Section 1: 8-K (8-K)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **August 3, 2018**

Hilltop Holdings Inc.

(Exact name of registrant as specified in its charter)

Maryland	**1-31987**	**84-1477939**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2323 Victory Avenue, Suite 1400 **Dallas, Texas**	**75219**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(214) 855-2177**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Section 1 — Registrant's Business and Operations

Item 1.01 Entry into a Material Definitive Agreement.

Hilltop Headquarters

On August 3, 2018, Hilltop Holdings Inc. ("Hilltop"), through HTH Diamond Hillcrest Land LLC ("Hillcrest Land LLC"), a newly formed entity owned equally between a wholly owned subsidiary of Hilltop and an affiliate of Mr. Gerald J. Ford, Chairman of the Board of Directors of Hilltop, purchased approximately 1.7 acres of land located in the City of University Park, Texas (the "Land"). Each of HTH Hillcrest Land LLC, a wholly owned subsidiary of Hilltop ("HTH Land LLC"), and Diamond Ground, LLC, an entity affiliated with Mr. Gerald J. Ford ("Diamond Ground LLC"), contributed $19.3 million to Hillcrest Land LLC to purchase the Land for an aggregate purchase price of $38.5 million. Mr. Gerald J. Ford beneficially owned 16.15% of Hilltop common stock as of August 3, 2018 and is the father of Jeremy Ford, a director, the President and Co-Executive Officer of Hilltop, and the father-in-law of Corey Prestidge, the Executive Vice President, General Counsel and Secretary of Hilltop. Trusts for which Jeremy Ford and the wife of Corey Prestidge are a beneficiary own 10.2% and 10.1%, respectively, of Diamond Ground, LLC. A copy of the Limited Liability Company Agreement of Hillcrest Land LLC is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated by reference herein.

Immediately following the purchase of the Land, on August 3, 2018, Hillcrest Land LLC entered into a 99-year ground lease (the "Ground Lease") of the Land to SPC Park Plaza Partners LLC, an unaffiliated third party ("Park Plaza"), as to an undivided 50% leasehold interest, HTH Hillcrest Project LLC ("HTH Project LLC"), a wholly owned subsidiary of Hilltop, as to an undivided 25% leasehold interest, and Diamond Hillcrest, LLC ("Diamond Hillcrest"), an entity owned by Mr. Gerald J. Ford, as to an undivided 25% leasehold interest. The Ground Lease is triple net and, accordingly, the lessees agreed to pay all property taxes, property insurance and maintenance costs. The base rent payable under the Ground Lease commences 18 months from entry into the Ground Lease at $1.8 million per year, which increases 1.0% per year each January 1, following the rent abatement period. A copy of the Ground Lease is attached as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated by reference herein.

In connection with Ground Lease, on August 3, 2018, each of Park Plaza, HTH Project LLC and Diamond Hillcrest (collectively, the "Co-Owners") entered into a Co-Owners Agreement to purchase the improvements currently being constructed on the Land, which is a mixed-use project (the "Project") that is planned to contain a six-story building (the "Building"). The Co-Owners Agreement governs the parties' undivided ownership in the Project. HTH Project LLC and Diamond Hillcrest each own an undivided 25% interest in the Project. Park Plaza owns the remaining undivided 50% interest in the Project. Park Plaza serves as the Co-Owner Manager under the Co-Owner Agreement; however, certain actions require approval of all Co-Owners. On August 3, 2018, each of HTH Project LLC and Diamond Hillcrest contributed $5.3 million to the construction and initial operation of the Project. The Project obtained a construction loan from an unaffiliated third-party bank with a maximum commitment of approximately $41.0 million to finance the construction of the Project, as well. The Co-Owners have engaged Strode Property Company to serve as developer of the Project under a Development Service Agreement. A copy of the Co-Owners Agreement is attached as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated by reference herein.

On August 3, 2018, Hilltop entered into an office lease with Park Plaza, HTH Project LLC and Diamond Hillcrest (the "Office Lease") for approximately 68,000 square feet in the Building. The Office Lease is for an initial term of 129 months and provides Hilltop with an option to renew for an additional ten-year term at fair market rental rates for comparable buildings. The Office Lease is a triple net lease. The first nine months of rent is abated, which commences upon move-in to the Building. The base rent commences at $43 per square foot and increases 1.5% per year. The total cost of base rent over the initial term of the Office Lease is $31.3 million, which averages to $3.1 million per year over the initial term. Move-in is expected in the fourth quarter of 2019. A copy of the Office Lease is attached as Exhibit 10.4 to this Current Report on Form 8-K and is incorporated by reference herein.

Additionally, on August 3, 2018, PlainsCapital Bank entered into a retail lease with Park Plaza, HTH Project LLC and Diamond Hillcrest (the "Retail Lease") for approximately 4,100 square feet for a branch location on the ground floor of the Building. The Retail Lease is for an initial term of 129 months and provides PlainsCapital Bank with an option to renew for an additional ten-year term at fair market rental rates for comparable buildings. The Retail Lease is a triple net lease. The first nine months of rent is abated, which commences upon move-in to the premises. The base rent commences at $75 per square foot and increases 1.5% per year. The total cost of base rent over the initial term of the Retail Lease is $3.3 million, which averages to $0.3 million per year over the initial term. The Retail Lease is subject to all required regulatory approvals and move-in is expected in the fourth quarter of 2019. A copy of the Retail Lease is attached as Exhibit 10.5 to this Current Report on Form 8-K and is incorporated by reference herein.

The foregoing description of the Limited Liability Company Agreement of Hillcrest Land LLC, Ground Lease, Co-Owners Agreement, Office Lease and Retail Lease does not purport to be complete and is qualified in its entirety by reference to the full text of such documents, which are filed as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5, respectively, to this Current Report on Form 8-K.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements anticipated in such statements. Forward-looking statements speak only as of the date they are made and, except as required by law, we do not assume any duty to update forward-looking statements. Such forward-looking statements include, but are not limited to, statements concerning such things as our plans, objectives, strategies, expectations, intentions, construction timing and other statements that are not statements of historical fact, and may be identified by words such as "anticipates," "believes," "could," "estimates," "expects," "forecasts," "goal," "intends," "may," "might," "plan," "probable," "projects," "seeks," "should," "target," "view" or "would" or the negative of these words and phrases or similar words or phrases. Factors that could cause our actual results to differ materially from those described in the forward-looking statements include, among others: (i) the possibility that we may not receive necessary regulatory approvals for the Retail Lease; and (ii) the failure of the Project to be completed on the expected timeline or at all. For a discussion of certain other factors that could cause our actual results to differ materially from

those described in the forward-looking statements, please see the risk factors discussed in our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q and other reports that are filed with the Securities and Exchange Commission. All forward-looking statements are qualified in their entirety by this cautionary statement.

Section 7 — Regulation FD

Item 7.01 Regulation FD Disclosure.

On August 6, 2018, Hilltop issued a press release announcing the items set forth in Item 1.01 of this Current Report on Form 8-K.

A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference. The information in this Item 7.01 (including Exhibit 99.1) is being furnished and shall not be deemed to be "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as expressly set forth in such filing.

Section 9 — Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

(a) Financial statements of businesses acquired.

Not applicable.

(b) Pro forma financial information.

Not applicable.

(c) Shell company transactions.

Not applicable.

(d) Exhibits.

The following exhibit(s) are filed or furnished, depending on the relative item requiring such exhibit, in accordance with the provisions of Item 601 of Regulation S-K and Instruction B.2 to this form.

Exhibit Number	Description of Exhibit
10.1	Limited Liability Company Agreement of HTH Diamond Hillcrest Land LLC, dated as of July 31, 2018.
10.2	Ground Lease, dated as of July 31, 2018, by and among HTH Diamond Hillcrest Land LLC, as Ground Lessor, and HTH Hillcrest Project LLC, Diamond Hillcrest, LLC and SPC Park Plaza Partners LLC, as Ground Lessees.
10.3	Co-Owners Agreement, dated as of July 31, 2018, by and by and among HTH Hillcrest Project LLC, Diamond Hillcrest, LLC and SPC Park Plaza Partners LLC.
10.4	Office Lease, dated as of July 31, 2018, by and among Hilltop Holdings Inc., as Tenant, and HTH Hillcrest Project LLC, Diamond Hillcrest, LLC and SPC Park Plaza Partners LLC, as Landlord.
10.5	Retail Lease, dated as of July 31, 2018, by and among PlainsCapital Bank, as Tenant, and HTH Hillcrest Project LLC, Diamond Hillcrest, LLC and SPC Park Plaza Partners LLC, as Landlord.
99.1	Press Release issued August 6, 2018 (furnished pursuant to Item 7.01).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Hilltop Holdings Inc.,
a Maryland corporation

Date: August 6, 2018

By: /s/ Corey G. Prestidge
Name: Corey G. Prestidge
Title: Executive Vice President,
General Counsel & Secretary

(Back To Top)

Section 2: EX-10.1 (EX-10.1)

Exhibit 10.1

LIMITED LIABILITY COMPANY AGREEMENT

OF

HTH DIAMOND HILLCREST LAND LLC

THE MEMBERSHIP INTERESTS OF THE MEMBERS ISSUED UNDER THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES ACT OF ANY STATE OR THE DISTRICT OF COLUMBIA IN RELIANCE ON EXEMPTIONS UNDER THOSE LAWS. NO RESALE OF A MEMBERSHIP INTEREST BY A MEMBER IS PERMITTED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT AND ANY APPLICABLE FEDERAL OR STATE SECURITIES LAWS, AND ANY VIOLATION OF SUCH PROVISIONS COULD EXPOSE THE SELLING MEMBER AND THE COMPANY TO LIABILITY.

DATED AS OF JULY 31, 2018

TABLE OF CONTENTS

Table of Contents
(continued)

Table of Contents
(continued)

LIMITED LIABILITY COMPANY AGREEMENT
OF

HTH DIAMOND HILLCREST LAND LLC

This LIMITED LIABILITY COMPANY AGREEMENT (this "**Agreement**") is made and entered into as of July 31, 2018 (the "**Effective Date**"), by and between the Members hereinafter described.

SECTION 1. DEFINITIONS

1.1 **Definitions**. As used in this Agreement, the following terms have the meanings set forth below:

"**AAA**" shall have the meaning set forth in Section 14.15(a)(ii).

"**Acquiring Offeree Members**" shall have the meaning set forth in Section 9.3(b).

"**Act**" shall mean the Texas Limited Liability Company Law, which is part of the TBOC, as it may be amended, modified or supplemented from time to time.

"**Additional Funding Requirement**" shall have the meaning set forth in Section 3.4(b).

"**Additional Member(s)**" shall mean a Member, other than a Substitute Member, who has acquired a Membership Interest from the

Company.

"**Adjusted Deficit(s)**" shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) the Capital Account shall be increased by any amounts that such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next-to-the-last sentence of Regulations Section 1.704-2(g)(1) and of Regulation Section 1.704-2(i)(5); and

(b) the Capital Account shall be decreased by the items described in Sections 1.704-l(b)(2)(ii)(d)(4), 1.704-l(b)(2)(ii)(d)(5) and 1.704-1 (b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Deficit is intended to comply with the provisions of Section 1.704-l(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"**Adjustment Event**" shall mean the exercise by a Contributing Member of an election pursuant to Section 3.4(b)(i), including in connection with the conversion of a Member Loan under Section 3.4(b)(ii).

"**Affiliate**" shall mean, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this Agreement, "**control**" means the possession

---

directly or indirectly of the power to direct the management of such Person (whether through ownership of voting securities, by contract or otherwise), and "**controlled**" and "**controlling**" shall have meanings correlative with the foregoing.

"**Agreement**" shall mean this Limited Liability Company Agreement as originally executed and as amended or restated from time to time.

"**Appointing Party**" shall have the meaning set forth in Section 4.1(d).

"**Bankruptcy**" shall mean, with respect to the affected party, (i) the entry of an Order for Relief under the Bankruptcy Code, (ii) the admission by such party of its inability to pay its debts as they mature, (iii) the making by it of an assignment for the benefit of creditors, (iv) the filing by it of a petition in bankruptcy or a petition for relief under the Bankruptcy Code or any other applicable federal or state bankruptcy or insolvency statute or any similar law, (v) the expiration of thirty (30) days after the filing of an involuntary petition under the Bankruptcy Code, an application for the appointment of a receiver for the assets of such party, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other federal or state insolvency law, provided that the same shall not have been vacated, set aside or stayed within such thirty (30)-day period or (vi) the imposition of a judicial or statutory lien on all or a substantial part of its assets unless such lien is discharged or vacated or the enforcement thereof stayed within thirty (30) days after its effective date.

"**Bankruptcy Code**" shall mean any chapter of the United States Bankruptcy Code (as now or in the future amended).

"**BHCA**" shall mean the U.S. Bank Holding Company Act of 1956, as the same may be amended from time to time.

"**Bonus Capital**" shall mean, with respect to any Member at any time, the amount by which the aggregate Capital Contributions (including Capital Advances treated as Capital Contributions pursuant to Section 3.4(b)(i)) made by such Member pursuant to Section 3.4 exceed such Member's Maximum Amount.

"**Book Basis**" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes; provided, *however*, (a) if property is contributed to the Company, the initial Book Basis of such Property will equal its fair market value on the date of contribution, and (b) if the Capital Accounts of the Company are adjusted pursuant to Regulation Section 1.704-1(b) to reflect the fair market value of any Company assets, the Book Basis of such assets will be adjusted to equal its respective fair market value as of the time of such adjustment in accordance with such Regulation. The Book Basis of all assets will be further adjusted thereafter by depreciation or amortization as provided in Regulation Section 1.704-1(b)(2)(iv)(g).

"**Business Day**" shall mean any day, other than Saturday, Sunday or a day on which national banks are authorized or required to be closed in Dallas, Texas.

"**Buy-Sell Deposit Amount**" shall have the meaning set forth in Section 13.1(c)(iii).

"**Buy-Sell Notice**" shall have the meaning set forth in Section 13.1(a).

"**Buy-Sell Price**" shall have the meaning set forth in Section 13.1(a).

"**Capital Account(s)**" shall have the meaning set forth in Section 3.7.

"**Capital Advance**" shall have the meaning set forth in Section 3.4(b).

"**Capital Call**" shall mean any written notice from the Investment Committee to the Members delivered in accordance with Section 3.4 (a) requesting a contribution in cash of capital to the Company, which notice must state the total amount of the contributions required to be made and the amount to be funded by each Member.

"**Capital Contribution**" shall mean, except as otherwise provided herein, any contribution of cash or cash equivalent for such value as the Investment Committee determines in good faith which a Member contributes to the Company as a member in accordance with, and subject to, the terms of this Agreement (excluding the amount of any Member Loan advanced by any Member).

"**Certificate**" shall mean the Certificate of Formation of the Company as filed with the Secretary of State of Texas, as the same may be amended or restated from time to time.

"**Claimant**" shall have the meaning set forth in Section 14.15(b).

"**Closing Period**" shall have the meaning set forth in Section 9.3(d).

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.

"**Committee Representative**" shall mean each individual appointed from time to time by any Appointing Party pursuant to Section 4.1(d), and "**Committee Representatives**" shall mean all of such individuals, collectively.

"**Company**" shall mean HTH Diamond Hillcrest Land LLC, as identified in the Certificate.

"**Company Group**" shall have the meaning set forth in Section 4.1(c).

"**Company Loans**" shall mean all loans made by Members to the Company pursuant to Section 3.6.

"**Company Minimum Gain**" shall mean the same as "partnership minimum gain" as set forth in Section 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

"**Company Property**" shall mean collectively, all right, title and interest of the Company in and to the Property and all other assets (real, personal, tangible or intangible) owned by the Company including, without limitation, the Company's ownership interests in any Subsidiary and any other contract or agreement.

"**Contributing Member**" shall have the meaning set forth in Section 3.4(b).

"**Contribution Period**" shall have the meaning set forth in Section 3.4(b).

"**Covered Person**" shall have the meaning set forth in Section 10.1(c).

"**Debtor Member**" means any Member that is a borrower under a Member Loan, for so long as that Member Loan remains outstanding.

"**Defaulting Membe**r" shall have the meaning set forth in Section 9.5(a).

"**Depreciation**" shall mean for each Fiscal Year an amount equal to the depreciation, amortization or other cost-recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of any asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost-recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method approved by all of the Members.

"**Diamond Group**" shall mean an Affiliate of Gerald J. Ford, together with its successors by merger, consolidation or transfer of all or substantially all of its assets.

"**Diamond Member**" shall mean Diamond Ground, LLC, a Texas limited liability company, together with its permitted successors and assigns.

"**Dilution Factor**" shall mean one and one-half (1.5).

"**Disposition Transaction**" shall have the meaning set forth in Section 9.3.

"**Dissociated Member**" shall mean a Member which is the subject of a Bankruptcy, or with respect to which any other event occurs which under the Act causes such Member to cease to be a Member of the Company.

"**Dissolution Event(s)**" shall mean any of the events identified in Section 11.2.

"**Distributable Cash**" for any period shall mean the sum of: (i) (X) the gross cash proceeds from the Company from operations less (Y) the portion thereof used to pay all Company expenses and debt service payments (other than Company Loans), to establish or maintain a reserve for payment of anticipated expenses, the amount of which reserve shall be determined by the Investment Committee in its discretion, and for capital improvements, replacements, and contingencies as determined by the Investment Committee in its discretion plus (ii) the net cash proceeds received by the Company, after payment of, or provision for, all Company debts (other than Company Loans), obligations and reserves required or incurred or established, as determined by the Investment Committee in its discretion in connection with, the receipt by the Company of such proceeds, and all expenses incurred by the Company in connection with the transaction giving rise to such proceeds, including, without limitation, from any of the following events: (A) any sale or other disposition of all or any part of the Company Property, (B) any loan secured by all or any part of the assets of the Company, (C) the refinancing of Company Indebtedness, (D) the condemnation of all or any part of the Company Property, or (E) any unapplied insurance recovery

relating to the Company Property. Distributable Cash shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established as described above. Furthermore, except as otherwise approved in writing by all of the Members or in connection with a final liquidating distribution, Distributable Cash shall not include Capital Contributions made by the Members.

"**Economic Rights**" shall mean a Member's rights to allocations and distributions, if any, pursuant to the Act, the Certificate and this Agreement, but shall not include any Management Rights.

"**Effective Date**" shall have the meaning set forth in the Preamble.

"**Encumber**" or "**Encumbrance**" shall mean, as a noun, any voluntary or involuntary lien or encumbrance on a Member's interest, including without limitation, judicial attachments, judgment liens, any liens arising out of a decree, order or judgment of any court, any lien arising in connection with taxes claimed due by any governmental unit, and any lien arising under federal or state bankruptcy laws, and as a verb, the act or voluntarily or involuntarily encumbering or permitting any such lien or encumbrance.

"**Entity**" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

"**Fiscal Year(s)**" shall mean the fiscal year of the Company and shall be the same as its taxable year, which shall be the period beginning on January 1 of a given year (other than the year of formation of the Company, for which the beginning shall be on the date of such formation) and ending on December 31, unless otherwise required by the Code. Each Fiscal Year shall commence on the day immediately following the last day of the immediately preceding Fiscal Year.

"**Funded Amount**" shall have the meaning set forth in Section 3.4(a)(ii).

"**Funding Member**" shall have the meaning set forth in Section 3.4(a)(ii).

"**Funder Funded Amount**" shall have the meaning set forth in Section 3.4(a)(ii).

"**HTH Group**" shall mean Hilltop Holdings, Inc., a Maryland corporation, together with its successors by merger, consolidation or transfer of all or substantially all of its assets.

"**HTH Member**" shall mean Hilltop Investments I LLC, a Delaware limited liability company, together with its permitted successors and assigns.

"**Guaranty**" means any guaranty, indemnity or other assurance of payment, directly or indirectly, provided by any Person in any manner or form by virtue of which such Person becomes primarily, secondarily, contingently or otherwise liable for another Person's obligations, including by acting as an account party on, or becoming obligated to reimburse amounts drawn under, any letter of credit obtained for such other Person.

"**Indebtedness**" shall include with respect to any Person (i) all indebtedness (whether secured or unsecured) of such Person for borrowed money or for the deferred purchase price of property, goods or services, including reimbursement, and all other obligations contingent or otherwise of such Person with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured, and hedges and other derivative contracts and financial instruments, (ii) all obligations of such Person evidenced by notes, bonds, derivatives, loan agreements, reimbursement agreements or similar instruments (including senior, mezzanine and junior borrowings, which may provide the lender with a participation in profits), (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (iv) all capital lease obligations of such Person, (v) all indebtedness referred to in clause (i), (ii), (iii), or (iv) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, and (vi) all Indebtedness of others guaranteed by such Person or for which such Person has

otherwise assumed responsibility on, before or after the date such Indebtedness is incurred.

"**Indemnified Losses**" shall have the meaning set forth in Section 10.2(a).

"**Indemnified Person**" shall have the meaning set forth in Section 10.2(a).

"**Initial Contribution Amount**" shall mean, with respect to each Member, the aggregate amount to be contributed to the Company by such Initial Member pursuant to Section 3.3.

"**Initial Member(s)**" shall mean the HTH Member and the Diamond Member.

"**Lender Member**" means any Member that has made a Member Loan, for as long as that Member Loan remains outstanding.

"**Liquidating Trustee**" shall have the meaning set forth in Section 11.3(a).

"**List**" shall mean the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury, and/or on any other similar list maintained by the Office of Foreign Assets Control pursuant to any authorizing statute, executive order or regulation.

"**Loan Guaranty**" means any Guaranty approved by the Members and provided under, in respect of or in connection with, any Indebtedness of the Company or any Subsidiary, including, without limitation, any Guaranty provided in respect of principal, interest, taxes, the environment, "bad boy" non-recourse carveouts or obligations of the Company or any Subsidiary in connection with any Indebtedness of the Company or any Subsidiary.

"**Management Right(s)**" shall mean the right of a Member to participate in the management of the Company pursuant to the terms of this Agreement, including the rights to information and to participate in approvals of the Members and the rights of any Member to appoint Committee Representatives pursuant to the terms hereof.

"**Maximum Amount**" shall mean, with respect to any Member at any time, an amount equal to the total Capital Contributions which are required to have been made by such Member at that time in connection with all Capital Calls made by the Investment Committee pursuant to Section 3.4(a).

"**Members**" or "**Member**" shall mean each of the Persons who executes a counterpart of this Agreement as an Initial Member and each of the Persons who may hereafter become an Additional Member or a Substitute Member.

"**Member Loan**" shall have the meaning set forth in Section 3.4(b)(ii).

"**Member Loan Rate**" shall mean a rate of interest equal to 15% per annum, compounded monthly; provided, however, that in no event shall the rate of interest exceed the maximum rate of interest permitted by applicable law.

"**Member Non-Recourse Debt**" shall have the meaning set forth in Section 1.704-2(b)(4) of the Regulations for "partner nonrecourse debt."

"**Member Non-Recourse Debt Minimum Gain**" shall mean an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

"**Member Non-Recourse Deductions**" shall have the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations for "partner nonrecourse deductions."

"**Membership Interest(s)**" shall have the meaning set forth in Section 3.2.

"**Necessary Expenditures**" shall mean all costs, expenditures or amounts that are necessary or advisable, in the good faith opinion of the Investment Committee, to preserve, protect or maintain the interest of the Company or any of its Subsidiaries in the Property or any other assets of the Company or any of its Subsidiaries, including, without limitation, (i) costs of restoring the Property after a casualty or condemnation thereof, (ii) any amounts required to be expended by the Company or any of its Subsidiaries in order to comply with legal requirements or with any contractual obligations of the Company or any of its Subsidiaries, (iii) payments due in respect of any Indebtedness of the Company or any of its Subsidiaries, (iv) any amounts required to pay any uncontrollable expenses, including any real estate taxes, operating deficits, insurance premiums, utility costs, marketing costs, fees payable under any property management agreement, leasing agreement and/or any sales agency agreement, and (v) any amounts required to reimburse a Member (or its Affiliate) for amounts funded by such Member (or its Affiliate) in respect of any Loan Guaranty.

"**Non-Contributing Member**" shall have the meaning set forth in Section 3.4(b).

"**Nonrecourse Liability**" shall have the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

"**Offer Notice**" shall have the meaning set forth in Section 9.3(a).

"**Offer Notice Parameters**" shall have the meaning set forth in Section 9.3(a).

"**Offer Parameters Disposition Transaction**" shall have the meaning set forth in Section 9.3(c).

"**Offeree Member**" shall have the meaning set forth in Section 9.3(a).

"**Offering Member**" shall have the meaning set forth in Section 9.3(a).

"**Percentage Interests**" shall mean, with respect to each Member, an amount equal to a fraction, the numerator of which is the aggregate amount of Capital Contributions then or theretofore made or deemed made to the Company by such Member, and the denominator of which is the aggregate amount of Capital Contributions then or theretofore made or deemed made to the Company by all of the Members, as the same may be adjusted from time to time pursuant to the terms of this Agreement. Following the initial Capital Contributions of the Members pursuant to Section 3.3, the initial Percentage Interests for each Member shall be as set forth in Schedule 3.3.

"**Permitted Transfer**" shall mean any Transfer described in Section 9.2.

"**Permitted Transferee**" shall mean (i) a general or limited partnership, corporation or limited liability company that is an affiliate of the HTH Group or Diamond Group, as applicable; (ii) a trust of which the beneficiaries are members of the immediate family of Gerald J. Ford and (iii) any Person 100% owned by one or more of the Persons described in clauses (i) and (ii) of this definition.

"**Person(s)**" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such "Person" where the context so permits.

"**Profit(s)**" **and** "**Loss(es)**" shall mean, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(l) shall be included in taxable income or loss), with the following adjustments:

(a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this paragraph shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-l(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this paragraph shall be subtracted from such taxable income or loss;

(c) gain or loss resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Basis of the Company Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Book Basis;

(d) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition thereof; and

(e) Profits and Losses of the Company shall be computed without regard to the amount of any items of gross income, gain, loss or deduction that are specially allocated pursuant to Section 6.3.

"**Property**" shall have mean that certain real property described on Schedule A hereto.

"**Proposed Purchaser**" shall mean any Person to which the Member desires to sell all or any part of its Membership Interest that is not a Permitted Transferee.

"**Proposed Price**" shall have the meaning set forth in Section 9.3(a).

"**Proposed Terms**" shall have the meaning set forth in Section 9.3(a).

"**Purchase Agreement**" shall mean that certain Purchase and Sale Agreement relating to the Property.

"**Purchase Notice**" shall have the meaning set forth in Section 9.5(a).

"**Purchase Price**" shall have the meaning set forth in Section 9.5(b).

"**Regulations**" shall mean temporary and final regulations promulgated under the Code in effect as of the date of filing the Certificate and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

"**Regulatory Authorities**" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and any other banking authority in the United States, the Commodity Futures Trading Commission and the Securities and Exchange Commission.

"**Regulatory Event**" means (i) such time as the HTH Member or its Affiliates lease less than 20% of the aggregate rentable square footage in the building to be constructed on the Property or (ii) a violation of the Volcker Rule in the written opinion of legal counsel.

"**Regulatory Event Notice**" has the meaning ascribed to it in Section 4.7(a).

"**Reimbursable Amount**" shall have the meaning set forth in Section 3.4(a)(ii).

"**Reimbursement Percentage**" shall mean, with respect to any Member:

(i) with respect to any liability under a Loan Guaranty caused solely by an action of such Member, 100%;

(ii) with respect to any liability under a Loan Guaranty caused by an action (a) to which such Member consented, (b) in which such Member participated, (c) of which such Member was

notified in advance but failed to object or (d) that is not attributable to the action of a particular Member (e.g. an environmental condition), such Member's Percentage Interest; and

(iii) with respect to any liability directly attributable to an action of the Member (a) to which such Member did not consent, (b) in which such Member did not participate and (c) of which such Member had no advance knowledge (or if such Member did have advance knowledge, to which such Member objected in writing), 0%.

"**Reply Notice**" shall have the meaning set forth in Section 13.1(b).

"**Required Committee Approval**" shall mean the affirmative vote of over a majority of the Committee Representatives.

"**Required Reimbursement Amount**" shall have the meaning set forth in Section 3.4(a)(ii).

"**Responding Member**" shall have the meaning set forth in Section 13.1(a).

"**Response Notice**" shall have the meaning set forth in Section 9.3(b).

"**Response Period**" shall have the meaning set forth in Section 9.3(b).

"**ROFO Percentage**" shall have the meaning set forth in Section 9.3(b).

"**Sale Period**" shall have the meaning set forth in Section 9.3(c).

"**Default**" shall mean (i) if there is any Bankruptcy of the Member, (ii) if the Member fails to make any payment required by Section 3.4(a)(ii) or (iii) if the Member defaults under Section 13.1.

"**Stated Amount**" shall have the meaning set forth in Section 13.1(a).

"**Subsidiaries**" means any subsidiary that may be formed by the Company in accordance with this Agreement, each of which shall be wholly owned by the Company, including, for the avoidance of doubt, Property Owner. "**Subsidiary**" means any one of the foregoing.

"**Subject Interest**" shall have the meaning set forth in Section 9.3.

"**Substitute Member**" shall mean an Assignee who has been admitted to all of the rights of membership in the Company.

"**Tag-Along Interest**" shall have the meaning set forth in Section 9.4(a).

"**Tag-Along Notice**" shall have the meaning set forth in Section 9.4(a).

"**Tag-Along Price**" shall have the meaning set forth in Section 9.4(b).

"**Tax Matters Partner**" shall mean the Person appointed pursuant to Section 4.4.

"**TBOC**" shall mean the Texas Business Organization Code, as amended, supplemented or modified from time to time.

"**Transfer**" shall mean, as a noun, any voluntary or involuntary transfer, sale, assignment, substitution, exchange or other disposition whether by operation of law or otherwise and, as a verb, to, voluntarily or involuntary, transfer, sell, assign, substitute, exchange or dispose of, whether by operation of law or otherwise.

"**Triggering Member**" shall have the meaning set forth in Section 13.1(a).

"**Total Distributions**" shall mean, at any time, the total amount of Distributable Cash distributed or deemed distributed to all of the Members pursuant to Section 7.1, but excluding, for the avoidance of doubt, any amount distributed to the Members in respect of Company Loans.

"**Unadjusted Member**" shall mean, at any time adjustments are made to Percentage Interests pursuant to Section 3.5(a), any Member which has (x) contributed to the Company the entire amount of such Member's Maximum Amount, and (y) has not made Capital Contributions to the Company which constitute Bonus Capital.

"**Unfunded Amount**" shall have the meaning set forth in Section 3.4(a).

"**Volcker Rule**" means Section 13 of the United States Bank Holding Company Act of 1956, as amended (as added by Section 619 of The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010), or any successor statute.

1.2 **Rules of Construction**. (a) References to numbered or lettered sections and subsections refer to sections and subsections of this Agreement unless otherwise expressly stated. The words "herein," "hereof," "hereunder," "hereby," "this Agreement" and other similar references shall be construed to mean and include this Agreement, including all exhibits and schedules hereto and all amendments and supplements hereto, unless the context shall clearly indicate or require otherwise. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require. Any reference to statutes or laws shall include all amendments, modifications or replacements of the specific sections and provisions concerned. Unless expressly stated otherwise, the word "including" in this Agreement shall be deemed to be followed by the words "without limitation."

(b) This Agreement is not subject to the principle of construing its meaning against the party that drafted it. The parties agree that there shall be a conclusive presumption that the Agreement was drafted by each party to an equal degree, and each Member acknowledges that it was represented by its own counsel in connection with its negotiation and drafting. Wherever in this Agreement a Member is permitted or required to make a decision or determination or take an action in its "discretion" or its "judgment," that means such Member may take that decision in its "sole discretion" or "sole judgment" unless otherwise specifically provided herein. Wherever in this Agreement a Member is empowered to take or make a decision, direction, consent, vote, determination, election, action or approval, such Member is entitled to consider, favor and further only such interests and factors as it desires, including its own interests, and has no duty or obligation to consider, favor or further any interest of the Company or the other Members.

Wherever in this Agreement a Member is to act in its "discretion", "in good faith" or under another express standard, such Member may act under that express standard and is not, and will not be, subject to any other or different standard arising from this Agreement or any other agreement contemplated herein or by relevant provision of law or in equity or otherwise.

SECTION 2. THE LIMITED LIABILITY COMPANY

2.1 **Formation**. The name of the Company is set forth on the cover page of this Agreement. The execution and filing of the Certificate on June 25, 2018 created the Company under the Act. The Company has been organized upon the terms and conditions set forth in this Agreement and pursuant to the Act. The rights and obligations of the Company and its Members shall be as provided in the Act except as otherwise expressly provided in this Agreement.

2.2 **Purpose**. The purpose of the Company is to enter into the Purchase Agreement and to acquire, own, operate, manage, lease, maintain, finance, market, sell and otherwise deal with the Property. The Company may engage in any and all activities necessary, desirable or incidental to the accomplishment of the foregoing. In connection therewith, the Company may acquire, own, hold, manage, finance, mortgage, pledge, lease and assign any assets, enter into such acquisition agreements, leases, assignments, financing agreements, security agreements and other instruments and agreements of any kind, enter into partnerships, limited partnerships, limited liability companies and joint ventures, and do any and all other acts and things that may be necessary or useful for the conduct of its business or the winding up thereof. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by law to a limited liability company organized under the laws of the State of Texas.

2.3 **No Partnership Intended for Nontax Purposes**. Except for purposes of the Code, the Members do not intend by execution of this Agreement to be, as among themselves, partners or any other venture or Person other than a limited liability company. Notwithstanding the foregoing, the Members and the Company shall elect to be taxed as a partnership under applicable federal, state and local tax laws and regulations.

2.4 **Term**. The Company commenced on the filing of the Certificate and shall continue in existence until the winding up and liquidation of the Company and its business following a Dissolution Event.

2.5 **Registered Office and Agent**. The registered office of the Company shall be located in the State of Texas at the location designated in the Certificate or at such other location as may be approved from time to time by an Officer upon the filing of any notices required by

law. The initial registered agent shall be the Person designated in the Certificate. The registered agent shall have a business office identical with such registered office.

2.6 **Defects as to Formalities**. A failure to observe any formalities or requirements of this Agreement, the Certificate or the Act shall not be grounds for imposing personal liability on the Members for liabilities or obligations of the Company.

2.7 **Title to Property**. All Company Property shall be owned, directly or indirectly, by the Company and no Member shall have any ownership interest in Company Property in a Member's individual name or right.

2.8 **Principal Office**. The initial principal office of the Company in the United States shall be at c/o Hilltop Holdings Inc., 2323 Victory Avenue, Suite 1400, Dallas, Texas 75219 or at such other place as may be approved from time to time by an Officer, which need not be in the State of Texas.

2.9 **Foreign Qualification**. Prior to the Company's conducting business in any jurisdiction other than the State of Texas, the Company shall comply with all requirements necessary to qualify the Company as a foreign limited liability company in each jurisdiction in which the character of its business requires it to be qualified. An Officer shall execute, acknowledge, swear to, and deliver all certificates and other instruments that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in each jurisdiction in which the character of its business requires it to be qualified.

2.10 **Subsidiaries**. The Company may form, directly or indirectly, one or more Subsidiaries to hold title to all or part of any Company Property. Any and all references herein to the Company or any Member causing or directing any action on behalf of a Subsidiary shall be deemed to refer to the Company causing (or such Member causing the Company to cause), in its capacity as a direct or indirect partner, member or stockholder of such Subsidiaries, such action to be taken for and on behalf of such Subsidiary.

SECTION 3. NAMES, ADDRESSES, MEMBERSHIP INTERESTS, AND CAPITAL CONTRIBUTIONS OF MEMBERS

3.1 **Names and Addresses**. The name and address of each Initial Member are set forth in Schedule 3.1.

3.2 **Membership Interests**. The "**Membership Interest**" of a Member is all of the Member's rights and interests under this Agreement and all other rights and interests of a member of a limited liability company as set forth in the Act (subject to the terms of this Agreement), including the Member's right to receive distributions under Section 7.1 and the Member's Management Rights.

3.3 **Initial Capital Contributions**. As of the Effective Date, the Members have funded Capital Contributions to the Company in the amounts set forth on Schedule 3.3 attached hereto.

3.4 **Additional Funding Requirement**.

(a) (i) The Members shall have the sole and exclusive right to make Capital Calls in accordance with this Section 3.4(a). The Members may, at any time or times, require all of the Members to make additional cash capital contributions to the Company that the Members determine, in good faith, are necessary to fund any Necessary Expenditure in excess of available, unrestricted cash and to pay such Necessary Expenditure with the proceeds of such Capital Call. The Investment Committee shall notify all the Members in writing (which, for the avoidance of doubt, may be via e-mail) of any Capital Calls made pursuant to this Section 3.4(a).

(ii) If any Member (or an Affiliate thereof) ("**Funding Member**") funds any amounts (such amounts, the "**Funded Amount**") under any Loan Guaranty, the Funding Member may give written notice of the funding of such Funded Amount and each of the other Members shall, within five (5) Business Days after its receipt of such notice, reimburse such Funding Member an amount equal to (x) such Funded Amount (together with any interest that has accrued thereon at the Member Loan Rate from the date of such notice) (the "**Reimbursable Amount**") *multiplied by* (y) such Member's Reimbursement Percentage (the "**Required Reimbursement Amount**"). If any Member timely reimburses the Funding Member the Required Reimbursement Amount as provided in the immediately preceding sentence, (i) the Member shall be deemed to have made a Capital Contribution in an amount equal to (x) the Reimbursable Amount *multiplied by* (y) the Member's Percentage Interest (each, a "**Funder Funded Amount**") and (ii) such Member shall be deemed to have made a Capital Contribution in an amount equal to the Required Reimbursement Amount. If any Member does not timely reimburse the Required Reimbursement Amount to the Funding Member (such amount not reimbursed, the "**Unfunded Amount**") in accordance with the first sentence of this paragraph, then, for all purposes of this Agreement, (i) the Company shall be deemed to have made a Capital Call in the amount of the Reimbursable Amount, (ii) the Funding Member shall be deemed to have contributed capital to the Company pursuant to such Capital Call in an amount equal to the Funding Member's Funded Amount, (iii) the Funding Member shall be deemed a Contributing Member with respect to such Capital Call and shall be deemed to have funded a Capital Advance equal to the Unfunded Amount, (iv) each Member that failed to reimburse the Unfunded Amount shall be deemed a Non-Contributing Member with respect to such Capital Call, and (v) the provisions of Section 3.4(b) shall apply to such deemed Capital Contributions and Capital Advance.

(b) Each Member's *pro rata* share (based on its Percentage Interests) of a Capital Call is referred to herein as an "**Additional Funding Requirement**." Each Member shall fund its Additional Funding Requirement of any such Capital Call within five (5) Business Days of receipt of notice therefor from the Investment Committee (the "**Contribution Period**"). If any Member (each, a "**Non-Contributing**

Member") refuses or fails to make all or any portion of an Additional Funding Requirement on or prior to the expiration of the Contribution Period therefor (as such period may be extended in accordance with the preceding sentence), then such refusal or failure shall constitute a default by the Non-Contributing Member, and (A) if any Member shall be a Non-Contributing Member, then each of the other Members (each a "**Contributing Member**"), provided such Contributing Member shall have made its corresponding Additional Funding Requirement, and subject to the succeeding provisions of this Section 3.4(b), within five (5) Business Days after the expiration of the relevant Contribution Period, may advance all or a portion of a Non-Contributing Member's unpaid Additional Funding Requirement to the Company (a "**Capital Advance**"). If more than one Member desires to be a Contributing Member with respect to another Member's failure to timely fund its Additional Funding Requirement, each such Member (provided the Contributing Member shall have made its corresponding Additional Funding Requirement) shall have the right to fund a portion of such Capital Advance *pro rata* in proportion to the relative Percentage Interests of such Contributing Members. In the event a Contributing Member makes a Capital Advance pursuant to this Section 3.4(b), then such Contributing Member may irrevocably elect either of the following:

(i) to treat the amount of the Capital Advance paid by such Contributing Member as a Capital Contribution by that Contributing Member, with the corresponding dilution of the Non-Contributing Member provided for in Section 3.5; or

(ii) to treat the entire amount funded by such Contributing Member attributable to such Contributing Member's Additional Funding Requirement as a loan by such Contributing Member to the Non-Contributing Member (a "**Member Loan**"), which Member Loan shall (i) be treated as a demand loan made by the Contributing Member to the Non-Contributing Member and (ii) bear interest at the Member Loan Rate. Any Member Loan will be recourse only to the Non-Contributing Member's Interest and must be repaid directly by the Company on behalf of the Non-Contributing Member as set forth in Section 7.6. Funds used to repay a Member Loan must be applied first to interest and then to principal. At any time before full repayment of any Member Loan, the Lender Member may elect, in its sole discretion, to terminate that Member Loan and have the Non-Contributing Member's Percentage Interest diluted as set forth in Section 3.5, with the entire outstanding principal treated as the amount of the Bonus Capital and the Capital Accounts of the Contributing and Non-Contributing Members adjusted as provided in Section 3.5. Each Member Loan may, at the election of the Lender Member, be evidenced by a promissory note in the form of Exhibit B, and that Lender Member is hereby granted an irrevocable power of attorney, coupled with an interest, to execute and deliver on behalf and in the name of the Debtor Member that promissory note and such Uniform Commercial Code financing and continuation statements and other security instruments reasonably requested by such Lender Member, as may be necessary to perfect and continue the security interest in favor of such Lender Member until such Member Loan is paid in full or converted as described below. The failure of a Lender Member or Debtor Member to execute the promissory note will not invalidate or otherwise affect the enforceability of, or amounts owing under, any Member Loan.

(c) An election by a Contributing Member pursuant to Section 3.4(b) to treat a Capital Advance (x) as a Capital Contribution by such Contributing Member with the corresponding dilution set forth in Section 3.5, as provided in Section 3.4(b)(i), or (y) as a Member Loan as provided in Section 3.4(b)(ii), shall in each case be made by the Contributing Member concurrently with the funding of such Capital Advance, by notice to the Non-Contributing Member and the Company. If a Contributing Member fails to provide notice to the Non-Contributing Member and the Company in accordance with this Section 3.4(c), such Contributing Member shall be deemed to have elected to treat its Capital Advance together with the amount funded by such Contributing Member with respect to the relevant Additional Funding Requirement as a Member Loan as provided in Section 3.4(b)(ii). In the event more than one Member is a Contributing Member, then each Member shall be required to make the same election pursuant to Section 3.4(b).

3.5 **Adjustments to Percentage Interests**.

(a) Upon the occurrence of an Adjustment Event, the Percentage Interests of the Members shall be adjusted as follows: (A) the Percentage Interest of each Contributing Member shall be adjusted so that it is equal to a fraction, the numerator of which is the sum of (x) such Member's Initial Contribution Amount, plus (y) any additional Capital Contributions then or theretofore made or deemed made by such Contributing Member (including any Capital Advance

made by such Contributing Member pursuant to an election as provided in Section 3.4(b)(i) up to (and not in excess of) such Member's Maximum Amount, plus (z) the product of (1) the Dilution Factor, *multiplied by* (2) such Contributing Member's Bonus Capital, and the denominator of which is the aggregate amount of all Capital Contributions then or theretofore made or deemed made to the Company by all of the Members (including any Capital Advances made by the Members pursuant to an election as provided in Section 3.4(b)(i)), (B) the Percentage Interest of each Unadjusted Member shall remain unchanged (that is, each Unadjusted Member's Percentage Interest is neither increased nor decreased) and (C) the Percentage Interest of each Non-Contributing Member shall be equal to such Non-Contributing Member's *pro rata* portion (based on the relative Percentage Interests of all of the Non-Contributing Members) of the difference between (x) 100% and (y) the sum of (1) the aggregate Percentage Interests of all of the Contributing Members and (2) the aggregate Percentage Interests of all of the Unadjusted Members, in each case after giving effect to the provisions of this Section 3.5(a).

(b) If a Member's Percentage Interest shall be reduced below 0.1% as a result of the operation of Section 3.5(a), then such Non-Contributing Member shall have no further right, title or interest in the Company and shall, upon the request of the Contributing Members, execute and deliver to the Contributing Members such documents of transfer and assignment, and such other instruments, as the Contributing Members shall reasonably request, to confirm that such Non-Contributing Member has no further right, title or interest in or to the Company, as a Member, manager or otherwise. Each Non-Contributing Member hereby grants to each Contributing Member an irrevocable power of attorney, coupled with an interest, to execute and deliver the documents of transfer and assignment and such other instruments referred to in the

immediately preceding sentence. The Members hereby acknowledge to one another that because of the difficulty in calculating the damage that may result from the failure of a Member to fund its share of an Additional Funding Requirement the remedies set forth in this Section 3.5 have been approved by the Members as fair and reasonable.

(c) For so long as no Member has made Capital Contributions to the Company in excess of such Member's Maximum Amount, the Percentage Interest of each Member shall be equal to a fraction, the numerator of which is the aggregate amount of Capital Contributions then or theretofore made or deemed made to the Company by such Member, and the denominator of which is the aggregate amount of Capital Contributions then or theretofore made or deemed made to the Company by all of the Members.

3.6 **Company Loans**. Except as otherwise expressly provided in this Agreement, no Member may make any contributions of capital or otherwise advance funds to the Company without the prior written consent of all Members.

3.7 **Establishment of Capital Accounts**. A capital account shall be established for each Member (a "**Capital Account**") in the initial amount of that portion of such Member's Capital Contribution which has been fully paid. Capital Accounts shall be determined and maintained in accordance with Regulations Section 1.704-1(b)(2)(iv). A Member's Capital Account shall:

(a) be increased by:

(i) the amount of money contributed by the Member to the Company;

(ii) the fair market value of property (other than money) contributed by, or on behalf of, the Member to the Company determined as of the date of such contribution;

(iii) allocations to the Member of Profits (or items thereof); and

(iv) the amount of any Company liabilities that are assumed by the Member or secured by any Company property distributed to the Member.

(b) and decreased by:

(i) the amount of money distributed to or withdrawn by the Member;

(ii) the Book Basis of property (other than money) distributed to the Member by the Company determined as of the date of such distribution;

(iii) allocations of Company Losses (or items thereof); and

(iv) the amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by the Member to the Company.

(c) The Capital Account of each Member also shall be adjusted appropriately to reflect any other adjustment required pursuant to Regulation Section 1.704-1 or 1.704-2, including, without limitation, the requirements set forth in Regulation Sections 1.704-1(b)(2)(iv)(g) and 1.704-1(b)(2)(iv)(m).

(d) In the event a Member fails to make a Capital Contribution and pursuant to Section 3.4(b) another Member makes such contributions then the Capital Account balances of such Members shall be adjusted so that the Capital Account balances immediately after such adjustment (after taking into account all allocations of Profit and Loss and other items through the date of the adjustment as deemed appropriate by the Members) are equal as closely as possible to their respective Target Capital Accounts, after giving effect to the adjustments to the amounts distributable resulting from changes to the Percentage Interests and Capital Contributions made by the Members. For purposes of the preceding Target Capital Account means, with respect to any Member, as of any date, an amount equal to the hypothetical distribution such Member would receive with respect to its equity interests in the Company if all assets of the Company, including cash, were sold for cash equal to their Gross Asset Value, all liabilities of the Company were satisfied (limited, with respect to nonrecourse liabilities to the Book Basis of the assets securing such liabilities) and the remaining proceeds were distributed pursuant to Section 7.1.

3.8 **Transfers of Interests in the Company**. Upon the Transfer of all or a part of an interest in the Company, the Capital Account of the transferor that is attributable to the transferred interest shall carry over to the transferee, and tax items for the Company taxable year of the Transfer shall be allocated between the transferor and the transferee in accordance with Section 9.8.

3.9 **Capital of the Company**. Except as otherwise provided herein, no Member shall be entitled to withdraw or receive any interest or (except as otherwise expressly provided herein) other return on, or return of, all or any part of its Capital Contribution, or to receive any Company Property (other than cash) in return for its Capital Contribution.

3.10 **Limited Liability of Members**. No Member will be bound by, nor be personally liable for, the expenses, liabilities, indebtedness

or obligations of the Company or any of its Subsidiaries, whether arising in contract, tort or otherwise. The provisions of Section 3.4 of this Agreement are intended solely to benefit the Members, and no Member has any obligation to any creditor of the Company or any of its Subsidiaries to make any Capital Contributions to the Company or any of its Subsidiaries.

3.11 **Guaranties**. If one or more Members, but not all of the Members (or an Affiliate thereof) provides a Loan Guaranty that is in the nature of a payment guaranty (i.e. is not only an environmental indemnity or non-recourse carve-out guaranty), the Company shall pay to such Member a market-rate fee (to be agreed by the Members at the time any such Loan Guaranty is provided) for providing such Loan Guaranty, which fee shall be based on the guaranteed amount. For the avoidance of doubt, nothing herein shall obligate a Member of any Affiliate thereof to provide any Loan Guaranty.

SECTION 4. MANAGEMENT

4.1 **Management by the Investment Committee**.

(a) Except as otherwise expressly provided in this Agreement, the management and control of the business and affairs of the Company shall be vested in the Investment Committee. A member of the Investment Committee is hereby authorized to execute and deliver on behalf of the Company any and all documents, contracts, certificates, agreements and instruments, and to take any action and to do anything and everything such member of the Investment Committee deems reasonably necessary or appropriate for and on behalf of the Company or any of its Subsidiaries in accordance with the provisions of this Agreement and applicable law to consummate the Purchase Agreement and effect the Ground Lease.

(b) A committee consisting of the Committee Representatives (the "**Investment Committee**") is hereby established and is granted the sole and exclusive right, power and authority to (i) make, approve or disapprove all Investment Committee Decisions on behalf of the Company and its Subsidiaries, and (ii) cause the Company and its Subsidiaries to effect decisions and determinations made by the Investment Committee (and designate authorized signatories of the Company or any Subsidiary to execute and deliver on behalf of the Company or any Subsidiary any and all such contracts, certificates, agreements, instruments and other documents, and to take any such action, as the Investment Committee deems necessary or appropriate relating to Investment Committee Decisions). None of the Members shall have authority to do (or to cause the Company to cause any of its Subsidiaries to do) or permit any of the Investment Committee Decisions (with respect to the Company or any of its Subsidiaries), or bind the Company (or any of its Subsidiaries or cause the Company to bind any of its Subsidiaries) as to any of the Investment Committee Decisions without first obtaining the approval of the Investment Committee, except to the extent otherwise expressly permitted herein.

(c) The "**Investment Committee Decisions**" shall mean any matter set forth in this Agreement that is specifically reserved to the discretion of the Investment Committee and each of the following decisions with respect to the Company or any of its Subsidiaries (collectively, the "**Company Group**"),:

(i) any sale, participation, exchange, mortgage or other encumbrance, pledge or other transfer or disposition of all or any portion of the Company Property (excluding space leases of portions of the Property), including, without limitation, all or any portion of any of Property and any equity interests held by any member of the Company Group, or entering into any contract or agreement to do so;

(ii) organizing or forming any Subsidiary of any member of the Company Group;

(iii) the merger, combination, consolidation or other reorganization of any member of the Company Group with or into another Entity;

(iv) the exercise or waiver of any rights of the Company under the Purchase Agreement, Ground Lease or the execution or delivery of any of the documents or notices required to be executed or delivered thereunder;

(v) the incurrence of any material expense;

(vi) the entry into, amendment or modification of any contract or other arrangement between any member of the Company Group and a Member or any Affiliate of a Member;

(vii) borrowing money or incurring Indebtedness on behalf of the Company or any of its Subsidiaries, or any refinancing thereof, or amending or modifying the terms and conditions of any loan in any material respect, or voluntarily prepaying any such financing or the intentional taking of any action or any intentional omission that would constitute an event of default under any loan agreement to which the Company or any of its Subsidiaries is a party;

(viii) (A) adjusting, settling, compromising or disposing any claim (including any condemnation action), regulatory proceeding or arbitration, or obligation, debt, demand, suit or judgment against or involving the Company or any of its Subsidiaries or any Company Property or any group of claims arising out of the same or related facts and circumstances involving more than $50,000, except for claims for which the Company or any of its Subsidiaries or a Company Property has full insurance coverage, without regard to the amount of deductibles or self-insured retentions which are equal to or less than $50,000, (B) becoming a plaintiff in any litigation or otherwise filing or initiating any suit for or on behalf of the Company or any of its Subsidiaries, except for litigation commenced by any insurer of the Company or any of its Subsidiaries pursuant to the policy or policies of insurance issued by such insurer, or (C) settling on

behalf of the Company or any of its Subsidiaries any claim for payment of insurance in excess of $50,000 or for payment of awards or damages arising out of the exercise of eminent domain by any public or governmental authority in excess of $50,000; and

(ix) approving, executing, modifying, amending or terminating any property management agreement, management agreement or asset management agreement or any other leasing, sales agency or brokerage agreement or marketing agreement with respect to the Property; provided, however, that the consent of all of the Members shall be required for any material changes to the economic terms of an Asset Management Agreement to which an Affiliate of the Member is a party;

(x) approving any insurance program for the Company or any of its Subsidiaries or the Property;

(xi) making or agreeing to any changes to the zoning of the Property or approve the terms and provisions of any restrictive covenant or easement affecting the Property or any portion thereof;

(xii) converting the Property into multiple condominium units;

(xiii) except to the extent required under the terms of any instrument of Indebtedness secured by the Property, deciding whether to repair or rebuild in the case of any casualty affecting the improvement located at the Property;

(xiv) entering into any lease of space at the Property in excess of twenty thousand (20,000) square feet or entering into any amendment, renegotiation, modification, supplement or extension of any lease that materially impairs any substantive right of the Company or any of its Subsidiaries thereunder or reduces the rents payable thereunder;

(xv) the acquisition by the Company of any material real property other than the Property;

(xvi) taking any act, including, without limitation, making any distribution, in contravention of this Agreement;

(xvii) lending any funds of the Company;

(xviii) altering the amount of any Member Loan;

(xix) causing the Company to employ any employees of the Company;

(xx) admitting any additional Member (other than in accordance with this Agreement);

(xxi) authorization of Indebtedness requiring (or the Company's agreement to indemnify any guarantor of) any Guaranty of principal or interest of any Indebtedness of the Company or any Subsidiary; and

(xxii) changing the fundamental business purpose of the Company.

(xxiii) making any Capital Calls;

(xxiv) establishing bank accounts on behalf of the Company or its Subsidiaries;

(xxv) subject to Section 7 hereof, setting the timing and amount of distributions of Distributable Cash, and establishing reserves in good faith by the Investment Committee for the ultimate discharge of contingent, unliquidated or unforeseen liabilities or obligations of the Company;

(xxvi) making or revoking any tax election or making any material tax decision by or on behalf of the Company or any of its Subsidiaries, filing any tax return or tax report on behalf of the Company or any of its Subsidiaries, or adopting significant accounting policies or selecting and employing the independent auditors of the Company or any of its Subsidiaries;

(xxvii) taking any action in respect of environmental matters involving the Company or any of its Subsidiaries or any Company Property, including any environmental matters involving the Property; and

(xxviii) filing, or consenting to the filing of, on behalf of the Company or any of its Subsidiaries, a petition or other similar action in any Bankruptcy or other similar proceeding under any present or future federal, state, local or other law and making any decisions on behalf of the Company or any such Subsidiaries in any such proceeding, and making any decisions on behalf of the Company or any of its Subsidiaries with respect to any Bankruptcy or other similar proceeding under any present or future federal, state, local or other law involving any other Person.

(d) The Investment Committee shall at all times consist of four (4) Committee Representatives, two of whom shall be appointed by the HTH Member and two of whom shall be appointed by the Diamond Member; provided, however, that if both of the Committee Representatives appointed by the HTH Member or the Diamond Member (the "**Appointing Party**") are deemed to have resigned pursuant to

Section 11.3(b), Section 13.1(d)(ii) or Section 13.1(d)(iii), then such Committee Representatives may not be replaced and the Investment Committee shall thereafter only consist of two (2) Committee Representatives, each of whom shall be appointed by the other Appointing Party. Each Appointing Party may appoint an alternate for any Committee Representative appointed by it to the Investment Committee, who shall have all the powers of a given Committee Representative in his absence or inability to serve. Each Appointing Party shall have the power to remove any Committee Representative or alternative Committee Representative of the Investment Committee appointed by it by delivering written notice of such removal to the Company and to the other Appointing Party. Subject to the first sentence of this Section 4.1(d), vacancies on the Investment Committee shall be filled by the Appointing Party that appointed the Committee Representative previously holding the position which is then vacant.

(e) The Committee Representatives effective as of the date hereof shall be as follows:

HTH Members:	(1) Jeremy Ford
	(2) Corey Prestidge
Diamond Member:	(1) Gerald Ford
	(2) Gary Shultz

(f) The Investment Committee shall act with respect to all matters (whether to approve any Investment Committee Decision or to exercise any other right (or to grant any consent or approval) accorded to the Investment Committee hereunder) by Required Committee Approval. Each Committee Representative shall have one (1) vote on all matters that arise before the Investment Committee. For avoidance of doubt and notwithstanding anything to the contrary herein, no matter may be approved and no action taken by the Investment Committee without Required Committee Approval.

(g) (i) The Investment Committee shall meet required to vote on any Investment Committee Decisions. Special meetings of the Investment Committee may be called by any Committee Representative to propose and vote on Investment Committee Decisions upon not less than five (5) days' prior written notice of time and place of such meeting; provided, however, that such notice requirement shall be deemed waived by any Committee Representative who is present (in person or by telephone) at the commencement of any such special meeting. Regular and special meetings may be held at any place as may be designated from time to time by any Committee Representative, including meetings by telephone conference. One (1) Committee Representative appointed by each of the HTH Member and the Diamond Member shall constitute a quorum for Investment Committee action with respect to any Investment Committee Decision, provided that if any member of the Committee Representative fails to attend five (5) consecutive meetings, then, until such Committee Representative attends a meeting, such Committee Representative shall not be needed to constitute a quorum for a meeting and such Committee Representative shall be deemed to have voted against any matter proposed at any such meeting.

(ii) The Committee Representatives shall use commercially reasonable efforts to evidence all actions taken or approved by the Investment Committee in writing (which may be by e-mail) promptly following such action or approval.

(iii) Any action required or permitted to be taken at a meeting of the Investment Committee may be taken without a meeting if a written consent setting forth the action so taken is signed by the Committee Representatives whose approval is required to constitute the Required Committee Approval. Such consent may be in one or more counterparts, and shall have the same force and effect as a vote of such Committee Representatives. An action so taken shall be deemed to have been taken at a meeting held on the latest date of a counterpart of such consent.

(iv) Each Committee Representative may authorize any other Committee Representative to act for him or her by proxy on all matters in which a Committee Representative is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting; provided that in no event shall any Committee Representative be

obligated to accept a proxy from any other Committee Representative. Every proxy must be given in writing and signed by the Committee Representative. Every proxy shall be revocable at the pleasure of the Committee Representative executing it, such revocation to be effective upon the Company's receipt of written notice thereof.

(v) All reasonable travel expenses incurred by each of the Committee Representatives in connection with their service on the Investment Committee shall be borne by the Company.

4.2 **Books and Records**. The Company shall direct the HTH Member to maintain full and complete books and records of the Company and its Subsidiaries, including those specified in the Act, at all times. The books and records required to be maintained hereunder by the HTH Member shall be the property of the Company and shall be made available by the HTH Member for examination by any Member and such Member's attorneys, accountants or other agents or representatives, in each case at reasonable times and upon reasonable notice.

4.3 **Reporting Requirements**. The Company shall direct the HTH Member to do the following (the expenses of which shall be expenses of the Company):

(a) within ninety (90) days after the end of the Company's Fiscal Year, deliver to the Members an estimate of the Members' distributive share of the items set forth in Section 702 of the Code for such Fiscal Year;

(b) within one hundred twenty (120) days after the end of the Company's Fiscal Year, deliver to the Members (i) pro forma IRS Schedules K-1 and such other tax information with respect to such year as is necessary for inclusion in the Members' federal and state income tax and other tax returns, and (ii) an annual report of the Company, including a balance sheet, profit and loss statement and a statement of changes in financial position, and a statement showing distributions to the Members all as prepared in accordance with U.S. generally accepted accounting principles consistently applied; and

(c) within sixty (60) days after the end of each quarter of each Fiscal Year, deliver to the Members quarterly financial statements of the Company, including a balance sheet, profit and loss statement and a statement showing distributions to the Members, all as prepared in accordance with U.S. generally accepted accounting principles consistently applied.

All of the above reports, balance sheets or other financial statements shall be prepared on an accrual basis and shall otherwise be in form reasonably acceptable to the Members.

4.4 **Tax Matters Partner; Tax Returns**. The HTH Member shall act as the Tax Matters Partner of the Company pursuant to § 6231 (a)(7) of the Code. The Tax Matters Partner, in its capacity as such, is authorized, to the extent provided in Code §§6221 through 6231, but subject to the succeeding provisions of this Section 4.4, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company and its Members and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and its Members. The Tax Matters Partner shall not be liable to the Company or any Member for any action taken in

good faith and without gross negligence as Tax Matters Partner, including in connection with the examination by the Internal Revenue Service of the Company's federal partnership tax return or the determination, protest or adjudication of any federal or state income tax liability of any Member resulting from the Company. Nothing in this Section 4.4 shall be construed to restrict or otherwise limit the other Members' rights to participate at each Member's own cost in any administrative or judicial proceeding in connection with any tax matters relating to the Company. Any direct or indirect costs and expenses incurred by the Tax Matters Partner, acting in its capacity as such, shall be deemed costs and expenses of the Company, and the Company shall reimburse the Tax Matters Partner for such amounts.

4.5 **Conduct of the Company**.

(a) Subject to the respective rights and obligations of the Members to manage the Company under the terms of this Agreement, the Members agree to use their commercially reasonable efforts to cause the Company and its Subsidiaries to comply with all requirements of applicable laws (including any directives or informal guidance provided by applicable regulatory authorities, whether through an examination process or otherwise).

4.6 **Member Defaults**.

(a) Within one hundred twenty (120) days of a Default, the non-Defaulting Member may: (x) deliver a Buy-Sell Notice to the Defaulting Member pursuant to Section 13.1, or (y) deliver a Purchase Notice to the Defaulting Member in order to exercise the purchase option with respect to the Membership Interest of the Defaulting Member pursuant to Section 9.5.

4.7 **Regulatory Events**.

(a) Regulatory Event Notices. If a Regulatory Event has occurred, then the HTH Member may, but is not obligated to, deliver to the other Members a written notice (a "**Regulatory Event Notice**") specifying in reasonable detail the occurrence and the nature of such Regulatory Event.

(b) Procedures. If a Regulatory Event Notice is given as provided above, then the Members agree to negotiate in good faith to restructure the terms of the transactions contemplated by this Agreement and the agreements to which the Company and its Subsidiaries are a party in such a manner as may be required so that HTH Member determines that the transactions contemplated by this Agreement and the agreements to which the Company and its Subsidiaries would be in compliance with the terms of all applicable laws and regulations (whether applicable to the HTH Member or any of its Affiliates) and all policies and procedures implemented by such party or any of its Affiliates pursuant to all applicable law and regulations but which preserves the economic interests of the other Members under this Agreement to the extent possible. Nothing in this Section 4.7(b) shall require a Member to incur a loss (other than immaterial incidental expenses) or increase its regulatory risk or cost in connection with any restructuring contemplated by the preceding sentence or to otherwise suffer a material adverse effect.

(c) Forced Sale. In the event that a Regulatory Event Notice has been delivered and the Members do not enter into a restructuring that satisfies the requirements of Section 4.7(b), then the HTH Member shall thereafter be entitled to sell all of the Company Assets in accordance with Section 9.5.

SECTION 5. REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 **Representations, Warranties and Covenants by the Members**. To induce each Member to execute, deliver and perform this Agreement, each of the Members, with respect to itself, hereby, severally and not jointly, represents, warrants and covenants to the other Members, their respective successors and assigns as follows:

(a) Such Member (i) is, if an entity, duly organized, validly existing and in good standing under the laws of the State of Texas as a limited liability company and (ii) has the full right, power and authority to enter into this Agreement, and to perform all of its obligations hereunder.

(b) This Agreement has been duly and validly executed and delivered by and on behalf of such Member and, assuming the due authorization, execution and delivery thereof by and on behalf of each other party hereto, constitutes a valid, binding and enforceable obligation of such Member enforceable in accordance with its terms, except to the extent such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors in general.

(c) Neither the execution and delivery hereof, nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation of any obligation under any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which such Member is a party, or by which such Member is otherwise bound.

(d) There is no claim, cause of action or other litigation or any judicial, administrative or investigative proceedings pending or, to the best of such Member's knowledge, threatened against such Member that would reasonably be expected to have a material adverse effect on the performance of such Member's obligations hereunder.

(e) Neither such Member nor any ultimate beneficial interest holder of such Member that holds through a flow-through entity for tax purposes is a "qualified organization" within the meaning of Section 514(c)(9)(C) of the Code.

5.2 **Additional Representations, Warranties and Covenants**.

(a) Each Member represents and warrants that (i) each Person owning a 10% or greater interest in such Member (A) is not currently identified on the List, and (B) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States and (ii) such Member has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations

and warranties remain true and correct at all times. This Section 5.2(a) shall not apply to any Person to the extent that such Person's interest in the Member is through either (A) a Person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a Person or (B) an "employee pension benefit plan" or "pension plan" as defined in Section 3(2) of ERISA.

