreements, conditions, covenants, provisions, or stipulations of this Lease, without commencing litigation, then the costs, expenses, and reasonable attorneys' fees and disbursements incurred by Landlord shall be paid to Landlord by Tenant.

28. **NOTICES.** Any notice to be given under this Lease may be given either by a party itself or by its attorney or agent and shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as FedEx), or by the United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed effective upon receipt or the date sent if it is returned to the addressor because it is refused, unclaimed, or the addressee has moved.

29. **EXCUSABLE DELAY.** For purposes of this Lease, the term "**Excusable Delay**" shall mean any delays resulting from causes beyond the direct control of the party delayed, including delays due to strikes, lockouts, riots, civil commotion, war (whether declared or undeclared) or warlike operations, acts of terrorism, cyber-attacks, acts of a public enemy, acts of bioterrorism, epidemics, pandemics, quarantines, or other health crises, invasion, rebellion, hostilities, military or usurped power, sabotage, government action, regulations or controls that are enacted after the Date of this Lease, inability to obtain any material, utility, or service because of governmental restrictions, inability to obtain building permits, hurricanes, floods, earthquakes, tornadoes, or other natural disasters, or acts of God, power outages, or any other cause beyond the direct control of the party delayed, whether similar or dissimilar in kind and nature to any of the foregoing and whether foreseeable or unforeseeable. Notwithstanding anything in this Lease to the contrary, if Landlord or Tenant shall be delayed in the performance of any act required under this Lease by reason of any Excusable Delay, then provided notice of the Excusable Delay is given to the other party within 10 days after its occurrence, performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a reasonable period, in no event



to exceed a period equivalent to the period of the delay. If a party fails to so notify the other party within any such ten-day period, such delay shall nevertheless be deemed an Excusable Delay from and after the date that the other party is notified of the delay. The provisions of this article shall not operate to excuse Tenant from the payment of Rent or from surrendering the Premises at the end of the Lease Term, or from the obligations to maintain insurance, and shall not operate to extend the Lease Term. Delays or failures to perform resulting from lack of funds or the increased cost of obtaining labor and materials shall not be deemed delays beyond the direct control of a party.

30. **QUIET ENJOYMENT.** Landlord covenants and agrees that, on Tenant's paying rent and performing all of the other provisions of this Lease on its part to be performed, Tenant may peaceably and quietly hold and enjoy the Premises for the Lease Term without material hindrance or interruption by Landlord or any other person claiming by, through, or under Landlord, subject, nevertheless, to the terms, covenants, and conditions of this Lease and all existing or future ground leases, underlying leases, or mortgages encumbering the Project.

31. **RESERVED.**

32. **PARKING.** Tenant shall be entitled to use no more than the number of parking spaces in the Parking Areas and on such terms as specified in the Basic Lease Information and Defined Terms article of this Lease. Additional Rent for parking spaces shall be as provided in the Basic Lease Information and Defined Terms article of this Lease and shall be due and payable, in advance, at the same time as monthly installments of Base Rent are due and payable under this Lease, plus all applicable sales taxes. Tenant shall pay for all such allocated spaces whether Tenant actually uses such spaces or not. The parking spaces may only be used by principals and employees of Tenant. "**Parking Areas**" shall mean the areas available for automobile parking in connection with the Building as those areas may be designated by Landlord from time to time. Except for particular spaces and areas designated from time to time by Landlord for reserved parking, if any, all parking in the Parking Areas shall be on an unreserved, first-come, first-served basis. Landlord reserves the right to (a) reduce the number of spaces in the Parking Areas, as long as the number of parking spaces remaining is in compliance with all applicable governmental requirements; (b) reserve spaces for the exclusive use of specific parties and change the location of any reserved spaces; and (c) change the access to the Parking Areas; provided that some manner of reasonable access to the Parking Areas remains after the change; and none of the foregoing shall entitle Tenant to any claim against Landlord or to any abatement of Rent. Landlord (or the operator of the Parking Areas) may charge Tenant (and/or its employees, agents, contractors, invitees, and visitors) directly for the parking fee established by Landlord (or the operator) from time to time for the use of the Parking Areas. Parking charges shall be increased on each anniversary of the Commencement Date by 3% over the rates in effect for the immediately preceding year of the Lease Term. Landlord shall have no liability to Tenant for unauthorized parking in reserved spaces, and shall not be required to tow any unauthorized vehicles.

