

## OFFICE LEASE

THIS OFFICE LEASE is executed this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between MF SOMERSET PARK, LLC, a North Carolina limited liability company ("**Landlord**"), and WAKE COUNTY, a body politic and corporate in the State of North Carolina ("**Tenant**").

### **ARTICLE 1 - LEASE OF PREMISES.**

#### Section 1.01. Basic Lease Provisions and Definitions.

(a) Leased Premises (shown outlined on **Exhibit A** attached hereto): Being all of the Rentable Area within the building located at 4401 Bland Road, Raleigh, North Carolina (the "**Building**"), within Somerset Park, consisting of Buildings 4401, 4402, 4405, and 4407 Bland Road (the "**Park**").

(b) Rentable Area: Relative to the Leased Premises and the Building, approximately 52,741 rentable square feet. The Rentable Area of the Leased Premises is equal to the usable square footage within the Leased Premises.

(c) Tenant's Proportionate Share of Rentable Area: 100%.

(d) Common Area: Tenant shall have the exclusive right to use the Building's common lobbies, corridors, stairways, and elevators necessary for access to the Leased Premises, the common toilets, corridors and elevator lobbies of any floor, and the Parking Area defined in (e); as well as the non-exclusive right in common with other Tenants of the Park to use the Park common areas, consisting of the underlying land and improvements thereto owned by Landlord that are designed for use in common by all Buildings in the Park, including common walkways and driveways necessary for access to the Building, center island "pocket park" (collectively, the "Common Areas").

(e) Parking Area: Tenant shall be entitled to the exclusive use of at least 208 parking spaces designated for the Building by Landlord. Tenant agrees (i) not to overburden the parking facilities, (ii) to cooperate with Landlord in the use of the parking facilities and (iii) that, notwithstanding the immediately preceding grammatical sentence, Tenant and Tenant's guests and invitees shall not, at any given time, be entitled to use more than four (4) parking spaces for each one thousand (1,000) square feet of Rentable Area of the Leased Premises, and Landlord shall not, at any time make less than four (4) parking spaces for each one thousand (1,000) square feet of Rentable Area available to Tenant. In the event Tenant is determined to be overburdening the parking facilities, Landlord shall be entitled (but not required) to monitor or restrict use of the parking facilities at Tenant's expense. There will be no assigned parking unless Landlord, in its sole discretion, deems such assigned parking advisable. No vehicle may be repaired or serviced in the parking area and any vehicle brought into the parking area by Tenant, or any of Tenant's employees, contractors or invitees, and deemed abandoned by Landlord will be towed and all costs thereof shall be borne by the Tenant. All driveways, ingress and egress, and all parking spaces are for the joint use of all tenants. There shall be no parking permitted on any of the streets or roadways located within the Park. In addition, Tenant agrees that its employees will not park in the spaces designated visitor parking.

(f) Minimum Annual Rent and Monthly Rental Installments:

| <u>Time Period</u>                              | <u>Minimum Annual<br/>Rent Per Square<br/>Foot Per Annum</u> | <u>Minimum Annual<br/>Rent for Time<br/>Period</u> | <u>Monthly Rental<br/>Installments</u> |
|---|--|--|--|
| Months 1 – 4*                                   | \$0.00 <sup>#</sup>  | \$0.00 <sup>#</sup>                                | \$0.00 <sup>#</sup>                    |
| Months 5– 12                                    | \$21.00  | \$738,374.00                                       | \$92,296.75                            |
| Months 13 – 24                                  | \$21.58  | \$1,138,150.80                                     | \$94,845.90                            |
| Months 25 – 36                                  | \$22.17  | \$1,169,268.00                                     | \$97,439.00                            |
| Months 37 – 48                                  | \$22.78  | \$1,201,440.00                                     | \$100,120.00                           |
| Months 49 – 60                                  | \$23.41  | \$1,234,666.80                                     | \$102,888.90                           |
| Months 61 – 72                                  | \$24.05  | \$1,268,421.00                                     | \$105,701.75                           |
| Months 73 – 84                                  | \$24.71  | \$1,303,230.12                                     | \$108,602.51                           |
| Months 85 – 96                                  | \$25.39  | \$1,339,094.04                                     | \$111,591.17                           |
| Months 97 – 108                                 | \$26.09  | \$1,376,012.64                                     | \$114,667.72                           |
| Months 109 – 120                                | \$26.81  | \$1,413,986.16                                     | \$117,832.18                           |
| Months 121 – 132                                | \$27.48  | \$1,449,322.68                                     | \$120,776.89                           |
| Months 133 – 144                                | \$28.17  | \$1,485,714.00                                     | \$123,809.50                           |
| Months 145 – 156                                | \$28.87  | \$1,522,632.72                                     | \$126,886.06                           |
| Months 157 – 168                                | \$29.59  | \$1,560,606.24                                     | \$130,050.52                           |
| Months 169 –Expiration of<br>initial Lease Term | \$30.33  | \$1,599,634.56 <sup>%</sup>                        | \$133,302.88                           |

\* “Months” refer to monthly periods starting with the Commencement Date.

# Subject to the provisions in Section 3.01 below regarding the Abatement Period.

% The amount shown reflects one hundred eighty (180) months. If the Commencement Date is not the first day of a calendar month and the final Month of the Lease Term is automatically extended to include the remaining partial calendar month following the date on which the Lease Term would otherwise expire (pursuant to Section 1.01(h) below), Tenant shall pay Minimum Annual Rent relative to such partial calendar month (at the same rate and on a prorated basis) in addition to the amount shown.

(g) Abated Payments: \$369,187.00 (*i.e.*, four (4) months at the annualized rate of \$21.00 per square foot of Rentable Area of the Leased Premises), as reflected in the rent chart above.

(h) Base Year: The Base Year shall be 2020 for years 1-6 of the Lease; and reset to 2027 for years 7-15 of the Lease for the purpose of calculating the Annual Operating Expense Adjustment.

(i) Commencement Date: The latter of (i) October 1, 2020 (the “**Target Commencement Date**”), or (ii) the date on which Tenant occupies and begins conducting business in the Leased Premises. Provided, however, the Commencement Date may be adjusted pursuant to Section 2.02 herein and **Exhibit B** attached hereto and shall be confirmed by the Letter of Understanding attached hereto and incorporated herein as **Exhibit C**.

(j) Lease Term: The period beginning on the Commencement Date and ending upon the expiration or earlier termination of the term of this Lease. The initial Lease Term shall be one hundred eighty (180) months, beginning on the Commencement Date. Provided, however, if the Commencement Date is any day other than the first day of a calendar month, the Lease Term shall be extended automatically until midnight on the last day of the calendar month in which the Lease Term otherwise would expire.

(k) Security Deposit: No Security Deposit is required for Lease Term, including any extensions of Term.

(l) Broker(s): TP Triangle, LLC representing Landlord and Avison Young representing Tenant.

(m) Permitted Use: Wake County Human Services Operations Center, Call Center, Administrative Offices, Veterans Affairs, client services, and related functions as determined by Wake County Human Services.

(n) Address for notices and payments are as follows:

**LANDLORD NOTICES TO:**

If by US Mail:

MF Somerset Park, LLC  
PO Box 603218  
Charlotte, NC 28260-3218  
Attention: Kevin Mast

If by Overnight Delivery:

MF Somerset Park, LLC  
6836 Morrison Blvd, Suite 410  
Charlotte, NC 28211  
Attention: Kevin Mast

With a

copy to: TP Triangle, LLC  
3020 Carrington Mill Boulevard, Suite 425  
Morrisville, North Carolina 27560  
Attn: William Allen

**WITH PAYMENTS TO LANDLORD TO:**

MF Somerset Park, LLC  
Lockbox Services 603218  
1525 West W.T. Harris Blvd. – 2C2  
Charlotte, NC 28262

**If by ACH, EFT or Wire:**

Bank: Wells Fargo Bank, NA  
San Francisco, CA  
Account Name: MF Somerset Park LLC (Restricted Account) for  
the benefit of Silverpeak Real Estate Finance LLC  
Account No.: 4127805844  
ABA No.: 121000248

**TENANT NOTICES TO:**

Tenant: Wake County  
PO Box 550  
Raleigh, NC 27602

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Attention: Ms. Kelli Braunbach, Director Wake County GSA  
[kbraunbach@wakegov.com](mailto:kbraunbach@wakegov.com)

with copy to:  
Wake County  
PO Box 550  
Raleigh, NC 27602

Attention: Mr. Mark Forestieri, Director, Wake County FD&C  
[mforestieri@wakegov.com](mailto:mforestieri@wakegov.com)  
Attention: Mr. Scott W. Warren, County Attorney  
[swarren@wakegov.com](mailto:swarren@wakegov.com)

(o) Tenant Improvement Allowance: \$1,714,082.50 (*i.e.*, \$32.50 per square foot of Rentable Area in the Leased).

(p) Exhibits. The following Exhibits are attached hereto and incorporated herein by reference:

Exhibit A - Leased Premises  
Exhibit B - Tenant Improvements  
Exhibit B-1 – Preliminary Space Plan and Scope of Work Narrative  
Exhibit C - Letter of Understanding  
Exhibit D - Information Sheet  
Exhibit E - Rules and Regulations  
Exhibit F – SNDA

Section 1.02. Term. The Commencement Date and Lease Term shall be as set forth in Sections 1.01(g) and 1.01(h) above.

Section 1.03. Construction of Tenant Improvements. Landlord shall construct and install all leasehold improvements to the Leased Premises (collectively, the “***Tenant Improvements***”) in accordance with **Exhibit B and Exhibit B-1** attached hereto and made a part hereof. Subject to delays resulting from Force Majeure Matters (as defined in Section 16.03) or Tenant Delays (as defined in **Exhibit B**), Landlord shall use diligent, commercially reasonable efforts to deliver the Leased Premises to Tenant not later than the Target Commencement Date with the Tenant Improvements Substantially Completed (as defined in **Exhibit B**). If Landlord for any reason whatsoever cannot deliver possession of the Leased Premises to Tenant (with the Tenant Improvements Substantially Completed) by the Target Commencement Date, this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom as long as Landlord acts diligently and uses commercially reasonable efforts to complete the work that is necessary to allow Landlord to deliver the Leased Premises to Tenant as specified above within six (6) months, in which case the Commencement Date shall be the date that the Tenant Improvements are Substantially Completed. For the purpose of this section, “Substantially completed” means such date as a partial or temporary Certificate of Occupancy is obtained and the Tenant can occupy the space for its Permitted Use. If Landlord for any reason whatsoever has not delivered possession of the Leased Premises to Tenant (with the Tenant Improvements Substantially Completed) within six (6) months of the Target Commencement Date, this Lease shall be voidable at the Tenant’s option.

Section 1.04. Surrender of the Leased Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, immediately (a) surrender the Leased Premises to Landlord in broom-clean condition and in good order, condition and repair, (b) remove from the Leased Premises or where located (i) Tenant’s Property (as defined in Section 8.01 below), (ii) all data and communications equipment, wiring and cabling (including above ceiling, below raised floors and behind walls), and (iii) any alterations required to be removed pursuant to Section 7.03 below, and (c) repair any damage caused by any such removal and restore the Leased Premises to the condition existing upon the Commencement Date, reasonable wear and tear excepted. All of Tenant’s Property that is not removed within ten (10) days following Landlord’s written demand therefor shall be conclusively deemed to have been abandoned and Landlord shall be entitled to dispose of such property without incurring any liability to Tenant. This Section 2.03 shall survive the expiration or any earlier termination of this Lease.