(b) Each Member shall comply with all applicable requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect and shall promptly notify the other Members in writing if any of the foregoing representations, warranties or covenants are no longer true or have been breached or if such Member has actual knowledge that they may no longer be true or have been breached.

(c) Each Member represents and warrants that:

(i) it has been advised to engage and has engaged its own counsel (whether in-house or external) and such other advisers as such Member deems necessary and appropriate; by reason of its business or financial experience, or by reason of the business or financial experience of such Member's own attorneys, accountants and financial advisors who are not Affiliates of the Company or any other Member and who are not compensated, directly or indirectly, by the Company or any other Member or any Affiliate thereof, it is capable of evaluating the risks and merits of an investment in the Company and of protecting its own interests in connection with this investment (nothing in this Agreement shall be construed to allow any Member to rely upon the counsel acting for another Member or to create an attorney-client relationship between such counsel and such other Member);

(ii) it and each of its beneficial owners is an "accredited investor" (as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended) and it is acquiring its Membership Interest for investment purposes for its own account only and not with a view to or for sale in connection with any distribution of all or any part of its Membership Interest;

(iii) it is financially able to bear the economic risk of an investment in the Company, including the total loss thereof; and

(iv) no Person has at any time expressly or impliedly represented, guaranteed, or warranted to it that it may freely transfer its Membership Interest, that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the Company, that cash distributions from Company operations or otherwise will be made to the Members by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the Company.

(d) Each Member covenants and agrees not to take any action which may cause the Company to be treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code or otherwise cause the Company to be treated as an association taxable as a corporation for U.S. federal income tax purposes.

SECTION 6. PROFIT AND LOSS

6.1 **Allocations of Profits and Losses**.

(a) After giving effect to the special allocations set forth in Sections 6.2 and 6.3, Profits and Losses with respect to any year shall be allocated to the Members such that each Member's Capital Account balance (computed after taking into account all distributions with respect to such taxable period and increased by such Members' share of Company Minimum Gain and Member Minimum Gain), would, as nearly as possible, be equal to the amount that each Member would receive if all of the remaining assets of the Company were sold for their Book Basis, all liabilities of the Company were satisfied (limited, with respect to nonrecourse liabilities, to the Book Basis of the assets securing such liabilities) and the remaining assets were distributed pursuant to Section 7.1, all as of the last day of the period for which the allocations are being made.

(b) Notwithstanding Section 6.1(a), in any year in which the Company sells substantially all of its assets or liquidates (or in any prior open year if the Investment Committee reasonably believe it necessary to accomplish the purposes of this Section 6.1(b)), each Member shall be allocated Profits or Losses (or items thereof) to the extent necessary to cause its Capital Account balance to reflect the amount that will be distributable to such Member in liquidation of the Company pursuant to this Agreement.

6.2 **Limitation on Loss Allocation**. No allocation of Losses, or items thereof, will be made to any Member if such allocation would create or increase such Members' Adjusted Deficits. Any such disallowed allocation will be made to the Members entitled to receive such allocation under the Section 704(b) Regulations. Any Member that would have a deficit balance in its Capital Account in excess of any amount such Member is obligated to restore, or is deemed obligated to restore under Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5), will be specially allocated items of income and gain to eliminate such deficit balance as quickly as possible.

6.3 **Special Allocations**. (a) If there is a net decrease in Company Minimum Gain during any Fiscal Year, then, subject to the exceptions set forth in Regulations § 1.704-2(f)(2), (3), (4) and (5), each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations § 1.704-2(g). If there is a net decrease in Member Non-Recourse Debt Minimum Gain attributable to a Member Non-Recourse Debt during any Fiscal Year, each Member who has a share of the Member Non-Recourse Debt Minimum Gain, determined in accordance with Regulations § 1.704-2(i)(5), shall be specially allocated items of Company income and gain, including gross income, for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Non-Recourse Debt Minimum Gain, determined in accordance with Regulations § 1.704-2(i)(4). If any Member unexpectedly receives any adjustments, allocations or distributions described in Regulations § 1.704-1 (b)(2)(ii)(d)(4), (5), or (6), items of Company income and gain, including gross income, shall be specially allocated to each such Member in an amount and manner sufficient to eliminate the Adjusted Deficit of such Member as quickly as possible. Any Member Non-Recourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Non-Recourse Debt in accordance with Regulations § 1.704-2(i)(1). Non-Recourse

Deductions and any excess non-recourse liabilities (within the meaning of Regulation Section 1.752-3(a)) for any Fiscal Year shall be allocated among the Members in accordance with Percentage Interests. To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulation Section 1.704-l(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

(b) The Members intend that the provisions of this Section 6 be interpreted in a manner that produces allocations that are respected under Section 704(b) of the Code and that, on liquidation of the Company, result in Capital Account balances that are consistent with the liquidating distributions required to be made pursuant to Section 11.3(a)(vi).

6.4 **Tax Allocations**. (a) Except as otherwise provided in this Section 6.4, for income tax purposes under the Code and the Regulations each Company item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Sections 6.1, 6.2, and 6.3 hereof.

(b) Notwithstanding Section 6.4(a) hereof, Tax Items with respect to assets whose Gross Asset Value varies from its adjusted tax basis in the hands of the Company shall be allocated among the Members for income tax purposes pursuant to Regulations promulgated under Code Section 704(c) so as to take into account such variation using any method selected in the reasonable determination of the Investment Committee.

SECTION 7. DISTRIBUTIONS

7.1 **Distributable Cash**.

(a) The Investment Committee shall determine the amount and timing of all distributions of the Distributable Cash of the Company; provided, however, that distributions of Distributable Cash, if any, shall be made no less frequently than quarterly. Unless all of the Members otherwise approve and except as otherwise provided in this Agreement, all distributions of Distributable Cash of the Company shall be applied as follows:

(i) First, to pay accrued and unpaid interest on, and thereafter principal of, Company Loans, in proportion to the aggregate balances of such accrued interest and principal, respectively;

(ii) Second, to the Members pro rata in accordance with their Percentage Interests.

7.2 **Amounts Withheld**. All amounts withheld by the Company pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation by the Company to the Members shall be treated as amounts distributed to the Members pursuant to this Section 7 for all purposes under this Agreement. The Company is authorized to withhold from distributions and to pay over to any federal, state or local government any amounts required

to be so withheld pursuant to the Code or any provisions of any other federal, state or local law and shall allocate any such amounts to the Members with respect to which such amounts were withheld.

7.3 **Limitations on Distributions**. Except as otherwise provided for in the Act, the Certificate or this Agreement, no Member shall have the right or power to demand or receive a distribution in a form other than cash and shall not be required or compelled to accept a distribution of any asset in-kind. Notwithstanding anything contained in this Agreement or the Certificate to the contrary, no distribution shall be made to a Member in violation of the Act.

7.4 **Characterization of Certain Distributions**. The Members acknowledge and agree that, notwithstanding anything to the contrary set forth in this Agreement, amounts payable, or payments made, to the Members in respect of Company Loans pursuant to Section 7.1 shall not be deemed or otherwise constitute (i) amounts which are distributable to the Members hereunder, or (ii) distributions made or deemed made to such Members hereunder.

7.5 **Liquidation**. Subject to Section 11 hereof, in the event of the sale or other disposition of all or substantially all of the Company Property, the Company shall be dissolved and the proceeds of such sale or other disposition shall be distributed in liquidation as provided in Section 11.3, except that to the extent that the Company receives a purchase money note or notes in exchange for all or a portion of such assets, the Company shall continue in existence until such purchase money notes or notes have been paid in full.

7.6 **Repayment of Member Loans**. If, as a result of a Member Loan, any Member becomes a Debtor Member, then any distributions that would otherwise be payable to the Debtor Member pursuant to Section 7.1 or Section 11.3 will instead be paid to the Lender Member or Members, first to pay any accrued interest (at the applicable Member Loan Rate) and then to pay the principal amount thereof, until these Member Loans (including any accrued and unpaid interest) are repaid in full. A Member Loan will be secured by a lien on the Debtor Member's Membership Interest, and any Transferee of the Debtor Member's Membership Interest will take that Membership Interest subject to the lien. If there are two or more Lender Members with respect to any Debtor Member, distributions under this Section 7.6 will be made pro rata to each Lender Member in proportion to the relative principal amount of Member Loans (including accrued and unpaid interest) that each Lender Member has outstanding as a percentage of total outstanding Member Loans made to the Debtor Member by all Lender Members. Any amounts distributed pursuant to this Section 7.6 will, for tax allocation and all other purposes of this Agreement, be treated as if they had been distributed to the Debtor Member, not the Lender Member or Members.

SECTION 8. ADDITIONAL AND SUBSTITUTE MEMBERS

8.1 **Admission**. Persons may be admitted as Additional Members or Substitute Members with the approval of, and upon the terms and conditions approved by, all of the Members. Notwithstanding the foregoing, a Person shall not become an Additional Member or a Substitute Member unless and until such Person:

(a) becomes a party to this Agreement as a Member by signing a counterpart hereof and executes such documents and instruments as the Members determine are necessary or appropriate to confirm such Person as a Member of the Company (including representations and warranties requested by the Company) and such Person's agreement to be bound by the terms and conditions hereof;

(b) if the Person is not an individual, provides the Company with evidence satisfactory to counsel for the Company of the authority of the Person to become a Member and to be bound by the terms and conditions of this Agreement; and

(c) pays or reimburses the Company for its expenses in connection with such admission.

8.2 **Acceptance of Prior Acts**. Any person who becomes a Member, by becoming a Member, accepts, ratifies and agrees to be bound by all actions duly taken pursuant to the terms and provisions of this Agreement by the Company prior to the date it became a Member and, without limiting the generality of the foregoing, specifically ratifies and approves all agreements and other instruments as may have been

executed and delivered on behalf of the Company prior to said date and which are in force and effect on said date.

SECTION 9. TRANSFERS OF INTERESTS

9.1 **Restriction on Transfers**.

(a) Except as expressly set forth in this Agreement, unless approved by all of the Members, no Member shall have the right or power to Transfer or Encumber or permit any Encumbrance of all or any part of such Member's Membership Interest or cause or suffer the direct or indirect Transfer of, or Encumbrance on, all or any part of such Membership Interest.

(b) No Transfer of all or any part of the Membership Interest of a Member permitted to be made under this Agreement shall be binding upon the Company unless and until a duplicate original of such assignment or instrument of transfer, duly executed and acknowledged by the assignor or transferor, has been delivered to the Company, and such instrument evidences (i) the written acceptance by the assignee of all of the terms and provisions of this Agreement, (ii) the assignee's representation that such assignment was made in accordance with all applicable laws and regulations and (iii) the unanimous consent of all of the Members to the Transfer of the Membership Interest unless such Transfer is pursuant to Section 9.2, Section 9.3, Section 9.4, Section 9.5, or Section 13.1, or such unanimous consent is otherwise not required pursuant to the express terms hereof.

(c) Any purported Transfer or Encumbrance in violation of this Agreement shall be void *ab initio*, and shall not bind the Company, and the Members making such purported Transfer, sale or assignment or Encumbrance shall indemnify and hold the Company and the other Members harmless from and against any federal, state or local income taxes, or transfer taxes, including, without limitation, transfer gains taxes, arising as a result of, or caused directly or indirectly by, such purported Transfer or Encumbrance. The giving of any consent to a Transfer or Encumbrance in any one or more instances shall not limit or waive the need for such consent in any other or subsequent instances.

(d) Notwithstanding anything contained in this Agreement, no Transfer shall be made if (i) registration is required under the Securities Act of 1933, as amended, in respect of such Transfer; (ii) such Transfer violates any applicable federal or state securities or comparable laws; or (iii) such Transfer will be subject to, or such Transfer, when aggregated with prior Transfers, in accordance with applicable law will result in the imposition of, any state, city or local transfer taxes, including, without limitation, any transfer gains taxes, unless such assignor pays such taxes.

9.2 **Permitted Transfers**.

(a) Member Permitted Transfers. A Transfer by a Member of all or any portion of its Membership Interests in the Company to a Member Permitted Transferee shall be permitted without the necessity of obtaining the approval of any other Member. Each such Member Permitted Transferee shall, upon becoming a member of the Company, represent, warrant and covenant to the other Members the representations, warranties and covenants set forth in Section 5.1 and Section 5.2 (in each case as applied to such Member Permitted Transferee). Transfers or Encumbrances of indirect interests in the Member shall be permitted and in no event shall any such Transfer or Encumbrance require the approval of any Member hereunder or otherwise require compliance with any of the provisions of this Section 9.

9.3 **Right of First Offer**. Subject only to the terms of this Section 9.3 and Section 9.4, a Member shall be permitted to Transfer all or any portion of its Membership Interest (the "**Subject Interest**") to any Proposed Purchaser (any such transaction, a "**Disposition Transaction**"), without restriction and without the necessity of obtaining any consents or approvals.

(a) If a Member desires to engage in a Disposition Transaction (other than pursuant to a Permitted Transfer described in Section 9.2 above) in respect of the Membership Interests in the Company, such Member (the "**Offering Member**") shall give notice (the "**Offer Notice**") to each of the other Members ("**Offeree Members**"), of the Offering Member's desire to engage in said Disposition Transaction, which Offer Notice shall state the desired sale price (the "**Proposed Price**") and the other desired material economic terms of such sale (the "**Proposed Terms**"). The Proposed Price and the Proposed Terms are sometimes collectively referred to herein as the "**Offer Notice Parameters**."

(b) Within a period ("**Response Period**") of thirty (30) days after the Offering Member gives the Offer Notice to the Offeree Members, each Offeree Member shall give notice (the "**Response Notice**") to the Offering Member and each other Offeree Member that: (i) such Offeree Member will purchase the entire Subject Interest in cash for the Proposed Price and upon the Proposed Terms, or (ii) such Offeree Member will waive its right to purchase the Subject Interest pursuant to this Section 9.3. In the event that more than one Offeree Member (individually or collectively, the "**Acquiring Offeree Members**") elects to acquire the entire Subject Interest, then the entire Subject Interest shall be acquired by the Acquiring Offeree Members on a *pro rata* basis in accordance with their respective Percentage Interests as of the date of the Response Notice. In the event that no Offeree Member gives the Response Notice to the Offering Member prior to the end of the Response Period, the Offeree Members shall be deemed to have waived their right to acquire the Subject Interest pursuant to this Section 9.3 and the Offering Member shall be permitted to proceed in accordance with Section 9.3(c) below. If prior to the end of the Response

Period any one or more of the Offeree Members elect to acquire the Subject Interest, then, simultaneously with said election, the Acquiring Offeree Members shall deliver into escrow to a nationally recognized title insurance company, bank or trust company (which escrow agent shall be selected by the Offering Member) immediately available funds in an amount equal to ten percent (10%) of the Proposed Price (the "**ROFO Percentage**"). The ROFO Percentage shall be held in escrow in an interest-bearing account for the benefit of the Offering Member if the Acquiring

Offeree Members do not perform their obligations under this Section 9.3 (other than solely as a result of a default by the Offering Member in its obligation to deliver the Subject Interest to the Acquiring Offeree Members, pursuant to an assignment and assumption agreement in the form attached hereto as Exhibit A, against payment of the Proposed Price). If any of the Acquiring Offeree Members fail to deposit the ROFO Percentage as described above, then all the Acquiring Offeree Members will be conclusively determined to have made an election under clause (ii) above (provided that if any of the Acquiring Offeree Members default on their obligation to deposit their *pro rata* percentage of the ROFO Percentage, the other Acquiring Offeree Members shall have three (3) Business Days to deposit the amounts on behalf of the defaulting Acquiring Offeree Members). Any election made by the Acquiring Offeree Members to purchase the Subject Interest in accordance with this Section 9.3 shall not be subject to receipt by the Acquiring Offeree Members of representations and warranties and/or indemnification from the Offering Member (other than representations and warranties set forth in the form of assignment and assumption agreement attached hereto as Exhibit A). Each party shall bear its own legal fees and expenses in connection with any sale of the Subject Interest to the Acquiring Offeree Members pursuant to Section 9.3(d).

(c) In the event the Offering Member is not, pursuant to the preceding paragraph, obligated to sell the Subject Interest to the Offeree Members, the Offering Member shall have the right, subject to Section 9.4 and the further provisions of this Section 9.3(c), to consummate a Disposition Transaction (an "**Offer Parameters Disposition Transaction**") with a Proposed Purchaser for not less than 100% of the Proposed Price, in cash, and otherwise on economic terms not materially more favorable to such Proposed Purchaser than the Proposed Terms (after taking into account any terms of such sale that are not customary in the market and that would require payments of liquidated sums or other contractually stipulated categories of expenses or other sums by the Offering Member that would effectively constitute a reduction of the Purchase Price), on or prior to the date which is six (6) months after the expiration of the Response Period (the "**Sale Period**"). If the Offer Parameters Disposition Transaction is not closed prior to the end of the Sale Period, then the Offering Member may not enter into a Disposition Transaction with respect to the Subject Interest without sending a new Offer Notice and otherwise complying with the provisions of Sections 9.3 (a) and (b). If the Offer Parameters Disposition Transaction is closed on or prior to the end of the final day of the Sale Period, the Offeree Members' rights under Section 9.3(a) shall terminate as to the Subject Interest and Section 9.3(a) will, as to the Subject Interest, be null, void and of no further force and effect. In furtherance of any of the foregoing, the Offeree Members each hereby agree to promptly execute and deliver any and all documents reasonably requested by the Offering Member to evidence its consent to the foregoing.

(d) If, prior to the expiration of the Response Period, the Acquiring Offeree Members elect to purchase the Subject Interest pursuant to Section 9.3(b) above and timely deposit the ROFO Percentage as required by Section 9.3(b) then the Offering Member shall sell and assign

the Subject Interest to the Acquiring Offeree Members, pursuant to an assignment and assumption agreement in the form attached hereto as Exhibit A, for the Proposed Price and on the Proposed Terms. The closing of such sale shall be held at the principal office of the Offering Member within sixty (60) days following the Acquiring Offeree Members' exercise of their election to purchase the Subject Interest (the "**Closing Period**") on a date designated by the Offeree Members by notice to the Offering Member at least ten (10) Business Days in advance (or, failing such designation, on the final day of the Closing Period or, if such day is not a Business Day, the Business Day preceding such final day). At the closing of the Acquiring Offeree Members' acquisition of the Subject Interest:

(i) the Offering Member shall assign and convey to the Acquiring Offeree Members the Subject Interest, free and clear of all liens, claims, and encumbrances, and each of the Offering Member and the Acquiring Offeree Members shall execute and deliver an assignment and assumption agreement in the form attached hereto as Exhibit A;

(ii) any deed, documentary, stamp, transfer or similar taxes or fees due in connection with the sale shall be paid by or apportioned equally as between the buyer and seller, unless a different apportionment is included in the Offer Notice Parameters;

(iii) the Acquiring Offeree Members shall pay the Purchase Price, net of the ROFO Percentage, to the Offering Member by wire transfer, and the ROFO Percentage shall be paid to the Offering Member; and

(iv) the Members shall execute all amendments to fictitious name certificates, certificates of formation or similar certificates necessary to effect the withdrawal of the Offering Member from the Company (if applicable) and the substitution of the Acquiring Offeree Members or their designees for the Offering Member with respect to the Subject Interest.

(e) If any of the Acquiring Offeree Members defaults on its obligation to purchase the Subject Interest in accordance with Section 9.3(d), (i) the other Acquiring Offeree Members shall have three (3) Business Days to cure such default and if such default has not been cured at the end of such period, the ROFO Percentage shall be immediately paid to the Offering Member as liquidated damages and the Offeree Members shall thereafter have no further rights under this Section 9.3 with respect to any sale of all or any portion of the Offering Member's Membership Interest and the Offering Member shall be free to sell all or any portion of its Membership Interest at any time without having to comply with this Section 9.3 or Section 9.4, and without having to obtain any consent or approval of any of the Offeree Members; (ii) the Offeree Members shall have no further liability or obligation to the Offering Member with respect to the purchase of the Subject Interest; (iii) the Offeree Members' purchase option set forth in Section 9.3(b) shall be null, void and of no further force and effect; and (iv) the Offeree Members' rights pursuant to Section 9.4 shall be null, void and of no further force and effect. If after the Acquiring Offeree Members have elected to purchase the Subject Interest as described above, the Offering Member defaults on its obligation to sell the Subject Interest to the Acquiring Offeree Members in accordance with this paragraph, the ROFO Percentage shall be immediately returned to the Acquiring Offeree Members and the Offering Member shall immediately pay to the Acquiring Offeree Members as liquidated damages, an amount equal to the ROFO Percentage.

The parties agree that, in connection with a default under this Section 9.3 by the Acquiring Offeree Members or the Offering Member, damages to the non-defaulting Member(s) will be difficult and impracticable to ascertain and the retention of the ROFO Percentage by the Offering Member, or the payment by the Offering Member to the Acquiring Offering Members of an amount equal to the ROFO Percentage, as the case may be, is a reasonable estimate of such damages from such default and shall not be considered a penalty. The costs of any escrow established by the Offering Member and the Acquiring Offeree Members to implement the terms and provisions of this Section 9.3 shall be shared by the parties according to their respective Percentage Interests

(f) In the event that an Acquiring Offeree Member becomes a majority owner of the Company as a result of the exercise of its right of first offer pursuant to this Section 9.3, the parties shall cooperate to cause Section 4 of this this Agreement to be amended to increase the management rights of such Acquiring Offeree Member accordingly; provided, however, as a condition of such amendment, the Offering Member (and all of its Affiliates) shall be concurrently released from any Loan Guaranty to which any of them is a party.

9.4 **Tag-Along Rights**. (a) In the event that (x) the Offering Member desires to sell all of its Membership Interests to any Proposed Purchaser other than pursuant to a Permitted Transfer described in Section 9.2 above (such interest, the "**Tag-Along Interest**"), and (y) the Offeree Members have not elected to purchase (or are deemed to have elected not to purchase) such Tag-Along Interest pursuant to Section 9.3, then the Offering Member shall deliver written notice (the "**Tag-Along Notice**") to each of the Offeree Members (which notice shall set forth the information required by Section 9.4(b)). Within thirty (30) days after delivery of such Tag-Along Notice, each Offeree Member shall notify the Offering Member if such Offeree Member elects to participate in the sale to the Proposed Purchaser in accordance with this Section 9.4, failing which, such Offeree Member will be deemed to have waived such participation right. If the Offeree Members waive or are deemed to have waived their rights under this Section 9.4 with respect to a proposed sale, the Offering Member may consummate the sale of the Tag-Along Interest to the Proposed Purchaser, provided that the Offering Member shall not be entitled to consummate the sale of the Tag-Along Interest to the Proposed Purchaser at a purchase price which exceeds 100% of the Proposed Price without again offering the Offeree Members the right to participate in such sale in accordance with the requirements of this Section 9.4. If the Offeree Members notify the Offering Member that all the Offeree Members elect to participate in the sale of the Tag-Along Interest, each Offeree Member shall be bound to sell to the Proposed Purchaser, at the Tag-Along Price, a portion of its Membership Interest equal to the product of (x) the total Membership Interests to be purchased by the Proposed Purchaser multiplied by (y) a fraction of which the numerator is the Percentage Interest of each such Offeree Member immediately prior to such sale, and the denominator is the aggregate Percentage Interests of the Offering Member and the Offeree Members immediately prior to such sale, and on the other terms set forth in the Tag-Along Notice.

(b) The Tag-Along Notice shall set forth: (i) the name and address of the Proposed Purchaser, (ii) the proposed terms and conditions of the offer, including any representations and warranties to be made by the Offering Member and any indemnity obligations of the Offering Member, (iii) the Tag-Along Price, and (iv) a statement of the right of the Offeree Members to participate in the proposed sale on the terms applicable to the sale by the Offering Member and in accordance with this Section 9.4. For purposes hereof, "**Tag-Along Price**" shall mean, with respect to each Member, an amount equal to the amount such Member would receive

if all of the Company Assets were sold for the purchase price paid by the Proposed Purchaser, and then such amount was distributed to the Members in accordance with the terms of this Agreement

(c) In connection with a sale of the Tag-Along Interest in which the Offeree Members participate pursuant to this Section 9.4, the Offeree Members will, if requested by the Proposed Purchaser, execute, deliver and perform agreements with the Proposed Purchaser relating to the sale containing terms that are substantially similar in all material respects to those contained in the comparable agreements to be executed, delivered and performed by the Offering Member.

9.5 **Purchase Option/Obligation**.

(a) Within one hundred twenty (120) days after the occurrence of a Member Default (such Member, the "**Defaulting Membe**r"), the Non-Defaulting Members may deliver notice to the Defaulting Member exercising their right to purchase the Membership Interest of the Defaulting Member (such notice, a "**Purchase Notice**"), in which case the provisions of this Section 9.5 will apply; provided, however, that in no event shall the Non-Defaulting Members be permitted to deliver a Purchase Notice when the Property is under contract for sale and the consummation of such sale remains pending.

(b) If a Purchase Notice is delivered, the Non-Defaulting Members will have the obligation to purchase, and the Defaulting Member shall have the obligation to sell, the Membership Interests of the Defaulting Member on the following terms:

(i) The purchase price for the Membership Interests of the Defaulting Member (the "**Purchase Price**") shall be determined pursuant to Section 9.5(d) below.

(ii) The closing of the sale of the Membership Interests of the Defaulting Member shall occur on a date designated by the Non-Defaulting Members, which date shall be no less than ten (10) Business Days following the determination of the Purchase Price and no more than ninety (90) days following the determination of the Purchase Price.

(iii) The Purchase Price will be paid by the Non-Defaulting Members to the Defaulting Member on the closing of the purchase. Simultaneously with the receipt of the Purchase Price, the Defaulting Member shall execute and deliver all documents that may be necessary to Transfer the entire Membership Interests of the Defaulting Member to the Non-Defaulting Members. Except as set forth on Exhibit C, Closing costs and all other charges involved in closing the sale shall be divided equally between the Defaulting

Member and the Non-Defaulting Members.

(c) In any sale of the Membership Interests of the Defaulting Member pursuant to this Section 9.5:

(i) In connection with such purchase, the Non-Defaulting Members will not be entitled to any representations, warranties or indemnification from the Defaulting Member (other than representations and warranties to the effect that (x) the Defaulting Member is duly organized and validly existing, (y) the Defaulting Member is duly authorized to effect the sale of its Membership Interests and (z) the Membership

Interests of the Defaulting Member are owned by the Defaulting Member and such Membership Interests are being transferred free and clear of all liens and encumbrances).

(ii) The Defaulting Member shall convey its Membership Interests to the Non-Defaulting Members free and clear of all liens upon payment of the Purchase Price. If the Defaulting Member has created or suffered any liens upon its Membership Interest, the Non-Defaulting Members may either (A) bring an action for specific performance to compel the Defaulting Member to have the liens removed, in which case the closing will be adjourned for that purpose, or (B) deduct an appropriate offset against the Purchase Price.

(iii) Each Person will bear its own legal fees and expenses for the purchase, except that the Defaulting Member shall pay for any reasonable attorneys' fees and costs incurred by the Non-Defaulting Members in removing liens on the Membership Interest of the Defaulting Member.

(iv) The Transfer of the Membership Interests of the Defaulting Member will be evidenced by a written instrument in customary form provided by the Non-Defaulting Members.

(d) The "Purchase Price" shall be determined based on the fair market value of the Membership Interest of the Defaulting Member (which shall be determined based on the fair market value of the Property less any transfer costs which would be incurred if the Property were transferred via sale or otherwise) either by agreement of the Non-Defaulting Members and the Defaulting Member or, if the Non-Defaulting Members and the Defaulting Member do not reach agreement within 15 business days after delivery of the Purchase Notice, in accordance with the appraisal procedure set forth in Exhibit C.

9.6 **Rights and Obligations of Assignees and Assignors**.

(a) A Transfer of a Person's interest in the Company does not itself dissolve the Company or entitle the Assignee to become a Member or exercise any Management Rights.

(b) If a court of competent jurisdiction holds that a nonvoidable Transfer has occurred notwithstanding the failure to comply with the conditions precedent to Transfer set forth in this Agreement, then (i) a Person who acquires a Membership Interest, but who is not admitted as a Substitute Member, shall be entitled to no more than the Economic Rights with respect to such Membership Interest, shall have no right to any information or accounting of the affairs of the Company or any of its Subsidiaries, shall have no right to attend meetings and shall not be entitled to inspect the books and records of the Company or any of its Subsidiaries, (ii) all distributions payable to such Person shall first be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations or liabilities for damages that the Company or the Members may have suffered as a result of such Transfer, and (iii) the parties engaging, or attempting to engage, in such Transfer shall indemnify and hold harmless the Company and the other Members from all costs, liabilities and damages that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and attorney fees and expenses as a result of such Transfer, or attempted Transfer, and efforts to enforce the indemnity granted herein).

9.7 **Acceptance of Assignee as Substitute Member**. Subject to the other provisions of this Section 9, a transferee of a Membership Interest may be admitted to the Company as a Substitute Member, with all of the Management Rights of a Member, only upon satisfaction of all of the conditions set forth in Section 8.1; provided, however, that with respect to the Transfer of a Membership Interest pursuant to Section 9.2, Section 9.3, Section 9.4, Section 9.5, or Section 13.1, the approval of the Members pursuant to Section 8.1 to the substitution of the transferee of such Membership Interest shall be deemed to have been given concurrently with such Transfer.

9.8 **Distributions and Allocations Regarding Transferred Interests**. If any Person's interest in the Company is transferred during any Fiscal Year in compliance with the provisions of this Section 9, Profits, Losses, each item thereof and all other items attributable to such interest for such Fiscal Year shall be divided and allocated between the transferor and the transferee either by the pro rating method, closing of the books method or any other reasonable method, in each case as determined by the transferor or, if both the transferor and the transferee are Members, by agreement of such transferor and transferee.

9.9 **Section 754 Election**. At the request of either the transferor or transferee in connection with a Transfer of an interest in the Company permitted under this Section 9, the Tax Matters Partner may cause the Company to make the election provided for in § 754 of the Code and to maintain a record of the adjustments to basis resulting from the election. As a condition to making the election, any such transferee shall pay to or reimburse the Company immediately upon demand for any and all costs and expenses incurred by the Tax Matters Partner and the Company (as such costs and expenses are reasonably estimated by the Tax Matters Partner or the Company) in connection with the § 754 election

and the maintenance of the basis adjustment records.

SECTION 10. EXCULPATION AND INDEMNIFICATION

10.1 **Liability**. (a) Each Member's liability shall be limited as set forth in this Agreement, the Act and other applicable law. Unless otherwise provided by law or expressly assumed, a Person who is a Member shall not be liable for the acts, debts or liabilities of the Company or any other Member.

(b) To the fullest extent permitted by applicable law, each Member hereby expressly waives any fiduciary duty and any implied duties that might be owed to such Member or the Company or any of its Subsidiaries by any other Member.

(c) No Member and no Affiliate, partner, member, manager, shareholder, officer, principal, employee, representative or agent of a Member (including any Person representing a Member) (each, a "**Covered Person**"), in its capacity as such, shall be liable to the Company, any of its Subsidiaries or any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company or of its Subsidiaries and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any loss, damage or claim incurred by reason of such Covered Person's bad faith, fraud or willful misconduct.

10.2 **Indemnity**. (a) Subject to Section 10.2(b), the Company shall indemnify each of its Members, including the Tax Matters Partner, each Member's respective Affiliates and each of their respective members, partners, officers, directors, managers and shareholders and each Representative (each, an "**Indemnified Person**") against all expense, liability, and loss (including reasonable attorney fees) (collectively, "**Indemnified Losses**") incurred or suffered by such Person by reason of or arising from the fact that such Person is or was a Member of the Company, an Affiliate of a Member, a member, partner, officer, director, investment manager, manager or shareholder of a Member or its Affiliate, or a Representative or otherwise a party to this Agreement. Notwithstanding the foregoing, the Company shall have no obligation to indemnify any Indemnified Person for Indemnified Losses resulting from such Person's violation of the terms of this Agreement, fraud, gross negligence, willful misconduct or knowing, material violation of law. Any amounts incurred by an Indemnified Person in connection with a pending action, suit, proceeding or claim shall be paid or reimbursed by the Company in advance of the final disposition of such matter upon delivery to the Company of such Person's written affirmation of such Person's good faith belief that such Person has met the standard of conduct (i.e., such Person has acted in good faith and in a manner that such Person reasonably believed to be within the scope of such Person's authority and without fraud, willful misconduct, gross negligence or a knowing material violation of law) necessary for entitlement to indemnification by the Company and such Person's written undertaking to repay such amount if it should ultimately be determined that such Person has not met such standard of conduct. The rights of any Person to indemnification hereunder are intended to be in addition to, and not in limitation of, any rights to indemnification granted by the Company to such Person by separate agreement or to which such Person is entitled under applicable law.

(b) Any indemnification pursuant to this Section 10.2 shall be made only from the assets of the Company, and no Member shall be personally liable therefor.

(c) To the extent that insurance from third parties has been obtained and is available to satisfy any Indemnified Losses, the Members shall seek to cause such Indemnified Losses to be satisfied first out of the proceeds of such insurance.

(d) All rights to indemnification pursuant to this Section 10.2 shall survive the dissolution of the Company, the withdrawal of a Member from the Company, the failure for any reason to remain a party to this Agreement and, in the case of a Representative, the resignation or removal of such Representative.

10.3 **Insurance**. The Company may obtain and maintain at its expense for itself and/or any Subsidiary such insurance, as the Members shall unanimously approve. Each Member shall separately secure directors' and officers' liability insurance, general liability, worker's compensation, fidelity, professional liability and worker's compensation for their employees who serve in any capacity for the Company.

SECTION 11. DISSOLUTION AND WINDING UP

11.1 **Covenant Not to Withdraw or Cause Dissolution**. Except as otherwise expressly permitted in Section 9 or Section 13 of this Agreement, each Member hereby covenants not to voluntarily withdraw from the Company and agrees not to take any action that would cause the

Company to dissolve (excluding any dissolution approved by the Members). In the event of a withdrawal by a Member in violation of this Section 11.1, the withdrawing Member shall not have the right to require the Company to pay such withdrawing Member the fair market value of the Membership Interest of such withdrawing Member (or any other compensation, for that matter), whether or not such ability exists as a matter of statute or otherwise. Notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Dissolution Event, which are the exclusive events that may cause the Company to dissolve.

11.2 **Dissolution Events**. The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following ("**Dissolution Events**"):

(a) the sale, assignment or other disposition of all of the Company Property and the full payment and collection of any

consideration for such sale, unless the Members approve the continuation of the Company following such sale or disposition;

(b) the unanimous approval of the Members to dissolve, wind up and liquidate the Company; or

(c) the entry of a decree of judicial dissolution of the Company pursuant to the Act.

The foregoing events shall be the exclusive events that shall cause the dissolution and winding up of the Company.

11.3 **Winding Up**.

(a) Upon the occurrence of a Dissolution Event, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors. Such Persons as may be authorized by the Members shall act as the liquidating trustee of the Company (the "**Liquidating Trustee**"). The Liquidating Trustee shall, to the extent feasible, proceed to wind up the affairs and liquidate the assets of the Company, as promptly as practicable, allowing a reasonable time for the process so as to minimize the losses that would normally be incidental to it. The Liquidating Trustee shall issue to all Members a final, accurate accounting of the affairs of the Company through the completion of the wind up of the Company; and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. To the extent not inconsistent with the foregoing, this Agreement shall continue in full force and effect until all proceeds of the liquidation have been distributed pursuant to this Section 11.3. The proceeds of a liquidation shall be applied in the following order of priority:

(i) in payment of the expenses of liquidation;

(ii) in payment of debts of the Company to creditors other than the Members;

(iii) in payment of debts of the Company to Members who are also creditors, other than payments in respect of Company Loans;

(iv) to establish reserves deemed reasonable by the Members for the ultimate discharge of contingent, unliquidated or unforeseen liabilities or obligations of the Company;

(v) in payment of debts of the Company to Members in respect of Company Loans; and

(vi) the balance, if any, to the Members in accordance with Section 7.1.

(b) If a Member shall become a Dissociated Member, (i) such Member shall, concurrently with becoming a Dissociated Member, be deemed to have withdrawn from the Company and (ii) such Member shall have no right to participate in the management of the Company or to approve or veto any decisions or actions in connection with the business or affairs of the Company or any of its Subsidiaries.

11.4 **Compliance with Regulations; Deficit Capital Accounts**. In the event that the Company is "liquidated" within the meaning of Regulations § 1.704-l(b)(2)(ii)(g), if any Member has a deficit Capital Account balance (after giving effect to all Capital Contributions, distributions and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Member shall have no obligation to make any contribution with respect to such deficit, and to the fullest extent permitted by law such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

11.5 **Notice of Dissolution**. If a Dissolution Event occurs and the Company is dissolved and liquidated, the Company shall, within thirty (30) days thereafter, provide written notice thereof to each of the Members and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the Members) and shall comply with all applicable notice provisions of the Act.

11.6 **Filing of Certificate of Cancellation**. Upon the dissolution and complete winding up of the Company, a Certificate of Cancellation (or an equivalent instrument) shall be delivered to the Texas Secretary of State. Upon the filing of the Certificate of Cancellation, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Liquidating Trustee shall have authority to distribute any Company Property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

11.7 **Return of Contributions Non-Recourse to Other Members**. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contributions. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash or other property contributed by one or more Members, such Member or Members shall have no recourse against any other Member.

SECTION 12. CONFLICT OF INTEREST; COMPETITION

12.1 **Rights of Members to Engage in Separate Activities**. Except as otherwise expressly provided herein or in any other agreement, any Member or Affiliate thereof may engage in or possess an interest in any other business ventures of any nature or description, independently

or with others, similar or dissimilar to the business of the Company or any of its Subsidiaries, including the ownership, management and operation of loans and real property, and none of the Company, any of its Subsidiaries, any Member shall have any rights by virtue of this Agreement or the relationship created hereby in or to any other ventures or activities engaged in by any Member or Affiliate thereof or to the income or proceeds derived therefrom, and the pursuit of such ventures or activities by any Member or Affiliate thereof shall not be deemed wrongful or improper, even to the extent the same is competitive with the business activities of the Company or any of its Subsidiaries. Except as otherwise expressly provided herein or in any other agreement, no Member or Affiliate thereof shall be obligated to submit any investment opportunity to the Company or any of its Subsidiaries even if such opportunity is of a character which, if submitted to the Company or any of its Subsidiaries, could be availed of by the Company or any of its Subsidiaries, and any Member or Affiliate thereof shall have the right to take for its own account (individually or as a partner, member or fiduciary) or to recommend to others any investment opportunity.

12.2 **Other Self Interest.** No agreement or transaction between the Company or any of its Subsidiaries and any Member or Affiliate of a Member shall be void or voidable solely by reason of such relationship.

SECTION 13. BUY-SELL PROCEDURES

13.1 **Buy-Sell**.

(a) Buy-Sell Notice. In the event that (x) the Committee Members or Members are unable to unanimously agree on three (3) or more Decisions during any twenty-four (24) month period or (y) any Member is expressly permitted to deliver a Buy-Sell Notice pursuant to the terms of this Agreement, then each of Member shall have the right to institute a buy-sell pursuant to the terms and procedures set forth in this Section 13.1 at any time within ninety (90) days following the fourth such dispute or the occurrence of the event that gave rise to such Member's right to deliver a Buy-Sell Notice, as applicable. If a Member wishes to so institute a buy-sell, such Member (the "**Triggering Member**") shall first deliver a written notice (the "**Buy-Sell Notice**") to the other Members (the "**Responding Member**") of the Triggering Member's intent to rely on this Section 13.1 which Buy-Sell Notice shall state that the Triggering Member is making a combined offer to (x) purchase for cash all, but not less than all, of the Membership Interests of the Responding Member, or (y) sell for cash all, but not less than all, of the Membership Interests of the Triggering Member. The Buy-Sell Notice shall set forth the cash purchase price at which the Triggering Member would be willing to purchase one hundred percent (100%) of the Company Assets (the "**Stated Amount**"), and include a calculation of the amount the Triggering Member and the Responding Member would receive if the Company Assets were sold for the Stated Amount and the Stated Amount, less assumed transaction costs equal to five percent (5%) of the Stated Amount, were distributed to the Members in accordance with the terms of this Agreement (the amount any Member would receive, such Member's "**Buy-Sell Price**").

(b) Reply Notice. The Responding Member shall have a period of fifteen (15) days (or, if the Buy-Sell Price for the Triggering Member's Membership Interest is greater than $5,000,000, thirty (30) days) after the receipt of the Buy-Sell Notice within which to notify the Triggering Member in writing (each, a "**Reply Notice**") whether such Responding Member shall (i) sell to the Triggering Member its Membership Interests for a purchase price equal to the Responding Member's Buy-Sell Price, or (ii) purchase the Triggering Member's Membership Interest for a purchase price equal to the Triggering Member's Buy-Sell Price. In the event that a Reply Notice is not so given by a Responding Member prior to the expiration of the 15-day or 30-day period, as applicable, then it shall be conclusively presumed that such Responding Member elected to sell its Membership Interest to the Triggering Member pursuant to clause (i) of the immediately preceding sentence.

(c) Deposits.

(i) Within three (3) days (or, if the Buy-Sell Price for any Responding Member is greater than $5,000,000, fifteen (15) days) following the election or deemed election by any Responding Member to sell its Membership Interests pursuant to Section 13.1 (b), the Triggering Member shall deliver into escrow to a nationally recognized title insurance company, bank or trust company (which escrow agent will be selected by the Triggering Member), to be held by the escrow holder pursuant to this Section 13.1, a cash deposit in an amount equal to the Buy-Sell Deposit Amount. If the Triggering Member shall fail to deliver such deposit, then the Buy-Sell Notice shall be deemed withdrawn and the rights and duties of the Members shall be as if the Buy-Sell Notice had never been given, except that the Triggering Member shall bear all costs and expenses resulting from the delivery and withdrawal of the Buy-Sell Notice.

(ii) As a condition to the effectiveness of the Reply Notice in which a Responding Member elects to purchase the Triggering Member's Membership Interests pursuant to Section 13.1(b), such Responding Member shall, within three (3) days (or, if the Buy-Sell Price for the Triggering Member's Membership Interest and the selling Responding Member's Membership Interest is greater than $5,000,000, fifteen (15) days) following delivery of such election. deliver into escrow to a nationally recognized title insurance company, bank or trust company (which escrow agent will be selected by such Responding Member), to be held by the escrow holder pursuant to this Section 13.1(c), a cash deposit in an amount equal to the Buy-Sell Deposit. If a Responding Member fails to deliver the Buy-Sell Deposit Amount, then such Responding Member shall be deemed to have elected to sell its Membership Interests pursuant to clause (i) of Section 13.1(b) above.

(iii) For purposes hereof, the "**Buy-Sell Deposit Amount**" shall mean with respect to the Membership Interests of any Member, 10% of the Buy-Sell Price for such Membership Interest.

(d) Consummation of Buy-Sell; Default.

(i) The purchase and sale of Membership Interests pursuant to this Section 13.1 shall be closed on or before the thirtieth (30th) day (or, if the Buy-Sell Price

for the Membership Interests being sold is greater than $5,000,000, the sixtieth (60th) day) following the election or deemed election of the Responding Member pursuant to Section 13.1(c), as applicable. In connection with any such sale by a Member, (x) the selling Member and the purchasing Member shall enter into an instrument of assignment in customary form that transfers the entire Membership Interest of the selling Member to the purchasing Member, which instrument shall include a representation from the selling Member that it is transferring the Membership Interest free and clear of all liens, claims or other encumbrances, (y) any transfer taxes and recording or documentary stamp taxes and similar taxes and fees shall be an expense of and paid by the selling and purchasing Member in accordance with their respective Percentage Interests and (z) each of the selling Member and the purchasing Member shall otherwise be responsible for its own out-of-pocket costs and expenses relating to such Transfer.

(ii) If any Member is obligated under this Section 13.1 to purchase the Membership Interest of any other Member and fails to do so and the failure to purchase such Membership Interest is not caused by the actions or inactions of the selling Member or the inability of the selling Member to convey its Membership Interest to the purchasing Member free and clear of all liens, claims and encumbrances, then in addition to any other remedies available to it, the non-defaulting selling Member shall be entitled to retain, as liquidated damages, the Buy-Sell Deposit Amount delivered to it as a deposit by the defaulting purchasing Member under Section 13.1(d)(i), it being agreed that the amount represents a fair and equitable estimate of the damages to be suffered by the non-defaulting Member in those circumstances and that actual damages would be highly impracticable to determine.

(iii) If a Member is obligated under this Section 13 to sell its Membership Interest to any other Member and fails to do so and the failure to sell such Membership Interest is not caused by the actions or inactions of the purchasing Member, then (in addition to having any other rights and remedies available at law or in equity to the non-defaulting purchasing Member(s)) (w) the defaulting selling Member shall return to the non-defaulting purchasing Member the Buy-Sell Deposit Amount delivered to it as a deposit by the defaulting Member under Section 13.1(c), (x) the purchasing Member shall have the right to seek any remedies available to it at law or in equity, including, without limitation, specific performance, in respect of such default (and to collect from the selling Member the costs incurred in seeking such remedies), and (y) the purchasing Member shall have the right to execute and deliver, on behalf of the selling Member, all documents necessary to transfer the Membership Interest from the selling Member to the purchasing Member and the selling Member hereby irrevocably constitutes and appoints the purchasing Member as the selling Member's true and lawful attorney-in-fact, coupled with an interest, to execute and to deliver for and on the selling Member's behalf, all such documents.

(iv) If any Member is obligated under this Section 13.1 to purchase the Membership Interests of any other Member, such Member shall (x) obtain any required consents of lenders with respect to any Indebtedness of the Company or any Subsidiary and releases of the selling Member(s) and its Affiliates from any Guaranty delivered by any of the foregoing to such lenders or (y) otherwise repay or defease such Indebtedness

in full simultaneously upon the closing of the purchase pursuant to this Section 13.1. The failure to obtain any lender consent shall be deemed a default by the purchasing Member(s) of its obligations under this Section 13.1 and shall entitle the non-defaulting Member(s) to the remedies set forth in clause (ii) above.

(e) Designee. Any Member acquiring the Membership Interest of another Member pursuant to this Section 13.1 may designate another Person to acquire such Membership Interest.

(f) Exclusion. No Member shall be entitled to deliver a Buy-Sell Notice at any time when the buy-sell procedures set forth in Section 13.1 are continuing in respect of another Buy-Sell Notice.

SECTION 14. GENERAL CONTRACT PROVISIONS

14.1 **Governing Law**. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Texas, and not in accordance with any conflict-of-law provisions that would apply the law of a different jurisdiction.

14.2 **Savings Clause**. If any provision of this Agreement shall be held to be invalid and unenforceable, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

14.3 **Attorney Fees and Costs**. If action becomes necessary in connection with this Agreement or any rights arising therefrom or thereunder, or to recover damages for breach of any terms of this Agreement, or to obtain injunctive or other equitable relief, the prevailing party in such action shall be entitled to recover reasonable attorney fees and costs incurred in such action, whether at trial, on appeal, or in any arbitration or bankruptcy proceeding.

14.4 **Counterparts**. This Agreement may be executed manually or by facsimile in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original and all of which counterparts, taken together, shall constitute but one and the same agreement. Duplicates of the same signature page or pages with the original signatures on different pages may be attached to the original Agreement without affecting the validity thereof or the liability of the Members.

14.5 **Successors and Assigns**. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and permitted assigns.

14.6 **Notices**.

(a) Any and all notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing, signed by or on behalf of the party by which given, and shall be considered to have been duly given when (i) delivered by hand, (ii) sent by telecopier (with receipt confirmed), provided that a copy is mailed (on the same date) by certified or registered mail, return receipt requested, postage prepaid, or (iii) received by the

addressee, if sent by Express Mail, Federal Express or other reputable express delivery service (receipt requested), or by first class certified or registered mail, return receipt requested, postage prepaid, in each case to the party for which intended at its address set forth below (or to such other addresses and telecopier numbers as a party may from time to time designate as to itself by notice similarly given to the other parties in accordance with this Section 14.6):

If to the HTH Member:

Hilltop Investments I LLC
2323 Victory Avenue
Suite 1400
Dallas, Texas 75219
Attention: Corey G. Prestidge
Telephone: (214) 525-4647
Facsimile: (214) 580-5722
Email: cprestidge@hilltop-holdings.com

If to the Diamond Member:

Diamond Ground, LLC
200 Crescent Court, Suite 1350
Attention: Gary Shultz
Telephone: (214) 871-5938
Facsimile: (214) 871-5199
Email: gshultz@diamond-a.com

A notice of change of address shall not be deemed given until received by the addressee.

14.7 **Rights and Remedies Cumulative**. Except as otherwise expressly provided herein, the rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies, and said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14.8 **Waivers**. The failure of any party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement shall not prevent a subsequent act that would have originally constituted a violation from having the effect of an original violation. Any waiver shall be in writing and signed by the party against whom the waiver is effective.

14.9 **Amendments**. This Agreement may only be amended by a written instrument executed by all of the Members. Any other attempt to amend any of the terms of this Agreement will be null and void and of no force or effect.

14.10 **Entire Agreement**. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements with respect to the same subject matter, whether oral or written.

14.11 **No Third Party Beneficiary**. Notwithstanding any contrary provisions of the Act, except as otherwise expressly provided herein, the provisions of this Agreement are not intended to be relied upon by and are not for the benefit of any other Person (other than a Member in its capacity as such) to whom any debts, liabilities or obligations are at any time owed by (or who otherwise has any claim against) the Company or any of its Subsidiaries, any of the Members or any Indemnified Person; and no such creditor or other Person shall obtain any right under any of the provisions or shall by reason of any of such provisions make any claim in respect of any debt, liability or obligation (or otherwise) against the Company or any of its Subsidiaries or any of the Members; except that the Persons who are expressly entitled to indemnification from the Company pursuant to the terms hereof are intended third party beneficiaries of this Agreement, but this Agreement may be amended or terminated without their consent or approval.

14.12 **Further Assurances**. Each party to this Agreement agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by law or as may be necessary or advisable to carry out the intent and purpose of this Agreement.

14.13 **Partition**. The Members hereby agree that no Member or any successor-in-interest to any Member shall have the right to have the property of the Company partitioned, or to file a complaint or institute any proceeding at law or in equity to have the property of the Company

partitioned, and each Member, on behalf of himself, his successors, representatives, heirs and assigns, hereby waives any such right.

14.14 **Maintenance as a Separate Entity**. The Company shall maintain books and records and bank accounts separate from those of its Affiliates; shall at all times hold itself out to the public as a legal entity separate and distinct from any of its Affiliates (including in its operating activities, in entering into any contract, in preparing its financial statements, and on its stationery and any signs it posts), and shall cause its Affiliates to do the same and to conduct business with it on an arm's-length basis; shall not commingle its assets with assets of any of its Affiliates; shall not guarantee any obligation of any of its Affiliates; and shall keep minutes of all meetings of the Members.

14.15 **Arbitration**.

(a) Arbitration is the exclusive method for resolution of any claims or disputes arising out of, or in connection with, this Agreement or the business or affairs of the Company or any of its Subsidiaries, and the determination of the arbitrators will be final and binding (except to the extent there exist grounds for vacation of an award under applicable arbitration statutes) on the Members.

(i) The parties agree that they will give conclusive effect to the arbitrators' determination and award and that judgment thereon may be entered in any court having jurisdiction.

(ii) The American Arbitration Association (the "**AAA**") Commercial Arbitration Rules will apply to any proceedings commenced under this Section 14.15.

(iii) The arbitrators may issue awards for compensatory damages and/or equitable remedies (including injunctive relief and specific performance) only, and may not, and will have no power to, award indirect, consequential, or punitive damages.

(iv) The parties waive any claim for, and the arbitrators will have no power to award, damages for defamation, negligent or intentional infliction of emotional distress, or similar torts based on harm to one's reputation or emotional or mental condition.

(v) The arbitrators may award the prevailing party its attorneys' fees and other costs incurred in connection with the proceeding. If any party fails to appear at any properly noticed arbitration proceeding, an award may be entered against that party by default or otherwise, notwithstanding such failure to appear.

(b) The number of arbitrators will be three, each of whom will be disinterested in the dispute or controversy and impartial with respect to all parties hereto. A Member must commence arbitration by serving a demand for arbitration on the other Members and the AAA. The initiating Member ("**Claimant**") must appoint an arbitrator within 10 Business Days of the demand. The respondent(s), collectively, must appoint an arbitrator within 10 Business Days of the appointment of an arbitrator by the Claimant. The third arbitrator will be appointed by both arbitrators within ten (10) Business Days of appointment of the second arbitrator. If they cannot agree, the AAA will appoint the third arbitrator.

(c) The place of arbitration will be Dallas, Texas. The arbitration will be conducted in the English language. The arbitrators shall decide the dispute in accordance with the law of Texas. To the fullest extent permitted by law, they shall apply the Commercial Arbitration Rules of the AAA, except to the extent that such rules conflict with the provisions of this Section 14.15, in which event the provisions of this Section 14.15 control. The arbitration provisions contained herein are self-executing and will remain in full force and effect after expiration or termination of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

MEMBERS:

HILLTOP INVESTMENTS I LLC
a Delaware limited liability company

By: Hilltop Holdings Inc.,
a Maryland corporation,
its sole member

By: /s/ COREY PRESTIDGE
Name: Corey Prestidge
Title: Executive Vice President and
General Counsel

DIAMOND GROUND, LLC,
a Texas limited liability company
z
By: /s/ GARY SHULTZ
Name: Gary Shultz
Title: Vice President

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTERESTS

This ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTERESTS, dated as of [ ], 20[ ] (this "Assignment"), is entered into by and among [ ], a [ ] ("Assignor"), and [ ], a [ ] ("Assignee 1"), [ ], a [ ] ("Assignee 2") and [ ], a [ ] ("Assignee 3" and, collectively with Assignee 1 and Assignee 2, the "Assignees").

WITNESSETH:

WHEREAS, HTH DIAMOND HILLCREST LAND LLC (the "Company") was formed pursuant to the terms and provisions of that certain Limited Liability Company Agreement, dated as of , 2018 (as amended to date, the "Agreement"; capitalized terms used but not defined herein shall have the meanings given such terms in the Agreement), by and among Assignor, Assignee 1. Assignee 2 and Assignee 3, the Certificate and the statutes and laws of the State of Texas relating to limited liability companies, including the Act;

WHEREAS, (x) Assignor desires to assign, transfer and convey [ ]% of its Membership Interest in the Company (the "Assignee 1 Transferred Interests") to Assignee 1, Assignor desires to assign, transfer and convey [ ]% of its Membership Interest in the Company (the "Assignee 2 Transferred Interests") to Assignee 2 and Assignor desires to assign, transfer and convey [ ]% of its Membership Interest in the Company (the "Assignee 3 Transferred Interests" and, collectively with the Assignee 1 Transferred Interests and the Assignee 2 Transferred Interests, the "Transferred Interests") to Assignee 3 and (y) Assignor desires to withdraw from the Company as a member of the Company; and

WHEREAS, Assignee 1 desires to purchase the Assignee 1 Transferred Interests from Assignor, Assignee 2 desires to purchase the Assignee 2 Transferred Interests from Assignor and Assignee 3 desires to purchase the Assignee 3 Transferred Interests from Assignor.

NOW, THEREFORE, the undersigned, in consideration of the premises, covenants and agreements contained herein, do hereby agree as follows:

1. Assignments.

(a) For value received, the receipt and sufficiency of which is hereby acknowledged, upon the execution of this Assignment by the parties hereto and the funding of the purchase price by Assignee 1 to Assignor in the amount of $[ ], Assignor does hereby assign, transfer and convey the Assignee 1 Transferred Interests to Assignee 1.

(b) For value received, the receipt and sufficiency of which is hereby acknowledged, upon the execution of this Assignment by the parties hereto and the funding of the purchase price by Assignee 2 to Assignor in the amount of $[ ], Assignor does hereby assign, transfer and convey the Assignee 2 Transferred Interests to Assignee 2.

(c) For value received, the receipt and sufficiency of which is hereby acknowledged, upon the execution of this Assignment by the parties hereto and the funding of the purchase price by Assignee 3 to Assignor in the amount of $[ ], Assignor does hereby assign, transfer and convey the Assignee 3 Transferred Interests to Assignee 3.

2. Assumptions.

(a) Assignee 1 hereby assumes all liabilities in connection with the Assignee 1 Transferred Interests and shall hereby be entitled to all benefits in respect of the Assignee 1 Transferred Interests.

(b) Assignee 2 hereby assumes all liabilities in connection with the Assignee 2 Transferred Interests and shall hereby be entitled to all benefits in respect of the Assignee 2 Transferred Interests.

(c) Assignee 3 hereby assumes all liabilities in connection with the Assignee 3 Transferred Interests and shall hereby be entitled to all benefits in respect of the Assignee 3 Transferred Interests.

3. [Withdrawal. Immediately following the assignments made pursuant hereto, Assignor shall and does hereby withdraw from the Company as a member of the Company, and shall thereupon cease to be a member of the Company and to have or exercise any right or power as a member of the Company, including any and all of its rights to appoint any Committee Representatives to the

Investment Committee of the Company (and Committee Representatives theretofore appointed by the Assignor shall be deemed to have immediately resigned).](1)

4. Continuation of the Company. The parties hereto agree that the assignment of the Transferred Interests [and the withdrawal of Assignor as a member of the Company](2) shall not dissolve the Company and that the business of the Company shall continue.

5. Representations and Warranties.

(a) Assignor represents and warrants that as of the date hereof, and prior to the transfers being made pursuant hereto, Assignor is the sole and legal beneficial owner

(1) To be included if the Member is assigning 100% of its Membership Interest.
(2) To be included if the Member is assigning 100% of its Membership Interest.

---

of the Transferred Interests, free and clear of all pledges, security interests, liens, charges and encumbrances of any kind or nature.

(b) Assignor is duly organized, validly existing and in good standing as a [ ] under the laws of the State of [ ] and has the full right, power and authority to enter into this Assignment, and to perform all of its obligations hereunder.

(c) This Assignment has been duly and validly executed and delivered by and on behalf of Assignor.

(d) Neither the execution and delivery hereof, nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation of any obligation under any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which Assignor is a party, or by which Assignor is otherwise bound.

6. Binding Effect. This Assignment shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7. Execution in Counterparts. This Assignment may be executed (a) in counterparts, each of which shall be deemed an original, but all which shall constitute one and the same instrument and (b) by scanned e-mail, telecopy or other facsimile signature (which shall be deemed an original for all purposes).

8. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first-above written.

ASSIGNOR:

[ ]

By: _____
Name:
Title:

ASSIGNEE 1:

[ ]

By: _____
Name:
Title:

ASSIGNEE 2:

[ ]

By: _____
Name:

Title:

ASSIGNEE 3:

[ ]

By: _____
Name:
Title:

EXHIBIT B

FORM OF MEMBER LOAN NOTE

PROMISSORY NOTE

$[•] [•], 20[•]

FOR VALUE RECEIVED, the undersigned, [INSERT NAME OF THE DEBTOR MEMBER], a [INSERT TYPE OF ENTITY] (the "**Maker**"), does hereby promise to pay to [INSERT NAME OF FUNDING MEMBER], a [INSERT TYPE OF ENTITY] (the "**Payee**"), or its order, at its offices in [•], or such other address as may be duly designated by the holder of this Note, [•] ($[•]), with interest thereon at the rate equal to [•] percent ([•]%) per annum. The principal amount of the loan together with any interest thereon is payable on the Maturity Date (as defined below).

"**Business Day**" means a day upon which banks in Texas are not authorized or required by law to be closed.

"**Maturity Date**" means the earliest of the date on which (i) the final liquidating distribution by the Company and (ii) any sale of the Maker's Interest is completed.

1. Capitalized terms used but not defined herein have the meaning set forth in the Limited Liability Company Agreement (the "**LLC Agreement**") of [ ] (the "**Company**"), dated as of [ ].

2. Interest due on this Note is calculated on the basis of a 360-day year for the actual number of days elapsed prior to the Maturity Date and shall be compounded monthly.

3. This Note evidences a Member Loan made by Payee to Maker pursuant to **Section 3.4** of the LLC Agreement. This Note may be prepaid at any time by the Maker in whole or in part at the election of the Maker, in an amount equal to the outstanding principal amount thereof plus accrued interest.

4. The Maker hereby authorizes the Company to (i) make any and all distributions that would otherwise be payable to the Maker by the Company pursuant to **Articles 7** and **11** of the LLC Agreement and (ii) pay any and all proceeds which would otherwise be payable to the Maker from, and upon the closing of, any sale of the Maker's Interest in the Company, directly to the Payee and any other Members that have made Member Loans to the Maker (to be split among them *pro rata* in accordance with the relative amounts of such Member Loans to the Maker) until such time as the obligations evidenced by this Note have been paid in full.

5. If the Maker fails to repay this Note on the Maturity Date, the Maker shall reimburse the holder of this Note for all of its costs and expenses incurred in enforcing this Note, including reasonable attorneys' fees and expenses. The obligations of the Maker hereunder shall be recourse only to the Maker's Interest in the Company.

---

6. This Note may be discharged, terminated, amended, supplemented or otherwise modified only by an instrument in writing signed by the party against which enforcement of such discharge, termination or modification is sought.

7. To the fullest extent permitted by law, the Maker hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Note and expressly agrees that, without in any way affecting the liability of the Maker hereunder, the holder hereof may extend the time for payment of any amount due hereunder, accept additional security, release any party liable hereunder or any security now or hereafter securing this Note, without in any other way affecting the liability and obligation of the Maker or any other person.

8. No failure by the holder hereof to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof will constitute a waiver of any such term or of any such breach. No waiver of any breach will affect or alter this Note, which will continue in full force and effect, nor will such waiver affect or alter the rights of the holder hereof with respect to any other then existing or subsequent breach. The acceptance by the holder hereof of any payment hereunder that is less than payment in full of all amounts due at the time of such payment will not, without the express written consent of the holder hereof: (i) constitute a waiver of the right to exercise any of such holder's remedies at that time or at any subsequent time, (ii) constitute an

accord and satisfaction, or (iii) nullify any prior exercise of any remedy.

9. No acceptance of a past due payment or indulgences granted from time to time may be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of the holder hereof thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by law.

10. In case any one or more of the provisions of this Note are determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

11. Nothing contained in this Note or elsewhere may be deemed or construed to create a partnership or joint venture between the holder hereof and the Maker or between the holder hereof and any other person, or cause the holder hereof to be responsible in any way for the debts or obligations of the Maker or any other person.

12. It is hereby expressly agreed that, if from any circumstances whatsoever, fulfillment of any provision of this Note, at the time performance of such provision will be due, violates any applicable usury statute or any other law, then ipso facto such provision will be conformed to comply with such statute or law. In no event shall the Maker be bound to pay for the use, forbearance or detention of the money lent pursuant hereto, interest of more than the current legal limit; the right to demand any such excess being hereby expressly waived by the holder hereof.

---

13. **THIS NOTE IS MADE UNDER AND IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CHOICE-OF-LAW RULES.**

14. Any legal action or proceeding with respect to this Note may be brought in any state or federal court located in the State of Texas. By execution and delivery hereof, the Maker hereby accepts for itself and in respect of property, generally and unconditionally, the jurisdiction of the aforesaid courts. Nothing herein, however, shall affect the right of the holder hereof to commence legal proceedings or otherwise proceed against Borrower in any other jurisdiction.

15. WITH RESPECT TO ANY SUCH LEGAL ACTION OR PROCEEDING, THE MAKER HEREBY IRREVOCABLY WAIVES TRIAL BY JURY, AND THE MAKER HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTIONS. SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE MADE BY THE PAYEE ON THE MAKER BY MAILING A COPY OF THE SUMMONS AND ANY COMPLAINT TO THE MAKER, BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

IN WITNESS WHEREOF, the Maker has caused this instrument to be duly executed on the date in the year first above written.

MAKER:

[INSERT NAME OF MAKER]

By: _____
Name:
Title:

EXHIBIT C

Appraisal Procedure

If at the end of the 15-business day period specified in Section 9.5(d), there is disagreement between the Members and the Defaulting Member on the fair market value of the Defaulting Member's Membership Interest under Section 9.5, the following appraisal procedure shall apply:

1. Either the Members or the Defaulting Member (each, a "party") may invoke this appraisal procedure by giving a notice to the other party of the appointment of an appraiser. The other party shall have 10 business days after the notice of appointment of the first appraiser to appoint an appraiser by notice to the first appointing party. If the other party fails to give a notice of appointment within such 10-day period, then the other party shall lose its right to appoint an appraiser.

2. No discounts shall be taken for any reason, including without limitation discounts for minority interest and lack of marketability.

3. If only one appraiser is appointed in accordance with the foregoing, the sole appraiser shall make a determination of fair market

value in writing and shall give notice to the Members and the Defaulting Member of such determination.

4. If two appraisers are appointed in a timely manner, the two appraisers shall conduct such meetings as they may deem appropriate, shall make their determination of fair market value in writing and shall give notice to the Members and the Defaulting Member of such determination. If the two appraisers are unable to reach agreement on fair market value within 30 days after the appointment of the second appraiser, each appraiser shall notify the Members and the Defaulting Member of the determination of fair market value made by such appraiser. If the higher of the two determinations is within 10% of the lower, then fair market value shall be equal to the average of the two fair market values so determined.