33. **FINANCIAL REPORTING.** From time to time, Tenant shall cause the following financial information to be delivered to Landlord, at Tenant's sole cost and expense, upon not less than 10 days' advance written notice from Landlord: (a) a current financial statement, including a balance sheet and a statement of income and expenses, for Tenant and Tenant's financial statements for the previous two accounting years, (b) a similar current financial statement for any Guarantor(s) of this Lease and the Guarantor's financial statements for the previous two accounting years, and (c) such other financial information pertaining to Tenant or any Guarantor as Landlord or any lender or purchaser may reasonably request. All financial statements shall be prepared in accordance with generally accepted accounting principles consistently applied and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Tenant authorizes Landlord to obtain a credit report or credit history on Tenant from any credit reporting company from time to time without notice to Tenant.

34. **OPTION TO EXTEND.**

34.1 Tenant shall have the option to extend the Lease Term for two additional periods of 60 months each (each an "**Extension Term**"), on the same terms and conditions as provided in this Lease, except that, for each Extension Term:

34.1.1 If Tenant does not timely exercise its option as to the first Extension Term, the option as to the second Extension Term shall terminate;

34.1.2 Upon exercise of the second option to extend the Lease Term, this Lease, as extended, shall not contain any further option to extend as provided in this article;

34.1.3 The Base Rent shall be determined as set forth below, but in no event shall it be less than the Base Rent payable for the 12-month period immediately preceding the current expiration date of the Lease Term; and

34.1.4 Landlord shall have no obligation to perform any alterations or tenant improvements or other work in the Premises and Tenant shall continue possession of the Premises in its "as-is," "where-is," and "with all faults" condition.

34.2 The exercise of the options set forth in this article shall only be effective on, and in strict compliance with, the following terms and conditions:

34.2.1 Each notice of Tenant's exercise of the option (the "**Extension Notice**") shall be given by Tenant to Landlord no earlier than 15 months and no later than nine months before the current expiration date of the Lease Term. TIME SHALL BE OF THE ESSENCE AS TO THE EXERCISE OF ANY ELECTION BY TENANT UNDER THIS ARTICLE.

34.2.2 At the time of Tenant giving Landlord notice of its election to extend the Lease Term and on the expiration of the current Lease Term, this Lease shall be in full force and effect and Tenant shall not be in default under any of the terms, covenants, and conditions of this Lease beyond any applicable grace period. In addition, if a Multiple Defaults Trigger has occurred, the rights granted in this article shall immediately and without further action by the Landlord terminate and be of no further force or effect.

34.2.3 The rights granted to Tenant under this article are personal to the original named Tenant in this Lease and any Permitted Assignee and may not be assigned or exercised by anyone other than such Tenant or a Permitted Assignee and only while such Tenant or Permitted Transferee is in possession of the entire Premises.

34.2.4 If this Lease has been guaranteed, the Guarantor shall execute and deliver to Landlord a reaffirmation of the Guaranty as to the extended Lease Term no later than the commencement of the extended Lease Term.

34.3 The Base Rent shall be a sum equal to the fair market renewal rental value of the Premises for the Extension Term, based on and taking into account the rentals at which extensions or renewals of leases are being concluded for comparable space in the Project and in Comparable Buildings in the West Palm Beach, Florida area at that time and for such a term and taking into account the terms and conditions of this Lease and anticipated inflation during the extended Lease Term (the "**Fair Market Rental Value**" or the "**Value**").

34.4 Within 30 days after receipt of the Extension Notice, Landlord shall advise Tenant of the applicable Fair Market Rental Value for the Extension Term ("**Landlord's Notice**"). If Tenant disagrees with Landlord's determination of Fair Market Rental Value, Tenant shall provide written notice to Landlord of its objection, within 30 days of Landlord's notice to Tenant, including Tenant's statement of what it believes the Fair Market Rental Value should be. If Tenant has not timely provided an objection notice, then Landlord and Tenant shall enter into an amendment to this Lease extending the Lease Term on the terms and conditions of Landlord's Notice and this article.