Section 1.05. Holding Over. If Tenant retains possession of the Leased Premises after the expiration of the Term (including Term Extensions) or earlier termination of this Lease, Tenant shall be a tenant at sufferance. Tenant’s occupancy shall be subject to all the terms and provisions

of this Lease, and Tenant shall (a) pay an amount (on a per month basis without reduction for partial months during the holdover) equal to 150% of the sum of the Monthly Rental Installment and Additional Rent (as defined in Section 3.03(a)) due for the period immediately preceding the holdover; No holdover by Tenant or payment by Tenant after the termination of this Lease shall be construed to extend the Lease Term or prevent Landlord from immediate recovery of possession of the Leased Premises by summary proceedings or otherwise, and this Section 2.04 shall in no way constitute consent by Landlord to any holding over by Tenant upon the expiration or earlier termination of this Lease, nor limit Landlord's remedies in such event.

## **ARTICLE 2 - RENT**

Section 2.01. Base Rent. Tenant shall pay to Landlord as Base Rent the Minimum Annual Rent in the Monthly Rental Installments in advance, without demand, deduction or offset, on the Commencement Date and on or before the fifth day of each and every calendar month thereafter during the Lease Term. The Monthly Rental Installments for partial calendar months shall be prorated. Tenant shall pay all amounts due under this Lease by Electronic Funds Transfer (EFT). Landlord shall cooperate in completing all required vendor enrollment documents in order to receive EFTs.

Notwithstanding contrary provisions that may be contained in this Lease, during the first four (4) months of the Lease Term after the Commencement Date (the "***Abatement Period***"), Landlord will forbear and waive the obligation of Tenant to pay Minimum Annual Rent in an amount equal to the Abated Payments (as set forth in Section 1.01(g)) and Tenant shall occupy the Premises for those months according to the terms and conditions of this Lease with no payment due. In the alternative, at Tenant's option, rather than applying the same towards Minimum Annual Rent, Tenant shall have the right to convert all or a portion of the Abated Payments towards the cost of the Tenant Improvements (i.e., increase the Allowance by the amount of such converted Abated Payments) as more particularly described in Exhibit B attached hereto without otherwise impacting the Commencement Date. The foregoing agreement by Landlord has been made relying on Tenant's agreement to perform all of its obligations under the Lease as and when required hereby. As a result, in the event that a Default (as defined in Article 13) occurs under this Lease which is not due to the fault of the Landlord, in addition to Landlord's other remedies which may be available to Landlord under this Lease or applicable law, Tenant shall reimburse Landlord, subject to offset for any damages owed to Tenant, an amount equal to the Unamortized Amount (as defined below) within ten (10) days following final adjudication of any dispute related to Lease. The term "***Unamortized Amount***" refers to the result obtained by multiplying the Abated Payments by a fraction, the numerator of which is the number of months which remain or would have remained during the Lease Term following the date of the Default, the denominator being the total number of months in the Lease Term, less the number of months in the Abatement Period.

### Section 2.02. Annual Operating Expense Adjustment Definitions.

(a) "***Annual Operating Expense Adjustment***" shall mean the amount of Tenant's Proportionate Share of Operating Expenses for a particular calendar year.

(b) "***Operating Expenses***" shall mean the amount of all of Landlord's costs and expenses paid or incurred in operating, repairing, replacing and maintaining the Building and the

Common Areas in good condition and repair for a particular calendar year, including by way of illustration and not limitation, the following: all Real Estate Taxes (as hereinafter defined), insurance premiums and deductibles; water, sewer, electrical and other utility charges other than the separately billed electrical and other charges paid by Tenant as provided in this Lease (or other tenants in the Building); service and other charges incurred in the repair, operation and maintenance of the elevators and the heating, ventilation and air-conditioning system; cleaning and other janitorial services; tools and supplies; repair costs; landscape maintenance costs; access patrols; license, permit and inspection fees; maintenance, repair and replacement of the driveways, parking and sidewalk areas (including snow and ice removal), landscaped areas, and lighting; costs paid or incurred by Landlord in bringing the Building or the Common Areas into compliance with Applicable Laws (as defined in Section 5.02(a)) enacted after the effective date of this Lease; The cost of any Capital Expenses shall be amortized over the useful life of the improvement (as reasonably determined by Landlord), and no portion of Capital Expenses shall be included in Operating Expenses. "Capital Expenses" shall mean the cost and expense of fixing a design or flaw; creating an addition, enlargement, or expansion; creating an increase in capacity, productivity, or efficiency; rebuilding after useful economic life; or replacing a major component or structural part of the Building or Park.

(c) ***"Tenant's Proportionate Share of Operating Expenses"*** shall mean an amount equal to the product of Tenant's Proportionate Share multiplied by an amount equal to (i) Operating Expenses incurred during or properly chargeable to the calendar year in question, less (ii) Operating Expenses incurred during or properly chargeable to the Base Year. "Tenant's Proportionate Share" shall be calculated by dividing the total square footage of Building 4401 by the total square footage of Buildings 4401, 4402, 4405, and 4407 Bland Road, comprising all buildings in the Park. This ratio applies regardless of the rental/occupancy status of the other buildings. Tenant's Proportionate Share of Operating Expenses shall be a credit to Tenant if the Operating Expenses incurred are less than the Base Year.

(d) ***"Real Estate Taxes"*** shall mean any form of real estate tax or assessment or service payments in lieu thereof, any state franchise taxes assessed on tangible property, and any license fee, commercial rental tax, improvement bond or other similar charge or tax (other than inheritance, personal income or estate taxes) imposed upon the Building or Common Areas, or against Landlord's business of leasing the Building, by any authority having the power to so charge or tax, together with costs and expenses of contesting the validity or amount of the Real Estate Taxes.

#### Section 2.03. Payment of Additional Rent.

(a) Any amount required to be paid by Tenant hereunder (in addition to Minimum Annual Rent) and any charges or expenses incurred by Landlord on behalf of Tenant under the terms of this Lease shall be considered "Additional Rent" payable in the same manner and upon the same terms and conditions as the Minimum Annual Rent reserved hereunder, except as set forth herein to the contrary. Any failure on the part of Tenant to pay such Additional Rent when and as the same shall become due shall entitle Landlord to the remedies available to it for non-payment of Minimum Annual Rent.

(b) In addition to the Minimum Annual Rent specified in this Lease, commencing as of the Commencement Date, Tenant shall pay to Landlord as Additional Rent for the Leased Premises,

in each calendar year or partial calendar year during the Lease Term, an amount equal to the Annual Operating Expense Adjustment for such calendar year. Landlord shall estimate the Annual Operating Expense Adjustment annually, and written notice thereof shall be given to Tenant prior to the beginning of each calendar year. Tenant shall pay to Landlord each month, at the same time the Monthly Rental Installment is due, an amount equal to one-twelfth (1/12) of the estimated Annual Operating Expense Adjustment. If Operating Expenses increase during a calendar year, Landlord may increase the estimated Annual Operating Expense Adjustment during such year by giving Tenant written notice to that effect, and thereafter Tenant shall pay to Landlord, in each of the remaining months of such year, an amount equal to the amount of such increase in the estimated Annual Operating Expense Adjustment divided by the number of months remaining in such year. If Operating Expenses decrease during a calendar year, Landlord shall decrease the estimated Annual Operating Expense Adjustment during such year by giving Tenant written notice to that effect, and thereafter Tenant shall pay to Landlord, in each of the remaining months of such year, an adjusted amount taking into account such decrease in the estimated Annual Operating Expense Adjustment divided by the number of months remaining in such year. Within a reasonable time after the end of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing the actual Annual Operating Expense Adjustment. Within thirty (30) days after receipt of the aforementioned statement, Tenant shall pay to Landlord, or Landlord shall credit against the next rent payment or payments due from Tenant, as the case may be, the difference between the actual Annual Operating Expense Adjustment for the preceding calendar year and the estimated amount paid by Tenant during such year. This Section 2.03 shall survive the expiration or any earlier termination of this Lease.

Section 2.04. Late Charges. [Intentionally Omitted]

Section 2.05. Notwithstanding anything herein to the contrary, commencing with calendar year 2021 and each calendar year during the initial Lease Term thereafter, it is understood and agreed that for purposes of calculating Tenant's Proportionate Share of Operating Expenses in any calendar year during the initial Lease Term (for purposes of this Section, the "***Remaining Term***"), the maximum amount of Controllable Operating Expenses (as defined below) included in Operating Expenses for any calendar year from and after 2021 during the Remaining Term shall be limited to the actual amount of Controllable Operating Expenses paid or incurred by Landlord on account of or in the Base Year as defined in 1.01(h) (annualized to reflect charges that would have been incurred for an entire calendar year), increased on a cumulative, compounding basis at five percent (5%) per annum through the applicable calendar year. Commencing with the second full calendar year of any renewal or extension term exercised by Tenant hereunder and each calendar year during such renewal or extension term (for purposes of this Section, the "***Remaining Applicable Renewal Term***"), the maximum amount of Controllable Operating Expenses included in Operating Expenses for any calendar year from and after the first full calendar year during the applicable renewal or extension term during the Remaining Applicable Renewal Term shall be limited to the actual amount of Controllable Operating Expenses paid or incurred by Landlord on account of or in such first full calendar year during the applicable renewal or extension term, increased on a cumulative, compounding basis at five percent (5%) per annum through the applicable calendar year. For the purposes of this Section, "***Controllable Operating Expenses***" means all Operating Expenses exclusive of charges for administration/management fees, security, utilities, insurance, compliance with Applicable Laws going into effect following the



Commencement Date, taxes and assessments, snow and ice removal, and any other charges beyond Landlord's reasonable control.

### **ARTICLE 3 -OCCUPANCY AND USE**

Section 3.01. Use. Tenant shall use the Leased Premises for the Permitted Use and for no other purpose without the prior written consent of Landlord.

Section 3.02. Covenants of Tenant Regarding Use.

(a) Tenant shall (i) use and maintain the Leased Premises and conduct its business thereon in a safe, careful, reputable and lawful manner, (ii) comply with all covenants that encumber the Building and all laws, rules, regulations, codes, orders, ordinances, directions and requirements of any governmental authority or agency, now in force or which may hereafter be in force, including, without limitation, those which shall impose upon Landlord or Tenant any duty with respect to or triggered by a change in the use or occupation of, or any improvement or alteration to, the Leased Premises (collectively, "***Applicable Laws***"), and (iii) comply with and obey all reasonable directions, rules and regulations of Landlord, including the Building Rules and Regulations attached hereto as **Exhibit E** and made a part hereof, as may be modified from time to time by Landlord on reasonable notice to Tenant. Tenant shall promptly provide Landlord with copies of any notices it receives regarding an alleged violation of the foregoing.

(b) Tenant shall not do or permit anything to be done in or about the Leased Premises that will in any way cause a nuisance, obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any of Landlord's directions, rules and regulations, but agrees that any enforcement thereof shall be done uniformly. Tenant shall not use the Leased Premises, nor allow the Leased Premises to be used, for any purpose or in any manner that would (i) invalidate any policy of insurance now or hereafter carried by Landlord on the Building, or (ii) increase the rate of premiums payable on any such insurance policy unless Tenant reimburses Landlord for any increase in premium charged.

Section 3.03. Landlord's Rights Regarding Use. Without limiting any of Landlord's rights specified elsewhere in this Lease Landlord, its agents, employees and contractors and any mortgagee of the Building shall have the right to enter any part of the Leased Premises, unescorted, at reasonable times upon reasonable notice (except in the event of an emergency or for routine repairs, maintenance, or other services that Landlord is required to provide hereunder, in which case no notice shall be required) for the purposes of examining or inspecting the same (including, without limitation, testing to confirm Tenant's compliance with this Lease), showing the same to prospective purchasers, mortgagees or tenants, and making such repairs, alterations or improvements to the Leased Premises or the Building as permitted or required by this Lease Landlord shall incur no liability to Tenant for such entry, nor shall such entry constitute an eviction of Tenant or a termination of this Lease, or entitle Tenant to any abatement of rent. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Leased Premises during the making of such changes or alterations, provided that Landlord shall have no obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever.