5. If the higher of the two determinations is not within 10% of the lower and the parties do not themselves reach agreement on fair market value within 10 business days after their receipt of both determinations, either of the parties may, by notice to the two appraisers, instruct the two appraisers to designate a third appraiser. Within 10 business days after any such instruction, the two appraisers shall make such appointment and notify the Members and the Defaulting Member.

6. If the two appraisers fail to appoint a third appraiser within the specified period for appointment, then the Members shall designate a third appraiser from a list of at least three potential appraisers provided by the two appraisers within two business days after the end of the 10-day period for agreement by the appraisers on fair market value. If the two appraisers do not agree on and provide such a list to the Members within such period of two business days, the Members shall designate a third appraiser from a separate list of at least three potential appraisers provided to the Members by the appraiser appointed by the Defaulting Member or, if such appraiser does not provided a separate list to the Members within such period of two business days, from a separate list of at least three potential appraisers provided to the Members by the appraiser appointed by the Members.

---

7. The third appraiser shall review the written reports of the initial two appraisers and issue a written report selecting one of the appraisals made as the fair market value of the Defaulting Member's Membership Interests within 30 days after appointment of the third appraiser.

8. Fair market value determined in accordance with the provisions of this appraisal procedure shall be final and binding for the intended purpose under the Agreement.

9. All appraisers appointed in accordance with this appraisal procedure shall be members of a recognized national appraisal organization. Each person acting as the appraiser (or, if the appraiser is an appraisal firm, heading up the appraisal on behalf of the appraisal firm) shall have had at least 10 years' experience in the business of appraising businesses of the Company's type and size and, in addition, shall have experience in the business then being conducted by the Company. Specifically, any appraiser shall be experienced in appraising real property and real estate holding companies.

10. The Members and the Defaulting Member shall each pay all fees and expenses of any appraiser appointed by the Members and the Defaulting Member, applicable, and one-half of all fees and expenses of any third appraiser.

SCHEDULE A

DESCRIPTION OF THE PROPERTY

PROPERTY DESCRIPTION

Being a tract of land situated in the John Scurlock Survey, Abstract No. 1351, City of University Park, Dallas County, Texas, being the same tract of land described in a deed to SPC Hillcrest LP, recorded in Instrument Number 201500282785, Official Public Records, Dallas County, Texas, being the same tract of land described in City Ordinance No. 18-001, recorded in Instrument Number 201800019205, Official Public Records, Dallas County, Texas, being all of Lot 6R, Block 3, University Park Addition, an addition to The City of University Park, according to the plat recorded in Instrument No. 201800049372, Official Public Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a MAG nail found at the intersection of the south line of Daniel Avenue (variable width right-of-way) and the west line of Hillcrest Avenue (100' right-of-way) for the northeast corner of said Lot 6R;

THENCE South 00° 24' 47" East, along the west line of said Hillcrest Avenue, a distance of 150.00 feet to a chiseled "X" in concrete found at the intersection of the west line of said Hillcrest Avenue and the north line of Haynie Avenue (50' right-of-way) for the southeast corner of said Lot 6R;

THENCE South 89° 16' 53" West, along the north line of said Haynie Avenue, passing the southeast corner of said City Ordinance No. 18-001 at 180.00 feet, passing the southwest corner of said City Ordinance No. 18-001 at 195.00 feet, and continuing for a total distance of 488.60 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" found for the southwest corner of said Lot 6R and the southeast corner of Lot 4R of said addition, from which a 1/2" iron rod with yellow plastic cap stamped "RLG INC" found bears South 89° 16' 53" West, a distance of 150.00 feet for the southwest corner of said Lot 4R and the southeast corner of Lot 3, Block 3 of University Park Addition, an addition to the City of University Park, according to the plat filed of record in Volume 2, Page 6, Map Records, Dallas County, Texas.

THENCE North 00° 43' 07" West, departing the north line of said Haynie Avenue, and along the common line between said Lot 6R and said Lot 4R, a distance of 150.00 feet to a chiseled "X" in concrete found on the south line of said Daniel Avenue for the northwest corner of said Lot 6R and

the northeast corner of said Lot 4R, from which a chiseled "X" in concrete found bears South 89° 16' 53" West, a distance of 150.00 feet for the northwest corner of said Lot 4R and the northeast corner of said Lot 3;

THENCE North 89° 16' 53" East, along the south line of Daniel Avenue, passing the northwest corner of said City Ordinance No. 18-001 at 294.40 feet, passing the northeast corner of said City Ordinance No. 18-001 at 309.40 feet and continuing for a total distance of 489.40 feet to the POINT OF BEGINNING, containing 73,350 square feet or 1.6893 acres of land, more or less AND ALSO KNOWN AS:

BEING all of Lot 6R, Block 3, UNIVERSITY PARK ADDITION, an Addition to the City of University Park, according to the plat recorded in Instrument No. 201800049372, Official Public Records, Dallas County, Texas.

SCHEDULE 3.1

NAMES AND ADDRESSES OF INITIAL MEMBERS

Diamond Ground, LLC
200 Crescent Court, Suite 1350
Dallas, Texas 75201

Hilltop Investments I LLC
2323 Victory Avenue, Suite 1400
Dallas, Texas 75219

SCHEDULE 3.3

INITIAL CONTRIBUTIONS AND PERCENTAGE INTERESTS

		CURRENT CONTRIBUTION	PERCENTAGE INTERESTS
HILLTOP INVESTMENTS I LLC	$	19,250,000.00	50.00%
DIAMOND GROUND, LLC	$	19,250,000.00	50.00%

(Back To Top)

Section 3: EX-10.2 (EX-10.2)

Exhibit 10.2

GROUND LEASE AGREEMENT

THIS **GROUND LEASE AGREEMENT** (this "**Lease**"), is made and entered into effective as of the 31st day of July, 2018 (the "**Effective Date**"), by and among **HTH DIAMOND HILLCREST LAND LLC,** a Texas limited liability company ("**Landlord**"), and **SPC PARK PLAZA PARTNERS LLC**, a Texas limited liability company ("**SPC CO-OWNER**"**),** as to an undivided 50% leasehold interest, **HTH HILLCREST PROJECT LLC**, a Texas limited liability company ("**HILLTOP CO-OWNER"),** as to an undivided 25% leasehold interest, and **DIAMOND HILLCREST, LLC**, a Texas limited liability company ("**FORD CO-OWNER"),** as to an undivided 25% leasehold interest, **(**SPC Co-Owner, Hilltop Co-Owner and Ford Co-Owner being collectively referred to herein as ("**Tenant**") and being individually referred to herein as a "**Tenant Co-Owner**").

WITNESSETH:

Subject to the terms, provisions and conditions of this Lease, and each in consideration of the duties, covenants and obligations of the other hereunder, Landlord does hereby lease, demise and let unto Tenant and Tenant does hereby lease from Landlord the Land, as such term is hereinbelow defined (the Land and Landlord's interest, if any, in any improvements now or hereafter constructed thereon are hereinafter referred to collectively as the "**Premises**"). Landlord acknowledges and agrees that prior to the date hereof, Strode Property Company, an affiliate of the Tenant, has commenced and continues to undertake site planning and construction planning services on the Land, which include, but are not limited to, demolition of existing improvements, site grading and clearing, platting, permitting, termination of existing utilities, and planning related to the commencement of permanent building improvements (collectively, the "Existing Improvements"). Landlord does not and shall not have any vested ownership rights in and to such Existing Improvements which have been performed and installed by Strode Property Company in, under and to the Land. Such rights relating to the Existing Improvements have been assigned and conveyed to Tenant (the "**SPC Assigned Rights**"), and Tenant hereby expressly subjects such SPC Assigned Rights to the terms of this Lease as part of the "Premises". Landlord's fee title in and to such Existing Improvements and SPC Assigned Rights shall automatically become vested upon the expiration or earlier termination of this Lease.

ARTICLE I.

CERTAIN DEFINITIONS

For purposes of this Lease, the following terms shall have the meanings respectively indicated:

1.1 "**Affiliate**" of Tenant means: (i) any entity controlled by, controlling or under joint control with a Tenant Co-Owner or any Tenant Co-Owner's partners, members or shareholders; (ii) any entity which is owned in whole or in part, by a Tenant Co-Owner or Tenant Co-Owner's partners, members or shareholders; or (iii) any entity which is the successor by merger or otherwise to all or substantially all of a Tenant Co-Owner's assets used in connection with a Tenant Co-Owner's business operations at the Premises and liabilities including, but not

limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital.

1.2 "**Annual Rent**" means One Million Eight Hundred Thousand and No/100 Dollars ($1,800,000) for the first Lease Year, commencing on the first day of the first full calendar month occurring eighteen (18) months after the Effective Date (the "**Rent Commencement Date**"), and thereafter, Annual Rent shall increase on January 1st of each succeeding calendar year, beginning on January 1st of the calendar year following the Rent Commencement Date, by one percent (1%) in excess of the Annual Rent paid for each prior Lease Year, until the expiration of the Term. A Schedule of the amounts of Annual Rent is set forth on **Exhibit "D"** attached hereto.

1.3 "**Business Days**" means any week day (but not any Saturday or Sunday) other than New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day.

1.4 "**Bylaws**" means the by-laws of the Master Association.

1.5 "**Commencement Date**" means the Effective Date, which is the same date Landlord acquired title to the Land.

1.6 "**Common Elements**" means the common areas and facilities of the Condominium as defined in Section 1.1 of the Condominium Declaration.

1.7 "**Condominium**" means the condominium regime that has been created pursuant to the Condominium Documents and covers Tenant's leasehold interest in the Premises as provided in this Lease.

1.8 "**Condominium Declaration**" means the Master Condominium Declaration for Hilltop Plaza Condominium dated of even date herewith, and recorded in the Official Public Records.

1.9 "**Condominium Documents**" means the Condominium Declaration, the Bylaws, the Rules and Regulations and any amendments thereto.

1.10 "**Condominium Statute**" means the Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time.

1.11 "**Construction Loan Agreement**" means that certain Construction Loan Agreement between Comerica Bank, as lender, and Tenant, as borrower, dated contemporaneously herewith.

1.12 "**Joint Obligations**" means all obligations, covenants, agreements, terms or conditions contained in this Lease other than the Several Obligations, which shall be joint and several obligations of the Unit Owners.

1.13 "**Land**" means that certain tract or parcel of land lying and being situated in Dallas County, Texas, which land is described in **Exhibit "A"** attached hereto and made a part hereof for all purposes.

1.14 "**Lease Year**" means a period of one calendar year; provided, however, the first Lease Year shall commence at 11:59 p.m. on the Commencement Date and shall end at midnight on December 31 of the year following the year in which the Commencement Date occurs.

1.15 "**Leasehold Estate**" means Tenant's interest in the Premises created pursuant to this Lease.

1.16 "**Master Association**" means Hilltop Plaza Owners Association, a Texas nonprofit corporation, created for the purposes and possessing the rights, powers, authority and obligations set forth in the Condominium Documents.

1.17 "**Official Public Records**" means the records of the Dallas County Clerk in Dallas, Dallas County, Texas.

1.18 "**Person**" means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, and any fiduciary acting in such capacity on behalf of any

of the foregoing.

1.19 "**Proportionate Interest**" shall equal, with respect to each Unit, the percentage of interest in the undivided ownership of the Common Elements which is appurtenant thereto.

1.20 "**Rules and Regulations**" means the rules and regulations of the Master Association, as amended from time to time, relating to the appearance, use and occupancy of the Units.

1.21 "**Several Obligations**" means (a) the payment of Rent and related reporting requirements required by this Lease, (b) the payment of taxes and Impositions, (c) the indemnity obligations contained in Article VII of this Lease to the extent attributable to a single Unit, (d) the surrender or holdover of an individual Unit under Article XIII of this Lease, (e) casualty or condemnation affecting a single Unit under Article XVII or XVIII of this Lease, (f) transfers by owners of a single Unit under this Lease, (g) violation of any applicable laws to the extent attributable to a single Unit, or (h) liability for liquidated damages under this Lease, all of which shall be the several (and not joint) obligations of each Owner.

1.22 "**Subtenants**" means all persons or other entities occupying any portion of the Premises as a subtenant of Tenant and their subtenants pursuant to a Sublease (herein so called) of any portion of the Premises, including the building improvements located thereon.

1.23 "**Unit**" means a unit of the Condominium.

1.24 "**Unit Owner's Share**" means, with respect to each Unit, that percentage which is equal to the Proportionate Interest for such Unit.

1.25 "**Unit Owners**" means the person(s) holding title to a Unit as shown by the Official Public Records.

ARTICLE II.

COMMENCEMENT, TERM AND OPTIONS

2.1 **Term**. This Lease will continue in full force and effect for a term (the "**Term**") of ninety-nine (99) Lease Years, commencing on the Effective Date; and ending on the date which is ninety-nine (99) Lease Years later, unless such Term is sooner terminated as hereinafter provided.

ARTICLE III.

RENT

3.1 **Annual Rent**. Commencing on the Rent Commencement Date, and continuing thereafter for each Lease Year of the Term, Tenant agrees to pay the applicable Annual Rent as herein provided, in lawful money of the United States of America, without deduction or offset, prior notice or demand, and at such place or places as Landlord may from time to time designate. Tenant shall pay such rent monthly in advance on or before the first day of each month in an amount equal to one-twelfth (1/12) of the applicable Annual Rent. A schedule of Annual Rent payments is set forth on **Exhibit "D"** attached hereto.

3.2 **Late Charge; Interest.** In the event that Tenant shall fail to pay: (i) any portion of any installment of Annual Rent on or before the day which is five (5) days after the day on which such installment is due, there shall be added to such unpaid amount a late charge of five percent (5%) of the amount owed, in order to compensate Landlord for the extra administrative expenses incurred in collecting delinquent accounts. In addition, from and after the date which is ten (10) days after the due date the total amount then due shall bear interest at the rate (the "**Default Rate**") which is lesser of: (a) fifteen percent (15%) or (b) the highest lawful rate, until paid. The parties hereto stipulate and agree that Landlord will incur additional expenses in collecting any delinquent payments and the late charges provided for herein are intended to compensate Landlord for overhead and other expenses likely to be incurred in collecting delinquent accounts. The parties further stipulate and agree that the late charges are not "interest" and it is not the intent of the parties to contract for, charge or receive interest in excess of the maximum lawful amount.

3.3 **Additional Rent**. It is understood and agreed this Lease is "triple net", and Landlord shall have no payment obligations whatsoever nor shall Landlord have any duty, obligation or liability to maintain, repair or improve all of any portion of the Premises. All Impositions, including real estate taxes, other taxes, insurance premiums, franchise and margin taxes, and all sums, liabilities, obligations, and other amounts which Tenant is required to pay or discharge pursuant to this Lease, in addition to Annual Rent, together with any interest, penalty, or other sum which may be added for late payment thereof, shall constitute additional rent hereunder ("**Additional Rent**"). So long as Tenant is not then in default hereunder, Tenant may pay Additional Rent directly to the person entitled thereto. Annual Rent and Additional Rent are

sometimes collectively referred to in this Lease as "rent". For avoidance of doubt, Tenant's obligation to pay Additional Rent commences on the Effective Date.

3.4 **Place and Manner of Payment**. Subject to the further provisions hereof, the rent and any other sums due and owing by Tenant

to Landlord hereunder shall be payable to Landlord or its designee at the original or changed address of Landlord set forth in Section 20.1 hereof or to such other person at such address as Landlord may designate from time to time in writing.

3.5 **Payments to Assignees and Third Parties.**

(a) If Landlord's interest in this Lease shall be assigned to a third party or if any sum accrued or to accrue hereunder shall ever be assigned or if any third party other than Landlord shall ever be entitled to collect such sum, then in any such event written notice shall be given by Landlord to Tenant within thirty (30) days after such assignment.

(b) If Landlord's interest in this Lease shall be owned by more than one person, firm, corporation or entity, such parties shall arrange among themselves for the joint execution of a notice specifying one (1) party or agent and an address therefor for the receipt of notices to Landlord under this Lease and to which all payments to Landlord under this Lease shall be made, and notices delivered and payments made by Tenant in accordance with such executed notice shall constitute notice and payment to all parties included within the term "Landlord".

ARTICLE IV.

DELIVERY OF THE PREMISES

4.1 **DELIVERY OF THE PREMISES. TENANT HEREBY ACCEPTS THE PREMISES FROM LANDLORD IN ITS "AS IS", "WHERE IS" CONDITION WITHOUT ANY REPRESENTATION OR WARRANTY BY LANDLORD OR ANY OF ITS EMPLOYEES OR AGENTS, AND "WITH ALL FAULTS". THE EXECUTION OF THIS LEASE BY TENANT SHALL BE PRIMA FACIE EVIDENCE THAT TENANT HAS INSPECTED THE PREMISES AND IS OR WILL BE THOROUGHLY FAMILIAR WITH ITS CONDITION, AND TENANT HEREBY ACCEPTS THE PREMISES AS BEING IN GOOD AND SATISFACTORY CONDITION AND SUITABLE FOR TENANT'S INTENDED PURPOSES. THE PROVISIONS OF THIS ARTICLE IV HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION BY LANDLORD OF, AND TENANT DOES HEREBY DISCLAIM, ANY AND ALL WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.**

4.2 **Zoning, Easements and Dedications**. From time to time throughout the term of this Lease, Landlord shall, upon the request of Tenant (but subject to Section 4.4 hereof), execute such consents, authorizations, applications, plats, requests, dedications, easements and other documents and instruments as may be reasonable and necessary or desirable in connection with Tenant's development and/or leasing of the Premises, including, without limitation, utility

easements, site plans, platting instruments and other documents or instruments, in forms approved by Landlord, as may be required by the City of University Park or any Major Subtenant (as hereinafter defined); provided, however, the Land shall not be rezoned or replatted without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall bear all expenses with respect to the matters described in this Section 4.2 and in no event shall Landlord be required to incur any expense (other than a reasonable amount of fees of its own counsel incurred in connection with the review of the documents and instruments submitted to Landlord in compliance with the terms of this Section 4.2), or undertake any development or construction obligation.

4.3 **Restrictions**. At the written request of Tenant (but subject to Section 4.4 hereof), Landlord shall, from time to time, execute and deliver or join in the execution and delivery of such documents as are reasonable and appropriate, in forms approved by Landlord, necessary or required to impose on the Premises such covenants, conditions and restrictions providing for, inter alia, exclusive uses of the Premises, or any part thereof, the establishment of common and parking areas, the establishment of party walls, replatting of the Land, and provisions for the enlargement of the common and parking areas by the establishment of mutual and reciprocal parking rights and the rights of ingress and egress, and other like matters, for the purpose of the orderly development and operation of the Premises. All matters, agreements, restrictions and ordinances which affect the Land shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

4.4 **Extent of Landlord's Obligation**. Notwithstanding anything in Section 4.2 and Section 4.3 to the contrary, Landlord's obligations thereunder will be limited to the execution and delivery or the joinder in the execution and delivery of such documents and instruments as may be necessary to grant and create "Typical Easements and Restrictions" (as hereinafter defined) for "Major Subtenants" (as hereinafter defined) and otherwise reasonably cooperate with Tenant to accommodate Major Subtenants. As to Subtenants who are not Major Subtenants, Landlord will reasonably consider such easements, dedications, restrictions, covenants and other conditions as may be necessary for or requested by such Subtenants and agrees to execute and deliver or join in the execution and delivery of same to the extent approved by Landlord, such approval not to be unreasonably withheld or delayed. Landlord's cooperation shall not, however, require Landlord to incur any expense (other than a reasonable amount fees of its own counsel incurred in connection with the review of the documents and instruments submitted to Landlord in compliance with the terms of this Section 4.4) or undertake any development or construction obligation. As used above, the term "Typical Easements and Restrictions" shall mean such easements, dedications, restrictions, covenants, non-disturbance agreements and conditions as are typically required by a National or Regional User (as defined in Section 11.4 below) for the lease and occupancy of space and the operation of its business in a multi-tenant first-class office, retail and restaurant project, which may include, but not be limited to, use and/or product exclusives, use and/or product radius restrictions, parking restrictions, access and/or service drive restrictions, building height restrictions, building area restrictions, signage restrictions, and other such matters as contemplated in Section 4.3 above; provided, however, in no event shall any of such easements, dedications, restrictions, covenants or conditions affect or burden any land other than the Premises.

ARTICLE V.

INDEPENDENT COVENANTS

5.1 It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the Annual Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events and that the obligations of Tenant hereunder shall continue unaffected.

ARTICLE VI.

USE

6.1 **Permitted Uses**. The Premises may be used and occupied by Tenant (and its permitted assignees and Subtenants) solely for the demolition of the existing improvements and the construction, operation and maintenance thereon of office operations, retail businesses, restaurants, financial institutions, professional offices and related facilities common to first class commercial developments in the Dallas-Fort Worth metroplex, and for common areas relating and necessary to the operation of the foregoing, including a parking garage facility; provided, however, notwithstanding anything in this Lease to the contrary, Tenant shall not use or permit the Premises or any part thereof to be used for any use proscribed on **Exhibit "B"** attached hereto and made a part hereof for all purposes, without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion (collectively, the "**Prohibited Uses**").

6.2 **Intentionally Deleted**.

6.3 **Compliance with Laws; Indemnity**. Tenant shall, at Tenant's sole cost and expense, promptly observe and comply with (i) all present and future laws (including, without limitation, environmental laws), ordinances, statutes, codes, requirements, orders, directions, rules and regulations of all federal, state, county and municipal governments and of all other governmental authorities having or claiming jurisdiction over the Premises or any appurtenances thereto or any part thereof, and of all the respective departments, bureaus and officials of any such authorities (collectively "**Laws**"), and (ii) the requirements and regulations of the Board of Fire Underwriters or any other body exercising similar functions, and of all insurance companies issuing policies covering the Premises or any part thereof (collectively, "**Regulations**") applicable to the use, condition, structure or occupancy of the Premises, including, without limitation, Laws relating to the environment, persons with disabilities, construction and occupational health and safety. Tenant must comply with the Laws and Regulations regardless of (a) whether the Laws or Regulations are in force at the commencement of the Term of this Lease or may in the future be passed, enacted or directed, and (b) whether compliance with such Laws and Regulations shall require structural or extraordinary alterations or additions, repairs or replacements to the Premises or any part thereof. Without limiting the generality of the foregoing, Tenant must also procure, at Tenant's sole cost and expense, each and every permit, license, certificate or other authorization required in connection with any building(s) or improvement(s) now or hereafter erected on the Premises or any part thereof, as well as any and

all licenses and permits required for Tenant's intended use upon the Premises (collectively the "**Permits**").

6.4 **Americans with Disabilities Act**. Notwithstanding any other provisions of this Lease to the contrary, Tenant must comply with the Americans With Disabilities Act, as it now exists and as it may hereafter be amended and any other accessibility Laws or Regulations as they may hereafter be amended (collectively, "ADA") with regard to the Premises and Tenant's use thereof. Landlord is not responsible for compliance with the ADA with respect to the Premises, including the design or construction of any buildings or improvements on the Premises.

ARTICLE VII.

INDEMNITY

7.1 Tenant shall indemnify, protect and save Landlord and Landlord's successors and assigns, partners, shareholders, trustees, directors, agents, contractors, employees and officers (collectively, the "**Indemnified Parties**") harmless from and against, and shall reimburse such parties for, all liabilities, obligations, losses, claims, damages, fines, penalties, costs, charges, judgments and expenses, including, without limitation, reasonable attorneys' fees and expenses which may be imposed upon or incurred or paid by or asserted against such Indemnified Parties by reason of or in connection with any of the following occurring during the Term of this Lease and any time thereafter Tenant, successors and/or assigns of Tenant retains possession of the Premises or any part thereof or a Subtenant holds over after the termination of this Lease without Landlord's consent (except to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties):

(a) Any accident, injury, death or damage to any person or property occurring in, on or about the Premises;

(b) All construction and any changes, alterations, repairs and anything done in, on or about the Premises or any part thereof in connection with such construction, changes, alterations and repairs;

(c) Any act (whether or not negligent) or omission on the part of Tenant or any of its agents, contractors, subcontractors, servants, successors, employees, Subtenants, licensees, invitees or any trespassers;

(d) Performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or

any part thereof;

(e) Any failure of Tenant or any of its agents, contractors, subcontractors, servants, successors, employees, Subtenants, licensees, invitees or any trespassers to comply with any Laws or Regulations or obtain or maintain any Permits;

(f) The use, occupancy, operation or condition of the Premises, or of any buildings or other structures now or hereafter situated thereon, or the fixtures or personal property thereon or therein;

(g) Any Event of Default by Tenant under this Lease; or

(h) Any other action or matter concerning the Premises except to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties.

Tenant's foregoing indemnity and hold harmless agreement shall survive the termination or expiration of this Lease.

ARTICLE VIII.

IMPOSITIONS, UTILITIES, MAINTENANCE

8.1 **Impositions.**

(a) Subject to Tenant's right to contest such charges pursuant to Section 8.1 (d) below, from and after the Commencement Date, Tenant shall pay all real property taxes which are assessed by any lawful authority against the Premises and all other taxes, assessments for local improvements, use and occupancy taxes, ad valorem taxes, margin taxes (including the margin tax imposed by Chapter 171 of the Texas Tax Code and any amendment or replacement thereof in addition thereto), water, and storm and sanitary sewer rates and charges (other than ordinary charges for utility services as provided in Section 8.2), licenses and permit fees, tap fees and other governmental levies and charges, which are assessed, levied, confirmed, imposed or become a lien upon the Premises (or any portion thereof), or become payable or accrue during the term of this Lease (the "**Impositions**"), payment thereof to be made at least fifteen (15) days before the earlier of (i) the date such payment is due, or (ii) the date on which any fine, penalty, interest or cost may be added thereto for the nonpayment thereof; provided, however, that any Impositions relating to a fiscal period of the taxing authority a portion of which is included within the Term hereof and a portion of which is included in a period of time before the Commencement Date or after the expiration of the term (for reasons other than Tenant's default hereunder) shall be adjusted between Landlord and Tenant as of the date for payment of Impositions occurring during the first Lease Year or such year in which this Lease expires, as applicable. If Tenant does not timely pay such Impositions (or contest such payment pursuant to Section 8.1(c) below), Landlord, at Landlord's option, may pay the same (without waiving Tenant's default) and such amount so paid, together with interest thereon at the Default Rate, shall be due and payable to Landlord as Additional Rent upon written demand therefor by Landlord. At least thirty (30) days prior to the end of the calendar year occurring during the first partial Lease Year of the Term, Landlord shall bill Tenant for the estimated Impositions based upon the overlap, if any, of the first partial Lease Year and the fiscal period of the taxing authorities. Such bill shall be accompanied with Landlord's calculation of such estimated Impositions (taking into consideration the required date of payment thereof by Tenant, as set forth below). Such estimated billing shall be based upon the Impositions for the previous fiscal year, or such other information then available to Landlord. Tenant shall pay each such estimated billing to Landlord within thirty days (30) days of receipt thereof and Landlord shall remit same together with Landlord's share prior to the later to occur of delinquency or fifteen (15) days after receipt of Tenant's share; provided, however, that if such estimated amounts shall vary from the actual amounts due for the fiscal year, Landlord and Tenant shall make a final adjustment as

soon as reasonably possible after the end of the partial Lease Year based upon the Impositions actually payable by Landlord.

(b) Nothing hereinabove contained shall require Tenant to pay any franchise, estate, inheritance, succession, capital levy, stamp levy, stamp tax or transfer tax of Landlord or any income, excess profits, or revenue tax, or any other tax, assessment, charge, or levy based on or measured by the gross income or capital stock of Landlord or upon any rental payable by Tenant under this Lease; provided, however, that if at any time during the Term of this Lease, the present method of taxation or assessment shall be so changed that the whole or any part of the taxes, assessments, levies or charges now levied, assessed or imposed on real estate and improvements thereon shall be changed or discontinued and as a substitute therefor, taxes, assessments, levies or charges shall be levied, assessed and/or imposed wholly or partially as a capital levy or otherwise on the rents received from said real estate or the rents reserved herein or any part thereof, then such changed or substitute taxes, assessments, levies or charges, to the extent so levied, assessed or imposed, shall be deemed to be included within the term "Impositions". Impositions shall also include any additional taxes and assessments (other than an income tax on Landlord's net income) that are hereafter levied and/or assessed with respect to the Premises and/or this Lease. In the event a sales tax or use tax is hereafter imposed upon any rental payable hereunder ("**Rental Tax**"), Tenant shall be responsible for the payment thereof, provided same is not an income tax on Landlord's net income. Tenant agrees to seek all available exemptions and waivers of Rental Tax and/or credits applicable to the payment of Rental Tax so as to minimize, to the extent possible, the net amount of Rental Tax actually paid by Tenant. To the extent received by Landlord, Landlord covenants to forward promptly to Tenant any and all notices or statements relating to taxes, assessments, fees, water, sewer or other rent, rate or charge, excise, levy, license fee, permit fee, inspection fee or other authorization fee and will reasonably cooperate with Tenant to allow such notices or statements to be sent directly to Tenant. Tenant shall furnish to Landlord for Landlord's inspection, at least 15 days prior to the delinquency date thereof, official receipts of the appropriate taxing authority or a canceled check payable to such taxing authority or other evidence reasonably satisfactory to Landlord evidencing payment thereof. The certificate, advice or bill of nonpayment of any Imposition from the appropriate official designated by

law to make or issue the same or to receive payment of any Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice, or bill of nonpayment. If Tenant fails to furnish such receipts or other proof within the foregoing 15 day period, Landlord, at Landlord's option, may pay such Taxes, and Tenant will reimburse such amount to Landlord, together with any interest, penalties or late fees accrued thereon within fifteen (15) days after Landlord's written request therefor.

(c) Tenant is liable for all taxes levied or assessed against personal property, furniture or fixtures placed or situated in or on the Premises during the Term ("**Personal Property Taxes**"). If any such Personal Property Taxes for which Tenant is liable under this Section 8.1 are levied or assessed against Landlord or Landlord's property and if Landlord, at Landlord's option, elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property, furniture or fixtures placed or situated in or on the Premises during the Term, and Landlord, at Landlord's option, elects to pay the Personal Property Taxes based on such increase, Tenant must pay to Landlord upon demand that part of such Personal Property Taxes.

(d) So long as there is then no uncured default hereunder, Tenant may contest the collection or assessment of any Impositions, tax, assessment, fee, water or sewer charge or rate, excise or levy by legal proceedings or other appropriate action provided that: (i) neither the Premises nor any part thereof nor any interest therein is placed in any danger of being sold, forfeited, lost or interfered with by virtue of any such contest; (ii) Tenant, prior to the prosecution or defense of any such claim, notifies Landlord in writing of its decision to pursue such contest; (iii) to the extent procedurally required and to avoid the consequences of delinquency, Tenant shall pay the amount in question prior to initiating the contest; (iv) provide, to the reasonable satisfaction of Landlord, adequate security to Landlord prior to initiating the contest; and (v) within thirty (30) days after the conclusion of such contest, pay all expenses (including, without limitation, any fees, penalty or interest) which are assessed or incurred in connection with or as a result of any such proceedings are paid by Tenant.

8.2 **Utilities**. Tenant alone shall be responsible for and promptly pay all charges incurred for all utility services to the Premises, including, but not limited to, telephone service, sanitary and storm sewer, water, natural gas, light, power, heat, steam, communications services, garbage collection and electricity arising out of Tenant's and any Subtenant's or other occupant's use, occupancy, and possession of the Premises during the term of this Lease. Tenant shall also pay for all penalties, surcharges and maintenance upon such utilities. In no event shall Landlord be liable in any respect (including for damages to either person or property) for any interruption or failure of utility service to the Premises, except to the extent caused by Landlord's gross negligence. In no event will any such failure or cessation relieve Tenant from fulfillment of any covenant in this Lease.

8.3 **Other Services**. Landlord is not responsible for providing any services to Tenant and/or the Premises (including, without limitation, janitorial services, landscaping, trash removal, or the like, it being hereby acknowledged and agreed that same are the sole responsibility of Tenant), except as may be otherwise expressly set forth herein.

8.4 **Maintenance and Repairs**. Subject to the provisions of Article XVII below relating to destruction of or damage to the Premises, Tenant agrees that at all times and during the Term at its own expense it will keep and maintain or cause to be kept and maintained all of the Premises (structural and non-structural and interior and exterior), including, without limiting the generality of the foregoing, all buildings and other improvements; heating, ventilating and air conditioning systems (collectively, "**HVAC**"); plumbing; lighting; signage; pavement; common areas; and landscaping (including mowing of grass and care of shrubs), in clean, neat and first-class condition and repair commensurate with similar first-class office, retail and restaurants located in the Dallas metropolitan area. Tenant must at all times during the Term and, at Tenant's sole cost and expense, further keep and maintain in good order and repair all buildings and improvements as may be situated on the Premises at any time during the Term, or forming part thereof, and their full equipment and appurtenances, both interior and exterior, structural or nonstructural, ordinary or extraordinary, regardless of how the necessity or desirability for such repairs may occur or arise. All repairs, replacements and renewals must be made promptly by Tenant and must be at least equal in quality and class to the original "as new" condition thereof. In no event shall Landlord have any obligation to make any repairs or replacements to the Premises, however, if Tenant fails to make the repairs or replacements promptly as required herein, Landlord may, at Landlord's sole option, make such repairs and replacements and the cost

of such repairs and replacements will be charged to Tenant as Additional Rent and will become due and payable by Tenant upon demand therefor. Upon the expiration or termination of this Lease, so long as Tenant is not in default hereunder, Tenant may remove from the Premises all of Tenant's movable fixtures, personal property and equipment located thereon; provided, however, Tenant may not remove any signs (except sign panels), HVAC, plumbing, electrical and similar equipment typically furnished to tenants of lease space or any of the building systems (or parts thereof) serving or benefitting the Premises or any portion thereof.

ARTICLE IX.

HAZARDOUS SUBSTANCES

9.1 **Hazardous Substance.** For purposes of this Article IX, "**Hazardous Substance**" means any substance, matter, material, waste or pollutant, the generation, storage, disposal, handling, release (or threatened release), treatment, discharge or emission of which is regulated, prohibited or limited under: (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended ("**RCRA**") (42 U.S.C. Sections 6901 et seq.); (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended ("**CERCLA**") (42 U.S.C. Sections 9601 et leg.); (iii) the Clean Water Act, as now or hereafter amended ("**CWA**") (33 U.S.C. Sections 1251 et seq.); (iv) the Toxic Substances and Control Act, as now or hereafter amended ("**TSCA**") (15 U.S.C. Sections 2601 et seq.); (v) the Clean Air Act, as now or hereafter

amended ("**CAA**") (42 U.S.C. Sections 7401 et seq.), (RCRA, CERCLA, CWA, TSCA and CAA are collectively referred to herein as the "**Federal Toxic Waste Laws**"); (vi) any local, state or foreign law, statute, regulation, or ordinance analogous to any of the Federal Toxic Waste Laws; and (vii) any other federal, state, local or foreign law (including any common law), statute, regulation or ordinance now existing or hereafter enacted regulating, prohibiting or otherwise restricting the placement, discharge, release, threatened release, generation, treatment or disposal upon or into any environmental media of any substance, pollutant or waste which is now or hereafter classified or considered to be hazardous or toxic. All of the laws, statutes, regulations and ordinances referred to in subsections (vi) and (vii) above, together with the Federal Toxic Waste Laws are collectively referred to herein as "**Toxic Waste Laws**". The term "**Hazardous Substances**" shall also include, without limitation: (a) gasoline, diesel fuel, fuel oil, motor oil, waste oil and any other petroleum hydrocarbons, including any additives or other by-products associated therewith; (b) asbestos and asbestos-containing materials in any form; (c) polychlorinated biphenyls; and (d) any substance the presence of which on the Premises: (x) requires reporting or remediation under any Toxic Waste Law, (y) causes or threatens to cause a nuisance on the Premises or poses or threatens to pose a hazard to the health or safety of persons on the Premises, or (z) which, if it emanated or migrated from the Premises, could constitute a trespass, nuisance or health or safety hazard to persons on adjacent property.

9.2 **Hazardous Substances on Premises Prohibited.** Tenant shall not conduct, permit, cause, allow or authorize the manufacturing, emission, generation, transportation, storage, treatment, existence or disposal in, on or under the Premises, of any Hazardous Substance without prior written authorization by Landlord, except for such quantities which are routinely utilized in connection with, or which routinely results from, the lawful use of the

Premises, all of which are to be stored, used, handled, and disposed of in full compliance with all Toxic Waste Laws. In particular, but without limitation, Tenant (and not Landlord) shall be responsible and liable for any Hazardous Substances located in, on or under the Land on or prior to the Effective Date (the "**Pre-Existing Conditions**") and/or after the Effective Date.

9.3 **Compliance with Toxic Waste Laws Indemnity.**

(a) Tenant shall, at its sole cost and expense, comply with all applicable Toxic Waste Laws. In particular, but without limitation, Tenant (and not Landlord) shall be responsible and liable for compliance with applicable Toxic Waste Laws, whether Pre-Existing Conditions or conditions that occur after the Effective Date.

(b) Notwithstanding anything contained herein to the contrary, **TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD** from any and all liabilities, claims, causes of action, penalties, fines, costs, expenses, attorneys' fees, remedial or response costs, investigatory costs and other similar expenses arising out of or otherwise attributable to any violation by Tenant, or the Premises of any Toxic Waste Law. In particular, but without limitation, Tenant (and not Landlord) shall be responsible and liable for any violation, whether Pre-Existing Conditions or conditions that occur after the Effective Date. Such indemnity obligation shall survive any termination or expiration of this Lease.

ARTICLE X.

INSURANCE

10.1 **Tenant's Insurance.**

(a) Tenant shall, at its sole cost and expense, obtain and maintain insurance upon and relating to the Premises by builder's risk insurance during construction and after construction is complete and by comprehensive commercial general liability property insurance or an "all-risk" form of insurance policy(ies) in amounts equal to the greater of: (i) one hundred percent (100%) of the full insurable replacement value of the improvements located on the Land; or (ii) such amount as is necessary to avoid co-insurance. All such policies of insurance shall insure Tenant, Landlord, Landlord's mortgagee and any Leasehold Mortgagee, as their interests may appear. Such policy must be endorsed to provide that Tenant's insurance is primary in the event of any overlapping coverage with the insurance covered by Tenant. All payments for losses under such insurance will be made solely to Tenant or to any Leasehold Mortgagee as their interests may appear, provided that Tenant uses such insurance to rebuild or restore the improvements constructed upon the Land and provided that such proceeds are held in escrow by a third party acceptable to Landlord and on terms and conditions concerning such rebuilding and restoration as Landlord shall reasonably approve.

(b) Tenant also must maintain a policy or policies of special form ("all risk") property insurance on all of its personal property, including removable trade fixtures, supplies and movable furniture and equipment located on the Premises, in an amount equal to full replacement cost and endorsed to provide that Tenant's insurance is primary in the event of any overlapping coverage with the insurance carried by Landlord. All payments for losses under

such insurance will be made solely to Tenant or to any Leasehold Mortgagee of Tenant (if permitted hereunder) as their interests may appear.

(c) Tenant shall, at its sole cost and expense, obtain and maintain a commercial general liability insurance, insuring Landlord, Landlord's mortgagee, Leasehold Mortgagee and Tenant against all claims, demands or actions arising out of or in connection with injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises, the limits of such policy or policies to be not less than $5,000,000.00 combined single limit for any one accident or occurrence. Tenant will review this coverage annually and increase limits as reasonably prudent for first-class commercial developments.

Tenant's insurance must contain an endorsement that Tenant's insurance is primary and non-contributory for claims arising out of an incident or event occurring within the Premises. Tenant's insurance must contain a provision naming Landlord (and any Mortgagee designated by Landlord) as an additional insured and include coverage for the contractual liability of Tenant to indemnify Landlord pursuant to the terms of this Lease.

(d) Tenant, at Tenant's sole cost and expense, must also maintain throughout the Term a policy or policies of workers' compensation insurance in an amount not less than that necessary to satisfy all statutory limits and other requirements of law concerning such workman's compensation coverage for Tenant's use and operations within the Premises. Such policy must contain a waiver of subrogation endorsement reasonably acceptable to Landlord.

(e) Tenant, at Tenant's sole cost and expense, must also maintain throughout the Term business interruption insurance in an amount equivalent to at least twelve (12) months' Annual Rent and other expenses paid by Tenant under this Lease for the calendar year then most recently concluded.

(f) All policies of insurance shall be issued by an insurance company or companies having a Best's rating of not less than A:X as stated in the most current available Best's insurance reports (or comparable rating service if Best's reports are not currently being published), licensed to do business in the State of Texas. All policies of insurance shall be in form and substance reasonably satisfactory to Landlord with Landlord shown as an additional insured or loss payee, as applicable; provided, however, that Landlord's rights to any casualty insurance proceeds with respect to the Property shall be subject to the rights of any Leasehold Mortgagee pursuant to Section 17.3. Tenant shall deliver to Landlord certificates or copies of all policies of required insurance and, upon request from Landlord, proof of the payment of the premiums. Sixty (60) days prior to the expiration of each of the policies required hereunder, Tenant shall furnish Landlord with a certificate of insurance in force or replacement coverage and meeting the standards hereinabove provided, all as required by this Lease. All such policies shall contain a provision that such policies will not be canceled or materially amended, including any reduction in the scope or limits of coverage, without ten (10) days prior written notice to Landlord. In the event Tenant fails to maintain, or cause to be maintained, or deliver and furnish to Landlord certified copies of policies of insurance required by this Lease, Landlord may procure such insurance for the benefit only of Landlord for such risks covering Landlord's interests, and Tenant will pay all premiums thereon within ten (10) days after demand by Landlord. In the event Tenant fails to pay such premiums (or reimburse Landlord) upon demand the amount of all such premiums shall bear interest at the Default Rate.

(g) All insurance required to be maintained under this Section 10.1 shall be in addition to the insurance maintained by the Master Association as described in the Bylaws; provided, however, the insurance maintained by the Master Association shall satisfy Tenant's requirement herein if Landlord is named as an additional insured on the Master Association's policy and the above dollar amounts are satisfied.

10.2 **Insurance Proceeds**. Landlord and Tenant agree that in the event of loss under any insurance policy or policies maintained pursuant to this Section 10, Tenant must proceed with the repair and restoration of the damaged or destroyed buildings and improvements in accordance with this Section 10 hereof and that the insurance proceeds in connection with such loss will, subject to Section 17.3, be paid to a third party acceptable to Landlord and Tenant on terms and conditions acceptable to Landlord and Tenant, allow the proceeds to be used by Tenant for application to such repair and restoration.

10.3 **Waiver of Subrogation.** Notwithstanding anything contained in this Lease to the contrary, each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto, or anyone claiming through or under them, by way of subrogation or otherwise, during the term for any and all loss of, or damage to, any of its property **(WHETHER OR NOT SUCH LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF THE OTHER PARTY OR ANYONE FOR WHOM SUCH OTHER PARTY MAY BE RESPONSIBLE)**, which loss or damage is covered, or is required by this Lease to be covered, by valid and collectible fire and extended coverage insurance policies. Such waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to property of the parties hereto.

ARTICLE XI.

ASSIGNMENT AND SUBLETTING

11.1 **Right to Sublet.** Tenant may from time to time sublet the Premises in part at any time and from time to time without Landlord's consent. The making of any such sublease shall not release Tenant from, or otherwise affect in any manner, any of Tenant's obligations hereunder. All Subleases will contain customary terms and conditions for similar first-class office, retail and restaurant projects in the Dallas area as determined by Tenant in its reasonable discretion, including the obligation to comply with the Prohibited Uses. Tenant shall not be relieved of any liability under this Lease as a result of any Sublease

11.2 **Right to Assign.** Tenant may not assign this Lease at any time without Landlord's consent, which consent shall not be unreasonably withheld; provided, however, that Tenant shall have the right to assign this Lease without Landlord's consent if such assignment is to an Affiliate of Tenant. Tenant shall, in each case of an assignment by Tenant (including, but not limited to, an assignment to an Affiliate of Tenant, but excluding the creation of a Leasehold Mortgage), deliver to Landlord an instrument in recordable form under the terms of which the assignee of Tenant's interest in this Lease assumes all of the burdens, terms, covenants, conditions and obligations of Tenant hereunder. After any assignment of this Lease that is approved in writing by Landlord, the assigning Tenant shall be relieved of any and all of

Tenant's liabilities or obligations hereunder except those accrued as of the time of the assignment and Landlord shall look only to such successor Tenant for performance of all of the obligations and liabilities of Tenant under this Lease of every kind and character thereafter to accrue. For purposes hereof, an assignment of this Lease by Tenant shall also include a transfer of 50% or more of the voting and/or ownership interests in Tenant by the current owners of Tenant to a person or entity that is not an Affiliate of Tenant.

11.3 **Procedure**. If Tenant desires to assign, mortgage, pledge, encumber, hypothecate or otherwise permit the transfer of this Lease or all or a portion of Tenant's interest in this Lease (all of the foregoing being referred to herein as a "Transfer"), then Tenant must deliver written notice of such intent to Landlord, together with a copy of the proposed instrument of assignment or sublease, at least thirty (30) days prior to the effective date of the proposed assignment or commencement date of the term of the proposed sublease. Any attempted Transfer by Tenant in violation of the terms and covenants of this Section 11 will be void. Any assignee which is permitted pursuant hereto must expressly accept and assume in writing all of the obligations of Tenant hereunder.

11.4 **Recognition of Subleases.**

(a) All subleases covering any portion of the Premises shall provide that the rights of the Subtenants thereunder shall be subject and subordinate to this Lease and the rights of Landlord hereunder, including but not limited to the obligation of such Subtenants to comply with the Prohibited Uses. The failure of any Subtenant to observe and comply with any covenants, conditions or restrictions set forth in this Lease (unless applicable only to Tenant), whether by act, negligence or omission, shall, subject to the notice and cure provisions set forth in Section 14.1(a) below, be deemed a default by Tenant.

(b) Notwithstanding the foregoing, Landlord agrees to enter into a nondisturbance agreement with any Major Subtenant (as hereinafter defined) upon request by such Major Subtenant or Tenant. For purposes hereof, a "**Major Subtenant**" is either: (i) a Subtenant occupying or proposing to occupy at least five thousand (5,000) square feet of leasable area within the Premises, or at least two thousand five hundred (2,500) square feet if the Sublease involves a retail store or restaurant, (ii) a Sublease with an Affiliate of Tenant, or (iii) a National or Regional User (as hereinafter defined). As used herein, the term "**National or Regional User**" shall mean a party operating (direct, franchise, or otherwise) at least thirty (30) or more facilities in the United States or at least twenty (20) within a single region thereof (e.g. the Southwest, New England, Pacific Northwest, etc.) under a single trade name, style or mark, and having a national or regional identity with the public-at-large. The nondisturbance agreement shall provide that, notwithstanding the termination of this Lease, the Major Subtenant Sublease shall continue for the duration of its term and extensions thereof as direct leases between Landlord hereunder and Major Subtenant thereunder; provided, however, the nondisturbance agreement shall be conditioned on the following: (i) Landlord shall not be liable to any Major Subtenant for any security deposits (unless the security deposit has been delivered to Landlord) under its Major Subtenant Sublease, nor shall Landlord be bound by any rental which is paid more than thirty (30) days in advance of the due date under the terms of the sublease; (ii) the Major Subtenant must not be in default under its Major Subtenant Sublease on the date of the Lease termination; (iii) the Major Subtenant shall attorn to Landlord; and (iv)

Landlord shall not be liable for any act or omission of Tenant or be subject to any offsets or defenses which any Major Subtenant may have against Tenant. In no event shall Tenant enter into any Sublease (including, but not limited to a Major Subtenant Sublease) which has a term (including available extensions) which extends beyond the Term of this Lease. As to any Subtenant who is not an Major Subtenant, Landlord agrees to consider any request by such Subtenant for a non-disturbance and attornment agreement, but Tenant shall not offer to obtain same unless and until requested by such Subtenant. Landlord agrees to devote a reasonable amount of time to the review, consideration, and negotiation of such non-disturbance and attornment agreements, but Tenant shall be liable and obligated to reimburse Landlord for any costs, fees and expenses that Landlord may suffer or incur in connection with such review, consideration and/or negotiation. Unless otherwise approved by Landlord, all Subleases for which a non-disturbance agreement is requested from Landlord (whether with Major Subtenants or otherwise) shall be "arm's length" with third party tenants unaffiliated with Tenant, and a copy of the executed or proposed Sublease will be delivered to Landlord at the same time the non-disturbance agreement is delivered to Landlord.

11.5 **Assignment to Financial Partner.** Landlord acknowledges that Tenant may enter into an agreement for the development, operation, leasing and/or management of the Premises during the Term of this Lease with a pension fund, real estate investment trust, public debt or equity pool, or other financial partner and Landlord agrees that no consent or approval shall be required therefor; provided, however, that any such agreement shall automatically terminate and be of no force or effect and not affect or be binding upon Landlord or the Premises after the termination of this Lease.

ARTICLE XII.

QUIET ENJOYMENT

12.1 **Quiet Enjoyment.** Provided Tenant pays the Annual Rent and Additional Rent payable hereunder as and when due and payable and timely keeps and fulfills all of the terms, covenants, agreements and conditions to be performed or observed by Tenant hereunder, Tenant shall at all times during the term have quiet and peaceable enjoyment of the Premises.

12.2 **Warranty of Title.** Landlord represents and warrants that Landlord is the sole owner of fee simple title in and to the Land, subject only to the matters set forth herein and on **Exhibit "C"** attached hereto ("**Title Exceptions**"), and that Landlord alone has the full and sole right to lease the Premises to Tenant without the consent or joinder of any other party.

ARTICLE XIII.

HOLDING OVER; SURRENDER

13.1 **Holdover.** Upon the termination of this Lease (whether by the expiration of the term of this Lease or otherwise), Tenant must immediately vacate the Premises, but, if Tenant fails to do so, then, without the execution of a new lease or renewal and/or extension of this Lease by Landlord and Tenant, Tenant, at the option of Landlord, shall immediately become a holdover, month-to-month tenant of the Premises under all terms, conditions, provisions, and

obligations of this Lease. In the event Tenant remains in possession of the Demised Premises after the expiration of this Lease without the consent of Landlord, (i) such event shall be an immediate event of default under this Lease; (ii) the Annual Rent for such holdover tenancy shall be equal to one hundred twenty-five percent (125%) of the Annual Rent payable by Tenant for the last month of the term immediately preceding such holdover period plus any Additional Rent owed; and (iii) Landlord shall have all rights and remedies available to Landlord under this Lease and at law. Either party shall have the right to terminate such tenancy upon thirty (30) days' written notice to the other.

13.2 **Surrender of Premises.** No act by Landlord will be deemed an acceptance by Landlord of Tenant's surrender of the Premises, and no agreement to accept a surrender of the Premises will be valid, unless the same is made in writing and signed by Landlord. Upon the expiration or other termination of the Term of this Lease, Tenant will quit and surrender to Landlord the Premises, including all buildings, replacements, changes, additions and improvements constructed, erected, added or placed by Tenant thereon, with all equipment in or appurtenant thereto, in good condition and repair, reasonable wear and tear excepted. Upon the expiration or sooner termination of this Lease, all buildings (if any, including all equipment in or appurtenant thereto), improvements and all changes, additions and alterations therein shall be and remain on the Land and title to all such property, including all existing leases, rights and contracts, will vest in and belong to Landlord without further action on the part of either party hereto and without cost or charge to Landlord. Tenant will, within five days after Landlord's request therefor, execute, acknowledge and deliver such documents as may be necessary or convenient in Landlord's discretion for the purpose of further evidencing that title to all such property and improvements is vested in Landlord. Notwithstanding the foregoing, upon Landlord's request Tenant must promptly remove such alterations, additions, improvements, trade fixtures, equipment and/or furnishings (other than New Improvements, as defined in Section 19.1(a), and such other improvements or alterations approved by Landlord) as Landlord may request, which removal will be at Tenant's sole cost and expense, and Tenant must repair all damage caused by such removal. All items not so removed will be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items. Landlord will not be liable or responsible for any loss of or damage to any personalty owned or held by or for Tenant which may be on the Premises when Landlord takes possession of it, nor will Landlord be required to account for any such personalty.

ARTICLE XIV.

DEFAULT AND REMEDIES

14.1 **Tenant Events of Default.** The occurrence and continuation of one or more of the following events shall constitute an event of default (each being referred to as an "**Event of Default**") pursuant to the terms hereof:

(a) The partition of the Condominium and/or the removal of the Condominium from the provisions of the Condominium Statute other than in accordance with this Lease;

(b) Any violation of a Prohibited Use that remains uncured for a period of thirty (30) consecutive days after Landlord delivers written notice to Tenant of such violation;

(c) The failure of Tenant to comply with or to observe any terms, provisions, or conditions of this Lease performable by and obligatory upon Tenant, excluding the rent and other payment provisions hereof and excluding any obligation that could give rise to a Terminable Event of Default, within thirty (30) days after written notice by Landlord plus, if such failure cannot reasonably be cured within such thirty (30) day period, such additional time as is needed to cure the same so long as Tenant (or its Leasehold Mortgagee , subject to Article XV below) has commenced such cure within such thirty (30) day period and such cure thereafter is continuously and diligently undertaken by Tenant (or its Leasehold Mortgagee, subject to Article XV below) and prosecuted to completion;

(d) The failure of Tenant to pay when due any portion of any installment of Annual Rent, Additional Rent or any other monetary charge due from Tenant hereunder and such failure continues for ten (10) days after written notice thereof from Landlord; provided, however, Landlord shall not be obligated to send more than two (2) such notices in any calendar year for nonpayment of Annual Rent;

(e) The taking of all of Tenant's Leasehold Estate by execution or other process of law other than as provided in Article XVIII;

(f) Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of Tenant's creditors;

(g) Tenant shall file a petition seeking relief, or a petition seeking an order for relief against Tenant is filed under any section or chapter of Title 11 of the United States Code, as amended, or under any similar law or statute of the United States or any state thereof; or Tenant shall be adjudged bankrupt or insolvent in proceedings filed against Tenant; or

(h) A receiver or trustee (other than a bankruptcy trustee or receiver) is appointed for all or substantially all of the assets of Tenant and Tenant fails to have such receivership or trusteeship terminated within sixty (60) days after appointment.

Upon the occurrence of any Event of Default, but subject to the rights of Leasehold Mortgagees and their designees as provided in Article XV hereof, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

(i) Subject to the rights of Major Subtenants which have received nondisturbance agreements from Landlord, terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall pay to Landlord the sum of (a) all Rent accrued hereunder through the date of termination, (b) all Default Costs (defined below), and (c) an amount equal to (but in no event less than zero) (1) the total Rent that Tenant would have been required to pay for the remainder of the Term discounted to present value at a per annum rate equal to the Default Rate, minus (2) the then present fair rental value of the Premises for such period, similarly discounted. "Default Costs" shall mean all amounts, costs, losses and/or expenses incurred, abated or foregone by Landlord (including court costs and reasonable attorneys' fees and

expenses) in (a) obtaining possession of the Premises, (b) removing, storing and/or disposing of Tenant's or any other occupant's property, (c) repairing, restoring, altering, remodeling, or otherwise putting the Premises into the condition acceptable to a new tenant, (d) performing Tenant's obligations under this Lease which Tenant failed to perform, (e) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default, and (f) securing this Lease, including all commissions, allowances, reasonable attorneys' fees, and if this Lease or any amendment hereto contains any abated Rent granted by Landlord as an inducement or concession to secure this Lease or amendment hereto, the full amount of all Rent so abated (and such abated amounts shall be payable immediately by Tenant to Landlord, without any obligation by Landlord to provide written notice thereof to Tenant, and Tenant's right to any abated rent accruing following such Terminable Event of Default shall immediately terminate);

(ii) Subject to the rights of Major Subtenants which have received nondisturbance agreements from Landlord, terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord (a) all Rent and other amounts accrued hereunder to the date of termination of possession, (b) all Default Costs, (c) all costs of reletting all or any part of the Premises (including brokerage commissions, cost of tenant finish work, and other costs incidental to such reletting), and (d) all Rent and other net sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period, after deducting all costs incurred by Landlord in reletting the Premises. If Landlord elects to terminate Tenant's right to possession without terminating this Lease, and to retake possession of the Premises (and Landlord shall have no duty to make such election), Landlord shall use reasonable efforts to relet the Premises. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by Landlord in the Premises shall not affect Tenant's obligations hereunder for the unexpired Term; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the Term. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to dispossess or exclude Tenant from the Premises shall be deemed to be taken under this Section 14.1(h)(ii). If Landlord elects to proceed under this Section 14.1(h)(ii), it may at any time elect to terminate this Lease under Section 14.1(h)(i);

(iii) Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate;

(iv) Institute a suit for damages against Tenant; and/or

(v) Sue for injunctive relief and/or for specific performance.

The exercise by Landlord of any one or more remedies hereunder will not constitute forfeiture or an acceptance of surrender of the Premises by Tenant. Such surrender can be effected only by the written agreement of Landlord and Tenant.

14.2 **No Waiver by Landlord.** Pursuit by Landlord of any of the remedies provided for in Section 14.1 hereof shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity, nor shall pursuit by Landlord of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Landlord's acceptance of rent following an Event of Default hereunder shall not be construed as Landlord's waiver of such Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default.

14.3 **Tenant's Waiver of Statutory and Other Rights.** In the event of any termination of this Lease (or any repossession of the Premises pursuant to Section 14.1 hereof), Tenant, so far as permitted by law, waives (a) any notice of re-entry or of the institution of legal

proceedings to that end, (b) any right of redemption, reentry or repossession, (c) any right to a trial by jury in any proceeding or in any matter in any way connected with this Lease, and (d) the benefits of any laws now or hereafter in force exempting property from liability for rent or for debt. To the full extent permitted by law, Tenant further hereby releases and waives all claims against Landlord and Landlord's principals, agents, representatives, employees, officers, directors, shareholders and independent contractors, for injury or damage to person, property or business sustained in or about the Premises by Tenant or Tenant's agents, employees or contractors, other than damage proximately and solely caused by the gross negligence or willful misconduct of Landlord or Landlord's agents or employees. Landlord additionally will not be responsible or liable to Tenant for any event, act or omission to the extent same is covered by insurance maintained or required to be maintained by Tenant with respect to the Premises and Tenant's use and occupancy thereof (whether or not such insurance is actually obtained or maintained), and, at the request of Landlord, Tenant must from time to time cause Tenant's insurers to provide effective waivers of subrogation for the benefit of Landlord and Landlord's agents, employees, contractors and insurers in a form satisfactory to Landlord.

14.4 **Attorneys' Fees.** In the event Landlord employs an attorney to collect past due Annual Rent, Additional Rent or other payments due to Landlord hereunder, Landlord shall also be entitled to recover its reasonable attorneys' fees and expenses incurred in connection therewith. In any case where Landlord or Tenant employs attorneys to protect or enforce its rights hereunder and litigation results, then the non-prevailing party agrees to pay the reasonable attorney's fees and expenses incurred by the prevailing party. In the event of a bankruptcy proceeding wherein Tenant is a debtor, Tenant shall be additionally liable for all reasonable attorneys' fees and expenses incurred by Landlord in any such bankruptcy proceeding.

ARTICLE XV.

FINANCING

15.1 **Right to Finance.** Tenant shall from time to time and at any time have the right to encumber by one or more mortgages, deeds of trust, security agreements, or other instruments in the nature thereof (in each case, individually and collectively, "Leasehold Mortgage"), as security for one or more loans, indebtednesses or obligations, Tenant's right to use and occupy the Premises (but not Landlord's fee interest in the Land), the Leasehold Estate created hereby, all of Tenant's right, title and interest in and to any improvements at any time located on or partially on the Premises, and any other property so affixed to said land, buildings or improvements as to be a part thereof. Any such indebtedness or obligation and any such Leasehold Mortgage shall be for such amount and on such other terms and conditions as Tenant may agree to in its sole discretion; provided that any such Leasehold Mortgage shall at all times be subject and subordinate to the terms and provisions of this Lease and the rights, titles and interests of Landlord whether arising by virtue of this Lease or otherwise. IN NO EVENT WILL LANDLORD BE REQUIRED TO "SUBORDINATE" LANDLORD'S FEE SIMPLE ESTATE IN THE PREMISES FOR FINANCING OBTAINED BY TENANT UNDER THIS SECTION 15.1, OR OTHERWISE ENCUMBER ITS FEE INTEREST IN THE PREMISES, WITH ANY LIEN OR OTHER ENCUMBRANCE WHATSOEVER AND IN NO EVENT WILL TENANT HAVE ANY RIGHT TO PLACE OR CAUSE ANY LIEN TO ATTACH TO OR COVER LANDLORD'S FEE INTEREST IN THE LAND OR THE PREMISES. There shall be no limitation to the granting of a Leasehold Mortgage by Tenant, the foreclosure (or transfer in lieu of foreclosure) of same by such Leasehold Mortgagee or its designee, but any subsequent Transfer after foreclosure (or Transfer in lieu thereof) by such Leasehold Mortgagee or its designee shall be subject to the terms and provisions set forth in Section 11.2 of this Lease.

15.2 **Nondisturbance Agreements**. Notwithstanding anything to the contrary contained herein, Landlord will, within fifteen (15) days after written request from Tenant, deliver to Tenant agreements of nondisturbance from Landlord and any of Landlord's mortgagees or lienholders subject to the form of the agreement of nondisturbance having been approved by Landlord and such mortgagee or lienholder. Such agreements will provide that, conditioned on Tenant not then being in default under this Lease, Landlord and such mortgagees or lienholders or underlying landlords will recognize the terms of this Lease in the event of foreclosure or the exercise of the power of sale under any mortgage or deed of trust, or in the event any proceedings are brought for default hereunder. The agreement executed by such lienholder must also contain an agreement to cause any purchaser at foreclosure sale to assume and agree to perform all of the duties of Tenant under this Lease.

15.3 **Notices to Mortgagee.** If at any time after execution and recordation in Dallas County, Texas, of any such Leasehold Mortgage, Tenant or the mortgagee therein (in each case, individually and collectively, "Leasehold Mortgagee") shall notify Landlord in writing that any such Leasehold Mortgage has been given and executed by Tenant, and shall furnish Landlord with the address to which such Leasehold Mortgagee desires copies of notices to be mailed (or designate some person or corporation as the agent and/or representative of such Leasehold Mortgagee for the purpose of receiving copies of notices), Landlord hereby agrees that Landlord will thereafter, in addition to any other notice Landlord shall be required by this Lease to deliver

to such Leasehold Mortgagee, mail to each such Leasehold Mortgagee or agent thereof, at the address so given, by certified mail, postage prepaid, return receipt requested, and at the same time that such notice is placed in the mail or otherwise delivered to Tenant, duplicate copies of any and all notices in writing which Landlord may from time to time give or serve upon Tenant under and pursuant to the terms and provisions of this Lease, including, but not by way of limitation, any notices of default required to be sent by virtue of Article XIV hereof.

15.4 **Right to Cure.** Any such Leasehold Mortgagee, at the option of such Leasehold Mortgagee, acting either directly or indirectly through a designee, may pay any rent due hereunder or may effect any insurance, or may pay any taxes and assessments, or may make any repairs and improvements, or may make any deposits, or may do any other act or thing or make any other payment required of Tenant by the terms of this Lease, or may do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions of this Lease, or to prevent the forfeiture of this Lease; and all payments so made and all things so done and performed by such Leasehold Mortgagee or

designee shall, if made or done timely as required under Article XIV hereof, including cure periods, be effective to prevent a forfeiture of the rights of Tenant hereunder as the same would have been if timely done and performed by Tenant instead of by any such Leasehold Mortgagee or designee. In the event it becomes necessary for any Leasehold Mortgagee to either take possession of the Premises or foreclose its Leasehold Mortgage in order to complete any cure and if: (i) the Leasehold Mortgagee is unable to take possession or foreclose due to the filing of any bankruptcy proceeding involving Tenant; (ii) the Leasehold Mortgagee promptly commences and diligently proceeds to obtain bankruptcy court approval to take possession or foreclose; and (iii) the Leasehold Mortgagee, or its designee, shall pay or cause to be paid all rent required of Tenant hereunder as and when such rent becomes due under the terms of this Lease, then the cure period afforded to the Leasehold Mortgagee shall be extended for a reasonable period of time as is necessary to complete the cure (but not to exceed sixty (60) days); provided, further, that if at the end of such sixty (60) day period, the Leasehold Mortgagee has taken possession of the Premises or has foreclosed its Leasehold Mortgage and is diligently prosecuting such cure, the cure period afforded to the Leasehold Mortgagee shall be extended for an additional period of time as is reasonably necessary to complete the cure.