34.5 If Tenant delivers a timely objection notice, then upon Landlord's receipt of the notice, Landlord and Tenant shall, for a period of 30 days, negotiate in good faith to agree on the Fair Market Rental Value. Upon agreement, Landlord and Tenant shall enter into an amendment to this Lease extending the Lease Term on the terms and conditions of this article. If the parties cannot agree on the Fair Market Rental Value within such 30-day period, then Landlord and Tenant shall meet with each other within 35 days after Landlord's receipt of Tenant's objection notice and shall exchange in sealed envelopes their final proposal as to the Fair Market Rental Value (collectively, the "**Estimates**") and open such envelopes in each other's presence. If the higher of the Estimates is no more than 105% of the lower Estimate, then the Fair Market Rental Value will be the average of the Estimates. If the higher of the Estimates is more than 105% of the lower Estimate, and if Landlord and Tenant do not mutually agree upon the Fair Market Rental Value within five Business Days after the exchange and opening of the envelopes, then the Fair Market Rental Value shall be determined by arbitration in accordance with the expedited procedures of the Commercial Arbitration Rules of the American Arbitration Association then in force, with the following exceptions: There shall be a single arbitrator selected by the American Arbitration Association. The arbitrator shall be a commercial real estate broker having at least 15 years of experience in the office market area in which the Building is located and having a professional designation of CCIM or SIOR, or both designations. The scope of the arbitrator's inquiry and determination shall be limited to whether the Landlord's or the Tenant's Estimate most closely reflects the Fair Market Rental Value and the arbitrator may not select any Value other than the Landlord's Estimate or the Tenant's Estimate. The determination by the arbitrator shall be rendered in writing to both Landlord and Tenant and shall be final and binding on them. The parties shall share equally in the cost of the arbitrator.

Any fees of any counsel or experts engaged directly by Landlord or Tenant, however, shall be borne by the party retaining the counsel or expert.

34.6 All options to extend the Lease Term as set forth in this article shall be null and void if Landlord and Tenant enter into any agreement extending the Lease Term on terms different than those set forth in this section.

35. **LETTER OF CREDIT.** Upon Tenant's execution of this Lease, Tenant shall deliver to Landlord an unconditional, irrevocable and transferable standby Letter of Credit in the amount of \$250,000.00 (the "**Letter of Credit**"), which Letter of Credit shall be issued by a United States commercial bank which is reasonably acceptable to Landlord with at least a AA- rating as published by Standard and Poor's Corporation or at least a Aa3 rating as published by Moody's and which has an office in Palm Beach County, Florida at which draws can be made under the Letter of Credit, naming Landlord (or its successor as Landlord) as beneficiary and in the form of **EXHIBIT "G"** to this Lease. Upon issuance of the Letter of Credit, a copy of it shall be attached to this Lease. Landlord reserves the right to periodically review the financial condition of the issuing bank for any Letter of Credit and any renewal or replacement Letter of Credit and if Landlord determines that the issuing bank no longer satisfies the criteria set forth above, Landlord may require a replacement Letter of Credit in form and substance and from a United States bank acceptable to Landlord which satisfies the criteria set forth above. Landlord may draw upon the Letter of Credit at any time Tenant is in default under this Lease without prior notice to Tenant. The Letter of Credit shall have a term of at least 12 months, and it shall by its terms be renewed automatically each year by the bank, unless the bank gives written notice to the beneficiary, at least 60 days before the expiration date of the then existing Letter of Credit, that the bank elects that it not be renewed. If Tenant fails to provide a replacement Letter of Credit because the issuing bank no longer satisfies the criteria set forth above or if the Letter of Credit is ever not renewed and has less than 30 days remaining in its term, Tenant shall be in default of the terms of this Lease and Landlord may draw on the Letter of Credit. The Letter of Credit shall be transferable and the proceeds assignable. Tenant shall reimburse Landlord for all transfer fees incurred. If the financial institution which issued the initial Letter of Credit is ever declared insolvent or closed by the FDIC or other applicable governmental authority or is closed for any other reason (other than periodic branch closures which occur in the normal course of business), then Tenant shall, within 30 days after notice from Landlord, provide a substitute Letter of Credit to Landlord from another financial institution acceptable to Landlord in its sole discretion and which otherwise complies with the terms of this section and Tenant shall reimburse Landlord for Landlord's attorneys' fees and costs incurred. Tenant agrees and acknowledges that Tenant has no property interest whatsoever in the Letter of Credit or the proceeds thereof and that, in the event Tenant becomes a debtor under any chapter of the Federal Bankruptcy Code, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the Letter of Credit and/or the proceeds thereof by application of Section 502(b) (6) of the Federal Bankruptcy Code. Any cure periods for a default by Tenant under this Lease shall not be applicable to a default by Tenant of the terms of this section. The Letter of Credit shall not be construed as a security deposit under this Lease, but rather as a third-party guaranty by the issuing bank guaranteeing all of the Tenant's obligations under this Lease. For purposes of this Lease, the term "**Reduction Date**" shall mean the third anniversary of the Commencement Date and each annual anniversary thereafter. Provided as of each Reduction Date (i) Tenant is not in default of this Lease beyond any applicable grace period, (ii) Tenant has been current in all of its monetary and other obligations under this Lease during the 12 month period preceding the Reduction Date within any applicable grace periods, (iii) Tenant's financial condition is equal to or better than its financial condition on the Date of this Lease, and (iv) Landlord has not drawn on the Letter of Credit for a default by Tenant, then the required amount of the Letter of Credit (the "**Required Amount**") may be reduced effective as of the 10<sup>th</sup> day following each Reduction Date by \$50,000.00, and Tenant may deliver to Landlord a new Letter of Credit stating the reduced Required Amount to replace the Letter of Credit then being held by Landlord.