## **ARTICLE 4 - UTILITIES AND OTHER BUILDING SERVICES**

Section 4.01. Services to be Provided. Provided Tenant is not in default, Landlord shall furnish to Tenant, except as noted below, the following utilities and other services to the extent reasonably necessary for Tenant's use of the Leased Premises for the Permitted Use, or as may be required by law or directed by governmental authority:

- (a) Heating, ventilation and air-conditioning between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and, upon forty-eight (48) hours prior written request from Tenant (email being sufficient), 8:00 a.m. to 1:00 p.m. on Saturday of each week except on legal holidays;
- (b) Electrical current not to exceed four (4) watts per square foot;
- (c) Water;
- (d) Automatic elevator service;
- (e) Cleaning and janitorial service in the Leased Premises and Common Areas on Monday through Friday of each week except legal holidays; provided, however, Tenant shall be responsible for carpet cleaning other than routine vacuuming;
- (f) Washing of exterior windows at intervals reasonably established by Landlord;
- (g) Replacement of all lamps, bulbs, starters and ballasts in the Building standard lighting fixtures as required from time to time as a result of normal usage; and
- (h) Maintenance of the Common Areas, including the removal of rubbish, ice and snow.
- (i) Fire Protection and Alarm Systems

Section 4.02. Additional Services. If Tenant requests utilities or building services in addition to those identified above, then Landlord shall use reasonable efforts to attempt to furnish Tenant with such additional utilities or services. In the event Landlord is able to and does furnish such additional utilities or services, the costs thereof (which shall be deemed to mean the cost that Tenant would have incurred had Tenant contracted directly with the utility company or service provider) shall be borne by Tenant, who shall reimburse Landlord monthly for the same as Additional Rent. The cost to be charged by Landlord to Tenant hereunder for heating, ventilation and air-conditioning service used by Tenant during times other than those hours set forth in Section 6.01(a) above shall be \$45.00 per hour for each floor which is served by such heating, ventilation and air-conditioning service (*i.e.*, \$45.00 multiplied by the number of hours multiplied by the number of floors affected), subject to increases in such hourly rate from time to time during the Lease Term to reimburse Landlord for increases in the cost to Landlord of electricity consumed in providing the heating, ventilation and air-conditioning service. Tenant shall have the option to separately meter the Leased Premises at Tenant's sole cost, and Tenant shall pay such utilities based on the submeter or separate meter.

Section 4.03. Interruption of Services. Tenant acknowledges and agrees that any one or more of the utilities or other services identified in Sections 6.01 or 6.02 or otherwise hereunder

may be interrupted by reason of accident, emergency or other causes beyond Landlord's control, or may be discontinued or diminished temporarily by Landlord or other persons until certain repairs, alterations or improvements can be made. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility or service and no such failure or interruption shall entitle Tenant to terminate this Lease or withhold sums due hereunder.

## **ARTICLE 5 - REPAIRS, MAINTENANCE AND ALTERATIONS**

Section 5.01. Repair and Maintenance of Building. Landlord shall make all necessary repairs and replacements to the roof, exterior walls, exterior doors, exterior windows, common corridors, elevators, utility, sprinkler service, fire alarm systems and electrical and plumbing lines and air conditioning and heating systems located outside the Leased Premises but which serve the Leased Premises on a non-exclusive basis, and other Common Areas, and Landlord shall keep the Building in a clean and neat condition and in good condition and repair. The cost of such repairs, and maintenance shall be included in Operating Expenses to the extent provided in Section 3.02; provided however, to the extent any such repairs, replacements or maintenance are required because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers or invitees, or are made at the specific request of Tenant, Landlord shall make such repairs at Tenant's sole expense, in which case Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in making such repair as Additional Rent within ten (10) days of Landlord's delivery of applicable invoices therefor.

Section 5.02. Repair and Maintenance of Leased Premises. Tenant shall keep and maintain the Leased Premises in good condition and repair, other than with respect to repairs that are Landlord's responsibility pursuant to Section 7.01. If Tenant fails to perform such repair and maintenance obligations, Landlord shall make such repairs or perform such maintenance at Tenant's sole expense, in which case Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in making such repairs or performing such maintenance as Additional Rent within ten (10) days of Landlord's delivery of applicable invoices therefor. Tenant's repair and maintenance obligations include, without limitation, repairs to: (a) floor coverings; (b) interior partitions; (c) doors; (d) the interior side of demising walls; (e) electronic, fiber, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Tenant; and (f) all alterations performed by Tenant. Tenant shall be solely responsible for any repair or replacement with respect to Tenant's Property (as defined in Section 8.01 below) located in the Leased Premises, the Building or the Common Areas. Nothing in this Article 7 shall obligate Landlord or Tenant to repair normal wear and tear to any paint, wall covering or carpet in the Leased Premises.

Section 5.03. Alterations. Tenant shall not permit alterations in or to the Leased Premises unless and until Landlord has approved, in its sole discretion, the plans therefor and the general contractor that will be engaged by Tenant to perform such alterations in writing. As a condition of such approval, Landlord may require Tenant to remove the alterations and restore the Leased Premises upon termination of this Lease; otherwise, all such alterations shall at Landlord's option become a part of the realty and the property of Landlord, and shall not be removed by Tenant. Tenant shall ensure that all alterations shall be made in accordance with all Applicable Laws in a good and workmanlike manner and of quality equal to or better than the original construction of the Building; provided Landlord's approval of such plans shall not be deemed a representation by Landlord that same comply with Applicable Laws. No person shall be entitled to any lien derived

through or under Tenant for any labor or material furnished to the Leased Premises, and nothing in this Lease shall be construed to constitute Landlord's consent to the creation of any lien. If any lien is filed against the Leased Premises for work claimed to have been done for or materials claimed to have been furnished to Tenant, Tenant shall cause such lien to be discharged of record within thirty (30) days after filing. Tenant shall be responsible for all costs associated with any Tenant performed construction or alteration and any related lien.

Section 5.04.

## **ARTICLE 6 - INDEMNITY AND INSURANCE**

Section 6.01. Release. All of Tenant's trade fixtures, merchandise, inventory, special fire protection equipment, telecommunication and computer equipment, supplemental air conditioning equipment, kitchen equipment and all other personal property in or about the Leased Premises, the Building or the Common Areas, which is deemed to include the trade fixtures, merchandise, inventory and personal property of others located in or about the Leased Premises or Common Areas at the invitation, direction or acquiescence (express or implied) of Tenant (all of which property shall be referred to herein, collectively, as "***Tenant's Property***"), shall be and remain at Tenant's sole risk. Landlord shall not be liable to Tenant or to any other person for, and Tenant hereby releases Landlord (and its affiliates, property managers and mortgagees) from, (a) any and all liability for theft or damage to Tenant's Property, and (b) any and all liability for any injury to Tenant or its employees, agents, contractors, guests and invitees in or about the Leased Premises, the Building or the Common Areas, except to the extent of personal injury caused directly by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Nothing contained in this Section 8.01 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.01, the provisions of Section 8.06 shall prevail. This Section 8.01 shall survive the expiration or earlier termination of this Lease.

Section 6.02. Financial Responsibility of Tenant. To the extent permitted by N.C. law and consistent with the terms of the Wake County 2003 Resolution Regarding Limited Waiver of Sovereign Immunity, Tenant shall be responsible for claims, damages, demands, penalties, costs, liabilities, and losses (not including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent (a) arising out of or relating to any act, omission, negligence, or willful misconduct of Tenant or Tenant's employees in or about the Leased Premises, the Building or the Common Areas, (b) arising out of or relating to any of Tenant's Property, or (c) arising out of any other act or occurrence within the Leased Premises, in all such cases except to the extent of personal injury caused directly by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Nothing contained in this Section 8.02 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.02, the provisions of Section 8.06 shall prevail. This Section 8.02 shall survive the expiration or earlier termination of this Lease.

Section 6.03. Indemnification by Landlord. Landlord shall protect, defend, indemnify and hold Tenant, its agents, employees and contractors of all tiers harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses and expenses (not including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent arising out

of or relating to any negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors. Nothing contained in this Section 8.03 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.03, the provisions of Section 8.06 shall prevail. This Section 8.03 shall survive the expiration or earlier termination of this Lease.

Section 6.04. Tenant's Insurance.

(a) During the Lease Term (and any period of early entry or occupancy or holding over by Tenant, if applicable), Tenant shall be responsible for procuring and maintaining, if desired, and at its own expense, all-risk (special form) property insurance in an amount equal to the full replacement cost of Tenant's personal property and for damage to others' property located in the Premises. Tenant is a governmental authority using a funded reserve of \$1,000,000 for liability claims and a Public Entity Excess Liability Policy above the retention. Landlord shall not require other or different insurance coverage from Tenant as a condition of this Lease. Tenant shall require any of its contractors or agents entering the Premises to obtain and keep in place with well rated insurers, authorized to do business in the State of North Carolina, adequate insurance coverage, as applicable, for (i) statutory workers' compensation including, employers' liability; (ii) comprehensive general liability including, personal injury, broad form property damage, independent contractor, XCU (explosion, collapse, underground) and products/completed operations; (iii) automobile liability; and (iv) fire and extended coverage insurance as appropriate to their operations on the Premises

Section 6.05. Landlord's Insurance. During the Lease Term, Landlord shall maintain the following types of insurance, in the amounts specified below (the cost of which shall be included in Operating Expenses):

(a) Liability Insurance. Commercial General Liability Insurance, ISO Form CG 00 01, or its equivalent, covering the Common Areas against claims for bodily injury or death and property damage, which insurance shall be primary and non-contributory and shall provide coverage on an occurrence basis with a per occurrence limit of not less than \$5,000,000 for each policy year, which limit may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(b) Property Insurance. Special Form Insurance in the amount of the full replacement cost of the Building, including, without limitation, any improvements, if any, made pursuant to Section 2.02 above, but excluding Tenant's Property and any other items required to be insured by Tenant pursuant to Section 6.04 above.

Section 6.06. Waiver of Subrogation. Notwithstanding anything contained in this Lease to the contrary, Landlord (and its affiliates, property managers and mortgagees) and Tenant (and its affiliates) hereby waive any rights each may have against the other on account of any loss of or damage to their respective property, the Leased Premises, its contents, or other portions of the Building or Common Areas arising from any risk which is required to be insured against by Sections 6.04 and 6.05(b) above. The special form property insurance policies and worker's compensation insurance policies maintained by Landlord as provided in this Lease shall include

an endorsement containing an express waiver of any rights of subrogation by the insurance company against Tenant.

## **ARTICLE 7 - CASUALTY**

Section 7.01. Notice of Casualty. Tenant shall give prompt notice to Landlord if all or any portion of the Leased Premises becomes untenable by fire or other casualty to the Leased Premises (collectively a “**Casualty**”). In the event of such Casualty, Landlord, by notice to Tenant within ninety (90) days after the date of such Casualty, shall have the right to terminate this Lease if: (1) the Leased Premises have been materially damaged and there is less than two (2) years of the Lease Term remaining on the date of the Casualty; (2) any mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt; or (3) a material uninsured loss to the Building or Leased Premises occurs. If this Lease is so terminated, (a) the Lease Term shall expire upon the date set forth in Landlord’s notice, which shall not be less than thirty (30) days after such notice is given, and Tenant shall vacate the Leased Premises and surrender the same to Landlord no later than the date set forth in the notice, (b) Tenant’s liability for rent shall cease as of the date of the Casualty, (c) any prepaid rental amounts for any period after the date of the Casualty shall be refunded by Landlord to Tenant, and (d) Landlord shall be entitled to collect all insurance proceeds of policies held by Landlord or Tenant providing coverage for alterations and other improvements to the Leased Premises, not including personal property insurance. Landlord shall retain such proceeds from Tenant’s insurance only to the extent that Landlord performed or paid for covered alterations and improvements, whether by contribution, offset or otherwise, and the balance of such proceeds, if any, shall be paid to Tenant.