15.5 **No Liability.** No such mortgagee of the rights or interests of Tenant or its designee hereunder shall be or become liable to Landlord as an assignee of this Lease, unless such Leasehold Mortgagee or designee succeeds to the rights or interests of Tenant, through foreclosure, transfer in lieu of foreclosure or other legal process, or otherwise expressly assumes by written instrument, or is deemed to have assumed by law, such liability or takes possession and control of the Premises, in which event such Leasehold Mortgagee or designee shall be liable to Landlord to the extent set forth in this Lease for the obligations of Tenant accruing during the period of such Leasehold Mortgagee's or designee's ownership or possession of the Leasehold Estate created hereby; provided, however, that (a) in order to assume this Lease, such Leasehold Mortgagee or its designee must cure all of the defaults of Tenant existing at the time of such assumption, and (b) such Leasehold Mortgagee or its designee shall be liable for any and all damages caused by such Leasehold Mortgagee or its designee.

15.6 **Modifications.** Landlord shall not accept any surrender of or agree to any termination of this Lease without the prior written consent thereto by any such Leasehold

Mortgagee, which consent will not be unreasonably withheld or delayed and shall be deemed given if such Leasehold Mortgagee does not consent or object in writing within thirty (30) days after the request for consent is received, and any attempt to do so without such written consent (or deemed consent) shall be void and of no force and effect; provided, however, that the foregoing shall not prohibit or adversely affect Landlord from terminating this Lease due to an Event of Default by Tenant under this Lease or any other express right of Landlord to terminate this Lease as provided in this Lease. In addition, Landlord shall not enter into any modification or amendment to this Lease which would materially increase the obligations of Tenant or materially and adversely affect the rights of Tenant under this Lease without the prior written consent thereto by any such Leasehold Mortgagee, which consent will not be unreasonably withheld or delayed and shall be deemed given if such Leasehold Mortgagee does not consent or object in writing within fifteen (15) days after the request for consent is received, and any attempt to do so without such written consent (or deemed consent) shall not be binding upon any such Leasehold Mortgagee.

15.7 Intentionally Deleted.

15.8 **Landlord's Right to Finance and Assign.** From and after the first to occur of: (i) Completion (as defined in the Construction Loan Agreement), and (ii) the payoff of the Debt (as defined in the Construction Loan Agreement), Landlord may at any time and from time to time, without the prior written consent of Tenant, encumber by mortgage, deed of trust, security agreement or other instrument in the nature thereof, any of Landlord's right, title or interest in the Premises and/or this Lease; provided that any such mortgage, deed of trust or other instrument in the nature thereof shall at all times be subject and subordinate to this Lease and the rights, titles and interests of Tenant and any Leasehold Mortgagee of Tenant arising by virtue of this Lease, subject to the terms of this Lease. Landlord shall, subject to the provisions of Section 20.24, also have the right to sell or transfer its fee title in the Premises and to transfer its rights, titles and interests in this Lease to such transferee or purchaser, without the consent of Tenant, but Tenant shall be given written notice of any such sale and transfer upon consummation thereof.

ARTICLE XVI.

ESTOPPEL CERTIFICATES

16.1 Landlord and Tenant will, at any time and from time to time, upon not less than fifteen (15) days prior written request by the other party, execute, acknowledge and deliver to each other or to any person whom the requesting party may designate, a certificate, certifying as follows: (i) that this Lease is unmodified and in full effect (or setting forth any modifications and that this Lease is in full effect as modified); (ii) the Annual Rent payable and the dates to which the Annual Rent has been paid and whether other sums payable hereunder have been paid; (iii) any default of which such party may have knowledge; (iv) the commencement and expiration dates of this Lease; and (v) such other factual matters as may reasonably be requested by either of the parties hereto. Any such certificate may be relied upon by any existing or prospective Leasehold Mortgagee, any existing or prospective Subtenant, any prospective purchaser or any existing or prospective lender.

ARTICLE XVII.

DAMAGE OR DESTRUCTION

17.1 **Rights and Obligations upon Casualty.** In the event the Premises shall be wholly or partially damaged or destroyed by fire or other casualty, Tenant shall, at its expense (utilizing proceeds of the insurance policies carried by Tenant pursuant to Article X hereof), cause such

damage to be repaired or restored to the condition of the Premises which existed immediately prior to such casualty or construct other new improvements on the Land; provided, however, that Tenant shall have no right to construct and shall not construct any new improvements on the Land without Landlord's prior written consent if such new improvements are materially different in size, scope or quality to the improvements that existed on the Land immediately prior to such casualty. In all casualty events (whether or not Tenant repairs or restores), this Lease shall remain in full force and effect (unless terminated pursuant to Section 17.4 hereof) and, rent shall not be abated or reduced.

17.2 **Time to Complete.** Tenant shall commence the repairs or rebuilding as soon as reasonably practicable after insurance proceeds are received and complete same with due diligence as soon as reasonably practicable, subject to extensions for Force Majeure.

17.3 **Rights of Leasehold Mortgagee.** Notwithstanding anything in this Lease to the contrary, all of the provisions contained in this Article XVII are subject to the right of any Leasehold Mortgagee to require, if provided for in such Leasehold Mortgage, that all insurance proceeds either be paid to the Leasehold Mortgagee to be applied to the debt secured thereby or be used by Tenant to repair and/or rebuild the Premises in accordance with Section 17.1. In such event, Tenant shall still be responsible for completing all necessary repairs or rebuilding and Tenant shall provide evidence reasonably acceptable to Landlord, including, without limitation, creation of a construction fund to assure that there are sufficient funds to pay all costs and expenses of repairs or rebuilding.

17.4 **Right to Terminate.** In the event a casualty loss occurs during the last two (2) years of this Lease, then Tenant shall have the right to terminate this Lease by giving written notice of termination to Landlord not later than ninety (90) days after the date of the casualty loss. Failure to give such notice during such ninety (90) day period shall be deemed to be a waiver by Tenant of its right to terminate this Lease. In the event such notice is timely given, this Lease shall terminate as of the date notice is delivered to Landlord and the rental payable hereunder shall be prorated to the date of such termination. In the event of such termination, Landlord shall have the option exercisable on or before the thirtieth (30th) day after such termination to require Tenant to demolish and remove all improvements which have been damaged or destroyed by the casualty, in which event Tenant may use so much of the proceeds of its insurance as may be required to pay for such demolition and removal, and the balance of the casualty proceeds shall be delivered to Landlord. In the event Landlord fails to give Tenant written notice to demolish within such ninety (90) day period or Landlord otherwise notifies Tenant in writing that Landlord is willing to accept the improvements in their then-present condition, then this Lease shall terminate with the improvements in their then present condition and the casualty proceeds shall be delivered to Landlord.

ARTICLE XVIII.

CONDEMNATION

18.1 **Definitions.** For purposes of this Article XVIII, the following terms shall have the respective meanings set forth below:

(a) "**Award(s)**" means the amount of any award made, consideration paid or damages ordered as a result of a Taking less any reasonable costs in obtaining such award, such as reasonable legal fees and costs, consultant fees and appraisal costs.

(b) "**Date of Taking**" means the date upon which title to the Premises, or a portion thereof, passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

(c) "**Partial Taking**" means any Taking which does not constitute a Significant Taking.

(d) "**Significant Taking**" means a Taking which, in the good faith determination of both Landlord and Tenant, materially and adversely affects Tenant's use of the Premises.

(e) "**Taking**" means a permanent (and not a temporary) taking of the Premises or any damage related to the exercise of the power of eminent domain and including a voluntary conveyance to any agency, authority, public utility, person or corporate entity empowered to condemn property in lieu of court proceedings.

(f) "**Total Taking**" means the permanent Taking of the entire Premises.

18.2 **Partial Taking.**

(a) In the event of a Partial Taking of the Premises during the Term of this Lease which takes any portion of the Premises, the following shall occur: (i) the rights of Tenant under this Lease and the Leasehold Estate of Tenant in and to the portion of the Premises taken shall cease and terminate as of the Date of Taking; and (ii) this Lease shall otherwise continue in full effect, except that Annual Rent shall be reduced as set forth below. Tenant shall, promptly after any such Taking, at its expense, repair any damage caused thereby so that, thereafter, the Premises shall be, as nearly as reasonably possible, in a condition as good as the condition thereof immediately prior to such Taking. In the event of any such Partial Taking, Landlord shall make an amount equal to that portion of the Award that is attributed to any building or other improvement then situated on the Land (but not any portion of the Award attributed to the Land) available to Tenant to make such repair. Any portion of the Award attributed to the Land shall be and remain the property of Landlord and in no event shall Tenant shall have any right to receive or share in any portion thereof. Any amount of the Award retained by Landlord and any amount of the Award delivered to Tenant remaining after such repairs have been made shall remain the property of Landlord, and shall, to the extent previously paid by Landlord to Tenant, be repaid by Tenant to Landlord. After such repairs have been completed, Annual Rent shall be reduced by the product of the Annual Rent multiplied by a fraction (the "**Rent Reduction**

Percentage"), the denominator of which is the total land area of the Land prior to the Taking and the numerator of which is the total land area of the Land subject to the Taking.

(b) In the event of any temporary Partial Taking, Tenant shall be entitled to the entire Award and there shall be no reduction in rent. A temporary Partial Taking shall mean a Taking for no more than ninety (90) days.

18.3 **Significant Taking.**

(a) In the event of a Significant Taking of the Premises during the Term of this Lease, after which Landlord and Tenant reasonably determine that Tenant can effectively continue its business in the Premises, the following shall occur: (i) the rights of Tenant under this Lease and the Leasehold Estate of Tenant in and to the portion of the Premises taken shall cease and terminate as of the Date of Taking; and (ii) this Lease shall otherwise continue in full effect, except that Annual Rent shall be reduced as set forth below (however Additional Rent or other sums payable by Tenant hereunder shall continue unreduced notwithstanding any such Taking). Tenant shall, promptly after any such Taking, at its expense, repair any damage caused thereby so that, thereafter, the Premises shall be, as nearly as possible, in a condition as good as the condition thereof immediately prior to such Taking. In the event of any such Significant Taking, Landlord shall make an amount equal to that portion of the Award that is attributed to any building or other improvement then situated on the Land (but not any portion of the Award attributed to the Land) available to Tenant to make such repair. Any portion of the Award attributed to the Land shall be and remain the property of Landlord and in no event shall Tenant have any right to receive or share in any portion thereof. Any amount of the Award retained by Landlord and any amount of the Award delivered to Tenant remaining after such repairs have been made shall remain the property of Landlord, and shall, to the extent previously paid by Landlord to Tenant, be repaid by Tenant to Landlord. After such repairs have been completed, Annual Rent shall be reduced by the Rent Reduction Percentage.

(b) In the event of a Significant Taking of the Premises during the Term of this Lease, after which Landlord and Tenant reasonably determine that Tenant cannot effectively continue its business in the Premises, the provisions of Section 18.4 shall apply.

18.4 **Total Taking.** In the event of a Total Taking, Tenant's Leasehold Estate shall terminate as of the Date of Taking and all rights and obligations of Landlord and Tenant hereunder shall terminate except for the rights and obligations under this Section 18.4 and those that otherwise survive termination of this Lease. Tenant and Landlord shall each be entitled to separately pursue any and all condemnation Awards to which they may legally be entitled with respect to the Premises and such Taking.

18.5 **Rights of Leasehold Mortgagee**. Notwithstanding anything in this Lease to the contrary, all of the provisions contained in this Article XVIII are subject to the right of any Leasehold Mortgagee to require, if provided for in such Leasehold Mortgage, that all condemnation proceeds be paid to the Leasehold Mortgagee to be applied to the debt secured thereby.

ARTICLE XIX.

PROPOSED IMPROVEMENTS; DEEMED APPROVAL

19.1 **New Improvements; Deemed Approval.**

(a) Tenant may demolish any existing improvements and construct new improvements on the Land (such improvements, along with the SPC Assigned Rights, the "**New Improvements**"), such New Improvements to consist of a first-class office, retail and restaurant containing approximately one hundred nineteen thousand (119,000) square feet of gross leasable area. Landlord hereby approves the site plan, elevations and other building plans, landscape plans and signage plans for same (collectively, the "**Development Plans**"), including without limitation exterior materials, colors, and architectural schemes, that are referenced and/or described in **Exhibit "E"** attached hereto and made a part hereof for all purposes. Landlord hereby approves Tenant's site plan, elevations and architectural scheme (the "**Conceptual Plans**") and general signage program and criteria, that are referenced and/or described in **Exhibit "E"** attached hereto and made a part hereof for all purposes. Notwithstanding the foregoing, however, Tenant shall have no right to construct and shall not construct any new improvements on the Land without Landlord's prior written consent if such new improvements are materially different in size, scope or quality to the improvements that existed on the Land immediately prior to any such demolition.

(b) In addition, in the event Tenant desires at any time during the term of this Lease to make alterations, additions or improvements to the Premises which vary materially from the site plan or the architectural scheme, colors or materials, depicted in the Conceptual Plans, Development Plans or any other plans approved by Landlord, or if Tenant seeks Landlord's consent for any other matter hereunder which requires that Tenant must first obtain the written consent of Landlord. Landlord's consent to such request shall be deemed given if Landlord fails to respond to such written request (within the timeframe for such response set forth in this Lease) provided that Tenant shall have sent Landlord an Initial Notice (herein so called), which Initial Notice shall have been marked in bold lettering with the following language on the top of the first page: "**LANDLORD'S RESPONSE IS REQUIRED PURSUANT TO THE TERMS OF THE GROUND LEASE AGREEMENT BETWEEN THE UNDERSIGNED AND LANDLORD**" and the envelope containing the Initial Notice shall have been marked "**PRIORITY-DEEMED APPROVAL MAY APPLY**" on its face; (i) Landlord shall have failed to respond to the Initial Notice within the aforesaid time-frame (requests for additional information shall be a response); (ii) Tenant shall have submitted a Second Notice (herein so called), which Second Notice shall have been marked in bold lettering with the following language: "**LANDLORD'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF THE GROUND LEASE AGREEMENT BETWEEN THE UNDERSIGNED AND LANDLORD**"

and the envelope containing the Second Notice shall have been marked "**SECOND NOTICE: PRIORITY-DEEMED APPROVAL MAY APPLY**" on its face; and (iii) Landlord shall have failed to respond to the Second Notice within the aforesaid time-frame, Landlord's approval shall be deemed given with respect to the proposed Lease matter.

ARTICLE XX.

GENERAL PROVISIONS

20.1 **Notice.** Any notice, request, or other communication (hereinafter severally and collectively called "**Notice**") in this Lease provided for or permitted to be given, made or accepted by either party to the other must be in writing, and may, unless otherwise in this Lease expressly provided, be given or be served by depositing the same in the United States mail, postpaid and certified and addressed to the party to be notified, with return receipt requested. Notice given in any manner as provided in this Section 20.1 shall: (a) as to Notice given to or served by depositing the same in the United States mail, as aforesaid, shall be effective two (2) business days after depositing the same in a regularly maintained receptacle for pick up and delivery of United States mail; and (b) as to Notice given or served by any other method, shall be effective only if and when received by the party to be notified. The following shall be prima facie evidence of the date of actual receipt of Notice by the addressee: (i) if hand delivered, by a delivery receipt signed by the addressee or the addressee's agent or representative; (ii) written evidence by the carrier of such notice of the date of attempted delivery at the address of the addressee if such delivery is refused; or (iii) a return telecopy sent from a fax machine or office of the addressee or other confirmation from the office of the addressee indicating that any faxed notice has been received.

For purposes of Notice, the addresses of the parties shall, until changed as herein provided, be as follows:

LANDLORD

HTH Diamond Hillcrest Land LLC
2323 Victory Avenue, Suite 1400
Dallas, Texas 75219
Attn: Corey G. Prestidge
Telephone: 214-525-4647
Email: cprestidge@hilltop-holdings.com

With Copy to:

HTH Diamond Hillcrest Land LLC
200 Crescent Court, Suite 1350
Dallas, Texas 75201
Attn: Gary Shultz
Telephone: (214) 871-5938
Email: gshultz@diamond-a.com

TENANT

SPC Co-Owner:

SPC Park Plaza Partners LLC
c/o First American Exchange Company
215 South State Street, Suite 380
Salt Lake City, UT 84111
Attn: Mark A. Bullock
Telephone: 866-516-1031
Email: mbullock@firstam.com

With a copy to:

Kane Russell Coleman Logan PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201
Attn: Raymond J. Kane
Telephone: 214-777-4290
Email: rkane@krcl.com

Ford Co-Owner:

Diamond Hillcrest, LLC
200 Crescent Court, Suite 1350
Dallas, TX 75201
Attn: Gary Shultz
Telephone: (214) 871-5938
Email: gshultz@diamond-a.com

With a copy to:	William C. Wilshusen Haynes and Boone, LLP 2323 Victory Avenue Suite 700 Dallas, TX 75219 Telephone: 214-651-5595 Email: william.wilshusen@haynesboone.com
Hilltop Co-Owner:	HTH Hillcrest Project LLC 2323 Victory Ave., 14th Floor Dallas, TX 75209 Telephone: 214-525-4647 Email: cprestidge@hilltop-holdings.com
With a copy to:	K. Brock Bailey Bracewell LLP 1445 Ross Avenue, Suite 3800 Dallas, TX 75202 Telephone: 214-758-1076 Email: brock.bailey@bracewell.com

However, the parties hereto and their respective heirs, successors, legal representatives and permitted assigns shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least ten (10) days written Notice to the other party. Any Notice delivered by counsel to a party shall be deemed delivered by such party.

20.2 **Captions.** The title captions appearing in this Lease are inserted and included solely for convenience and shall never be considered or given any effect in construing this Lease, or any provisions hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto, or in ascertaining intent, if any question of intent exists.

20.3 **Entire Contract: Amendment.** It is expressly agreed by both parties that this Lease, and the Exhibits attached hereto is the entire agreement of the parties with respect to the subject matter hereof, and that there are, and have been, no verbal representations, understandings, stipulations, agreements or promises pertaining to this Lease. It is likewise agreed that this Lease may not be altered, amended, or extended except by an instrument in writing signed by both Landlord and Tenant.

20.4 **No Personal Liability.** Tenant agrees to look solely to Landlord's interest in the Premises for recovery of any judgment or claim from Landlord and that in no event shall Landlord (or its partners, members, beneficiaries, shareholders, officers or directors) ever be personally liable to Tenant or any other party for any matter pertaining to this Lease. Landlord agrees that in no event shall any of Tenant's partners, members, beneficiaries, shareholders, officers or directors ever be personally liable to Landlord or any other party for any matter pertaining to this Lease.

20.5 **Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

20.6 **Successor and Assigns.** All covenants and obligations as contained within this Lease shall bind and, except as otherwise prohibited or restricted by the terms of this Lease, extend and inure to the benefit of the successors and permitted assigns of each of Landlord and Tenant.

20.7 **Personal Pronouns.** All personal pronouns used in this Lease shall include the other gender, whether used in the masculine, feminine, or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

20.8 **No Merger.** There shall be no merger of this Lease or of the Leasehold Estate created by this Lease with the fee or any other estate or interest in the Premises solely by reason of the fact that the same person owns or holds, directly or indirectly, all such estates and interests or any combination thereof.

20.9 **Short Form Lease.** Before the recordation of the Condominium Declaration, the parties hereto shall execute and record a memorandum of this Lease in the Real Property

Records of Dallas County, Texas, and further agree that the recordation of such memorandum affirms that this Lease complies with the provisions of Section 82.056 of the Texas Uniform Condominium Act. If such compliance is ever legally challenged by either (i) one or more of the parties hereto or (ii) any third party, and such challenge may be remedied by the recordation of this Lease, the parties hereto agree that the Lease will be recorded without further collective action on the part of either or both Landlord or Tenant.

20.10 **LEGAL INTERPRETATION.** THIS LEASE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE INTERPRETED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE OBLIGATIONS OF THE PARTIES HERETO ARE PERFORMABLE, AND VENUE FOR ANY ACTION HEREUNDER SHALL BE, IN DALLAS COUNTY, TEXAS.

20.11 **No Mortgage or Joint Venture.** Tenant and Landlord acknowledge and agree that this Lease is, in fact, a lease arrangement, and does not constitute a loan, a joint venture or a partnership, and that Landlord and Tenant have been represented by experienced legal counsel, who have advised Landlord and Tenant of the rights and duties of Landlord and Tenant. Neither Landlord nor Tenant will assert that the transaction evidenced hereby is a loan, a joint venture or a partnership if either party attempts to enforce its rights hereunder.

20.12 **Brokers.** Landlord and Tenant each warrant that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and each of Landlord and Tenant AGREES TO INDEMNIFY THE OTHER AND HOLD THE OTHER HARMLESS from and against any and all costs, expenses, or liability for commissions or other compensation or charges claimed by any broker or other party claiming by, through, or under such party with respect to this Lease.

20.13 **Waiver of Landlord's Lien.** Landlord hereby waives any contractual, statutory or other Landlord's lien on Tenant's furniture, fixtures, supplies, equipment and inventory located on the Premises.

20.14 **Authority to Execute.**

(a) Tenant represents and warrants that Tenant is duly formed and validly existing under the laws of the State of its organization, has full right, power and authority to enter into this Lease and that the party(ies) executing this Lease on behalf Tenant has (have) full right, power, and authority to execute this Lease on behalf of Tenant.

(b) Landlord represents and warrants that Landlord is duly formed and validly existing under the laws of the State of its organization, has full right, power, and authority to enter into this Lease and that the party(ies) executing this Lease on behalf of Landlord has (have) full right, power, and authority to execute this Lease on behalf of Landlord.

20.15 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant (except as to payment of rent or other sums due by either party hereunder), neither Landlord nor Tenant, as applicable, shall be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays (collectively, "**Force Majeure**") due to strikes, riots, acts of God, shortages of labor or materials,

war or other causes which are beyond the control of such party and could not have been reasonably anticipated by Landlord or Tenant, as the case may be, at the time of execution of this Lease. Tenant shall, within twenty (20) days of the occurrence of an event of Force Majeure, advice Landlord in writing of any Force Majeure delays which Tenant claims with respect to any aspect of Tenant's performance hereunder.

20.16 **Time is of the Essence.** Time is of the essence of this Lease.

20.17 **Title to Buildings and Improvements.** The title to the buildings, improvements and fixtures appurtenant thereto and all changes, additions and alterations therein, and all renewals and replacements thereof, when made, erected, constructed, installed or placed upon the Land by Tenant, shall be and remain in Tenant until the expiration of the Term of this Lease, unless sooner terminated as provided herein. Upon the expiration or sooner termination of this Lease, title to all such property shall automatically pass to, vest in and belong to Landlord without further action on the part of either party. So long as Tenant retains ownership of the buildings, improvements, additions and alterations, Tenant shall be entitled to claim depreciation and all other tax losses with respect thereto.

20.18 **No Mechanic's Liens.**

(a) Tenant covenants and agrees with Landlord that Tenant will not permit or suffer to be filed or claimed against the Land or Premises or any building or improvement thereon or against Landlord, any mechanic's, materialman's or other lien, charge or order for the payment of money. In the event any such lien, charge or order shall be filed or claimed, Tenant shall immediately notify Landlord thereof in writing and Tenant shall, at its own expense, cause the same to be canceled and discharged of record within twenty (20) days after Tenant shall have received notice of the filing thereof, or Tenant may, within said period, furnish to Landlord a bond satisfactory to Landlord against said lien, charge or order, in which case Tenant shall have the right in good faith to contest the validity or amount thereof. **TENANT HEREBY INDEMNIFIES AND AGREES TO HOLD LANDLORD HARMLESS** from any loss, liability, expense (including attorneys' fees) incurred or suffered by Landlord as a result of any such lien, charge or order.

(b) Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific alteration, addition, improvement or repair that would give rise to the filing of any lien against the estate or interest of Landlord in and to the Land, nor as giving Tenant any right, power or authority to contract for or permit any rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the estate or interest of Landlord in and to the Land. Notice is hereby given that Landlord shall not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Land through or under Tenant, upon credit and that no mechanic's or other lien for such labor, services or materials shall attach to or affect the estate or interest of Landlord in and to the Land.

20.19 **Inspection by Landlord; Signs.** Within one (1) year prior to the expiration of this Lease, or upon the earlier termination thereof, Landlord shall have the right to inspect the Premises and to show the Premises to prospective purchasers and/or tenants from time to time upon reasonable advance notice to Tenant, subject to the rights of all Subtenants under their respective subleases. All such inspections shall be done during normal business hours and shall not unreasonably interfere with the business operations conducted on the Premises by Tenant and its Subtenants. During the final one (1) year of the term of this Lease, or any applicable extended term, Landlord shall have the right to place signs on the Premises offering the Premises for lease. All such signs shall comply with the requirements of the City of University Park.

20.20 **Net Lease.** This Lease shall be deemed and construed to be a "net lease", and Tenant shall pay to Landlord the rent hereunder without abatement, deduction or offset; and under no circumstances or conditions, whether now existing or hereafter arising, or whether or not beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder or with respect to the Premises, except as herein otherwise expressly set forth.

20.21 **Parties Constituting Landlord; Landlord Representative.** In the event that the "Landlord" hereunder consists of more than one (1) party, such parties shall, at the written request of Tenant, designate, in writing, one (1) person or entity (the "**Landlord Representative**") to act on behalf of all such parties and Tenant shall be entitled to rely on the consent, approval or agreement of the Landlord Representative for any and all purposes under this Lease; the approval, consent or agreement of the Landlord Representative shall be deemed to be the approval, consent and/or agreement of all parties constituting Landlord hereunder; provided, however, that any amendment or other modification or supplement to this Lease shall require the signature of all parties constituting Landlord. The authority of any person or entity designated as the Landlord Representative may be revoked at any time upon written notice to Tenant, such written notice: (i) to be executed by all parties constituting Landlord; and (ii) to designate another person or entity to serve as the successor Landlord Representative. In addition, the default, failure or omission of any one (1) party constituting Landlord shall be deemed a default, failure or omission as to all parties constituting Landlord.

20.22 **Parties Constituting Tenant: Tenant Representative.** In the event that the "Tenant" hereunder consists of more than one (1) party, such parties shall, at the written request of Landlord, designate, in writing, one (1) person or entity (the "**Tenant Representative**") to act on behalf of all such parties and Landlord shall be entitled to rely on the consent, approval or agreement of the Tenant Representative for any and all purposes under this Lease; the approval, consent or agreement of the Tenant Representative shall be deemed to be the approval, consent and/or agreement of all parties constituting Tenant hereunder; provided, however, that any amendment or other modification or supplement to this Lease shall require the signature of all parties constituting Tenant. The authority of any person or entity designated as the Tenant Representative may be revoked at any time upon written notice to Landlord, such written notice: (i) to be executed by all parties constituting Tenant; and (ii) to designate another person or entity to serve as the successor Tenant Representative. In addition, the default, failure or omission of any one (1) party constituting Tenant shall be deemed a default, failure or omission as to all parties constituting Tenant.

20.23 **Joint and Several**. If there is more than one party comprising Tenant, the obligations hereunder imposed upon Tenant will, as to all such parties comprising Tenant, be joint and several, and if there is a guarantor of Tenant's obligations hereunder, the obligations hereunder imposed upon Tenant will be the joint and several obligations of Tenant and each such guarantor. Landlord need not first proceed against Tenant before proceeding against such guarantor, nor shall any such guarantor be released from its guarantee for any reason whatsoever, including (without limitation) in case of any amendments hereto, waivers hereof or failure to give such guarantor any notices hereunder.

20.24 **Intentionally Deleted.**

20.25 **Condominium Declaration**. It is anticipated that Tenant's Leasehold Estate in the Premises shall be subject to the Condominium Declaration establishing at least three (3) Units. Landlord consents to the creation of a condominium regime from the Leasehold Estate hereunder and agrees to join in the Condominium Declaration, to evidence Landlord's consent to the Condominium Declaration, and cause any lender holding a lien on the Landlord's fee title to the Premises and/or Landlord's interest under this Lease to join in the Condominium Declaration to evidence its consent to the Condominium Declaration.

20.26 **Transfer of Condominium Units**. Notwithstanding anything to the contrary contained in this Lease, in no event, without Landlord's prior written consent, shall any Unit be hereafter acquired, in whole or in part, by any person who is not then a Tenant under this Lease. If Landlord hereafter expressly consents in writing to any Unit being acquired, in whole or in part, by a Person who is not a Tenant under this Lease, then the following shall apply during the period that the Person (who is not a Tenant hereunder) owns its Unit:

(a) each Unit Owner (regardless of whether the Unit Owner is a Tenant under this Lease) shall perform, or cause to be performed, each Several Obligation applicable to its Unit or arising from the ownership of its Unit; and the Unit Owners collectively shall perform, or shall cause to be performed, all Joint Obligations; and

(b) each Several Obligation of Tenant under this Lease shall be proportionately discharged by the applicable Unit Owner, and Landlord shall accept performance of Tenant's Several Obligations through such proportionate discharge by the applicable Unit Owner; provided, however, that if the applicable Unit Owner fails to timely discharge a Severable Obligation of Tenant under this Lease, then, notwithstanding that such failure is a Severable Obligation, Tenant must cause such failure to be remedied pursuant to Section 14.1 of this Lease or an Event of Default shall occur and Landlord shall be entitled to exercise any and all rights and remedies available to Landlord with respect to the entire Premises and not just that portion of the Premises owned by the applicable Unit Owner.

20.27 **Non-merger of Fee and Leasehold Estates**. If under any circumstances both Landlord's and Tenant's estates in the Premises

become vested in the same owner, this Lease nevertheless shall not be extinguished by application of the doctrine of merger except at the express written election of the Landlord recorded in the Official Public Records and with the express written consent of all Unit Owners as Tenant, and the express written consent of any

Leasehold Mortgagee, which consent may be withheld in such Leasehold Mortgagee's sole and absolute discretion.

INTENTIONALLY LEFT BLANK

EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS, which constitute but one and the same instrument, as of the Effective Date. Upon the final execution hereof by Landlord and Tenant, the last to sign of such parties shall complete the date on the first page hereof.

LANDLORD:

HTH DIAMOND HILLCREST LAND LLC,
a Texas limited liability company

By: /s/ COREY PRESTIDGE
Name: Corey Prestidge
Title: Committee Representative

TENANT:

SPC PARK PLAZA PARTNERS LLC,
a Texas limited liability company

By: First American Exchange Company, LLC
A Delaware limited liability company
Its sole member and manager

By: /s/ MARK A. BULLOCK
Name: Mark A. Bullock
Title: Legal Counsel

HILLTOP CO-OWNER:

HTH HILLCREST PROJECT LLC,
a Texas limited liability company

By: Hilltop Holdings Inc.,
a Maryland corporation,
its sole member

By: /s/ COREY PRESTIDGE
Name: Corey Prestidge
Title: Executive Vice President and General Counsel

DIAMOND HILLCREST, LLC
a Texas limited liability company

By: /s/ GARY SHULTZ
Name: Gary Shultz

Title: Vice President

EXHIBITS AND SCHEDULES INTENTIONALLY OMITTED

(Back To Top)

Section 4: EX-10.3 (EX-10.3)

Exhibit 10.3

HILLTOP PLAZA

CO-OWNERS AGREEMENT

July 31, 2018

THE UNDIVIDED INTERESTS IN THE PROJECT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF ANY OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH.

TABLE OF CONTENTS

CO-OWNERS AGREEMENT

THIS CO-OWNERS AGREEMENT (this "*Agreement*") dated effective July 31, 2018 (the "*Effective Date*"), is entered into by and among Diamond Hillcrest, LLC, a Texas limited liability company ("*Ford Owner*"), HTH Hillcrest Project LLC, a Texas limited liability company ("*Hilltop Owner*"), and SPC Park Plaza Partners LLC, a Texas limited liability company ("*SPC Owner*") (together with any other persons or parties who acquire an interest and assume the rights and obligations hereunder by written instrument, each sometimes referred to as a "*Co-Owner*" or collectively as the "*Co-Owners*"), with reference to the facts set forth below.

RECITALS

A. Collectively Ford Owner, Hilltop Owner, and SPC Owner are the "*Co-Owners*" and separately each a "*Co-Owner*";

B. The Co-Owners are each individually executing this Agreement for the specific purpose of acknowledging and agreeing to the covenants, representations, warranties, and indemnifications of the respective Co-Owners set forth herein;

C. The Co-Owners are simultaneously executing a Ground Lease, as ground tenant thereunder (the "*Ground Lease*");

D. The Ground Lease covers certain real property and existing and proposed improvements thereon, located at 6565 Hillcrest Avenue, University Park, Texas, as more particularly described on **Exhibit A** attached hereto and incorporated herein (the "*Property*"). The notice addresses for the Co-Owners and percentage interest held by each Co-Owner in the Property (the "*Ownership Interests"* or *"Interests*") are set forth on **Exhibit B** attached hereto and incorporated herein;

E. The Co-Owners' leasehold interest in the Ground Lease is or will be encumbered by a loan from Comerica Bank, its successors and/or assigns (including its successors and assigns, collectively the "*Lender*"), in the approximate aggregate original principal amount of FORTY MILLION, SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($40,750,000.00) (the "*Loan*");

F. The Loan is or will be evidenced and secured by a Promissory Note in the approximate original principal amount of FORTY MILLION, SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($40,750,000.00) payable to the Lender (the "*Note*"), a Leasehold Deed of Trust, Security Agreement, Assignment of Lease and Rents, and Fixture Filing (collectively the "*Deed of Trust*"), UCC Financing Statement(s), and certain other documents evidencing or securing the Loan (collectively with the Note and Deed of Trust, the "*Loan Documents*"); and

G. Each Co-Owner desires to enter into this Agreement to: provide for (i) the acquisition of SPC Assigned Rights and the development of additional improvements upon the Property, as more particularly described in **Exhibit C** attached hereto (the Property is encumbered by the Ground Lease and improved by

the buildings and other features described on **Exhibit C**, such improvements are collectively referred to as the "*Project*"); (ii) the establishment of a commercial condominium regime upon the Project by filing a commercial condominium declaration executed by the Co-Owners (the "*Condominium*"); (iii) the leasing, operation and management of the Project; (iv) the orderly administration of their rights and responsibilities as to each other and as to third parties; and (v) the delegation of authority and responsibility for the intended further leasing, operation and management of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

ARTICLE I.
NATURE OF RELATIONSHIP AMONG CO-OWNERS

1.01 **Co-Owners Relationship; No Partnership**.

(a) Tenancy in Common Created. The Co-Owners each shall hold their respective undivided interests in the Project (collectively the "*Interests*" and each an "*Interest*") as tenants in common.

(b) Purpose. The purposes of the Co-Owners with respect to the Project are: (i) to acquire, develop, manage, lease, mortgage, and transfer the Project; and (ii) to take such other actions, in accordance with the terms of this Agreement, as the Co-Owners determine, in accordance with the terms of this Agreement, necessary or advisable to carry out the foregoing. The Co-Owners shall hold their Interests for investment purposes only and not for the active conduct of a trade or business.

(c) No Partnership. The Co-Owners do not intend by this Agreement to create a partnership or joint venture among themselves, but merely to set forth the terms and conditions upon which each of them shall hold their respective Interests. In addition, the Co-Owners do not intend to create a partnership or joint venture with the Developer or Property Manager (as such terms are defined below). Therefore, each Co-Owner hereby elects to be excluded from the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended (the "*Code*"), with respect to the tenancy in common ownership of the Project. The exclusion elected by the Co-Owners hereunder shall commence with the execution of this Agreement.

1.02 **Tax Reporting as Direct Owners and Not as a Partnership**. Each Co-Owner hereby covenants and agrees to report on such Co-Owner's respective federal and state income tax returns all items of income, deduction and credits that result from its Interests. All such reporting shall be consistent with the exclusion of the Co-Owners from Subchapter K of Chapter 1 of the Code, commencing with the first taxable year following the execution of this Agreement. Further, each Co-Owner covenants and agrees not to notify the Commissioner of Internal Revenue (the "*Commissioner*") that it desires that Subchapter K of Chapter 1 of the Code apply to the Co-Owners.

1.03 **Indemnity**. Each Co-Owner hereby agrees to indemnify, protect, defend and hold the other Co-Owners free and harmless from all costs, liabilities, tax consequences and expenses (for example, taxes, interest and any penalties), including, without limitation, attorneys' fees and costs, which may result from such indemnifying Co-Owner(s) violating Section 1.02 of this Agreement, or otherwise taking a contrary position on any tax return, report or other document.

1.04 **No Agency**. Except as expressly set forth herein, no Co-Owner is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Co-Owner, or to incur any duties, obligations, or liabilities with respect to the Project, except as expressly set forth herein to the contrary.

1.05 **Limitation on Number of Co-Owners; Compliance with Revenue Procedure**. Notwithstanding anything to the contrary in this Agreement, at no time shall the number of Co-Owners exceed the limit set forth in Revenue Procedure 2002-22, 2002-1 C.B. 733 (the "*Revenue Procedure*"), as such limit may be modified from time to time. The Co-Owners consent and agree that they shall at all times comply with the entirety of the Revenue Procedure in connection with this Agreement and the Project.

ARTICLE II.
MANAGEMENT

2.01 **Co-Owner Manager**.

(a) The Co-Owners agree to appoint one (1) Co-Owner to be responsible, subject to Section 6.02, for timely overseeing the development, operation, management, and leasing of the Project (the "*Co-Owner Manager*"). In addition to those duties expressly set forth herein, the Co-Owner Manager shall be responsible for enforcing the rights of the Co-Owners under, and complying with the terms of, the Ground Lease, Condominium, Property Management Agreement, Development Agreement, and Leasing Agreement, as such terms are defined below in this Article II from time to time (collectively, the "*Co-Owner Manager Duties*"). The Co-Owners agree that SPC Owner shall be appointed as the initial Co-Owner Manager. The Co-Owner Manager shall not be compensated for the Co-Owner Manager Duties but shall be reimbursed by each Co-Owner, pro-rata, for any and all ordinary and necessary costs and expenses incurred by the Co-Owner Manager in executing the Co-Owner Manager Duties, including but not limited to a reimbursement of all costs and expenses which have been incurred by an affiliate of SPC Owner, Strode Property Company, in connection with the site planning and pre-construction activities relating to the Project prior to the date hereof, in the approximate amount of $10,642,366.00, which is more particularly set forth in a rider attached to, and all of which comprises development costs shown in the construction budget attached hereto as **Exhibit G** (the "*Construction Budget*"), which reimbursement shall be made simultaneously with the closing of the Loan. Except as expressly set forth in Article VI below, the Co-Owner Manager Duties shall include, and the Co-Owner Manager shall be authorized to act for and on behalf of each Co-Owner, including but not limited to, the following enumerated

acts: (i) execution of all leases (excluding Major Leases (defined below)) proposed to be executed by the Leasing Agent and the Managing Co-Owner, provided that all rental and tenant finish amounts set forth in such leases are set forth in the Construction Budget, Operating Budget, or otherwise approved by the Co-Owners; (ii) execution of all agreements and contracts (excluding Material Contracts (defined below)) required in connection with the development, repair, maintenance and operation of the Project, provided the financial obligations set forth in such agreements and contracts are set forth in the Construction Budget, Operating Budget, or otherwise approved by the Co-Owners in accordance with this Agreement; (iii) execution of all Loan Documents in connection with the Loan, provided that a Majority in Interest (defined below) of the Co-Owners have approved the form and content of the Loan Documents in writing; and (iv) execution of those agreements described in Sections 2.02, 2.03, and 2.04. The Co-Owner Manager shall execute any agreements authorized under this Agreement as "Co-Owner Manager under that certain Co-Owners Agreement dated [of even date herewith], as same may be amended from time to time". Notwithstanding the foregoing, contracts which (i) are on standard forms approved by a Majority in Interest of the Co-Owners, and (ii) conform to the Construction Budget or Operating Budget approved by a Majority in Interest of the Co-Owners, may be executed by the Co-Owner Manager.

(b) The Co-Owner Manager may resign at any time by providing written notice to the Co-Owners. The Co-Owner Manager may be removed by an affirmative vote of the Co-Owners holding at least an aggregate of 50% of the Ownership Interests, for "cause". As used in the preceding sentence, the term "cause" shall mean the act, existence, occurrence, omission, or commission of one or more of the following (each, a "*Bad Act*", and collectively, "*Bad Acts*"): (i) the criminal conduct, fraud, negligence or willful misconduct of Co-Owner Manager which, in the reasonable opinion of the Co-Owners, other than Co-Owner Manager, had or will have a materially adverse effect on the Project; (ii) a breach of Co-Owner Manager's duties under this Agreement that remains uncured (notwithstanding any provision hereunder to the contrary, the removal of SPC Owner as Co-Owner Manager pursuant to this subpart (ii), shall be subject to the following: for any breach or default by Co-Owner Manager under this Agreement that is susceptible to being cured, Co-Owner Manager shall be given ten (10) days' written notice and opportunity to cure, provided that if such breach or default cannot reasonably be cured within such 10-day period, and Co-Owner Manager promptly commences the cure of such breach or default and diligently pursues such cure to completion, then such cure period shall be extended to the extent necessary, but not to exceed a total cure period of thirty (30) days); or (iii) an uncured event of default by Developer under the Development Agreement. If as a result of resignation, removal, or any other reason for which the Co-Owner Manager ceases to serve, there shall exist or occur any vacancy in the Co-Owner Manager's position, then a vote of one or more Co-Owners holding collectively more than 50% of the Ownership Interests (a "*Majority in Interest*") shall appoint another party to fill such vacancy.

(c) The Co-Owners agree to indemnify and defend the Co-Owner Manager, and hold it harmless, from and against all costs, damages, liabilities and expenses (including reasonable attorneys' fees) arising directly or indirectly out of any matter relating to the Co-Owner Manager's duties or any action taken by Co-Owner Manager within the scope of its authority and duties under this Agreement, unless such costs, damages, liabilities or expenses result from a Bad Act by Co-Owner Manager. This indemnity extends to and protects the affiliates, agents, officers, managers, members, and employees of Co-Owner Manager.

(d) The Co-Owner Manager agrees to indemnify the Co-Owners, and hold them harmless, from and against all costs, damages, liabilities and expenses (including reasonable attorney's fees) arising directly or indirectly out of any matter relating to the Co-Owner Manager's duties or any action taken by Co-Owner Manager in connection with this Agreement to the extent that such costs, damages, liabilities and/or expenses result from Bad Acts committed by the Co-Owner Manager.

(e) The execution of any Major Lease (including, without limitation, any renewal, extension, termination or amendment thereto) shall require the approval (not to be unreasonably withheld) of a Majority in Interest of the Co-Owners. "*Major Lease*" means any Lease or Leases with respect to the Property, (a) in which a tenant together with one or more of its affiliates, is leasing in the aggregate, in excess of 10,000 square feet (inclusive of expansion options), (b) has a term of ten (10) years or longer, (c) [includes non-market terms], or (d) with respect to which the tenant is an affiliate of a Co-Owner.

2.02 **Property Manager**. The Co-Owner Manager, on behalf of the Co-Owners, shall enter into a property management agreement with respect to the Project (which agreement and any amendments thereto and any successor agreement with any other property manager, shall collectively be referred to as the "*Property Management Agreement*") with a qualified property manager experienced in the operation of mixed use commercial projects similar to the Project, following approval thereof by a Majority in Interest of the Co-Owners (the "*Property Manager*") which shall provide for a property management fee not to exceed market based compensation for projects similar to the Project. Once approved and executed, the Property Management Agreement shall be attached hereto as **Exhibit D**. Pursuant to the Property Management Agreement, the Property Manager shall be the sole and exclusive manager of the Project to act on behalf of the Co-Owners with respect to the management, operation, and maintenance of the Project during the term of the Property Management Agreement. The Property Manager shall keep adequate books and records for the Company and the Project, setting forth a true and accurate account of all receipts, disbursements and business transactions arising out of or connected with the operation of the Project. The calendar year shall be the annual accounting period for the operation of the Project. All reasonable costs and expenses of keeping and maintaining such books and records and the audits thereof shall be deemed and treated as an expense of operating the Project. Each Co-Owner shall be entitled to review the books and records of the Company and the Project upon reasonable prior notice, and may audit the books and records of the Company and the Project no more than one (1) time in any calendar year, upon reasonable

prior notice to the Property Manager and the Co-Owner Manager, which audit shall be conducted at the offices of the Co-Owner Manager.

2.03 **Developer**. The Co-Owner Manager, on behalf of the Co-Owners, shall enter into that certain Development Services Agreement in form and substance attached hereto as **Exhibit E** with respect to the Project (which agreement and any amendments thereto and any successor agreement with any other Developer, shall collectively be referred to as the "*Development Agreement*") with Strode Property Company or an affiliate (the "*Developer*"), which is a related party to SPC Owner, following the approval thereof by each of the Co-Owners, which shall provide for the Development Fee as calculated in the Development Agreement), which is set forth in the Construction Budget. Pursuant to the Development Agreement, the Developer shall be the sole and exclusive developer of the Project to act on behalf of the Co-Owners with respect to the development of the Project during the term of the Development Agreement.

2.04 **Leasing Agent**. The Co-Owners shall accept an assignment of that certain Leasing Agreement in form and substance attached hereto as **Exhibit F** with respect to the Project (which agreement and any amendments thereto and any successor agreement with any other Leasing Agent, collectively the "*Leasing Agreement*") with Myers Commercial (the "*Leasing Agent*"), setting forth the schedule of lease commissions payable with respect to the Project. Pursuant to the Leasing Agreement, the Leasing Agent shall be the sole and exclusive Leasing Agent for the office portion of the Project to act on behalf of the Co-Owners with respect to the leasing of the office portion of the Project during the term of the Leasing Agreement. An affiliate of SPC Owner shall manage the retail leasing portion of the Project, and shall be entitled to receive market rate fees for such efforts, in accordance with the Construction Budget.

2.05 **The Project Agreements**. The Development Agreement and Leasing Agreement are hereby approved by the Co-Owners. Such agreements, together with the Property Management Agreement and any retail leasing agreements, shall not be amended in a material way, terminated, or replaced without the consent of a Majority in Interest of the Co-Owners.

2.06 **The Condominium Documents and Ground Lease**. The Condominium and the Condominium Documents (defined below), and the Ground Lease, have been approved by each of the Co-Owners, and Co-Owner Manager is authorized to cause same to be completed, executed, and, as applicable, filed against record title to the Property.

ARTICLE III.
USE OF THE PROJECT

3.01 **Use of Project**. The Co-Owners intend to lease the Project for third-party occupancy at all times. Accordingly, no Co-Owner shall have the right to occupy or use the Project at any time during the term of this Agreement, and each Co-Owner hereby expressly waives any such right, unless such Co-Owner or its affiliate has executed an arm's length lease agreement with the Co-Owners, as landlord ("*Landlord*"). The Co-Owners hereby acknowledge that (i) Hilltop Holdings Inc. and/or Plains Capital Bank, its affiliate, which

is an affiliate of each of Hilltop Owner and Ford Owner (collectively, the "*Lead Tenants*"), and Co-Owner Manager, have executed contemporaneously herewith that certain Office Lease agreement and that certain Retail Lease agreement, and that (ii) Hunter's Glen/Ford, Ltd. which is an affiliate of each of Ford Owner, has executed contemporaneously herewith that certain Office Lease agreement (each a "*Lead Tenant Lease*," and collectively, the "*Lead Tenant Leases*") with Co-Owner Manager. The Co-Owners hereby approve the completion and full execution of the Lead Tenant Leases by Co-Owner Manager, and pledge of same to Lender in accordance with the Loan Documents.

3.02 **Loan Responsibilities**. The Co-Owners shall cause the Project to be maintained and shall otherwise conduct themselves in relation to the Project in accordance with the Ground Lease, Condominium, Property Management Agreement, Development Agreement, Leasing Agreement and the Loan Documents. Without limiting the foregoing, insofar as the Loan Documents require a Co-Owner to be a so-called special purpose bankruptcy remote entity (an "*SPE*"), each Co-Owner (and each Co-Owner by such Co-Owner's acknowledgement and agreement set forth below) covenants and agrees to at all times maintain its status as such in accordance with the SPE requirements of the Loan Documents and the Co-Owners' respective own operating agreements. No Co-Owner may transfer or encumber, or permit the transfer or encumbrance of, its membership interest except in compliance with the Agreement and in compliance with the Loan Documents. All rights, remedies, and indemnities of each Co-Owner against any other Co-Owner or in the Interests of any Co-Owner pursuant to this Agreement, at law, in equity, or otherwise, shall be subject to the Loan Documents and Lender's rights under the Loan Documents. Furthermore, notwithstanding anything to the contrary herein, each Co-Owner agrees that it will not exercise any rights it may have against any other Co-Owner or in the Interests of any Co-Owner, whether such rights accrue pursuant to this Agreement, at law, in equity, or otherwise, if the exercise of such rights would violate the Loan Documents. Each Co-Owner shall join in this Agreement to acknowledge and agree to be bound by the terms, conditions, and obligations of this Section 3.02. To the extent that any Co-Owner or its affiliates breach or otherwise violate the transfer restrictions or other provisions contained in the Loan Documents, each such Co-Owner having read and understood the Loan Documents, such breaching Co-Owner hereby agrees to indemnify, defend and hold the other Co-Owners, and their affiliates acting in a capacity as guarantor under any of the Loan Documents, from any loss, cost, liability or damage which results from such breach or other violation of the Loan Documents by the breaching Co-Owner(s).

ARTICLE IV.
INCOME AND PROCEEDS FROM THE PROJECT

4.01 **Income from Project Operations**. Subject to Article V below and the consent of the Co-Owners, the Co-Owner Manager shall cause the Property Manager to disburse Net Operating Revenue on a quarterly basis to the Co-Owners, pro rata in accordance with their respective Ownership Interests. "*Net Operating Revenue*" shall be equal to all income, revenue and other cash flow derived from the operation of the Project, less (a) any ordinary and necessary operating expenses, including payments under the Loan Documents and Ground Lease, and (b) any expenditure set forth in either a Construction Budget or an Operating Budget approved by the Co-Owners (other than a disbursement related to

payment of legal fees, which must be approved by a Majority in Interest of the Co-Owners), net of such amounts as may be reasonably determined by the Property Manager to be retained for reasonable reserves for operations, repairs or improvements from time to time in accordance with the Property Management Agreement, shall be disbursed by the Co-Owner Manager to the Co-Owners, pro rata in accordance with their respective Ownership Interests, on a quarterly basis. Each Co-Owner shall approve (i) the Construction Budget (herein so called) prepared by the Developer in connection with the Loan, and all material amendments thereto, and (ii) annual operating budgets (each, an "*Operating Budget*") prepared by the Co-Owner Manager, based upon information provided by the Property Manager, no later than November 1 of each calendar year. If the Co-Owners are unable to agree upon an Operating Budget, then the Co-Owner Manager shall utilize the Operating Budget in effect for the prior calendar year to operate the Project, subject to the provisions of Article V. The Co-Owners approve the Construction Budget attached hereto as **Exhibit G**.

4.02 **Disbursement of Proceeds on Disposition of the Project**. Subject to Article V below, the Co-Owner Manager shall cause the Property Manager to disburse net proceeds derived from the sale, exchange, or other joint disposition of, or from the financing or refinancing of all or any part of the Project, after satisfaction of any debts, liabilities or expenses of the Project, first to repay Co-Owner Loans (as described in Section 5.05(a)), next to return each Co-Owner's Initial Investment and Subsequent Required Contributions (along with any accrued preferred return as described in Section 5.06), then to SPC Owner in return of any Unanticipated Overrun Costs (as described in Section 5.06 below), and then in accordance with the Co-Owners' respective Ownership Interests.

ARTICLE V.
PAYMENT OF PROJECT EXPENSES; RIGHT OF CONTRIBUTION

5.01 **Obligation to Pay**. The Construction Budget will reflect that each Co-Owner will have invested the cash funds in connection with the acquisition of its Ownership Interest in the Project, as more particularly described on **Exhibit B** (with respect to each Co-Owner, its "*Initial Investment*" and collectively, the "*Initial Investments*"). It is understood and agreed that SPC Owner's purchase price investment for its Interest is part of a like kind exchange transaction, and such sums invested by SPC Owner in connection with its acquisition of its undivided interest in the Project shall occur through the exchange accommodation title holder engaged for such purpose. Except as otherwise expressly provided for in this Agreement, the Co-Owners shall apportion all debts, liabilities, and expenses that they incur in connection with the Project and the costs of constructing the Project (the "*Project Expenses*") in proportion to their respective

Ownership Interests. Without limitation of the foregoing and except as otherwise provided below, Project Expenses shall include all debt service with respect to the Project. For the avoidance of doubt, (a) nothing herein shall be deemed to affect the liability of the Co-Owners under the Loan Documents; and (b) all payments required to be made pursuant to the terms of the Loan Documents shall have priority over all other payments provided for hereunder, including, but not limited to, disbursements to Co-Owners pursuant to Article IV and payments in respect of any Co-Owners Loan (as defined in Section 5.05(a)).

5.02 **Time of Payment**. The Property Manager shall be responsible for collecting and disbursing funds from the operation of the Project pursuant to the Property Management Agreement (including each Co-Owner's share of Net Operating Revenue). Whenever the Co-Owner Manager, in the Co-Owner Manager's reasonable discretion, determines that the Project Expenses must be paid in an amount which exceeds the Co-Owner's share of income from the Project then held by the Property Manager, or which have been paid to a Co-Owner, then the Co-Owner Manager shall give written notice to the Co-Owners setting forth (a) the total amount required to pay the Project Expenses (including, without limitation, a detailed explanation of the amount of any such Project Expenses that relate solely to the construction of the Project (the "*Project Construction Expenses*")) and (b) such Co-Owner's proportionate share thereof. Except as provided below in Section 5.06, the Co-Owners shall be required, in accordance with their Ownership Interests, to fund Project Construction Expenses in the amounts set forth in the Construction Budget, which includes the Initial Investments, and upon notice from Co-Owner Manager, to fund Project Expenses (the "*Subsequent Required Contributions*"). The Co-Owners shall have ten (10) business days from the date such notice is received to deliver to the Co-Owner Manager, by wire transfer, certified or bank cashier's check or other mutually acceptable means, their share of the required funds. Such notice shall contain sufficient detail explaining the nature of the request for payment of Project Expenses, including an explanation of why the related shortfall in Net Operating Revenue occurred, if applicable, along with any related impacts to the current Operating Budget. Each Co-Owner shall have access to and the right to inspect and review the books and records of the Co-Owner Manager concerning the Project and, in particular, but without limitation, the Project Expenses and the Net Operating Revenue.

5.03 **Delinquencies**. If a Co-Owner does not timely pay its share of Project Expenses when due in accordance with Section 5.02 hereof, then the Co-Owner Manager shall send the delinquent Co-Owner written notice of delinquency, giving such delinquent Co-Owner an additional five (5) business days from the date such notice is received to pay in full its proportionate share of the Project Expenses. If the delinquent Co-Owner does not timely pay the full amount of its proportionate share of the Project Expenses, together with any and all late fees, additional interest and other charges resulting from the delinquency, then the delinquent Co-Owner shall thereupon become a "*Defaulting Co-Owner*".

5.04 **Indemnity**. A delinquent Co-Owner or Defaulting Co-Owner shall pay all late fees, additional interest or other charges that the other Co-Owners incur as a result of such delinquent Co-Owner's failure to timely pay its share of the Project Expenses and shall otherwise indemnify the other Co-Owners from any and all loss, cost, liability or expense suffered on account of such Co-Owner's failure.

5.05 **Co-Owner Loans.**

(a) If a delinquent Co-Owner becomes a Defaulting Co-Owner by failing to pay its share of Project Expenses when due and not curing such failure within the applicable notice and cure period, the Co-Owner Manager shall give written notice of such failure to the other Co-Owners (each a "*Non-Defaulting Co-Owner*") within two (2) days following the expiration of the five (5) business day period described in Section 5.03. Within seven (7) days following such notice, any one or more of the Non-Defaulting Co-Owner may elect to pay all or any part of the Defaulting Co-Owner's proportionate share of the delinquent Project Expenses (each such paying Co-Owner a "*Lending Co-Owner*"). Such amount shall be treated as a loan by the respective Lending Co-Owner to the Defaulting Co-Owner whether one or more (a "*Co-Owner Loan*"). All Co-Owner Loans shall be payable in full within thirty-one (31) days from the date such loan was made, together with interest at the rate per annum equal to the lesser of (i) the maximum legal rate, or (ii) sum of the prime rate of interest as published from time to time in The Wall Street Journal plus six percent (6.0%) (the "*Default Rate*"). All Co-Owner Loans shall be with recourse to the Defaulting Co-Owner. Notwithstanding any provision herein to the contrary, in the event either Hilltop Owner or Ford Owner becomes a Defaulting Co-Owner, then Hilltop Owner or Ford Owner, whichever is then a Non-Defaulting Co-Owner, shall have the first and pre-eminent right to exercise the Non-Defaulting Co-Owner rights described above relative to SPC Owner's rights to cure such default, provided such first and pre-eminent rights are exercised within the period set forth above for a Lending Co-Owner to advance its share of delinquent Project Expenses; thereafter, if either Hilltop Owner or Ford Owner fail to advance such delinquent Project Expenses, then SPC Owner shall have the period of time set forth in this Section 5.05(a) to elect to advance such delinquent Project Expenses.

(b) Except to the extent prohibited by the Loan Documents, each Co-Owner hereby grants to each other Co-Owner a lien on such Co-Owner's Interest to secure its obligations under this Agreement, including without limitation, such Co-Owner's obligations to pay its share of all expenses the Co-Owners incur in connection with their ownership of the Project (the "*Co-Owner Lien*"). Any such Co-Owner Lien if made is expressly subordinate and inferior to the Loan and Lender's rights under the Loan Documents. Furthermore, without Lender's prior written approval, any holder of a Co-Owner Lien shall not exercise any right to foreclose such Co-Owner Lien against the Defaulting Co-Owner's Interest, as provided in Section 5.05(c).

(c) If a Co-Owner Loan is not paid when due by the Defaulting Co-Owner (each Defaulting Co-Owner that does not pay a Co-Owner Loan when due a "*Delinquent Co-Owner*"), then the Lending Co-Owners shall receive all distributions of Net Operating

Revenue which the Defaulting Co-Owner would have otherwise received, until the Co-Owner Loan, and all interest thereon, is repaid; provided, however, if such Co-Owner Loan is not repaid within twelve (12) months, interest shall accrue on all unpaid principal amounts at the Default Rate.

5.06 **Unanticipated Overrun Funding**. As of the date hereof, the Managing Co-Owner does not anticipate that Project Construction Expenses will exceed the amount set forth in the Construction Budget, or that the Project will require additional investment from the Co-Owners, other than the Initial Investments and any Subsequent Required Contributions. If, however, aggregate Project Construction Expenses (other than change orders required by the tenants under the Lead Tenant Leases, the costs and expenses of which shall be treated in accordance with the applicable provisions of such Lead Tenant Leases, and if treated therein as a cost of Landlord, then such shall be a Project Expense under Section 5.01), including, without limitation, hard costs, interest carry costs, architectural and/or engineering costs, permitting costs and impact fees, exceed the amounts set forth in the Construction Budget as a result of an event or circumstance that (i) rises to the level of a Bad Act by SPC Owner, (ii) constitutes an uncured breach of the Development Agreement by Developer, or (iii) which was (A) within the reasonable control or either SPC Owner or Developer, or (B) should have been anticipated by either SPC Owner or Developer using reasonable diligence, then any related cost overruns (the "*Unanticipated Overrun Costs*") shall be paid solely by SPC Owner as an Overrun Contribution (as hereinafter defined). Any such Unanticipated Overrun Costs, then SPC Owner shall be solely liable for the payment of all such Unanticipated Overrun Costs not paid by Developer or a guarantor of the Loan. Any contributions made by SPC Owner with respect to Unanticipated Overrun Costs pursuant to this Section are referred to as "*Overrun Contributions*". Overrun Contributions shall be contributed by SPC Owner in accordance with Section 5.02. If SPC Owner fails to contribute the Unanticipated Overrun Costs as and when required by this Section and Section 5.02, each of Ford Owner and Hilltop Owner shall have the rights as set forth in Section 5.05(a) to make Co-Owner Loans to satisfy such Unanticipated Overrun Costs, as described therein. Notwithstanding any provision of this Agreement to the contrary, Overrun Contributions made by SPC Owner in accordance with this Section shall be considered to be investment(s) in the Project; however, they shall not impact the Ownership Interests of the parties, and such Overrun Contributions shall be returned to SPC Owner pursuant to the provisions of Article IV following such time as each of the Co-Owners has received 100% of its Initial Investment and all Subsequent Required Contributions (not including any Overrun Contributions made by SPC Owner) in the Project, plus a preferred return on such investment equal to eight percent (8%) per annum, compounded annually, commencing on the date of such contribution. All other amounts of Construction Project Expenses set forth in any request for payment delivered by the Co-Owner Manager (other than Unanticipated Overrun Costs) shall be treated as Subsequent Required Contributions in accordance with Article V of this Agreement.

ARTICLE VI.
RIGHTS AND OBLIGATIONS OF THE CO-OWNERS

6.01 **Rights of Co-Owners**. Except as otherwise provided in Section 6.03, a Co-Owner shall have no right to transfer, partition or encumber the Co-Owner's Interest in the Project without the prior written consent of the other Co-Owners; provided, however, that in any event:

(a) No transfer shall be permitted if the number of Co-Owners after such transfer would exceed the number of persons specified in Section 1.05 hereof, or such lesser number required by the Loan Documents;

(b) Any transfer (whether voluntary or involuntary) partition or encumbrance of a Co-Owner's Interest in the Project must satisfy all of the terms and provisions of the Loan Documents and may not constitute an event of default thereunder. Notwithstanding anything to the contrary herein, to the extent that Lender has required the Co-Owners to waive their right to file a complaint or institute any proceeding at law or in equity to have the Project partitioned in accordance with applicable law and to waive their right to transfer their Co-Owner's Interest in the Project, accordingly, each Co-Owner hereby waives such rights to the greatest extent permitted by applicable law, but only for so long as any obligations of the Co-Owners under the Loan remain outstanding;

(c) The transferee shall agree to be bound by all of the terms, conditions, restrictions, and limitations set forth in, and shall expressly join, this Agreement;

(d) The transferor shall reimburse the other Co-Owners (or their owners, as applicable) for all reasonable fees and expenses and other costs that they incur as a result of the transaction; and

(e) The transferee is an "accredited investor" as defined in Rule 501 of Regulation D of the rules and regulations promulgated under the Securities Act of 1933.

6.02 **Decisions of Co-Owners.**

(a) Notwithstanding the provisions of Section 2.01, the following actions require the consent of one or more of the Co-Owners holding in the aggregate at least ninety percent (90%) of the Ownership Interests (a "*Supermajority in Interest*"): (i) entering into any agreement for the sale, transfer, or exchange of all or any portion of the Project (the "*Sale Agreement*") and the consummation of the related transaction; and the termination of any Sale Agreement prior to the consummation thereof; (ii) entering into, modifying, extending, renewing or canceling any agreement pertaining to any indebtedness to be secured in whole or in part by any mortgage, deed of trust, pledge, lien or other encumbrance upon the Project; (iii) modifying or amending this Agreement; (iv) amending, terminating or modifying the Condominium Documents; or (v) amending, terminating or

modifying the Loan Documents. Notwithstanding the foregoing, or any other provision of this Agreement to the contrary, for so long as the Loan is outstanding, this Agreement may not be modified or amended without the prior written consent of Lender. Notwithstanding the provisions of Article II, the following actions require the consent of a Majority in Interest of the Co-Owners: entering into, amending, terminating and/or replacing (each of the following, a "*Material Contract*"): (1) the Property Management Agreement, (2) the Development Agreement, (3) the Leasing Agreement, (4) any Major Lease, (5) any and all leases, contracts and other agreements that provide for a payment term or duration of more than 5 years

(including renewal periods), or involve expenses or receipts in excess of $250,000, unless otherwise set forth in the Construction Budget or Operating Budget, or (6) any leases, contracts or other agreements with (aa) a third party that is not on then current fair market value terms, (bb) an entity that is related to or affiliated with a Co-Owner, (cc) any construction, repairs, renovations or other expenses relating to the Project that will cost more than $100,000 in the aggregate, or (dd) any lease, contract, easement, restriction and/or governmental approval (such as zoning and/or platting of the Project) that would be binding on the Project after the termination of the Ground Lease. For purposes hereof, the "*Condominium Documents*" mean the Master Condominium Declaration and Master Condominium Association formation and governance agreements for the Hilltop Plaza Condominiums.

(b) Whenever an action by the Co-Owners not otherwise authorized by the terms of this Agreement is proposed by any Co-Owner, or unless a separate approval process is described herein with respect to actions taken by the Managing Co-Owner, the requesting Co-Owner shall first send to all Co-Owners written notice (the "*Decision Notice*") setting forth the particulars of the decision to be taken (the "*Decision*"). The Decision Notice shall include a ballot on which the Co-Owner may mark its vote for or against the Decision. Consistent with the provisions of Section 10.06, the Co-Owners shall respond to the Decision Notice by returning the marked ballot to the Co-Owner Manager within ten (10) days following receipt of the Decision Notice. A Co-Owner not returning the ballot within the prescribed period of time shall be deemed to have consented to the Decision, if such Co-Owner fails to respond to a second copy of the Decision Notice, marked to show "**SECOND DECISION NOTICE: DEEMED APPROVAL MAY APPLY"**, and such Co-Owner fails to respond to the Second copy of the Decision Notice within five (5) days following delivery thereof. The Managing Co-Owner shall notify all Co-Owners of the results of the vote (the "*Outcome Notice*"). The Managing Co-Owner shall be authorized to take action with respect to such Decision if such Decision has been approved by a Majority in Interest of the Co-Owners. If the Decision requires approval of all the Co-Owners, then the Co-Owner Manager shall be authorized to take action with respect to such Decision only if the Co-Owners have unanimously approved it.