36. **CONTINGENCY.** Tenant acknowledges that a tenant (the "**Existing Tenant**") is in possession of a portion of the Premises as of the Date of this Lease. The Existing Tenant's rights to occupy such portion of the Premises are scheduled to expire on January 31, 2022 (the "**Vacation Date**"). This Lease is contingent upon vacation of the Premises by the Existing Tenant by the Vacation Date. If the Existing Tenant has not vacated the Premises by the Vacation Date, Landlord will promptly initiate legal proceedings to obtain possession of the Premises and will use all reasonable diligence to prosecute the proceedings to final conclusion and obtain possession of the Premises as soon as reasonably possible. Notwithstanding the foregoing, Landlord shall not be liable to Tenant for any costs, damages, or expenses whatsoever resulting from the Existing Tenant's failure to vacate the Premises by the Vacation Date or any time thereafter.

37. **LENDER APPROVAL** This Lease is contingent upon the approval of Landlord's mortgagee. Landlord may terminate this Lease if its mortgagee does not approve this Lease within 30 days after the Date of this Lease. Landlord shall not be liable to Tenant for any costs, damages, or expenses whatsoever if Landlord elects to terminate this Lease as provided in this article.

38. **GENERAL PROVISIONS.**

38.1 **Miscellaneous.** The word or words (a) “including” and “include” and similar words will not be construed restrictively to limit or exclude other items not listed; (b) “or” is used in the inclusive sense of “and/or”; the word “any” means “any and all”; (c) “will” and “shall” are intended to express mandatory actions and may be used interchangeably with no difference of meaning or intent for purposes of this Lease; (d) “good faith” means “honesty in fact” as such phrase is used in the Uniform Commercial Code, as adopted in the State of Florida as of the Date of this Lease; (e) “commercially reasonable efforts” will not include any obligation to institute or threaten legal proceedings, to declare or threaten to declare any person in default, to incur any liabilities, to expend any monies (other than customary telephone, printing, copying, delivery, and similar expenses), or to cause any other person to do any of the foregoing; and (f) the two words in each of the following pairs of words (whether used in the singular or the plural) will be deemed to have the same meanings, which will encompass any meaning attributable to either word: “approval” and “consent”; “breach” and “default”; “cost” and “expense”; and “true” and “correct”. If any provision of this Lease is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Lease shall remain in full force, if the essential provisions of this Lease for each party remain valid, binding, and enforceable. The parties may amend this Lease only by a written agreement of the parties. There are no conditions precedent to the effectiveness of this Lease, other than those expressly stated in this Lease. This Lease may be executed by the parties signing different counterparts of this Lease, which counterparts together shall constitute the agreement of the parties. This transaction may be conducted, and this Lease may be delivered, by electronic means, and Landlord and Tenant will be bound by the signatures (whether original, electronic, or faxed) contained in this Lease. This Lease shall bind and inure to the benefit of the heirs, personal representatives, and, except as otherwise provided, the successors and assigns of the parties to this Lease. Each provision of this Lease shall be deemed both a covenant and a condition and shall run with the land. Any liability or obligation of Landlord or Tenant arising during the Lease Term shall survive the expiration or earlier termination of this Lease. Any action brought under or with respect to this Lease must be brought in a court having jurisdiction location in the County in which the Premises is located which shall be the exclusive jurisdiction and venue for litigation concerning this Lease. Neither this Lease nor any memorandum or other notice of this Lease, including an SNDA, may be recorded in any public records.