Section 7.02. Restoration. If this Lease is not terminated, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord’s reasonable control, restore the Leased Premises and Common Areas. Such restoration shall be to substantially the same condition that existed prior to the Casualty, except for modifications required by Applicable Laws or any other modifications to the Common Areas deemed desirable by Landlord. Upon notice from Landlord, Tenant shall assign or endorse over to Landlord (or to any party designated by Landlord) all property insurance proceeds payable to Tenant under Tenant’s insurance with respect to any alterations or improvements performed by or for the benefit of Tenant; provided if the estimated cost to repair such alterations or improvements exceeds the amount of insurance proceeds received by Landlord from Tenant’s insurance carrier, the excess cost of such repairs shall be paid by Tenant to Landlord prior to Landlord’s commencement of repairs. Within fifteen (15) days of demand, Tenant shall also pay Landlord for any additional excess costs that are determined during the performance of the repairs. In no event shall Landlord be required to spend more for the restoration than the proceeds received by Landlord. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant occasioned by damage by fire or other casualty or the repair thereof. Landlord will not carry insurance of any kind on Tenant’s Property, and shall not be obligated to restore or repair any damage to Tenant’s Property. Provided that Tenant is not then in default, during any period of time that all or a material portion of the Leased Premises is rendered untenable as a result of a Casualty, rent shall abate for the portion of the Leased Premises that is untenable and not used by Tenant. Landlord shall have the right to adapt the restoration of the Leased Premises as contemplated by this Section 7.02 to comply with Applicable Laws then in effect.

Section 7.03. Additional Termination Rights. In addition to Landlord's rights under Section 7.01, if the Leased Premises are totally damaged or are rendered wholly untenantable, or if the Building is so damaged that in Landlord's opinion, substantial alteration, demolition, or reconstruction of the Building is required (whether or not the Leased Premises are so damaged or rendered untenantable), then in either of such events, Landlord may, not later than ninety (90) days following the date of the damage, give Tenant a notice terminating this Lease. If this Lease is so terminated, (a) the Lease Term shall expire upon the date set forth in Landlord's notice, which shall not be less than thirty (30) days after such notice is given, and Tenant shall vacate the Leased Premises and surrender the same to Landlord no later than the date set forth in the notice, (b) Tenant's liability for rent shall cease as of the date of the damage, (c) any prepaid rent for any period after the date of the damage shall be refunded by Landlord to Tenant, and (d) Landlord shall be entitled to collect all insurance proceeds of policies held by Landlord or Tenant providing coverage for alterations and other improvements to the Leased Premises. Landlord shall retain such proceeds from Tenant's insurance only to the extent that Landlord performed or paid for such alterations and improvements, whether by contribution, offset or otherwise, and the balance of such proceeds, if any, shall be paid to Tenant.

## **ARTICLE 8 - EMINENT DOMAIN**

If all or any substantial part of the Building or Common Areas shall be acquired by the exercise of eminent domain, Landlord may terminate this Lease by giving written notice to Tenant on or before the date possession thereof is so taken. If all or any part of the Leased Premises shall be acquired by the exercise of eminent domain so that the Leased Premises shall become impractical for Tenant to use for the Permitted Use, Tenant may terminate this Lease by giving written notice to Landlord as of the date possession thereof is so taken. All damages awarded shall belong to Landlord; provided, however, that Tenant may assert a separate claim for dislocation damages if such amount is not subtracted from Landlord's award.

## **ARTICLE 9 - ASSIGNMENT AND SUBLEASE**

### **Section 9.01. Assignment and Sublease.**

(a) Tenant shall not assign this Lease or sublet the Leased Premises in whole or in part without Landlord's prior written consent, not to be unreasonably withheld, conditioned or delayed. In the event of any permitted assignment or subletting, Tenant shall remain primarily liable hereunder, and any extension, expansion, rights of first offer, rights of first refusal or other options granted to Tenant under this Lease shall be rendered void and of no further force or effect. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or to be a consent to the assignment of this Lease or the subletting of the Leased Premises. Any assignment or sublease consented to by Landlord shall not relieve Tenant (or its assignee) from obtaining Landlord's consent to any subsequent assignment or sublease.

(b) By way of example and not limitation, Landlord shall be deemed to have reasonably withheld consent to a proposed assignment or sublease if in Landlord's opinion (i) the Leased Premises are or may be in any way adversely affected; (ii) the business reputation of the proposed assignee or subtenant is unacceptable; (iii) the financial worth of the proposed assignee or subtenant is insufficient to meet the obligations hereunder, or (iv) the prospective assignee or subtenant is a

current tenant at the Park or is a bona-fide third-party prospective tenant. Landlord further expressly reserves the right to refuse to give its consent to any subletting if the proposed rent is publicly advertised to be less than the then current rent for similar premises in the Building. If Landlord refuses to give its consent to any proposed assignment or subletting, Landlord may, at its option, within thirty (30) days after receiving a request to consent, terminate this Lease by giving Tenant thirty (30) days prior written notice of such termination, whereupon each party shall be released from all further obligations and liability hereunder, except those which expressly survive the termination of this Lease.

(c) If Tenant shall make any assignment or sublease, with Landlord's consent, for a rental in excess of the rent payable under this Lease, Tenant shall pay to Landlord fifty percent (50%) of any such excess rental upon receipt. Tenant agrees to pay Landlord \$1,500.00 upon demand by Landlord for reasonable accounting and attorneys' fees incurred in conjunction with the processing and documentation of any requested assignment, subletting or any other hypothecation of this Lease or Tenant's interest in and to the Leased Premises as consideration for Landlord's consent.

Section 9.02. Permitted Transfer. Notwithstanding anything to the contrary contained in Section 11.01 above, Tenant shall have the right, without Landlord's consent, but upon ten (10) days prior notice to Landlord, to (a) sublet all or part of the Leased Premises to any department or division of Wake County Government, (b) assign all or any part of this Lease to any department or division of Wake County Government provided further that such successor entity assumes all of the obligations and liabilities of Tenant (any such entity is hereinafter referred to as a "***Permitted Transferee***"; and any transfer to a Permitted Transferee is hereinafter referred to as a "***Permitted Transfer***". Any such transfer shall not relieve Tenant of its obligations under this Lease. Nothing in this paragraph is intended to nor shall permit Tenant to transfer its interest under this Lease as part of a fraud or subterfuge to intentionally avoid its obligations under this Lease (for example, transferring its interest to a shell corporation that subsequently files a bankruptcy), and any such transfer shall constitute a Default hereunder.

## **ARTICLE 10 - TRANSFERS BY LANDLORD**

Section 10.01. Sale of the Building. Landlord shall have the right to sell the Building at any time during the Lease Term, subject only to the rights of Tenant hereunder; and such sale shall operate to release Landlord from liability hereunder after the date of such conveyance provided that Transferee assumes all obligations under the Lease.

Section 10.02. Estoppel Certificate. Within ten (10) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost to Landlord, an estoppel certificate in such form as Landlord may reasonably request certifying (a) that this Lease is in full force and effect and unmodified or stating the nature of any modification, (b) the date to which rent has been paid, (c) that there are not, to Tenant's knowledge, any uncured defaults or specifying such defaults if any are claimed, and (d) any other matters or state of facts reasonably required respecting the Lease. Such estoppel may be relied upon by Landlord and by any purchaser or mortgagee of the Building.



Section 10.03. Subordination. This Lease is and shall be expressly subject and subordinate at all times to the lien of any present or future mortgage or deed of trust encumbering fee title to the Leased Premises. If any such mortgage or deed of trust be foreclosed, upon request of the mortgagee or beneficiary, as the case may be, Tenant will attorn to the purchaser at the foreclosure sale. The foregoing provisions are declared to be self-operative and no further instruments shall be required to effect such subordination and/or attornment; provided, however, that subordination of this Lease to any present or future mortgage or trust deed shall be conditioned upon the mortgagee, beneficiary, or purchaser at foreclosure, as the case may be, agreeing that Tenant's occupancy of the Leased Premises and other rights under this Lease shall not be disturbed by reason of the foreclosure of such mortgage or trust deed, as the case may be, so long as Tenant is not in default under this Lease. Within ten (10) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost, any instrument that Landlord deems reasonably necessary or desirable to confirm the subordination of this Lease; provided that Tenant may include edits to the document required by its status as a public entity. Prior to or promptly following the execution of this Lease, Landlord shall use commercially reasonable efforts to cause the current mortgagee relative to the Leased Premises to execute and deliver a subordination, non-disturbance and attornment agreement in the form attached hereto as **Exhibit F**; provided, however, Tenant shall be responsible, at Tenant's expense, for recording such SNDA in the appropriate real estate records and, if requested by Landlord, terminating such SNDA of record upon the expiration or earlier termination of this Lease.

## **ARTICLE 11 - DEFAULT AND REMEDY**

Section 11.01. Tenant Default. The occurrence of any of the following shall be a "*Default*":

(a) Tenant fails to pay any Monthly Rental Installments or Additional Rent within five (5) days after the same is due ; provided, however, relative to the first (1st) failure to timely pay such sums in any twelve (12) month period, Tenant shall not be in Default if Tenant makes full payment within twenty (20) business days after receipt of written notice of such delinquency (*i.e.*, Landlord shall not be required to provide written notice of delinquency more than one (1) time in any twelve (12) month period during the Lease Term).

(b) Tenant fails to perform or observe any other term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Landlord; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required to cure, then such default shall be deemed to have been cured if Tenant commences such performance within said thirty (30) day period and thereafter diligently completes the required action within a reasonable time.

(c) Tenant shall vacate or abandon the Leased Premises, or fail to occupy the Leased Premises or any substantial portion thereof for a period of thirty (30) days; provided, however, Tenant shall not be in Default under this Section 11.01(c) if Tenant provides reasonably satisfactory assurances of Tenant's financial condition and solvency within ten (10) business days after Landlord's written request for such assurances.

(d) Tenant shall assign or sublet all or a portion of the Leased Premises in contravention of the provisions of Article 10 of this Lease.

(e) All or substantially all of Tenant's assets in the Leased Premises or Tenant's interest in this Lease are attached or levied under execution (and Tenant does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant (and Tenant fails to secure a stay or discharge thereof within sixty (60) days thereafter); Tenant is insolvent and unable to pay its debts as they become due; Tenant makes a general assignment for the benefit of creditors; Tenant takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for Tenant or its assets if such receivership has not been vacated or set aside within thirty (30) days thereafter; or, dissolution or other termination of Tenant's corporate charter if Tenant is a corporation.

In addition to the defaults described above, the parties agree that if Tenant receives written notice of a violation of the performance of any (but not necessarily the same) term or condition of this Lease three (3) or more times during any twelve (12) month period, regardless of whether such violations are ultimately cured, then such conduct shall, at Landlord's option, represent a separate Default.

(f) **Non-Appropriation.** Landlord acknowledges that Tenant is a governmental entity, the Premises are leased contingent upon the availability of public funding. Tenant and Landlord hereby acknowledge and agree that the Wake County Board of Commissioners (upon its approval of this Lease, as specified below) have the duty to appropriate funds for the fulfillment of Tenant's obligations under this Lease throughout the Lease Term. In the event that public funds are unavailable and not appropriated for the performance of Tenant's obligations under this Lease, then this Lease shall automatically expire without penalty to Tenant thirty (30) days after written notice to Landlord of the unavailability and non-appropriation of public funds. It is expressly agreed that Tenant shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Lease but only as an emergency fiscal measure during a substantial fiscal crisis which affects generally all governmental operations. Non-appropriation shall include the reduction or elimination of third party funding appropriated as revenue for the payment of funds due under this Lease.

Section 11.02. Remedies. Upon the occurrence of any Default, Landlord shall have the following rights and remedies, in addition to those stated elsewhere in this Lease and those allowed by law or in equity, any one or more of which may be exercised without further notice to Tenant:

(a) Landlord may re-enter the Leased Premises and cure any Default of Tenant, and Tenant shall reimburse Landlord as Additional Rent for any costs and expenses that Landlord thereby incurs; and Landlord shall not be liable to Tenant for any loss or damage that Tenant may sustain by reason of Landlord's action.