6.03 **Permitted Transfers**. Subject to the provisions of Section 6.01 above, a Co-Owner may sell, assign, or transfer all (but not less than all) of Ownership Interest, with prior written notice to but without the prior written consent of the other Co-Owner, to: (a) the Co-Owner's spouse, descendants and/or spouse of his or her descendants, his or her stepson or stepdaughter or a descendant of either; (b) a trust established for the benefit of the Co-Owner or any one or more of the individuals described in clause (a) above; or (c) any person that is already a Co-Owner. In addition, subject to the provisions of Section 6.01 above, each of Ford Owner and Hilltop Owner may sell, sign or transfer some or all of its respective Ownership Interest, with prior written notice to but without the prior written consent of SPC Owner, to: (i) each other, (ii) Hilltop Holdings Inc. (and/or its successor), (iii) any entity that is owned or controlled by either Hilltop Holdings Inc. (and/or its successor), or Gerald J. Ford and/or Gerald J. Ford's spouse, his descendants and/or spouse

of his descendants, his step-son or step-daughter or a descendant of either and/or (iv) a trust established for the benefit of Gerald J. Ford and/or any one or more of the individuals described in clause (iii) above. Notwithstanding anything contained herein to the contrary, the Co-Owners are aware that SPC Owner has entered into one or more exchange accommodation agreements (collectively, the "*Exchange Agreement*") with respect to a 1031 like kind exchange related to its Interest, and transfers of the ownership of the SPC Owner solely in connection with such Exchange Agreement shall be deemed to be a permitted transfer under this Section 6.03.

6.04 **Buy-Sell Option**. At any time following the two (2) year anniversary of the Effective Date of this Agreement (or earlier exercisable by Hilltop Owner and/or Ford Owner, only, in the event the HF Owners (defined below) have notified SPC Owner that SPC Owner has committed a Bad Act), a Co-Owner (the "*Offeror*") may deliver to the other Co-Owners (the "*Offerees*") a written offer ("*Offer*") that gives the Offerees the option to either (i) purchase all of the Offeror's Ownership Interest or (ii) sell all of the Offerees' Ownership Interests to the Offeror, which Offer shall set forth a specified cash purchase price for each 1% of Ownership Interest (the "*Interest Price*") (i.e., the same Interest Price per 1% of Ownership Interest whether the Offeror becomes a buyer or a seller). Within fifteen (15) days after the Offerees receives the Offer, the Offerees shall notify the Offeror in writing that the Offerees either (i) agree to sell all of the Offerees' Ownership Interest to the Offeror for a sales price (the "*Offeree Sales Price*") equal to the product of the Interest Price multiplied by the Ownership Interest of the Offerees or (ii) agree to purchase all of the Offeror's Ownership Interest for a purchase price (the "*Offeror Sales Price*") equal to the product of the Interest Price multiplied by the Ownership Interest of the Offeror. The election of the Offerees shall be binding upon the Offeror. In the event that, following an Offer, one or more Offeree(s) determines to purchase, but other Offeree(s), if any, determine to sell, the Offeree(s) desiring to purchase shall be obligated to purchase both the other (selling) Offeree(s)' Ownership Interests and the Offeror's Ownership Interest. The failure of the Offerees to give a written notice of its election within such fifteen (15) day period shall be deemed an acceptance of the Offer to sell the Offerees' Ownership Interest to Offeror for the Offeree Sales Price. Notwithstanding the foregoing, if the Offeror is either Hilltop Owner or Ford Owner (each, a "*HF Owner*") or their respective successors or assigns, such offer must first be made to the other HF Owner prior to being made to SPC Owner, and if the Offeror is SPC Owner, such Offer must be made to each of the HF Owners. Further, the HF Owners may aggregate their respective Ownership Interests in connection with an Offer to SPC Owner. Any Offer to the Offerees shall be exercisable by them in the same proportion which their Ownership Interests bear, in the aggregate, to the Offeror's Ownership Interest, or in such other manner as the Offerees agree in writing.

The closing of any purchase or sale under this Section 6.04 shall occur within sixty (60) days after the Offeror's delivery of the Offer to the Offeree (the "*Closing Period*"). If the Offerees deliver a notice to the Offeror that the Offerees elect to purchase all of the Offeror's Ownership Interest and fail to close such purchase within the Closing Period, then the Offeror shall have the option to elect to purchase all of the Offerees' Ownership Interest for an amount equal to seventy-five percent (75%) of the Offeree Sales Price and the closing of such purchase shall occur within thirty (30) days after the expiration of the

Closing Period. At the closing of any purchase or sale under this Section 6.04, the purchaser shall deliver or cause to the delivered the applicable purchase price, as calculated hereinabove, to the sellers and the sellers, at the sellers' expense, shall cause all liens and security interests covering all of any portion of the sellers' Ownership Interest to be released at or prior to the closing and the sellers shall transfer to the purchaser all of the sellers' Ownership Interest, free and clear of all liens and security interests and in such form and substance reasonably acceptable to the purchaser.

ARTICLE VII.
INDEMNIFICATION

7.01 **General**. Subject to Section 2.01, each Co-Owner, as indemnitor, shall indemnify, defend and hold harmless each of the other Co-Owners from and against all losses, damages, penalties and liabilities of every kind, arising in any manner out of the indemnitor's failure to perform or observe any of the terms or provisions of this Agreement.

7.02 **Indemnification for Loan Default Damages**. In addition to the indemnification provided by Section 7.01, a Co-Owner, as indemnitor, shall indemnify, defend and hold harmless each of the other Co-Owners from and against losses, damages, penalties and liabilities of every kind, arising in any manner out of a default on the Loan caused by the indemnitor or the Co-Owner owned by such indemnitor. Each Co-Owner joins in this Agreement as provided below to acknowledge and agree to be bound by the terms and conditions of this Section 7.02.

7.03 **Survival of Indemnification**. The provisions contained in this Article VII shall survive the termination of this Agreement.

ARTICLE VIII.
TERM

8.01 **Term**.

(a) The term of this Agreement commenced upon the Effective Date and shall terminate upon the occurrence of any of the following events: (i) the Co-Owners unanimously agree in writing to terminate this Agreement; (ii) the Co-Owners sell, exchange, or otherwise dispose of the entire Project and distribute the proceeds; or (iii) one Co-Owner acquires the entire Project. Notwithstanding the foregoing, or any other provision of this Agreement to the contrary, for so long as the Loan is outstanding, this Agreement may not be terminated, and the Co-Owners shall take no action that will terminate this Agreement as provided in this Section 8.01, without the prior written consent of the Lender.

(b) Neither the death, retirement, removal, withdrawal, termination nor resignation of the Property Manager, nor any assignment for the benefit of creditors by or the adjudication of bankruptcy or incompetency of the Property Manager shall cause the termination of this Agreement.

8.02 **Accounting on Termination**. In the event of any termination of this Agreement, there shall be a prompt accounting by the Co-Owner Manager with respect to the Project. A termination shall not relieve any Co-Owner of any obligations owing to any other Co-Owner existing at the time of such termination.

ARTICLE IX.
ELECTION TO PURCHASE OWNERSHIP INTERESTS

For purposes of this Agreement, if a Co-Owner exercises a right to purchase the Interest of another Co-Owner pursuant to this Agreement, then such Purchasing Co-Owner may elect, subject to compliance with the Loan Documents, to purchase, at closing, either: (a) the Interest of the selling Co-Owner; or (b) the ownership interest in such selling Co-Owner where such selling Co-Owner is an SPE.

ARTICLE X.
GENERAL PROVISIONS

10.01 **Mutuality; Reciprocity; Runs With the Land**. All provisions, conditions, covenants, restrictions, obligations and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part of the Project; shall be binding upon and shall inure to the benefit of each of the Co-Owners and their respective heirs, executors, administrators, successors, assigns, devisees, representatives and all other persons acquiring any undivided interest in the Project or any portion thereof whether by operation of law or any manner whatsoever (collectively, "*Successors*"); shall create mutual, equitable servitudes and burdens upon the undivided Interest in the Project

of each Co-Owner in favor of the Interest of every other Co-Owner; shall create reciprocal rights and obligations between the respective Co-Owners, their Interests in the Project, and their Successors; and shall, as to each of the Co-Owners and their Successors operate as covenants running with the land, for the benefit of the other Co-Owners pursuant to applicable law. It is expressly agreed that each covenant contained herein (i) is for the benefit of and is a burden upon the undivided Interests in the Project of each of the Co-Owners, (ii) runs with the undivided Interest in the Project of each Co-Owner, and (iii) benefits and is binding upon each Successor owner during its ownership of any undivided Interest in the Project, and each owner having any interest therein derived in any manner through any Co-Owner or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement is contained in the instrument conveying such interest in the Project to such person or entity. The Co-Owners agree that, subject to the restrictions on transfer contained herein, any Successor shall become a party to this Agreement upon acquisition of an undivided interest in the Project as if such person was a Co-Owner initially executing this Agreement.

10.02 **Binding Arbitration**. Any controversy arising out of or related to this Agreement or the breach thereof or an investment in the Interests shall be settled by arbitration in Dallas County, Texas, in accordance with the rules of The American Arbitration Association, and

judgment entered upon the award rendered may be enforced by appropriate judicial action pursuant to Texas law. The arbitration panel shall consist of three members, consisting of one member selected by each Co-Owner, which panel members shall be experienced in the legal rights related to the ownership and operation of projects similar to the Project. Selection of the members by the Co-Owners must occur within thirty (30) days following notice by one party that it desires that a matter be arbitrated. If there was no mediation and the parties are unable within such thirty (30) day period to agree upon the arbitrations, then the panel shall be one arbitrator selected by the Dallas, Texas office of The American Arbitration Association. Each member of the arbitration panel shall also be knowledgeable with respect to the subject matter area of the dispute, as well as applicable legal and equitable remedies related thereto. The non-prevailing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorneys' fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by it or the prevailing party or such costs shall be allocated by the arbitrator. The arbitration panel shall render a decision within thirty (30) days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within thirty (30) days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery; provided, in any event each Co-Owner shall be entitled to discovery in accordance with Texas law. Nothing contained herein shall prevent a Co-Owner from seeking equitable remedies under exigent circumstances.

10.03 **Attorneys' Fees**. If any action or proceeding is instituted between all or any of the Co-Owner arising from or related to or with this Agreement, the Co-Owner or Co-Owners prevailing in such action or arbitration shall be entitled to recover from the other Co-Owner or Co-Owners all of its or their costs of action or arbitration, including, without limitation, reasonable attorneys' fees and costs as fixed by the court or arbitrator therein.

10.04 **Entire Agreement**. This Agreement, together with the Property Management Agreement, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

10.05 **Governing Law; Venue. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RIGHTS, DUTIES AND THE LEGAL RELATIONS AMONG THE PARTIES HERETO AND THERETO SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OF LAW RULE OR PRINCIPLE THAT MIGHT REFER CONSTRUCTION OF SUCH PROVISIONS TO THE LAWS OF ANOTHER JURISDICTION. ALL OF THE PARTIES HERETO CONSENT TO THE EXERCISE OF JURISDICTION IN PERSONA BY THE FEDERAL COURTS OF THE UNITED STATES LOCATED IN DALLAS COUNTY, TEXAS OR THE STATE COURTS LOCATED IN DALLAS COUNTY, TEXAS FOR ANY ACTION ARISING OUT OF THIS AGREEMENT, THE TRANSACTION DOCUMENTS,**

OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. ALL ACTIONS OR PROCEEDINGS WITH RESPECT TO, ARISING DIRECTLY OR INDIRECTLY IN CONNECTION WITH, OUT OF, RELATED TO, OR FROM THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY SHALL BE EXCLUSIVELY LITIGATED IN SUCH COURTS DESCRIBED ABOVE HAVING SITES IN DALLAS, TEXAS AND EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF SUCH COURTS SOLELY IN RESPECT OF ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANOTHER IN ANY MATTER WHATSOEVER ARISING OUT OF OR IN RELATION TO OR IN CONNECTION WITH THIS AGREEMENT.

10.06 **Notice and Payments.**

(a) Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the Co-Owner at the

addresses specified on the signature page hereof or in any instrument effecting an assignment and assumption hereof. Any party hereto from time to time, by written notice to the others, may designate a different address (or phone number) that shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, or (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

(b) For all purposes of the Loan, the Co-Owners hereby designate the Co-Owner Manager as the notice party for purposes of all communication and correspondence by, with or on behalf of the Co-Owners with respect to the Lender.

10.07 **Successors**. All provisions of this Agreement shall inure to the benefit of and shall be binding upon the permitted successors-in-interest, assigns and legal representatives of the parties hereto.

10.08 **Waivers**. No act of any Co-Owner shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Co-Owner(s) affected.

10.09 **Counterparts**. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

10.10 **Severability**. If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

10.11 **Securities Laws**. **THE UNDIVIDED INTERESTS IN THE PROPERTY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF ANY OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH.**

10.12 **Time is of the Essence**. Time is of the essence of each and every provision of this Agreement.

10.13 **Subordination.**

(a) For so long as there is outstanding any balance on the Loan, the Deed of Trust, and any renewals and extensions thereof, shall unconditionally be and remain at all times a lien on the Project prior and superior to this Agreement and all rights, privileges, duties and obligations of each Co-Owner hereunder. For so long as there is any outstanding balance on the Loan, this Agreement and all rights, privileges, duties and obligations of the Co-Owners hereunder shall be and hereby are subjected and subordinated to the Note, the Deed of Trust, and the other Loan Documents, including, without limitation, all indebtedness, and any interest, fees, costs or expenses thereon due or to become due to the holder thereof under the Note, Deed of Trust or any other Loan Document. The Co-Owners each agree that they shall not engage in any activity which would violate the terms of any of the Loan Documents. The Co-Owners each agree not to allow its Interest in the Project to become subject to any liens of any third party, and if a Co-Owner's Interest is involuntarily encumbered, then such lien will be discharged within thirty (30) days. Each Co-Owner shall promptly respond to any request for information from the other Co-Owner or Lender and will promptly execute documents reasonably required in connection with the Loan and the operation of the Project. Each Co-Owner shall promptly notify all other Co-Owners and the Lender of any change in address or telephone number set forth on the signature page attached hereto.

(b) For so long as there is outstanding any balance on the Loan, the Co-Owners agree that: (i) any and all rights and remedies, including rights of indemnity or otherwise under this Agreement are subject to the terms and provisions of the Loan Documents; and (ii) they shall not take any action that would cause a violation of the Loan Documents.

10.14 **Memorandum**. The Co-Owners agree that they will execute and record the Memorandum of Co-Owners Agreement in the deed records of Dallas County, Texas in the form of **Exhibit H** attached hereto, in lieu of the recordation of this Co-Owners Agreement.

10.15 **Representations, Warranties, and Covenants of Owners of Co-Owners**.

(a) Ford Owner hereby represents, covenants, and agrees that:

(i) Ford Owner is an "accredited investor" as defined in Rule 501 of Regulation D of the General Rules and Regulations promulgated under the Securities Act of 1933.

(ii) Ford Owner is a Texas limited liability company, duly formed, validly existing and in good standing under the laws of

the State of Texas and has all requisite organizational power and authority to own, lease, and operate its Interest and to carry on its business as now conducted and as contemplated herein.

(iii) All of the outstanding membership interests of Ford Owner (the "*Ford Owner Interests*") are validly issued and owned, beneficially and of record, by Ford Owner. There are no interests or rights to Ford Owner Interests other than what issued, outstanding, and owned by Ford Owner.

(iv) Ford Owner owns free and clear of any and all liens, encumbrances, claims, or other restrictions or limitations whatsoever all legal and beneficial right, title, and interest in Ford Owner Interests. Except as created by this Agreement, Ford Owner has not, directly or indirectly entered into any agreement, commitment or arrangement to transfer, pledge, mortgage, hypothecate or otherwise encumber Ford Owner Interests or any interest therein.

(v) Ford Owner will not transfer all or a portion of Ford Owner Interests, or any interest therein, except in compliance with this Agreement and the Loan Documents, and only if the transferee executes a joinder, acknowledgement, and agreement to all the terms and conditions of this Agreement. Further, Ford Owner shall deliver written notice to the other Co-Owners of any such transfer, prior to or contemporaneously with such transfer.

(b) Hilltop Owner hereby represents, covenants, and agrees that:

(i) Hilltop Owner is an "accredited investor" as defined in Rule 501 of Regulation D of the General Rules and Regulations promulgated under the Securities Act of 1933.

(ii) Hilltop Owner is a Texas limited liability company, duly formed, validly existing and in good standing under the laws of the State of Texas and has all requisite organizational power and authority to own, lease, and operate

its Interest and to carry on its business as now conducted and as contemplated herein.

(iii) All of the outstanding membership interests of Hilltop Owner (the "*Hilltop Owner Interests*") are validly issued and owned, beneficially and of record, by Hilltop Owner. There are no interests or rights to Hilltop Owner Interests other than what issued, outstanding, and owned by Hilltop Owner.

(iv) Hilltop Owner owns free and clear of any and all liens, encumbrances, claims, or other restrictions or limitations whatsoever all legal and beneficial right, title, and interest in Hilltop Owner Interests. Except as created by this Agreement, Hilltop Owner has not, directly or indirectly entered into any agreement, commitment or arrangement to transfer, pledge, mortgage, hypothecate or otherwise encumber Hilltop Owner Interests or any interest therein.

(v) Hilltop Owner will not transfer all or a portion of Hilltop Owner Interests, or any interest therein, except in compliance with this Agreement and the Loan Documents, and only if the transferee executes a joinder, acknowledgement, and agreement to all the terms and conditions of this Agreement. Further, Hilltop Owner shall deliver written notice to the other Co-Owners of any such transfer, prior to or contemporaneously with such transfer.

(c) SPC Owner hereby represents, covenants, and agrees that:

(i) SPC Owner is an "accredited investor" as defined in Rule 501 of Regulation D of the General Rules and Regulations promulgated under the Securities Act of 1933

(ii) SPC Owner is a Texas limited liability company duly formed, validly existing and in good standing under the laws of the State of Texas and has all requisite organizational power and authority to own, lease, and operate its Interest and to carry on its business as now conducted and as contemplated herein.

(iii) All of the outstanding partnership interests of SPC Owner (the "*SPC Owner Interests*") are validly issued and owned, beneficially and of record, by SPC Owner. There are no interests or rights to SPC Owner Interests other than what issued, outstanding, and owned by SPC Owner.

(iv) SPC Owner owns free and clear of any and all liens, encumbrances, claims, or other restrictions or limitations whatsoever all legal and beneficial right, title, and interest in SPC Owner Interests. Except as created by this Agreement, SPC Owner has not, directly or indirectly entered into any agreement, commitment or arrangement to transfer, pledge, mortgage, hypothecate or otherwise encumber SPC Owner Interests or any interest therein.

(v) SPC Owner will not transfer all or a portion of SPC Owner Interests, or any interest therein, except in compliance with this Agreement and the Loan Documents, and only if the transferee executes a joinder, acknowledgement, and agreement to all the terms and conditions of this Agreement. Further, SPC Owner shall deliver written notice to the other Co-Owners of any such transfer, prior to or contemporaneously with such transfer.

10.16 **Confidentiality**. By executing this Agreement, each Co-Owner hereby agrees, on behalf of itself and each of its affiliates, not to reveal or make known to any person or entity (other than a Co-Owner's officers, directors, managers, members, partners, investors, prospective investors, lenders, prospective lenders, purchasers, accountants and attorneys) any financial statements or reports provided to the Co-Owners by the Co-Owner Manager, Property Manager, Developer, Leasing Agent or other third party contracted by the Co-Owners in accordance with this Agreement or any other information (whether written or otherwise) respecting the Property or the Project; provided, however, that the foregoing limitation shall not apply to any information which (A) was already known to such Co-Owner on a non-confidential basis at the time of its disclosure to such Co-Owner, (B) is made known to such Co-Owner on a non-confidential basis from a source other than the Co-Owner Manager, Property Manager, Developer, Leasing Agent or other third party contracted by the Co-Owners in accordance with this Agreement, (C) was at the time of its disclosure to such Co-Owner, or later becomes, part of the public domain otherwise than by any act, omission or fault of such Co-Owner, (D) the Co-Owner Manager authorizes such disclosure, or (E) is required to be disclosed by law, including, without limitation, rules promulgated by the Securities and Exchange Commission, or court order.

[This section left blank; signature pages to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CO-OWNERS:

FORD OWNER

DIAMOND HILLCREST, LLC,
a Texas limited liability company

By: /s/ GARY SHULTZ
Name: Gary Shultz
Title: Vice President

Notice Address: 200 Crescent Court
Suite 1350
Dallas, Texas 75201
Attn: Mr. Gary Shultz
Telephone Number: (214) 871-5938
Email: gshultz@diamond-a.com

With a copy to:

William C. Wilshusen
Haynes and Boone, LLP
Suite 700
2323 Victory Avenue
Dallas, TX 75219
Telephone Number: (214) 651-5595
e-mail: william.wilshusen@haynesboone.com

HILLTOP OWNER

HTH HILLCREST PROJECT LLC,
a Texas limited liability company

By: **Hilltop Holdings Inc**., its sole member

By: /s/ COREY PRESTIDGE
Name: Corey Prestidge
Title: Executive Vice President and General Counsel

Notice Address:
c/o Hilltop Holdings Inc.
2323 Victory Avenue, Suite 1400
Dallas, Texas 75219
Attn: Mr. Corey G. Prestidge

Telephone Number: (214) 525-4647
Email: cprestidge@hilltop-holdings.com

With a copy to:

Notice Address:
1445 Ross Ave, Suite 3800
Dallas, Texas 75202
Attn: Mr. K. Brock Bailey
Telephone Number: (214) 758-1076
Email: brock.bailey@bracewell.com

SPC OWNER

SPC PARK PLAZA PARTNERS LLC,
a Texas limited liability company

By: First American Exchange Company, LLC,
a Delaware limited liability company,
its sole member and manager

By: /s/ MARK A. BULLOCK
Name: Mark A. Bullock
Its: Legal Counsel

Notice address:
c/o FIRST AMERICAN EXCHANGE COMPANY
215 South State Street, Suite 380
Salt Lake City, UT 84111
Attn.: Mark A. Bullock
Legal Counsel

With a copy to:

Kane Russell Coleman Logan PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201
Attn: Raymond J. Kane
Telephone No.: 214-777-4290
Email: rkane@krcl.com

EXHIBITS AND SCHEDULES INTENTIONALLY OMITTED

(Back To Top)

Section 5: EX-10.4 (EX-10.4)

Exhibit 10.4

OFFICE LEASE

BETWEEN

SPC PARK PLAZA PARTNERS LLC, DIAMOND HILLCREST, LLC, AND HTH HILLCREST PROJECT LLC, AS CO-OWNERS

(“LANDLORD”)

AND

HILLTOP HOLDINGS INC.

(Doing Business in Texas as HTH HOLDINGS INC.)

("TENANT")

TABLE OF CONTENTS

EXHIBITS AND RIDERS:

OFFICE LEASE

This Office Lease (this "***Lease***") is entered into by and between **SPC PARK PLAZA PARTNERS LLC**, a Texas limited liability company, **DIAMOND HILLCREST, LLC**, a Texas limited liability company, and **HTH HILLCREST PROJECT LLC**, a Texas limited liability company, as co-owners (collectively, "***Landlord***"), and **HILLTOP HOLDINGS INC.**, a Maryland corporation, doing business in Texas as HTH Holdings Inc. ("***Tenant***"), and shall be effective as of , 2018 (the "***Effective Date***").

1. Basic Lease Information.

The key business terms used in this Lease are defined as follows:

A. "***Building***": A mixed-use retail and office tower to be constructed by Landlord located at 6565 Hillcrest Avenue, University Park, Texas 75205, which shall be known as Hilltop Plaza.

B. "***Rentable Square Footage of the Building***" is approximately 118,989 square feet of Rentable Square Footage composed of approximately 76,724.75 square feet of Rentable Square Footage in the Office Condominium Unit (defined below) and 42,264.25 square feet of Rentable Square Footage in the Retail Condominium Unit (defined below).

C. "***Premises***": The area shown on **Exhibit A-1** to this Lease, as follows:

Floor	Suite Number	Rentable Square Footage
Third	300	18,668
Fourth	400	19,351
Fifth	500	19,351
Sixth	600	10,690

The aggregate "***Rentable Square Footage of the Premises***" is approximately 68,060 square feet of Rentable Square Footage. Tenant shall have the right to expand or contract the size of the Premises as provided in **Riders No. 1 and 3** attached hereto. Promptly upon approval of Tenant's Plans (defined in **Exhibit D**) and prior to Tenant's application for permits for the Tenant Work, Landlord and Tenant shall remeasure the Rentable Square Footage of the Premises shown in the Approved Construction Documents (defined in **Exhibit D**) in accordance with BOMA ANSI Z65.1-2017 measurement standards. Upon Tenant's written request, Tenant shall have the right within sixty (60) days of Substantial Completion of the Tenant Work (defined in **Exhibit D**) to again remeasure the Premises in accordance with the aforesaid measurement standards, "Substantial Completion" of the Tenant Work being certified in and the date of Substantial Completion of the Tenant Work being the date established in a certificate of Substantial Completion issued by Tenant's architect. In the event any adjustment of the Rentable Square Footage is made as a result of any such remeasurement, the Base Rent, and the OE Payment payable under this Lease, the parking permits made available to Tenant and any other

concessions based on the Rentable Square Footage of the Premises shall be adjusted accordingly. The necessary adjustments, if any, shall be reflected in the Memorandum of Commencement Date and Square Footage attached hereto in the form of **Exhibit B**.

D. "***Base Rent***": Based on 68,060 RSF and subject to recalculation of Monthly Base Rent if the square footage of the Premises is revised pursuant to **Section 1.C**.

Period	Annual Base Rent Rate Per Rentable Square Foot	Monthly Base Rent
CD* through Month 9*	$ 0.00	$ 0.00
Month 10 through Month 21	$ 43.00	$ 243,881.66
Month 22 through Month 33	$ 43.65	$ 247,568.25
Month 34 through Month 45	$ 44.30	$ 251,254.83
Month 46 through Month 57	$ 44.96	$ 254,998.13
Month 58 through Month 69	$ 45.64	$ 258,854.86
Month 70 through Month 81	$ 46.32	$ 262,711.60
Month 82 through Month 93	$ 47.02	$ 266,681.76
Month 94 through Month 105	$ 47.72	$ 270,651.93
Month 106 through Month 117	$ 48.44	$ 274,735.53
Month 118 through ED*	$ 49.17	$ 278,875.85

* CD = Commencement Date
ED = Expiration Date
Commencement Date through Month 9 = "Abated Rent Period"

E. "***Tenant's Pro Rata Share***": The percentage equal to the Rentable Square Footage of the Premises divided by the Rentable Square Footage of: (1) the entire Building for expenses that apply to the entire Property; (2) the Office Condominium Unit for expenses that apply only to the Office Condominium Unit; (3) the Commercial Condominium Unit and the Office Condominium Unit combined for expenses that apply to both the Commercial Condominium Unit and the Office Condominium Unit, and (4) the portion of the Building to which an expense is directly attributable or reasonably and fairly allocable for expenses that apply other than to: (i) the entire Office Condominium Unit, or (ii) the entire Commercial Condominium Unit and the entire Office Condominium Unit combined.

F. "***Term***": The period of one hundred twenty-nine (129) months (as more particularly defined in **Section 3.B**), starting on the Commencement Date, as such period may be extended pursuant to **Rider No. 2** attached to this Lease.

G. "***Commencement Date***": One hundred eighty (180) days after the Actual Delivery Date (defined in **Section 3.C**), subject to adjustment, if any, as provided in **Section 3.C**, **Section 3.H** and the Work Letter.

H. "***Business Day(s)***" shall mean the days national banks are open for business in Dallas, Texas.

I. "***Holidays***": New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day. Landlord may designate additional Holidays, provided that the additional Holidays are commonly recognized by other Comparable Buildings.

J. "***Law(s)***": (i) All applicable statutes, codes, ordinances, orders, rules and regulations of any municipal or governmental entity, now or hereafter adopted, including the Americans with Disabilities Act and any other law pertaining to disabilities and architectural barriers (collectively, "***ADA***"), and all laws pertaining to the environment, including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq. ("***CERCLA***"), and (ii) all restrictive covenants existing of record as of the Effective Date and (iii) all rules and requirements of any association or improvement district affecting the Property; provided that, any Laws under subsection (iii) which are modified after the Effective Date do not materially diminish the rights or materially increase the obligations of Tenant under this Lease.

K. "***Normal Business Hours***": 7:00 A.M. to 6:00 P.M. Monday through Friday and 8:00 A.M. to 1:00 P.M. on Saturdays, exclusive of Holidays.

L. "***Comparable Buildings***" shall mean other comparable Class AA office buildings in Dallas County, Texas, taking into account age, quality, size, location and other relevant operating factors.

M. "***Notice Addresses***":

Tenant: On or after the Commencement Date, notices shall be sent to Tenant at the Premises, as follows:

Tenant:
Hilltop Holdings Inc.
6565 Hillcrest Ave., Suite 300
University Park, Texas 75205
Attn: Lisa Loreto, Senior Vice President
(469) 718-4620
Email: Lisa.Loreto@hilltop-holdings.com

With copy to:
SRS-Cresa Lease Administration
c/o Hilltop Holdings Inc.
15660 North Dallas Parkway, Suite 1200
Dallas, Texas 75248
Attn: Real Estate Administrator

And to:
Bracewell LLP
1445 Ross Avenue, Suite 3800
Dallas, Texas 75202
Attn: K. Brock Bailey
(214) 758-1076
Email: Brock.Bailey@bracewell.com

Prior to the Commencement Date, notices shall be sent to Tenant at the following address:

Tenant:
Hilltop Holdings Inc.
2323 Victory Ave., Suite 1400
Dallas, Texas 75219
Attn: Lisa Loreto, Senior Vice President
(469) 718-4620
Email: Lisa.Loreto@hilltop-holdings.com

With copy to:
SRS-Cresa Lease Administration
c/o Hilltop Holdings Inc.
15660 North Dallas Parkway, Suite 1200
Dallas, Texas 75248
Attn: Real Estate Administrator

And to:
Bracewell LLP
1445 Ross Avenue, Suite 3800
Dallas, Texas 75202
Attn: K. Brock Bailey
(214) 758-1076
Email: Brock.Bailey@bracewell.com

Landlord: Notices shall be sent to Landlord, as follows:

Landlord:
SPC Park Plaza Partners LLC
c/o First American Exchange Company
215 South State Street, Suite 380
Salt Lake City, UT 84111
Tel.: (866) 516-1031
Email: mbullock@firstam.com

With a copy to:
Kane Russell Coleman Logan PC
1601 Elm Street, Suite 3700
Dallas, Texas 75201
Attn: Raymond J. Kane
(214) 777-4290
Email: rkane@krcl.com

Diamond Hillcrest, LLC
200 Crescent Court, Suite 1350
Dallas, Texas 75201
Attn: Gary Shultz
Tel.: (214) 871-5151
Email: gshultz@diamond-a.com

Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Attn: William C. Wilshusen
Tel.: (214) 651-5595
Email: William.wilshusen@haynesboone.com

HTH Hillcrest Project LLC
2323 Victory Avenue, Suite 1400
Dallas, Texas 75219
Attn: Corey G. Prestidge
Tel.: (214) 525-4647
Email: cprestige@hilltop-holdings.com

Bracewell LLP
1445 Ross Avenue, Suite 3800
Dallas, Texas 75202
Attn: K. Brock Bailey
(214) 758-1076
Email: Brock.Bailey@bracewell.com

"Rent" (defined in **Section 4.A**) is payable to the order of SPC Park Plaza Partners LLC as follows:

If by check:
SPC Park Plaza Partners LLC
6565 Hillcrest, Suite 200
Dallas, Texas 75205
Attn: Chuck Keller

If by wire transfer:
[BANK (location)**]
ABA #[ ]
Account #: **
Account Name: **
Reference: [ ]

If by ACH:
[BANK (location)**]
ABA #[ ]
Account #: **
Account Name: **
Reference: [ ]

[If necessary, this can be confirmed or completed in the Memorandum of Commencement Date and Square Footage to be executed pursuant to **Section 3.B]

2. Lease Grant.

As further described below, the Premises is a part of a mixed use condominium project known as Hilltop Plaza Condominium, containing the Office Condominium Unit of the Building (the "***Office Condominium Unit***"), as one component, as well as a Retail Condominium Unit of the Building (the "***Commercial Condominium Unit***" or "***Retail Condominium Unit***"), as another component, and an attached parking garage with 3 levels of parking (the "***Parking Condominium Unit***" or "***Parking Garage***"), as a third component. Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord, together with the right in common with others to use any portions of the Property (defined below) that are designated by Landlord for the common use of tenants and others, such as sidewalks, common corridors, vending areas, and lobby areas, and with respect to multi-tenant floors, restrooms and elevator foyers (collectively, the "***Common Areas***"). Tenant's use of lobbies and other Common Areas of the Building, plus elevators, freight elevators and loading dock shall be subject to scheduling and reasonable rules and regulations and any costs more particularly set forth herein associated with such usage. "***Property***" or "***Project***" means the Building and the parcel(s) of land on which it is located as more fully described on **Exhibit A-2**, together with all other buildings and improvements located thereon, the Retail Condominium Unit, the Parking Garage, and other improvements serving the Building, and the parcel(s) of land on which they are located. Tenant acknowledges and agrees as follows:

A. This Lease, and Tenant's rights hereunder, are subject and subordinate to any and all documents governing the maintenance, operation, and use of the condominium, including without limitation that certain Master Declaration of Condominium for Hilltop Plaza Condominium, recorded in the Official Public Records of Dallas County, Texas (the "**Master Declaration**"); the Certificate of Formation of Hilltop Plaza Condominium Association, Inc. (the "***Master Association***"); By-Laws of the Master Association; and Rules and Regulations of Hilltop Plaza Condominium; and any rules or regulations promulgated by or on behalf of said Master Association, whether recorded or unrecorded (collectively, and as all may be amended or supplemented from time to time, the "***Condominium Documents***"). Notwithstanding the foregoing, (i) in the event of any conflict between the terms of this Lease and the Condominium Documents, as amended from time to time, the terms of this Lease shall control; and (ii) nothing in the Condominium Documents, as amended from time to time, shall increase Tenant's obligations (including with respect to Operating Expenses), nor decrease its rights, under this Lease. Landlord hereby represents and warrants that all of the Condominium Documents attached to this Lease as **Exhibit J** are true, correct, and complete, and that there are no other Condominium Documents other than those attached hereto as **Exhibit J**. Landlord agrees that it will not, as a member of the Condominium Association or otherwise, amend, or suffer or permit the Condominium Documents to be amended, without first receiving the prior written consent of Tenant.

B. Some of the obligations of Landlord under this Lease may be performed or will be performable by the Master Association pursuant to the Master Declaration. Without waiving or limiting any of Landlord's obligations under this Lease, and subject to the terms of this Lease, Tenant hereby agrees that the Master Association may perform such obligations on behalf of Landlord, and Tenant agrees to reimburse Landlord for the performance of such obligations by

the Master Association, as and when required by the terms of this Lease. To the extent that any employee, agent, or contractor of the Master Association performs any such obligations on behalf of Landlord under this Lease, such employee, agent, or contractor shall be deemed a Landlord Party (defined in Article 12) for all purposes under this Lease.

C. Notwithstanding anything to the contrary contained in this Lease, Landlord, on behalf of itself, its lenders, and their successor and assigns, covenants and agrees that any assignment, sublease, transfer or encumbrance of any interest created by, or which becomes subject to, the Master Declaration (either absolutely or collaterally) shall be conditioned upon the receipt by Tenant of an agreement (in form and substance reasonably acceptable to Tenant) from such assignee, sublessee, transferee or beneficiary recognizing Tenant's rights under this Lease, including without limitation, Tenant's rights of access to and from the Premises, Tenant's Signage rights, Tenant's rights to use the parking spaces specified in this Lease, and Tenant's rights to perform repair and maintenance obligations which Landlord has failed or refuses to make or cause to be made (whether to the Building, the Property, or to any of the units created by the Master Declaration), all as specifically set forth in this Lease.

3. Construction; Term; Adjustment of Commencement Date; Possession.

A. **Construction of Building**. The parties acknowledge that as of the Effective Date of this Lease, the Building is not yet constructed. The Building will be constructed generally in accordance with the building schematics attached hereto as Schedule 2 to **Exhibit C** (the "***Building Schematics***") and the Building will be improved by the Landlord Work as described in **Exhibit C**. Landlord shall complete the Building substantially in accordance with the Building Schematics and **Exhibit C**. Landlord shall consult with and solicit comments from Tenant before proceeding with any Building scheme substantially different from the scheme illustrated by the Building Schematics, and shall obtain Tenant's consent to all such changes. Tenant shall respond to such request within 10 Business Days after receipt of such request, with Tenant's failure to timely respond to a request for Tenant consent to a change being deemed consent to such change. Tenant shall designate a construction representative who will represent Tenant in connection with the interaction contemplated by this **Section 3.A**, and Tenant initially designates Lisa Loreto as such representative. Tenant may change such representative upon 10 days' prior written notice to Landlord.

B. **Term**. The term of this Lease shall commence on the Commencement Date and, unless terminated early in accordance with this Lease, continue through the last day of the Term specified in **Section 1.F**. (the "***Expiration Date***"). Except as otherwise expressly set forth in **Section 3.F** below, Landlord's delay in delivering possession of the Premises for any reason shall not be a default by Landlord, render this Lease void or voidable, or otherwise render Landlord liable for damages. Within thirty (30) days of the occurrence of the Commencement Date the parties shall execute a Memorandum of Commencement Date and Square Footage in the form attached hereto as **Exhibit B** and made a part hereof. If such Memorandum of Commencement Date is not executed or objected to in writing by Tenant within 30 days after delivery of same by Landlord, then Tenant shall be deemed to have agreed with the matters set forth therein. Notwithstanding any other provision of this Lease to the contrary, if the Expiration Date would

occur on a date other than the last day of a calendar month, then the Expiration Date shall be automatically extended to the last day of such calendar month.

C. **Delivery Date**. It is anticipated that Landlord will deliver the Premises and the Building in Delivery Condition (as defined hereinbelow) on or before May 31, 2019 (the "***Scheduled Delivery Date***") so that Tenant may commence the construction of its Tenant Work pursuant to the Work Letter attached hereto as **Exhibit D** (the "***Work Letter***"). The "***Actual Delivery Date***," as such term is used herein, shall refer to the date Landlord actually delivers the Premises and the Building to Tenant in Delivery Condition. Landlord shall use diligent efforts to deliver the Premises in Delivery Condition on or before the Scheduled Delivery Date.

"***Delivery Condition***" shall mean that:

(1) The Premises have been delivered to Tenant in the condition specified in **Exhibit C** and free of debris, subject to completion of the Landlord Work;

(2) The Landlord Work is Substantially Complete, except to the extent the noncompletion of the Landlord Work will not materially interfere with the Tenant Work; and

(3) Means of access to the Premises and all facilities necessary for Tenant to begin the Tenant Work, including necessary lifts, elevators and stairways, have been installed and are in good operating order and available to Tenant in coordination with Landlord.

Landlord shall complete the Landlord Work in the Premises in coordination with Tenant's performance of the Tenant Work no later than Tenant's occupancy of the Premises for its permitted use. Landlord shall, to the extent reasonably possible, perform the portion of the Landlord Work which must be completed in conjunction with the Tenant Work in a manner that does not materially impede the progress of the Tenant Work. Landlord and Tenant agree to cooperate and to cause their respective contractors to cooperate so as to avoid an unreasonable delay of the Landlord Work or the Tenant Work by reason of the coordinated construction.

Landlord agrees to construct the base Building in substantial accordance with the Building Construction Schedule attached as Schedule 1 to **Exhibit C**, subject to extension as provided in this Lease. If at any time there is a change in the Construction Schedule for the Building such that the Actual Delivery Date is anticipated to occur after the Scheduled Delivery Date, Landlord shall promptly give Tenant notice of any such change (and all subsequent changes, if any), and shall, in all events, give Tenant at least thirty (30) days' prior written notice of the Actual Delivery Date.

Except as expressly set forth below, Landlord shall have no liability whatsoever to Tenant on account of Landlord's failure to meet any date in the Construction Schedule; furthermore, if Landlord fails to meet one date but satisfies the next ensuing date, then Landlord shall have no liability whatsoever to Tenant. If a date is so extended so that it falls on other than a Business Day, the date shall be further extended, at Landlord's discretion, so as to fall on the next occurring Business Day. Notwithstanding the foregoing, in no event will Force Majeure Delays (as defined in **Section 30.C**) total, in the aggregate, more than 180 days. Not later than 20 days after the end of any calendar month in which Landlord believes that a Force Majeure Delay has

occurred, Landlord shall deliver to Tenant written notice of the number of Force Majeure Delay days being claimed in such prior month, the details supporting the Force Majeure Delay, and the cumulative total of all Force Majeure Delays being claimed by Landlord through the end of such prior month, and the failure of Landlord to timely do so shall prevent Landlord from claiming Force Majeure Delay(s) for the month such notification was not timely given to Tenant.

D. **Substantial Completion; Tenant Delay**. The Landlord Work shall be deemed to be "***Substantially Complete***" on the date that the Landlord Work has been performed to the extent that Tenant may reasonably commence the Tenant Work (as defined in **Exhibit D** attached hereto). "***Tenant Delay***" means any act or omission of Tenant or its agents, employees, vendors or contractors that actually delays the Substantial Completion of the Landlord Work, including: (i) Tenant's failure to furnish information or approvals within any time period specified in this Lease, including the failure to prepare or approve preliminary or final plans by any applicable due date; (ii) Tenant's selection of non-building standard equipment or materials; (iii) changes requested or made by Tenant to previously approved plans and specifications; or (iv) performance of work in the Premises by Tenant or Tenant's contractor(s) during the performance of the Landlord Work prior to the date upon which the Landlord Work is Substantially Complete.

E. **Landlord Delay**. "***Landlord Delay***" means any delay not caused by Tenant.

F. **Tenant Remedies**.

(1) Subject to extension due to Force Majeure Delay(s) and Tenant Delay in accordance with this Lease, if Landlord has not delivered the Premises to Tenant in Delivery Condition by May 31, 2019 (the "***First Outside Delivery Date***"), then Tenant shall be entitled to receive a two-day extension of the Abated Rent Period and the Parking Abatement Period (defined in **Exhibit F**) for each additional day of delivery of the Premises beyond the First Outside Delivery Date (the "***First Additional Abated Rent***"). If, subject to extension due to Force Majeure Delay (s) and Tenant Delay in accordance with this Lease, Landlord has not delivered the Premises to Tenant by the ***First Outside Delivery Date***, in addition to the First Additional Abated Rent as set forth above, Landlord shall pay Tenant the following damages (collectively, "***Holdover Damages***"): the difference between what Tenant is currently actually paying under its current lease and any holdover differential on its current leased space or increased rent on any substituted space (plus moving costs) between May 31, 2019, and the Actual Delivery Date, and all actual and reasonable documented overtime charges necessitated to expedite the Tenant Work, provided that such overtime charges shall not exceed $365,000.00.

(2) Subject to extension due to Force Majeure Delay(s) and Tenant Delay in accordance with this Lease, if Landlord has not delivered the Premises to Tenant on or before August 30, 2019 (the "***Second Outside Delivery Date***"), then in addition to the remedies set forth in **Section 3.F(1)** above, Tenant shall be entitled to receive an additional one-day extension of the Abated Rent Period and the Parking Abatement Period for each additional day of delivery of the Premises beyond the Second Outside Delivery Date, for an aggregate extension of three (3) days of the Abated Rent Period and the Parking Abatement Period for each additional day of delivery of the Premises beyond the Second Outside Delivery Date (the "***Second Additional***

Abated Rent"). If Landlord has not delivered the Premises to Tenant by the Second Outside Delivery Date, in addition to the Second Additional Abated Rent, Landlord shall pay Tenant Holdover Damages, as set forth above, and Tenant shall have the right, but not the obligation, to complete the Landlord Work at Landlord's expense. In addition, and notwithstanding anything to the contrary in this Lease, if Landlord has not delivered the Premises within four hundred fifty (450) days after the Second Outside Delivery Date, subject to Tenant Delay (defined below) and Force Majeure Delay (as limited in this **Section 3**), then Tenant shall have the right, as its sole remedy, to terminate this Lease upon written notice to Landlord given at any time after such 450-day period and prior to delivery of the Premises.

G. **Acceptance of Premises**. Subject to Landlord's obligation to perform the Landlord Work, Landlord's repair obligations under **Section 8.B**., and any latent defects in the Premises or the Landlord Work of which Tenant provides, written notice not later than 365 days following the Actual Delivery Date, the Premises are accepted by Tenant in "as is" condition and configuration. By taking possession of the Premises, and with the exception of any Landlord Work that is not Substantially Complete, Tenant agrees that the Premises are in good order and satisfactory condition, and that there are no representations or warranties, express or implied, by Landlord regarding the condition of the Premises or the Building, except as expressly set forth herein.

H. **Possession of Premises Prior to Commencement Date**. Notwithstanding the fact that the Premises may not fully satisfy all of the criteria in the definition of "***Delivery Condition***", Tenant, along with its employees, agents, contractors, subcontractors, space planner/interior architect, engineers, consultants, vendors, suppliers and other representatives, and their respective employees, shall be permitted to enter the Premises, for the purpose of performing the Tenant Work as soon as the floors of the Building are dried in and are, in Landlord's reasonable discretion, ready for the commencement of the Tenant Work. Tenant will coordinate Tenant's construction activities with Landlord's Contractor (s), prior to the Commencement Date for the purposes of inspecting same, and for the installation of furniture, fixtures and equipment (including telephone, communications and computer equipment). Except as otherwise provided herein, there shall be no obligation on the part of Tenant to pay Base Rent or Tenant's Pro Rata Share of Operating Expenses by reason of any such access between the Actual Delivery Date and the date of Substantial Completion of the Tenant Work. Any party having prior access must comply with Landlord's standard insurance provisions and other requirements pursuant to **Section 6.C**. Tenant shall have the right to also access and use loading dock facilities, parking facilities and freight elevator(s), as well as access to and use of appropriate electrical and other systems and related facilities, provided such entry and work shall be in harmony with Landlord's contractors and subcontractors, and shall not materially interfere with or delay completion of the Landlord Work to be performed by Landlord in the Premises or elsewhere in the Building. Between the date the Tenant Work is Substantially Complete (as defined in the Work Letter), and provided Tenant has received a certificate of occupancy or its official equivalent issued by the applicable governmental authority (a "***CO***"), and further provided that Landlord has received a temporary CO for the Building, to the extent available, Tenant shall be allowed to occupy the Premises for the purposes of the Permitted Use, and there shall be no obligation on the part of Tenant to pay Base Rent or Additional Rent by reason of any such occupancy between such occupancy date and the Commencement Date.

I. **Move-In**. Tenant will move its furniture, furnishings, equipment, supplies and other property required for doing business into the Premises commencing on or about the date of Substantial Completion of Tenant's Work. Landlord and Tenant will mutually schedule the actual move in date(s). Landlord shall furnish, without charge to Tenant (except for electricity charges, which shall be payable as set forth in **Section 7.B**) such air conditioning, light and power as may be required in the Premises, elevator service, including the Building freight elevator(s), and the services or operators for such elevators during such move-in, and all other services required to be delivered by Landlord pursuant to this Lease.

4. Rent.

A. **Payments**. As consideration for this Lease, commencing on the Commencement Date, Tenant shall pay Landlord, without any demand, setoff or deduction (except as expressly set forth in this Lease), the total amount of Base Rent and Additional Rent (defined below) (which are sometimes collectively referred to as "***Rent***"). "***Additional Rent***" means the OE Payment and all other sums (exclusive of Base Rent) that Tenant is required to pay Landlord under this Lease. Tenant shall pay and be liable for Tenant's allocable portion of all gross receipts, margin, rental, sales and use taxes (but excluding income taxes), if any, imposed upon or measured by rents, receipts or income attributable to ownership, use, occupancy, rental, leasing, operation or possession of the Property (in addition to, but not in duplication of, amounts included in Operating Expenses pursuant to **Section 4.D(5)**). The monthly Base Rent and the OE Payment shall be due and payable in advance on the first day of each calendar month without notice or demand. All other items of Rent shall be due and payable by Tenant on or before 30 days after billing by Landlord. All payments of Rent shall be by good and sufficient check or by other means (such as automatic debit or electronic transfer) reasonably acceptable to Landlord. If the Term commences on a day other than the first day of a calendar month, the monthly Base Rent and the OE Payment for the month shall be prorated on a daily basis based on a 360 day calendar year, and such prorated amount shall be due and payable on the first day of the month following the Commencement Date. Landlord's acceptance of less than the correct amount of Rent shall be considered a payment on account of the earliest Rent due. No endorsement or statement on a check or letter accompanying a check or payment shall be considered an accord and satisfaction, and either party may accept such check or payment without such acceptance being considered a waiver of any rights such party may have under this Lease or applicable Law. Tenant's covenant to pay Rent is independent of every other covenant in this Lease. Notwithstanding the foregoing, from the Commencement Date through the last day of Month 9 of the Term, Tenant shall not be required to pay Base Rent or the OE Payment; however, Tenant shall be required to pay Tenant's Pro Rata Share of the portion of Operating Expenses allocable to electrical costs pursuant to **Section 4.D(10)**.

B. **Payment of Operating Expenses**. Tenant shall pay Tenant's Pro Rata Share of the Operating Expenses (the "***OE Payment***") for each calendar year during the Term. Notwithstanding the foregoing, beginning on the first anniversary of the Commencement Date, Tenant's Pro Rata Share of Controllable Expenses (defined below) shall not increase by more than 5% over Tenant's Pro Rata Share of Controllable Expenses in the prior calendar year. The term "***Controllable Expenses***" means all Operating Expenses excluding expenses relating to the cost of insurance and real estate taxes and assessments. On or about January 1 of each calendar

year, Landlord shall provide Tenant with a good faith estimate of the OE Payment for such calendar year during the Term. On or before the first day of each month, Tenant shall pay to Landlord a monthly installment equal to one-twelfth of Landlord's estimate of the OE Payment. If Landlord determines that its good faith estimate of the Operating Expenses was incorrect, Landlord may provide Tenant with a revised estimate. After its receipt of the revised estimate, Tenant's monthly payments shall be based upon the revised estimate. If Landlord does not provide Tenant with an estimate of the OE Payment by January 1 of a calendar year, Tenant shall continue to pay monthly installments based on the most recent estimate (s) until Landlord provides Tenant with the new estimate. Upon delivery of the new estimate, an adjustment shall be made for any month for which Tenant paid monthly installments based on the same year's prior incorrect estimate(s). Tenant shall pay Landlord the amount of any underpayment within 30 days after receipt of the new estimate. Any overpayment shall be credited against the next sums due and owing by Tenant or, if no further Rent is due, refunded directly to Tenant within 30 days of determination. Landlord shall use a consistent methodology in computing each tenant's pro rata share of Operating Expenses from year to year. Landlord currently estimates that the Operating Expenses for the calendar year 2020 will be $19.00 per Rentable Square Foot.

C. **Reconciliation of Operating Expenses**. Within 120 days after the end of each calendar year or as soon thereafter as is practicable, Landlord shall furnish Tenant with a statement of the actual Operating Expenses and the OE Payment for such calendar year. If the most recent estimated OE Payment paid by Tenant for such calendar year is more than the actual OE Payment for such calendar year, Landlord shall apply any overpayment by Tenant against Rent due or next becoming due; provided, if the Term expires before the determination of the overpayment, Landlord shall, within 30 days of determination, refund any overpayment to Tenant after first deducting the amount of Rent due within 30 days of determination. If the most recent estimated OE Payment paid by Tenant for the prior calendar year is less than the actual OE Payment for such year, Tenant shall pay Landlord, within 30 days after its receipt of the statement of Operating Expenses and the OE Payment, any underpayment for the prior calendar year.

D. **Operating Expenses Defined**. "***Operating Expenses***" means all costs and expenses incurred or accrued in each calendar year in connection with the operation, maintenance, management, repair and protection of the Property which are directly attributable or reasonably and fairly allocable to the Property as reasonably determined by Landlord, employing sound and consistent accounting principles, including Landlord's personal property used in connection with the Property and including, but not limited to, all costs and expenditures relating to the following:

(1) Operation, maintenance, repair and replacements of any part of the Property, including the mechanical, electrical, plumbing, HVAC, vertical transportation, fire prevention and warning and security systems; materials and supplies (such as light bulbs and ballasts); equipment and tools; floor, wall and window coverings; personal property; required or beneficial easements; and related service agreements and rental expenses.

(2) Administrative, asset management, and management fees and costs, including accounting, information and professional services (except for negotiations and disputes

with specific, future tenants, if any, not affecting other parties); fees and assessments from the Office Condominium Unit, the Parking Condominium Unit, and Master Association as set forth in **Section 2**; management office(s); and wages, salaries, benefits, reimbursable expenses

and taxes (or allocations thereof if the same are not 100% attributable to the Property) for full and part time personnel involved in operation, maintenance and management of the Property at or below the level of regional property manager and regional asset manager; *provided, however*, the total combined costs of such administrative, asset management, and fees and assessments from the Office Condominium Unit, the Parking Condominium Unit, or Master Association as set forth in **Section 2**, together with all such management fees and costs, shall not exceed 4% of the Building Gross Revenue.

(3) Janitorial service; window cleaning; waste disposal; gas, water and sewer and other utility charges (including add-ons); and landscaping, including all applicable tools and supplies.

(4) Property, liability and other insurance coverages carried by Landlord, including deductibles (not to exceed $20,000.00 per occurrence) and risk retention programs and a proportionate allocation of the cost of blanket insurance policies maintained by Landlord and/or its Affiliates (defined below).

(5) Real estate taxes, assessments, excises, association dues, fees, levies, charges and other taxes of every kind and nature whatsoever, general and special, extraordinary and ordinary, foreseen and unforeseen, including interest on installment payments, which may be levied or assessed against or arise in connection with ownership, use, occupancy, rental, leasing, operation or possession of the Property, or paid as rent under any ground lease ("***Tax Expenses***"). Tax Expenses shall include, without limitation: (i) any tax on the rent or other revenue from the Property, or any portion thereof, or as against the business of owning or leasing the Property, or any portion thereof, including any business, gross margins, or similar tax payable by Landlord which is attributable to rent or other revenue derived from the Property, (ii) any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, (iii) personal property taxes for property that is owned by Landlord and used in connection with the operation, maintenance and repair of the Property, (iv) any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, and (v) any assessment, tax, fee, levy or charge substituted, in whole or in part, for a tax previously in existence, or assessed in lieu of a tax increase. Tax Expenses shall not include Landlord's estate, excise, income or franchise taxes (except to the extent provided above).

(6) Compliance with Laws enacted, amended or interpreted differently after the Effective Date, including license, permit and inspection fees (but not in duplication of capital expenditures amortized as provided in **Section 4.D(9)**); and all expenses and fees, including attorneys' fees and court or other venue of dispute resolution costs, incurred in negotiating or contesting real estate taxes or the validity and/or applicability of any governmental enactments which may affect Operating Expenses; provided Landlord shall credit against Operating Expenses any refunds received from such negotiations or contests to the extent originally included in Operating Expenses (less Landlord's costs).

(7) Building safety services.

(8) Goods and services purchased from Landlord's subsidiaries and Affiliates to the extent the cost of same is generally consistent with rates charged by unaffiliated third parties for similar goods and services (except no such limitation shall apply in emergencies).

(9) Amortization of capital expenditures incurred with the intention of reducing or controlling increases in Operating Expenses, such as lighting retrofit and installation of energy management systems, but only to the extent of the actual savings. Such expenditures shall be amortized uniformly over the useful life of the capital asset as reasonably determined by Landlord, together with interest on the unamortized balance at the Prime Rate (hereinafter defined) (as of the date incurred) plus 2%. In addition and notwithstanding the foregoing, as the Property is new construction, no amortization of capital expenditures shall be a part of Operating Expenses during the first five (5) years of the Term.

(10) Electrical services used in the operation, maintenance and use of the Property; sales, use, excise and other taxes assessed by governmental authorities on electrical services supplied to the Property, and other costs of providing electrical services to the Property. Landlord agrees that the electrical service for any restaurants within the Property shall be separately metered.

E. **Exclusions from Operating Expenses**. Operating Expenses exclude the following expenditures:

(1) Leasing commissions, attorneys' fees and other expenses related to leasing tenant space and constructing improvements for the sole benefit of an individual tenant.

(2) Goods and services (including electrical services) furnished to an individual tenant of the Building which are above Building Standard and that are only available to Tenant at additional cost under the Lease.

(3) Repairs, replacements and general maintenance paid by insurance proceeds or condemnation proceeds or covered by warranty.

(4) Except as provided in **Section 4.D(9)**, depreciation, amortization, principal and interest payments on any encumbrances on the Property and the cost of capital improvements, capital repairs or additions or capital replacements.

(5) Costs related exclusively to: (i) any retail tenant in the Project for services only provided to such tenant; (ii) the Retail Condominium Unit for services only provided to the Retail Condominium Unit, and (iii) of the Master Association related to the Retail Condominium Unit, which are not directly attributable or reasonably and fairly allocable to the Office Condominium Unit.

(6) Costs of installing, operating and maintaining any specialty service, such as, but not limited to, an observatory,

broadcasting facility, luncheon club, cafeteria, retail store, sundry shop, newsstand, car wash, athletic or recreational club or day care center.

(7) Costs of repairing, maintaining, or replacing any latent defects in the construction of the Building, and expenses for repairs or maintenance related to the Property which have been reimbursed to Landlord pursuant to warranties or service contracts.

(8) Costs (other than maintenance costs) of any art work (such as sculptures or paintings) used to decorate the Building.

(9) Principal payments on indebtedness secured by liens against the Property, or costs of refinancing such indebtedness.

(10) Rental, gross receipts, sales and use, or other taxes, if any, imposed upon or measured by rents, receipts or income attributable to ownership, use, occupancy, rental, leasing, operation or possession of the Property which have been paid by tenants pursuant to **Section 4.A**.

(11) Legal, auditing, consulting and professional fees paid or incurred in connection with negotiations for financings, refinancings, sales, acquisitions, obtaining of permits or approvals relating to the development of the Building, zoning proceedings or actions, environmental permits or actions, lawsuits, or further development of the Property.

(12) Expenses incurred in leasing or procuring new tenants, including advertising and leasing fees, commissions or brokerage commissions of any kind, including without limitation, signing bonuses, moving expenses, assumption of rent under existing leases and other concessions or inducements, marketing expenses and expenses for preparation of leases or renovating space for new tenants and build out allowances.

(13) The amount of rent or other charges payable under and pursuant to any ground lease or superior lease pertaining to the Property.

(14) Costs incurred in correcting defects in construction of the Property, including noncompliance of Laws.

(15) Any advertising, promotional or marketing expenses for the Property.

(16) Except in emergencies, costs, fees, and compensation paid to Landlord or to Landlord's Affiliates, for services in or to the Property to the extent that they exceed the charges for comparable services rendered by an unaffiliated third party of comparable skill, competence, stature, and reputation.

(17) Services, costs, items and benefits for which Tenant or any other tenant or occupant of the Building or third person (including insurers) specifically reimburses Landlord or for which Tenant or any other tenant or occupant of the Building pays third persons.

(18) Fines, penalties and default interest.

(19) Contributions to charitable or political organizations.

(20) Contributions to operating expense reserves.

(21) Costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Property.

(22) Expenses incurred by Landlord for the use of any portion of the Property to accommodate special events such as shows, promotions, filming, displays, photography, private events, parties and ceremonies, to the extent invitations to such events, parties or celebrations are not extended to all of the tenants of the Building.

(23) The initial cost of tools and equipment used in the operation of the Property.

(24) Flowers, gifts, balloons, or similar items provided to any vendors, contractors, prospective tenants, and agents, and any such items provided to any or all tenants or their employees; however, such exclusion does not apply to flowers and other decorations to be placed in Building lobbies.

(25) Entertainment or dining expenses, or travel expenses for Building employees.

(26) Costs of constructing additions to the Building or new buildings on the Property, or otherwise further developing the Property.

(27) Any validated parking for any entity.

(28) Rentals and other related expenses incurred in leasing air-conditioning systems, elevators, and other equipment ordinarily considered to be capital expenditures.

(29) Any rental, imputed rental, or associated costs for any management office space that exceeds 2,000 rentable square feet or for which the rental rate exceeds the prevailing rental rate for comparable office space in the Building, and any costs associated with the purchase of furniture and office equipment for Landlord, Landlord's property manager, or their agents, contractors, and lenders.

(30) Costs for expenditures incurred in connection with any environmental clean-up, response action or remediation on, in, under or about the Building or the Property other than costs of identification, testing, monitoring or minor cleaning (not rising to the level of remediation) of Hazardous Materials.

(31) Costs relating to disputes between Landlord and a specific tenant of the Building.

(32) Costs relating to disputes between Landlord and any employee or agent of Landlord.

(33) Costs related to the existence and maintenance of Landlord as a legal entity, except to the extent attributable to the operation and management of the Property.

(34) Costs not billed to Tenant within three (3) years of the date such costs are incurred, except for properly amortized expenses pursuant to the terms of this Lease, or within one (1) year after the end of the Lease Term.

F. **Proration of Operating Expenses; Adjustments**. Subject to the limitations set forth in this Lease, if Landlord incurs Operating Expenses for the Property together with one or more other buildings or properties, whether pursuant to a reciprocal easement agreement, common area agreement or otherwise, the shared costs and expenses shall be equitably prorated and apportioned by Landlord between the Property and the other buildings or properties. If the Building is not 100% occupied during any calendar year or partial calendar year or if Landlord is not supplying services to 100% of the total Rentable Square Footage of the Building at any time during a calendar year or partial calendar year, Operating Expenses shall be determined as if the Building had been 100% occupied and Landlord had been supplying services to 100% of the Rentable Square Footage of the Building during that calendar year. The extrapolation of Operating Expenses under this Section shall be performed by Landlord by adjusting the cost of those components of Operating Expenses that are impacted by changes in the occupancy of the Building ("***Variable Operating Expenses***"). Landlord shall use a consistent methodology to "gross-up" Variable Operating Expenses from year to year, the methodology for grossing-up Variable Operating Expenses for any year shall be no less favorable to Tenant than for any other tenant of office space in the Building whose economic terms are similar and Landlord shall provide in the statement required by **Section 4.C**, a reasonably detailed description of how the Variable Operating Expenses were "grossed-up". Landlord will not recover in any one calendar year more than 100% of the actual Operating Expenses for such year. Notwithstanding anything contained herein to the contrary, in no event shall the allocation to Operating Expenses of costs relating to the operation of the Parking Condominium Unit exceed such costs multiplied by a fraction, the numerator of which is the number of parking spaces allocated to the Office Condominium Unit by Landlord (which is 3 1/3 spaces multiplied by the Rentable Square Footage in the Office Condominium Unit), and the denominator of which is the total number of parking spaces in the Parking Condominium Unit. Landlord agrees to provide to Tenant and Tenant's representatives reasonable information relating to the allocation of expenses between the Office Condominium Unit and the Commercial Condominium Unit upon Tenant's reasonable request.

G. **Audit Rights**. Within three (3) years after Landlord furnishes its statement of actual Operating Expenses for any calendar year (including the Base Year) (the "***Audit Election Period***"), Tenant or Tenant's representatives may, at Tenant's expense (subject to reimbursement by Landlord as provided below), upon not less than 10 days' prior written notice to Landlord, elect to audit during Landlord's normal business hours at the location where Landlord maintains its records in Dallas County, Texas, Landlord's Operating Expenses for such calendar years only. If the audit proves that Landlord's calculation of Operating Expenses for the calendar year under inspection was overstated by more than 5%, then, after verification, Landlord shall pay Tenant's out-of-pocket audit and inspection fees applicable to the review within thirty (30) days after receipt of Tenant's invoice therefor. Landlord shall credit any overpayment determined by the

final approved audit report against the next Rent due and owing by Tenant or, if no further Rent is due, refund such overpayment directly to Tenant within 30 days of determination. Likewise, Tenant shall pay Landlord any underpayment determined by the final approved audit report within 30 days of determination. The foregoing obligations shall survive the expiration or termination of this Lease. Tenant and its representatives shall keep such audit results confidential, except as may be required to comply with Laws or any court order. Tenant agrees not to engage a third-party auditor who is compensated on a contingency fee basis for the sole purpose of conducting an audit hereunder; provided, however, the foregoing restriction notwithstanding, Tenant's lease administration service provider may conduct an audit and perform audit-related services regardless of how such service provider is compensated.

5. Tenant's Use of Premises.

A. **Permitted Uses**. The Premises shall be used only for general office and other uses consistent with a first class office building, together with uses ancillary thereto (the "***Permitted Use***"). Landlord covenants that, as of the Commencement Date, nothing in the record title would prevent use of the Premises for retail banking office purposes. Tenant shall not use or permit the use of the Premises for any purpose which is illegal, creates obnoxious odors (including tobacco smoke), noises or vibrations, is dangerous to persons or property, could increase Landlord's insurance costs, or which, in Landlord's reasonable opinion, unreasonably disturbs any other tenants of the Building, interferes with the operation or maintenance of the Property, impairs the reputation or quality of the Building, or overburdens any of the Building systems for which Landlord is

responsible, the Common Areas or parking facilities, in violation of this Lease.