38.2 **Radon Gas.** The following notification is provided under Section 404.056(5), Florida Statutes: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

38.3 **Exhibits.** All exhibits, riders, and addenda attached to this Lease shall, by this reference, be incorporated into this Lease. The following exhibits are attached to this Lease:

EXHIBIT "A"	–	Legal Description of the Project
EXHIBIT "B"	–	Location of Premises
EXHIBIT "C"	–	Guaranty
EXHIBIT "D"	–	Rules and Regulations
EXHIBIT "E"	–	Tenant Improvements
EXHIBIT "F"	–	Restricted Uses
EXHIBIT "G"	–	Letter of Credit
EXHIBIT "H"	–	Form of SNDA

39. **GUARANTY.** Payment of all rents and charges and the performance of all covenants of Tenant contained in this Lease are guaranteed by the Guarantor(s) under the Guaranty that is attached as an exhibit to this Lease. The Guaranty is a part of this Lease and Tenant agrees to be bound by the terms of the Guaranty that relate to this Lease. The execution and delivery to Landlord of the Guaranty together with Tenant's execution of this Lease is a condition to the effectiveness of and Landlord's obligations under this Lease.

40. **CONSTRUCTION; MERGER.** THIS LEASE HAS BEEN NEGOTIATED "AT ARM'S-LENGTH" BY LANDLORD AND TENANT, EACH HAVING THE OPPORTUNITY TO BE REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE AND TO NEGOTIATE THE FORM AND SUBSTANCE OF THIS LEASE. THEREFORE, THIS LEASE SHALL NOT BE MORE STRICTLY CONSTRUED AGAINST EITHER PARTY BECAUSE ONE PARTY MAY HAVE DRAFTED THIS LEASE. THIS LEASE SHALL CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES CONCERNING THE MATTERS COVERED BY THIS LEASE. ALL PRIOR UNDERSTANDINGS AND AGREEMENTS HAD BETWEEN THE PARTIES CONCERNING THOSE MATTERS, INCLUDING ALL PRELIMINARY NEGOTIATIONS, LEASE PROPOSALS, LETTERS OF INTENT, AND SIMILAR DOCUMENTS, ARE MERGED INTO THIS LEASE, WHICH ALONE FULLY AND COMPLETELY EXPRESSES THE UNDERSTANDING OF THE PARTIES. THE PROVISIONS OF THIS LEASE MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS.

41. **NO RELIANCE.** EACH PARTY AGREES IT HAS NOT RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS LEASE.

42. **INCONTESTABILITY.** THE PARTIES WAIVE AND RELEASE ALL CLAIMS AND CAUSES OF ACTION FOR FRAUD IN THE INDUCEMENT OR PROCUREMENT OF THIS LEASE IT BEING THEIR INTENT THAT THIS LEASE BE INCONTESTABLE ON ACCOUNT OF ANY CLAIM OF FRAUD, OR FOR ANY OTHER REASON. THE FOREGOING WAIVER AND RELEASE IS MADE BY EACH PARTY IN CONSIDERATION OF THE PARTY'S RECIPROCAL WAIVER AND RELEASE.

43. **JURY WAIVER; COUNTERCLAIMS.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE LANDLORD/TENANT RELATIONSHIP, OR THE PROJECT. TENANT FURTHER WAIVES THE RIGHT TO INTERPOSE ANY PERMISSIVE COUNTERCLAIM OF ANY NATURE IN ANY ACTION TO OBTAIN POSSESSION OF THE PREMISES.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Lease has been executed on behalf of Landlord and Tenant as of the Date of this Lease.

**WITNESSES:**

\_\_\_\_\_  
Signature of Witness 1

\_\_\_\_\_  
Print or type name of Witness 1

\_\_\_\_\_  
Signature of Witness 2

\_\_\_\_\_  
Print or type name of Witness 2

\_\_\_\_\_  
Signature of Witness 1

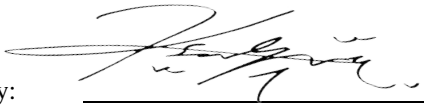
\_\_\_\_\_  
Print or type name of Witness 1

\_\_\_\_\_  
Signature of Witness 2

\_\_\_\_\_  
Print or type name of Witness 2


**LANDLORD:**

Menlo Group, a Delaware limited liability company authorized to transact business in Arizona

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

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

**TENANT:**

Shorebucks LLC, a 

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

[CORPORATE SEAL]

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

\*Must be the President, any Vice President, or Chief Executive Officer

Tenant's Taxpayer Identification Number: \_\_\_\_\_