(b) Landlord may terminate this Lease by giving Tenant notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination and all rights of Tenant under this Lease and in and to the Leased Premises shall terminate. Tenant shall remain liable for all obligations under this Lease arising up to the date of such termination, and Tenant shall surrender the Leased Premises to Landlord on the date specified in such notice.

Furthermore, Tenant shall be liable to Landlord for the unamortized balance of any leasehold improvement allowance and brokerage fees paid in connection with the Lease.

(c) Without terminating this Lease, Landlord may terminate Tenant's right to possession of the Leased Premises, and thereafter, neither Tenant nor any person claiming under or through Tenant shall be entitled to possession of the Leased Premises. In such event, Tenant shall immediately surrender the Leased Premises to Landlord, and Landlord may re-enter the Leased Premises and dispossess Tenant and any other occupants of the Leased Premises by any lawful means and may remove their effects, without prejudice to any other remedy that Landlord may have.

(d) Landlord or Tenant may sue for injunctive relief or to recover damages for any loss resulting from the Default.

(e) If Landlord has terminated this Lease or Tenant's right to possession, Landlord agrees to use commercially reasonable efforts to mitigate its damages, to the extent required by Applicable Laws. Landlord shall be required to use only reasonable efforts to mitigate, which shall not exceed such efforts as Landlord generally uses to lease other space in the Building and the Park. Landlord will not be deemed to have failed to mitigate if Landlord leases any other portions of the Building before re-letting all or any portion of the Leased Premises. Landlord shall not be deemed to have failed to mitigate if it incurs Default Damages. Tenant shall bear the burden of proof that Landlord failed to mitigate.

Section 11.03. Limitation of Landlord's Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD) SHALL BE LIMITED TO LANDLORD'S (AND ANY SUCCESSOR TO LANDLORD) INTEREST IN THE BUILDING. TENANT SHALL LOOK SOLELY TO LANDLORD'S INTEREST IN THE BUILDING FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST LANDLORD OR ANY LANDLORD RELATED PARTY. NEITHER LANDLORD NOR ANY LANDLORD RELATED PARTY SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY, AND IN NO EVENT SHALL LANDLORD OR ANY LANDLORD RELATED PARTY BE LIABLE TO TENANT FOR ANY LOST PROFIT, DAMAGE TO OR LOSS OF BUSINESS OR ANY FORM OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE. BEFORE FILING SUIT FOR AN ALLEGED DEFAULT BY LANDLORD, TENANT SHALL GIVE LANDLORD AND THE MORTGAGEE(S) WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES NOTICE AND REASONABLE TIME TO CURE THE ALLEGED DEFAULT.

Section 11.04. Landlord Default: The following events shall be deemed to be "Events of Landlord Default" under this Lease: (i) Landlord fails to perform or observe any material condition or obligation of this Lease to be performed by Landlord, and such failure is not cured within thirty (30) days (or immediately if the failure involves a hazardous condition) after notice from Tenant, however, other than with respect to a hazardous condition, if Landlord's failure to comply cannot reasonably be cured within thirty (30) days, Landlord shall be allowed additional time (not to exceed thirty (30) additional days) as is reasonably necessary to cure the failure so long as Landlord begins the cure within thirty (30) days and diligently pursues the cure to completion; (ii) the possessory interest of Tenant is levied upon or attached under process of law;

(v) any voluntary or involuntary proceedings are filed by or against Landlord under any bankruptcy, insolvency or similar laws and, in the case of any involuntary proceedings, are not dismissed within sixty (60) days after filing.

Section 11.05. Upon the occurrence of any Event of Default and the expiration of any applicable cure period, Tenant shall have the following rights and remedies, in addition to those allowed by law or equity, any one or more of which may be exercised upon no less than twenty (20) days' required written notice to or demand upon Landlord and which may be pursued successively or cumulatively as Tenant may elect:

- (a) Tenant may attempt to cure any default of Landlord, relating specifically to Premises, in which event Tenant may offset Rent or Landlord shall, upon demand, reimburse Tenant for all reasonable costs and expenses which Tenant incurs to cure such default;
- (b) Tenant may terminate this Lease by giving to Landlord notice of Tenant's election to do so, in which event the Lease Term shall end, and all obligations of Tenant for Base or Additional Rent shall expire, on the date stated in such notice;
- (c) Tenant may enforce the provisions of this Lease by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Landlord under any of the provisions of this Lease.
- (d) Tenant shall use commercially reasonable efforts to mitigate any damages resulting from an Event of Default by Landlord under this Lease.

Section 11.06. Nonwaiver of Default. Neither party's failure nor delay in exercising any of its rights or remedies or other provisions of this Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. Landlord's receipt of less than the full rent due shall not be construed to be other than a payment on account of rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction. No act or omission by Landlord or its employees or agents during the Lease Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord.

Section 11.07. Attorneys' Fees. [Intentionally Omitted]

## **ARTICLE 12 -- INTENTIONALLY OMITTED**

**ARTICLE 13 -TENANT'S RESPONSIBILITY REGARDING  
ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES**

Section 13.01. Environmental Definitions.

(a) “***Environmental Laws***” shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Leased Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or entity having jurisdiction over the Leased Premises.

(b) “***Hazardous Substances***” shall mean those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances” “solid waste” or “infectious waste” under Environmental Laws and petroleum products.

Section 13.02. Restrictions on Tenant. Tenant shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Leased Premises, or the transportation to or from the Leased Premises of any Hazardous Substances, except as necessary and appropriate for its Permitted Use in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the highest standards prevailing in the industry.

Section 13.03. Notices, Affidavits, Etc. Tenant shall immediately (a) notify Landlord of (i) any violation by Tenant, its employees, agents, representatives, customers, invitees or contractors of any Environmental Laws on, under or about the Leased Premises, or (ii) the presence or suspected presence of any Hazardous Substances on, under or about the Leased Premises, and (b) deliver to Landlord any notice received by Tenant relating to (a)(i) and (a)(ii) above from any source. Tenant shall execute affidavits, representations and the like within five (5) days of Landlord's request therefor concerning Tenant's best knowledge and belief regarding the presence of any Hazardous Substances on, under or about the Leased Premises.

Section 13.04. Tenant's Indemnification. Tenant shall indemnify Landlord and Landlord's managing agent from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Landlord in connection with any breach by Tenant of its obligations under this Article 15. The covenants and obligations under this Article 15 shall survive the expiration or earlier termination of this Lease.

Section 13.05. Existing Conditions. Notwithstanding anything contained in this Article 15 to the contrary, Tenant shall not have any liability to Landlord under this Article 15 resulting from any conditions existing, or events occurring, or any Hazardous Substances existing or generated, at, in, on, under or in connection with the Leased Premises prior to the Commencement Date of this Lease (or any earlier occupancy of the Leased Premises by Tenant) except to the extent Tenant exacerbates the same.

Section 13.06. Landlord's Environmental Representation and Indemnity. Landlord represents to Tenant that, to Landlord's current, actual knowledge, as of the date of this Lease,

without further inquiry, except as may have been heretofore disclosed to Tenant in writing, there are no Hazardous Substances in or about the Building or the Leased Premises in violation of applicable Environmental Laws. Landlord further warrants that it will be responsible for the remediation and removal of any environmentally hazardous substances encountered during the Tenant Improvements at the Landlord's sole expense. Landlord shall indemnify Tenant from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Tenant in connection with any Hazardous Substances in or about the Building or the Leased Premises in violation of applicable Environmental Laws existing prior to or at the execution of this Lease. The covenants and obligations under this Article 15 shall survive the expiration or earlier termination of this Lease.

#### **ARTICLE 14 - MISCELLANEOUS**

Section 14.01. Benefit of Landlord and Tenant. This Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns.

Section 14.02. Governing Law. This Lease shall be governed in accordance with the laws of the State of North Carolina.

Section 14.03. Force Majeure. Landlord and Tenant (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including but not limited to work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies (collectively, "***Force Majeure Matters***").

Section 14.04. Examination of Lease. Submission of this instrument by Landlord to Tenant for examination or signature does not constitute an offer by Landlord to lease the Leased Premises. This Lease shall become effective, if at all, only upon the execution by and delivery to both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord constitutes an offer to lease the Leased Premises on the terms contained herein. The offer by Tenant will be irrevocable until 6:00 p.m. EST, fifteen (15) days after the date Landlord receives the Lease executed by Tenant.

Section 14.05. Indemnification for Leasing Commissions. The parties hereby represent and warrant that the only real estate brokers involved in the negotiation and execution of this Lease are the Brokers and that no other party is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Lease. Each party shall indemnify the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any other broker or person who may be entitled thereto. Landlord shall pay any commissions due Brokers based on this Lease pursuant to separate agreements between Landlord and Brokers.

Section 14.06. Notices. Any notice required or permitted to be given under this Lease or by law shall be deemed to have been given if it is written and delivered in person or by overnight courier or mailed by certified mail, postage prepaid, to the party who is to receive such notice at

the address specified in Section 1.01(l). If sent by overnight courier, the notice shall be deemed to have been given one (1) day after sending. If mailed, the notice shall be deemed to have been given on the date that is three (3) business days following mailing. Either party may change its address by giving written notice thereof to the other party.

Section 14.07. Partial Invalidity; Complete Agreement. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect. This Lease represents the entire agreement between Landlord and Tenant covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Lease except by a written agreement executed by Landlord and Tenant.

Section 14.08. Financial Statements. [Intentionally Omitted]

Section 14.09. Representations and Warranties.

(a) Tenant hereby represents and warrants that (i) Tenant is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Tenant is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Tenant has been properly authorized to do so, and such execution and delivery shall bind Tenant to its terms.

(b) Landlord hereby represents and warrants that (i) Landlord is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Landlord is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Landlord has been properly authorized to do so, and such execution and delivery shall bind Landlord to its terms.

Section 14.10. Signage. Landlord, at its cost and expense, shall provide Tenant with Building standard Wake County approved signage on the main Building directory and at the entrance to the Leased Premises. Any changes requested by Tenant to the initial directory or suite signage shall be made at Tenant's sole cost and expense and shall be subject to Landlord's approval.. Tenant shall not place any exterior signs on the Leased Premises or interior signs visible from the exterior of the Leased Premises without the prior written consent of Landlord. Notwithstanding any other provision of this Lease to the contrary, Landlord may immediately remove any sign(s) placed by Tenant in violation of this Section 14.10.

For as long as the Tenant originally named herein (or a Permitted Transferee) is leasing and occupying at least one hundred percent (100%) of the original Rentable Area set forth in this Lease, Tenant shall be entitled, at Tenant's expense, to install signage in one (1) location on the existing monument sign located near the main entrance to the Building; provided, however (i) any such signage installed by Tenant shall be non-exclusive, and (ii) any such signage shall be installed in accordance with the Building standard criteria, all Applicable Laws and all ordinances and regulations applicable to the Building, and shall be subject to Landlord's prior written approval as to its location, size, configuration, lettering, and content; and (iii) upon the expiration or earlier termination of the Lease Term or upon any sublease of the Leased Premises or assignment of the

Lease other than a Permitted Transfer, or reduction of the Rentable Area occupied or leased by Tenant below the amount originally set forth in this Lease, Landlord shall have the right to cause Tenant, at Tenant's expense, to remove any such signage and repair any damage caused by such removal (which obligations shall survive the expiration or earlier termination of this Lease).

Section 14.11. Intentionally Omitted.

Section 14.12. Time. Time is of the essence of each term and provision of this Lease.

Section 14.13. Patriot Act. Each of Landlord and Tenant, each as to itself; hereby represents its compliance and its agreement to continue to comply with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order 13224 (the "***Executive Order***"). Each of Landlord and Tenant further represents (such representation to be true throughout the Lease Term) (i) that it is not, and it is not owned or controlled directly or indirectly by any person or entity, on the SDN List published by the United States Treasury Department's Office of Foreign Assets Control and (ii) that it is not a person otherwise identified by government or legal authority as a person with whom a U.S. Person is prohibited from transacting business. As of the date hereof, a list of such designations and the text of the Executive Order are published under the internet website address [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac). The provisions of this Section 16.14 shall survive the expiration or earlier termination of this Lease.