B. **Compliance with Laws**. Tenant shall comply with all Laws, including the ADA (subject to Landlord's obligations set forth in **Exhibits C** and **D**) regarding the operation of Tenant's business in, and Tenant's manner of use and occupancy of the Premises and its use of the Common Areas. Landlord agrees to provide Tenant with a copy of a certificate of occupancy for the Building, and Tenant shall provide Landlord with (i) the temporary certificate of occupancy for the Premises prior to taking possession of the Premises for business purposes, to the extent available, and (ii) the permanent certificate of occupancy for the Premises within 5 Business Days after receipt of same but in no event later than ninety (90) days after the Commencement Date. Tenant shall comply with the rules and regulations of the Building attached as **Exhibit E** to this Lease and such other reasonable rules and regulations (or modifications thereto) adopted by Landlord from time to time, provided that Landlord shall have given prior written notice thereof to Tenant. Such rules and regulations will be applied in an equitable and non-discriminatory manner as reasonably determined by Landlord, taking all circumstances into account. In the event of any discrepancy between the provisions of **Exhibit E** and those of this Lease, the provisions of this Lease shall govern. Except as otherwise specifically provided herein, Landlord shall be responsible for causing the Building Elements (as defined in **Section 8.B** below) to be in compliance with all Laws, including the ADA.

C. **Tenant's Security**. Tenant shall have the right to install its own security system in the Premises and at doors to Building stairwells located in the Premises at Tenant's sole cost

and expense and subject to Landlord's review and approval thereof (not to be unreasonably withheld, conditioned or delayed). Tenant agrees that it shall not be deemed an unreasonable condition of approval for Landlord to require that Tenant's system be functionally compatible with the base Building systems or that Tenant use a certain vendor or installer for Tenant's security system. If Tenant elects to install a security card access system in the Building stairwells pursuant to the preceding sentence, Tenant may, at Tenant's sole cost and expense, upgrade the finishes and lighting in the stairwells in compliance with applicable laws and after obtaining Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed. In addition, if Tenant's security system is compatible with Landlord's security system at the Building and the Parking Garage, Tenant shall have the right, at Tenant's sole cost and expense (inclusive of any monthly fee charged by Landlord), to connect Tenant's security system to Landlord's security system.

6. Services to be Furnished by Landlord.

A. **Standard Services**. Subject to the provisions of this Lease, Landlord agrees to furnish (or cause a third party provider to furnish) the following services to Tenant during the Term, in each case consistent with the standard offered in other Comparable Buildings (collectively, the "***Building Standard Services***"):

(1) Water service for use by Tenant for drinking and use in the lavatories (including hot and cold water in the lavatories only) and convenience kitchens, if any, on each floor on which the Premises are located.

(2) Heat and air conditioning in season, during Normal Business Hours at such temperatures and in such amounts as required by governmental authority or as supplied in Comparable Buildings. Landlord shall operate the HVAC system in the Building within the design parameters set forth in **Section 1.L** of **Exhibit C**. With respect to any portion of the HVAC system not controlled by Tenant, Tenant may, upon notice given two hours prior to the time overtime HVAC is required, and subject to the capacity of the Building systems, request HVAC service during hours other than Normal Business Hours, and upon such request Landlord shall provide such HVAC service, subject to a 2-hour minimum. Tenant shall pay Landlord the then standard charge for such additional service, as determined by Landlord from time to time based on Landlord's estimated Actual Costs. *"**Actual Costs**"* shall mean an amount equal to the actual out-of-pocket incremental extra costs to Landlord to provide such after-hour air conditioning (or other additional services or utilities), without markup for profit, overhead, depreciation or administrative costs. Such Actual Costs shall fluctuate only due to actual increase or decrease in such costs.

(3) Maintenance and repair of the Building and Property as described in **Section 8.B**.

(4) Janitorial service five (5) days per week (excluding Holidays), substantially in accordance with the Janitorial Specifications set forth on **Exhibit G**.

(5) Passenger and freight elevator service, subject to Landlord's reasonable policies and procedures for use of the elevator (s) in the Building. The minimum number of elevators will be that reflected on **Exhibit C**.

(6) Exterior and interior window washing in accordance with the Janitorial Specifications set forth on **Exhibit G**.

(7) Security for the Building (including equipment, personnel, procedures and systems) 24 hours a day, 7 days per week.

(8) Electricity to the Premises for general office use, in accordance with and subject to the terms and conditions in **Section 7**.

(9) Access to the Premises and the Parking Garage 24 hours a day, 7 days per week, subject to Landlord's security measures, Force Majeure, applicable Law, Landlord's reasonable rules and regulations, and emergency/repair situations.

(10) Parking in the Parking Garage, at an additional cost as set forth on **Exhibit F**.

(11) Replacement of Building Standard lighting tubes, lamp ballasts and bulbs.

(12) Extermination and pest control in the Common Areas.

(13) On-site property management by a professional and qualified property management company that is then managing multiple Comparable Buildings, including an on-line portal for submitting work order and after-hours air condition/heating requests.

(14) Fully-staffed concierge service.

(15) Landlord agrees to permit Tenant's employees and approved visitors and vendors to use the base Building stairwells in the Building for access between the floors of the Premises and to the Building lobby, 24 hours a day, 7 days a week, subject to Landlord's reasonable security measures, Force Majeure, applicable Law, Landlord's reasonable rules and regulations, and emergency/repair situations.

Landlord agrees that the above-described services and maintenance of the Building and its components, including the Common Areas, shall be reasonably similar to services and maintenance provided to other Comparable Buildings.

B. **Service Interruptions**. If any of the Building equipment or machinery ceases to function properly for any cause, or any Building Standard Services are not provided to Tenant and/or the Premises as provided herein, Landlord shall use reasonable diligence to repair or restore the same promptly. Landlord's inability to furnish, or any interruption or termination of, services due to the application of Laws, the failure of any equipment, the performance of maintenance, repairs, improvements or alterations, or the occurrence of any other event or cause, whether or not within the reasonable control of Landlord (a "***Service Failure***"), shall not render

Landlord liable to Tenant, constitute a constructive eviction of Tenant, give rise to an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement, except as expressly set forth herein. In no event shall Landlord be liable to Tenant for any loss or damage, including the theft of Tenant's Property (defined in **Section 16**), arising out of or in connection with the failure of any security services, personnel or equipment. Any provision herein to the contrary notwithstanding, if a Service Failure beyond the control of Landlord results in the Premises or any material portion thereof not being reasonably usable by Tenant for its business purpose ("***Untenantable***") (unless the Service Failure is caused by a fire or other casualty, in which event **Section 15** controls), and same remains uncured for a total of three (3) consecutive Business Days, or five (5) Business Days during any ten (10) consecutive Business Day period ("***First Cure Period***") after Landlord's receipt of Tenant's written notice of the Service Failure, Tenant shall have the following rights and remedies:

(1) For each day or portion thereof that such Service Failure beyond the control of Landlord continues beyond the First Cure Period, Tenant shall be entitled to an equitable abatement of Rent commensurate to that portion of the Premises rendered Untenantable by the Service Failure calculated on a per square foot basis beginning after the First Cure Period and ending at the time the Premises are again suitable for use by Tenant for its intended purposes.

(2) If the Service Failure beyond the control of Landlord renders more than 25% of the Premises Untenantable, and is not cured within thirty (30) days ("***Second Cure Period***") after Landlord's receipt of written notice of Service Failure, Tenant may at its option make such repairs as are necessary to eliminate the Service Failure, and Landlord shall pay to Tenant upon demand, the cost of such repairs plus interest at the Default Rate (defined in **Section 18.B**), such interest to accrue continuously from the date of payment by Tenant until repayment by Landlord, or at Tenant's election, after giving Landlord written notice of Tenant's intent to do so and Landlord's failure to pay the same to Tenant within 5 days after receipt of such notice. Tenant may offset any such unpaid amount from Rent payable hereunder, until such time as Tenant has been fully reimbursed.

(3) If the Service Failure beyond the control of Landlord renders more than 25% of the Premises Untenantable, and is not cured by either Landlord or Tenant (with Tenant being under no obligations to complete such cure) within one hundred eighty (180) days ("***Third Cure Period***") after Landlord's receipt of Tenant's written notice of Service Failure, then Tenant, at its option, exercised by written notice to Landlord prior to restoration of such service, may terminate this Lease and all of its obligations for the remaining balance of the Term, and any renewals or extensions thereof, whichever shall be applicable, and the parties hereto shall be relieved of all liabilities and obligations hereunder (other than those which expressly survive termination) as of the date of Tenant's written notice of termination pursuant to this **Section 7.B**.

C. **Third Party Services**. If Tenant desires any service which Landlord has not specifically agreed to provide in this Lease, such as private security systems or telecommunications services serving the Premises, Tenant shall have the right to procure such service directly from a reputable third party service provider ("***Provider***") for Tenant's own account at Tenant's sole cost and expense and subject to Landlord's review and approval thereof

(not to be unreasonably withheld, conditioned or delayed). Tenant agrees that it shall not be deemed an unreasonable condition of approval for Landlord to require that Tenant's security system be functionally compatible with the base Building systems or that Tenant use a certain vendor or installer for Tenant's security system. Subject to the foregoing, Landlord agrees that any such Provider shall have the right to access the Building and install such Provider's equipment in the Building, subject to Landlord's reasonable policies and practices for the Building.

7. Use of Electrical Services by Tenant.

A. **Landlord's Electrical Service**. Subject to the terms of this Lease, Landlord shall furnish building standard electrical facilities (including transformers, risers, conduits, feeders, and switchboards) necessary to furnish the Premises with electric power 24 hours a day, 7 days per week, for normal office purposes, including the following (the "***Building Standard Electricity***"), in each case measured in the aggregate over the Premises and as calculated using the National Electrical Code (NEC) procedures:

(1) Normal office equipment (including personal computers, duplicating/reproduction/photocopy machines, employee lunchrooms, coffee bars, executive or other dining areas, including kitchen equipment associated therewith, vending machines) and other equipment operating at 120/208 volts up to a maximum connected load of (5.5) VA per usable square foot (USF) of the Premises.

(2) Task and ambient lighting systems and other equipment operating at 277/480 volts up to a maximum connected load of (1.5) VA per USF of the Premises.

(3) Tenant shall be entitled to increase electrical facilities above the Building Standard Electricity by additional connected load capacity of up to two (2.0) VA per USF of the Premises at 277/480 volts available in the bus riser (exclusive of base Building components such as heat, VAV terminal units, etc.) for use by Tenant (the "***Above-Standard Electricity***"), if Tenant so requires in connection with its permitted use of the Premises. Any distribution equipment (panels, transformers, conduit, wiring, etc.) required to deliver Above-Standard Electricity shall be at Tenant's cost and all consumption on this excess equipment shall be separately metered and billed directly to Tenant by Landlord and shall not be included in Operating Expenses. Tenant will not, without Landlord's prior written consent (which consent shall not be unreasonably withheld or delayed) in each instance, connect any fixtures, appliances or equipment to the Building's electric distribution system other than through outlets existing on the Commencement Date or make any alteration or addition to the electric system of the Premises existing on the Commencement Date.

B. **Electrical Consumption**. Landlord may, at any time and from time to time, calculate Tenant's actual electrical consumption in the Premises either by a survey conducted by a reputable consultant selected by Landlord, or through separate meters installed, maintained and read by Landlord, all at Landlord's expense (subject to **Section 7.C** and **7.D** below). Commencing on the Commencement Date, Tenant shall pay its Pro Rata Share of electrical costs under **Section 4.D(10)**. In addition, commencing on the date that Tenant receives its certificate

of occupancy for the Premises, Tenant shall pay (either in its own name and for its own account as set forth in **Section 7.C** below, or as a reimbursement to Landlord), in accordance with **Sections 7.C** and **7.D**, the cost of any electrical consumption in the Premises. The furnishing of electrical services to the Premises shall be subject to the rules, regulations and practices of the supplier of such electricity and of any municipal or other governmental authority regulating the business of providing electrical utility service. Except as expressly set forth in this Lease, Landlord shall not be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quantity or character of the electrical service is changed or is no longer available or no longer suitable for Tenant's requirements.

C. **Selection of Electrical Service Provider**. Landlord reserves the right to select the provider of electrical services to the Building and/or the Property. To the fullest extent permitted by Law, Landlord shall have the continuing right to change such utility provider. At no time shall Landlord charge Tenant more for electrical services than Landlord's cost therefor, as reasonably determined by Landlord, and any such charge shall specifically exclude any administrative or similar fees that might otherwise be charged by Landlord or its property manager with respect thereto. The foregoing notwithstanding, Tenant shall have the ongoing right, at Tenant's sole cost and expense, to select the provider of electrical services to the Premises.

D. **Submetering**. Landlord or Tenant shall have the continuing right, upon 30 days written notice, to install one or more submeters for the Premises or portions thereof or equipment therein at Landlord's expense, provided, however, if the reason for the installation is to monitor Tenant's electricity usage and the usage is actually above that allocated to Tenant pursuant to **Section 7** ("***Excess Usage***"), then the submetering shall be at Tenant's expense. However, if the submeter is installed for any reason other than because of Tenant's Excess Usage or to calculate the electrical usage of equipment utilized greater than single-phase electrical current, then the submetering shall be at Landlord's expense. If submetering is installed for the Premises, Landlord may charge for Tenant's actual electrical consumption monthly in arrears at Landlord's cost therefor, as reasonably determined by Landlord, with such method of calculation to be described and delivered to Tenant. Even if the Premises are submetered, Tenant shall remain obligated to pay Tenant's Pro Rata Share of the cost of electrical services as provided in **Section 4.D(10)**, except that Tenant shall be entitled to a credit against electrical services costs equal to that portion of the amounts actually paid by Tenant separately and directly to Landlord which are attributable to building standard electrical services submetered to the Premises.

8. Repairs and Alterations.

A. **Tenant's Repair Obligations**. Tenant shall, at its sole cost and expense, promptly perform all maintenance and repairs to the Premises that are not Landlord's express responsibility under this Lease, and shall keep the Premises in good condition and repair, ordinary wear and tear excepted, and subject to any casualty or condemnation not required to be repaired by Tenant and any janitorial services to be provided by Landlord pursuant to the terms hereof. Tenant's repair obligations include, without limitation, repairs to: (1) floor covering and/or raised flooring; (2) interior partitions; (3) doors; (4) the interior side of demising walls; (5) electronic, phone and data cabling and related equipment (collectively, "***Cable***") that is

installed by or exclusively for the benefit of Tenant (or an occupant of the Premises) and located in the Premises or other portions of the Building; (6) supplemental air conditioning units, private showers and kitchens, including hot water heaters, plumbing, dishwashers, ice machines and similar facilities serving Tenant exclusively; (7) phone rooms used exclusively by Tenant; (8) Alterations (defined below) performed by contractors retained by Tenant, including related HVAC balancing; and (9) all of Tenant's furnishings, trade fixtures, equipment and inventory. Prior to performing any such repair obligation, Tenant shall give written notice to Landlord describing the necessary maintenance or repair. Upon receipt of such notice, Landlord may elect either to perform any of the maintenance or repair obligations specified in such notice, or require that Tenant perform such obligations by using contractors approved by Landlord. All work shall be performed at Tenant's expense in accordance with the rules and procedures described in **Section 8.C** below. If Tenant fails to make any repairs to the Premises for more than 15 days after notice from Landlord (although notice shall not be required if there is an emergency), Landlord may, in addition to any other remedy available to Landlord, make the repairs, and Tenant shall pay to Landlord the reasonable cost of the repairs within 30 days after receipt of an invoice, together with an administrative charge in an amount equal to (i) 5% of the cost of the repairs for repairs costing from $0 through $99,999.99, or (ii) 4% of the cost of the repairs for repairs costing from $100,000.00 through $199,999.99, or (iii) 3% of the cost of the repairs for any repairs costing $200,000.00 or more.

B. **Landlord's Repair Obligations**. Landlord shall keep and maintain in good repair and working order (in a condition at least equivalent to Comparable Buildings) and shall make repairs to and perform maintenance upon: (1) structural elements of the Property; (2) standard mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Property generally; (3) Common Areas; (4) the roof of the Building; (5) exterior windows of the Building; and (6) elevators serving the Building (collectively, the "***Building Elements***"). Landlord shall promptly make repairs (considering the nature and urgency of the repair) for which Landlord is responsible. All costs of maintenance, operation and routine repair of the Building Elements shall be included in Operating Expenses; however, if any of the foregoing maintenance or repair is necessitated due to the acts or omissions of any Tenant Party (defined in **Article 12**), Tenant shall pay the costs of such repairs or maintenance to Landlord within 30 days after receipt of an invoice, together with an administrative charge in an amount equal to 5% of the cost of the repairs.

C. **Alterations**. After the completion of the Tenant Improvements in accordance with **Exhibit D**, Tenant shall not make alterations, additions or improvements to the Premises in the Premises or other portions of the Building (collectively, "***Alterations***") without first obtaining the written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. However, Landlord's consent shall not be required for any Alteration that satisfies all of the following criteria (a "***Minor Alteration***"): (a) is of a cosmetic nature such as painting, wallpapering, hanging pictures and installing carpeting; (b) is not visible from outside the Premises or Building; (c) will not affect the systems or structure of the Building; and (d) does not require work to be performed inside the walls or above the ceiling of the Premises.

D. **Multi-Tenant Corridors**. During the Term, any required reconfiguration from a full floor to a multi-tenant floor with a tenant corridor resulting from the initial location of the Premises or the taking of additional previously unoccupied (first generation) space by Tenant pursuant to the rights set forth in **Rider No. 1** and **Rider No. 3** of this Lease, shall be at Landlord's sole cost and expense, including the Building Standard finishes for such corridor and elevator lobby. Any other required reconfiguration shall be at Tenant's cost. Any and all alterations and modifications to the Premises in connection therewith shall be subject to Landlord's reasonable approval pursuant to **Section 8.C**.

9. Entry by Landlord.

Landlord, its agents, contractors and representatives may enter the Premises to inspect or show the Premises (but if to show the Premises to a prospective tenant, only during the last year of the Term or earlier if Tenant notifies Landlord at an earlier time of its intention not to renew), to clean and make repairs, alterations or additions to the Premises, and to conduct or facilitate repairs, alterations or additions to any portion of the Building, including other tenants' premises; provided, however, that in the case of entering the Premises for the purpose of making non-emergency repairs or additions or alterations to the Building or other tenants' premises, Landlord shall not enter the Premises if any other means of performing such work is reasonably available at no additional material cost. Except in emergencies or to provide janitorial and other Building services after Normal Business Hours, Landlord shall provide Tenant with reasonable prior notice of entry into the Premises, which may be given orally. Entry by Landlord for any such purposes shall not constitute a constructive eviction or entitle Tenant to an abatement or reduction of Rent. Landlord shall use commercially reasonable efforts in connection with any such entry (except in the event of an emergency) to minimize any interference with the operations and normal office routine of Tenant.

10. Assignment and Subletting.

A. **Landlord's Consent Required**. Subject to the remaining provisions of this **Section 10**, but notwithstanding anything to the contrary contained elsewhere in this Lease, Tenant shall not assign, transfer or encumber any interest in this Lease (either absolutely or collaterally) or sublease or allow any third party to use any portion of the Premises (collectively or individually, a "***Transfer***") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted Transfer in violation of this **Section 10** is voidable at Landlord's option. Consent by Landlord to one or more Transfer(s) shall not operate as a waiver of Landlord's rights to approve any subsequent Transfers. In no event shall any Transfer or Permitted Transfer (defined in **Section 10.D**) release or relieve Tenant from any obligation under this Lease, nor shall the acceptance of Rent from any assignee, subtenant or occupant constitute a waiver or release of Tenant from any of its obligations or liabilities under this Lease. Landlord agrees that Tenant shall be permitted to allow its clients, contractors and vendors ("***Permitted Occupants***") to use up to 15% of Rentable Square Footage of the Premises, and such use shall not be considered a Transfer nor otherwise require Landlord's consent. No such use or occupancy shall operate to give any such Permitted Occupants any right or interest in this Lease or any right to exercise any right of Tenant hereunder, and such use and occupancy shall be subject and subordinate to all of the terms, covenants and conditions of this

Lease. Additionally, any such use and occupancy by Permitted Occupants shall in no way give to any such Permitted Occupant any rights or remedies against Landlord.

B. **Consent Procedure**. As part of Tenant's request for, and as a condition to, Landlord's consent to a Transfer, Tenant shall provide Landlord with a complete copy (unexecuted) of the financial statements of the proposed assignee or subtenant, proposed assignment or sublease and other contractual documents, and such other information as Landlord may reasonably request. Landlord shall, by written notice to Tenant within 30 days of receipt of Tenant's notification and all of the information required pursuant to this **Section 10.B.**, either: consent to the Transfer by the execution of a consent agreement in a reasonable form consistent with the terms of this Lease or reasonably refuse to consent to the Transfer in writing, in which case Landlord shall set forth, with specificity, the basis for its refusal. If Landlord refuses to consent to the Transfer, the Lease shall continue in full force and effect as if Tenant had not requested Landlord's consent to the proposed Transfer. Tenant shall pay Landlord a review fee of $1,500.00 for Landlord's review of any Permitted Transfer or requested Transfer.

C. **Change in Control of Tenant**. Except for a Permitted Transfer, if Tenant is a corporation, limited liability company, partnership, or similar entity, and if the entity which owns or controls a majority of the voting shares/rights in Tenant at any time sells or disposes of such majority of voting shares/rights, or changes its identity for any reason (including a merger, consolidation or reorganization), such change of ownership or control shall constitute a Transfer. The foregoing shall not apply so long as, both before and after the Transfer, Tenant is an entity whose outstanding stock is listed on a recognized U.S. securities exchange, or if at least 25% of its voting stock is owned by another entity, the voting stock of which is so listed.

D. **No Consent Required**. Notwithstanding any other provisions hereof, without the prior written consent of Landlord, Tenant may assign this Lease or sublease all or any portion of the Premises to: (1) Tenant's Affiliate (defined below), (2) any entity resulting from a merger or consolidation with Tenant, or (3) any entity succeeding to all or substantially all of the business and assets of Tenant (a "***Permitted Transferee***") provided that the following conditions are satisfied in Landlord's reasonable discretion: (a) no uncured Event of Default exists, (b) the successor's use of the Premises shall not conflict with the Permitted Use or any exclusive usage rights granted to any other tenant in the Building, and (c) in the event of an assignment of this Lease, such assignee shall have a tangible net worth in accordance with generally accepted accounting principles of at least equal to $20,000,000.00 (a "***Permitted Transfer***"). In the event of a Permitted Transfer, Tenant shall not be released from liability under the Lease. The term "Affiliate" means any person or entity controlling, controlled by or under common control with Tenant or Landlord, as applicable. Further, and not in limitation of the foregoing, Tenant and Hunter's Glen/Ford, Ltd., a Texas limited partnership, are deemed Affiliates for purposes of this **Section 10**. In addition, without the prior written consent of Landlord, Tenant may assign this Lease or sublease or license all or any portion of the Premises to or permit the Premises to be occupied by any member firm of Tenant, or any entity comprised in whole or in part, of any former, current and/or future division or group of Tenant, regardless of the form of such entity and regardless of whether Tenant has or retains any ownership interest therein, provided, however, any Alterations required as a result of such Permitted Transfer shall be subject to Landlord's reasonable approval and **Section 8.C**.

E. **Subdivision of Space**. In connection with any assignment or sublease permitted hereunder, Tenant shall have the right (but not the obligation), at its sole cost and expense, to convert any single-tenant floor within the Premises to a multi-tenant floor. Any and all Alterations to the Premises in connection therewith shall be subject to Landlord's reasonable approval and **Section 8.C**.

F. **Exercisable by Transferee**. Tenant shall have the right to transfer to any Permitted Transferee pursuant to a Permitted Transfer of the entire interest in this Lease the right to exercise all remaining extension options, expansion options, preferential rights, right of first refusal, and any other valid and unexercised rights Tenant has in connection with this Lease at the time of Transfer.

G. **Expedited Arbitration for Unreasonable Withholding of Consent**. In the event Tenant claims that Landlord unreasonably withheld its consent to a proposed Transfer by Tenant, Tenant shall send Landlord a written notice within 5 days of Landlord's decision to withhold consent (the "***Dispute Notice***"), specifying the grounds on which Tenant claims the consent was unreasonably withheld and electing to have the dispute resolved by an arbitration (the "***Arbitration***"). In the Dispute Notice, Tenant shall designate an arbitrator of its selection who meets the qualifications provided below. Within 5 days after receipt of the Dispute Notice, Landlord shall notify Tenant of its selection of an arbitrator who meets the qualifications provided below. Landlord's and Tenant's arbitrators shall then select a third, neutral arbitrator who meets the qualifications provided below. The Arbitration shall be held at such neutral arbitrator's office. Each of the arbitrators shall (1) have at least ten (10) years' experience in either managing Class A office buildings or representing owners in the leasing of Class A office buildings, (2) not have represented Landlord or Tenant during the preceding five years, and (3) have general experience and competence in determining the issue at hand, and being registered with the American Arbitration Association (or its equivalent, should the American Arbitration Association not then be in existence). The Arbitration shall be held on a mutually agreeable date which shall be no less than 10 days and no more than 20 days after Landlord's receipt of the Dispute Notice. The Arbitration shall be conducted in accordance with the rules of the American Arbitration Association and the scope of the arbitrators' inquiry and determination shall be strictly limited to whether Landlord has been reasonable in withholding its consent to the proposed Transfer. The determination of the majority of the arbitrators shall be conclusive and binding upon the parties and shall be made within 5 days after completion of the Hearing. The losing party shall pay all of the fees and expenses of the 3 arbitrators. In the event the arbitrators find that Landlord unreasonably withheld its consent to the proposed Transfer, Tenant may proceed with the proposed Transfer provided Tenant complies with all the terms and conditions of this Lease. The arbitrators' decision may be entered as a final judgment in the court records of the applicable jurisdiction.

11. Liens.

If any mechanic's or other liens are placed upon the Property, Premises or Tenant's leasehold interest in connection with any work or service done or purportedly done by or for the benefit of Tenant, then Tenant shall, within 20 days of notice from Landlord of the filing of the lien,

fully discharge the lien by settling the claim which resulted in the lien or by bonding or

insuring over the lien in the manner prescribed by the applicable lien Law. If Tenant fails to discharge the lien, then, in addition to any other right or remedy of Landlord, Landlord may bond or insure over the lien or otherwise discharge the lien. Tenant shall reimburse Landlord for any amount paid or incurred by Landlord to bond or insure over the lien or discharge the lien, including, without limitation, reasonable attorneys' fees, within 30 days after receipt of an invoice from Landlord.

12. Indemnity and Waiver of Claims.

A. **Tenant's Indemnity**. Subject to **Section 14** and **Section 20.B**, Tenant shall indemnify, defend and hold Landlord, its trustees, Affiliates, subsidiaries, members, principals, beneficiaries, partners, officers, directors, shareholders, employees, Mortgagee(s) (defined in **Section 24**) and agents (including the manager of the Property) harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees, which may be imposed upon, incurred by or asserted against any of such indemnified parties that arise out of or in connection with any damage or injury (i) occurring in the Premises, except to the extent caused by the negligence or willful misconduct of Landlord or any of its employees, agents or contractors (collectively, "***Landlord Parties***"); (ii) occurring in connection with or in any way related to Tenant's Telecommunications Equipment, except to the extent caused by the negligence or willful misconduct of Landlord or any of the Landlord Parties; or (iii) occurring elsewhere in the Building or on the Property to the extent caused by the negligence or willful misconduct of Tenant or any assignees, subtenants and licensees claiming by, through or under Tenant, or any of their respective agents, contractors, employees and invitees (collectively, "***Tenant Parties***").

B. **Landlord's Indemnity**. Subject to **Section 14** and **Section 20.A**, Landlord shall indemnify, defend and hold Tenant, its trustees, members, principals, beneficiaries, partners, officers, directors, shareholders, employees and agents harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees, which may be imposed upon, incurred by or asserted against any of such indemnified parties that arise out of or in connection with any damage or injury occurring in the Premises, the Building or on the Property to the extent caused by the negligence or willful misconduct of any of the Landlord Parties.

13. Insurance.

A. **Tenant's Insurance**. Tenant shall carry and maintain the following insurance ("***Tenant's Insurance***"), at its sole cost and expense: (1) commercial general liability insurance applicable to the Premises and its appurtenances and Tenant's Telecommunications Equipment providing, on an occurrence basis, a minimum combined single limit of $5,000,000 (coverage in excess of $1,000,000 may be provided by way of an umbrella/excess liability policy), and contractual liability, including the indemnification provisions contained in this Lease; and (2) special form (formerly "all risk") property insurance on Tenant's Property and Tenant's Telecommunications Equipment. Any company underwriting any of Tenant's Insurance shall have an *A.M. Best Insurance Guide* rating of not less than A-VIII. All commercial general

liability shall name Landlord (or any successor), Landlord's property manager and Landlord's Mortgagee (if any and provided that Landlord has given Tenant 30 days prior written notice of the same), as "additional insureds" and shall be primary with Landlord's policy being secondary and noncontributory. Tenant shall provide Landlord with a certificate of insurance evidencing Tenant's Insurance prior to the earlier to occur of the Commencement Date or the date Tenant is provided with possession of the Premises. Tenant may maintain any of its required insurance coverages under a blanket policy of insurance, provided the same is sufficient to maintain the types and levels of insurance required under this Lease. If Tenant fails to comply with the foregoing insurance requirements or to deliver to Landlord the certificates or evidence of coverage required herein, and such failure continues for 15 days after delivery of notice of such failure to Tenant, Landlord, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand the premium costs thereof, plus an administrative fee of 5% of such cost.

B. **Landlord's Insurance**. Landlord shall maintain (1) commercial general liability insurance applicable to the Property providing, on an occurrence basis, a minimum of $5,000,000 per occurrence/general aggregate (coverage in excess of $1,000,000 may be provided by way of an umbrella/excess liability policy), and contractual liability, including the indemnification provisions contained in this Lease; and (2) special form (formerly "all risk") property insurance on the Building and all improvements therein, including flood, in the amount of the replacement cost thereof, as reasonably estimated by Landlord. Any company underwriting any of Landlord's insurance required by this **Section 13.B** shall have an *A.M. Best Insurance Guide* rating of not less than A-VIII. The foregoing insurance and any other insurance carried by Landlord may be effected by a policy or policies of blanket insurance (provided the same is sufficient to maintain the types and levels of insurance required under this Lease).

14. Mutual Waiver of Subrogation.

Notwithstanding anything in this Lease to the contrary, Landlord and Tenant shall cause their respective insurance carriers and any other party claiming through or under such carriers, by way of subrogation or otherwise, to waive any and all rights of recovery, claim, action or causes of action against the other party and such other party's trustees, principals, beneficiaries, partners, officers, directors, agents, and employees, for any loss of or damage to or loss of use of the Building, the Premises, any personal property of Landlord, any additions or improvements to the Building or the Premises, or any contents thereof, **INCLUDING ALL RIGHTS (BY WAY OF SUBROGATION OR OTHERWISE) OF**

RECOVERY, CLAIMS, ACTIONS OR CAUSES OF ACTION ARISING OUT OF THE NEGLIGENCE OF ANY LANDLORD PARTIES OR THE NEGLIGENCE OF ANY TENANT PARTIES, which loss or damage is (or would have been, had the insurance required by this Lease been carried) covered by insurance.

15. Casualty Damage.

A. **Restoration or Termination by Landlord**. If all or any part of the Premises are damaged by fire or other casualty, Tenant shall promptly notify Landlord in writing. Landlord shall have the right to terminate this Lease if: (1) the Building shall be damaged so that substantial alteration or reconstruction of the Building shall be required (whether or not the

Premises have been damaged) and Landlord elects not to restore the Building and Landlord simultaneously terminates all other leases in the Building; (2) Landlord is not permitted by Law to rebuild the Building in substantially the same form as existed before the fire or casualty; (3) the Premises have been materially damaged and there is less than 2 years of the Term remaining on the date of the casualty and Tenant does not exercise any remaining option to renew this Lease within 30 days after Tenant receives Landlord's written election to terminate this Lease; or (4) any Mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt and Landlord does not have the right under its loan agreement to require that such proceeds be made available for the repair or reconstruction of the Building and Landlord elects not to restore the Building and Landlord simultaneously terminates all other leases of similarly affected tenants in the Building. Landlord may exercise its right to terminate this Lease by notifying Tenant in writing within 90 days after the date of the casualty. If Landlord does not terminate this Lease under this **Section 15.A**, Landlord shall commence and proceed with reasonable diligence to repair and restore the Building and/or the Premises to substantially the same condition as existed immediately prior to the date of damage. However, provided Landlord has complied with Landlord's requirements to purchase and maintain insurance as set forth in this Lease, in no event shall Landlord be required to spend more than the insurance proceeds received by Landlord.

B. **Timing for Repair; Termination by Either Party**. If all or any portion of the Premises is damaged as a result of fire or other casualty, or such fire or other casualty renders the general Building systems inoperable such that a substantial portion of the Building cannot be used and occupied or the Premises cannot be accessed or used for business operations, Landlord shall, as soon as reasonably possible, cause an architect or general contractor selected by Landlord to provide Landlord and Tenant with a written estimate of the amount of time required to substantially complete the repair and restoration of the Premises, using standard working methods ("***Completion Estimate***"). If the Completion Estimate indicates that the restoration of the Premises to its condition prior to the casualty cannot be substantially completed within 300 days from the date of the fire or other casualty (or 90 days if the damage occurs in the last year of the Term and Tenant does not elect to exercise any then-unexercised renewal options), then regardless of anything in **Section 15.A** above to the contrary, either party shall have the right to terminate this Lease by giving written notice to the other of such election within 10 Business Days after receipt of the Completion Estimate. If neither party terminates this Lease under this **Section 15.B**, then Landlord shall repair and restore the Premises in accordance with, and subject to the limitations of, **Section 15.A**. If Landlord fails to complete such repairs to the Premises within 300 days from the date of the fire or other casualty (or 90 days if the damage occurs in the last year of the Term and Tenant does not elect to exercise any then-unexercised renewal options), then Tenant shall have the right to terminate this Lease following 60 days written notice given after such 300 day period, but prior to completion of the repairs.

C. **Abatement**. In the event any portion of the Premises is Untenantable as a result of a fire or other casualty, the Rent shall abate for the portion of the Premises that is Untenantable until substantial completion of the repairs and restoration required to be made by Landlord pursuant to **Section 15.B**; provided, however, if the fire or casualty affects more than 75% of the Premises, more than 75% of any floor within the Premises, or Tenant's access to and from the Premises or such floor, and Tenant elects not to use any of the Premises or such floor,

as the case may be, there shall be a full abatement of the Rent for the Premises or such floor, as applicable. Landlord and Tenant hereby waive the provisions of any Law relating to the matters addressed in this **Section 15**, and agree that their respective rights for damage to or destruction of the Premises shall be those specifically provided in this Lease.

16. Condemnation.

Either party may terminate this Lease if the whole or any material part of the Premises are taken or condemned for any public or quasi-public use under Law, by eminent domain or private purchase in lieu thereof (a "***Taking***"). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building or Property which would leave the remainder of the Building unsuitable for use as a mixed-use and retail office building in a manner substantially comparable to the Building's use prior to the Taking. In order to exercise its right to terminate this Lease under this **Section 16**, Landlord or Tenant, as the case may be, must provide written notice of termination to the other within 45 days after the terminating party first receives notice of the Taking. Any such termination shall be effective as of the date the physical taking of the Premises or the portion of the Building or Property occurs. If this Lease is not terminated, the Rentable Square Footage of the Building, the Rentable Square Footage of the Premises and Tenant's Pro Rata Share shall, if applicable, be appropriately adjusted by Landlord. In addition, Rent for any portion of the Premises taken or condemned shall be abated during the unexpired Term effective when the physical taking of the portion of the Premises occurs. All compensation awarded for a Taking, or sale proceeds, shall be the property of Landlord, any right to receive compensation or proceeds being expressly waived by Tenant. However, Tenant may file a separate claim at its sole cost and expense for Tenant's trade fixtures, equipment, furniture and other personal property within the Premises ("***Tenant's Property***") and Tenant's reasonable moving and relocation expenses, loss of business and other claims that Tenant may have. Notwithstanding anything to the contrary set forth in this Lease, if a Taking of any portion of the Premises leaves the balance unsuitable for Tenant's use as a mixed-use retail and office building, or if a Taking of any

portion of the Building permanently deprives the Premises or the Building of reasonably adequate access or parking, then Tenant may terminate this Lease by giving written notice to Landlord effective as of the date of Taking.

17. Events of Default.

Tenant shall be considered to be in default under this Lease upon the occurrence of any of the following events of default (each, an "***Event of Default***"):

A. Tenant's failure to pay when due all or any portion of the Rent, and such failure continues for 5 days after written notice from Landlord to Tenant that Rent is past due ("***Monetary Default***").

B. Tenant's failure (other than a Monetary Default) to comply with any term, provision or covenant of this Lease, if the failure is not cured within 30 days after written notice to Tenant. However, if Tenant's failure to comply cannot reasonably be cured within 30 days, Tenant shall be allowed additional time as is reasonably necessary (but in no event more than an additional 90 days) to cure the failure so long as: (1) Tenant commences to cure the failure

within 10 days following Landlord's initial written notice, and (2) Tenant diligently pursues a course of action that will cure the failure and bring Tenant back into compliance with this Lease.

C. Tenant becomes insolvent, files a petition for protection under the U.S. Bankruptcy Code (or similar Law) or a petition is filed against Tenant under such Laws and is not dismissed within sixty (60) days after the date of such filing, makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts when due.

18. Remedies.

A. **Landlord's Remedies**. Upon any Event of Default, and for so long as the same remains uncured (if curable), Landlord shall have the right without notice or demand (except as provided in **Section 17**) to pursue any of its rights and remedies at Law or in equity, including any one or more of the following remedies:

(1) Terminate this Lease, in which case Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to surrender the Premises, Landlord may, in compliance with applicable Law and without prejudice to any other right or remedy, enter upon and take possession of the Premises and expel and remove Tenant, Tenant's Property and any parties occupying all or any part of the Premises. Tenant shall pay Landlord on demand the amount of all past due Rent, all Costs of Reletting (defined below) and any deficiency that may arise from reletting or the failure to relet the Premises. "***Costs of Reletting***" shall include commercially reasonable costs, losses and expenses incurred by Landlord in reletting all or any portion of the Premises, including the cost of removing and storing Tenant's furniture, trade fixtures, equipment, inventory or other property, repairing and/or demolishing the Premises, removing and/or replacing Tenant's signage and other fixtures, making the Premises ready for a new tenant, including the cost of advertising, commissions, architectural fees, legal fees and leasehold improvements, and any allowances and/or concessions provided by Landlord.

(2) Terminate Tenant's right to possession of the Premises and change the locks as permitted by Law, and, in compliance with applicable Laws, expel and remove Tenant, Tenant's Property and any parties occupying all or any part of the Premises. If Landlord terminates Tenant's possession of the Premises under this **Section 18.A(2)**, Landlord shall have no obligation to post any notice and Landlord shall have no obligation whatsoever to tender to Tenant a key for new locks installed in the Premises. Landlord may (but shall not be obligated to) relet all or any part of the Premises, without notice to Tenant, for a term that may be greater or less than the balance of the Term and on such conditions (which may include concessions, free rent and alterations of the Premises) and for such uses as Landlord in its reasonable discretion shall determine. Landlord may collect and receive all rents and other income from the reletting. Tenant shall pay Landlord on demand all past due Rent, all Costs of Reletting and any deficiency arising from the reletting or failure to relet the Premises. Landlord shall not be responsible or liable for the failure to relet all or any part of the Premises or for the failure to collect any Rent, except to the extent provided in **Section 18.C**. The re-entry or taking of possession of the Premises shall not be construed as an election by Landlord to terminate this Lease unless a written notice of termination of this Lease is given to Tenant.

(3) Cure such Event of Default for Tenant at Tenant's expense.

(4) Withhold or suspend payment of sums Landlord would otherwise be obligated to pay to Tenant under this Lease or any other agreement.

(5) Recover such other actual damages in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Law, excluding however, consequential, special and punitive damages.

B. **Tenant Not Relieved from Liabilities**. Unless expressly provided in this Lease, the repossession or re-entering of all or any part of the Premises or Landlord's exercise of any other remedy either as provided herein or otherwise, shall not relieve Tenant of its liabilities and obligations under this Lease including, without limitation, Tenant's liability for the payment of Rent or any other damages Landlord may incur by

reason of Tenant's breach. In addition, Tenant shall not be relieved of its liabilities under this Lease, nor be entitled to any damages hereunder, based upon minor or immaterial errors in the exercise of Landlord's remedies. No right or remedy of Landlord shall be exclusive of any other right or remedy. Each right and remedy shall be cumulative and in addition to any other right and remedy now or subsequently available to Landlord at Law or in equity. If Tenant fails to pay any amount when due hereunder (after the expiration of any applicable grace or cure period), Landlord shall be entitled to receive interest on any unpaid item of Rent from the date initially due (without regard to any applicable grace period) at a per annum rate equal to the lesser of 12% or the highest rate permitted by Law (the "***Default Rate***"). In addition, if Tenant fails to pay any item or installment of Rent when due (after the expiration of any applicable grace or cure period), Tenant shall pay Landlord an administrative fee equal to 5% of the past due Rent; provided, however, Landlord waives its right to impose the administrative fee against Tenant for the first time in any consecutive 12 month period Tenant fails to pay any amount within 5 days after becoming due under this Lease. However, in no event shall the charges permitted under this **Section 18.B** or elsewhere in this Lease, to the extent they are considered interest under applicable Law, exceed the maximum lawful rate of interest. If any payment by Tenant of an amount deemed to be interest results in Tenant having paid any interest in excess of that permitted by Law, then it is the express intent of Landlord and Tenant that all such excess amounts theretofore collected by Landlord be credited against the other amounts owing by Tenant under this Lease. Receipt by Landlord of Tenant's keys to the Premises shall not constitute an acceptance or surrender of the Premises.

C. **Mitigation of Damages**. For so long as an Event of Default exists, Landlord shall use objectively reasonable efforts to mitigate damages by reletting the Premises. Notwithstanding Landlord's duty to mitigate its damages as provided herein, Landlord shall not be obligated (i) to give any priority to reletting Tenant's space in connection with its leasing of space in the Building or any complex of which the Building is a part, or (ii) to accept below market rental rates for the Premises or any rate that would negatively impact the market rates for the Building.

D. **Waiver of Landlord's Lien**. Landlord hereby expressly waives and negates any and all statutory, contractual and constitutional landlord's liens and security interests on all property of Tenant now or hereafter placed in or upon the Premises.

E. **Landlord Defaults and Tenant Remedies**. Except as otherwise provided in this Lease and specifically subject to **Sections 3.F** and **19**, if Landlord fails in the performance of any of Landlord's obligations under this Lease and such failure continues for 10 days with respect to monetary defaults or 30 days (or such longer period of time as is reasonably necessary to remedy such default, provided Landlord shall commence such cure within 30 days after receipt of written notice from Tenant and continuously and diligently pursue such remedy at all times until such default is cured) as to non-monetary defaults, after in each instance Landlord's receipt of written notice thereof from Tenant, then Tenant shall be entitled to exercise any remedies that Tenant may have at law or in equity.

19. Landlord Payment Defaults.

If Landlord fails to pay when due any portion of the Reimbursement Allowance (subject to the provisions of the Work Letter), and such failure continues for a period of thirty (30) days after written notice of such failure to Landlord (and to any mortgagee of Landlord of which Tenant has received written notice or entered into a subordination, attornment and non-disturbance agreement) from Tenant, without amendment by or regard to any provision regarding the timing of such failure becoming a default by Landlord hereunder, including the provisions of **Section 18.E** hereof; then, in such event, Tenant may provide Landlord with a second (2nd) written notice of the failure which states, in conspicuous bold font "**NOTICE: LANDLORD'S FAILURE TO RESPOND TO THIS NOTICE MAY RESULT IN TENANT HAVING OFF- SET RIGHTS IN ACCORDANCE WITH THE LEASE.**", and if such failure is not cured within 10 Business Days after such second (2nd) written notice from Tenant to Landlord of the demand for such payment (without amendment by or regard to any provision regarding the timing of such failure becoming a default by Landlord hereunder, including the provisions of **Section 18.E** hereof), then, and conditioned upon no Event of Default by Tenant then existing, Tenant may offset the amounts thereof then due to Tenant, together with interest thereon at the Default Rate, calculated from the date such amounts were due to Tenant until so offset or otherwise reimbursed to Tenant, against Tenant's obligation to pay Rent hereunder.

20. Limitation of Liability.

A. **Landlord**. Tenant does hereby acknowledge and agree that none of the owners (but does not excuse the co-owner entities that comprise Landlord from liability), investors, members, stockholders, shareholders, partners, officers, or directors of Landlord shall be liable for any default by Landlord under this Lease or for the performance by Landlord of any of its obligations under this Lease. Anything in this Lease to the contrary notwithstanding, Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation of Landlord under this Lease shall only be enforced against Landlord's interest in the Property (including all rents, proceeds from any sale or transfer, and insurance or condemnation award(s) in respect to such Property), and no other property or assets of Landlord, disclosed or undisclosed, will be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use and occupancy of the Premises. Tenant hereby waives all

claims against all Landlord Parties for consequential, special or punitive damages allegedly suffered by any Tenant Parties.

B. **Tenant**. Landlord does hereby acknowledge and agree that none of the owners, investors, members, stockholders, shareholders, partners, officers, or directors of the Tenant shall be liable for any default by Tenant under this Lease or for the performance by Tenant of any of its obligations under this Lease. Landlord hereby agrees to look solely to the assets of Tenant for the recovery of any damages arising out of Tenant's default of its obligations under this Lease or for the enforcement of the performance by Tenant of any of its obligations under this Lease. Landlord hereby waives all claims against all Tenant Parties for consequential, special or punitive damages allegedly suffered by any Landlord Parties.

21. No Waiver.

Either party's failure to declare a default immediately upon its occurrence or delay in taking action for a default shall not constitute a waiver of the default, nor shall it constitute an estoppel. Except as expressly provided otherwise herein, either party's failure to enforce its rights for a default shall not constitute a waiver of its rights regarding any subsequent default.

22. Tenant's Right to Possession.

Provided Tenant pays the Rent and fully performs all of its other covenants and agreements under this Lease, Landlord covenants that Tenant shall have the right to peacefully occupy the Premises, subject to the terms of this Lease. This covenant and all other covenants of Landlord shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building, and shall not be a personal covenant of any Landlord Parties.

23. Holding Over.

Except for any permitted occupancy by Tenant under **Section 27**, if Tenant or any party claiming by, through or under Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, the continued occupancy of the Premises shall be that of a tenancy at sufferance. Tenant shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to 150% of the Base Rent and 100% of the OE Payment due for the period immediately preceding the holdover; provided, however, so long as no other uncured event of default exists under the Lease, for the first four (4) months of any such holdover Tenant shall pay only 125% of such amount and 100% of the OE Payment. Tenant shall otherwise continue to be subject to all of Tenant's obligations under this Lease.

24. Subordination to Mortgages; Estoppel Certificate.

Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently affecting the Premises, the Building or the Property, and to renewals, modifications, refinancings and extensions thereof (collectively, a "***Mortgage***"), provided that Landlord delivers to Tenant a fully executed subordination and non-disturbance agreement from Mortgagee (the "***SNDA***") which shall be revised to incorporate

commercially reasonable changes agreed upon by Tenant and such Mortgagee. As a condition to the effectiveness of this Lease, Landlord agrees to deliver to Tenant an SNDA in form and content reasonably acceptable to Tenant in connection with the execution of this Lease. The party having the benefit of a Mortgage shall be referred to as a "***Mortgagee***." In lieu of having the Mortgage be superior to this Lease, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. If requested by a successor-in-interest to all or a part of Landlord's interest in this Lease, Tenant shall, without charge, attorn to the successor-in-interest. Tenant shall, within 10 Business Days after receipt of a written request from Landlord, execute and deliver an estoppel certificate to those parties as are reasonably requested by Landlord (including a Mortgagee or prospective purchaser). The estoppel certificate shall include a statement certifying that this Lease is unmodified (except as identified in the estoppel certificate) and in full force and effect, describing the dates to which Rent and other charges have been paid, representing that, to the best of Tenant's knowledge, there is no default (or stating with specificity the nature of the alleged default) and certifying other matters with respect to this Lease that may reasonably be requested.

25. Attorneys' Fees.

If either party institutes a suit against the other for violation of or to enforce any covenant or condition of this Lease, or if either party intervenes in any suit in which the other is a party to enforce or protect its interest or rights, the prevailing party shall be entitled to all of its costs and expenses, including, without limitation, reasonable attorneys' fees. The term "***prevailing party***" is defined to mean the party who obtains a determination of wrongful conduct by the other party regardless of whether actual damages are awarded.

26. Notice.

If a demand, request, approval, consent or notice (collectively, a "***notice***") shall or may be given to either party by the other, the notice shall be in writing and delivered by hand or sent by registered or certified mail with return receipt requested, or sent by overnight or same day courier service, or sent by facsimile, at the party's respective Notice Address(es) set forth in **Section 1.M**, except that if Tenant has vacated the Premises (or if the Notice Address for Tenant is other than the Premises, and Tenant has vacated such address) without providing Landlord a new Notice Address, Landlord may serve notice in any manner described in this Section or in any other manner permitted by Law. Each notice shall be deemed to have been received or given on the earlier to occur of actual delivery (which, in the case of delivery by facsimile, shall be deemed to occur at the time of delivery indicated on the electronic confirmation of the facsimile) or the date on which delivery is first refused, or, if Tenant has vacated the Premises or the other Notice Address of Tenant without providing a new Notice Address, 3 days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address by giving the other party written notice of the new address in the manner described in this **Section 26**.

27. Reserved Rights.

This Lease does not grant any rights to light or air over or about the Building. Landlord excepts and reserves exclusively to itself the use of: (A) roofs, (B) telephone, electrical and janitorial closets, (C) equipment rooms, Building risers or similar areas that are used by Landlord for the provision of Building services, (D) rights to the land and improvements below the floor of the Premises, (E) improvements and air rights above the Premises, (F) the improvements and air rights outside the demising walls of the Premises, (G) the areas within the Premises used for the installation of utility lines and other installations serving occupants of the Building, and (H) any other areas designated from time to time by Landlord as service areas of the Building; provided that Landlord's use of such rights does not materially adversely affect Tenant's ability to use the Premises for the Permitted Use. Notwithstanding anything to the contrary contained herein, in the exercise of any of the foregoing reserved rights set forth in this **Section 27**, and except as otherwise permitted pursuant to this Lease, (1) Landlord shall use reasonable and diligent efforts not to unreasonably interfere with (i) Tenant's use and occupancy of or its business operations in the Premises, (ii) its use of any and all Common Areas of the Building including, without limitation, the Parking Facilities, (iii) its use of and access to and egress from the Premises and the Building, and (iv) Tenant's signage rights granted under this Lease; (2) Landlord shall not materially increase any of Tenant's obligations hereunder or materially diminish any of its rights hereunder, including, without limitation, increasing any Rent obligations; and (3) Landlord shall not alter the nature or character of the Building from a Class AA office building. As used herein, "reasonable and diligent efforts" shall include use of overtime labor so that work can be performed after Normal Business Hours, if same can be accomplished without material additional cost.

28. Surrender of Premises.

At the expiration or earlier termination of this Lease or Tenant's right of possession, Tenant shall quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair, ordinary wear and tear and casualty excepted, Tenant shall have no obligation to remove or restore any improvements to the Premises or Building, or any cables installed in the Premises or Building. All improvements to the Premises shall be owned by Landlord and shall remain upon the Premises without compensation to Tenant. If Tenant fails to remove any of Tenant's Property upon termination of this Lease or of Tenant's right to possession, Landlord may deem all or any part of Tenant's Property to be abandoned and Landlord shall be entitled to retain or to remove the same, and Landlord shall not be responsible for the value, preservation or safekeeping thereof. Title to any such abandoned Tenant's Property (except with respect to any Hazardous Material (defined in **Section 29.C**)) shall be deemed to be immediately vested in Landlord.

29. Hazardous Materials.

A. **Restrictions**. No Hazardous Material (defined below) (except for *de minimis* quantities of household cleaning products and office supplies used in the ordinary course of Tenant's business at the Premises and that are used, kept and disposed of in compliance with Laws) shall be brought upon, used, kept or disposed of in or about the Premises or the Property by any Tenant Parties or any of Tenant's transferees, contractors or licensees without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

B. **Remediation**. Tenant shall promptly notify Landlord if it suspects Contamination (defined below) in the Premises. Any remediation of Contamination caused by a Tenant Party or its contractors or invitees which is required by Law or which is deemed necessary by Landlord, in Landlord's opinion, shall be performed by Landlord and Tenant shall reimburse Landlord for the cost thereof.

C. **Landlord Compliance**. For purposes of this **Section 29**, a "***Hazardous Material***" is any substance the presence of which requires, or may hereafter require, notification, investigation or remediation under any Laws or which is now or hereafter defined, listed or regulated by any governmental authority as a "hazardous waste", "extremely hazardous waste", "solid waste", "toxic substance", "hazardous substance", "hazardous material" or "regulated substance", or otherwise regulated under any Laws. "***Contamination***" means the existence or any release or disposal of a Hazardous Material, in, on, under, at or from the Premises, the Building or the Property which may result in any liability, fine, use restriction, cost recovery lien, remediation requirement, or other government or private party action or imposition affecting any Landlord Party. For purposes of this Lease, claims arising from Contamination shall include diminution in value, restrictions on use, adverse impact on leasing space, and all costs of site investigation, remediation, removal and restoration work, including response costs under CERCLA and similar statutes. Landlord hereby agrees: (1) that the Building designs indicate no material amounts of asbestos in the Premises, the Building or other portions of the Property and (2) no investigation, administrative order, settlement, consent order or agreement, or litigation with respect to a Hazardous Material is proposed or threatened in writing by a governmental authority with respect to the Building or other portions of the Property. No notice, demand, claim, citation, complaint, summons, request for information or other communication has been received by Landlord from any governmental body claiming any violation of any Hazardous Material Laws or any administrative or court order relating to Hazardous Materials, except as disclosed to Tenant in writing. Landlord will use commercially reasonable efforts to contractually restrict tenants in the Building from using the Building or any portion thereof for the manufacturing, treatment, storage or disposal of Hazardous Materials, except as may be common for use or storage in Class AA projects. Landlord shall at all times be responsible for the base Building's compliance of the non-rentable portions of the Building with all federal, state and local environmental protection laws, rules, regulations, or ordinances, including, any administrative and court orders relating to Hazardous Material, and shall pay for all costs or compliance therewith except to the extent caused by Tenant or for which Landlord can look to others contractually or legally bound for payment. If at any time during the Term Contamination occurs as a result of an act or omission of Landlord, Landlord shall, at its expense (and not as an Operating Expense), promptly take all actions necessary to comply with Laws and to return the Building and the Property to its condition prior to such Contamination.

30. Miscellaneous.

A. **Governing Law; Jurisdiction and Venue; Severability; Paragraph Headings**. This Lease and the rights and obligations of the parties shall be interpreted, construed and enforced in accordance with the Laws of the state in which the Property is located. All obligations under this Lease are performable in the county or other jurisdiction where the Property is located, which shall be venue for all legal actions. If any term or provision of this

Lease shall be invalid or unenforceable, then such term or provision shall be automatically reformed to the extent necessary to render such term or provision enforceable, without the necessity of execution of any amendment or new document. The remainder of this Lease shall not be affected, and each remaining and reformed provision of this Lease shall be valid and enforced to the fullest extent permitted by Law. The headings and titles to the Articles and Sections of this Lease are for convenience only and shall have no effect on the interpretation of any part of this Lease. The words "include", "including" and similar words will not be construed restrictively to limit or exclude other items not listed.

B. **Recording**. Neither Landlord nor Tenant shall record this Lease. Notwithstanding the foregoing, simultaneously with the execution of this Lease, Landlord and Tenant shall enter into the Memorandum of Lease attached hereto as **Exhibit I** for the purpose of recording the same, and Tenant may, at Tenant's expense, record the same.

C. **Force Majeure**. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist attacks (including bio-chemical attacks), civil disturbances and other causes beyond the reasonable control of the performing party ("***Force Majeure***"). Any delay in any obligation undertaken by a party under this Lease resulting from Force Majeure shall be referred to herein as a "***Force Majeure Delay***". However, Force Majeure Delays shall not extend any period of time for the payment of Rent or other sums payable by either party or any period of time for the written exercise of an option or right by either party.

D. **Transferability; Release of Landlord**. Landlord shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Building and/or Property referred to herein, and upon such transfer Landlord shall be released from any further obligations hereunder accruing after the date of such transfer, and, provided that the successor in interest has assumed all of the obligations of Landlord under this Lease, Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligations. Notwithstanding anything to the contrary contained in this Lease, prior to the date that the Building is Substantially Complete, Landlord shall not have the right to transfer or assign this Lease to any other party other than to an Affiliate of Landlord or a Mortgagee, without the written consent of Tenant, which shall not be unreasonably withheld, conditioned or delayed.

E. **Brokers**. Tenant represents that it has dealt directly with and only with Lincoln Property Company Commercial, Inc. (whose commission of $1,265,386.00 shall be paid by Landlord pursuant to a separate written agreement) in connection with this Lease. Landlord represents that it has dealt directly with and only with Myers Commercial, Inc. pursuant to a separate written agreement in connection with this Lease. **TENANT AND LANDLORD SHALL EACH INDEMNIFY THE OTHER AGAINST ALL COSTS, EXPENSES, ATTORNEYS' FEES, LIENS AND OTHER LIABILITY FOR COMMISSIONS OR OTHER COMPENSATION CLAIMED BY ANY BROKER OR AGENT CLAIMING THE SAME BY, THROUGH OR UNDER THE INDEMNIFYING PARTY, OTHER THAN THE BROKER(S) SPECIFICALLY IDENTIFIED ABOVE.**

F. **Authority; Joint and Several Liability**. Landlord covenants, warrants and represents that each individual executing, attesting and/or delivering this Lease on behalf of Landlord is authorized to do so on behalf of Landlord, this Lease is binding upon and enforceable against Landlord, and Landlord is duly organized and legally existing in the state of its organization and is qualified to do business in the state in which the Premises are located. Similarly, Tenant covenants, warrants and represents that each individual executing, attesting and/or delivering this Lease on behalf of Tenant is authorized to do so on behalf of Tenant, this Lease is binding upon and enforceable against Tenant; and Tenant is duly organized and legally existing in the state of its organization and is qualified to do business in the state in which the Premises are located. If there is more than one Tenant, or if Tenant is comprised of more than one party or entity, the obligations imposed upon Tenant shall be joint and several obligations of all the parties and entities. Notices, payments and agreements given or made by, with or to any one person or entity shall be deemed to have been given or made by, with and to all of them. If there is more than one Landlord, or if Landlord is comprised of more than one party or entity, the obligations imposed upon Landlord shall be joint and several obligations of all the parties and entities. Notices, payments and agreements given or made by, with or to any one person or entity shall be deemed to have been given or made by, with and to all of them.

G. **Time is of the Essence; Relationship; Successors and Assigns**. Time is of the essence in this Lease. This Lease shall create only the relationship of landlord and tenant between the parties, and not a partnership, joint venture or any other relationship. This Lease and the covenants and conditions in this Lease shall inure only to the benefit of and be binding only upon Landlord and Tenant and their permitted successors and assigns.

H. **Survival of Obligations**. The expiration of the Term, whether by lapse of time or otherwise, shall not relieve either party of any obligations which accrued prior to or which may continue to accrue after the expiration or early termination of this Lease.

I. **Full Agreement; Amendments**. This Lease contains the parties' entire agreement regarding the subject matter hereof. All understandings, discussions, and agreements previously made between the parties, written or oral, are superseded by this Lease, and neither party is relying upon any warranty, statement or representation not contained in this Lease. This Lease may be modified only by a written agreement signed by Landlord and Tenant. The exhibits and riders attached hereto are incorporated herein and made a part of this Lease for all purposes.

J. **Prohibited Persons and Transactions**. Tenant represents to Landlord: (i) that neither Tenant nor any person or entity that directly owns a 10% or greater equity interest in it, nor any of its officers, directors or managing members, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("***OFAC***") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under Executive Order 13224 (the "***Executive***

Order") signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", or other Laws (each such person, a "***Prohibited Person***"), (ii) that Tenant's activities do not violate the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, or the

regulations or orders promulgated thereunder, as they may be amended from time to time, or other anti-money laundering Laws (the "***Anti-Money Laundering Laws***"), and (iii) that throughout the Term of this Lease Tenant shall comply with the Executive Order and with the Anti-Money Laundering Laws. Likewise, Landlord represents to Tenant: (i) that neither Landlord nor any person or entity that directly owns a 10% or greater equity interest in it, nor any of its officers, directors or managing members, is a Prohibited Person, (ii) that Landlord's activities do not violate Anti-Money Laundering Laws, and (iii) that throughout the Term, Landlord shall comply with the Executive Order and with the Anti-Money Laundering Laws.

K. **Tax Protest**. Landlord shall, within 30 days of receipt of the yearly ad valorem tax valuation notice applicable to the Premises, deliver such valuation notice to Tenant. Together with such notice, Landlord shall deliver notice to Tenant indicating whether Landlord will formally contest Tax Expenses and the ad valorem valuation of the Project for such year with the applicable taxing authorities. If Landlord elects to formally contest Tax Expense or the ad valorem valuation of the Project, Landlord shall keep Tenant reasonably informed as to the progress of such contest, copy Tenant on material communications regarding such contest, and deliver copies of all documentation related to such contest to Tenant. Landlord shall not settle any such contest once commenced without first receiving Tenant's written consent, which consent shall not be unreasonably withheld. If Landlord fails to deliver such notice or elects not to formally contest Tax Expenses or the ad valorem valuation of the Project, Tenant shall have the right to contest Tax Expenses and the ad valorem valuation of the Project, in Landlord's name and with the reasonable cooperation of Landlord, with the applicable taxing authorities, within the time frames established by Law. Any savings realized (net of expenses) as a result of any such tax contest shall be credited against Tax Expenses next coming due.

L. **Method of Calculation**. Tenant is knowledgeable and experienced in commercial transactions and does hereby acknowledge and agree that the provisions of this Lease for determining charges and amounts payable by Tenant are commercially reasonable and valid and constitute satisfactory methods for determining such charges and amounts as required by Section 93.012 of the Texas Property Code. **TENANT FURTHER VOLUNTARILY AND KNOWINGLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ALL RIGHTS AND BENEFITS OF TENANT UNDER SUCH SECTION, AS IT NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED OR SUCCEEDED.**

M. **Waiver of Consumer Rights**. Tenant hereby waives all its rights under the Texas Deceptive Trade Practices - Consumer Protection Act, Section 17.41 et seq. of the Texas Business and Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of Tenant's own selection, tenant voluntarily adopts this waiver.

N. **Counterpart Signatures**. This Lease may be executed and delivered (including delivery in electronic format) in counterparts and each counterpart so delivered which bears the signature of a party hereto shall be binding as to such party, and all counterparts together shall constitute the same instrument.

31. Special Provisions.

A. **Signage**. Subject to the approval of all applicable governmental and quasi-governmental entities, and further subject to all applicable Laws, Landlord hereby grants Tenant the right to have the following signs at the Building identifying Tenant:

(1) Tenant shall have the exclusive right to install and maintain exterior lighted signage (the "***Building Signage***") above the second level of the exterior façade of the Building, and Landlord shall not permit or allow any other signage to be installed above the second level of the exterior façade of the Building. Tenant's Building Signage shall be installed on the exterior façade of the Building facing Hillcrest Avenue and on the exterior façade of the Building facing Daniel Avenue (such two façades being referred to as the "***Signage Facades***") above the sixth level of the Building, and Landlord shall ensure that the Building will be designed and constructed to facilitate such installation and to allow for the installation Building Signage without blocking any of the windows of the Premises.

(2) In the event that either Landlord or the Master Association ever construct, or permit to be constructed, a monument sign on the Property, which monument sign is not designated for use solely by the tenants of the Retail Condominium Unit, Landlord agrees to install, display and maintain, at Tenant's sole expense, Tenant's signage on such monument sign (the "***Monument Signage***"). In addition, no other tenant shall have signage positioned higher than Tenant's signage on the Monument Signage.

(3) Landlord agrees to install elevator bank signage and/or Building lobby signage identifying Tenant's name or the name under which Tenant does business. This signage shall be the highest tenant identification signage and shall be comparable in letter size and mounting height as any other tenant's signage in the main lobby of the Building (collectively, the "***Elevator Signage***"). Tenant's portion of the Building Signage, the Monument Signage, and the Elevator Signage shall collectively be referred to as "***Tenant's Signage***".

(4) Upon final approval of Tenant's Signage by both Landlord and Tenant, including the size, material, construction and design of Tenant's Signage, the final approved rendering of Tenant's Signage shall be inserted as **Exhibit H** hereto. Neither party shall unreasonably withhold, condition or delay its consent to Tenant's Signage.

(5) Tenant, at its expense, shall obtain all necessary governmental permits and certificates required for the installation and use of Tenant's Signage, as well as any approvals necessary under applicable Laws. Tenant acknowledges that Landlord has made no representation that any of Tenant's Signage will comply with applicable Law. Following Tenant's compliance with the requirements hereof for such Tenant's Signage, Landlord shall erect the Tenant's Signage in accordance with the approved plans and specifications and any reasonable requirements of Landlord in connection therewith, in a good and workmanlike manner, in accordance with all applicable Laws. Following Landlord's construction and installation of the Tenant's Signage, Tenant shall maintain Tenant's Signage in a good, working and safe condition and otherwise in accordance with the terms of this Lease, and shall pay all costs associated with such construction and any maintenance of Tenant's Signage. All utilities serving Tenant's Signage shall be submetered by Landlord, and Tenant shall be solely responsible for the costs of all utilities serving Tenant's Signage and all costs in connection therewith. Further, if Landlord

elects to install an electronic Building directory in the ground floor lobby area of the Building, the name and/or logo of Tenant (whose name and/or logo shall be included in any such directory at all times during the Term of this Lease) shall be organized and displayed in a manner reasonably determined by Landlord.

B. **Riser Space**. During the Term, Landlord shall provide riser space in the Building as mutually agreed upon by Landlord and Tenant, from, among other locations, the Premises to the roof of the Building for purposes of any Telecommunications Equipment (hereinafter defined). Such riser space shall be used for the installation of conduit containing control wiring and electrical distribution cabling used to supply the Premises with emergency power, plus for telecommunications wiring and fiber. All costs and expenses associated with the installation, operation, maintenances and insuring of the conduit shall be borne by Tenant. There shall be no rental cost to Tenant for the use of such riser space unless such space penetrates rentable parking or storage areas.

C. **Supplemental HVAC**. Subject to all other applicable provisions of this Lease, including without limitation the provisions of **Section 8** hereof pertaining to Alterations, Tenant shall have the right to install an additional HVAC unit (the "***Supplemental HVAC Unit***") to serve the Premises, such Supplemental HVAC Unit to be installed either within the Premises or at such other locations as Landlord shall designate in its sole but reasonable discretion, and such Supplemental HVAC Unit to be installed in a good and workmanlike manner, in compliance with all Laws, and at Tenant's sole cost and expense. In addition, once any such Supplemental HVAC Unit is installed, except as expressly set forth below, Tenant shall be responsible for the maintenance, repair, upkeep and replacement of the same, all at Tenant's sole cost and expense. Notwithstanding the foregoing, Landlord agrees that it will perform, at Tenant's request, the following services related to the Supplemental HVAC Unit: replacement of the Supplemental HVAC Unit's air filters and replacement of the Supplemental HVAC Unit's water strainers (the "***Landlord HVAC Work***"). The Landlord HVAC Work will be performed at such times as reasonably determined by Landlord after Tenant's request therefor, taking into account timing to obtain materials or other supplies needed, etc. The Landlord HVAC Work will be performed at Tenant's cost and expense, with Tenant to pay any costs (including, in addition to costs of materials, costs of labor at Landlord's current rate for any labor) associated with such Landlord HVAC Work within thirty (30) days after receipt of Landlord's invoice therefor.

D. **Telecommunications Antenna**. Landlord and Tenant agree that Tenant shall have the right to no more than 400 square feet of space available for Tenant on the roof of the Building for the installation of certain telecommunications equipment (the "***Telecommunications Equipment***"), subject to the provisions of this **Section 31.D**. The following provisions shall apply with respect to any such Telecommunications Equipment. The quantity, type, size, electrical and transmission capacity, location and other variables regarding such Telecommunications Equipment shall be subject to Landlord's prior approval which shall not be unreasonably withheld, conditioned or delayed. The Telecommunications Equipment shall be installed in a good and workmanlike manner, in compliance with all Laws, and at Tenant's sole cost and expense, and Tenant shall be responsible for all upkeep and replacement of the same, all at Tenant's sole cost and expense. The Telecommunications Equipment will be used only by Tenant and its Affiliates leasing space in the Building and not by any third parties. Tenant shall

cause its Telecommunications Equipment not to interfere with the operations of other equipment located on the roof of the Building, and Landlord will cause the other equipment on the roof of the Building not to interfere with the operation of Tenant's Telecommunication Equipment. Within thirty (30) days of Landlord's invoice, which reimbursement obligation will survive termination of this Lease, Tenant will reimburse Landlord for fifty percent (50%) of the cost of: (A) removal of the Telecommunications Equipment, and (B) restoration of the areas of the roof of the Building affected by Tenant's Telecommunication Equipment (ordinary wear and tear excepted) upon removal of the Telecommunications Equipment after the end of the Term.

E. **Exclusivity**. Tenant, and its successor and assigns, shall have the exclusive right in the Building to provide those activities permitted by Law to be performed by a Financial Holding Company, as defined in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841, et seq.), including without limitation, providing banking services, insurance services, financial services, and lending services (the "***Bank Holding Exclusive***"); provided, however, the Bank Holding Exclusive shall not apply to any Affiliate of Tenant or to any other occupant of the Premises. During the Term (including any renewal or extension thereof), Landlord shall not lease any space to or allow the occupancy of any space, or allow any signage, in or on, the Building or Property in violation of the Bank Holding Exclusive, including without limitation, leasing or allowing the occupancy of any space, or allowing any signage, in or on, the Building or Property to any company, individual, or other business which is directly in competition with Tenant (other than any Affiliate of Tenant or any other occupant of the Premises), including for any banking services, insurance services, financial services, or lending services use.

F. **Naming Rights**. So long as Tenant or any of its Affiliates leases or occupies at least 36,445 Rentable Square Feet in the Building

(the "***Naming Right Occupancy Threshold***"), the Building shall be named "Hilltop Plaza", and Landlord shall not name the Building or Property, or rename, refer to, or allow any marketing material or signage in, on, or relating to the Building or Property, to any name other than "Hilltop Plaza", without first obtaining the written consent of Tenant, which consent may be withheld in Tenant's sole and absolute discretion. Notwithstanding anything to the contrary contained in this **Section 31.F**, so long as Tenant or any of its Affiliates satisfies the Naming Right Occupancy Threshold, Tenant, or its successors and assigns, shall have the right to rename the Building to a name reasonably acceptable to Landlord. For so long as (i) Tenant or any of its Affiliates has satisfied the Naming Right Occupancy Threshold, and (ii) Landlord has not changed the Building name to a name that does not contain the name "Hilltop" after first obtaining the written consent of Tenant as set forth above, and (iii) Tenant and Tenant's successors or assigns have not renamed the Building to a name that does not contain include the name "Hilltop" in the Building name as set forth above, Tenant hereby grants to Landlord, without warranty, a license to use the name "Hilltop" in connection with the Building name during the Term of this Lease.

[Signatures Appear on the Following Page]

Landlord and Tenant have executed this Lease as of the Effective Date.

LANDLORD:

SPC PARK PLAZA PARTNERS LLC,
a Texas limited liability company

By: First American Exchange Company, LLC,
a Delaware limited liability company,
its sole member and manager

By: /s/ MARK A. BULLOCK
Mark A. Bullock,
Legal Counsel

AND

DIAMOND HILLCREST, LLC,
a Texas limited liability company

By: /s/ GARY SHULTZ
Name: Gary Shultz
Title: Vice President

AND

HTH HILLCREST PROJECT LLC,
a Texas limited liability company

By: /s/ COREY PRESTIDGE
Name: Corey Prestidge
Title: Vice President

as co-owners

TENANT:

HILLTOP HOLDINGS INC.,
a Maryland corporation

By: /s/ COREY PRESTIDGE

Name: Corey Prestidge
Title: Executive Vice President and General Counsel

EXHIBITS AND SCHEDULES INTENTIONALLY OMITTED

(Back To Top)

Section 6: EX-10.5 (EX-10.5)

Exhibit 10.5

RETAIL LEASE

BETWEEN

SPC PARK PLAZA PARTNERS LLC, DIAMOND HILLCREST, LLC, AND HTH HILLCREST PROJECT LLC, AS CO-OWNERS

("LANDLORD")

AND

PLAINSCAPITAL BANK

("TENANT")

TABLE OF CONTENTS

EXHIBITS AND RIDERS:

RETAIL LEASE

This Retail Lease (this "***Lease***") is entered into by and between **SPC PARK PLAZA PARTNERS LLC**, a Texas limited liability company, **DIAMOND HILLCREST, LLC**, a Texas limited liability company, and **HTH HILLCREST PROJECT LLC**, a Texas limited liability company, as co-owners (collectively, "***Landlord***"), and **PLAINSCAPITAL BANK**, a Texas chartered bank ("***Tenant***"), and shall be effective as of , 2018 (the "***Effective Date***").

1. Basic Lease Information.

The key business terms used in this Lease are defined as follows:

A. "***Building***": A mixed-use retail and office tower to be constructed by Landlord located at 6565 Hillcrest Avenue, University Park, Texas 75205, which shall be known as Hilltop Plaza.

B. "***Rentable Square Footage of the Building***" is approximately 118,989 square feet of Rentable Square Footage composed of approximately 76,724.75 square feet of Rentable Square Footage in the Office Condominium Unit (defined below) and 42,264.25 square feet of Rentable Square Footage in the Retail Condominium Unit (defined below).

C. "***Premises***": The area shown on **Exhibit A-1** to this Lease, as follows:

Floor	Suite Number	Rentable Square Footage
First	100	4,098

The aggregate "***Rentable Square Footage of the Premises***" is approximately 4,098 square feet of Rentable Square Footage. Promptly upon approval of Tenant's Plans (defined in **Exhibit D**) and prior to Tenant's application for permits for the Tenant Work, Landlord and Tenant shall remeasure the Rentable Square Footage of the Premises shown in the Approved Construction Documents (defined in **Exhibit D**) in accordance with BOMA ANSI Z65.1-2017 measurement standards. Upon Tenant's written request, Tenant shall have the right within thirty (30) days of substantial completion of the Tenant Work to again remeasure the Premises in accordance with the aforesaid measurement standards. In the event any adjustment of the Rentable Square Footage is made as a result of any such remeasurement, the Base Rent, and the OE Payment payable under this Lease, the parking permits made available to Tenant and any other concessions based on the Rentable Square Footage of the Premises shall be adjusted accordingly. The necessary adjustments, if any, shall be reflected in the Memorandum of Commencement Date and Square Footage attached hereto in the form of **Exhibit B**.

D. "***Base Rent***": Based on 4,098 RSF and subject to recalculation of Monthly Base Rent if the square footage of the Premises is revised pursuant to **Section 1.C**.

Period	Annual Base Rent Rate Per Rentable Square Foot	Monthly Base Rent
CD* through Month 9*	$ 0.00	$ 0.00
Month 10 through Month 21	$ 75.00	$ 25,612.50
Month 22 through Month 33	$ 76.13	$ 25,996.69
Month 34 through Month 45	$ 77.27	$ 26,386.64
Month 46 through Month 57	$ 78.43	$ 26,782.44

Month 58 through Month 69	$	79.60	$	27,184.17
Month 70 through Month 81	$	80.80	$	27,591.94
Month 82 through Month 93	$	82.01	$	28,005.82
Month 94 through Month 105	$	83.24	$	28,425.90
Month 106 through Month 117	$	84.49	$	28,852.29
Month 118 through ED*	$	85.75	$	29,285.08

* CD = Commencement Date
ED = Expiration Date
Commencement Date through Month 9 = "Abated Rent Period"

E. "***Tenant's Pro Rata Share***": The percentage equal to the Rentable Square Footage of the Premises divided by the Rentable Square Footage of: (1) the entire Building for expenses that apply to the entire Property; (2) the Commercial Condominium Unit for expenses that apply only to the Commercial Condominium Unit; (3) the Commercial Condominium Unit and the Office Condominium Unit combined for expenses that apply to both the Commercial Condominium Unit and the Office Condominium Unit, and (4) the portion of the Building to which an expense is directly attributable or reasonably allocable for expenses that apply other than to: (i) the entire Commercial Condominium Unit, or (ii) the entire Commercial Condominium Unit and the entire Office Condominium Unit combined.

F. "***Term***": The period of one hundred twenty-nine (129) months (as more particularly defined in **Section 3.B**), starting on the Commencement Date, as such period may be extended pursuant to **Rider No. 1** attached to this Lease.

G. "***Commencement Date***": One hundred eighty (180) days after the Actual Delivery Date (defined in **Section 3.C**), subject to adjustment, if any, as provided in **Section 3.C**, **Section 3.H** and the Work Letter.

H. "***Business Day(s)***" shall mean the days national banks are open for business in Dallas, Texas.

I. "***Holidays***": New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Landlord may designate additional Holidays, provided that the additional Holidays are commonly recognized by other Comparable Buildings and do not conflict with the Laws applicable to Tenant's operations.

J. "***Law(s)***": (i) All applicable statutes, codes, ordinances, orders, rules and regulations of any municipal or governmental entity, now or hereafter adopted, including the Americans with Disabilities Act and any other law pertaining to disabilities and architectural barriers (collectively, "***ADA***"), and all laws pertaining to the environment, including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq. ("***CERCLA***"), and (ii) all restrictive covenants existing of record as of the Effective Date and (iii) all rules and requirements of any association or improvement district affecting the Property; provided that, any Laws under subsection (iii) which are modified after the Effective Date do not materially diminish the rights or materially increase the obligations of Tenant under this Lease.

K. "***Normal Business Hours***": 7:00 A.M. to 6:00 P.M. Monday through Friday and 8:00 A.M. to 6:00 P.M. on Saturdays, exclusive of Holidays.

L. "***Comparable Buildings***" shall mean other comparable Class AA mixed-use office and retail buildings in Dallas County, Texas, taking into account age, quality, size, location and other relevant operating factors.

M. "***Notice Addresses***":

Tenant: On or after the Commencement Date, notices shall be sent to Tenant at the Premises, as follows:

Tenant:
PlainsCapital Bank
6565 Hillcrest Ave., Suite 300
University Park, Texas 75205
Attn: Lisa Loreto, Senior Vice President
(469) 718-4620
Email: Lisa.Loreto@hilltop-holdings.com

With copy to:
SRS-Cresa Lease Administration
c/o PLAINSCAPITAL BANK
15660 North Dallas Parkway,
Suite 1200
Dallas, Texas 75248
Attn: Real Estate Administrator

And to:
Bracewell LLP
1445 Ross Avenue, Suite 3800
Dallas, Texas 75202
Attn: K. Brock Bailey
(214) 758-1076
Email: Brock.Bailey@bracewell.com

Prior to the Commencement Date, notices shall be sent to Tenant at the following address:

Tenant:
PlainsCapital Bank
2323 Victory Ave., Suite 1400
Dallas, Texas 75219
Attn: Lisa Loreto, Senior Vice President
(469) 718-4620

With copy to:
SRS-Cresa Lease Administration
c/o PLAINSCAPITAL BANK
15660 North Dallas Parkway, Suite 1200
Dallas, Texas 75248

And to:
Bracewell LLP
1445 Ross Avenue, Suite 3800
Dallas, Texas 75202
Attn: K. Brock Bailey
(214) 758-1076

Landlord: Notices shall be sent to Landlord, as follows:

Landlord: SPC Park Plaza Partners LLC c/o First American Exchange Company 215 South State Street, Suite 380 Salt Lake City, UT 84111 Tel.: (866) 516-1031 Email: mbullock@firstam.com	With a copy to: Kane Russell Coleman Logan PC 1601 Elm Street, Suite 3700 Dallas, Texas 75201 Attn: Raymond J. Kane (214) 777-4290 Email: rkane@krcl.com
Diamond Hillcrest, LLC 200 Crescent Court, Suite 1350 Dallas, Texas 75201 Attn: Gary Shultz Tel.: (214) 871-5151 Email: gshultz@diamond-a.com	Haynes and Boone, LLP 2323 Victory Avenue, Suite 700 Dallas, Texas 75219 Attn: William C. Wilshusen Tel.: (214) 651-5595 Email: William.wilshusen@haynesboone.com
HTH Hillcrest Project LLC 2323 Victory Avenue, Suite 1400 Dallas, Texas 75219 Attn: Corey G. Prestidge Tel.: (214) 525-4647 Email: cprestige@hilltop-holdings.com	Bracewell LLP 1445 Ross Avenue, Suite 3800 Dallas, Texas 75202 Attn: K. Brock Bailey (214) 758-1076 Email: Brock.Bailey@bracewell.com

"Rent" (defined in **Section 4.A**) is payable to the order of SPC Park Plaza Partners LLC as follows:

If by check:
SPC Park Plaza Partners LLC
6565 Hillcrest, Suite 200
Dallas, Texas 75205
Attn: Chuck Keller

If by wire transfer:
[BANK (location)**]
ABA #[ ]
Account #: **
Account Name: **
Reference: [ ]

If by ACH:
[BANK (location)**]
ABA #[ ]
Account #: **
Account Name: **
Reference: [ ]

[If necessary, this can be confirmed or completed in the Memorandum of Commencement Date and Square Footage to be executed pursuant to **Section 3.B]

2. Lease Grant.

As further described below, the Premises is a part of a mixed use condominium project known as Hilltop Plaza Condominium, containing the Office Condominium Unit of the Building (the "***Office Condominium Unit***"), as one component, as well as a Retail Condominium Unit of the Building (the "***Commercial Condominium Unit***" or "***Retail Condominium Unit***"), as another component, and an attached parking garage with 3 levels of parking (the "***Parking Condominium Unit***" or "***Parking Garage***"), as a third component. Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord, together with the right in common with others to use any portions of the Property (defined below) that are designated by Landlord for the common use of tenants and others, such as sidewalks, common corridors, vending areas, and lobby areas, and with respect to multi-tenant floors, restrooms and elevator foyers (collectively, the "***Common Areas***"). Tenant's use of lobbies and other Common Areas of the Building, plus elevators, freight elevators and loading dock shall be subject to scheduling and reasonable rules and regulations and

any costs more particularly set forth herein associated with such usage. "***Property***" or "***Project***" means the Building and the parcel(s) of land on which it is located as more fully described on **Exhibit A-2**, together with all other buildings and improvements located thereon, the Retail Condominium Unit, the Parking Garage, and other improvements serving the Building, and the parcel(s) of land on which they are located. Tenant acknowledges and agrees as follows:

A. This Lease, and Tenant's rights hereunder, are subject and subordinate to any and all documents governing the maintenance, operation, and use of the condominium, including without limitation that certain Master Declaration of Condominium for Hilltop Plaza Condominium, recorded in the Official Public Records of Dallas County, Texas (the "**Master Declaration**"); the Certificate of Formation of Hilltop Plaza Condominium Association, Inc. (the "***Master Association***"); By-Laws of the Master Association; and Rules and Regulations of Hilltop Plaza Condominium; and any rules or regulations promulgated by or on behalf of said Master Association, whether recorded or unrecorded (collectively, and as all may be amended or supplemented from time to time, the "***Condominium Documents***"). Notwithstanding the foregoing, (i) in the event of any conflict between the terms of this Lease and the Condominium Documents, as amended from time to time, the terms of this Lease shall control; and (ii) nothing in the Condominium Documents, as amended from time to time, shall increase Tenant's obligations (including with respect to Operating Expenses), nor decrease its rights, under this Lease. Landlord hereby represents and warrants that all of the Condominium Documents attached to this Lease as **Exhibit I** are true, correct, and complete, and that there are no other Condominium Documents other than those attached hereto as **Exhibit I**. Landlord agrees that it will not, as a member of the Condominium Association or otherwise, amend, or suffer or permit the Condominium Documents to be amended, without first receiving the prior written consent of Tenant.

B. Some of the obligations of Landlord under this Lease may be performed or will be performable by the Master Association pursuant to the Master Declaration. Without waiving or limiting any of Landlord's obligations under this Lease, and subject to the terms of this Lease, Tenant hereby agrees that the Master Association may perform such obligations on behalf of Landlord, and Tenant agrees to reimburse Landlord for the performance of such obligations by

the Master Association, as and when required by the terms of this Lease. To the extent that any employee, agent, or contractor of the Master Association performs any such obligations on behalf of Landlord under this Lease, such employee, agent, or contractor shall be deemed a Landlord Party (defined in Article 12) for all purposes under this Lease.

C. Notwithstanding anything to the contrary contained in this Lease, Landlord, on behalf of itself, its lenders, and their successor and assigns, covenants and agrees that any assignment, sublease, transfer or encumbrance of any interest created by, or which becomes subject to, the Master Declaration (either absolutely or collaterally) shall be conditioned upon the receipt by Tenant of an agreement (in form and substance reasonably acceptable to Tenant) from such assignee, sublessee, transferee or beneficiary recognizing Tenant's rights under this Lease, including without limitation, Tenant's rights of access to and from the Premises, Tenant's Signage rights, Tenant's rights to use the parking spaces specified in this Lease, and Tenant's rights to perform repair and maintenance obligations which Landlord has failed or refuses to make or cause to be made (whether to the Building, the Property, or to any of the units created by the Master Declaration), all as specifically set forth in this Lease.

3. Construction; Term; Adjustment of Commencement Date; Possession.

A. **Construction of Building**. The parties acknowledge that as of the Effective Date of this Lease, the Building is not yet constructed. The Building will be constructed generally in accordance with the building schematics attached hereto as Schedule 2 to **Exhibit C** (the "***Building Schematics***") and the Building will be improved by the Landlord Work as described in **Exhibit C**. Landlord shall complete the Building substantially in accordance with the Building Schematics and **Exhibit C**. Landlord shall consult with and solicit comments from Tenant before proceeding with any Building scheme substantially different from the scheme illustrated by the Building Schematics, and shall obtain Tenant's consent to all such changes. Tenant shall respond to such request within 10 Business Days after receipt of such request, with Tenant's failure to timely respond to a request for Tenant consent to a change being deemed consent to such change. Tenant shall designate a construction representative who will represent Tenant in connection with the interaction contemplated by this **Section 3.A**, and Tenant initially designates Lisa Loreto as such representative. Tenant may change such representative upon 10 days' prior written notice to Landlord.

B. **Term**. The term of this Lease shall commence on the Commencement Date and, unless terminated early in accordance with this Lease, continue through the last day of the Term specified in **Section 1.F**. (the "***Expiration Date***"). Except as otherwise expressly set forth in **Section 3.F** below, Landlord's delay in delivering possession of the Premises for any reason shall not be a default by Landlord, render this Lease void or voidable, or otherwise render Landlord liable for damages. Within thirty (30) days of the occurrence of the Commencement Date the parties shall execute a Memorandum of Commencement Date and Square Footage in the form attached hereto as **Exhibit B** and made a part hereof. If such Memorandum of Commencement Date is not executed or objected to in writing by Tenant within 30 days after delivery of same by Landlord, then Tenant shall be deemed to have agreed with the matters set forth therein. Notwithstanding any other provision of this Lease to the contrary, if the Expiration Date would

occur on a date other than the last day of a calendar month, then the Expiration Date shall be automatically extended to the last day of such calendar month.

C. **Delivery Date**. It is anticipated that Landlord will deliver the Premises and the Building in Delivery Condition (as defined hereinbelow) on or before May 31, 2019 (the "***Scheduled Delivery Date***") so that Tenant may commence the construction of its Tenant Work

pursuant to the Work Letter attached hereto as **Exhibit D** (the "***Work Letter***"). The "***Actual Delivery Date***," as such term is used herein, shall refer to the date Landlord actually delivers the Premises and the Building to Tenant in Delivery Condition. Landlord shall use diligent efforts to deliver the Premises in Delivery Condition on or before the Scheduled Delivery Date.

"***Delivery Condition***" shall mean that:

(1) The Premises have been delivered to Tenant in the condition specified in **Exhibit C** and free of debris, subject to completion of the Landlord Work;

(2) The Landlord Work is Substantially Complete, except to the extent the noncompletion of the Landlord Work will not materially interfere with the Tenant Work; and

(3) Means of access to the Premises and all facilities necessary for Tenant to begin the Tenant Work, including necessary lifts, elevators and stairways, have been installed and are in good operating order and available to Tenant in coordination with Landlord.

Landlord shall complete the Landlord Work in the Premises in coordination with Tenant's performance of the Tenant Work no later than Tenant's occupancy of the Premises for its permitted use. Landlord shall, to the extent reasonably possible, perform the portion of the Landlord Work which must be completed in conjunction with the Tenant Work in a manner that does not materially impede the progress of the Tenant Work. Landlord and Tenant agree to cooperate and to cause their respective contractors to cooperate so as to avoid an unreasonable delay of the Landlord Work or the Tenant Work by reason of the coordinated construction.

Landlord agrees to construct the base Building in substantial accordance with the Building Construction Schedule attached as Schedule 1 to **Exhibit C**, subject to extension as provided in this Lease. If at any time there is a change in the Construction Schedule for the Building such that the Actual Delivery Date is anticipated to occur after the Scheduled Delivery Date, Landlord shall promptly give Tenant notice of any such change (and all subsequent changes, if any), and shall, in all events, give Tenant at least thirty (30) days' prior written notice of the Actual Delivery Date.

Except as expressly set forth below, Landlord shall have no liability whatsoever to Tenant on account of Landlord's failure to meet any date in the Construction Schedule; furthermore, if Landlord fails to meet one date but satisfies the next ensuing date, then Landlord shall have no liability whatsoever to Tenant. If a date is so extended so that it falls on other than a Business Day, the date shall be further extended, at Landlord's discretion, so as to fall on the next occurring Business Day. Notwithstanding the foregoing, in no event will Force Majeure Delays (as defined in **Section 30.C**) total, in the aggregate, more than 180 days. Not later than 20 days after the end of any calendar month in which Landlord believes that a Force Majeure Delay has

occurred, Landlord shall deliver to Tenant written notice of the number of Force Majeure Delay days being claimed in such prior month, the details supporting the Force Majeure Delay, and the cumulative total of all Force Majeure Delays being claimed by Landlord through the end of such prior month, and the failure of Landlord to timely do so shall prevent Landlord from claiming Force Majeure Delay(s) for the month such notification was not timely given to Tenant.

D. **Substantial Completion; Tenant Delay**. The Landlord Work shall be deemed to be "***Substantially Complete***" on the date that the Landlord Work has been performed to the extent that Tenant may reasonably commence the Tenant Work (as defined in **Exhibit D** attached hereto). "***Tenant Delay***" means any act or omission of Tenant or its agents, employees, vendors or contractors that actually delays the Substantial Completion of the Landlord Work, including: (i) Tenant's failure to furnish information or approvals within any time period specified in this Lease, including the failure to prepare or approve preliminary or final plans by any applicable due date; (ii) Tenant's selection of non-building standard equipment or materials; (iii) changes requested or made by Tenant to previously approved plans and specifications; or (iv) performance of work in the Premises by Tenant or Tenant's contractor(s) during the performance of the Landlord Work prior to the date upon which the Landlord Work is Substantially Complete.

E. **Landlord Delay**. "***Landlord Delay***" means any delay not caused by Tenant.

F. **Tenant Remedies**.

(1) Subject to extension due to Force Majeure Delay(s) and Tenant Delay in accordance with this Lease, if Landlord has not delivered the Premises to Tenant in Delivery Condition by May 31, 2019 (the "***First Outside Delivery Date***"), then Tenant shall be entitled to receive a two-day extension of the Abated Rent Period and the Parking Abatement Period (defined in **Exhibit F**) for each additional day of delivery of the Premises beyond the First Outside Delivery Date (the "***First Additional Abated Rent***"). If, subject to extension due to Force Majeure Delay (s) and Tenant Delay in accordance with this Lease, Landlord has not delivered the Premises to Tenant by the ***First Outside Delivery Date***, in addition to the First Additional Abated Rent as set forth above, Landlord shall pay Tenant the following damages (collectively, "***Holdover Damages***"): the difference between what Tenant is currently actually paying under its current lease and any holdover differential on its current leased space or increased rent on any substituted space (plus moving costs) between May 31, 2019, and the Actual Delivery Date, and all actual and reasonable documented overtime charges necessitated to expedite the Tenant Work, provided that such overtime charges shall not exceed $23,000.00.

(2) Subject to extension due to Force Majeure Delay(s) and Tenant Delay in accordance with this Lease, if Landlord has not delivered the Premises to Tenant on or before August 30, 2019 (the "***Second Outside Delivery Date***"), then in addition to the remedies set forth in **Section 3.F(1)** above, Tenant shall be entitled to receive an additional one-day extension of the Abated Rent Period and the Parking Abatement

Period for each additional day of delivery of the Premises beyond the Second Outside Delivery Date, for an aggregate extension of three (3) days of the Abated Rent Period and the Parking Abatement Period for each additional day of delivery of the Premises beyond the Second Outside Delivery Date (the "***Second Additional***

Abated Rent"). If Landlord has not delivered the Premises to Tenant by the Second Outside Delivery Date, in addition to the Second Additional Abated Rent, Landlord shall pay Tenant Holdover Damages, as set forth above, and Tenant shall have the right, but not the obligation, to complete the Landlord Work at Landlord's expense. In addition, and notwithstanding anything to the contrary in this Lease, if Landlord has not delivered the Premises within four hundred fifty (450) days after the Second Outside Delivery Date, subject to Tenant Delay (defined below) and Force Majeure Delay (as limited in this **Section 3**), then Tenant shall have the right, as its sole remedy, to terminate this Lease upon written notice to Landlord given at any time after such 450-day period and prior to delivery of the Premises.

G. **Acceptance of Premises**. Subject to Landlord's obligation to perform the Landlord Work, Landlord's repair obligations under **Section 8.B**., and any latent defects in the Premises or the Landlord Work of which Tenant provides, written notice not later than 365 days following the Actual Delivery Date, the Premises are accepted by Tenant in "as is" condition and configuration. By taking possession of the Premises, and with the exception of any Landlord Work that is not Substantially Complete, Tenant agrees that the Premises are in good order and satisfactory condition, and that there are no representations or warranties, express or implied, by Landlord regarding the condition of the Premises or the Building, except as expressly set forth herein.

H. **Possession of Premises Prior to Commencement Date**. Notwithstanding the fact that the Premises may not fully satisfy all of the criteria in the definition of "***Delivery Condition***", Tenant, along with its employees, agents, contractors, subcontractors, space planner/interior architect, engineers, consultants, vendors, suppliers and other representatives, and their respective employees, shall be permitted to enter the Premises, for the purpose of performing the Tenant Work as soon as the floors of the Building are dried in and are, in Landlord's reasonable discretion, ready for the commencement of the Tenant Work. Tenant will coordinate Tenant's construction activities with Landlord's Contractor (s), prior to the Commencement Date for the purposes of inspecting same, and for the installation of furniture, fixtures and equipment (including telephone, communications and computer equipment). Except as otherwise provided herein, there shall be no obligation on the part of Tenant to pay Base Rent or Tenant's Pro Rata Share of Operating Expenses by reason of any such access between the Actual Delivery Date and the date of Substantial Completion of the Tenant Work (as defined in the Work Letter). Any party having prior access must comply with Landlord's standard insurance provisions and other requirements pursuant to **Section 6.C**. Tenant shall have the right to also access and use loading dock facilities, parking facilities and freight elevator(s), as well as access to and use of appropriate electrical and other systems and related facilities, provided such entry and work shall be in harmony with Landlord's contractors and subcontractors, and shall not materially interfere with or delay completion of the Landlord Work to be performed by Landlord in the Premises or elsewhere in the Building. Between the date the Tenant Work is Substantially Complete (as defined in the Work Letter), and provided Tenant has received a certificate of occupancy or its official equivalent issued by the applicable governmental authority (a "***CO***"), and further provided that Landlord has received a temporary CO for the Building, to the extent available, Tenant shall be allowed to occupy the Premises for the purposes of the Permitted Use, and there shall be no obligation on the part of Tenant to pay Base Rent or Additional Rent by reason of any such occupancy between such occupancy date and the Commencement Date.

I. **Move-In**. Tenant will move its furniture, furnishings, equipment, supplies and other property required for doing business into the Premises commencing on or about the date of Substantial Completion of Tenant's Work. Landlord and Tenant will mutually schedule the actual move in date(s). Landlord shall furnish, without charge to Tenant (except for electricity charges, which shall be payable as set forth in **Section 7.B**) such air conditioning, light and power as may be required in the Premises, elevator service, including the Building freight elevator(s), and the services or operators for such elevators during such move-in, and all other services required to be delivered by Landlord pursuant to this Lease.

4. Rent.

A. **Payments**. As consideration for this Lease, commencing on the Commencement Date, Tenant shall pay Landlord, without any demand, setoff or deduction (except as expressly set forth in this Lease), the total amount of Base Rent and Additional Rent (defined below) (which are sometimes collectively referred to as "***Rent***"). "***Additional Rent***" means the OE Payment and all other sums (exclusive of Base Rent) that Tenant is required to pay Landlord under this Lease. Tenant shall pay and be liable for Tenant's allocable portion of all gross receipts, margin, rental, sales and use taxes (but excluding income taxes), if any, imposed upon or measured by rents, receipts or income attributable to ownership, use, occupancy, rental, leasing, operation or possession of the Property (in addition to, but not in duplication of, amounts included in Operating Expenses pursuant to **Section 4.D(5)**). The monthly Base Rent and the OE Payment shall be due and payable in advance on the first day of each calendar month without notice or demand. All other items of Rent shall be due and payable by Tenant on or before 30 days after billing by Landlord. All payments of Rent shall be by good and sufficient check or by other means (such as automatic debit or electronic transfer) reasonably acceptable to Landlord. If the Term commences on a day other than the first day of a calendar month, the monthly Base Rent and the OE Payment for the month shall be prorated on a daily basis based on a 360 day calendar year, and such prorated amount shall be due and payable on the first day of the month following the Commencement Date. Landlord's acceptance of less than the correct amount of Rent shall be considered a payment on account of the earliest Rent due. No endorsement or statement on a check or letter accompanying a check or payment shall be considered an accord and satisfaction, and either party may accept such check or payment without such acceptance being considered a waiver of any rights such party may have under this Lease or applicable Law. Tenant's covenant to pay Rent is independent of every other covenant in this Lease. Notwithstanding the foregoing, from the Commencement Date through the last day of Month 9 of the Term, Tenant shall not be required to pay Base Rent or the OE Payment; however, Tenant shall be required to pay Tenant's Pro Rata Share of the portion of Operating Expenses allocable to electrical costs pursuant to **Section 4.D(10)**.

B. **Payment of Operating Expenses**. Tenant shall pay Tenant's Pro Rata Share of the Operating Expenses (the "***OE Payment***") for each calendar year during the Term. Notwithstanding the foregoing, beginning on the first anniversary of the Commencement Date, Tenant's Pro Rata Share of Controllable Expenses (defined below) shall not increase by more than 5% over Tenant's Pro Rata Share of Controllable Expenses in the prior calendar year. The term "***Controllable Expenses***" means all Operating Expenses excluding expenses relating to the cost of insurance and real estate taxes and assessments. On or about January 1 of each calendar

year, Landlord shall provide Tenant with a good faith estimate of the OE Payment for such calendar year during the Term. On or before the first day of each month, Tenant shall pay to Landlord a monthly installment equal to one-twelfth of Landlord's estimate of the OE Payment. If Landlord determines that its good faith estimate of the Operating Expenses was incorrect, Landlord may provide Tenant with a revised estimate. After its receipt of the revised estimate, Tenant's monthly payments shall be based upon the revised estimate. If Landlord does not provide Tenant with an estimate of the OE Payment by January 1 of a calendar year, Tenant shall continue to pay monthly installments based on the most recent estimate (s) until Landlord provides Tenant with the new estimate. Upon delivery of the new estimate, an adjustment shall be made for any month for which Tenant paid monthly installments based on the same year's prior incorrect estimate(s). Tenant shall pay Landlord the amount of any underpayment within 30 days after receipt of the new estimate. Any overpayment shall be credited against the next sums due and owing by Tenant or, if no further Rent is due, refunded directly to Tenant within 30 days of determination. Landlord shall use a consistent methodology in computing each tenant's pro rata share of Operating Expenses from year to year. Landlord currently estimates that the Operating Expenses for the calendar year 2020 will be $19.00 per Rentable Square Foot.

C. **Reconciliation of Operating Expenses**. Within 120 days after the end of each calendar year or as soon thereafter as is practicable, Landlord shall furnish Tenant with a statement of the actual Operating Expenses and the OE Payment for such calendar year. If the most recent estimated OE Payment paid by Tenant for such calendar year is more than the actual OE Payment for such calendar year, Landlord shall apply any overpayment by Tenant against Rent due or next becoming due; provided, if the Term expires before the determination of the overpayment, Landlord shall, within 30 days of determination, refund any overpayment to Tenant after first deducting the amount of Rent due within 30 days of determination. If the most recent estimated OE Payment paid by Tenant for the prior calendar year is less than the actual OE Payment for such year, Tenant shall pay Landlord, within 30 days after its receipt of the statement of Operating Expenses and the OE Payment, any underpayment for the prior calendar year.

D. **Operating Expenses Defined**. "***Operating Expenses***" means all costs and expenses incurred or accrued in each calendar year in connection with the operation, maintenance, management, repair and protection of the Property which are directly attributable or reasonably allocable to the Property as reasonably determined by Landlord, employing sound and consistent accounting principles, including Landlord's personal property used in connection with the Property and including, but not limited to, all costs and expenditures relating to the following:

(1) Operation, maintenance, repair and replacements of any part of the Property, including the mechanical, electrical, plumbing, HVAC, vertical transportation, fire prevention and warning and security systems; materials and supplies (such as light bulbs and ballasts); equipment and tools; floor, wall and window coverings; personal property; required or beneficial easements; and related service agreements and rental expenses.

(2) Administrative, asset management, and management fees and costs, including accounting, information and professional services (except for negotiations and disputes

with specific, future tenants, if any, not affecting other parties); fees and assessments from the Retail Condominium Unit, the Parking Condominium Unit, or Master Association as set forth in **Section 2**; management office(s); and wages, salaries, benefits, reimbursable expenses and taxes (or allocations thereof if the same are not 100% attributable to the Property) for full and part time personnel involved in operation, maintenance and management of the Property at or below the level of regional property manager and regional asset manager; *provided, however,* the total combined costs of such administrative, asset management, and fees and assessments from the Retail Condominium Unit, the Parking Condominium Unit, and Master Association as set forth in **Section 2**, together with all such management fees and costs, shall not exceed 4% of the Building Gross Revenue.

(3) Janitorial service; window cleaning; waste disposal; gas, water and sewer and other utility charges (including add-ons); and landscaping, including all applicable tools and supplies.

(4) Property, liability and other insurance coverages carried by Landlord, including deductibles (not to exceed $20,000.00 per occurrence) and risk retention programs and a proportionate allocation of the cost of blanket insurance policies maintained by Landlord and/or its Affiliates (defined below).

(5) Real estate taxes, assessments, excises, association dues, fees, levies, charges and other taxes of every kind and nature whatsoever, general and special, extraordinary and ordinary, foreseen and unforeseen, including interest on installment payments, which may be levied or assessed against or arise in connection with ownership, use, occupancy, rental, leasing, operation or possession of the Property, or paid as rent under any ground lease ("***Tax Expenses***"). Tax Expenses shall include, without limitation: (i) any tax on the rent or other revenue from the Property, or any portion thereof, or as against the business of owning or leasing the Property, or any portion thereof, including any business, gross margins, or similar tax payable by Landlord which is attributable to rent or other revenue derived from the Property, (ii) any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, (iii) personal property taxes for property

that is owned by Landlord and used in connection with the operation, maintenance and repair of the Property, (iv) any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, and (v) any assessment, tax, fee, levy or charge substituted, in whole or in part, for a tax previously in existence, or assessed in lieu of a tax increase. Tax Expenses shall not include Landlord's estate, excise, income or franchise taxes (except to the extent provided above).

(6) Compliance with Laws enacted, amended or interpreted differently after the Effective Date, including license, permit and inspection fees (but not in duplication of capital expenditures amortized as provided in **Section 4.D(9)**); and all expenses and fees, including attorneys' fees and court or other venue of dispute resolution costs, incurred in negotiating or contesting real estate taxes or the validity and/or applicability of any governmental enactments which may affect Operating Expenses; provided Landlord shall credit against Operating Expenses any refunds received from such negotiations or contests to the extent originally included in Operating Expenses (less Landlord's costs).

(7) Building safety services.

(8) Goods and services purchased from Landlord's subsidiaries and Affiliates to the extent the cost of same is generally consistent with rates charged by unaffiliated third parties for similar goods and services (except no such limitation shall apply in emergencies).

(9) Amortization of capital expenditures incurred with the intention of reducing or controlling increases in Operating Expenses, such as lighting retrofit and installation of energy management systems, but only to the extent of the actual savings. Such expenditures shall be amortized uniformly over the useful life of the capital asset as reasonably determined by Landlord, together with interest on the unamortized balance at the Prime Rate (hereinafter defined) (as of the date incurred) plus 2%. In addition and notwithstanding the foregoing, as the Property is new construction, no amortization of capital expenditures shall be a part of Operating Expenses during the first five (5) years of the Term.

(10) Electrical services used in the operation, maintenance and use of the Property; sales, use, excise and other taxes assessed by governmental authorities on electrical services supplied to the Property, and other costs of providing electrical services to the Property. Landlord agrees that the electrical service for any restaurants within the Property shall be separately metered.

E. **Exclusions from Operating Expenses**. Operating Expenses exclude the following expenditures:

(1) Leasing commissions, attorneys' fees and other expenses related to leasing tenant space and constructing improvements for the sole benefit of an individual tenant.

(2) Goods and services (including electrical services) furnished to an individual tenant of the Building which are above Building Standard and that are only available to Tenant at additional cost under the Lease.

(3) Repairs, replacements and general maintenance paid by insurance proceeds or condemnation proceeds or covered by warranty.

(4) Except as provided in **Section 4.D(9)**, depreciation, amortization, principal and interest payments on any encumbrances on the Property and the cost of capital improvements, capital repairs or additions or capital replacements.

(5) Costs related to exclusively: (i) any office tenant in the Project for services only provided to such tenant, (ii) the Office Condominium Unit for services only provided to the Office Condominium Unit, and (iii) the Master Association related to the Office Condominium Unit, which are not directly attributable or reasonably allocable to the Retail Condominium Unit.

(6) Costs of installing, operating and maintaining any specialty service, such as, but not limited to, an observatory, broadcasting facility, luncheon club, cafeteria, retail store, sundry shop, newsstand, car wash, athletic or recreational club or day care center.

(7) Costs of repairing, maintaining, or replacing any latent defects in the construction of the Building, and expenses for repairs or maintenance related to the Property which have been reimbursed to Landlord pursuant to warranties or service contracts.

(8) Costs (other than maintenance costs) of any art work (such as sculptures or paintings) used to decorate the Building.

(9) Principal payments on indebtedness secured by liens against the Property, or costs of refinancing such indebtedness.

(10) Rental, gross receipts, sales and use, or other taxes, if any, imposed upon or measured by rents, receipts or income attributable to ownership, use, occupancy, rental, leasing, operation or possession of the Property which have been paid by tenants pursuant to **Section 4.A**.

(11) Legal, auditing, consulting and professional fees paid or incurred in connection with negotiations for financings, refinancings, sales, acquisitions, obtaining of permits or approvals relating to the development of the Building, zoning proceedings or actions, environmental permits or actions, lawsuits, or further development of the Property.

(12) Expenses incurred in leasing or procuring new tenants, including advertising and leasing fees, commissions or brokerage commissions of any kind, including without limitation, signing bonuses, moving expenses, assumption of rent under existing leases and other concessions or inducements, marketing expenses and expenses for preparation of leases or renovating space for new tenants and build out allowances.

(13) The amount of rent or other charges payable under and pursuant to any ground lease or superior lease pertaining to the Property.

(14) Costs incurred in correcting defects in construction of the Property, including noncompliance of Laws.

(15) Any advertising, promotional or marketing expenses for the Property.

(16) Except in emergencies, costs, fees, and compensation paid to Landlord or to Landlord's Affiliates, for services in or to the Property to the extent that they exceed the charges for comparable services rendered by an unaffiliated third party of comparable skill, competence, stature, and reputation.

(17) Services, costs, items and benefits for which Tenant or any other tenant or occupant of the Building or third person (including insurers) specifically reimburses Landlord or for which Tenant or any other tenant or occupant of the Building pays third persons.

(18) Fines, penalties and default interest.

(19) Contributions to charitable or political organizations.

(20) Contributions to operating expense reserves.

(21) Costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Property.

(22) Expenses incurred by Landlord for the use of any portion of the Property to accommodate special events such as shows, promotions, filming, displays, photography, private events, parties and ceremonies, to the extent invitations to such events, parties or celebrations are not extended to all of the tenants of the Building.

(23) The initial cost of tools and equipment used in the operation of the Property.

(24) Flowers, gifts, balloons, or similar items provided to any vendors, contractors, prospective tenants, and agents, and any such items provided to any or all tenants or their employees; however, such exclusion does not apply to flowers and other decorations to be placed in Building lobbies.

(25) Entertainment or dining expenses, or travel expenses for Building employees.

(26) Costs of constructing additions to the Building or new buildings on the Property, or otherwise further developing the Property.

(27) Any validated parking for any entity.

(28) Rentals and other related expenses incurred in leasing air-conditioning systems, elevators, and other equipment ordinarily considered to be capital expenditures.

(29) Any rental, imputed rental, or associated costs for any management office space that exceeds 2,000 rentable square feet or for which the rental rate exceeds the prevailing rental rate for comparable office space in the Building, and any costs associated with the purchase of furniture and office equipment for Landlord, Landlord's property manager, or their agents, contractors, and lenders.

(30) Costs for expenditures incurred in connection with any environmental clean-up, response action or remediation on, in, under or about the Building or the Property other than costs of identification, testing, monitoring or minor cleaning (not rising to the level of remediation) of Hazardous Materials.

(31) Costs relating to disputes between Landlord and a specific tenant of the Building.

(32) Costs relating to disputes between Landlord and any employee or agent of Landlord.

(33) Costs related to the existence and maintenance of Landlord as a legal entity, except to the extent attributable to the operation and management of the Property.

(34) Costs not billed to Tenant within three (3) years of the date such costs are incurred, except for properly amortized

expenses pursuant to the terms of this Lease, or within one (1) year after the end of the Lease Term.

F. **Proration of Operating Expenses; Adjustments**. Subject to the limitations set forth in this Lease, if Landlord incurs Operating Expenses for the Property together with one or more other buildings or properties, whether pursuant to a reciprocal easement agreement, common area agreement or otherwise, the shared costs and expenses shall be equitably prorated and apportioned by Landlord between the Property and the other buildings or properties. If the Building is not 100% occupied during any calendar year or partial calendar year or if Landlord is not supplying services to 100% of the total Rentable Square Footage of the Building at any time during a calendar year or partial calendar year, Operating Expenses shall be determined as if the Building had been 100% occupied and Landlord had been supplying services to 100% of the Rentable Square Footage of the Building during that calendar year. The extrapolation of Operating Expenses under this Section shall be performed by Landlord by adjusting the cost of those components of Operating Expenses that are impacted by changes in the occupancy of the Building ("***Variable Operating Expenses***"). Landlord shall use a consistent methodology to "gross-up" Variable Operating Expenses from year to year, the methodology for grossing-up Variable Operating Expenses for any year shall be no less favorable to Tenant than for any other tenant of retail space in the Building whose economic terms are similar and Landlord shall provide in the statement required by **Section 4.C**, a reasonably detailed description of how the Variable Operating Expenses were "grossed-up". Landlord will not recover in any one calendar year more than 100% of the actual Operating Expenses for such year. Notwithstanding anything contained herein to the contrary, in no event shall the allocation to Operating Expenses of costs relating to the operation of the Parking Condominium Unit exceed such costs multiplied by a fraction, the numerator of which is the number of parking spaces allocated to the Commercial Condominium Unit by Landlord (which shall be equal to the minimum number of parking spaces required to be maintained by each occupant of the Commercial Unit according to its use, as mandated by the applicable regulations of the City), and the denominator of which is the total number of parking spaces in the Parking Condominium Unit. Landlord agrees to provide to Tenant and Tenant's representatives reasonable information relating to the allocation of expenses between the Office Condominium Unit and the Commercial Condominium Unit upon Tenant's reasonable request.

G. **Audit Rights**. Within three (3) years after Landlord furnishes its statement of actual Operating Expenses for any calendar year (including the Base Year) (the "***Audit Election Period***"), Tenant or Tenant's representatives may, at Tenant's expense (subject to reimbursement by Landlord as provided below), upon not less than 10 days' prior written notice to Landlord, elect to audit during Landlord's normal business hours at the location where Landlord maintains its records in Dallas County, Texas, Landlord's Operating Expenses for such calendar years only. If the audit proves that Landlord's calculation of Operating Expenses for the calendar year under inspection was overstated by more than 5%, then, after verification, Landlord shall pay Tenant's out-of-pocket audit and inspection fees applicable to the review within thirty (30) days after

receipt of Tenant's invoice therefor. Landlord shall credit any overpayment determined by the final approved audit report against the next Rent due and owing by Tenant or, if no further Rent is due, refund such overpayment directly to Tenant within 30 days of determination. Likewise, Tenant shall pay Landlord any underpayment determined by the final approved audit report within 30 days of determination. The foregoing obligations shall survive the expiration or termination of this Lease. Tenant and its representatives shall keep such audit results confidential, except as may be required to comply with Laws or any court order. Tenant agrees not to engage a third-party auditor who is compensated on a contingency fee basis for the sole purpose of conducting an audit hereunder; provided, however, the foregoing restriction notwithstanding, Tenant's lease administration service provider may conduct an audit and perform audit-related services regardless of how such service provider is compensated.

5. Tenant's Use of Premises.

A. **Permitted Uses**. The Premises shall be used only for financial services and other uses ancillary thereto consistent with a first class mixed-use retail and office building (the "***Permitted Use***"). Landlord covenants that, as of the Commencement Date, nothing in the record title would prevent use of the Premises for financial services purposes. Tenant shall not use or permit the use of the Premises for any purpose which is illegal, creates obnoxious odors (including tobacco smoke), noises or vibrations, is dangerous to persons or property, could increase Landlord's insurance costs, or which, in Landlord's reasonable opinion, unreasonably disturbs any other tenants of the Building, interferes with the operation or maintenance of the Property, impairs the reputation or quality of the Building, or overburdens any of the Building systems for which Landlord is responsible, the Common Areas or parking facilities, in violation of this Lease. Tenant will not operate other than for the Permitted Use without Landlord's prior written consent, which will not be unreasonably withheld, conditioned or delayed.

B. **Compliance with Laws**. Tenant shall comply with all Laws, including the ADA (subject to Landlord's obligations set forth in **Exhibits C** and **D**) regarding the operation of Tenant's business in, and Tenant's manner of use and occupancy of the Premises and its use of the Common Areas. Landlord agrees to provide Tenant with a copy of a certificate of occupancy for the Building, and Tenant shall provide Landlord with (i) the temporary certificate of occupancy for the Premises prior to taking possession of the Premises for business purposes, to the extent available, and (ii) the permanent certificate of occupancy for the Premises within 5 Business Days after receipt of same but in no event later than ninety (90) days after the Commencement Date. Tenant shall comply with the rules and regulations of the Building attached as **Exhibit E** to this Lease and such other reasonable rules and regulations (or modifications thereto) adopted by Landlord from time to time, provided that Landlord shall have given prior written notice thereof to Tenant. Such rules and regulations will be applied in an equitable and non-discriminatory manner as reasonably determined by Landlord, taking all circumstances into account. In the event of any discrepancy between the provisions of **Exhibit E** and those of this Lease, the provisions of this Lease shall govern. Except as otherwise specifically provided herein, Landlord shall be responsible for causing the Building Elements (as defined in **Section 8.B** below) to be in compliance with all Laws, including the ADA.

C. **Tenant's Security**. Tenant shall have the right to install its own security system in the Premises and at doors to Building

stairwells located in the Premises at Tenant's sole cost and expense and subject to Landlord's review and approval thereof (not to be unreasonably withheld, conditioned or delayed). Tenant agrees that it shall not be deemed an unreasonable condition of approval for Landlord to require that Tenant's system be functionally compatible with the base Building systems or that Tenant use a certain vendor or installer for Tenant's security system. In addition, if Tenant's security system is compatible with Landlord's security system at the Building and the Parking Garage, Tenant shall have the right, at Tenant's sole cost and expense (inclusive of any monthly fee charged by Landlord), to connect Tenant's security system to Landlord's security system.

D. **Interactive Teller Machine**. Subject to compliance with Laws, Tenant, at no cost to Landlord, shall have the right to install, maintain, service, use, and allow its customers and invitees to use, an interactive teller machine (an "***ITM***") in the (i) Premises, which ITM will be accessible from the Building lobby via an opening in the Premises storefront, (ii) Premises, which ITM will be accessible from the exterior of the Building, and (iii) Parking Garage. The location of (i) any opening in the exterior of the Building or in the Premises' lobby storefront for the purpose of installing an ITM in the Premises, and (ii) any ITM in the Parking Garage, shall be subject to the reasonable approval of Landlord, which shall not be unreasonably withheld, conditioned, or delayed.

6. Services to be Furnished by Landlord.

A. **Standard Services**. Subject to the provisions of this Lease, Landlord agrees to furnish (or cause a third party provider to furnish) the following services to Tenant during the Term, in each case consistent with the standard offered in other Comparable Buildings (collectively, the "***Building Standard Services***"):

(1) Water service for use by Tenant for drinking and use in the lavatories (including hot and cold water in the lavatories only) and convenience kitchens, if any, on each floor on which the Premises are located.

(2) Heat and air conditioning in season, during Normal Business Hours at such temperatures and in such amounts as required by governmental authority or as supplied in Comparable Buildings. Landlord shall operate the HVAC system in the Building within the design parameters set forth in **Section 1.L** of **Exhibit C**. With respect to any portion of the HVAC system not controlled by Tenant, Tenant may, upon notice given two hours prior to the time overtime HVAC is required, and subject to the capacity of the Building systems, request HVAC service during hours other than Normal Business Hours, and upon such request Landlord shall provide such HVAC service, subject to a 2-hour minimum. Tenant shall pay Landlord the then standard charge for such additional service, as determined by Landlord from time to time based on Landlord's estimated Actual Costs. "***Actual Costs***" shall mean an amount equal to the actual out-of-pocket incremental extra costs to Landlord to provide such after-hour air conditioning (or other additional services or utilities), without markup for profit, overhead, depreciation or administrative costs. Such Actual Costs shall fluctuate only due to actual increase or decrease in such costs.

(3) Maintenance and repair of the Building and Property as described in **Section 8.B**.

(4) Intentionally Deleted.

(5) Passenger and freight elevator service, subject to Landlord's reasonable policies and procedures for use of the elevator (s) in the Building. The minimum number of elevators will be that reflected on **Exhibit C**.

(6) Exterior surface of exterior windows washing at least two (2) times per year; provided, however, in the event Landlord cleans the outside surface of the exterior windows more frequently than two (2) times per year, in the case of the floors located above the Premises, in such a manner as to dirty the windows of the Premises, then Landlord shall clean the windows of the Premises as frequently as those located above same.

(7) Security for the Building (including equipment, personnel, procedures and systems) 24 hours a day, 7 days per week.

(8) Electricity to the Premises for financial service use, in accordance with and subject to the terms and conditions in **Section 7**.

(9) Access to the Premises and the Parking Garage 24 hours a day, 7 days per week, subject to Landlord's security measures, Force Majeure, applicable Law, Landlord's reasonable rules and regulations, and emergency/repair situations.

(10) Parking in the Parking Garage, at an additional cost as set forth on **Exhibit F**.

(11) Intentionally Deleted.

(12) Extermination and pest control in the Common Areas.

(13) On-site property management by a professional and qualified property management company that is then managing multiple Comparable Buildings, including an on-line portal for submitting work order and after-hours air condition/heating requests.

(14) Landlord agrees to permit Tenant's employees to use the base Building stairwells in the Building for access to the premises of any Tenant Affiliate, 24 hours a day, 7 days a week, subject to Landlord's reasonable rules and regulations, and emergency/repair situations.

Landlord agrees that the above-described services and maintenance of the Building and its components, including the Common Areas, shall be reasonably similar to services and maintenance provided to other Comparable Buildings.

B. **Service Interruptions**. If any of the Building equipment or machinery ceases to function properly for any cause, or any Building Standard Services are not provided to Tenant

and/or the Premises as provided herein, Landlord shall use reasonable diligence to repair or restore the same promptly. Landlord's inability to furnish, or any interruption or termination of, services due to the application of Laws, the failure of any equipment, the performance of maintenance, repairs, improvements or alterations, or the occurrence of any other event or cause, whether or not within the reasonable control of Landlord (a "***Service Failure***"), shall not render Landlord liable to Tenant, constitute a constructive eviction of Tenant, give rise to an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement, except as expressly set forth herein. In no event shall Landlord be liable to Tenant for any loss or damage, including the theft of Tenant's Property (defined in **Section 16**), arising out of or in connection with the failure of any security services, personnel or equipment. Any provision herein to the contrary notwithstanding, if a Service Failure beyond the control of Landlord results in the Premises or any material portion thereof not being reasonably usable by Tenant for its business purpose ("***Untenantable***") (unless the Service Failure is caused by a fire or other casualty, in which event **Section 15** controls), and same remains uncured for a total of three (3) consecutive Business Days, or five (5) Business Days during any ten (10) consecutive Business Day period ("***First Cure Period***") after Landlord's receipt of Tenant's written notice of the Service Failure, Tenant shall have the following rights and remedies:

(1) For each day or portion thereof that such Service Failure beyond the control of Landlord continues beyond the First Cure Period, Tenant shall be entitled to an equitable abatement of Rent commensurate to that portion of the Premises rendered Untenantable by the Service Failure calculated on a per square foot basis beginning after the First Cure Period and ending at the time the Premises are again suitable for use by Tenant for its intended purposes.

(2) If the Service Failure beyond the control of Landlord renders more than 25% of the Premises Untenantable, and is not cured within thirty (30) days ("***Second Cure Period***") after Landlord's receipt of written notice of Service Failure, Tenant may at its option make such repairs as are necessary to eliminate the Service Failure, and Landlord shall pay to Tenant upon demand, the cost of such repairs plus interest at the Default Rate (defined in **Section 18.B**), such interest to accrue continuously from the date of payment by Tenant until repayment by Landlord, or at Tenant's election, after giving Landlord written notice of Tenant's intent to do so and Landlord's failure to pay the same to Tenant within 5 days after receipt of such notice. Tenant may offset any such unpaid amount from Rent payable hereunder, until such time as Tenant has been fully reimbursed.

(3) If the Service Failure beyond the control of Landlord renders more than 25% of the Premises Untenantable, and is not cured by either Landlord or Tenant (with Tenant being under no obligations to complete such cure) within one hundred eighty (180) days ("***Third Cure Period***") after Landlord's receipt of Tenant's written notice of Service Failure, then Tenant, at its option, exercised by written notice to Landlord prior to restoration of such service, may terminate this Lease and all of its obligations for the remaining balance of the Term, and any renewals or extensions thereof, whichever shall be applicable, and the parties hereto shall be relieved of all liabilities and obligations hereunder (other than those which expressly survive termination) as of the date of Tenant's written notice of termination pursuant to this **Section 7.B**.

C. **Third Party Services**. If Tenant desires any service which Landlord has not specifically agreed to provide in this Lease, such as private security systems or telecommunications services serving the Premises, Tenant shall have the right to procure such service directly from a reputable third party service provider ("***Provider***") for Tenant's own account at Tenant's sole cost and expense and subject to Landlord's review and approval thereof (not to be unreasonably withheld, conditioned or delayed). Tenant agrees that it shall not be deemed an unreasonable condition of approval for Landlord to require that Tenant's security system be functionally compatible with the base Building systems or that Tenant use a certain vendor or installer for Tenant's security system. Subject to the foregoing, Landlord agrees that any such Provider shall have the right to access the Building and install such Provider's equipment in the Building, subject to Landlord's reasonable policies and practices for the Building.

7. Use of Electrical Services by Tenant.

A. **Landlord's Electrical Service**. Subject to the terms of this Lease, Landlord shall furnish building standard electrical facilities (including transformers, risers, conduits, feeders, and switchboards) necessary to furnish the Premises with electric power 24 hours a day, 7 days per week, for normal financial services purposes, including the following (the "***Building Standard Electricity***"), in each case measured in the aggregate over the Premises and as calculated using the National Electrical Code (NEC) procedures:

(1) Normal office equipment (including personal computers, duplicating/reproduction/photocopy machines, employee lunchrooms, coffee bars, executive or other dining areas, including kitchen equipment associated therewith, vending machines) and other equipment operating at 120/208 volts up to a maximum connected load of (5.5) VA per usable square foot (USF) of the Premises.

(2) Task and ambient lighting systems and other equipment operating at 277/480 volts up to a maximum connected load of (1.5) VA per USF of the Premises.

(3) Tenant shall be entitled to increase electrical facilities above the Building Standard Electricity by additional connected

load capacity of up to two (2.0) VA per USF of the Premises at 277/480 volts available in the bus riser (exclusive of base Building components such as heat, VAV terminal units, etc.) for use by Tenant (the "***Above-Standard Electricity***"), if Tenant so requires in connection with its permitted use of the Premises. Any distribution equipment (panels, transformers, conduit, wiring, etc.) required to deliver Above-Standard Electricity shall be at Tenant's cost and all consumption on this excess equipment shall be separately metered and billed directly to Tenant by Landlord and shall not be included in Operating Expenses. Tenant will not, without Landlord's prior written consent (which consent shall not be unreasonably withheld or delayed) in each instance, connect any fixtures, appliances or equipment to the Building's electric distribution system other than through outlets existing on the Commencement Date or make any alteration or addition to the electric system of the Premises existing on the Commencement Date.

B. **Electrical Consumption**. Landlord may, at any time and from time to time, calculate Tenant's actual electrical consumption in the Premises either by a survey conducted by a reputable consultant selected by Landlord, or through separate meters installed, maintained and read by Landlord, all at Landlord's expense (subject to **Section 7.C** and **7.D** below). Commencing on the Commencement Date, Tenant shall pay its Pro Rata Share of electrical costs under **Section 4.D(10)**. In addition, commencing on the date that Tenant receives its certificate of occupancy for the Premises, Tenant shall pay (either in its own name and for its own account as set forth in **Section 7.C** below, or as a reimbursement to Landlord), in accordance with **Sections 7.C** and **7.D**, the cost of any electrical consumption in the Premises. The furnishing of electrical services to the Premises shall be subject to the rules, regulations and practices of the supplier of such electricity and of any municipal or other governmental authority regulating the business of providing electrical utility service. Except as expressly set forth in this Lease, Landlord shall not be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quantity or character of the electrical service is changed or is no longer available or no longer suitable for Tenant's requirements.

C. **Selection of Electrical Service Provider**. Landlord reserves the right to select the provider of electrical services to the Building and/or the Property. To the fullest extent permitted by Law, Landlord shall have the continuing right to change such utility provider. At no time shall Landlord charge Tenant more for electrical services than Landlord's cost therefor, as reasonably determined by Landlord, and any such charge shall specifically exclude any administrative or similar fees that might otherwise be charged by Landlord or its property manager with respect thereto. The foregoing notwithstanding, Tenant shall have the ongoing right, at Tenant's sole cost and expense, to select the provider of electrical services to the Premises.

D. **Submetering**. Landlord or Tenant shall have the continuing right, upon 30 days written notice, to install one or more submeters for the Premises or portions thereof or equipment therein at Landlord's expense, provided, however, if the reason for the installation is to monitor Tenant's electricity usage and the usage is actually above that allocated to Tenant pursuant to **Section 7** ("***Excess Usage***"), then the submetering shall be at Tenant's expense. However, if the submeter is installed for any reason other than because of Tenant's Excess Usage or to calculate the electrical usage of equipment utilized greater than single-phase electrical current, then the submetering shall be at Landlord's expense. If submetering is installed for the Premises, Landlord may charge for Tenant's actual electrical consumption monthly in arrears at Landlord's cost therefor, as reasonably determined by Landlord, with such method of calculation to be described and delivered to Tenant. Even if the Premises are submetered, Tenant shall remain obligated to pay Tenant's Pro Rata Share of the cost of electrical services as provided in **Section 4.D(10)**, except that Tenant shall be entitled to a credit against electrical services costs equal to that portion of the amounts actually paid by Tenant separately and directly to Landlord which are attributable to building standard electrical services submetered to the Premises.