Section 14.14. Confidentiality. [Intentionally Omitted]

Section 14.15. Recording Lease. Tenant agrees not to record this Lease; provided however that Landlord shall sign and Tenant may record in the Wake County Registry at its own expense any short form or memorandum hereof.

Section 14.16. Option to Renew.

(a) Provided that (i) this Lease is in full force and effect as of the date of the Renewal Notice (as defined below) and as of the originally scheduled expiration of the Lease Term; (ii) Tenant is not then in Default under this Lease as of the dates referred to in clause (i) above; and (iii) Tenant has been continuously operating in the Leased Premises throughout the Lease Term and has not assigned this Lease or sublet all or any portion of the Leased Premises (other than to a Permitted Transferee), Tenant shall have the option to extend the Lease Term for the entire Leased Premises for one (1) period of five (5) years (the "***Renewal Term***") commencing on the date immediately following the expiration of the initial Lease Term. Tenant may exercise such option by delivering written notice (the "***Renewal Notice***") to Landlord not less than two hundred seventy (270) days prior to the expiration of the initial Lease Term. The Renewal Term, if properly exercised by Tenant as set forth herein, shall constitute an extension of the Lease Term and shall be upon all of the same terms and conditions then in effect under this Lease, except that (i) there shall be no further option to renew or extend the Lease Term during the Renewal Term, and (ii) Minimum Annual Rent for the Renewal Term shall be payable at a rate per annum equal to the Fair Market Rental (as defined below) for the Leased Premises for the Renewal Term. If Tenant shall duly and timely exercise Tenant's right to extend the Lease Term for the Renewal Term pursuant to the terms



hereof, all of the applicable references in this Lease to the Lease Term shall be deemed to include such Renewal Term. During the Renewal Term, Tenant shall continue to pay Tenant's Proportionate Share of Operating Expenses without interruption. Base Year shall be reset as of the start of the Renewal Term.

(b) If Tenant shall timely deliver the Renewal Notice to Landlord, then not later than twenty (20) days after the date the Renewal Notice is delivered, Landlord shall notify Tenant of Landlord's determination of the Fair Market Rental. For purposes of the foregoing, the "**Fair Market Rental**" shall be the rental rate charged for premises of comparable size and condition as the Leased Premises in the North Raleigh, North Carolina, office market, taking into consideration the location and quality of the Building, term of lease, and any material economic differences between the terms of this Lease and the terms of any comparable lease (including improvement or refurbishment allowances, architectural fees, brokerage commissions and any other relevant cash and non-cash incentives, inducements, concessions and other relevant factors). If Tenant delivers to Landlord a written objection to Landlord's calculation of the Fair Market Rental within ten (10) days after Tenant's receipt of Landlord's determination of the Fair Market Rental, and the parties cannot agree on the Fair Market Rental within twenty (20) days after Tenant's written objection, then Tenant may retract its exercise of its option to extend, or at Tenant's sole option, Tenant may choose arbitration to determine the Fair Market Rental. If Tenant chooses arbitration, Tenant shall give Landlord written notice of its desire to seek arbitration within five (5) business days after expiration of such twenty (20) day period ("**Arbitration Notice**"). Within ten (10) days after Tenant provides Landlord with its Arbitration Notice, the parties shall each appoint an appraiser to determine the Fair Market Rental for the Leased Premises. Each appraiser so selected shall be an MAI appraiser or a licensed real estate broker, each having at least ten (10) years prior experience in the appraisal or leasing of comparable space in the metropolitan area in which the Leased Premises are located and with a working knowledge of current rental rates and practices. If the two appraisers cannot agree upon the Fair Market Rental for the Leased Premises within twenty (20) days after their appointment, then, within five (5) days after the expiration of such twenty (20) day period, the two appraisers shall select a third appraiser meeting the above criteria. Once the third appraiser has been selected as provided for above, each of the initial appraisers shall deliver its determination of the Fair Market Rental to the third appraiser, and such third appraiser shall within ten (10) days after its appointment select the determination made by one of the initial two appraisers that most closely approximates the third appraiser's own determination of the Fair Market Rental. The determination of the Fair Market Rental selected by the third appraiser shall be used as the Minimum Annual Rent for the Renewal Term and shall be binding on both Landlord and Tenant. Landlord and Tenant shall each bear the cost of its appraiser and shall share the cost of the third. If Tenant delivers a written objection to Landlord's calculation of the Fair Market Rental within the 10-day time period referenced above but fails to provide the Arbitration Notice as provided above, then Tenant's exercise of its option to extend shall be deemed retracted.

(c) Following the determination of Fair Market Rental, Landlord and Tenant will mutually execute, acknowledge and deliver an amendment to this Lease setting forth the Minimum Annual Rent for the Renewal Term, the Renewal Term commencement date, and the new expiration of the Lease Term; provided, the failure of either party to execute and deliver such an amendment shall not affect the rights or the parties under this Lease relating to the Renewal Term.

(d) Tenant's right to extend the Lease Term for the Renewal Term shall automatically terminate and become null, void and of no force and effect upon the earlier to occur of (i) the termination of this Lease by Landlord or pursuant to this Lease or applicable law, (ii) the termination or surrender of Tenant's right to possession of the Leased Premises or any portion thereof, or (iii) the failure of Tenant to timely and properly deliver the Renewal Notice to Landlord.

Section 14.17. Right of First Refusal. Provided that (i) Tenant is not then in Default under this Lease (and that no circumstance then exists which, with the lapse of time and without being corrected or cured, will constitute a default of Tenant under this Lease), and (ii) Tenant has not assigned this Lease or sublet all or any portion of the Leased Premises (other than a Permitted Transfer), Tenant shall, during the Lease Term have a right of first refusal to lease any space located in the building located adjacent to the Building, at 4403 Bland Road, Raleigh, North Carolina (the "**4403 Bland Building**") for so long as Landlord or its affiliate owns the 4403 Bland Building (the "**First Refusal Space**"). Tenant's first refusal rights relative to the First Refusal Space are subject to the following terms and conditions:

(a) Offer by Landlord. If Landlord receives a written bona fide offer or proposal from a prospective tenant for the lease of part or all of the First Refusal Space (which may be in the form of a non-binding "letter of intent" or similar document), prior to entering into any lease with such prospective tenant, Landlord shall notify Tenant of the prospective lease (and of Landlord's receipt from the prospective tenant of a written offer or proposal relating thereto which is acceptable to Landlord), and such notification from Landlord to Tenant also shall identify all of the space to be leased, the effective rent commencement date, the term of the proposed lease, the rental rate, the terms of any options to renew or expansion rights and all other material economic terms and conditions provided for in the third party's offer or proposal. Provided, however, Landlord shall not be required to notify Tenant of the identity of the prospective tenant. Tenant shall have seven (7) business days after such notification is delivered to Tenant by Landlord (the "**Tenant Response Period**") to elect (by so notifying Landlord in writing) to lease all (but not less than all) of the space encompassed by the prospective tenant's offer or proposal on all of the same terms and conditions (including, without limitation, rental rate, tenant improvements allowance and term of lease) as set forth in the prospective tenant's offer or proposal.

(b) Tenant's Election of Rights. If Tenant elects, pursuant to subsection (a) above, to lease from Landlord all of the space encompassed by the prospective tenant's offer or proposal, Tenant and Landlord shall proceed diligently and in good faith to finalize and execute a lease amendment for such purpose within fifteen (15) business days after the expiration of the Tenant Response Period (provided, however, in any event, Tenant's exercise of its rights relative to the First Refusal Space shall be irrevocable, and the terms set forth in the offer accepted by Tenant shall be binding on Tenant).

(c) Tenant's Failure to Exercise Rights. If Tenant elects not to lease from Landlord the space encompassed by a prospective tenant's offer or proposal (as evidenced either by Tenant's written notice to Landlord to that effect or by Tenant's failure to respond to Landlord within the Tenant Response Period), then, in such event, Landlord shall be entitled, at any time within six (6) months after the expiration of the Tenant Response Period (without triggering any further rights of Tenant under this Section 14.17), to enter into a lease agreement with the prospective tenant or any other party relative to all or any portion of the space encompassed by the prospective tenant's offer

or proposal, in which case all of Tenant's first refusal rights under this Section 14.17 shall immediately and automatically terminate relative to such portion or all (as the case may be) of the First Refusal Space that Landlord so leases. If Tenant elects not to lease from Landlord the space encompassed by a prospective tenant's offer or proposal (as evidenced either by Tenant's written notice to Landlord to that effect or by Tenant's failure to respond to Landlord within the Tenant Response Period), and Landlord does not enter into a lease agreement with the prospective tenant or another party relative to all or any portion of the space encompassed by the prospective tenant's offer or proposal within six (6) months after the expiration of the Tenant Response Period, Tenant's first refusal rights under this Section 14.17 shall be revived in full with regard to the relevant portion or all (as the case may be) of the First Refusal Space.

(d) Currently Vacant Space. Notwithstanding any term or provision in this Section to the contrary, Tenant's first refusal rights under this Section 14.17 shall not apply relative to the leasing by Landlord to third parties of those portions of the First Refusal Space that are vacant as of the execution of this Lease. Therefore, Landlord shall be entitled to enter into one or more leases with respect to any portion(s) of the First Refusal Space that is(are) vacant as of the execution of this Lease with such third parties on such terms as Landlord elects without triggering any first refusal rights of Tenant under this Section.

(e) Superior Rights. All rights of Tenant under this Section 14.17 are subject and subordinate to all prior rights previously granted by Landlord to other tenants in the Building or the 4403 Bland Building, and Landlord shall be entitled to enter into any extension or renewal of the lease of any tenant in the 4403 Bland Building relative to the First Refusal Space (regardless of whether such lease expressly provides for such extension or renewal right) without triggering any rights of Tenant under this Section 14.17.

(f) Additional Terms. Notwithstanding anything set forth herein to the contrary, as a condition precedent to Tenant's exercise of its right to lease the First Refusal Space, the Lease Term relative to the existing Leased Premises shall be extended as needed (but in no event shortened) to make the same co-terminous with the lease term for the First Refusal Space leased by Tenant. If the Lease Term is extended relative to the existing Leased Premises in accordance with this grammatical paragraph, the Minimum Annual Rent for the existing Leased Premises for such extended portion of the Lease Term shall be increased to equal the greater of (i) the Minimum Annual Rent that would have been applicable had such extension been included in the original Lease Term (with corresponding annual increases each year), or (ii) the Minimum Annual Rent (expressed on a rentable per square foot basis) for the First Refusal Space.

(g) No document executed under this section shall have binding authority until the obligation is authorized by the governing authority of the Tenant and sufficient funds are available to appropriate or encumber for the obligation.

(SIGNATURES CONTAINED ON THE FOLLOWING PAGES)



IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

MF SOMERSET PARK, LLC, a North Carolina  
limited liability company

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

TENANT:

WAKE COUNTY, a body politic and corporate  
of the STATE of NORTH CAROLINA,

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

Dated: \_\_\_\_\_

Printed: Gregory D. Ford  
Title: Chairman, Wake County Board of  
Commissioners

Attested to:

Clerk: : \_\_\_\_\_

[SEAL]

Approved as to form only:

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

County Attorney

**This instrument has been preaudited in the manner required by the Local Government  
Budget and Fiscal Control Act.**

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**Finance Director**

**EXHIBIT A**

**SITE PLAN OF LEASED PREMISES**

**[TO BE ADDED]**

## **EXHIBIT B**

### **TENANT IMPROVEMENTS**

1. Landlord's Obligations. Tenant has personally inspected the Leased Premises and accepts the same **"AS IS"** without representation or warranty by Landlord of any kind and with the understanding that Landlord shall have no responsibility with respect thereto except to construct and install within the Leased Premises, in a good and workmanlike manner, the Tenant Improvements, in accordance with this **Exhibit B**. Landlord will not use Tenant Improvement Allowance to correct existing American with Disabilities Act (ADA) deficiencies, correct code deficiencies, or remove and/or abate environmental hazards or other contaminants but correct any deficiencies and remove any environmentally hazardous materials at Landlord's sole expense.