8. Repairs and Alterations.

A. **Tenant's Repair Obligations**. Tenant shall, at its sole cost and expense, promptly perform all maintenance and repairs to the Premises that are not Landlord's express

responsibility under this Lease, and shall keep the Premises in good condition and repair, ordinary wear and tear excepted, and subject to any casualty or condemnation not required to be repaired by Tenant and any janitorial services to be provided by Landlord pursuant to the terms hereof. Tenant's repair obligations include, without limitation, repairs to: (1) floor covering and/or raised flooring; (2) interior partitions; (3) doors; (4) the interior side of demising walls; (5) electronic, phone and data cabling and related equipment (collectively, "***Cable***") that is installed by or exclusively for the benefit of Tenant (or an occupant of the Premises) and located in the Premises or other portions of the Building; (6) supplemental air conditioning units, private showers and kitchens, including hot water heaters, plumbing, dishwashers, ice machines and similar facilities serving Tenant exclusively; (7) phone rooms used exclusively by Tenant; (8) Alterations (defined below) performed by contractors retained by Tenant, including related HVAC balancing; and (9) all of Tenant's furnishings, trade fixtures, equipment and inventory. Prior to performing any such repair obligation, Tenant shall give written notice to Landlord describing the necessary maintenance or repair. Upon receipt of such notice, Landlord may elect either to perform any of the maintenance or repair obligations specified in such notice, or require that Tenant perform such obligations by using contractors approved by Landlord. All work shall be performed at Tenant's expense in accordance with the rules and procedures described in **Section 8.C** below. If Tenant fails to make any repairs to the Premises for more than 15 days after notice from Landlord (although notice shall not be required if there is an emergency), Landlord may, in addition to any other remedy available to Landlord, make the repairs, and Tenant shall pay to Landlord the reasonable cost of the repairs within 30 days after receipt of an invoice, together with an administrative charge in an amount equal to (i) 5% of the cost of the repairs for repairs costing from $0 through $99,999.99, or (ii) 4% of the cost of the repairs for repairs costing from $100,000.00 through $199,999.99, or (iii) 3% of the cost of the repairs for any repairs costing $200,000.00 or more.

B. **Landlord's Repair Obligations**. Landlord shall keep and maintain in good repair and working order (in a condition at least equivalent to Comparable Buildings) and shall make repairs to and perform maintenance upon: (1) structural elements of the Property; (2) standard mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Property generally; (3) Common Areas; (4) the roof of

the Building; (5) exterior windows of the Building; and (6) elevators serving the Building (collectively, the "***Building Elements***"). Landlord shall promptly make repairs (considering the nature and urgency of the repair) for which Landlord is responsible. All costs of maintenance, operation and routine repair of the Building Elements shall be included in Operating Expenses; however, if any of the foregoing maintenance or repair is necessitated due to the acts or omissions of any Tenant Party (defined in **Article 12**), Tenant shall pay the costs of such repairs or maintenance to Landlord within 30 days after receipt of an invoice, together with an administrative charge in an amount equal to 5% of the cost of the repairs.

C. **Alterations**. After the completion of the Tenant Improvements in accordance with **Exhibit D**, Tenant shall not make alterations, additions or improvements to the Premises in the Premises or other portions of the Building (collectively, "***Alterations***") without first obtaining the written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. However, Landlord's consent shall not be required for any Alteration that satisfies all of the following criteria (a "***Minor Alteration***"): (a) is of a cosmetic

nature such as painting, wallpapering, hanging pictures and installing carpeting; (b) is not visible from outside the Premises or Building; (c) will not affect the systems or structure of the Building; and (d) does not require work to be performed inside the walls or above the ceiling of the Premises.

9. Entry by Landlord.

Landlord, its agents, contractors and representatives may enter the Premises (excluding Sensitive Areas, defined below, except in an emergency or when access is required by Landlord to perform Landlord's obligations under this Lease, provided that Landlord's agents, contractors, and representatives are accompanied by a branch manager or officer of Tenant) to inspect or show the Premises (but if to show the Premises to a prospective tenant, only during the last year of the Term or earlier if Tenant notifies Landlord at an earlier time of its intention not to renew), to clean and make repairs, alterations or additions to the Premises, and to conduct or facilitate repairs, alterations or additions to any portion of the Building, including other tenants' premises; provided, however, that in the case of entering the Premises for the purpose of making non-emergency repairs or additions or alterations to the Building or other tenants' premises, Landlord shall not enter the Premises if any other means of performing such work is reasonably available at no additional material cost. Except in emergencies or to provide Building services after Normal Business Hours, Landlord shall provide Tenant with reasonable prior notice of entry into the Premises, which may be given orally. Entry by Landlord for any such purposes shall not constitute a constructive eviction or entitle Tenant to an abatement or reduction of Rent. Landlord shall use commercially reasonable efforts in connection with any such entry (except in the event of an emergency) to minimize any interference with the operations and normal routine of Tenant. "***Sensitive Areas***" include Tenant's vault, safety deposit box area, and cash room.

10. Assignment and Subletting.

A. **Landlord's Consent Required**. Subject to the remaining provisions of this **Section 10**, but notwithstanding anything to the contrary contained elsewhere in this Lease, Tenant shall not assign, transfer or encumber any interest in this Lease (either absolutely or collaterally) or sublease or allow any third party to use any portion of the Premises (collectively or individually, a "***Transfer***") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted Transfer in violation of this **Section 10** is voidable at Landlord's option. Consent by Landlord to one or more Transfer(s) shall not operate as a waiver of Landlord's rights to approve any subsequent Transfers. In no event shall any Transfer or Permitted Transfer (defined in **Section 10.D**) release or relieve Tenant from any obligation under this Lease, nor shall the acceptance of Rent from any assignee, subtenant or occupant constitute a waiver or release of Tenant from any of its obligations or liabilities under this Lease. Landlord agrees that Tenant shall be permitted to allow its clients, contractors and vendors ("***Permitted Occupants***") to use up to 15% of Rentable Square Footage of the Premises, and such use shall not be considered a Transfer nor otherwise require Landlord's consent. No such use or occupancy shall operate to give any such Permitted Occupants any right or interest in this Lease or any right to exercise any right of Tenant hereunder, and such use and occupancy shall be subject and subordinate to all of the terms, covenants and conditions of this

Lease. Additionally, any such use and occupancy by Permitted Occupants shall in no way give to any such Permitted Occupant any rights or remedies against Landlord.

B. **Consent Procedure**. As part of Tenant's request for, and as a condition to, Landlord's consent to a Transfer, Tenant shall provide Landlord with a complete copy (unexecuted) of the financial statements of the proposed assignee or subtenant, proposed assignment or sublease and other contractual documents, and such other information as Landlord may reasonably request. Landlord shall, by written notice to Tenant within 30 days of receipt of Tenant's notification and all of the information required pursuant to this **Section 10.B.**, either: consent to the Transfer by the execution of a consent agreement in a reasonable form consistent with the terms of this Lease or reasonably refuse to consent to the Transfer in writing, in which case Landlord shall set forth, with specificity, the basis for its refusal. If Landlord refuses to consent to the Transfer, the Lease shall continue in full force and effect as if Tenant had not requested Landlord's consent to the proposed Transfer. Tenant shall pay Landlord a review fee of $1,500.00 for Landlord's review of any Permitted Transfer or requested Transfer.

C. **Change in Control of Tenant**. Except for a Permitted Transfer, if Tenant is a corporation, limited liability company, partnership, or similar entity, and if the entity which owns or controls a majority of the voting shares/rights in Tenant at any time sells or disposes of such majority of voting shares/rights, or changes its identity for any reason (including a merger, consolidation or reorganization), such change of ownership or control shall constitute a Transfer. The foregoing shall not apply so long as, both before and after the Transfer, Tenant is an entity whose outstanding stock is listed on a recognized U.S. securities exchange, or if at least 25% of its voting stock is owned by another entity, the

voting stock of which is so listed.

D. **No Consent Required**. Notwithstanding any other provisions hereof, without the prior written consent of Landlord, Tenant may assign this Lease or sublease all or any portion of the Premises to: (1) Tenant's Affiliate (defined below), (2) any entity resulting from a merger or consolidation with Tenant, or (3) any entity succeeding to all or substantially all of the business and assets of Tenant (a "***Permitted Transferee***") provided that the following conditions are satisfied in Landlord's reasonable discretion: (a) no uncured Event of Default exists, (b) the successor's use of the Premises shall not conflict with the Permitted Use or any exclusive usage rights granted to any other tenant in the Building, and (c) in the event of an assignment of this, such assignee shall be a state or federally chartered bank (not a credit union) having a tangible net worth calculated in accordance with generally accepted accounting principles of at least equal to $20,000,000.00 (a "***Permitted Transfer***"). In the event of a Permitted Transfer, Tenant shall not be released from liability under the Lease. The term "Affiliate" means any person or entity controlling, controlled by or under common control with Tenant or Landlord, as applicable. In addition, without the prior written consent of Landlord, Tenant may assign this Lease or sublease or license all or any portion of the Premises to or permit the Premises to be occupied by any member firm of Tenant, or any entity comprised in whole or in part, of any former, current and/or future division or group of Tenant, regardless of the form of such entity and regardless of whether Tenant has or retains any ownership interest therein, provided, however, any Alterations required as a result of such Permitted Transfer shall be subject to Landlord's reasonable approval and **Section 8.C**.

E. **Exercisable by Transferee**. Tenant shall have the right to transfer to any Permitted Transferee pursuant to a Permitted Transfer of the entire interest in this Lease the right to exercise all remaining extension options, expansion options, preferential rights, right of first refusal, and any other valid and unexercised rights Tenant has in connection with this Lease at the time of Transfer.

F. **Expedited Arbitration for Unreasonable Withholding of Consent**. In the event Tenant claims that Landlord unreasonably withheld its consent to a proposed Transfer by Tenant, Tenant shall send Landlord a written notice within 5 days of Landlord's decision to withhold consent (the "***Dispute Notice***"), specifying the grounds on which Tenant claims the consent was unreasonably withheld and electing to have the dispute resolved by an arbitration (the "***Arbitration***"). In the Dispute Notice, Tenant shall designate an arbitrator of its selection who meets the qualifications provided below. Within 5 days after receipt of the Dispute Notice, Landlord shall notify Tenant of its selection of an arbitrator who meets the qualifications provided below. Landlord's and Tenant's arbitrators shall then select a third, neutral arbitrator who meets the qualifications provided below. The Arbitration shall be held at such neutral arbitrator's office. Each of the arbitrators shall (1) have at least ten (10) years' experience in either managing Class A mixed-use retail and office buildings or representing owners in the leasing of Class A mixed-use retail and office buildings, (2) not have represented Landlord or Tenant during the preceding five years, and (3) have general experience and competence in determining the issue at hand, and being registered with the American Arbitration Association (or its equivalent, should the American Arbitration Association not then be in existence). The Arbitration shall be held on a mutually agreeable date which shall be no less than 10 days and no more than 20 days after Landlord's receipt of the Dispute Notice. The Arbitration shall be conducted in accordance with the rules of the American Arbitration Association and the scope of the arbitrators' inquiry and determination shall be strictly limited to whether Landlord has been reasonable in withholding its consent to the proposed Transfer. The determination of the majority of the arbitrators shall be conclusive and binding upon the parties and shall be made within 5 days after completion of the Hearing. The losing party shall pay all of the fees and expenses of the 3 arbitrators. In the event the arbitrators find that Landlord unreasonably withheld its consent to the proposed Transfer, Tenant may proceed with the proposed Transfer provided Tenant complies with all the terms and conditions of this Lease. The arbitrators' decision may be entered as a final judgment in the court records of the applicable jurisdiction.

11. Liens.

If any mechanic's or other liens are placed upon the Property, Premises or Tenant's leasehold interest in connection with any work or service done or purportedly done by or for the benefit of Tenant, then Tenant shall, within 20 days of notice from Landlord of the filing of the lien, fully discharge the lien by settling the claim which resulted in the lien or by bonding or insuring over the lien in the manner prescribed by the applicable lien Law. If Tenant fails to discharge the lien, then, in addition to any other right or remedy of Landlord, Landlord may bond or insure over the lien or otherwise discharge the lien. Tenant shall reimburse Landlord for any amount paid or incurred by Landlord to bond or insure over the lien or discharge the lien, including, without limitation, reasonable attorneys' fees, within 30 days after receipt of an invoice from Landlord.

12. Indemnity and Waiver of Claims.

A. **Tenant's Indemnity**. Subject to **Section 14** and **Section 20.B**, Tenant shall indemnify, defend and hold Landlord, its trustees, Affiliates, subsidiaries, members, principals, beneficiaries, partners, officers, directors, shareholders, employees, Mortgagee(s) (defined in **Section 24**) and agents (including the manager of the Property) harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees, which may be imposed upon, incurred by or asserted against any of such indemnified parties that arise out of or in connection with any damage or injury (i) occurring in the Premises, except to the extent caused by the negligence or willful misconduct of Landlord or any of its employees, agents or contractors (collectively, "***Landlord Parties***"); (ii) occurring in connection with or in any way related to Tenant's Telecommunications Equipment, except to the extent caused by the negligence or willful misconduct of Landlord or any of the Landlord Parties; (iii) occurring in connection with or in any way related to any ITM, except to the extent caused by the negligence or willful misconduct of Landlord or any of the Landlord Parties or (iv) occurring elsewhere in the Building or on the Property to the extent caused by the negligence or willful misconduct of Tenant or any assignees, subtenants and licensees claiming by, through or under Tenant, or any of their respective agents, contractors, employees and invitees (collectively, "***Tenant Parties***").

B. **Landlord's Indemnity**. Subject to **Section 14** and **Section 20.A**, Landlord shall indemnify, defend and hold Tenant, its trustees, members, principals, beneficiaries, partners, officers, directors, shareholders, employees and agents harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees, which may be imposed upon, incurred by or asserted against any of such indemnified parties that arise out of or in connection with any damage or injury occurring in the Premises, the Building or on the Property to the extent caused by the negligence or willful misconduct of any of the Landlord Parties.

13. Insurance.

A. **Tenant's Insurance**. Tenant shall carry and maintain the following insurance ("***Tenant's Insurance***"), at its sole cost and expense: (1) commercial general liability insurance applicable to the Premises and its appurtenances, Tenant's Telecommunications Equipment, and any ITM providing, on an occurrence basis, a minimum combined single limit of $5,000,000 (coverage in excess of $1,000,000 may be provided by way of an umbrella/excess liability policy), and contractual liability, including the indemnification provisions contained in this Lease; and (2) special form (formerly "all risk") property insurance on Tenant's Property, Tenant's Telecommunications Equipment and any ITM. Any company underwriting any of Tenant's Insurance shall have an *A.M. Best Insurance Guide* rating of not less than A-VIII. All commercial general liability shall name Landlord (or any successor), Landlord's property manager and Landlord's Mortgagee (if any and provided that Landlord has given Tenant 30 days prior written notice of the same), as "additional insureds" and shall be primary with Landlord's policy being secondary and noncontributory. Tenant shall provide Landlord with a certificate of insurance evidencing Tenant's Insurance prior to the earlier to occur of the Commencement Date or the date Tenant is provided with possession of the Premises. Tenant may maintain any of its

required insurance coverages under a blanket policy of insurance, provided the same is sufficient to maintain the types and levels of insurance required under this Lease. If Tenant fails to comply with the foregoing insurance requirements or to deliver to Landlord the certificates or evidence of coverage required herein, and such failure continues for 15 days after delivery of notice of such failure to Tenant, Landlord, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand the premium costs thereof, plus an administrative fee of 5% of such cost.

B. **Landlord's Insurance**. Landlord shall maintain (1) commercial general liability insurance applicable to the Property providing, on an occurrence basis, a minimum of $5,000,000 per occurrence/general aggregate (coverage in excess of $1,000,000 may be provided by way of an umbrella/excess liability policy), and contractual liability, including the indemnification provisions contained in this Lease; and (2) special form (formerly "all risk") property insurance on the Building and all improvements therein, including flood, in the amount of the replacement cost thereof, as reasonably estimated by Landlord. Any company underwriting any of Landlord's insurance required by this **Section 13.B** shall have an *A.M. Best Insurance Guide* rating of not less than A-VIII. The foregoing insurance and any other insurance carried by Landlord may be effected by a policy or policies of blanket insurance (provided the same is sufficient to maintain the types and levels of insurance required under this Lease).

14. Mutual Waiver of Subrogation.

Notwithstanding anything in this Lease to the contrary, Landlord and Tenant shall cause their respective insurance carriers and any other party claiming through or under such carriers, by way of subrogation or otherwise, to waive any and all rights of recovery, claim, action or causes of action against the other party and such other party's trustees, principals, beneficiaries, partners, officers, directors, agents, and employees, for any loss of or damage to or loss of use of the Building, the Premises, any personal property of Landlord, any additions or improvements to the Building or the Premises, or any contents thereof, **INCLUDING ALL RIGHTS (BY WAY OF SUBROGATION OR OTHERWISE) OF RECOVERY, CLAIMS, ACTIONS OR CAUSES OF ACTION ARISING OUT OF THE NEGLIGENCE OF ANY LANDLORD PARTIES OR THE NEGLIGENCE OF ANY TENANT PARTIES**, which loss or damage is (or would have been, had the insurance required by this Lease been carried) covered by insurance.

15. Casualty Damage.

A. **Restoration or Termination by Landlord**. If all or any part of the Premises are damaged by fire or other casualty, Tenant shall promptly notify Landlord in writing. Landlord shall have the right to terminate this Lease if: (1) the Building shall be damaged so that substantial alteration or reconstruction of the Building shall be required (whether or not the Premises have been damaged) and Landlord elects not to restore the Building and Landlord simultaneously terminates all other leases in the Building; (2) Landlord is not permitted by Law to rebuild the Building in substantially the same form as existed before the fire or casualty; (3) the Premises have been materially damaged and there is less than 2 years of the Term remaining on the date of the casualty and Tenant does not exercise any remaining option to renew this Lease within 30 days after Tenant receives Landlord's written election to terminate this Lease; or

(4) any Mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt and Landlord does not have the right under its loan agreement to require that such proceeds be made available for the repair or reconstruction of the Building and Landlord elects not to restore the Building and Landlord simultaneously terminates all other leases of similarly affected tenants in the Building. Landlord may exercise its right to terminate this Lease by notifying Tenant in writing within 90 days after the date of the casualty. If Landlord does not terminate this Lease under this **Section 15.A**, Landlord shall commence and proceed with reasonable diligence to repair and restore the Building and/or the Premises to substantially the same condition as existed immediately prior to the date of damage. However, provided Landlord has complied with Landlord's

requirements to purchase and maintain insurance as set forth in this Lease, in no event shall Landlord be required to spend more than the insurance proceeds received by Landlord.

B. **Timing for Repair; Termination by Either Party**. If all or any portion of the Premises is damaged as a result of fire or other casualty, or such fire or other casualty renders the general Building systems inoperable such that a substantial portion of the Building cannot be used and occupied or the Premises cannot be accessed or used for business operations, Landlord shall, as soon as reasonably possible, cause an architect or general contractor selected by Landlord to provide Landlord and Tenant with a written estimate of the amount of time required to substantially complete the repair and restoration of the Premises, using standard working methods ("***Completion Estimate***"). If the Completion Estimate indicates that the restoration of the Premises to its condition prior to the casualty cannot be substantially completed within 300 days from the date of the fire or other casualty (or 90 days if the damage occurs in the last year of the Term and Tenant does not elect to exercise any then-unexercised renewal options), then regardless of anything in **Section 15.A** above to the contrary, either party shall have the right to terminate this Lease by giving written notice to the other of such election within 10 Business Days after receipt of the Completion Estimate. If neither party terminates this Lease under this **Section 15.B**, then Landlord shall repair and restore the Premises in accordance with, and subject to the limitations of, **Section 15.A**. If Landlord fails to complete such repairs to the Premises within 300 days from the date of the fire or other casualty (or 90 days if the damage occurs in the last year of the Term and Tenant does not elect to exercise any then-unexercised renewal options), then Tenant shall have the right to terminate this Lease following 60 days written notice given after such 300 day period, but prior to completion of the repairs.

C. **Abatement**. In the event any portion of the Premises is Untenantable as a result of a fire or other casualty, the Rent shall abate for the portion of the Premises that is Untenantable until substantial completion of the repairs and restoration required to be made by Landlord pursuant to **Section 15.B**; provided, however, if the fire or casualty affects more than 75% of the Premises, more than 75% of any floor within the Premises, or Tenant's access to and from the Premises or such floor, and Tenant elects not to use any of the Premises or such floor, as the case may be, there shall be a full abatement of the Rent for the Premises or such floor, as applicable. Landlord and Tenant hereby waive the provisions of any Law relating to the matters addressed in this **Section 15**, and agree that their respective rights for damage to or destruction of the Premises shall be those specifically provided in this Lease.

16. Condemnation.

Either party may terminate this Lease if the whole or any material part of the Premises are taken or condemned for any public or quasi-public use under Law, by eminent domain or private purchase in lieu thereof (a "***Taking***"). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building or Property which would leave the remainder of the Building unsuitable for use as a mixed-use and retail office building in a manner substantially comparable to the Building's use prior to the Taking. In order to exercise its right to terminate this Lease under this **Section 16**, Landlord or Tenant, as the case may be, must provide written notice of termination to the other within 45 days after the terminating party first receives notice of the Taking. Any such termination shall be effective as of the date the physical taking of the Premises or the portion of the Building or Property occurs. If this Lease is not terminated, the Rentable Square Footage of the Building, the Rentable Square Footage of the Premises and Tenant's Pro Rata Share shall, if applicable, be appropriately adjusted by Landlord. In addition, Rent for any portion of the Premises taken or condemned shall be abated during the unexpired Term effective when the physical taking of the portion of the Premises occurs. All compensation awarded for a Taking, or sale proceeds, shall be the property of Landlord, any right to receive compensation or proceeds being expressly waived by Tenant. However, Tenant may file a separate claim at its sole cost and expense for Tenant's trade fixtures, equipment, furniture and other personal property within the Premises ("***Tenant's Property***") and Tenant's reasonable moving and relocation expenses, loss of business and other claims that Tenant may have. Notwithstanding anything to the contrary set forth in this Lease, if a Taking of any portion of the Premises leaves the balance unsuitable for Tenant's use as a mixed-use retail and office building, or if a Taking of any portion of the Building permanently deprives the Premises or the Building of reasonably adequate access or parking, then Tenant may terminate this Lease by giving written notice to Landlord effective as of the date of Taking.

17. Events of Default.

Tenant shall be considered to be in default under this Lease upon the occurrence of any of the following events of default (each, an "***Event of Default***"):

A. Tenant's failure to pay when due all or any portion of the Rent, and such failure continues for 5 days after written notice from Landlord to Tenant that Rent is past due ("***Monetary Default***").

B. Tenant's failure (other than a Monetary Default) to comply with any term, provision or covenant of this Lease, if the failure is not cured within 30 days after written notice to Tenant. However, if Tenant's failure to comply cannot reasonably be cured within 30 days, Tenant shall be allowed additional time as is reasonably necessary (but in no event more than an additional 90 days) to cure the failure so long as: (1) Tenant commences to cure the failure within 10 days following Landlord's initial written notice, and (2) Tenant diligently pursues a course of action that will cure the failure and bring Tenant back into compliance with this Lease.

C. Tenant becomes insolvent, files a petition for protection under the U.S. Bankruptcy Code (or similar Law) or a petition is filed against Tenant under such Laws and is not dismissed within sixty (60) days after the date of such filing, makes a transfer in fraud of

creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts when due.

18. Remedies.

A. **Landlord's Remedies**. Upon any Event of Default, and for so long as the same remains uncured (if curable), Landlord shall have the right without notice or demand (except as provided in **Section 17**) to pursue any of its rights and remedies at Law or in equity, including any one or more of the following remedies:

(1) Terminate this Lease, in which case Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to surrender the Premises, Landlord may, in compliance with applicable Law and without prejudice to any other right or remedy, enter upon and take possession of the Premises and expel and remove Tenant, Tenant's Property and any parties occupying all or any part of the Premises. Tenant shall pay Landlord on demand the amount of all past due Rent, all Costs of Reletting (defined below) and any deficiency that may arise from reletting or the failure to relet the Premises. "***Costs of Reletting***" shall include commercially reasonable costs, losses and expenses incurred by Landlord in reletting all or any portion of the Premises, including the cost of removing and storing Tenant's furniture, trade fixtures, equipment, inventory or other property, repairing and/or demolishing the Premises, removing and/or replacing Tenant's signage and other fixtures, making the Premises ready for a new tenant, including the cost of advertising, commissions, architectural fees, legal fees and leasehold improvements, and any allowances and/or concessions provided by Landlord.

(2) Terminate Tenant's right to possession of the Premises and change the locks as permitted by Law, and, in compliance with applicable Laws, expel and remove Tenant, Tenant's Property and any parties occupying all or any part of the Premises. If Landlord terminates Tenant's possession of the Premises under this **Section 18.A(2)**, Landlord shall have no obligation to post any notice and Landlord shall have no obligation whatsoever to tender to Tenant a key for new locks installed in the Premises. Landlord may (but shall not be obligated to) relet all or any part of the Premises, without notice to Tenant, for a term that may be greater or less than the balance of the Term and on such conditions (which may include concessions, free rent and alterations of the Premises) and for such uses as Landlord in its reasonable discretion shall determine. Landlord may collect and receive all rents and other income from the reletting. Tenant shall pay Landlord on demand all past due Rent, all Costs of Reletting and any deficiency arising from the reletting or failure to relet the Premises. Landlord shall not be responsible or liable for the failure to relet all or any part of the Premises or for the failure to collect any Rent, except to the extent provided in **Section 18.C**. The re-entry or taking of possession of the Premises shall not be construed as an election by Landlord to terminate this Lease unless a written notice of termination of this Lease is given to Tenant.

(3) Cure such Event of Default for Tenant at Tenant's expense.

(4) Withhold or suspend payment of sums Landlord would otherwise be obligated to pay to Tenant under this Lease or any other agreement.

(5) Recover such other actual damages in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Law, excluding however, consequential, special and punitive damages.

B. **Tenant Not Relieved from Liabilities**. Unless expressly provided in this Lease, the repossession or re-entering of all or any part of the Premises or Landlord's exercise of any other remedy either as provided herein or otherwise, shall not relieve Tenant of its liabilities and obligations under this Lease including, without limitation, Tenant's liability for the payment of Rent or any other damages Landlord may incur by reason of Tenant's breach. In addition, Tenant shall not be relieved of its liabilities under this Lease, nor be entitled to any damages hereunder, based upon minor or immaterial errors in the exercise of Landlord's remedies. No right or remedy of Landlord shall be exclusive of any other right or remedy. Each right and remedy shall be cumulative and in addition to any other right and remedy now or subsequently available to Landlord at Law or in equity. If Tenant fails to pay any amount when due hereunder (after the expiration of any applicable grace or cure period), Landlord shall be entitled to receive interest on any unpaid item of Rent from the date initially due (without regard to any applicable grace period) at a per annum rate equal to the lesser of 12% or the highest rate permitted by Law (the "***Default Rate***"). In addition, if Tenant fails to pay any item or installment of Rent when due (after the expiration of any applicable grace or cure period), Tenant shall pay Landlord an administrative fee equal to 5% of the past due Rent; provided, however, Landlord waives its right to impose the administrative fee against Tenant for the first time in any consecutive 12 month period Tenant fails to pay any amount within 5 days after becoming due under this Lease. However, in no event shall the charges permitted under this **Section 18.B** or elsewhere in this Lease, to the extent they are considered interest under applicable Law, exceed the maximum lawful rate of interest. If any payment by Tenant of an amount deemed to be interest results in Tenant having paid any interest in excess of that permitted by Law, then it is the express intent of Landlord and Tenant that all such excess amounts theretofore collected by Landlord be credited against the other amounts owing by Tenant under this Lease. Receipt by Landlord of Tenant's keys to the Premises shall not constitute an acceptance or surrender of the Premises.

C. **Mitigation of Damages**. For so long as an Event of Default exists, Landlord shall use objectively reasonable efforts to mitigate damages by reletting the Premises. Notwithstanding Landlord's duty to mitigate its damages as provided herein, Landlord shall not be obligated (i) to give any priority to reletting Tenant's space in connection with its leasing of space in the Building or any complex of which the Building is a part, or (ii) to accept below market rental rates for the Premises or any rate that would negatively impact the market rates for the Building.

D. **Waiver of Landlord's Lien**. Landlord hereby expressly waives and negates any and all statutory, contractual and constitutional landlord's liens and security interests on all property of Tenant now or hereafter placed in or upon the Premises.

E. **Landlord Defaults and Tenant Remedies**. Except as otherwise provided in this Lease and specifically subject to **Sections 3.F** and **19**, if Landlord fails in the performance of any of Landlord's obligations under this Lease and such failure continues for 10 days with respect to monetary defaults or 30 days (or such longer period of time as is reasonably necessary to remedy

such default, provided Landlord shall commence such cure within 30 days after receipt of written notice from Tenant and continuously and diligently pursue such remedy at all times until such default is cured) as to non-monetary defaults, after in each instance Landlord's receipt of written notice thereof from Tenant, then Tenant shall be entitled to exercise any remedies that Tenant may have at law or in equity.

19. Landlord Payment Defaults.

If Landlord fails to pay when due any portion of the Reimbursement Allowance (subject to the provisions of the Work Letter), and such failure continues for a period of thirty (30) days after written notice of such failure to Landlord (and to any mortgagee of Landlord of which Tenant has received written notice or entered into a subordination, attornment and non-disturbance agreement) from Tenant, without amendment by or regard to any provision regarding the timing of such failure becoming a default by Landlord hereunder, including the provisions of **Section 18.E** hereof; then, in such event, Tenant may provide Landlord with a second (2nd) written notice of the failure which states, in conspicuous bold font "**NOTICE: LANDLORD'S FAILURE TO RESPOND TO THIS NOTICE MAY RESULT IN TENANT HAVING OFF-SET RIGHTS IN ACCORDANCE WITH THE LEASE.**", and if such failure is not cured within 10 Business Days after such second (2nd) written notice from Tenant to Landlord of the demand for such payment (without amendment by or regard to any provision regarding the timing of such failure becoming a default by Landlord hereunder, including the provisions of **Section 18.E** hereof), then, and conditioned upon no Event of Default by Tenant then existing, Tenant may offset the amounts thereof then due to Tenant, together with interest thereon at the Default Rate, calculated from the date such amounts were due to Tenant until so offset or otherwise reimbursed to Tenant, against Tenant's obligation to pay Rent hereunder.

20. Limitation of Liability.

A. **Landlord**. Tenant does hereby acknowledge and agree that none of the owners (but does not excuse the co-owner entities that comprise Landlord from liability), investors, members, stockholders, shareholders, partners, officers, or directors of Landlord shall be liable for any default by Landlord under this Lease or for the performance by Landlord of any of its obligations under this Lease. Anything in this Lease to the contrary notwithstanding, Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation of Landlord under this Lease shall only be enforced against Landlord's interest in the Property (including all rents, proceeds from any sale or transfer, and insurance or condemnation award(s) in respect to such Property), and no other property or assets of Landlord, disclosed or undisclosed, will be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use and occupancy of the Premises. Tenant hereby waives all claims against all Landlord Parties for consequential, special or punitive damages allegedly suffered by any Tenant Parties.

B. **Tenant**. Landlord does hereby acknowledge and agree that none of the owners, investors, members, stockholders, shareholders, partners, officers, or directors of the Tenant shall

be liable for any default by Tenant under this Lease or for the performance by Tenant of any of its obligations under this Lease. Landlord hereby agrees to look solely to the assets of Tenant for the recovery of any damages arising out of Tenant's default of its obligations under this Lease or for the enforcement of the performance by Tenant of any of its obligations under this Lease. Landlord hereby waives all claims against all Tenant Parties for consequential, special or punitive damages allegedly suffered by any Landlord Parties.

21. No Waiver.

Either party's failure to declare a default immediately upon its occurrence or delay in taking action for a default shall not constitute a waiver of the default, nor shall it constitute an estoppel. Except as expressly provided otherwise herein, either party's failure to enforce its rights for a default shall not constitute a waiver of its rights regarding any subsequent default.

22. Tenant's Right to Possession.

Provided Tenant pays the Rent and fully performs all of its other covenants and agreements under this Lease, Landlord covenants that Tenant shall have the right to peacefully occupy the Premises, subject to the terms of this Lease. This covenant and all other covenants of Landlord shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building, and shall not be a personal covenant of any Landlord Parties.

23. Holding Over.

Except for any permitted occupancy by Tenant under **Section 27**, if Tenant or any party claiming by, through or under Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, the continued occupancy of the Premises shall be that of a tenancy at sufferance. Tenant shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to 150% of the Base Rent and 100% of the OE Payment due for the period immediately preceding the holdover; provided, however, so long as no other uncured event of default exists under the Lease, for the first four (4) months of any such holdover Tenant shall pay only 125% of such amount and 100% of the OE Payment. Tenant shall otherwise continue to be subject to all of Tenant's obligations under this Lease.

24. Subordination to Mortgages; Estoppel Certificate.

Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or

subsequently affecting the Premises, the Building or the Property, and to renewals, modifications, refinancings and extensions thereof (collectively, a "***Mortgage***"), provided that Landlord delivers to Tenant a fully executed subordination and non-disturbance agreement from Mortgagee (the "***SNDA***") which shall be revised to incorporate commercially reasonable changes agreed upon by Tenant and such Mortgagee. As a condition to the effectiveness of this Lease, Landlord agrees to deliver to Tenant an SNDA in form and content reasonably acceptable to Tenant in connection with the execution of this Lease. The party having the benefit of a Mortgage shall be referred to as a "***Mortgagee***." In lieu of having the Mortgage be superior to this Lease, a Mortgagee shall have the right at any time to

subordinate its Mortgage to this Lease. If requested by a successor-in-interest to all or a part of Landlord's interest in this Lease, Tenant shall, without charge, attorn to the successor-in-interest. Tenant shall, within 10 Business Days after receipt of a written request from Landlord, execute and deliver an estoppel certificate to those parties as are reasonably requested by Landlord (including a Mortgagee or prospective purchaser). The estoppel certificate shall include a statement certifying that this Lease is unmodified (except as identified in the estoppel certificate) and in full force and effect, describing the dates to which Rent and other charges have been paid, representing that, to the best of Tenant's knowledge, there is no default (or stating with specificity the nature of the alleged default) and certifying other matters with respect to this Lease that may reasonably be requested.

25. Attorneys' Fees.

If either party institutes a suit against the other for violation of or to enforce any covenant or condition of this Lease, or if either party intervenes in any suit in which the other is a party to enforce or protect its interest or rights, the prevailing party shall be entitled to all of its costs and expenses, including, without limitation, reasonable attorneys' fees. The term "***prevailing party***" is defined to mean the party who obtains a determination of wrongful conduct by the other party regardless of whether actual damages are awarded.

26. Notice.

If a demand, request, approval, consent or notice (collectively, a "***notice***") shall or may be given to either party by the other, the notice shall be in writing and delivered by hand or sent by registered or certified mail with return receipt requested, or sent by overnight or same day courier service, or sent by facsimile, at the party's respective Notice Address(es) set forth in **Section 1.M**, except that if Tenant has vacated the Premises (or if the Notice Address for Tenant is other than the Premises, and Tenant has vacated such address) without providing Landlord a new Notice Address, Landlord may serve notice in any manner described in this Section or in any other manner permitted by Law. Each notice shall be deemed to have been received or given on the earlier to occur of actual delivery (which, in the case of delivery by facsimile, shall be deemed to occur at the time of delivery indicated on the electronic confirmation of the facsimile) or the date on which delivery is first refused, or, if Tenant has vacated the Premises or the other Notice Address of Tenant without providing a new Notice Address, 3 days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address by giving the other party written notice of the new address in the manner described in this **Section 26**.

27. Reserved Rights.

This Lease does not grant any rights to light or air over or about the Building. Landlord excepts and reserves exclusively to itself the use of: (A) roofs, (B) telephone, electrical and janitorial closets, (C) equipment rooms, Building risers or similar areas that are used by Landlord for the provision of Building services, (D) rights to the land and improvements below the floor of the Premises, (E) improvements and air rights above the Premises, (F) the improvements and air rights outside the demising walls of the Premises, (G) the areas within the Premises used for the

installation of utility lines and other installations serving occupants of the Building, and (H) any other areas designated from time to time by Landlord as service areas of the Building; provided that Landlord's use of such rights does not materially adversely affect Tenant's ability to use the Premises for the Permitted Use. Notwithstanding anything to the contrary contained herein, in the exercise of any of the foregoing reserved rights set forth in this **Section 27**, and except as otherwise permitted pursuant to this Lease, (1) Landlord shall use reasonable and diligent efforts not to unreasonably interfere with (i) Tenant's use and occupancy of or its business operations in the Premises, (ii) its use of any and all Common Areas of the Building including, without limitation, the Parking Facilities, (iii) its use of and access to and egress from the Premises and the Building, and (iv) Tenant's signage rights granted under this Lease; (2) Landlord shall not materially increase any of Tenant's obligations hereunder or materially diminish any of its rights hereunder, including, without limitation, increasing any Rent obligations; and (3) Landlord shall not alter the nature or character of the Building from a Class AA mixed-use office and retail building. As used herein, "reasonable and diligent efforts" shall include use of overtime labor so that work can be performed after Normal Business Hours, if same can be accomplished without material additional cost.

28. Surrender of Premises.

At the expiration or earlier termination of this Lease or Tenant's right of possession, Tenant shall quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair, ordinary wear and tear and casualty excepted, Tenant shall have no obligation to remove or restore any improvements to the Premises or Building (including without limitation, any vault installed in the Premises), or any cables installed in the Premises or Building. All improvements to the Premises shall be owned by Landlord and shall remain upon the Premises without compensation to Tenant. If Tenant fails to remove any of Tenant's Property upon termination of this Lease or of Tenant's right to possession, Landlord may deem all or any part of Tenant's Property to be abandoned and Landlord shall be entitled to retain or to remove the same, and

Landlord shall not be responsible for the value, preservation or safekeeping thereof. Title to any such abandoned Tenant's Property (except with respect to any Hazardous Material (defined in **Section 29.C**)) shall be deemed to be immediately vested in Landlord.

29. Hazardous Materials.

A. **Restrictions**. No Hazardous Material (defined below) (except for *de minimis* quantities of household cleaning products and office supplies used in the ordinary course of Tenant's business at the Premises and that are used, kept and disposed of in compliance with Laws) shall be brought upon, used, kept or disposed of in or about the Premises or the Property by any Tenant Parties or any of Tenant's transferees, contractors or licensees without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

B. **Remediation**. Tenant shall promptly notify Landlord if it suspects Contamination (defined below) in the Premises. Any remediation of Contamination caused by a Tenant Party or its contractors or invitees which is required by Law or which is deemed

necessary by Landlord, in Landlord's opinion, shall be performed by Landlord and Tenant shall reimburse Landlord for the cost thereof.

C. **Landlord Compliance**. For purposes of this **Section 29**, a "***Hazardous Material***" is any substance the presence of which requires, or may hereafter require, notification, investigation or remediation under any Laws or which is now or hereafter defined, listed or regulated by any governmental authority as a "hazardous waste", "extremely hazardous waste", "solid waste", "toxic substance", "hazardous substance", "hazardous material" or "regulated substance", or otherwise regulated under any Laws. "***Contamination***" means the existence or any release or disposal of a Hazardous Material, in, on, under, at or from the Premises, the Building or the Property which may result in any liability, fine, use restriction, cost recovery lien, remediation requirement, or other government or private party action or imposition affecting any Landlord Party. For purposes of this Lease, claims arising from Contamination shall include diminution in value, restrictions on use, adverse impact on leasing space, and all costs of site investigation, remediation, removal and restoration work, including response costs under CERCLA and similar statutes. Landlord hereby agrees: (1) that the Building designs indicate no material amounts of asbestos in the Premises, the Building or other portions of the Property and (2) no investigation, administrative order, settlement, consent order or agreement, or litigation with respect to a Hazardous Material is proposed or threatened in writing by a governmental authority with respect to the Building or other portions of the Property. No notice, demand, claim, citation, complaint, summons, request for information or other communication has been received by Landlord from any governmental body claiming any violation of any Hazardous Material Laws or any administrative or court order relating to Hazardous Materials, except as disclosed to Tenant in writing. Landlord will use commercially reasonable efforts to contractually restrict tenants in the Building from using the Building or any portion thereof for the manufacturing, treatment, storage or disposal of Hazardous Materials, except as may be common for use or storage in Class AA projects. Landlord shall at all times be responsible for the base Building's compliance of the non-rentable portions of the Building with all federal, state and local environmental protection laws, rules, regulations, or ordinances, including, any administrative and court orders relating to Hazardous Material, and shall pay for all costs or compliance therewith except to the extent caused by Tenant or for which Landlord can look to others contractually or legally bound for payment. If at any time during the Term Contamination occurs as a result of an act or omission of Landlord, Landlord shall, at its expense (and not as an Operating Expense), promptly take all actions necessary to comply with Laws and to return the Building and the Property to its condition prior to such Contamination.

30. Miscellaneous.

A. **Governing Law; Jurisdiction and Venue; Severability; Paragraph Headings**. This Lease and the rights and obligations of the parties shall be interpreted, construed and enforced in accordance with the Laws of the state in which the Property is located. All obligations under this Lease are performable in the county or other jurisdiction where the Property is located, which shall be venue for all legal actions. If any term or provision of this Lease shall be invalid or unenforceable, then such term or provision shall be automatically reformed to the extent necessary to render such term or provision enforceable, without the necessity of execution of any amendment or new document. The remainder of this Lease shall

not be affected, and each remaining and reformed provision of this Lease shall be valid and enforced to the fullest extent permitted by Law. The headings and titles to the Articles and Sections of this Lease are for convenience only and shall have no effect on the interpretation of any part of this Lease. The words "include", "including" and similar words will not be construed restrictively to limit or exclude other items not listed.

B. **Recording**. Neither Landlord nor Tenant shall record this Lease. Notwithstanding the foregoing, simultaneously with the execution of this Lease, Landlord and Tenant shall enter into the Memorandum of Lease attached hereto as **Exhibit H** for the purpose of recording the same, and Tenant may, at Tenant's expense, record the same.

C. **Force Majeure**. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist attacks (including bio-chemical attacks), civil disturbances and other causes beyond the reasonable control of the performing party ("***Force Majeure***"). Any delay in any obligation undertaken by a party under this Lease resulting from Force Majeure shall be referred to herein as a "***Force Majeure Delay***". However, Force Majeure Delays shall not extend any period of time for the payment of Rent or other sums payable by either party or any period of time for the written exercise of an option or right by either party.

D. **Transferability; Release of Landlord**. Landlord shall have the right to transfer and assign, in whole or in part, all of its rights

and obligations under this Lease and in the Building and/or Property referred to herein, and upon such transfer Landlord shall be released from any further obligations hereunder accruing after the date of such transfer, and, provided that the successor in interest has assumed all of the obligations of Landlord under this Lease, Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligations. Notwithstanding anything to the contrary contained in this Lease, prior to the date that the Building is Substantially Complete, Landlord shall not have the right to transfer or assign this Lease to any other party other than to an Affiliate of Landlord or a Mortgagee, without the written consent of Tenant, which shall not be unreasonably withheld, conditioned or delayed.

E. **Brokers**. Tenant represents that it has dealt directly with and only with Lincoln Property Company Commercial, Inc. (whose commission shall be paid by Landlord pursuant to a separate written agreement and as reflected in a lease entered into between Landlord and Hilltop Holdings, Inc., who is an Affiliate of Tenant) in connection with this Lease. Landlord represents that it has dealt directly with and only with Myers Commercial, Inc. pursuant to a separate written agreement in connection with this Lease. **TENANT AND LANDLORD SHALL EACH INDEMNIFY THE OTHER AGAINST ALL COSTS, EXPENSES, ATTORNEYS' FEES, LIENS AND OTHER LIABILITY FOR COMMISSIONS OR OTHER COMPENSATION CLAIMED BY ANY BROKER OR AGENT CLAIMING THE SAME BY, THROUGH OR UNDER THE INDEMNIFYING PARTY, OTHER THAN THE BROKER(S) SPECIFICALLY IDENTIFIED ABOVE.**

F. **Authority; Joint and Several Liability**. Landlord covenants, warrants and represents that each individual executing, attesting and/or delivering this Lease on behalf of Landlord is authorized to do so on behalf of Landlord, this Lease is binding upon and

enforceable against Landlord, and Landlord is duly organized and legally existing in the state of its organization and is qualified to do business in the state in which the Premises are located. Similarly, Tenant covenants, warrants and represents that each individual executing, attesting and/or delivering this Lease on behalf of Tenant is authorized to do so on behalf of Tenant, this Lease is binding upon and enforceable against Tenant and Tenant is duly organized and legally existing in the state of its organization and is qualified to do business in the state in which the Premises are located. If there is more than one Tenant, or if Tenant is comprised of more than one party or entity, the obligations imposed upon Tenant shall be joint and several obligations of all the parties and entities. Notices, payments and agreements given or made by, with or to any one person or entity shall be deemed to have been given or made by, with and to all of them. If there is more than one Landlord, or if Landlord is comprised of more than one party or entity, the obligations imposed upon Landlord shall be joint and several obligations of all the parties and entities. Notices, payments and agreements given or made by, with or to any one person or entity shall be deemed to have been given or made by, with and to all of them.

G. **Time is of the Essence; Relationship; Successors and Assigns**. Time is of the essence in this Lease. This Lease shall create only the relationship of landlord and tenant between the parties, and not a partnership, joint venture or any other relationship. This Lease and the covenants and conditions in this Lease shall inure only to the benefit of and be binding only upon Landlord and Tenant and their permitted successors and assigns.

H. **Survival of Obligations**. The expiration of the Term, whether by lapse of time or otherwise, shall not relieve either party of any obligations which accrued prior to or which may continue to accrue after the expiration or early termination of this Lease.

I. **Full Agreement; Amendments**. This Lease contains the parties' entire agreement regarding the subject matter hereof. All understandings, discussions, and agreements previously made between the parties, written or oral, are superseded by this Lease, and neither party is relying upon any warranty, statement or representation not contained in this Lease. This Lease may be modified only by a written agreement signed by Landlord and Tenant. The exhibits and riders attached hereto are incorporated herein and made a part of this Lease for all purposes.

J. **Prohibited Persons and Transactions**. Tenant represents to Landlord: (i) that neither Tenant nor any person or entity that directly owns a 10% or greater equity interest in it, nor any of its officers, directors or managing members, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("***OFAC***") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under Executive Order 13224 (the "***Executive Order***") signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", or other Laws (each such person, a "***Prohibited Person***"), (ii) that Tenant's activities do not violate the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, or the regulations or orders promulgated thereunder, as they may be amended from time to time, or other anti-money laundering Laws (the "***Anti-Money Laundering Laws***"), and (iii) that throughout the Term of this Lease Tenant shall comply with the Executive Order and with the

Anti-Money Laundering Laws. Likewise, Landlord represents to Tenant: (i) that neither Landlord nor any person or entity that directly owns a 10% or greater equity interest in it, nor any of its officers, directors or managing members, is a Prohibited Person, (ii) that Landlord's activities do not violate Anti-Money Laundering Laws, and (iii) that throughout the Term, Landlord shall comply with the Executive Order and with the Anti-Money Laundering Laws.

K. **Tax Protest**. Landlord shall, within 30 days of receipt of the yearly ad valorem tax valuation notice applicable to the Premises, deliver such valuation notice to Tenant. Together with such notice, Landlord shall deliver notice to Tenant indicating whether Landlord will formally contest Tax Expenses and the ad valorem valuation of the Project for such year with the applicable taxing authorities. If Landlord elects to formally contest Tax Expense or the ad valorem valuation of the Project, Landlord shall keep Tenant reasonably informed as to the progress of such contest, copy Tenant on material communications regarding such contest, and deliver copies of all documentation related to

such contest to Tenant. Landlord shall not settle any such contest once commenced without first receiving Tenant's written consent, which consent shall not be unreasonably withheld. If Landlord fails to deliver such notice or elects not to formally contest Tax Expenses or the ad valorem valuation of the Project, Tenant shall have the right to contest Tax Expenses and the ad valorem valuation of the Project, in Landlord's name and with the reasonable cooperation of Landlord, with the applicable taxing authorities, within the time frames established by Law. Any savings realized (net of expenses) as a result of any such tax contest shall be credited against Tax Expenses next coming due.

L. **Method of Calculation**. Tenant is knowledgeable and experienced in commercial transactions and does hereby acknowledge and agree that the provisions of this Lease for determining charges and amounts payable by Tenant are commercially reasonable and valid and constitute satisfactory methods for determining such charges and amounts as required by Section 93.012 of the Texas Property Code. **TENANT FURTHER VOLUNTARILY AND KNOWINGLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ALL RIGHTS AND BENEFITS OF TENANT UNDER SUCH SECTION, AS IT NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED OR SUCCEEDED.**

M. **Waiver of Consumer Rights**. Tenant hereby waives all its rights under the Texas Deceptive Trade Practices - Consumer Protection Act, Section 17.41 et seq. of the Texas Business and Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of Tenant's own selection, tenant voluntarily adopts this waiver.

N. **Counterpart Signatures**. This Lease may be executed and delivered (including delivery in electronic format) in counterparts and each counterpart so delivered which bears the signature of a party hereto shall be binding as to such party, and all counterparts together shall constitute the same instrument.

31. Special Provisions.

A. **Signage**. Subject to the approval of all applicable governmental and quasi-governmental entities, and further subject to all applicable Laws, Landlord hereby grants Tenant the right to have the following signs at the Building identifying Tenant:

(1) Tenant shall have the right to install and maintain exterior lighted signage above the first floor Building entrance facing Hillcrest Avenue and above the first floor Building entrance facing Daniel Avenue (the "***Retail Signage***").

(2) In the event that either Landlord or the Master Association ever construct, or permit to be constructed, a monument sign on the Property for use by the tenants of the Retail Condominium Unit, Landlord agrees to install, display and maintain, at Tenant's sole expense, Tenant's signage on such monument sign (the "***Monument Signage***"). Signage position on such Monument Signage is to be based on relative square footage of the tenants of the Retail Condominium Unit.

(3) Tenant shall have the right to install Tenant's standard window vinyl and identification signage on the storefront of the Premises facing the lobby (the "***Lobby Signage***"). Tenant's portion of the Retail Signage, the Monument Signage, and the Lobby Signage shall collectively be referred to as "***Tenant's Signage***".

(4) Upon final approval of Tenant's Signage by both Landlord and Tenant, including the size, material, construction and design of Tenant's Signage, the final approved rendering of Tenant's Signage shall be inserted as **Exhibit G** hereto. Neither party shall unreasonably withhold, condition or delay its consent to Tenant's Signage.

(5) Tenant, at its expense, shall obtain all necessary governmental permits and certificates required for the installation and use of Tenant's Signage, as well as any approvals necessary under applicable Laws. Tenant acknowledges that Landlord has made no representation that any of Tenant's Signage will comply with applicable Law. Following Tenant's compliance with the requirements hereof for such Tenant's Signage, Landlord shall erect the Tenant's Signage in accordance with the approved plans and specifications and any reasonable requirements of Landlord in connection therewith, in a good and workmanlike manner, in accordance with all applicable Laws. Following Landlord's construction and installation of the Tenant's Signage, Tenant shall maintain Tenant's Signage in a good, working and safe condition and otherwise in accordance with the terms of this Lease and shall pay all costs associated with such construction and any maintenance of Tenant's Signage. All utilities serving Tenant's Signage shall be submetered by Landlord, and Tenant shall be solely responsible for the costs of all utilities serving Tenant's Signage and all costs in connection therewith. Further, if Landlord elects to install an electronic Building directory in the ground floor lobby area of the Building, the name and/or logo of Tenant (whose name and/or logo shall be included in any such directory at all times during the Term of this Lease) shall be organized and displayed in a manner reasonably determined by Landlord.

B. **Riser Space**. During the Term, Landlord shall provide riser space in the Building as mutually agreed upon by Landlord and Tenant, from, among other locations, the Premises to the roof of the Building for purposes of any Telecommunications Equipment (hereinafter defined). Such riser space shall be used for the installation of conduit containing control wiring and electrical distribution cabling used to supply the Premises with emergency power, plus for telecommunications wiring and fiber. All costs and expenses associated with the installation, operation, maintenances and insuring of the conduit shall be borne by Tenant. There shall be no

rental cost to Tenant for the use of such riser space unless such space penetrates rentable parking or storage areas.

C. **Supplemental HVAC**. Subject to all other applicable provisions of this Lease, including without limitation the provisions of

Section 8 hereof pertaining to Alterations, Tenant shall have the right to install an additional HVAC unit (the "***Supplemental HVAC Unit***") to serve the Premises, such Supplemental HVAC Unit to be installed either within the Premises or at such other locations as Landlord shall designate in its sole but reasonable discretion, and such Supplemental HVAC Unit to be installed in a good and workmanlike manner, in compliance with all Laws, and at Tenant's sole cost and expense. In addition, once any such Supplemental HVAC Unit is installed, except as expressly set forth below, Tenant shall be responsible for the maintenance, repair, upkeep and replacement of the same, all at Tenant's sole cost and expense. Notwithstanding the foregoing, Landlord agrees that it will perform, at Tenant's request, the following services related to the Supplemental HVAC Unit: replacement of the Supplemental HVAC Unit's air filters and replacement of the Supplemental HVAC Unit's water strainers (the "***Landlord HVAC Work***"). The Landlord HVAC Work will be performed at such times as reasonably determined by Landlord after Tenant's request therefor, taking into account timing to obtain materials or other supplies needed, etc. The Landlord HVAC Work will be performed at Tenant's cost and expense, with Tenant to pay any costs (including, in addition to costs of materials, costs of labor at Landlord's current rate for any labor) associated with such Landlord HVAC Work within thirty (30) days after receipt of Landlord's invoice therefor.

D. **Telecommunications Antenna**. In the event that an Affiliate of Tenant no longer occupies space in the Building, or in the event that an Affiliate of Tenant discontinues its use of a portion of the roof of the Building for the installation of telecommunications equipment, Landlord and Tenant agree that Tenant shall have the right to no more than 400 square feet of space available for Tenant on the roof of the Building for the installation of certain telecommunications equipment (the "***Telecommunications Equipment***"), subject to the provisions of this **Section 31.D**. The following provisions shall apply with respect to any such Telecommunications Equipment. The quantity, type, size, electrical and transmission capacity, location and other variables regarding such Telecommunications Equipment shall be subject to Landlord's prior approval which shall not be unreasonably withheld, conditioned or delayed. The Telecommunications Equipment shall be installed in a good and workmanlike manner, in compliance with all Laws, and at Tenant's sole cost and expense, and Tenant shall be responsible for all upkeep and replacement of the same, all at Tenant's sole cost and expense. The Telecommunications Equipment will be used only by Tenant and its Affiliates leasing space in the Building and not by any third parties. Tenant shall cause its Telecommunications Equipment not to interfere with the operations of other equipment located on the roof of the Building, and Landlord will cause the other equipment on the roof of the Building not to interfere with the operation of Tenant's Telecommunication Equipment. In the event that Tenant installs the Telecommunications Equipment, then within thirty (30) days of Landlord's invoice, which reimbursement obligation will survive termination of this Lease, Tenant will reimburse Landlord for fifty percent (50%) of the cost of: (A) removal of the Telecommunications Equipment, and (B) restoration of the areas of the roof of the Building affected by Tenant's Telecommunication Equipment (ordinary wear and tear excepted) upon removal of the Telecommunications Equipment after the end of the Term.

E. **Exclusivity**. Tenant, and its successor and assigns, shall have the exclusive right in the Building to provide those activities permitted by Law to be performed by a Financial Holding Company, as defined in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841, et seq.), including without limitation, providing banking services, insurance services, financial services, lending services, and the installation of any automated or interactive teller machine (the "***Bank Holding Exclusive***"); provided, however, the Bank Holding Exclusive shall not apply to any Affiliate of Tenant or to any other occupant of the Premises. During the Term (including any renewal or extension thereof), Landlord shall not lease any space to or allow the occupancy of any space, or allow any signage, in or on, the Building or Property in violation of the Bank Holding Exclusive, including without limitation, leasing or allowing the occupancy of any space, or allowing any signage, in or on, the Building or Property to any company, individual, or other business which is directly in competition with Tenant (other than any Affiliate of Tenant or any other occupant of the Premises), including for any banking services, insurance services, financial services, or lending services use.

F. **Regulatory Approval**. The parties acknowledge that this Lease is being executed prior to Tenant obtaining all governmental and regulatory approvals necessary for Tenant to operate from the Premises as a bank or financial institution (the "***Regulatory Approvals***"). Tenant agrees to apply for the Regulatory Approvals no later than November 1, 2018 **[OPEN]** and to use commercially reasonable diligent and good faith efforts to obtain the Regulatory Approvals. In the event that despite such efforts, Tenant is not able to obtain all necessary Regulatory Approvals prior to March 1, 2019 **[OPEN]** (the "***Contingency Date***"), Tenant may, at its sole option, terminate this Lease by providing written notice to Landlord on or before ten (10) Business Days after the Contingency Date (the "***Regulatory Approval Termination Right***"), and thereafter neither party shall have any obligations under this Lease. Notwithstanding the foregoing or anything in this Lease to the contrary, in the event that the Lease is not terminated due to Tenant's exercise of the Regulatory Approval Termination Right, and the Premises is not open for business to the public by no later than one year from the date of receipt by Tenant of the Regulatory Approvals (or such other period of time as may be required by Laws for Tenant to open for business in the Premises after receipt of the Regulatory Approvals), Tenant shall apply for an extension from the applicable regulator to operate the Premises as a bank branch or, if such application for extension is not available, make a new application for Regulatory Approvals to operate the Premises as a bank branch (either, the "***Second Application***"); provided that if such extension or approval is not granted by applicable regulators within one-hundred (120) days from the Second Application (the "***Second Application Contingency Date***"), and the sole reason that the Premises is not open for business by no later than one (1) year from the date of receipt by Tenant of the Regulatory Approvals is Landlord's failure to deliver the Premises in accordance with the Lease on the Scheduled Delivery Date, then Tenant may, at its sole option, terminate this Lease by providing written notice to Landlord on or before ten (10) Business Days after the Second Application Contingency Date, and thereafter neither party shall have any obligations under this Lease. Further, notwithstanding the foregoing or anything in this Lease to the contrary, in the event an extension to open the Premises as a bank branch (a "***Regulatory Extension***") is granted to Tenant by the applicable regulator, and the Premises is not open for business on the last date of such extension period provided by the applicable regulator, Tenant shall make new application for approval to operate the Premises as a bank branch (the "***Extended Regulatory Application***"), and if the necessary

Regulatory Approvals are not obtained with one-hundred (120) days from the date of the submission of the Extended Regulatory Application (the

"***Extended Regulatory Contingency Date***"), and the sole reason that the Premises is not open for business by no later than one (1) year from the date of receipt by Tenant of the Regulatory Approvals is Landlord's failure to deliver the Premises in accordance with the Lease on the Scheduled Delivery Date, then Tenant may, at its sole option, terminate this Lease by providing by providing written notice to Landlord on or before ten (10) Business Days after the Extended Regulatory Contingency Date, and thereafter neither party shall have any obligations under this Lease. In the event that it becomes necessary or desirable to do so in order to obtain or maintain any Regulatory Approvals, or to satisfy the conditions of any Regulatory Approvals, Tenant and Landlord hereby agree to work in good faith to open a temporary branch location at the same address as the Premises. If Tenant terminates this Lease pursuant to this **Section 31.F**., Tenant covenants and agrees that it will not, within five (5) years of the effective date of such termination, open a branch bank in another location in the University Park, Highland Park or Preston Center trade areas of Dallas, Texas if space of substantially the same size as the Premises on the first floor of the Building is available for lease on substantially the same terms as the Lease; however, the foregoing Tenant covenant does not apply to a relocation of Tenant's existing Preston Center branch.

[Signatures Appear on the Following Page]

Landlord and Tenant have executed this Lease as of the Effective Date.

LANDLORD:

SPC PARK PLAZA PARTNERS LLC,
a Texas limited liability company

By: First American Exchange Company, LLC, a Delaware limited liability company, its sole member and manager

By: /s/ MARK A. BULLOCK
Mark A. Bullock,
Legal Counsel

AND

DIAMOND HILLCREST, LLC,
a Texas limited liability company

By: /s/ GARY SHULTZ
Name: Gary Shultz
Title: Vice President

AND

HTH HILLCREST PROJECT LLC,
a Texas limited liability company

By: /s/ COREY PRESTIDGE
Name: Corey Prestidge
Title: Vice President

as co-owners

TENANT:

PLAINSCAPITAL BANK,
a Texas chartered bank

By: /s/ SCOTT J. LUEDKE
Name: Scott J. Luedke
Title: Executive Vice President

EXHIBITS AND SCHEDULES INTENTIONALLY OMITTED

Signature Page

(Back To Top)

Section 7: EX-99.1 (EX-99.1)

Exhibit 99.1

Media Contact:
Ben Brooks | 214.252.4047
ben.brooks@hilltop-holdings.com

Investor Relations Contact:
Isabell Novakov | 214.252.4029
inovakov@hilltop-holdings.com

Hilltop Holdings Inc. Invests in New Dallas Headquarters and Executes Related Long-Term Lease

Construction Underway at 119,000-Square-Foot University Park Location

DALLAS (August 06, 2018) — Dallas-based Hilltop Holdings Inc. (NYSE: HTH) today announced it made an investment in a new real estate development in Dallas' University Park, which will serve as headquarters for both Hilltop and its largest subsidiary, PlainsCapital Bank. Joining Hilltop in the transaction is the company's chairman and largest shareholder, Gerald J. Ford, who will be an equal investing partner in the project.

Together, Hilltop and the Ford family will each own 25 percent of the six-story, 119,000-square-foot Class A commercial office building at 6565 Hillcrest Avenue and each own 50 percent of the 1.7-acre tract on which the building will sit. A third party unaffiliated with Hilltop and the Ford family will own the remaining 50% of the building. Strode Property Company is the developer of the project. The building will be named Hilltop Plaza, and construction is expected to be completed in the second half of 2019.

"Hilltop Holdings has experienced significant growth in the past five years, and this new headquarters project signifies our continued commitment to investing in our company and community," said Hilltop's Co-CEO and President Jeremy B. Ford. "Hilltop Plaza will be a highly visible and unique property in one of Dallas' most desirable areas. It is a fitting symbol of Hilltop Holdings' strength and position as a financial services leader in Texas."

Hilltop and PlainsCapital Bank will lease approximately 68,000 square feet of corporate office space on the top four floors of Hilltop Plaza and will also open an approximately 4,000-square-foot PlainsCapital Bank branch on the building's first floor. Hilltop will occupy just over half of the building's rentable space and expects to move in during the fourth quarter of 2019. The remaining space in the building will be leased for commercial office, retail and restaurant use. The building will pursue LEED Silver certification.

Hilltop made an approximately $24 million investment in the project, which consists of approximately $5 million for its stake in the building and approximately $19 million for its stake in the land. Construction on the project commenced in the fourth quarter of 2017, and total building costs are expected to be approximately $60 million.

"Combining our headquarters offices into this new location provides an important opportunity to increase collaboration and efficiency within the company," said Hilltop's Co-CEO and Vice Chairman Alan B. White. "Hilltop Plaza will serve as the flagship for our expanding organization as we pursue our plans for long-term growth."

The building was designed by the Dallas-based architectural and design firm Omniplan and will be located at the intersection of Hillcrest Ave. and Daniel Ave. The property is adjacent to the northwest corner of Southern Methodist University's campus and just south of Snider Plaza shopping center. Hilltop was advised in the

transaction by Bracewell LLP as legal counsel and by Lincoln Property Company. Rogers-O'Brien Construction Company is the general contractor

on the project.

About Hilltop Holdings Inc.

Hilltop Holdings is a Dallas-based financial holding company. Its primary line of business is to provide business and consumer banking services from offices located throughout Texas through PlainsCapital Bank. PlainsCapital Bank's wholly owned subsidiary, PrimeLending, provides residential mortgage lending throughout the United States. Hilltop Holdings' broker-dealer subsidiaries, Hilltop Securities Inc. and Hilltop Securities Independent Network Inc., provide a full complement of securities brokerage, institutional and investment banking services in addition to clearing services and retail financial advisory. Through Hilltop Holdings' other wholly owned subsidiary, National Lloyds Corporation, it provides property and casualty insurance through two insurance companies, National Lloyds Insurance Company and American Summit Insurance Company. At June 30, 2018, Hilltop employed approximately 5,400 people and operated approximately 475 locations in 45 states. Hilltop Holdings' common stock is listed on the New York Stock Exchange under the symbol "HTH." Find more information at Hilltop-Holdings.com, PlainsCapital.com, PrimeLending.com, NationalLloydsInsurance.com and HilltopSecurities.com.

FORWARD-LOOKING STATEMENTS

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements anticipated in such statements. Forward-looking statements speak only as of the date they are made and, except as required by law, we do not assume any duty to update forward-looking statements. Such forward-looking statements include, but are not limited to, statements concerning such things as our plans, objectives, strategies, expectations, intentions, construction timing and other statements that are not statements of historical fact, and may be identified by words such as "anticipates," "believes," "could," "estimates," "expects," "forecasts," "goal," "intends," "may," "might," "plan," "probable," "projects," "seeks," "should," "target," "view" or "would" or the negative of these words and phrases or similar words or phrases. Factors that could cause our actual results to differ materially from those described in the forward-looking statements include, among others: (i) the possibility that we may not receive necessary regulatory approvals for the branch location; and (ii) the failure of the construction project to be completed on the expected timeline or at all. For a discussion of certain other factors that could cause our actual results to differ materially from those described in the forward-looking statements, please see the risk factors discussed in our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q and other reports that are filed with the Securities and Exchange Commission. All forward-looking statements are qualified in their entirety by this cautionary statement.

# # #

(Back To Top)