2. Construction Drawings, Cost Statement and Allowance.

(a) Promptly following the date hereof, Tenant will work with Landlord's space planner to develop a space plan for the Leased Premises that is reasonably acceptable to Landlord, consistent with the preliminary scope of work described on **Exhibit B-1** attached hereto (the **"Space Plan"**). Tenant shall be responsible for paying any costs of preparing the Space Plan and any revisions thereto, which costs may, at Tenant's election, be applied against the Allowance. Tenant shall deliver the Space Plan to Landlord within twenty (20) days after the date of this Lease. Landlord shall review and accept or reject such Space Plan within ten (10) days after receipt thereof. Within twenty (20) days after approving the Space Plan, Landlord shall prepare and submit to Tenant (i) a set of construction drawings (the **"CDs"**) covering all work to be performed by Landlord in constructing the Tenant Improvements in accordance with the Space Plan, and (ii) a statement of the cost to construct and install the Tenant Improvements (the **"Cost Statement"**). Landlord and Tenant acknowledge and agree that the Cost Statement shall include design fees, a fee payable to the project's general contractor, and a construction management fee of up to two and one-half percent (2.5%) payable to the project's construction manager, which may be comprised of a subsidiary, affiliate or employees of Landlord. Tenant shall have ten (10) days after receipt of the CDs and the Cost Statement in which to review both the CDs and the Cost Statement and to give Landlord written notice of Tenant's approval of the CDs or its requested changes thereto. Tenant shall have no right to request any changes to the CDs that would materially alter the exterior appearance or basic nature of the Building or the Building systems. If Tenant fails to approve or request changes to the CDs within ten (10) days after its receipt thereof, then Tenant shall be deemed to have approved the CDs and the Cost Statement and the same shall thereupon be final. If Tenant requests any changes to the CDs, Landlord shall make those changes which are reasonably requested by Tenant and shall within ten (10) days of its receipt of such request submit the revised portion of the CDs (and, to the extent applicable, the revised Cost Statement) to Tenant. Tenant may not thereafter disapprove the revised portions of the CDs unless Landlord has unreasonably failed to incorporate reasonable comments of Tenant and, subject to the foregoing, the CDs and the Cost Statement, as modified by said revisions, shall be deemed to be final upon the submission of said revisions to Tenant. Tenant shall at all times in its review of the CDs and the Cost Statement, and of any revisions thereto, act reasonably and in good faith. Without limiting the foregoing, Tenant agrees to confirm Tenant's consent to the CDs and acknowledge the Cost Statement in writing within five (5) following Landlord's written request therefor.



(b) Tenant shall be responsible for the cost to construct and install the Tenant Improvements only to the extent that the cost of constructing the Tenant Improvements, taking into account any increases or decreases resulting from any Change Orders (defined below), exceeds the Allowance (as defined in Section 1.01), as such Allowance may be increased by any converted Abated Payments (as described below). If, following Tenant's approval (or deemed approval) of the CDs, the Cost Statement shows that the cost to construct and install the Tenant Improvements will exceed the Allowance, Tenant shall deliver to Landlord, within thirty (30) days following Landlord's written request, an amount equal to one-half (1/2) of such excess. Following Substantial Completion of the Tenant Improvements, Tenant shall pay to Landlord the remaining difference between the actual cost of constructing the Tenant Improvements (taking into account any increases or decreases resulting from any Change Orders) and the Allowance within thirty (30) days following Landlord's request therefor. Tenant's failure to deliver the payments required in this paragraph shall entitle Landlord to stop the construction and installation of the Tenant Improvements until such payment is received, and any resulting delay shall constitute a Tenant Delay (as hereinafter defined) hereunder. If the Allowance exceeds the Cost Statement (taking into account any increases or decreases resulting from any Change Orders), such savings shall be the property of the Tenant and may be used for moving expenses, FF&E, and any applicable Additional Rent. Notwithstanding the foregoing, if any portion of the Allowance remains unused following Substantial Completion of the Tenant Improvements, Tenant shall be entitled to request, by written notice to Landlord, reimbursement from Landlord for certain documented, third-party "soft costs," including but not limited to those costs associated with moving, cabling and installing furniture, fixtures and equipment in the Leased Premises; provided, however, Landlord shall only be required to reimburse Tenant an amount equal to the lesser of: (i) such unused portion of the Allowance or (ii) Seven and 50/100 Dollars (\$7.50) per square foot of Rentable Area of the Leased Premises. In no event shall Tenant be entitled to use any unused portion of the Allowance to offset Minimum Annual Rent.

Notwithstanding anything to the contrary contained herein, Tenant may, by providing written notice to Landlord within thirty (30) days following the date of this Lease, pay for any such excess with all or a portion of the Abated Payments, on a dollar-for-dollar basis, in which case Tenant shall be responsible for paying Minimum Annual Rent, in accordance with the terms and conditions of the Lease, in lieu of any portion of the Abated Payments so used. In the event that Tenant elects to so use all or a portion of the Abated Payments to pay for such excess, the parties shall, within ten (10) business days of Landlord's receipt of Tenant's written notice referenced in the preceding sentence, amend this Lease to address the resulting changes in rent.

3. Tenant's Early Occupancy. If and to the extent permitted by applicable laws, rules and ordinances, Tenant shall have the right to enter the Leased Premises for six (6) weeks prior to the Commencement Date in order to prepare the Leased Premises for occupancy provided that during said period: (i) Tenant shall comply with all terms and conditions of this Lease other than the obligation to pay Minimum Rent or Annual Operating Expense Adjustment, (ii) Tenant shall not interfere with Landlord's completion of the Tenant Improvements and (iii) Tenant shall not begin operation of its business. Notwithstanding anything to the contrary contained herein, Tenant does hereby expressly acknowledge and agree that the storage and installation of fixtures and personal property (including equipment) in the Leased Premises shall be at Tenant's sole risk, cost and expense, and that Landlord shall not be liable for and Tenant hereby releases Landlord from any and all liability for theft thereof or any damage thereto occasioned by any act of God or by

any acts, omissions or negligence of any persons. Tenant does hereby further agree to indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless Landlord and its employees, officers, directors, agents and contractors from and against any and all claims, liabilities, losses, actions, causes of action, demands, costs and expenses (including, without limitation, attorneys' fees at the trial and appellate levels) of any and every nature arising out of or in any way relating to Tenant's storage and installation of said fixtures and personal property as provided herein.

EXHIBIT B-1

PRELIMINARY SCOPE OF WORK

**EXHIBIT C**

**LETTER OF UNDERSTANDING**

MF Somerset Park, LLC  
6836 Morrison Blvd, Suite 410  
Charlotte, NC 28211  
Attention: Kevin Mast

RE: Lease Agreement between MF Somerset Park, LLC, a North Carolina limited liability company ("Landlord"), and \_\_\_\_\_ ("Tenant"), for the Leased Premises located at \_\_\_\_\_, \_\_\_\_\_ (the "Leased Premises"), within the \_\_\_\_\_ Park, dated \_\_\_\_\_ (the "Lease").

Dear \_\_\_\_\_:

The undersigned, on behalf of Tenant, certifies to Landlord as follows:

1. The Commencement Date under the Lease is \_\_\_\_\_.
2. The rent commencement date is \_\_\_\_\_.
3. The expiration date of the Lease is \_\_\_\_\_.
4. The Lease (including amendments or guaranty, if any) is the entire agreement between Landlord and Tenant as to the leasing of the Leased Premises and is in full force and effect.
5. Landlord has completed the improvements designated as Landlord's obligation under the Lease (excluding punchlist items as agreed upon by Landlord and Tenant), if any, and Tenant has accepted the Leased Premises as of the Commencement Date.
6. To the best of the undersigned's knowledge, there are no uncured events of default by either Tenant or Landlord under the Lease.

IN WITNESS WHEREOF, the undersigned has caused this Letter of Understanding to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**[EXHIBIT ONLY — NOT FOR SIGNATURE]**

**EXHIBIT D**  
**INFORMATION SHEET**

- Lease /Company Name \_\_\_\_\_
- Company Address \_\_\_\_\_
- City, State, and Zip \_\_\_\_\_
- Contact Name \_\_\_\_\_
- Contact Phone Number \_\_\_\_\_
- Contact Email \_\_\_\_\_
- Bank Name \_\_\_\_\_
- Bank Address \_\_\_\_\_
- City, Address, and Zip \_\_\_\_\_
- ABA Number \_\_\_\_\_
- Account Number \_\_\_\_\_
- Start Date \_\_\_\_\_
- Checking \_\_\_\_\_ Savings \_\_\_\_\_ Other \_\_\_\_\_
- Customer Lease ID \_\_\_\_\_

## **EXHIBIT E**

### **RULES AND REGULATIONS**

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or used for any purpose other than ingress and egress. Landlord shall control the Common Areas.

2. No awnings or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Leased Premises other than Landlord standard window coverings without Landlord's prior written approval. All electric ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and tube color approved by Landlord. Neither the interior nor the exterior of any windows shall be coated or otherwise sunscreened without written consent of Landlord.

3. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by any tenant on, about or from any part of the Leased Premises, the Building or in the Common Areas including the parking area without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove or stop same without any liability, and may charge the expense incurred in such removal or stopping to tenant. The lobby directory will be provided exclusively for the display of the name and location of tenants only, and Landlord reserves the right to exclude any other names therefrom. Nothing may be placed on the exterior of corridor walls or corridor doors other than Landlord's standard lettering.

4. The sashes, sash doors, windows, and doors that reflect or admit light and air into halls, passageways or other public places in the Building shall not be covered or obstructed by tenant.

5. The sinks and toilets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose subtenants, assignees or any of their servants, employees, agents, visitors or licensees shall have caused the same.

6. No tenant shall mark, paint, drill into, or in any way deface any part of the Leased Premises or the Building (except for nails for the display of artwork). No boring, cutting or stringing of wires or laying of any floor coverings shall be permitted, except with the prior written consent of Landlord and as Landlord may direct. Landlord shall direct electricians as to where and how telephone or data cabling are to be introduced. The location of telephones, call boxes and other office equipment affixed to the Leased Premises shall be subject to the approval of Landlord.

7. No bicycles, vehicles, birds or animals of any kind (except service animals and pet dogs pursuant to Landlord's Pet Policy) shall be brought into or kept in or about the Leased Premises, and no cooking shall be done or permitted by any tenant on the Leased Premises, except microwave cooking, and the preparation of coffee, tea, hot chocolate and similar items for tenants

and their employees. No tenant shall cause or permit any unusual or objectionable odors to be produced in or permeate from the Leased Premises.

8. No rollerblades, bicycles, vehicles of any kind, or skateboards (including, without limitation, so-called hover boards) shall be used or operated in or about the Leased Premises.

9. The Leased Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the permitted use of the Leased Premises. No tenant shall occupy or permit any portion of the Leased Premises to be occupied as an office for the manufacture or sale of liquor, narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or a dance, exercise or music studio, or any type of school or daycare or copy, photographic or print shop or an employment bureau without the express written consent of Landlord. The Leased Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.

10. No tenant shall make, or permit to be made any unseemly, excessive or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No tenant shall throw anything out of doors, windows or down the passageways.

11. No tenant, subtenant or assignee nor any of its servants, employees, agents, visitors or licensees, shall at any time bring or keep upon the Leased Premises any flammable, combustible or explosive fluid, chemical or substance or firearm.

12. No unauthorized locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made to existing locks or the mechanism thereof. Each tenant must upon the termination of its tenancy, restore to Landlord all keys of doors, offices, and toilet rooms, either furnished to, or otherwise procured by, such tenant and in the event of the loss of keys so furnished, such tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes. Access to the Building may be restricted by Landlord, with access granted to tenants by use of keys or electronic cards to the outside doors of the Buildings. Landlord may from time to time establish security controls for the purpose of regulating access to the Building. Landlord will provide tenants a reasonable number of keys and replacements for their suite; all additional key requests must go through the Landlord.

13. No tenant shall overload the floors of the Leased Premises. All damage to the floor, structure or foundation of the Building due to improper positioning of storage items or materials shall be repaired by Landlord at the sole cost and expense of tenant, who shall reimburse Landlord immediately therefor upon demand. All removals or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must take place during the hours that Landlord shall reasonably determine from time to time. The moving of safes or other fixtures or bulky matter of any kind must be done upon previous notice to Landlord and under Landlord's supervision, and the persons employed by any tenant for such work must be acceptable to Landlord. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these

Rules and Regulations or the Lease of which these Rules and Regulations are a part. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon supports approved by Landlord to distribute the weight.

14. Landlord shall have the right to prohibit any advertising by any tenant that, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as an office location and, upon written notice from Landlord, such tenant shall refrain from or discontinue such advertising.

15. The business hours for the Building shall be 8:00 a.m. to 6:00 p.m. Monday through Friday and 8 a.m. to 1 p.m. on Saturday, excluding legal holidays. Landlord reserves the right to require all persons entering the Building between the hours of 6:00 p.m. and 8:00 a.m. and at all hours on Saturday, Sunday and legal holidays to register with Landlord's security personnel. Each tenant shall be responsible for all persons entering the Building at tenant's invitation, express or implied. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of an invasion, mob riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right without any abatement of rent to require all persons to vacate the Building and to prevent access to the Building during the continuance of the same for the safety of the tenants and the protection of the Building and the property in the Building.

16. No tenant shall purchase janitorial or maintenance or other like services, from any person or persons not approved by Landlord. Any persons employed by any tenant to do janitorial work or other work in the Leased Premises shall, while in the Building and outside of the Leased Premises, be subject to and under the control and direction of Landlord (but not as an agent or servant of Landlord), and tenant shall be responsible for all acts of such persons.

17. Canvassing, soliciting and peddling in the Building are prohibited, and each tenant shall report and otherwise cooperate to prevent the same.

18. All office equipment of any electrical or mechanical nature shall be placed by tenant in the Leased Premises in settings that will, to the maximum extent possible, absorb or prevent any vibration, noise and annoyance.

19. No air-conditioning unit or other similar apparatus shall be installed or used by any tenant without the written consent of Landlord.

20. There shall not be used in any space, or in the public halls of the Building, either by any tenant or others, any hand trucks except those equipped with rubber tires and rubber side guards.

21. The scheduling of tenant move-ins shall be before or after normal business hours and on weekends, subject to the reasonable discretion of Landlord.

22. The Building is a smoke-free Building. Smoking is strictly prohibited within the Building. Landlord may, at its sole discretion, impose a charge against monthly rent of \$50.00 per violation by tenant or any of its employees, representatives, contractors or invitees, of this smoking policy.



23. Tenants will ensure that all doors are securely locked, and water faucets, electric lights and electric machinery are turned off before leaving the Building.

24. Parking spaces associated with the Building are intended for the exclusive use of passenger automobiles. Except for intermittent deliveries, no vehicles other than passenger automobiles may be parked in a parking space without the express written permission of Landlord. Tenant, its employees, customers, invitees and guests shall, when using the parking facilities in and around the Building, observe and obey all signs regarding fire lanes and no-parking and driving speed zones and designated handicapped and visitor spaces, and when parking always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a no-parking zone or in a designated handicapped area, and any vehicle which is left in any parking lot in violation of the foregoing regulation. All vehicles shall be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicles except to the extent arising out of the negligence or willful misconduct of Landlord, the managing agent or any of their respective partners, directors, officers, agents or employees.

25. Tenant shall be responsible for and cause the proper disposal of medical waste, including hypodermic needles, created by its employees.

26. In the event Tenant connects equipment directly to a water supply, Tenant shall ensure that such equipment is plumbed with braided or copper lines. Without limiting the generality of the foregoing, polymer plastic lines are not permitted for any plumbing performed by Tenant or its agents within the Building and Leased Premises.

27. Tenant shall not, whether temporarily, accidentally or otherwise, allow anything to remain in, place or store anything in, or obstruct in any way, any sidewalk, court, hall, passageway, entrance, or shipping area.

28. If Tenant desires signal, alarm or other utility or similar service connections installed or changed, then Tenant shall not install or change the same without the approval of Landlord, and then only under direction of Landlord and at Tenant's expense.

29. Any large volume of trash resulting from delivery of furniture, equipment, etc., should be removed by the company delivering the same, by Tenant, or by Landlord at Tenant's expense.

30. No air conditioning or heating unit (space heaters included here) or other similar apparatus shall be installed or used by any tenant without the written consent of Landlord.

It is Landlord's desire to maintain in the Building and Common Areas the highest standard of dignity and good taste consistent with comfort and convenience for tenants. Any action or condition not meeting this high standard should be reported directly to Landlord. Landlord reserves the right to make such other and further rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Building and Common Areas, and for the preservation of good order therein.

## **EXHIBIT F**

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

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (“*Agreement*”) is entered into as of \_\_\_\_\_, 2020, (the “*Effective Date*”) by and between **SILVERPEAK REAL ESTATE FINANCE LLC** (together with any other holder of the Loan (defined below) and their respective successors and assigns, the “*Mortgagee*”) and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter, the “*Tenant*”), with reference to the following facts:

A. MF SOMERSET PARK, LLC, a North Carolina limited liability company (the “*Landlord*”), owns fee simple title in the real property described in Exhibit “A” attached hereto (the “*Property*”).

B. Mortgagee has made or intends to make a loan to Landlord (the “*Loan*”).

C. To secure the Loan, Landlord has or will encumber the Property by entering into a mortgage or deed of trust in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the “*Mortgage*”) to be recorded in land records.

D. Pursuant to the Lease dated \_\_\_\_\_, (the “*Lease*”) between Landlord and Tenant, Landlord leased to Tenant a portion of the Property, as said portion is more particularly described in the Lease (the “*Leased Premises*”).

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. *Definitions.* The following terms shall have the following meanings for purposes of this Agreement.

a. *Foreclosure Event.* A “***Foreclosure Event***” means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which a Mortgagee becomes owner of the Property; or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in the Property in lieu of any of the foregoing.

b. *Former Landlord.* A “***Former Landlord***” means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

c. Offset Right. An “**Offset Right**” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

d. Rent. The “**Rent**” means any fixed rent, base rent or additional rent under the Lease.

e. Successor Landlord. A “**Successor Landlord**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

f. Termination Right. A “**Termination Right**” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

g. Other Capitalized Terms. If any capitalized term is used in this Agreement and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. Subordination. The Lease, as the same may hereafter be modified, amended or extended, shall be, and shall at all times remain, subject and subordinate to the terms, conditions and provisions of the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage. Notwithstanding the foregoing, Mortgagee may elect, in its sole and absolute discretion, to subordinate the lien of the Mortgage to the Lease.

3. Nondisturbance, Recognition and Attornment.

a. No Exercise of Mortgage Remedies Against Tenant. So long as the Tenant is not in default under this Agreement or under the Lease beyond any applicable grace or cure periods (an “**Event of Default**”), Mortgagee (i) shall not terminate or disturb Tenant’s possession of the Leased Premises under the Lease, except in accordance with the terms of the Lease and this Agreement and (ii) shall not name or join Tenant as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

b. Recognition and Attornment. Upon Successor Landlord taking title to the Property (i) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease as affected by this Agreement; and (iii) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Tenant hereby acknowledges notice that pursuant to the Mortgage and assignment of rents, leases and profits, Landlord has granted to the Mortgagee an absolute, present assignment of the Lease and Rents which provides that Tenant continue making payments of Rents and other amounts owed by

Tenant under the Lease to the Landlord and to recognize the rights of Landlord under the Lease until notified otherwise in writing by the Mortgagee. After receipt of such notice from Mortgagee, the Tenant shall thereafter make all such payments directly to the Mortgagee or as the Mortgagee may otherwise direct, without any further inquiry on the part of the Tenant. Landlord consents to the foregoing and waives any right, claim or demand which Landlord may have against Tenant by reason of such payments to Mortgagee or as Mortgagee directs.

c. Further Documentation. The provisions of this Article 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article 3 in writing upon request by either of them within ten (10) days of such request.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

a. Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. The foregoing shall not limit either (i) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (ii) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.

b. Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

c. Payment; Security Deposit; Work. Any obligation: (i) to pay Tenant any sum(s) that any Former Landlord owed to Tenant unless such sums, if any, shall have been actually delivered to Mortgagee by way of an assumption of escrow accounts or otherwise; (ii) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee; (iii) to commence or complete any initial construction of improvements in the Leased Premises or any expansion or rehabilitation of existing improvements thereon; (iv) to reconstruct or repair improvements following a fire, casualty or condemnation; or (v) arising from representations and warranties related to Former Landlord.

d. Modification, Amendment or Waiver. Any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Mortgagee's written consent.

e. Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, Successor Landlord's obligations and liability under the Lease shall never

extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Property from time to time, including insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "***Successor Landlord's Interest***"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. **Mortgagee's Right to Cure.** Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Offset Right or Termination Right:

a. **Notice to Mortgagee.** Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "***Default Notice***") and, thereafter, the opportunity to cure such breach or default as provided for below.

b. **Mortgagee's Cure Period.** After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing. In addition, as to any breach or default by Landlord the cure of which requires possession and control of the Property, provided that Mortgagee undertakes by written notice to Tenant to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require to either: (i) obtain possession and control of the Property with due diligence and thereafter cure the breach or default with reasonable diligence and continuity; or (ii) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. **Miscellaneous.**

a. **Notices.** Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by telefax transmission, with the original machine-generated transmit confirmation report as evidence of transmission. Notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or telefax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

- i. If to the Mortgagee, at:

Silverpeak Real Estate Finance LLC  
1330 Avenue of the Americas  
New York, New York 10019  
Attn: \_\_\_\_\_  
Facsimile No. \_\_\_\_\_

- ii. If to the Tenant, at:

Wake County  
PO Box 550  
Raleigh, NC 27602  
Attention: Ms. Kelli Braunbach, Director Wake County GSA  
kbraunbach@wakegov.com

with copy to:  
Wake County  
PO Box 550  
Raleigh, NC 27602

Attention: Mr. Mark Forestieri, Director, Wake County FD&C  
mforestieri@wakegov.com\_\_\_\_\_

Attention: Mr. Scott W. Warren, County Attorney  
swarren@wakegov.com

b. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

c. Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

d. Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

e. Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under

this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

f. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State in which the Leased Premises are located, excluding such State's principles of conflict of laws.

g. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

h. Due Authorization. Tenant represents to Mortgagee that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Mortgagee represents to Tenant that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

i. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagee and the Tenant have caused this Agreement to be executed as of the date first above written.

**MORTGAGEE:**

**SILVERPEAK REAL ESTATE FINANCE LLC**

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

Name:

Title:

[Signature Pages Continue on Following Page]



**TENANT:**

\_\_\_\_\_

a \_\_\_\_\_

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

Name:

Title:

### **LANDLORD'S CONSENT**

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Landlord is not a party to the above Agreement.

**LANDLORD:**

MF SOMERSET PARK, LLC, a  
North Carolina limited liability  
company

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

Name:

Title:

Dated: \_\_\_\_\_, \_\_\_\_\_

## MORTGAGEE'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

## TENANT'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

## **LIST OF EXHIBITS**

If any exhibit is not attached hereto at the time of execution of this Agreement, it may thereafter be attached by written agreement of the parties, evidenced by initialing said exhibit.

Exhibit “A” - Legal Description of the Land